



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

# FINAL PUBLIC NOTICE

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## **PUBLIC NOTICE FOR THE FINAL REGIONAL CONDITIONS IN NEW MEXICO APPLICABLE TO THE 41 NATIONWIDE PERMITS PUBLISHED IN THE FEDERAL REGISTER ON DECEMBER 27, 2021**

On December 27, 2021, the U.S. Army Corps of Engineers (Corps) published a final rule in the *Federal Register* (86 FR 73522) announcing the reissuance of 40 existing nationwide permits (NWP) and one new NWP as well as the reissuance of NWP general conditions and definitions with some modifications. These 41 NWP will go into effect on February 25, 2022, and they will expire on March 14, 2026:

- NWP 1 – Aids to Navigation
- NWP 2 – Structures in Artificial Canals
- NWP 3 – Maintenance
- NWP 4 – Fish and Wildlife Harvesting, Enhancement, and Attraction Devices and Activities
- NWP 5 – Scientific Measurement Devices
- NWP 6 – Survey Activities
- NWP 7 – Outfall Structures and Associated Intake Structures
- NWP 8 – Oil and Gas Structures on the Outer Continental Shelf
- NWP 9 – Structures in Fleeting and Anchorage Areas
- NWP 10 – Mooring Buoys
- NWP 11 – Temporary Recreational Structures
- NWP 13 – Bank Stabilization
- NWP 14 – Linear Transportation Projects
- NWP 15 – U.S. Coast Guard Approved Bridges
- NWP 16 – Return Water From Upland Contained Disposal Areas
- NWP 17 – Hydropower Projects
- NWP 18 – Minor Discharges
- NWP 19 – Minor Dredging
- NWP 20 – Response Operations for Oil or Hazardous Substances
- NWP 22 – Removal of Vessels
- NWP 23 – Approved Categorical Exclusions
- NWP 24 – Indian Tribe or State Administered Section 404 Programs
- NWP 25 – Structural Discharges
- NWP 27 – Aquatic Habitat Restoration, Establishment, and Enhancement Activities
- NWP 28 – Modifications of Existing Marinas
- NWP 30 – Moist Soil Management for Wildlife
- NWP 31 – Maintenance of Existing Flood Control Facilities
- NWP 32 – Completed Enforcement Actions
- NWP 33 – Temporary Construction, Access, and Dewatering
- NWP 34 – Cranberry Production Activities

- NWP 35 – Maintenance Dredging of Existing Basins
- NWP 36 – Boat Ramps
- NWP 37 – Emergency Watershed Protection and Rehabilitation
- NWP 38 – Cleanup of Hazardous and Toxic Waste
- NWP 41 – Reshaping Existing Drainage Ditches
- NWP 45 – Repair of Uplands Damaged by Discrete Events
- NWP 46 – Discharges in Ditches
- NWP 49 – Coal Remining Activities
- NWP 53 – Removal of Low-Head Dams
- NWP 54 – Living Shorelines
- NWP 59 – Water Reclamation and Reuse Facilities

The new NWP 59 authorizes discharges of dredged or fill material into waters of the United States for the construction, expansion, and maintenance of water reclamation and reuse facilities.

The December 27, 2021, *Federal Register* notice is available for viewing at <https://www.federalregister.gov/documents/2021/12/27/2021-27441/reissuance-and-modification-of-nationwide-permits>. As an alternative, interested parties can access the December 27, 2021, and January 13, 2021, final rules and related documents at: <https://www.usace.army.mil/Missions/Civil-Works/Regulatory-Program-and-Permits/Nationwide-Permits/>

It should be noted that on January 13, 2021, the U.S. Army Corps of Engineers (Corps) published a final rule in the Federal Register (86 FR 2744) announcing the reissuance of 12 existing nationwide permits (NWPs) and four new NWPs, as well as the reissuance of NWP general conditions and definitions with some modifications. These 16 NWPs went into effect on March 15, 2021 and will expire on March 14, 2026:

- NWP 12 – Oil or Natural Gas Pipeline Activities
- NWP 21 – Surface Coal Mining Activities
- NWP 29 – Residential Developments
- NWP 39 – Commercial and Institutional Developments
- NWP 40 – Agricultural Activities
- NWP 42 – Recreational Facilities
- NWP 43 – Stormwater Management Facilities
- NWP 44 – Mining Activities
- NWP 48 – Commercial Shellfish Mariculture Activities
- NWP 50 – Underground Coal Mining Activities
- NWP 51 – Land-Based Renewable Energy Generation Facilities
- NWP 52 – Water-Based Renewable Energy Generation Pilot Projects
- NWP 55 – Seaweed Mariculture Activities
- NWP 56 – Finfish Mariculture Activities
- NWP 57 – Electric Utility Line and Telecommunications Activities
- NWP 58 – Utility Line Activities for Water and Other Substances

The regional conditions for these 16 NWPs remain in effect and can be found at <https://www.spa.usace.army.mil/Missions/Regulatory-Program-and-Permits/NWP/>.

