

# White River Algae TAG Meeting:

## US Army Corps of Engineers Regulatory Program Overview-

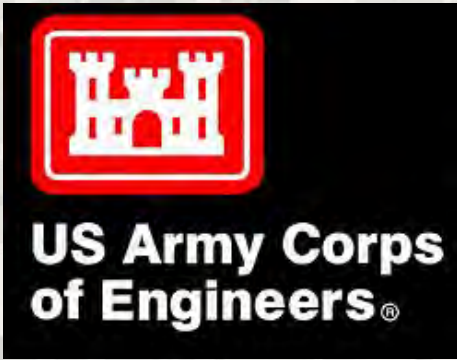
Date: February 13, 2019

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# Overview

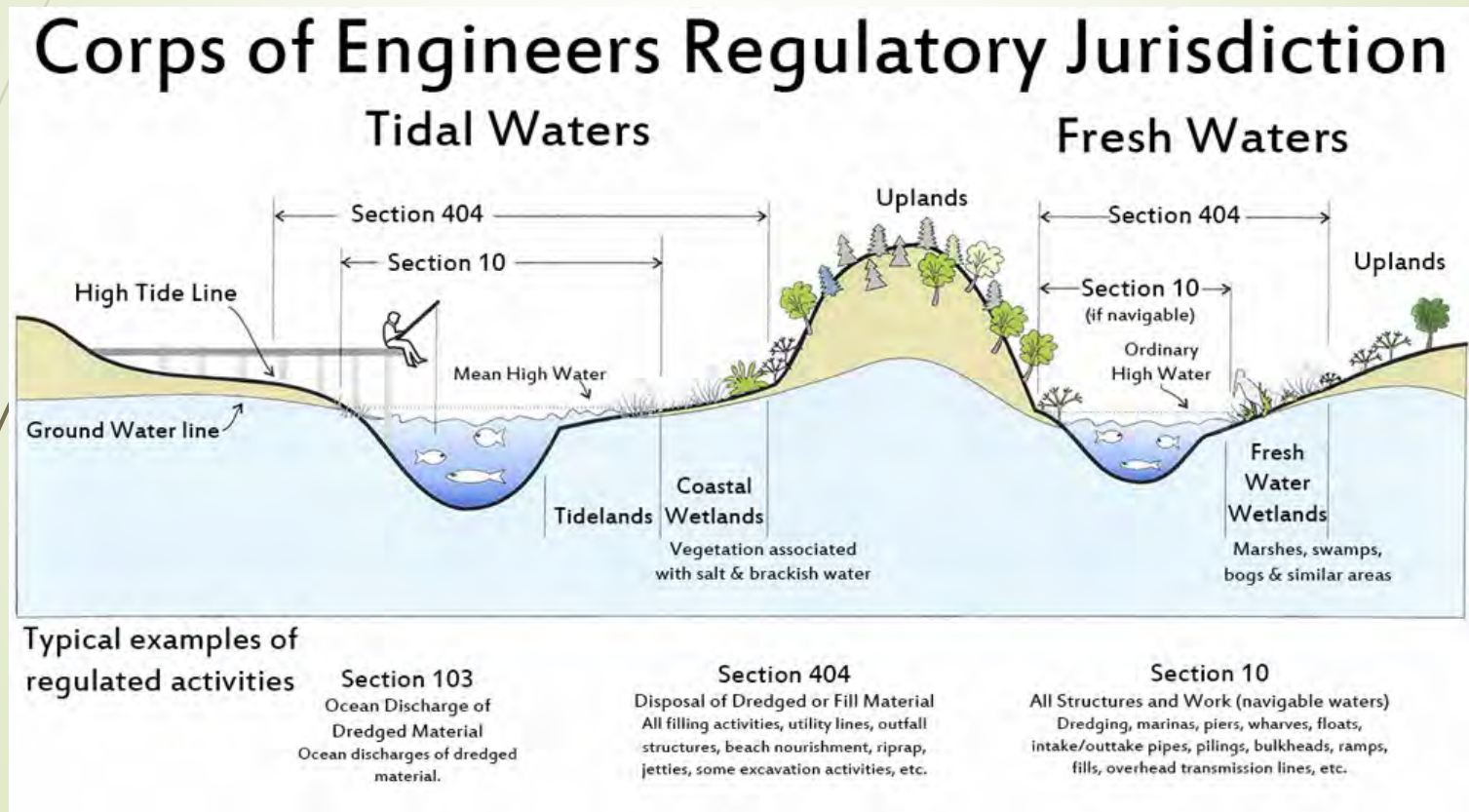
- I. Determining if your project is regulated by the Corps:
  - Geographical Authority
  - Activity-based Authority
  - Exemptions
- II. Aquatic Resource Delineation.
- III. Permit Types - Nationwide, Regional, and Individual.
- IV. Mitigation.
- V. River Permitting Statistics in western Colorado – last 10 yrs.



