Corps of Engineers Regulatory Program

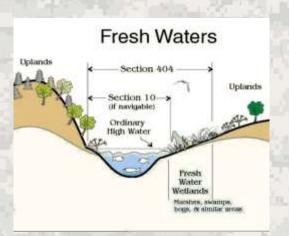
September 18, 2018



Corps of Engineers, Sacramento District

Colorado West Section, Grand Junction, CO









Topics

- Determining if your project is regulated by the Corps
 - Geographical Authority
 - Activity-based Authority
 - Exemptions
- Delineating Waters of the U.S
- Nationwide Permits, Regional Permits, and Individual Permits
- Determining if your project needs to get written verification from the Corps – i.e. submit a Pre-construction Notification
- Mitigation

Primary Regulatory Authorities

Section 10 of the Rivers & Harbors Act (1899)

Section 404 of the Clean Water Act (1972)

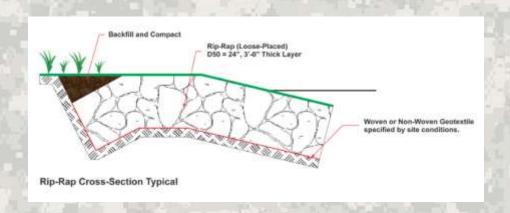
- Section 404 of the Clean Water Act (CWA) establishes a program to regulate the discharge of <u>DREDGED</u> and <u>FILL</u> material <u>INTO</u> <u>WATERS OF THE UNITED STATES</u>.
- Goal: "sustainable development" of our nations aquatic resources

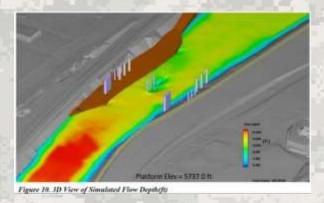


Is A Project Regulated?

Does the project involve the

- (1) discharge of fill materials (activity)
- (2) in waters of the U.S (geographical)?
- Examples of Fill: Rip-rap, road base, abutments, piers,
- Not Examples of Fill: Pilings, Excavation, Removal of vegetation
- Water of U.S. include wetlands, rivers, streams, ditches, etc



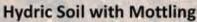


Geographical Jurisdiction

Wetland Delineations

- 3 Part Test-Must have all 3
 - **Hydric Soils**
 - Vegetation
 - Hydrology
- Wetland Delineation Manual
- Regional Supplements
- Automated forms available soon







Upland Soil

Waters Delineation

- Ordinary High Water Mark (OHWM)
- Regional Supplements



Wetland Delineation Data Sheets

sject/Site:		WyCounty	Sampling Date:	
opiioans/Owner:	- 1		State: Serpting Point:	
vestigatoris:		ection, Township, Ra		
ndform drillslope, terrace, etc.:	19	Local relief (concave.	convex hare! Since /%	ė.
dregion (LRR):				
Map Unit Name			NWI clessification	
e climatic / hydrologic conditions on the sile typical				
e Vegetation Soil or Hydrology			Tionnal Circumstances' present? Yes!	
			합니다 그리지 않아서 아이들이 아이들이 아이들이 되었다.	
e Vegetation Soit or Hydrology			reded, explain any answers in Remarks.)	
UMMARY OF FINDINGS - Attach site	map showing	sampling point i	ocations, transects, important feature	es, et
tydric Soli Present? Yes	No	hu the Sampled within a Wetla		
EGETATION – Use scientific names of	plants.			
STATE OF THE PARTY	Atriotote	Dominant Indicator	Dominance Test worksheet:	
Tree Stratum (Plot spe)	35,C04F	Species? Status	Number of Donavarit Species. That Are OIL. FACW, or FAC:	
			That Are Offic, FACW, St FAC:	- 100
le .			Total Number of Dominant Species Across Air Strats	100
				100
		+ Total Cover	Percent of Dominant Species That Are OSL, FACW, or FAC	iAm
SeptimofShrub Stretum (Prof size:)		Prevalence Index worksheet:	
-			Total % Cover of Multiply by	
			Offic species s 1 =	
			FACW species 92+	
			FAC species x1+	
		- Total Cover	FACU species x 4 =	
ferb Stratum (Plot size)			UPL species x 5 =	
-			Celumn Totals:(A)	_ (6)
			Prevalence Index = BIA =	_
			Hydrophytic Vegetation Indicators:	
			1 - Rapid Test for Hydrophytic Vegetation	
			2 - Domenance Test is >50%	
			3 - Prevalence Index is s3.0'	
ti			4 - Morphological Adaptetions* (Provide sudats in Remarks or on a separate sheet	pperm
ţ.			5 - Welland Non-Vascular Plants'	
e			Problematic Hydrophytic Vegetation* (Espi-	um)
1			Indicators of trydric set and wetland hydrology	mast
Noods Vine Stretum (Plot size:)		- Total Cover	be present, unless disturbed or problematic	
			Hydrophytic	
		Total Cover	Vegetation Present? Yes No	
N. Bare Ground in Herb Stretum				

