October 14, 2021

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

Re: Clean Water Act Section 401 Water Quality Certification
United States Army Corps of Engineers 2021 Nationwide Permits

Dear Kelly 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 (SWQB) Chief. NMED examined the September 15, 2020 Proposal to Reissue and Modify Nationwide Permits (NWPs) under Section 404 of the CWA and Section 10 of the Harbors and Rivers Act, issued by the U.S. Army Corps of Engineers (Corps) (*see* 85 FR 57298) and the September 24, 2020 Albuquerque Corps District's public notice of the proposed NWPs. 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, printed in the Albuquerque Journal on November 1, 2020 and posted on the SWQB's web site: https://www.env.nm.gov/surface-water-quality/public-notices/ on November 2, 2020. The public comment period ended on November 30, 2020. NMED received comments from Amigos Bravos and the New Mexico Mining Association, which were considered in NMED's CWA Section 401 Certification sent to the Corps on December 14, 2020.

As a result of this effort, the Corps reissued 16 NWPs, which became effective on March 15, 2021. Subsequently, on June 11, 2021, the Corps submitted a draft final rule for the remaining 41 NWPs for review by the Office of Management and Budget (OMB). There were no material changes from the original proposal published in the Federal Register on September 15, 2020. On August 20, 2021 the Corps notified NMED that certifying authorities would be provided an extended opportunity to revise or reconsider their Certification decision for the 41 proposed NWPs that are in the draft final rule that was submitted to OMB on June 11, 2021. Because there were no material changes from the original proposal published in September 2020 and noticed in November 2020, and consistent with the State's certification regulations at 20.6.2.2002 NMAC, NMED considered all pertinent comments received during the 401 Certification public comment period in this revised Certification.

Applicable Water Quality Regulations:

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 provided in the New Mexico Water Quality Act, NMSA 1978, Section 74- 6-4, and promulgated in accordance with the New Mexico State Rules Act, NMSA 1978, Sections 14-4-1 to -11. For projects that discharge dredged or fill material into surface waters of the state, NMED relies on conditions included in the Certification to ensure compliance with State water quality regulations and standards at 20.6.2 NMAC and 20.6.4 NMAC and the State of New Mexico Water Quality Management Plan and Continuing Planning Process (WQMP/CPP), including Total Maximum Daily Loads (TMDLs) and the State's Antidegradation Policy. Certification is also required to comply with General Condition 25 (Water Quality) and General Condition 27 (Regional and Case-By- Case Conditions) of the NWPs.

The State of New Mexico hereby certifies that the permitted activities will comply with applicable provisions of the CWA Sections 301, 302, 303, 306, and 307 and with appropriate requirements of State law, including the New Mexico Water Quality Act (NMSA 1978, Sections 74-6-1 to -17), 20.6.2 NMAC, and 20.6.4 NMAC, upon inclusion of NMED's conditions in the final NWPs. Projects that are unable to comply with the conditions of this Certification are denied Certification without prejudice and the Project Proponent must apply to NMED for an Individual Certification pursuant to 20.6.2.2002 NMAC. The conditional Certification, and denials, for the Nationwide Permits are attached.

Sincerely,

Shelly Lemon, Chief
Surface Water Quality Bureau

xc: Chris Parrish, Regulatory Branch Chief, USACE Albuquerque District – Christopher.M.Parrish@usace.army.mil
Curry Jones, Enforcement and Compliance Assurance Division, USEPA Region 6 – Jones.Curry@epa.gov
Brianna Wadley, Water Division, USEPA Region 6 – Wadley.Brianna@epa.gov
Mathew Wunder, Chief, Ecological & Environmental Planning, New Mexico Department of Game and Fish – Mathew.Wunder@state.nm.us
Debra Hill, Large River Restoration Branch Supervisor, NM Ecological Services Field Office, U.S. Fish and Wildlife Service – Debra_Hill@fws.gov
John Rhoderick, Acting Water Protection Division Director, NMED (john.rhoderick@state.nm.us)
Abe Franklin, Watershed Protection Program Manager, SWQB-NMED (abraham.franklin@state.nm.us)
Alan Klatt, Implementation & Restoration Team Supervisor, SWQB-NMED (alan.klatt@state.nm.us)
401 Certification File, NMED-SWQB

State of New Mexico
CWA Section 401 Certification Conditions on the
41 Proposed Nationwide Permits (NWPs)
October 14, 2021

General Conditions of Certification:

The following conditions apply to all uses of the 41 Nationwide Permits (NWPs) within the State of New Mexico Clean Water Act (CWA) Section 401 area or region of certification authority.

