

**DRAFT REGIONAL GENERAL PERMIT
US NATIONAL PARK SERVICE
CATEGORICALLY EXCLUDED ACTIVITIES
ON
LAKE POWELL**

EFFECTIVE DATE:

EXPIRATION DATE:

Scope Of Work: This Regional General Permit (RGP) authorizes activities undertaken, assisted, authorized, regulated, funded, or financed, in whole or in part, by the U.S. National Park Service (NPS) in Lake Powell that are categorically excluded from environmental documentation in accordance with the Council on Environmental Quality Regulation for Implementing the Procedural Provisions of the National Environmental Policy Act (NEPA)[40 CFR part 1500 et seq.] because the activity is within a category of actions that neither individually nor cumulatively have a significant effect on the human environment.

Issuing Office: U.S. Army Engineer District, Sacramento
Corps of Engineers
1325 "J" Street
Sacramento, California 95814-2922

NOTE: The term "you" and its derivatives, as used in this permit, 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.

Project Location: Lake Powell in Glen Canyon National Recreation Area within the Sacramento District in Cocinino County, Arizona, and San Juan, Garfield, and Kane Counties, Utah.

Notification Requirement: A potential permittee under this RGP must provide the Durango Regulatory Office with prior written notification before beginning an activity. This notification shall included a signed determination by the NPS that the activity is categorically excluded, and shall fully describe the project and its location, purpose and need, and the immediate project area. Submittal of sketches or drawings of the activity along with photographs of the work area is encouraged and may be required on a case-by-case basis. Work may not commence until you receive notice to proceed by the Durango Regulatory Office. The address and phone numbers of the Durango Regulatory Office are:

**Durango Regulatory Office
Corps of Engineers, Sacramento District
278 Sawyer Drive, Unit # 1
Durango, Colorado 81301
(970) 375-9452
(970) 375-9531 (Fax)**

Please give special attention to General Condition number 5 below for additional notification and other requirements. You must also comply with the applicable state water quality certification.

Additional Information: In accordance with Section 10 of the Rivers and Harbors Act, the Corps of Engineers regulates the construction of any structure in or over, excavation from, deposit of material in, or the accomplishment of any other work affecting the course, location, condition or capacity of any Navigable Waters of the United States. The Sacramento District considers all of Lake Powell as Navigable Waters of the United States subject to permit authority under Section 10 and 33 CFR 329.

In accordance with Section 404 of the Clean Water Act, the Corps of Engineers regulates the discharge of dredged or fill material in waters of the United States. The Colorado River, including but not limited to, Lake Powell, and tributaries of the Colorado River, are waters of the United States subject to permit authority under Section 404 and 33 CFR 328.3(a).

The NPS Organic Act of 1916 is the most important and primary statutory directive for the NPS. This Act was later supplemented and clarified by the NPS General Authorities Act of 1970. The key management-related provision of the Organic Act is that the NPS "shall promote and regulate the use of the Federal areas known as national parks, monuments, and reservations hereinafter specified ... by such means and measures as conform to the fundamental purpose of the said parks, monuments, and reservations, which purpose is to conserve the scenery and the natural and historic objects and the wildlife therein and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations. 16 USC 1."

The NPS has identified and published a number of activities that are categorically excluded from further documentation under NEPA. The NPS and the Sacramento District have cooperatively identified the following NPS' categorically excluded activities that can require a permit from the Corps of Engineers and are authorized by this RGP:

- * Routine maintenance and repairs to non-historic structures, facilities, utilities, grounds, and trails.
- * Installation of signs, displays, and kiosks.
- * Installation of navigation aids.
- * Replacement in kind of minor structures and facilities with little or no change in location, capacity, or appearance--for example, comfort stations, pit toilets, fences, kiosks, signs and campfire circles.
- * Repair, resurfacing, striping, installation of traffic control devices, and repair/replacement of guardrails, culverts, signs, and other minor existing features on existing roads when no potential for environmental impact exists.
- * Changes in sanitary facilities operation resulting in no new environmental effects.
- * Installation of wells, comfort stations, and pit or vault toilets in areas of existing use and in developed areas.
- * Restoration of noncontroversial (based on internal scoping requirements) native species into suitable habitats within their historic range.
- * Removal of individual members of a non-threatened/endangered species or populations of pests and exotic plants that pose an imminent danger to visitors or an immediate threat to park resources.
- * Grants for replacement or renovation of facilities at their same location without altering the kind and amount of recreational, historic, or cultural resources of the area or the integrity of the existing setting.

