



**ARKANSAS RIVER AT I-430  
BRIDGE STREAMBANK  
PROTECTION PROJECT**

**NORTH LITTLE ROCK, ARKANSAS**

**DRAFT  
ENVIRONMENTAL ASSESSMENT**

**JUNE 2002**



**US ARMY CORPS  
OF ENGINEERS**  
Little Rock District

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## 1.0 INTRODUCTION

### 1.1 Scope and Purpose of the Proposed Action

The purpose of the project is to stabilize the bank of the Arkansas River at the I-430 bridge. The river has severely eroded the fill material on the peninsular bank near the bridge. If the erosion were allowed to continue, it would endanger utilities near the bridge. The original and subsequent bank stabilization measures have not been completely successful. Therefore additional stream-bank stabilization material will be applied. The alternative to the bank stabilization is to allow the utilities to be destroyed by the river. Failure of the gas line would require the bridge to be closed.

### 1.2 Project Location

The problem area is located on the left descending bank of the Arkansas River at river navigation mile 126.5, adjacent to the Interstate 430 bridge, North Little Rock, Arkansas. The project area location is shown on the Vicinity Map.

### 1.3 Environmental Compliance

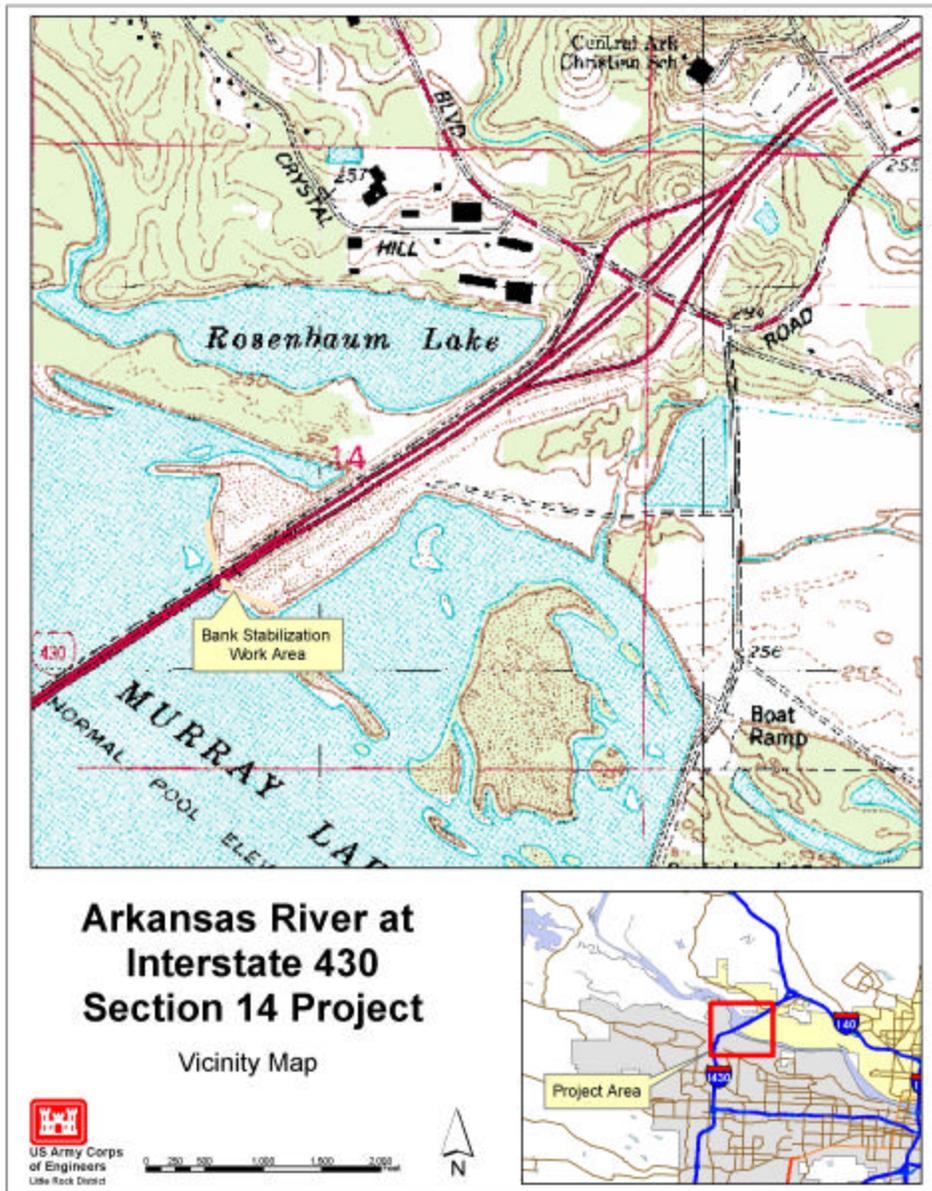
#### Status of Project with Applicable Laws and Statutes

<b>Federal Statutes</b>	<b>Compliance</b>
Archaeological and Historic Preservation Act 16 U.S.C. 469, et. Seq.	Full
Clean Air Act of 1977, as amended, 42 U.S.C. 7609, et. seq.	Full
Clean Water Act, (Federal Water Pollution Control Act), 33 U.S.C. 1251, et. seq.	Full
Coastal Zone Management Act, 16 U.S.C. 1451, et. seq.	N/A
Endangered Species Act, 16 U.S.C. 1531, et. seq.	Full
Estuary Protection Act, 16 U.S.C. 1221, et. seq.	N/A
Federal Water Project Recreation Act, 16 U.S.C. 460-12, et. seq.	Full

Fish and Wildlife Coordination Act, 16 U.S.C. 661, et. seq.	Full
Land and Water Conservation Fund Act, 16 U.S.C. 460/ -460/-11, et. seq.	N/A
Marine Protection, Research and Sanctuary Act, 33 U.S.C. 1401, et. seq.	N/A
National Environmental Policy Act, 42 U.S.C. 4321, et. seq.	Full
National Historic Preservation Act, 16 U.S.C. 470a, et. seq.	Full
Rivers and Harbors Act, 33 U.S.C. 401, et. seq.	Full
Watershed Protection and Flood Prevention Act, 16 U.S.C. 1001, et. seq.	N/A
Wild and Scenic Rivers Act, 16 U.S.C. 1271, et. seq.	Full