General Condition 1. Inspection

Prior to the initial operation of a certified project, the New Mexico Environment Department (NMED) shall be afforded the opportunity to inspect the facility or activity for the purpose of determining whether the discharge from the certified project will violate the certification (40 C.F.R. §121.11). To facilitate an inspection, the Project Proponent shall submit a copy of the Pre-Construction (PCN) to NMED when a PCN is required by the Corps. PCNs should be emailed to:

wpsprogram.manager@state.nm.us
Watershed Protection Program Manager, Surface Water Quality Bureau, NMED
Or mailed to (email is preferred):
Program Manager, Watershed Protection Section
Surface Water Quality Bureau
PO BOX 5469
Santa Fe, NM 87502

General Condition 2. Impaired Water Bodies

If a proposed activity will result in fill material in water bodies listed as impaired under Section 303(d) of the CWA, the Project Proponent shall select and implement specific measures or Best Management Practices (BMPs) to prevent further degradation of the water quality. 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 most current summary spreadsheet "All Impairments (Category 4 or 5)" or contact NMED's Surface Water Quality Bureau if you have any questions or need assistance.

General Condition 3. Best Management Practices (BMPs)

Project Proponents shall select and implement all practicable and reasonable BMPs that are appropriate for their project. Practicable and reasonable BMPs for New Mexico surface waters include but are not limited to:

Scheduling – 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 sandbags, water bladders, concrete barriers, or channel lined with geotextile or plastic sheeting. Dirt cofferdams or unlined ditches 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.

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 and topography.
- Excavated trenches shall not result in draining any surface water including wetlands.
- Excavated trenches shall include escape ramps for wildlife.
- Use planning and construction practices to minimize the length and duration of open trenches.

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.

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 working in wetlands when soils are too saturated to support heavy machinery.
- Avoid permanent impacts to wetlands such as draining, filling, or other hydro-modifications.
- Install permeable fills to allow natural seepage flows.
- 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.

Post-construction stabilization –

- The Project Proponent 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 so that species regrowth is functionally equivalent to the pre-disturbed site or a reference site. 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. The Corps will determine the requirements for post-construction monitoring on a case-by-case basis.

General Condition 4. Fills Within Floodplains

The authorized dredge and fill activity shall comply with Executive Order 11988 (Floodplain Management).

General Condition 5. 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 Project Proponent shall select and implement low impact development practices (e.g. native landscaping, bioretention and infiltration techniques, and constructed green spaces) to the extent practicable. More information including low impact concepts and definitions is available at: https://www.epa.gov/nps/urban-runoff-low-impact-development.

General Condition 6. Spills

Appropriate spill clean-up materials such as absorbent pads must be available on-site at all times during construction. The Project Proponent 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).

General Condition 7. Posting

The Project Proponent shall provide all contractors and subcontractors a copy of this Certification and make all contractors and subcontractors aware of the certification conditions prior to initial operation. A copy of this Certification must be kept at the project site during all phases of construction.

Specific Conditions for Nationwide Permits:

Subject to the General Conditions above, NMED certifies the following NWPs without permit-specific conditions: 1, 2, 4, 5, 6, 7, 8, 9, 10, 11, 15, 16, 17, 18, 19, 20, 22, 23, 24, 25, 28, 30, 32, 33, 34, 35, 36, 37, 38, 45, 46, 49, 53, 54, and 59.

Specific Condition for NWP-03 Maintenance –
NMED certifies this NWP subject to the General Conditions above and with the following permit-specific conditions:

If the maintenance activity is needed to repair a failed structure, the Project Proponent shall select and implement measures to prevent failure in the future.

Specific Condition for NWP-14 Linear Transportation Projects –
NMED certifies this NWP subject to the General Conditions above and with the following permit-specific conditions:

Structures and culverts at stream crossings must allow for the passage of sediment, bedload, woody debris, aquatic life, and prevent erosion problems such as headcuts, incision, bank erosion, and the diversion of the stream from its natural channel during flood events. The Project Proponent shall consider options that minimize disturbance and allow for uninterrupted flow such as low water crossings instead of culverts (for low standard rural roads), bottomless arch culverts, and spans that preserve bank full geometry, depending on site characteristics and level of service needs.

