



REPLY TO
ATTENTION OF

CESWL-RD

DEPARTMENT OF THE ARMY
LITTLE ROCK DISTRICT, CORPS OF ENGINEERS
POST OFFICE BOX 867
LITTLE ROCK, ARKANSAS 72203-0867

June 30, 2010

2009-00100-GG

JOINT PUBLIC NOTICE
CORPS OF ENGINEERS:
Little Rock, Memphis, and Vicksburg Districts
and
STATE OF ARKANSAS

ISSUANCE OF A GENERAL PERMIT which authorizes work associated with the discharge of dredged or fill material into some waters of the United States (US), including wetlands, and work in, over, under, or affecting navigable waters of the US, associated with the construction and operation of exploration and production wells for oil and gas and their supporting fills and structures. As other types of hydrocarbons are developed in other locations within Arkansas, this RGP may be used for those development activities. Activities that may be authorized by this RGP include, but are not limited to, the fill associated with the construction of drilling pads, reserve and mud pits, access roads, dikes, levees, production and storage facilities, pipelines, temporary cofferdams, equipment ramps, borrow pits, disposal areas, dams, and associated staging areas.

TO WHOM IT MAY CONCERN:

Background. On December 23, 2009, the Little Rock, Memphis, and Vicksburg Districts of the Corps of Engineers issued a joint public notice with the State of Arkansas announcing consideration of issuance of this general permit associated with the construction and operation of exploration and production wells for oil and gas and their supporting fills and structures. Due to requests to extend the comment period, the Corps issued a second public notice on January 21, 2010. The authority for permit issuance is found in Section 10 of the Rivers and Harbors Act of 1899 (33 U.S. Code 403) and Section 404 of the Clean Water Act (33 U.S. Code 1344). Corps districts are authorized to develop general permits in accordance with Title 33, Code of Federal Regulations Parts 325.2(e)(2) and 325.5(c)(1).

Determination to Issue. After reviewing comments received on the public notice, it is our assessment that the work authorized will not have significant adverse environmental impacts and that the public interest will be served by issuance of the general permit.

The policies of this general permit will be subject to reconsideration at any time, but will be reviewed at least every five (5) years. This general permit is therefore issued for a period of 5 years until **June 30, 2015**, unless it is revoked or specifically extended in the interim.

Public Interest Review. As a result of the public interest review and in an effort to clarify the permit, verification procedures, and special conditions, modifications were made to the permit and verification procedures. Modifications include the permit authorization specifically incorporates other hydrocarbons (in addition to oil and gas); mitigation requirements associated with the Little Red River watershed; and modification of right-of-way restrictions at waters of the US.

Notification/Verification Requirement. Anyone wanting to do work under the proposed general permit would have to notify the appropriate Corps District and receive verification that the proposed work met the limits of the general permit. The notification/verification details are outlined in the Procedures for Verifying Authorization attached to the general permit. All prospective permittees should review the entirety of the general permit and verification procedures.

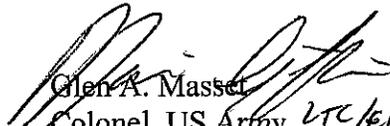
Water Quality Certification. Attached to this public notice, you will find a copy of the Section 401 Water Quality Certification and special conditions, which are conditions of your permit. If you have questions concerning compliance with the conditions of the 401 certification, you should contact the State of Arkansas, Department of Environmental Quality, 5301 Northshore Drive, North Little Rock, Arkansas 72118-5317, (501) 682-0744.

Consideration of New/Additional Information. If additional information, developed during the life of the permit, indicates factors contrary to the public interest, this general permit may be suspended, modified, or revoked.

Interested parties are requested to provide comments on this general permit at any time during the life of the permit. Comments should be addressed to Chief, Regulatory Division, US Army Corps of Engineers, PO Box 867, Little Rock, Arkansas 72203-0867.

NOTE: The mailing list for this Public Notice is arranged by state and county(s) where the project is located, and also includes any addressees who have asked to receive copies of all public notices. Please discard notices that are not of interest to you. If you have no need for any of these notices, please advise us so that your name can be removed from the mailing list.

