



Regional General Permit 37

U.S. ARMY CORPS OF ENGINEERS

BUILDING STRONG®

STREAM STABILIZATION PROJECTS IN COLORADO

EFFECTIVE DATE: October 2, 2017

EXPIRATION DATE: October 2, 2022

In accordance with Section 404 of the Clean Water Act (33U.S.C. 1344) and Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403), the U.S. Army Corps of Engineers (Corps) hereby authorizes certain limited discharges of dredged and fill material associated with stream stabilization in the State of Colorado. The purpose of this Regional General Permit (RGP) is to authorize stream bed and bank stabilization activities.

LOCATION: This RGP is applicable to waters of the United States within the State of Colorado, including Tribal Lands.

SCOPE OF WORK: This RGP authorizes stream stabilization activities necessary for erosion control or prevention, such as vegetative stabilization, bioengineering, sills, rip rap, revetment, barbs, jetties, weirs, or combinations of bank stabilization techniques, provided the activity meets all of the following criteria:

1. No material is placed in excess of the minimum needed for erosion protection;
2. The activity is no more than 1,000 feet in length along the bank;
3. The activity will not exceed an average of two cubic yard per running foot, as measured along the length of the treated bank, below the plane of the ordinary high water mark (OHWM), unless the district engineer waives this criterion by making a written determination concluding that the discharge will result in no more than minimal adverse environmental effects;
4. The average stream width measured at the OHWM is no less than 20 feet; and
5. The activity will not exceed 0.5 acre of permanent wetland impact.

NOTIFICATION AND APPROVAL PROCEDURES:

Written notification requesting approval and concurrence with the requirements of the RGP must be sent to the Corps office that services the area of the project location. For assistance in determining the appropriate regulatory office, please contact one of the Regulatory offices below or visit the Colorado Regulatory website at <http://www.nwo.usace.army.mil/Missions/RegulatoryProgram/Colorado/GeographicResponsibility.aspx>.

Denver Regulatory Office
(Omaha District)
9307 South Wadsworth Blvd.

Grand Junction Regulatory Office
(Sacramento District)
400 Rood Ave., Room 224

Littleton, CO 80128-6901
Phone: (303) 979-4120

Grand Junction, CO 81501-2563
Phone: (970) 243-1199

Southern Colorado Regulatory Office
(Albuquerque District)
200 S. Santa Fe Ave., Suite 301
Pueblo, CO 81003
Phone: (719) 543-9459

Durango Regulatory Office
(Albuquerque & Sacramento Districts)
1970 E 3rd Ave., Suite 109
Durango, CO 81301
Phone: (970) 259-1764

This RGP does not authorize activities that would adversely affect important spawning areas, including Gold Medal Waters, or that would be conducted in these waters during designated spawning seasons. In order to determine if projects would result in adverse effects to important spawning areas, the Corps will consult with Colorado Parks and Wildlife (CPW) for all projects proposed in Gold Medal Waters and other fisheries of concern identified by CPW on a case-by-case basis. Pre-application consultation with CPW, preferably on-site, is highly recommended. Providing documentation of pre-application consultation with CPW and their response(s) will satisfy the coordination requirements of this permit resulting in quicker processing times. For assistance in determining the appropriate CPW office and point-of-contact, please visit the following state website to determine the appropriate office for coordination:

<http://wildlife.state.co.us>, or call one of the following:

Northeast Region Manager
6060 Broadway
Denver, CO 80216
(303) 291-7227

Northwest Region Manager
711 Independent Ave.
Grand Junction, CO 81505
(970) 255-6100

Southeast Region Manager
4255 Sinton Rd.
Colorado Springs, CO 80907
(719) 227-5200

Southwest Region Manager
415 Turner Dr.
Durango, CO 81303
(970) 375-6702

The applicant must first notify the Corps in writing according to the Notification procedures of the RGP as described below. Work cannot proceed until the Corps has provided written approval to the applicant. The applicant must provide the following information:

1. Name, address and telephone number of the applicant responsible for the work, the owner of the affected lands (if different than the applicant), and the contractor(s) that will be performing the work, if applicable. The applicant must provide written permission allowing the Corps, CPW, and/or tribal representative to enter upon and perform work on property not belonging to the applicant. The applicant should be the entity retaining long-term maintenance responsibility for constructed features. The notification must include a letter, signed and dated by the applicant, stating that they certify that the information in the notification is complete and accurate and that they will abide by the terms and conditions of this permit;
2. A description of the project location including section, township, range, and coordinates (latitude/longitude, UTM, etc.) at both ends of the work area;

