



REPLY TO
ATTENTION OF:

DEPARTMENT OF THE ARMY
ST. LOUIS DISTRICT CORPS OF ENGINEERS
1222 SPRUCE STREET
ST. LOUIS, MISSOURI 63103-2833

July 19, 2016

Operations, Readiness and
Regulatory Division
Regulatory Branch
Project Number 2013-480 (P-2924)

Mr. Mark Diamond
522 Scenic View Lane
Cape Girardeau, Missouri 63701

Dear Mr. Diamond:

Transmitted herewith is Department of the Army Permit No. P-2924, authorizing the placement of fill material into waters of the United States associated with the construction of an approximate 26-acre private lake. The project site occurs in Section 7, Township 32 North, Range 8 East, in Madison County, Missouri. The geographic coordinates for the approximate location of the impoundment are 37.4758° North, -90.2084° West. The project will require the discharge of fill material into 528 linear feet of jurisdictional stream channels. The streams are tributaries to Castor River. Castor River is a primary tributary to the Mississippi River, a navigable waterbody.

This instrument does not give any property rights either in real estate or material, or any exclusive privileges; and that it does not authorize any injury to private property or invasion of private rights, or any infringement of Federal, state or local laws or regulations; nor does it obviate the necessity of obtaining state assent to the work authorized.

General conditions designated 1 through 6 and parts 2 through 6 of "Further Information" are standard conditions for all permits. Special Condition 1 points out the Section 401 Water Quality Certification conditions from the Missouri Department of Natural Resources, which specify measures to protect water quality at the work site (enclosure). Special Conditions 2 through 9 specify measures to ensure protection of the aquatic environment and permit compliance.

If any material changes in the scope, location and plans of the work are found necessary, due to unforeseen conditions or otherwise, revised plans detailing proposed modifications in the work must be submitted to the District Engineer for review and approval. Proposed modifications may not be placed under construction until Department of the Army "Approval of Revised Plans" has been granted.

The St. Louis District Regulatory Branch is committed to providing quality and timely service to our customers. In an effort to improve customer service, please take a

moment to go to our Customer Service Survey found on our web site at
http://corpsmapu.usace.army.mil/cm_apex/f?p=regulatory_survey.

If you have any questions please contact Mr. Matt Shively of my Regulatory staff at
(314) 331-8632. Please refer to file number MVS-2013-480.

Sincerely,


Danny D. McClendon
Chief, Regulatory Branch

Enclosures

Copies Furnished: (w/ Special Conditions only)

Mr. Mike Irwin, MDNR-WPP
Ms. Amy Salveter, USFWS
Mr. Jason Daniels, USEPA
Ms. Audrey Beres, MDC

Copy Furnished:

Mr. Craig Gump, Terra Technologies

DEPARTMENT OF THE ARMY PERMIT

Permittee Mr. Mark Diamond

Permit No. P-2924

Issuing Office U.S. Army Engineer District, St. Louis

NOTE: The term "you" and its derivatives, as used in this permit, mean 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: The Permittee proposes to construct a private recreational lake, with a surface area of approximately 26 acres. The construction of the dam for the lake will result in the placement of fill into 298 linear feet of perennial tributary, and 230 linear feet of intermittent tributary. The project will result in secondary impacts (impoundment of water) to an additional 560 linear feet of perennial tributary, and 3,353 linear feet of intermittent tributary.

Project Location: From the city of Fredericktown, the approximate 520-acre project site is located approximately 9 miles southeast on Highways 72 and F. The project site occurs in Section 7, Township 32 North, Range 8 East, in Madison County, Missouri. The geographic coordinates for the approximate location of the impoundment are 37.4758° North, -90.2084° West.

Permit Conditions:

General Conditions:

1. The time limit for completing the work authorized ends on **June 13, 2021**. If you find that you need more time to complete the authorized activity, submit your request for a time extension to this office for consideration at least one month before the above date is reached.
2. You must maintain the activity authorized by this permit in 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.

