



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

# FINAL PUBLIC NOTICE

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**Date: February 27, 2026**

**PUBLIC NOTICE FOR THE FINAL REGIONAL CONDITIONS IN THE STATE OF COLORADO  
APPLICABLE TO THE 57 NATIONWIDE PERMITS PUBLISHED IN THE FEDERAL  
REGISTER ON JANUARY 8, 2026**

On January 8, 2026, the U.S. Army Corps of Engineers (Corps) published a final action in the Federal Register (91 FR 768) announcing the reissuance of 56 existing nationwide permits (NWP) and one new NWP, as well as the reissuance of NWP general conditions and definitions with some modifications. These 57 NWP will go into effect on March 15, 2026, and will expire on March 15, 2031. One NWP was not reissued.

**Nationwide Permits (NWP)**

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 Ecosystem Restoration, Enhancement, and Establishment 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
41. Reshaping Existing Drainage and Irrigation 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
55. Seaweed Mariculture Activities
56. [Reserved]
57. Electric Utility Line and Telecommunications Activities
58. Utility Line Activities for Water and Other Substances
59. Water Reclamation and Reuse Facilities
60. Activities to Improve Passage of Fish and Other Aquatic Organisms

The January 8, 2026, *Federal Register* notice is available for viewing at <https://www.federalregister.gov/documents/2026/01/08/2026-00121/reissuance-and-modification-of-nationwide-permits>. If appropriate, a grandfathering period will apply, as specified by 33 CFR 330.6(b), for those project proponents who have already commenced work under a 2021 NWP or are under contract to commence work under a 2021 NWP (see 33 CFR 330.5(c)(1)(iv)).

In accordance with the U.S. Environmental Protection Agency's (EPA's) current water quality certification (WQC) regulations at 40 Code of Federal Regulations (CFR) Part 121, the Albuquerque District has reviewed Clean Water Act Section (CWA) 401 WQC decisions received from certifying authorities. The Albuquerque District has determined that all accepted granted and denied WQC decisions in Colorado satisfied the requirements set forth in 40 CFR 121.7. For a list of final WQC decisions, see the attached letters from the certifying authorities. If a permittee engages in activities within the scope of an NWP, the permittee must also

comply with any applicable regional conditions. In the state of Colorado, the regional conditions that apply to the 57 NWP's, as described above, are as follows:

1. Construction of Diversions and Intakes. The permittee must submit a pre- construction notification (PCN) to the District Engineer in accordance with general condition 32 prior to commencing any activity that involves the construction of new water diversions and intakes. This regional condition does not apply to maintenance activities covered by Nationwide Permit (NWP) 3.
2. Open Trenching in Perennial Streams. The permittee must submit a PCN to the District Engineer in accordance with general condition 32 prior to commencing any activity that involves open trenching in perennial streams.
3. Peatlands. All NWP's, with the exception of 3, 5, 6, 20, 27, 32, 37, and 38, are revoked for the discharge of dredged or fill material in peatlands. For NWP's 3, 5, 6, 20, 27, 32, 37, and 38, the permittee must submit a PCN to the District Engineer in accordance with general condition 32 prior to commencing work in peatlands. The term peatland includes fens and bogs. For the purposes of this regional condition, a peatland is defined as a wetland with organic soil that is classified as a histosol in the Natural Resources Conservation Service (NRCS) guidance document titled Field Indicators of Hydric Soils in the United States (Version 9.0, 2024). A copy of the document can be obtained from the NRCS at <https://www.nrcs.usda.gov/resources/guides-and-instructions/field-indicators-of-hydric-soils>.
4. Stream Stabilization. The permittee must submit a PCN to the District Engineer in accordance with general condition 32 prior to commencing any stream stabilization activity that utilizes non-native material. The permittee must also submit a PCN to the District Engineer in accordance with general condition 32 prior to commencing any stream stabilization activity that exceeds the placement of ¼ cubic yard of material per linear foot on average below the plane of the ordinary high water mark for streams with an average width of less than 20 feet (measured at the plane of ordinary high water).

Non-native materials include clean brick, broken concrete, cinder block, slab material, wire mesh, such as gabion baskets, grout, and sheet piling. The use of broken concrete with exposed rebar, tires (loose or formed into bales), or other materials listed under general condition 6 is prohibited in all waters of the United States. Rock rip rap, and woody debris are considered native material.

For all stream stabilization activities involving non-native material, permittees must demonstrate that alternative engineering methods utilizing native materials are not practicable (with respect to cost, existing technology, and logistics), before the use of non-native material is allowed as suitable fill.

5. Gold Medal Waters. The permittee must submit a PCN to the District Engineer in accordance with general condition 32 prior to commencing all activities located in waters identified as "Gold Medal" by the Colorado Wildlife Commission. Upon receipt of a complete PCN, the U.S. Army Corps of Engineers (Corps) will initiate Agency Coordination with Colorado Parks and Wildlife (CPW) as outlined in the procedures under general condition 32(d) of the NWP's. Pre-application consultation with CPW is not required but highly recommended. If a pre-application consultation is conducted with CPW, providing written documentation of CPW's response to the project may satisfy the coordination requirements resulting in quicker processing times. Please visit CPW's website at [cpw.state.co.us](http://cpw.state.co.us) to determine the location of Gold Medal waters and the appropriate office for coordination.

6. Water Quality Certification. In accordance with 33 CFR 330.4(c), the conditions of Clean Water Act Section 401 water quality certifications are incorporated as conditions of the Section 404 NWP. The requirements for water quality certifications in the State of Colorado can be found at [spa.usace.army.mil/reg/wqc](http://spa.usace.army.mil/reg/wqc).

In the State of Colorado, the regional conditions that apply to the specific NWP, as described below, are as follows:

7. Nationwide Permit No. 27: Aquatic Ecosystem Restoration, Enhancement, and Establishment Activities.
  - a. PCN is required for activities that qualify for Nationwide Permit 27 and involve streambed form modifications, or the creation/modification of riffle pool complexes. To evaluate whether the activity is ecologically appropriate for the specific stream reach, the Corps will coordinate with Colorado Parks and Wildlife (CPW), or the appropriate Tribal entity, in accordance with the procedures set forth in General Condition 32(d).

To assist in agency coordination with CPW or appropriate Tribal entity drawings must include the following:

- (1) Plan view of all work clearly identifying types and locations of structures/impacts, along with dimensions, and approximate extents of aquatic resources within the project area, including wetlands and riffle and pool complexes. To aid in visual understanding, this plan can be overlaid on a recent aerial image of the project site. The plan should also include information such as the existing and proposed bank slopes, width-to-depth ratio of the channel, and sinuosity.
- (2) Cross-sectional and longitudinal profile views to scale of the existing stream channel and the proposed channel modifications, including dimensions (length, width and height of the structures or work).

PCNs will be determined incomplete if the information required for coordination with CPW or appropriate Tribal entity is not provided.

- b. Use of concrete and grout. The use of concrete/grouting is not allowed in perennial streams unless the Corps determines on a case-by-case basis that the impacts will result in minimal adverse effects to the aquatic resource. Projects proposing the use of concrete/grouting will require a PCN.



## REGION 8

DENVER, CO 80202

December 16, 2025

### SENT VIA EMAIL

Christina Schroeder  
U.S. Army Corps of Engineers  
Albuquerque District  
[Christina.L.Schroeder@usace.army.mil](mailto:Christina.L.Schroeder@usace.army.mil)

### **RE: Clean Water Act Section 401 Water Quality Certification of the U.S. Army Corps of Engineers 2026 Nationwide Permits in Colorado**

Dear Ms. Schroeder:

Please find enclosed the water quality certification decisions consistent with Section 401 of the Clean Water Act (CWA) for the reissuance of the Nationwide Permits (NWP). On June 18, 2025, the U.S. Environmental Protection Agency, Region 8 received the U.S. Army Corps of Engineers' requests for water quality certification under CWA Section 401 for the proposed 2026 NWPs. The EPA reviewed the June 18, 2025, Federal Register<sup>1</sup> notice announcing the reissuance of the NWPs, along with the regional conditions proposed by the Albuquerque District for Colorado. The enclosed CWA section 401 water quality certification decision applies where the EPA is the certifying authority and includes Indian country<sup>2</sup> lands within the state of Colorado<sup>3</sup> and lands of exclusive federal jurisdiction in relevant respects within the state of Colorado.<sup>4</sup>

Please provide this certification to any project proponent (or their designated agent) contacting the Corps regarding applicable projects that may be authorized under the 2026 NWPs. If a project proposal

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<sup>1</sup> See 90 FR 26100 (June 18, 2025).

<sup>2</sup> Indian country is defined at 18 U.S.C. § 1151.

<sup>3</sup> Indian country in Colorado generally includes: (1) lands within the exterior boundaries of the following Indian reservations located within Colorado: the Southern Ute Indian Reservation and the Ute Mountain Ute Reservation; (2) any land held in trust by the United States for an Indian tribe; and (3) any other areas that are "Indian country" within the meaning of 18 U.S.C. Section 1151. The enclosed CWA Section 401 certification document specifies where these decisions apply.

<sup>4</sup> An inventory report compiled by the U.S. General Services Administration for federal properties as of 1962 identifies properties that may contain exclusive federal jurisdiction. This document is accessible at <https://www.congress.gov/116/meeting/house/110088/documents/HHRG-116-II13-20191017-SD044.pdf>. The EPA notes that this inventory report is not all-inclusive and that the information contained within it has not been recently confirmed and/or updated. Please contact EPA Region 8 at [R8CWA401@epa.gov](mailto:R8CWA401@epa.gov) with questions regarding the jurisdictions where this certification decision applies.

does not meet either the general or NWP-specific certification conditions contained herein, the project proponent must request an individual certification from EPA Region 8 at [R8CWA401@epa.gov](mailto:R8CWA401@epa.gov). Project proponents are encouraged to contact EPA Region 8 during the project planning phase if there are any questions about relevant best management practices (e.g., bioengineering techniques, biodegradable erosion control measures, revegetation using native plant species, suitable fill materials, and disposal of debris/construction materials preventing runoff) and resources that can assist with compliance. Prior to work commencing, EPA recommends that project proponents notify the appropriate Tribal Environmental Office, if applicable.

Thank you for your ongoing partnership and coordination in implementing CWA regulatory programs. Please contact Tanya Code with any questions at (303) 312-6110 or [Code.Tanya@epa.gov](mailto:Code.Tanya@epa.gov). If your staff have questions, please have them contact Estella Moore at (303) 312-6357 or [R8CWA401@epa.gov](mailto:R8CWA401@epa.gov).