3. A written well-defined purpose and need for the work, including a description/assessment of the existing stream conditions (i.e., baseline information) and an explanation for why the project is needed, including a description of how the project will result in bank stabilization;
4. Quantity of waters of the U.S to be impacted by the proposed activity in terms of wetlands and other aquatic resources. Units of measure should be provided in acres or square feet, and also linear feet, if appropriate;
5. If the proposed activity will result in the loss of greater than 1/10-acre of wetlands, the prospective permittee must submit a proposal describing how the wetland loss will be mitigated, or explaining why the adverse environmental effects are no more than minimal and why compensatory mitigation should not be required. As an alternative, the prospective permittee may submit a conceptual or detailed mitigation plan;
6. 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;
7. A set of drawings per established standards and guidelines for maps and drawings (refer to the map standards located at http://www.spd.usace.army.mil/Portals/13/docs/regulatory_standards/MapStand020816.pdf). Additionally, the drawings must include the following elements:
 - a. Location map, including name of the waterway, nearest town, county, and coordinates (NAD83) of each structure and at both ends of the work area;
 - b. Plan view of all work, including staging area(s) and access point(s), clearly identifying types and locations of structures/impacts, along with dimensions, a scale bar, a north arrow, and approximate extent of aquatic resources within the project area. To aid in visual understanding, this plan can be overlaid on a recent aerial image of the project site;
 - c. Cross-sectional and profile views to scale of the existing stream channel and the proposed structures, including dimensions (length, width and height of the structures or work), and clear delineation of the limits of the OHWM; and
 - d. A delineation of the OHWM and all special aquatic sites at the project site, including wetlands and riffle and pool complexes. The aquatic resource delineation report must be submitted in accordance with the wetland delineations protocols for the individual Corps District that covers the project area;
8. A complete description of the work, including the composition, source, and volume in cubic yards of all material to be placed or redistributed in waters of the U.S. The description should contain a proposed procedure to be taken to reduce sedimentation and the basis used in determining the volume of fill to be placed or redistributed in waters of the U.S.:
 - a. For projects involving grade control, the project description must also include a detailed explanation and criteria for the following design features:
 - (1) Number and spacing of structures;

- (2) Any changes in base flow elevations; and
 - (3) For projects located in perennial streams, a justification for any structure heights that exceed 18 inches and/or do not include a fish passage element with a maximum drop of 12 inches;
- b. For projects that involve deflectors, such as jetties and weirs, the project description must also include a detailed explanation and criteria for the following design features:
- (1) Height: Deflectors are generally designed to be exposed during low flows and submerged during high flows. Depending on the site and the project goals, deflectors may be constructed with the height of the structure at the stream bank equal to the bankfull elevation sloping down to the low flow elevation at the toe or end of the structure;
 - (2) Length: The maximum extension of any deflector into a waterway generally should not exceed $\frac{1}{3}$ of the channel width as measured at bankfull elevation (approximately 1-2 year event);
 - (3) Angle: Deflectors are designed to redirect flows away from the stream bank and back toward the center of the channel. In order to best accomplish this goal, the angle of deflectors is generally perpendicular to the desired direction of flow downstream of the deflector. Incorrect deflector angles can result in scouring behind the structure, particularly during low flow conditions, or erosion of the opposite stream bank. In most cases, the angle of the deflector should be between 0 and 30 degrees upstream from perpendicular to the stream bank; and
 - (4) Spacing: In many cases, a series of deflectors are designed to work together as a single unit. In such applications, deflectors should be spaced appropriately along the bank in order to prevent scouring or scalloping of the bank between the structures;
- c. For projects involving work on multiple reaches or sections of stream, the project description must also include detailed explanation of the independent utility of each section of work; and
- d. If the proposal does not incorporate bioengineering techniques, the project description must also include a discussion on the alternative techniques that were considered and why they were found not to be practicable. The description of the proposed activity and any proposed mitigation measures should be sufficiently detailed to allow the District Engineer to determine that the adverse environmental effects of the activity will be no more than minimal and to determine the need for compensatory mitigation or other mitigation measures;
9. If the project is located on the following Indian Lands, the applicant must obtain an individual water quality certification (WQC) under Section 401 of the Clean Water Act and provide a copy of the WQC to the Corps (see also General Condition 20):
- a. Southern Ute Indian Lands. WQCs for projects located on Southern Ute Indian Lands must be obtained from the U.S. Environmental Protection Agency (EPA). For assistance, contact the EPA at: EPA, EPR-EP, Aquatic Resources Protection and Accountability

Unit, 1595 Wynkoop Street, Denver, Colorado 80202-1129, 303-312-6909, or visit the webpage: <http://www.epa.gov/region8/water/wqc.html>; or

- b. Ute Mountain Ute Indian Lands. WQCs for projects located on Ute Mountain Ute Indian Lands must be obtained from the Ute Mountain Ute Tribe. For assistance, contact the Ute Mountain Ute Environmental Programs Department, 520 Sunset Blvd. or P.O. Box 448, Towaoc, Colorado 81334, 970-564-5430 (fax 970-565-2651), or visit the webpage: <http://www.utemountainuteenvironmental.org>;
10. For non-federal permittees, if any listed species or designated critical habitat might be affected or is in the vicinity of the activity, or if the activity is located in designated critical habitat, the notification package must include the name(s) of those endangered or threatened species that might be affected by the proposed activity or utilize the designated critical habitat that might be affected by the proposed activity. Federal permittees must provide documentation demonstrating compliance with the Endangered Species Act (see General Condition 16);
11. For non-federal permittees, if the RGP activity may have the potential to cause effects to a historic property listed on, determined to be eligible for listing on, or potentially eligible for listing on, the National Register of Historic Places, the notification package must state which historic property may have the potential to be affected by the proposed activity or include a vicinity map indicating the location of the historic property. Federal permittees must provide documentation demonstrating compliance with Section 106 of the National Historic Preservation Act (see General Condition 18); and
12. Applicants are encouraged to provide the Corps with electronic files to expedite agency coordination and permit review. Such submittals may be limited by size so the applicant should request confirmation of delivery receipt.

