



# Regional General Permit 96

U.S. ARMY CORPS OF ENGINEERS

BUILDING STRONG®

## NATURAL DISASTER MITIGATION & FLOOD-RELATED ACTIVITIES IN COLORADO

**Effective: October 1, 2021**

**Expires: September 30, 2026**

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

**LOCATION:** This RGP is applicable to waters of the United States within the state of Colorado.

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

- repair and reconstruction of existing roads
- repair and construction of temporary levees
- protection and repair of bridge embankments
- protection and repair of utility structures
- stabilization and protection of stream banks
- protection and restoration of intake structures
- construction of debris catchment facilities
- restoration/cleanup of mud/rockslides

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

(a) **One (1) acre** of permanent loss to non-wetland jurisdictional areas, unless the Corps waives this limit, after agency coordination, by making a written determination concluding that the discharge will result in no more than minimal adverse environmental effects. Loss of waters of the United States is defined as Waters of the United States that are permanently adversely affected by filling, flooding, excavation, or drainage because of the regulated activity. The loss of stream bed includes the acres of stream bed that are permanently adversely affected by filling or excavation 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.

(b) **One-half (1/2) acre** of permanent loss to wetlands – this limit cannot be waived.

The time limit for **completing** the work authorized by this RGP is **one (1) year** from the date of permit verification, unless otherwise specified in the Corps verification letter. If additional time is required to complete the authorized activity, a written request for a time extension, including justification for the request, must be submitted to the Corps at least 45 days prior to the expiration of the verification.

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

**NOTIFICATION:** The permittee must submit a pre-construction notification (PCN) to the District Engineer (See general condition 30). A PCN is a request submitted by the project proponent to the Corps for confirmation that a particular activity is authorized by this RGP.

The PCN must be received within **one (1) year** following the date of the natural disaster unless, after case-by-case review, the District Engineer waives this criterion by making a written determination concluding that there is a legitimate reason for the delay. Reasonable considerations for accepting requests more than one year after the date of the natural disaster may include but are not limited to:

- (a) Delays in funding under a designated federal disaster recovery program;
- (b) Scale and nature of the natural disaster (e.g., fire vs. flood);
- (c) Overall speed and status of recovery efforts in the disaster area;
- (d) Legal issues (e.g., land disputes); and
- (e) Existence of a federal- or state-sponsored long-term monitoring program for identifying critical needs as they develop within a catastrophically disturbed watershed (commonly for burn scar areas where watersheds evolve rapidly within a few years after intense disturbances).

For assistance in determining the appropriate Corps regulatory office, please contact one of the offices below or visit the Colorado Regulatory website at:

<https://www.nwo.usace.army.mil/Locations/District-Offices/Colorado/>

**Denver Regulatory Office**

(Omaha District)  
9307 South Wadsworth Blvd.  
Littleton, CO 80128-6901  
Phone: (303) 979-4120

[DenverRegulatoryMailbox@usace.army.mil](mailto:DenverRegulatoryMailbox@usace.army.mil)

**Grand Junction Regulatory Office**

(Albuquerque District)  
400 Rood Ave., Room 224  
Grand Junction, CO 81501-2563  
Phone: (970) 243-1199

[SPA-RD-CO@usace.army.mil](mailto:SPA-RD-CO@usace.army.mil)

**Pueblo Regulatory Office**

(Albuquerque District)  
201 West 8<sup>th</sup> St., Suite 350  
Pueblo, CO 81003-3040  
Phone: (719) 543-9459

[SPA-RD-CO@usace.army.mil](mailto:SPA-RD-CO@usace.army.mil)

**Durango Regulatory Office**

(Albuquerque District)  
1970 E 3rd Ave., Suite 109  
Durango, CO 81301-5025  
Phone: (970) 259-1764

[SPA-RD-CO@usace.army.mil](mailto:SPA-RD-CO@usace.army.mil)

**GENERAL CONDITIONS:** To qualify for this RGP, 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. **Navigation.** (a) No activity may cause more than a minimal adverse effect on navigation.  
  
(b) Any safety lights and signals prescribed by the U.S. Coast Guard, through regulations or otherwise, must be installed and maintained at the permittee's expense on authorized facilities in navigable waters of the United States.  
  
