



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

JOINT PUBLIC NOTICE

Action No.:	SPA-2016-00034-ABQ
Action Title:	Letter of Permission NM-2
Applicable Area:	State of New Mexico
Effective Date:	September 12, 2016

Regulatory Division
New Mexico/Texas Branch
U.S. Army Corps of Engineers, Albuquerque District
4101 Jefferson Plaza, Northeast
Albuquerque, New Mexico 87109

**FINAL LETTER OF PERMISSION PROCEDURE UNDER SECTIONS 404 and 401
OF THE CLEAN WATER ACT (33 USC 1344) and SECTION 10 OF THE RIVERS AND
HARBORS ACT OF 1899 (33 USC 403)
for EXCAVATION ACTIVITIES**

Interested parties are hereby notified that, in accordance with Title 33 Code of Federal Regulations (CFR) Part 325.2(e), published in the Federal Register on November 13, 1986, the Albuquerque District of the U.S. Army Corps of Engineers (Corps) has issued a Letter of Permission (LOP) procedure for authorizing the work described herein, within the state of New Mexico. The purpose of this procedure is to expedite Section 404 and Section 10 authorization for the activities described below when they would not pose substantial adverse individual or cumulative impacts on the aquatic environment. Each LOP issued under this LOP procedure will include the general conditions identified herein by reference and, as appropriate, may include case-specific special conditions intended to protect the environment, including natural and cultural resources. Work that does not comply with the terms and conditions of the LOP may require authorization by standard individual permit. However, compliance with this proposed LOP procedure, including the general conditions, does not guarantee authorization of the work by LOP. Work or structures that would have unacceptable impacts on the public interest are not authorized. Activities requiring Department of the Army authorization that are not specifically covered by this LOP are prohibited unless authorized by a separate permit.

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LOCATION OF WORK: This LOP procedure shall apply to work in all waters of the U.S., including designated navigable waters, located within the State of New Mexico.

PROPOSED CATEGORIES OF ACTIVITIES: Work authorized by LOP under this procedure is limited to discharges of dredged or fill material associated with excavation activities in waters of the U.S., including designated navigable waters.

The Categories of Activities that may be authorized by LOP under this procedure are as follows:

Category A: Returning Engineered Projects to Original Design: Excavation activities associated with returning engineered projects or facilities to the original designed or as-built physical characteristics (e.g., depth, width, length, location, configuration, or design flood capacity, etc.). Note that stormwater management facilities that are determined to be waste treatment systems under 33 CFR 328.3(a)(8) are not waters of the U.S., and maintenance of these waste treatment systems generally does not require a Section 404 permit.

Category B: Removing or Reducing Flood Hazards in Disturbed Watersheds: Removal of sediment and debris that would lower the risk of flood impacts in watersheds damaged by wildfire and other significant disturbances such as flooding. Activities authorized by LOP under this procedure and category include, restoring flow conveyance/channel geometry to pre-flood event dimensions by removing accumulated sediment and debris, associated sloping and minor stabilization of vertical banks to prevent collapse, and temporary access roads associated with the removal activity. Activities are limited to an area of no more than 5 acres of waters of the U.S. and designated navigable waters, unless this limit is waived in writing by the District Engineer.

Category C: Providing for Protection of Existing Infrastructure: Removal of debris, trash, flood-deposited unrooted woody and herbaceous vegetation, fallen trees, dead trees which are in danger of falling in or across a waterbody, and branches and associated debris which reduces waterbody capacity and would result in accelerated erosion and/or damage to an existing structure. Removal of silt, sand or sediment that obstructs flow in the immediate vicinity of a structure to the approximate dimensions that existed when the structure was built.

Category D: Other Sediment and Debris Removal: Removal of sediment and debris in ephemeral and intermittent streams, that is not associated with an engineered project or facility, or within a disturbed watershed, that is necessary for alleviating flood hazards or other adverse impacts on the aquatic or human environment.

Category E: Sand, Gravel and Aggregate Mining: Excavation activities associated with existing sand, gravel, and aggregate mining; or new sand, gravel, and aggregate mining in ephemeral streams. Mine must be registered with the State of New Mexico Mining and Minerals Division (MMD) Mine Registration Program and the U.S. Department of Labor, Mine Safety Health Administration (MSHA); and is compliance with all applicable

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federal, state and local laws and regulations. For the purposes of this LOP procedure, sand, gravel and aggregate mining is defined as operating sand and gravel pits, including dredging for or otherwise extracting sand, gravel, and aggregate; and washing, screening or otherwise preparing sand and gravel.

Impacts to waters of the U.S., including wetlands, shall be avoided or minimized through the use of practicable alternatives. Compensatory mitigation for unavoidable adverse impacts to waters of the U.S. shall be required.

ACTIVITIES NOT AUTHORIZED: The following activities shall not be authorized by LOP under this procedure:

- Work that would have substantial adverse individual or cumulative impacts on the aquatic environment or result in a substantial reduction in the reach or impair the flow or circulation of waters of the U.S.,
- Projects that would sever existing stream connection to a floodplain,
- Activities that would convert an unmanaged water body into an engineered flood management system,
- Activities that channelize or re-align a stream channel with an unaltered planform (i.e. are not channelized),
- Using excavated material to build levees,
- New sand, gravel and aggregate mining activities in waters of the U.S. and designated navigable waters other than ephemeral streams, and
- Channel bed widening that destabilizes stream banks.

