

## DEPARTMENT OF THE ARMY PERMIT

Permittee      General Public

Permit No.     Amendment No. 2, GP 96-08  
                    199621008

Issuing Office  Corps of Engineers  
                    Omaha District

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 work in waters of the United States (including rivers, lakes, streams and wetland areas) associated with flood protection, reconstruction and repair activities within flooded areas of eastern South Dakota. This General Permit authorizes, but is not limited to, the following types of activities: repair and reconstruction of existing roads, temporary levee construction, levee repair, breach closures, bridge embankment repair, protection and/or repair of utility structures, placement of suitable rock and/or dirt fill for bank protection, and restoration of river channels to the alignment which existed immediately prior to flooding. Any authorization granted under this General Permit will be subject to the attached Special Conditions. Before any project will be considered under this General Permit, it must conform to the attached general criteria listed in Appendix A (see page 10 of 10).

### Project Location:

South Dakota waterways east of the Missouri River including the Missouri River and segments designated as Missouri National Recreation River from river mile 753.60 (across from Ponca State Park, Nebraska) to mile 811.05 (Gavins Point Dam) and from mile 841.00 (near Running Water, South Dakota) 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 No. 1 on page 4 of 10). 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 August 31, 2007.
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 4 through 9 of 10 for a list of Special 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.

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

Aug 22, 2002  
(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)

DA Permit  
No. 199621008  
GP 96-08, Amendment No. 2  
General Public

**Special Conditions:**

1. The time limit for completing the work authorized is 120 days from each permit determination. If additional time will be needed to complete the authorized activity, a written request for a time extension must be submitted to the Corps of Engineers.
2. This Regional General Permit authorizes the discharge of dredged or fill material and other work associated with flood protection measures and restoration, repair or reconstruction measures performed in waters of the United States within the State of South Dakota as a result of damages caused by flooding. The work will be limited to that authorized by the Corps of Engineers through the issuance of this General Permit. Work associated with restoration, repair or reconstruction will be limited to that necessary to restore damaged areas to pre-flood conditions.
3. All channel restoration work will be limited to restoring the area to pre-flood conditions. Channel restoration of areas not caused by flooding is not authorized under this General Permit.
4. Repair and protection measures authorized herein do not allow for the construction of structures (e.g. jetties) which would result in any further stream channel constriction or in the redirection of flows in such a way as to cause upstream or downstream erosion, etc. Nor does this Regional General Permit authorize any repair work on such structures that would result in the structure being modified or extended beyond its original dimensions. Protection measures (e.g. raise and widen flooded roadways, riprap protection of road inslopes, etc.) are authorized herein.
5. Repair measures authorized herein do not allow for improved drainage of legally drained wetlands or new, permanent drainages that would result in the lowering of basin water retention capacity and/or impacts to the wildlife value of that wetland.
6. Temporary levees, accesses, and other fills must involve the least damaging and minimum amount of disturbance/impacts to waters of the United States. Appropriate measures must be taken to maintain near normal downstream flows to minimize flooding. All fill must be of suitable materials and placed in such a manner that the material will not be eroded by expected high flows.
7. All fill material will be obtained from a non-wetland, upland source.
8. All temporary fills, including sandbags, in waters of the United States must be completely removed and the area restored to pre-project conditions within 30 days of the end of flooding conditions.

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9. The use of small aggregate, such as streambed material, for bank stabilization and erosion control is prohibited. All dirt fill material associated with bank protection must be stabilized with vegetation or appropriate rock protection.
10. Only clean riprap materials will be utilized in order to avoid the percolation of fines that would result in excessive local turbidity.
11. All areas along the bank disturbed or newly created by the construction activity, which will not be riprapped, 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.
12. The clearing of vegetation, including trees located in or immediately adjacent to waters of the United States, will be limited to that which is absolutely necessary for construction of the project. The removal of mature trees will be avoided to prevent potential impacts to bald eagle roost sites.
13. All construction debris will be disposed of on an approved upland site in such a manner that it cannot enter a waterway or wetland. 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.
14. Equipment for handling and conveying materials during construction will be operated to prevent dumping or spilling the materials into the water except as approved herein.
15. All dredged or excavated materials, with the exception of that authorized herein, 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.
16. Concrete trucks will be washed at a site and in such a manner that washwater cannot enter the waterway or other waters of the U.S.
17. 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.