Extended regional drought conditions and decreasing Lake Powell water levels have especially increased the number of necessary actions that are categorically excluded by the NPS and that also require a Department of the Army permit from the Sacramento District. Eventually, as lake water levels rise, similar actions will be needed to meet this issue. Examples of these actions covered by this RGP are as follows:

- * Repair and extend launch ramps as necessary.
- * Adjust marina positions as water levels dictate.
- * Reconfigure breakwaters and add new breakwaters as necessary.
- * Manage water intakes, utilities, lift stations, and other infrastructure that exists below ordinary high water mark.
- * Re-configuring bars and reefs as water level changes.

- * Grading harbor bottoms as needed to move marina facilities as water level changes.
- * Grading/maintenance of shorelines/beach areas.
- * Grading washes after flood events.
- * Culvert maintenance in washes.

Permit Conditions:

General Conditions:

1. The time limit for completing the work authorized ends 3 years from the date that the office notifies you that you are authorized to proceed under this permit. If you find that you need more time to complete the authorized activity, submit your request for a time extension to this office for consideration at least one month before the above date is reached.
2. 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 4 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 permit from this office, which may require restoration of the area.
3. If you discover any previously unknown historic or archeological remains while accomplishing the activity authorized by this permit, you must immediately notify this office 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.
4. If you sell the property associated with this permit, you must obtain the signature of the new owner in the space provided and forward a copy of the permit to this office to validate the transfer of this authorization.
- 5. Water quality certification from the states of Arizona and/or Utah must be obtained or waived prior to the commencement of work or The states of Arizona and Nevada have issued water quality certifications for activities covered by this permit in each respective state. You must comply with the terms and conditions of the applicable certification i.e., depending upon which state your activity will occur. A copy of each certification is attached.**
6. 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.
7. The permittee understands and agrees that, if future operations by the United States require the removal, relocation, or other alteration, of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the Corps of Engineers, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.
8. Within 30 days of completing work, a written statement signed by the permittee shall be submitted to the Durango Regulatory Office certifying that the work has been completed in accordance with the terms and conditions of this permit.
9. In accordance with the Migratory Bird Treaty Act of 1918, migratory birds may not be killed, nor may the nests (nests with eggs or young) of migratory birds be harmed. Any surface or aquatic disturbance associated with activities approved under this permit shall be conducted outside of the avian breeding season to avoid potential

destruction of bird nests or young, or birds that breed in the area. If this is not feasible, then a qualified biologist shall survey each specific project area prior to disturbance. If nests are located, or if other evidence of nesting (i.e., mated pairs, territorial defense, carrying nesting material, transporting food) is observed, a protective buffer (the size depending on the habitat requirements of the species) should be delineated and the entire area avoided to prevent destruction or disturbance to nests until they are longer active.

10. You shall implement the best management practices and other requirements of the U.S. National Park Service for protecting the environment of Glen Canyon National Recreation Area in association with any work authorized by this permit. Failure to do will be grounds for modifying, suspending, or revoking your authorization under this permit.

Special Conditions:

[Special Conditions may be added based upon specific review of your request to perform work. These special conditions would be included in a notice from this office verifying authorization under this RGP.]

Further Information:

1. Congressional Authorities: You have been authorized to undertake the activity described above pursuant to:
 - (X) Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403).
 - (X) Section 404 of the Clean Water Act (33 U.S.C. 1344).

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 projects.

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 Applicant'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 permit application 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 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 1 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 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.

Andrew J. Rosenau
Chief, Regulatory Branch
(For the District Engineer)

Date