



2012 Regional Conditions in New Mexico

U.S. Army Corps of Engineers
Albuquerque District

REGIONAL CONDITIONS TO NATIONWIDE PERMITS IN THE STATE OF NEW MEXICO

Regional Conditions Applicable to All Nationwide Permits within the State of New Mexico

a. Dredge and Fill Activities in Intermittent and Perennial Streams, Special Aquatic Sites, and Outstanding National Resource Waters (ONRWs):

Notification to the District Engineer in accordance with General Condition 31 (Pre-Construction Notification) is required for all proposed activities in intermittent and perennial streams, special aquatic sites (including wetlands, riffle and pool complexes, and sanctuaries and refuges), and ONRWs.

For projects in which the New Mexico Environment Department (NMED) is the water quality certifying agency, the applicant must also provide a copy of the Pre-Construction Notification directly to the NMED Surface Water Quality Bureau, and obtain confirmation for the use of the Section 401 Water Quality Certification prior to commencing work in these waters. A copy of NMED's confirmation must be provided to the Corps. The timeframes established in General Condition 30(d) shall apply to the NMED confirmation process.

b. Special Status Waters in New Mexico. The waters listed in **Attachment 1** have been designated by the New Mexico Department of Game and Fish as Special Trout Waters, Rio Grande Cutthroat Trout Waters, Critical Reptile and Amphibian Habitat, or Critical Mammal Habitat. No activities are authorized under any nationwide permits for activities occurring in these waters without Pre-Construction Notification to the Corps in accordance with General Condition 30 and to the appropriate agencies, including but not limited to the New Mexico Department of Game and Fish, in accordance with the timeframes established in General Condition 31(d).

c. Activities in all Waters of the United States. Any activity that exceeds 1/2 acre of permanent fill in waters of the United States will **not** be authorized by any nationwide permit except 20, 27, 32, 37, 38 and 46.

d. Springs. All nationwide permits require Pre-Construction Notification pursuant to General Condition 31 for discharges of dredged or fill material within 100 feet of the point of groundwater discharge of natural springs. A spring source is defined as any location where ground water emanates from a point in the ground and has a defined surface water connection to another water of the United States. For purposes of this regional condition, springs do not include seeps or other discharges which lack a defined surface water connection.

e. Aquatic Life Movements. General Condition 2 (Aquatic Life Movements) is amended to require that all activities that would impede aquatic life movement or migration including those construction activities whose purpose is to impound water, will require efficient fish passage structures except when the structure is specifically designed to prevent such movement (barriers to prevent upstream movement of non-native fish to protect native fish species).

f. Gradient. General Condition 9 (Management of Water Flows) is amended to add the following: Projects that will result in permanent changes to local stream gradient, streambed elevation, sinuosity, direction, velocity of streamflow, or cause any significant changes (i.e., causing more than minimal interruption of normal stream processes or functions) in channel morphology or aquatic habitat (unless the project is specifically designed to restore previously degraded and unstable streams) require notification to the District Engineer in accordance with General Condition 31 (Pre-Construction Notification).

g. Suitable Fill. Use of broken concrete or used tires formed into bales as fill or bank stabilization material requires notification to the District Engineer in accordance with General Condition 31 (Pre-Construction Notification). Applicants must demonstrate that soft engineering methods utilizing native or non-manmade materials are not practicable (with respect to cost, existing technology, and logistics), before broken concrete or used tires as bales are allowed as suitable fill. Use of broken concrete with rebar is prohibited in all waters of the United States.

h. Fens. All Nationwide permits, except permit Nos. 3, 5, 6, 20, 27, 32 and 38, are revoked in fens and wetlands adjacent to fens. Use of nationwide permit Nos. 3, 20, 27 and 38, requires notification to the District

Engineer, in accordance with General Condition 31 (Pre-Construction Notification), and the applicant may not begin the activity until the Corps determines the adverse environmental effects are minimal. The following defines a fen:

Fen soils (histosols) are normally saturated throughout the growing season, although they may not be during drought conditions. The primary source of hydrology for fens is groundwater. Histosols are defined in accordance with the U.S. Department of Agriculture, Natural Resources Conservation Service publications on Keys to Soil Taxonomy and Field Indicators of Hydric Soils in the United States (<http://soils.usda.gov/technical/classification/taxonomy> and <http://soils.usda.gov/technical/>).

