



PUBLIC NOTICE

**US Army Corps
of Engineers**
Omaha District

Application No: NWO-2021-01753-DEN
Project: Modification and Reissue of Regional
General Permit 7
Applicant: Mile High Flood District (MHFD)
Waterway: All waters of the US in the state of
Colorado within the boundaries of
MHFD.
Issue Date: November 15, 2021
Expiration Date: November 30, 2021

REPLY TO:

US Army Corps of Engineers, Omaha District
Denver Regulatory Office
9307 South Wadsworth Blvd
Littleton, CO 80128-6901

15 DAY NOTICE

PUBLIC NOTICE OF PENDING MODIFICATION AND REISSUE OF SECTION 404 REGIONAL GENERAL PERMIT 7

CHANNEL MAINTENANCE AND CONSTRUCTION ON THE SOUTH PLATTE RIVER AND TRIUTARIES TO THE SOUTH PLATTE RIVER CONDUCTED BY THE MILE HIGH FLOOD DISTRICT

SUBJECT: The U.S. Army Corps of Engineers, Omaha District (Corps, is proposing to modify and reauthorize Regional General Permit No. 7 (RGP 7) for channel maintenance and construction on the South Platte River and tributaries to the South Platte River conducted by the Mile High Flood District. This notice is to inform interested parties of the proposed re-issuance of RGP 7 and to solicit comments. The existing RGP 7 was issued on January 1, 2017 and expires January 1, 2022.

AUTHORITY: This permit will authorize activities under Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act of 1899.

PURPOSE AND NEED: which are conducted to restore, improve, and maintain channel stability and resiliency, stream and wetland function and habitat, public safety, and/or to protect existing infrastructure.

SCOPE OF ACTIVITIES: Activities proposed to be authorized by this RGP are limited to work associated with construction, repair, rehabilitation, and improvement of the following six categories of facilities in developed and undeveloped areas:

- Grade control/drop structures
- Bank stabilization controls
- Construction of high functioning, lower maintenance channel
- Culverts and bridges
- Storm sewer outfalls and channel rundowns
- Stormwater treatment, detention and management facilities

For a full description of the activities and proposed conditions, see attached draft permit.

LENGTH OF AUTHORIZATION: The regional general permit, if re-issued, will expire five years from the date of issuance.

OTHER GOVERNMENTAL AUTHORIZATIONS: The state of Colorado has mandated by statute that Section 401 water quality certification is issued without additional conditions for general permits. If the project is located on tribal lands, an individual Section 401 water quality certification for the proposed discharge must be obtained or waived.

COMMENT PERIOD: All comments pertaining to this Public Notice must reach this office on or before November 30, 2021. Extensions of the comment period may be granted for valid reasons provided a written request is received by the end of the public notice comment period. If no comments are received by that date, it will be considered that there are no objections. Anyone may request, in writing, that a public hearing be held to consider this effort. Requests shall specifically state, with particularity, the reason(s) for holding a public hearing. If the Corps determines that the information received in response to this notice is inadequate for thorough evaluation, a public hearing may be warranted. If a public hearing is warranted, interested parties will be notified of the time, date, and location. Please note that names and addresses of those who submit comments in response to this public notice may be made publicly available through the Freedom of Information Act.

SUBMITTING COMMENTS: Written comments, referencing Public Notice NWO-2021-01753-DEN must be submitted to the office listed below on or before November 30, 2021.

Aaron Eilers, Project Manager
U.S. Army Corps of Engineers, Omaha District
Denver Regulatory Office
9307 South Wadsworth Blvd.
Phone: (303) 979-4120
Email: Aaron.R.Eilers@usace.army.mil

The Corps is particularly interested in receiving comments related to the proposal's probable impacts on the affected aquatic environment and the secondary and cumulative effects. If you have questions or need additional information, please contact the Corps' project manager.

