



# Regional General Permit 4

U.S. ARMY CORPS OF ENGINEERS

BUILDING STRONG®

## Activities Beneficial to the Recovery of the Upper Colorado River Endangered Fish Species

**EFFECTIVE DATE:** January 10, 2014

**EXPIRATION DATE:** January 10, 2019

**ISSUING OFFICE:** U.S. Army Corps of Engineers, Sacramento District

**ACTION ID:** SPK-2008-00117

**PURPOSE:** The purpose of this Regional General Permit is to facilitate efficient Department of the Army permit processing for minimal impact projects that are beneficial to the recovery of the Upper Colorado River endangered fish species within western Colorado and Utah.

**LOCATION:** This RGP is applicable to waters of the United States in the Upper Colorado River watershed in the states of Colorado and Utah that are occupied by, susceptible to occupation by, or listed as critical habitat for the federally endangered Colorado pikeminnow (*Ptychocheilus lucius*), razorback sucker (*Xyrauchen texanus*), humpback chub (*Gila cypha*), and/or bonytail chub (*Gila elegans*). The applicable waters include:

1. The Yampa River from the Green River confluence to the Town of Hayden, Colorado at the confluence of Dry Creek.
2. The Green River from Dinosaur National Monument to the confluence with the Colorado River.
3. The Duchesne River from River Mile 15.0 to the confluence with the Green River.
4. The Price River from River Mile 37.8 to the confluence with the Green River.
5. The San Rafael River from Utah State Highway 24 bridge to the confluence with the Green River.
6. The Colorado River from Lake Powell to the Colorado State Highway 13 bridge at the City of Rifle, Colorado.
7. The Gunnison River from the confluence with the Colorado River to the Hartland dam near the City of Delta, Colorado.
8. The White River from the confluence with the Green River to the Colorado State Highway 13 bridge near the Town of Meeker, Colorado.
9. The San Juan River from Lake Powell to the New Mexico State Line.

10. The Little Snake River from the confluence with the Yampa River to the Wyoming State Line.

**AUTHORITIES:** Regional General Permit (RGP) 4 is issued by the Sacramento District under the authorities of 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). Section 404 of the Clean Water Act authorizes the discharge of dredged or fill material into waters of the United States. Section 10 of the Rivers and Harbors Act allows for work or structures in navigable water. In accordance with provisions of "Regulatory Programs of the Corps of Engineers," 33 CFR 323.2 (h), the Corps may issue general permits for activities which are substantially similar in nature and which cause only minimal individual and cumulative environmental impacts.

**ACTIVITIES AUTHORIZED BY THIS REGIONAL GENERAL PERMIT:** This RGP is applicable to any activity that is beneficial to the recovery of the federally endangered Colorado pikeminnow (*Ptychocheilus lucius*), razorback sucker (*Xyrauchen texanus*), humpback chub (*Gila cypha*), and/or bonytail chub (*Gila elegans*) as outlined in the "Upper Colorado River Endangered Fish Recovery Program", which was initiated in 1988 and is administered by the U.S. Fish and Wildlife Service.

This RGP covers discharges of dredged and fill material and work or structures associated with activities in waters of the United States in the Upper Colorado River watershed which have minimal environmental effects and are beneficial to the recovery of the four Upper Colorado River endangered fish species. This includes, but is not limited to, the following activities:

1. Breaching or removal of levees, dikes, berms, riprap or other fills that are barriers to fish movement.
2. Construction of levees, dikes, berms, and placement of riprap to inhibit fish movement or protect habitat.
3. Excavation of channels from floodplain depressions, ponds, abandoned gravel pits, lakes, or wetlands to connect to the active stream channel in order to facilitate fish movement.
4. Development of controlled floodplain backwater facilities for experimental manipulation, including inlet and outlet works and in-stream elevation control structures.
5. Construction or placement of fish screens, fish harvest kettles, pump station facilities, scientific measurement devices, and fill barriers.
6. Isolation of backwater areas to facilitate eradication or prevention of non-native fish species escapement.
7. Excavation of sediments to improve storage capacity, drainage, or fish collection.
8. Construction of road access and boat launch and retrieval facilities.

9. Construction of fish passageways or ladders, hatcheries, other propagation facilities, and refugia ponds.

10. Maintenance and/or rehabilitation of fills and structures appurtenant or functionally related to the above-mentioned activities.