**Executive Orders, Memorandum, etc.****Compliance**

Executive Order 11988, Floodplain Management, May 24, 1977 (42 CFR 26951; May 25, 1977)	Full
Executive Order 11990, Protection of Wetlands, May 24, 1977 (42 CFR 26961; May 25, 1977)	Full
Council on Environmental Quality Memorandum of August 11, 1980: Analysis of Impacts on Prime or Unique Agricultural Lands in Implementing the National Environmental Policy Act.	Full
Executive Order 12114, Environmental Effects Abroad of Major Federal Actions	N/A



**VICINITY MAP**

## 1.4 Authority and Regulatory Permits

The authority for this study is Section 14 of the Flood Control Act of 1946, as amended. This Section provides for the construction or repair of stream bank and shoreline protection works to prevent flood or erosion damage to endangered public and private non-profit hospitals and schools, and other non-profit public facilities.

The discharge of material along the bank below the ordinary high water mark requires a Clean Water Act Section 404 permit. In addition, since the Arkansas River is a navigable stream, a Section 10 permit pursuant to the requirements of the Rivers and Harbors Act of 1899 is also applicable. Department of the Army Nationwide Permit No. 13 provides authorization under the regulations, which implement the aforementioned laws. This permit authorizes the discharge of dredged and fill material for bank stabilization purposes provided the work would have a minimal adverse impact. (A copy of the Nationwide Permit No. 13 is at Appendix B.)

## 2.0 DESCRIPTION OF PROPOSED ACTION AND ALTERNATIVES

### 2.1 Description of the Proposed Action

The Proposed Action consists of the excavation of about 3,500 cubic yards material, mostly sand, from the river bank and the application of approximately 180 cubic yards of concrete rubble to the toe of the bank being stabilized. This material would be placed below the normal pool elevation of the Arkansas River (249.0 feet Mean Sea Level). Bank sloping would be necessary to provide the appropriate angle of repose for the rock that would be placed on the slope to prevent erosion.

Finally, approximately 13,000 tons of graded stone riprap would be placed along approximately 1000 feet of the bank to stabilize the bank and complete the project. The toe of the bank varies from 20' deep up to 2' deep. The width of bank stabilization necessary varies from 25' to 50' wide. This would cover the utilities that are being exposed and prevent their destruction by the river.

### 2.2 Alternatives to the Proposed Action

#### 2.2.1 No Action

Acceptance of a "no-action" plan would result in the destruction of the utility lines and the subsequent temporary closing the I-430 bridge because of a natural gas release.

#### 2.2.2 Other Alternatives

No consideration was given to the proposal of relocating the utilities. Also, no consideration was given to the proposal of re-channeling the river and tributaries and/or removing the new flow obstructions (sand bars) to quell erosion in the area, since exposure of the utility lines has already occurred.

**2.2.3 Environmental Comparison of Alternatives**

<b>Resource Area</b>	<b>Alternative 1 Proposed Action</b>	<b>No-Action Alternative</b>
<b>Land Use</b>	?? No adverse effect on land use	?? Adverse Minor Impact - Continued erosion will result in the loss of public utilities and private and commercial transportation
<b>Water Resources</b>	?? Adverse minor impacts - inconsequential and temporary minor increase in turbidity because of construction, in the immediate area and for a short distance downstream	?? Adverse minor impact from continued erosion resulting in increased turbidity in the Arkansas River in the immediate area and for a short distance downstream. Loss of treated water to the river if the water line were destroyed.
<b>Biological Resources</b>	?? No impacts	?? Adverse minor impacts from continued vegetation and habitat loss and aquatic disturbance from increased turbidity in the Arkansas River.
<b>HTRW</b>	?? No impacts	?? No impacts.
<b>Air Quality</b>	?? Adverse Minor Impact - Construction related temporary minor increase in dust production and emissions	?? Adverse Minor Impact from natural gas release if gas line were destroyed.
<b>Noise</b>	?? Adverse Minor Impact - Construction related temporary minor increase in noise levels	?? Beneficial Minor Impact - Temporary decrease in noise levels while bridge is unused during natural gas release. .
<b>Cultural Resources</b>	?? No Impact	?? Probably No Impacts. The area consists of fill material.
<b>Socioeconomic</b>	?? Beneficial Minor Impact - Temporary short-term increase to the local community from the money used to construct the project. Long-term beneficial impact from protection of existing facilities which would allow transportation to continue.	?? Adverse impact to economy from loss of utilities and transportation.
<b>Recreation</b>	?? Minor adverse impacts because of the temporary reduction of fishing opportunities during construction.	?? Minor negative impact because of the decrease in area access following destruction of utilities.
<b>Aesthetics</b>	?? Minor adverse impact because the bank would be covered with a uniform layer of rock when work is complete.	?? Adverse minor visual impacts from bank destruction.

### **3.0 AFFECTED ENVIRONMENT**

#### **3.1 Land Use**

The project area is located in an area primarily devoted to wetland habitat.

##### **3.1.1 Climate**

Pulaski County is hot in the summer and moderately cool in winter. In winter the average temperature is 41 degrees Fahrenheit. In the summer the average daily temperature is 82 degrees Fahrenheit, but a high temperature of over 100 degrees is frequent. The average length of the growing season is 233 days.

The total annual precipitation is about 49 inches. About one-third of this amount, approximately 15 inches, usually falls between March and May.

##### **3.1.2 Topography, Physiography and Soils**

Physiographically, Little Rock is situated in the transition zone between the Interior Highlands and the Gulf Coastal Plain. The project site is located in the coastal plain on the eastern edge of the city.

Soil series in the project area consists of Bruno fine sandy loam soils, which are excessively drained, level to nearly level soils on young natural levees along the Arkansas River. These soils formed in stratified loamy and sandy sediment carried from the west by the Arkansas River. Some soils may consist of sand dredged from the river.

#### **3.2 Water Resources**

The primary water resource in the project area is of course the Arkansas River, which originates in the Colorado and empties into the Mississippi River in southeastern Arkansas. Maumelle Creek, the nearest Arkansas River tributary, discharges into the Arkansas River across the river from the project area.