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18. 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.
19. All earthwork operations on shore will be carried out in such a manner that sediment runoff and soil erosion to the waterbody do not occur.
20. If and when the District Engineer has been notified that a dredging or filling 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.
21. The use of machinery in the waterway will be kept to a minimum.
22. A discharge of material may not occur in the proximity of a public water supply unless appropriate approval is given and mitigation measures are identified to offset any adverse effects.
23. If the Corps of Engineers is notified that work being performed does not comply with, or fall within the scope of, this Regional General Permit, the responsible party will take immediate steps, as directed by the Corps of Engineers, to bring the work into compliance with this permit.
24. If any historical, archeological, architectural, or other cultural artifacts, vestiges, or remains are found prior to, during or after any earth disturbance activities in the proposed project area, the permittee shall immediately cease construction and notify the District Engineer of the find.
25. If threatened or endangered species are sighted at or near the project site, particularly during construction, work must cease and the U.S. Fish and Wildlife Service contacted immediately.
26. The District Engineer may require additional special conditions (including mitigation requirements) be included in any authorization issued under this Regional General Permit to avoid or minimize adverse environmental impacts. The District Engineer may also require the processing of an individual permit for an activity determined to have more than minimal adverse environmental effects, individually or cumulatively, or would be contrary to the public interest.

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**Special Conditions applicable to the Missouri National Recreation River:**

**27. Bank stabilization** activities associated with flood protection, reconstruction and repair that are proposed for the **Missouri National Recreation River** segments, shall be constructed in compliance with the following criteria:

- a. For bioengineering projects, the following conditions shall be adhered to:
  - (1) Plant materials utilized shall be native to the area where they are to be used.
  - (2) Bioengineering methods require the survival of the plants to maintain the structural integrity of the design. It is, therefore, required that a ratio of plants is used that will guarantee an adequate density of survival. This means that seed plantings shall be applied at a rate of 20 pounds of live seed per acre (minimum) and live plantings (willows or other tree specimens) shall be planted on a 3-foot grid.
  - (3) All live plantings shall be monitored (at least monthly during the growing season) for damage due to lack of water, insects or animals. Dying or dead plants shall be immediately replaced.

Note: There is a vast range in types of materials that could potentially be used. The Natural Resources Conservation Service (NRCS) can be contacted for native plant information. Many biodegradable products are available to reinforce the soils and bankline during the initial plant growth. Information on the erosion control methods and materials and links to manufactures can be found on the world wide web at [www.IECA.ORG](http://www.IECA.ORG) (International Erosion Control Association).

b. Riprap shall consist of fieldstone, quarry rock, clean broken concrete, or combinations thereof placed along the toe of and parallel to the eroding bank. Only clean riprap material is acceptable, riprap with more than 5% fines (1.5-inch or smaller material) (solids, silts, and clays) shall be prohibited.

- (1) Broken concrete must meet the requirements in (2) below and must be chemically acceptable, free of protruding reinforcing steel or wire mesh and free of other construction debris (i.e., lath, plaster, asphalt, scrap iron, etc.).

