Regional General RGP 96

U.S. ARMY CORPS OF ENGINEERS BUILDING STRONG®

NATURAL DISASTER MITIGATION
& FLOOD-RELATED ACTIVITIES IN COLORADO

Effective Date: TBD

Expiration Date: TBD

In accordance with Section 404 of the Clean Water Act (33 U.S.C. 1344) and Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403), the District Engineers for the Albuquerque, Omaha and Sacramento Districts of the U.S. Army Corps of Engineers (Corps) hereby issue Regional General Permit (RGP) 96 for Natural Disaster Mitigation and Flood-Related Activities in Colorado. This permit replaces RGP 96-07 for Flood-related Activities in Colorado. (In Sacramento District this RGP number is currently RGP 53)

NOTE: The term "you" and its derivatives, as used in this RGP, means the permittee or any future transferee. The term "this office" refers to the appropriate district or division office of the Corps of Engineers having jurisdiction over the permitted activity or the appropriate official of that office acting under the authority of the commanding officer.

You are authorized to perform work in accordance with the terms and conditions specified below.

LOCATION: This permit is applicable to all navigable and non-navigable jurisdictional waters of the United States within State of Colorado, including, but not limited to, rivers, creeks, lakes, ponds, reservoirs and wetlands.

Certain waterways are given special consideration. These special aquatic resources include, but are not limited to, occupied and critical habitat for fish species protected by the Endangered Species Act. The Corps will also carefully review projects located in streams designated by the Colorado Department of Parks & Wildlife (CPW) as Gold Medal Waters and may consult with CPW prior to permit verification.

DESCRIPTION OF AUTHORIZED WORK

This permit authorizes the discharge of dredged or fill material into waters of the U.S. associated with certain natural disaster mitigation and flood-related activities within the State of Colorado. This RGP may apply to localized or widespread events and includes, but is not limited to, the following activities:

- repair and reconstruction of existing roads
- repair and construction of temporary levees
- protection and repair of bridge embankments
- protection and repair of utility structures

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- stabilization and protection of stream banks
- protection and restoration of intake structures
- construction of debris catchment facilities
- restoration/cleanup of mud/rockslides

Work ***may not*** proceed under this RGP until the permittee has submitted a pre-construction notification (PCN) to the District Engineer and received a written permit verification from the Corps.

After reviewing the PCN and determining that the work meets the terms and conditions of the RGP, the Corps will issue a verification that the work is authorized to proceed. If the District Engineer determines that the proposed work does not meet the terms and conditions of this RGP or that it does not fall within the intended scope of this RGP, the Corps may verify authorization of the work under one or more nationwide permits or other regional general permits or determine that the work is exempt from regulation under Section 404(f)(1) of the Clean Water Act. For any activity that the District Engineer determines to have more than minimal environmental effects, individually or cumulatively, or that may be contrary to the public interest, a standard individual permit may be required. Before any project will be considered and before permit verification is granted under this RGP, it must be in compliance with the following Notification Procedures and permit conditions.

NOTIFICATION PROCEDURES

A PCN for work authorized by this RGP must be received within **one (1) year** following the date of the natural disaster unless, after case-by-case review, the Corps determines that there is a legitimate reason for the delay (see General Condition 1).

Parties proposing work under this RGP must provide a complete PCN to their local Corps Regulatory Office so a determination can be made that the proposed work is necessitated by natural disaster conditions (e.g., flood, fire, mud/rockslide) and meets the criteria contained in Federal Regulation 33 CFR 325.2(e)(2). PCNs must include, at a minimum, the following information:

1. Name, address and telephone number of the person(s) responsible for the work, the owner of the affected lands (if different from the permittee), and the contractor(s) that will be performing the work, if applicable;

2. A written description of the proposed work including:

    a. Purpose and need for the project;
    b. Type, composition, and quantity of material to be excavated or placed (including temporary material used for cofferdams, etc.);
    c. Length, width, and depth of fill area and/or excavation area;
    d. A discussion of the direct and indirect adverse environmental effects of the activity;
    e. Location of the disposal site for excavated material;
    f. Type of equipment to be used;

g. Identification/delineation of wetlands;
h. The receiving site for excess water (drainage projects); and
i. Any other pertinent, supporting data.