Attachments: 1. RGP 7 - Channel Maintenance and Construction on the South Platte River and Tributaries to the South Platte River Conducted by the Mile High Flood District



Regional General Permit 7

Channel Maintenance and Construction on the South Platte River and Tributaries to the South Platte River Conducted by the Mile High Flood District

Permittee: Mile High Flood District (MHFD)

Permit No.: Corps File No. NWO-2021-01753-DEN Regional General Permit 7 (RGP-7)

Permit Expires: **January 1, 2027**

Issuing Office: Omaha District, US Army Corps of Engineers (Corps)

Location: All waters of the US in the State of Colorado within the Boundaries of MHFD.

Authorization: MHFD is authorized to perform work in accordance with the terms and conditions specified herein.

Section 1. Introduction

1.1 Permit Overview

With this Regional General Permit (RGP) the District Engineer for the Omaha District US Army Corps of Engineers (Corps) authorizes dredge or fill activities performed in waters of the United States by the Mile High Flood District (MHFD) which are conducted to restore, improve, and maintain channel stability and resiliency, stream and wetland function and habitat, public safety, and/or to protect existing infrastructure. These activities have only minimal adverse impacts on the aquatic environment when performed separately or on a cumulative basis. This RGP pertains to the construction, repair, rehabilitation, and improvement of the following six categories of facilities in developed and undeveloped areas:

- **Grade control/drop structures**
- **Bank stabilization controls**
- **Construction of high functioning, lower maintenance channel**
- **Culverts and bridges**
- **Storm sewer outfalls and channel rundowns**
- **Stormwater treatment, detention and management facilities**

Please see 2021 Nationwide Permit General Conditions for definitions of terms referenced within this RGP.

1.2 General Limitations

Below are the proposed general limitations of using this RGP.

- If the proposed activity will result in the permanent loss of greater than 3/100 of an acre of open water or greater than 1/10-acre of wetlands, pre-construction notification is required and the MHFD must propose a compensatory mitigation plan to be evaluated by the Corps on a case-by-case basis. The compensatory mitigation plan will include all the required elements of a compensatory mitigation plan as specified at 33 CFR 332.4(c) and will clearly identify

anticipated stream and wetland debits and credits based off procedures identified in the 2020 Colorado Mitigation Procedures (COMP).

- The total combined aerial footprint of impacts to waters of the U.S. for a single and complete project will not exceed 3 acres for tributaries to the South Platte River and 5 acres for the South Platte River. The project will use the MHFD Criteria Manual as a basis for project design and the COMP to calculate debits and credits for the proposed project.
- All disturbed upland areas and adjacent riparian areas will be replanted with grasses, shrubs, and trees according to MHFD Criteria Manual Revegetation Guidelines (MHFD 2020).
- Typical structures shown on in the attached figures are for general information only. Specific dimensions, configurations, and materials will vary with each project.
- For MHFD fee-in-lieu projects where the purpose of the project is to construct a highly functioning, low maintenance channel in association with a residential or commercial development, no projects that would discharge dredged or fill material into waters of the United States and in doing so reduce the 100-year floodplain to maximize developable land are authorized by this RGP. To determine if the project would decrease the floodplain to increase developable land, the MHFD shall provide existing and post-construction floodplain maps demonstrating that the 100-year floodplain has not been filled for the purpose of residential or commercial development. In circumstances where this cannot be demonstrated in advance, an Individual Permit is required, unless waived by the Corps if it is demonstrated the reduction in floodplain is not the purpose of the project, consistent with the Denver Regulatory Office Floodplain Policy.

Section 2. Description of Authorized Work

2.1 Grade Control/Drop Structures

MHFD continually constructs grade control or drop structures as part of stream stability measures. Grade control or drop structures are structures that modify the centerline slope of natural streams in such a way as to resolve erosion and sediment transport problems. These can include boulder, grouted boulder, riffle-drop, narrow sheet metal piling or concrete drops, soil cement, or sculpted concrete structures.

