



# California Regional Water Quality Control Board

## Colorado River Basin Region



Linda S. Adams  
Secretary for  
Environmental Protection

73-720 Fred Waring Drive, Suite 100, Palm Desert, California 92260  
(760) 346-7491 • Fax (760) 341-6820  
<http://www.waterboards.ca.gov/coloradoriver>

Arnold Schwarzenegger  
Governor

April 12, 2010

Marjorie Blaine  
U.S. Army Corps of Engineers  
5205 E. Comanche Street  
Tucson, AZ 85707

**RE: ACTION ON REQUEST FOR CLEAN WATER ACT SECTION 401 WATER QUALITY CERTIFICATION FOR DISCHARGE OF DREDGED AND/OR FILL MATERIALS**

**PROJECT:** Regional General Permit (RGP) 22 for the Restoration of Backwaters along the Colorado River

**APPLICANT:** U.S. Army Corps of Engineers

- ACTION:**
1.  Order for Standard Certification
  2.  Order for Technically-Conditioned Certification
  3.  Order for Denial of Certification

**STANDARD CONDITIONS:**

The following standard conditions apply to all certification actions, except as noted above under Action 3 for denials.

1. This certification action is subject to modification or revocation upon administrative or judicial review, including review and amendment pursuant to section 13330 of the California Water Code and section 3867 of Title 23 of the California Code of Regulations (23 CCR).
2. This certification action is not intended and shall not be construed to apply to any discharge from any activity involving a hydroelectric facility requiring a Federal Energy Regulatory Commission (FERC) license or an amendment to a FERC license unless the pertinent certification application was filed pursuant to 23 CCR section 3855(b) and the application specifically identified that a FERC license or amendment to a FERC license for a hydroelectric facility was being sought.
3. The validity of any non-denial certification action (Actions 1 and 2) shall be conditioned upon total payment of the full fee required under 23 CCR section 3833, unless otherwise stated in writing by the certifying agency.

*California Environmental Protection Agency*

4. In the event of any violation or threatened violation of the conditions of this certification, the violation or threatened violation shall be subject to any remedies, penalties, process, or sanctions as provided for under State law. For purposes of Clean Water Act (CWA) section 401(d), the applicability of any State law authorizing remedies, penalties, process, or sanctions for the violation or threatened violation constitutes a limitation necessary to assure compliance with the water quality standards and other pertinent requirements incorporated into this Water Quality Certification (WQC).
  - a. In response to a suspected violation of any condition of this WQC, the Regional Water Quality Control Board (Regional Water Board) may require the holder of any permit or license subject to this certification to furnish, under penalty of perjury, any technical or monitoring reports the Regional Water Board deems appropriate, provided that the burden, including cost of the reports, shall be in reasonable relationship to the need for the reports and the benefits to be obtained from the reports.
  - b. In response to any violation of the conditions of this WQC, the Regional Water Board may add to or modify the conditions of this certification as appropriate to ensure compliance.

**ADDITIONAL CONDITIONS:**

The following additional conditions apply to this certification:

1. The permittee shall notify the California Regional Water Quality Control Board - Colorado River Basin Region of all activities covered under this general permit. The notification must include a map of the area, a description of the activity as it pertains to the general permit, and an as-built which describes the final condition of the project after completion.
2. The permittee shall comply with all requirements of the California Porter-Cologne Water Quality Control Act.

**REGIONAL WATER QUALITY CONTROL BOARD CONTACT PERSON:**

If you have any questions, please contact Jay Mirpour, Water Resources Control Engineer, at (760) 776-8981 or [jmirpour@waterboards.ca.gov](mailto:jmirpour@waterboards.ca.gov).



**WATER QUALITY CERTIFICATION:**

I hereby issue an order certifying that any discharge from the referenced project will comply with the applicable provisions of sections 301 (Effluent Limitations), 302 (Water Quality Related Effluent Limitations), 303 (Water Quality Standards and Implementation Plans), 306 (National Standards of Performance), and 307 (Toxic and Pretreatment Effluent Standards) of the Clean Water Act, and with other applicable requirements of State law.

Except insofar as may be modified by any preceding conditions, all certification actions are contingent on (a) the discharge being limited and all proposed mitigation being completed in strict compliance with the applicants' project description and the attached Project Information Sheet, and (b) compliance with all applicable requirements of the Regional Water Quality Control Board's Water Quality Control Plan (Basin Plan).

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ROBERT PERDUE  
Executive Officer

JJM/

cc: Mark Durham, U.S. Army Corps of Engineers, Los Angeles District Office  
Bill Orme, SWRCB, Division of Water Quality, Water Quality Certification Unit  
David Smith, U.S. Environmental Protection Agency, Region 9  
Thomas A. Vandenberg, Office of Chief Counsel, SWRCB

File: 401 Certification, U.S. Army Corp of Engineers - RGP 22



Mailing List:

Mark Durham  
Regulatory Branch  
Los Angeles Office  
U.S. Army Corps of Engineers  
P.O. Box 532711  
Los Angeles, CA 90053-2325

