



**US Army Corps  
of Engineers®**  
Albuquerque District

# DISTRICT PUBLIC NOTICE

## NATIONWIDE PERMIT REISSUANCE REQUEST FOR COMMENTS

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On September 15, 2020, the U.S. Army Corps of Engineers published in the Federal Register its proposal to reissue the 52 existing nationwide permits (NWP) and issue five new NWPs.

Nationwide permits are general permits issued on a nationwide basis to streamline the authorization of activities that result in no more than minimal individual and cumulative adverse environmental effects. Many of the proposed NWPs require notification to the district engineer before commencing those activities, to ensure that the activities authorized by those NWPs cause no more than minimal individual and cumulative adverse environmental effects.

National Issues Concerning the Proposed NWPs: The Federal Register notice is the public's opportunity to comment on the proposed NWPs, general conditions, and definitions. Comments on national issues relating to these NWPs should be submitted to docket number COE-2020-0002 at [www.regulations.gov](http://www.regulations.gov), or by email to [nationwidepermits2020@usace.army.mil](mailto:nationwidepermits2020@usace.army.mil) or by mail to Headquarters, U.S. Army Corps of Engineers, Directorate of Civil Works, ATTN: CECW-CO-R, 441 G Street, N.W., Washington, D.C. 20314-1000. Instructions for submitting comments are provided in the September 15, 2020 Federal Register notice. Comments on the proposed NWPs are due by November 16, 2020.

Regional Issues Concerning the Proposed NWPs, Including Regional Conditioning: Division engineers are authorized to add regional conditions specific to the needs and/or requirements of a particular region or state. Regional conditions are an important mechanism to help ensure that the adverse environmental effects of activities authorized by the NWPs are no more than minimal, both individually and cumulatively. Division engineers may also suspend or revoke specific NWPs in certain geographic areas (e.g., states or watersheds) or high-value aquatic systems where the adverse environmental effects caused by activities authorized by those NWPs may be more than minimal. An enclosure for this public notice (Enclosure 2) lists the proposed regional conditions currently under consideration by the South Pacific and Northwest Divisions for the State of Colorado.

The Albuquerque, Omaha, and Sacramento Districts are seeking comments on the proposed regional conditions and the potential need for additional regional conditions to help ensure that the adverse environmental effects of activities

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authorized by the proposed NWPs are no more than minimal, individually and cumulatively. Unless otherwise noted, all proposed regional conditions listed on this enclosure are applicable for activities in the State of Colorado. Comments on regional issues relating to the proposed NWPs and proposed regional conditions should be sent by mail to:

Albuquerque District, U.S. Army Corps of Engineers  
Southern Colorado Regulatory Branch  
ATTN: Joshua Carpenter  
201 West 8th Street, Suite 350  
Pueblo, Colorado 81003  
[joshua.g.carpenter@usace.army.mil](mailto:joshua.g.carpenter@usace.army.mil)  
(719) 744-9379

Comments relating to regional conditions are due by November 08, 2020. Similar public notices proposing regional conditions in other regions or states are being published concurrently by other division or district offices. After the final NWPs are issued, the final regional conditions will be issued after they are approved by the Division Commanders.

States, tribes, and other certifying authorities will make their Clean Water Act Section 401 water quality certification (WQC) decisions after reviewing the proposed NWPs. States will make their Coastal Zone Management Act (CZMA) consistency determination decisions after reviewing the proposed NWPs.

Draft decision documents for each of the proposed NWPs, which include environmental documentation prepared for the purposes of the National Environmental Policy Act, have been written by Corps Headquarters. The decision documents will address compliance of the NWPs with the requirements for issuance under the Corps' general permit authority. These draft decision documents, as well as the proposed NWPs, are available for viewing at [www.regulations.gov](http://www.regulations.gov), docket number COE-2020-0002. Final decision documents will be prepared for the NWPs that are issued.