##### **3.2.1 Wild and Scenic Rivers**

There are no streams in the project vicinity that are listed as a “wild or scenic” river.

#### **3.3 Biological Resources**

The biological resources of the Arkansas River basin are extensive as a whole. The resources specifically listed in this Environmental Assessment include vegetation, fish and wildlife, threatened and endangered species, wetlands, and prime farmlands.

##### **3.3.1 Vegetation**

The original vegetation in this area was a mix of hardwood trees. These and wetland vegetation exist in the surrounding area. Development has changed the much of the remaining vegetation.

### **3.3.2 Fish and Wildlife**

Wildlife species present in the project area are limited to small rodents and game animals. Small animals such as rabbit, opossum, squirrel and possibly some furbearers such as river otter or beaver could occur in the vicinity of the proposed action.

Fishes of the Arkansas River include game species such as largemouth bass, crappie, bream, and catfish, and various species of rough and commercial fish such as gar, buffalo, carp, and suckers.

### **3.3.3 Threatened and Endangered Species**

The U.S. fish and Wildlife Service reported no endangered or threatened species or critical habitat existing in this immediate area. The bald eagle winters on the Arkansas River, but lack of suitable roosting trees and human occupancy of the area preclude the extensive use of the area. The interior least tern is also present in the general area, however, they are not expected to be present at the project site.

### **3.3.4 Wetlands**

There are jurisdictional wetlands in the project area. The wetlands associated with Rosenbaum Lake and adjacent to the Arkansas River, near the project, are jurisdictional wetlands.

### **3.3.5 Prime Farmlands**

The industrial area near the project site contains no prime farmlands.

## **3.4 Hazardous, Toxic, and Radioactive Waste (HTRW)**

There is no known hazardous, toxic or radioactive waste located in the project area.

## **3.5 Air Quality**

Air quality in the project vicinity is considered good.

## **3.6 Noise**

Noise levels in the project area are mild to moderate. The sources of noise are vehicles on the interstate highway and boats on the Arkansas River.

### **3.7 Cultural Resources**

A site visit by the Little Rock District archeologist indicated that no significant cultural resources would be disturbed in the area. The area has experienced extensive soil disturbance in the past from prior development. No known cultural resources were identified by the Arkansas State Historic Preservation Officer.

### **3.8 Socioeconomics**

Little Rock is the county seat, the largest city in Pulaski County, and the largest city in Arkansas. Pulaski County is located in the middle of the state in an area that is largely urban. Little Rock has a population of 183,951. Pulaski County has a population of 349,660.

### **3.9 Recreation and Aesthetics**

The Arkansas River provides a source of recreational opportunities near the project area. Opportunities include boating and fishing.

## **4.0 ENVIRONMENTAL CONSEQUENCES**

### **4.1 Land Use**

Bank stabilization as proposed in this Environmental Assessment will not change the land use of this area. Present use of the area will continue in its present state.

#### **4.1.1 Climate**

No adverse impacts to the climate of the area will occur because of this project.

#### **4.1.2 Topography, Physiography and Soils**

Bank shaping activities associated with this bank stabilization project will require the insignificant manipulation of soil material in the immediate project area.

### **4.2 Water Resources**

The proposed project will result in a temporary increase in turbidity in the Arkansas River for a short distance downstream of the site. This impact will be temporary and short-term. The “No Action” alternative will also result in turbidity in the Arkansas River from the continued attrition of the fill material on the eroding peninsula.

### **4.3 Biological Resources**

No significant impacts to any biological resources of this area are expected because of the proposed action of bank stabilization work.

#### **4.3.1 Vegetation**

Clearing and grubbing, as well as other construction activities associated with bank stabilization will require the removal of vegetation in the project area. The vegetative resources are limited because of the industrial nature of the site. Therefore, no significant impact will occur. .

#### **4.3.2 Fish and Wildlife**

Because of the limited habitat available in the area, no significant fish or wildlife habitat is expected. Small wildlife species that may transiently utilize the area would be temporarily displaced but this will not significantly impact any species in this general area. After construction and re-vegetation of the adjacent upland, wildlife species are expected to return to the area.

#### **4.3.3 Threatened and Endangered Species**

No threatened or endangered species or critical habit will be impacted by this project.

#### **4.3.4 Wetlands**

The project site is not considered a wetland. Therefore, there will be no impacts to wetlands, except to equipment ingress routes. .

#### **4.4 Hazardous, Toxic, and Radioactive Waste (HTRW)**

No impacts will occur to hazardous, toxic or radioactive waste since none exist in the project area.

#### **4.5 Air Quality**

No impacts to the air quality of the area will result from this project except for the temporary dust production caused from construction activities. This impact will not be significant in intensity or duration. Engineering controls for dust suppression should be incorporated.

#### **4.6 Noise**

Increased noise levels will occur from construction equipment and activities. These levels will be consistent with sound levels from transportation and will not result in any significant increases in noise levels in the area. The noise level increases would be temporary, only occurring during construction.

#### **4.7 Cultural Resources**

No cultural resource impacts are expected from construction at the site since the site is composed of non-indigenous fill material. Monitoring during construction for the presence of unearthen artifacts is recommended as a prudent measure in the protection of cultural resources.

#### **4.8 Socioeconomics**

No significant socioeconomic adverse impacts will occur because of the proposed action. A short-term beneficial local economic impact might occur because of the increased construction activity in the area, however this will not be significant.

#### **4.9 Recreation and Aesthetics**

The limited opportunities for fishing in the area would be temporarily reduced during construction. After completion of the construction, recreational opportunities will return to normal. The aesthetics of the project site are not expected to be significantly impacted by the project.

## **5. FINDINGS**

No significant impacts from the proposed bank stabilization have been identified in this environmental assessment. Minor impacts such as increased noise levels, turbidity, and dust are anticipated during the construction phase but should have no prolonged impact on the environment.

## **6. COORDINATION**

To decrease Environmental Assessment production time of this project, and since it is an emergency project, the public coordination and review are being performed simultaneously. Review comments will be incorporated into the final Environmental Assessment.