Enclosures


Glen A. Massel
Colonel, US Army LTC/EN
for District Engineer DEPUTY COMMANDER

DEPARTMENT OF THE ARMY PERMIT

General Permit: FOR REGULATED ACTIVITIES IN WATERS OF THE UNITED STATES ASSOCIATED WITH THE EXPLORATION FOR AND SUBSEQUENT PRODUCTION OF HYDROCARBONS

Permit No.: **2009-00100-GG**

Issuing Office: Department of the Army
Little Rock District
PO Box 867
Little Rock, Arkansas 72203-0867

NOTE: The term "you" and its derivatives, as used in this general permit, means any of the permittees whose work is authorized under its terms and conditions. The term "this office" refers to the appropriate district or division office of the Corps of Engineers having jurisdiction over the permitted activity or the appropriate official of that office acting under the authority of the commanding officer.

You are authorized to perform work in accordance with the terms and conditions specified below.

Project Description: Work authorized by this Regional General Permit (RGP) is limited to the discharge of dredged or fill material into some waters of the United States (US), including wetlands, and work in, over, under, or affecting navigable waters of the US, associated with the construction and operation of exploration and production wells for oil and gas and their supporting fills and structures. As other types of hydrocarbons are developed in other locations within Arkansas, this RGP may be used for those development activities. Work authorized by this RGP includes, but is not limited to, the fill associated with the construction of drilling pads, reserve and mud pits, access roads, dikes, levees, production and storage facilities, pipelines, temporary cofferdams, equipment ramps, borrow pits, disposal areas, dams and associated staging areas.

This RGP has defined limits of impacts to waters of the US. The loss of waters of the US cannot exceed 1 acre of wetland impact or 2,000 linear feet of intermittent or ephemeral stream impacts.

Project Location: The provisions of this RGP will be applicable to some waters of the US, including navigable waters of the US, within the State of Arkansas.

NOTE: This RGP does not authorize work associated with fill material in perennial streams. Additionally, the RGP does not authorize fill material in any National Wild and Scenic River, Extraordinary Resource Waterbody, or Ecologically Sensitive Waterbody.

Permit Conditions:

General Conditions:

1. The time limit for completing the work authorized ends **three** years from the date of the verification letter to you. If you find additional time is needed to complete the authorized activity, a time extension request should be submitted to this office for consideration at least one month before the above date is reached.
2. You must maintain the activity authorized by this general permit in good condition and in conformance with the terms and conditions of this general permit. You are not relieved of this requirement if you abandon the permitted activity, although you may make a good faith transfer to a third party in compliance with General Condition 4 below. Should you wish to cease to maintain the authorized activity or should you desire to abandon it without a good faith transfer, you must obtain a modification of this general permit from this office, which may require restoration of the area.
3. If you discover any previously unknown historic or archeological remains while accomplishing the activity authorized by this general permit, you must immediately notify this office. We will initiate the state and tribal coordination required to determine if the remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.
4. If you sell the property associated with this general permit, you must inform the new owner to contact this office so that the authorization can be transferred or reissued.
5. If a conditioned water quality certification has been issued for your project, you must comply with the conditions specified in the certification as special conditions to this general permit. For your convenience, a copy of the certification is attached if it contains such conditions.
6. You must allow representatives from this office to inspect the authorized activity at any time deemed necessary to ensure that it is being or has been accomplished in accordance with the terms and conditions of this general permit.

Special Conditions:

1. **For temporary cofferdams and access roads, appropriate measures must be taken to maintain near normal downstream flows and to minimize flooding. Fill must consist of suitable materials and be placed in a manner that will not be eroded by expected high flows.**

- 2. All temporary fills must be removed within 30 days of placement. The material must be removed entirely to an upland area. The affected waters of the US must be restored to preconstruction elevations and channel conditions within ten days of removal and any exposed slopes and streambanks must be revegetated or stabilized according to approved BMPs.**
- 3. For pipeline installations in wetlands, the top 6 to 12 inches of the trench must be backfilled with topsoil from the trench. The trench cannot be constructed or backfilled in such a manner as to drain waters of the US. The project shall not promote the drainage of waters of the US or cause an unnecessary impoundment of water.**
- 4. Access roads, pipelines, and temporary structures shall be designed to pass low flows and expected high flows, to not interfere with the migration of aquatic organisms, and to maintain the preconstruction conditions to the greatest extent practicable.**
- 5. Access roads constructed above pre-construction contours and elevations in waters of the United States must be properly bridged or culverted to maintain surface flows and the passage of aquatic organisms. If the activity creates an impoundment of water, adverse effects to the aquatic system due to accelerating the passage of water and/or restricting its flow must be minimized to the maximum extent practicable.**
- 6. For all authorized activities, appropriate best management practices shall be used to the maximum extent practicable to minimize the discharge of pollutants and sediment in stormwater runoff to protect water quality. 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 runoff, 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. Appropriate restoration of wetland vegetation must be accomplished within one month of the site impact.**
- 7. To mitigate for unavoidable impacts, you must comply with the approved mitigation plan.**
- 8. If your form of mitigation is permittee-responsible, the designated mitigation area shall remain in its natural state and shall be preserved in perpetuity. The area may not be converted to another use, including, but not limited to: clearing, spraying with herbicides (unless authorized for invasive species), filling, leveling, draining, dumping, construction of**