An activity authorized under this RGP may not cause the permanent loss of more than 0.5 acre of waters of the U.S. This limitation includes permanent loss of waters due to the discharge of dredged or fill material, plus any waters that are adversely affected by flooding or draining as a result of the project.

The Sacramento District may authorize the permanent loss of more than 0.5 acre of waters if the activity complies with the other terms and conditions of the permit and the adverse environmental impacts are minimal. Authorization will only be considered after coordination with other Federal and state agencies. Once a complete application has been received for an activity proposing a permanent loss of greater than 0.5 acre of waters, the District will coordinate with the appropriate Federal and state agencies. The agencies will have 10 days from the receipt of District's notification to indicate that they will be commenting on the proposed project. They will then have an additional 15 days after the initial 10-day period to provide comments. If an agency raises concerns during coordination, the applicant may either modify the plan (in coordination with the concerned agency) or apply for a standard permit. If no comments are received within the comment period, the District will assume there are no objections to the project design.

The Sacramento District's evaluation may determine that wetland mitigation is required for any project, and may add special conditions to ensure that environmental impacts are minimal.

#### **TERMS:**

1. Special conditions: The Sacramento District may add special conditions to an authorization to ensure the activity complies with the terms and conditions of this RGP, and/or that adverse impacts on the aquatic environment or other aspects of the public interest are individually and cumulatively minimal.

2. Discretionary authority: The Sacramento District has the discretion to suspend, modify, or revoke authorizations under this RGP. This discretionary authority may be used by the Corps to also further condition or restrict the applicability of the RGP for cases in which it has concerns associated with the Clean Water Act Section 404(b)(1) Guidelines, or regarding any public interest factor. Should the Corps determine that a proposed activity may have more than minimal individual or cumulative adverse impacts to aquatic resources or otherwise be contrary to the public interest, the Sacramento District will modify the authorization to reduce or eliminate those adverse effects, or notify the applicant that the proposed activity is not authorized by the RGP and provide instructions on how to seek authorization under an individual permit. The Corps may restore authorization under the RGP at any time it determines that the reason for asserting discretionary authority has been resolved or satisfied by a condition, project modification, or new information. The Sacramento District may also use its discretionary authority to modify, suspend, or revoke the RGP at any time.

3. Expiration: This RGP is valid for five (5) years from the date of issuance (reissuance). At least sixty (60) calendar days prior to the expiration date of this RGP, the Sacramento District will issue a public notice, with an opportunity for public comment, describing the reasons for reissuing the RGP, reissuing the RGP with modifications, or not reissuing the RGP for another five years. The Sacramento District may extend the RGP for six months beyond the expiration date if it is unable to reissue the RGP due to unresolved issues. If the Sacramento District has not reissued or extended the RGP by the expiration date, the RGP will no longer be valid. This RGP may also be modified, suspended or revoked by the Corps at any time deemed necessary. In such instance, the Sacramento District will issue a public notice concerning the action.

**PERMIT CONDITIONS:**

1. Upon receiving approval to perform work under this RGP, you will have two (2) years to complete the work. If additional time is required, you must seek an extension of time from the Sacramento District. Your request for an extension of time must be provided to the Corps at least 60 days prior to your authorized permit expiration date.
2. This RGP does not obviate the need to obtain other Federal, state, or local authorizations as required by law, does not grant any property rights or exclusive privileges, does not authorize any injury to the property rights of others, and does not authorize interference with any existing or proposed federal project.
3. Projects in the State of Utah must comply with the attached Water Quality Certification with Conditions. Projects located in the State of Colorado are automatically certified under Section 401 of the Clean Water Act under Colorado Statute, Regulation Number 82.1.
4. Projects located within the State of Utah must also obtain a Stream Alteration Permit from the Utah Division of Water Resources. Please contact a Utah Stream Alteration Permit specialist at (801) 538-7377 or (801) 538-7404.
5. All in-stream work shall be performed during low water periods and the use of heavy equipment, especially in flowing water, shall be conducted in a manner to prevent pollution and release of contaminants, and to minimize turbidity and sedimentation.
6. Unless otherwise authorized by the Sacramento District, all dredged material shall be deposited in an upland disposal site, and sufficiently removed and isolated to prevent re-entry into waters of the United States.
7. Fill material shall not consist of unsuitable material, such as trash, debris, bituminous concrete (asphalt), automotive bodies or parts in any amount and must be free of toxic pollutants in toxic amounts.
8. This permit does not authorize any damage to existing bank stabilization work which could cause accelerated erosion or unstable effects on stream channels.
9. The discharge of dredged and fill material in waterfowl breeding areas shall be avoided to the maximum extent practicable.