Enclosed is a list of the proposed NWPs and general conditions (Enclosure 1). Anyone wishing to provide comments may obtain a full text copy of the NWPs through the Corps Home Page at <https://www.usace.army.mil/Missions/Civil-Works/Regulatory-Program-and-Permits/Nationwide-Permits/>, at [www.regulations.gov](http://www.regulations.gov) in docket number COE-2020-0002, or at the following Federal Register address: <https://www.federalregister.gov/documents/2020/09/15/2020-17116/proposal-to-reissue-and-modify-nationwide-permits>.

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### **Enclosure 1: List of Proposed Nationwide Permits and General Conditions**

#### ***Nationwide Permits***

1. Aids to Navigation
2. Structures in Artificial Canals
3. Maintenance
4. Fish and Wildlife Harvesting, Enhancement, and Attraction Devices and Activities
5. Scientific Measurement Devices
6. Survey Activities
7. Outfall Structures and Associated Intake Structures
8. Oil and Gas Structures on the Outer Continental Shelf
9. Structures in Fleeting and Anchorage Areas
10. Mooring Buoys
11. Temporary Recreational Structures
12. Oil or Natural Gas Pipeline Activities
13. Bank Stabilization
14. Linear Transportation Projects
15. U.S. Coast Guard Approved Bridges
16. Return Water from Upland Contained Disposal Areas
17. Hydropower Projects
18. Minor Discharges
19. Minor Dredging
20. Response Operations for Oil or Hazardous Substances
21. Surface Coal Mining Activities
22. Removal of Vessels
23. Approved Categorical Exclusions
24. Indian Tribe or State Administered Section 404 Programs
25. Structural Discharges
26. [Reserved]
27. Aquatic Habitat Restoration, Establishment, and Enhancement Activities
28. Modifications of Existing Marinas
29. Residential Developments
30. Moist Soil Management for Wildlife
31. Maintenance of Existing Flood Control Facilities
32. Completed Enforcement Actions
33. Temporary Construction, Access, and Dewatering
34. Cranberry Production Activities
35. Maintenance Dredging of Existing Basins
36. Boat Ramps
37. Emergency Watershed Protection and Rehabilitation
38. Cleanup of Hazardous and Toxic Waste
39. Commercial and Institutional Developments
40. Agricultural Activities

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41. Reshaping Existing Drainage Ditches
42. Recreational Facilities
43. Stormwater Management Facilities
44. Mining Activities
45. Repair of Uplands Damaged by Discrete Events
46. Discharges in Ditches
47. [Reserved]
48. Commercial Shellfish Mariculture Activities
49. Coal Remining Activities
50. Underground Coal Mining Activities
51. Land-Based Renewable Energy Generation Facilities
52. Water-Based Renewable Energy Generation Pilot Projects
53. Removal of Low-Head Dams
54. Living Shorelines
  - A. Seaweed Mariculture Activities
  - B. Finfish Mariculture Activities
  - C. Electric Utility Line and Telecommunications Activities
  - D. Utility Line Activities for Water and Other Substances
  - E. Water Reclamation and Reuse Facilities

### ***General Conditions***

1. Navigation
2. Aquatic Life Movements
3. Spawning Areas
4. Migratory Bird Breeding Areas
5. Shellfish Beds
6. Suitable Material
7. Water Supply Intakes
8. Adverse Effects from Impoundments
9. Management of Water Flows
10. Fills Within 100-Year Floodplains
11. Equipment
12. Soil Erosion and Sediment Controls
13. Removal of Temporary Fills
14. Proper Maintenance
15. Single and Complete Project
16. Wild and Scenic Rivers
17. Tribal Rights
18. Endangered Species
19. Migratory Birds and Bald and Golden Eagles
20. Historic Properties
21. Discovery of Previously Unknown Remains and Artifacts
22. Designated Critical Resource Waters
23. Mitigation
24. Safety of Impoundment Structures
25. Water Quality

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- 26. Coastal Zone Management
- 27. Regional and Case-by-Case Conditions
- 28. Use of Multiple Nationwide Permits
- 29. Transfer of Nationwide Permit Verifications
- 30. Compliance Certification
- 31. Activities Affecting Structures or Works Built by the United States
- 32. Pre-Construction Notification



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### ENCLOSURE 2: 2020 PROPOSED NATIONWIDE PERMIT (NWP) REGIONAL CONDITIONS FOR THE STATE OF COLORADO

