

# Corps of Engineers Regulatory Program

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**US Army Corps  
of Engineers.**



# 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 **DREDGED** and **FILL** material **INTO WATERS OF THE UNITED STATES**.
- Goal: “sustainable development” of our nations aquatic resources

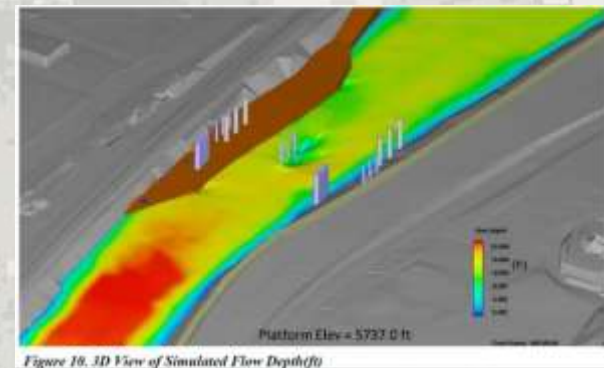
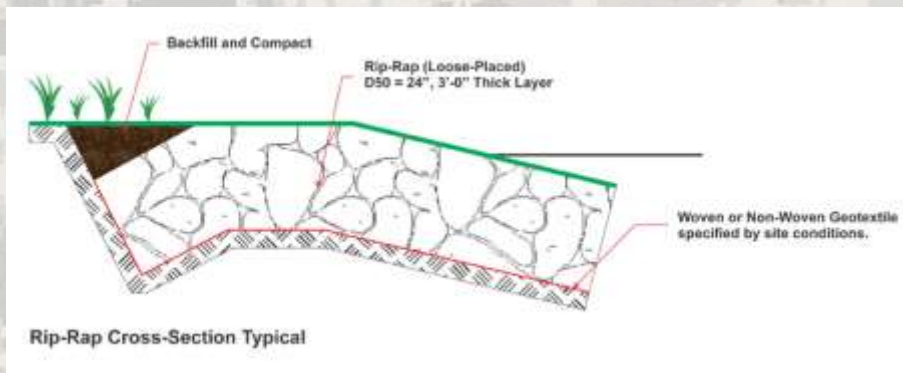


# Is A Project Regulated?

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



Hydric Soil with Mottling



Upland Soil

## Waters Delineation

- Ordinary High Water Mark (OHWM)
- Regional Supplements









Nordic Inn Site PUD



Figure 2  
Wetlands and  
Waters of the U.S.

# 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.....*

Do I need to submit a PCN?

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 NWP

### 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 NWP's

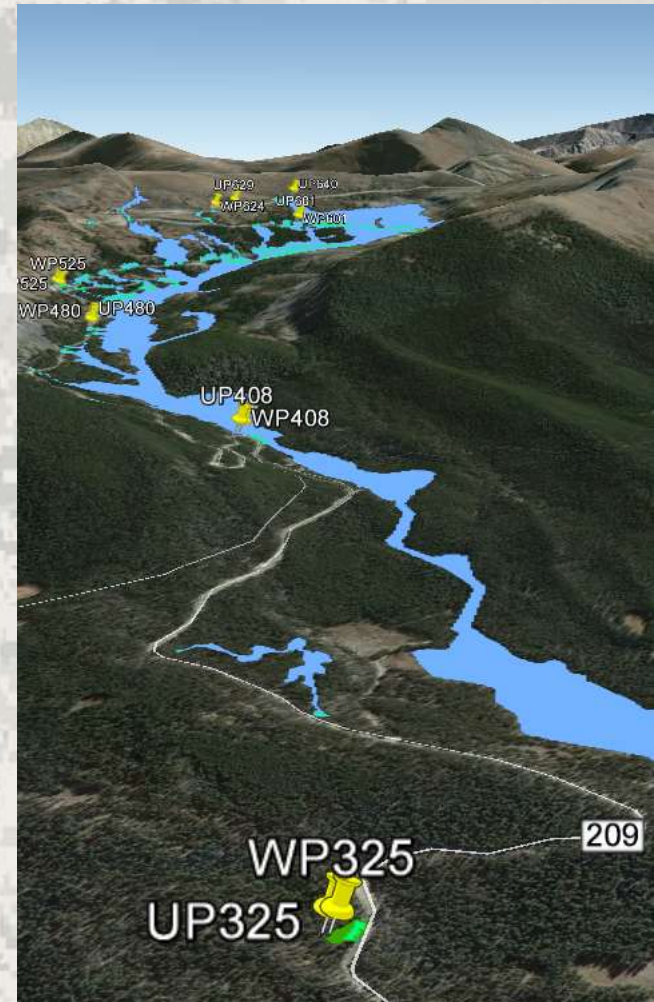
- **NWP #13 – Bank Stabilization**
  - Up to 500 linear feet
  - Up to 1 cubic yards per linear foot
- **NWP # 18 – Minor Discharges**
  - Authorizes up to 25 cubic yards
- **NWP #33 – Temporary Construction, Access and Dewatering**
  - Must include a restoration plan
- **RGP #37 – Stream Bank Stabilization 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