(c) 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 or her 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.
2. **Aquatic Life Movements.** 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, unless the activity's primary purpose is to impound water. All permanent and temporary crossings of waterbodies shall be suitably culverted, bridged, or otherwise designed and constructed to maintain low flows to sustain the movement of those aquatic species. If a bottomless culvert cannot be used, then the crossing should be designed and constructed to minimize adverse effects to aquatic life movements.
3. **Spawning Areas.** Activities in spawning areas during spawning seasons must be avoided to the maximum extent practicable. 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.
4. **Migratory Bird Breeding Areas.** Activities in waters of the United States that serve as breeding areas for migratory birds must be avoided to the maximum extent practicable.
5. **Suitable Material.** No activity may use unsuitable material (e.g., trash, debris, car bodies, asphalt, etc.). Material used for construction or discharged must be free from toxic pollutants in toxic amounts (see Section 307 of the Clean Water Act).
6. **Water Supply Intakes.** No activity may occur in the proximity of a public water supply intake, except where the activity is for the repair or improvement of public water supply intake structures or adjacent bank stabilization.
7. **Adverse Effects From Impoundments.** If the activity creates an impoundment of water, adverse effects to the aquatic system due to accelerating the passage of water, and/or restricting its flow must be minimized to the maximum extent practicable.
8. **Management of Water Flows.** To the maximum extent practicable, the pre-construction course, condition, capacity, and location of open waters must be maintained for each

activity, including stream channelization, storm water management activities, and temporary and permanent road crossings, except as provided below. Stream channelization is defined as the manipulation of a stream's course, condition, capacity, or location that causes more than minimal interruption of normal stream processes. The activity must be constructed to withstand expected high flows. The activity must not restrict or impede the passage of normal or high flows unless the primary purpose of the activity is to impound water or manage high flows. The activity may alter the pre-construction course, condition, capacity, and location of open waters if it benefits the aquatic environment (e.g., stream restoration or relocation activities).

- 9. Fills Within 100-Year Floodplains.** The activity must comply with applicable FEMA-approved state or local floodplain management requirements.
- 10. Equipment.** Heavy equipment working in wetlands or mudflats must be placed on mats, or other measures must be taken to minimize soil disturbance.
- 11. Soil Erosion and Sediment Controls.** 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. Permittees are encouraged to perform work within waters of the United States during periods of low-flow or no-flow, or during low tides.
- 12. Removal of Temporary Structures and Fills.** Temporary structures must be removed, to the maximum extent practicable, after their use has been discontinued. Temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations. The affected areas must be revegetated, as appropriate.
- 13. Proper Maintenance.** Any authorized structure or fill shall be properly maintained, 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 the RGP authorization.
- 14. Single and Complete Project.** The activity must be a single and complete project. The same GP cannot be used more than once for the same single and complete project. For linear projects, the term "single and complete project" is defined as that portion of the total linear project proposed or accomplished by one owner/developer or partnership or other association of owners/developers that includes all crossings of a single water of the United States (i.e., a single waterbody) at a specific location.
- 15. Wild and Scenic Rivers.** (a) The RGP activity may not occur in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a "study river" for possible inclusion in the system while the river is in an official study status, 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. For non-linear projects, 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 an NWP authorization.

(b) The District Engineer will coordinate the PCN with the Federal agency with direct management responsibility for that river. Permittees 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.

(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/>.

**16. Tribal Rights.** No activity or its operation may impair reserved tribal rights, including, but not limited to, reserved water rights and treaty fishing and hunting rights.

**17. Endangered Species.** (a) No activity is authorized under this 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 designated critical habitat or critical habitat proposed for such designation. No activity is authorized under this RGP which “may affect” a listed species or critical habitat unless ESA Section 7 consultation addressing the consequences of the proposed activity on listed species or critical habitat has been completed. See 50 CFR 402.02 for the definition of “effects of the action” for the purposes of ESA Section 7 consultation, as well as 50 CFR 402.17, which provides further explanation under ESA Section 7 regarding “activities that are reasonably certain to occur” and “consequences caused by the proposed action.”

