IRRIGATION/DRAINAGE DITCH MAINTENANCE IN FLOODPLAINS: AN UPDATE ON NFIP PERMIT GUIDANCE AND IDWR-FEMA MOA

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NORFMA Conference
September 25, 2019
Boise, ID
The difference between a floodway and a floodplain

A floodway is the channel of a river or stream, plus the adjacent land needed to carry away floodwaters. It has some of the fastest-moving water during a flood.

The 100-year floodplain is a broader area surrounding the floodway. It would be inundated during a storm that has a 1% chance of occurring in a given year.

Source: Association of State Floodplain Managers

SFHA = Floodway + 100-year floodplain
NFIP Roles & Responsibilities

• FEMA
  – Administers/Regulates/Enforces NFIP
  – Sets laws, regulations & policy

• State
  – Maintains statutes authorizing communities to adopt local floodplain ordinances
  – IDWR State Floodplain Coordinator
    • Outreach, training, assistance to local FPAs
    • Audit communities to assure compliance with NFIP
    • No enforcement authority
NFIP Roles & Responsibilities

• Local Communities
  – Administer NFIP at local level
  – Adopt FP ordinances & FP maps
  – Permit floodplain development consistent with Federal and State law
    (IDWR does not permit floodplain development)

• Public/Land Owners or users/Irrigation Entities
  – work with local communities on any permit requirements, prior to construction
Definition of “Development”
Idaho Code § 46-1021 & 44 CFR § 60.3
Inconsistency:

The term "development" does not include the operation, cleaning, maintenance or repair of any ditch, canal, lateral, drain, diversion structure or other irrigation or drainage works that is performed or authorized by the owner thereof pursuant to lawful rights and obligations.

(Amendment added by HB 556, 2010)
Definition of “Development”
Idaho Code § 46-1022 & 44 CFR § 60.3
Inconsistency:

Floodplain zoning ordinances shall not regulate the operation, cleaning, maintenance or repair of any ditch, canal, lateral, drain, diversion structure or other irrigation or drainage works that is performed or authorized by the owner thereof pursuant to lawful rights and obligations.

(Amendment added by HB 556, 2010)
Potential Suspension of Idaho from NFIP and IDWR Mandate

- Spring 2018 - Governor directs IDWR to work directly with FEMA on guidance to preserve NFIP in Idaho
- IDWR & FEMA complete guidance June 2018
- IDWR & FEMA sign MOA March-April 2019
MOA Features

- 26-month term
- No NFIP suspension during term
- Notification, outreach & training
  - Letters & guidance sent to communities & irrigation/drainage entities May 2019
  - Training schedule included in letters & website
Guidance Features

- Defines **Operation, Cleaning, Maintenance, Repair (OCMR)**
  - Other definitions included
  - OCMR does not include dredging ditches/canals

- No Permit for OCMR activities
  - as defined by Guidance

- **GIFD: General Irrigation Floodplain Development** permit
  - Low-to-no impact irrigation development
  - **Review, Assess, Document** process

- **Individual Permit**
Guidance Features

No Permit for OCMR

Examples are limited:

• Removal of debris, growth, beaver dams
  • provided debris hauled off outside of SFHA

• General delivery operations, gate adjustments etc.

• General repairs or maintenance
  • maintain to same or original condition
  • does not include dredging as defined by Guidance
Guidance Features

GIFD Permit - Examples:

• Seasonal grading of natural channels (push-up dams)
• Dredging/Grading of ditches
  • Provided material/fill removed from SFHA within 10 days or graded and compacted to existing grade within \( \pm 0.2 \) ft.
• Replacement meeting in-kind definition
  • Dimensions within \( \pm 10\% \) of existing structure
• Armoring, stabilizing, securing infrastructure in channels
  • Provided channels are not altered
Guidance Features

Individual Permit - Examples:

• Any activity that causes an increase in flood elevation
• New construction, enlargement of facilities
• Replacement not meeting in-kind definition
  • Dimensions > ± 10% of existing structure
• Fill
  • Except fill allowed under GIFD
Guidance Features

**GIFD**

- Authorizes multiple low-to-no impact irrigation activities within SFHA only, up to five years
- Letter/notice from local FPA to irrigation entity documenting activities/projects that qualify as GIFD
- Requires annual coordination between the irrigation entity & the FPA
- Ensures a community complies with NFIP regulations & its own ordinances while reducing administrative burden of permitting irrigation & drainage activities
Guidance Features

Permit Process

- Review (FPA and water users)
- Assess (FPA)
- Document (FPA)

Similar to proposed guidance from FEMA re. low-to-no impact development but not yet adopted.
NFIP IRRIGATION and DRAINAGE PERMIT PROCESS FLOWCHART
Including Operation, Cleaning, Maintenance & Repair (OCMR) of Irrigation & Drainage Works

Irrigation Activities Proposed or Reviewed with Community FPA

Located in SFHA or Floodway?