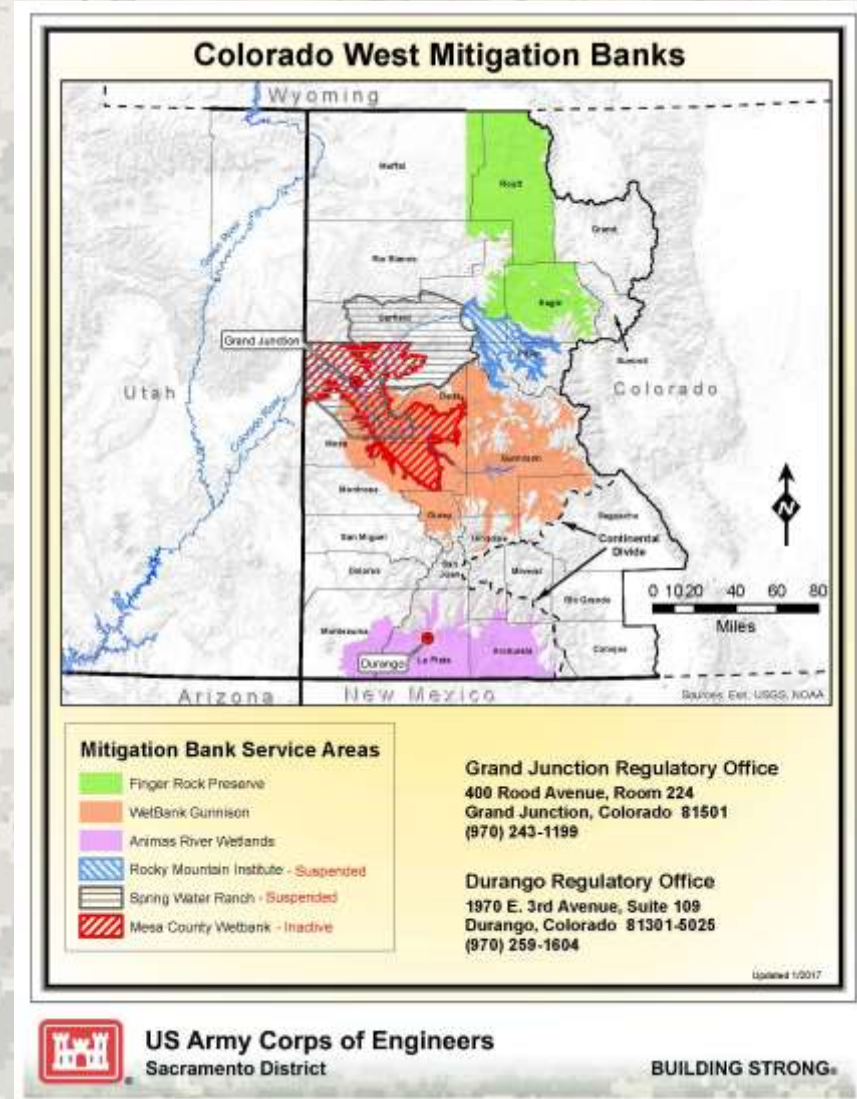
Sequence of mitigation

- 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



# Not Always Black & White...

Regulatory Policies can change

- Court decisions
- District Policies