WAIVERS REQUIRED: This procedure may not be used to authorize the following activities unless the District Engineer issues a case-specific waiver based upon a written determination that the work would be minor; would not have significant adverse individual or cumulative impacts to waters of the U.S., designated navigable waters, or environmental values; and should encounter no appreciable opposition.

- Disposal of material excavated under authority of an LOP into waters of the U.S. and designated navigable waters.
- Any reduction or increase in pre-construction bankfull width or depth of perennial streams or negatively alter the flood control capacity of perennial streams.
- Removal of vegetation from within a stream channel except that shallow rooted upland-type vegetation, snags, and woody fire debris may be removed from within the stream channel to mitigate hazards.
- Category B activities that would result in more than 5 acres of impact in waters of the U.S. and designated navigable waters.

APPLICATION PROCEDURES: An application for authorization of work under this LOP procedure must include: a written description of the entire project as described below; proposed work schedule; photos of the proposed project area; and name, address, telephone number, and electronic mail address, if available, of the applicant. The information may be submitted on an

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Application for Department of the Army Permit form (ENG Form 4345) or in any other form convenient to the applicant. The description of the project must include at least the following information, as applicable:

1. A vicinity map showing the location of all excavation activities within the entire project, including all disposal sites;
2. Plan, profile, and typical cross-section views of the proposed work;
3. A description of the dimensions (length, width and depth) of the activity area; type, amount, and composition of the material to be removed, or used as temporary fill; type of equipment to be used; and location of all permanent and temporary fills and excavations that would be located in designated navigable waters and waters of the U.S., including adjacent wetlands. This information can be submitted in spreadsheet format and must identify the total permanent and temporary impacts of the project. A description (e.g., location information, site type, etc) of each disposal site shall also be included;
4. If potential wetlands are in or adjacent to the proposed project area, a wetland delineation utilizing the appropriate Corps Wetland Delineation Regional Supplemental Guidance shall be performed and submitted with the application;
5. A statement disclosing whether or not any cultural resources protected under the National Historic Preservation Act might be affected by, or found in the vicinity of, the proposed project;
6. A statement disclosing whether or not any species listed as threatened or endangered under the Endangered Species Act might be affected by, or found in the vicinity of, the proposed project. Direct coordination with the U.S. Fish and Wildlife Service (USFWS) concerning the potential impact of the entire project on threatened and endangered species is strongly encouraged;
7. An explanation describing how impacts to waters of the U.S. are being avoided and minimized on the project site. Also provide a description of how impacts to waters of the U.S. will be compensated for (see <http://www.spa.usace.army.mil/Missions/RegulatoryProgramandPermits/Mitigation.aspx> for information on compensatory mitigation), or an explanation of why compensatory mitigation should not be required for those impacts;
8. In cases where the applicant is seeking a waiver from the District Engineer in accordance with the terms of this procedure, the application shall include a written request for a waiver(s) and documentation that the proposed work would be minor; would not have significant individual or cumulative impacts to waters of the U.S., designated navigable waters, or environmental values; and should encounter no appreciable opposition; and

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9. Additional application materials may be required depending on which Category of Activities the applicant is seeking authorization under. See General Conditions for more information about specific application material requirements.

These application procedures may also be used for work proposed in designated navigable waters under Section 10 of the Rivers and Harbors Act of 1899.

GENERAL CONDITIONS: In addition to limitations discussed in the Proposed Categories of Activities, projects authorized by LOP under this procedure are subject to the following general conditions:

General Conditions Applicable to Specific Categories of Activities

Category A General Conditions (Returning Engineered Projects to Original Design):

1. The applicant must provide documentation in the application materials of original or as-built design characteristics for the engineered project or facility.
2. The applicant shall demonstrate in the application how the proposed work will restore the engineered project or facility to original or as-built design characteristics.

Category B General Conditions (Removing or Reducing Flood Hazards in Disturbed Watersheds):

1. The applicant must provide documentation in the application materials which verifies the proposed work will not increase pre-event channel or reservoir capacity. (Note: an exception to this limit can be granted if the applicant demonstrates the water body had reduced flow capacity due to development or other encroachments). In areas where no pre-event data is available, the applicant must provide a basis for determining the pre-event channel or reservoir capacity.
2. The applicant must provide documentation in the application materials for the watershed disturbance(s) and demonstrate how the proposed project would reduce or remove flood hazards in the application materials. The documentation must also identify property or infrastructure subject to flood hazard.
3. If a waiver of the 5 acre limit is requested by the applicant, the applicant must provide documentation in the application materials that demonstrates how the proposed project would not result in significant adverse individual or cumulative impacts on the aquatic environment.

Category C General Conditions (Providing for Protection of Existing Infrastructure):

1. The applicant must demonstrate in the application materials how the proposed activity would reduce or eliminate accelerated erosion and/or damage to an existing structure.