Additionally, peat lands with spongy, water-logged soil containing a histosol or a mineral soil with a histic epipedon that may be termed in some literature as cienagas, marshes, or bogs (for example, the Alamo bog complex and the floating mat fen complex at Santo Domingo Pueblo) are included in this regional condition.

Regional Conditions Applicable to Specific Nationwide Permits within the State of New Mexico

i. Nationwide Permit No. 13 - Bank Stabilization. Bank stabilization activities necessary for erosion prevention in intermittent or perennial streams that average less than 20 feet in width (measured between the ordinary high water marks on each bank) are limited to the placement of no more than 1/4 cubic yard of suitable fill* material per running foot below the plane of the ordinary high water mark. Activities greater than 1/4 cubic yard per running foot may be authorized, but will require notification in accordance with General Condition 31 (Pre-Construction Notification) for the Corps to determine if adverse environmental effects are minimal. *See condition g for definition of Suitable Fill.

j. Nationwide Permit No. 14 - Linear Transportation Crossings. In perennial waterways, culverts will be designed to allow the upstream and downstream passage of aquatic organisms, including fish native to the reach.

k. Nationwide Permit No. 23 – Approved Categorical Exclusions. Notification to the District Engineer in accordance with General Condition 31

(Pre-Construction Notification) is required for all proposed activities under Nationwide Permit 23.

l. Nationwide Permit No. 27 – Aquatic Habitat Restoration, Establishment, and Enhancement Activities. For all proposed activities under Nationwide Permit 27 that require Pre-Construction Notification, a monitoring plan commensurate with the scale of the proposed restoration project and the potential for risk to the aquatic environment must be submitted to the Corps. (See “Guidelines for Nationwide Permit 27 Submittals” at <https://spa.usace.afpims.mil/Missions/RegulatoryProgramandPermits/NationwidePermits.aspx>).

m. Nationwide Permits No. 29 - Residential Developments, and No. 39 - Institutional and Commercial Developments. These permits do not authorize channelization or relocation of any intermittent or perennial water course regardless of size or rate of flow, except when, as determined by the Corps, the proposed channelization would impact a previously channelized stream reach, or the proposed relocation would result in a net increase in functions of the aquatic ecosystem within the watershed.

ADDITIONAL INFORMATION

The following provides additional information regarding minimization of impacts and compliance with existing General Conditions:

a. Permittees are reminded of **General Condition Number 6** which prohibits the use of unsuitable material. Organic debris, building waste, asphalt, car bodies, individual tires and trash are **not** suitable fill material. Also, **General Condition Number 12** requires appropriate erosion and sediment controls (i.e., all fills must be permanently stabilized to prevent erosion and siltation into water and/or wetlands at the earliest practicable date). Streambed material or other small aggregate material placed along a bank as stabilization will not meet General Condition Number 12.

b. Designated Critical Resource Waters in New Mexico. Within the State of New Mexico, the waters listed in **Attachment 2** are designated as critical resource waters. In accordance with General Condition 22 (Designated Critical Resource Waters), the discharge of dredged or fill material is not authorized by the following nationwide permits in these waters, including wetlands adjacent to such waters: NWP 7, 12, 14, 16, 17, 21, 29, 31, 35, 39, 40, 42, 43, 44, 49, 50, A and B. In addition, in accordance with General Condition 30 (Pre-Construction Notification), notification to the

District Engineer is required for use of the following nationwide permits in these waters, including adjacent wetlands: NWP's 3, 8, 10, 13, 15, 18, 19, 22, 23, 25, 27, 28, 30, 33, 34, 36, 37 and 38.

ATTACHMENT 1 **SPECIAL STATUS WATERS**

CRITICAL REPTILE AND AMPHIBIAN HABITAT

Critical reptile and amphibian habitat, also referenced as "herp" habitat, is defined as that habitat which is known to be occupied by state threatened and endangered reptiles and amphibians under the New Mexico Wildlife Conservation Act, but are not listed as threatened and endangered under the Federal Endangered Species Act.