## **7. LIST OF PREPARERS**

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Engineering District, Little Rock, P.O. Box 867, Little Rock, AR 72203-0867

**APPENDIX A**

**Public Review Comments and Responses**

**APPENDIX B**

**NATIONWIDE PERMIT No. 13**

## NATIONWIDE PERMIT 13

### BANK STABILIZATION

13. Bank Stabilization. Bank stabilization activities necessary for erosion prevention provided the activity meets all of the following criteria:

- a. No material is placed in excess of the minimum needed for erosion protection;
- b. The bank stabilization activity is less than 500 feet in length;
- c. The activity will not exceed an average of one cubic yard per running foot placed along the bank below the plane of the ordinary high water mark or the high tide line;
- d. No material is placed in any special aquatic site, including wetlands;
- e. No material is of the type, or is placed in any location, or in any manner, to impair surface water flow into or out of any wetland area;
- f. No material is placed in a manner that will be eroded by normal or expected high flows (properly anchored trees and treetops may be used in low energy areas); and,
- g. The activity is part of a single and complete project.

Bank stabilization activities in excess of 500 feet in length or greater than an average of one cubic yard per running foot may be authorized if the permittee notifies the District Engineer in accordance with the "Notification" General Condition 13 and the District Engineer determines the activity complies with the other terms and conditions of the NWP and the adverse environmental effects are minimal both individually and cumulatively. This NWP may not be used for the channelization of waters of the US. (Sections 10 and 404)

#### Nationwide Permit General Conditions

The following General Conditions must be followed in order for any authorization by an NWP to be valid:

1. **Navigation.** No activity may cause more than a minimal adverse effect on navigation.
2. **Proper Maintenance.** Any structure or fill authorized shall be properly maintained, including maintenance to ensure public safety.
3. **Soil Erosion and Sediment Controls.** Appropriate soil erosion and sediment controls must be used and maintained in effective operating condition during construction, and all exposed soil and other fills, as well as any work below the ordinary high water mark or high tide line, must be permanently stabilized at the earliest practicable date. Permittees are encouraged to perform work within waters of the United States during periods of low-flow or no-flow.
4. **Aquatic Life Movements.** No activity may substantially disrupt the necessary life-cycle movements of those species of aquatic life indigenous to the waterbody, including those species that normally migrate through the area, unless the activity's primary purpose is to impound water. Culverts placed in streams must be installed to maintain low flow conditions.
5. **Equipment.** Heavy equipment working in wetlands must be placed on mats, or other measures must be taken to minimize soil disturbance.
6. **Regional and Case-By-Case Conditions.** The activity must comply with any regional conditions that may have been added by the Division Engineer (see 33 CFR 330.4(e)) and with any case specific conditions added by the Corps or by the state or tribe in its Section 401 Water Quality Certification and Coastal Zone Management Act consistency determination.
7. **Wild and Scenic Rivers.** No activity may occur in a component of the National Wild and Scenic River System; or in a river officially designated by Congress as a "study river" for possible inclusion in the system, while the river is in an official study status; unless the appropriate Federal agency, with direct management responsibility

for such river, has determined in writing that the proposed activity will not adversely affect the Wild and Scenic River designation, or study status. Information on Wild and Scenic Rivers may be obtained from the appropriate Federal land management agency in the area (e.g., National Park Service, U.S. Forest Service, Bureau of Land Management, U.S. Fish and Wildlife Service).

8. ***Tribal Rights.*** No activity or its operation may impair reserved tribal rights, including, but not limited to, reserved water rights and treaty fishing and hunting rights.

9. ***Water Quality.*** (a) In certain states and tribal lands an individual 401 Water Quality Certification must be obtained or waived (See 33 CFR 330.4(c)).

(b) For NWP 12, 14, 17, 18, 32, 39, 40, 42, 43, and 44, where the state or tribal 401 certification (either generically or individually) does not require or approve water quality management measures, the permittee must provide water quality management measures that will ensure that the authorized work does not result in more than minimal degradation of water quality (or the Corps determines that compliance with state or local standards, where applicable, will ensure no more than minimal adverse effect on water quality). An important component of water quality management includes stormwater management that minimizes degradation of the downstream aquatic system, including water quality (refer to General Condition 21 for stormwater management requirements). Another important component of water quality management is the establishment and maintenance of vegetated buffers next to open waters, including streams (refer to General Condition 19 for vegetated buffer requirements for the NWPs).

This condition is only applicable to projects that have the potential to affect water quality. While appropriate measures must be taken, in most cases it is not necessary to conduct detailed studies to identify such measures or to require monitoring.

10. ***Coastal Zone Management.*** In certain states, an individual state coastal zone management consistency concurrence must be obtained or waived (see 33 CFR 330.4(d)).

11. ***Endangered Species.*** (a) No activity is authorized under any NWP which is likely to jeopardize the continued existence of a threatened or endangered 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. Non-federal permittees shall notify the District Engineer if any listed species or designated critical habitat might be affected or is in the vicinity of the project, or is located in the designated critical habitat and shall not begin work on the activity until notified by the District Engineer that the requirements of the ESA have been satisfied and that the activity is authorized. For activities that may affect Federally-listed endangered or threatened species or designated critical habitat, the *notification* must include the name(s) of the endangered or threatened species that may be affected by the proposed work or that utilize the designated critical habitat that may be affected by the proposed work. As a result of formal or informal consultation with the FWS or NMFS the District Engineer may add species-specific regional endangered species conditions to the NWPs.

(b) Authorization of an activity by a NWP 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 or the NMFS, both lethal and non-lethal “takes” of protected species are in violation of the ESA. Information on the location of threatened and endangered species and their critical habitat can be obtained directly from the offices of the USFWS and NMFS or their world wide web pages at <http://www.fws.gov/r9endspp/endspp.html> and [http://www.nmfs.noaa.gov/prot\\_res/overview/es.html](http://www.nmfs.noaa.gov/prot_res/overview/es.html) respectively.