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IOIL		-	Sampling Point:	
	e depth needed to document the indicator or cor	nflom the absence of	of indicators.)	
Depth Matte	Recon Features	-	Philosophia.	
(Inthes) Color (most)	% Color (moist) % Type Los		Remarks	
Type: C+Concentration, D+Depletor	, RM+Reduced Matrix, CS+Covered or Coaled San	d Grains Too	ition: PL+Pore Lining, M+Matrix	
Hydric Soil Indicators: (Applicable	to all LRRs, unless otherwise noted.)	Indicator	s for Problematic Hydric Soils*	
Histosof (A1)	Sandy Redox (S5)	2 cm Muck (A10)		
Histic Epipedon (AZ)	Original Matrix (ISE)		Parent Material (TF2)	
Black Hielic (A3)	Loarry Mucky Mineral (FT) (seccept MLR		Shallow Dark Surface (TF12)	
Hydrogen Suffide (A4)	Lourny Gleyed Mitrix (F2)		(Explain in Remarks)	
Depleted Below Dark Surface (A1	[1] Depleted Matrix (F3)	300	TO STATE OF THE ST	
Thick Dark Surface (A12)	Redox Dark Surface (F6)	Indicator	s of hydrophytic vegetation and	
Sendy Musicy Mineral (S1)	Depleted Dark Surface (F7)		welland hydrology must be present.	
Sandy Gleyed Metrix (S4)	Redox Depressors (Fit)	unless	disturbed or problematic.	
Restrictive Layer (if present):				
Type				
Depth (inches):		Hydric Soil Present? Yes No		
		Hydric State	Present? Yes No	
Herraths.		Hydric Solt (Present? Yes No	
Remarks.		Hydric Sult	Present? Yes No	
Remarks: EYDROLOGY Walland Hydrology Indicators:				
Remarks.	equirest: sheek all that apply)		resent? Yes No	
Remarks: EYDROLOGY Walland Hydrology Indicators:	rouled: sheek all that specyl. Water-Stained Leaves (89) (except	Secon	ines indicators (2 or more required)	
PYDROLOGY Wetland Hydrology Indicators: Pitrans Indicators concinues of one in Burtaco Wijeri (A1) Halpy Winder Tatio (A2)		Secon	ines indicators (2 or more required)	
IYDROLOGY Welland Hydrology Indicators: Phras's Indicators unicimum of one in Burtaco Wijeer (A1) High Woter Tatle (PB) Steturshon (A3)	Water-Stained Leaves (95) (except	Secon W	SeculoResons 2 or more required.	
PYDROLOGY Wetland Hydrology Indicators: Pitrans Indicators concinues of one in Burtaco Wijeri (A1) Halpy Winder Tatio (A2)	 Water-Stained Leaves (88) (except MLRA 1, 2, 4A, and 48) 	Secon	Seru Indicators (2 or noise Insulates) del-Stained Leaves (80) (MLRA 1, 2 4A, and 48)	
IYDROLOGY Welland Hydrology Indicators: Phras's Indicators unicimum of one in Burtaco Wijeer (A1) High Woter Tatle (PB) Steturshon (A3)	Water-Stained Leaves (85) (except MLRA 1, 2, 4A, and 48) Self-Cryst (811)		Seculosistatos (2 or nore insules) des-Stanod Leves (SS) (MLRA 1, 2 4A, and 4B) sings Fabors (BS) "Desam Vider Table (C3)	
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PYDROLOGY Wetland Hydrology Indicators: Primary Indicators concinues of one in Burtace Wierer (A1) High Winder Table (A2) Seaturation (A3) Valet Marks (B1) Sectioned Deposits (82)	Water-Stained Leaves (80) (except MI,RA 1, 2, 4A, and 48) Sat Coult (813) Apparts invertabrates (813) Hydrogen Suffate Odor (C1)	Secon W	Seculnidadora (2 or more resistradi side-Stamod Leaves (50) (MLRA 1, 2, 4A, and 4B) sinago Paterra (870) Passion Visiter (10) Staration Visiter on Aerial Inagery (Ct omorphic Position (10)	
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PYDROLOGY Weldard Hydrology Indicators: Primars Indicators unicimum of one in Burtaco Velecir (A1) High Visiter Tactic (A2) Selstration (A3) Visiter Marks (B1) Second Deposits (B2) Drift Deposits (B3) Algal Met or Christ (B4) Fon Deposits (B5) Serfame Oxfo Charles (B6)	Water-Stained Leaves (B5) (weeks) MLRA 1, 2, 44, and 48) Sat Cruze (B1) Agoutin Invertabrates (B13) Hydrogen Suffice Goor (C11) Outdoor Rhydroghesis along Living Presence of Reduced fron (C4) Room's Your Reduction on Titled Solid Souried or Stressed Haufs (C11) (LR	Second S	Seru Indicators (2 or norm Insumed) de-Stamod Leaves (80) (MLRA 1, 2 4A, and 48) sinsage Fathern; (810) y Besson Visiter Table (C2) taration Visiter on Antial Inagery (C5 omorphic Footbon (D2) sinor Agutent (D3) C-Virula	
PPDROLOGY Wetland Hydrology Indicators: Primary Indicators oncinimum of one in Burtace Wiper (A1) Halph Winder Table (A2) Seturation (A3) Valet Marks (B1) Sectioned Deposits (B2) Drift Deposits (B3) Algal Mat or Crust (BH) For Deposits (B5)	Water-Stained Leaves (B5) (weeept MLRA 1, 2, 4A, and 4B) Sale Coupt (B1) Aguate Investebrates (B13) Hydrogen Saffate Odor (C1) Osidized Rhizosphems along Living Presence of Reducted tron (C4) Racent Your Reduction or Tiled Sole Souted or Stressed Henris (D1) (LR ery (B7) Other (Expain in Remarks)	Second S	ides Indicators (2 or more resource); site-Stamod Leaves (30) (MLRA 1, 2, 4A, and 4B) sincep Fabrers (BSD) (Ceases Viniter Tables (C2) tration Visible on Aeral Integery (C5 orropchie Foolion (D2) sites Agustant (D3) C-Haralant Table (D3) consider Missing (D6) (LRR A)	
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US Army Corps of Engineers