# Regulatory Authorities

## Section 404 of the Clean Water Act (1972)

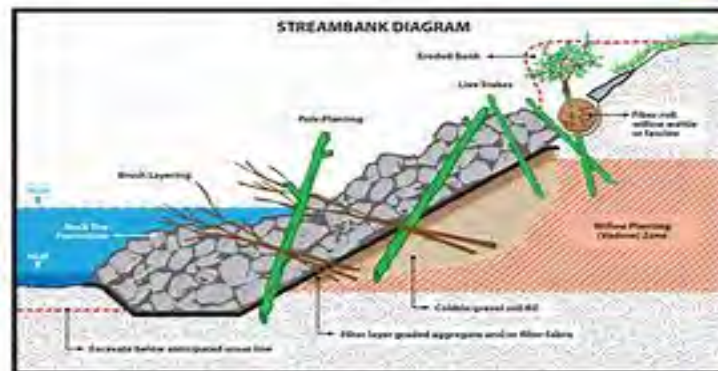
- ▶ Section 404 of the Clean Water Act (CWA) establishes a program to regulate the discharge of **DREDGED** or **FILL** material **INTO WATERS OF THE U. S.**



# When is a Project Regulated?

Does the project involve the discharge of fill (**activity** jurisdiction) in waters of the U.S (**geographical** jurisdiction)?

- Waters of U.S. (WOTUS) include:
  - Rivers, streams (perennial or intermittent), lakes, ponds, marshes, wetlands, seeps, and springs.
- Fill material is defined as “material placed in WOTUS where the material has the effect of:
  - (i) Replacing any portion of a WOTUS with dry land; or
  - (i) Changing the bottom elevation of any portion of a water of the United States.”
- **Examples of Fill:** *rip-rap, road base, abutments, piers, culverts*
- **Not Examples of Fill:** *excavation, above ground removal of vegetation (no ground disturbance)*



# Exemptions - Section 404(f) of the Clean Water Act

1. **Normal Farming**, silviculture, and ranching activities such as plowing, seeding, cultivating, minor drainage, and harvesting.
2. **Maintenance** Activities.
3. Construction and maintenance of **Farm ponds, stock ponds, or irrigation ditches** or the maintenance of drainage ditches.
4. Construction of **temporary sedimentation basins**.
5. Any **nonpoint source pollution** activity since Colorado has a program under Section 208(b)(4) of the CWA.
6. Construction or maintenance of **farm roads, forest roads, or temporary roads for moving mining equipment**.

**Be Aware** - In some cases, even if an activity falls under one of the 6 categories, a permit may still be required if:

- **Toxic Pollutants**
- **Recapture Provision**



# Aquatic Resource Delineation

*Necessary to quantify impacts to WOTUS*

## Wetland Delineations

- 3 Parameter Approach:
  - *Hydric Soils*
  - *Hydrophytic Vegetation*
  - *Hydrology*
- 1987 Wetland Delineation Manual
- Regional Supplements

*(i.e., Arid West Region and Western Mountains, Valleys, and Coast Region)*



**Hydric Soil with Mottling**



**Upland Soil**

## Waters Delineation

- Ordinary High Water Mark (OHWM)



# Available Permits

## Nationwide Permits (NWP):

**52 different permits based on activity/purpose:**

- Re-issued every 5 years on a national level.
- Pre-Construction Notification (if necessary)
  - Must comply w/ all General Conditions.
  - Must comply w/ any applicable Regional Conditions.
- In Colorado 401 Water Quality Certification issued by statute for all GPs.