2.2 Bank Stabilization Controls

Bank stabilization is common on MHFD projects to repair or protect streambanks where erosion has occurred or is beginning to occur. Bank stabilization controls include, but are not limited to, riprap or soil cement toe and bank protection, boulder edging, geotextile installations, modular blocks, and bioengineering techniques such as seeded buried soil riprap planted with willow stakes, soil lifts, willow logs/fascines, rootwads or other woody debris, or other methods that use vegetation to help support bank stability.

2.2.1 Proposed Limits

- The activity will not exceed an average of 2 cubic yards per running foot placed along the bank below the plane of the ordinary high water mark (OHWM).
- Unless otherwise approved by the Corps, all riprap will be buried with soil (soil riprap) as specified in MHFD's Urban Storm Drainage Criteria Manual (MHFD 2020). All soil riprap will have a 6" minimum depth of topsoil.

2.3 High Functioning, Lower Maintenance Channel

As discussed above, MHFD is focused on creating high functioning, lower maintenance streams, which focuses on more naturalistic channel design approaches (Figure 2). This often includes channel reshaping and realignment and adding appropriate bed material such as cobble or riprap to create a stable, high functioning stream. Another common design approach is to raise degraded channel inverts to reestablish connectivity of stream flows with the floodplain. This activity may include other activities already described including bank stabilization measures and drop structures.

2.4 Culverts and Bridges

Culverts and bridges are often associated with MHFD projects to accommodate existing or proposed roads. A culvert or bridge is defined as any hydraulic structure that enables vehicular or pedestrian traffic to cross a natural stream or drainage channel above the elevation of the normal base flow. Culverts are typically circular or box sections. Associated structures include wingwalls, flared end sections, trash racks, and energy dissipaters. A bridge structure can include piles and/or abutments.

2.5 Storm Sewer Outfalls and Channel Rundowns

Storm sewer outfalls are often associated with MHFD projects to accommodate existing or proposed adjacent land use and allow for adjacent surface runoff to enter the stream system. A storm sewer outfall is defined as a hydraulic structure that serves as a point discharge for a storm sewer system. Storm sewer outfalls are typically circular pipe or box outlet sections. Associated structures are wingwalls or flared end sections, trash racks, energy dissipaters and stilling basins, and riprap/grouted boulder rundowns. A channel rundown is defined as a structure that carries water from the top of the stream or drainage channel bank to the bottom of the bank, and usually below the water surface. The rundown can consist of, but is not limited to, concrete, riprap or grouted boulders, soil riprap, geotextiles/erosion-control blankets, and other bio-engineering materials. The purpose of the rundown is to convey concentrated urban stormwater runoff down the bank without eroding the bank.

2.6 Stormwater Treatment, Detention and Management Facilities

Stormwater regulations require mitigation treatments for peak flow reduction and water quality. Stormwater treatment, detention, and management facilities include stormwater ponds/facilities, detention basins and retention basins, water quality control structures and facilities, and the associated inlet and outlet structures and emergency spillways.

2.6.1 Proposed Limits

- No stormwater treatment, detention, or management facility will hold water for more than 72 hours.
- Wetlands within stormwater treatment, detention, and management facilities that form after construction of the facility and are included in areas designated for routine improvement or maintenance are authorized to be excavated without need for compensatory mitigation, provided these wetlands were not created as areas of compensatory mitigation.
- If wetland compensatory mitigation is proposed in areas of stormwater treatment, detention, and management facilities, the plan will follow the 2004 compensatory mitigation policy on mitigation in detention/retention basins and the 2008 Mitigation Rule.

Section 3. Application Procedure

The following information is required, for each facility considered under this RGP, in order to process a permit application.

