



Regional General Permit 37

U.S. ARMY CORPS OF ENGINEERS

BUILDING STRONG®

STREAM STABILIZATION PROJECTS IN COLORADO

EFFECTIVE DATE: October XX, 2022

EXPIRATION DATE: October XX, 2027

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 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. The average stream width measured at the OHWM is no less than 20 feet.
2. No material is placed in excess of the minimum needed for erosion protection.
3. The activity is no more than 1,000 feet in length along the treated bank.
4. The activity will not exceed an average of 2 cubic yards 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.
5. The activity will not exceed 0.5 acre of permanent impacts to wetlands. Any bed form modification is limited to the minimum necessary for erosion control or prevention and not to exceed 1 acre of total permanent impact; such modifications must be in the immediate vicinity of the project.

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:

https://www.spa.usace.army.mil/Portals/16/docs/civilworks/regulatory/2021.05.07_CO%20Maps-combined_REDUCED.pdf?ver=Jh_SISEA46Kcs5B_BSCsKQ%3d%3d

Denver Regulatory Office
(Omaha District)
9307 S Wadsworth Blvd.
Littleton, CO 80128-6901
Phone: (303) 979-4120

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

Southern Colorado Regulatory Office
(Albuquerque District)
201 W 8th St., Suite 350
Pueblo, CO 81003-3040
Phone: (719) 543-9459

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

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 in addition to the Colorado regional permit pre-construction notification (PCN) form (Attachment A):

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 landowner must allow Corps representatives 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 the RGP. 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 United States 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. Compensatory mitigation at a minimum one-for-one ratio will be required for all wetland losses that exceed 1/10 acre and require pre-construction notification, 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 that require pre-construction notification, 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.
6. Compensatory mitigation at a minimum one-for-one ratio will be required for all losses of stream bed that exceed 3/100 acre and require pre-construction notification, 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. This compensatory mitigation requirement may be satisfied through the restoration or enhancement of riparian areas next to streams in accordance with paragraph (e) of Permit Condition 26. For losses of stream bed of 3/100 acre or less that require pre-construction notification, 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. Compensatory mitigation for losses of streams should be provided, if practicable, through stream rehabilitation, enhancement, or preservation since streams are difficult-to-replace resources (see 33 CFR 332.3(e)(3)). See Permit Condition 26 for additional information.

7. Imagery and Drawings:

a. A set of drawings per established standards and guidelines for maps and drawings (for projects located within Albuquerque District refer to the map standards at:

<http://www.spd.usace.army.mil/Portals/13/docs/regulatory/standards/MapStand020816.pdf>) Additionally, the drawings must include the following elements:

- (1) Location map, including name of the waterway, nearest town, county, and coordinates (NAD83) of each structure and at both ends of the work area;
- (2) 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;
- (3) 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
- (4) 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.

b. Photo imagery:

- (1) Pre-construction photos depicting the physical setting (to be compared to post construction site conditions from the same photo points);
- (2) Photos should contain figure labels with time, date, bearing, and a general description of the site; and
- (3) Photos should be referenced on a map, using the mapping standards located at the link in 7(a) above.

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 United States. 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 United States:

- 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 and location;
 - (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- to 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.
- d. The project description must also include information such as the existing and proposed bank slopes and width-to-depth ratio of the channel, with rationale assuring that the new channel geometry will be stable.
- e. The project description must also include a discussion on the vegetative techniques that were considered and if they were not incorporated then 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 Tribal Lands, the applicant must request water quality certification (WQC) with the Tribal Nations through a pre-filing request and 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 Permit Condition 28):
 - a. Southern Ute Indian Tribal Lands. WQCs for projects located on Southern Ute Indian Tribal Lands must be obtained from the Southern Ute Indian Tribe. For assistance, contact the Southern Ute Indian Tribe Environmental Programs Division, P.O. Box 737, MS 84, Ignacio, CO 81137, (970) 563-0135 (fax: 970-563-0384), or visit the webpage: <https://www.southernute-nsn.gov/justice-and-regulatory/epd/water-quality/>.
 - b. Ute Mountain Ute Tribal 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 Permit Condition 22).
11. For non-federal permittees, if the RGP activity may have the potential to cause effects to a historic property listed in, determined to be eligible for listing in, or potentially eligible for listing in 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 and 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 Permit Condition 24).
12. Applicants are encouraged to provide the Corps with electronic files to expedite agency coordination and permit review. Submittals may be limited by file 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).
13. 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.
14. 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: <https://dwr.colorado.gov/division-offices>.