any structure, or any other activity that would adversely impact the natural state of the area without obtaining a revision of this Department of the Army permit. Proposed resource management activities involving alteration of the mitigation site must have prior approval from the appropriate Corps of Engineers District.

9. If your form of mitigation is permittee-responsible mitigation, a perpetual deed restriction/conservation easement (legal protection mechanism) shall be placed on the designated mitigation area to guarantee its preservation. A certified copy of the deed restriction as well as a copy of this Department of the Army permit shall be recorded in the Real Estate property records of the appropriate county. It is your responsibility to attach to the deed restriction a clear map and legal description of this mitigation site based on a survey performed by a registered professional land surveyor. Documentation of the deed restriction recording shall be provided to the Corps no later than 120 days following the date of the general permit letter. If you cannot comply with the 120-day timeline, you must contact the Regulatory Enforcement Branch Chief.

If the permittee's interests authorized herein are transferred by conveyance or realty, the deed shall reference the permittee's authorization by this general permit and the terms and conditions specified herein, and their authorization under this general permit shall be recorded along with the deed in the Real Estate property records of the appropriate county.

10. If your form of mitigation is permittee-responsible mitigation, the boundaries of the designated mitigation area shall be surveyed by a registered land surveyor and a copy submitted to the Corps of Engineers. Surveyed corners and boundaries shall be clearly and permanently marked in the field for easy identification. The boundaries of the mitigation area shall be marked with metal posts with signs identifying the area as a mitigation site.

11. If your form of mitigation is permittee-responsible mitigation, you shall monitor the designated mitigation site for a period of five years. A total of five annual reports must be prepared for submittal to the appropriate Corps of Engineers Regulatory Office in each successive year after planting. The first report is due on or before December 31st following completion of the mitigation work, and subsequent reports shall be submitted on or before December 31st of each specified year thereafter. A survival rate of 70% is required for the fifth year after planting. If the Corps of Engineers determines that the mitigation sites do not adequately satisfy the required compensatory mitigation, you shall be responsible for any corrective work determined to be necessary by the Corps of Engineers. This corrective work may include, but is not limited to, grading the site or manipulating water levels to

achieve necessary hydrology, or replanting of the mitigation site. This responsibility shall extend for a period of 5 years, unless extended by the District Engineer, beginning upon completion of the mitigation work.

12. If your form of mitigation is permittee-responsible mitigation, your responsibility to complete the required compensatory mitigation as set forth in Special Condition Nos. 7 to 11 will not be considered fulfilled until you have demonstrated mitigation success and have received written verification from the US Army Corps of Engineers.

13. If your form of mitigation is permittee-responsible mitigation, you shall plant native tree, shrub and herbaceous species that are adapted to the existing climatic and soil conditions and purchased within the same geographic region as the project site. The permittee shall control non-native invasive species that appear within the mitigation site. Control shall be removal by hand or use of an approved herbicide. An approved herbicide is one that is used correctly as prescribed on the label and defined as a general-use herbicide by EPA.

14. If your form of mitigation is use of either an approved mitigation bank or in-lieu fee program, you must submit documentation to the appropriate Corps of Engineers Regulatory Office. Your documentation must include baseline information about the impact site and an explanation that includes the name of the bank, the number and resource type of credits to be secured and how the credits were determined. Verification of your participation will be required prior to any discharge of dredged or fill material into identified waters of the United States.

15. You must furnish copies of the Regional General Permit, verification letter, and appropriate Best Management Practices to all pertinent contractors. The contractor is required to implement all conditions of this permit.

16. A minimum of one spillway and a minimum flow release must be constructed concurrent with the construction of any dam authorized by this RGP.

17. The RGP cannot be used in conjunction with any other Department of the Army authorization in order to enlarge the project size.

