



PROGRAMMATIC GENERAL PERMIT 40
MINIMAL IMPACT ACTIVITIES AUTHORIZED
IN CONJUNCTION WITH THE STATE OF UTAH'S
STREAM ALTERATION PROGRAM

Issuance Date: XXXXX
Expiration Date: XXXXX

The District Engineer, Sacramento District, U.S. Army Corps of Engineers (Corps), is issuing a Programmatic General Permit 40 (PGP 40) for certain activities in waters of the United States (waters) that have been authorized under the State of Utah's Stream Alteration Program. An activity is verified under PGP 40 when the Utah State Engineer issues a Stream Alteration Permit in compliance with state law and the Corps has determined it meets the terms and conditions of this general permit.

Authorities: This permit covers activities under Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act of 1899. Under Section 404 of the Clean Water Act, the Corps authorizes the discharge of dredged or fill material into waters of the U.S. Work or structures in or affecting navigable waters are permitted by the Corps under Section 10 of the Rivers and Harbors Act.

Purpose: This permit is designed to eliminate duplication and expedite authorization of the activities that fall under the Corps' Regulatory Program that have been authorized through a Stream Alteration Permit.

The Stream Alteration Program was implemented by the State of Utah in 1972 to protect the natural resource value of the state's streams and protect the water rights and recreational opportunities associated with them. Section 73-3-29 of the Utah Code requires any person, governmental agency, or other organization proposing to alter the bed or banks of a natural stream to obtain written authorization from the State Engineer prior to beginning work.

This permit applies to perennial, intermittent and ephemeral streams that are considered to be part of the surface tributary system and over which the State Engineer has regulatory authority under the Stream Alteration Program. Limits of the State of Utah's jurisdiction are defined in Administrative Rule R655-13. This permit does not authorize discharges of dredged or fill material into special aquatic sites such as wetlands, springs, fens and riffle/pool complexes. Activities involving discharges of dredged or fill material in special aquatic sites would require an alternate form of Department of Army (DA) authorization. Exceptions to this prohibition are identified below under Activities. Applicants should contact the Corps for additional information.

Activities: The types of activities covered under this permit are those that have a minimal impact, individually and cumulatively, on the aquatic environment and have been authorized by the State Engineer through a Stream Alteration Permit. These activities include, but are not limited to, culvert installation and replacement, bridges, low water crossings, utility crossings, bank stabilization, linear transportation projects, diversion structures, outfall structures, boat ramps, docks, commercial and

residential construction, flood control facilities and maintenance of previously permitted activities that are not exempt under Section 404 of the Clean Water Act or located in waters subject to jurisdiction under Section 10 of the Rivers and Harbors Act. Stream restoration activities located in riffle/pool complexes are authorized under this general permit.

This permit does not cover any activities in waters of the U.S. undertaken on tribal lands or activities conducted under emergency situations.

Terms: This permit authorizes minimal impact activities that have been authorized by the State Engineer through a Stream Alteration Permit with the following provisions:

a) For activities in perennial and intermittent waters, no more than 300 linear feet may be impacted. If the activity involves the use of a bioengineering method, no more than 500 linear feet may be impacted.

b) For activities in ephemeral waters that are under the purview of the State of Utah, no more than 500 linear feet may be impacted. If the activity involves the use of a bioengineering method, no more than 750 feet may be impacted.

The activity being permitted shall be a “single and complete” project. For linear projects, a “single and complete project” is all crossings of a single water of the United States (i.e., a single water-body) at a specific location.

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. 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 add special conditions to a verification under this permit to ensure the activity has minimal impact.

Procedures: Applicants must submit a joint application form, developed by the State Engineer and the Corps, when applying for a Stream Alteration Permit and verification under this permit. The Corps highly recommends a pre-application meeting with both agencies and the applicant. There may be additional surveys/reports that need to be completed for Endangered Species and Cultural Resources. The joint application form and instructions may be obtained from either agency. To process the application, the joint application form must be completed, along with the following information:

a. A clear site location map with enough detail to easily find the site, a recent aerial/satellite image of the site, and a USGS topography map (7.5 minute quadrangle map is recommended).

b. Plan view and cross-sectional drawings showing all work requiring a permit, including fills, structures, borrow sites, staging areas and storage areas. The drawings must clearly demarcate the ordinary high water mark of the waters of the U.S. to be impacted. Professional drawings are not required; however, drawings must be scaled or indicate dimensions of the work to be completed;

c. A restoration plan for any areas temporarily disturbed during work, including re-contouring, revegetation with appropriate native plants and maintenance and monitoring to ensure success for the restored area.

d. Ground photographs taken from various locations of the proposed disturbance area.

- e. If the activity involves bank stabilization or protection,
 - i) A description of the need for the work, including the cause of the erosion and the threat posed to structures, infrastructure, and/or public safety;
 - ii) A narrative demonstrating the proposed activity incorporates the least damaging bank protection methods. These methods include, but are not limited to, the use of bioengineering, biotechnical design, root wads, large woody debris and native plantings. If rock must be used due to site erosion conditions, explain how the bank stabilization structure incorporates elements beneficial to aquatic organisms;
 - iii) A planting plan which involves the use of native riparian plants, unless the applicant demonstrates it is not appropriate or not practicable.