7. Your responsibility to complete the required compensatory mitigation as set forth in Special Condition 4 will not be considered fulfilled until you have demonstrated compensatory mitigation project success and have received written verification of that success from the U.S. Army Corps of Engineers.

Special Conditions:

See continuation sheet, Pages 4 and 5 of this document for Special Conditions.

Further Information:

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

() Section 10 of the Rivers 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 authorization 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 the 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)
Mr. Mark Diamond

(TITLE)

(DATE)

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

(DISTRICT ENGINEER) Anthony P. Mitchell
Colonel, U.S. Army
BY: Danny D. McClendon
Chief, Regulatory Branch

(DATE)

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)

Special Conditions (P-2924)

1. That the permit may be revoked or a stop work order issued if the State of Missouri notifies the Corps that the permitted activities are not being performed in conformance with the Missouri Department of Natural Resources March 23, 2016 Section 401 Water Quality Certification conditions issued for this permit (see attached).
2. Permittee shall construct the project in accordance with the plans described in Terra Technologies' July 2015 Alternatives Analysis, and October 28, 2015 Final Permittee Responsible Mitigation Plan and Jurisdictional Impacts; and Koehler Engineering's September 21, 2015 Grading Plan. The permittee shall notify the Corps should any change in size, location or methods to accomplish the work occur. Changes could potentially require additional authorizations from the Corps as well as other Federal, state or local agencies.
3. The permittee shall allow representatives from the Corps office to inspect the authorized activity at any time deemed necessary to ensure compliance with permit conditions.
4. In accordance with consultation with the US Fish & Wildlife Service regarding the Federally-endangered Indiana bat (*Myotis sodalis*), and Federally-threatened northern long-eared bat (*Myotis septentrionalis*), tree clearing shall be performed during the seasonal dormancy period from November 1 to March 31.
5. The applicant shall provide compensatory mitigation as described in the Final Permittee Responsible Mitigation Plan, prepared by Terra Technologies and dated October 28, 2015. In addition to the plans and specifications set forth in the plan, the Corps requires adherence to the following conditions:
 - a. The Permittee shall submit written documentation showing formal agreement between the Permittee and a third-party oversight entity and conservation easement holder (grantee) for the mitigation site. The Permittee must submit this documentation prior to initiating waterbody impacts. The Mitigation Plan proposes that the Midwest Mitigation Oversight Association shall serve as the third-party oversight entity. The Permittee must obtain approval from the Corps prior to assigning third-party oversight to any entity other than Midwest Mitigation Oversight Association.
 - b. The Permittee shall submit to the Corps copy of a conservation easement for the compensatory wetland mitigation site totaling 38.19 acres; signed and notarized, with book and page numbers from the Madison County Recorder of Deeds. The conservation easement shall guarantee the preservation of the mitigation site for wetland and wildlife resources, as set forth in language and provisions established by the Corps. The copy of the conservation easement shall be submitted with a land description meeting all legal requirements and prepared by a licensed land surveyor, including the total restricted area, and with a figure illustrating the meets and bounds of the restricted mitigation area. The required conservation easement documentation shall be submitted to the District prior to initiating waterbody impacts.
 - c. Prior to initiating waterbody impacts, the Permittee must provide documentation to the Corps that the required financial assurances; in the form of an irrevocable

letter of credit (LOC) guaranteeing not less than \$38,951; have been established as prescribed in the Mitigation Plan. The LOC must specifically authorize the Midwest Mitigation Oversight Association to draw upon the LOC, at the Corps' direction. Reassignment of the third-party oversight entity, at any time following establishment of financial assurances, will require submittal of a new LOC, designating the new entity as the recipient. The required documentation must include an **original signed copy** of the LOC, as well as certification that the issuing financial institution is FDIC insured. The LOC must include the following language: "The US Army Corps of Engineers (USACE) has full and final authority to determine whether the Permittee, Mr. Mark Diamond, has specifically performed and fulfilled some and/or all obligations, covenants, terms and conditions of the P-2924 lake mitigation project. Mr. Diamond has defaulted on some or all of the obligations, covenants, terms and conditions of the P-2924 lake mitigation project. The Midwest Mitigation Oversight Association has therefore been directed by the USACE to draw against this letter of credit." Written authorization must be received from the Corps prior to any modification of the letter(s) of credit.