3. A location map indicating the location of the proposed work and a legal description (section, township, range and county, and latitude and longitude);

4. A set of 8.5 by 11-inch drawings showing the details of the proposed work (plan and cross sectional views showing elevations and dimensions);

5. Pre-construction photos depicting the physical setting (to be compared to post-construction site conditions from the same photo points). Photos should contain figure labels with time, date, bearing, and a general description of the site; and

6. If applicable, a compensatory mitigation plan for proposed wetland fill or drainage activities (see General Conditions 5-7 below).

The information submitted must clearly describe the project so that the Corps can determine whether or not the work complies with the terms, conditions, and limitations of this RGP. The project may not proceed until the written permit verification has been received from the Corps that the proposed work meets the permit criteria. Authorization of work under this RGP does not supersede the Food Security Act regulations and requirements for applicable projects.

GENERAL CONDITIONS

1. The time limit for ***requesting*** a permit verification for work under this RGP is one (1) year following the natural disaster event. In rare cases, the Corps may accept requests for permit verification beyond the one-year time frame, provided the permittee can document a legitimate reason for the delay. Reasonable considerations for accepting requests more than one year after the date of the natural disaster may include but are not limited to:

   a. Delays in funding under a designated federal disaster recovery program;

   b. Scale and nature of the natural disaster (e.g., fire vs. flood);

   c. Overall speed and status of recovery efforts in the disaster area;

   d. Legal issues (e.g., land disputes); and

   e. Existence of a federal or state-sponsored long-term monitoring program for identifying critical needs as they develop within a catastrophically disturbed watershed (commonly for burn scar areas where watersheds evolve rapidly within a few years after intense disturbances).

2. The time limit for ***completing*** the work authorized by this RGP is one (1) year from the date of permit verification, unless otherwise specified in the Corps verification

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letter. If additional time is required to complete the authorized activity, a written request for a time extension, including justification for the request, must be submitted to the Corps at least 45 days prior to the expiration of the verification.

3. Impacts to aquatic resources authorized by this RGP must be limited to the minimum necessary in order to accomplish the purpose of the project. The maximum limits are as follows:

   a. **One (1) acre** of permanent impacts to **non-wetland** jurisdictional areas. In rare cases, the Corps may increase this limit to a maximum of **two (2) acres** if, after consultation with other federal and state agencies, the Corps determines that the adverse environmental impacts are minimal; and

   b. **One-half (½) acre** of permanent impacts to wetlands. This limit cannot be waived.

4. Channel restoration work will be limited to restoring the area to pre-flood contours and conditions unless a determination has been made, and the Corps agrees, that a realignment of the channel or changes in grades are necessary for restoration. Straightening of stream channels is prohibited.

5. Compensatory mitigation is required for all projects involving the loss of greater than 1/10 acre of wetlands. For wetland losses of 1/10 acre or less, the Corps may determine on a case-by-case basis that compensatory mitigation is required.

6. For projects that require compensatory mitigation, the permittee shall develop a compensatory mitigation plan. The mitigation plan must be approved by the Corps, in coordination with other applicable resource agencies, prior to permit verification. In urgent situations, approval of mitigation plans by the Corps may be subsequent to permit verification, since sufficient time may not be available to approve mitigation before the work must take place.

7. In general, the compensatory mitigation should be located within the same watershed as the impact site, and should be located where it is most likely to successfully replace lost functions and services at an areal or functional compensatory mitigation ratio of no less than 1:1, as determined by the Corps. Mitigation proposals should be submitted following the guidance as specified in the Mitigation Rule, found at 33 C.F.R. Part 332, Compensatory Mitigation for Losses of Aquatic Resources, 10-Apr-08 (http://www.usace.army.mil/CECW/Documents/cecwo/reg/news/final_mitig_rule.pdf).

