

DEPARTMENT OF THE ARMY PERMIT

Permittee General Public

Permit No. RGP 96-02, Amendment #2; 2007-1779-BIS

Issuing Office Omaha District, Corps of Engineers

NOTE: The term "you" and its derivatives, as used in this permit, means the permittee or any future transferee. The term "this office" refers to the appropriate district or division office of the Corps of Engineers having jurisdiction over the permitted activity or the appropriate official of that office acting under the authority of the commanding officer.

You are authorized to perform work in accordance with the terms and conditions specified below.

Project Description: Construction or installation of permanent or portable irrigation or domestic water intake structures. Also, the installation of temporary commercial intakes associated with water needs related to upland construction projects (e.g., dust control, compaction, etc.). Authorized activities also include energy support structures associated with the installation and operation of the intake system.

This RGP expires on February 29, 2013.

Project Location: Missouri River along the right and left banks from mile 1231.94 (South Dakota-North Dakota State line) to mile 1586.63 (North Dakota-Montana State line), including the mainstem dam reservoirs.

Permit Conditions:

General Conditions:

1. The time limit for completing the work authorized ends on See Special Condition 1. If you find that you need more time to complete the authorized activity, submit your request for a time extension to this office for consideration at least one month before the above date is reached.
2. You must maintain the activity authorized by this permit in good condition and in conformance with the terms and conditions of this permit. You are not relieved of this requirement if you abandon the permitted activity, although you may make a good faith transfer to a third party in compliance with General Condition 4 below. Should you wish to cease to maintain the authorized activity or should you desire to abandon it without a good faith transfer, you must obtain a modification of this permit from this office, which may require restoration of the area.
3. If you discover any previously unknown historic or archeological remains while accomplishing the activity authorized by this permit, you must immediately notify this office of what you have found. We will initiate the Federal and state coordination required to determine if the remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.

4. If you sell the property associated with this permit, you must obtain the signature of the new owner in the space provided and forward a copy of the permit to this office to validate the transfer of this authorization.
5. If a conditioned water quality certification has been issued for your project, you must comply with the conditions specified in the certification as special conditions to this permit. For your convenience, a copy of the certification is attached if it contains such conditions.
6. You must allow representatives from this office 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 your permit.

Special Conditions: (See Appendix A, pages 4 thru 7)

After a detailed and careful review of all of the conditions contained in this permit, the permittee acknowledges that, although said conditions were required by the Corps of Engineers, nonetheless the permittee agreed to those conditions voluntarily to facilitate issuance of the permit and the permittee will comply fully with all the terms of the permit conditions.

Further Information:

1. Congressional Authorities: You have been authorized to undertake the activity described above pursuant to:
 - (X) Section 10 of the River and Harbors Act of 1899 (33 U.S.C. 403).
 - (X) Section 404 of the Clean Water Act (33 U.S.C. 1344).
 - () Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972 (33 U.S.C. 1413).
2. Limits of this authorization.
 - a. This permit does not obviate the need to obtain other Federal, state, or local authorizations required by law.
 - b. This permit does not grant any property rights or exclusive privileges.
 - c. This permit does not authorize any injury to the property or rights of others.
 - d. This permit does not authorize interference with any existing or proposed Federal 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 to other permitted or unpermitted activities or structures caused by the activity authorized by this permit.
 - d. Design or construction deficiencies associated with the permitted work.

e. Damage claims associated with any future modification, suspension, or revocation of this permit.

4. Reliance on Applicant's Data: The determination of this office that issuance of this permit is not contrary to the public interest was made in reliance on the information you provided.

5. Reevaluation of Permit Decision. This office may reevaluate its decision on this permit at any time circumstances warrant. Circumstances that could require a reevaluation include, but are not limited to, the following:

a. You fail to comply with the terms and conditions of this permit.

b. The information provided by you in support of your permit application proves to have been false, incomplete, or inaccurate (See 4 above).

c. Significant new information surfaces which this office did not consider in reaching the original public interest decision.

Such a reevaluation may result in a determination that it is appropriate to use the suspension, modification, and revocation procedures contained in 33 CFR 325.7 or enforcement procedures such as those contained in 33 CFR 326.4 and 326.5. The referenced enforcement procedures provide for the issuance of an administrative order requiring you 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. General condition 1 establishes a time limit for the completion of the activity authorized by this permit. Unless there are circumstances requiring either a prompt completion of the authorized activity or a reevaluation of the public interest decision, the Corps will normally give favorable consideration to a request for an extension of this time limit.