- d. In accordance with the Missouri Stream Mitigation Method credit calculations included in the Mitigation Plan, the low-water crossing removal, as well as all in-stream debris removal, must take place prior to initiating waterbody impacts. With regard to the restored Intermittent #13 stream channel, at least 50 percent of the construction and planting must be completed prior to or concurrent with waterbody impacts. The planting for the other forested corridor restoration areas specified within the Mitigation Plan must be completed within one year of completion of the impoundment.
6. Appropriate soil erosion and sediment controls must be used and maintained in operating condition during construction, and all exposed soil and other fills, as well as any work below the ordinary high water mark, must be permanently stabilized at the earliest practicable date.
7. The Permittee shall submit final design plans for the lake discharge structure. The plans must incorporate means to allow a continuous minimum base flow discharge to the downstream perennial tributary. The Permittee must obtain Corps approval for the discharge structure plans prior to construction.
8. The permittee shall notify the Corps upon completion of all work relative to the project. A final compliance inspection may be carried out in order to witness that all conditions have been complied with during construction.
9. That the permit (P-2924) is valid for 5 years from the date of permit issuance. The permittee shall contact the District in writing at least 30 days prior to permit expiration in order to renew this permit, if all construction activities relative to this project are not completed in this time frame.

STATE OF MISSOURI
DEPARTMENT OF NATURAL RESOURCES

Jeremiah W. (Jay) Nixon, Governor • Sara Parker Pauley, Director

www.dnr.mo.gov

MAR 23 2016

Mr. Mark Diamond
522 Scenic View Lane
Cape Girardeau, MO 63701

RE: P-2924/2013-00480/CES002755 in Madison County

Dear Mr. Diamond:

The Department of Natural Resources (DNR), Water Protection Program, has reviewed your request for Clean Water Act Section 401 Water Quality Certification (WQC) to accompany the U.S. Army Corps of Engineers' (USACE) Permit P-2924/2013-00480 in which you are proposing to construct a private lake of 26.02 acres by placing fill into 258 linear feet (LF) of a perennial tributary of the Castor River and 230 LF of an intermittent tributary. The resulting secondary impacts from armoring and inundation would include an additional 600 LF of the perennial tributary and 3,353 LF of intermittent tributaries.

A permittee responsible mitigation plan was submitted on October 28, 2015. It includes the restoration and enhancement of 1,847 LF of stream channel and the preservation and restoration of riparian buffer along 11,510 LF of stream. The mitigation plan will result in 21,627 credits.

The 520-acre project site, which includes the proposed lake and mitigation areas, is located in Section 7, Township 32 North, Range 8 East approximately nine miles southeast of Fredericktown, Madison County, Missouri. Approximate geographic coordinates for the project are 37.4758°N and 90.2084°W.

This WQC is being reissued under Section 401 of Public Law 95-217, The Clean Water Act of 1977 and subsequent revisions. This office certifies the proposed project will not cause the general or numeric criteria to be exceeded nor impair beneficial uses established in the Water Quality Standards, 10 CSR 20-7.031, provided the following conditions are met:

1. The 4,441 LF of stream impacts were assessed using the "2013 State of Missouri Stream Mitigation Method" and determined to require 20,815 mitigation credits. Compensatory mitigation shall be satisfied as described in the mitigation plan dated October 28, 2015. Compensatory mitigation shall be completed according to the credit schedules in the mitigation plan, and the mitigation area shall be placed under a permanent real estate instrument. Copies of the permanent real estate instrument and proof of completed on-site mitigation shall be provided to DNR at the address below.