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#### **A. Regional Conditions Applicable to All Nationwide Permits within the State of Colorado**

1. Construction of Diversions and Intakes. PCN is required for utility line activities that involve the construction of new water diversions and intakes. This regional condition does not apply to activities that are covered by NWP 3 for Maintenance.
2. Open Trenching in Perennial Streams. PCN is required for activities involving open trenching in perennial streams.
3. Fens, Bogs, and other Peatlands. PCN is required for all activities involving the discharge of dredged or fill material in peatlands. For the purposes of this requirement, a peatland is defined as a wetland with saturated organic soil (greater than or equal to 16 inches in thickness) that is classified as a histosol in the Natural Resources Conservation Service (NRCS) Field Indicators of Hydric Soils in the United States (Version 8.0, 2016). A copy of the document can be obtained from the NRCS at [http://www.nrcs.usda.gov/Internet/ DOCUMENTS/nrcs142p2\\_053171.pdf](http://www.nrcs.usda.gov/Internet/DOCUMENTS/nrcs142p2_053171.pdf).
4. Suitable Fill. A PCN is required for stream stabilization activities that utilize non-native material within the State of Colorado. Non-native materials include, but are not limited to, concrete, broken concrete, grout, sheet piling, and gabion structures.

Permittees must demonstrate that soft engineering methods utilizing native materials are not practicable (with respect to cost, existing technology, and logistics), before the use of non-native materials is allowed as suitable fill.

Use of broken concrete with exposed rebar and tires (loose or formed into bales) is prohibited in all waters of the United States.

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### **B. Regional Conditions Applicable to Specific Nationwide Permits within the State of Colorado**

5. Nationwide Permit No. 27: Aquatic Habitat Restoration, Establishment, and Enhancement Activities.
  - a. This permit is revoked within the Omaha District Area of Responsibility (AOR) for projects involving fishery enhancement activities in perennial streams. These projects may qualify for authorization under [Regional General Permit 12 for Aquatic Habitat Improvement for Stream Channels in Colorado](#).
  - b. Agency Coordination with Colorado Parks and Wildlife (CPW) is required for projects involving fisheries enhancement in perennial streams within the Albuquerque and Sacramento District AORs. Upon receipt of a complete pre-construction notification (PCN), the Corps will initiate Agency Coordination with Colorado Parks and Wildlife (CPW) and follow the procedures set forth under GC 32(d).
  - c. Pre-application consultation with CPW, preferably on-site, is highly recommended for all projects located in perennial streams. Providing documentation of pre-application consultation with CPW and their response may satisfy any coordination requirements of this permit and result in quicker processing times.
  - d. The use of concrete/grouting is not allowed in perennial streams unless the Corps determines on a case-by-case basis that the impacts are not detrimental to the affected resource.
  - e. This permit authorizes activities that are planned, designed, and implemented for the purpose of restoring, establishing, and enhancing aquatic habitat to resemble an ecological reference. This permit does not authorize projects that involve other goals, such as waterborne recreation (e.g. kayak courses) and flood control.

### **C. General Notes Applicable to All Nationwide Permits within the State of Colorado**

1. General Condition (GC) 3 requires avoidance of activities in spawning areas during spawning seasons 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.

Gold Medal Waters have been identified by the Colorado Wildlife Commission as one type of important spawning area due to their ability to produce at least 60 pounds of trout per acre and a minimum of 14" or

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larger trout per acre. In order to ensure compliance with GC 3, the Corps highly recommends consultation with CPW, preferably on-site, for projects located in perennial streams.

Please visit the following state website to determine the appropriate CPW office for coordination: <http://cpw.state.co.us>.

2. In accordance with GC 25, activities requiring a Corps permit within the historic reservation boundary for Ute Mountain Ute or Southern Ute Indian Tribe, 401 Water Quality Certification must be obtained or waived by the Southern Ute or Ute Mountain Ute Indian Tribe for work within land held by the United States government in trust (trust land) and the U.S. Environmental Protection Agency for work within land no longer held in trust (fee land).