US Army Corps of Engineers®
Albuquerque District

JOINT PUBLIC NOTICE

Action No.:	SPA-2014-00449-ABQ
Action Title:	Letter of Permission NM-1
Applicable Area:	state of New Mexico
Effective Date:	May 15, 2017

Regulatory Division
New Mexico/Texas Branch
U.S. Army Corps of Engineers, Albuquerque District
4101 Jefferson Plaza, Northeast
Albuquerque, New Mexico 87109

UPDATE to ADD VILLAGE OF RUIDOSO to
FINAL LETTER OF PERMISSION PROCEDURE UNDER SECTIONS 404 and 401
OF THE CLEAN WATER ACT (33 USC 1344)
for MAINTENANCE ACTIVITIES AT CERTAIN EXISITING STRUCTURES/FACILITIES CONDUCTED BY GOVERNMENT ORGANIZATIONS

Interested parties are hereby notified that, in accordance with Title 33 Code of Federal Regulations (CFR) Part 325.2(e), published in the Federal Register on November 13, 1986, the Albuquerque District of the United States Army Corps of Engineers (Corps) issued a Letter of Permission (LOP) procedure for authorizing the work described herein, within the state of New Mexico. The purpose of this procedure is to expedite Section 404 authorization for the activities described below when they would not pose substantial adverse individual or cumulative impacts on the aquatic environment. Each LOP issued will include the general conditions identified herein by reference and appropriate case-specific provisions intended to protect the environment, including natural and cultural resources. Work that does not comply with these provisions may require authorization by standard individual permit. However, compliance with this LOP procedure, including the general conditions, does not guarantee authorization of the work by LOP. Work or structures that would have unacceptable impacts on the public interest are not authorized. Activities requiring Department of the Army authorization that are not specifically covered by this LOP are prohibited unless authorized by a separate permit.

NEWS RELEASE

PERMITEES: As of the date of this public notice, the Albuquerque Metropolitan Arroyo Flood Control Authority (AMAFCA), Southern Sandoval County Arroyo Flood Control Authority (SSCAFCA), Bernalillo County (BernCo), and Village of Ruidoso (VOR) are the permittees for this LOP procedure. Through this public notice the Corps is also making potential additional permittees who may qualify to use this LOP procedure aware of it. Prospective permittees who would like to be considered for approval by the Corps to use this LOP procedure must be a government or quasi-government organization with an operations and maintenance program for facilities or structures located in an urban area that they are responsible for or own. An "urban area" means an area that has been identified in the U.S. Census Bureau's 2010 geographic dataset as an "urbanized area" (http://www.census.gov/geo/reference/ua/urban-rural-2010.html). Prospective permittees shall make a request for consideration in writing to the Corps at the address provided above. The Corps shall evaluate requests for prospective permittee consideration based on organization type; organization mission; and the type, frequency and scope of maintenance activities conducted by the organization. The Corps may contact prospective permittee requestors for more information in order to determine the appropriateness of approving their request. The final public notice issuing the LOP procedure will be updated periodically to include a list of all approved permittees.

LOCATION OF WORK: This LOP procedure shall apply to maintenance work at facilities and structures operated and maintained by the permittees located within the state of New Mexico in all waters of the United States (U.S.), including wetlands.

CATEGORIES OF ACTIVITIES: Work authorized by LOP under this procedure is limited to discharges of dredged and fill material associated with maintenance activities conducted by the permittees in waters of the U.S. The categories of activities to be authorized by this LOP procedure consist of maintenance activities conducted by the permittees or their contractors/representatives including, sediment removal from earthen and concrete structures; erosion repair and control; concrete repairs; vegetation removal; trash removal; vactor cleaning; access control; slide gate servicing; water monitoring; water quality monitoring; bank restoration; pipe and structure repairs; and work associated with these activities, such as temporary diversion structures. Maintenance is the repair, rehabilitation, or replacement of a facility, structure or fill. Maintenance does not include new construction. Impacts to waters of the U.S. shall be avoided or minimized through the use of practicable alternatives. Work that would have substantial adverse impacts on the aquatic environment or cause a substantial reduction in the reach of waters of the U.S. shall not be authorized by LOP under this procedure.