## Nationwide Information Sheets

- Collapse All Expand All
- ☐ NW01 - Aids to Navigation
- ☐ NW02 - Structures in Artificial Canals
- ☐ NW03 - Maintenance
- ☐ NW04 - Fish and Wildlife Harvesting, Enhancement, and Attraction Devices and Activities
- ☐ NW05 - Scientific Measurement Devices
- ☐ NW06 - Survey Activities
- ☐ NW07 - Outfall Structures and Associated Intake Structures
- ☐ NW09 - Structures in Fleeting and Anchorage Areas
- ☐ NW10 - Mooring Buoys
- ☐ NW11 - Temporary Recreational Structures
- ☐ NW12 - Utility Line Activities
- ☐ NW13 - Bank Stabilization
- ☐ NW14 - Linear Transportation Projects
- ☐ NW15 - U.S. Coast Guard Approved Bridges
- ☐ NW16 - Return Water From Upland Contained Disposal Areas
- ☐ NW17 - Hydropower Projects
- ☐ NW18 - Minor Discharges
- ☐ NW19 - Minor Dredging
- ☐ NW20 - Response Operations for Oil and Hazardous Substances
- ☐ NW21 - Surface Coal Mining Activities
- ☐ NW22 - Removal of Vessels
- ☐ NW23 - Approved Categorical Exclusions
- ☐ NW25 - Structural Discharges
- ☐ NW27 - Aquatic Habitat Restoration, Establishment, and Enhancement Activities
- ☐ NW28 - Modifications of Existing Marinas
- ☐ NW29 - Residential Developments
- ☐ NW30 - Moist Soil Management for Wildlife
- ☐ NW31 - Maintenance of Existing Flood Control Facilities
- ☐ NW32 - Completed Enforcement Actions
- ☐ NW33 - Temporary Construction, Access, and Dewatering
- ☐ NW34 - Cranberry Production Activities
- ☐ NW35 - Maintenance Dredging of Existing Basins
- ☐ NW36 - Boat Ramps
- ☐ NW37- Emergency Watershed Protection and Rehabilitation
- ☐ NW38 - Cleanup of Hazardous and Toxic Waste
- ☐ NW39 - Commercial and Institutional Developments
- ☐ NW40 - Agricultural Activities
- ☐ NW41 - Reshaping Existing Drainage Ditches
- ☐ NW42 - Recreational Facilities
- ☐ NW43 - Stormwater Management Facilities
- ☐ NW44 - Mining Activities
- ☐ NW45 - Repair of Uplands Damaged by Discrete Events
- ☐ NW46 - Discharges in Ditches
- ☐ NW48 - Commercial Shellfish Aquaculture Activities
- ☐ NW49 - Coal Remining Activities
- ☐ NW50 - Underground Coal Mining Activities
- ☐ NW51 - Land-Based Renewable Energy Generation Facilities
- ☐ NW52 - Water-Based Renewable Energy Generation Pilot Projects
- ☐ NW53 - Removal of Low-Head Dams
- ☐ NW54 - Living Shorelines



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# NWP Applications

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

- Read the NWP information sheet
- Read the Reporting Requirements
  - Check General Conditions
  - Check Regional Conditions

## If PCN is required, submit.....

- PCN
- Aquatic Resource Delineation
- Map of Impacts
- Design Drawings
- **BE SPECIFIC**

## \*Pre-App Discussion

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

### U.S. Army Corps of Engineers South Pacific Division



#### Nationwide Permit Pre-Construction Notification (PCN)

This form integrates requirements of the U.S. Army Corps of Engineers (Corps) Nationwide Permit Program within the South Pacific Division (SPD). Boxes 1-10 must be completed to include all information required by General Condition 32. Box 11 (or other sufficient information to show compliance with all General Conditions) must be completed for activities in Arizona, California, Nevada, and Utah, and is recommended for activities in Colorado and New Mexico. If additional space is needed, please provide as a separate attachment. Please refer to the *Instructions for the South Pacific Division Nationwide Permit Pre-Construction Notification (PCN)* (Instructions) for instructions for completing the PCN, as well as additional information on the attachments and tables included with this PCN that may be used.

0. To be filled by the Corps		
Application Number:	Date Received:	Date Complete:
1. Prospective Permittee and Agent Name and Addresses (see Instructions)		
a. Prospective Permittee		
First - <input type="text"/>	Middle - <input type="text"/>	Last - <input type="text"/>
Company - <input type="text"/>	Email Address - <input type="text"/>	
Address - <input type="text"/>	City - <input type="text"/>	State - <input type="text"/> Zip - <input type="text"/>
Phone (Residence/Mobile) - <input type="text"/>	Phone (Business) - <input type="text"/>	
b. Agent (if applicable)		
First - <input type="text"/>	Middle - <input type="text"/>	Last - <input type="text"/>
Company - <input type="text"/>	Email Address - <input type="text"/>	
Address - <input type="text"/>	City - <input type="text"/>	State - <input type="text"/> Zip - <input type="text"/>
Phone (Residence/Mobile) - <input type="text"/>	Phone (Business) - <input type="text"/>	
c. Statement of Authorization: I hereby authorize <input type="text"/> to act in my behalf as my agent for the proposed activity. (Optional, see instructions)		
Signature of Applicant		Date