All perennial reaches of the Gila River, the San Francisco River and Mule Creek. These waters are native habitat for the Narrowhead garter snake (*Thamnophis rufipunctatus*) and the Mexican garter snake (*Thamnophis eques*).

Black River, Delaware River and lower Pecos River below Carlsbad. These waters are occupied by state-listed western river cooter (*Pseudemys gorzugi*) and plainbelly watersnake (*Nerodia erythrogaster*).

Ute Creek, Cieneguilla Creek, Canadian River and tributaries below Maxwell, Bitter Lake National Wildlife Refuge (NWR) wetlands and Pecos River and tributaries downstream of Bitter Lake NWR, including the Black River, Delaware River, and lower Pecos River below Carlsbad. These waters are occupied by the state-listed western ribbon snake (*Thamnophis proximus*).

CRITICAL MAMMAL HABITAT

Critical mammal habitat is defined as that habitat which is known to be occupied by state threatened and endangered mammals under the New Mexico Wildlife Conservation Act, but are not listed as threatened and endangered under the Federal Endangered Species Act.

San Francisco River and tributaries. These waters are occupied by the state-listed Arizona montane vole (*Microtus montanus arizonensis*). This vole occupies mesic sedge and grass meadows bordering small creeks and marshes in the San Francisco drainage. Projects requiring authorization under Section 404 of the Clean Water Act for placement of fill in waters of the

U.S. in the San Francisco drainage have the potential to impact occupied habitat of this species.

Raton Creek, Jemez River drainage, Coyote Creek (Sangre de Cristo Mountains), Isleta reach of the middle Rio Grande, Bosque del Apache National Wildlife Refuge, and Rio Penasco drainage on the Lincoln National Forest. These waters are occupied by the state-listed meadow jumping mouse (*Zapus hudsonius*). This species occupies riparian habitats immediately adjacent to perennial streams and rivers, including the water's edge. Typical plant species associated with meadow jumping mouse habitat include spikerush, sedges, and rushes. Projects requiring authorization under Section 404 of the Clean Water Act for placement of fill in waters of the U.S. in these waters have the potential to impact occupied habitat of this species.

Tucumcari Lake, Salt Lake on Grulla NWR, and Bitter Lake National Wildlife Refuge and vicinity in the Pecos River Valley, including Bottomless Lakes State Park and BLM Overflow Wetlands. These waters are occupied by the state-listed least shrew (*Cryptotis parva*). Aquatic habitats this shrew occupies include mesic meadows with willows and cattails, and bulrush marshes. Projects requiring authorization under Section 404 of the Clean Water Act for placement of fill in waters of the U.S. in these waters have the potential to impact occupied habitat of this species.

SPECIAL TROUT WATERS

Special trout waters are managed to provide anglers with the opportunity to experience superior high quality fishing. These waters have reduced creel limits or are catch and release. Accordingly, they need to be protected during construction activities permitted under CWA Sec. 404.

Pecos River Drainage

Pecos River the box canyon 1/2 mile above the confluence of the Mora and Pecos, upstream 1 mile to 1/4 mile below Cowles Bridge

Pecos River in the Pecos Wilderness above Pecos Falls

Doctor Creek from 1/4 mile above its confluence with Holy Ghost Creek, upstream to its headwaters

Jacks Creek from the waterfalls located 1/4 mile downstream from NM Hwy 63 crossing, upstream to its headwaters

Rio Valdez in the Pecos Wilderness from 1/4 mile below Smith Cabin, upstream to its headwaters

Jemez River Drainage

Rio Cebolla from the Seven Springs Day Use Area upstream to its headwaters

Rio Guadalupe from Porter Landing Bridge 1.3 miles downstream to Llano Loco Spring

San Antonio River from Valles Caldera Preserve boundary downstream 2 miles.

San Juan River Drainage

San Juan River from Navajo Dam downstream 3.5 miles as posted.