The information should reference "Regional General Permit No. 37" and be sent to the appropriate Corps office. The Corps will review the applicant's request for authorization under this RGP and will inform the applicant in writing that the work may proceed. The applicant may not start work until notified by the Corps. If the work is not authorized under this RGP, the applicant must apply to the Corps for a Standard Individual Permit or other appropriate Department of the Army permit(s).

For projects located within tribal trust lands, coordination is required with the appropriate tribal entity. Pre-application consultation with the tribe, preferably on-site, is highly recommended.

For projects that have the potential to impact vested water rights, it is recommended that the applicant provide evidence or coordination with the local Water Commissioner. For assistance, contact the Colorado Division of Water Resources (DWR), 1313 Sherman St., Suite 821, Denver, CO 80203, (303) 866-3581, or you may contact the appropriate Water Commissioner using the directory found at: <http://water.state.co.us/DivisionsOffices/Pages/default.aspx>.

GENERAL CONDITIONS: To qualify for this RGP authorization, the prospective permittee must comply with the following general conditions (GC), in addition to any regional or case-specific conditions imposed by the Division Engineer or District Engineer:

1. Upon receiving approval to perform work under this RGP, the permittee will have three years to complete the work or until the permit expires or is revoked, unless specified otherwise in a Corps verification letter. If the permittee commenced work on the authorized activity or is under contract to commence work when the permit expires or is revoked, the permittee will have one more year or until the original expiration, whichever is less, to complete the construction. Upon completion of the work, the permittee shall submit a signed Certification of Compliance form to the Corps;
2. For all projects that include a design-build component, the permittee shall submit a complete set of as-built drawings to the Corps within 90 days following the completion of work;
3. Structures or fill authorized by this permit shall not impede waterborne navigation, including rafting and canoeing, or create a hazard to navigation in waterways. Any interference with navigation may require removal or modification of the structure at the permittee's expense;
4. Activities authorized by this permit shall be designed to withstand expected high flows and maintain preconstruction surface flow rates from the site to the maximum extent practicable;
5. This RGP does not authorize stream stabilization projects that are a necessary component of residential, commercial, and institutional developments;
6. The construction of recreational features (e.g., water parks, kayak courses) and flood control projects are not authorized by this permit;
7. Material may not be placed in any location or manner that will impair surface water flows into or out of any special aquatic sites. The permittee must take precautions to avoid and minimize temporary impacts and protect wetlands and riffle-pool complexes from damage during access and construction. Temporary fills must be removed in their entirety and the affected areas returned to pre-construction conditions, including the revegetation of affected areas, as appropriate. This permit does not authorize the loss of greater than 0.5 acre of wetland;
8. The activity must comply with applicable FEMA-approved state or local floodplain management requirements;
9. Heavy equipment working in wetlands or mudflats must be placed on mats, or other measures must be taken to minimize soil disturbance;
10. The District Engineer may designate, after notice and opportunity for public comment, additional waters officially designated by the State of Colorado as having particular environmental or ecological significance, such as outstanding national resource waters or state natural heritage sites. The District Engineer may also designate additional critical resource waters after notice and opportunity for public comment;
11. The District Engineer may determine on a case-by-case basis that compensatory mitigation is required to ensure that the activity results in no more than minimal adverse environmental effects. The District Engineer will consider the following factors when determining appropriate and practicable mitigation necessary to ensure that the individual and cumulative adverse environmental effects are no more than minimal:

- a. The activity must be designed and constructed to avoid and minimize adverse effects, both temporary and permanent, to waters of the United States to the maximum extent practicable at the project site (i.e., on site);
- b. Mitigation in all its forms (avoiding, minimizing, rectifying, reducing, or compensating for resource losses) will be required to the extent necessary to ensure that the individual and cumulative adverse environmental effects are no more than minimal;
- c. Compensatory mitigation plans for RGP activities in or near streams or other open waters will normally include a requirement for the restoration or enhancement, maintenance, and legal protection (e.g., conservation easements) of riparian areas next to open waters. In some cases, the restoration of riparian areas may be the only compensatory mitigation required. Restored riparian areas should consist of native species. The width of the required riparian area will address documented water quality or aquatic habitat loss concerns. Normally, the riparian area will be 25 to 50 feet wide on each side of the stream, but the District Engineer may require slightly wider riparian areas to address documented water quality or habitat loss concerns. Where both wetlands and open waters exist on the project site, the District Engineer will determine the appropriate compensatory mitigation (e.g., riparian areas and/or wetlands compensation) based on what is best for the aquatic environment on a watershed basis. In cases where riparian areas are determined to be the most appropriate form of compensatory mitigation, the District Engineer may waive or reduce any requirement to provide wetland compensatory mitigation for wetland losses;
- d. Compensatory mitigation projects provided to offset losses of aquatic resources must comply with the applicable provisions of 33 CFR part 332;
 - (1) The prospective permittee is responsible for proposing an appropriate compensatory mitigation option if compensatory mitigation is necessary to ensure that the activity results in no more than minimal adverse environmental effects;
 - (2) If permittee-responsible mitigation is the proposed option, the prospective permittee is responsible for submitting a mitigation plan. A conceptual or detailed mitigation plan may be used by the District Engineer to make the decision on the RGP verification request, but a final mitigation plan that addresses the applicable requirements of 33 CFR parts 332.4(c)(2) – (14) must be approved by the District Engineer before the permittee begins work in waters of the United States, unless the District Engineer determines that prior approval of the final mitigation plan is not practicable or not necessary to ensure timely completion of the required compensatory mitigation (see 33 CFR part 332.3(k)(3));
 - (3) If mitigation bank or in-lieu fee program credits are the proposed option, the mitigation plan only needs to address the baseline conditions at the impact site and the number of credits to be provided; and
 - (4) Compensatory mitigation requirements (e.g., resource type and amount to be provided as compensatory mitigation, site protection, ecological performance standards, monitoring requirements) may be added through special conditions added to the RGP authorization;