(b) Federal agencies should follow their own procedures for complying with the requirements of the ESA (see 33 CFR 330.4(f)(1)). 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 species proposed for listing) or designated critical habitat (or critical habitat proposed for such designation), the pre-construction notification must include the name(s) of the endangered or threatened species (or species proposed for listing) that might be affected by the proposed activity or that utilize the designated critical habitat (or critical habitat proposed for such designation) that might be affected by the proposed activity.

(d) As a result of formal or informal consultation or conference with the FWS the District Engineer may add species-specific permit conditions to the RGP.

(e) Authorization of an activity by this 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, 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 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 PCN 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.

(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 page at <http://www.fws.gov/> or <http://www.fws.gov/ipac>.

**18. Migratory Birds and Bald and Golden Eagles.** The permittee is responsible for ensuring that an action authorized by this RGP complies with the Migratory Bird Treaty Act and the Bald and Golden Eagle Protection Act. The permittee is responsible for contacting the appropriate local office of the U.S. Fish and Wildlife Service to determine what measures, if any, are necessary or appropriate to reduce adverse effects 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.

**19. Historic Properties.** (a) No activity is authorized under this RGP which may have the potential to cause effects to properties listed, or eligible for listing, in the National Register of Historic Places 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 (see 33 CFR 330.4(g)(1)). 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 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) For non-federal permittees, if the RGP activity might have the potential to cause effects to any historic properties listed on, determined to be eligible for listing on, or potentially eligible for listing on the National Register of Historic Places, including previously unidentified properties, the pre-construction notification must state which historic properties might have the potential to be affected by the proposed RGP activity 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 properties can be sought from the State Historic Preservation Officer, Tribal Historic Preservation Officer, or designated tribal representative, as appropriate, and the National Register of Historic Places (see 33 CFR 330.4(g)). When reviewing pre-construction notifications, 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 commensurate with potential impacts, which may include background research, consultation, oral history interviews, sample field investigation, and/or field survey. Based on the information submitted in the PCN and these identification efforts, the District Engineer shall determine whether the proposed RGP activity has the potential to cause effects on the historic properties. Section 106 consultation is not required when the District Engineer determines that the activity does not have the potential to cause effects on historic properties (see 36 CFR 800.3(a)). Section 106 consultation is required when the District Engineer determines that the activity has the potential to cause effects on historic properties. The District Engineer will conduct consultation with consulting parties identified under 36 CFR 800.2(c) when he or she makes any of the following effect determinations for the purposes of Section 106 of the NHPA: no historic properties affected, no adverse effect, or adverse effect.

(d) Prospective permittees should be aware that Section 110k of the NHPA (54 U.S.C. 306113) 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 historic properties affected, and proposed mitigation. This documentation must include 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.

**20. Discovery of Previously Unknown Remains and Artifacts.** Permittees that discover any previously unknown historic, cultural or archeological remains and artifacts while accomplishing the activity authorized by this RGP, they must immediately notify the District Engineer of what they have 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.

**21. Designated Critical Resource Waters.** The District Engineer may authorize activities under this RGP only after she or he determines that the impacts to the critical resource waters will be no more than minimal.

**22. Mitigation.** 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 at a minimum one-for-one ratio will be required for all wetland losses that exceed 1/10-acre, unless the District Engineer determines in writing that either some other form of mitigation would be more environmentally appropriate, or the adverse environmental effects of the proposed activity are no more than minimal and provides an activity-specific waiver of this requirement. For wetland losses of 1/10-acre or less, the District Engineer may determine on a case-by-case basis that compensatory mitigation is required to ensure that the activity results in only minimal adverse environmental effects.

(d) For projects that cause stream bed loss, the District Engineer may determine on a case-by-case basis that compensatory mitigation is required to ensure that the activity results in only minimal adverse environmental effects.

(e) 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 or maintenance/protection of riparian areas may be the only compensatory mitigation required. If restoring riparian areas involves planting vegetation, only native species should be planted. 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. If it is not possible to restore or maintain/protect a riparian area on both sides of a stream, or if the waterbody is a lake or coastal waters, then restoring or maintaining/protecting a riparian area along a single bank or shoreline may be sufficient. 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 minimization or compensatory mitigation, the District Engineer may waive or reduce the requirement to provide wetland compensatory mitigation for wetland losses.