Sincerely,

**STEPHANIE  
DEJONG**  Digitally signed by  
STEPHANIE DEJONG  
Date: 2025.12.16  
16:25:23 -07'00'

Stephanie DeJong, Manager  
Clean Water Branch

Enclosure

CC: Mark Hutson, Environmental Programs Department Director, Southern Ute Indian Tribe  
Mitch Dorsk, Water Quality and Remediation Division Head, Southern Ute Indian Tribe  
Geoff Hensgen, Water Quality Program Manager, Southern Ute Indian Tribe

# **U.S. Environmental Protection Agency Region 8's Clean Water Act Section 401 Certification of the 2026 Nationwide Permits in the State of Colorado**

December 16, 2026

Clean Water Act (CWA) Section 401 requires applicants for Federal licenses or permits to conduct any activity which may result in any discharge into waters of the United States to obtain a certification or waiver from the certifying authority where the discharge originates or will originate. Where no state or Tribe has authority to give such certification, the U.S. Environmental Protection Agency is the certifying authority. 33 U.S.C. 1341(a)(1). In this case, the Southern Ute Indian Tribe has the authority to provide CWA Section 401 certification for projects within some, but not all, of their tribal lands. The Southern Ute Indian Tribe has authority to provide CWA Section 401 certification for projects occurring on Tribal trust lands within the Southern Ute Indian Reservation and on one off-reservation Tribal trust land parcel contiguous to the Reservation near its southeast corner. However, the Tribe does not have authority to provide CWA Section 401 certification for projects on non-Tribal trust lands within its Reservation, or on any other Tribal trust lands outside of the Reservation in the state of Colorado. Therefore, the EPA is making the CWA Section 401 certification decision for the 2026 Nationwide Permit reissuance in Indian country in non-Tribal trust lands within the Southern Ute Indian Reservation and in any other Tribal trust lands outside of the Reservation in the state of Colorado (except for the one parcel noted above). Additionally, the state of Colorado does not have authority to provide CWA section 401 certification for projects within lands of exclusive federal jurisdiction in relevant respects.<sup>1</sup> Therefore, EPA is also making the certification decision for the 2026 NWP reissuance for projects within lands of exclusive federal jurisdiction in relevant respects that may be authorized under the 2026 NWPs.

## **Project Description**

On June 18, 2025, the Corps proposed to reissue 56 NWPs and 1 new NWP that would expire in March 2026. 90 FR 26100 (June 18, 2025). The purpose of the NWPs is to authorize categories of activities under CWA Section 404 and Section 10 of the Rivers and Harbors Act of 1899 that have no more than minimal individual and cumulative adverse environmental impacts. For more details see: <https://www.usace.army.mil/Missions/Civil-Works/Regulatory-Program-and-Permits/Nationwide-Permits/>

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<sup>1</sup> An inventory report compiled by the U.S. General Services Administration for federal properties as of 1962 identifies properties that may contain exclusive federal jurisdiction. This document is accessible at <https://www.congress.gov/116/meeting/house/110088/documents/HHRG-116-II13-20191017-SD044.pdf>. The EPA notes that this inventory report is not all-inclusive and that the information contained within it has not been recently confirmed and/or updated. Please contact EPA Region 8 at [R8CWA401@epa.gov](mailto:R8CWA401@epa.gov) with questions regarding the jurisdictions where this certification decision applies.

### **The EPA's Public Notice Process**

On June 18, 2025, the EPA received a request for certification from the project proponent. On July 2, 2025, the EPA issued a public notice regarding the proposed project and provided the opportunity for the public to submit comments until August 2, 2025. EPA received no public comments during the public notice period.

### **General Information**

The general information provided in this section does not constitute a certification condition(s).

#### *General Applicability*

- The Corps did not request for certification for NWP's 1, 2, 8, 9, 10, 11, 24, 28, 35 and 55, and as such, the certification process did not begin and EPA neither certified nor waived certification. Consequently, if any activity authorized by this NWP may result in a discharge into a water of the United States, on lands that EPA acts as the certifying authority, the Corps must seek CWA 401 certification from EPA.
- If a project proposal does not meet either the general or NWP-specific certification conditions, or if certification is denied for a specific NWP, the project proponent must request an individual certification from EPA Region 8.

#### *Documentation Recommendations*

- Project proponents for potential projects authorized under the NWP's should retain this certification in their files with the applicable NWP's as documentation of EPA's certification decisions for the above-referenced proposed NWP's. This certification is specifically associated with the proposed NWP's described above and expires when those NWP's expire, five years from Corps issuance date, or are otherwise superseded by subsequent reissuance if less than five years.
- Copies of this certification should be kept on the job site and made readily available for reference.

#### *Contact Information*

- The project proponents for potential projects authorized under an NWP are encouraged to contact EPA Region 8 during the project planning phase if there are any questions about relevant best management practices (e.g., bioengineering techniques, biodegradable erosion control measures, revegetation using native plant species, suitable fill materials, and disposal of debris/construction materials preventing runoff) and resources that can assist with compliance.
- Prior to work commencing, EPA recommends that project proponents notify the appropriate Tribal Environmental Office, if applicable.
- In the case of a spill, EPA recommends that the project proponent notify EPA Region 8 within 8 hours from discovery. For emergency spills, EPA recommends that the project proponent contact the EPA's National Response Center at 1-800-424-8802 as well as the appropriate personnel identified in the project's Spill Prevention Control and Countermeasures, or similar plan, if applicable.
- If you have any questions regarding this certification, please contact [R8CWA401@epa.gov](mailto:R8CWA401@epa.gov).

### ***Waiver of Certification***

EPA Region 8 is expressly waiving its authority to act on the CWA § 401 request for certification for NWP 4, 22, 34, 48, and 54.

### ***Grants of Certification without Conditions***

EPA is granting certification without conditions for NWPs 5, 20, 27, and 32. For NWPs that EPA grants certification without conditions, EPA has determined that the activity will comply with the applicable water quality requirements, including any limitation, standard, or other requirement under sections 301, 302, 303, 306, and 307 of the CWA; any Federal and State or Tribal laws or regulations implementing those sections; and any other water quality-related requirement of State or Tribal law.

### ***Grants of Certification with Conditions***

EPA is granting certification with conditions for NWPs 3, 6, 7, 12, 13, 14, 15, 16, 17, 18, 19, 21, 23, 25, 29, 30, 31, 33, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 49, 50, 51, 52, 53, 57, 58, 59, and A. For NWPs that EPA grants certification with conditions, EPA has determined that the activity will comply with the applicable water quality requirements, including any limitation, standard, or other requirement under sections 301, 302, 303, 306, and 307 of the CWA; any Federal and State or Tribal laws or regulations implementing those sections; and any other water quality-related requirement of State or Tribal law, subject to the conditions listed under the NWP below, pursuant to CWA Section 401(d).

### **Condition #1: Plan Development and Implementation for Projects that require Pre-Construction Notification (PCN)**

Prior to construction for projects that require a PCN, the project proponent shall develop a plan that includes a copy of the PCN and the following information (if not already included in the PCN):

- Time stamped photo-documentation of the baseline conditions (i.e., 50 feet upstream of the project area, within the project area, and 100 feet downstream of the project area).
- Identifies on a site map, as applicable:
  - Project site with all waters of the U.S. demarcated. Identify all locations where the project will cross jurisdictional waterbodies and identify the ordinary high-water mark and/or wetland boundaries; the planned work area where wetlands/aquatic resources will be removed, disturbed, and/or protected; buffer zones; and areas to be restored/reclaimed, as well as site access points and other approved work areas.
  - Staging areas and stockpiling of materials and equipment, including locations for containment booms and/or absorbent materials, and/or hazardous materials. Stockpiles (e.g., sediment, soil, or other construction materials) shall be stored at least 50 feet from where it may enter waters of the U.S.
  - Construction access points.
  - Disturbance limits.
  - Locations where site dredging and placement of dredged material activities will occur.

- Locations where dewatering activities will occur including as applicable locations of cofferdams, temporary berms, piling, and/or dikes.
- Locations of undergrounding or directional drilling (including bore pits).
- Locations where hazardous materials are stored. Identify where containment booms and/or absorbent materials are located for corrective action if needed. Hazardous materials shall be stored in leak-proof containers with appropriate secondary containment measures (e.g., spill berms, dikes, spill containment pallets, absorbent materials).
- Any silt/sediment fencing.
- Photo-reference sites. The project proponent shall indicate the directional view and location where photos were taken on the site map.
- A description of how the site will be restored to pre-construction conditions, as applicable, including measures that will be used to promote and maintain:
  - Stream hydrology and stability.
  - Aquatic resource composition.
  - Diversity of native species existing on site and as introduced via restoration activities.
  - Stability of soils.
  - Establishment of vegetation at the same percent cover as pre-construction activities.
- The timeframe/schedule for revegetation following completion of construction. Revegetation should occur at the earliest practicable date following completion of construction. Drill seeding is the preferred method, where applicable.
- Non-native and invasive species shall not be used for restoration activities.
- Includes the following, as applicable:
  - Cofferdams, temporary berms, pilings, and/or dikes: Describe installation and maintenance practices for any cofferdams, temporary berms, pilings, and/or dikes.
  - Dredging: Describe how contaminated materials will be managed (e.g., sediment testing data and information to identify whether sediments are clean or contaminated), if included in the project dredged area. Describe methods for minimizing dredging impacts (i.e., sedimentation resuspension) in the water column.
  - Erosion and sediment control: Identify the types and locations of sediment and erosion control features that shall be used onsite, including sediment control fences, haybales, heavy mud mats, and/or other structures. Biodegradable blankets and/or loose-weave mesh shall be used for erosion control matting. If using velocity dissipation structures (e.g., riprap aprons, check dams etc.), structures shall be constructed to include both peak flow rates and total stormwater volume, and provide protection from the erosive potential of high-velocity flows to minimize channel and streambank erosion and scour in the immediate vicinity of discharge points. The project proponent shall ensure all erosion and sediment control measures are in place prior to the onset of construction.
  - Bank stabilization and channel modification: If the project requires bank stabilization or stream channel modification, include pre-construction cross sections. If the project includes steep bank slopes of 3:1 or greater, include revetment cross sections. Bioengineering techniques suitable for steep slope disturbances are preferred (e.g., vegetated toe, bioengineered boulder toe, etc.) Slopes of disturbed banks shall be designed and installed to not reduce the bottom width of the stream.