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2. The applicant must provide documentation in the application materials which verifies the proposed work will restore the area to the approximate dimensions that existed when the structure was built.

Category D General Conditions (Other Sediment and Debris Removal):

1. The applicant must demonstrate how the proposed activity will alleviate flood hazards or other adverse impacts on the aquatic or human environment in the application materials.

2. Work shall only be conducted in dry conditions.

Category E General Conditions (Sand, Gravel and Aggregate Mining):

1. The applicant must provide documentation of registration with the State of New Mexico MMD Mine Registration Program and the U.S. Department of Labor, MSHA for existing mines or documentation that application for registration in these programs has been submitted to the appropriate organizations with the application for authorization under this LOP procedure.

2. Applications for new sand, gravel and aggregate mining shall only be authorized in ephemeral streams under this LOP procedure.

General Conditions Applicable to All Categories of Activities

1. In issuing a LOP, the Department of the Army has relied in part on the information provided by the permittee. If that information proves to be false, incomplete, or inaccurate, the LOP may be modified, suspended, or revoked, in whole or in part.

2. Projects authorized by LOP shall comply with all terms and conditions herein. Failure to abide by such conditions invalidates the authorization and may result in a violation of the law, requiring restoration of the site or other remedial action.

3. An LOP should not be considered as an approval of the design features of any authorized project or an implication that such is considered adequate for the purpose intended; a Department of the Army permit merely expresses the consent of the Federal Government to conduct the proposed work insofar as public rights are concerned. LOPs do not authorize any damage to private property, invasion of private rights, or any infringement of federal, state or local laws or regulations. Nor do they relieve the permittee from the requirement to obtain a local permit from the jurisdiction within which the project is located and to address all non-encroachment restrictions within a regulatory floodway of such local jurisdiction as identified by the Federal Emergency Management Agency.

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4. This LOP procedure or individual authorizations issued using this procedure may be modified, suspended, or revoked, in whole or in part, if it is determined by the District Engineer that the individual or cumulative impacts of the work are found to be substantial or are contrary to the public interest.

5. Any LOP issued under this procedure and any modification, suspension or revocation of the LOP authorization shall not be the basis for any claim for damages against the U.S.

6. An LOP does not authorize the interference with any existing or proposed Federal project, and the permittee shall not be entitled to compensation for damage or injury to the activities authorized herein which may result from existing or future operations undertaken by the U.S. in the public interest.

7. Permittees shall make every reasonable effort to conduct the activities authorized by LOP in a manner that will minimize any adverse impact of the work on water quality, fish and wildlife, and the natural environment, including adverse impacts to migratory waterfowl breeding areas, spawning areas, riparian areas and native vegetation, particularly mast-producing trees and shrubs such as juniper, pinyon pines, and oaks.

8. Permittees shall avoid and minimize discharges of dredged or fill material into waters of the U.S. through the use of practicable alternatives.

9. The District Engineer will consider the following factors when determining appropriate and practicable mitigation necessary to ensure that adverse effects on the aquatic environment are minimal:

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

b) Mitigation in all its forms (avoiding, minimizing, or compensating for resources losses) will be required to the extent necessary to ensure that the adverse effects to the aquatic environment are minimal.

c) Compensatory mitigation at a minimum one-for-one ratio will be required for all aquatic resource losses that exceed 0.1-acre, unless the District Engineer determines in writing that either some other form of mitigation would be more environmentally appropriate or that the adverse effects of the proposed activity are minimal and, therefore, provides a project-specific waiver of this requirement. For aquatic resource losses of 0.1-acre or less, the District Engineer may determine on a case-by-case basis that compensatory mitigation is required to ensure that the activity results in minimal adverse effects on the aquatic environment.

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Compensatory mitigation projects provided to offset losses of aquatic resources must comply with the applicable provisions of 33 Code of Federal Regulations Part 332. Where compensatory mitigation is required, it shall only be required once for impacts associated with the approved maintenance activity.

10. Permittees shall allow the District Engineer and his authorized representative(s) to make periodic inspections of project sites at any time deemed necessary to ensure that the activity being performed by LOP is in accordance with the terms and conditions prescribed herein.

11. The impact of activities authorized by LOP using this procedure on cultural resources shall be taken into account by the Corps prior to the initiation of work. Cultural resources include, but are not limited to, prehistoric and historic archeological sites, artifacts, historic buildings and structures, and areas of cultural interest (e.g. Traditional Cultural Properties). If cultural resources are determined to be in the permit area, the applicant shall not conduct any work that would affect the cultural resource until the requirements of 33 CFR Part 325, Appendix C, have been satisfied. If a previously unknown cultural resource is encountered during work authorized by an LOP issued under this procedure, the permittee shall immediately notify the Corps and avoid further impact to the cultural resource until the Corps has verified that the requirements of 33 CFR Part 325, Appendix C, have been satisfied.

12. No authorization will be granted for an activity that is likely to jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation, as identified under the Endangered Species Act, or for an activity that is likely to destroy or adversely modify the critical habitat of such species. Applicant's shall notify the District Engineer if any listed species or critical habitat might be affected by, or is in the vicinity of, the project and shall not begin work until notified by the District Engineer that the requirements of the Endangered Species Act have been satisfied and that the activity is authorized.