The completed joint application form and the information above must be submitted to Utah State Engineer's Office.

Once a complete application has been received, the State Engineer will circulate copies to federal and states agencies as a public notice of the proposed work. Copies will be sent to the Corps, U.S. Fish and Wildlife Service, U.S. Environmental Protection Agency, Utah Division of Wildlife Resources, Utah Division of Water Quality, Utah State Historic Preservation Office, local agencies. The State Engineer will allow at least 20 days for review and comment. The State Engineer will notify the Corps of any application that generates considerable public interest or opposition.

The Corps will review each application to determine whether the activity complies with the terms and conditions of this permit. The Corps must also ensure compliance with related laws including Section 7 of the federal Endangered Species Act and Section 106 of the National Historic Preservation Act.

For an activity to be authorized by this permit, the Corps must find the activity has no effect or, with the concurrence of the U.S. Fish and Wildlife Service, the activity is not likely to adversely affect listed species or critical habitat. If the activity may affect listed species or critical habitat and formal consultation is required with the U.S. Fish and Wildlife Service, the activity will need to be authorized under another type of Corps permit.

The Corps must ensure compliance with Section 106 of the National Historic Preservation Act for each activity to be authorized under this permit. Activities that may result in adverse effects to sites listed, or sites eligible for listing, on the National Register of Historic Places will not be authorized under this permit. Should any such impacts be identified, the Corps will request, after any necessary coordination with the State Historic Preservation Office, to suspend processing of the application while the applicant considers ways of modifying the proposal to address the identified concerns.

Should a specific activity be found to not meet the terms and conditions of this permit or have impacts that are more than minimal, the Corps will notify the State and the applicant of one of the following:

- a. The activity does not qualify for authorization under PGP 40, with instruction on the procedures to seek authorization under a different type of permit; or

- b. The activity might be authorized under PGP 40 if the applicant modifies the activity and/or proposes non-permittee responsible mitigation (i.e. purchase of credits at an approved mitigation bank or in lieu fee) that would reduce adverse effects on the aquatic environment to the minimal level.

Permit Duration: This General Permit expires 5 years from the date of issuance. The Corps may re-evaluate the terms and conditions of this permit at any time it deems necessary to protect the public interest. This permit may be re-issued, after public notice and documentation of the decision. Activities verified by the Corps under this permit are valid until the date this General Permit expires. If work has not been completed prior to expiration of the verification, the applicant must request an extension at least 30 days prior to the expiration date.

General Conditions:

1. Activities may not adversely affect species listed under the federal Endangered Species Act or adversely modify their critical habitat.
2. Activities may not cause a take of any migratory birds, their parts, nests, eggs, and nestlings. Destruction of riparian vegetation shall be avoided to the maximum extent practicable. Unavoidable vegetation clearing and surface disturbance shall be conducted outside critical breeding, nesting, and fledging seasons. For raptor species, locations of existing raptor nests should be identified prior to the initiation of activities. Appropriate spatial buffer zones of inactivity should be established during crucial breeding and nesting periods relative to raptor nest sites or territories. Arrival at nesting sites can occur as early as December for certain raptor species. Nesting and fledging can continue through August.
3. Activities may not result in the take, possession, sale, purchase, barter or transport of any bald or golden eagle, alive or dead, or any part, nest, or egg thereof. Destruction of riparian vegetation, especially mature cottonwoods, shall be avoided to the maximum extent practicable. Unavoidable vegetation clearing and surface disturbance shall be conducted outside critical breeding, nesting, and fledging seasons. Locations of existing bald and golden eagle nests should be identified prior to the initiation of activities. Appropriate spatial buffer zones of inactivity should be established during crucial breeding and nesting periods relative to eagle nest sites or territories. Arrival at nesting sites can occur as early as December. Nesting and fledging can continue through August.
4. No activity may substantially disrupt the movements of those species of aquatic life indigenous to the water body, including those species that normally migrate through the area, unless the activity's primary purpose is to impound water.
5. Activities may not occur in spawning areas during spawning seasons.
6. Destruction of riparian or riverine vegetation, especially mature cottonwoods, shall be avoided to the maximum extent practicable. When work authorized by this permit causes damage to riparian vegetation that is not directly covered by a permanent feature, these scarred areas shall be replanted with a mixture of native trees, shrubs, forbs and grasses, as appropriate. The permittee is ultimately responsible for revegetation success.
7. Activities may not adversely affect sites listed on or determined eligible for listing on the National Register of Historic Places.
8. Work must stop if any previously unknown historic properties, archaeological artifacts, or remains are identified during the completion of authorized work, and the permittee must immediately notify the Corps. The Corps will initiate the Federal and State coordination required to determine if the remains or cultural resources warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places. Work may not resume until the Corps has complied with the appropriate regulations.