Rio Costilla Drainage

Valle Vidal - all streams in the Valle Vidal including Shuree Lakes

Rio Costilla from Valle Vidal Boundary 2.4 miles downstream to Latir Creek

Chama River Drainage

All waters within the Sargent Wildlife Management Area, including Nabor Creek and Nabor Lake), Rio Chama, Rio Chamita and Sexto Creek Chama River 2.9 miles within the Rio Chama Wildlife and Fishing Area

Chama River from Abiquiu Dam downstream 7 miles to the U.S. bridge at Abiquiu

Upper Rio Grande Drainage and its tributaries

Rio Grande from Colorado line downstream to the Taos Junction Bridge

Red River from the confluence of Goose Creek for 1 mile upstream as posted

Red River from 1/2 mile below walking bridge at the Red River State Hatchery downstream to confluence with the Rio Grande

Rio De Los Pinos from USFS Roads 284 & 87A, 2-1/2 miles upstream to private land

Rio Pueblo between the bridge at Mile Marker 55 on State Hwy 518 upstream 1 mile to Canon Tio Maes Trailhead, as posted.

Capulin Creek on Bandelier National Monument and US Forest Service property

Cabresto Creek from the Cabresto Canyon upstream to headwaters.

Gila and San Francisco River drainages

Gilita Creek and Willow Creek from the confluence of Snow Creek to headwaters.

Iron Creek from barrier 4 miles upstream of Turkey Feather Trail to its headwaters

Mogollon Creek from barrier at waterfalls near Forest Service Trail 153 to confluence of Trail Canyon

Black Canyon from waterfall barrier at Black Canyon Campground upstream

Lower Rio Grande from Elephant Butte Dam downstream to Caballo Lake including Caballo Lake

Cimarron River from east end of Tolby Campground downstream 1.4 miles to first U.S. 64 bridge

Rio Las Animas within the Gila National Forest, Black Ranger District

Rio Ruidoso from the Mescalero Reservation border downstream to Friedenbloom Drive

RIO GRANDE CUTTHROAT TROUT WATERS

CANADIAN DRAINAGE

Colfax County

American Creek
Clear Creek
Leandro Creek
Middle Ponil Creek
Ricardo Creek
South Ponil creek

Little Vermejo River
Vermejo River

Mora County

Luna Creek (Near Mora)
Mccrystal Creek
Murphy Creek
Santiago Creek

PECOS DRAINAGE

Mora County

Pecos River (Above the falls)
Rio Valdez
Rito Del Padre
Rito Maestas (Rio del Padre)
Rio Mora (Upper)

San Miguel County

Cave Creek
Doctor Creek
Jacks Creek

Lincoln County

Pinelodge Creek

RIO GRANDE DRAINAGE

Rio Arriba County

Canjillon Creek
Canones Creek (Jemez)
East Fork Wolf Creek
El Rito Creek
El Rito Creek Upper (Fifteen Springs)
Jaroso Creek (El Rito)
Nabor Creek (Sergent Wildlife Area)
Polvadera Creek (Canones Creek)
Rio de La Cebolla (Rio Quemado-Truchas)
Rio De Las Vacas (Perchas, Anastacio)
Rio De Truchas (Rio Quemado)
Rio Del Oso (Chama)
Rio Nutrias (Tres Piedras)

Rio Puerco West
Rio Santa Barbara (east fork)
Rio Santa Barbara (middle fork)
Rio Santa Barbara (West Fork)
Rito De Las Perchas
Tanques Creek (Tres Piedras)
Tio Grande (Tres Piedras)
Willow Creek (Jicarilla)-restored-1998

Sandoval County

Cochiti Creek watershed
Peralta Creek
La Jara Creek (Rio Puerco)
Rio Cebolla
Rito de las Palomas (Jemez)
Rito de Los Pinos (Jemez)
Rio Capulin (Bandelier)

Santa Fe County

Dalton Creek
Macho Creek
Rio Capulin (Nambe drainage)
Rio Frijoles

Taos County

Red River Drainage

Bitter Creek
Cabresto Creek
Columbine Creek (Deer, Placier, Willow)
Costilla Creek

