

## DEPARTMENT OF THE ARMY PERMIT

Permittee US Fish and Wildlife Service, US Army Corps of Engineers, US Bureau of Reclamation, South Dakota Department of Game, Fish and Parks and Cooperators\*

Permit No. 199230314, Amendment No. 2 (General Permit 92-07)

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:

This general permit authorizes a variety of activities including the placement of fill material in wetlands and waterways within the State of South Dakota primarily intended to create wetlands and to restore, manage, and enhance the values of existing wetlands for wildlife, particularly migratory water birds (waterfowl, wadingbirds, and shorebirds). The projects are grouped into five (5) categories as follows: (1) wetland restoration or enhancement via ditch plugs, instream channel drop structures, water control structures, and filling of water concentration pits; (2) small impoundments for wetlands creation; (3) dike projects built to create impoundments or subimpoundments or built to enhance areas for wildlife; (4) recontouring and excavation in wetlands for vegetation management to increase wetland longevity, and other practices associated with vegetation management; and (5) construction of nesting islands on areas managed for water bird production. See pages 4 through 7 of 12 for a Detailed Description of Authorized Work.

\*Cooperators may be other Federal, state and local agencies, citizens groups, or private landowners that construct projects in conjunction with and under written approval of the US Fish and Wildlife Service or SD Department of Game, Fish and Parks.

### Project Location:

Waters of the United States (primarily wetlands including wetlands adjacent to lakes and streams, and intermittent flowing waterways) within the State of South Dakota - excluding segments of the Missouri River designated Missouri National Recreation River from mile 753.60 (Ponca State Park, NE) to mile 811.05 (Gavins Point Dam) and from mile 841.00 (near Running Water, SD) to mile 880.00 (Fort Randall Dam).

### Permit Conditions:

#### General Conditions:

1. The time limit for completing the work authorized ends on (see Special Condition "p" on page 9 of 12). 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. **This general permit expires on March 31, 2009.**
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 pages 8 through 12 of 12 for a list of Special Conditions and Appendices A and B.

**Further Information:**

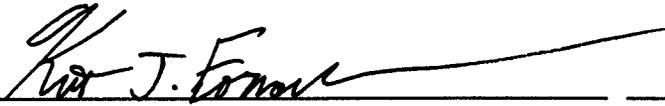
1. Congressional Authorities: You have been authorized to undertake the activity described above pursuant to:
  - (X) Section 10 of the River and Harbors Act of 1899 (33 U.S.C. 403).
  - (X) Section 404 of the Clean Water Act (33 U.S.C. 1344).
  - ( ) Section 103 of the Marine Protection, Research and 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.

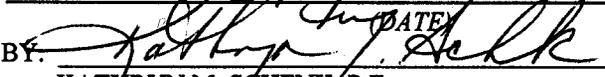
Your signature below, as permittee, indicates that you accept and agree to comply with the terms and conditions of this permit.

 4-21-04  
 (PERMITTEE) (DATE)

Kurt J. Forman, Coordinator  
 South Dakota Partners for Fish and Wildlife  
 U.S. Fish and Wildlife Service

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

KURT F. UBBELOHDE  
 (DISTRICT ENGINEER)  
 Colonel, Corps of Engineers

5/10/04  
 (DATE)  
 BY:   
 KATHRYN M. SCHENK, P.E.  
 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)

- 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.

Dennis E. Britzman 4/8/04  
 (PERMITTEE) (DATE)  
 Dennis E. Britzman  
 Area Manager, DKAO

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

KURT F. UBBELOHDE  
 (DISTRICT ENGINEER)  
 Colonel, Corps of Engineers

Kathryn M. Schenk 5/12/04  
 (DATE)  
 BY: KATHRYN M. SCHENK, P.E.  
 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)