13. Discharges of dredged and fill material into waters of the U.S. shall not consist of unsuitable material (e.g., trash, debris, waste products, asphalt, car bodies, tires, etc.) and must be free from toxic pollutants in toxic amounts (see Section 307 of the Clean Water Act).

14. Permittees shall submit a site restoration plan for all disturbed areas outside of the footprint of the authorized excavation and shall remove all temporary fills in their entirety within 5 days of project completion. The restoration plan shall include, where appropriate, planting with native species.

15. Permittees shall coordinate all construction activities in federally maintained channels and/or waterways for required setback distances with the Corps prior to application for a permit.

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16. The project shall not significantly disrupt the movement of those species of aquatic life indigenous to the water body or those species that normally migrate through the project area.
17. Permittees shall properly maintain any structure or fill to ensure public safety.
18. Permittees shall disclose in the application and address any potential adverse impacts of the discharge of dredged or fill material to public water supply intakes.
19. To the maximum extent practicable, permitted work shall not restrict or impede the passage of normal or expected high flows.
20. Authorizations issued under this LOP procedure do not authorize work in a park, wildlife management area, refuge, sanctuary, or similar area administered by a federal, state or local agency without that agency's approval.
21. Each permittee who receives a LOP from the Corps using this procedure must provide a signed certification documenting completion of the authorized activity and any required compensatory mitigation. The success of any required permittee-responsible mitigation, including the achievement of ecological performance standards, will be addressed separately by the District Engineer. The Corps will provide the permittee the certification document with the LOP. The certification document will include:
 - a) A statement that the authorized work was done in accordance with the LOP authorization, including any general or activity-specific conditions;
 - b) A statement that the implementation of any required compensatory mitigation was completed in accordance with the permit conditions. If credits from a mitigation bank or in-lieu fee program are used to satisfy the compensatory mitigation requirements, the certification must include the documentation required by 33 CFR 332.3(I)(3) to confirm that the permittee secured the appropriate number and resource type of credits;
 - c) Photographs of the authorized work area taken within 5 days after work is completed; and
 - d) The signature of the permittee certifying the completion of the work and mitigation.

22. Best Management Practices:

- a) Retain Channel Roughness. Where appropriate and practicable, objects that create roughness in the stream, such as riparian vegetation and boulders, should be left in the channel to slow water and reduce damaging effects of erosion.

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Vegetation within the stream provides hydraulic roughness which reduces flow velocity and severity and can help absorb flood flows.

b) Maintain Floodplain Connectivity. Where appropriate, undeveloped floodplain areas can help absorb flood flows and should be planned for in managing flood flows. By allowing flood flows to overtop embankments in the right locations, flows will be diverted, dissipated, detained, and decreased.

c) Efforts must be taken to avoid removing natural structural materials that protect or armor the stream bed and banks because such removal may expose material that is more susceptible to erosion and headcuts.

d) Efforts must be taken to reduce adverse impacts and limit disturbance to streambanks by minimizing stream access points and returning all access points to pre-construction conditions.

e) Soil Erosion and Sediment Controls. Temporary soil erosion and sediment controls must be used and maintained in effective operating condition during construction.

f) Management of Water Flows. Work in the stream channel should be limited to periods of no or low flow unless waived in writing by the Corps. In the event that storm flows or runoff events are forecasted during construction, work in the channel must cease and measures must be taken to remove temporary piles within the channel.

g) Permittees shall place all heavy equipment working in wetlands on mats, or take other measures to minimize soil disturbance.

23. Water Quality Certification. In accordance with Section 401 of the Clean Water Act, certification of compliance with state or tribal water quality standards by the state or tribal water quality certifying authority is required for any discharge of dredged and fill material into waters of the U.S. under Section 404 of the Clean Water Act. Compliance with the attached water quality certifications or individual water quality certification, when issued by the certifying authority, as described below, is a general condition of LOPs issued under this procedure:

a. For Permittees on Non-tribal Land in New Mexico – Appendix A New Mexico Environment Department, Sec. 401 Conditional Water Quality Certification for this LOP procedure issued on August 4, 2016.

b. For Permittees on Sandia Pueblo lands – Appendix B Sandia Pueblo, Sec. 401 Conditional Water Quality Certification for this LOP procedure issued June 21, 2016.

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c. For Permittees on other tribal lands - Water quality certification has not been issued by any other authority on tribal lands, including EPA; therefore, permittees must obtain individual water quality certification, or a waiver thereof, from the appropriate certifying authority and provide a copy of individual water quality certification or waiver to the Corps prior to authorization by LOP under this procedure.

24. Notification to Tribes. Prospective permittees conducting work on tribal lands in the State of New Mexico must notify and obtain permission from the tribe prior to conducting any activities on their lands. Prospective permittees should contact the appropriate tribal administration office for more information.

25. To the maximum extent practicable, prospective permittees shall implement best management practices to prevent the growth and spread of invasive species in the project area. Efforts shall include planting disturbed areas with native species, where appropriate; reducing the disturbance footprint to the minimal amount of area needed to accomplish the activity; cleaning of equipment off-site prior to commencing authorized activities on-site; and other appropriate methods.