15. 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.

PERMIT CONDITIONS: To qualify for this RGP authorization, the prospective permittee must comply with the following permit conditions, in addition to any regional, included below, 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 five 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. Activities authorized by this permit shall be designed to withstand expected high flows and maintain pre-construction surface flow rates from the site to the maximum extent practicable;
3. This RGP does not authorize stream stabilization projects that are a necessary component of residential, commercial, and institutional developments;
4. The construction of recreational features (e.g., water parks, kayak courses) and flood control projects are not authorized by this permit;
5. 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 and no loss of greater than 1000 linear feet along the treated bank;
6. 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;
7. 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.

8. **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.
9. **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.
10. **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.
11. **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.
12. **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.
13. **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. 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).
14. **Fills Within 100-Year Floodplains.** The activity must comply with applicable FEMA-approved state or local floodplain management requirements.
15. **Equipment.** Heavy equipment working in wetlands or mudflats must be placed on mats, or other measures must be taken to minimize soil disturbance.
16. **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.

17. **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.
18. **Proper Maintenance.** Any authorized structure or fill shall be properly maintained, including maintenance to ensure public safety and compliance with applicable RGP permit conditions, as well as any activity-specific conditions added by the district engineer to a RGP authorization.
19. **Single and Complete Project.** The activity must be a single and complete project. The same general permit cannot be used more than once for the same single and complete project.
20. **Wild and Scenic Rivers.** (a) No general permit 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 permittee must submit a pre-construction notification (see permit condition 32). 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/>.
21. **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.
22. **Endangered Species.** (a) No activity is authorized under any general permit 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 any general permit 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)). If pre-construction notification is required for the proposed activity, 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) Non-federal permittees must submit a pre-construction notification to the district engineer if any listed species (or species proposed for listing) or designated critical habitat (or critical habitat proposed 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, and shall not begin work on the activity until notified by the district engineer that the requirements of the ESA have been satisfied and that the activity is authorized. 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. 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 pre-construction notification. For activities where the non-federal applicant has identified listed species (or species proposed for listing) or designated critical habitat (or critical habitat proposed for such designation) 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 species proposed for listing or designated critical habitat (or critical habitat proposed for such designation), or until ESA section 7 consultation or conference has been 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. (d) As a result of formal or informal consultation or conference with the FWS the district engineer may add species-specific permit conditions to any general permit. (e) Authorization of an activity by a general permit 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 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 general permit 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 general permit 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 general permit 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 general permit 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 general permit 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 pages at <http://www.fws.gov/>.

23. Migratory Birds and Bald and Golden Eagles. The permittee is responsible for ensuring that an action authorized by a general permit 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.
24. Historic Properties. (a) No activity is authorized under any general permit 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)). If pre-construction notification is required for the proposed RGP activity, 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) Non-federal permittees must submit a pre-construction notification to the district engineer 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. For such activities, 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) Where the non-federal applicant has identified historic properties on which the proposed RGP activity might have the potential to cause effects and has 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 to historic properties or that NHPA Section 106 consultation has been completed. For non-federal permittees, the district engineer will notify the prospective permittee within 45 days of receipt of a complete pre-construction notification whether NHPA Section 106 consultation is required. If NHPA Section 106 consultation is required, the district engineer will notify the non-federal applicant that he or she cannot begin the activity 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. (e) 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.