Specific Condition for NWP-31 Maintenance of Existing Flood Control Facilities –
NMED certifies this NWP subject to the General Conditions above and with the following permit-specific conditions:

If the maintenance activity is needed to repair a failed structure, the Project Proponent shall select and implement measures to prevent failure in the future. Dredged material shall not be sidecast into waters of the U.S. and should be stabilized so that the material will not be transported into waters of the U.S.

Specific Condition for NWP-41 Reshaping Existing Drainage Ditches –
NMED certifies this NWP subject to the General Conditions above and with the following permit-specific conditions:

Dredged material shall not be sidecast into waters of the U.S. and should be stabilized so that the material will not be transported into waters of the U.S.

Specific Denials of Specific Nationwide Permits:

Specific Denial for NWP-13 Bank Stabilization –
NMED denies Certification for bank stabilization projects that use concrete, soil cement, or other materials to line channels either partially or wholly with impervious surfaces. In these cases, the Project Proponent must apply to NMED for an Individual Certification pursuant to 20.6.2.2002 NMAC. NMED strongly recommends that all bank stabilization projects involve either the sole use of native vegetation or other bioengineered design techniques (e.g., willow plantings, root wads, large woody debris, etc.) or alternatively, a combination of hard-armoring (e.g., rock) and native vegetation or bioengineered design techniques.

Specific Denial for NWP-27 Aquatic Habitat Restoration, Establishment, and Enhancement Activities –
NMED denies Certification for sediment releases from reservoirs. In these cases, the Project Proponent must apply to NMED for an Individual Certification pursuant to 20.6.2.2002 NMAC.

Specific Denial for Outstanding National Resource Waters –
For proposed activities in Outstanding National Resource Waters (ONRWs), NMED denies Certification of all

NWPs except NWP-27. NMED certifies NWP-27 subject to the General Conditions above, with the exception of the Specific Denial for NWP-27 related to sediment releases from reservoirs. For all other activities located within ONRWs, the Project Proponent must apply to NMED for an Individual Certification pursuant to 20.6.2.2002 NMAC.

Table 1: 40 C.F.R. §121.7(d)(2) Action on a Certification request.

General & Specific Conditions	Why the condition is necessary to assure that the proposed project will comply with water quality requirements	A citation that authorizes the condition
General Condition 1	This condition is necessary to protect water quality, because it supports the purpose of determining whether the discharge from the certified project will violate the water quality requirements included in this Certification.	40 C.F.R. §121.11 Enforcement of and compliance with Certification conditions.
General Condition 2	Impaired water bodies are protected as Tier 1 waters under New Mexico's Antidegradation Policy and Implementation Procedure ("no further degradation is permitted"). This condition is necessary to protect water quality, because the installation and implementation of Best Management Practices (BMPs) is the primary tool for preventing and limiting the discharge of pollutants from dredge and fill activities to a watercourse. It is necessary to ensure that water quality is not further degraded, and that the chemical, physical, and biological integrity of New Mexico's waters are not negatively impacted by potential discharges.	20.6.4.13 NMAC General Criteria; 20.6.4.8 NMAC Antidegradation Policy and Implementation Plan; Statewide Water Quality Management Plan and Continuing Planning Process (WQMP/CPP) – Appendix A, Antidegradation Policy Implementation Procedure for Regulated Activities; 40 C.F.R. §131.12 Antidegradation policy and implementation methods; 40 C.F.R. §230.10 Restrictions on discharge; 40 C.F.R. §230.72 Actions controlling the material after discharge; 40 C.F.R. §230.74 Actions related to technology; 40 C.F.R. §230.75 Actions affecting plant and animal populations.
General Condition 3	This condition is necessary to protect water quality, because the installation and implementation of Best Management Practices (BMPs) is the primary tool for preventing and limiting the discharge of pollutants from dredge and fill activities to a watercourse. It is necessary to ensure that water quality is not degraded, and that the chemical, physical, and biological integrity of the National waters are not negatively impacted by potential discharges.	20.6.4.13 NMAC General Criteria; 20.6.4.8 NMAC Antidegradation Policy and Implementation Plan; 40 C.F.R. §131.12 Antidegradation policy and implementation methods; 40 C.F.R. §230.10 Restrictions on discharge; 40 C.F.R. §230.72 Actions controlling the material after discharge; 40 C.F.R. §230.74 Actions related to technology; 40 C.F.R. §230.75 Actions affecting plant and animal populations.
General Condition 4	This condition is necessary to protect water quality because proper functioning floodplains provide natural riparian buffers along streams that filter sediment and pollutants from runoff and promote uptake of nutrients and chemical reactions in the soil and water column that improve water quality[1]. Land-use changes have the potential to disrupt floodplain function, limiting the natural ability of floodplain ecosystems to assimilate pollutants.	Executive Order 11988 – Floodplain management; 20.6.4.13 NMAC General Criteria; 20.6.4.8 NMAC Antidegradation Policy and Implementation Plan; 40 C.F.R. §131.12 Antidegradation policy and implementation methods; 40 C.F.R. §230.10 Restrictions on discharge; 40 C.F.R. §230.72 Actions controlling the material after discharge; 40 C.F.R. §230.74