OTHER AUTHORIZATIONS: The permittees are responsible for obtaining any additional federal, state, or local permits that may be required, which include, but are not limited to:

1. Any work on lands or in waters under the jurisdiction of any river authority or other operating agency may require a permit from that agency.

2. Projects involving government property on Corps reservoirs will require submission of detailed design information to the reservoir manager and Corps approval of the proposed activity, including a real estate consent to easement.

3. Activities within a 100-year floodplain may require a permit from the local Floodplain Administrator. In addition, evidence that the project meets non-encroachment restrictions in regulatory floodways may be required.

4. Storm water runoff from construction activities that result in a disturbance of one or more acres, or are a part of a common plan of development that will result in the disturbance of one or more acres, must be controlled and authorized under Environmental Protection Agency's National Pollutant Discharge Elimination System (NPDES) General Permit for Discharges from Construction Activities. A copy of the general permit, application (notice of intent), and additional information is available at: <http://water.epa.gov/polwaste/npdes/stormwater/Applying-for-Coverage-under-the-Construction-General-Permit-CGP.cfm>

5. Proposed activities subject to authorization under this permit and affecting an international water in New Mexico, including the Rio Grande, and all tributaries of the Rio Grande, may require authorization from the International Boundary and Water Commission, The Commons, Building C, Suite 310, 4171 North Mesa Street, El Paso, Texas 79902.

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6. Activities outside the Corps permit area that may affect a federally listed endangered or threatened species or its critical habitat could require permits from the USFWS to prevent a violation of the Endangered Species Act under Section 9.

EVALUATION PROCEDURES: Prior to authorizing any project, the Corps shall determine if the proposed work cannot be authorized by any other valid Corps general permit without the requirement for preconstruction notification, if there is more than a substantial adverse individual or cumulative impact on the aquatic environment, conduct a public interest evaluation and determine mitigation requirements, if any, for the proposed work. The Corps will evaluate the proposed projects to determine if the work qualifies for authorization under this LOP procedure. Projects that qualify for authorization under this LOP procedure must meet the terms and conditions of this procedure. Generally, LOPs issued under this procedure will be valid for no more than five years. The District Engineer will consider requests for a longer permit term on a case-by-case basis.

Work cannot proceed until the Corps has issued a written LOP to the permittee. The Corps may add special conditions to the LOP to ensure that adverse environmental impacts are not substantial, or may determine that a standard individual permit is required.

The Corps will evaluate this LOP procedure every five years from the date of issuance to determine if any changes need to be made or if the procedure is still needed. If the Corps determines that changes to this LOP procedure are needed or required, a new public notice will be issued with a 30 day comment period to all interested parties notifying them of the proposed changes.

This LOP procedure shall become effective on the date of the signature of the District Engineer, or their authorized representative.

Allan Steinle
Regulatory Division Chief
Albuquerque District

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APPENDIX A
NEW MEXICO ENVIRONMENT DEPARTMENT
SEC. 401 WATER QUALITY CERTIFICATION

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*CESPA-RD
SPA-2016-00034-ABQ*



SUSANA MARTINEZ
Governor

JOHN A. SANCHEZ
Lt. Governor

NEW MEXICO ENVIRONMENT DEPARTMENT

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RYAN FLYNN
Cabinet Secretary
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Deputy Secretary

August 4, 2016

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

SUBJECT: Clean Water Act Section 401 Water Quality Certification, NMED SWQB File 1302, Letter of Permission NM-2 (SPA-2016-0034-ABQ), New Mexico

Dear Mr. Steinle:

The New Mexico Environment Department (NMED) has examined the proposed Letter of Permission (LOP) procedure for excavation activities. The purpose of this LOP procedure is to expedite Clean Water Act (CWA) §404 authorization for certain excavation activities when they would not pose substantial adverse individual or cumulative impacts on the aquatic environment.

Certification is required by CWA §401 to ensure that the LOP is consistent with state law and complies with the state Water Quality Standards (20.6.4 NMAC), the Water Quality Management Plan/Continuing Planning Process, including Total Maximum Daily Loads (TMDLs), and the Antidegradation Policy. Pursuant to State regulations for permit certification (20.6.2.2002 NMAC), NMED issued a public notice of this activity and announced a public comment period on the Surface Water Quality Bureau's web site: (www.nmenv.state.nm.us/swqb/WQA/Notice) on May 12, 2016. The public comment period ended on June 12, 2016. No comments were received.

NMED considers the LOP to be an individual permit with "abbreviated procedures" per 33 CFR §322.2(d). NMED understands that work authorized by LOP under this procedure is limited to discharges of dredged or fill material associated with excavation activities in waters of the U.S., including navigable waters of the U.S., located within the state of New Mexico. The activities authorized under this LOP procedure are described in five broad categories.