2. Hydraulic design of the dam shall seek to minimize adverse impacts by matching design outflows to natural inflows, mimic the natural hydrology of this system and include a channel-maintenance flow to the greatest extent practicable. Antidegradation requirements dictate all appropriate and reasonable Best Management Practices related to erosion and sediment control, project stabilization and prevention of water quality degradation are applied and maintained; for example, preserving vegetation, streambank stability and basic drainage. Applicants will be responsible for ensuring permit requirements and relevant WQC conditions are met.
3. Best Management Practices shall be used during all phases of the project to limit the amount of discharge of water contaminants to waters of the state. The project shall not involve more than normal stormwater or incidental loading of sediment caused by construction disturbances.
4. Acquisition of a WQC shall not be construed or interpreted to imply the requirements for other permits are replaced or superseded, including Clean Water Act Section 402 National Pollutant Discharge Elimination System Permits. Permits or any other requirements shall remain in effect. Land disturbance activities disturbing one or more acres of total area for the entire project require a stormwater permit. Instructions on how to apply for and receive the on-line land disturbance permit are located at www.dnr.mo.gov/env/wpp/epermit/help.htm. Questions regarding permit requirements may be directed to DNR's Southeast Regional Office at (573) 840-9750.
5. Care shall be taken to keep machinery out of the water way as much as possible. Fuel, oil and other petroleum products, equipment, construction materials and any solid waste shall not be stored below the ordinary high water mark at any time or in the adjacent floodway beyond normal working hours. All precautions shall be taken to avoid the release of wastes or fuel to streams and other adjacent waters as a result of this operation.
6. Petroleum products spilled into any water or on the banks where the material may enter waters of the state shall be immediately cleaned up and disposed of properly. Any such spills of petroleum shall be reported as soon as possible, but no later than 24 hours after discovery to DNR's Environmental Emergency Response number at (573) 634-2436.
7. Only clean, nonpolluting fill shall be used.
8. Streambed gradient shall not be adversely altered during project construction.
9. No project shall accelerate bed or bank erosion.
10. The project shall not fill jurisdictional springs.
11. Conduct project activity at low flows and water levels to limit the amount of sediment disturbance caused by the heavy equipment. Limit the duration and extent that any heavy equipment is required to be in-stream.

Mr. Mark Diamond
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12. Representatives from DNR shall be allowed on the project property to inspect the authorized activity at any time deemed necessary by DNR to ensure compliance with the above conditions.
13. The WQC is based on the plans as submitted. Should any plan modifications occur, please contact DNR to determine whether the WQC remains valid or may be amended or revoked.

No additional fee is due. Pursuant to Chapter 644, RSMo, commonly referred to as the Missouri Clean Water Law, and fee regulations under 10 CSR 20-6.011(2)(I), this reissued WQC was valid once payment of the \$150 fee was received on March 14, 2016.

You may appeal to have the matter heard by the Administrative Hearing Commission (AHC). To appeal, you must file a petition with the AHC within 30 days after the date this decision was mailed or the date it was delivered, whichever date was earlier. If any such petition is sent by registered mail or certified mail, it will be deemed filed on the date it is mailed; if it is sent by any method other than registered mail or certified mail, it will be deemed filed on the date it is received by the AHC.

This WQC is part of the USACE's permit. Water Quality Standards must be met during any operations authorized. If you have any questions, please contact Mr. Mike Irwin by phone at (573) 522-1131, by e-mail at mike.irwin@dnr.mo.gov, or by mail at the Department of Natural Resources, Water Protection Program, P.O. Box 176, Jefferson City, MO 65102-0176. Thank you for working with DNR to protect our environment.

Sincerely,

WATER PROTECTION PROGRAM



Chris Wieberg, Chief
Operating Permits Section

CW:mip

Enclosure

- c: Ms. Sherry Bell, Fiscal Management Section, Budget and Fees Unit
Mr. Art Goodin, Southeast Regional Office
Mr. John Hoke, Watershed Protection Section
Ms. Crystal McNeal, Southeast Regional Office
Ms. Anna Nowack, Watershed Protection Section
Mr. Matt Shively, U.S. Army Corps of Engineers, St. Louis District