- Dewatering: Work shall be completed in the dry unless coordinated with EPA Region 8. Describe methods for dewatering, including the equipment that would be used to conduct the dewatering activities. Identify the locations and timing, including length of time the area is to be dewatered. Explain removal method of the temporary structures and/or fill and what measures will be taken to minimize downstream turbidity and adaptive management measures that will be taken and employed to prevent the draining of waters of U.S., including wetlands.
- Ditching and trenching: Explain ditching/trenching and material placement techniques and stabilization methods to be employed, as well as timing. In wetlands, the top 6 to 12 inches of the ditch/trench shall be backfilled with topsoil from the trench, unless other techniques are approved. Include activity timing needs for ditching and stabilization.
- Undergrounding or directional drilling: Describe measures taken to prevent, contain and cleanup any inadvertent return of drilling fluid to the surface (i.e., “frac-outs”).
- Submit the plan to EPA Region 8 at [R8CWA401@epa.gov](mailto:R8CWA401@epa.gov) at least 30 days prior to commencing construction activities.

During construction for projects that require a PCN, the project proponent shall:

- Visually inspect construction activities daily.
- Prevent sediment, debris, silt, sand, cement, concrete, oil or petroleum, organic materials, or other construction debris or wastes from entering waters of the U.S. The discharge of unset cement, concrete, grout, or water that has contacted uncured concrete or cement, or related washout to waters of the U.S. is prohibited.
- Maintain documentation onsite that all equipment was cleaned of dirt, mud, and other materials prior to arriving on the project site.
- Inspect all equipment daily and prior to entering any waters of the U.S. for oil, gas, diesel, anti-freeze, hydraulic fluid, and other petroleum leaks. If the project proponent detects a leak from any equipment, they shall immediately remove the equipment from waters of the U.S.; and within 24 hours of detection of a leak, repair the equipment in a staging area or move it offsite.
- Limit vegetation clearing and disturbance to waters. Limit the clearing and grubbing of vegetation and disturbance to areas demarcated on the site map submitted as part of the vegetation restoration and monitoring plan. The boundaries of vegetation to protect shall be flagged in the field prior to beginning construction activities.
- Limit restoration of the channel bed to pre-existing contours and conditions. Any proposed deviations must be specified in advance. For example, if any improvements will be made using natural channel design.
- Photo-document any failures or increased turbidity due to construction activities.
  - Within 24 hours of observing a failure or marked increase in turbidity associated with construction, the project proponent shall remedy and implement any additional adaptive management measures to stabilize the activity and prevent further unauthorized discharges into waters of the U.S. The project proponent shall photo-document the failure (i.e., 50 feet upstream of failure, at the incident site, and at least 100 feet downstream of the failure) and the adaptive management measures taken

immediately following implementation. The project proponent shall take remediation condition photos at the same location(s) and direction(s) as in the failure condition photos.

- Within 48 hours of observing any failure, the project proponent shall provide EPA Region 8 with the required photo-documentation, and descriptions of all observed failures and implemented remedies.
- Within three weeks of observing a failure, the project proponent shall provide EPA Region 8 with a description of the impacts and effectiveness of the employed adaptive management measures.
- Carry out as applicable:
  - Erosion control: Inspect sediment and erosion control measures daily during project implementation and within 12 hours of precipitation events. After construction is complete, remove sediment and erosion control structures once vegetation is established to the same percent cover as pre-construction conditions, unless they are needed for long term stabilization purposes.
  - Dewatering: Assess all dewatering measures within 24 hours after a severe storm event.

Post construction for projects that require a PCN, the project proponent shall, as applicable:

- Submit a post-construction report, as defined below, within 90 days of completing construction activity to EPA Region 8 at [R8CWA401@epa.gov](mailto:R8CWA401@epa.gov) or, if the Corps requires a post-construction report for the project activity, the applicant may submit that report to EPA to fulfill this post-construction requirement. The project proponent shall include the following items in the post-construction report:
  - Construction dates.
  - As-built drawings.
  - Documentation of site restoration activities using photographs and any field data sheets showing that the site was restored to pre-existing conditions or better. Include photographs of the site restoration areas on a map.
  - Any water quality data gathered before, during, and post-construction and associated maps showing the sample locations.
  - A description of any adaptive management strategies that were employed during construction, with a focus on strategy effectiveness.
  - Details on the removal of any sediment and erosion control structures, unless they are needed for long term stabilization purposes.
  - Effectiveness of the plan developed and implemented as required under this condition, and recommendations to remedy any deficiencies in plan development and implementation where employed measures were ineffective.
- For activities that require dredging, submit a copy of the as-builts and a post dredged and disposal report within 45 days of each dredging or disposal event to EPA Region 8 at [R8CWA401@epa.gov](mailto:R8CWA401@epa.gov). The project proponent shall include the following items in the post-dredged and disposal report:
  - Dredging and disposal dates.
  - Updated site map displaying the disposal location(s).
  - Dredging and disposal volumes.

- Water quality monitoring data.
- Post-dredged bathymetry.
- Updated site maps displaying any new ditches, spoil piles, widths, and depths.

**Why these conditions are necessary:** This condition is necessary to minimize suspended particulates /turbidity caused by construction activities and is necessary to ensure water quality is not degraded by toxic pollutants in toxic amounts, including construction materials, oil, grease, gasoline, or other types of fluids used to operate and maintain equipment used to complete the project, or discharges from dust abatement activities as well as contaminants in dredged material. This condition also appropriately minimizes impacts from access roads, staging areas, and stockpiling to further ensure that construction activities will result in no more than minimal individual and cumulative adverse environmental effects. This condition will protect water quality because it ensures that the project proponent is using planning and construction practices that will maintain the integrity of the site hydrology and maintain the aquatic resource functions and values and ensures that appropriate revegetation measures are used to re-establish riparian/wetland vegetation to minimize the adverse impacts of discharges of sediment and pollutants that enter waterways. Limiting the amount of vegetation that is disturbed will minimize the adverse environmental impacts of any potential discharges. Monitoring for at least three growing seasons, or until replanted areas meet monitoring success criteria, will provide an adequate indication that the restoration effort is able to demonstrate restoration is successful.

The general conditions in the Corps' NWP package do not address concerns about resuspension and turbidity caused by construction and dredging activities, thereby justifying the inclusion of this condition. GC 32 only requires agency coordination in certain circumstances. Additionally, GC 11 (equipment), GC 12 (soil erosion and sediment controls), and GC 13 (removal of temporary structures and fills) provide some aquatic resource protections, but greater specificity is needed to determine what measures are suitable to comply with applicable water quality requirements.

**Citations:** 33 U.S.C. 1341(a)(4); 40 CFR 230.10(c)-(d); 40 CFR 230.10(d); 40 CFR 230.21(a); 40 CFR 230.70; 40 CFR 230.71; 40 CFR 230.72; 40 CFR 230.74; 40 CFR 230.75; Tribal Water Quality Requirements<sup>2</sup>

### **Condition #2: Special Aquatic Resources**

Projects or activities expected to have potential discharges into the below special aquatic resources areas are not covered by this certification and applicants must request a project-specific CWA Section 401 certification from EPA Region 8 consistent with 40 CFR 121.5.

- **Wetlands Classified as Peatlands:** For the purposes of this condition, peatlands are permanently or seasonally waterlogged areas containing organic soils

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<sup>2</sup> Southern Ute Indian Tribe WQS Sections 6.1.1-8., 7.1, 7.2, 10, 11, 13.1 and 401 certification requirements Article 4-106.

classified as a Histosol with a specific thickness of an accumulation of peat (i.e., organic matter) and include fens, bogs and muskegs.<sup>3</sup>

- **Natural Springs:** Within 100 feet of the water source in natural spring areas. For the purposes of this condition, a spring water source is defined as any location where there is flow emanating from a distinct point at any time during the growing season. Some examples of spring-fed wetlands are hanging gardens. Some examples of spring-fed headwater slopes are peat-accumulating wet meadows and fens (see above). These resources may be identified using U.S. Fish and Wildlife Service’s online digital National Wetland Inventory maps, or other aquatic resource mapping tools.
- **Riffle and Pool Complexes:** For the purposes of this condition, riffle and pool complexes are steep gradient sections of streams recognizable by their hydraulic characteristics. The rapid movement of water over a coarse substrate in riffles results in a rough flow, a turbulent surface, and high dissolved oxygen levels in the water. Pools are deeper areas associated with riffles. Pools are characterized by a slower stream velocity, a steaming flow, a smooth surface, and a finer substrate.
- **Wild rice (*Manoomin/Manomin*) Waters:** Wild rice is especially sensitive to changes in water quality, hydrology changes, competition with invasive plants, and habitat loss.<sup>4</sup>

**Why this condition is necessary:** This condition is necessary to ensure a case-by-case review of any point source discharges into waters of the United States that are proposed in these specific aquatic resource site types which are inherently difficult to replace and have important ecological functions and values. Discharges into these systems have the potential to alter water circulation patterns and hydroperiods, release nutrients causing shifts in native to non-native species composition, release chemicals that adversely impact biota (plants and animals), increase turbidity levels, reduce light penetration and photosynthesis, or otherwise change the capacity of

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<sup>3</sup> It is a general rule that a soil is classified as an organic soil (Histosol) if more than half of the upper 80 cm (32 inches) of the soil is organic or if organic soil material of any thickness rests on rock or on fragmental material having interstices filled with organic materials. Generally, organic soil materials have organic carbon content by weight of 12 percent or more. See the following for more information on what constitutes “organic soil material”, limits between Histosols and soils of other orders, problematic hydric soils situations, and other indicators to identify peatlands: Soil Survey Staff. 1999. Soil taxonomy: A basic system of soil classification for making and interpreting soil surveys. 2nd edition. Natural Resources Conservation Service. U.S. Department of Agriculture Handbook 436. <https://www.nrcs.usda.gov/resources/guides-and-instructions/soil-taxonomy>; United States Department of Agriculture, Natural Resources Conservation Service. 2025. Hydric soils of problematic conditions and altered materials, Version 1.0. <https://usace.contentdm.oclc.org/utis/getfile/collection/p266001coll1/id/11824>; United States Department of Agriculture, Natural Resources Conservation Service. 2024. Field Indicators of Hydric Soils in the United States, Version 9.0. <https://www.nrcs.usda.gov/sites/default/files/2024-09/Field-Indicators-of-Hydric-Soils.pdf>.

<sup>4</sup> [https://plants.usda.gov/DocumentLibrary/plantguide/pdf/pg\\_ZIAQ.pdf](https://plants.usda.gov/DocumentLibrary/plantguide/pdf/pg_ZIAQ.pdf), last visited 11 Dec 2025.

these systems to support aquatic life uses and other beneficial uses of these special aquatic sites, including impairing their diverse and unique communities of aquatic organisms, including fish, wildlife and the habitats upon which they depend. Project specific information is needed to ensure compliance with water quality requirements.