(f) 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. For this RGP, the preferred mechanism for providing compensatory mitigation is mitigation bank credits or in-lieu fee program credits (see 33 CFR 332.3(b)(2) and (3)). However, if an appropriate number and type of mitigation bank or in-lieu credits are not available at the time the PCN is submitted to the District Engineer, the District Engineer may approve the use of permittee-responsible mitigation.

(2) The amount of compensatory mitigation required by the District Engineer must be sufficient to ensure that the authorized activity results in no more than minimal individual and cumulative adverse environmental effects (see 33 CFR 330.1(e)(3)). (See also 33 CFR 332.3(f).)

(3) Since the likelihood of success is greater and the impacts to potentially valuable uplands are reduced, aquatic resource restoration should be the first compensatory mitigation option considered for permittee-responsible mitigation.

(4) 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 332.4(c)(2) through (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 332.3(k)(3)). If permittee-responsible mitigation is the proposed option, and the proposed compensatory mitigation site is located on land in which another federal agency holds an easement, the District Engineer will coordinate with that federal agency to determine if proposed compensatory mitigation project is compatible with the terms of the easement.

(5) If mitigation bank or in-lieu fee program credits are the proposed option, the mitigation plan needs to address only the baseline conditions at the impact site and the number of credits to be provided (see 33 CFR 332.4(c)(1)(ii)).

(6) Compensatory mitigation requirements (e.g., resource type and amount to be provided as compensatory mitigation, site protection, ecological performance standards, monitoring requirements) may be addressed through conditions added to the RGP authorization, instead of components of a compensatory mitigation plan (see 33 CFR 332.4(c)(1)(ii)).

(g) Compensatory mitigation will not be used to increase the acreage losses allowed by the acreage limits of this RGP.

(h) Permittees may propose the use of mitigation banks, in-lieu fee programs, or permittee-responsible mitigation. When developing a compensatory mitigation proposal, the permittee must consider appropriate and practicable options consistent with the

framework at 33 CFR 332.3(b). 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.

(i) Where certain functions and services of waters of the United States are permanently adversely affected by a regulated activity, such as discharges of dredged or fill material into waters of the United States that will convert a forested or scrub-shrub wetland to a herbaceous wetland in a permanently maintained utility line right-of-way, mitigation may be required to reduce the adverse environmental effects of the activity to the no more than minimal level.

**23. Safety of Impoundment Structures.** To ensure that all impoundment structures are safely designed, the District Engineer may require non-Federal applicants to demonstrate that the structures comply with established state or federal, dam safety criteria or 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.

**24. Water Quality Certification.** The state of Colorado has certified the activities authorized by this RGP under CWA Section 401. Under CWA Section 401, the USEPA and Ute Mountain Ute Tribe have certified with conditions, and the South Ute Indian Tribe has waived a CWA Section 401 certification for the activities authorized under this RGP.

(aa) In accordance with Code of Federal Regulations (CFR) 33 Part 330.4(c), the conditions of the respective CWA Section 401 water quality certifications are incorporated as conditions of this permit. Water quality certifications are available at: <http://www.spa.usace.army.mil/reg/wqc>.

(bb) If the permittee cannot comply with all of the conditions of a water quality certification previously issued by a certifying authority for the issuance of this RGP, then the permittee must obtain a water quality certification or waiver for the proposed discharge in order for the activity to be authorized by this RGP.

**25. Case-By-Case Conditions.** The activity must comply with any case specific conditions added by the Corps or by the state, Indian Tribe, or U.S. EPA in its CWA Section 401 Water Quality Certification.

**26. Use of Multiple General Permits.** The use of more than one general permit (GP) for a single and complete project is authorized, subject to the following restrictions:

(a) If only one of the GPs used to authorize the single and complete project has a specified acreage limit, the acreage loss of waters of the United States cannot exceed the acreage limit of the GP with the highest specified acreage limit.