25. 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 a general permit, 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.
26. 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 and require pre-construction notification, 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 that require pre-construction notification, 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) Compensatory mitigation at a minimum one-for-one ratio will be required for all losses of stream bed that exceed 3/100-acre and require pre-construction notification, 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. This compensatory mitigation requirement may be satisfied through the restoration or enhancement of riparian areas next to streams in accordance with paragraph (e) of this permit condition. For losses of stream bed of 3/100-acre or less that require pre-construction notification, 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. Compensatory mitigation for losses of streams should be provided, if practicable, through stream rehabilitation, enhancement, or preservation since streams are difficult-to-replace resources (see 33 CFR 332.3(e)(3)). (e) Compensatory mitigation plans for general permit 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 general permits, 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).) 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. For example, if a general permit has an acreage limit of 1/2 acre, it cannot be used to authorize any general permit activity resulting in the loss of greater than 1/2-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 a general permit activity already meeting the established acreage limits also satisfies the no more than minimal impact requirement for 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 activities resulting in the loss of marine or estuarine resources, permittee-responsible mitigation may be environmentally preferable if there are no mitigation banks or in-lieu fee programs in the area that have marine or estuarine credits available for sale or transfer to the permittee. For permittee-responsible mitigation, the special conditions of this 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.

27. **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.
28. **Water Quality.** (a) Where the certifying authority (state, authorized tribe, or EPA, as appropriate) has not previously certified compliance of a general permit with CWA section 401, a CWA section 401 water quality certification for the proposed discharge must be obtained or waived (see 33 CFR 330.4(c)). If the permittee cannot comply with all of the conditions of a water quality certification previously issued by certifying authority for the issuance of the general permit, then the permittee must obtain a water quality certification or waiver for the proposed discharge in order for the activity to be authorized by a general permit. (b) The proposed discharge is not authorized by this RGP until water quality certification is obtained or waived. If the certifying authority issues a water quality certification for the proposed discharge, the permittee must submit a copy of the certification to the district engineer. The discharge is not authorized by this RGP until the district engineer has notified the permittee that the water quality certification requirement has been satisfied by the issuance of a water quality certification or a waiver. (c) The district engineer or certifying authority may require additional water quality management measures to ensure that the authorized activity does not result in more than minimal degradation of water quality. Water quality certifications are available at: <http://www.spa.usace.army.mil/reg/wqc>. 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;
29. **Regional and Case-By-Case Conditions.** The activity must comply with any regional conditions that may have been added by the Division Engineer (see 33 CFR 330.4(e)) and

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.

30. **Compliance Certification.** Each permittee who receives an 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. 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.
31. **Activities Affecting Structures or Works Built by the United States.** If a general permit activity also requires review by, or permission from, 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 (USACE) federally authorized Civil Works project (a "USACE project"), the prospective permittee must submit a pre-construction notification. See paragraph (b)(10) of permit condition 32. An activity that requires section 408 permission and/or review is not authorized by a general permit 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 general permit verification.
32. **Pre-Construction Notification.** (a) *Timing.* As noted above, a PCN is required for any proposed activity under this RGP. The prospective permittee must notify the district engineer by submitting a pre-construction notification (PCN) as early as possible. The district engineer must determine if the PCN is complete within 30 calendar days of the date of receipt and, if the PCN is determined to be incomplete, notify the prospective permittee within that 30 day period to request the additional information necessary to make the PCN complete. The request must specify the information needed to make the PCN complete. As a general rule, district engineers will request additional information necessary to make the PCN complete only once. However, if the prospective permittee does not provide all of the requested information, then the district engineer will notify the prospective permittee that the PCN is still incomplete and the PCN review process will not commence until all of the requested information has been received by the district engineer. The prospective permittee shall not begin the activity until either: (1) He or she is notified in writing by the district