9. Activities must satisfy all conditions of the Section 401 water quality certification issued for this permit by the Utah Division of Water Quality.
10. Fill material must be clean and free of contaminants and noxious plants. Fresh cement or concrete is not allowed in waters unless it is placed in sealed forms. Unsuitable fill material includes vehicle bodies, farm machinery, appliances and other metal objects, asphalt, biodegradable construction debris and tires.
11. Equipment shall be cleaned to remove noxious weeds/seeds and petroleum products prior to moving on site. Machinery shall be fueled outside of the channel to prevent spillage into waterways. Best management practices shall be used to ensure construction related byproducts do not enter the riverine ecosystem and have negative effects on aquatic organisms.
12. No activity may occur in the proximity of a public water supply intake, except where the activity is for the maintenance, repair or replacement of the intake structure or for adjacent bank stabilization.
13. Stream relocations are not authorized.
14. No heavy equipment shall be used within the stream channel, except where it is demonstrated this type of action is necessary.
15. Material may not be placed in any location or manner which will impair surface water flows into or out of any wetlands.
16. Best Management Practices shall be implemented to minimize sedimentation inputs to river systems resulting from stream bed disturbance by storing excavated material outside of the stream channel. Appropriate soil erosion and sediment controls must be used and maintained in effective operating condition during construction, and all exposed soil and other fills, as well as any work below the ordinary high water mark or high tide line, must be permanently stabilized at the earliest practicable date.
17. Work in waters of the U.S. shall only be conducted during periods of low or no flow.
18. Culverts placed in streams must be installed in a manner that maintains flows during low flow periods.
19. All disturbed areas must be restored to pre-disturbance levels. At a minimum, replanting an area at a 1:1 ratio will be required. On a case-by-case basis, a Mitigation and Monitoring Plan may be required, with a minimum 5-year monitoring requirement to ensure success of restoration.
20. If permittee responsible compensatory mitigation to offset impacts to waters of the U.S. is required, the activity will need to be authorized under another type of Corps permit. When determining whether appropriate and practicable mitigation is necessary, the Corps will consider whether impacts to waters of the U.S. were avoided and minimized to the maximum extent practicable. If available and determined appropriate by the Corps, compensatory mitigation may be achieved through a mitigation bank or in lieu fee program.
21. All temporary fills must be removed in their entirety within 30 days after completion of the permitted action and the affected areas returned to their pre-existing elevations.

22. Within 30 days of completion of the permitted work, the permittee must submit the following information to the Corps and State Engineer:

- a. The permittee's name, address, telephone number and email address;
- b. The Stream Alteration Permit number and Corps Action ID;

c. A statement that the authorized work was done in accordance with the Stream Alteration Permit and PGP 40 including special conditions added to the verification; and

- d. The signature of the permittee certifying the completion of the work and mitigation.

23. Work authorized under this permit may be inspected by the Corps at any reasonable time to assure that it is being or has been completed in compliance with the terms and conditions of this permit.

24. Any activity authorized by this permit must be maintained in good condition and in conformance with the terms and conditions of this permit.

25. For activities authorized through this permit under Section 10 of the Rivers and Harbors Act of 1899, 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.

Further Information:

1. This permit does not obviate the need to obtain any other required federal, state or local authorizations.

2. This permit does not grant any property rights or exclusive privileges nor do they authorize injury to the property or the rights of others.

3. This permit does not convey the right to interfere with any existing or future federal project.

4. In issuing authorizations under this permit, the Federal Government does not assume any liability for the following: damages to authorized projects, or uses thereof, as a result of other permitted or unpermitted activities or natural events; damages to persons or property caused by authorized activity; damages to authorized projects, or uses thereof, as a result of current or future activities undertaken by or on behalf of the United States in the public interest; design or construction deficiencies associated with the authorized work; damage claims associated with any modification, suspension or revocation of individual authorizations.

5. In issuing authorizations under this permit, the Corps must rely on information supplied by the applicant. Should it be determined that any authorization was based on false, incomplete or inaccurate data, the Corps reserves the right to re-evaluate the case and to suspend, modify or revoke the authorization. Failure to comply with the terms and conditions of an authorization is also grounds for suspension, modification or revocation, as is the discovery of relevant information not considered in the initial application review.

The joint application form and instructions for completing the form can be found at
<http://www.waterrights.utah.gov/strmalt/>

For additional information or questions about PGP 40, please contact one of the offices below.

Utah Division of Water Rights-State Engineer
1594 West North Temple, Suite 220
P.O. Box 146300
Salt Lake City, Utah 84114-6300
(801) 538-7240
<http://www.waterrights.utah.gov/strmalt/>

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

U.S. Army Corps of Engineers, Sacramento District
1325 J Street, Room 1480, Sacramento, CA 95814-2922
<http://www.spk.usace.army.mil/organizations/cespk-co/regulatory/index.htm>