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- (2) Any material used shall be reasonably well-graded material to create a dense erosion resistant structure.
  - (a) The maximum weight of any piece of material shall be 1350 pounds with 50 percent of the material weighing at least 200 pounds.
  - (b) The material shall range in size from 6 to 36 inches in maximum dimension. The average mean dimension shall be approximately 13 inches and the protection layer thickness shall be 1.0 to 1.5 times the largest rock dimension.
  - (c) The material shall be angular in shape. No more than 30 percent of the material shall have the maximum dimension more than 2.5 times the minimum dimension and no material shall have the maximum dimension more than 3.5 times the minimum dimension.
- (3) All areas along the bank disturbed or newly created by the construction activity, must be immediately seeded with an annual rye grass (nurse crop) plus a mixture of native grass species. The replacement herbaceous vegetation will require maintenance such as reseeding, watering, implementation of grazing restrictions, fencing, etc., as necessary to ensure survival of the replacement vegetation.
- (4) The removal of trees and other woody vegetation shall be restricted to only what is necessary for construction of the project. Trees and other woody vegetation removed shall be replaced in kind and 3:1 in quantity. Maintenance such as replanting, watering, implementation of grazing restrictions, fencing, etc., shall be required as necessary to ensure survival of the replacement trees and woody vegetation.
- (5) The maximum elevation of the structure shall not exceed 2 vertical feet above the anticipated flood stage elevation.
- (6) The exposed riprap must be covered, from the top of the structure down to the annual ordinary high water line, with a minimum of 6 inches of soil compacted into the voids of the riprap and immediately seeded with an annual rye grass (nurse crop) plus a mixture of native grass species. Soil cover and seeding shall be completed immediately upon completion of construction of the revetment to allow maximum opportunity for vegetation establishment prior to the next high water event. The planted vegetation will require maintenance such as reseeding, watering, implementation of grazing restrictions, fencing, etc., as necessary to ensure survival. Covering soil may be obtained offsite.

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(7) A travel lane or access point (minimum of 15 feet in width) shall be provided across any stabilized area exceeding 660 feet in length to allow for the movement of wildlife and recreational access. A travel lane/access point shall be installed for every 660 feet of continuous revetment. This is typically completed by covering the riprap and seeding the upper bank as described above and covering the lower portion from the annual ordinary high water line to the toe with sufficient oversized gravel to make a smooth surface.

(8) Disturbed areas shall be monitored following the project construction and noxious weeds (i.e., Canada thistle, purple loosestrife, leafy spurge and other invasive exotic species) controlled.

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## **Appendix A**

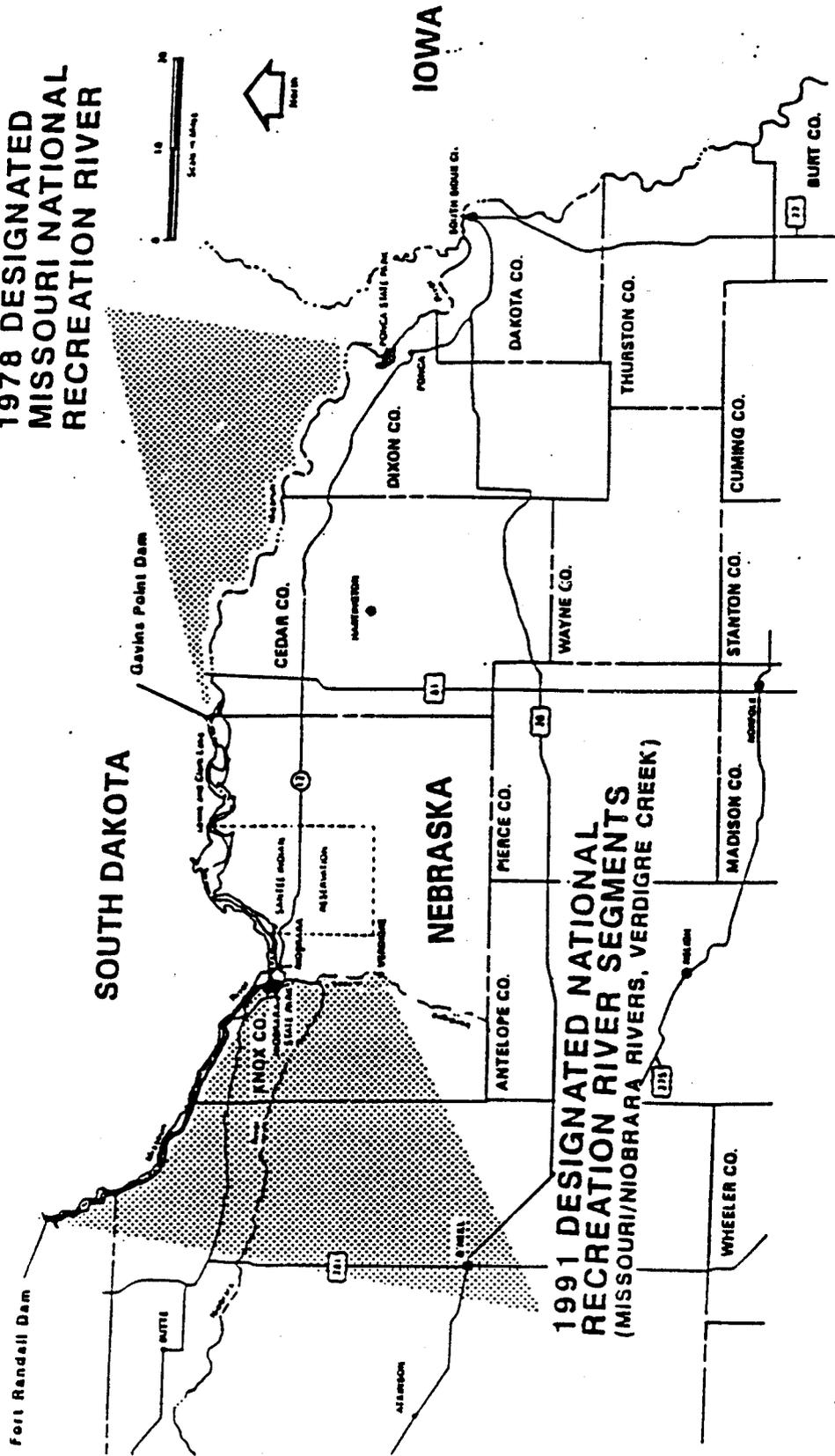
All interested parties proposing work under this General Permit are required to contact the Corps of Engineers at the South Dakota Regulatory Office, 28563 Powerhouse Road, Room 118, Pierre, South Dakota 57501 in advance so that a determination can be made that the work is necessitated by flood conditions. The Corps of Engineers will verify (on-site verification, if necessary) that flood damages are probable or that damage has occurred from recent flooding (i.e., determine the applicability of this RGP to the permit application under review). The following information is required:

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 work including the purpose and need: type, composition, and quantity of material to be discharged or excavated; length, width and depth of fill material and/or excavation area; disposal site for excavated material; equipment to be used: and any other pertinent, supporting data. Drainage projects must identify the receiving site for the excess water.
3. Names, addresses, and telephone numbers of adjacent property owners.
4. A location map with the exact location of the proposed work and a legal description.
5. A drawing on 8 1/2 by 11-inch paper with details of the proposed work showing:
  - a. The project location, including the disposal site locations. A photocopy excerpt from a USGS quadrangle, road map, or equivalent is acceptable;
  - b. Plan and cross-sectional views showing elevation (relative) and dimensions.
6. If applicable, a mitigation plan for all proposed wetland fill activities.

The information submitted must clearly describe the work and the purpose and need for the work so the Corps of Engineers can determine whether or not the work complies with the terms, conditions, and limitations of this General Permit.

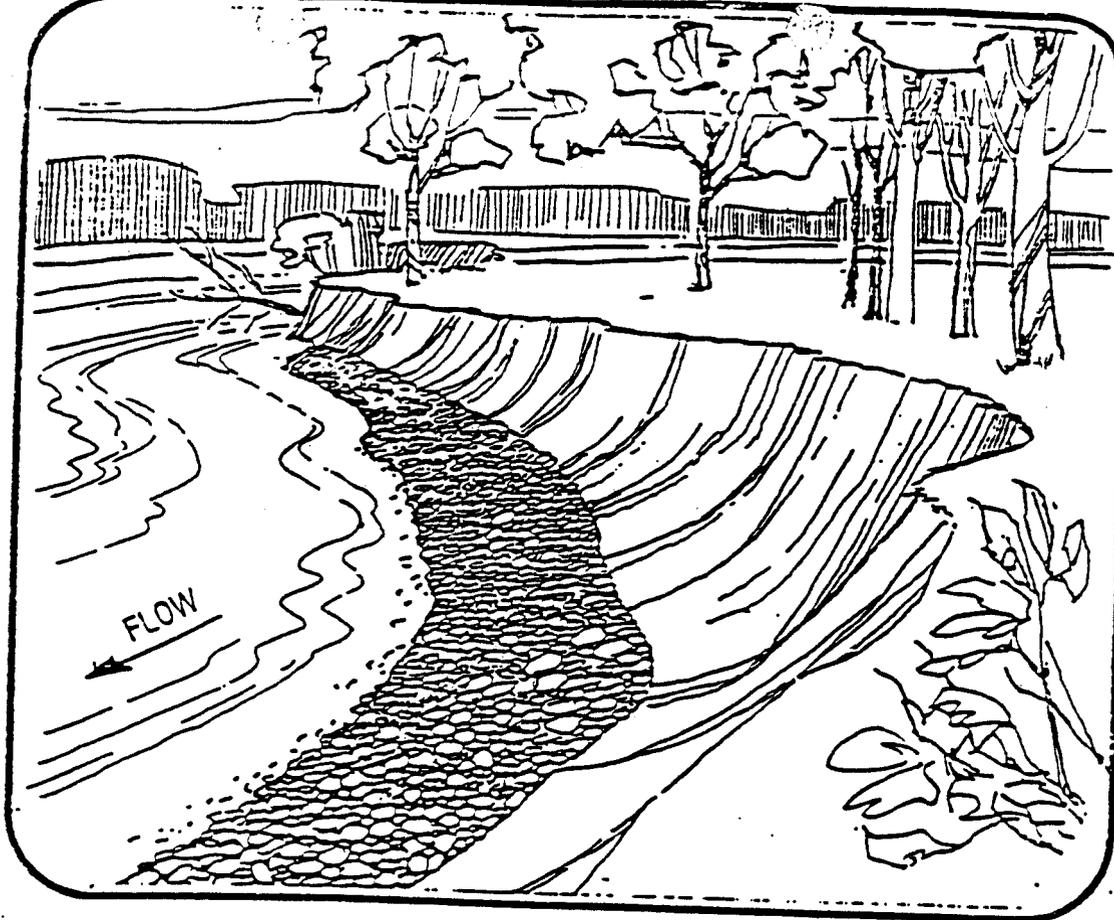
No project may proceed until notification approval has been received from the Corps of Engineers that the proposal meets the General Permit criteria.