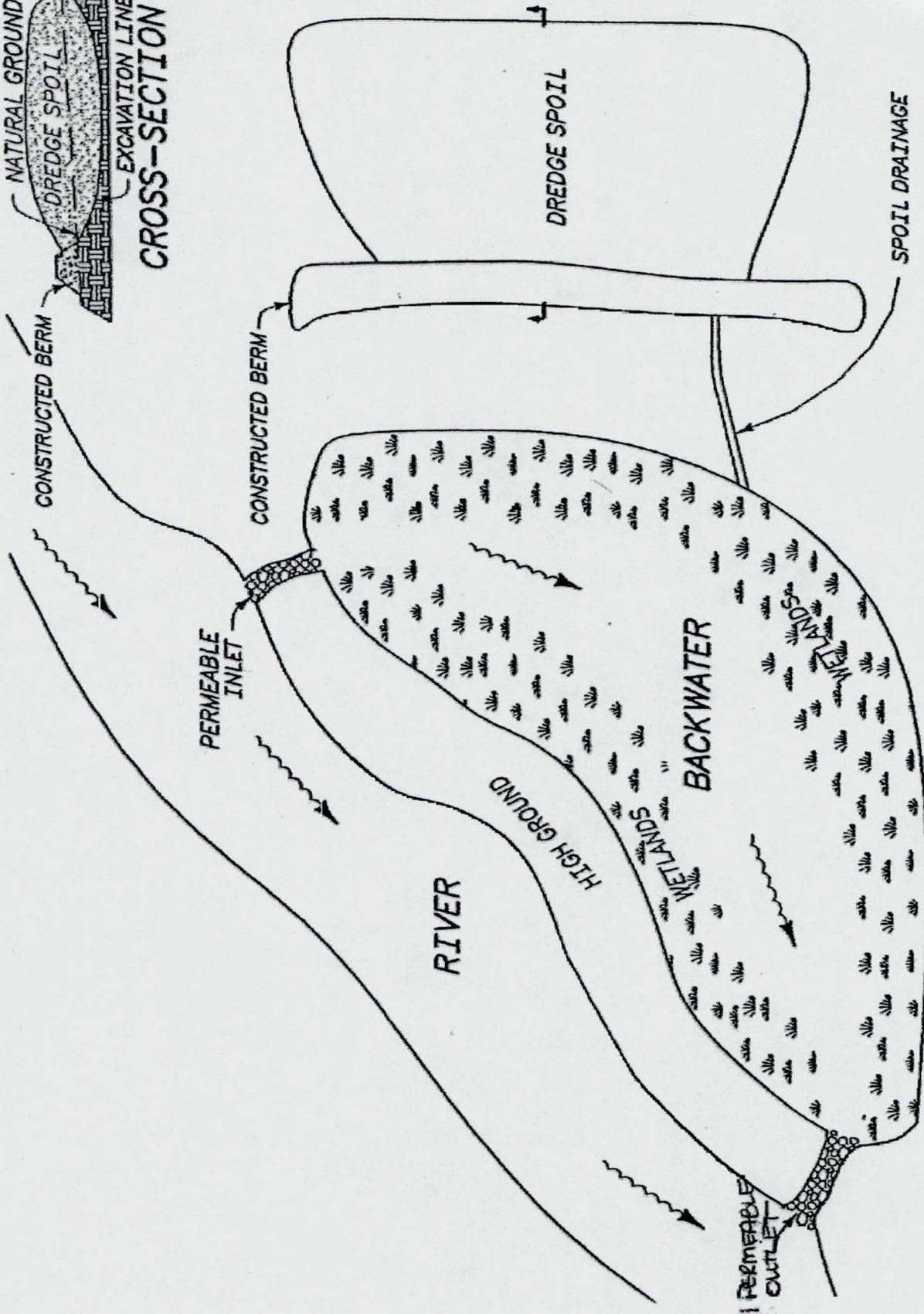
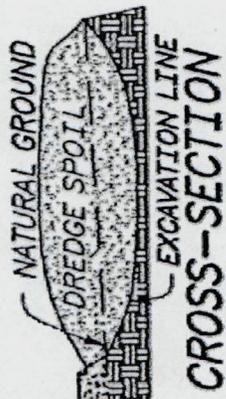
Bill Orme (\*)  
Water Quality Certification Unit  
Division of Water Quality  
State Water Resources Control Board  
1001 I Street  
Sacramento, CA 95814