Your signature below, as permittee, indicates that you accept and agree to comply with the terms and conditions of this permit.

(PERMITTEE)

(DATE)

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

DAVID C. PRESS
(DISTRICT ENGINEER)
Colonel, Corps of Engineers

(DATE)

By:
MARTHA S. CHIEPLY, Chief, Regulatory Branch,
Operations Division

When the structures or work authorized by this permit are still in existence at the time the property is transferred, the terms and conditions of this permit will continue to be binding on the new owner(s) of the property. To validate the transfer of this permit and the associated liabilities associated with compliance with its terms and conditions, have the transferee sign and date below.

(TRANSFEREE)

(DATE)

APPENDIX A - SPECIAL CONDITIONS
RGP 96-02, Amendment #2

1. Upon receiving approval to perform work under this RGP, the permittee will have one (1) year to complete the work. If additional time is needed, a request for an extension of time must be submitted to the Corps at least 45 days prior to the permit expiration date.
2. This permit authorizes only the proposed work shown on the attached drawing and described within this permit instrument.
3. No attempt shall be made to prevent the full and free use by the public of all navigable waters at or adjacent to the activity authorized by this permit.
4. The permittee understands and agrees that if future operations by the United States require the removal, relocation, or other alteration of the structure or work herein authorized, or if in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the Corps, 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.
5. The permittee agrees to make every reasonable effort to prosecute the construction or work authorized herein in a manner so as to minimize any adverse impact of the construction or work on fish, wildlife, and natural environmental values.
6. All construction debris will be disposed of on land in a non-wetland, non-timbered, non-floodplain upland site in such a manner that it cannot enter a waterway or wetland.
7. The permittee will establish and carry out a program for immediate removal of debris during construction in order to prevent the accumulation of unsightly, deleterious and/or potentially polluted materials.
8. Equipment for handling and conveying materials during construction shall be operated to prevent dumping or spilling the materials into a waterway, except as approved herein.
9. Steps will be taken to prevent materials spilled or stored on site from washing into wetlands or waterways as a result of cleanup activities, natural runoff, or flooding, and that during construction, any materials which are accidentally spilled into these areas will be retrieved.
10. During construction and subsequent operation of this facility, no petroleum products, chemicals, or other deleterious materials shall be allowed to enter or be disposed of in such a manner so that they could enter the water, and that precautions be taken to prevent entry of these materials into the water.

APPENDIX A - SPECIAL CONDITIONS
RGP 96-02, Amendment #2

11. Fuel storage tanks above ground will be diked or curbed or other suitable means provided to prevent the spread of liquids in case of leakage in the tanks or piping. Such dike, curbed area, or device shall have a capacity at least equal in volume to that of the tanks plus 10 percent.

12. The use of machinery in the waterway will be kept to a minimum.

13. The clearing of vegetation will be limited to that which is absolutely necessary for construction of the project.

14. All areas along the bank disturbed or newly created by the construction activity will be seeded with vegetation both in kind and in quantity (this will include both the herbaceous and woody species) that are indigenous to the area for protection against subsequent erosion and to minimize adverse impacts to fish and wildlife resources. This may require maintenance such as reseeding, watering, implementation of grazing restrictions, fencing, etc. to ensure the survival of the replacement vegetation.

15. All work in the waterway will be performed in such a manner so as to minimize increases in suspended solids and turbidity that may degrade water quality and damage aquatic life outside the immediate area of operation.

16. All erosion and sediment control practices shall be in place prior to any grading or filling operations and installation of proposed structures or utilities. They shall remain in place and be maintained until construction is completed and the area is stabilized.

17. All dredged or excavated materials will be placed on an upland site above the ordinary high water line in a confined area, not classified as a wetland, to prevent the return of such materials to the waterway.

18. When the Corps has been notified that an activity is adversely affecting fish or wildlife resources or the harvest thereof and the Corps subsequently directs remedial measures, the permittee will comply with such directions as may be received to suspend or modify the activity to the extent necessary to mitigate or eliminate the adverse effect as required.