Detailed Description of Authorized Work

**1. WETLAND RESTORATION OR ENHANCEMENT PROJECTS USING DITCH PLUGS, WATER CONTROL STRUCTURES, INSTREAM CHANNEL DROP STRUCTURES, AND FILLING OF WATER CONCENTRATION PITS**

a. **Earthen Channel Plugs.** Earthen channel plugs will be constructed within the following maximum dimensions: two hundred fifty (250) feet long, fourteen (14) foot top width, and ten (10) feet high. The sides will have slopes of 3(h): 1(v) or flatter. The order of preference for fill is (a) suitable soils (see Natural Resources Conservation Service (NRCS) County Soils Maps) from an upland site, (b) spoil material from the original ditch, (c) adjacent hydric soils (if it will not adversely affect other wetland functions), and (d) upland soils, if no hydric soils (e.g., clay) are available in the area. Fill material from wetlands will be excavated in a manner that will create an irregular bottom with a variety of depths at maximum pool elevations, averaging three (3) feet or less. The fill will be compacted with heavy equipment. Plugs will be constructed to provide at least one (1) foot of freeboard at maximum pool elevation. If a spillway is needed, reference should be made to NRCS design specifications. The overflow spillway site shall remain vegetated during plug installation. The elevation of the spillway or overflow site shall be lower than the plug elevation to reduce washouts.

b. **Water Control Structures.** Water control structures are not required in restoration or enhancement projects, but they are recommended to facilitate water management in the wetland to develop desired vegetation stands, prevent disease, etc. If installed, the structures should be capable of temporarily draining the wetlands for the aforementioned reasons. Water control structures are usually constructed using concrete, wood, metal, polyethylene and/or PVC material. Typical structures include screw gates, stop logs, or the installation of pipes with removable caps. These structures are included under this authorization as are similar structures that would accomplish the desired water control function.

c. **Instream Channel Drop Structures.** The main purpose of these projects will be to reduce streambed cutting, maintain or raise ground water levels, and restore adjacent wetlands. Drop structures will be constructed of the minimum amount of material needed to accomplish the purpose. The structures will not exceed two (2) feet above the normal stream elevation and will not be constructed in a manner that will adversely affect any fish populations of concern.

**Detailed Description of Authorized Work (cont'd)**  
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d. **Filling of Water Concentration Ponds (e.g., dugouts).** The main purpose of these projects is to fill a deep hole in the wetland and to restore shallow water areas. This is accomplished by pushing in surrounding berms into the pit hole, or if the area has been leveled, by reshaping the wetland bottom, hauling material close to the hole, and then pushing that material into the hole. The end result in either above case shall be restoration of the wetland to near its original water holding capacity. Temporary dikes to hold water from the pit may be constructed if necessary to shape the pond to an acceptable bottom configuration.

For all the above activities (1.a. through 1.d.), incidental fill associated with tile breaking, removal of culverts, plugging of drains, and protecting newly installed water control structures for the purpose of wetland restoration or enhancement are included in this authorization.

**2. SMALL IMPOUNDMENTS FOR WETLAND CREATION**

These projects are not dugouts. They are small berms (less than twelve (12) feet high) that block intermittent streams or other drainageways (not containing perennial streams) to impound shallow water. The majority of the wetland created or enhanced should be approximately three (3) feet deep or less. These small impoundments may have water control structures installed to allow drawdown capability.

**3. DIKE PROJECTS BUILT TO CREATE IMPOUNDMENTS OR SUBIMPOUNDMENTS OR BUILT TO ENHANCE AREAS FOR WILDLIFE**

The dikes shall be designed to accommodate a design average water depth of approximately three (3) feet or less and a maximum depth of seven (7) feet. Top width will range from a minimum of eight (8) feet to a maximum of fourteen (14) feet with side slopes of 3:1 or flatter. Maximum length of dikes will be two thousand, five hundred (2,500) feet per project area per year. Minimum freeboard will be one (1) foot. Installation of water control structures are strongly recommended, but not required. Maximum area of fill material placed in waters of the United States, including wetlands, will not exceed five (5) acres per project.

Every reasonable effort will be made to design and operate the dikes in a manner that will create wetlands to replace those filled. Also, when practical, borrow areas will be located and designed in such a manner as to create wetlands.

**4. RECONTOURING AND EXCAVATION IN WETLANDS FOR VEGETATION MANAGEMENT TO INCREASE WETLAND LONGEVITY, AND OTHER PRACTICES ASSOCIATED WITH VEGETATION MANAGEMENT**

a. **Recontouring/Excavation in Wetlands.** This authorizes excavation projects in wetlands where the purpose is to (1) increase emergent plant diversity, (2) improve open water to emergent plant ratios/distribution, and/or (3) restore historic or near historic wetland elevations that have been degraded by filling, silt deposition or prior excavation.