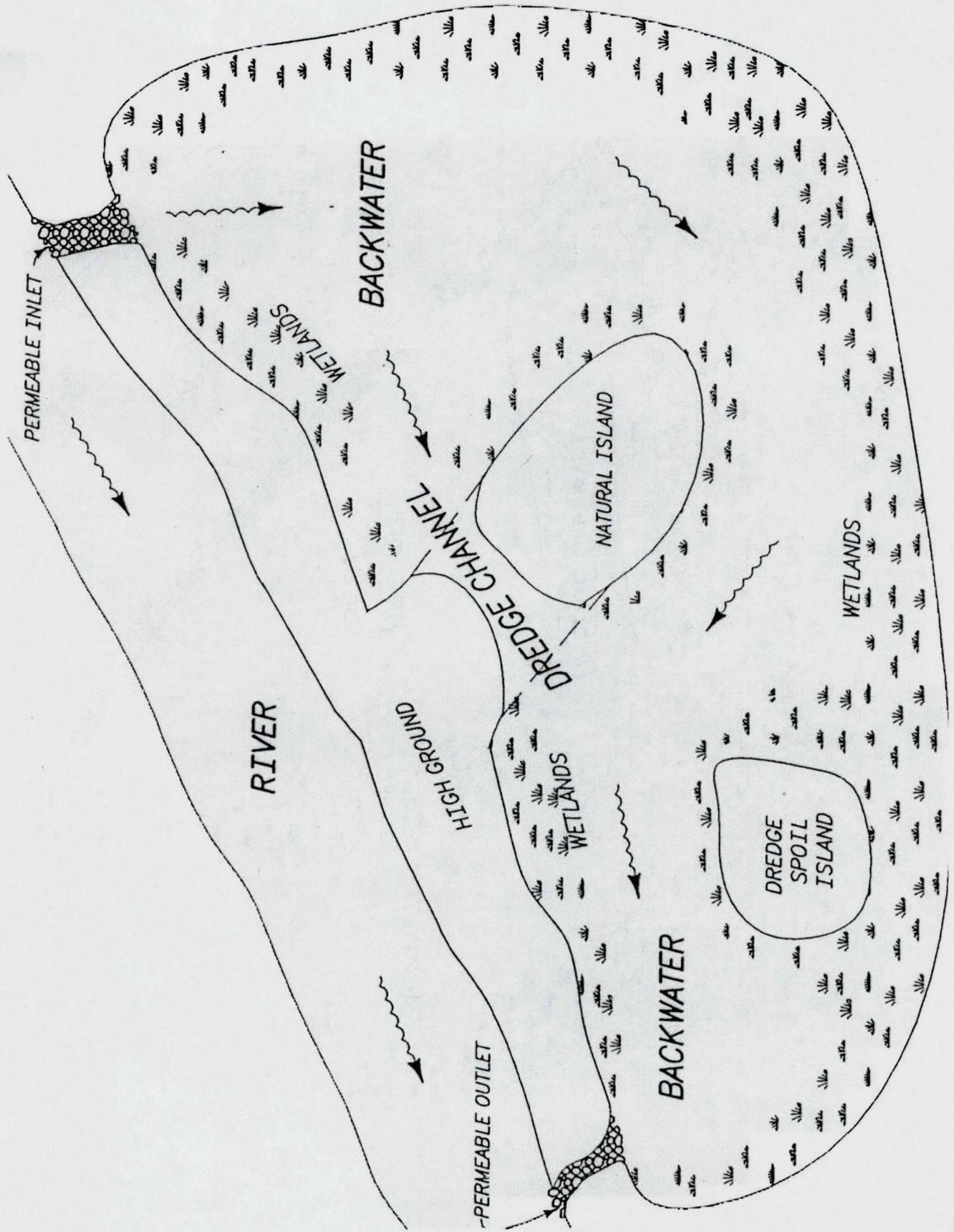
David Smith  
Wetlands Regulatory Office  
U.S. Environmental Protection Agency, Region 9  
75 Hawthorne Street  
San Francisco, CA 94105

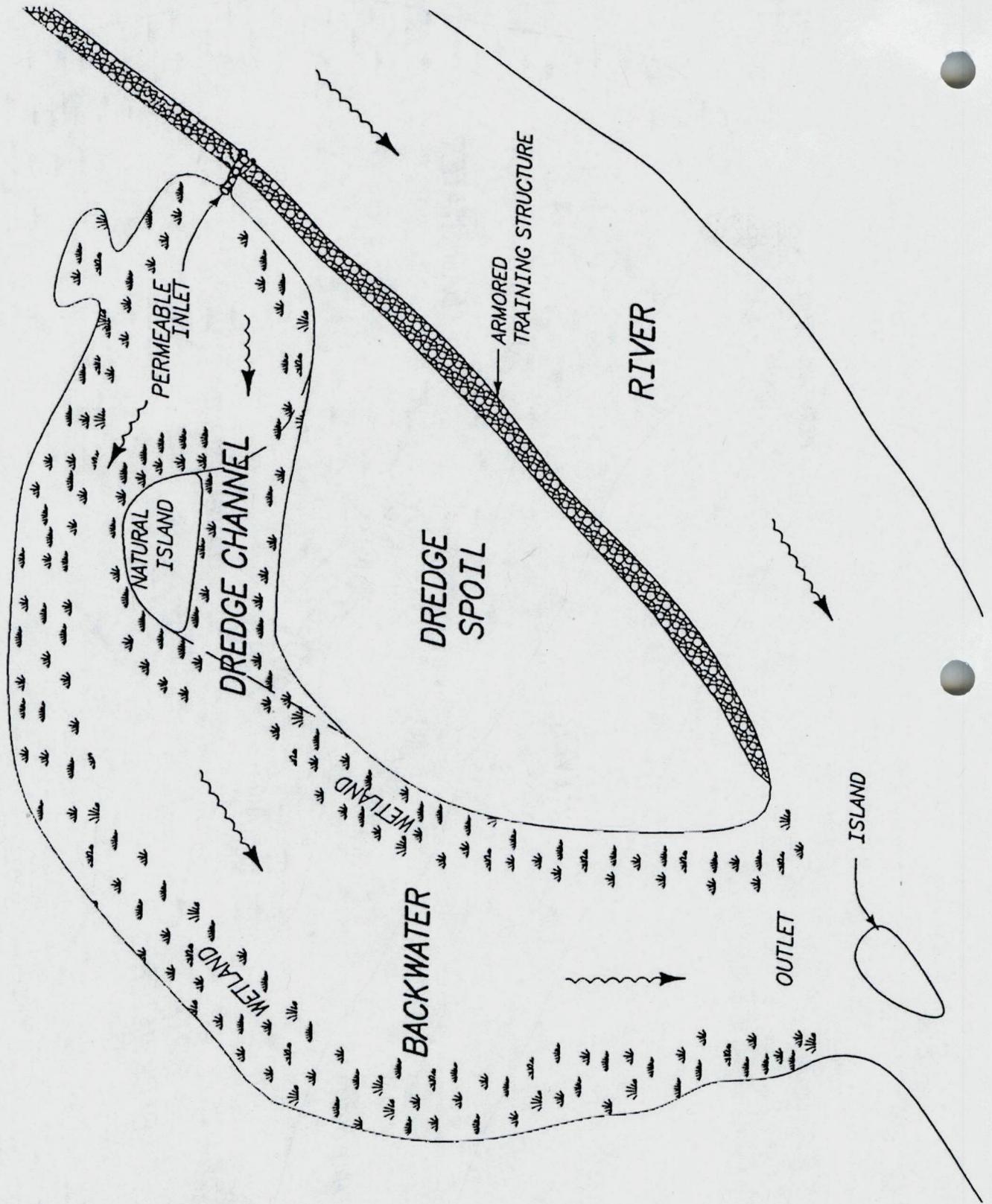
Thomas A. Vandenberg (\*)  
Staff Counsel  
Office of Chief Counsel  
State Water Resources Control Board  
1001 I Street  
Sacramento, CA 95814