8. You must maintain the activity authorized by this permit in good condition and in conformance with the terms and conditions of this permit. You are not relieved of this requirement if you abandon the permitted activity, although you may make a good faith transfer to a third party in compliance with General Condition 9 below. Should you wish to cease to maintain the authorized activity or should you desire to abandon it without a good faith transfer, you must obtain a modification of this RGP from this office, which may require restoration of the area.

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9. If you sell the property associated with this permit, you must obtain the signature of the new owner and forward a copy of the permit to this office to validate the transfer of this authorization.

10. You must allow representatives from this office to inspect the authorized activity at any time deemed necessary to ensure that it is being or has been accomplished in accordance with the terms and conditions of your permit.

11. No activity is authorized under this permit which is likely to jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation, as identified under the Endangered Species Act, or which is likely to destroy or adversely modify the critical habitat of such species. When appropriate, the Corps will consult with the U.S. Fish and Wildlife Service (USFWS) on specific requests to perform work under this RGP when a project may affect a threatened or endangered species.

12. An activity which may affect historic properties listed, or eligible for listing, in the National Register of Historic Places is not authorized by this permit until the Corps has complied with Appendix C of 33 CFR 325 *and* the latest Corps interim guidance with respect to Appendix C. The permittee must notify the Corps if the activity may affect any historic properties listed, determined to be eligible for listing, or which the permittee has reason to believe may be eligible for listing in the National Register of Historic Places, and will not begin the activity until notified by the Corps that the requirements of the National Historic Preservation Act have been satisfied and that the activity is authorized.

13. If you discover any previously unknown historic or archeological remains while accomplishing the activity authorized by this RGP, you must stop work and immediately notify us of what you have found. We will initiate the federal and state coordination required to determine if the remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.

14. All fill must be of suitable materials and placed in such a manner that the material will not be eroded by expected high flows (in most cases in-stream material is not suitable fill, as it will erode during high flows). If the use of streambed material is authorized for bank stabilization and erosion control, it must be stabilized with vegetation or appropriate rock protection. The following materials are prohibited or restricted as fill material under this permit:

    a. Vehicle bodies, farm machinery and metal junk, including appliances, containers and barrels (including plastic barrels) are prohibited;
    b. Asphalt cannot be used for bank stabilization or erosion control, and old or used asphalt cannot be used as a fill material;
    c. Biodegradable building materials, including wood debris, sheet rock, roofing materials, and chemically treated materials subject to leaching when placed in an aquatic environment are prohibited;
    d. Trees and treetops are prohibited unless properly anchored;
    e. Tires are prohibited; and

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f. The use of clean brick and broken concrete will be allowed on a case-by-case basis (broken concrete must be free of exposed rebar and old asphalt).

15. All fill material must be obtained from a non-wetland source.

16. All temporary fills in waters of the United States, including sandbags, straw or hay bales with string or wire, must be completely removed and the area restored to pre-project conditions and contours within 30 days of the end of the flood event.

17. Temporary levees, temporary access roads, and other temporary fills must involve the least damaging alternative and have minimum impact to waters of the United States. Appropriate measures must be taken to maintain near normal downstream flows to minimize additional flooding. Construction of permanent levees or access roads is not authorized by this permit.

18. All areas disturbed by construction, which will not be riprapped, will be seeded/planted for protection against subsequent erosion and to minimize adverse impacts to fish and wildlife resources (this includes both herbaceous and woody species that are indigenous to the area).

19. The clearing of vegetation, including trees located in or immediately adjacent to waters of the United States, will be limited to that which is absolutely necessary for construction of the project.

20. Equipment for handling and conveying materials during construction will be operated to prevent dumping or spilling the materials into the water except as approved herein. Construction equipment will not be operated in flowing water to the maximum extent practicable.

21. All dredged or excavated materials, with the exception of that authorized herein, will be placed on an upland site above the ordinary high water line in a confined area, not classified as a wetland, to prevent the return of such materials to the waterway.