**1978 DESIGNATED  
MISSOURI NATIONAL  
RECREATION RIVER**

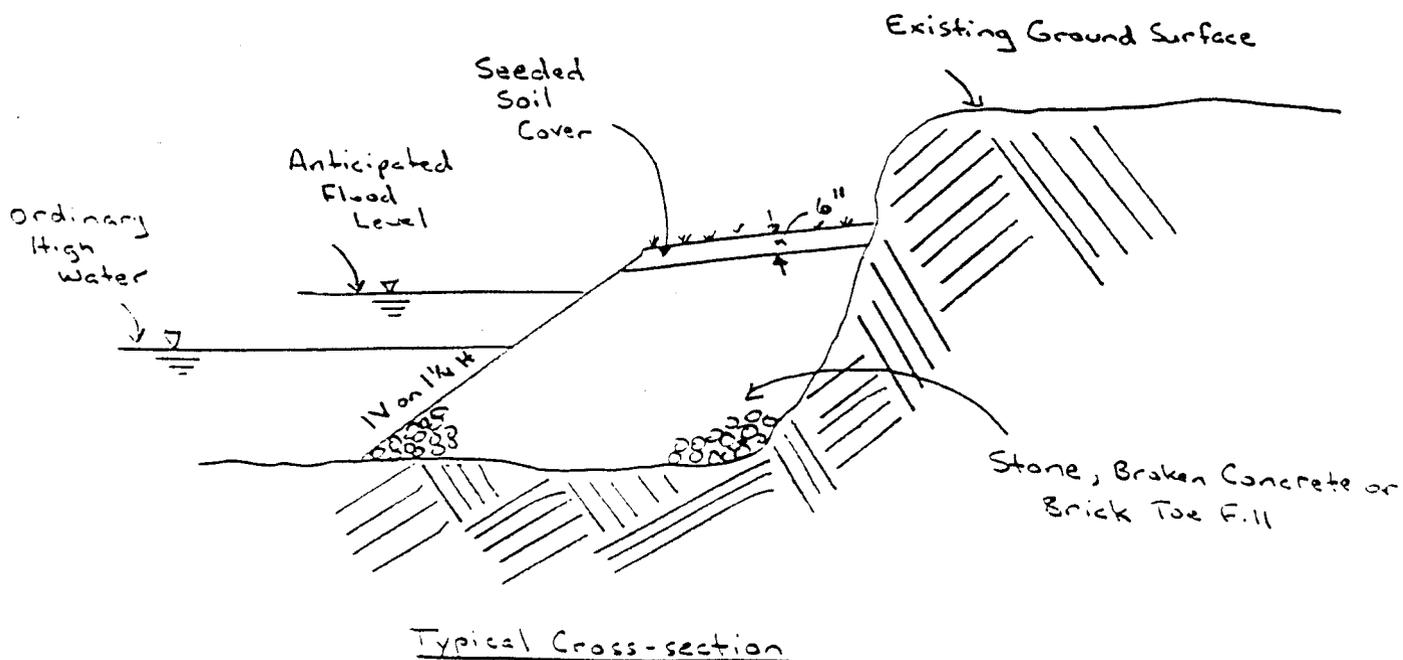


**PURPOSE:** Flood Protection and Repair  
GP 96-08, Amendment No. 2  
**DATUM:** MSL  
**APPLICATION BY:** General Public