# Regional General Permits (RGPs)

## Specific to Colorado.

- ▶ **\*RGP 12** - Aquatic Habitat Improvements for Stream Channels in Colorado.
  - ▶ Stream habitat improvement associated with the creation or enhancement of fish habitat components, provided those activities result in net increases in aquatic resource functions and services.
  - ▶ This permit does not authorize the loss of **>0.5 acre of wetland**.
  - ▶ **RGP 37**- Stream Stabilization Projects in Colorado
    - ▶ Up to 1,000 linear feet
    - ▶ Up to 2 cubic yards per linear foot

## \*RGP 12 Notification and Approval Procedures:

- ▶ Coordination with the Colorado Division of Parks and Wildlife (**CPW**) is **required for projects considered for authorization by this RGP**.
- ▶ Pre-application consultation with CPW, preferably on-site, is highly recommended.
- ▶ Providing documentation of pre-application consultation with CPW and their response will satisfy the coordination requirements of this permit resulting in quicker processing times.



## Regional General Permit 12

U.S. ARMY CORPS OF ENGINEERS

BUILDING STRONG®

### AQUATIC HABITAT IMPROVEMENT FOR STREAM CHANNELS IN COLORADO

EFFECTIVE DATE: October 12, 2016

EXPIRATION DATE: October 12, 2021

In accordance with Section 404 of the Clean Water Act (33 U.S.C. 1344) and Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403), the District Engineer, U.S. Army, Corps of Engineers, Albuquerque, Omaha, and Sacramento Districts, hereby re-issue Regional General Permit (RGP) 12 for certain limited discharges of dredged and fill material within waters of the U.S. associated with aquatic habitat improvement for stream channel activities in Colorado.

**LOCATION:** This RGP 12 is applicable to all waters of the United States within the State of Colorado.

**SCOPE OF WORK:** This RGP authorizes certain discharges of dredged and fill material for stream habitat improvement associated with the creation or enhancement of fish habitat components, provided those activities result in net increases in aquatic resource functions and services. This permit does not authorize the loss of greater than 0.5 acre of wetland.

These activities involve placement of materials such as large woody debris, boulders, and other materials into the active stream channel or actual manipulation of the active channel itself in an effort to improve fish habitat (e.g., create pools, trap gravel) and can include such structures as boulder or log weirs, jetties and deflectors, rootwads, and placement of spawning gravel. Examples of typical in-stream structures can be found online at: <http://www.spa.usace.army.mil/Missions/Regulatory-Program-and-Permits/Stream-Management/>. Other structures not specifically listed may be authorized by this permit on a case-by-case basis. Project goals and standards must be achieved within a reasonable time frame to benefit the environment. Mitigation and monitoring may be required based on the nature, extent, and duration of the impact and/or risk of the project plan not achieving performance standards.



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# Individual Permits (IPs)

Required when no NWP or RGP fit the description, or there are more than minimal effects (i.e., > 0.5 acre of impacts)

- Public Notice
- Alternatives Analysis
- 404 (b) (1) guidelines, Public Interest Factors
- Least Environmentally Damaging Practicable Alternative (LEDPA)
- Individual WQ Certificate
  - Mitigation required for all impacts

## Examples:

- White Water Parks and Water Supply projects.



# General Conditions

(~ 32 General Conditions)

## GC #18: Endangered Species

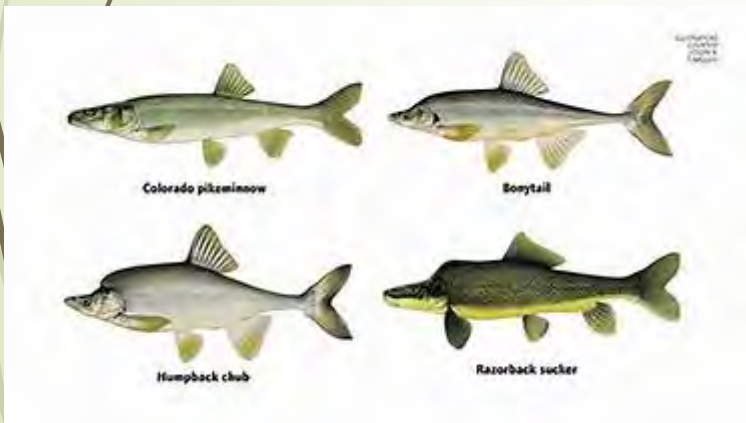


**Canada lynx**  
(*Lynx canadensis*)



**Yellow-billed Cuckoo**  
(*Coccyzus americanus*)

## GC #20: Historic Properties



# Mitigation of Impacts

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

➤ **Sequence of mitigation** (in this order):

1. **Avoid**
2. **Minimize**
3. **Compensate**



- Compensatory Mitigation: Required for General Permit projects with impacts >0.1 acre (~4,300 square feet) to wetlands.