**Citations:** 40 C.F.R. 230.1(d); 40 C.F.R. 230.10(a)(3); 40 C.F.R. 230.10(c); 40 C.F.R. 230.10(d); 40 C.F.R. 230.20-24; 40 C.F.R. 230.21-22; 40 CFR 230.41; 40 C.F.R. 230.45; 40 C.F.R. 230.75(c); Tribal Water Quality Requirements<sup>5</sup>

**Condition #3: Specific Condition for Bridges for NWP 3, 14, 15, 57, 58 and A**

Project proponents shall use an established bridge analysis and hydraulic design tool when designing and constructing bridges (e.g., HEC-RAS, FHWA, etc.). Bridges shall be constructed in a manner such that stormwater does not drain directly into the waterbody. Bridges shall span greater than or equal to 1.2 times the bankfull width and adjacent wetlands of the affected waterbody, where feasible. Crossings shall be placed perpendicular to the direction of the stream flow where possible and account for potential future lateral migration in the stream, unless the project proponent can document that this would result in increased impacts to aquatic resources or compromise the safety of the structure.

**Why this condition is necessary:** This condition is necessary to ensure that discharges associated with bridge design and placement minimally affect water quality and aquatic resource functions and values. Perpendicular stream crossings minimize the impacts of bank erosion and scouring from length of stream bed and bank impacts for a project. Drainage directly from the bridge decks may cause erosion and scouring, and introduce additional pollutants, such as oil, gas, sediment, and toxics. Directing bridge deck drainage into constructed runoff water quality control systems will help prevent erosion and keep pollutants from directly entering the waterway. This condition will ensure that physical habitat and hydrologic characteristics of waters are not degraded, will maintain the habitat and biology of the waters and will ensure the hydrogeomorphology is not negatively impacted by the project.

**Citation:** 40 CFR 230.10(d); 40 CFR 230.72; 40 CFR 122.26; Tribal Water Quality Requirements<sup>6</sup>

**Condition #4: Specific condition for NWP 7**

Outfall design and placement shall include an appropriate energy dissipation structure (e.g., rip rap aprons) and shall be sized to prevent high pressure discharge. For intake structures, project proponents shall use an intake screen that reduces the size of aquatic organisms that can be

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<sup>5</sup> Southern Ute Indian Tribe WQS Sections 6.1.1-8., 7.1, 7.2, 10, 11, 13.1 and 401 certification requirements Article 4-106.

<sup>6</sup> Ibid.

entrained (e.g., a Johnson-type screen/intake), where feasible. Intake velocities shall not exceed 0.5 feet per second.<sup>7</sup>

**Why this condition is necessary:** This condition is necessary to ensure that outfall structures and intakes are constructed such that they provide localized erosion control at the point(s) of discharge while minimizing habitat degradation and assimilative capacity of the waterbody. Erosion from outfall structures due to improperly designed and placed structures increases sedimentation that alters stream and wetland hydrology (e.g., scouring and deposition) and uncontrolled stormwater contaminants harm aquatic organisms and habitat. Impingement controls for intake structures reduce the size of aquatic organisms that can be entrained and minimize impacts to aquatic species.

**Citations:** 40 CFR 230.10(c)-(d); 40 CFR 230.30; 40 CFR 230.70; 40 CFR 230.73; 40 CFR 230.74; 40 CFR 230.75; Tribal Water Quality Requirements<sup>8</sup>

#### **Condition #5: Specific Condition for NWP 13**

For projects using gabions, the project proponent shall visually inspect and repair any damage to gabions and the gabion installation area after construction is completed at least once a year after spring flows.

**Why this condition is necessary:** This condition is necessary to reduce the individual and cumulative adverse environmental effects caused by hard bank stabilization structures on aquatic biodiversity, habitat, and aquatic resource functions and services. This condition is also necessary to minimize the potential for gabion failure and corresponding water quality impacts. Gabion failure leads to erosion and sediment release, which can significantly affect aquatic ecosystem diversity, productivity and stability, and can potentially release wire into the environment that can impact aquatic habitat. Rock released from damaged gabions can impact channel flow, which can interfere with aquatic habitat processes and infrastructure.

**Citations:** 40 CFR 230.10(c)-(d); 40 CFR 230.72; 40 CFR 230.74; Tribal Water Quality Requirements<sup>9</sup>

#### **Condition #6: Specific Condition for NWP 16**

The project proponent shall provide EPA Region 8 with a description of the return water from the upland disposal area prior to discharge, including a description of the nature of the dredged material and a description of any contaminants present in the discharge. The project proponent shall also provide an analysis of how the return water may impact the physiochemical

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<sup>7</sup> Additional guidance on water intakes is available from the U.S. Fish and Wildlife Service: <https://www.fws.gov/sites/default/files/documents/water-intake-recommendations.pdf>.

<sup>8</sup> Southern Ute Indian Tribe WQS Sections 6.1.1-8., 7.1, 7.2, 10, 11, 13.1 and 401 certification requirements Article 4-106.

<sup>9</sup> Ibid.

conditions of the receiving water prior to discharge, including a description of how the project proponent will ensure controls are in place to ensure compliance with applicable water quality requirements.

**Why this condition is necessary:** This condition is necessary to ensure any return water meets applicable water quality requirements and does not degrade receiving waters. Dredged material from industrial and urban areas, stormwater and agricultural runoff, as well as from areas of natural deposits of minerals and other natural substances, often contain contaminants from these sources and may have the potential to alter the chemistry of receiving waters, including but not limited to, nutrients, metals, organic carbon, and invasive species. To ensure that all appropriate and practicable measures to minimize harm to the aquatic ecosystem from contaminants are addressed, the project proponent should consider the unique nature of dredged material and the related contaminant pathway to understand the physicochemical conditions of each disposal site under consideration.

**Citation:** 40 CFR 230.10(b)-(d); 40 CFR 230.11; 40 CFR 230.12; 40 CFR 230.22; 40 CFR 230.31; 40 CFR 230.32; 40 CFR 230.61; Tribal Water Quality Requirements<sup>10</sup>

**Condition #6: Specific Condition for NWP 40**

The project proponent shall ensure that any return water flows back into waters of the U.S. does not contain levels of toxic and priority pollutants in excess of effluent limitation guidelines established under Section 307 of the Clean Water Act.

**Why this condition is necessary:** This condition is necessary to ensure that return water to waters of the U.S. meets water quality requirements. Agricultural runoff can degrade receiving waters due to contaminants, including toxic and priority pollutants that are subject to effluent limitations pursuant to Section 307 of the Clean Water Act. Project specific information is needed to consider the contaminants proposed for discharge and the aquatic environment at the proposed discharge site to ensure that all appropriate and practicable measures to minimize harm to the aquatic ecosystem are addressed.

**Citations:** 33 U.S.C. 1317(a)(1); 40 CFR 401.15; 40 CFR 230.10(c); 40 CFR 230.31; 40 CFR 230.32; Tribal Water Quality Requirements<sup>11</sup>

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<sup>10</sup> Ibid.

<sup>11</sup> Ibid.



**COLORADO**

**Department of Public  
Health & Environment**

November 4, 2025

U.S. Army Corps of Engineers Albuquerque District  
4101 Jefferson Plaza NE  
Albuquerque, NM 87109-3435

Re: 2026 Nationwide Permits, 401 Water Quality Certification, Docket number COE-2025-0002

To whom it may concern:

On May 2, 2025, the U.S. Army Corps of Engineers (USACE) Albuquerque District Office requested a pre-filing meeting with the Colorado Department of Public Health and Environment, Water Quality Control Division (WQCD) regarding reissuing 56 Nationwide Permits (NWP) and issuing one new NWP. The USACE and WQCD attended a meeting on May 22, 2025 to discuss the NWP process and timeline.

Pursuant to section 25-8-302(1)(f), C.R.S., of the Colorado Water Quality Control Act, the WQCD is the agency responsible for the issuance of certifications under the provisions of section 401 of the federal Clean Water Act (401 certifications). Projects that meet the criteria for NWP under section 404 automatically receive 401 certifications without imposition of any additional state conditions by the WQCD. § 25-8-302(1)(f), C.R.S.

Although these certifications are issued by statute and do not require imposition of additional state conditions by the WQCD for issuance, permittees under NWP still need to abide by the state requirements outlined in section 82.6(A)(1)-(12) of Water Quality Control Commission Regulation 82. The WQCD does not consider the requirements in 82.6(A) to be additional conditions under section 25-8-302(1)(f), C.R.S.

Please do not hesitate to contact Alex Powell ([alex.powell@state.co.us](mailto:alex.powell@state.co.us)), Brittany Sprout ([brittany.sprout@state.co.us](mailto:brittany.sprout@state.co.us)), or me ([skip.feeney@state.co.us](mailto:skip.feeney@state.co.us)) with any questions.

Sincerely,

**Skip C. Feeney**

Digitally signed by Skip C.  
Feeney  
Date: 2025.11.06 08:27:32 -07'00'

Skip Feeney, Environmental Data Unit Manager  
Water Quality Control Division  
4300 Cherry Creek Drive South, Denver, CO 80246



# Ute Mountain Ute Tribe

Environmental Programs Department

P.O. Box 448

Towaoc, Colorado 81334-0448

(970) 564-5430

December 16, 2025

Kelly Allen  
Albuquerque District  
Regulatory Division  
505-342-3216  
[Kelly.e.allen@usace.army.mil](mailto:Kelly.e.allen@usace.army.mil)

**Re: Certification of the proposed U.S. Army Corps of Engineers 2025 Nationwide Permits pursuant to Section 401 of the Clean Water Act for lands of the Ute Mountain Ute Tribe in Colorado, New Mexico and Utah in the Albuquerque, Sacramento and Omaha Districts.**

The Ute Mountain Ute Tribe (UMUT) has responsibility under Section 401 of the Clean Water Act (CWA) to evaluate and certify water quality protection for federal permits or licenses issued for work on lands within the boundary of the Ute Mountain Ute Reservation.

This certification is in response to the US Army Corps of Engineers Notice issuance of Proposed Nationwide Permits (NWP) listed in the June 18, 2025 Federal Register for Clean Water Act (CWA) Section 401 water quality certification and the CWA 401 certification correspondence from the U.S. Army Corps of Engineers Albuquerque District beginning May 2, 2025.

This certification applies to any potential point source discharges from potential projects authorized under the proposed U.S. Corps of Engineers Nationwide Permit Reissuance (Federal Register September 15, 2020) into waters of the United States that occur within the Ute Mountain Ute Reservation. It is the responsibility of the applicant to determine the proper CWA Section 401 authority through coordination and recommendations of status through the UMUT or certification of land status by the Bureau of Indian Affairs (BIA).

Section 401(a)(1) of the Clean Water Act requires applicants for Federal permits and licenses that may result in discharges into waters of the United States to obtain



certification that potential discharges will comply with applicable provisions of the CWA including Sections 301, 302, 303, 306 and 307.

