

In the event that you disagree with an approved jurisdictional determination, and you have **new information** not considered in the original determination, you may request reconsideration of that determination by the Corps District prior to initiating an appeal. To request this reconsideration based upon new information, you must submit the completed NAO-RFA form and the new information to the District Office so that it is received within 60 days of the date of the NAO-RFA. Send approved jurisdictional determination reconsideration requests to:

District Commander
ATTN: Mark D. Frazier
Chief, Regulatory Branch
U.S. Army Engineer District, Kansas City
601 East 12th Street, Suite 402
Kansas City, MO 64106-2824
Voice: 816-389-3990 – FAX: 816-389-2032

The Corps of Engineers has jurisdiction over all waters of the United States. Discharges of dredged or fill material in waters of the United States, including wetlands, require prior authorization from the Corps under Section 404 of the Clean Water Act (33 U.S.C. 1344). The implementing regulation for this Act is found at 33 C.F.R. 320-332.

We have reviewed the information furnished and have determined that your project is authorized by nationwide permit (**NWP**) 27, provided you ensure that the conditions listed in the enclosed copy of excerpts from the February 21, 2012 Federal Register, Issuance of Nationwide Permits are met. You must also comply with the Kansas City District Regional NWP Conditions posted at: <http://www.nwk.usace.army.mil/Missions/RegulatoryBranch/NationWidePermits.aspx>

The District Engineer has further conditioned this permit authorization to include the following special permit conditions:

- a) This Corps permit does not authorize you to take an endangered species, in particular the Neosho madtom (*Noturus placidus*). In order for the taking of a listed species to not be prohibited, you must have separate authorization, in the form of a U.S. Fish & Wildlife Service (FWS) Biological Opinion (BO) issued under Section 7 of the Endangered Species Act (ESA), which contains "incidental take" provisions with which you must comply. The enclosed FWS Biological Opinion contains mandatory terms and conditions to implement the reasonable and prudent measures that are associated with and required to avoid or minimize the occurrence of "incidental take" that is also specified in the BO. Your authorization under this Corps permit is conditional upon your compliance with all of the mandatory terms and conditions associated with incidental take referred to in the attached BO, the terms and conditions of which are incorporated by reference in this permit. Failure to comply with the terms and conditions of the BO associated with incidental take, where a take of the listed species occurs, would constitute an unauthorized take, and would also constitute non-compliance with your Corps permit. However, the Kansas Water Office, in communication with the FWS, is the appropriate authority to determine compliance with the terms and conditions of the BO and with the ESA. For further clarification on this point, you should contact the Kansas Water Office. Should it be determined that the conditions of the BO have been violated, the FWS will enforce the violation of the ESA, or refer the matter to the Department of Justice. (Note: The Corps, as the permitting agency, retains the regulatory responsibility for ensuring that permit conditions are met).
- b) Before the authorized work begins you must provide written authorization to the Corps allowing the Kansas Water Office, the FWS, KDWPT, KDHE, and the Corps, and/or their designated

representatives, access to the work sites authorized by this permit as needed to conduct Neosho madtom sampling and/or monitoring work as required by the U.S. Fish & Wildlife Service Biological Opinion.

- c) You must store all construction materials, equipment, and/or petroleum products, when not in use, above anticipated high water levels. Storage facilities for petroleum products, fuels and other chemicals shall be located so that discharge and runoff into the stream is not possible.
- d) You must restrict the clearing of timber and other vegetation to the absolute minimum required to accomplish the work. If trees are removed you must replace them at a ratio of at least two trees planted for each one removed.
- e) Best management practices for erosion control shall be implemented and maintained throughout the duration of all project activities located in runoff areas to streams.
- f) You must use only graded rock and/or quarry-run rock for riprap. The material must be reasonably well graded, consisting of pieces varying in size from 20 pounds up 150 pounds. Gravel and dirt should not exceed 15% of the total fill volume.
- g) You must establish a minimum 66-foot wide vegetative buffer adjacent to the stream channel beginning at the edge of the shaped bank and continuing the entire length of this project. The vegetative buffer must be planted to and/or established in native grasses, forbs, trees and shrubs during the first growing season following completion of construction of this project.
- h) Upon completion of the earth work, you must seed to native grass all areas disturbed along the stream banks. This seeding mixture must not include reed canary grass (*Phalaris arundinacea*) or any other exotic and/or invasive species.

The Kansas Department of Health and Environment (KDHE) has certified that this NWP will not violate existing state water quality standards provided you comply with the conditions included in their attached letter. All conditions included in the water quality certification become conditions of the NWP authorization, please carefully review all conditions associated with this NWP. If you have any questions concerning state water quality standards or compliance issues with the associated certification conditions, please contact KDHE at 785 296 5573, Bureau of Water – NPS Section, 1000 SW Jackson Street, Suite 420, Topeka, Kansas 66612-1367.

General condition 30 requires you to sign and submit the enclosed "Compliance Certification" upon completion of the authorized work and any required mitigation.

This NWP verification is valid until March 18, 2017. Should your project plans change or if your activity is not complete within the specified verification term, you must contact this office for another permit determination.

Although an individual DA permit is not required, other Federal, state and/or local permits may be required. You should verify this yourself.

In addition, information provided by the Kansas Department of Wildlife, Parks and Tourism (KDWPT) indicates that your project may involve potential impacts to a state listed threatened or endangered species and/or its designated critical habitat. Therefore, a separate action permit may be needed from KDWPT to be in compliance with regulations pursuant to the Kansas Nongame and Endangered Species Conservation Act. For more information concerning an action permit, please contact the KDWPT Environmental Services

Section at 620-672-5911. A copy of this verification is being furnished to KDWPT for their information in administrating the subject Kansas Act.

We are interested in your thoughts and opinions concerning your experience with the Kansas City District, Corps of Engineers Regulatory Program. Please feel free to complete an electronic version of our Customer Service Survey form on our website at: <http://per2.nwp.usace.army.mil/survey.html>. You may also call and request a paper copy of the survey which you may complete and return to us by mail or fax.

Sarah Reznicek, Regulatory Project Manager, reviewed the information furnished and made this determination. If you have any questions concerning this matter, please feel free to contact Ms. Reznicek at (816) 389-3741 or email sarah.m.reznicek@usace.army.mil. Please reference Permit No. NWK-2013-01600 in all comments and/or inquiries relating to this project.

Enclosures

Copies Furnished (electronically w/o enclosures):

Environmental Protection Agency, Watershed Planning and Implementation Branch
U.S. Fish and Wildlife Service, Manhattan, Kansas
Kansas Department of Wildlife, Parks and Tourism
Kansas Department of Health and Environment
Kansas Department of Agriculture
Kansas Water Office
The Watershed Institute, Inc.