18. Any structure or fill shall be properly constructed, stabilized, and maintained to ensure public safety.

19. Special Conditions that are required for stream crossing activities occurring in waters of the United States in the Little Red River watershed to protect a local threatened and endangered species are the following:

Note: The specific areas of the Little Red River watershed to which the special conditions apply are identified on the attached map entitled “Little Red River Watershed U.S. Fish and Wildlife Service Coordination.”

a. At least one-business day prior to construction within waters of the United States, you must contact the Corps Regulatory Enforcement Chief. After the pipe is placed within waters of the United States, the site must be restored to pre-construction contours within 48 hours.

b. No permanent stream alterations (stream channelization) are authorized.

c. At each water of the United States crossing, the combined temporary/construction and permanent/maintained right-of-way width cannot exceed 50 feet. This restriction shall be maintained for a distance of 50 feet beginning at the ordinary high water mark on each side of the stream. If the designated right-of-way width is technically infeasible, unsuitable due to local conditions, or safety issues cause this restriction to be impracticable, you must notify the Corps of Engineers Regulatory Enforcement Branch of this concern and request a waiver of this special condition.

d. All access roads must be designed to adequately pass aquatic organisms. Culverts must be adequately sized to maintain flow and must be properly maintained.

e. You must effectively implement the Little Rock District US Army Corps of Engineers Regulatory Branch Guidelines for Non-Bridged Stream Crossings.

f. Within 24 hours following precipitation events at the impact site, all sedimentation control measures must be maintained and either repaired or replaced.

g. Each water of the United States impact site must have effective temporary and permanent re-vegetation measures which include non-vegetative soil stabilization measures. The temporary measures include seeding the exposed soil within seven days. Alternative measures must be implemented in areas where flow conditions limit effective use of vegetation stabilization techniques.

h. For utility line activities, no temporary sidelaying within waters of the United States is authorized.

20. The permittee understands and agrees 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 Corps of Engineers, 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.

21. When the structures or work authorized by this permit are still in existence at the time the property is transferred, the terms and conditions of this Regional General Permit will continue to be binding on the owner(s) of the property. To validate the transfer of this permit and the associated liabilities associated with compliance with its terms and conditions, have the transferee sign and date below.

(Transferee)

(Date)

22. We consider your signature on the permit application as affirmation that you possess or will possess the requisite property interest to undertake the activity proposed. We will not enter into property disputes.

23. The activity must be a single and complete project as defined at 33 CFR 330.2 (i). The RGP cannot be used more than once for the same single and complete project.

24. For impacts to waters of the United States that occur within specific 12-digit hydrologic unit codes (HUCs) of the Little Red River Watershed, your compensatory mitigation must occur within those same 12-digit HUCs. The specific areas are identified on the attached map entitled "Little Red River Watershed U.S. Fish and Wildlife Service Coordination."

Further Information:

1. Congressional Authorities: You have been authorized to undertake the activity described above pursuant to:

Section 10 of the Rivers and Harbors Act of 1899 (33 U.S. Code 403).

Section 404 of the Clean Water Act (33 U.S. Code 1344).

Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972 (33 U.S.C. 1413).

2. Limits of this authorization:

- a. This general permit does not obviate the need to obtain other Federal, state, or local authorizations required by law.
- b. This general permit does not grant any property rights or exclusive privileges.
- c. This general permit does not authorize any injury to the property or rights of others.
- d. This general permit does not authorize interference with any existing or proposed Federal project.

3. Limits of Federal Liability: In issuing this general permit, the Federal Government does not assume any liability for the following:

- a. Damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural causes.
- b. Damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the United States in the public interest.
- c. Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this general permit.
- d. Design or construction deficiencies associated with the permitted work.
- e. Damage claims associated with any future modification, suspension, or revocation of this general permit.

4. Reliance on Applicant's Data: The determination of this office that your proposed work complies with the terms and conditions of this general permit was made in reliance on the information you provided.