These requirements will protect water quality and help ensure that the NWP program minimizes adverse impacts on the aquatic environment on tribal lands, both individually and cumulatively, as required by CWA Section 404(e).

Permit applicants need to request individual certification from UMUT for NWP that are denied herein. If a project is unable to meet the enclosed conditions despite being eligible for a NWP, or if a certification is denied for an applicable NWP, the applicant may request an individual certification from UMUT. An individual certification letter must follow the requirements outlined in Section 121.5 of EPA's CWA Section 401 Certification Rule. Projects that qualify for a NWP that also meet the enclosed conditions must notify UMUT personnel pursuant to General Condition #1; these may proceed after verifying that notification was received by UMUT without further written verification from UMUT.

### **General Information**

The general information provided in this cover letter section does not constitute a certification condition(s). The Applicant is responsible for obtaining all other permits, licenses, and certifications that may be required by federal, state or tribal authorities where applicable, including an EPA general construction CWA Section 402 storm water permit notice of intent. This certification must be retained in your files with the applicable NWPs as documentation of UMUT certification for the above-referenced proposed NWPs. This certification is specifically associated with the proposed NWPs and expires when these NWPs expire.

UMUT has not received the final nationwide permits, national or regional conditions from the Corps. Therefore, if nationwide permits, national conditions and/or regional conditions are modified significantly, UMUT expects notifications of these modifications and that the Corps of Engineers will follow the spirit of 40 CFR Part 121 and request new or revised 401 certifications to reflect the significant changes in the permits.

The Corps and applicants should consider contacting UMUT Environmental Programs Department as early as possible for potential permits and actions that may be complicated and when early discussions may be beneficial to all parties. UMUT requests notification when the Corps District Engineer intends to exert discretionary authority or waive the acreage, linear feet or cubic yard limits of any of the 2020 proposed Nationwide Permits. We would like the opportunity to discuss the rationale and finding of de minimus impact in these instances. The Corps should be aware of



UMUT lands outside of commonly known reservation boundaries including but not limited to tribal trust lands that are outside of reservation boundaries. A state certification is not valid on these waters, and without a valid 401 certification, a permit is not valid.

For NWP or projects that do require an individual 401 certification, a request for certification must follow the requirements outlined in Section 121.5 of EPA's final 401 regulation. Inquiries, pre-filing meeting requests and certification requests should be sent to [abishop@utemountain.org](mailto:abishop@utemountain.org). Suggested minimum information needed by UMUT is available by request. If minimum information is not included, the information will be requested after receipt of the certification request. UMUT may decide to Public Notice certification requests and offer the public an opportunity to request a public hearing on all individually requested certifications. This additional time should be considered in setting the reasonable time period for certifications.

Sincerely,



Scott Clow  
Director

CC: Selwyn Whiteskunk, Chairman, Ute Mountain Ute Tribe  
Tribal Council, Ute Mountain Ute Tribe  
Megan Mustoe, Associate General Counsel, Ute Mountain Ute Tribe  
[SPKRegulatoryMailbox@usace.army.mil](mailto:SPKRegulatoryMailbox@usace.army.mil)

Enclosure: Ute Mountain Ute Tribe Clean Water Act Section 401 Water Quality Certification  
for U.S. Army Corps of Engineers CWA Section 404 2025 Nationwide Permits Reissuance



**Ute Mountain Ute Tribe Clean Water Act Section 401  
Water Quality Certification for the U.S. Corps of  
Engineers CWA Section 404  
2025 Nationwide Permits Reissuance**

This Certification applies to any potential point source discharges from potential projects authorized under the proposed re-issuance of the following U.S. Army Corps of Engineers CWA 404 Nationwide Permit (NWP) into waters of the United States that occur within the Ute Mountain Ute Reservation within the Albuquerque, Omaha and Sacramento Corps Districts:

NWP 3, 4, 5, 6, 7, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 25, 27, 29, 30, 31, 32, 33, 34, 36, 37, 38, 39, 40, 41, 42, 43, 44, 46, 48, 49, 50, 51, 52, 53, 54, 57, 58, 59.

Section 401(a)(1) of the Clean Water Act requires applicants for Federal permits and licenses that may result in discharges into waters of the United States to obtain certification that potential discharges will comply with applicable provisions of the CWA, including Sections 301, 302, 303, 306 and 307.

This Certification does **not** apply to the following NWP: 1, 2, 8, 9, 10, 11, 24, 28, 35, and A. If any activity authorized by these listed NWP may result in a discharge into a water of the United States, the Corps must seek CWA section 401 certification from the Ute Mountain Ute Tribe for discharges that occur in the boundaries of the Ute Mountain Ute Tribe within the Albuquerque, Omaha and Sacramento Corps Districts. In addition, this certification does not apply to NWP applied "after-the-fact" (i.e., after the discharge has occurred) or to NWP where a waiver on limits has been granted by the District or Division Engineer.

**General Information**

The general information provided in this section is intended to provide context for UMUT's certification decision and does not itself constitute a certification condition(s). The information in this section is being provided to help ensure applicants comply with the terms and conditions of the CWA § 401 certifications of the NWP on applicable UMUT lands.

- The Applicant and applicants for projects authorized under the NWP should obtain all other permits, licenses, and certifications that may be required by federal, state, or tribal authority.
- If a project is unable to meet the enclosed conditions, or if certification is denied for an applicable NWP, the Applicant may request an individual certification from UMUT. An individual certification request must follow the requirements outlined in 40 CFR 121.5 of EPA's CWA § 401 Certification Rule.
- Copies of this certification should be kept on the job site and readily available for reference.
- If the project is constructed and/or operated in a manner not consistent with the applicable NWP, general conditions, or regional conditions, the permittee may be in violation of this certification.
- UMUT representatives may inspect the authorized activity and any mitigation areas to determine compliance with the terms and conditions of the NWP. CWA Section 308(a).

UMUT is expressly waiving its authority to act on the CWA § 401 certification request for the following proposed N.WPs: **NWPs Waived (121.9(a)(1)):**

- 4. Fish and Wildlife Harvesting, Enhancement, and Attraction Devices and Activities
- 22. Removal of Vessels
- 48. Commercial Shellfish Mariculture
- 54. Living Shorelines

**NWPs Granted with Conditions (121.7(d)(2))**

CWA Section. 401 certification is granted with the following conditions for NWPs 3, 5, 6, 7, 13, 14, 15, 18, 19, 20, 23, 25, 27, 30, 31, 32, 33, 36, 38, 41, 43, 45, 46, 57, and 59. UMUT has determined that any discharge authorized under these proposed NWPs will comply with water quality requirements, including applicable provisions of Sections 301, 302, 303, 306, and 307 of the Clean Water Act, and tribal regulatory requirements for point source discharges into waters of the United States, subject to the following conditions pursuant to Section 401(d).

**All conditionally certified NWPs, including those with additional permit-specific conditions, must comply with the following conditions:**

**Conditions pertaining to all NWP's (Authorizing citations in parentheses):**

1. All applicants, including federal agencies, must notify the UMUT Environmental Programs Department of the use of all NWP's for which certification has been granted prior to commencing work on the project. Notification must be at least 7 days prior to the commencement of construction. (CWA sections 301, 302, 303, 306, and 307; CWA 308(a); 40 CFR 121.11(a))<sup>1</sup>

Notifications must include:

- Project location (latitude, longitude)
- Applicable NWP, specific to the permitted activity
- Quantity of permanent and temporary fill
- Written summary of proposed activity, including all associated permits or licenses for the project
- Contact information for applicant and contractors (name, company affiliation, telephone, email, postal address)
- Detailed description of best management practices to be used

Notifications should be directed to: Adrian Bishop, Water Quality Specialist, Ute Mountain Ute Tribe, PO Box 448, Towaoc, CO 81334; [abishop@utemountain.org](mailto:abishop@utemountain.org); 970-564-5435.

2. Point Source discharges may not occur:
  - a. In fens, bogs, or other peatlands
  - b. Within 100 feet of the point of discharge of a natural spring source
  - c. In hanging gardens
  - d. In culturally sensitive waters(40 CFR 230 Subpart E; Ute Mountain)
3. Except as specified in the application, no debris, silt, sand, cement, concrete, oil or petroleum, organic material, or other construction related materials or wastes shall be allowed to enter into or be stored where they may enter into water of the U.S. (40 CFR 230.10(d), 40 CFR 230.71; Ute Mountain)
4. Silt fences, straw wattles, and other techniques shall be employed as appropriate to protect waters of the U.S. from sedimentation and related pollutants. . (40 CFR 230.10(d), 40 CFR 230.72; Ute Mountain)
5. Erosion control matting that is biodegradable blankets or loose-weave mesh must be used to the

- maximum extent possible. . (40 CFR 230.10(d), 40 CFR 230.72; Ute Mountain)
6. Water used in dust suppression shall not contain contaminants that could violate water quality standards. . (40 CFR 230.10(d), 40 CFR 230.71; Ute Mountain)
  7. All equipment used in waters of the U.S. must be inspected for fluid leaks and invasive species (seed transport) prior to and during use on a project. All fluid leaks shall be repaired and equipment cleaned prior to use, or when discovered or equipment shall be immediately decommissioned from the project or not used at all on the project. Invasive species seed transport shall be prevented by cleaning offsite prior to use on the project. (40 CFR 230.10(d), 40 CFR 230.74; Ute Mountain)
  8. Vegetation shall be protected except where its removal is necessary for the project. Disturbed soil caused by the project shall be revegetated with appropriate native vegetation in a manner that optimizes plant establishment for the specific project site.
    - a. This may include topsoil replacement, planting, seeding, fertilization, liming, and weed-free mulching, as necessary.
    - b. When practical, stockpile weed-free topsoil and replace it on disturbed areas.
    - c. All revegetation materials, including plants and seed shall be on site or scheduled for delivery prior to or upon completion of earth moving activities.  
(40 CFR 230.10(d), 40 CFR 230.75; Ute Mountain)
  9. Activities may not result in any unconfined discharge of liquid cement into waters of the U.S. Grouting riprap must occur under dry conditions with no exposure of wet concrete to the waterbody. (40 CFR 230.10(d), 40 CFR 230.71 CWA 307, Ute Mountain)
  10. Activities that may result in a point source discharge shall occur during seasonal low flow or no flow periods to the maximum extent practicable. (40 CFR 230.10(d), 40 CFR 230.72 (d), 40 CFR 230.23, 40 CFR 230.24, Ute Mountain)
  11. The placement of material (discharge) for the construction of new dams is not certified, except for stream restoration. (40 CFR 230.23, 40 CFR 230.24, Ute Mountain)

**NWPs Granted with Permit-Specific Conditions in addition to the Conditions listed above. (121.7(d)(2))<sup>1,2</sup>:**

**NWP #3: Maintenance**

- a. No more than 25 cubic yards of new or additional riprap may be placed to protect the structure or fill;
- b. Bridge replacements must span the bank full width and/or the ordinary high water mark of the affected waters of the U.S.
- c. Fill or dredged material shall not result in an increase in land contour height beyond the original dimensions for the repair of low water crossings, or loss of stream cross section dimensions.
- d. Silt and sediment removal associated with low water crossings shall not exceed 50 linear feet.
- e. Silt and sediment removal associated with bridge crossings shall not exceed 100 linear feet.  
(40 CFR 230.10(d), 40 CFR 230.73 (d), 40 CFR 230.75, Ute Mountain)

**NWP #7: Outfall Structures**

- a. Construction of the outfall structure shall be placed at the streambed elevation and, at a minimum, the pipe should be sized to prevent high pressure discharge of storm water.
- b. Outfall structures shall not be constructed in wetlands.
- c. Controls shall be put in place to stabilize all areas of the bed and bank around and adjacent to the outfall structure and associated intake structures that may be affected by outfall or stream flows, respectively.
- d. Structures shall not result in a loss of waters of the U.S. (e.g. tile systems).