**IN:** Missouri River-  
Natl. Rec. River  
**DATE:** 12/10/2001  
**SHEET** 1 of 3

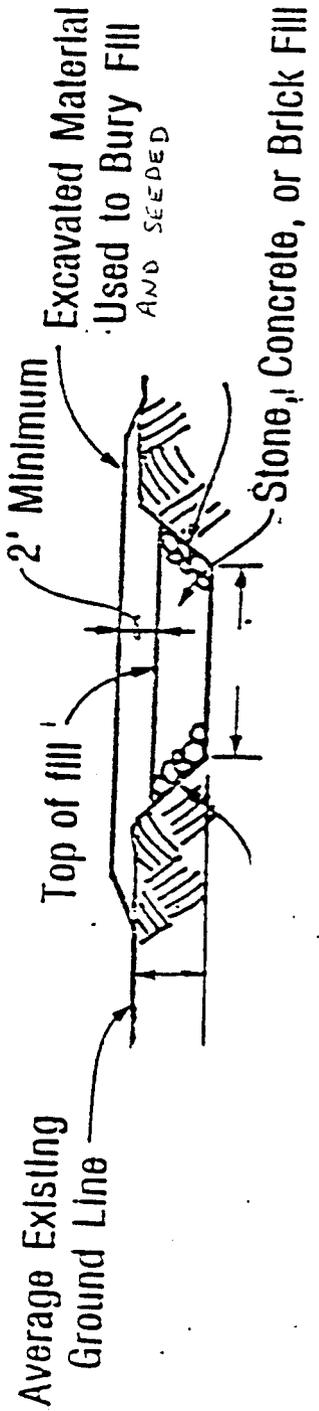
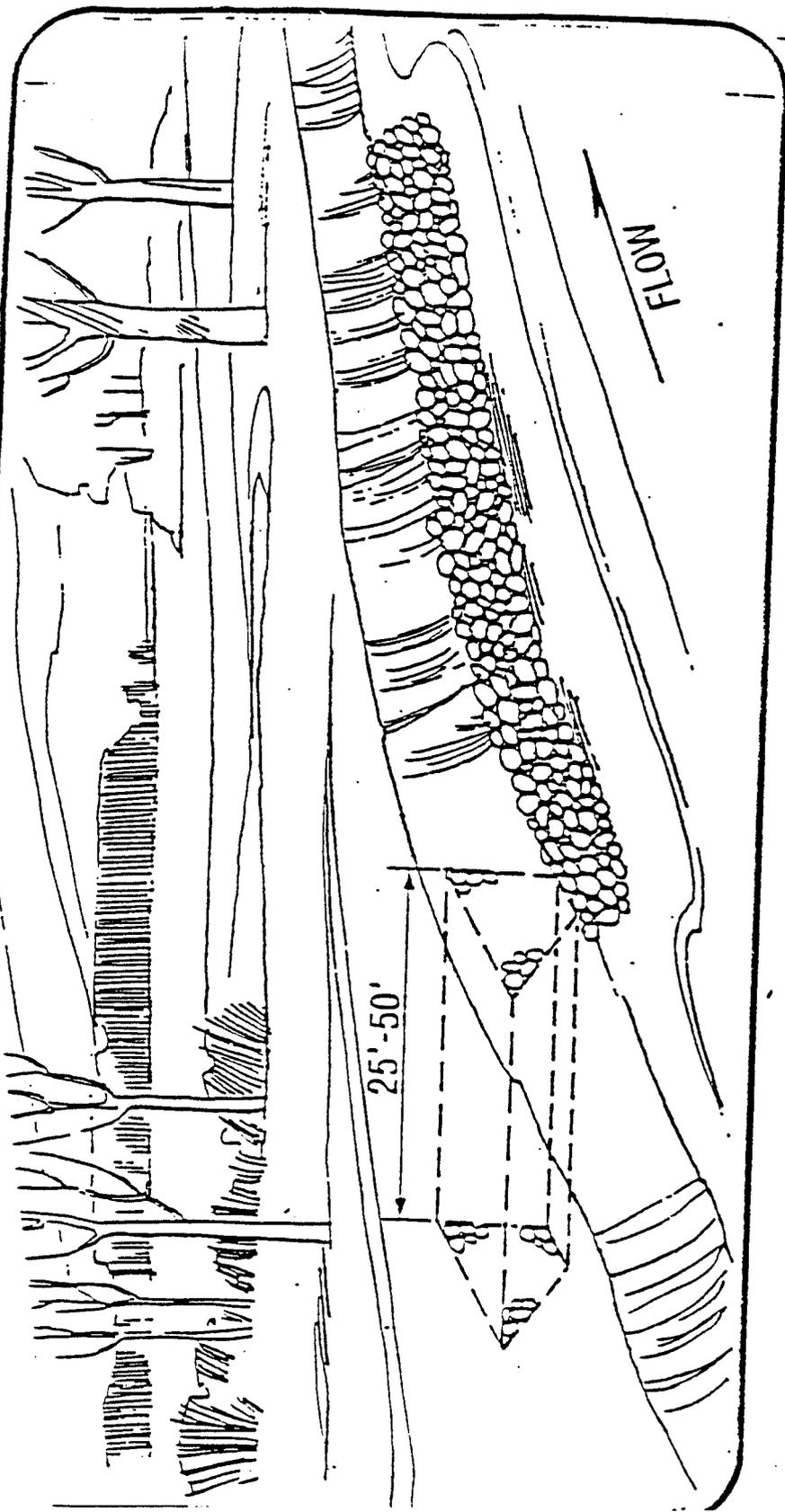


## RIPRAP REVETMENT



PURPOSE: Flood Protection and Repair  
 GP 96-08, Amendment No. 2  
 DATUM: MSL  
 APPLICATION BY: General Public

IN: Missouri River-  
 Natl. Rec. River  
 DATE: 12/10/2001  
 SHEET 2 of 3



**PURPOSE:** Flood Protection and Repair  
 GP 96-08, Amendment No. 2  
**DATUM:** MSL  
**APPLICATION BY:** General Public

**IN:** Missouri River-  
 Natl. Rec. River  
**DATE:** 12/10/2001  
**SHEET** 3 of 3



DEPARTMENT of ENVIRONMENT  
and NATURAL RESOURCES

JOE FOSS BUILDING  
523 EAST CAPITOL  
PIERRE, SOUTH DAKOTA 57501-3182  
[www.state.sd.us/denr](http://www.state.sd.us/denr)

January 18, 2002

Steven E. Naylor  
US Army Corps of Engineers  
28563 Powerhouse Road  
Room 120  
Pierre SD 57501

RE: Section 404 Regional General Permit  
199621008, Amendment #2, GP 96-08

Dear Mr. Naylor:

The Department of Environment and Natural Resources has reviewed the request for water quality certification under Section 401 of the Clean Water Act. This request pertains to the issuance of a Regional General Permit. The purpose of this General Permit will be for various activities such as flood protection and repair work in waterways east of the Missouri River (including the Missouri River).