19. In that portion of the Missouri River above river mile 1519 in Williams and McKenzie Counties, the following conditions are applicable:

- Only floating intakes are authorized.
- The intakes will be located over water with a minimum depth of 20 feet.
- If the 20-foot depth is not attainable, the intake will be located over the deepest water available at the start of the pumping season.
- If the water depth beneath the intake screen falls below 6 feet, the intake will be moved to deeper water or the maximum intake velocity limited to 1/4-foot per second, with the intake placed over the maximum practicable attainable depth.

APPENDIX A - SPECIAL CONDITIONS
RGP 96-02, Amendment #2

20. Intakes located in Lake Sakakawea, below river mile 1519, and in the Missouri River below Garrison Dam are subject to the following conditions:

- The intakes will be submerged.
- At the beginning of the pumping season, the intake will be placed at least 20 vertical feet below the existing water level.
- The intake will be elevated 2 to 4 feet off the bottom of the river or reservoir bed.
- If the 20-foot depth is not attainable, then the intake velocity will be limited to 1/4-foot per second, with the intake placed at the maximum practicable attainable depth.

21. Intakes must be screened and maintained with material having a maximum mesh opening of one quarter (1/4) inch. Prior to pumping at the beginning of each recreation season, the screen shall be inspected and replaced if the screen has deteriorated. Johnson intake screens are allowed provided the distance between wires is one-eighth (1/8) inch or less and are maintained seasonally.

22. Intake velocities will not exceed 0.5 cubic feet per second.

23. Pumping plant noise levels shall not exceed 75 dB at 50 feet.

24. If the activity includes any dredging or placement of fill material, the installation will not occur below the water surface from April 15 to June 1.

25. If the intake lines are to be buried beneath the riverbed, the trench shall be backfilled to the original contours of the riverbed.

26. Pumps placed on Government-owned land will be located so as to minimize mechanical and electrical hazards to the public, as well as minimize visual impacts. This may be accomplished by locating pumps underground (minimally below surface) in concrete or wooden structures with lockable manhole type covers. If an underground location is impracticable, some type of natural landscaping or other tamper-proof structure will be considered.

27. Electrical service to submerged motors will be controlled from a panel located on land. Submersible pumps located in less than four feet of water must be marked by a buoy with an orange diamond.

28. Energy support structures carrying electrical lines ranging from 1kV to 69kV will be designed in a raptor friendly manner. Information and recommendations can be found in the Edison Electric Institute's current guidelines for preventing raptor electrocutions; "Suggested Practices for Raptor Protection on Power Lines: The State of the Art in 1996".

29. Permanent non-residential intake structures will be located above or flood proofed to above the 100-year flood water surface elevation.

APPENDIX A - SPECIAL CONDITIONS
RGP 96-02, Amendment #2

30. The permittee, the permittee's contractor, or any of the employees, subcontractors or other persons working in the performance of the contract shall report any endangered species at the project site. The activity herein authorized shall not jeopardize a threatened or endangered species, or destroy or adversely modify the critical habitat of such species, as identified under the Endangered Species Act.
31. If historic properties or archeological sites/resources are unearthed during excavation, the permittee will immediately cease construction and notify the Corps of the find. No further work will occur until the resource(s) are evaluated and the effect determined, mitigated or eliminated.
32. The Corps shall be notified, in writing, of any changes in the project design. No changes in design that impact wetlands or any waterway shall be undertaken without authorization.
33. Upon notification from the Corps that work being performed does not comply with, or fall within the scope of, this permit, the responsible party will take immediate steps, as directed by the Corps, to bring the work into compliance with this authorization.
34. This authorization does not obviate the need to obtain any other Federal, state or local authorizations as required by law, does not grant any property rights or exclusive privileges, does not authorize any injury to the property rights of others, and does not authorize interference with any existing or proposed Federal project.
35. In issuing this permit and giving approval to perform work under this permit, the Federal Government does not assume any liability for damages to the permitted project, or uses thereof, as a result of current or future activities undertaken by or on behalf of the United States in the public interest; damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this permit; design or construction deficiencies associated with the permitted work; or damage claims associated with any future modification, suspension, or revocation of this permit.
36. Representatives from the Corps must be allowed 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.
37. The Corps may re-evaluate its decision on any authorization given in accordance with this permit at any time that circumstances may warrant. Circumstances that could require re-evaluation include, but are not limited to: (1) failure to comply with the terms and conditions of the permit; (2) the information provided in support of the application proves to be false, incomplete, or inaccurate; and (3) significant new information surfaces which the Corps did not consider in reaching a decision.
38. The permittee must comply with any additional special conditions that may be added by the Corps.