- 3.1 Completed Application Form 4345.
- 3.2 Project manager at MHFD, and the name, address, and telephone number of the owner of the affected land.
- 3.3 Wetland and stream delineations as appropriate.
- 3.4 Maps including the longitude and latitude in decimal degrees of the project location, permanent and temporary impacts to waters of the US, and mitigation areas and specifications.
- 3.5 Representative pre-project photos of the project reach.
- 3.6 Drawings/sketches, on 8.5 x 11-inch sheets, showing details of the proposed work, including longitudinal profile, channel cross sections with views showing elevations, dimensions and standard detail.
- 3.7 The compensatory mitigation plan will include all the required elements of a compensatory mitigation plan as specified at 33 CFR 332.4(c) and will clearly identify anticipated stream and wetland debits and credits based off procedures identified in the 2020 COMP.
- 3.8 Endangered species and cultural assessments/surveys, if applicable.

Section 4. Compensatory Mitigation Requirements and Guidelines

If the proposed activity will result in the loss of greater than 3/100 of an acre of open water or greater than 1/10-acre of wetlands, pre-construction notification is required and MHFD must propose a compensatory mitigation plan to be evaluated by the Corps on a case-by-case basis. The compensatory mitigation plan will include all the required elements of a compensatory mitigation plan as specified at 33 CFR 332.4(c) and will clearly identify anticipated stream and wetland debits and credits based on procedures identified in the 2020 COMP.

4.1 Mitigation Success

Wetland mitigation will be considered successful and self-sustaining when the following conditions have been met without intervention in the form of irrigation, removal of undesirable vegetation or replanting desirable vegetation for a three (3) consecutive year period or other time period determined by the Corps:

- At least 80% of the mitigation site is vegetated and at least 50 % of species will consist of species rated as facultative or wetter.
- Trees and shrubs, to include volunteer specimens, will have a survival rate of at least 85%. Species composition shall be representative of species planted.

- Those species shown on the Colorado Noxious Weed Inventory list-A shall be 100% eradicated. Those species shown on list-B shall be no more than 10% or less of the total cover in the wetland mitigation area.
- When SQT is required, an SQT analysis will be completed at the end of the monitoring period to confirm the project has reached or exceeded the functional feet of loss that resulted from the project.
- If, during the first two years after initial implementation of mitigation, the site conditions indicate that the success criteria are not likely to be achieved, MHFD agrees that remedial efforts will be undertaken or mitigation bank credits applied after consultation between the Corps and MHFD.

4.2 Mitigation Monitoring Table of All Projects Authorized under this RGP.

Each year before December 31, MHFD will submit to the Corps a running updated table of all projects authorized under this RGP. The table will include the following columns:

- Project name.
- Corps file number.
- Project location (individual columns with drainage name, county, latitude and longitude).
- Date project and mitigation began.
- Date project and mitigation complete.
- Impacts to waters of the US (individual columns with wetland and open water acres and stream functional feet debits or credits).
- Successful mitigation of waters of the US (individual columns with acres and stream functional feet debits or credits).
- Date mitigation determined successful by the Corps.

4.3 Monitoring Report of Each Project.

MHFD will annually monitor the work and mitigation of each project, when mitigation is required. Reports describing the monitoring will be submitted each year to the Corps before December 31 beginning during the calendar year the project and mitigation are completed. For each project, the following information will be included in the report:

- Project name.
- Corps file number.
- Project location (drainage name, county, latitude and longitude).
- Date project and mitigation began.
- Date project and mitigation complete.
- Impacts to waters of the US (in both acres and stream functional feet debits or credits).
- Successful mitigation of waters of the US (in both acres and stream functional feet debits or credits).
- Summary of the mitigation plan and standards of success, discussion of success or failure of mitigation, and potential remedial actions proposed to meet standards.
- First year monitoring report will provide information (as-builts or CSQT field measurements), to demonstrate the proposed design and estimated CSQT lift originally proposed was constructed as permitted.

- Short statement and dates of any recent corrective or maintenance activities conducted since the previous report.
- Conclusion summarizing project success, mitigation success, and recommendations.
- Maps and drawings of the project and mitigation areas.
- Photos of the project and mitigation areas, including areas of restored temporary impacts.