Valle Vidal Drainage

Comanche Creek
Fernandez Creek (Comanche)
La Cueva Creek
Little Costilla Creek (Comanche)
Powderhouse Creek
Chuckwagon Creek (Comanche)
Vidal Creek (Comanche)
Holman Creek (Comanche)
Gold Creek (Comanche)

LaBelle Creek (Comanche)
Casias Lakes
Costilla Creek
State Line Creek
Glacier Creek
Glacier Lakes
South Fork Glacier Creek

Hondo Drainage

Gavilan Canyon Creek (Rio Hondo de Taos)
Italianos Creek (Rio Hondo de Taos)
Rio Hondo -South Fork (Wheeler Peak)
Yerba Creek (Rio Hondo de Taos)

Rio Pueblo Drainage

Sardinas (near la Prensa)
Alamitos Creek (Rio Pueblo)
Frijoles Creek (Rito de la Olla)
Indian Canyon (Penasco)
Osha Creek
Palociento Creek
Rito de la Presa
Policarpio Creek
San Cristobal Creek
Tienditas Creek (Valle Escondito)

ATTACHMENT 2
DESIGNATED CRITICAL RESOURCE WATERS

CRITICAL INVERTEBRATE HABITAT

Critical invertebrate habitat is defined as that habitat which is known to be occupied by state threatened and endangered invertebrates that are not listed as threatened and endangered under the Federal Endangered Species Act.

Blue Spring and associated riparian corridor, Eddy County. Blue Spring is the primary hydrologic source for perennial reaches of the Black River, and provides habitat for the endemic Pecos springsnail (*Pyrgulopsis pecosensis*) and the land snail, *Vertigo ovata*.

Thermal spring in Socorro County*. Habitat for the endemic Chupadera springsnail (*Pyrgulopsis chupaderae*).

Thermal spring in Socorro County*. Habitat for the endemic New Mexico springsnail (*Pyrgulopsis neomexicana*).

Ojo Caliente-Warm Spring wetland complex, Socorro County. Habitat for the endemic Alamosa springsnail (*Tryonia alamosae*), and the land snail, *Vertigo ovata*.

Thermal spring, Socorro County*. Native habitat for the Socorro isopod (*Thermosphaeroma thermophilum*).

Ute River, Conchas Lake, and Ute Reservoir. Habitat for the paper pondshell mussel (*Utterbackia imbecillis*).

All perennial reaches of the Black River, Eddy County, from Black River Village downstream to the Carlsbad Irrigation District dam. Habitat for Texas hornshell mussel (*Popenaias popeii*)

Critical Designated Resource Areas for Invertebrates

Gila springsnail (*Pyrgulopsis gilae*)

Jordon Hot Springs, Middle Fork Gila River, Catron County
Unnamed thermal springs along Middle Fork Gila River, Catron County
Unnamed thermal springs along East Fork Gila River, Grant County

Unnamed spring seeps along Beaver Creek, East Fork Gila River, Catron County

Unnamed spring seeps along Taylor Creek, Catron County
Alum Hot Spring, Gila River, Grant County

New Mexico springsnail (*Pyrgulopsis thermalis*)

Unnamed thermal springs along East Fork Gila River, Grant County
Alum Hot Spring, Gila River, Grant County

* Release of site-specific locality information precluded by NMDGF Regulation 19.33.4.8, "Release of Confidential Data Regarding Endangered Species."

CRITICAL DESIGNATED RESOURCE AREAS FOR INVERTEBRATES¹

Doña Ana County

Issack Lake
(*Streptocephalus moorei*, fairy shrimp)
unnamed playa near Riley, NM
(*Streptocephalus moorei*, fairy shrimp)

Hidalgo County

Lordsburg Playa Special Management Area and Natural Resource Area (BLM)
(*Streptocephalus thomasbowmani*, fairy shrimp; *Lepidurus lemmoni*, tadpole shrimp)

Luna County

unnamed playa, Arena, NM
(*Streptocephalus moorei*, fairy shrimp)

Otero County

Crow Flats Alkali Lakes Area of Critical Concern (BLM)
(*Phallocryptus sublettei*, fairy shrimp)

¹ Saline and alkali playas provide unique aquatic habitats for rare, globally restricted large branchiopod crustaceans, and are recognized as important habitat for resident and migratory waterfowl, including rare plants. Designated uses for these areas include: recreation, grazing, paleontological, wildlife, biological, and research.

