



DEPARTMENT OF THE ARMY
WALLA WALLA DISTRICT, CORPS OF ENGINEERS
201 NORTH THIRD AVENUE
WALLA WALLA, WASHINGTON 99362-1876

Reply To
Attention Of:

July 10, 1995

ERIC
SKIP EG
RAW EG

PLEASE FILE w/ WATER DISTRICT
#31, 1995 FILE - SV

Operations Division

SUBJECT: NPW No. 950500020

Mr. Donald W. Shenton
Water District No. 31
P.O. Box 33
Dubois, Idaho 83423

Dear Mr. Shenton:

This confirms our policy on the removal of beaver dams, as you requested in your letter of June 20, 1995. Under Section 404 of the Clean Water Act (33 U.S.C. 1344), a Department of the Army permit is required for the discharge of dredged or fill material into waters of the United States, including wetlands. This includes excavation activities which result in the discharge of dredged material and destroy or degrade waters of the United States.

The removal of beaver dams is an excavation activity that requires a Department of the Army permit. However, we find the removal of recently established beaver dams may not result in a discharge of dredged material or destroy or degrade waters of the United States, therefore you may remove beaver dams which are less than 1 year old, without contacting us and without obtaining a Department of the Army permit.

You should contact us if you will be removing a beaver dam which is older than 1 year. We will inspect the beaver dam and review your proposed excavation method. If we determine your work will result in the discharge of dredged material and destroy or degrade a water of the United States, a Department of the Army permit will be required. I am enclosing our permit application pamphlet containing an application form and a drawing sheet, for use in preparing your application.

You said you were disappointed it took so long for us to respond to your letter of last August. Our regulations governing the excavation of fill material were new at the time we received your letter and the issue of beaver dams had not yet been addressed by our office. Our Office of Counsel needed to review the Federal Court Decree which directs you to remove obstructions from the streambed. We felt our determination would be precedent setting. We are sorry for the long wait and apologize for any inconvenience it caused you.

You asked what would happen if we do not approve a permit. In such cases, an application would be denied and the work, as proposed, would not be authorized. This denial would not preclude you from reapplying with a different project design which would have less than minimal impact.

You also asked in what situations we would deny a permit. In processing your application, we must evaluate the social, economic, and environmental benefits and detriments of your proposed work in relation to the public interest. The benefits of the work you propose must outweigh its reasonably foreseeable detriments and be in the public interest. If required Federal, state, or local authorization has been denied for your project or your work does not receive water quality certification or waiver of certification from the State of Idaho, Division of Environmental Quality we are required to deny your permit without prejudice.

We must also determine if your project complies with the Environmental Protection Agency's 404 (b) (1) Guidelines for review of permit applications. These guidelines require that any project that is approved must be shown to be the least damaging practicable alternative. The guidelines state that for non-water dependent activities, there is a presumption that there are alternative sites for the work that are less damaging to aquatic resources. An applicant must demonstrate that practicable alternatives do not exist before a permit can be issued. No discharge shall be permitted if it violates State water quality standards or jeopardizes the continued existence of species listed as endangered or threatened. The guidelines state that no discharge of dredged or fill material shall be permitted which will cause or contribute to significant degradation of the waters of the United States. Finally, you must design your project to minimize adverse impacts to the aquatic ecosystem to the maximum extent possible and then show how you will mitigate for any remaining unavoidable impacts.

We look forward to working with you. If you have any questions, please contact Mr. Ray Kagel of my Idaho Falls Regulatory Office, telephone 208-522-1645.

Sincerely,

Barbara C. Bengt

Barbara C. Bengt
Acting Chief, Regulatory Branch

Enclosure