12. ***Historic Properties.*** No activity which may affect historic properties listed, or eligible for listing, in the National Register of Historic Places is authorized, until the District Engineer has complied with the provisions of 33 CFR Part 325, Appendix C. The prospective permittee must notify the District Engineer if the authorized activity may affect any historic properties listed, determined to be eligible, or which the prospective permittee has reason to believe may be eligible for listing on the National Register of Historic Places, and shall not begin the activity until notified by the District Engineer that the requirements of the National Historic Preservation Act have been satisfied and that the activity is authorized. Information on the location and existence of historic resources can be obtained from the State Historic Preservation Office and the National Register of Historic Places (see 33 CFR 330.4(g)). For activities that may affect historic properties listed in, or eligible for listing in, the National Register of Historic Places, the *notification* must state which historic property may be affected by the proposed work or include a vicinity map indicating the location of the historic property.

**13. Notification.**

(a) **Timing;** where required by the terms of the NWP, the prospective permittee must notify the District Engineer with a preconstruction *notification* (PCN) as early as possible. The District Engineer must determine if the *notification* is complete within 30 days of the date of receipt and can request additional information necessary to make the PCN complete only once. However, if the prospective permittee does not provide all of the requested information, then the District Engineer will notify the prospective permittee that the *notification* is still incomplete and the PCN review process will not commence until all of the requested information has been received by the District Engineer. The prospective permittee shall not begin the activity:

(1) Until notified in writing by the District Engineer that the activity may proceed under the NWP with any special conditions imposed by the District or Division Engineer; or

(2) If notified in writing by the District or Division Engineer that an Individual Permit is required; or

(3) Unless 45 days have passed from the District Engineer's receipt of the complete *notification* and the prospective permittee has not received written notice from the District or Division Engineer. Subsequently, the permittee's right to proceed under the NWP may be modified, suspended, or revoked only in accordance with the procedure set forth in 33 CFR 330.5(d)(2).

(b) **Contents of Notification:** The *notification* must be in writing and include the following information:

(1) Name, address and telephone numbers of the prospective permittee;

(2) Location of the proposed project;

(3) Brief description of the proposed project; the project's purpose; direct and indirect adverse environmental effects the project would cause; any other NWP(s), Regional General Permit(s), or Individual Permit(s) used or intended to be used to authorize any part of the proposed project or any related activity. Sketches should be provided when necessary to show that the activity complies with the terms of the NWP (Sketches usually clarify the project and when provided result in a quicker decision.);

(4) For NWPs 7, 12, 14, 18, 21, 34, 38, 39, 40, 41, 42, and 43, the PCN must also include a delineation of affected special aquatic sites, including wetlands, vegetated shallows (e.g., submerged aquatic vegetation, seagrass beds), and riffle and pool complexes (see paragraph 13(f));

(5) For NWP 7 (Outfall Structures and Maintenance), the PCN must include information regarding the original design capacities and configurations of those areas of the facility where maintenance dredging or excavation is proposed;

(6) For NWP 14 (Linear Transportation Projects), The PCN must include a compensatory mitigation proposal to offset permanent losses of waters of the US and a statement describing how temporary losses of waters of the US will be minimized to the maximum extent practicable;

(7) For NWP 21 (Surface Coal Mining Activities), the PCN must include an Office of Surface Mining (OSM) or state-approved mitigation plan, if applicable. To be authorized by this NWP, the District Engineer must determine that the activity complies with the terms and conditions of the NWP and that the adverse environmental effects are minimal both individually and cumulatively and must notify the project sponsor of this determination in writing;

(8) For NWP 27 (Stream and Wetland Restoration Activities), the PCN must include documentation of the prior condition of the site that will be reverted by the permittee;

(9) For NWP 29 (Single-Family Housing), the PCN must also include:

(i) Any past use of this NWP by the Individual Permittee and/or the permittee's spouse;

(ii) A statement that the single-family housing activity is for a personal residence of the permittee;

(iii) A description of the entire parcel, including its size, and a delineation of wetlands. For the purpose of this NWP, parcels of land measuring  $\frac{1}{4}$ -acre or less will not require a formal on-site delineation. However, the applicant shall provide an indication of where the wetlands are and the amount of wetlands that exists on the

property. For parcels greater than ¼-acre in size, formal wetland delineation must be prepared in accordance with the current method required by the Corps. (See paragraph 13(f));

iv) A written description of all land (including, if available, legal descriptions) owned by the prospective permittee and/or the prospective permittee's spouse, within a one mile radius of the parcel, in any form of ownership (including any land owned as a partner, corporation, joint tenant, co-tenant, or as a tenant-by-the-entirety) and any land on which a purchase and sale agreement or other contract for sale or purchase has been executed;

(10) For NWP 31 (Maintenance of Existing Flood Control Facilities), the prospective permittee must either notify the District Engineer with a PCN prior to each maintenance activity or submit a five year (or less) maintenance plan. In addition, the PCN must include all of the following:

(i) Sufficient baseline information identifying the approved channel depths and configurations and existing facilities. Minor deviations are authorized, provided the approved flood control protection or drainage is not increased;

(ii) A delineation of any affected special aquatic sites, including wetlands; and,

(iii) Location of the dredged material disposal site;

(11) For NWP 33 (Temporary Construction, Access, and Dewatering), the PCN must also include a restoration plan of reasonable measures to avoid and minimize adverse effects to aquatic resources;

(12) For NWPs 39, 43 and 44, the PCN must also include a written statement to the District Engineer explaining how avoidance and minimization for losses of waters of the US were achieved on the project site;

(13) For NWP 39 and NWP 42, the PCN must include a compensatory mitigation proposal to offset losses of waters of the US or justification explaining why compensatory mitigation should not be required. For discharges that cause the loss of greater than 300 linear feet of an intermittent stream bed, to be authorized, the District Engineer must determine that the activity complies with the other terms and conditions of the NWP, determine adverse environmental effects are minimal both individually and cumulatively, and waive the limitation on stream impacts in writing before the permittee may proceed;

(14) For NWP 40 (Agricultural Activities), the PCN must include a compensatory mitigation proposal to offset losses of waters of the US. This NWP does not authorize the relocation of greater than 300 linear-feet of existing serviceable drainage ditches constructed in non-tidal streams unless, for drainage ditches constructed in intermittent non-tidal streams, the District Engineer waives this criterion in writing, and the District Engineer has determined that the project complies with all terms and conditions of this NWP, and that any adverse impacts of the project on the aquatic environment are minimal, both individually and cumulatively;