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 New Mexico satisfied the requirements set forth in 40 CFR 121.7. For a list of WQC decisions in New Mexico see the summary spreadsheet attached to this public notice.

If a permittee conducts activities under the terms and conditions of a NWP, the permittee must also comply with any applicable regional conditions. In New Mexico, the following regional conditions apply to the 41 NWPs listed above:

## **REGIONAL CONDITIONS APPLICABLE TO ALL NATIONWIDE PERMITS WITHIN THE STATE OF NEW MEXICO**

1. All Activities Conducted Under Nationwide Permits (NWPs): In accordance with 33 Code of Federal Regulations (CFR) § 330.4(c), the Corps hereby incorporates the current conditions of Clean Water Act (CWA) Section 401 water quality certifications as conditions of the Section 404 Nationwide Permits in New Mexico. Water quality certifications are available at: <http://www.spa.usace.army.mil/Missions/RegulatoryProgramandPermits/WaterQualityCertification.aspx>.

2. Dredge and Fill Activities in Lakes, Intermittent and Perennial Streams, and Special Aquatic Sites: For all activities subject to regulation under the CWA Section 404 in lakes, intermittent and perennial streams, and special aquatic sites (including wetlands, riffle and pool complexes, and sanctuaries and refuges), Pre-Construction Notification to the District Engineer is required in accordance with general condition (GC) 32.

3. Individual Water Quality Certification and Pre-Construction Notification (PCN): For all activities subject to regulation under the CWA Section 404 where Section 401 individual water quality certification is required, the applicant must provide a PCN to the District Engineer in accordance with GC 32 at the same time a request for water quality certification is submitted to the water quality certifying authority. A copy of the individual 401 water quality certification must be provided to the District Engineer prior to commencing the regulated activity. The activity may not commence until the Corps has completed post-certification with U.S. Environmental Protection Agency (EPA), Region 6 in accordance with CWA Sec. 401(a)(2). A list of state agencies and tribes with Section 401 authority is on our website available at: <http://www.spa.usace.army.mil/Missions/Regulatory-Program-and-Permits/Water-Quality-Certification/>

4. Peatlands: The use of the NWPs for the discharge of dredged or fill material into peatlands is prohibited. 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 entitled Field Indicators of Hydric Soils in the United States (Version 8.0, 2016). A copy of the document can be obtained from the NRCS at: <https://www.nrcs.usda.gov/wps/portal/nrcs/main/soils/use/hydric/>.

5. Temporary Fills and Impacts: Temporary fills and/or impacts to waters of the U.S. shall be removed in their entirety and the affected areas returned to pre-construction elevations in the shortest time frame practicable, not to exceed six months unless otherwise approved by the District Engineer. Site restoration of temporarily filled or impacted areas shall include returning the area to pre-project ground surface contours. The permittee shall appropriately revegetate temporarily filled or impacted areas with

native, noninvasive herbs, shrubs, and/or tree species sufficient in number, spacing, and diversity to replace affected aquatic functions. Temporary erosion and sediment control measures must be removed as soon as the area has established vegetation sufficient to control erosion and sediment.

6. Suitable Fill: Use of broken concrete as fill or bank stabilization material is prohibited unless the applicant demonstrates that its use is the only practicable material (with respect to cost, existing technology, and logistics). Any applicant who wishes to use broken concrete as bank stabilization must provide notification to the District Engineer in accordance with General Condition 32 (Pre-Construction Notification) along with justification for such use. Use of broken concrete with rebar, used tires (loose or formed into bales), or car bodies is prohibited in all waters of the United States.

7. Timing and Dewatering: Unless determined to be not practicable by the Corps, no dredged and/or fill material shall be discharged within standing or flowing waters. For perennial or intermittent drainages (e.g., natural or relocated streams, creeks, rivers), this may be accomplished through construction during periods of low flow (winter months) or during the dry season.