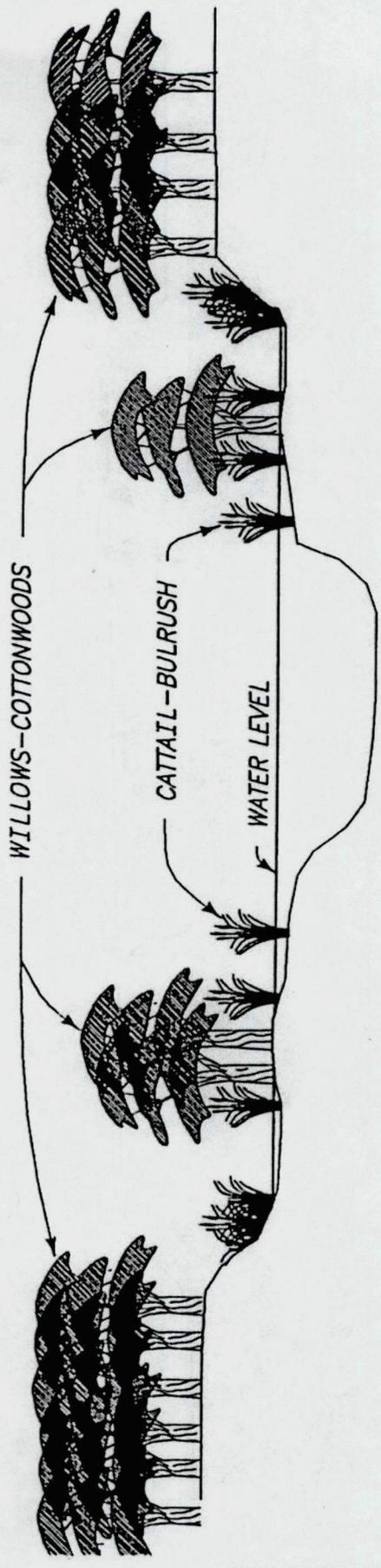
Note: (\*) will e-mail electronic copy



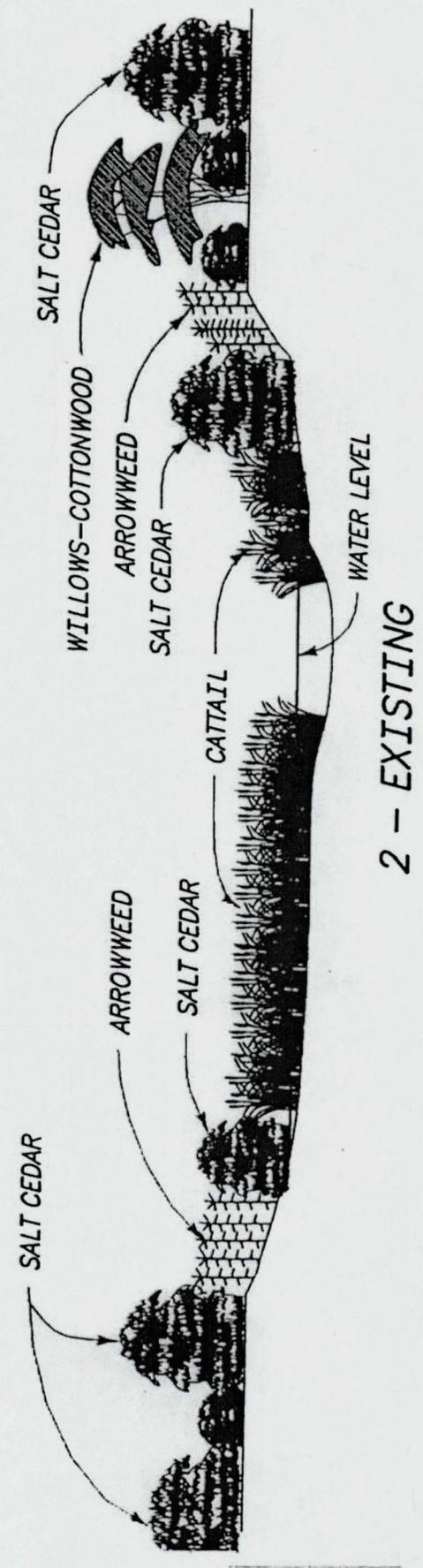




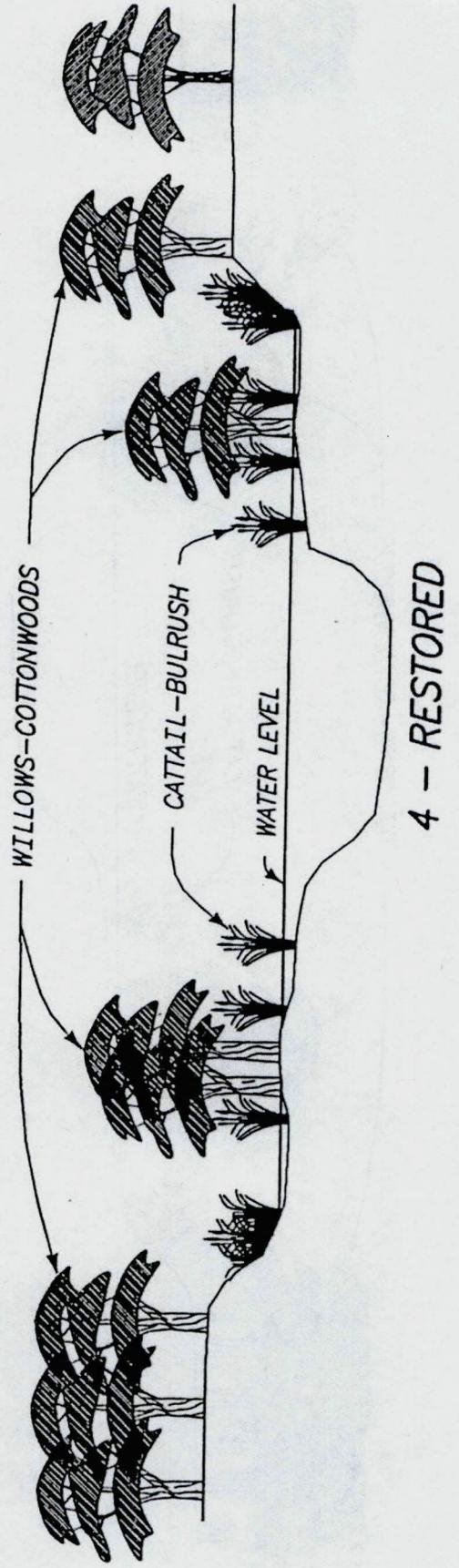
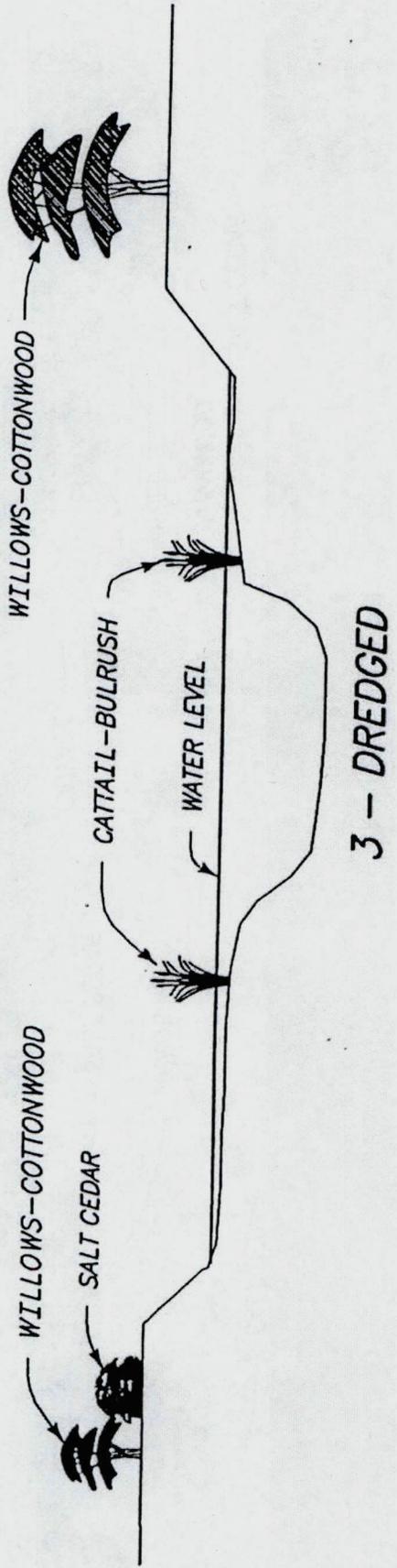




1 - HISTORICAL  
(PRIOR TO 1964)



2 - EXISTING



### PROJECT INFORMATION

**Application Date:** March 2010

**Applicant:** U.S. Army Corps of Engineers - Tucson Project Office, Regulatory Division, Public Notice/Application No.: SPL-1994-4015400-MB

**Applicant Representative:** Marjorie Blaine - Senior Project Manager/Biologist, (520)584-1684

**Project Name:** Regional General Permit (RGP) 22 for the Restoration of Backwaters along the Colorado River

**Project Start and Completion:** RGP is issued for a 5-year period (April 2010 - April 2015). Specific projects to be authorized by this RGP must be submitted to the U.S. Army Corps of Engineers in accordance with RGP requirements and may not begin until the Corps has verified the work complies with the RGP.