Section 5. Permit Conditions

1. This RGP expires on **January 1, 2027**.
2. The information submitted in the pre-construction notification must clearly describe the project so that the Corps can determine whether or not the work complies with the terms, conditions, and limitations of this RGP. The project may not proceed until notification approval has been received from the Corps that the proposed work meets the RGP criteria.
3. MHFD must maintain the activity authorized by this permit in good condition and in conformance with the terms and conditions of this permit. If MHFD relinquishes responsibility for construction or maintenance of a project authorized under this RGP, MHFD must obtain the signature of the new construction/maintenance party, together with that party's assurance of maintenance, and forward the information to the Corps. The Corps must approve the transfer of the responsible party.
4. This RGP may be subject to reevaluation at the discretion of the Corps at any time, but will be reevaluated at least every five (5) years.
5. The Corps has the discretion to require an individual permit on a case-by-case basis. For any activity that the Corps determines to have more than minimal adverse environmental effects, individually or cumulatively, or may be contrary to the public interest, an individual permit may be required.
6. This permit authorizes only projects managed or constructed by MHFD.
7. The Colorado Parks and Wildlife (CPW) has indicated that populations of Northern redbelly dace, common shiner, and Iowa darter can be found on Plum Creek and its tributaries, and should be protected. No work is authorized under this permit on Plum Creek and its tributaries without written clearance from the CPW stating that the project will not harm these species. CPW also indicated that Chatfield and Cherry Creek Reservoirs, which are premier walleye fishing lakes and sources of walleye eggs for the state hatchery system, should be protected. No work is authorized under this permit at Chatfield and Cherry Creek Reservoirs without written clearance from the CPW stating that the project will not harm fish or hatchery systems in the reservoirs.
8. If the Corps is notified that work being performed does not comply with or fall within the scope of this RGP, the responsible party will take immediate steps, as directed by the Corps, to bring the work into compliance with this permit.
9. The Corps may require that additional special conditions be included in any authorization issued under this RGP to avoid, minimize or compensate for adverse environmental impacts.

Section 6. Further Information

1. **Congressional Authorities.** MHFD has been authorized to undertake the activity described above pursuant to Section 404 of the Clean Water Act (33 U.S.C. 1344).
2. **Limits of this authorization.**
 - a. This permit does not obviate the need to obtain other Federal, state, or local authorizations required by law.
 - b. This permit does not grant any property rights or exclusive privileges.
 - c. This permit does not authorize any injury to 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 the Corps that issuance of this permit is not contrary to the public interest was made in reliance on the information MHFD provided.
5. **Reevaluation of Permit Decision.** The Corps may reevaluate its decision on this permit at any time the circumstances warrant. Circumstances that could require a reevaluation include, but are not limited to, the following:
 - a. MHFD fails to comply with the terms and conditions of this permit.
 - b. The information provided by MHFD in support of the permit application proves to have been false, incomplete, or inaccurate (See 4 above).
 - c. Significant new information surfaces which the Corps did not consider in reaching the original public interest decision.

Such a reevaluation may result in a determination that it is appropriate to use the suspension, modification, and revocation procedures contained in 33 CFR 325.7 or enforcement procedures such as those contained in 33 CFR 326.4 and 326.5. The referenced enforcement procedures provide for the issuance of an administrative order requiring MHFD to comply with the terms and conditions of the permit and for the initiation of legal action where appropriate. MHFD will be required to pay for any corrective measures ordered by the Corps, and if MHFD fails to comply with such directive, the Corps may in certain situations (such as those specified in 33 CFR 209.170) accomplish the corrective measures by contract or otherwise and bill MHFD for the cost.
6. **Extensions.** Permit Condition No. 1 establishes a time limit for the application of the activities 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.

This permit becomes effective when the Federal official, designated to act for the Secretary of the Army, has signed below. Issued for and in behalf of Colonel Mark Himes, Omaha District Commander.

Eric Laux
Chief, Regulatory Branch
Operations Division

Date