Category A: Returning Engineered Projects to Original Design: Excavation activities associated with returning engineered projects or facilities to the original designed or as-built physical characteristics (e.g., depth, width, length, location, configuration, or design flood capacity, etc.). Note that stormwater management facilities that are determined to be waste treatment systems

under 33 CFR 328.3(a)(8) are not waters of the U.S., and maintenance of these waste treatment systems generally does not require a Section 404 permit.

Category B: Removing or Reducing Flood Hazards in Disturbed Watersheds: Removal of sediment and debris that would lower the risk of flood impacts in watersheds damaged by wildfire and other significant disturbances such as flooding. Activities authorized by LOP under this procedure and category include, restoring flow conveyance/channel geometry to pre-flood event dimensions by removing accumulated sediment and debris, associated sloping and minor stabilization of vertical banks to prevent collapse, and temporary access roads associated with the removal activity. Activities are limited to an area of no more than 5 acres of waters of the U.S. and navigable waters of the U.S., unless this limit is waived in writing by the District Engineer.

Category C: Providing for Protection of Existing Infrastructure: Removal of debris, trash, flood-deposited unrooted woody and herbaceous vegetation, fallen trees, dead trees which are in danger of falling in or across a waterbody, and branches and associated debris which reduces waterbody capacity and would result in accelerated erosion and/or damage to an existing structure. Removal of silt, sand or sediment that obstructs flow in the immediate vicinity of a structure to the approximate dimensions that existed when the structure was built.

Category D: Other Sediment and Debris Removal: Removal of sediment and debris in ephemeral and intermittent streams, that is not associated with an engineered project or facility, or within a disturbed watershed, that is necessary for alleviating flood hazards or other adverse impacts on the aquatic or human environment.

Category E: Sand, Gravel and Aggregate Mining: Excavation activities associated with existing sand, gravel, and aggregate mining; or new sand, gravel, and aggregate mining in ephemeral streams that is registered with the State of New Mexico Mining and Minerals Division (MMD) Mine Registration Program and the U.S. Department of Labor, Mine Safety Health Administration (MSHA); and is compliance with all applicable federal, state and local laws and regulations.

Conditional 401 Certification of LOP:

The following conditions are necessary to assure compliance with the applicable provisions of the Clean Water Act §§301, 302, 303, 306, and 307 and with applicable requirements of State law. Compliance with the terms and conditions of the permit and this certification will provide reasonable assurance that the permitted activities will be conducted in a manner which will not violate applicable water quality standards and the water quality management plan and will be in compliance with the antidegradation policy. The State of New Mexico certifies that the discharge will comply with these provisions and requirements upon inclusion of the following conditions in the permit:

1. The NMED Surface Water Quality Bureau requires notification of planned activities in surface waters of the state prior to USACE authorization. This notification is necessary to ensure that the conditions provided in this certification are sufficient to protect water

quality. This condition can be met by providing NMED the information submitted to the USACE as described in the Application Procedures for the LOP. For projects in flowing water or those with the potential to have more than minimal adverse impacts on the aquatic environment, NMED may require additional information such as: 1) a description of potential adverse water quality impacts (including turbidity, which is a measurement of the amount of suspended material in water, as well as oil, grease, or hydraulic fluid, and all other potential contaminants); 2) a description of methods to be used to prevent water quality impacts (including detailed Best Management Practices, which must be designed to minimize sediment, oil, grease, and other pollutants from entering the water); 3) any surface water monitoring procedures; and 4) for any unavoidable surface water impacts, conceptual mitigation plans.

2. Fuel, oil, hydraulic fluid, lubricants, and other petrochemicals must not be stored within the 100-year floodplain and must have a secondary containment system capable of containing twice the volume of the product. Appropriate spill clean-up materials such as booms and absorbent pads must be available on-site at all times during maintenance.
3. All heavy equipment used in the project area must be pressure washed and/or steam cleaned before the start of the project and inspected daily for leaks. A written log of inspections and maintenance must be completed and maintained throughout the project period. Leaking equipment must not be used in or near surface water. Refuel equipment at least 100 feet from surface water.
4. Work in ephemeral and intermittent stream channels should be limited to periods of no flow when practicable. Work in intermittent and ephemeral channels during low-flow periods and work in all perennial streams must have prior approval by the NMED. Requests for such approval must describe planned methods to minimize turbidity and to avoid spills. Releases from dams must be incorporated into the work schedule to avoid working in high water.
5. Temporary crossings should be restricted to a single location and perpendicular to and at a narrow point of the channel to minimize disturbance. If flowing water is present, heavy equipment must be operated from the bank or work platforms and not enter surface water, unless otherwise approved in writing by NMED. Heavy equipment must not be parked within the stream channel. Unless otherwise approved by NMED, directional borehole (horizontal) drilling must be used instead of open-cut trenching for the placement of utility lines or other buried structures crossing the channel. Requests for such approval of deviations must include a description of planned methods to minimize turbidity, to avoid spills, and to salvage any drilling equipment that cannot be withdrawn from beneath the channel.
6. Unless otherwise approved by NMED, flowing water must be temporarily diverted around the work area, but remain within the existing channel to minimize erosion and turbidity and to provide for aquatic life movement. Diversion structures must be non-erodible, such as sand bags, water bladders, concrete barriers, or channel lined with

geotextile or plastic sheeting. Dirt cofferdams are not acceptable diversion structures. Requests for such approval of deviations must include descriptions of planned methods to minimize turbidity, to avoid spills, and to provide a continuous zone of passage for aquatic life through or around the project area in which the water quality meets all applicable criteria including turbidity.

