



**U S Army Corps  
of Engineers**  
Huntington District

# Public Notice

In reply refer to Public Notice No.

**199700048-3**

Issuance Date:

**July 16, 2008**

Stream:

**n/a**

Closing Date:

**August 15, 2008**

Please address all comments and inquiries to:

U.S. Army Corps of Engineers, Huntington District

ATTN: CELRH-OR-F Public Notice No. (*reference above*)

502 Eighth Street, Huntington, West Virginia 25701-2070

Phone: (304) 399-5210

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**PROPOSED REGIONAL PERMIT FOR STREAM RESTORATION AND  
MANAGEMENT BY INDIVIDUAL LANDOWNERS WITHIN THE  
HUNTINGTON AND PITTSBURGH DISTRICTS  
IN THE STATE OF WEST VIRGINIA**

TO WHOM IT MAY CONCERN: In accordance with Title 33 CFR 325.5(c)(1) as published on November 13, 1986, in the Federal Register, Volume 51, Number 219, the District Engineer, U.S. Army Engineers, Huntington District has proposed a regional permit to individual landowners that would authorize certain stream restoration and management activities, pursuant to Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act.

This regional permit would authorize a similar set of activities usually associated with stream repair, including (1) excavation; (2) reduction of sand and gravel bars; (3) bank stabilization; (4) channel restorations; and (5) maintenance of approved work. This regional permit would apply to work on all streams within the Huntington and Pittsburgh Districts in West Virginia, except those excluded by the attached special and general permit conditions.

Individuals interested in using this regional permit for work in stream(s) on their property would contact one of the West Virginia Conservation Districts to request technical assistance in developing a stream management plan. Representatives from federal and state agencies, listed in Special Condition "A" would be a part of a review team that would assistance to the landowner in development of the management plan. A completed plan would be forwarded to the Corps of Engineers for a final decision as to whether the proposed work qualifies for authorization by the regional permit.

The landowner would be responsible for performance of the work in accordance with the individual stream management plan developed by the West Virginia Conservation Agency and conditions of the regional permit. Land ownership must be proved by the applicant prior to development of the plan. All activities authorized would be subject to compliance with the limitations specified in the special and general conditions of the regional permit and any conditions associated with an approved water quality certification. The policies of this permit would be subject to reconsideration at any time, but at least every five years. At that time, a complete reevaluation will be performed according to regulations governing the use of regional

**WATER QUALITY CERTIFICATION:** This notice shall serve as a request to the West Virginia Department of Environmental Protection by the U.S. Army Corps of Engineers, to act on the 401 Water Quality Certification for the above referenced Regional General Permit.

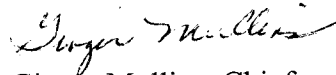
**PUBLIC INTEREST REVIEW AND COMMENT:** Any person who has an interest that may be adversely affected by the issuance of a permit may request a public hearing. The request must be submitted in writing to the District Engineer on or before the expiration date of this notice and must clearly set forth the interest which may be adversely affected and the manner in which the interest may be adversely affected by the activity. This application will be reviewed in accordance with 33 CFR 320-332, the Regulatory Program of the U. S. Army Corps of Engineers (USACE), and other pertinent laws, regulations, and executive orders. Our evaluation will also follow the guidelines published by the U. S. Environmental Protection Agency pursuant to Section 404(b) (1) of the CWA. Interested parties are invited to state any objections they may have to the proposed work. 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 that reasonably may be expected to accrue from the proposal must be balanced against its reasonably foreseeable detriments. All factors that may be relevant to the proposal will be considered including the cumulative effects thereof; of those are conservation, economics, aesthetics, general environmental concerns, wetlands, historic properties, fish and wildlife values, flood hazards, floodplain values, land use, navigation, shoreline erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs, considerations of property ownership and, in general, the needs and welfare of the people. Written statements on these factors received in this office on or before the expiration date of this public notice will become a part of the record and will be considered in the final determination. A permit will be granted unless its issuance is found to be contrary to the public interest.

**SOLICITATION OF COMMENTS:** 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. For accuracy and completeness of the administrative record, all data in support of or in opposition to the proposed work should be submitted in writing setting forth sufficient detail to furnish a clear understanding of the reasons for support or opposition. 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.