engineer that the activity may proceed under this RGP with any special conditions imposed by the district or division engineer. If the proposed activity requires a written waiver to exceed specified limits of this RGP, the permittee may not begin the activity until the district engineer issues the waiver. If the district or division engineer notifies the permittee in writing that an individual permit is required within 45 calendar days of receipt of a complete PCN, the permittee cannot begin the activity until an individual permit has been obtained. Subsequently, the permittee's right to proceed under this RGP may be modified, suspended, or revoked only in accordance with the procedure set forth in 33 CFR 330.5(d)(2). (b) *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) Identify the specific general permit the prospective permittee wants to use to authorize the proposed activity; (4) (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 this RGP 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 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) For linear projects where one or more single and complete crossings require pre-construction notification, the PCN must include the quantity of anticipated losses of wetlands, other special aquatic sites, and other waters for each single and complete crossing of those wetlands, other special aquatic sites, and other waters (including those single and complete crossings authorized by a general permit that do not require PCNs). This information will be used by the district engineer to evaluate the cumulative adverse environmental effects of the proposed linear project and does not change those non-PCN general permit activities into general permit PCNs. (iii) Sketches should be provided when necessary to show that the activity complies with the terms of this RGP. (Sketches usually clarify the activity and when provided results in a quicker decision. Sketches should contain sufficient detail to provide an illustrative description of the proposed activity (e.g., a conceptual plan), but do not need to be detailed engineering plans); (5) 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. The permittee may ask the Corps to delineate the special aquatic sites and other waters on the project site, but there may be a delay if the Corps does the delineation, especially if the project site is large or contains many wetlands, other special aquatic sites, and other waters. Furthermore, the 45-day period will not start until the delineation has been submitted to or completed by the Corps, as appropriate; (6) If the proposed activity will result in the loss of

greater than 1/10-acre of wetlands or 3/100-acre of stream bed and a PCN is required, 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. (7) 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; (8) 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; (9) 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 permit condition 20); and (10) For a general permit 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. (c) *Form of Pre-Construction Notification*: The Colorado regional permit PCN form must be used for this RGP. Applicants may provide electronic files of PCNs and supporting materials if the district engineer has established tools and procedures for electronic submittals. (d) *Agency Coordination*: The district engineer will consider any comments from Federal and state agencies concerning the proposed activity's compliance with the terms and conditions of this RGP and the need for mitigation to reduce the activity's adverse environmental effects so that they are no more than minimal.

33. If the district engineer determines that the adverse environmental effects of the proposed activity are more than minimal, then the district engineer will notify the applicant either: (a) that the activity does not qualify for authorization under this RGP and instruct the applicant on the procedures to seek authorization under an individual permit; (b) that the activity is authorized under the RGP subject to the applicant's submission of a mitigation plan that would reduce the adverse environmental effects so that they are no more than minimal; or (c) that the activity is authorized under the RGP with specific modifications or conditions. Where the district engineer determines that mitigation is required to ensure no more than

minimal adverse environmental effects, the activity will be authorized with activity-specific conditions that state the mitigation requirements. The authorization will include the necessary conceptual or detailed mitigation plan or a requirement that the applicant submit a mitigation plan that would reduce the adverse environmental effects so that they are no more than minimal. When compensatory 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.

34. 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).
35. Non-native materials include clean brick, broken concrete, cinder block, slab material, wire mesh, such as gabion baskets, grout, and sheet piling. Use of broken concrete with exposed rebar and tires (loose or formed into bales), and other materials listed under Permit Condition 34 of this RGP is prohibited in all waters of the United States. Rock, riprap, and woody debris are considered native material. For all stream stabilization activities involving non-native material, permittees must demonstrate that alternative engineering methods utilizing native materials are not practicable (with respect to cost, existing technology, and logistics), before the Corps will consider whether the use of non-native material constitutes suitable fill.
36. 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 approved upland area in such a manner that it cannot enter a waterway or wetland;
37. The use of concrete/grouting is not allowed in perennial streams unless the Corps determines on a case-by-case basis that the impacts will result in minimal adverse effects to the aquatic resource.
38. 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 general permit conditions, as well as any activity-specific conditions added by the District Engineer to this 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 with written approval from the District Engineer. 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
39. Construction of Diversions and Intakes. The permittee must submit a pre-construction notification (PCN) to the District Engineer in accordance with Permit Condition 32 prior to commencing any activity that involves the construction of new water diversions and intakes.