Western Mountains, Valleys, and Class - Version 2.0



Exemptions

Agricultural Irrigation Exemption

- Construction or maintenance of farm or stock ponds and irrigation ditches.
- Discharges associated with siphons, pumps, headgates, wingwalls, weirs, diversion structures, and such other facilities as are appurtenant and functionally related to irrigation ditches are included in this exemption.

Maintenance Exemption

- Discharges for the maintenance, including emergency reconstruction of recently damaged parts, of currently serviceable structures.
- Maintenance does not include any modification that changes the character, scope, or size of the original fill design.
- Reconstruction must occur within a reasonable period of time after damage occurs in order to qualify for this exemption.



Available Permits

Nationwide Permits (NWP)

≈50 different permits based on activity/purpose

- Pre-Construction Notification (if necessary)
- Must Comply w/ General & Regional Conditions
- Examples:
 - NWP #13 Bank Stabilization
 - NWP #14 Linear Transportation Projects
- More than 80% of our workload

Regional General Permits (RGP)

- Specifically for the State of Colorado
- Example: RGP #12 Aquatic Habitat Improvements

NWP Applications

Nationwide Permits may or may not require a Pre-Construction Notification (PCN)

- Read the NWP
- Check General Conditions
- Check Regional Conditions

If PCN is required, submit.....