**CLOSE OF COMMENT PERIOD:** All comments pertaining to this Public Notice must reach this office on or before the close of the comment period listed on page one of this Public Notice. If no comments are received by that date, it will be considered that there are no objections. Comments and requests for additional information should be submitted to:

**U.S. Army Corps of Engineers, Huntington District  
Attn. Amy Ferguson, CELRH-OR-FS, Public Notice 199700048-3  
502 Eighth Street  
Huntington, West Virginia 25701-2070**

Please note names and addresses of those who submit comments in response to this public notice become part of our administrative record and, as such, are available to the public under provisions of the Freedom of Information Act. If you have any questions concerning this public notice, please contact Amy Ferguson of the South Regulatory Section at 304-399-5710.



Ginger Mullins, Chief  
Regulatory Branch

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## SPECIAL CONDITIONS FOR FORMULATION OF THE STREAM RESTORATION AND MANAGEMENT PLANS:

### **A. The Stream Review Team:**

The review team will consist of one or more representative(s) from the West Virginia Conservation Agency and/or Conservation District, U.S. Army Corps of Engineers, West Virginia Division of Natural Resources, West Virginia Department of Environmental Protection, and U.S. Fish and Wildlife Service, and will have an opportunity to assist in development of the stream management plans. Each agency will be given adequate notification of team reviews. Decisions by the review team on the acceptability of the proposed plan will be directed to the appropriate Corps of Engineers office for evaluation and a decision as to whether the management plan qualifies for authorization under the regional permit. If the proposal is not acceptable to the team, the landowner will have the option of modifying the plan to make it acceptable or applying directly to the Corps of Engineers for other authorizations as described in 33 CFR 320-332.

### **B. Excavation of Silt, Sand and Rock Deposits:**

1. Will not exceed 3000 cubic yards of material from below the plane of the ordinary high water elevation of the stream. Will not exceed 1000 feet in length per management plan.
2. Must be completed as a single operation and will be performed during periods of low flow. For streams with no flow, excavation is limited such that the existing low flow channel can be maintained.
3. Will not increase original channel width or depth. All low flow channels must be maintained.
4. Excavated material may be placed below the ordinary high water mark **only** if it is to be used as part of a bank protection project (as outlined in section "E").
5. Excavated material will be utilized as part of an approved bank stabilization plan or disposed of at an upland location that will preclude its reentry into the stream or any other water of the U.S, including wetlands, in accordance with the approved stream management plan and local or state regulations. Any topsoil at the disposal site should be removed, stockpiled and redistributed over the excavated material to promote rapid revegetation.
6. Excavation should be done from top of bank where feasible.

### **C. Sand and/or Gravel Bar Reduction Activities:**

1. Will not extend below an elevation which is 12 vertical inches above the surface of the water at the time that the removal activity is performed.
2. Will not include reduction of islands that support woody vegetation.

3. Excavation should be done from top of bank where feasible.
4. Will not exceed 1000 feet in length per management plan.

**D. Restoration of Stream Channels:**

1. Is allowed to protect structures, cropland, pastures and/or fences.
2. Is allowed to return a channel to its previous location if the channel has recently changed course due to a heavy storm event and/or blockage.
3. Removing mid-channel gravel bars is allowed to correct over-widened channel conditions.
4. The use of log/rock/cross vanes is allowed to improve habitat and increase bank stability. The creation of benches is allowed to improve width/depth ratio of the stream.
5. Excavation should be done from top of bank where feasible.
6. Will not exceed 1000 feet in length per management plan.

**E. Bank Stabilization:**

1. Will consist of the minimum amount needed for erosion protection, and will not exceed an average of one cubic yard per running foot placed along the bank below the plane of the ordinary high water elevation.
2. Will be planned and installed in a manner to prevent material from re-entering the watercourse under normal or expected high flow conditions.
3. Can consist of rock riprap, crushed concrete, gabions or other acceptable clean, uncontaminated material. Large concrete sections from pavement expansion joint repair and tires are not suitable materials.
4. May include the use of unconsolidated river material if used as a part of stream bank reconstruction and it is stabilized by methods intended to prevent further erosion.
5. Will not be placed in any special aquatic site, including wetlands, nor will it be placed in any location or in any manner so as to impair surface water flow into or out of a wetland.
6. Unconsolidated material will be graded to a 2:1 or flatter slope. All dredged materials disposed of on the top of the stream bank will be stacked no higher than three feet above the top-of-bank, will be leveled and graded landward to a 3:1 or flatter slope, and will be adequately seeded and mulched where feasible.
7. The use of log/rock/cross vanes is allowed to increase bank stability.