Sierra County

Cedar Lake
(*Streptocephalus moorei*, fairy shrimp)

Torrance County

Laguna del Perro Salt Lakes Complex, Estancia Bain (BLM, NMED)
(*Branchinecta* sp., fairy shrimp)

CRITICAL FISH HABITAT

Gila chub (*Gila intermedia*) (also federally-listed):

Mule Creek (San Francisco River tributary)
Turkey Creek (Gila River tributary)
Gila River

Roundtail chub (*Gila robusti*):

Gila River: New Mexico reaches of the
Upper East Fork of the Gila River,
Lower Middle fork of the Gila River,
Lower most West Fork of the Gila River
Mainstem Gila River from confluence of East & West forks Gila River
downstream to AZ/NM border.

San Juan River Drainage: New Mexico reaches of the
Mancos River
La Plata River
Animas River
Navajo River

Headwater chub (*Gila nigra*):

West Fork Gila River—from its confluence with East Fork Gila River
upstream to Gila Wilderness boundary.

Middle Fork Gila River—from its confluence with West Fork Gila River
upstream to Gila Wilderness boundary.

East Fork Gila River—from its confluence with West Fork Gila River
upstream to confluence of Beaver and Taylor creeks.

Beaver Creek—from its confluence with Taylor Creek upstream to FS Road

150.

Taylor Creek—from its confluence with Beaver Creek upstream to Wall Lake.

Peppered chub (*Macrhybopsis tetranemus*):

South Canadian River, downstream of Ute dam to the Texas/New Mexico
border.

Suckermouth minnow (*Phenacobius mirabilis*):

South Canadian
Dry Cimarron River
Lower reaches of Mora River

Southern redbelly dace (*Phoxinus erythrogaster*):

Headwaters of the Mora River, including Coyote Creek and tributaries to
Black Lake
Wetland associated with Mora River, located just east of Mora

Zuni bluehead sucker (*Catastomus discobolus yarrowi*):

Rio Nutria drainage upstream of mouth of Nutria Box Canyon

Blue Sucker (*Cycleptus elongatus*):

Pecos River, downstream from Brantley Dam to the Texas - New Mexico
border
Lower reaches of the Black River

Gray Redhorse (*Moxostoma congestum*):

Pecos River, from Carlsbad downstream to the New Mexico - Texas border
Lower reaches of the Black River.

Mexican tetra (*Astyanas mexicanus*):

Pecos River and associated floodplain habitats from Bitter Lake National
Wildlife Refuge downstream to the New Mexico - Texas border
Black River
Delaware River

White Sands pupfish (*Cyprinodon tularosa*):

All wetted aquatic habitat within the U. S. Army White Sands Missile Range
and the Holloman Air Force Base. Wetted habitat associated with Lost River
and Malpais Spring changes with precipitation. Pupfish move quickly into
newly wetted areas

Pecos pupfish (*Cyprinodon pecosensis*):

Pecos River and associated floodplain habitats from Bitter Lake National Wildlife Refuge downstream to near Malaga Bend
Gypsum sinkholes, isolated oxbows and artificial impoundments on Bitter Lake National Wildlife Refuge
Aquatic habitats on Bottomless Lakes State Park.
BLM Overflow Area on Bottomless Lakes State Park

Bigscale Logperch (*Percina macrolepida*):

Pecos River between Santa Rosa and Fort Sumner Reservoir
Lower Pecos (Bitter Lake NWR downstream to Brantley Reservoir)
Black River

Greenthroat darter (*Etheostoma lepidum*):

Bitter Creek and gravel-bottomed ponds on Bitter Lake National Wildlife Refuge
Cottonwood Creek, Blue Spring and Rattlesnake Springs in Carlsbad Caverns National Park