When work is required to occur in flowing water, a dewatering plan is required to constitute a complete PCN. All dewatering structures and/or fills shall be removed within 30 days following completion of construction activities in waters of the U.S.

(a) For all dewatering activities that propose structures or fill in waters of the U.S. a dewatering plan must contain the following:

- 1) Information on why it is not practicable to conduct construction activities during periods of low flow or during the dry season;
- 2) The proposed methods for dewatering;
- 3) The equipment that would be used to conduct the dewatering;
- 4) The length of time the area is proposed to be dewatered;
- 5) The area (in acres) and length (in linear feet) and locations of all structure(s) and/or fill in waters of the U.S.;
- 6) The expected extent of temporary impacts to downstream waters;
- 7) The method for removal of the structures and/or fill;
- 8) The method for how the proposed work shall be conducted to allow safe fish and wildlife passage during construction; and
- 9) The method for restoration of the waters of the U.S. affected by the structure or fill following construction.

## **REGIONAL CONDITIONS APPLICABLE TO SPECIFIC NATIONWIDE PERMITS WITHIN THE STATE OF NEW MEXICO**

8. NWP 13 – Bank Stabilization: For bank stabilization activities in intermittent or perennial streams that average less than 20 feet in width (measured between the ordinary high water marks on each bank), the placement of fill is limited to no more than one cubic yard of suitable fill\* material per running foot below the plane of the ordinary high water mark, unless the District Engineer waives this criterion by making a written determination concluding that the discharge will result in minimal adverse effects. \*See Note 1 under Additional Information regarding suitable fill.

9. NWP 23 – Approved Categorical Exclusions: Pre-Construction Notification to the District Engineer in accordance with GC 32 is required for all proposed activities under NWP 23.

10. NWP 27 – Aquatic Habitat Restoration, Establishment, and Enhancement Activities: For all proposed activities under NWP 27 that require PCN, a monitoring plan commensurate with the scale of the proposed restoration project and the potential for risk to the aquatic environment must be submitted to the Corps. (See “NWP 27 Guidelines” at <http://www.spa.usace.army.mil/Missions/RegulatoryProgramandPermits/NWP.aspx>).

### ADDITIONAL INFORMATION

The following provides additional information regarding minimization of impacts and compliance with existing general conditions:

1. Permittees are reminded of **GC 6**, which prohibits the use of unsuitable material. Organic debris, building waste, asphalt, car bodies, individual tires, concrete jersey barriers, and trash are **not** suitable fill material.
2. **GC 12** requires appropriate erosion and sediment controls (i.e., all fills must be permanently stabilized to prevent erosion and siltation into water and/or wetlands at the earliest practicable date). Streambed material or other small aggregate material placed along a bank as stabilization will not meet GC 12.

**APPENDIX 3 - 401 Water Quality Certification (WQC) Decisions Summary Table**

Below is a summary table of WQCs granted, waived, or denied in the state of New Mexico, excluding Navajo Nation. Certifying Authorities may grant a General Water Quality Certification (GWC), a Conditional Water Quality Certification (CWQC), deny certification, or waive certification.