5. Reevaluation of Permit Decision: This office may reevaluate its decision on this general permit at any time the circumstances warrant. Circumstances that could require a reevaluation include, but are not limited to, the following:

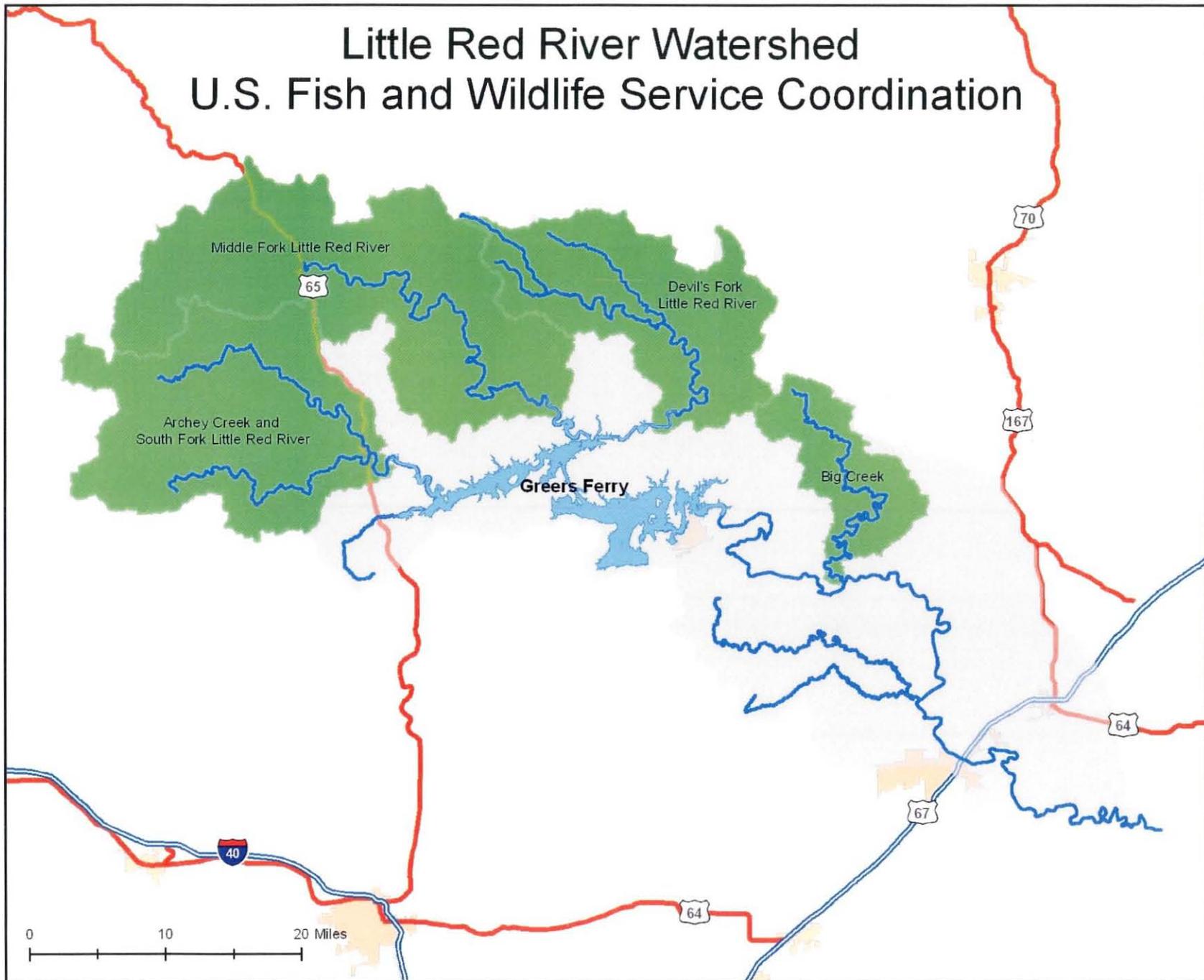
- a. You fail to comply with the terms and conditions of this general permit.
- b. The information provided by you in support of your permit application proves to have been false, incomplete, or inaccurate (See 4 above).

c. Significant new information surfaces which this office did not consider in reaching the original public interest decision.

Such a reevaluation may result in a determination that it is appropriate to use the suspension, modification, and revocation procedures contained in 33 CFR 325.7 or enforcement procedures such as those contained in 33 CFR 326.4 and 326.5. The referenced enforcement procedures provide for the issuance of an administrative order requiring you to comply with the terms and conditions of your general permit and for the initiation of legal action where appropriate. You will be required to pay for any corrective measures ordered by this office, and if you fail to comply with such directive, this office may in certain situations (such as those specified in 33 CFR 209.170) accomplish the corrective measures by contract or otherwise and bill you for the cost.