**Project Description (purpose/goal):** RGP 22 under Section 404 of the Clean Water Act and Section 10 of the River and Harbor Act of 1899 for the discharge of dredged and/or fill material resulting from wetland and aquatic habitat enhancement, restoration, and maintenance activities in the referenced locations. The basic work to be authorized under RGP22 will be:

- (1) Reestablish meandering channel waterways feeding overgrown and sediment laden lakes and wetlands using mechanical means (dredging by hydraulic dredge and/or amphibious or "cookie cutter" excavators").
- (2) Modify banklines and build islands using ground based excavation in order to create cattail/bulrush wetland fringe habitats and edges.
- (3) Construct permeable water inlet structures and water control structures in existing training structures along levees and inlets between the backwaters and Colorado River.
- (4) Maintenance dredge backwaters previously authorized and dredged under this RGP to originally authorized depths and profiles, and
- (5) Perform revegetation activities by removing saltcedar and replacing it with native riparian tree species. For more information, see page 3 of this notice and attached drawings.



**Project Location:** In backwaters along the Lower Colorado River from Davis Dam (RM 276) in Arizona to San Luis Rio Colorado (RM 0) bordering Sonora, Mexico and Arizona.

**Receiving Water(s):** Colorado River

**Fill/Excavation Area (acres):** Not available – reporting as activities occur

**Dredge Volume (cy):** Not available – reporting as activities occur

**Mitigation:** None

**Federal Permit(s):** U.S. Army Corps of Engineers RGP 22

**Status of CEQA:** This project is categorically exempt per 14 California Code of Regulation §15308 and §15333

**Reference No.:** 401 Certification, U.S. Army Corp of Engineers - Regional General Permit





# PUBLIC NOTICE

**US Army Corps  
of Engineers®**

**PROPOSAL TO REISSUE  
REGIONAL GENERAL PERMIT 22**

**Public Notice/Application No.:** SPL-1994-4015400-MB

**Comment Period:** March 15 – March 29, 2010

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## Location

In backwaters along the Lower Colorado River from Davis Dam (RM 276) in Arizona to San Luis Rio Colorado (RM 0) bordering Sonora, Mexico and Arizona.

## Activity

To reissue Regional General Permit (RGP) 22 under Section 404 of the Clean Water Act and Section 10 of the River and Harbor Act of 1899 for the discharge of dredged and/or fill material resulting from wetland and aquatic habitat enhancement, restoration, and maintenance activities in the referenced locations. The basic work to be authorized under RGP22 will be: (1) reestablish meandering channel waterways feeding overgrown and sediment laden lakes and wetlands using mechanical means (dredging by hydraulic dredge and/or amphibious or "cookie cutter" excavators"), (2) modify banklines and build islands using ground based excavation in order to create cattail/bulrush wetland fringe habitats and edges, (3) construct permeable water inlet structures and water control structures in existing training structures along levees and inlets between the backwaters and Colorado River, (4) maintenance dredge backwaters previously authorized and dredged under this RGP to originally authorized depths and profiles, and (5) perform revegetation activities by removing saltcedar and replacing it with native riparian tree species. For more information, see page 3 of this notice and attached drawings.

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Interested parties are hereby notified that the Corps of Engineers is proposing to reissue RGP22 for the activities described herein and shown on the attached drawing(s). Interested parties are invited to provide their views on the proposed work, which will become a part of the record and will be considered in the decision. This RGP will be reissued or denied under Section 10 of the River and Harbor Act of March 3, 1899 (33 U.S.C. 403) and Section 404 of the Clean Water Act (33 U.S.C. 1344). Comments may be emailed to [Marjorie.E.Blaine@usace.army.mil](mailto:Marjorie.E.Blaine@usace.army.mil) or mailed to:

**U. S. Army Corps of Engineers  
ATTENTION: Regulatory Division (SPL-1994-4015400-MB)  
5205 E. Comanche Street  
Tucson, Arizona 85707**

## **Evaluation Factors**

The decision whether to issue a permit will be based on an evaluation of the probable impact including cumulative impacts of the proposed activity on the public interest. That decision will reflect the national concern for both protection and utilization of important resources. The benefit which reasonably may be expected to accrue from the proposal must be balanced against its reasonably foreseeable detriments. All factors which may be relevant to the proposal will be considered including the cumulative effects thereof. Factors that will be considered include conservation, economics, aesthetics, general environmental concerns, wetlands, cultural values, fish and wildlife values, flood hazards, flood plain values, land use, navigation, shoreline erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food production and, in general, the needs and welfare of the people. In addition, if the proposal would discharge dredged or fill material, the evaluation of the activity will include application of the EPA Guidelines (40 CFR 230) as required by Section 404 (b)(1) of the Clean Water Act.

The Corps of Engineers is soliciting comments from the public; Federal, state, and local agencies and officials; Indian tribes; and other interested parties in order to consider and evaluate the impacts of this proposed activity. Any comments received will be considered by the Corps of Engineers to determine whether to issue, modify, condition or deny a permit for this proposal. To make this decision, comments are used to assess impacts on endangered species, historic properties, water quality, general environmental effects, and the other public interest factors listed above. Comments are used in the preparation of an Environmental Assessment and/or an Environmental Impact Statement pursuant to the National Environmental Policy Act. Comments are also used to determine the need for a public hearing and to determine the overall public interest of the proposed activity.

## **Preliminary Review of Selected Factors**

**EIS Determination-** A preliminary determination has been made that an environmental impact statement is not required for the proposed work.

**Water Quality-** Section 401 water quality certification must be obtained from the following agencies: (1) U. S. Environmental Protection Agency (EPA) for work on Tribal lands, (2) the California State Water Resources Control Board (CSWRCB) for California, and (3) the Arizona Department of Environmental Quality (ADEQ) for Arizona. The decision for these agencies to issue or waive a blanket certification for all activities included in this RGP or to require individual Section 401 water quality certification by each applicant will be determined prior to reissuance of the RGP.