7. All asphalt, concrete, drilling fluids and muds, and other maintenance materials must be properly handled and contained to prevent releases to surface water. Poured concrete must be fully contained in mortar-tight forms and/or placed behind non-erodible cofferdams to prevent contact with surface or ground water. Appropriate measures must be used to prevent wastewater from concrete batching, vehicle wash-down, or aggregate processing entering the watercourse. Dumping of any waste materials in or near watercourses is prohibited.
8. Protective measures must be used to prevent blast, ripped or excavated soil or rock from entering surface water. Dewatering discharges are to be uncontaminated and include all practicable erosion control measures and turbidity control techniques.
9. Work or the use of heavy equipment in wetlands must be avoided or minimized unless the impacts are to be mitigated. Maintenance activities in wetlands must be scheduled during low water or winter (frozen) conditions. Unless otherwise approved by NMED, wetland crossings must be restricted to a single location and constructed perpendicular to and at a narrow point of the wetland. Requests for such approval of deviations must include descriptions of planned methods to minimize turbidity and avoid spills. Wetland vegetation and excavated material (top soil) must be retained and reused to improve seeding success. Permeable fills should be designed and installed when practicable, and flows to wetlands must not be permanently disrupted. Fill materials must be clean and consist of coarse material with minimal fines. Ditches or culverts in wetlands must have properly designed, installed and maintained siltation or sedimentation structures at the outfall.
10. During repair, demolition, treatments, or cleaning activities of bridges or associated structures (e.g., deck, pier, abutment, and wing walls), materials must be kept out of the channel. Before removing a bridge or related structures, impermeable containment material (e.g., plastic sheet, canvas, tarpaulins or other catchment devices) must be secured under the bridge and on the banks to capture any debris that may fall into the stream channel. Sandblasting operations must include vacuum systems or the bridge and associated structures must be completely bagged to collect all lead paint and concrete debris. Any debris that falls onto the containment area or channel must be properly disposed in accordance with the New Mexico Solid Waste Regulations (20.9.1 NMAC). Applicable Material Safety Data Sheets of water repellants and surface finish treatments must be maintained at the project area.
11. Bridges, culverts and structures at stream crossings must be properly designed, installed and maintained to allow passage of sediment, bedload, and woody debris, and to prevent

erosion problems or diversion of the stream from its natural channel. Unless otherwise approved by NMED, projects must not alter the natural stream channel size or shape (width, depth, gradient, direction or meander pattern), streamflow velocity (sediment transport rates), or water flow capacity. Requests for such approval of deviations must include descriptions of planned methods to minimize turbidity and avoid spills, as well as to stabilize modified hydraulic geometry.

12. Culverts at stream crossings must be designed and installed to prevent upstream headcutting, downstream channel incision, and erosion of the stream banks or the crossing. Culverts should be designed to pass 100-year flow events. Culvert design must allow for the passage of fish and other aquatic organisms. The road grade at culvert stream crossings must prevent the diversion of the stream from its channel in the event of culvert failure due to plugging or the exceedance of capacity. If the flow overtops the road, it must return to its natural channel instead of running down the road into a new channel.
13. Excavated trenches must be backfilled and compacted to match the bulk density and elevation of the adjacent undisturbed soil.
14. Unless otherwise approved by NMED, all areas adjacent to the watercourse that are disturbed because of the project, including temporary access roads, stockpiles and staging areas, must be restored to pre-project elevations. Disturbed areas outside the channel that are not otherwise physically protected from erosion must be reseeded or planted with native vegetation. Stabilization measures including vegetation are required at the earliest practicable date, but by the end of first full growing season following maintenance. Native woody riparian and/or wetland species must be used in areas that support such vegetation. Measures to prevent damage by beavers, wildlife, or livestock are required until trees are established. Plantings must be monitored and replaced for an overall survival rate of at least 80 percent by the end of the second growing season. Once established, native plants adapted to the site must be able to thrive with no supplemental water or treatment. Requests for approval of deviation from this condition must include descriptions of planned methods to minimize turbidity and avoid spills, as well as final grading plans.
15. A copy of this Certification must be kept at the project site during all phases of maintenance. All contractors involved in the project must be provided a copy of this certification and made aware of the conditions prior to starting maintenance.

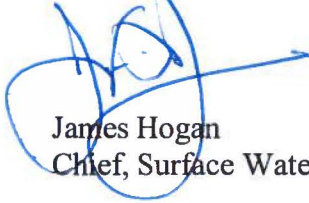
Allan E. Steinle

August 4, 2016

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NMED reserves the right to amend or revoke this certification if such action is necessary to ensure compliance with the State's water quality standards and water quality management plan. If you have any questions regarding this conditional §401 Water Quality Certification, please feel free to contact Chris Canavan of my staff at 575-915-1172.