- PCN
- Wetland/Waters Delineation
- Map of Impacts
- Design Drawings
- BE SPECIFIC

*Pre-App Discussion

- Give us a call....
- During the Planning Phase
- We conduct site visits

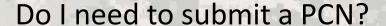


Nationwide Permit #14 Linear Transportation Projects

Does the NWP description fit my project?

NWP 14 – Linear Transportation Projects

Activities required for the construction, expansion, modification, or improvement of linear transportation projects (e.g., roads, highways, railways, trails, airport runways, and taxiways) in waters of the United States.....



Check the Notification section of the NWP

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity if: (1) the loss of waters of the United States exceeds 1/10-acre; or (2) there is a discharge in a special aquatic site, including wetlands.

BUT NOT DONE YET....

- Check the General Conditions
- Check the Regional Conditions



General Conditions

32 General Conditions that apply to all NWPs

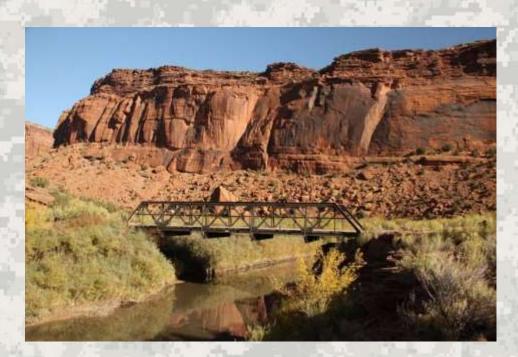
Notable General Conditions

15. **Single and Complete Project**. The activity must be a single and complete project. The same NWP cannot be used more than once for the same single and complete project.

20. **Historic Properties**. *paraphrased*: If there is potential to affect a historic resource then a PCN is required and the Corps (or lead federal agency) will consult with the State Historic Office

Other NWPs

- NWP #13 Bank Stabilization
 - Up to 500 linear feet
 - Up to 1 cubic yards per linear foot
- NWP # 18 Minor Discharges
 - Authorizes up to 25 cubic yards
- NWP #33 Temporary Construction, Access and Dewatering
 - Must include a restoration plan
- RGP #37 Stream Bank Stabilization Projects
 - Up to 1,000 linear feet
 - Quality reference for designing bank and in-stream structures



Individual Permits

Individual Permit Process

- Required when no NWPs or RGPs fit the description, or there are more than minimal effects
- Public Notice
- NEPA, Public Interest Factors
- Alternatives Analysis
- Least Environmentally Damaging Practicable Alternative (LEDPA)
- Mitigation Required for all impacts



Mitigation of Impacts

Mitigation is necessary to ensure that adverse effects on the aquatic environment are minimal

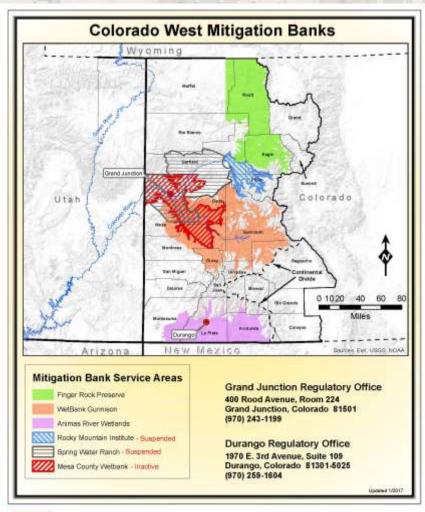
Sequence of mitigation

- Avoidance
- Minimization
- Compensation

Compensatory Mitigation may be

- · On-site or off-site
- Credits purchased from a bank

Required for Nationwide Permitted projects with impacts greater than 0.1 acre (~4,300 sqft) to wetlands





BUILDING STRONG

Not Always Black & White...

Regulatory Policies can change

- Court decisions
- District Policies
- Regional Guidance Letters

Projects are reviewed case-by-case

Corps is NOT a Proponent or an Opponent of projects

We Conduct Site Visits
We do not design projects

Give us a call....