(15) For NWP 43 (Stormwater Management Facilities), the PCN must include, for the construction of new stormwater management facilities, a maintenance plan (in accordance with state and local requirements, if applicable) and a compensatory mitigation proposal to offset losses of waters of the US. For discharges that cause the loss of greater than 300 linear feet of an intermittent stream bed, to be authorized, the District Engineer must determine that the activity complies with the other terms and conditions of the NWP, determine adverse environmental effects are minimal both individually and cumulatively, and waive the limitation on stream impacts in writing before the permittee may proceed;

(16) For NWP 44 (Mining Activities), the PCN must include a description of all waters of the US adversely affected by the project, a description of measures taken to minimize adverse effects to waters of the US, a description of measures taken to comply with the criteria of the NWP, and a reclamation plan (for all aggregate mining activities in isolated waters and non-tidal wetlands adjacent to headwaters and any hard rock/mineral mining activities);

(17) For activities that may adversely affect Federally-listed endangered or threatened species, the PCN must include the name(s) of those endangered or threatened species that may be affected by the proposed work or utilize the designated critical habitat that may be affected by the proposed work; and

(18) For activities that may affect historic properties listed in, or eligible for listing in, the National Register of Historic Places, the PCN must state which historic property may be affected by the proposed work or include a vicinity map indicating the location of the historic property.

(c) **Form of Notification:** The standard Individual Permit application form (Form ENG 4345) may be used as the *notification* but must clearly indicate that it is a PCN and must include all of the information required in (b) (1)-(18) of General Condition 13. A letter containing the requisite information may also be used.

(d) **District Engineer's Decision:** In reviewing the PCN for the proposed activity, the District Engineer will determine whether the activity authorized by the NWP will result in more than minimal individual or cumulative adverse environmental effects or may be contrary to the public interest. The prospective permittee may submit a proposed mitigation plan with the PCN to expedite the process. The District Engineer will consider any proposed compensatory mitigation the applicant has included in the proposal in determining whether the net adverse environmental effects to the aquatic environment of the proposed work are minimal. If the District Engineer determines that the activity complies with the terms and conditions of the NWP and that the adverse effects on the aquatic environment are minimal, after considering mitigation, the District Engineer will notify the permittee and include any conditions the District Engineer deems necessary. The District Engineer must approve any compensatory mitigation proposal before the permittee commences work. If the prospective permittee is required to submit a compensatory mitigation proposal with the PCN, the proposal may be either conceptual or detailed. If the prospective permittee elects to submit a compensatory mitigation plan with the PCN, the District Engineer will expeditiously review the proposed compensatory mitigation plan. The District Engineer must review the plan within 45 days of receiving a complete PCN and determine whether the conceptual or specific proposed mitigation would ensure no more than minimal adverse effects on the aquatic environment. If the net adverse effects of the project on the aquatic environment (after consideration of the compensatory mitigation proposal) are determined by the District Engineer to be minimal, the District Engineer will provide a timely written response to the applicant. The response will state that the project can proceed under the terms and conditions of the NWP.

If the District Engineer determines that the adverse effects of the proposed work are more than minimal, then the District Engineer will notify the applicant either: (1) that the project does not qualify for authorization under the NWP and instruct the applicant on the procedures to seek authorization under an Individual Permit; (2) that the project is authorized under the NWP subject to the applicant's submission of a mitigation proposal that would reduce the adverse effects on the aquatic environment to the minimal level; or (3) that the project is authorized under the NWP with specific modifications or conditions. Where the District Engineer determines that mitigation is required to ensure no more than minimal adverse effects occur to the aquatic environment, the activity will be authorized within the 45-day PCN period. The authorization will include the necessary conceptual or specific mitigation or a requirement that the applicant submit a mitigation proposal that would reduce the adverse effects on the aquatic environment to the minimal level. When conceptual mitigation is included, or a mitigation plan is required under item (2) above, no work in waters of the US will occur until the District Engineer has approved a specific mitigation plan.

(e) **Agency Coordination:** The District Engineer will consider any comments from Federal and state agencies concerning the proposed activity's compliance with the terms and conditions of the NWPs and the need for mitigation to reduce the project's adverse environmental effects to a minimal level.

For activities requiring *notification* to the District Engineer that result in the loss of greater than 1/2-acre of waters of the US, the District Engineer will provide immediately (e.g., via facsimile transmission, overnight mail, or other expeditious manner) a copy to the appropriate Federal or state offices (USFWS, state natural resource or water quality agency, EPA, State Historic Preservation Officer (SHPO), and, if appropriate, the NMFS). With the exception of NWP 37, these agencies will then have 10 calendar days from the date the material is transmitted to telephone or fax the District Engineer notice that they intend to provide substantive, site-specific comments. If so contacted by an agency, the District Engineer will wait an additional 15 calendar days before making a decision on the *notification*. The District Engineer will fully consider agency comments received within the specified time frame, but will provide no response to the resource agency, except as provided below. The District Engineer will indicate in the administrative record associated with each *notification* that the resource agencies' concerns were considered. As required by Section 305(b)(4)(B) of the Magnuson-Stevens Fishery Conservation and Management Act, the District Engineer will provide a response to NMFS within 30 days of receipt of any Essential Fish Habitat conservation recommendations. Applicants are encouraged to provide the Corps multiple copies of *notifications* to expedite agency *notification*.

(f) **Wetland Delineations:** Wetland delineations must be prepared in accordance with the current method required by the Corps (For NWP 29 see paragraph (b)(9)(iii) for parcels less than 1/4-acre in size). The permittee may ask the Corps to delineate the special aquatic site. There may be some delay if the Corps does the delineation. Furthermore, the 45-day period will not start until the wetland delineation has been completed and submitted to the Corps, where appropriate.

**14. Compliance Certification.** Every permittee who has received NWP verification from the Corps will submit a signed certification regarding the completed work and any required mitigation. The certification will be forwarded by the Corps with the authorization letter and will include: (a) A statement that the authorized work was done in accordance with the Corps authorization, including any general or specific conditions;

(b) A statement that any required mitigation was completed in accordance with the permit conditions; and (c) The signature of the permittee certifying the completion of the work and mitigation.

