

DEPARTMENT OF THE ARMY PERMIT

Permittee: **US Fish & Wildlife Service, NE Game & Parks Commission, Cooperators***

*Cooperators are other Federal, State or Local agencies, citizen groups or private landowners that construct projects in co-operation with and under approval of the USFWS &/or NGPC

Permit No: **NE 91-74960 General Permit 91-02 Amendment #3**

Issuing Office: **Kearney Regulatory 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:

1. WETLAND RESTORATION PROJECTS USING DITCH PLUGS/FILLS, WATER CONTROL STRUCTURES, INSTREAM CHANNEL DROP STRUCTURES AND FILLING REUSE PITS

a. Ditch Plugs/Fills -- Ditches shall be plugged/filled using the spoil material originally excavated from the ditch, if the spoil pile still exists. Fill material may be excavated from the adjacent wetland provided the excavated material is limited to silt deposits within the wetland (excavation cannot be so deep that the clay pan is disrupted). The resulting depth cannot exceed three feet. Or, material may be carried in from an outside source. The fill areas should be overfilled by approximately 20% to allow for settling.

b. Water Control Structures -- Water control structures are not required in restoration projects and are only recommended to facilitate water management in the wetland. For most projects, passive methods of water control are recommended. If a water control structure is used, the structure shall be capable of temporarily draining the wetland. Water control structures shall be constructed using concrete, wood, plastic &/or metal. Typical structures include screw gates, stop logs or the installation of pipes with removable caps.

c. Instream Channel Drop Structures -- Drop structures can be used to reduce streambed degradation, to restore, maintain or elevate groundwater levels, to restore adjacent wetlands or to protect existing wetlands. The height of the structure cannot exceed two feet above the ordinary high water mark (OHW). The structure shall be constructed so as not to adversely impact State or Federally listed threatened or endangered species. Structures shall be placed no closer than one structure per six inches drop in elevation.

d. Filling Reuse or Concentration Pits -- Reuse and concentration pits shall be filled using the spoil material originally excavated from the pit, if the spoil pile still exists. Fill material may be excavated from the adjacent wetland provided the excavated material is limited to silt deposits within the wetland (excavation cannot be so deep that the clay pan is disrupted). The resulting depth cannot exceed three feet. Or, material may be carried in from an outside source. The pits shall be filled not to exceed the existing grade.

e. Other -- Incidental fills associated with other restoration techniques may be included in this authorization. Other restoration techniques will be evaluated on a case-by-case basis.

2. WETLAND CREATION PROJECTS USING SMALL DAMS ON STREAMS

Impoundments shall be established by the construction of a small dam on intermittent or ephemeral streams. A certified professional engineer or an NRCS staff with the appropriate job approval authority shall design the structures. The structure may be designed in a variety of ways, however, no structure shall exceed any of the following: 25 feet in height, 50 acre-feet of storage below the top of the dam or 15 acre-feet of storage below the principal spillway. The structure shall be low hazard and shall have some type of outlet and an emergency spillway.

This general permit cannot be used to authorize projects on any Class A State Resource Water or any river listed in the Wild & Scenic Rivers system, including rivers on the Nationwide Rivers Inventory list.

In compliance with the Endangered Species Act, each project will be reviewed on a case-by-case basis to address any Platte River depletion.

3. WETLAND CREATION PROJECTS USING DIKES

Dikes shall be designed to impound water with depths not to exceed three feet. The top width of the dike shall not exceed 14 feet, side slopes shall be 2(h):1(v) or flatter. The length of the dike shall not exceed 2,500 feet per year. The area of fill (footprint) shall not exceed three acres per year.

Construction material for the dike may be excavated from the adjacent wetland provided the excavated material is limited to silt deposits within the wetland (excavation cannot be so deep that the clay pan is disrupted). The resulting depth cannot exceed three feet. Additional material may be obtained from the perimeter of the wetland to expand the wetland area. Additional material may also be carried in from an outside source.

4. WETLAND VEGETATION MANAGEMENT PROJECTS

a. Recontouring Wetlands -- These are excavation projects designed to 1) increase emergent plant diversity; 2) improve the open water/emergent plant mosaic; 3) restore historic or near-historic bottom elevations in wetlands that have been degraded by filling, silt deposition or prior excavation. Water depths resulting from recontouring shall not exceed three feet.

b. Vegetation Management -- These are mechanized landclearing projects involving the cutting and piling of trees, brush or other vegetation in wetlands. The tree/brush piles shall be burned or removed within three years of the clearing.

5. NESTING ISLAND CONSTRUCTION PROJECTS

Areas eligible for the construction of nesting islands are those areas classified as semi-permanently flooded or wetter that are 15 acres or larger in size. Traditional Rainwater Basin wetlands are NOT included.

Islands shall be constructed using material obtained from the edges of the wetland to expand the existing wetland area. Material may also be excavated from the wetland adjacent to the island location provided the excavation is performed in a manner that will create an irregular bottom with a variety of depths not to exceed three feet. Islands may also be constructed using hay bales or platforms.

Individual islands shall not exceed one acre in size and the total area of all islands shall not exceed 7% of the wetland

surface acres. Each island should be a minimum of 300 feet from any shoreline.

Each island shall be revegetated with appropriate native vegetation within one year of construction. Islands may be armored, if necessary, to prevent erosion.

6. MAINTENANCE PROJECTS

For maintenance on existing dikes/roads through wetlands, the toe of the slope shall not be extended more than two feet beyond the original design.

Project Location:

Wetlands and intermittent and ephemeral streams in Nebraska

Permit Conditions:

General Conditions:

1. The time limit for completing the work authorized ends on **January 31, 2007**. 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:

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Further Information:

1. Congressional Authorities: You have been authorized to undertake the activity described above pursuant to:

() 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, tribal, 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) US Fish & Wildlife Service (DATE)

(PERMITTEE) NE Game & Parks Commission (DATE)

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

KURT F. UBBELOHDE
COLONEL, CORPS OF ENGINEERS
(DISTRICT ENGINEER)

(DATE)

By:

KATHRYN M. SCHENK
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)

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Special Conditions

1. No activity will be authorized by this GP that is likely to jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation, as identified in the Federal Endangered Species Act or Key Species in Title 117-Nebraska Surface Water Standards, or which is likely to destroy or adversely modify the critical habitat of such species. Nor does authorization of an activity by this GP authorize a take of a threatened or endangered species.
2. Activities authorized by this GP will result in minimal effects to the environment. To ensure minimal effects, special conditions will be attached to the permit: 1) avoidance of spawning areas during spawning season to the maximum extent practicable; 2) prohibition of activities which may substantially disrupt the movement of species indigenous to the waterbody; 3) the requirement of appropriate erosion and siltation controls.
3. Activities authorized by this GP will result in no more than minimal adverse impacts. A special condition will be added to require avoidance of discharges into breeding areas for waterfowl to the maximum extent practicable.
4. No activity may occur in a component of the Wild and Scenic River System, or in a river officially designated by Congress as a study river while in a official study status, unless the National Park Service determines, in writing, that a proposed project will not adversely affect the Wild and Scenic designation or study status.
5. Project proponents doing work in designated floodplains will be required to obtain a floodplain permit from the local authority.
6. Other special conditions may be added to each project authorized by the GP, if necessary.