

SPECIAL PUBLIC NOTICE



**US Army Corps
of Engineers
Kansas City District**

**Public Notice No. 2008-424
Issue Date: June 25, 2010**

UPDATE OF KANSAS STREAM MITIGATION GUIDANCE (KSMG)

Background: The U.S. Army Corps of Engineers-Kansas City District (Corps) adopted the KSMG on October 30, 2008, after a request from the Kansas Natural Resources Sub-cabinet and the Kansas Stream Mitigation Task Force (Task Force), and after a public notice for comment and review for conformance with the Compensatory Mitigation Rule (see 33 CFR part 332). The KSMG became the primary tool the Corps used for the evaluation of stream impacts and mitigation proposals for permit actions within the State of Kansas, including Indian Country.

The Corps conducted a comprehensive review of the KSMG to address inconsistencies and issues identified during its first year of use and issued a 30-day public notice, expiring on January 30, 2010, for public comment. The Corps then further modified the KSMG based upon internal review, consideration of all comments received to date and the completion of field testing exercises.

A number of comments were received recommending changes to the Compensatory Mitigation Rule and other national regulations and guidance. The KSMG is subordinate to those national regulations and guidance documents, and review of those national regulations and guidance documents is not within the scope of the Kansas City District's authority. However, the Kansas City District will use these comments to better focus public outreach efforts related to the KSMG.

Additionally, many comments were received concerning the impact of the KSMG on the extent of waters of the United States (Corps Regulatory Program jurisdiction). Jurisdiction is determined under separate regulations and processes. The KSMG has no bearing on the extent of jurisdiction. Typically, the KSMG is used only on waters previously determined jurisdictional or proposed/accepted as jurisdictional.

Purpose: For projects approved pursuant to the Corps Regulatory Program jurisdiction under Section 10 of the Rivers and Harbors Act of 1899 (33 USC 403) and Section 404 of the Clean Water Act (33 USC 1344), the Corps of Engineers must require compensatory mitigation to offset losses of aquatic functions. The KSMG creates a level tool to identify impacts to aquatic ecosystems (debits) and effects of mitigation actions (credits) so that the debit and credits can be compared in like terms. Use of a standard assessment tool improves efficiency, communication and consistency and provides increased predictability in the mitigation design and evaluation process.

Effective Date: Effective the date of this notice, the comprehensive one-year review has concluded and the KSMG has been updated. This second version of the KSMG will remain the primary tool the Corps will use for evaluating stream impacts and mitigation proposals for new permit actions within the State of the Kansas, including Indian Country. For those projects that are currently under Corps review, the Corps will determine which version of the KSMG will be utilized.

KSMG Document: The updated KSMG and [KSMG Assessment Spreadsheet](#) are located on the District's webpage at <http://www.nwk.usace.army.mil/regulatory/regulatory.htm>, and posted within the “Topics of Interest” box under Compensatory Mitigation.

Periodic Review: The KSMG will be reviewed and updated as necessary based upon experiences during use, with a comprehensive review when needed. Comments may be provided at any time, or held for the next comprehensive review.

Additional Information: Additional information about the KSMG may be obtained by contacting Mr. Thomas A. McCabe, Kansas State Regulatory Office, 2710 NE Shady Creek Access Road, El Dorado, Kansas, 67042, at telephone (316) 322-8247 or via e-mail at Thomas.a.mccabe@usace.army.mil