APPENDIX B - GENERAL CRITERIA
RGP 96-02, Amendment #2

The following criteria govern the duration, utilization, and applicability of this Regional General Permit:

1. The cumulative impacts of this RGP may be subject to reevaluation at the discretion of the District Engineer at any time, but will be reevaluated at the end of five (5) years.
2. The District Engineer has the discretion to require an individual permit on a case-by-case basis for any activity described herein.
3. An activity which may affect historic properties listed, or eligible for listing, in the National Register of Historic Places, is not authorized by this RGP until the Corps has complied with the provisions of Title 33, CFR Part 325, Appendix C.
4. Any proposed project located in a site included in the National Registry of Natural Landmarks or any area named in Acts of Congress or Presidential Proclamations as National Rivers, National Wilderness Areas, National Recreation Areas, National Lakeshores, National Parks, National Monuments, and such areas as may be established under Federal law for similar and related purposes, such as estuarine and marine sanctuaries, will not be considered under this RGP.
5. Any proposed project located in an area classified as a wetland or identified as being environmentally sensitive other special aquatic sites will not be considered under this RGP.
6. No project will be authorized under this RGP which adversely affects endangered and/or threatened species or their critical habitat.
7. Municipal and industrial intakes will not be considered under this RGP.
8. Submersible pumps attached to boat docks or other floating devices will not be considered under this RGP on Lake Sakakawea and Lake Oahe.
9. During low water levels, intake lines only may be extended as necessary to obtain water. Relocation of pumps, increased pump capacities, etc. will not be allowed under this RGP.
10. Prior to receiving consideration under this RGP, each applicant will be required to contact the North Dakota State Water Commission, 900 East Boulevard, Bismarck, North Dakota 58505 regarding a water use permit. If a water use permit is required, a copy of the permit must be furnished to the Corps.
11. Prior to obtaining authorization under this RGP, applicants will be required to obtain a right-of-way easement from the appropriate authority in any case in which the facility is located on land owned by the U.S. Government.
12. Permittees are advised that operation of the Missouri River main stem reservoirs frequently requires adjustments in releases resulting in downstream stage fluctuations. Reservoir regulation forecasts prepared by the Corps of Engineers, Reservoir Control Center are available on the Water Management Section of the Northwestern Division, Missouri River Region home page at www.nwd-mr.usace.army.mil/rcc. They are entitled "Monthly Study" and "Three-Week Forecast" under "Forecast Data". Monthly studies are updated the first of the month, and three-week studies are updated every Wednesday. During flood events, studies are updated more frequently. Call in number to the Reservoir Control Center is 402-697-2642.

APPENDIX C - APPLICATION PROCEDURES
RGP 96-02, Amendment #2

To receive consideration under this RGP, anyone proposing to perform work authorized by the RGP is required to submit a Notice of Intent to undertake a particular project to the U.S. Army Corps of Engineers, Bismarck Regulatory Office, 1513 South 12th Street, Bismarck, North Dakota 58504. The Notice of Intent must clearly describe the proposed work so the Corps can clearly determine whether or not the work complies with the terms, conditions, and limitations of this RGP, and must contain the following information:

1. Name, address, and telephone number of the applicant responsible for the work and the owner of the affected land, if other than the applicant.
2. A written description of the proposed work including the following information:
 - a. Type of pump and power source.
 - b. Type and design of pump support system and/or anchoring device.
 - c. Design pumping capacity (gallons per minute or cubic feet per second).
 - d. Pump location relative to the ordinary high water line.
 - e. Type, size, screen data, and elevation of intake device.
 - f. Type and size of intake and discharge lines.
 - g. Type and size of electric lines (if applicable).
3. A site map with exact project location clearly marked and the legal description of the project location including section, township, and range.
4. A drawing on 8 1/2 by 11-inch paper showing the plan view and elevation view.
5. Photographs of the area immediately in front of the proposed intake, immediately upstream and downstream of the intake site.
6. Names, addresses, and telephone numbers of adjacent property owners.
7. A water use permit from the North Dakota State Water Commission, if required.
8. A right-of-way easement from the appropriate authority in any case in which the facility is located on land owned by the U.S. Government.

No project may proceed until notification approval has been received from the Corps of Engineers.