- Compensatory Mitigation may be

➤ **On-site or off-site**

## CONSTRUCTED WETLANDS



# Enforcement

- ▶ Unauthorized Activities (USEPA):
  - ▶ Responsible parties are subject to fines of up to \$50,000 per day of violation.
  
- ▶ Non-Compliance (USACE):
  - ▶ Class I civil penalties may not exceed \$10,000 per violation, except that the maximum amount of any Class I civil penalty shall not exceed \$25,000. Penalty may be pursued in conjunction with a compliance order for restoration and/or mitigation.



# Permitting History (2008-2018)

- Upper Yampa (~ 1,676,215 acres)
  - Total Permits = 248 (NWP = 216, RGP = 31, IP = 1)
  
- Eagle (~1,675,215 acres)
  - Total Permits = 133 (NWP = 128, RGP = 3, IP = 2)
  
- Roaring Fork (~ 927,315 acres)
  - Total Permits = 142 (NWP = 124, RGP = 17, IP = 1)
  
- Upper White (~ 866,939 acres)
  - Total Permits = 53 (NWP = 38, RGP = 14, IP = 1)
  
- Animas (~ 722,581 acres)
  - Total Permits = 299 (NWP = 251, RGP = 35, IP = 13)



# Where To Find Information

Sacramento District Regulatory Program Website Link:  
<http://www.spk.usace.army.mil/Missions/Regulatory/>

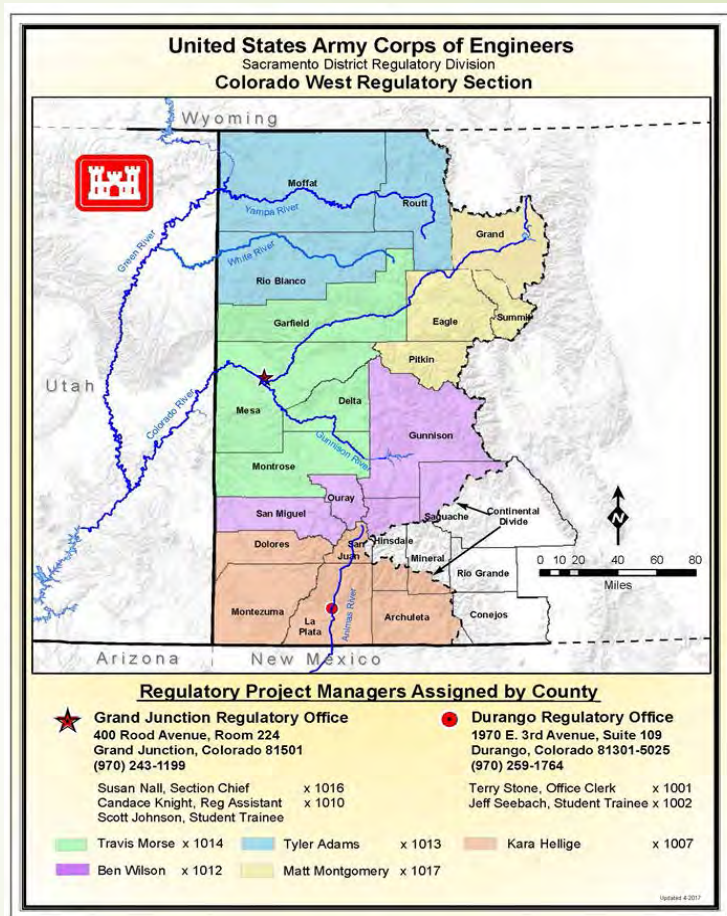
- **Handouts available:**
  - Project Manager Map
  - Exemptions
  - Pre-Construction Notification
  - 2017 Colorado Regional Conditions

In Closing...

- **The Corps is NOT a Proponent or an Opponent of projects.**
- Projects are reviewed case-by-case
- Regulatory Policies can change due to:
  - District policies
  - Court decisions
  - Regional Guidance Letters

Give us a call anytime to discuss projects

(970) 243-1199



# Questions?

