



Reply to  
Attention of:

DEPARTMENT OF THE ARMY  
CORPS OF ENGINEERS, OMAHA DISTRICT  
WYOMING REGULATORY OFFICE  
2232 DELL RANGE BOULEVARD, SUITE 210  
CHEYENNE WY 82009-4942

September 14, 2007

Wyoming Regulatory Office

Mr. Michael Murley  
Elk Mountain Ranch Operations, Inc.  
P.O. Box 36  
Elk Mountain, Wyoming 82324

Dear Mr. Murley:

This letter is in response to the request we received on July 12, 2007, from Mr. Peter Gallagher of Fin-Up Habitat Consultants, Inc., for a Department of the Army permit, as required by Section 404 of the Clean Water Act (33 U.S.C. 1344), to construct bank stabilization projects on four lakes within the Elk Mountain Ranch near Elk Mountain Wyoming. The project includes the following regulated activities:

1. Placement of 1,200 yd<sup>3</sup> of trees, root wads, and earthen fill to construct revetments along 6,000 linear feet of the shorelines of Eagle Lake, Tatanka Lake, Trophy Lake, and Waken Tanka Lake.
2. Placement of 1,800 yd<sup>3</sup> of riprap along the lakeside face of the Eagle Lake dam.

Eagle Lake is located in the SW/4 of Section 17 and the SE/4 of Section 18. Tatanka Lake is located in the SW/4 of Section 9. Trophy Lake is located in the NW/4 of Section 16. Waken Tanka Lake is located in the central portion of Section 15. All lakes are located in Township 20 North, Range 81 West, Carbon County, Wyoming.

The U.S. Army Corps of Engineers regulates the placement of dredged and fill material into waters of the United States under Section 404 of the Clean Water Act (33 U.S.C. 1344). The Corps' regulations are published in the *Code of Federal Regulations* as 33 CFR Parts 320 through 331. Detailed information on Section 404 requirements in Wyoming can be obtained from our website at: <https://www.nwo.usace.army.mil/html/od-rwy/Wyoming.htm>

Eagle Lake, Tatanka Lake, Trophy Lake, and Waken Tanka Lake, are all on unnamed tributaries to Halleck Creek, a tributary to the Medicine Bow River, a tributary to North Platte River, a traditionally navigable water. Therefore, the unnamed tributaries, all four lakes, and all adjacent wetlands, meet the definition of waters of the United States as defined at 33 CFR Part 328.3(a)(4)(5) and (7).

In the March 28, 2000, edition of the *Federal Register* (Vol. 65, No. 60), the Corps implemented an administrative appeals process for jurisdictional determinations. This letter serves as an approved jurisdictional determination. Elk Mountain Ranch Operations, Inc.

(EMRO) may appeal any determination to the Division Engineer's appeal officer, Ms. Karen Kochenbach, by obtaining a Notification of Administrative Appeal Options and Process (NAO) form at our web site. Section "D" of the NAO explains the procedures for appeal. The NAO form must be submitted to Ms. Kochenbach at the address shown on the form prior to **November 13, 2007**, or you will forfeit your right to an administrative appeal.

Based on the information provided, it has been determined that the activities described above will not require processing of an individual permit because the activities qualify for authorization under Nationwide Permit (NWP) 13 as defined in Part II of the *Federal Register* published on March 12, 2007 (Volume 72, No. 47). A copy of NWP 13 is enclosed. Please take time to carefully review all the terms and General Conditions of NWP 13.

EMRO is authorized to commence with the activities described above in accordance with NWP 13. EMRO is responsible for ensuring that all activities undertaken at the location specified above comply with all of the terms and conditions of NWP 13. If a contractor or other authorized representative will be accomplishing any activities on behalf of EMRO, it is recommended that they be provided a copy of this letter and the attached permit so that they are also aware of the terms and conditions of NWP 13. Any regulated activities that do not comply with NWP 13 will be considered unauthorized and all responsible parties will be subject to appropriate enforcement action.

In a letter dated March 20, 2007, the Wyoming Department of Environmental Quality (WyDEQ) certified that the use of NWP 13 for the activities described above is acceptable provided that all of the terms and conditions of NWP 13 are followed and that construction is conducted in a manner which does not result in a violation of any applicable water quality standard. A copy of the WyDEQ's letter is enclosed. Please note that the WyDEQ has added specific conditions to its certification and those conditions have been incorporated as regional conditions of NWP 13.

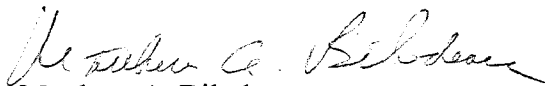
Also enclosed is a Compliance Certification form. Please complete the form and return it to this office within 30 days after project completion as required by General Condition 26. The purpose of the form is to document which activities were actually completed and to certify that the activities were accomplished in compliance with the terms and conditions of NWP 13.

Please be aware that issuance of a Department of the Army permit does not eliminate the requirement to obtain any other applicable federal, state, tribal or local permits. In addition, any deviations from the plans and specifications for the project, as provided by Mr. Gallagher on July 8<sup>th</sup>, August 22<sup>nd</sup>, August 23<sup>rd</sup>, and August 29, 2007 - including the withdrawal of plans for the proposed work on Arapaho Lake and Swim Pond - could require additional authorization.

**This verification will be valid until September 14, 2009, unless NWP 13 is modified, suspended, or revoked.**

If you have any questions concerning this verification, please contact Mr. Michael Burgan at (307) 772-2300 and reference file No. 2007-2754-CHE.

Sincerely,



Matthew A. Bilodeau  
Program Manager  
Wyoming Regulatory Office

Enclosures

Copies Furnished: (w/o enclosures)

✓ J Peter Gallagher  
Fin-Up Habitat Consultants, Inc.  
220 Illinois Avenue  
Manitou Springs, Colorado 80829

David Waterstreet  
Wyoming Department of Environmental Quality  
Water Quality Division  
122 West 25th Street  
Cheyenne, Wyoming 82002