[1] https://www.epa.gov/sites/production/files/201508/documents/a_function_based_framework_for_stream_assessment_3.pdf

	Executive Order 11988 requires the avoidance of long- and short-term adverse impacts associated with the occupancy and modification of floodplains and the avoidance of direct or indirect support of floodplain development wherever there is a practicable alternative. It is necessary to ensure that water quality is not degraded, and that the chemical, physical, and biological integrity of the National waters are not negatively impacted by potential discharges.	Actions related to technology; 40 C.F.R. §230.75 Actions affecting plant and animal populations.
General Condition 5	This condition is necessary to protect water quality, because impervious surfaces, buildings, and land developments are documented as probable sources of water quality impairments (CWA Section 303(d)(1), State of New Mexico Total Maximum Daily Loads[2]). The installation and implementation of Best Management Practices (BMPs) is the primary tool for preventing and limiting the discharge of pollutants from dredge and fill activities to a watercourse. It is necessary to ensure that water quality is not degraded, and that the chemical, physical, and biological integrity of the National waters are not negatively impacted by potential discharges.	20.6.4.13 NMAC General Criteria; 20.6.4.8 NMAC Antidegradation Policy and Implementation Plan; 40 C.F.R. §131.12 Antidegradation policy and implementation methods; 40 C.F.R. §230.10 Restrictions on discharge; 40 C.F.R. §230.72 Actions controlling the material after discharge; 40 C.F.R. §230.74 Actions related to technology; 40 C.F.R. §230.75 Actions affecting plant and animal populations.
General Condition 6	This condition is necessary to protect water quality, because 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 General Criteria; 20.6.2.1203 NMAC Notification of Discharge-Removal; 40 C.F.R. §230.74 Actions related to technology.
General Condition 7	This condition is necessary to protect water quality, because providing all contractors and subcontractors with the terms and conditions of this Certification will help prevent noncompliance with the State water quality regulations by supporting adequate training and working procedures.	NMSA 1978, Sections 74-6-1 to -17; 20.6.2 NMAC Ground and Surface Water Protection; 20.6.4 NMAC Standards for Interstate and Intrastate Surface Waters. 40 C.F.R. §230.74 Actions related to technology.
Specific Condition for NWP 3	This condition is necessary to protect water quality, because structures that require avoidable maintenance create recurring disturbances that have the potential to adversely affect water quality each time maintenance is conducted. It is necessary to ensure that water quality is not degraded, and that the chemical, physical, and biological integrity of New Mexico's waters are not negatively impacted by potential discharges.	20.6.4.13 NMAC General Criteria; 20.6.4.8 NMAC Antidegradation Policy and Implementation Plan; 40 C.F.R. §131.12 Antidegradation policy and implementation methods; 40 C.F.R. §230.10 Restrictions on discharge; 40 C.F.R. §230.72 Actions controlling the material after discharge; 40 C.F.R. §230.74 Actions related to technology; 40 C.F.R. §230.75 Actions affecting plant and animal populations.
Specific Condition for NWP 14	This condition is necessary to protect water quality, because structures that do not support the passage of aquatic life, sediment, and woody debris, and structures that accelerate erosion contribute to	20.6.4.13 NMAC General Criteria; 20.6.4.8 NMAC Antidegradation Policy and Implementation Plan; 40 C.F.R. §131.12 Antidegradation policy and