**Cultural Resources-** Compliance with Section 106 of the National Historic Preservation Act (NHPA) (36 CFR 800) must be completed before any action may commence. Each Federal applicant shall be required to initiate and satisfactorily complete the process on their own. Any non-Federal applicant shall coordinate Section 106 compliance directly with the Corps.

**Endangered Species-** Any Federal project-specific prospective permittee shall be required to initiate and satisfactorily complete compliance under Section 7 of the Endangered Species Act with the U. S. Fish and Wildlife Service (FWS), Ecological Services (602)242-0210. Any non-Federal

applicant shall coordinate Section 7 compliance directly with the Corps and shall be required to furnish a biological evaluation of the project and its impacts to threatened and endangered species and designated critical habitat. The Corps shall then determine if the specific project requires consultation under Section 7(c) and if so, shall initiate such consultation.

**Public Hearing-** Any person may request, in writing, within the comment period specified in this notice, that a public hearing be held to consider this application. Requests for public hearing shall state with particularity the reasons for holding a public hearing.

### **Proposed Activity for Which a Permit is Required**

A permit is required for any discharges of dredged and/or fill material, and for structures and/or work associated with aquatic and wetland enhancement activities below the ordinary high water mark (OWHM) or in wetlands. Specific activities to be reauthorized under RGP22 include:

1. **DREDGING OF CHANNEL OR BACKWATER WATERWAYS:** Rehabilitation shall be accomplished by dredging of channels in backwaters cut off from the mainstem of the Colorado River by using hydraulic dredges, and/or amphibious or "cookie cutter" excavators. The purpose of this activity is to reestablish meandering channel waterways which feed overgrown and sediment laden lakes and wetlands using mechanical means. Channel depths will conform to dimensions which existed when created in the 1960's. The dredge spoil shall be placed on older spoil piles unless these are being used as mitigation or for revegetation. If new areas are to be used for the placement of dredge spoil, then the vegetation shall be mapped so that spoil is placed on the lowest value habitat. Berms shall be placed around the spoil piles to prevent increases in turbidity of return water. Cattail habitats having actual; or potential Yuma clapper rail habitat shall be avoided during dredging operations.

2. **CREATION OF CATTAIL WETLAND FRINGE HABITATS:** Creation of cattail/bulrush wetland fringe habitats and edges shall be accomplished by modifying banklines and building islands. Excavation shall be accomplished using ground based equipment (bulldozers, etc.). The excavated area shall support saturated soil so that wetland vegetation will become established. It shall not be excavated deeper than 6 ft. below the normal surface water elevation in order to accommodate wetland plants. Dredge spoil shall be placed in an upland location on older spoil piles or on lowest quality vegetation. Berms shall be placed around the spoil piles to prevent increases in turbidity of return water.

3. **PERMEABLE WATER INLET STRUCTURES AND WATER CONTROL STRUCTURES:** Water inlet/outlet structures shall be constructed by either placing boulders or large rocks (permeable structures) in openings of levees, installing culverts, placing a combination of permeable structure with culverts, and/or establishing open inlets/outlets to permit water from the main stem of the Colorado River to flow and circulate through the backwaters. The type of structure to be placed shall be designed to avoid and minimize becoming plugged with sediment and debris. In addition, water control structures may also be used for the same purpose under this RGP where water must be regulated. The placement of these structures shall not create a navigable hazard, impair any existing wetlands, or cause cottonwood, willow or mesquite trees to be removed. Maintenance of structures previously authorized under this RGP is allowable provided it is done to the originally authorized structure specifications.

4. **MAINTENANCE DREDGING:** Maintenance dredge backwaters previously authorized and dredged under this RGP to originally authorized depths and profiles. Enlarging of backwaters is not authorized under this specific activity of this RGP. Dredging in existing channels shall avoid shoreline emergent vegetation as much as possible and shall encourage establishment of desirable emergents where

shallow "shelves" are left along channel edges. The establishment of these shelves shall be required in all areas where it is technically feasible. Discharges of dredged material associated with contouring, shaping edges, island creation, and tree planting in jurisdictional areas shall be permitted under this RGP

**5. REVEGETATION ACTIVITIES:** Revegetation activities covered under this RGP are those which occur below the ordinary high water mark or in wetlands. Saltcedar may be removed by mechanical means (i.e. bulldozer), provided it is replaced with native riparian trees. This RGP does not authorize the replacement of cattails by riparian trees. Decadent cattails persisting above the water table where the water surface elevation has dropped since 1983 shall be restored as part of these revegetation activities in cooperation with the U.S. Fish and Wildlife Service Yuma clapper rail recovery plan.

### **Additional Project Information**

The original RGP was supported by the Backwaters Subcommittee of the Lower Colorado River Work Group. Work which was authorized and occurred under the originally issued RGP22 (issued March 10, 1995) has resulted in high value backwaters within the Lower Colorado River. Applicants eligible to obtain approval under this RGP are Federal, State, and local agencies; Indian tribes; and citizens' groups in cooperation with Arizona Game and Fish Department (AGFD) or California Department of Fish and Game (CDFG), and/or the FWS. The Bureau of Reclamation shall be the lead agency for the majority of the proposed backwater projects.

