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## NEW MEXICO ENVIRONMENT DEPARTMENT

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November 17, 2016

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

**SUBJECT: Clean Water Act Section 401 Water Quality Certification of Regional General Permit (RGP) NM-16-01, New Mexico, for Utility Line Maintenance, Repair or Removal (SPA-2016-00174-ABQ). NMED SWQB File # 1323**

Dear Mr. Steinle:

The New Mexico Environment Department (NMED) has examined the proposed Regional General Permit (RGP) procedure for discharge of dredged or fill material into waters of the United States (U.S.) for crossings of those waters associated with the maintenance, repair or removal of utility lines where the activity does not qualify for coverage under Nationwide Permit 12 because the activity would result in a change in pre-construction contours below the Ordinary High Water Mark (OHWM). The area of waters of the U.S. that is disturbed must be limited to the minimum amount necessary for maintenance, repair or removal of the utility line and shall not result in the loss of greater than ½ acre of waters of the U.S. for each single and complete project. Projects authorized, must not result in more than minimal individual and cumulative adverse environmental effects.

Certification is required by CWA §401 to ensure that the RGP 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: ([www.nmenv.state.nm.us/swqb/WQA/Notice](http://www.nmenv.state.nm.us/swqb/WQA/Notice)) on September 6, 2016. The public comment period ended on October 6 2016. No comments were received.

NMED considers the RGP to be an individual permit with "abbreviated procedures" per 33 CFR §322.2(d). NMED understands that work authorized by RGP under this procedure is limited to discharges of dredged or fill material associated with crossings of those waters associated with

the maintenance, repair or removal of utility lines in waters of the U.S., including navigable waters of the U.S., located within the state of New Mexico. The following definitions apply:

A "utility line" is defined as any pipe or pipeline for the transportation of a gaseous, liquid, liquescent, or slurry substance, for any purpose, and any cable, line, or wire for the transmission for any purpose of electrical energy, telephone and telegraph messages, and internet, radio and television communication. The term "utility line" does not include activities or structures that drain a water of the U.S., such as drainage tile or French drains, but it does apply to pipes conveying drainage from another area.

The term "single and complete project" is defined as that portion of the total linear project proposed or accomplished by one owner/developer or partnership or other association of owners/developers that includes all crossings of a single water of the United States (i.e., a single waterbody) at a specific location. For linear projects crossing a single or multiple waterbodies several times at separate and distant locations, each crossing is considered a single and complete project for purposes of RGP authorization. However, individual channels in a braided stream or river, or individual arms of a large, irregularly shaped wetland or lake, etc., are not separate waterbodies, and crossings of such features cannot be considered separately. A linear project is a project constructed for the purpose of getting people, goods, or services from a point of origin to a terminal point, which often involves multiple crossings of one or more waterbodies at separate and distant locations.

**Conditional 401 Certification of RGP NM-16-01:**

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 as described in the Application Procedures for the RGP. 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) 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); 2) 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); 3) any surface water monitoring procedures; and 4) 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 ephemeral and intermittent stream channels should be limited to periods of no flow when practicable. Work in intermittent and ephemeral channels during low-flow periods and work in all perennial streams 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  
Acting Chief, Surface Water Quality Bureau

SL:cmc

Allan Steinle  
November 17, 2016  
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xc: Tom Nystrom, Wetlands, Region 6, USEPA  
Matthew Wunder, New Mexico Department of Game and Fish  
U.S. Fish and Wildlife Service  
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