(40 CFR 230.10(d), 40 CFR 230.70, 40 CFR 230.73, CWA 303(a), Ute Mountain)

**NWP#13: Bank Stabilization**

- a. Activities shall use of native vegetation or other bioengineered design techniques (e.g. willow plantings, root wads, large woody debris, etc.) or a combination of hard-armoring (e.g.

rock) and native vegetation or bioengineered design techniques. Artificial soil stabilizing material (e.g. mulch, matting, netting, etc.) shall be used to reduce soil erosion. These materials, to include all plants and plant seed, shall be on site or scheduled for delivery prior to or upon completion of the earth moving activities. Sediment control measures shall be maintained in good working order at all times.

b. The slopes of disturbed banks should be configured to mimic a stable reach of the same stream within ½ mile in either direction of the project and not reduce the bottom width of the stream.

c. If flow conditions dictate the use of hardened structures, only appropriately sized angular rock may be used. Soil cement, concrete, grouted riprap, etc. may not be used.  
(40 CFR 230.10(d), 40 CFR 230.70, 40 CFR 230.72, CWA 303(a), Ute Mountain)

#### **NWP# 14: Linear Transportation Projects**

a. Storm water from the construction and operation of these projects must be routed into constructed runoff water quality control systems (e.g. sediment basins, wet ponds, etc.)

b. Affected streambanks must be sloped such that the stream bottom **width** is not reduced, and bottom elevations are restored to original elevations. In general, stream bank slopes should not be steeper than 3:1 unless there is a compelling reason.

c. Crossings must be placed as close to perpendicular to the water course as possible.  
(40 CFR 230.10, 40 CFR 230.70, CWA 303(a), Ute Mountain)

#### **NWP# 15: Bridges**

a. Storm water from the construction and operation of these projects (including runoff from bridge decks) must be routed into constructed runoff water quality control systems (e.g. sediment basins, wet ponds, etc.)

b. Affected streambanks must be sloped such that the stream bottom width is not reduced, and bottom elevations are restored to original elevations.

c. Crossings must be placed as close to perpendicular to the watercourse as possible.

d. Bridge decks must be designed such that they do not drain directly into the waterbody.

e. Bridges must span the bank full width and/or ordinary high water mark of the affected waters of the U.S. Bridges may not impair flow under normal circumstances, should not produce eddies or unintended scour holes and should be designed to prevent accumulation of sediment that may block flows.

(40 CFR 230.10(d), 40 CFR 230.70, 40 CFR 230.72, CWA 303(a), Ute Mountain)

#### **NWP# 19: Minor Dredging**

a. Dredged or fill materials must be placed in uplands and controlled such that it cannot return to waters of the U.S. Dredged or fill material may not be placed on temporary islet, islands, sandbars, landmass or other area of sediment accumulation within the banks of a stream, shore of lake, edge of wetland or other type of waterbody, unless the vegetation and geomorphology signify a long term stable configuration (e.g. areas of accumulation are not formed from temporary situations such as drought conditions or temporary upstream reservoir release conditions).

(40CFR 230.10(d), 40 CFR 230.70, Ute Mountain)

**NWP# 27: Aquatic Habitat Restoration**

- a. Activities that may result in a discharge into waters of the United States shall not result in conversion of one habitat type to another (e.g. wetlands to open water).  
(40 CFR 230.10(d), 40 CFR 230.75, Ute Mountain)

**NWP #43: Storm Water Management Facilities**

- a. Certification is granted with conditions only for replacement and repair activities that impact (e.g., fill, relocate, realign or straighten) no more than 300 LF of stream or 1/10 acre of waters of the U.S.  
(40 CFR 230.10(d), 40 CFR 230.73, 40 CFR 230.75, Ute Mountain)

**NWP # 57: Electric Utilities and Telecom Activities**

- a. Construction activities shall not impact (e.g., fill, relocate, realign or straighten) more than 300 LF of stream for a single and complete project.  
(CWA 301, 302, 303, 306, 307, Ute Mountain)

**NWP #59 Water Reclamation and Reuse Facilities**

- a. Activities shall not impact (e.g., fill, relocate, realign or straighten) more than 300 LF of stream channel for a single and complete project.  
(CWA 301, 302, 303, 306, 307, Ute Mountain)

**NWP's Denied (121.7(e)(2))<sup>1,3</sup>**

UMUT has determined that the discharges from the following NWPs will not comply with water quality requirements. Therefore, CWA Section 401 certification is denied, and applicants must apply for an individual water quality certification. Denials apply to all UMUT lands.

**NWP #12: Oil and Gas pipeline Activities**

(CWA 301, 302, 303, 306, 307, 311, 40 CFR 230 Subpart C, Ute Mountain)

**NWP# 16: Return Water from Upland Contained Disposal Areas**

(40 CFR 230.23, CWA 307, Ute Mountain)

**NWP# 17: Hydropower Projects**

(40 CFR 230.23, 40 CFR 230.24, Ute Mountain)

**NWP #21: Surface Coal Mining Activities**

(CWA 301, 302, 303, 306, 307, 40 CFR 230 Subpart C, Subpart D, Ute Mountain)

**NWP # 24: Indian Tribe or State Administered 404 Programs**

(CWA 404(g))

**NWP #29: Residential Developments**

(CWA 301, 302, 303, 306, 307, 40 CFR 230 Subpart C, Subpart D, Ute Mountain)

**NWP #34: Cranberry Production**

(40 CFR 230.23, 40 CFR 230.24, Ute Mountain)

**NWP #37: Emergency Watershed Protection and Rehabilitation**

(Ute Mountain)

**NWP #39: Commercial Development**

(CWA 301, 302, 303, 306, 307, 40 CFR 230 Subpart C, Subpart D, Ute Mountain)

**NWP #40: Agricultural Activities**

(CWA 301, 302, 303, 306, 307, 40 CFR 230 Subpart C, Subpart D, Ute Mountain)

**NWP #42: Recreational Facilities**

(CWA 301, 302, 303, 306, 307, 40 CFR 230 Subpart C, Subpart D, Ute Mountain)

**NWP #44: Mining Activities**

(CWA 301, 302, 303, 306, 307, 40 CFR 230 Subpart C, Subpart D, Ute Mountain)

**NWP #49: Coal Remining**

(40 CFR 230.23, 40 CFR 230.24, Ute Mountain)

**NWP #50: Underground Coal Mining**

(CWA 301, 302, 303, 306, 307, 40 CFR 230 Subpart C, Subpart D, Ute Mountain)

**NWP #51: Land-Based Renewable Energy**

(CWA 301, 302, 303, 306, 307, 40 CFR 230 Subpart C, Subpart D, Ute Mountain)

**NWP #52: Water-Based Renewable Energy**

(CWA 301, 302, 303, 306, 307, 40 CFR 230 Subpart C, Subpart D, Ute Mountain)

**NWP #53: Removal of Low Head Dams**

(40 CFR 230.23, 40 CFR 230.24, Ute Mountain)

**NWP #58: Utility Line Activities for Water and Other Substances**

(40 CFR 230.20, 40 CFR 230.23, 40 CFR 230.24, Ute Mountain)

**Footnotes:**

1- Citations

- a. CWA sections 301,302,303,306, and 307 are listed in CWA section 401(a)(1) and, therefore, those sections and federal regulations implementing those sections can be considered water quality requirements and provide a legal basis for certification grants, denials or conditions. Section 303 and EPA's implementing regulations at Part 131 establish "existing uses" as "the absolute floor of water quality in all waters of the United States." 48 Fed. Reg. 51,400, 51,403 (Nov. 8, 1983). Existing uses are "those uses actually attained in the water body on or after November 28, 1975, *whether or not they are included in the water quality standards.*" 40 C.F.R. § 131.3(e) (emphasis added). As a result, States are prohibited from removing designated uses from a waterbody segment if they are existing uses unless establishing a use with even more

stringent criteria, 40 C.F.R. § 131.10(h), and existing instream water uses and the level of water quality necessary to protect the existing uses shall be maintained and protected even if degradation is allowed under a State antidegradation policy, 40 C.F.R. § 131.12(a)(1). As a result, regardless of what water quality standards may be applicable to a water of the US, no discharge may be authorized under the CWA that would be so extensive as to change or destroy an existing use of that waterbody. Additionally, Section 404 is incorporated by reference into section 401(a)(1) and 401(d) by virtue of section 301(a), which prohibits the discharge of any pollutant by any person "[e]xcept as in compliance with this section and section... 404 of this title..." Section 404(a) authorizes the permitting of discharges of dredge or fill material "into the navigable waters at specified disposal sites." Under Section 404(b), those sites must be specified "through the application of guidelines developed by the Administrator, in conjunction with the Secretary." These guidelines, the CWA 404(b)(1) Guidelines, are contained at 40 CFR Part 230, establish requirements for all permitted Section 404 discharges, including a requirement that such discharges must comply with all State water quality standards. 40 C.F.R. § 230.10(b)(1)&(2).

- b. CWA - 40 CFR § 230 Subpart C - Potential Impacts on Physical and Chemical Characteristics of the Aquatic Ecosystem
  - c. CWA - 40 CFR § 230 Subpart D - Potential Impacts on Biological Characteristics of the Aquatic Ecosystem
  - d. (Ute Mountain) Water Quality Standards For Surface Waters of the Ute Mountain Ute Indian Reservation - Section 4 Anti-degradation Policy, Section 5. Narrative Water Quality Criteria, Section 6. Narrative Biological Criterion, Section 12 Designated Uses and Criteria
- 
- 2- For further explanation regarding rationale for NWP specific conditions, contact the Ute Mountain Ute Tribe's Environmental Programs Department.
  - 3- For further explanation regarding rationale for NWP denials, contact the Ute Mountain Ute Tribe's Environmental Programs Department.