- e. Compensatory mitigation will not be used to increase the acreage losses allowed by the acreage limits of this RGP. For example, RGP 37 cannot be used to authorize any activity resulting in the loss of greater than 0.5 acre of waters of the United States, even if compensatory mitigation is provided that replaces or restores some of the lost waters. However, compensatory mitigation can and should be used, as necessary, to ensure that an activity already meeting the established acreage limits also satisfies the no more than minimal impact requirement for this RGP; and
- f. Permittees may propose the use of mitigation banks, in-lieu fee programs, or permittee-responsible mitigation. For permittee-responsible mitigation, the special conditions of the RGP verification must clearly indicate the party or parties responsible for the implementation and performance of the compensatory mitigation project, and, if required, its long-term management.

When mitigation is required, no work in waters of the United States may occur until the District Engineer has approved a specific mitigation plan or has determined that prior approval of a final mitigation plan is not practicable or not necessary to ensure timely completion of the required compensatory mitigation. For projects requiring compensatory mitigation, please refer to the Mitigation and Monitoring Guidelines located at: <http://www.spd.usace.army.mil/Portals/13/docs/regulatory/mitigation/MitMon.pdf>;

- 12. No activity may substantially disrupt the necessary life cycle movements of those species of aquatic life indigenous to the waterbody, including those species that normally migrate through the area;
- 13. Destruction of riparian or riverine vegetation, especially mature cottonwoods, shall be avoided to the maximum extent practicable. The permittee is cautioned that cottonwoods may be locally very important for several protected species, including the yellow-billed cuckoo, and bald eagles, which are protected under the Bald and Golden Eagle Act. If the authorized work 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. Seeding, sprigging, or other means of planting native woody and herbaceous plants is highly recommended and advantageous to further stabilize stream banks. For further information on planting, please contact the local Natural Resources Conservation Service or Corps office;
- 14. 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 OHWM, must be permanently stabilized at the earliest practicable date. Erosion control fabrics/blankets may be required on a case-by-case basis. All disturbed areas, including the riparian and upland buffer zones, shall be revegetated with native species to prevent erosion. These areas shall be monitored and maintained to ensure vegetative success;
- 15. Activities in breeding areas for migratory waterfowl must be avoided to the maximum extent practicable. On a case-by-case basis, the Corps may restrict the timing of construction in order to avoid and minimize impacts to migratory waterfowl during the breeding season;
- 16. Endangered Species:

- a. No activity is authorized under any RGP which is likely to directly or indirectly jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation, as identified under the Federal Endangered Species Act (ESA), or which will directly or indirectly destroy or adversely modify the critical habitat of such species. No activity is authorized under any RGP which “may affect” a listed species or critical habitat, unless ESA section 7 consultation addressing the effects of the proposed activity has been completed. Direct effects are the immediate effects on listed species and critical habitat caused by the RGP activity. Indirect effects are those effects on listed species and critical habitat that are caused by the RGP activity and are later in time, but still are reasonably certain to occur;
- b. Federal agencies should follow their own procedures for complying with the requirements of the ESA. The federal permittee must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements. The district engineer will verify that the appropriate documentation has been submitted. If the appropriate documentation has not been submitted, additional ESA section 7 consultation may be necessary for the activity and the respective federal agency would be responsible for fulfilling its obligation under section 7 of the ESA;
- c. For activities that might affect federally-listed endangered or threatened species or designated critical habitat, the non-federal applicant’s notification must include the name(s) of the endangered or threatened species that might be affected by the proposed activity or that utilize the designated critical habitat that might be affected by the proposed activity. The district engineer will determine whether the proposed activity “may affect” or will have “no effect” to listed species and designated critical habitat and will notify the non-federal applicant of the Corps’ determination within 45 days of receipt of a complete notification. In cases where the non-federal applicant has identified listed species or critical habitat that might be affected or is in the vicinity of the activity, and has so notified the Corps, the applicant shall not begin work until the Corps has provided notification that the proposed activity will have “no effect” on listed species or critical habitat, or until ESA section 7 consultation has been completed;
- d. As a result of formal or informal consultation with the FWS the district engineer may add species specific permit conditions to the RGP;
- e. Authorization of an activity by the RGP does not authorize the “take” of a threatened or endangered species as defined under the ESA. In the absence of separate authorization (e.g., an ESA Section 10 Permit, a Biological Opinion with “incidental take” provisions, etc.) from the FWS or the NMFS, the Endangered Species Act prohibits any person subject to the jurisdiction of the United States to take a listed species, where “take” means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. The word “harm” in the definition of “take” means an act which actually kills or injures wildlife. Such an act may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding or sheltering;
- f. If the non-federal permittee has a valid ESA section 10(a)(1)(B) incidental take permit with an approved Habitat Conservation Plan for a project or a group of projects that includes the proposed RGP activity, the non-federal applicant should provide a copy of that ESA section 10(a)(1)(B) permit with the notification required by paragraph (c) of this