Excavation of meandered openings is included under this authorization. During construction, it will be permissible to use spoil material for nesting/loafing islands along the path of meandered openings. These islands will not exceed two hundred (200) cubic yards of fill per island and will be placed a minimum of eighty (80) feet apart. The removal of silt or past upland fills from the wetland to restore natural water-holding capabilities is authorized for all wetlands. Water depths resulting from recontouring will not exceed five (5) feet in depth.

b. **Other Practices Associated with Vegetation Management.** This authorizes cutting and temporary piling of trees, brush, or other existing vegetation in wetlands. The main purpose of these projects to allow consolidation of unwanted vegetation material in a wetland for eventual burning or removal by hauling the material out of the wetland. The clearing and piling of vegetation is a part of the necessary management practice of keeping marshes open and attractive to migratory birds. Piling and eventual burnings is much more cost effective than moving all downed trees or material from the wetland. All piles of trees or brush shall be burned or removed within one (1) year.

**Detailed Description of Authorized Work (cont'd)**  
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**5. CONSTRUCTION OF NESTING ISLANDS ON AREAS MANAGED FOR WATER BIRD PRODUCTION**

This authorizes the placement of fill material in conjunction with the construction and maintenance of wildlife ponds and nesting islands only in areas classified as semipermanently flooded or wetter (e.g., shallow lakes) that are fifteen (15) acres or larger in size (reference Coward in et al. 1979<sup>1</sup>). Individual islands shall not exceed one (1) acre (i.e., area of island above the normal pool level) in size. The total area of the islands and associated fill shall not exceed seven (7) percent of the wetland basin surface at normal pool level. The island shall be vegetated with nesting cover (and overhead cover if needed for protection against predator birds) as soon as possible after construction. Topsoil shall first be added if necessary to grow desired cover.

Avoidance and alternatives to island construction must be considered and the reasons for not adopting those alternatives documented on the project evaluation form. An example of such a reason could be high predator populations and impracticality of developing adequate upland nesting cover with predator enclosures that would produce the equivalent number of desired birds.

Whenever practical, borrow will be obtained from the edges of the wetlands to create new acreages of wetland to compensate for that area being filled. However, when it is beneficial to wetland management objectives, materials may be excavated from within the wetlands in a manner that will create an irregular bottom and a variety of depths. Reasons for the latter approach could include (a) removal of silt that has accrued from flooding or nonpoint source pollution or (b) opening of emergent vegetative (e.g., cattail) choked areas to provide more wetland diversity. Islands shall be constructed so that they are a minimum of three hundred (300) feet from shore at normal pool level. Islands will be designed to prevent erosion and ripped if necessary.

This authority only applies to lands that presently are managed or will be managed for water bird production. This authorization also includes the use of hay bales or platform nesting structures.

Nesting islands should be designed in a manner consistent with the "Guidelines for Planning Construction of Nesting Islands for Waterbirds," prepared by Region 6 of the US Fish and Wildlife Service.

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<sup>1</sup>Cowardin, L.M., V. Carter, F.C. Golet, and E.T. LaRoe. 1979. Classification of wetlands and deep water habitats of the United States. US Fish and Wildlife Service, FWS/OBS-79/3103 pp.

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**Special Conditions:**

- a. That all construction debris will be disposed of on land in such a manner that it cannot enter a waterway or wetland.
- b. That equipment for handling and conveying materials during construction shall be operated to prevent dumping or spilling the materials into the water except as approved herein.
- c. That during construction, 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.
- d. That all work in the waterway is performed in such a manner so as to minimize increases in suspended solids and turbidity, which may degrade water quality and damage aquatic life outside the immediate area of operation. The use of mats or low ground pressure equipment is recommended when heavy equipment must be used within a wetland.
- e. That only clean riprap material will be utilized in order to avoid the percolation of fines, which would result in excessive local turbidity.
- f. That the clearing of vegetation will be limited to that which is absolutely necessary for construction of the project.
- g. That all areas disturbed or newly created by the construction activity will be promptly seeded with vegetation indigenous to the area or with vegetation preferred for wildlife management purposes.
- h. That all revegetated areas will be maintained for at least two (2) growing seasons to ensure viability.
- i. That deposition of excavated materials on shore and all earthwork operations on shore will be carried out in such a way that sediment runoff and soil erosion to the water are controlled.
- j. That all earthwork operations on shore will be carried out in such a manner that sediment runoff and soil erosion to the water is controlled.
- k. That concrete trucks will be washed at a site and in such a manner that washwater cannot enter the waterway.