## WATER QUALITY PROGRAM

ENVIRONMENTAL PROGRAMS DEPARTMENT  
SOUTHERN UTE INDIAN TRIBE  
PO BOX 737, MS 84, IGNACIO, CO 81137  
(970) 563 – 0135 · (970) 563 – 0384 FAX

October 30, 2025

SENT VIA EMAIL: [christina.l.schroeder@usace.army.mil](mailto:christina.l.schroeder@usace.army.mil)

Christina Schroeder  
Acting Chief, Regulatory Division  
U.S. Army Corps of Engineers Albuquerque District  
4101 Jefferson Plaza NE  
Albuquerque, NM 87109-3435

**Re: 2026 Nationwide Permits 401 Water Quality Certification (Request for Certification)**

Dear Ms. Schroeder:

The Southern Ute Indian Tribe's Environmental Programs Department (EPD) received a 401 certification request from the U.S. Army Corps of Engineers (Army Corps) for 2026 Nationwide Permits (NWP) on June 18, 2025. A pre-filing meeting was requested on May 2, 2025, and held on May 28, 2025.

### Actions on 401 Certification Request for Proposed 2026 NWP

EPD takes the following water quality certification actions under Section 401 of the Clean Water Act on the Army Corps' proposed NWP:

- "After-the-Fact" NWP: Permits determined to be applicable after a project or associated discharge has occurred – Deny
- NWP where the District or Division Engineer has granted a waiver on limits – Deny

NWP#	Title	Certification Action
1	Aids to Navigation	Waive
2	Structures in Artificial Canals	Certify with Conditions; Deny when there is a trenching activity or when activities have potential to discharge into perennial streams or special aquatic sites including wetlands
3	Maintenance	Certify with Conditions; Deny when there is a trenching activity or when activities require a Pre-Construction Notice (PCN) or have potential to discharge into perennial streams or special aquatic sites including wetlands
4	Fish and Wildlife Harvesting, Enhancement, and Attraction Devices and Activities	Certify with Conditions

5	Scientific Measurement Devices	Certify with Conditions
6	Survey Activities	Certify with Conditions; Deny when there is a trenching activity or when activities have potential to discharge into perennial streams or special aquatic sites including wetlands
7	Outfall Structures and Associated Intake Structures	Deny
8	Oil and Gas Structures on the Outer Continental Shelf	Waive
9	Structures in Fleeting and Anchorage Areas	Waive
10	Mooring Buoys	Waive
11	Temporary Recreational Structures	Waive
12	Oil or Natural Gas Pipeline Activities	Deny
13	Bank Stabilization	Deny
14	Linear Transportation Projects	Deny
15	U.S. Coast Guard Approved Bridges	Waive
16	Return Water from Upland Contained Disposal Areas	Deny
17	Hydropower Projects	Deny
18	Minor Discharges	Deny
19	Minor Dredging	Certify with Conditions
20	Response Operations for Oil or Hazardous Substances	Deny
21	Surface Coal Mining Activities	Deny
22	Removal of Vessels	Certify with Conditions
23	Approved Categorical Exclusions	Certify with Conditions
24	Indian Tribe or State Administered Section 404 Programs	Deny
25	Structural Discharges	Certify with Conditions
26	[Reserved]	N/A
27	Aquatic Habitat Restoration, Establishment, and Enhancement Activities	Certify with Conditions
28	Modifications of Existing Marinas	Waive
29	Residential Developments	Deny
30	Moist Soil Management for Wildlife	Certify with Conditions
31	Maintenance of Existing Flood Control Facilities	Deny
32	Completed Enforcement Actions	Deny

33	Temporary Construction, Access, and Dewatering	Deny
34	Cranberry Production Activities	Waive
35	Maintenance Dredging of Existing Basins	Certify with Conditions
36	Boat Ramps	Waive
37	Emergency Watershed Protection and Rehabilitation	Certify with Conditions
38	Cleanup of Hazardous and Toxic Waste	Deny
39	Commercial and Institutional Developments	Deny
40	Agricultural Activities	Deny
41	Reshaping Existing Drainage Ditches	Certify with Conditions
42	Recreational Facilities	Deny
43	Stormwater Management Facilities	Deny
44	Mining Activities	Deny
45	Repair of Uplands Damaged by Discrete Events	Deny
46	Discharges in Ditches	Deny
47	[Reserved]	N/A
48	Commercial Shellfish Mariculture Activities	Waive
49	Coal Remining Activities	Deny
50	Underground Coal Mining Activities	Deny
51	Land-Based Renewable Energy Generation Facilities	Deny
52	Water-Based Renewable Energy Generation Pilot Projects	Deny
53	Removal of Low-Head Dams	Deny
54	Living Shorelines	Waive
55	Seaweed Mariculture Activities	Waive
56	Finfish Mariculture Activities	Waive
57	Electric Utility Line and Telecommunications Activities	Deny
58	Utility Line Activities for Water and Other Substances	Deny
59	Water Reclamation and Reuse Facilities	Deny
A	Activities to Improve Passage of Fish and Other Aquatic Organisms	Certify with Conditions; Deny when there is a trenching activity or when activities require a Pre-Construction Notice (PCN) or have potential to discharge into perennial streams or special aquatic sites including wetlands

### **Conditions of Certification**

Included in Table 1 are the justifications and appropriate citations for each condition. This project must also comply with the Tribe's certification requirements, which apply to all certifications unless specifically set forth otherwise in a certification decision. The Tribe's certification requirements are found in Section 4-106 of the 401 Certification Procedures, and a copy of the requirements is enclosed with this certification.

In addition to the Tribe's certification conditions, the project must be completed in accordance with applicable NWP's and their General Conditions, as well as applicable Regional Conditions to Nationwide Permits in the State of Colorado. Compliance with the terms and conditions of the Nationwide Permit, the Best Management Practices (BMPs) within Tribe's certification conditions, and the Tribe's certification requirements described below will provide reasonable assurances that the permitted activities will be conducted in a manner which will not violate water quality standards and will address the Tribe's most significant water quality concerns. Projects for which EPD has elected to certify with conditions will comply with water quality requirements as defined at 40 CFR 121.1(n), subject to the following conditions pursuant to Section 401(d):

**Condition 1:** A copy of the Tribe's 401 certification letter for NWP's shall be maintained on-site at all times and available for inspection.

**Condition 2:** The project proponent shall provide EPD a written description of sediment and erosion control BMPs and/or a site-specific Stormwater Pollution Prevention Plan (SWPPP) 10 days *prior* to initiating construction. These measures shall be used to fully maintain and protect all existing water uses throughout the duration of the project and prevent discharge of disturbed soil into the waterway from the shoreline. All sediment and erosion control measures shall be in place prior to the onset of construction or prior to work in a waterbody. These measures shall provide for implementation of BMPs during and after construction including:

- A method statement that describes the phasing of sediment and erosion control measures installation and construction activities to include:
  - Timing (i.e., date estimates) of pre-construction preparation, BMP installation, construction, and removal.
  - The types and locations of sediment and erosion control features that shall be used onsite, including sediment control fences, haybales, heavy mud mats, or other structures. The project proponent shall actively maintain these features during construction.
- Construction materials and equipment storage areas shall be at least 100 feet away from a waterbody. If it is not possible to site the storage area 100 feet away, the project proponent shall explain the additional measures that will be taken to ensure there is no sediment migration into the waterway.

**Condition 3:** For projects with temporary impacts to aquatic resources, the project proponent shall submit written description of site-specific aquatic resource restoration and monitoring measures to EPD 10 days *prior* to construction activities. The project proponent shall restore and monitor the site consistent with the restoration and monitoring description. The described elements must include and/or expand upon the details supplied in this project's certification request:

- Pre-construction, the project proponent shall identify:

- Mitigation measures for disturbed aquatic resources and upland areas, where they are adjacent to the aquatic resource, and restoration of disturbed riparian areas
- Species for restoration and techniques for planting. The project proponent shall use identical native species or use salvaged plants removed during construction to the extent practicable. Non-native and invasive species shall not be used for restoration activities.
- Monitoring success criteria such that species regrowth is functionally equivalent to the pre-disturbed site or achieves a 70% vegetative cover.
- Monitoring protocol for at least three growing seasons or until replanted areas meet monitoring success criteria. The project proponent shall identify adaptive management measures to reestablish aquatic resource functions and values if restoration of the site does not meet monitoring success criteria.
- Post-construction, revegetation efforts shall occur in accordance with the restoration and monitoring description and elements provided to EPD. Disturbed soil and vegetation shall be restored to pre-disturbance reference conditions based on monitoring success criteria. Nursery and seed stock shall be acquired from localized sources and stockpile weed-free topsoil shall replace disturbed soil areas.
- Post-construction, the project proponent shall provide documentation of annual monitoring efforts, including photographs. At a minimum, photographs shall be submitted before construction and post-construction until the site meets monitoring success criteria. Monitoring reports and photographs shall be submitted to EPD at [wqs@southernute-nsn.gov](mailto:wqs@southernute-nsn.gov), subject line: CWA 401 Certification - NWP - Restoration Monitoring.

**Condition 4:** When operating equipment or undertaking construction riparian areas or waterways:

- Prior to arriving on the project site and entering a waterway, all equipment shall be cleaned, and the project proponent must provide to EPD evidence or certification of equipment cleaning/decontamination outlined in Article 4-106(t) to avoid aquatic nuisance species infestation. Remove all plants, animals, or mud and thoroughly wash equipment that have come in contact with the water before leaving a lake or stream.
- All equipment shall be inspected daily and prior to entering any waterway, for oil, gas, diesel, anti-freeze, hydraulic fluid, and other petroleum leaks. Before equipment is used on a project and upon discovery of any fluid leaks, all fluid leaks must be repaired. If a fluid leak cannot be repaired promptly, the equipment shall not be used on site and moved offsite within 24 hours.
- All contaminated areas shall be cleaned immediately, and contaminated soil removed from the site or contained in enclosed containers. Containers shall be located no closer than 100 feet to a waterbody or wetland. If it is not possible to site the storage area 100 feet away, the project proponent shall explain additional measures in their sediment and erosion control BMPs.
- Containment booms and/or absorbent material shall be available onsite. In the case of spills, containment booms and/or absorbent materials shall be employed immediately to prevent discharges from reaching waters of the U.S. Any spills shall be reported to the Army Corps, and EPD at [wqs@southernute-nsn.gov](mailto:wqs@southernute-nsn.gov) within 24 hours.