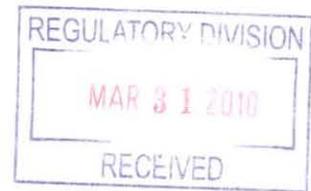
6. Extensions: General Condition 1 establishes a time limit for the completion of your activity authorized by this general permit. Unless there are circumstances requiring either a prompt completion of the authorized activity or a reevaluation of the public interest decision, the Corps will normally give favorable consideration to a request for an extension of this time limit.

Little Red River Watershed U.S. Fish and Wildlife Service Coordination





ARKANSAS
Department of Environmental Quality



April 2, 2010

Colonel Donald E. Jackson, Jr.
District Commander,
Little Rock District Corps of Engineers
P. O. Box 867
Little Rock, Arkansas 72203-0867

RE: Public Notice: Issuance of General Permit 2009-00100-GG:

Dear Colonel Jackson:

The Arkansas Department of Environmental Quality (“ADEQ”) has completed its review of the above referenced public notice for the issuance of the U.S. Army Corps of Engineers Regional General Permit 2009-00100-GG (RGP) for the State of Arkansas. In accordance with Title 33, Code of Federal Regulations Parts 325.2(e)(2) and 325.5©(1), the US Army Corps of Engineers, Little Rock, Memphis, and Vicksburg Districts, within the State of Arkansas propose to issue a general permit which would authorize the construction of exploration and production wells for oil and gas and their supporting fills and structures. Activities that may be authorized by this RGP would include, but are not limited to, the fill associated with the construction of drilling pads, reserve and mud pits, access roads, dikes, levees, production and storage facilities, pipelines, temporary cofferdams, equipment ramps, borrow pits, disposal areas, dams, and associated staging areas. The purpose of this RGP is to expedite authorization of recurring work that would have minimal adverse impact on the aquatic environment.

This RGP would not authorize work associated with fill material in perennial streams. Additionally, the RGP would not authorize fill material in any National Wild and Scenic River, Extraordinary Resource Waterbody, or Ecologically Sensitive Waterbody.

ADEQ has determined that there is a reasonable assurance that this activity will be conducted in a manner which, according to the Arkansas Pollution Control and Ecology Commission’s Regulation No. 2, will not physically alter a significant segment of a waterbody, and will not violate the water quality criteria.

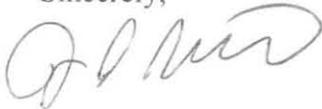
Pursuant to §401(a)(1) of the Clean Water Act, the ADEQ hereby **issues** water quality certification for this project contingent upon the following conditions:

- 1) The applicant shall perform all work in low flow conditions if possible.
- 2) The applicant should utilize all practicable Best Management Practices to ensure that the waters of the state are not impacted by sedimentation and turbidity due to this project.

- 3) The applicant shall contact ADEQ for a Short Term Activity Authorization needs determination for activities that have the potential to violate water quality criteria.
- 4) In issuing this certification, ADEQ does not assume any liability for the following:
 - a. Damages to the proposed project, or uses thereof, as a result of other permitted or unpermitted activities or from natural causes.
 - b. Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity specified in this certification.
 - c. Design or construction deficiencies associated with this proposed project.

Please contact Jason Hooks of the Water Division at (501) 682-0028 if you have any questions regarding this certification.

Sincerely,



Teresa Marks
Director

cc: Michael Hatcher, Project Manager, Little Rock District, USACE
J. Randy Young, P.E., Chairman, Technical Review Committee, ANRC
Lindsey Lewis, US Fish and Wildlife Service
Craig Uyeda, Chief, River Basins Section, Arkansas Game and Fish Commission
Raul Gutierrez, Region VI, Environmental Protection Agency

PROCEDURES FOR VERIFYING AUTHORIZATION

GENERAL PERMIT – **2009-00100-GG**FOR REGULATED ACTIVITIES IN WATERS OF THE UNITED STATES
ASSOCIATED WITH THE EXPLORATION FOR
AND SUBSEQUENT PRODUCTION OF HYDROCARBONS

1. The US Army Corps of Engineers (USACE), Little Rock, Memphis, and Vicksburg Districts, has issued the attached regional general permit (RGP) for work within the State of Arkansas. This regional general permit is currently valid until **June 30, 2015**.