The department is granting water quality certification with the following condition:

1. All work activities must be performed in such a manner to avoid violating South Dakota Water Quality Standards.

If you have questions pertaining to this certification, please contact John Miller, at (605) 773-3351. Thank you for ensuring the continued protection of our natural resources.

Sincerely,



Steven M. Pirner  
Secretary

cc: Katie Schenk, US COE, Omaha  
Rex Fletcher, US EPA, Denver



# UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8

999 18<sup>TH</sup> STREET - SUITE 300

DENVER, CO 80202-2466

Phone 800-227-8917

<http://www.epa.gov/region08>



Ref: 8 EPR-EP

MAY 16 2002

Steven E. Naylor  
Chief, South Dakota Regulatory Office  
Corps of Engineers  
28563 Powerhouse Road, Room 120  
Pierre, South Dakota 57501

Re: Public Notice #199621008  
GP 96-08 Amendment No.2

Dear Mr. Naylor:

The Environmental Protection Agency Region 8 (EPA) is amending our comments as requested by the Corps of Engineers for the purpose of clarifying 401 Certification for projects in Tribal country. This issue has been addressed by EPA's legal counsel with their comment; "...EPA's position in most cases is that EPA should be doing the 401 certification for projects licensed or permitted in Indian country whether the facilities are owned by tribal governments, tribal members or private owners. But we'd be glad to work with you on individual cases that arise involving such issues". We are also in receipt of your letter requesting 401 Certification for the Public Notice 199621008 (PN) General Permit 96-08 (GP) Amendment No. 2. Flood protection/reconstruction/repair east of the Missouri River including the Missouri River was the stated purpose.

The EPA is authorizing 401 Certification to be used only with General Permit 96-08 in Indian country. For this Certification to be valid, special conditions outlined in this 401 Certification must be adhered to.

## 401 Certification and Conditions

It is hereby certified that the project, as described in the application, should not result in violation of applicable water quality standards provided that you assure the construction entity complies with the following conditions:

1. Streambed and streambank contours must not exceed pre-construction elevations, and are to be revegetated with native vegetation indigenous to the project site.
2. Instream turbidity increases immediately below the construction site must not, at any time, exceed 10 NTUs above the existing turbidity condition upstream from the construction site.



3. Erosion from exposed soil surface during construction is prohibited. Methods to be used include, but are not restricted to: sediment dams or berms, hay bales and filter fabric as erosion checks, mesh or burlap blankets.
4. Upland disposal areas for construction materials shall be naturally contoured and revegetated with native species immediately following construction to ensure that runoff from the disposal area does not reach nearby water bodies.
5. Use of pesticides and herbicides in the construction area is forbidden.
6. Any material placed below the high water mark must be free of top soil, decomposable materials, and persistent organic compounds. Material placed below the high water mark must be of proper size and shape to eliminate the potential of erosion of the material during construction.
7. If the stream must be forded, the vehicle must not push or pull material along the streambed below the high water mark.
8. The period and timing of construction must be adjusted to minimize conflicts with fish migration and spawning.
9. Any temporary crossings, bridge supports, cofferdams, or other structures that will be needed during the period of construction must be designed to handle high flows that could be anticipated during the construction period. All temporary structures must be completely removed from the stream channel at the conclusion of construction and the area restored to preconstruction conditions.

Thank you for the opportunity to comment on this GP. If you have any comments pertaining to this document, you may submit them to Rex Fletcher at 303-312-6702, or his email address ([fletcher.rex@epa.gov](mailto:fletcher.rex@epa.gov)).

Sincerely,



Richard Claggett  
Chief, Wetlands & Watersheds Unit  
Ecosystems Protection Program

cc: Laslie Petersen, DGF&P, Pierre  
Scott Larson, USFWS, Pierre  
John Miller, DE&NR, Pierre