Sincerely,



James Hogan
Chief, Surface Water Quality Bureau

JH:cmc

xc: Tom Nystrom, Wetlands, Region 6, USEPA
Matthew Wunder, New Mexico Department of Game and Fish
U.S. Fish and Wildlife Service
401 Certification File 1302

APPENDIX B
SANDIA PUEBLO
SEC. 401 WATER QUALITY CERTIFICATION

NEWS RELEASE

Francisco I. Lujan

Stuart Paisano

June 21, 2016

Kelley Allen
Regulatory Project Manager
U.S. Army Corps of Engineers
Albuquerque District
4101 Jefferson Plaza, N.E.
Albuquerque, NM 87109-3435

Re: CWA Section 401 Certification for USACE Letter of Permission for Excavation Activities NM-2 (No. SPA-2016-00034-ABQ)

Dear Ms. Allen:

This letter is in response to the U.S. Army Corps of Engineers (USACE) Letter of Permission (LOP) NM-2 (No. SPA-2016-00034-ABQ) for Excavation Activities. The purpose of this LOP procedure is to expedite CWA Section 404 authorization for work within the state of New Mexico. This LOP procedure is not supposed to pose substantial adverse individual or cumulative impacts on the aquatic environment. According to the USACE, each LOP issued under this LOP procedure will include general conditions identified but may include case-specific conditions intended to protect the environment, including natural and cultural resources. There are also several Categories of Activities that may be authorized by the LOP.

As you know, the Pueblo of Sandia has had EPA approved water quality standards (WQS) since 1993, with revisions in 2010. The WQS apply to all surface waters within the exterior boundaries of our reservation and set forth existing uses that must be protected. The Pueblo of Sandia does not waive CWA Section 401 water quality certification for the USACE Letter of Permission (LOP) NM-2 (No. SPA-2016-00034-ABQ) for Excavation Activities. Although the Pueblo of Sandia believes the conditions in the LOP procedure are protective, generally sufficient and warranted to meet the USACE requirements, the Pueblo feels it needs to take a more active approach on projects within the boundaries of the Pueblo. Therefore the Pueblo certifies CWA Section 401 water quality certification of the U.S. Army Corps of Engineers (USACE) Letter of Permission (LOP) NM-2 (No. SPA-2016-00034-ABQ) for projects on or around the Pueblo of Sandia that may affect water quality. The Pueblo of Sandia requests the following conditions (listed below) be met to expedite the process of the permittees obtaining the LOP procedure:

1. The Pueblo of Sandia be notified of any requests by each individual entity requesting a LOP for Excavation Activities within waters of the U.S., on or near the Pueblo of Sandia (within two (2) miles) or within the jurisdiction of the Pueblo of Sandia. This notification would allow the Pueblo of Sandia to review the entities project for regional conditions that may affect the Pueblo's WQS. By reviewing the project by each LOP applicant for Excavation Activities, the Pueblo of Sandia can ensure that individuals will comply with applicable provisions of Section 208(e), 301 (including 301(h) variances), 302, 303, 306, and 307 of the CWA, along with regional and specific conditions relevant to the waters of

- the Pueblo. These conditions and certifications will provide reasonable assurance that the permitted activities will not violate the Pueblo's WQS and provisions of the CWA;
2. The Pueblo of Sandia requests that the LOP for Excavation Activities procedure apply only to excavation work that falls into the Categories of Activities and that before any waivers are issued the Pueblo of Sandia is contacted;
 3. The Pueblo of Sandia requests that the work on or around the Pueblo of Sandia (within two (2) miles) and not authorized by LOP procedure for Excavation Activities be prohibited from using this CWA Section 401 water quality certification. Impacts to waters of the U.S. shall be avoided or minimized through the use of practicable alternatives. Work that would have substantial adverse impacts on the aquatic environment or cause a substantial environmental damage in waters of the U.S. shall not be authorized by LOP procedure for Excavation Activities and will have to seek other options. Any failure by LOP procedure for Excavation Activities applicant to maintain compliance with these requirements may result in revocation of the CWA Section 401 water quality certification; and
 4. To expedite the notification process, the LOP applicant for Excavation Activities should copy all the LOP information sent to or received by the USACE to the Pueblo of Sandia's Environment Department, Attention: Water Quality Manager, 481 Sandia Loop, Bernalillo, New Mexico 87004 or email sbulgrin@sandiapueblo.nsn.us, telephone (505) 771-5081 for more information. A response, if necessary, will be issued within seven (7) working days of receiving the LOP package.

We look forward to the USACE continued on environmental issues. If you have any questions or concerns, please contact Scott Bulgrin, water quality manager of my staff at 867-4533.

Sincerely:

Francisco I. Lujan
Governor

SJB/

cc: Ron Kneebone, PhD., U.S. Army Corps of Engineers, Tribal Liaison
Marcy Leavitt, U.S. Army Corps of Engineers, Regulatory Project Manager
Wally Murphy, U.S. Fish & Wildlife Service, Field Supervisor
Tom Nystrom, USEPA Region 6, Environmental Scientist
Frank Chaves, Environment Director, Pueblo of Sandia
Scott Bulgrin, Water Quality Manager, Pueblo of Sandia