general condition. The district engineer will coordinate with the agency that issued the ESA section 10(a)(1)(B) permit to determine whether the proposed RGP activity and the associated incidental take were considered in the internal ESA section 7 consultation conducted for the ESA section 10(a)(1)(B) permit. If that coordination results in concurrence from the agency that the proposed RGP activity and the associated incidental take were considered in the internal ESA section 7 consultation for the ESA section 10(a)(1)(B) permit, the district engineer does not need to conduct a separate ESA section 7 consultation for the proposed RGP activity. The district engineer will notify the non-federal applicant within 45 days of receipt of a complete pre-construction notification whether the ESA section 10(a)(1)(B) permit covers the proposed RGP activity or whether additional ESA section 7 consultation is required; and

- g. Information on the location of threatened and endangered species and their critical habitat can be obtained directly from the offices of the FWS or their World Wide Web pages at <http://www.fws.gov/> or <http://www.fws.gov/ipac>;
17. The permittee is responsible for ensuring their action complies with the Migratory Bird Treaty Act and the Bald and Golden Eagle Protection Act. The permittee is responsible for contacting appropriate local office of the USFWS to determine applicable measures to reduce impacts to migratory birds or eagles, including whether “incidental take” permits are necessary and available under the Migratory Bird Treaty Act or Bald and Golden Eagle Protection Act for a particular activity;
 18. Historic Properties:
 - a. In cases where the District Engineer determines that the activity may affect properties listed, or eligible for listing, in the National Register of Historic Places, the activity is not authorized, until the requirements of Section 106 of the National Historic Preservation Act (NHPA) have been satisfied;
 - b. Federal permittees should follow their own procedures for complying with the requirements of Section 106 of the National Historic Preservation Act. Federal permittees must provide the District Engineer with the appropriate documentation to demonstrate compliance with those requirements. The District Engineer will verify that the appropriate documentation has been submitted. If the appropriate documentation is not submitted, then additional consultation under Section 106 may be necessary. The respective federal agency is responsible for fulfilling its obligation to comply with Section 106;
 - c. Non-federal permittees must identify in their notification which historic properties may be affected by the proposed work or include a vicinity map indicating the location of the historic properties or the potential for the presence of historic properties.

Assistance regarding information on the location of or potential for the presence of historic resources can be sought from the State Historic Preservation Officer or Tribal Historic Preservation Officer, as appropriate, and the National Register of Historic Places (see 33 CFR part 330.4(g)). When reviewing notification packages, District Engineers will comply with the current procedures for addressing the requirements of Section 106 of the National Historic Preservation Act. The District Engineer shall make a reasonable and good faith effort to carry out appropriate identification efforts, which may include

background research, consultation, oral history interviews, sample field investigation, and field survey. Based on the information submitted and these efforts, the District Engineer shall determine whether the proposed activity has the potential to cause an effect on the historic properties. Where the non-federal applicant has identified historic properties on which the activity may have the potential to cause effects and so notified the Corps, the non-federal applicant shall not begin the activity until notified by the District Engineer either that the activity has no potential to cause effects or that consultation under Section 106 of the NHPA has been completed;

- d. The District Engineer will notify the prospective permittee within 45 days of receipt of a complete notification package whether NHPA Section 106 consultation is required. Section 106 consultation is not required when the Corps determines that the activity does not have the potential to cause effects on historic properties (see 36 CFR part 800.3(a)). If NHPA Section 106 consultation is required and will occur, the District Engineer will notify the non-federal applicant that he or she cannot begin work until Section 106 consultation is completed. If the non-federal applicant has not heard back from the Corps within 45 days, the applicant must still wait for notification from the Corps; and
- e. Prospective permittees should be aware that Section 110k of the NHPA (16 U.S.C. 470h-2(k)) prevents the Corps from granting a permit or other assistance to an applicant who, with intent to avoid the requirements of Section 106 of the NHPA, has intentionally significantly adversely affected a historic property to which the permit would relate, or having legal power to prevent it, allowed such significant adverse effect to occur, unless the Corps, after consultation with the Advisory Council on Historic Preservation (ACHP), determines that circumstances justify granting such assistance despite the adverse effect created or permitted by the applicant. If circumstances justify granting the assistance, the Corps is required to notify the ACHP and provide documentation specifying the circumstances, the degree of damage to the integrity of any views obtained from the applicant, SHPO/THPO, appropriate Indian tribes if the undertaking occurs on or affects historic properties on tribal lands or affects properties of interest to those tribes, and other parties known to have a legitimate interest in the impacts to the permitted activity on historic properties.