(b) If one or more of the GPs used to authorize the single and complete project has specified acreage limits, the acreage loss of waters of the United States authorized by those GPs cannot exceed their respective specified acreage limits.

**27. Transfer of Regional General Permit Verifications.** If the permittee sells the property associated with this regional general permit verification, the permittee may transfer the

regional general permit verification to the new owner by submitting a letter to the appropriate Corps district office to validate the transfer. A copy of the regional general 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 regional general permit are still in existence at the time the property is transferred, the terms and conditions of this regional general permit, including any special conditions, will continue to be binding on the new owner(s) of the property. To validate the transfer of this regional general permit and the associated liabilities associated with compliance with its terms and conditions, have the transferee sign and date below.”

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(Transferee)

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(Date)

**28. Compliance Certification.** Each permittee who receives a RGP verification letter from the Corps must provide a signed certification documenting completion of the authorized activity and implementation of any required compensatory mitigation. The success of any required permittee-responsible mitigation, including the achievement of ecological performance standards, will be addressed separately by the District Engineer. The Corps will provide the permittee the certification document with the RGP verification letter. The certification document will include:

(a) A statement that the authorized activity was done in accordance with the RGP authorization, including any general, regional, or activity-specific conditions;

(b) A statement that the implementation of any required compensatory mitigation was completed in accordance with the permit conditions. If credits from a mitigation bank or in-lieu fee program are used to satisfy the compensatory mitigation requirements, the certification must include the documentation required by 33 CFR 332.3(l)(3) to confirm that the permittee secured the appropriate number and resource type of credits; and

(c) The signature of the permittee certifying the completion of the activity and mitigation.

(d) The completed certification document must be submitted to the District Engineer within 30 days of completion of the authorized activity or the implementation of any required compensatory mitigation, whichever occurs later.

**29. Activities Affecting Structures or Works Built by the United States.** An activity that requires Section 408 permission and/or review is not authorized by this RGP until the appropriate Corps office issues the Section 408 permission or completes its review to alter, occupy, or use the USACE project, and the District Engineer issues a written RGP verification.

**30. Pre-Construction Notification.** (a) Contents of Pre-Construction Notification: The PCN must be in writing and include the following information:

(1) Name, address and telephone numbers of the prospective permittee;

(2) Location of the proposed activity;

(3) (i) A description of the proposed activity; the activity's purpose; direct and indirect adverse environmental effects the activity would cause, including the anticipated amount of loss of wetlands, other special aquatic sites, and other waters expected to result from the GP activity, in acres, linear feet, or other appropriate unit of measure; a description of any proposed mitigation measures intended to reduce the adverse environmental effects caused by the proposed activity; and any other NWP(s), regional general permit(s), or individual permit(s) used or intended to be used to authorize any part of the proposed project or any related activity, including other separate and distant crossings for linear projects that require Department of the Army authorization but do not require pre-construction notification. 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.

ii. Type, composition, and quantity of material to be excavated or placed(including temporary material used for cofferdams, etc.).

iii. Location of the source of any imported fill material.

iv. Location of the disposal site for excavated material.

v. The receiving site for excess water (drainage projects).

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

vii. 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;

(4) The PCN must include a delineation of wetlands, other special aquatic sites, and other waters, such as lakes and ponds, and perennial and intermittent streams, on the project site. Wetland delineations must be prepared in accordance with the current method required by the Corps;

(5) If the proposed activity will result in the loss of greater than 1/10-acre of wetlands, the prospective permittee must submit a statement describing how the mitigation requirement will be satisfied 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) For non-federal permittees, if any listed species (or species proposed for listing) or designated critical habitat (or critical habitat proposed for such designation) might be affected or is in the vicinity of the activity, or if the activity is located in designated critical habitat (or critical habitat proposed for such designation), the PCN must include the name(s) of those endangered or threatened species (or species proposed for listing) that might be affected by the proposed activity or utilize the designated critical habitat (or critical habitat proposed for such designation) that might be affected by the proposed activity. Federal permittees must provide documentation demonstrating compliance with the Endangered Species Act;

(7) For non-federal permittees, if the RGP activity might 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 PCN must state which historic property might 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;

(8) For an activity that 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 PCN must identify the Wild and Scenic River or the “study river” (see general condition 15); and

(9) For activity that requires permission from, or review by, the Corps pursuant to 33 U.S.C. 408 because it will alter or temporarily or permanently occupy or use a U.S. Army Corps of Engineers federally authorized civil works project, the pre-construction notification must include a statement confirming that the project proponent has submitted a written request for Section 408 permission from, or review by, the Corps office having jurisdiction over that USACE project.