Yes

Assess Activity Type

New Construction, extension, or enlargement of ditches & works?

Yes

Issue Individual Permit

No Permit Required (Notify entity & save docs)

No

Meets OCMR* Definition?

Yes

Issue GIFD Permit (Notify entity & save docs)

No Permit Required (Notify entity & save docs)

No

NFIP Regulations Satisfied

No

* Refer to OCMR definitions in IDWR NFIP Irrigation and Drainage Permit Guidance
### NFIP Irrigation Permitting

<table>
<thead>
<tr>
<th>Operation, Maintenance, Cleaning, &amp; Repair</th>
<th>GIFD Permit: Activities must be permitted before work can begin.</th>
<th>Individual Floodplain Development Permit: Activities must be permitted before work can begin.</th>
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<tbody>
<tr>
<td><strong>Non-development activities</strong>&lt;br&gt;Requires no permit</td>
<td>Development activities that can be grouped together under a common GIFD permit / low-to-no impact irrigation &amp; drainage development activities or uses in the floodplain which inherently do not increase the BFE</td>
<td>Development activities requiring an Individual Floodplain Development Permit - all other permitted activities &amp; projects within the regulatory floodway &amp; SFHA that do not meet the requirements of a GIFD permit.</td>
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<tr>
<td>a. General farming, pasture, horticultural and forestry activities that do not involve earthwork that permanently alter the topography or any clearing/grubbing of an area.</td>
<td>a. Dredging and grading of irrigation and drainage channels, when the fill from dredging or grading is not deposited on the banks of channels or anywhere within the regulatory floodway or SFHA for longer than 10 days.</td>
<td>a. fill and/or dredging (sedimentation/silt removal)</td>
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<tr>
<td>b. Grading of existing roads or easements along or near channels and within the SFHA, when the grading does not add fill within the regulatory floodway or SFHA.</td>
<td>b. Seasonal grading within natural stream channels to check or direct water into irrigation facilities (i.e. earthen “push-up dams” and “wing dams”).</td>
<td>b. new construction, or replacements that do not meet the in-kind definition;</td>
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<tr>
<td>c. Maintenance of underground utilities (work must not permanently alter topography).</td>
<td>c. Deposition of fill within the SFHA for less than 10 days. After 10 days, deposited fill must be removed from the SFHA, or graded and compacted to existing grade within ± 0.2 feet. Deposition of fill includes deposition of material resulting from grading or excavating irrigation or drainage channels. Deposition of fill within the mapped floodway requires an individual permit.</td>
<td>c. activities or projects that trigger any requirement found in the local floodplain management or NFIP regulations; and</td>
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<tr>
<td>d. In-kind replacement of existing piers or posts supporting a conforming deck.</td>
<td>d. Construction of new underground utilities that do not permanently alter the existing grade elevations by ± 0.5 feet. Excess soil from new pipes larger than 2 feet in diameter must be disposed of outside the regulatory floodway and SFHA.</td>
<td>d. activities or projects that increase flood damage and/or increase exposure to flood hazards.</td>
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**Note:** Permit category examples are not comprehensive.
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<td><strong>e.</strong> Activities associated with land-surface construction stormwater Best Management Practices (&quot;BMP&quot;), when the measures are temporary in nature (i.e. not in place for longer than 180 days) or do not increase the BFE. Examples of stormwater BMP activities that do not require a permit include the following: dust control; materials and equipment covers; mulching; geotextile fabrics; matting; bio-filter bags; fiber rolls; silt fences; vegetative buffer strips; temporary swales; and temporary berms.</td>
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<td><strong>e.</strong> In-kind replacement of irrigation and drainage works or components including but not limited to control gates or head gates, measuring devices and their housing structures/stilling wells, culverts, pumps, pipes, flumes, siphons and similar works. GIFD permits cannot authorize the In-kind replacement of dams or bridge structures.</td>
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<td><strong>f.</strong> New installation or maintenance of non-solid fences constructed parallel to the flow of water during a flood event. Non-parallel or solid fences that block the flow will need to go through the individual permitting process.</td>
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<td><strong>f.</strong> New driveways, trails, sidewalks, roads and streets constructed completely at-or-below existing grade.</td>
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<td><strong>g.</strong> Armoring, stabilizing, securing, or in-kind replacement of existing infrastructure within the channel banks (such as bridge piers, sewer/utility supports and storm water/sewer drainage outfalls/headwalls) when the dimensions (bank slopes, channel location, channel elevation) of the channel are not altered. This should not involve replacement with larger or additional above ground infrastructure.</td>
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Irrigation and drainage entities should consult their local Floodplain Administrator regarding the application and review process for individual permits.

FEMA defines Development as any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavating or drilling operations or storage of equipment and materials.
Questions