If any previously unknown historic, cultural or archeological remains and artifacts are discovered while accomplishing the activity authorized by this permit, the permittee must immediately notify the District Engineer of what was found, and to the maximum extent practicable, avoid construction activities that may affect the remains and artifacts until the required coordination has been completed. The District Engineer will initiate the federal, tribal and state coordination required to determine if the items or remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places;

19. To ensure that all habitat improvement structures are safely designed, the District Engineer may require non-federal applicants to demonstrate that the structures have been designed by qualified persons. The District Engineer may also require documentation that the design has been independently reviewed by similarly qualified persons, and appropriate modifications made to ensure safety;

20. If a conditioned water quality certification is issued for the project, (i.e., for projects located on Southern Ute or Ute Mountain Ute Tribal Lands) the permittee must comply with the conditions specified in the certification as special conditions to this permit. In Colorado, excluding Indian lands, regional general permits are unconditionally certified by statute;
21. This permit does not authorize discharges of dredged or fill material associated with channelization, ditching, mechanized land clearing, cutting off meanders, or blocking off channels;
22. All construction debris (including excess dredged or fill materials, wood, cleared vegetation, concrete, and all other materials not specifically authorized by the permit) shall be disposed of in an upland area in such a manner that it cannot enter a waterway or wetland;
23. Dredged or fill material shall not consist of unsuitable material (e.g., trash, debris, waste metal products, asphalt, car bodies, tires, etc.) and must be free from toxic pollutants in toxic amounts (see Section 307 of the Clean Water Act);
24. The use of grout is not allowed by this permit unless, after a case-by-case review, the Corps makes a written determination that the use of grout would not cause more than minor impacts to the aquatic resource;
25. Activities that result in the physical destruction (e.g., through excavation, fill, or downstream smothering by substantial turbidity) of an important spawning area are not authorized by this RGP;
26. Discharges of dredged or fill material shall not occur in the proximity of a water supply intake, shall not limit the ability of any existing diversion structure to appropriate water, shall not impair the ability to deliver vested water rights, and shall not adversely impact a stream gauging station;
27. Activities shall not impair reserved tribal rights including, but not limited to, reserved water rights and treaty fishing and hunting rights;
28. National Wild and Scenic River System:
 - a. No activity may 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, unless the appropriate federal agency with direct management responsibility for such river, has determined in writing that the proposed activity will not adversely affect the Wild and Scenic River designation or study status;
 - b. If a proposed RGP activity will 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, the District Engineer will coordinate with the federal agency with direct management responsibility for that river. The permittee shall not begin the RGP activity until notified by the District Engineer that the federal agency with direct management responsibility for that river has determined in writing that the proposed RGP activity will not adversely affect the Wild and Scenic River designation or study status; and

- c. Information on Wild and Scenic Rivers may be obtained from the appropriate federal land management agency responsible for the designated Wild and Scenic River or study river (e.g., National Park Service, U.S. Forest Service, Bureau of Land Management, U.S. Fish and Wildlife Service). Information on these rivers is also available at: <http://www.rivers.gov/>;
29. The permittee must allow representatives from the Corps to inspect the authorized work at any time deemed necessary to ensure that it is being or has been accomplished in compliance with the terms and conditions of the permit;
 30. The permittee shall maintain the activity authorized by this permit in good condition and in conformance with the terms and conditions of this permit, including maintenance to ensure public safety and compliance with applicable RGP general conditions, as well as any activity-specific conditions added by the District Engineer to an RGP authorization. The permittee is not relieved of this requirement if construction of the permitted activity is abandoned, although the permittee may make a good faith transfer to a third party in compliance with General Condition 31 below. Should the permittee wish to cease maintenance of the authorized activity, or should the permittee desire to abandon it without a good faith transfer, the permittee shall obtain a modification of the permit from the Corps, which may require restoration of the area; and
 31. 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 Corps 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.”*

BEST MANAGEMENT PRACTICES:

1. In order to prevent the spread of invasive and/or nuisance species (e.g., Asian Clam, Grand Valley Asian Tapeworm, Green River Mud Snail, New Zealand Mud Snail), the permittee is strongly encouraged to clean heavy equipment prior to and after construction if the equipment was previously used in another stream, river, lake, pond, or wetland within 10 days of initiating work. The following are recommended methods for preventing the spread of invasive aquatic organisms:
 - a. Remove all mud and debris from equipment (tracks, turrets, buckets, drags, teeth, etc.) and spray/soak equipment with a 1:15 solution of disinfection solution containing the following ingredients:
 - (1) Dialkyl dimethyl ammonium chloride (5-10% by weight);
 - (2) Alkyl dimethyl benzyl ammonium chloride (5-10% by weight);
 - (3) Nonyl phenol ethoxylate (5-10% by weight);

- (4) Sodium sesquicarbonate (1-5%); and
 - (5) Tetrasodium ethylene diaminetetraacetate (1-15%); and
- b. The equipment should be kept moist for at least 10 minutes, and rinsate should be managed as a solid waste in accordance with local, county, state, or federal regulations. Alternately, equipment, hand tools, boots and any other equipment that was previously used in a river, stream, lake, pond, or wetland prior to moving the equipment to another water body may be disinfected using either of the following methods:
- (1) Spray/soak equipment with water greater than 140 degrees Fahrenheit for at least 10 minutes; or
 - (2) Sanitize water suction hoses and water transportation tanks (using methods described above) and discard rinse water at an appropriately permitted disposal facility; and
2. No petroleum products, chemicals, or other deleterious materials should be allowed to enter or be disposed of in such a manner in which they could enter the waterway or adjacent wetlands. Accordingly, it is recommended that oil absorbent “booms” be installed downstream of the project site during construction activities.