10. An activity shall not occur in proximity to a public water supply unless approval is given by the controlling water provider and all required mitigation measures are implemented to offset adverse effects.

11. An activity shall not impair or interfere with the ability of any group or individual to exercise the use of an appropriated or decreed water right. An activity may not impair reserved Tribal rights including, but not limited to, reserved water rights and treaty fishing and hunting rights.

12. All activities authorized under this RGP require the Sacramento District to consult with the U.S. Fish and Wildlife Service under Section 7 of the Endangered Species Act. Activities authorized under this RGP shall not jeopardize a listed species as identified under the Endangered Species Act, or destroy or adversely modify their critical habitat.

13. Activities which may affect historic properties listed or eligible for listing in the National Register of Historic Places (Register) are not authorized by this RGP until the Sacramento District has complied with the provisions of Title 33, CFR, Part 325, Appendix C. The applicant must notify the Corps of Engineers if the activity may affect any historic properties listed, determined to be eligible, or which the prospective permittee has reason to believe may be eligible for listing on the Register. The proposed activities shall not commence until notified by the Corps of Engineers that the requirements of the National Historic Preservation Act have been satisfied and that the activities are authorized. Information concerning the location and existence of historic resources can be obtained from the Colorado or Utah State Historic Preservation Officer, as appropriate.

14. Activities occurring 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, are not authorized by this RGP.

15. In issuing this RGP and giving approval to perform work under this RGP, the Federal government does not assume any liability for 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; damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activities authorized by this RGP; design or construction deficiencies associated with the permitted work; or damage claims associated with any future modification, suspension, or revocation of this RGP.

16. You must comply with all general conditions, special conditions and any required mitigation measures added by the Sacramento District.

17. You must allow representatives from the Sacramento District 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 this RGP.

18. The Sacramento District may re-evaluate its decision on any authorization given in accordance with this RGP at any time circumstances may warrant. Circumstances that could require a re-evaluation include, but are not limited to the following:

- a. Your failure to comply with the terms and conditions of the permit.
- b. The information provided by you in support of your application proves to be false, incomplete, or inaccurate.
- c. Significant new information surfaces which the Sacramento District did not consider in reaching a decision on your project.

Such re-evaluation may result in a determination that it is appropriate to use the suspension, modification and revocation procedures contained in 33 CFR 327.5 or enforcement procedures 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 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 the Sacramento District, and if you fail to comply with such a directive, the Corps of Engineers may in certain situations (as specified in 33 CFR 209.170) accomplish the corrective measures by contract or otherwise and bill you for the cost.

19. For structures or work in navigable waters, you understand and agree 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, you will be required, upon due notice from the Corps, to remove, relocate, or alter the structural work or obstructions caused hereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.

20. Within 30 days after completion of the activity, you must provide the Sacramento District with a signed Compliance Certificate confirming that the project was performed according to the general conditions of the RGP and any required special conditions and that any required compensatory mitigation has been completed.

21. You must maintain the activities authorized by this RGP in good condition and in conformance with the terms and conditions of this RGP. 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 provided you obtain a transfer of this authorization from the Sacramento District to the new owner or proprietor.