Form of Pre-Construction Notification: Preconstruction Notification (PCN) Form (Attachment A). A letter containing the required information may also be used.

The PCN must clearly describe the project so that the Corps can determine whether or not the work is necessitated by natural disaster conditions (e.g., flood, fire, mud/rockslide) and complies with the terms and conditions of the RGP.

After reviewing the PCN and determining that the proposed work complies with the terms and conditions of the RGP, the Corps will issue a permit verification authorizing the work to proceed. If the District Engineer determines that the proposed work does not meet the terms and conditions of this RGP or that it does not fall within the intended scope of this RGP, the Corps may verify authorization of the work under one or more nationwide permits or other regional general permits or determine that the work is exempt from regulation under Section 404(f)(1) of the Clean Water Act.

For any activity that the District Engineer determines to have more than minimal environmental effects, individually or cumulatively, or that may be contrary to the public interest, a standard individual permit may be required.

(c) Agency Coordination: (1) The District Engineer will consider any comments from Federal and state agencies concerning the proposed activity’s compliance with the terms

and conditions of the RGP and the need for mitigation to reduce the activity's adverse environmental effects so that they are no more than minimal.

(2) When agency coordination is required, the District Engineer will immediately provide (e.g., via e-mail, facsimile transmission, overnight mail, or other expeditious manner) a copy of the complete PCN to the appropriate Federal or state offices (FWS, state natural resource or water quality agency, and EPA). These agencies will have 10 calendar days from the date the material is transmitted to notify the District Engineer via telephone, facsimile transmission, or e-mail that they intend to provide substantive, site-specific comments. The comments must explain why the agency believes the adverse environmental effects will be more than minimal. If so contacted by an agency, the District Engineer will wait an additional 15 calendar days before making a decision on the pre-construction notification. The District Engineer will fully consider agency comments received within the specified time frame concerning the proposed activity's compliance with the terms and conditions of the RGP, including the need for mitigation to ensure that the net adverse environmental effects of the proposed activity are no more than minimal. The District Engineer will provide no response to the resource agency, except as provided below. The District Engineer will indicate in the administrative record associated with each pre-construction notification that the resource agencies' concerns were considered.

#### **FURTHER INFORMATION:**

District Engineers have authority to determine if an activity complies with the terms and conditions of an RGP.

Congressional Authorities. The permittee has been authorized to undertake the activity described above pursuant to:

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

Limits of this authorization:

- (a) This RGP does not obviate the need to obtain other federal, state, or local authorizations required by law.
- (b) This RGP does not grant any property rights or exclusive privileges.
- (c) This RGP does not authorize any injury to the property or rights of others.
- (d) This RGP does not authorize interference with any existing or proposed federal project.

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.

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

**Reevaluation of Permit Decision.** The Corps 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:

The permittee fails to comply with the terms and conditions of this permit.

The information provided by the permittee in support of the pre-construction notification proves to have been false, incomplete, or inaccurate (See 5 above).

Significant new information surfaces which the Corps 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. Thereferenced 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. The permittee will be required to pay for any corrective measures ordered by the Corps, and if the permittee fail to comply with such directive, the Corps may in certain situations (such as those specified in 33 CFR 209.170) accomplish the corrective measures by contract or otherwise and bill the permittee for the cost.

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

The permittee must allow representatives from the Corps 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 permit.

**ATTACHMENT:**

A. PCN Form

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



\_\_\_\_\_  
Kelly Allen, Chief  
Albuquerque District Regulatory Division

22 September 2021

\_\_\_\_\_  
Date

\_\_\_\_\_  
Eric Laux, Chief  
Omaha District Regulatory Branch

22 September 2021

\_\_\_\_\_  
Date