DEFINITIONS:

Bankfull: Bankfull, as defined by Dunne and Leopold (1978), is the stream stage corresponding to the discharge at which channel maintenance is most effective. That is, the discharge at which moving sediment, forming or removing bars, forming or changing bends and meanders, and generally doing work that result in the average morphological characteristics of channels.

Best management practices (BMPs): Policies, practices, procedures, or structures implemented to mitigate the adverse environmental effects on surface water quality resulting from development. BMPs are categorized as structural or non-structural.

Bioengineering Techniques: The combination of biological, mechanical, and ecological concepts to control erosion and stabilize soil through the use of native vegetation or a combination of vegetative and traditional construction materials. Bioengineering techniques include both living and non-living plants. Non-living plants (trees, logs, etc.) are used as construction materials, similar to or in combination with engineered materials. Planted vegetation controls erosion, stabilizes soil, and serves as wildlife and fisheries habitat in riparian areas, between the stream channel and adjacent upland habitats.

Compensatory mitigation: The restoration (re-establishment or rehabilitation), establishment (creation), enhancement, and/or in certain circumstances preservation of aquatic resources for the purposes of offsetting unavoidable adverse impacts which remain after all appropriate and practicable avoidance and minimization has been achieved.

Direct effects: Effects that are caused by the activity and occur at the same time and place.

Discharge: The term “discharge” means any discharge of dredged or fill material into waters of the United States.

Enhancement: The manipulation of the physical, chemical, or biological characteristics of an aquatic resource to heighten, intensify, or improve a specific aquatic resource function(s). Enhancement results in

the gain of selected aquatic resource function(s), but may also lead to a decline in other aquatic resource function(s). Enhancement does not result in a gain in aquatic resource area.

Ephemeral stream: An ephemeral stream has flowing water only during, and for a short duration after, precipitation events in a typical year. Ephemeral stream beds are located above the water table year-round. Groundwater is not a source of water for the stream. Runoff from rainfall is the primary source of water for stream flow.

Establishment (creation): The manipulation of the physical, chemical, or biological characteristics present to develop an aquatic resource that did not previously exist at an upland site. Establishment results in a gain in aquatic resource area.

Historic Property: Any prehistoric or historic district, site (including archaeological site), building, structure, or other object included in, or eligible for inclusion in, the National Register of Historic Places maintained by the Secretary of the Interior. This term includes artifacts, records, and remains that are related to and located within such properties. The term includes properties of traditional religious and cultural importance to an Indian tribe or Native Hawaiian organization and that meet the National Register criteria (36 CFR part 60).

Independent utility: A test to determine what constitutes a single and complete non-linear project in the Corps Regulatory Program. A project is considered to have independent utility if it would be constructed absent the construction of other projects in the project area. Portions of a multi-phase project that depend upon other phases of the project do not have independent utility. Phases of a project that would be constructed even if the other phases were not built can be considered as separate single and complete projects with independent utility.

Indirect effects: Effects that are caused by the activity and are later in time or farther removed in distance, but are still reasonably foreseeable.

Intermittent stream: An intermittent stream has flowing water during certain times of the year, when groundwater provides water for stream flow. During dry periods, intermittent streams may not have flowing water. Runoff from rainfall is a supplemental source of water for stream flow.

Loss of waters of the United States: Waters of the United States that are permanently adversely affected by filling, flooding, excavation, or drainage because of the regulated activity. Permanent adverse effects include permanent discharges of dredged or fill material that change an aquatic area to dry land, increase the bottom elevation of a waterbody, or change the use of a waterbody. The acreage of loss of waters of the United States is a threshold measurement of the impact to jurisdictional waters for determining whether a project may qualify for a general permit; it is not a net threshold that is calculated after considering compensatory mitigation that may be used to offset losses of aquatic functions and services. The loss of stream bed includes the acres or linear feet of stream bed that are filled or excavated as a result of the regulated activity. Waters of the United States temporarily filled, flooded, excavated, or drained, but restored to pre-construction contours and elevations after construction, are not included in the measurement of loss of waters of the United States. Impacts resulting from activities that do not require Department of the Army authorization, such as activities eligible for exemptions under section 404(f) of the Clean Water Act, are not considered when calculating the loss of waters of the United States.

Navigable waters: Waters subject to section 10 of the Rivers and Harbors Act of 1899. These waters are defined at 33 CFR part 329.

Open water: For purposes of this general permit, an open water is any area that in a year with normal patterns of precipitation has water flowing or standing above ground to the extent that an OHWM can be determined. Aquatic vegetation within the area of flowing or standing water is either non-emergent,

sparse, or absent. Vegetated shallows are considered to be open waters. Examples of “open waters” include rivers, streams, lakes, and ponds.

Ordinary High Water Mark: An OHWM is a line on the shore established by the fluctuations of water and indicated by physical characteristics, or by other appropriate means that consider the characteristics of the surrounding areas.

Perennial stream: A perennial stream has flowing water year-round during a typical year. The water table is located above the stream bed for most of the year. Groundwater is the primary source of water for stream flow. Runoff from rainfall is a supplemental source of water for stream flow.