22. If the permittee sells the property associated with the permit verification, the permittee may transfer the permit verification to the new owner by submitting a letter to the Sacramento District to validate the transfer. A copy of the permit verification must be attached to the letter, and the letter must contain the following statement and signature: *"When the structures or work authorized by this permit are still in existence at the time the property is transferred, the terms and conditions of this permit, including any special conditions, shall continue to be binding on the new property owner(s). To validate the transfer of this permit and the liabilities associated with compliance with its terms and conditions, have the transferee sign and date below."*



**PROCEDURES:** Anyone proposing to perform an activity under this RGP must provide the following information to the Sacramento District prior to commencing work in waters of the U.S.:

1. The name, address, and telephone number of the applicant responsible for the work and the owner of the affected property, if other than the applicant.
2. A written description of the proposed work including: project purpose and need, composition and volume of dredged and fill material, dimensions of fills or structures, disposal site for material, types and numbers of equipment to be used, if wetlands are proposed to be impacted provide a wetland delineation in accordance with Corps of Engineers Sacramento District minimum standards, quantify direct and indirect adverse environmental effects of the activity, and include any other pertinent or supporting data.
3. The names, addresses, and telephone numbers of adjacent property owners.
4. A complete set of drawings with dimensions of the proposed project which includes the following:
  - a. Location map including name of the waterway, nearest town, county, Section, Township, and Range, and the latitude and longitude (in decimal degrees, NAD 83) at both ends of the work area, if known;
  - b. A plan or top-view of the project site clearly depicting structures, fill, and disposal sites.
  - c. Typical cross-section or end views of all structures and fill.

The drawings should be prepared on 8½-inch by 11-inch paper, and include all pertinent dimensions such as height, width, length and depth. A bar scale should be included with each drawing.

5. The following information is required for the Corps' Biological Evaluation and Section 7 Consultation with the U.S. Fish and Wildlife Service in accordance with the Endangered Species Act:
  - a. Identify listed, proposed, and candidate species that may occur on site or within the influence of the proposed project.
  - b. Provide a description of threatened or endangered species habitat within the project area.
  - c. Provide any known threatened or endangered fish survey information.
  - d. Describe the effects of the action that would directly and indirectly affect the species.

6. If the project is located on Tribal Lands, you must obtain "water quality certification" under Section 401 of the CWA from the U.S. Environmental Protection Agency (EPA) or Tribal authority, if delegated. For assistance concerning water quality certification on Tribal Lands, contact EPA, (EPR-EP), Wetlands and Watersheds Unit, U.S. Environmental Protection Agency, Region VIII, 1595 Wynkoop, Denver, Colorado 80202-1129, 303-315-6235. A copy must be included with the permit application package.

Submit this information along with a permit application form (Form ENG 4345) and include a cover letter requesting authorization with the subject "Pre-construction Notification RGP 4". Please contact the appropriate Sacramento District Regulatory office (see page 10) to ensure that your application, supporting information, and drawings are submitted to the correct office.

You may not proceed with your project until notified in writing by the Sacramento District. If you proceed without approval by the Corps of Engineers, you may be subject to penalties under the law.

### **FURTHER INFORMATION:**

1. Congressional Authorities: Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403), and 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. The permit duration, as described above, 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.

Activities not meeting the terms and conditions of this permit may be authorized through another type of permit from the Corps, such as a Nationwide Permit or Letter of Permission. The Corps will determine on a case-by-case basis whether an activity has a more than minimal impact, individually or cumulatively, on the aquatic environment or may be contrary to the public interest. The Corps may include additional special conditions to verification under this permit to ensure the activity has minimal impact.

**CONTACTS AND ADDITIONAL INFORMATION:**

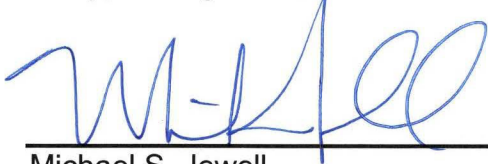
NW and Central West Colorado: U.S Army Corps of Engineers, Sacramento District  
Grand Junction Regulatory Office  
400 Rood Avenue, Room 224  
Grand Junction, Colorado 81501-2563  
Telephone (970) 243-1199

SW Colorado: U.S. Army Corps of Engineers, Sacramento District  
Durango Regulatory Office  
1970 East 3<sup>rd</sup> Avenue, Suite 109  
Durango, Colorado 81301-5025  
Telephone (970) 259-1604

Utah: U.S. Army Corps of Engineers, Sacramento District  
Bountiful Regulatory Office  
533 West 2600 South, Suite 150  
Bountiful, Utah 84010-7744  
Telephone (801) 295-8380

**ATTACHMENT:** State of Utah Water Quality Certification with Conditions

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



Michael S. Jewell  
Chief, Regulatory Division  
U.S. Army Corps of Engineers, Sacramento District

10 January 2014

Date