**15. Use of Multiple Nationwide Permits.** The use of more than one NWP for a single and complete project is prohibited, except when the acreage loss of waters of the US authorized by the NWPs does not exceed the acreage limit of the NWP with the highest specified acreage limit (e.g. if a road crossing over tidal waters is constructed under NWP 14, with associated bank stabilization authorized by NWP 13, the maximum acreage loss of waters of the US for the total project cannot exceed 1/3-acre).

**16. Water Supply Intakes.** No activity, including structures and work in navigable waters of the US or discharges of dredged or fill material, may occur in the proximity of a public water supply intake except where the activity is for repair of the public water supply intake structures or adjacent bank stabilization.

**17. Shellfish Beds.** No activity, including structures and work in navigable waters of the US or discharges of dredged or fill material, may occur in areas of concentrated shellfish populations, unless the activity is directly related to a shellfish harvesting activity authorized by NWP 4.

**18. Suitable Material.** No activity, including structures and work in navigable waters of the US or discharges of dredged or fill material, may consist of unsuitable material (e.g., trash, debris, car bodies, asphalt, etc.) and material used for construction or discharged must be free from toxic pollutants in toxic amounts (see Section 307 of the CWA).

**19. Mitigation.** The District Engineer will consider the factors discussed below when determining the acceptability of appropriate and practicable mitigation necessary to offset adverse effects on the aquatic environment that are more than minimal.

(a) The project must be designed and constructed to avoid and minimize adverse effects to waters of the US to the maximum extent practicable at the project site (i.e., on site).

(b) Mitigation in all its forms (avoiding, minimizing, rectifying, reducing or compensating) will be required to the extent necessary to ensure that the adverse effects to the aquatic environment are minimal.

(c) Compensatory mitigation at a minimum one-for-one ratio will be required for all wetland impacts requiring a PCN, unless the District Engineer determines in writing that some other form of mitigation would be more environmentally appropriate and provides a project-specific waiver of this requirement. Consistent with National policy, the District Engineer will establish a preference for restoration of wetlands as compensatory mitigation, with preservation used only in exceptional circumstances.

(d) Compensatory mitigation (i.e., replacement or substitution of aquatic resources for those impacted) will not be used to increase the acreage losses allowed by the acreage limits of some of the NWPs. For example, 1/4-acre of wetlands cannot be created to change a 3/4-acre loss of wetlands to a 1/2-acre loss associated with NWP 39 verification. However, 1/2-acre of created wetlands can be used to reduce the impacts of a 1/2-acre loss of wetlands to the minimum impact level in order to meet the minimal impact requirement associated with NWPs.

(e) To be practicable, the mitigation must be available and capable of being done considering costs, existing technology, and logistics in light of the overall project purposes. Examples of mitigation that may be appropriate and practicable include, but are not limited to: reducing the size of the project; establishing and maintaining wetland or upland vegetated buffers to protect open waters such as streams; and replacing losses of aquatic resource functions and values by creating, restoring, enhancing, or preserving similar functions and values, preferably in the same watershed.

(f) Compensatory mitigation plans for projects in or near streams or other open waters will normally include a requirement for the establishment, maintenance, and legal protection (e.g., easements, deed restrictions) of vegetated buffers to open waters. In many cases, vegetated buffers will be the only compensatory mitigation required. Vegetated buffers should consist of native species. The width of the vegetated buffers required will address documented water quality or aquatic habitat loss concerns. Normally, the vegetated buffer will be 25 to 50 feet wide on each side of the stream, but the District Engineers may require slightly wider vegetated buffers to address documented water quality or habitat loss concerns. Where both wetlands and open waters exist on

the project site, the Corps will determine the appropriate compensatory mitigation (e.g., stream buffers or wetlands compensation) based on what is best for the aquatic environment on a watershed basis. In cases where vegetated buffers are determined to be the most appropriate form of compensatory mitigation, the District Engineer may waive or reduce the requirement to provide wetland compensatory mitigation for wetland impacts.

(g) Compensatory mitigation proposals submitted with the “notification” may be either conceptual or detailed. If conceptual plans are approved under the verification, then the Corps will condition the verification to require detailed plans be submitted and approved by the Corps prior to construction of the authorized activity in waters of the US.

(h) Permittees may propose the use of mitigation banks, in-lieu fee arrangements or separate activity-specific compensatory mitigation. In all cases that require compensatory mitigation, the mitigation provisions will specify the party responsible for accomplishing and/or complying with the mitigation plan.

20. Spawning Areas. Activities, including structures and work in navigable waters of the US or discharges of dredged or fill material, in spawning areas during spawning seasons must be avoided to the maximum extent practicable. Activities that result in the physical destruction (e.g., excavate, fill, or smother downstream by substantial turbidity) of an important spawning area are not authorized.

21. Management of Water Flows. To the maximum extent practicable, the activity must be designed to maintain preconstruction downstream flow conditions (e.g., location, capacity, and flow rates). Furthermore, the activity must not permanently restrict or impede the passage of normal or expected high flows (unless the primary purpose of the fill is to impound waters) and the structure or discharge of dredged or fill material must withstand expected high flows. The activity must, to the maximum extent practicable, provide for retaining excess flows from the site, provide for maintaining surface flow rates from the site similar to preconstruction conditions, and provide for not increasing water flows from the project site, relocating water, or redirecting water flow beyond preconstruction conditions. Stream channelizing will be reduced to the minimal amount necessary, and the activity must, to the maximum extent practicable, reduce adverse effects such as flooding or erosion downstream and upstream of the project site, unless the activity is part of a larger system designed to manage water flows. In most cases, it will not be a requirement to conduct detailed studies and monitoring of water flow.

This condition is only applicable to projects that have the potential to affect waterflows. While appropriate measures must be taken, it is not necessary to conduct detailed studies to identify such measures or require monitoring to ensure their effectiveness. Normally, the Corps will defer to state and local authorities regarding management of water flow.

22. Adverse Effects From Impoundments. If the activity creates an impoundment of water, adverse effects to the aquatic system because of the acceleration of the passage of water, and/or the restricting its flow shall be minimized to the maximum extent practicable. This includes structures and work in navigable waters of the US, or discharges of dredged or fill material.