APPLICATION PROCEDURES: An application for authorization of work, under this LOP procedure, must be submitted in writing to the Corps, Albuquerque District Office, at the beginning of the calendar year for anticipated maintenance projects. The information may be submitted on an Application for Department of the Army Permit form (ENG Form 4345) or in any other form convenient to the applicant. The LOP application for anticipated maintenance within a particular calendar year shall be submitted by an individual permittee and shall contain the following information:

1. Name, address, telephone number, and electronic mail address, if available, of the prospective permittee;

2. A list, preferably in spreadsheet format, of the prospective permittee's anticipated maintenance projects for the calendar year to include a brief description of the anticipated maintenance activity, description of the best management practices utilized for adverse impact avoidance and minimization for each maintenance project, an estimate of the area of impact to waters of the U.S. for each maintenance project, an estimate of the volume of dredged and/or fill material to be discharged in waters of the U.S., an estimate of the volume of excavated material from waters of the U.S., identification of any disposal site location(s) or statement that material removed will be disposed in an upland location, and planned begin and end dates for the work;

3. A vicinity map showing the location of each of the prospective permittee's anticipated maintenance projects for the calendar year;

4. If potential wetlands are in or adjacent to the proposed maintenance site, a wetland delineation utilizing the appropriate Corps Wetland Delineation Regional Supplemental Guidance shall be performed and submitted with the application;

5. For all existing structures requiring maintenance within the calendar year include the date of initial construction and any major modifications. A structure that is 50 years or older is considered historic and must be evaluated in accordance with Appendix C of 33 CFR Part 325 and the National Historic Preservation Act (see Item 6 below);

6. A statement disclosing whether or not any cultural resources protected under the National Historic Preservation Act might be affected by, or found in the vicinity of, the proposed project(s); and

7. A statement disclosing whether or not any species listed as threatened or endangered under the Endangered Species Act might be affected by, or found in the vicinity of, the proposed project(s). Direct coordination with the U.S. Fish and Wildlife Service (USFWS) concerning the potential impact of the entire project on threatened and endangered species is strongly encouraged.

In the case of unanticipated maintenance work that falls within the scope of this LOP procedure, prospective permittees shall notify the Corps, Albuquerque District Office, as early as possible to discuss permitting requirements. The Corps recognizes there may be situations where imminent threats to life or property occur and the prospective permittee has not received authorization to proceed from the District Engineer. It is not the intention of this LOP procedure to require threats to life or property to remain unaddressed. If a prospective permittee chooses to proceed without authorization from the District Engineer, the applicant must ensure that prior notice of such a unilateral decision to proceed is made to this office by telephone, facsimile, e-mail, delivered written notice or other alternative means.

Note that other Corps permits or permit processes may be available for unanticipated maintenance projects in emergency situations. Emergency situations are defined in the Corps implementing regulations at 33 Code of Federal Regulations Part 325.2. Currently, the Corps Albuquerque District Regulatory Program may process emergency projects under Regional General Permit NM-12-01 for Repair and Protection Activities in Emergency Situations or by standard individual permit utilizing the South Pacific Division Emergency Permit Procedures. For emergency projects that are not authorized by the Corps prior to the activity taking place, the Corps may authorize the work after-the-fact.

If the unanticipated maintenance work cannot be authorized by General Permit, but the work does fall within the scope of this LOP procedure, then the permittee shall submit in writing to the Corps, Albuquerque District Office, an application for authorization of work under this LOP procedure. The LOP application for unanticipated maintenance shall be submitted by an individual permittee and shall contain the same information as described above for anticipated work.

All permittees shall submit a final annual report to the Corps Albuquerque District Office by December 31st of each calendar year that documents the work accomplished under the LOP issued to the permittee that same calendar year, which includes both anticipated and unanticipated work. The final annual report will include, at a minimum, the following information:

1. A list, preferably in spreadsheet format, of maintenance projects authorized by LOP that were not conducted during the calendar year, if any;

2. A list, preferably in spreadsheet format, of maintenance projects that were conducted during the calendar year authorized by LOP including project location; actual acres or linear feet of impact to waters of the U.S.; actual volume in cubic yards or cubic feet of material discharged into and/or removed from waters of the U.S.; photographs of the maintenance sites taken within 30 days after construction is complete; a statement that each maintenance project was conducted in compliance with the terms and conditions of this LOP procedure; and documentation of compliance with any special conditions added to the LOP;

3. For projects where the original structure/facility capacity was modified, include drawings or sketches of those projects conducted during the calendar year to include plan, profile, and cross-section views.