**Special Conditions (cont'd)**  
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l. That when the District Engineer has been notified that an activity is adversely affecting fish or wildlife resources or the harvest thereof and the District Engineer 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.

m. That the discharge will consist of suitable material free from toxic pollutants in toxic amounts.

n. That the fill created by the discharge will be properly maintained to prevent erosion and other non-point source of pollution.

o. That if historic properties or archeological sites/resources are unearthed during construction, the permittee will immediately cease construction and notify the District Engineer of the find. No further work will occur until the resource(s) are evaluated and the effect determined, mitigated or eliminated.

p. That the construction of any wetland enhancement, restoration or management project authorized under the provisions of this General Permit must be started within one (1) year of such authorization and must be completed within three (3) years, or said authorization if not previously revoked or specifically extended shall automatically expire.

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**Appendix A**

The following will govern the duration, utilization and applicability of this general permit:

a. The cumulative impacts of this general permit may be subject to reevaluation at the discretion of the District Engineer at any time, but will be reevaluated at the end of the five (5) years.

b. Any proposed project, which is located in an area containing historic, cultural, or archeological sites as listed in the National Register of Historic Places, or those known to be eligible for such listing, and all monthly supplements thereto; and any proposed project, which is located in a site included in the National Registry of Natural Landmarks, will be not considered under this general permit.

c. Any proposed project located within an area named in Acts of Congress or Presidential Proclamations as National Rivers (i.e., Missouri National Recreation River), 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 general permit.

d. This general permit only applies to the general public and other governmental agencies when such projects are constructed in cooperation with, and under written approval of, the US Fish and Wildlife Service or the South Dakota Department of Game, Fish and Parks.

e. This general permit does not apply to blockage of streams containing fish species that migrate up or downstream of the site as part of an annual biological cycle (e.g., for spawning purposes).

f. The District Engineer has the discretion to require an individual permit on a case-by-case basis for any of the activities authorized herein.

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**Appendix B**

1. To receive consideration under this general permit, the applicant will provide a Notice of Intent to construct a particular project to the District Engineer's designee. If the project is located on the Missouri River the designee will be the appropriate Corps of Engineers Project Manager (addresses listed below). If the project is located on any other waterbody, the designee will be the South Dakota Regulatory Office, 28563 Powerhouse Road, Room 120, Pierre, South Dakota 57501.

Gavins Point Project Office, Project Manager, P.O. Box 710, Yankton, South Dakota 57078.

Fort Randall Project Office, Project Manager, P.O. Box 199, Pickstown, South Dakota 57367.

Big Bend Project Office (Big Bend Dam to Antelope Creek), Project Manager, HC 69, Box 74, Chamberlain, South Dakota 57325.

Oahe Project Office (Antelope Creek to North Dakota State Line), Project Manager, 28563 Powerhouse Road, Room 105, Pierre, South Dakota 57501.

2. The Notice of Intent must clearly describe the proposed work so the District Engineer or his designee can clearly determine whether or not the proposed work complies with the terms, conditions and limitations of this general permit, and must contain the following information:

a. A completed Application for Department of the Army Permit (ENG Form 4345).

b. A cover letter and/or supplemental document(s) that:

(1) clearly describe the proposed work including how and when the anticipated work will be accomplished;

(2) clearly identify the type (using Cowardin et al.) and the area of wetland(s) filled or otherwise adversely affected (i.e, type and area of wetland(s) that will be excavated, drained or flooded in association with the proposed filling activity); and

(3) clearly describe the type and the area of wetland(s) to be created or restored and the type and area of existing wetland(s) to be enhanced in association with the proposed filling activity;

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- c. Drawings on eight and one-half (8-1/2) inch by eleven (11) inch paper showing a vicinity map (with exact project location clearly marked), plan view and sectional view of the proposed work;
- d. The results of any contact with the South Dakota State Historical Preservation Officer; if available;
- e. The results of any contact with state or federal wildlife agency or any state or federal water resource agency, if available; and
- f. In instances where the applicant is a cooperator, a notice of project concurrence signed by the designated US Fish and Wildlife Service or South Dakota Department of Game, Fish and Parks official, whichever is appropriate.