In order to expedite reviews associated with this RGP, procedures are in place to initiate submittals within the Corps of Engineers. Expedited reviews are applicable to requests associated with preliminary jurisdictional determinations; the expedited process is not applicable to requests associated with approved jurisdictional determinations. If you choose to initiate an expedited review of the request, you may submit the following information in writing (or send an email). A centralized email address within each district is established as follows:

Little Rock District: m4fayettevilleshale@usace.army.mil
Memphis District: Timothy.L.Davis@usace.army.mil
Vicksburg District: regulatory@usace.army.mil

1. Name, address and telephone numbers of the prospective permittee and authorized agent.
2. Location of the proposed project (inclusion of UTM's and decimal degrees, both in NAD 83 projection, and location map will expedite processing).
3. A description of the proposed project, including the project's purpose, direct / indirect adverse environmental effects to the aquatic environment, and drawings.
4. A delineation of special aquatic sites and other waters of the United States on the project site.
5. Mitigation plan as deemed appropriate.
6. Plan of Best Management Practices, one-time submittal that must be referenced in subsequent requests.

Once the submittal is received, if the project appears to comply with the RGP, you will be notified. Then, the following procedures must be followed to verify authorization to do work

under this regional general permit. Your request for authorization under this RGP certifies that you possess the authority to undertake the proposed work.

2. Procedures for Verifying Authorization. You shall use the following procedures in verifying authorization under this regional general permit.

a. You shall submit a written description of the proposed work to the respective district engineer at least 30 days prior to the proposed commencement of work. The following addresses are used for the appropriate districts:

ATTN: CESWL-RD, US Army Corps of Engineers, Little Rock District, PO Box 867, Little Rock, Arkansas 72203-0867

ATTN: CEMVM-CO-R, US Army Corps of Engineers, Memphis District, 167 North Main Street, Rm. B-202, Memphis, Tennessee 38103-1894

ATTN: CEMVK-OD-F, US Army Corps of Engineers, Vicksburg District, 4155 Clay Street, Vicksburg, Mississippi 39183-3435

b. Included with the submittal shall be drawings which accurately depict the work and its exact location. The type, sizes, and quantities of structures and/or materials to be used should be fully described, including appropriate dimensions. The submittal must include a statement of how the fill material is associated with the production of hydrocarbons. Your application must include a statement to identify if you are requesting a preliminary or approved jurisdictional determination. For an RGP application to be considered complete, the submittal must include applicable items listed in b through j.

c. Upon receipt of your request, the Corps of Engineers Regulatory Division will determine whether the work falls within the criteria established by this regional general permit. The length of time required to process each request under this regional general permit will be directly related to the adequacy and completeness of the information you submit. You will receive a letter of verification if the work is covered by this regional general permit. If the work cannot be authorized under this regional general permit, you will be notified that your application must be processed under other procedures, which may involve submission of additional information and likely issuance of a public notice. The Corps of Engineers has the discretion to require an Individual Permit on a case-by-case basis for any proposed impact.

d. To comply with the intent of the National Historic Preservation Act (NHPA), each proposed activity that meets the criteria in this general permit will typically be coordinated with the Arkansas State Historic Preservation Office (SHPO). The applicant can establish procedures to obtain supplemental information for the Arkansas Historic Preservation Program. To expedite the verification process associated with this RGP, such procedures may be accomplished before the permit application is submitted to expedite reviews. Coordination with the SHPO should

include (1) a review of the National Register of Historic Places for known historic properties, (2) a review of any completed cultural resource surveys in the affected area, and, if applicable, (3) a completed reconnaissance survey for historic properties on the proposed site by a cultural resources professional. The qualifications of a cultural resource professional are defined in the Secretary of Interior's guidelines found in 36 Code of Federal Regulations (CFR) Part 61. If the applicant chooses not to consult with the SHPO prior to the submittal of the application, the Corps of Engineers will begin coordination procedures with the SHPO, if necessary, upon receipt of the application. The applicant should be aware that this deferment could potentially delay the permit verification process.

Federally recognized Native American Tribes are sovereign nations. As such, consultation with the appropriate Native American Tribes requires a government to government process. The USACE will initiate the tribal consultation process when appropriate. No work shall begin in the permit area 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.

e. No activity is authorized under this RGP which is likely to jeopardize the continued existence of a threatened or endangered (T&E) species or a species proposed for such designation, as identified under the Federal Endangered Species Act (ESA), or which will destroy or adversely modify the critical habitat of such species. All applications must identify any Federally listed (or proposed for listing) endangered or threatened species or critical habitat that might be affected or is in the vicinity of the project. To expedite the verification process associated with this RGP, written notification from the US Fish and Wildlife Service (USFWS) must be obtained by the applicant regarding the affect of the proposed work to Federally listed species or critical habitat. The notification information must include the written coordination and response from the USFWS associated with T&E species. If a response from the USFWS is not received within 25 business days, you should provide documentation of your correspondence to our office with the submittal. If notification is not completed by the applicant with USFWS, prior to the submittal of the application, the Corps of Engineers will follow coordination procedures with the USFWS, which will delay the verification process associated with this RGP.