**Condition 5:** Except as specified in the application, the project proponent shall not allow debris, concrete, oil or petroleum, organic material, or other construction related materials or wastes to enter into or be stored within 100 feet of where it may enter into waters of the U.S.

**Condition 6:** The project proponent shall notify EPD when construction activities are complete at [wqs@southernute-nsn.gov](mailto:wqs@southernute-nsn.gov).

### Conclusion

Thank you for your ongoing partnership in the implementation of the regulatory programs of the Clean Water Act. If you have questions about this certification, please contact me or Geoff Hensgen, Water Quality Program Manager at (970) 563-2805 or [ghensgen@southernute-nsn.gov](mailto:ghensgen@southernute-nsn.gov).

Sincerely,

Mitchell A.  
Dorsk

Digitally signed by  
Mitchell A. Dorsk  
Date: 2025.10.30  
14:57:45 -06'00'

Mitchell Dorsk  
Southern Ute Indian Tribe  
Water Quality and Remediation Division Head  
P.O. Box 737 MS# 84  
Ignacio, Colorado 81137  
970-563-2272  
[mdorsk@southernute-nsn.gov](mailto:mdorsk@southernute-nsn.gov)

Enclosures:

1. Southern Ute Indian Tribe 401 Certification Requirements
2. Table 1: Supporting Information for Certification Conditions

CC:

Daniel Delgado, USACE, [daniel.i.delgado@usace.army.mil](mailto:daniel.i.delgado@usace.army.mil)  
401 Notifications, USACE, [SPA-RD-CO@usace.army.mil](mailto:SPA-RD-CO@usace.army.mil)  
Steven Crosson, USACE, [steven.b.crosson@usace.army.mil](mailto:steven.b.crosson@usace.army.mil)  
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**Southern Ute Indian Tribe (SUIT)  
401 Water Quality Certification Requirements**

## **SUIT Clean Water Act Section 401 Certification Procedures for Nationwide Permits, Regional General Permits, and Individual Section 404 Permits Issued by the U.S. Army Corps of Engineers**

### **Article 4-106. Certification Requirements**

(1) The following requirements shall apply to all certifications unless specifically authorized by the 401 certification issued by the Department:

- (a) A water quality certification shall require the project owner and operator to notify the Division Head of all changes in the project subsequent to certification.
- (b) A water quality certification shall not be transferable without the written approval of the Division Head.
- (c) Authorized representatives from the Department shall be permitted to enter upon the site where the construction activity or operation of the project is taking place for purposes of inspection of compliance with BMPs and certification conditions.
- (d) In the event of any changes in control or ownership of facilities where the construction activity or operation of the project is taking place, the successor shall be notified in writing by their predecessor of the existence of the BMPs and certification conditions. The permittee shall provide a copy of such notification to the Division.
- (e) If the permittee discovers that certification conditions are not being implemented as designed, or are not operating or functioning as designed, or if there is an exceedance of water quality standards despite compliance with the certification conditions by the permittee, the permittee shall verbally notify the Division of such failure or exceedance within two working days of becoming aware of the same. Within ten working days of such notification, the permittee shall provide to the Division, in writing, the following:
  - i. In the case of the failure to comply with the certification conditions, a description of (i) the nature of such failure, (ii) any reasons for such failure, (iii) the period of non-compliance, and (iv) the measures to be taken to correct such failure to comply; and
  - ii. In the case of the exceedance of water quality criteria, (i) an explanation, to the extent known after reasonable investigation, of the relationship between the project and the exceedance, (ii) the identity of any other known contributions to the exceedance, and (iii) a proposal to modify the certification conditions so as to remedy the contribution of the project to the exceedance.
- (f) Any anticipated change in discharge location, quantities, or composition associated with the project must be reported to the Division by submission of a written notice by the permittee no less than ten days before the change. If the change is determined to be significant, the permittee will be notified within ten days, and the change will be acknowledged and approved or disapproved.
- (g) Any diversion from or bypass of facilities necessary to maintain compliance with the terms and conditions herein is prohibited, except (i) where unavoidable to prevent loss of life or severe property damage, or (ii) where excessive storm drainage or runoff would damage any facilities

necessary for compliance with limitations and prohibitions herein. The Division shall be notified immediately in writing of each such diversion or bypass.

(h) At least 5 days before commencement of a project in a watercourse, which the Division has certified, or conditionally certified, the permittee shall notify the Division.

(i) Immediately upon discovery of any spill or other discharge to waters of the United States not authorized by the applicable license or permit, the permittee shall notify the Division.

(j) Construction operations within watercourses and water bodies shall be restricted to only those project areas specified in the federal license or permit.

(k) No construction equipment shall be operated below the existing water surface.

(l) Work should be carried out diligently and completed as soon as practicable. To the maximum extent practicable, discharges of dredged or fill material shall be restricted to those periods when impacts to designated uses are minimal.

(m) The project shall incorporate provisions for operation, maintenance, and replacement of BMPs to assure compliance with the conditions identified in this section, and any other conditions placed in the permit or certification. All such provisions shall be identified and complied with in an operation and maintenance plan which will be retained by the project owner and available for inspection within a reasonable timeframe upon request by any authorized representative of the Division.

(n) The use of chemicals during construction and operation shall be in accordance with the manufacturers' specifications. There shall be no excess application and introduction of chemicals into waters of the United States.

(o) All solids, sludges, dredged or stockpiled materials and all fuels, lubricants, or other toxic materials shall be controlled in a manner so as to prevent such materials from entering waters of the United States.

(p) All seed, mulching material and straw used in the project shall be certified weed-free.

(q) Discharges of dredged or fill material in excess of that necessary to complete the project are not permitted.

(r) Discharges to waters of the United States not identified in the license or permit and not certified in accordance therewith are not allowed.

(s) No discharge shall be allowed which causes non-attainment of federal or tribal narrative water quality or biological criteria.

(t) Before any equipment touches the water, the project proponent must provide to the Division:

(i) a certification that (a) the equipment has not been used in waters with the possibility of aquatic nuisance species infestation and (b) the equipment has been thoroughly decontaminated using water that is heated to a temperature necessary to kill aquatic nuisance species,

(ii) evidence that the equipment has passed a Colorado Parks and Wildlife invasive species inspection, or

(iii) a certification in a form that is acceptable to the Division, signed by a third-party consultant, certifying that the equipment has undergone a waters of the United States-specific preventative decontamination using water that is heated to a temperature necessary to kill aquatic nuisance species.

(2) Best Management Practices.

(a) BMPs are required for all projects for which Division certification is issued except for section 402 permits. Project proponents must select and propose BMPs to the Division to be employed in their project.

(b) All certification requests for certifications which require BMPs shall include a map of project location, a site plan, and a listing of the selected BMPs chosen for the project. At a minimum, each project must provide for the following:

i. Permanent erosion and sediment control measures that shall be installed at the earliest practicable time consistent with good construction practices and that shall be maintained and replaced as necessary throughout the life of the project.

ii. Temporary erosion and sediment control measures that shall be coordinated with permanent measures to assure economical, effective, and continuous control throughout the construction phase and during the operation of the project.

**Table 1: Supporting Information for Certification Conditions**

<b>Numbered Condition</b>	<b>Why the condition is necessary to assure the activity will comply with water quality requirements</b>	<b>Citation that authorizes the condition</b>
<b>Condition 1, 6</b>	This condition is necessary to ensure that construction site operators are aware of and abide by Tribal 401 certification conditions, Tribal Certification Requirements, Nationwide Permit 18 and its General Conditions, as well as applicable Regional Conditions to Nationwide Permits in the State of Colorado.	SUIT 401 Certification Requirements 4-106(1)(a)-(d)
<b>Conditions 2, 4, 5</b>	These conditions are necessary to ensure water quality is not degraded by toxic pollutants in toxic amounts, raw materials, oil, grease, gasoline, sediment, soil, or construction materials.	40 CFR 230.10(c);40 CFR 230.10(d); 40 CFR 230.71; 40 CFR 230.75; SUIT 401 Procedures  Sections 4-106(1)(e)-(g), 4-106(1)(i), 4-106(1)(o)-(s), 4-106(2)(a)-(b)
<b>Conditions 3, 4</b>	These conditions are necessary to protect water quality because it ensures that the project proponent is using planning and construction practices that will maintain the aquatic resource functions and values. Monitoring for at least three growing seasons, or until replanted areas meet monitoring success criteria will provide an adequate indication that the restoration effort is able to demonstrate restoration is successful. This condition is necessary to ensure minimization of adverse effects on plants and animals and to preserve water quality benefits provided by vegetation in riparian and wetland vegetation, including protecting wildlife dependent on aquatic ecosystems. This condition is necessary to sustain aquatic resource functions and value characteristics ( <i>e.g.</i> , ensure minimization of potential adverse impacts on the aquatic ecosystem that often occurs through the placement and installation of hard armoring along streambanks), to measure the progress of wetland revegetation, and to ensure that non-native and invasive species do not become established. Revegetation with natives and stockpiling of weed-free topsoil are restoration techniques that minimize adverse impacts of potential point source discharges. Revegetation, of areas denuded by the discharge, with natives and stockpiling of weed-free topsoil are	40 CFR 230.10(d); 40 CFR 230.70; 40 CFR 230.75; SUIT WQS Sections 6.1.1, 6.1.3, 6.1.6, 6.1.8, 7.1, 7.2, 13.1; SUIT 401 Procedures Sections 4-106(1)(e)-(g), 4-106(1)(i), 4-106(1)(o)-(t), 4-106(2)(a)-(b)

	restoration techniques that can be used to minimize adverse impacts because riparian vegetation acts as buffer to reduce the amount of sediment and pollutants that enter waterways. Native vegetation, because it is adapted to local conditions ( <i>e.g.</i> , soil types and temperature) provides this function most efficiently. Native vegetation also protects the biological integrity of waters.	
<b>Condition 5</b>	This condition is necessary to ensure water quality is not degraded by oil, grease, gasoline, or other types of fluids used to operate and maintain equipment used to complete the project. This condition also helps protect the water quality and native biology of the impacted waters by preventing the spread of invasive or nuisance species.	40 CFR 230.10(c)-(d); 40 CFR 230.70; 40 CFR 230.71; 40 CFR 230.72; 40 CFR 230.74; SUIWQS Sections 6.1.1, 6.1.2, 6.1.8, 7.1, 7.2, 13.1; SUIWQS 401 Procedures Sections 4-106(1)(e)-(g), 4-106(1)(i), 4-106(1)(o)-(s), 4-106(2)(a)-(b)