GENERAL CONDITIONS: In addition to limitations discussed in the Categories of Activities, projects authorized by LOP under this procedure are subject to the following general conditions:

1. In issuing a LOP, the Department of the Army has relied in part on the information provided by the permittee. If, subsequent to issuing an LOP, such information proves to be false, incomplete, or inaccurate, this permit may be modified, suspended, or revoked, in whole or in part.

2. Projects authorized by LOP shall comply with all terms and conditions herein. Failure to abide by such conditions invalidates the authorization and may result in a violation of the law, requiring restoration of the site or other remedial action.

3. An LOP should not be considered as an approval of the design features of any authorized project or an implication that such is considered adequate for the purpose intended; a Department of the Army permit merely expresses the consent of the Federal Government to conduct the proposed work insofar as public rights are concerned. LOPs do not authorize any damage to private property, invasion of private rights, or any infringement of federal, state or local laws or regulations. Nor do they relieve the permittee from the requirement to obtain a local permit from the jurisdiction within which the project is located and to address all non-encroachment restrictions within a regulatory floodway of such local jurisdiction as identified by the Federal Emergency Management Agency.

4. This LOP procedure may be modified or suspended in whole or in part if it is determined that the individual or cumulative impacts of work that would be authorized using this procedure are contrary to the public interest. The authorization for individual projects may also be summarily modified, suspended, or revoked, in whole or in part, upon a finding by the District Engineer that such action would be in the public interest.

5. Any modification, suspension or revocation of the District Engineer's authorization shall not be the basis for any claim for damages against the United States.

6. An LOP does not authorize the interference with any existing or proposed Federal project, and the permittee shall not be entitled to compensation for damage or injury to the structures or activities authorized herein which may result from existing or future operations undertaken by the United States in the public interest.

7. Permittees shall make every reasonable effort to conduct the activities authorized by LOP in a manner that will minimize any adverse impact of the work on water quality, fish and wildlife, and the natural environment, including adverse impacts to migratory waterfowl breeding areas, spawning areas, riparian areas and native vegetation, particularly mast-producing trees and shrubs such as juniper, pinyon pines, and oaks.

8. The District Engineer will consider the following factors when determining appropriate and practicable mitigation necessary to ensure that adverse effects on the aquatic environment are minimal:

a) The activity must be designed and conducted to avoid and minimize adverse effects, both temporary and permanent, to waters of the U.S. to the maximum extent practicable at the project site (i.e., on site).
b) Mitigation in all its forms (avoiding, minimizing, or compensating for resources losses) will be required to the extent necessary to ensure that the adverse effects to the aquatic environment are minimal.
c) Compensatory mitigation at a minimum one-for-one ratio will be required for all wetland losses that exceed 0.1-acre, unless the District Engineer determines in writing that either some other form of mitigation would be more environmentally appropriate or that the adverse effects of the proposed activity are minimal and, therefore, provides a project-specific waiver of this requirement. For wetland losses of 0.1-acre or less, the District Engineer may determine on a case-by-case basis that compensatory mitigation is required to ensure that the activity results in minimal adverse effects on the aquatic environment. Compensatory mitigation projects provided to offset losses of aquatic resources must comply with the applicable provisions of 33 Code of Federal Regulations Part 332. Where compensatory mitigation is required, it shall only be required once for impacts associated with the approved maintenance activity.

9. Permittees shall allow the District Engineer and his authorized representative(s) to make periodic inspections of project sites at any time deemed necessary to ensure that the activity being performed by LOP is in accordance with the terms and conditions prescribed herein.

10. The impact of activities authorized by LOP using this procedure on cultural resources shall be taken into account by the Corps prior to the initiation of work. Cultural resources include, but are not limited to, prehistoric and historic archeological sites, artifacts, historic buildings and structures, and areas of cultural interest (e.g. Traditional Cultural Properties). If cultural resources are determined to be in the permit area, the permittee shall not conduct any work that would affect the cultural resource until the requirements of 33 CFR Part 325,

Appendix C, have been satisfied. If a previously unknown cultural resource is encountered during work authorized by an LOP issued under this procedure, the permittee shall immediately notify the Corps and avoid further impact to the cultural resource until the Corps has verified that the requirements of 33 CFR Part 325, Appendix C, have been satisfied.

11. Dredged and fill material shall not consist of unsuitable material (e.g., trash, debris, waste products, asphalt, car bodies, tires, etc.) and must be free from toxic pollutants in toxic amounts (see Section 307 of the Clean Water Act).

12. Permittees shall use and maintain appropriate erosion and sedimentation controls in effective operating condition during construction, and permanently stabilize all exposed soil at the earliest practicable date.

13. Permittees shall remove all temporary fills in their entirety.

14. Permittees shall coordinate all construction activities in federally maintained channels and/or waterways for required setback distances with the Corps prior to application for a permit.

15. Permittees shall place all heavy equipment working in wetlands on mats, or take other measures to minimize soil disturbance.

16. No authorization will be granted for an activity that is likely to jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation, as identified under the Endangered Species Act, or for an activity that is likely to destroy or adversely modify the critical habitat of such species. Permittees shall notify the District Engineer if any listed species or critical habitat might be affected by, or is in the vicinity of, the project and shall not begin work until notified by the District Engineer that the requirements of the Endangered Species Act have been satisfied and that the activity is authorized.

17. The project shall not significantly disrupt the movement of those species of aquatic life indigenous to the water body or those species that normally migrate through the project area unless the primary purpose of the activity is to impound water.

18. Permittees shall properly maintain any structure or fill to ensure public safety.

19. Permittees shall address any potential adverse impacts of the discharge of dredged or fill material to public water supply intakes.

20. Stream realignment is not authorized.

21. Permittees shall avoid and minimize discharges of dredged or fill material into waters of the U.S. through the use of practicable alternatives.

22. To the maximum extent practicable, permittees shall not permanently restrict or impede the passage of normal or expected high flows unless the primary purpose of the fill is to impound water.

23. This permit does not authorize work in a park, wildlife management area, refuge, sanctuary, or similar area administered by a federal, state or local agency without that agency's approval.

24. Permittees shall conduct work in dry conditions to the maximum extent practicable.

25. Water Quality Certification. In accordance with Section 401 of the Clean Water Act, certification of compliance with state or tribal water quality standards by the state or tribal water quality certifying authority, is required for any discharge of dredged and fill material into waters of the U.S. under Section 404 of the Clean Water Act. Compliance with the attached water quality certifications or individual water quality certification, when issued by the certifying authority, as described below, is a general condition of LOP's issued under this procedure:

a. For Permittees on Non-tribal Land in New Mexico – Appendix A New Mexico Environment Department, Sec. 401 Conditional Water Quality Certification for this LOP procedure issued on May 12, 2017.

b. For Permittees on Sandia Pueblo lands – Appendix B Sandia Pueblo, Sec. 401 Water Quality Certification is denied for this LOP procedure as described in the attached letter issued on April 14, 2015. Therefore, the permittees must obtain individual water quality certification from Sandia Pueblo and provide a copy of individual water quality certification to the Corps prior to authorization by LOP under this procedure.

c. For Permittees on Isleta Pueblo lands - Water quality certification is denied by Isleta Pueblo; therefore, the permittees must obtain individual water quality certification from Isleta Pueblo and provide a copy of individual water quality certification to the Corps prior to authorization by LOP under this procedure.

OTHER AUTHORIZATIONS: The permittees are responsible for obtaining any additional federal, state, or local permits that may be required, which include, but are not limited to:

1. Any work on lands or in waters under the jurisdiction of any river authority or other operating agency may require a permit from that agency.

2. Projects involving government property on Corps reservoirs will require submission of detailed design information to the reservoir manager and Corps approval of the proposed activity, including a real estate consent to easement.

3. Activities within a 100-year floodplain may require a permit from the local Floodplain Administrator. In addition, evidence that the project meets non-encroachment restrictions in regulatory floodways may be required.

4. Storm water runoff from construction activities that result in a disturbance of one or more acres, or are a part of a common plan of development that will result in the disturbance of one or more acres, must be controlled and authorized under Environmental Protection Agency's National Pollutant Discharge Elimination System (NPDES) General Permit for Discharges from Construction Activities. A copy of the general permit, application (notice of intent), and additional information is available at: http://water.epa.gov/polwaste/npdes/stormwater/Applying-for-Coverage-under-the-Construction-General-Permit-CGP.cfm

5. Proposed activities affecting an international water in New Mexico, including the Rio Grande may require authorization from the International Boundary and Water Commission, The Commons, Building C, Suite 310, 4171 North Mesa Street, El Paso, Texas 79902.

6. Activities outside the Corps permit area that may affect a federally listed endangered or threatened species or its critical habitat could require permits from the USFWS to prevent a violation of the Endangered Species Act under Section 9.

EVALUATION PROCEDURES: Prior to authorizing any project, the Corps shall conduct a public interest evaluation and determine mitigation requirements, if any, for the proposed work. The Corps will evaluate the proposed projects to determine if the work qualifies for authorization under this LOP procedure. Projects that qualify for authorization under this LOP procedure must meet the terms and conditions of this procedure.

Work cannot proceed until the Corps has issued a written LOP to the permittee for projects that cannot be authorized by any other valid Corps general permit without the requirement for preconstruction notification. The Corps may add special conditions to the LOP to ensure that adverse environmental impacts are not substantial, or may determine that a standard individual permit is required.

The Corps will evaluate this LOP procedure every five years from the date of issuance to determine if any changes need to be made or if the procedure is still needed. If the Corps determines that changes to this LOP procedure are needed or required, a new public notice will be issued with a 30 day comment period to all interested parties notifying them of the proposed changes.

This LOP procedure shall become effective on the date of the signature of the District Engineer, or their authorized representative.

Allan Steinle
Regulatory Division Chief

APPENDIX A
NEW MEXICO ENVIRONMENT DEPARTMENT
SEC. 401 WATER QUALITY CERTIFICATION

NEW MEXICO
ENVIRONMENT DEPARTMENT

SUSANA MARTINEZ
Governor

JOHN A. SANCHEZ
Lt. Governor

Harold Runnels Building
1190 South St. Francis Drive (87505)
P.O. Box 5469, Santa Fe, NM 87502-5469
Phone (505) 827-0187 Fax (505) 827-0160
www.env.nm.gov

BUTCH TONGATE
Cabinet Secretary

J. C. BORREGO
Deputy Secretary

May 12, 2017

Mr. Allan Steinle
U.S. Army Corps of Engineers
Albuquerque District
Regulatory Division, CESPA-RA
4101 Jefferson Plaza NE Albuquerque, NM 87109

SUBJECT: Clean Water Act Section 401 Water Quality Certification, NMED SWQB File 1356, Letter of Permission (SPA-2014-00449-ABQ), New Mexico

Dear Mr. Steinle:

The New Mexico Environment Department (NMED) has examined the proposed letter of permission (LOP) procedure for maintenance. This LOP is intended to streamline Clean Water Act (CWA) §404 authorization for the maintenance of structures and facilities within urban areas of New Mexico that are owned or controlled by government or quasi-government organizations.

Certification is required by CWA §401 to ensure that the LOP is consistent with state law and complies with the state Water Quality Standards (20.6.4 NMAC), the Water Quality Management Plan/Continuing Planning Process, including Total Maximum Daily Loads (TMDLs), and the Antidegradation Policy. Pursuant to State regulations for permit certification (20.6.2.2002 NMAC), NMED issued a public notice of this activity and announced a public comment period on the Surface Water Quality Bureau's web site: https://www.env.nm.gov/surface-water-quality/public-notices/ on April 5, 2017. The public comment period ended on May 5, 2017. No comments were received.

NMED considers the LOP to be an individual permit with "abbreviated procedures" per 33 CFR §322.2(d). NMED understands that permittees will be limited to Albuquerque Metropolitan Arroyo Flood Control Authority (AMAFCA), Southern Sandoval County Arroyo Flood Control Authority (SSCAFCA), Bernalillo County (BernCo), and the Village of Ruidoso. The activities authorized by this LOP are limited to maintenance work in waters of the United States at facilities and structures operated and maintained by the permittee. The permittees will submit lists of planned maintenance activities that are subject to U.S. Army Corps of Engineers (USACE) regulation in January of each calendar year; and the USACE will review these bulk submittals pursuant to authorization under this LOP. NMED supports this streamlining to review and permit planned maintenance at once. However, NMED is concerned about the open-ended nature of maintenance activities to be authorized under this permit and the lack of consultation

with NMED on these categories of activities, as required under 33CFR §325.2(e)(1)(ii)(A). Because of this NMED's certification is necessarily broad to cover a wide range of possible maintenance activities within unspecified waters of the United States.

Conditional 401 Certification of LOP:

The following conditions are necessary to assure compliance with the applicable provisions of the Clean Water Act §§301, 302, 303, 306, and 307 and with applicable requirements of State law. Compliance with the terms and conditions of the permit and this certification will provide reasonable assurance that the permitted activities will be conducted in a manner which will not violate applicable water quality standards and the water quality management plan and will be in compliance with the antidegradation policy. The State of New Mexico certifies that the discharge will comply with these provisions and requirements upon inclusion of the following conditions in the permit:

1. The NMED Surface Water Quality Bureau requires notification of planned activities in surface waters of the state prior to USACE authorization. This notification is necessary to ensure that the conditions provided in this certification are sufficient to protect water quality. This condition can be met by providing NMED the information submitted to the USACE, either in the January bulk submittal for planned activities or in supplemental submissions for unplanned activities. For projects in flowing water or those with the potential to have more than minimal adverse impacts on the aquatic environment, NMED may require additional information such as: 1) drawings or sketches of projects (including proposed in-channel excavations and temporary diversions); 2) a description of potential adverse water quality impacts (including turbidity, which is a measurement of the amount of suspended material in water, as well as oil, grease, or hydraulic fluid, and all other potential contaminants); 3) a description of methods to be used to prevent water quality impacts (including detailed Best Management Practices, which must be designed to minimize sediment, oil, grease, and other pollutants from entering the water); 4) any surface water monitoring procedures; and 5) for any unavoidable surface water impacts, conceptual mitigation plans.

2. Fuel, oil, hydraulic fluid, lubricants, and other petrochemicals must not be stored within the 100-year floodplain and must have a secondary containment system capable of containing twice the volume of the product. Appropriate spill clean-up materials such as booms and absorbent pads must be available on-site at all times during maintenance.

3. All heavy equipment used in the project area must be pressure washed and/or steam cleaned before the start of the project and inspected daily for leaks. A written log of inspections and maintenance must be completed and maintained throughout the project period. Leaking equipment must not be used in or near surface water. Refuel equipment at least 100 feet from surface water.

4. Work in the stream channel should be limited to periods of no flow. Work during low-flow periods must have prior approval by the NMED. Requests for such approval must describe planned methods to minimize turbidity and to avoid spills. Releases from dams must be incorporated into the work schedule to avoid working in high water.

5. Temporary crossings should be restricted to a single location and perpendicular to and at a narrow point of the channel to minimize disturbance. If flowing water is present, heavy equipment must be operated from the bank or work platforms and not enter surface water, unless otherwise approved in writing by NMED. Heavy equipment must not be parked within the stream channel. Unless otherwise approved by NMED, directional borehole (horizontal) drilling must be used instead of open-cut trenching for the placement of utility lines or other buried structures crossing the channel. Requests for such approval of deviations must include a description of planned methods to minimize turbidity, to avoid spills, and to salvage any drilling equipment that cannot be withdrawn from beneath the channel.

6. Unless otherwise approved by NMED, flowing water must be temporarily diverted around the work area, but remain within the existing channel to minimize erosion and turbidity and to provide for aquatic life movement. Diversion structures must be non-erodible, such as sand bags, water bladders, concrete barriers, or channel lined with geotextile or plastic sheeting. Dirt cofferdams are not acceptable diversion structures. Requests for such approval of deviations must include descriptions of planned methods to minimize turbidity, to avoid spills, and to provide a continuous zone of passage for aquatic life through or around the project area in which the water quality meets all applicable criteria including turbidity.

7. All asphalt, concrete, drilling fluids and muds, and other maintenance materials must be properly handled and contained to prevent releases to surface water. Poured concrete must be fully contained in mortar-tight forms and/or placed behind non-erodible cofferdams to prevent contact with surface or ground water. Appropriate measures must be used to prevent wastewater from concrete batching, vehicle wash-down, or aggregate processing entering the watercourse. Dumping of any waste materials in or near watercourses is prohibited.

8. Protective measures must be used to prevent blast, ripped or excavated soil or rock from entering surface water. Dewatering discharges are to be uncontaminated and include all practicable erosion control measures and turbidity control techniques.

9. Work or the use of heavy equipment in wetlands must be avoided or minimized unless the impacts are to be mitigated. Maintenance activities in wetlands must be scheduled during low water or winter (frozen) conditions. Unless otherwise approved by NMED, wetland crossings must be restricted to a single location and constructed perpendicular to and at a narrow point of the wetland. Requests for such approval of deviations must include descriptions of planned methods to minimize turbidity and

avoid spills. Wetland vegetation and excavated material (top soil) must be retained and reused to improve seeding success. Permeable fills should be designed and installed when practicable, and flows to wetlands must not be permanently disrupted. Fill materials must be clean and consist of coarse material with minimal fines. Ditches or culverts in wetlands must have properly designed, installed and maintained siltation or sedimentation structures at the outfall.

10. During repair, demolition, treatments, or cleaning activities of bridges or associated structures (e.g., deck, pier, abutment, and wing walls), materials must be kept out of the channel. Before removing a bridge or related structures, impermeable containment material (e.g., plastic sheet, canvas, tarpaulins or other catchment devices) must be secured under the bridge and on the banks to capture any debris that may fall into the stream channel. Sandblasting operations must include vacuum systems or the bridge and associated structures must be completely bagged to collect all lead paint and concrete debris. Any debris that falls onto the containment area or channel must be properly disposed in accordance with the New Mexico Solid Waste Regulations (20.9.1 NMAC). Applicable Material Safety Data Sheets of water repellants and surface finish treatments must be maintained at the project area.

11. Bridges, culverts and structures at stream crossings must be properly designed, installed and maintained to allow passage of sediment, bedload, and woody debris, and to prevent erosion problems or diversion of the stream from its natural channel. Unless otherwise approved by NMED, projects must not alter the natural stream channel size or shape (width, depth, gradient, direction or meander pattern), streamflow velocity (sediment transport rates), or water flow capacity. Requests for such approval of deviations must include descriptions of planned methods to minimize turbidity and avoid spills, as well as to stabilize modified hydraulic geometry.

12. Culverts at stream crossings must be designed and installed to prevent upstream headcutting, downstream channel incision, and erosion of the stream banks or the crossing. Culverts should be designed to pass 100-year flow events. Culvert design must allow for the passage of fish and other aquatic organisms. The road grade at culvert stream crossings must prevent the diversion of the stream from its channel in the event of culvert failure due to plugging or the exceedance of capacity. If the flow overtops the road, it must return to its natural channel instead of running down the road into a new channel.

13. Excavated trenches must be backfilled and compacted to match the bulk density and elevation of the adjacent undisturbed soil.

14. Unless otherwise approved by NMED, all areas adjacent to the watercourse that are disturbed because of the project, including temporary access roads, stockpiles and staging areas, must be restored to pre-project elevations. Disturbed areas outside the channel that are not otherwise physically protected from erosion must be reseeded or

planted with native vegetation. Stabilization measures including vegetation are required at the earliest practicable date, but by the end of first full growing season following maintenance. Native woody riparian and/or wetland species must be used in areas that support such vegetation. Measures to prevent damage by beavers, wildlife, or livestock are required until trees are established. Plantings must be monitored and replaced for an overall survival rate of at least 80 percent by the end of the second growing season. Once established, native plants adapted to the site must be able to thrive with no supplemental water or treatment. Requests for approval of deviation from this condition must include descriptions of planned methods to minimize turbidity and avoid spills, as well as final grading plans.

15. A copy of this Certification must be kept at the project site during all phases of maintenance. All contractors involved in the project must be provided a copy of this certification and made aware of the conditions prior to starting maintenance.

NMED reserves the right to amend or revoke this certification if such action is necessary to ensure compliance with the State's water quality standards and water quality management plan. If you have any questions regarding this conditional §401 Water Quality Certification, please feel free to contact Chris Canavan of my staff at (575) 915-1172.

Sincerely,

Shelly Lemon

Shelly Lemon
Chief, Surface Water Quality Bureau

SL:cmc

xc: Tom Nystrom, Wetlands, Region 6, USEPA
Matthew Wunder, New Mexico Department of Game and Fish
U.S. Fish and Wildlife Service
401 Certification File 1356

APPENDIX B
SANDIA PUEBLO
DENIAL LETTER FOR SEC. 401 WATER QUALITY CERTIFICATION

Francisco I. Lujan
Governor

Stuart Paisano
Lt. Governor

PUEBLO of SANDIA
481 Sandia Loop Road
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(505) 867-3317
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www.sandiapueblo.nsn.us

April 14, 2015

Kelley Allen
Regulatory Project Manager
U.S. Army Corps of Engineers (USACE)
Albuquerque District
4101 Jefferson Plaza N.E.
Albuquerque, New Mexico 87109-3435

Re: CWA Section 401 Certification for USACE Letter of Permission (LOP) NM-1 (No. SPA-2014-00449-ABQ)

Dear Ms. Allen:

This letter is in response to the USACE LOP NM-1 (No. SPA-2014-00449-ABQ). The purpose of this LOP procedure is to expedite CWA Section 404 authorization for work within the state of New Mexico. This LOP procedure is not supposed to pose substantial adverse individual or cumulative impacts on the aquatic environment. The Albuquerque Metropolitan Arroyo Flood Control Authority, Southern Sandoval County Arroyo Flood Control Authority, Bernalillo County, and any government or quasi-government organization with an operations and maintenance program for facilities or structures located in an urban area that they are responsible for or own would be able to utilize the LOP procedure. According to the USACE, each LOP issued will include general conditions and specific appropriate provisions intended to protect the environment, including natural and cultural resources.

As you know, the Pueblo of Sandia (Pueblo) has had EPA approved water quality standards (WQS) since 1993, with revisions in 2010. The WQS apply to all surface waters within the exterior boundaries of our reservation and set forth existing uses that must be protected. The Pueblo does not waive CWA Section 401 water quality certification for the USACE LOP NM-1 (No. SPA-2014-00449-ABQ). Although the Pueblo believes the conditions in the LOP procedure are protective, generally sufficient and warranted to meet the USACE requirements, the Pueblo feels it needs to take a more active approach on projects within the boundaries of the Pueblo. Therefore the Pueblo denies CWA Section 401 water quality certification of the USACE LOP NM-1 (No. SPA-2014-00449-ABQ) for projects on or around the Pueblo that may affect water quality. The Pueblo requests the following conditions be met to expedite the process of the permittees obtaining individual CWA Section 401 water quality certification (listed below):

1. The Pueblo requests that each individual entity requesting a LOP within urban areas in the State of New Mexico occurring within the jurisdiction of the Pueblo be individually certified

by the Pueblo. This would allow the Pueblo to review the entities project for regional conditions that may affect the Pueblo's WQS. By reviewing the project by each LOP applicant, the Pueblo can ensure that individuals will comply with applicable provisions of Section 208(e), 301 (including 301(h) variances), 302, 303, 306, and 307 of the CWA, along with regional and specific conditions relevant to the waters of the Pueblo. These conditions and certifications will provide reasonable assurance that the permitted activities will not violate the Pueblo's WQS and provisions of the CWA;

2. The Pueblo requests that the LOP procedure apply only to maintenance work at facilities and structures operated and maintained by the permittees located within the State of New Mexico in all waters of the United States (U.S.), including wetlands;
3. The Pueblo requests that the work authorized by LOP procedure on or around the Pueblo be limited to discharges of dredged and fill material associated with maintenance activities conducted by the permittees in waters of the U.S. The proposed categories of activities to be authorized by this LOP procedure consist of maintenance activities conducted by the permittees including, sediment removal from earthen and concrete structures; erosion repair and control; concrete repairs; vegetation removal; trash removal; vactor cleaning; access control; slide gate servicing; water monitoring; water quality monitoring; bank restoration; pipe and structure repairs; and work associated with these activities, such as temporary diversion structures. Maintenance is the repair, rehabilitation, or replacement of a facility, structure or fill. Maintenance does not include new construction. Impacts to waters of the U.S. shall be avoided or minimized through the use of practicable alternatives. Work that would have substantial adverse impacts on the aquatic environment or cause a substantial reduction in the reach of waters of the U.S. shall not be authorized by LOP under this procedure and any failure by LOP applicant to maintain compliance with these requirements may result in revocation of the CWA Section 401 water quality certification; and
4. To expedite the CWA Section 401 water quality certification process, the LOP applicant should copy all the LOP information sent to or received by the USACE to the Pueblo's Environment Department, Attention: Water Quality Manager, 481 Sandia Loop, Bernalillo, New Mexico 87004 or telephone (505) 771-5081 for more information. An individual CWA Section 401 water quality certification will be issued within seven (7) working days of receiving the LOP package.

We look forward to the USACE continued on environmental issues. If you have any questions or concerns, please contact Scott Bulgrin, Water Quality Manager of my staff at (505) 867-4533.

Sincerely:

Isaac Lujan
Governor

\SJB

cc: Ron Kneebone, PhD., U.S. Army Corps of Engineers, Tribal Liaison
Marcy Leavitt, U.S. Army Corps of Engineers, Regulatory Project Manager
Wally Murphy, U.S. Fish & Wildlife Service, Field Supervisor
Tom Nystrom, USEPA Region 6, Environmental Scientist
Frank Chaves, Pueblo of Sandia Environment Director (via e-mail)
Scott Bulgrin, Pueblo of Sandia Environment Department (via e-mail)