8. Will not exceed 1000 feet in length per management plan.
9. Excavation should be done from top of bank where feasible.

**F. Best Management Practices:**

1. Points of ingress and egress will be identified to minimize streambed damage from equipment for instream work when specifically authorized by the approved management plan. Maintenance work should be done from the top-of-bank, whenever possible. Initial in-stream work may include the use of a bulldozer if specifically authorized by the approved stream management plan.
2. Removal of mature riparian vegetation not directly associated with the project is prohibited. Disturbance and removal of vegetation at construction areas will be limited to that absolutely necessary to perform the work.
3. All disturbed areas, including stream banks, access roads and disposal areas will be revegetated, where feasible, using native plant species. The approved stream management plan will include consideration of planting rates, species specifications and survival evaluation procedures. In low gradient streams, consideration will be given to mechanical and bioengineered reclamation of banks.
4. Work should be done during low flow.
5. Working during the spawning season on streams that contain native brook trout (September 15 - February) should be avoided, where possible.
6. Working on stocked streams during stocking periods should be avoided, where possible.
7. Using the channel to transport materials or equipment is prohibited unless specifically authorized by the stream management plan.
8. All heavy earth moving equipment working in or near the stream should be inspected daily for necessary maintenance (i.e. fluid leaks) prior to commencement of work.
9. A copy of the approved plan must be available on-site for inspection by team members during implementation of restoration activities.
10. Maintenance of the stream in accordance with an approved plan is permitted, provided the environmental effects resulting from such activities are similar in nature. Maintenance activities, in accordance with the approved plan, may occur within the limits of the authorized permit until the permit expires.

**G. Historic and/or Archaeological Resources:**

Activities that would affect historic, cultural, or archaeological sites listed or eligible for listing in the National Register of Historic Places are not authorized by this regional permit unless coordination as required by Section 106 of the National Historic Preservation Act has been completed with the State Historic Preservation Office and the Advisory Council on Historic Preservation. To determine if historic, cultural, or archaeological sites have been listed on the National Register, contact the Division of Culture and History.

**H. Endangered Species:**

Due to the presence of threatened and endangered species of plants and animals, work on the following streams will not be authorized by the regional permit:

**Huntington District**

- Upper Kanawha River (Kanawha Falls to Watson Island, River Mile 75.5) (Fayette and Kanawha Counties) (Tubercled-blossum pearlymussel, Epioblasma torulosa torulosa; Pink mucket pearlymussel, Lampsilis abrupta; and Fanshell, Cyprogenia stegaria)
- Elk River (Sutton Dam to slackwater below Coonskin Park) (Braxton, Clay, Kanawha Counties) (Clubshell, Pleurobema clava; Northern riffleshell, Epioblasma torulosa rangiana; and the Pink mucket pearlymussel, Lampsilis abrupta)
- Ohio River (Upper Greenup, R.C. Byrd, Racine, and Belleville Navigation Pools) (Cabell, Mason, Jackson, and Wood Counties) (Pink mucket pearly mussel, Lampsilis abrupta and the Fanshell, Cyprogenia stegaria)
- Hackers Creek of the West Fork River (Lewis County) (Clubshell, Pleurobema clava)
- Meathouse Fork of Middle Island Creek (Doddridge County) (Clubshell, Pleurobema clava)
- Middle Island Creek (Doddridge, Tyler, and Pleasants Counties) (Clubshell, Pleurobema clava)
- South Fork of the Hughes River (Ritchie County) (Clubshell, Pleurobema clava)
- Potts Creek and the South Fork of Potts Creek (Monroe County) (James spinymussel, Pleurobema collina)
- Greenbrier River (Greenbrier County) (Virginia spiraea, Spiraea virginiana)
- Lower Gauley River (Summersville Dam - Swiss) (Nicholas and Fayette Counties) (Virginia spiraea, Spiraea virginiana)
- Lower Meadow River (Nallen - Gauley River) (Nicholas and Fayette Counties) (Virginia spiraea, Spiraea virginiana)

- Bluestone River (Bluestone Gorge - slackwater Bluestone Reservoir) (Mercer and Summers Counties) (Virginia spiraea, Spiraea virginiana)
- Dingess Branch and Millers Camp Branch of Marsh Fork and associated palustrine emergent and scrub-shrub wetlands (Raleigh County) (Virginia spiraea, Spiraea virginiana)