- Regional Guidance Letters

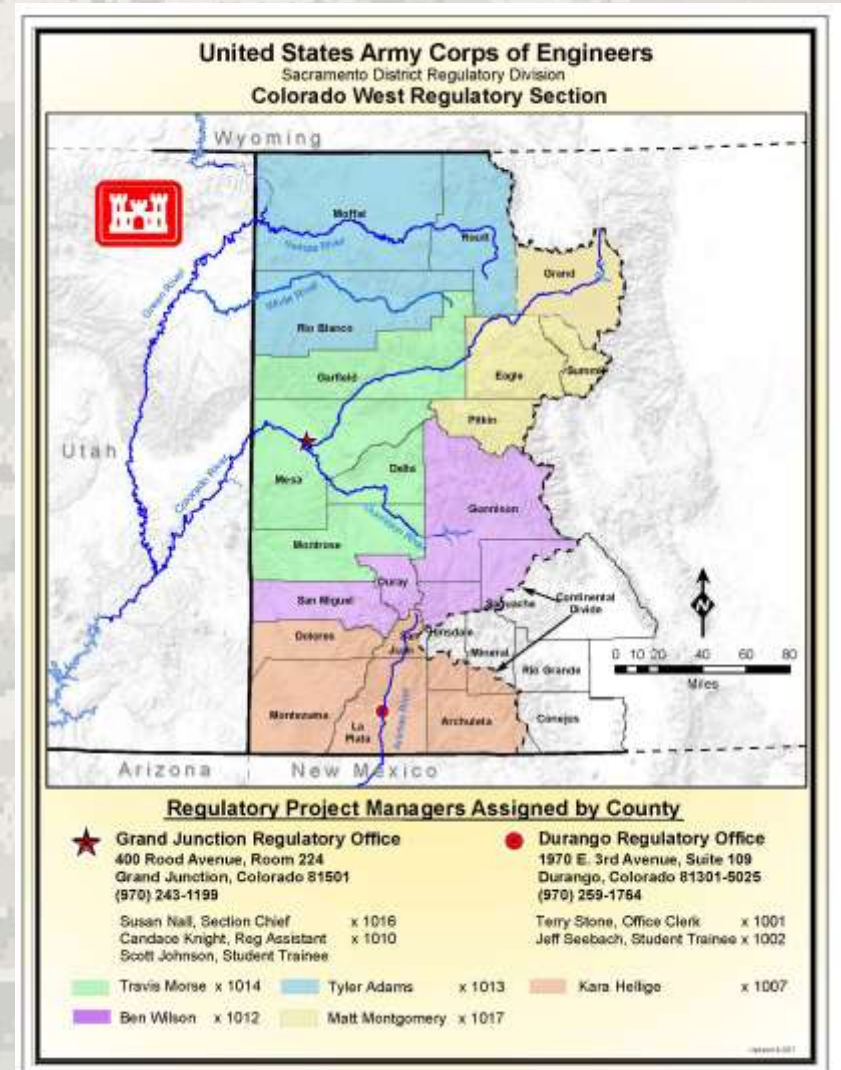
Projects are reviewed case-by-case

Corps is NOT a Proponent or an Opponent of projects

We Conduct Site Visits

We do not design projects

Give us a call....





# Questions?