Preservation: The removal of a threat to, or preventing the decline of, aquatic resources by an action in or near those aquatic resources. This term includes activities commonly associated with the protection and maintenance of aquatic resources through the implementation of appropriate legal and physical mechanisms. Preservation does not result in a gain of aquatic resource area or functions.

Re-establishment: The manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural/historic functions to a former aquatic resource. Re-establishment results in rebuilding a former aquatic resource and results in a gain in aquatic resource area and functions.

Rehabilitation: The manipulation of the physical, chemical, or biological characteristics of a site with the goal of repairing natural/historic functions to a degraded aquatic resource. Rehabilitation results in a gain in aquatic resource function, but does not result in a gain in aquatic resource area.

Restoration: The manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural/historic functions to a former or degraded aquatic resource. For the purpose of tracking net gains in aquatic resource area, restoration is divided into two categories: re-establishment and rehabilitation.

Riffle and pool complex: Riffle and pool complexes are special aquatic sites under the 404(b)(1) Guidelines. Riffle and pool complexes sometimes characterize steep gradient sections of streams. Such stream sections are recognizable by their hydraulic characteristics. The rapid movement of water over a coarse substrate in riffles results in a rough flow, a turbulent surface, and high dissolved oxygen levels in the water. Pools are deeper areas associated with riffles. A slower stream velocity, a streaming flow, a smooth surface, and a finer substrate characterize pools.

Riparian areas: Riparian areas are lands next to streams, lakes, and estuarine-marine shorelines. Riparian areas are transitional between terrestrial and aquatic ecosystems, through which surface and subsurface hydrology connects riverine, lacustrine, estuarine, and marine waters with their adjacent wetlands, non-wetland waters, or uplands. Riparian areas provide a variety of ecological functions and services and help improve or maintain local water quality. (See general condition 23.)

Single and complete project: For non-linear projects, such as those activities authorized by this RGP, the term “single and complete project” is defined at 33 CFR 330.2(i) as the total project proposed or accomplished by one owner/developer or partnership or other association of owners/developers. A single and complete non-linear project must have independent utility (see definition of “independent utility”). Single and complete non-linear projects may not be “piecemealed” to avoid the limits in this general permit.

Stream bed: The substrate of the stream channel between the OHWMs. The substrate may be bedrock or inorganic particles that range in size from clay to boulders. Wetlands contiguous to the stream bed, but outside of the OHWMs, are not considered part of the stream bed.

Stream channelization: The manipulation of a stream's course, condition, capacity, or location that causes more than minimal interruption of normal stream processes. A channelized stream remains a water of the United States.

Structure: An object that is arranged in a definite pattern of organization. Examples of structures include, without limitation, any pier, boat dock, boat ramp, wharf, dolphin, weir, boom, breakwater, bulkhead, revetment, riprap, jetty, artificial island, artificial reef, permanent mooring structure, power transmission line, permanently moored floating vessel, piling, aid to navigation, or any other manmade obstacle or obstruction.

Tribal lands: Any lands title to which is either: 1) held in trust by the United States for the benefit of any Indian tribe or individual; or 2) held by any Indian tribe or individual subject to restrictions by the United States against alienation.

Tribal rights: Those rights legally accruing to a tribe or tribes by virtue of inherent sovereign authority, unextinguished aboriginal title, treaty, statute, judicial decisions, executive order or agreement, and that give rise to legally enforceable remedies.

Waterbody: For purposes of this general permit, a waterbody is a jurisdictional water of the United States. If a wetland is adjacent to a waterbody determined to be a water of the United States, that waterbody and any adjacent wetlands are considered together as a single aquatic unit (see 33 CFR 328.4(c)(2)). Examples of "waterbodies" include streams, rivers, lakes, ponds, and wetlands.

FURTHER INFORMATION:

1. District Engineers have authority to determine if an activity complies with the terms and conditions of a RGP;
2. Congressional Authorities. This permit authorizes work in accordance with:
 - a. Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403); and
 - b. Section 404 of the Clean Water Act (33 U.S.C. 1344);
3. 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; and
 - c. This permit does not authorize interference with any existing or proposed federal projects;
4. 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 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; and
 - e. Damage claims associated with any future modification, suspension, or revocation of this permit;
5. Reliance on applicant's data. The determination by the Corps that a verification based upon this permit is not contrary to the public interest will be made in reliance on the information provided by the applicant;
 6. Re-evaluation of permit decisions. The Corps may reevaluate its decision on this permit at any time the circumstances warrant (33 CFR 325.7(a)). Circumstances that could require a reevaluation include, but are not limited to, the following:
 - a. Failure 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; or
 - c. Significant new information surfaces that the Corps did not consider before verifying that the project is authorized by this permit.

Such re-evaluation 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 the permittee to comply with the terms and conditions of the permit and for the initiation of legal action where appropriate;

7. 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 our decision, the Corps will normally give favorable consideration to a request for an extension of this time limit; and
8. Renewal of the RGP: This RGP may be reviewed for reissuance prior to its expiration date. Any reissuance will be processed in accordance with 33 CFR 325.2 including a public notice and environmental procedures and documentation required by the national Environmental Policy Act of 1969.

This permit becomes effective when the federal official, designated to act for the Sacramento, Albuquerque, and Omaha District Engineers, has signed below.

Allan Steinle, Chief
Albuquerque District Regulatory Division

DATE