40. Gold Medal Waters. 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) may 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: <https://ndismaps.nrel.colostate.edu/index.html?app=FishingAtlas>, 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

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:

Spray/soak equipment with water greater than 140 degrees Fahrenheit for at least 10 minutes; or

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: The bankfull stage corresponds to the discharge at which the channel maintenance is the 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 results 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.

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.

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.

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. 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. The acreage of loss of waters of the United States is a threshold measurement of the impact to jurisdictional waters or wetlands 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. 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: The term ordinary high water mark means that line on the shore established by the fluctuations of water and indicated by physical characteristics such as a clear, natural line impressed on the bank, shelving, changes in the character of soil, destruction of terrestrial vegetation, the presence of litter and debris, or 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.

Pre-Construction Notification: A request submitted by the project proponent to the Corps for confirmation that a particular activity is authorized by nationwide permit. The request may be a permit application, letter, or similar document that includes information about the proposed work and its anticipated environmental effects. Pre-construction notification may be required by the terms and conditions of a nationwide permit, or by regional conditions. A pre-construction notification may be voluntarily submitted in cases where pre-construction notification is not required and the project proponent wants confirmation that the activity is authorized by nationwide permit.

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 jurisdictional 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 “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)).

FURTHER INFORMATION:

1. Congressional Authorities. You have 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); and
 - b. Section 404 of the Clean Water Act (33 U.S.C. 1344);
2. Limits of this authorization:
 - a. This permit does not obviate the need to obtain other federal, state, or local authorizations required by law;
 - b. This permit does not grant any property rights or exclusive privileges;
 - c. This permit does not authorize any injury to property or rights of others; and
 - d. This permit does not authorize interference with any existing or proposed federal project.
3. Limits of Federal Liability. In issuing this permit, the federal government does not assume any liability for the following:
 - a. Damages to the permitted project, or uses thereof, as a result of other permitted or unpermitted activities or from natural causes;
 - b. Damages to the permitted project, or uses thereof, as a result of current or future activities undertaken by or on behalf of the United States in the public interest;
 - c. Damages to persons, property, or 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;
4. 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.

5. Re-evaluation 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:
 - a. The permittee fails to comply with the terms and conditions of this permit.;
 - b. The information provided by the permittee in support of the pre-construction notification proves to have been false, incomplete, or inaccurate; or
 - c. 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. The referenced enforcement procedures provide for the issuance of an administrative order requiring you to comply with the terms and conditions of your permit and for the initiation of legal action where appropriate. You will be required to pay for any corrective measures ordered by this office, and if you fail to comply with such directive, this office may in certain situations (such as those specified in 33 CFR 209.170) accomplish the corrective measures by contract or otherwise and bill you for the cost.

6. Extensions. Permit Condition 1 establishes a time limit for the completion of the activity authorized by this permit. Unless there are circumstances requiring either a prompt completion of the authorized activity or a reevaluation of the public interest decision, the Corps will normally give favorable consideration to a request for an extension of this time limit; and
7. 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.

This permit becomes effective when the federal officials, designated to act for the Secretary of the Army on behalf of the Albuquerque and Omaha District Engineers, have signed below.

Kelly Allen, Chief
Albuquerque District Regulatory Division

DATE:

Eric Laux, Chief
Omaha District Regulatory Division

DATE: