

*ALBUQUERQUE DISTRICT
U.S. ARMY CORPS OF ENGINEERS*

REGIONAL GENERAL PERMIT (RGP) 16-01

UTILITY LINE CONSTRUCTION, MAINTENANCE, REPAIR OR REMOVAL

EFFECTIVE DATE: November 29, 2021 **EXPIRATION DATE:** November 29, 2026

ISSUING OFFICE: U.S. Army Corps of Engineers (Corps), Albuquerque District
(District)

AREA OF COVERAGE: Within the District's Area of Responsibility for New Mexico and West Texas

AUTHORITY: 33 Code of Federal Regulations (CFR) Parts 322.2(f), 323.2(h), and 325.2(e)(2) published in the Federal Register November 13, 1986, pursuant to Section 404 of the Clean Water Act (CWA).

SCOPE OF AUTHORIZED ACTIVITIES: Activities required for the construction, maintenance, repair, and removal of utility lines and associated facilities in waters of the United States, provided the activity does not result in the loss of greater than 1/2-acre of waters of the United States for each single and complete project.

Utility lines: This RGP authorizes the construction, maintenance, or repair of utility lines, including outfall and intake structures, and the associated excavation, backfill, or bedding for the utility lines, in all waters of the United States, including projects where there is a change in pre-construction contours.

A "utility line" is defined as any pipe or pipeline for the transportation of any 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 radio and television communication. The term "utility line" does not include activities that drain a water of the United States, such as drainage tile or French drains, but it does apply to pipes conveying drainage from another area. Material resulting from trench excavation may be temporarily side-cast into waters of the United States for no more than three months, provided the material is not placed in such a manner that it is dispersed by currents or other forces. The District Engineer (DE) may extend the period of temporary side casting for no more than a total of 180 days, where appropriate. In wetlands, the top 6 to 12 inches of the trench should normally be backfilled with topsoil from the trench. The trench cannot be constructed or backfilled in such a manner as to drain waters of the United States (e.g., backfilling with extensive gravel layers, creating a French drain effect). Any exposed slopes and stream banks must be stabilized immediately upon completion of the utility line crossing of each waterbody.

Utility line substations: This RGP authorizes the construction, maintenance, or expansion of substation facilities associated with a power line or utility line in non-tidal waters of the United States, provided the activity, in combination with all other activities included in one single and complete project, does not result in the loss of greater than 1/2-acre of waters of the United States. This RGP does not authorize discharges into non-tidal wetlands adjacent to tidal waters of the United States to construct, maintain, or expand substation facilities.

Foundations for overhead utility line towers, poles, and anchors: This RGP authorizes the construction or maintenance of foundations for overhead utility line towers, poles, and anchors in all waters of the United States, provided the foundations are the minimum size necessary and separate footings for each tower leg (rather than a larger single pad) are used where feasible.

Access roads: This RGP authorizes the construction of access roads for the construction and maintenance of utility lines, including overhead power lines and utility line substations, in non-tidal waters of the United States, provided the activity, in combination with all other activities included in one single and complete project, does not cause the loss of greater than 1/2-acre of non-tidal waters of the United States. This RGP does not authorize discharges into non-tidal wetlands adjacent to tidal waters for access roads. Access roads must be the minimum width necessary. Access roads must be constructed so that the length of the road minimizes any adverse effects on waters of the United States and must be as near as possible to pre-construction contours and elevations (e.g., at grade corduroy roads or geotextile/gravel roads). Access roads constructed above pre-construction contours and elevations in waters of the United States must be properly bridged or culverted to maintain surface flows. Access roads used solely for construction of the utility line must be removed upon completion of the work, in accordance with the requirements for temporary fills.

This RGP also authorizes temporary structures, fills, and work necessary to conduct the utility line activity. Appropriate measures must be taken to maintain normal downstream flows and minimize flooding to the maximum extent practicable, when temporary structures, work, and discharges, including cofferdams, are necessary for construction activities, access fills, or dewatering of construction sites. Temporary fills must consist of materials, and be placed in a manner, that will not be eroded by expected high flows. Temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations. The areas affected by temporary fills must be revegetated with native species, as appropriate.

Note 1: 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.

Note 2: Each activity will be evaluated and, in some cases, may be authorized by nationwide permits or other regional general permits or may be exempt from regulation under Section 404(f)(1) of the Clean Water Act. An individual permit will be required for any activity that the DE determines to have more than minimal environmental effects, individually or cumulatively, or that may be contrary to the public interest.

Note 3: Before any project will be considered and before authorization is granted under this RGP, it must be in compliance with the General Conditions.

This RGP *does not* authorize work in advance of permit verification by the Corps.

GENERAL CONDITIONS OF THIS RGP:

The general conditions (GCs) of the 2021 Nationwide Permits (NWP) are also applicable to this RGP and, therefore, included as an attachment. However, it should be noted that the following conditions of this RGP supersede the NWP GCs where the same basic requirements are addressed. For example, GCs 1 and 2 below supersede GC 32 of the NWP (Pre-Construction Notification); and GC 4 below supersedes GC 6 of the NWP (Suitable Material).

1. **Application and Project Completion Timeframes:** Prior to commencing work, a prospective permittee must notify the Corps of the proposed work in accordance with the requirements of the "Preconstruction Notifications" General Condition below.

2. **Preconstruction Notifications:**

a. **Timing of Notification:** The applicant must notify the DE as early as possible and shall not begin the activity until the DE provides written verification that the activity may proceed under this RGP with any site-specific special conditions imposed by the DE. Applicants may request pre-application consultation via the email addresses below or by contacting the NM/TX Branch Chief at 505-231-3586. Preconstruction notification should be sent

via mail/email to:

U.S. Army Corps of Engineers
Albuquerque District
Regulatory Division, CESPARD
4101 Jefferson Plaza NE
Albuquerque, NM 87109
[SPA-RD-
NM@usace.army.mil](mailto:SPA-RD-NM@usace.army.mil) [SPA-
RD-TX@usace.army.mil](mailto:SPA-RD-TX@usace.army.mil)

Note: Electronic submittals are preferred.

b. **Contents of Notification:** The notification should be in writing and include the following information:

- (1) Applicant's name, physical address, electronic mail address, and telephone number, and contact information for the owner of the affected land.
- (2) A written description of the proposed work including:
 - a) The purpose and need for the project and anticipated start and end dates

- b) Location of the project: Latitude/Longitude or UTM (NAD 83); may also include - Section, Township, Range or Land Grant
 - c) A description of waters of the United States that may be affected by the activities including the waterway name, if known, or nearest named waterway, including dimensions of waterway/wetlands (acreage or length, width, depth at and below the ordinary highwater mark (OHWM)). Additional information for identifying the OHWM can be found at:
https://www.spa.usace.army.mil/Portals/16/docs/civilworks/regulatory/Jurisdiction/Arid_West_OHWM_Identification_ERDC_TR%2008-12.pdf.
 Also, the length and width or acreage of aquatic resource type (perennial or intermittent stream; emergent, scrub/shrub, or forested wetland, fens, etc.). A table providing this information is useful if multiple aquatic resources exist within the project area
 - d) Delineation report for any impacted waters of the United States. SPD Map and Drawings SOP available at:
https://www.spa.usace.army.mil/Portals/16/docs/civilworks/regulatory/publicnotices/SPD-RG_map-drawing-standards_final_20120806v3.pdf.
 - e) Photos of the project site
 - f) Baseline conditions of the site, including dominant plant species, habitat, structures, disturbance, waterway condition, grade, substrate/soils, floodplain, etc.
 - g) Location of disposal site for excavated material; and
 - h) Type, composition, and quantity of material to be excavated from or placed in (including temporary material used for cofferdams, etc) waters of the United States
 - i) Dimensions of both temporary and permanent impacts to waters of the U.S., including wetlands, within the project area and impact type (e.g., fill, excavation, rip-rap, etc). A table providing this information is useful for projects that have multiple types of impacts and/or multiple stream crossings
 - j) Description of impacts to vegetation, aquatic and wildlife habitat, hydrology and hydraulics at the project site and upstream and downstream of the project, erosion and sedimentation, water quality, and substrate
 - k) Type of equipment to be used. Avoidance and minimization measures, and a Mitigation Plan (if applicable)
 - l) Short- and long-term maintenance requirements or issues and a Maintenance Plan (if applicable)
- (3) A location map on 8 1/2" x 11" paper indicating the location of the proposed work and a legal description (section, township, range, and county, NAD 83 UTM coordinates or latitude and longitude).
 - (4) A set of 8.5 by 11-inch drawings showing the details of the proposed work (plan and cross-sectional views showing elevations and dimensions).
 - (5) Assessment of potential impacts to federally-listed endangered and threatened species or designated critical habitat. Assessment should include endangered and threatened species list for the county the project is located in; description of existing habitat; description of suitable habitat; survey methods; conclusions; and any correspondence or documentation of coordination with U.S. Fish and

Wildlife Service (USFWS)

- (6) Assessment of potential impacts to historic properties listed on, determined to be eligible for listing on, or potentially eligible for listing on, the National Register of Historic Places. Assessment should include statement of known presence or absence of historic properties; identification of historic properties; detailed description of historic properties; survey methods; conclusions; and any correspondence or documentation of coordination with State Historic Preservation Officer (SHPO)/Tribal Historic Preservation Officer (THPO)
 - (7) Any other pertinent, supporting data
- c. **Form of Notification:** The Nationwide Permit Pre-Construction Notification (PCN) Form may be used and is available from the District's website at: <http://www.spa.usace.army.mil/Missions/RegulatoryProgramandPermits/RGP.aspx>. Regardless of the form of notification, that applicant must provide all of the information required in General Condition 2.b. Items (1)-(7) above.
- d. **Construction:** Proposed work must be done in the dry, and outside of the monsoon season. Exceptions may be made for intermittent and ephemeral stream channels on a case-by-case basis. Proposals to work in a perennial stream should be during the low flow period of the hydrograph and must include an erosion and sedimentation control plan.
- e. **Mitigation:** Impacts resulting from discharges of dredged or fill material into waters of the United States must be avoided or minimized to the maximum extent practicable. Compensation for unavoidable adverse impacts will be considered when there is a 0.1 ac or more loss of aquatic resource functions. Additional information regarding Mitigation Guidance can be found at: <https://www.spd.usace.army.mil/Portals/13/docs/regulatory/mitigation/MitMon.pdf>. Factors that the DE will consider when determining the suitability of appropriate and practicable mitigation will include, but are not limited to:
- (1) The approximate functions and values of the aquatic resource being impacted, such as habitat value, aquifer recharge, sediment conveyance or retention, flood storage, etc.
 - (2) The permanence of the project's impacts on the resource; and
 - (3) The potential long-term effects of the action on remaining functions and values of the impacted aquatic resource.

To be practicable, the mitigation must be available and capable of being done considering costs, existing technology, and logistics in light of the overall project purpose. Examples of mitigation that may be appropriate and practicable include, but are not limited to: reducing the size of the project; establishing wetland or upland buffer zones to protect aquatic resource values; replacing the loss of aquatic resource values by creating, restoring, or enhancing similar functions and values; or using other methods to offset project impacts.

The DE will utilize a watershed-based approach to establish compensatory mitigation requirements in association with use of this RGP to the extent appropriate and practicable. The goal of a watershed approach is to maintain and

improve the quality and quantity of aquatic resources in a watershed through strategic selection of mitigation sites.

- f. **District Engineer's Decision:** In reviewing the notification for the proposed activity, the DE will determine whether the activity would likely result in more than minimal individual or cumulative adverse environmental effects or may be contrary to the public's interest. The applicant may submit a proposed mitigation plan with the notification to expedite the process or an explanation as to why compensatory mitigation should not be required.

If the applicant elects to submit a mitigation plan as part of the proposed project, the DE will review the proposed plan. If the DE determines the activity complies with the terms and conditions of this RGP and the adverse effects are minimal, this office will notify the applicant and include any situation-specific conditions deemed necessary.

If the DE determines the adverse effects of the proposed work are more than minimal, the DE will notify the applicant that the project does not qualify for authorization under this RGP and instruct the applicant on the procedures to seek authorization under an individual permit.

3. **Certificate of Completion:** Upon completion of the work, the permittee shall submit a signed Certification of Compliance form to the Corps. The certification shall include:
 - a. A statement that the work was done in accordance with the Corps authorization, including any special conditions.
 - b. A statement that the required compensatory mitigation, if applicable, was done in accordance with the permit conditions.
 - c. The signature of the permittee certifying the completion of the work and mitigation.
 - d. Project site photos.
 - e. For all projects that include a design-build component, the permittee shall also submit a complete set of as-built drawings.
4. **Suitable Material:** This RGP authorizes the construction, maintenance, repair or removal of utility lines and does not authorize the discharge of fill material other than associated sloping and stabilization of vertical banks to prevent collapse and temporary access roads. Discharges consisting of broken concrete, used tires, trash, car bodies or other unsuitable material is not authorized by this permit, and material discharged must be free of toxic pollutants in toxic amounts. Discharged material must not be placed in a manner that will be eroded by normal or expected high flows.
5. **Best Management Practices:**
 - a. Efforts must be taken to avoid removing natural structural materials that protect or armor the stream bed because such removal may expose material that is more susceptible to erosion and headcuts.

- b. Soil Erosion and Sediment Controls. Temporary soil erosion and sediment controls must be used and maintained in effective operating condition during construction.
 - c. When feasible, impacted aquatic resources must be returned to their pre-construction contours and elevations.
6. **Management of Water Flows:** Work in the stream channel should be limited to periods of no or low flow. In the event that storm flows or runoff events are forecasted during construction, work in the channel must cease and measures must be taken to remove temporary piles within the channel. The activity must be constructed to withstand expected high flows.
 7. **Authorized Work:** Work not described in permit application documentation but deemed necessary after a field assessment is not authorized unless coordinated with the Regulatory Division project manager and approved in writing (i.e., electronic mail or facsimile transmission, memo to the record, etc.).
 8. **Access:** You must allow representatives from this office and other agencies to inspect the authorized activity at any time deemed necessary to ensure the project is being or has been accomplished in accordance with the terms and conditions of this RGP.
 9. **Tribal Rights:** No activity or its operation may impair reserved tribal rights, including, but not limited to, reserved water rights and treaty fishing and hunting rights, and tribal water quality
 10. **Water Quality Certification:**

For Permittees on Non-tribal Land in New Mexico:

State Water Quality Certification (WQC) is required by CWA §401 to ensure that the permit 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 20.6.2.2002 NMAC, the New Mexico Environment Department (NMED) issued conditional certification for the RGP dated February 11, 2021; and is included as an attachment.

Regarding NMED's conditional WQC, a few clarifications are provided. First, GC 1. Notification states that "Email confirmation from NMED for the use of this Certification is required by USACE Regional Condition 2.b and is typically completed within 60 days of receipt of a complete application." However, Regional Condition 2.b is only applicable to the 2017 NWP that remain in effect. Additionally, under the category of Post-construction stabilization per GC 2, the WQC states that "Plantings must be monitored and replaced for an overall survival rate of at least 80 percent by the second growing season." It should be noted that the Corps determines monitoring requirements on a case-by-case basis. Finally, the WQC references state regulations regarding Discharge Permits, as well as requirements under Section 402 of the CWA as conditions. However, these regulations are not within the purview of the Corps.

For Permittees on Non-tribal Land in West Texas:

State Water Quality Certification has been issued by the Texas Commission of Environmental Quality (TCEQ) in pursuant to the requirements of Title 30, Texas Administrative Code, Chapter 279, is restricted to the work described in the revised RGP 16-01 received September 8, 2021. This certification may be extended to any minor revision of the COE permit when such change(s) would not result in an impact on water quality. The Texas Commission on Environmental Quality (TCEQ) reserves the right to require full joint public notice on a request for minor revision. If this application is a modification of an original permit or any modification thereof for which a special condition was cited by the Commission or a predecessor agency, such conditions shall remain valid. The applicant is hereby placed on notice that any activity conducted pursuant to the COE permit which results in a violation of the state's surface water quality standards may result in an enforcement proceeding being initiated by the TCEQ or a successor agency. Provisions within the certification shall be attached to any permit issued by the COE and shall be followed by the permittee or any employee, agent, contractor, or subcontractor of the permittee during any phase of work authorized by a COE permit.

For Permittees on Tribal Lands:

Water quality certification for projects on tribal lands must be obtained from the tribal water quality program for tribes that have water quality certification authority (as of the date of this notice) - Pueblo of Sandia, Pueblo of Isleta, Pueblo of Nambé, Pueblo of Acoma, Picuris Pueblo, Pueblo of Pojoaque, Santa Clara Pueblo, Taos Pueblo, Ohkay Owinghey, Pueblo of Tesuque, Navajo Nation and Ute Mountain Ute Tribe). Contact information as of the date of this notice is provided below:

Ohkay Owingeh	Naomi Archuleta	Environment Department	505-852-4212	naomi.archuleta@ohkay.org
Pueblo of Acoma	Donna Martinez	Acoma Environment Department	505-552-5161	dmartinez@puebloofacoma.org
Pueblo of Isleta	Ramona Montoya	Department of Natural Resources	505-869-765	Ramona.Montoya@isletapueblo.com
Pueblo of Laguna	E. Nikki Woodward	Environmental and Natural Resources Department	505-552-7512	info.environmental@pol-nsn.gov ; ewoodward@pol-nsn.gov
Pueblo of Nambe	Glenda Fred-Weahkee	Department of Environment and Natural Resources	505-455-4420	gfred-weahkee@nambepueblo.org
Pueblo of Picuris	Shannon Tenorio	Environment Department	575-587-0110	administrator@picurispueblo.org ; Envirotech@picurispueblo.org
Pueblo of Pojoaque	Adam Duran	Environment Department	505-455-2278	aduran@pojoaque.org

Pueblo of Sandia	Greg Kaufman	Environment Department	505-771-5081	gkaufman@sandiapueblo.nsn.us
Pueblo of Santa Ana	Andrew Sweetman, Tammy Montoya	Department of Natural Resources	505-771-6771 (Alan) 505-771-6739 (Tammy)	Andrew.Sweetman@santaana.nsn.gov ; Tammy.Montoya@santaana.nsn.gov
Pueblo of Santa Clara	Dino Chavarria	Office of Environmental Affairs	505-753-7326 ext 1239	DinoC@santaclarapueblo.org
Pueblo of Taos	Miguel Vigil	Environmental Office	575-751-4601	MVigil@taospueblo.com
Pueblo of Tesuque	Sage Mountainflower, Sophie Stauffer	Department of Environment & Natural Resources	505-303-1566 Ext. 3094	sstauffer@pueblooftesuque.org ; sagem@pueblooftesuque.org
Navajo Nation	Patrick Antonio	Navajo Nation EPA, Water Quality Program	928-871-715	Panto41815@aol.com

For projects on tribal lands where the tribe does not have water quality certification authority, certification must be obtained from the appropriate Regional Office of the Environmental Protection Agency. Contact information as of the date of this notice is provided below:

- EPA Region 6, Water Division, Brianna Wadley, Life Scientist, 1201 Elm Street, Suite 500 (ECDWR), Dallas, TX 75270, Wadley.Brianna@epa.gov, (214) 665-8077
- EPA Region 9 for allotted lands within the Navajo Nation, Elizabeth Goldmann, Physical Scientist, Water Division, 75 Hawthorne Street, San Francisco, CA 9410 Goldmann.Elizabeth@epa.gov, (415) 972-3398

Section 402 comment:

Activities that disturb one acre or more may require a permit from EPA under Section 402 (NPDES) of the Clean Water Act. The permittee should submit the appropriate application to EPA 14 days prior to initiating construction. In the case of emergency operations, you must apply no later than 30 days after the start of construction and are considered provisionally covered under the terms and conditions of the EPA issued general permit immediately, and fully covered 14 calendar days after EPA has acknowledged receipt of your application (Notice of Intent, or NOI), unless EPA notifies you that your authorization has been delayed or denied. For additional information, contact:

EPA Region 6
1445 Ross Avenue
Suite 1200
Dallas, Texas 75202
Ph: 800-887-6063 or 214-665-2760 if calling from outside Region 6

11. **Endangered Species:** No activity is authorized under this RGP which is likely to jeopardize the continued existence of a threatened or endangered species or destroy or adversely modify designated critical habitat as identified under the Endangered Species Act (ESA).

As appropriate, the Corps will consult with the USFWS on specific requests to perform work under this permit if the project may affect a threatened or endangered species, or critical habitat.

Consultation may conclude with the identification of conservation recommendations by the USFWS in non-jeopardy Biological Opinion (BO). At the discretion of Corps, these recommendations will be incorporated into the permit decision, and the Corps will enforce compliance with accepted recommendations. If the USFWS renders a jeopardy BO and reasonable and prudent alternatives cannot be implemented to avoid the unacceptable impacts, the project will require an individual Department of the Army permit.

Authorization of an activity under this permit does not authorize the "take" of a threatened or endangered species as defined under the ESA. In the absence of separate authorization (e.g., an ESA Section 10 Permit, a BO with "incidental take" provisions, etc.) from the USFWS, both lethal and non-lethal "takes" of protected species are in violation of the ESA.

Information on the location of listed or proposed threatened or endangered species and their designated or proposed critical habitat can be obtained directly from the FWS or from their website at <http://www.fws.gov/angered/>.

12. **Historic Properties:** Impacts to cultural resources listed, proposed for listing, or potentially eligible for listing in the National Register of Historic Places will be avoided to the maximum extent practicable. If such resources will be impacted because of actions authorized under this RGP, the Corps will consult with the State Historic Preservation Officer/Tribal Historic Preservation Officer, and/or the Advisory Council for Historic Preservation, to determine the appropriate procedures and/or mitigation required to comply with Section 106 of the National Historic Preservation Act and other applicable regulations (e.g. Appendix C of 33 CFR Part 325 and Interim Guidance).

If the permittee discovers any previously unknown historic or archeological remains while accomplishing the activity authorized by this RGP, the permittee must immediately notify the Corps Regulatory Branch who 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.

13. **Regional and Case-by-Case Conditions:** The activity must comply with any special conditions added by the DE.
14. **Temporary Storage of Excavated Materials in Channel:** Material resulting from trench excavation may be temporarily side cast into waters of the U.S. for no more than 3 months provided that the material is not placed in a manner that will allow it to be dispersed by currents or other forces. In the event that storm flows or runoff events are forecasted, measures must be taken to remove the material within the channel.

15. **Work in Wetlands:** In wetlands, the top 6 to 12 inches of a trench should generally be backfilled with topsoil from the trench. The trench cannot be constructed or backfilled in such a manner as to drain waters of the United States (e.g., backfilling with extensive gravel layers, creating a french drain effect).
16. **Stream Channelization:** Stream channelization is prohibited.
17. **Removal of Temporary Fills:** Temporary fills associated with the project, such as access roads or coffer dams, shall be removed in their entirety and the affected areas returned to pre-existing elevations and revegetated with appropriate native riparian or wetland vegetation appropriate for the area.
18. **Dredged or excavated materials:** With the exception of that authorized herein, dredged or excavated material will be placed on an upland site above the ordinary high water mark in a defined area not classified as a wetland to prevent the return of such materials to the waterway.
19. **Energy Dissipation:** Energy dissipation measures must be used when necessary to prevent erosion downstream of permitted structures/fill. Design of energy dissipation structures must be based on site specific flow conditions, scour potential and channel erosion resistance.
20. **Channel Instability:** The elevation of material used to cover the utility line must be minimized to the maximum extent practicable in order to prevent bed and bank instability. The potential for channel instability must be addressed in the application and project plans should include design counter measures that are appropriate for the site (e.g. downstream apron, rock refusals into the bank, etc.)
21. **Passage of sediment and flows:** Utility line crossings must be properly designed, installed and maintained to allow passage of water, sediment, bedload, and woody debris.
22. **Contaminated Dredge Material:** If contaminated dredge material that was not anticipated or provided for in the permit application is encountered during dredging, operations shall cease immediately (e.g. as a result of a spill or frac-out). Contaminated dredge material is defined as dredge material which has been chemically, physically, or biologically altered by man-made or man-induced contaminants which include, but are not limited to solid waste, hazardous waste and hazardous waste constituent.

For Actions in New Mexico

The individual operating or responsible for the dredging operations shall notify the Albuquerque District's Regulatory Division as soon as possible at (505) 231-3586 or (505) 342-3374, and no later than 24 hours after discovery of the material. Dredging activities shall not be resumed until authorized in writing by the Corps

For Actions in West Texas

Pursuant to Chapter 26 of the Texas Water Code, the individual operating or

responsible for the dredging operations shall notify the Railroad Commission (RRC) of Texas' 24-hour emergency number at (844) 773-0305 (toll free) or (512) 463-6785 as soon as possible, and not later than 24 hours after the discovery of the material. The applicant shall also notify the Corps that activities have been temporarily halted. Contaminated dredge material shall be remediated or disposed of in accordance with RRC rules. Dredging activities shall not be resumed until authorized in writing by the RRC.

23. **Compliance with Other Laws:** The permittee must comply with all Federal, State and local applicable regulations and ordinances.

FURTHER INFORMATION:

1. **Congressional Authorities:** Activities conducted under this RGP are authorized pursuant to:

(X) Section 404 of the Clean Water Act (33 U.S.C. 1344).

2. **Limits of authorization under RGP No. 16-01**

- a. This permit does not obviate the need to obtain other Federal, State, or local authorizations 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 provision of permit verification under this RGP is not contrary to the public interest is made in reliance on the information provided by the permittee.

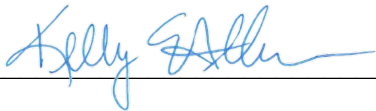
5. **Reevaluation of Permit Decision:** This office may reevaluate its decision to issue this RGP, or on the verification that any particular activity qualifies for this RGP, at any time circumstances warrant. Circumstances that could require a reevaluation include, but are not limited to, the following:

- a. Failure to comply with the terms and conditions of this permit.
- b. The information provided in support of the permit verification request or after-action report proves to be false, incomplete, or inaccurate. See Item 4 above.
- c. Significant new information becomes available which this office did not consider in reaching the original public interest decision.
- d. The activity is determined to result in more than minimal impacts.

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 compliance with the terms and conditions of this permit and for the initiation of legal action where appropriate.

The permittee will be required to pay for any corrective measures ordered by this office. If the permittee fails 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 the permittee for the cost.

This permit becomes effective when the Federal official, designated to act for the Albuquerque District Engineer, has signed below.



29 November 2021

Kelly Allen
Chief, Regulatory Division

DATE



**US Army Corps
of Engineers®**

Albuquerque District

NATIONWIDE PERMIT GENERAL CONDITIONS

1. **Navigation.** (a) No activity may cause more than a minimal adverse effect on navigation.
(b) Any safety lights and signals prescribed by the U.S. Coast Guard, through regulations or otherwise, must be installed and maintained at the permittee's expense on authorized facilities in navigable waters of the United States.
(c) The permittee understands and agrees that, if future operations by the United States require the removal, relocation, or other alteration, of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the Corps of Engineers, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.
2. **Aquatic Life Movements.** No activity may substantially disrupt the necessary life cycle movements of those species of aquatic life indigenous to the waterbody, including those species that normally migrate through the area, unless the activity's primary purpose is to impound water. All permanent and temporary crossings of waterbodies shall be suitably culverted, bridged, or otherwise designed and constructed to maintain low flows to sustain the movement of those aquatic species. If a bottomless culvert cannot be used, then the crossing should be designed and constructed to minimize adverse effects to aquatic life movements.
3. **Spawning Areas.** Activities in spawning areas during spawning seasons must be avoided to the maximum extent practicable. Activities that result in the physical destruction (e.g., through excavation, fill, or downstream smothering by substantial turbidity) of an important spawning area are not authorized.
4. **Migratory Bird Breeding Areas.** Activities in waters of the United States that serve as breeding areas for migratory birds must be avoided to the maximum extent practicable.
5. **Shellfish Beds.** No activity may occur in areas of concentrated shellfish populations, unless the activity is directly related to a shellfish harvesting activity authorized by NWP 4 and 48, or is a shellfish seeding or habitat restoration activity authorized by NWP 27.
6. **Suitable Material.** No activity may use unsuitable material (e.g., trash, debris, car bodies, asphalt, etc.). Material used for construction or discharged must be free from toxic pollutants in toxic amounts (see section 307 of the Clean Water Act).
7. **Water Supply Intakes.** No activity may occur in the proximity of a public water supply intake, except where the activity is for the repair or improvement of public water supply intake structures or

adjacent bank stabilization.

8. Adverse Effects from Impoundments. If the activity creates an impoundment of water, adverse effects to the aquatic system due to accelerating the passage of water, and/or restricting its flow must be minimized to the maximum extent practicable.

9. Management of Water Flows. To the maximum extent practicable, the preconstruction course, condition, capacity, and location of open waters must be maintained for each activity, including stream channelization, storm water management activities, and temporary and permanent road crossings, except as provided below. The activity must be constructed to withstand expected high flows. The activity must not restrict or impede the passage of normal or high flows, unless the primary purpose of the activity is to impound water or manage high flows. The activity may alter the preconstruction course, condition, capacity, and location of open waters if it benefits the aquatic environment (e.g., stream restoration or relocation activities).

10. Fills Within 100-Year Floodplains. The activity must comply with applicable FEMA-approved state or local floodplain management requirements.

11. Equipment. Heavy equipment working in wetlands or mudflats must be placed on mats, or other measures must be taken to minimize soil disturbance.

12. Soil Erosion and Sediment Controls. Appropriate soil erosion and sediment controls must be used and maintained in effective operating condition during construction, and all exposed soil and other fills, as well as any work below the ordinary high water mark or high tide line, must be permanently stabilized at the earliest practicable date. Permittees are encouraged to perform work within waters of the United States during periods of low-flow or no-flow, or during low tides.

13. Removal of Temporary Structures and Fills. Temporary structures must be removed, to the maximum extent practicable, after their use has been discontinued. Temporary fills must be removed in their entirety and the affected areas returned to preconstruction elevations. The affected areas must be revegetated, as appropriate.

14. Proper Maintenance. Any authorized structure or fill shall be properly maintained, including maintenance to ensure public safety and compliance with applicable NWP general conditions, as well as any activity-specific conditions added by the district engineer to an NWP authorization.

15. Single and Complete Project. The activity must be a single and complete project. The same NWP cannot be used more than once for the same single and complete project.

16. Wild and Scenic Rivers. (a) No NWP activity may occur in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a “study river” for possible inclusion in the system while the river is in an official study status, unless the appropriate Federal agency with direct management responsibility for such river, has determined in writing that the proposed activity will not adversely affect the Wild and Scenic River designation or study status.

(b) If a proposed NWP activity will occur in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a “study river” for possible inclusion in the system while the river is in an official study status, the permittee must submit a pre-construction notification (see general condition 32). The district engineer will coordinate the PCN with the Federal agency with direct management responsibility for that river. Permittees shall not begin the NWP activity

until notified by the district engineer that the Federal agency with direct management responsibility for that river has determined in writing that the proposed NWP activity will not adversely affect the Wild and Scenic River designation or study status.

(c) Information on Wild and Scenic Rivers may be obtained from the appropriate Federal land management agency responsible for the designated Wild and Scenic River or study river (e.g., National Park Service, U.S. Forest Service, Bureau of Land Management, U.S. Fish and Wildlife Service). Information on these rivers is also available at: <http://www.rivers.gov/>.

17. **Tribal Rights.** No activity or its operation may impair reserved tribal rights, including, but not limited to, reserved water rights and treaty fishing and hunting rights.

18. **Endangered Species.** (a) No activity is authorized under any NWP which is likely to directly or indirectly jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation, as identified under the Federal Endangered Species Act (ESA), or which will directly or indirectly destroy or adversely modify designated critical habitat or critical habitat proposed for such designation. No activity is authorized under any NWP which “may affect” a listed species or critical habitat, unless ESA section 7 consultation addressing the consequences of the proposed activity on listed species or critical habitat has been completed. See 50 CFR 402.02 for the definition of “effects of the action” for the purposes of ESA section 7 consultation, as well as 50 CFR 402.17, which provides further explanation under ESA section 7 regarding “activities that are reasonably certain to occur” and “consequences caused by the proposed action.”

(b) Federal agencies should follow their own procedures for complying with the requirements of the ESA (see 33 CFR 330.4(f)(1)). If pre-construction notification is required for the proposed activity, the Federal permittee must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements. The district engineer will verify that the appropriate documentation has been submitted. If the appropriate documentation has not been submitted, additional ESA section 7 consultation may be necessary for the activity and the respective federal agency would be responsible for fulfilling its obligation under section 7 of the ESA.

(c) Non-federal permittees must submit a pre-construction notification to the district engineer if any listed species (or species proposed for listing) or designated critical habitat (or critical habitat proposed such designation) might be affected or is in the vicinity of the activity, or if the activity is located in designated critical habitat or critical habitat proposed for such designation, and shall not begin work on the activity until notified by the district engineer that the requirements of the ESA have been satisfied and that the activity is authorized. For activities that might affect Federally-listed endangered or threatened species (or species proposed for listing) or designated critical habitat (or critical habitat proposed for such designation), the pre-construction notification must include the name(s) of the endangered or threatened species (or species proposed for listing) that might be affected by the proposed activity or that utilize the designated critical habitat (or critical habitat proposed for such designation) that might be affected by the proposed activity. The district engineer will determine whether the proposed activity “may affect” or will have “no effect” to listed species and designated critical habitat and will notify the non-Federal applicant of the Corps’ determination within 45 days of receipt of a complete pre-construction notification. For activities where the non-Federal applicant has identified listed species (or species proposed for listing) or designated critical habitat (or critical habitat proposed for such designation) that might be affected or is in the vicinity of the activity, and has so notified the Corps, the applicant shall not begin work until the Corps has provided notification that the proposed activity will have “no effect” on listed species (or species proposed for listing or designated critical habitat (or critical habitat proposed for such designation), or until ESA section 7 consultation or conference has been completed. If the non-Federal applicant has not heard back from the Corps within

45 days, the applicant must still wait for notification from the Corps.

(d) As a result of formal or informal consultation with the FWS or NMFS the district engineer may add species-specific permit conditions to the NWP.

(e) Authorization of an activity by an NWP does not authorize the “take” of a threatened or endangered species as defined under the ESA. In the absence of separate authorization (e.g., an ESA Section 10 Permit, a Biological Opinion with “incidental take” provisions, etc.) from the FWS or the NMFS, the Endangered Species Act prohibits any person subject to the jurisdiction of the United States to take a listed species, where “take” means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. The word “harm” in the definition of “take” means an act which actually kills or injures wildlife. Such an act may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding or sheltering.

(f) If the non-federal permittee has a valid ESA section 10(a)(1)(B) incidental take permit with an approved Habitat Conservation Plan for a project or a group of projects that includes the proposed NWP activity, the non-federal applicant should provide a copy of that ESA section 10(a)(1)(B) permit with the PCN required by paragraph (c) of this general condition. The district engineer will coordinate with the agency that issued the ESA section 10(a)(1)(B) permit to determine whether the proposed NWP activity and the associated incidental take were considered in the internal ESA section 7 consultation conducted for the ESA section 10(a)(1)(B) permit. If that coordination results in concurrence from the agency that the proposed NWP activity and the associated incidental take were considered in the internal ESA section 7 consultation for the ESA section 10(a)(1)(B) permit, the district engineer does not need to conduct a separate ESA section 7 consultation for the proposed NWP activity. The district engineer will notify the non-federal applicant within 45 days of receipt of a complete pre-construction notification whether the ESA section 10(a)(1)(B) permit covers the proposed NWP activity or whether additional ESA section 7 consultation is required.

(g) Information on the location of threatened and endangered species and their critical habitat can be obtained directly from the offices of the FWS and NMFS or their world wide web pages at <http://www.fws.gov/> or [http:// www.fws.gov/ipac](http://www.fws.gov/ipac) and [http:// www.nmfs.noaa.gov/pr/species/esa/](http://www.nmfs.noaa.gov/pr/species/esa/) respectively.

19. Migratory Birds and Bald and Golden Eagles. The permittee is responsible for ensuring that an action authorized by an NWP complies with the Migratory Bird Treaty Act and the Bald and Golden Eagle Protection Act. The permittee is responsible for contacting the appropriate local office of the U.S. Fish and Wildlife Service to determine what measures, if any, are necessary or appropriate to reduce adverse effects to migratory birds or eagles, including whether “incidental take” permits are necessary and available under the Migratory Bird Treaty Act or Bald and Golden Eagle Protection Act for a particular activity.

20. Historic Properties. (a) No activity is authorized under any NWP which may have the potential to cause effects to properties listed, or eligible for listing, in the National Register of Historic Places until the requirements of Section 106 of the National Historic Preservation Act (NHPA) have been satisfied.

(b) Federal permittees should follow their own procedures for complying with the requirements of section 106 of the National Historic Preservation Act (see 33 CFR 330.4(g)(1)). If preconstruction notification is required for the proposed NWP activity, the Federal permittee must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements. The district engineer will verify that the appropriate documentation has been submitted. If the appropriate documentation is not submitted, then additional consultation under section 106 may be necessary. The respective federal agency is responsible for fulfilling its obligation to comply with section 106.

(c) Non-federal permittees must submit a pre-construction notification to the district engineer if the NWP activity might have the potential to cause effects to any historic properties listed on, determined to be eligible for listing on, or potentially eligible for listing on the National Register of Historic Places, including previously unidentified properties. For such activities, the preconstruction notification must state which historic properties might have the potential to be affected by the proposed NWP activity or include a vicinity map indicating the location of the historic properties or the potential for the presence of historic properties. Assistance regarding information on the location of, or potential for, the presence of historic properties can be sought from the State Historic Preservation Officer, Tribal Historic Preservation Officer, or designated tribal representative, as appropriate, and the National Register of Historic Places (see 33 CFR 330.4(g)). When reviewing pre-construction notifications, district engineers will comply with the current procedures for addressing the requirements of section 106 of the National Historic Preservation Act. The district engineer shall make a reasonable and good faith effort to carry out appropriate identification efforts commensurate with potential impacts, which may include background research, consultation, oral history interviews, sample field investigation, and/or field survey. Based on the information submitted in the PCN and these identification efforts, the district engineer shall determine whether the proposed NWP activity has the potential to cause effects on the historic properties. Section 106 consultation is not required when the district engineer determines that the activity does not have the potential to cause effects on historic properties (see 36 CFR 800.3(a)). Section 106 consultation is required when the district engineer determines that the activity has the potential to cause effects on historic properties. The district engineer will conduct consultation with consulting parties identified under 36 CFR 800.2(c) when he or she makes any of the following effect determinations for the purposes of section 106 of the NHPA: No historic properties affected, no adverse effect, or adverse effect.

(d) Where the non-Federal applicant has identified historic properties on which the proposed NWP activity might have the potential to cause effects and has so notified the Corps, the non-Federal applicant shall not begin the activity until notified by the district engineer either that the activity has no potential to cause effects to historic properties or that NHPA section 106 consultation has been completed. For non-federal permittees, the district engineer will notify the prospective permittee within 45 days of receipt of a complete pre-construction notification whether NHPA section 106 consultation is required. If NHPA section 106 consultation is required, the district engineer will notify the non-Federal applicant that he or she cannot begin the activity until section 106 consultation is completed. If the non-Federal applicant has not heard back from the Corps within 45 days, the applicant must still wait for notification from the Corps.

(e) Prospective permittees should be aware that section 110k of the NHPA (54 U.S.C. 306113) prevents the Corps from granting a permit or other assistance to an applicant who, with intent to avoid the requirements of section 106 of the NHPA, has intentionally significantly adversely affected a historic property to which the permit would relate, or having legal power to prevent it, allowed such significant adverse effect to occur, unless the Corps, after consultation with the Advisory Council on Historic Preservation (ACHP), determines that circumstances justify granting such assistance despite the adverse effect created or permitted by the applicant. If circumstances justify granting the assistance, the Corps is required to notify the ACHP and provide documentation specifying the circumstances, the degree of damage to the integrity of any historic properties affected, and proposed mitigation. This documentation must include any views obtained from the applicant, SHPO/ THPO, appropriate Indian tribes if the undertaking occurs on or affects historic properties on tribal lands or affects properties of interest to those tribes, and other parties known to have a legitimate interest in the impacts to the permitted activity on historic properties.

21. Discovery of Previously Unknown Remains and Artifacts. Permittees that discover any

previously unknown historic, cultural or archeological remains and artifacts while accomplishing the activity authorized by an NWP, they must immediately notify the district engineer of what they have found, and to the maximum extent practicable, avoid construction activities that may affect the remains and artifacts until the required coordination has been completed. The district engineer will initiate the Federal, Tribal, and state coordination required to determine if the items or remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.

22. Designated Critical Resource Waters. Critical resource waters include, NOAA-managed marine sanctuaries and marine monuments, and National Estuarine Research Reserves. The district engineer may designate, after notice and opportunity for public comment, additional waters officially designated by a state as having particular environmental or ecological significance, such as outstanding national resource waters or state natural heritage sites. The district engineer may also designate additional critical resource waters after notice and opportunity for public comment.

(a) Discharges of dredged or fill material into waters of the United States are not authorized by NWPs 7, 12, 14, 16, 17, 21, 29, 31, 35, 39, 40, 42, 43, 44, 49, 50, 51, 52, 57 and 58 for any activity within, or directly affecting, critical resource waters, including wetlands adjacent to such waters.

(b) For NWPs 3, 8, 10, 13, 15, 18, 19, 22, 23, 25, 27, 28, 30, 33, 34, 36, 37, 38, and 54, notification is required in accordance with general condition 32, for any activity proposed in the designated critical resource waters including wetlands adjacent to those waters. The district engineer may authorize activities under these NWPs only after it is determined that the impacts to the critical resource waters will be no more than minimal.

23. Mitigation. The district engineer will consider the following factors when determining appropriate and practicable mitigation necessary to ensure that the individual and cumulative adverse environmental effects are no more than minimal:

(a) The activity must be designed and constructed to avoid and minimize adverse effects, both temporary and permanent, to waters of the United States to the maximum extent practicable at the project site (i.e., on site).

(b) Mitigation in all its forms (avoiding, minimizing, rectifying, reducing, or compensating for resource losses) will be required to the extent necessary to ensure that the individual and cumulative adverse environmental effects are no more than minimal.

(c) Compensatory mitigation at a minimum one-for-one ratio will be required for all wetland losses that exceed 1/10-acre and require preconstruction notification, unless the district engineer determines in writing that either some other form of mitigation would be more environmentally appropriate or the adverse environmental effects of the proposed activity are no more than minimal, and provides an activity-specific waiver of this requirement. For wetland losses of 1/10-acre or less that require preconstruction notification, the district engineer may determine on a case-by-case basis that compensatory mitigation is required to ensure that the activity results in only minimal adverse environmental effects.

(d) Compensatory mitigation at a minimum one-for-one ratio will be required for all losses of stream bed that exceed 3/100-acre and require preconstruction notification, unless the district engineer determines in writing that either some other form of mitigation would be more environmentally appropriate or the adverse environmental effects of the proposed activity are no more than minimal, and provides an activity-specific waiver of this requirement. This compensatory mitigation requirement may be satisfied through the restoration or enhancement of riparian areas next to streams in accordance with paragraph (e) of this general condition. For losses of stream bed of 3/100-acre or less that require preconstruction notification, the district engineer may determine on a case-by-case basis that compensatory mitigation is required to ensure that the activity results in only minimal adverse

environmental effects. Compensatory mitigation for losses of streams should be provided, if practicable, through stream rehabilitation, enhancement, or preservation, since streams are difficult-to-replace resources (see 33 CFR 332.3(e)(3)).

(e) Compensatory mitigation plans for NWP activities in or near streams or other open waters will normally include a requirement for the restoration or enhancement, maintenance, and legal protection (e.g., conservation easements) of riparian areas next to open waters. In some cases, the restoration or maintenance/protection of riparian areas may be the only compensatory mitigation required. If restoring riparian areas involves planting vegetation, only native species should be planted. The width of the required riparian area will address documented water quality or aquatic habitat loss concerns. Normally, the riparian area will be 25 to 50 feet wide on each side of the stream, but the district engineer may require slightly wider riparian areas to address documented water quality or habitat loss concerns. If it is not possible to restore or maintain/protect a riparian area on both sides of a stream, or if the waterbody is a lake or coastal waters, then restoring or maintaining/protecting a riparian area along a single bank or shoreline may be sufficient. Where both wetlands and open waters exist on the project site, the district engineer will determine the appropriate compensatory mitigation (e.g., riparian areas and/or wetlands compensation) based on what is best for the aquatic environment on a watershed basis. In cases where riparian areas are determined to be the most appropriate form of minimization or compensatory mitigation, the district engineer may waive or reduce the requirement to provide wetland compensatory mitigation for wetland losses.

(f) Compensatory mitigation projects provided to offset losses of aquatic resources must comply with the applicable provisions of 33 CFR part 332.

(1) The prospective permittee is responsible for proposing an appropriate compensatory mitigation option if compensatory mitigation is necessary to ensure that the activity results in no more than minimal adverse environmental effects. For the NWPs, the preferred mechanism for providing compensatory mitigation is mitigation bank credits or in-lieu fee program credits (see 33 CFR 332.3(b)(2) and (3)). However, if an appropriate number and type of mitigation bank or in-lieu credits are not available at the time the PCN is submitted to the district engineer, the district engineer may approve the use of permittee-responsible mitigation.

(2) The amount of compensatory mitigation required by the district engineer must be sufficient to ensure that the authorized activity results in no more than minimal individual and cumulative adverse environmental effects (see 33 CFR 330.1(e)(3)). (See also 33 CFR 332.3(f)).

(3) Since the likelihood of success is greater and the impacts to potentially valuable uplands are reduced, aquatic resource restoration should be the first compensatory mitigation option considered for permittee-responsible mitigation.

(4) If permittee-responsible mitigation is the proposed option, the prospective permittee is responsible for submitting a mitigation plan. A conceptual or detailed mitigation plan may be used by the district engineer to make the decision on the NWP verification request, but a final mitigation plan that addresses the applicable requirements of 33 CFR 332.4(c)(2) through (14) must be approved by the district engineer before the permittee begins work in waters of the United States, unless the district engineer determines that prior approval of the final mitigation plan is not practicable or not necessary to ensure timely completion of the required compensatory mitigation (see 33 CFR 332.3(k)(3)). If permittee-responsible mitigation is the proposed option, and the proposed compensatory mitigation site is located on land in which another federal agency holds an easement, the district engineer will coordinate with that federal agency to determine if proposed compensatory mitigation project is compatible with the terms of the easement.

(5) If mitigation bank or in-lieu fee program credits are the proposed option, the mitigation plan needs to address only the baseline conditions at the impact site and the number of credits to be provided (see 33 CFR 332.4(c)(1)(ii)).

(6) Compensatory mitigation requirements (e.g., resource type and amount to be provided as

compensatory mitigation, site protection, ecological performance standards, monitoring requirements) may be addressed through conditions added to the NWP authorization, instead of components of a compensatory mitigation plan (see 33 CFR 332.4(c)(1)(ii)).

(g) Compensatory mitigation will not be used to increase the acreage losses allowed by the acreage limits of the NWPs. For example, if an NWP has an acreage limit of 1/2-acre, it cannot be used to authorize any NWP activity resulting in the loss of greater than 1/2- acre of waters of the United States, even if compensatory mitigation is provided that replaces or restores some of the lost waters. However, compensatory mitigation can and should be used, as necessary, to ensure that an NWP activity already meeting the established acreage limits also satisfies the no more than minimal impact requirement for the NWPs.

(h) Permittees may propose the use of mitigation banks, in-lieu fee programs, or permittee-responsible mitigation. When developing a compensatory mitigation proposal, the permittee must consider appropriate and practicable options consistent with the framework at 33 CFR 332.3(b). For activities resulting in the loss of marine or estuarine resources, permittee-responsible mitigation may be environmentally preferable if there are no mitigation banks or in-lieu fee programs in the area that have marine or estuarine credits available for sale or transfer to the permittee. For permittee-responsible mitigation, the special conditions of the NWP verification must clearly indicate the party or parties responsible for the implementation and performance of the compensatory mitigation project, and, if required, its long-term management.

(i) Where certain functions and services of waters of the United States are permanently adversely affected by a regulated activity, such as discharges of dredged or fill material into waters of the United States that will convert a forested or scrub-shrub wetland to a herbaceous wetland in a permanently maintained utility line right-of-way, mitigation may be required to reduce the adverse environmental effects of the activity to the no more than minimal level.

24. Safety of Impoundment Structures. To ensure that all impoundment structures are safely designed, the district engineer may require non-Federal applicants to demonstrate that the structures comply with established state or federal, dam safety criteria or have been designed by qualified persons. The district engineer may also require documentation that the design has been independently reviewed by similarly qualified persons, and appropriate modifications made to ensure safety.

25. Water Quality.

(a) Where the certifying authority (state, authorized tribe, or EPA, as appropriate) has not previously certified compliance of an NWP with CWA section 401, a CWA section 401 water quality certification for the proposed discharge must be obtained or waived (see 33 CFR 330.4(c)). If the permittee cannot comply with all of the conditions of a water quality certification previously issued by certifying authority for the issuance of the NWP, then the permittee must obtain a water quality certification or waiver for the proposed discharge in order for the activity to be authorized by an NWP.

(b) If the NWP activity requires preconstruction notification and the certifying authority has not previously certified compliance of an NWP with CWA section 401, the proposed discharge is not authorized by an NWP until water quality certification is obtained or waived. If the certifying authority issues a water quality certification for the proposed discharge, the permittee must submit a copy of the certification to the district engineer. The discharge is not authorized by an NWP until the district engineer has notified the permittee that the water quality certification requirement has been satisfied by the issuance of a water quality certification or a waiver.

(c) The district engineer or certifying authority may require additional water quality management measures to ensure that the authorized activity does not result in more than minimal degradation of water quality.

26. Coastal Zone Management. In coastal states where an NWP has not previously received a state coastal zone management consistency concurrence, an individual state coastal zone management consistency concurrence must be obtained, or a presumption of concurrence must occur (see 33 CFR 330.4(d)). If the permittee cannot comply with all of the conditions of a coastal zone management consistency concurrence previously issued by the state, then the permittee must obtain an individual coastal zone management consistency concurrence or presumption of concurrence in order for the activity to be authorized by an NWP. The district engineer or a state may require additional measures to ensure that the authorized activity is consistent with state coastal zone management requirements.

27. Regional and Case-By-Case Conditions. The activity must comply with any regional conditions that may have been added by the Division Engineer (see 33 CFR 330.4(e)) and with any case specific conditions added by the Corps or by the state, Indian Tribe, or U.S. EPA in its CWA section 401 Water Quality Certification, or by the state in its Coastal Zone Management Act consistency determination.

28. Use of Multiple Nationwide Permits. The use of more than one NWP for a single and complete project is authorized, subject to the following restrictions:

(a) If only one of the NWPs used to authorize the single and complete project has a specified acreage limit, the acreage loss of waters of the United States cannot exceed the acreage limit of the NWP with the highest specified acreage limit. For example, if a road crossing over tidal waters is constructed under NWP 14, with associated bank stabilization authorized by NWP 13, the maximum acreage loss of waters of the United States for the total project cannot exceed 1/3-acre.

(b) If one or more of the NWPs used to authorize the single and complete project has specified acreage limits, the acreage loss of waters of the United States authorized by those NWPs cannot exceed their respective specified acreage limits. For example, if a commercial development is constructed under NWP 39, and the single and complete project includes the filling of an upland ditch authorized by NWP 46, the maximum acreage loss of waters of the United States for the commercial development under NWP 39 cannot exceed 1/2-acre, and the total acreage loss of waters of United States due to the NWP 39 and 46 activities cannot exceed 1 acre.

29. Transfer of Nationwide Permit Verifications. If the permittee sells the property associated with a nationwide permit verification, the permittee may transfer the nationwide permit verification to the new owner by submitting a letter to the appropriate Corps district office to validate the transfer. A copy of the nationwide permit verification must be attached to the letter, and the letter must contain the following statement and signature:

“When the structures or work authorized by this nationwide permit are still in existence at the time the property is transferred, the terms and conditions of this nationwide permit, including any special conditions, will continue to be binding on the new owner(s) of the property. To validate the transfer of this nationwide permit and the associated liabilities associated with compliance with its terms and conditions, have the transferee sign and date below.”

(Transferee)

(Date)

30. Compliance Certification. Each permittee who receives an NWP verification letter from the Corps must provide a signed certification documenting completion of the authorized activity and implementation of any required compensatory mitigation. The success of any required permittee-responsible mitigation, including the achievement of ecological performance standards, will be addressed separately by the district engineer. The Corps will provide the permittee the certification document with the NWP verification letter. The certification document will include:

- (a) A statement that the authorized activity was done in accordance with the NWP authorization, including any general, regional, or activity-specific conditions;
- (b) A statement that the implementation of any required compensatory mitigation was completed in accordance with the permit conditions. If credits from a mitigation bank or in-lieu fee program are used to satisfy the compensatory mitigation requirements, the certification must include the documentation required by 33 CFR 332.3(l)(3) to confirm that the permittee secured the appropriate number and resource type of credits; and
- (c) The signature of the permittee certifying the completion of the activity and mitigation. The completed certification document must be submitted to the district engineer within 30 days of completion of the authorized activity or the implementation of any required compensatory mitigation, whichever occurs later.

31. Activities Affecting Structures or Works Built by the United States. If an NWP activity also requires review by, or permission from, the Corps pursuant to 33 U.S.C. 408 because it will alter or temporarily or permanently occupy or use a U.S. Army Corps of Engineers (USACE) federally authorized Civil Works project (a “USACE project”), the prospective permittee must submit a pre-construction notification. See paragraph (b)(10) of general condition 32. An activity that requires section 408 permission and/or review is not authorized by an NWP until the appropriate Corps office issues the section 408 permission or completes its review to alter, occupy, or use the USACE project, and the district engineer issues a written NWP verification.

32. Pre-Construction Notification. (a) *Timing.* Where required by the terms of the NWP, the prospective permittee must notify the district engineer by submitting a pre-construction notification (PCN) as early as possible. The district engineer must determine if the PCN is complete within 30 calendar days of the date of receipt and, if the PCN is determined to be incomplete, notify the prospective permittee within that 30 day period to request the additional information necessary to make the PCN complete. The request must specify the information needed to make the PCN complete. As a general rule, district engineers will request additional information necessary to make the PCN complete only once. However, if the prospective permittee does not provide all of the requested information, then the district engineer will notify the prospective permittee that the PCN is still incomplete and the PCN review process will not commence until all of the requested information has been received by the district engineer. The prospective permittee shall not begin the activity until either:

- (1) He or she is notified in writing by the district engineer that the activity may proceed under the NWP with any special conditions imposed by the district or division engineer; or
- (2) 45 calendar days have passed from the district engineer’s receipt of the complete PCN and the prospective permittee has not received written notice from the district or division engineer.

However, if the permittee was required to notify the Corps pursuant to general condition 18 that listed species or critical habitat might be affected or are in the vicinity of the activity, or to notify the Corps pursuant to general condition 20 that the activity might have the potential to cause effects to historic properties, the permittee cannot begin the activity until receiving written notification from the Corps that

there is “no effect” on listed species or “no potential to cause effects” on historic properties, or that any consultation required under Section 7 of the Endangered Species Act (see 33 CFR 330.4(f)) and/or section 106 of the National Historic Preservation Act (see 33 CFR 330.4(g)) has been completed. If the proposed activity requires a written waiver to exceed specified limits of an NWP, the permittee may not begin the activity until the district engineer issues the waiver. If the district or division engineer notifies the permittee in writing that an individual permit is required within 45 calendar days of receipt of a complete PCN, the permittee cannot begin the activity until an individual permit has been obtained. Subsequently, the permittee’s right to proceed under the NWP may be modified, suspended, or revoked only in accordance with the procedure set forth in 33 CFR 330.5(d)(2).

(b) *Contents of Pre-Construction Notification:* The PCN must be in writing and include the following information:

(1) Name, address and telephone numbers of the prospective permittee;

(2) Location of the proposed activity;

(3) Identify the specific NWP or NWP(s) the prospective permittee wants to use to authorize the proposed activity;

(4) (i) A description of the proposed activity; the activity’s purpose; direct and indirect adverse environmental effects the activity would cause, including the anticipated amount of loss of wetlands, other special aquatic sites, and other waters expected to result from the NWP activity, in acres, linear feet, or other appropriate unit of measure; a description of any proposed mitigation measures intended to reduce the adverse environmental effects caused by the proposed activity; and any other NWP(s), regional general permit(s), or individual permit(s) used or intended to be used to authorize any part of the proposed project or any related activity, including other separate and distant crossings for linear projects that require Department of the Army authorization but do not require pre-construction notification. The description of the proposed activity and any proposed mitigation measures should be sufficiently detailed to allow the district engineer to determine that the adverse environmental effects of the activity will be no more than minimal and to determine the need for compensatory mitigation or other mitigation measures;

(ii) For linear projects where one or more single and complete crossings require pre-construction notification, the PCN must include the quantity of anticipated losses of wetlands, other special aquatic sites, and other waters for each single and complete crossing of those wetlands, other special aquatic sites, and other waters (including those single and complete crossings authorized by an NWP but do not require PCNs). This information will be used by the district engineer to evaluate the cumulative adverse environmental effects of the proposed linear project, and does not change those non-PCN NWP activities into NWP PCNs;

(iii) Sketches should be provided when necessary to show that the activity complies with the terms of the NWP. (Sketches usually clarify the activity and when provided results in a quicker decision. Sketches should contain sufficient detail to provide an illustrative description of the proposed activity (e.g., a conceptual plan), but do not need to be detailed engineering plans);

(5) The PCN must include a delineation of wetlands, other special aquatic sites, and other waters, such as lakes and ponds, and perennial and intermittent streams, on the project site. Wetland delineations must be prepared in accordance with the current method required by the Corps. The permittee may ask the Corps to delineate the special aquatic sites and other waters on the project site, but there may be a delay if the Corps does the delineation, especially if the project site is large or contains many wetlands, other special aquatic sites, and other waters. Furthermore, the 45-day period will not start until the delineation has been submitted to or completed by the Corps, as appropriate;

(6) If the proposed activity will result in the loss of greater than 1/10-acre of wetlands or 3/100-acre of stream bed and a PCN is required, the prospective permittee must submit a statement describing how the mitigation requirement will be satisfied, or explaining why the adverse

environmental effects are no more than minimal and why compensatory mitigation should not be required. As an alternative, the prospective permittee may submit a conceptual or detailed mitigation plan.

(7) For non-federal permittees, if any listed species (or species proposed for listing) or designated critical habitat (or critical habitat proposed for such designation) might be affected or is in the vicinity of the activity, or if the activity is located in designated critical habitat (or critical habitat proposed for such designation), the PCN must include the name(s) of those endangered or threatened species (or species proposed for listing) that might be affected by the proposed activity or utilize the designated critical habitat (or critical habitat proposed for such designation) that might be affected by the proposed activity. For NWP activities that require pre-construction notification, Federal permittees must provide documentation demonstrating compliance with the Endangered Species Act;

(8) For non-federal permittees, if the NWP activity might have the potential to cause effects to a historic property listed on, determined to be eligible for listing on, or potentially eligible for listing on, the National Register of Historic Places, the PCN must state which historic property might have the potential to be affected by the proposed activity or include a vicinity map indicating the location of the historic property. For NWP activities that require pre-construction notification, Federal permittees must provide documentation demonstrating compliance with section 106 of the National Historic Preservation Act;

(9) For an activity that will occur in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a “study river” for possible inclusion in the system while the river is in an official study status, the PCN must identify the Wild and Scenic River or the “study river” (see general condition 16); and

(10) For an NWP activity that requires permission from, or review by, the Corps pursuant to 33 U.S.C. 408 because it will alter or temporarily or permanently occupy or use a U.S. Army Corps of Engineers federally authorized civil works project, the pre-construction notification must include a statement confirming that the project proponent has submitted a written request for section 408 permission from, or review by, the Corps office having jurisdiction over that USACE project.

(c) *Form of Pre-Construction Notification:* The nationwide permit pre-construction notification form (Form ENG 6082) should be used for NWP PCNs. A letter containing the required information may also be used. Applicants may provide electronic files of PCNs and supporting materials if the district engineer has established tools and procedures for electronic submittals.

(d) *Agency Coordination:* (1) The district engineer will consider any comments from Federal and state agencies concerning the proposed activity’s compliance with the terms and conditions of the NWPs and the need for mitigation to reduce the activity’s adverse environmental effects so that they are no more than minimal.

(2) Agency coordination is required for: (i) All NWP activities that require pre-construction notification and result in the loss of greater than 1/2-acre of waters of the United States; (ii) NWP 13 activities in excess of 500 linear feet, fills greater than one cubic yard per running foot, or involve discharges of dredged or fill material into special aquatic sites; and (iii) NWP 54 activities in excess of 500 linear feet, or that extend into the waterbody more than 30 feet from the mean low water line in tidal waters or the ordinary high water mark in the Great Lakes.

(3) When agency coordination is required, the district engineer will immediately provide (e.g., via email, facsimile transmission, overnight mail, or other expeditious manner) a copy of the complete PCN to the appropriate Federal or state offices (FWS, state natural resource or water quality agency, EPA, and, if appropriate, the NMFS). With the exception of NWP 37, these agencies will have 10 calendar days from the date the material is transmitted to notify the district engineer via telephone, facsimile transmission, or email that they intend to provide substantive, site-specific comments. The comments must explain why the agency believes the adverse environmental effects will be more than

minimal. If so contacted by an agency, the district engineer will wait an additional 15 calendar days before making a decision on the preconstruction notification. The district engineer will fully consider agency comments received within the specified time frame concerning the proposed activity's compliance with the terms and conditions of the NWPs, including the need for mitigation to ensure that the net adverse environmental effects of the proposed activity are no more than minimal. The district engineer will provide no response to the resource agency, except as provided below. The district engineer will indicate in the administrative record associated with each pre-construction notification that the resource agencies' concerns were considered. For NWP 37, the emergency watershed protection and rehabilitation activity may proceed immediately in cases where there is an unacceptable hazard to life or a significant loss of property or economic hardship will occur. The district engineer will consider any comments received to decide whether the NWP 37 authorization should be modified, suspended, or revoked in accordance with the procedures at 33 CFR 330.5.

(4) In cases of where the prospective permittee is not a Federal agency, the district engineer will provide a response to NMFS within 30 calendar days of receipt of any Essential Fish Habitat conservation recommendations, as required by section 305(b)(4)(B) of the Magnuson-Stevens Fishery Conservation and Management Act.

(5) Applicants are encouraged to provide the Corps with either electronic files or multiple copies of preconstruction notifications to expedite agency coordination.



Michelle Lujan Grisham
Governor

Howie C. Morales
Lt. Governor

**NEW MEXICO
ENVIRONMENT DEPARTMENT**

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James C. Kenney
Cabinet Secretary

Jennifer J. Pruett
Deputy Secretary

Original via Electronic Mail

February 11, 2021

Ms. Kelly Allen
Chief, Regulatory Division
U.S. Army Corps of Engineers, Albuquerque District
4101 Jefferson Plaza NE
Albuquerque, New Mexico 87109-3434

Re: Clean Water Act Section 401 Water Quality Certification
United States Army Corps of Engineers 2021 Regional General Permit 16-01

Dear Ms. Allen:

The Cabinet Secretary of the New Mexico Environment Department (NMED) delegated signatory authority for state certifications of federal Clean Water Act (CWA) permits to the Surface Water Quality Bureau Chief. NMED examined the November 17, 2020 Draft Regional General Permit (RGP) 16-01 under Section 404 of the CWA and Section 10 of the Harbors and Rivers Act issued by the Albuquerque District of the U.S. Army Corps of Engineers ("Corps"), the Corps public notice of the proposed Revisions to Regional General Permit 16-01 and the Corps request that NMED consider certification of this permit under the CWA §401 (Certification). Certification is required by CWA §401 to ensure that RGPs are consistent with state law, comply with the state Water Quality Standards (20.6.4 NMAC and 20.6.2 NMAC), Water Quality Management Plan/Continuing Planning Process, including Total Maximum Daily Loads (TMDLs), and Antidegradation Policy.

Pursuant to State regulations for permit certification at 20.6.2.2002 NMAC, NMED issued a public notice of this activity and announced a public comment period, posted on the Surface Water Quality Bureau's web site: <https://www.env.nm.gov/surface-water-quality/public-notices/> on December 11, 2020. The public comment period ended on January 11, 2021. NMED received no comments.

The Conditional Certification for Regional General Permit 16-01 is attached.

Sincerely,

Shelly Lemon, Chief
Surface Water Quality Bureau

xc: Curry Jones, Enforcement and Compliance Assurance Division, USEPA Region 6
Briana Wadley, Water Division, USEPA Region 6
Mathew Wunder, Chief, New Mexico Department of Game and Fish
U.S. Fish and Wildlife Service
401 Certification File, NMED-SWQB

State of New Mexico CWA Section 401 Certification of Regional General Permit 16-01:

For projects that discharge dredged or fill material into surface waters of the state, the New Mexico Environment Department (NMED) relies on conditions to ensure compliance with State water quality standards at [20.6.2](#) and [20.6.4](#) New Mexico Administrative Code (NMAC) and the State of New Mexico Water Quality Management Plan and Continuing Planning Process (WQMP/CPP)¹, including Total Maximum Daily Loads (TMDLs)² and the State's Antidegradation Policy³.

The New Mexico Environment Department (NMED) has examined the proposed Regional General Permit (RGP) for discharge of dredged or fill material into waters of the United States (U.S.) for crossings of those waters associated with the construction, maintenance, repair and removal of utility lines and associated facilities in waters of the United States, provided the activity does not result in the loss of greater than ½-acre of waters of the United States for each single and complete project. Projects authorized, must not result in more than minimal individual and cumulative adverse environmental effects. NMED considers the RGP to be an individual permit with "abbreviated procedures" per 33 CFR §322.2(d).

The water quality standards and regulations cited herein as codified in the New Mexico Administrative Code (i.e., 20.6.2 NMAC, 20.6.4 NMAC) were adopted by the New Mexico Water Quality Control Commission pursuant to the authority granted by the New Mexico Water Quality Act, NMSA 1978, § 74-6-4, and promulgated in accordance with the New Mexico State Rules Act, NMSA 1978, §§ 14-4-1 to -11.

The State of New Mexico certifies that the permitted activities will comply with applicable provisions of the CWA §§301, 302, 303, 306, and 307 and with appropriate requirements of State law, including the New Mexico Water Quality Act (NMSA 1978, §§ 74-6-1 to -17), 20.6.2 NMAC and 20.6.4 NMAC, upon inclusion of the following conditions in the permit, as listed below. Compliance with the terms and conditions of the permit and this certification provides reasonable assurance that the permitted activities will be conducted in a manner which will not violate applicable State water quality standards nor the water quality management plan and will be in compliance with the antidegradation policy.

Projects that are unable to comply with the conditions of this certification are denied certification without prejudice and the applicant must apply to NMED for an individual certification pursuant to 20.6.2.2002 NMAC⁴.

NMED has the knowledge and experience to determine the appropriate conditions necessary to protect state water quality. The following conditions and Best Management Practices (BMPs) have proven successful in maintaining and protecting state water quality and are hereby justified pursuant to the CWA §401 Certification Rule (40 CFR 121.7(d)(2)) and are authorized by the state and federal Antidegradation Policy and Implementation Plan and Methods (40 CFR 131.12; 20.6.4.8 NMAC).

Violations of State water quality standards could lead to penalties under the New Mexico Water Quality Act ("Act"), which states: "[a]ny person who violates any provision of the Water Quality Act [Chapter 74, Article 6 NMSA 1978] other than Section 74-6-5 NMSA 1978 or any person who violates any regulation, water quality standard or compliance order adopted pursuant to that act shall be assessed civil penalties up to the amount of ten thousand dollars (\$10,000) per day for each violation." NMSA 1978, § 74-6-10.1(B).

¹ <https://www.env.nm.gov/surface-water-quality/wqmp-cpp/>

² <https://www.env.nm.gov/surface-water-quality/tmdl/>

³ <https://www.env.nm.gov/surface-water-quality/wp-content/uploads/sites/25/2019/11/WQMP-CPP-Appendix-A-Antideg-20201023-APPROVED.pdf>

⁴ <http://164.64.110.134/parts/title20/20.006.0002.html>

General Conditions of Certification:

The following conditions apply to all uses of Regional General Permit (RGP) 16-01 within the State of New Mexico Clean Water Act (CWA) §401 area or region of certification authority.

1. Notification

Applicants seeking authorization under RGP 16-01 must notify NMED, including a description of all selected best management practices (BMPs; see General Condition #2), in order to be eligible for RGP 16-01.

- 1) When a Pre-Construction Notification (PCN) is required by the Corps, the applicant shall submit a copy of the PCN to NMED for notification. If not already included, the notification must include the PCN application materials as submitted to the Corps.
- 2) If a proposed activity will result in dredge or fill in water bodies listed as impaired under Section 303(d) of the CWA, the notification must include specific measures that will be used to avoid intensifying the impairment(s). The current EPA-approved New Mexico list of impaired waters is available at <https://www.env.nm.gov/surface-water-quality/303d-305b/> - see the link for "All Impairments (Category 4 or 5)" or contact NMED's Surface Water Quality Bureau should you have any questions or need assistance.

Timing. Applicants shall submit notification to NMED as early as possible, and in advance of any authorization letter from the Corps allowing the applicant to proceed under RGP 16-01. Email Confirmation from NMED for the use of this Certification is required by USACE Regional Condition 2.b and is typically completed within 60 days of receipt of a complete notification.

Content. Notification must be in writing (email submittal is preferred) and must include the same information that was submitted to the Corps in the PCN application package.

Written Notification should be emailed to: wpsprogram.manager@state.nm.us
Watershed Protection Section Program Manager, NMED- Surface Water Quality Bureau

Or mailed to (email is preferred):
Surface Water Quality Bureau
WPS Program Manager
PO Box 5469
Santa Fe, NM 87502

Notification to NMED is required in order to ensure that the activities will comply with the terms and conditions of the permit and this certification, including compliance with State water quality standards, water quality requirements associated with effective best management practices, and other water pollution controls pursuant to the State's Antidegradation Policy and Implementation Plan (20.6.4.8 NMAC; Appendix A of the WQMP/CPP).

2. Best Management Practices

No pollutants (suspended or settleable solids including fine sediment particles, precipitates, organic or inorganic solids, floating solids, total dissolved solids, oil, grease, other petroleum products, toxic pollutants, turbidity, or surface water temperature) or any other contaminant shall be allowed to discharge to a water of the state in such quantity and of such duration as may with reasonable probability injure human health, animal or plant life or property, or unreasonably interfere with public welfare or the use of property (20.6.4.13 NMAC).

The primary tool for limiting the discharge of pollutants from dredge and fill activities, individually and cumulatively, is through permit requirements mandating the installation and implementation of best management practices (BMPs) that prevent pollutant transport to a watercourse and thereby degradation (40 CFR 131.12 Antidegradation policy and implementation methods; 20.6.4.8 NMAC -

Antidegradation Policy and Implementation Plan; Appendix A of New Mexico's WQMP/CPP).

Therefore, Project Proponents (i.e., permittees) are required to select and implement all practicable and reasonable BMPs that are appropriate for their projects. Notification requires Project Proponents to describe all selected BMPs (see General Condition #1). Practicable and reasonable BMPs for New Mexico surface waters include:

Scheduling - Limit work in channel to periods of no flow or when wetland soils are frozen. Project activities must avoid times of predictable flooding to avoid working in high water (seasonal monsoons, snowmelt, or releases from dams).

Crossings - Limit stream and wetland crossings to a single, narrow location that is perpendicular to the stream (or along a contour of a wetland).

Diversions - Flowing water that is diverted around the work area must remain within the existing channel and provide for aquatic life movement. Diversions 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.

Heavy equipment -

- Pressure wash and/or steam clean before the start of the project and inspect daily for leaks (to remove contaminants and to avoid introducing invasive species).
- Complete a written log of inspections and maintenance throughout the project period.
- Do not use leaking equipment in or near surface water(s).
- Do not park or leave equipment stored within the stream channel or wetland.
- Operate from the bank or work platforms whenever possible. Avoid heavy equipment operation in flowing water.

Fuel

- Store fuel, oil, hydraulic fluid, lubricants, and other petrochemicals outside of the 100-year floodplain within a secondary containment system capable of containing twice the volume of the product.
- Refuel equipment at least 100 feet from surface water

Design

- Structures and culverts at stream crossings must be properly designed, installed and maintained to allow passage of sediment, bedload, woody debris, aquatic life, and to prevent erosion problems such as headcuts, incision, bank erosion, and the diversion of the stream from its natural channel during flood events.

Construction Materials

- Use appropriate fill material – broken concrete, tires, tire bales, treated lumber, and other refuse material shall not be used as fill material.
- All asphalt, concrete, drilling fluids and other construction 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 waters. Appropriate measures must be used to prevent wastewater from concrete batching, vehicle and equipment wash-down, or aggregate processing from impacting surface waters and aquatic resources.

Demolition, repair, and cleaning activities

Materials associated with demolition, repair, and cleaning activities of bridges or associated structures must be kept out of the channel. Generally, impermeable containment material (e.g., plastic sheet, canvas, tarpaulins or other catchment devices) must be secured under the structure to capture falling debris. Sandblasting must include vacuum systems or the structures must be completely bagged to collect all paint and concrete debris. Any debris that falls onto the

containment area or channel must be properly disposed of in accordance with the New Mexico Solid Waste Regulations (20.9.1 NMAC). Applicable Safety Data Sheets of water repellants and surface finish treatments must be maintained at the project area and such products must follow safety procedures for use near open water.

Trenching

- Excavated trenches shall be backfilled and compacted to match the adjacent undisturbed soil.
- Excavated trenches shall not result in draining any surface water including wetlands.
- Excavated trenches shall include escape ramps for wildlife.

Confine grading to the area of the trench and minimize to the extent practicable. The total length of excavated trench open at any one time should not be greater than the total length of pipeline/utility line that can be placed in the trench and back-filled in one working day.

Dewatering discharges

Dewatering discharges shall not contain contaminants, including excessive turbidity and other contaminants associated with the discharge, in concentrations that exceed surface water or groundwater standards at 20.6.4 NMAC and 20.6.2 NMAC. Appropriate dewatering BMPs include discharging to a sediment basin within an uplands area behind a vegetative buffer, using fabric, biobag, or hay-bale corrals, or using geotextile filter bags.

Dewatering discharges may be subject to NMED Discharge Permits. Regulations for ground and surface water protection at 20.6.2.1201 NMAC require any person intending to make a new water contaminant discharge to file a notice of intent to discharge with the Ground Water Quality Bureau (<https://www.env.nm.gov/gwqb/>) for discharges that may affect groundwater and/or with the Surface Water Quality Bureau (<https://www.env.nm.gov/swqb/>) for discharges that may affect surface water. Based on the information provided in the notice of intent, the appropriate Bureau will notify the applicant if a discharge permit is required.

Dust Control - Water used in dust suppression shall not contain contaminants in concentrations that exceed surface water or groundwater standards at 20.6.4 NMAC and 20.6.2 NMAC.

Erosion Control

- Avoid disturbance to vegetation and minimize bare ground.
- Establish and maintain upland buffers between upland construction and all surface waters, including streams, arroyos and wetlands.
- Silt fences, seed free straw mulch, hydro-mulch, biodegradable straw wattles, erosion control fabrics and other techniques must be employed as appropriate to protect waters from sedimentation and other pollutants.
- Avoid using jute netting or placing woven wire in contact with the stream. These materials have been known to trap and kill fish and wildlife near streams or rivers.

Wetlands

- Avoid working in wetlands whenever possible.
- Flag or otherwise mark wetland boundaries so construction crews can avoid them.
- When wetlands must be crossed by heavy equipment, schedule work when wetland soils are frozen whenever possible.
- Avoid permanent impacts to wetlands such as draining, filling, or other hydro-modifications.
- Backfill all trenches and return topography to pre-construction elevations.
- Install permeable fills to allow natural seepage flows.
- Use machinery appropriately.
- Use the smallest machinery that can handle the job – preferably non-mechanized equipment.

- Use wide tires, tracks, wooden mats, or board roads to disperse weight and minimize soil compaction when heavy machinery is required.
- Avoid turning wheels when the vehicle is stationary to prevent digging and damage to vegetation.
- Minimize wetland impacts by stockpiling vegetation and hydric soils to be reused during post-construction stabilization.

Stormwater Management

Activities that disturb one (1) acre or more may require a National Pollutant Discharge Elimination System (NPDES) permit from the U.S. Environmental Protection Agency (EPA) under Section 402 of the Clean Water Act. The permittee should submit the appropriate application to EPA 14 days prior to initiating construction. In the case of emergency operations, operators must apply no later than 30 days after the start of construction and are considered provisionally covered under the terms and conditions of the EPA-issued general permit immediately, and fully covered 14 calendar days after EPA has acknowledged receipt of the application (Notice of Intent, or NOI), unless EPA notifies the permittee that the authorization has been delayed or denied. For additional information, contact:

EPA Region 6
1201 Elm St.
Dallas, Texas 75202
Ph: 800-887-6063 or 214-665-2760 if calling from outside Region 6

Post-construction stabilization

- Permittees and their contractors shall take necessary steps to minimize channel and bank erosion during and after construction. Where applicable, banks must be reseeded or replanted with native vegetation.
- Disturbed areas outside stream channels 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 the first full growing season following construction. Native woody riparian and/or wetland species must be used in areas that support such vegetation. 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.

BMP Citations: Including but not limited to 20.6.4.13 NMAC - (A) bottom deposits and suspended or settleable solids; (B) floating solids, oil and grease; (F) toxic pollutants; (J) turbidity; (K) total dissolved solids and (M) biological integrity; 20.6.4.8 NMAC - Antidegradation Policy and Implementation Plan; Appendix A of New Mexico's WQMP/CPP; 40 CFR 131.12 - Antidegradation policy and implementation methods.

3. Fills Within Floodplains

Projects requiring authorization for discharges of fill material within 100-year floodplains shall include in their Notification a statement of compliance with Executive Order 11988 (Floodplain Management).

However, projects within the Federal Emergency Management Agency (FEMA)-mapped 100-year floodplain associated with residential and commercial development are denied certification.

4. Low Impact Development

When the discharge of fill material results in the replacement of wetlands or waters of the U.S. with impervious surfaces, the authorized activity should not result in more than minimal degradation of water quality. To ensure RGP 16-01 does not cumulatively degrade water quality from increasing the impervious area, the permittee shall incorporate low impact development practices (e.g. native

landscaping, bioretention and infiltration techniques, and constructed green spaces) to the extent practical. A description of the low impact development concepts in the proposed project shall be included in the PCN or Notification to NMED. More information including low impact concepts and definitions is available at: <https://www.epa.gov/nps/urban-runoff-low-impact-development>.

Incorporating low impact development practices ensures compliance with all water quality requirements associated with effective BMPs and other water pollution controls (20.6.4.8 NMAC - Antidegradation Policy and Implementation Plan).

5. Compliance Evaluation

NMED must be notified at least five days before starting construction to allow time to schedule a compliance evaluation, as necessary. The permittee shall allow NMED staff to monitor the authorized activity and any mitigation areas at any time deemed necessary to determine compliance with applicable State water quality standards.

NMED compliance evaluations are necessary to ensure that the project activities will comply with the terms and conditions of the permit and this certification, including compliance with State water quality standards, all water quality requirements associated with effective BMPs, and other water pollution controls (20.6.4.8 NMAC - Antidegradation Policy and Implementation Plan).

6. Spills

Appropriate spill clean-up materials such as absorbent pads must be available on-site at all times during construction. Permittees shall report all spills immediately to NMED as required by the New Mexico Water Quality Control Commission Regulations (20.6.2.1203 NMAC). For non-emergencies during normal business hours, call 505-428-2500. For non-emergencies after hours, call 866-428-6535. For emergencies only, call 505-827-9329 twenty-four hours a day (New Mexico Department of Public Safety). Requiring clean-up materials on-site and timely spill reporting ensures compliance with all water quality requirements in the event of a spill of toxic pollutants or other contaminants (20.6.4.13 NMAC, 20.6.2.1203 NMAC).

7. Posting

To prevent noncompliance with the terms and conditions of this certification, including appropriate requirements of State water quality law and regulations (NMSA 1978, §§ 74-6-1 to -17; 20.6.2 NMAC; 20.6.4 NMAC), a copy of this Certification must be kept at the project site during all phases of construction. All contractors involved in the project must be provided a copy of this certification and be made aware of the conditions prior to the start of construction.

8. Maintenance

Maintenance of existing structures should preserve (via design, flow modeling or other information in the PCN) the natural functions of the affected surface water when the structure is fully operational. "Currently serviceable structures" which may be maintained under this permit do not include undersized culverts or structures that cause or exacerbate channel incision, bank destabilization, and/or prevent fish and wildlife passage due to inadequate design or construction standards.

Citation: Including but not limited to 20.6.4.13 NMAC - (A) bottom deposits and suspended or settleable solids; (J) turbidity; (K) total dissolved solids and (M) biological integrity; 20.6.4.8 NMAC - Antidegradation Policy and Implementation Plan; Appendix A of New Mexico's WQMP/CPP; 40 CFR 131.12 Antidegradation policy and implementation methods.

9. Outstanding National Resource Waters

For proposed activities in Outstanding National Resource Waters (ONRWs), NMED denies Certification of RGP 16-01. The applicant must apply to NMED for an individual certification pursuant to 20.6.2.2002 NMAC.

Citation: Including but not limited to 20.6.4.9 NMAC - outstanding national resource waters; 20.6.4.13 NMAC - (A) bottom deposits and suspended or settleable solids; (B) floating solids, oil and grease; (F) toxic pollutants; (H) pathogens; (I) temperature; (J) turbidity; (K) total dissolved solids and (M) biological integrity; 20.6.4.8 NMAC - Antidegradation Policy and Implementation Plan; Appendix A of New Mexico's WQMP/PPP; 40 CFR 131.12 Antidegradation policy and implementation methods.