22. Concrete trucks will be washed at a site and in such a manner that washwater cannot enter a waterway or wetland.

23. During construction, petroleum products, chemicals, or other deleterious materials will not be allowed to enter or be deposited, in waters of the United States. Precautions will be taken to prevent entry of these materials into waters of the United States. Any unauthorized release of petroleum products, chemicals, or other deleterious materials into waters of the United States will be reported immediately to the Colorado Environmental Release and Incident Reporting Line at 1-877-518-5608.

24. All work in the waterway will be performed in such a manner so as to minimize increases in suspended solids and turbidity which may degrade water quality and damage aquatic life outside the immediate area of operation.

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25. All earthwork operations on the bank will be carried out in such a manner that sediment runoff and soil erosion to the waterbody are controlled.

26. If and when the Corps has been notified that a dredging or filling activity is adversely affecting fish or wildlife resources or the harvest thereof and the Corps subsequently directs remedial measures, the permittee will comply with such directions to suspend or modify the activity to the extent necessary to mitigate or eliminate the adverse effect as required.

27. If the Corps is notified that work being performed does not comply with or fall within the scope of this General Permit, the responsible party will take immediate steps, as directed by the Corps, to bring the work into compliance with this permit.

28. The Corps may include special conditions in the permit verification in order to ensure avoidance, minimization or compensation for adverse environmental impacts associated with the work.

29. Any activity authorized under this permit may not occur in a component of the National Wild and Scenic River system, or in a river officially designated by Congress as a "study river" for possible inclusion in the system, while the river is in an official study status.

30. An activity may not impair reserved tribal rights, including, but not limited to, reserved water rights and treaty fishing and hunting rights.

31. For any activity that the Corps determines to have more than minimal adverse environmental effects, individually or cumulatively, or may be contrary to the public interest, an individual permit may be required.

32. The State of Colorado has certified the activities authorized by this permit under Section 401 of the Clean Water Act. The Environmental Protection Agency must individually certify the activities in Indian Country authorized by this permit. To obtain water quality certification in Indian Country, write to the Environmental Protection Agency, Eco- Systems Protection and Remediation Program, 1595 Wynkoop Street, Denver, Colorado 80202. The certification from EPA, for a project in Indian Country, should accompany the request for permit verification.

FURTHER INFORMATION

1. **Congressional Authorities**: You have been authorized to undertake the activity described above pursuant to:

    a. Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403)
    b. Section 404 of the Clean Water Act (33 U.S.C. 1344)

2. **Limits of this authorization:**

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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.

3. **Limits of Federal Liability**. In issuing this permit, the federal government does not assume any liability for the following:

   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 Permittee's Data**: The determination of this office that issuance of this permit is not contrary to the public interest was made in reliance on the information you provided.

5. **Reevaluation of Permit Decision**. This office may reevaluate its decision on this permit at any time the circumstances warrant. Circumstances that could require a reevaluation include, but are not limited to, the following:

   a. You fail to comply with the terms and conditions of this permit.
   b. The information provided by you in support of your pre-construction notification proves to have been false, incomplete, or inaccurate (See 4 above).
   c. Significant new information surfaces which this office did not consider 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 325.7 or enforcement procedures such as those contained in 33 CFR 326.4 and 326.5. The referenced enforcement procedures provide for the issuance of an administrative order requiring you to comply with the terms and conditions of your permit and for the initiation of legal action where appropriate. You will be required to pay for any corrective measures ordered by this office, and if you fail 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 you for the cost.

6. **Extensions**. General Condition 2 establishes a time limit for the completion of the activity authorized by this permit. Unless there are circumstances requiring either a prompt completion of the authorized activity or a reevaluation of the public interest

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decision, the Corps will normally give favorable consideration to a request for an extension of this time limit.

This permit becomes effective when the federal official, designated to act for the Secretary of the Army, has signed below.

_____ _____

[Name] Date
[Title]

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