### **Pittsburgh District**

- Sleepy Creek and the Great Cacapon River (Morgan County) (Harperella, Ptilimnium nodosum)
- Back Creek (Berkeley County) (Harperella, Ptilimnium nodosum)
- Wetlands (Berkeley and Hardy Counties) (Northeastern bulrush, Scirpus ancistrochaetus)
- Evitts Run watershed (Jefferson County) (Madison cave isopod Antrolana lira)
- Jefferson County – the groundwater system including caves, areas near sinkholes, and other groundwater/surface interfaces, especially in the Rippon and Leetown Areas (Madison cave isopod Antrolana lira)

**I. National or State Wild and Scenic Rivers.** Work in designated components of the National or State Wild and Scenic Rivers Systems, a Federal or State designated wildlife management area or at sites included in the National Registry of Natural Landmarks, is not authorized by this regional permit, unless approval is granted from the administering agency.

**J. National Rivers Inventory Streams.** Work in the National Inventory Streams is not authorized unless coordinated with the National Park Service. These streams include: Cherry River, Cranberry River, Elk River, Left Fork of Elk River, Greenbrier River, East Fork of Greenbrier River, West Fork of Greenbrier River, Holly River, Left Fork of Holly River, Hughes River, North Fork of Hughes River, Laurel River, Kanawha River, Mud River, and New River.

**K. The National Park Service** should be notified of proposed activities within, or draining into the Bluestone River and its tributaries within the (Bluestone National Scenic River), Gauley (below Summersville Dam) and Meadow Rivers and their tributaries within the (Gauley River National Recreation Area), and the New River (below Bluestone Dam) and its tributaries with the (New River Gorge National River).

### GENERAL CONDITIONS FOR STREAM RESTORATION AND MANAGEMENT:

A. The activity authorized by this permit must be maintained in good condition and in conformance with the terms and conditions of the permit. Abandonment of the permitted activity will not relieve this requirement; although a good faith transfer to a third party may be made.



Cessation of maintenance of the authorized activity or abandonment without a good faith transfer must be authorized by a modification of this permit by this office, which may require restoration of the area.

B. If any previously unknown historic or archaeological remains are discovered while accomplishing the activity authorized by this permit, notification must immediately be provided to this office of what has been found. The Corps of Engineers will then initiate the Federal and state coordination required to determine if the remains warrant a recovery effort if the site is eligible for listing on the National Register of Historic Places.

C. Representatives from the Corps of Engineers will be allowed to inspect the authorized activity at any time deemed necessary to insure that it is being or has been accomplished in accordance with the terms and conditions of the regional permit. Landowners are encouraged to contact members of the agency management team to resolve issues and/or request technical assistance.

D. Further information:

1. Congressional Authorities. This activity had been authorized pursuant to Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act.
2. Limits of this authorization:
  - a. This permit does not obviate the need to obtain other Federal, state, or local authorizations required by law.
  - b. This permit does not grant any property rights or exclusive privileges.
  - c. This permit does not authorize any injury to the property or rights of others.
  - d. This permit does not authorize interference with any existing or proposed Federal project.
  - e. This permit does not authorize work at locations that do not have an approved stream restoration plan.
3. Limits of Federal Liability. In issuing this permit, the federal government does not assume any liability for:
  - 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 permit.
  - d. Design or construction deficiencies associated with the permitted work.
  - e. Damage claims associated with any future modification, suspension, or revocation of this permit.

4. Reliance on applicant's data. The determination of this office that the activity is not contrary to the public interest was made in reliance on the information provided pursuant to the notification requirement. Any changes to the description may make the project ineligible for authorization by this regional permit.
5. Reevaluation of permit decision. This office may reevaluate its decision on the permit at any time the circumstances warrant. Circumstances that could require a reevaluation include, but are not limited to the following:
  - a. Failure to comply with the terms and conditions of this permit.
  - b. If information provided in support of the project description is false, incomplete, or inaccurate.
  - c. Significant new information surfaces which was not considered 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 326.4 and 326.5. The referenced enforcement procedures provide for the issuance of an administrative order requiring compliance with the terms and conditions of the permit and for the initiation of legal action where appropriate. The project proponent will be required to pay for any corrective measures ordered by this office, and for failure 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 the proponent for the costs.

6. Consent to Easement over and under lands identified as flowage easement is attached, if applicable.