[2] https://www.env.nm.gov/surface-water-quality/tmdl/

	degraded water quality. Bridges with span lengths and clearance heights or bottomless arch culverts that allow for uninterrupted flows are preferred. It is necessary to ensure that water quality is not degraded, and that the chemical, physical, and biological integrity of the National waters are not negatively impacted by potential discharges.	implementation methods; 40 C.F.R. §230.10 Restrictions on discharge; 40 C.F.R. §230.72 Actions controlling the material after discharge; 40 C.F.R. §230.74 Actions related to technology; 40 C.F.R. §230.75 Actions affecting plant and animal populations.
Specific Condition for NWP 31	This condition is necessary to protect water quality, because facilities that require avoidable maintenance create recurring disturbances that have the potential to adversely affect water quality each time maintenance is conducted. It is necessary to ensure that water quality is not degraded, and that the chemical, physical, and biological integrity of the National waters are not negatively impacted by potential discharges.	20.6.4.13 NMAC General Criteria; 20.6.4.8 NMAC Antidegradation Policy and Implementation Plan; 40 C.F.R. §131.12 Antidegradation policy and implementation methods; 40 C.F.R. §230.10 Restrictions on discharge; 40 C.F.R. §230.72 Actions controlling the material after discharge; 40 C.F.R. §230.74 Actions related to technology; 40 C.F.R. §230.75 Actions affecting plant and animal populations.
Specific Condition for NWP 41	This condition is necessary to protect water quality, because dredged material that is not properly handled and disposed has the potential to adversely affect water quality. It is necessary to ensure that water quality is not degraded, and that the chemical, physical, and biological integrity of the National waters are not negatively impacted by potential discharges.	20.6.4.13 NMAC General Criteria; 40 C.F.R. §230.72 Actions controlling the material after discharge; 40 C.F.R. §230.74

Table 2: 40 C.F.R. §121.7(e)(2) For denial of certification for issuance of a general license or permit

Denials	**(i) The specific water quality requirements with which discharges that could be authorized by the general license or permit will not comply;**	**(ii) A statement explaining why discharges that could be authorized by the general license or permit will not comply with the identified water quality requirements; and**	**(iii) If the denial is due to insufficient information, the denial must describe the types of water quality data or information, if any, that would be needed to assure that the range of discharges from potential projects will comply with water quality requirements.**
Specific Denial for NWP-13	20.6.4 NMAC Standards for Interstate and Intrastate Surface Waters; 20.6.4.13 NMAC General Criteria; 20.6.4.8 NMAC Antidegradation Policy and Implementation Plan.	The use of concrete, soil cement, or other methods to partially or wholly line channels reduces infiltration, disrupts bank formation processes, and contributes to significant individual or cumulative adverse environmental impacts. Streambank modification, streambank destabilization, and loss of riparian habitat are	

		documented as probable sources of water quality impairments (CWA Section 303(d)(1), State of New Mexico Total Maximum Daily Loads[3]).	
Specific Denial for NWP-27	20.6.4.12 NMAC Compliance With Water Quality Standards; 20.6.4.13 NMAC General Criteria; 20.6.4.8 NMAC Antidegradation Policy and Implementation Plan.		Appropriate study and modeling are required to release sediment from reservoirs to ensure compliance with State water quality standards. The volume of reservoir sediment relative to the stream's mean annual sediment load and concentration of any contaminants relative to background levels are key parameters for determining downstream environmental impacts.
Specific Denial for ONRWs	20.6.4.8(4)(a) NMAC Antidegradation Policy and Implementation Plan; 40 C.F.R. §131.12 Antidegradation policy and implementation methods; 20.6.4.9 NMAC Outstanding National Resource Waters.	Outstanding National Resource Waters (ONRWs) are Tier 3 streams, lakes, and wetlands that receive special protection against degradation. No degradation shall be allowed in waters designated by the Water Quality Control Commission as ONRWs, except as provided in 20.6.4.8 NMAC.	

[3] https://www.env.nm.gov/surface-water-quality/tmdl/

Comments that are not Conditions of Certification:

NMED comments on the proposed NWPs were submitted to Docket ID # COE-2020-0002 via the Regulations.gov website on November 16, 2020. *See* 85 FR 57298 (September 15, 2020).

Other permits that may be required in addition to CWA Section 404 permits –

- 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 Project Proponent if a discharge permit is required.
- 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