There are over four hundred backwaters/wetlands adjacent to the Lower Colorado River (LCR) below Davis Dam which are over one acre in size. Of these, at least 124 have previously been identified by the work group as suitable for aquatic and wetland enhancement projects. Several of the backwaters in the LCR were created in the 1960's by the Bureau of Reclamation as mitigation for fish and wildlife values lost to river channelization. Major floods have silted in the backwaters and exotic plant species have overgrown and replaced important wetlands.

The basic purpose in reissuing this RGP is to allow for the continued restoration and improvement of existing backwater/wetland habitats for fish, wildlife, and recreation. The overall purpose is to allow restoration, enhancement, creation, and maintenance of backwater habitats along the Lower Colorado River to provide higher quality habitat for fish and wildlife and to provide areas for passive recreation. Wildlife habitat will be enhanced by creating more edge effect, wider and more productive wetland fringes, and increased diversity of native riparian trees and shrubs. Fish habitat will be enhanced by improving water quality and creating spawning habitat. Fish attraction devices, which may be permitted under nationwide permit 4, will also improve fish habitat. Restoration and improvement techniques will be dependent on the physical condition, size, and location of the backwaters/wetlands and management objectives developed and dictated by requirements of the Multi-Species Conservation Plan (MSCP). For example, individual backwater/wetlands may be developed for endangered/threatened fish and/or wildlife. Others may be developed for waterfowl, sport fishing, shorebirds, or a combination of each. The LCR is a navigable water of the U.S. based on a 1968 Corps navigability study and as defined in accordance with 33 CFR 329.

**Proposed Special Conditions**

a. Any permittee who desires to perform activities under this RGP shall notify the Corps (contact the Tucson Field Office at (520) 584-1684). Public review is not required, however, the permittee shall request written approval from the Corps by submitting written plans and drawings to the following addresses:

U. S. Army Corps of Engineers  
Tucson Field Office, Regulatory Division  
ATTN: Ms. Marjorie Blaine  
5205 E. Comanche Street  
Tucson, Arizona 85707

b. The permittee shall contact the Arizona State Land Department at the following address to determine whether the activity occurs on State sovereign land and if a license to encroach is required:

Arizona State Land Department  
ATTN: Kay McNeely  
1616 West Adams  
Phoenix, Arizona 85007

c. Any Federal permittee proposing work under this RGP shall complete, on their own, all Section 106 compliance. Prior to beginning work, the permittee shall submit all documentation regarding completion of Section 106 compliance with the applicable SHPO to the Corps including written concurrence from the SHPO. For Federal agencies, the SHPO addresses are:

Arizona State Parks  
State Historic Preservation Office  
ATTN: Ms. Jo Anne Medley  
1300 W. Washington  
Phoenix, Arizona 85007

California Department of Parks and Recreation  
State Historic Preservation Office  
ATTN: Mr. Milford Donaldson  
PO Box 942896  
Sacramento, California 94296-0001

For Section 106 compliance, any non-Federal permittee shall coordinate all proposed actions with the Corps. The permittee shall notify the Corps regarding all proposed activities early in the planning process to allow completion of the Section 106 process well in advance of commencement of the proposed undertaking.

d. When a project is proposed within California, the applicant/lead agency shall submit plans for the CDFG review and comment prior to initiation of the project. CDFG comments shall be submitted to the Corps. Restoration projects conducted by the Bureau of Reclamation are not subject to CDFG Code 1600 et. seq. CDFG may be contacted at:

California Department of Fish and Game  
ATTN: Mr. Dave Elms  
PO Box 2160  
Blythe, California 92225

e. Prior to approval by the Corps, the proposed activity shall be certified or certification waived under Section 401 of the Clean Water Act either on an individual basis or as a blanket approval from one or more of the following agencies: U. S. EPA (Tribal lands), CARWCB (California), ADEQ (Arizona). (NOTE: The Corps is currently seeking blanket Section 401 certification from these three agencies; however, if this is denied, the applicant shall be required to obtain individual certification or waiver).

f. This permit shall be valid for five years after which time a new RGP shall be issued if Federal, State, and local agencies and the public support its reissuance.

g. The permittee shall develop a water use budget to demonstrate the water use will be accounted for or show existing water rights are valid.

h. The permittee shall identify on a map locations where dredge spoil is to be placed. The permittee shall demonstrate the least damaging location for dredge spoil placement is chosen. Preferred dredge spoil locations are on existing dredge spoil piles and vegetation having the lowest habitat value. The permittee shall construct berms to surround the dredge spoil sites. These are to be placed above the OHWM to reduce runoff and eliminate impacts caused by turbidity or mixing zones.

i. The permittee shall submit a detailed revegetation plan to include location of revegetation, species to be planted, densities of each species, irrigation methods, etc. The permittee shall annually for five years provide to the Corps a monitoring report which shall indicate by use of % canopy cover, dbh, or other methodology that the vegetation is in a living and growing condition. Survivability requirements are 80%. If the Corps determines revegetation efforts are not successful, the Corps may require modifications to the revegetation plan. Revegetation efforts shall commence within 30 days of completion of the activities authorized by this RGP.

j. The permittee shall maintain the permeable water inlet structures and water control structures after they have been put in place for the life of the project. These structures shall be constructed during or immediately after completion of dredging.

k. This RGP may be modified in the future if: (1) new species become Federally listed or new critical habitat designated which could be adversely affected by the permitted activities, (2) additional information indicates activities permitted under this RGP cause significant environmental impacts.

For additional information please call Marjorie E. Blaine at (520) 584-1684. This public notice is issued on behalf of the Chief, Regulatory Division.