Based on the coordination with the USFWS, additional activity-specific conditioning of this RGP could be required to comply with the ESA. Section 7 consultation must be conducted for activities when a project may affect a listed species or designated critical habitat; therefore, if Section 7 consultation is conducted, the activity is not authorized by the RGP until the consultation is completed and a verification letter is issued. If Section 7 consultation is required, the District Engineer (DE) could assert discretionary authority and require an individual permit.

Authorization of an activity by a RGP does not authorize the "take" of a threatened or endangered species as defined under the ESA. In the absence of separate authorization (e.g., an

ESA Section 10 Permit, a Biological Opinion with “incidental take” provisions, etc.) from the USFWS, both lethal and non-lethal “takes” of protected species are in violation of the ESA.

T&E species that are reported by the USFWS to occur within the Fayetteville Shale area are scaleshell (*Leptodea leptodon*), speckled pocketbook (*Lampsilis streckeri*), pink mucket (*Lampsilis abrupta*), fat pocketbook (*Potamilus capax*), gray bat (*Myotis grisescens*), Indiana bat (*Myotis sodalis*), Ozark big-eared bat (*Corynorhinus townsendii ingens*), and pallid sturgeon (*Scaphirhynchus albus*). Candidate T&E species that occur within the Fayetteville Shale area are yellowcheek darter (*Etheostoma moorei*), rabbitsfoot (*Quadrula cylindrica cylindrica*), and spectaclecase (*Cumberlandia monodonta*). Updated and additional information on the location of T&E species and their critical habitat, as well as clearance procedures, can be obtained directly from the offices of the USFWS at: <http://www.fws.gov/arkansas-es/index.html> or by calling (501) 513-4470 or by mail to U.S. Fish & Wildlife Service, Arkansas Field Office, 110 S. Amity Road, Suite 300, Conway, Arkansas 72032.

f. Activities that would be authorized by the RGP would require compensatory mitigation. Avoidance and minimization of impacts would be required as practicable. In order to use the RGP, the applicant will be required to provide statements concerning mitigation measures to avoid and minimize. The applicant must compensate for impacts to waters of the United States from activities involving discharges of dredged or fill material. The applicant will be required to provide a compensatory mitigation plan; the plan must be approved by the DE prior to authorization by this RGP. Furthermore, if a pond is excavated in wetlands with a resulting wetland fringe, the wetland fringe is not considered compensation for the excavation impacts. Similarly, an impoundment for a stream with a resulting increase in open surface water area or wetland fringe is not considered compensatory mitigation for the adverse impacts to the impounded stream.

g. If the activity would involve the construction of an impoundment structure, the applicant is required for public safety purposes to demonstrate that the structure has been designed by a registered professional engineer (PE). The design plans submitted must be stamped by the PE. In appropriate cases, the design could be independently reviewed (and modified as the review would indicate) by similarly qualified persons. Furthermore, the impoundment structure must incorporate a minimum flow sufficient to release a flow of water for in-stream habitat and downstream riparian uses.

h. The applicant’s Best Management Practices (BMP) must be submitted. Erosion control measures must be incorporated into the BMP plan.

i. If your activity involves areas where the United States has acquired an interest in the real estate under the jurisdiction of the Corps of Engineers, such as the use of Government-owned land or land over which the Government has acquired a flowage easement, you must obtain written approval from the Chief, Real Estate, US Army Corps of Engineers. This RGP will not be valid unless the proper real estate instrument can be obtained for the use of Government-

owned land. Additional conditions for work involving the location, placement of fill, construction and operations in the impacted areas will be included in the real estate instrument or authorization letter. Additional authorization is required for any work under, through or affecting the Mississippi River mainline levee.

j. You must coordinate with the appropriate city and/or county to determine if they participate in the National Flood Insurance Program. The flood plain administrator for the appropriate city and/or county must be contacted to obtain any necessary variances for the specific project.