23. Waterfowl Breeding Areas. Activities, including structures and work in navigable waters of the US or discharges of dredged or fill material, into breeding areas for migratory waterfowl must be avoided to the maximum extent practicable.

24. Removal of Temporary Fills. Any temporary fills must be removed in their entirety and the affected areas returned to their preexisting elevation.

25. Designated Critical Resource Waters. Critical resource waters include, NOAA-designated marine sanctuaries, National Estuarine Research Reserves, National Wild and Scenic Rivers, critical habitat for Federally listed threatened and endangered species, coral reefs, state natural heritage sites, and outstanding national resource waters or other waters officially designated by a state as having particular environmental or ecological significance and identified by the District Engineer after notice and opportunity for public comment. The District Engineer may also designate additional critical resource waters after notice and opportunity for comment.

(a) Except as noted below, discharges of dredged or fill material into waters of the US are not authorized by NWPs 7, 12, 14, 16, 17, 21, 29, 31, 35, 39, 40, 42, 43, and 44 for any activity within, or directly affecting, critical resource waters, including wetlands adjacent to such waters. Discharges of dredged or fill materials into waters of the US may be authorized by the above NWPs in National Wild and Scenic Rivers if the

activity complies with General Condition 7. Further, such discharges may be authorized in designated critical habitat for Federally listed threatened or endangered species if the activity complies with General Condition 11 and the USFWS or the NMFS has concurred in a determination of compliance with this condition.

(b) For NWP's 3, 8, 10, 13, 15, 18, 19, 22, 23, 25, 27, 28, 30, 33, 34, 36, 37, and 38, *notification* is required in accordance with General Condition 13, for any activity proposed in the designated critical resource waters including wetlands adjacent to those waters. The District Engineer may authorize activities under these NWP's only after it is determined that the impacts to the critical resource waters will be no more than minimal.

26. ***Fills Within 100-Year Floodplains.*** For purposes of this General Condition, 100-year floodplains will be identified through the existing Federal Emergency Management Agency's (FEMA) Flood Insurance Rate Maps or FEMA-approved local floodplain maps.

(a) ***Discharges in Floodplain; Below Headwaters.*** Discharges of dredged or fill material into waters of the US within the mapped 100-year floodplain, below headwaters (i.e. five cfs), resulting in permanent above-grade fills, are not authorized by NWP's 39, 40, 42, 43, and 44.

(b) ***Discharges in Floodway; Above Headwaters.*** Discharges of dredged or fill material into waters of the US within the FEMA or locally mapped floodway, resulting in permanent above-grade fills, are not authorized by NWP's 39, 40, 42, and 44.

(c) The permittee must comply with any applicable FEMA-approved state or local floodplain management requirements.

27. ***Construction Period.*** For activities that have not been verified by the Corps and the project was commenced or under contract to commence by the expiration date of the NWP (or modification or revocation date), the work must be completed within 12-months after such date (including any modification that affects the project).

For activities that have been verified and the project was commenced or under contract to commence within the verification period, the work must be completed by the date determined by the Corps.

For projects that have been verified by the Corps, an extension of a Corps approved completion date may be requested. This request must be submitted at least one month before the previously approved completion date.

**Further Information**

- 1. District Engineers have authority to determine if an activity complies with the terms and conditions of an NWP.**
- 2. NWPs do not obviate the need to obtain other Federal, state, or local permits, approvals, or authorizations required by law.**
- 3. NWPs do not grant any property rights or exclusive privileges.**
- 4. NWPs do not authorize any injury to the property or rights of others.**
- 5. NWPs do not authorize interference with any existing or proposed Federal project.**

**ARKANSAS NATIONWIDE PERMIT REGIONAL CONDITIONS**

**REGIONAL CONDITION NO. 2 AND 4 ARE APPLICABLE TO NWP 13\***

**Regional Condition No. 2.** For NWPs 3, 4, 5, 6, 12, 13, 14, 15, 18, 19, 20, 23, 25, 30, 35, 36, 39, 40, 42, and 43, and in the following listed waters, the prospective permittee shall provide written notification to the appropriate Corps of Engineers (CE) District. Notification will be to the District Engineer according to *General Condition No. 13 (Federal Register, 67 FR 2021-2095)*:

**Fens - Peat-accumulating wetlands that receives some drainage from surrounding mineral soil and usually supports marshlike vegetation.**

**Bogs - Peat-accumulating wetlands that has no significant inflows or outflows and supports acidophilic mosses, particularly sphagnum.**

**Groundwater seeps - Wetlands at the base of steep slopes where the groundwater surface intersects with the land surface.**

**Dune depressional wetlands - Wetlands in shallow depressions that have no significant outflows but receive runoff from the surrounding land, located between sandy ridges in northeast Arkansas and southeast Missouri. These wetlands often support pondberry (*Lindera melissifolia*), a federally-listed endangered plant.**

**Regional Condition No. 4.** For NWPs 3, 4, 5, 6, 13, 12, 14, 15, 18, 19, 20, 23, 25, 27, 30, 35, 36, 39, 40, 41, 42, and 43, and in the waters listed below, the prospective permittee shall provide written notification to the appropriate CE District. Notification will be to the District Engineer according to *General Condition No. 13 (Federal Register, 67 FR 2021-2095)*. This notification shall be used to review the project for impacts on Federally listed threatened or endangered species and to determine if the project would have a minimal impact on the aquatic environment. The application will be coordinated with the Arkansas Department of Environmental Quality and other agencies as appropriate. This condition doesn't lessen the restrictions provided by General Condition 11 of the NWPs.

**ARKANSAS RIVER - IN THE FOLLOWING COUNTIES**

**CONWAY            PERRY    CRAWFORD    POPE    FAULKNER    PULASKI            JOHNSON  
                          SEBASTIAN        LOGAN    YELL**

**SPECIES OF CONCERN: INTERIOR LEAST TERN (STERNA ANTILLARUM ATHALASSOS - LE), ARKANSAS RIVER SHINER (NOTROPIS GIRARDI - PE, OF HISTORIC OCCURRENCE)**

**\*Note: Even though Regional Condition 2 is a condition to NWP 13, it is not applicable in this case since there are no fens, bogs, groundwater seeps, and dune depressional wetlands in the project area.**