NWP	New Mexico Environment	EPA Region 6	Ohkay Owingeh	Pueblo of Acoma	Pueblo of Isleta	Pueblo of Laguna	Pueblo of Nambe	Pueblo of Picuris	Pueblo of Pojoaque	Pueblo of Sandia	Pueblo of Santa Ana	Pueblo of Santa Clara	Pueblo of Taos	Pueblo of Tesuque
3	CWQC	GWC	Waived	Waived	Denied	CWQC	Waived	Waived	Waived	CWQC	CWQC	CWQC	Waived	CWQC
4	CWQC	GWC	Waived	Waived	Denied	CWQC	Waived	Waived	Waived	CWQC	CWQC	CWQC	Waived	CWQC
5	CWQC	GWC	Waived	Waived	Denied	CWQC	Waived	Waived	Waived	CWQC	CWQC	CWQC	Waived	CWQC
6	CWQC	GWC	Waived	Waived	Denied	CWQC	Waived	Waived	Waived	CWQC	CWQC	CWQC	Waived	CWQC
7	CWQC	GWC	Waived	Waived	Denied	CWQC	Waived	Waived	Waived	CWQC	CWQC	CWQC	Waived	CWQC
13	CWQC	GWC	Waived	Waived	Denied	CWQC	Waived	Waived	Waived	CWQC	CWQC	CWQC	Waived	CWQC
14	CWQC	GWC	Waived	Waived	Denied	CWQC	Waived	Waived	Waived	CWQC	CWQC	CWQC	Waived	CWQC
15	CWQC	GWC	Waived	Waived	Denied	CWQC	Waived	Waived	Waived	CWQC	CWQC	CWQC	Waived	CWQC
16	CWQC	GWC	Waived	Waived	Denied	CWQC	Waived	Waived	Waived	CWQC	CWQC	CWQC	Waived	CWQC
17	CWQC	GWC	Waived	Waived	Denied	CWQC	Waived	Waived	Waived	CWQC	CWQC	CWQC	Waived	CWQC
18	CWQC	GWC	Waived	Waived	Denied	CWQC	Waived	Waived	Waived	CWQC	CWQC	CWQC	Waived	CWQC
19	CWQC	GWC	Waived	Waived	Denied	CWQC	Waived	Waived	Waived	CWQC	CWQC	CWQC	Waived	CWQC
20	CWQC	GWC	Waived	Waived	Denied	CWQC	Waived	Waived	Waived	CWQC	CWQC	CWQC	Waived	CWQC
22	CWQC	GWC	Waived	Waived	Waived	CWQC	Waived	Waived	Waived	CWQC	CWQC	CWQC	Waived	CWQC
23	CWQC	GWC	Waived	Waived	Denied	CWQC	Waived	Waived	Waived	CWQC	CWQC	CWQC	Waived	CWQC
25	CWQC	GWC	Waived	Waived	Denied	CWQC	Waived	Waived	Waived	CWQC	CWQC	CWQC	Waived	CWQC
27	CWQC	GWC	Waived	Waived	Denied	CWQC	Waived	Waived	Waived	CWQC	CWQC	CWQC	Waived	CWQC
30	CWQC	GWC	Waived	Waived	Denied	CWQC	Waived	Waived	Waived	CWQC	CWQC	CWQC	Waived	CWQC
31	CWQC	GWC	Waived	Waived	Denied	CWQC	Waived	Waived	Waived	CWQC	CWQC	CWQC	Waived	CWQC
32	CWQC	GWC	Waived	Waived	Denied	CWQC	Waived	Waived	Waived	CWQC	CWQC	CWQC	Waived	CWQC
33	CWQC	GWC	Waived	Waived	Denied	CWQC	Waived	Waived	Waived	CWQC	CWQC	CWQC	Waived	CWQC
34	CWQC	GWC	Waived	Waived	Waived	CWQC	Waived	Waived	Waived	CWQC	CWQC	CWQC	Waived	CWQC
36	CWQC	GWC	Waived	Waived	Denied	CWQC	Waived	Waived	Waived	CWQC	CWQC	CWQC	Waived	CWQC
37	CWQC	GWC	Waived	Waived	Denied	CWQC	Waived	Waived	Waived	CWQC	CWQC	CWQC	Waived	CWQC
38	CWQC	GWC	Waived	Waived	Denied	CWQC	Waived	Waived	Waived	CWQC	CWQC	CWQC	Waived	CWQC
41	CWQC	GWC	Waived	Waived	Denied	CWQC	Waived	Waived	Waived	CWQC	CWQC	CWQC	Waived	CWQC
45	CWQC	GWC	Waived	Waived	Denied	CWQC	Waived	Waived	Waived	CWQC	CWQC	CWQC	Waived	CWQC
46	CWQC	GWC	Waived	Waived	Denied	CWQC	Waived	Waived	Waived	CWQC	CWQC	CWQC	Waived	CWQC
49	CWQC	GWC	Waived	Waived	Waived	CWQC	Waived	Waived	Waived	CWQC	CWQC	CWQC	Waived	CWQC
50	CWQC	GWC	Waived	Waived	Denied	CWQC	Waived	Waived	Waived	CWQC	CWQC	CWQC	Waived	CWQC
51	CWQC	GWC	Waived	Waived	Denied	CWQC	Waived	Waived	Waived	CWQC	CWQC	CWQC	Waived	CWQC
52	CWQC	GWC	Waived	Waived	Denied	CWQC	Waived	Waived	Waived	CWQC	CWQC	CWQC	Waived	CWQC
53	CWQC	GWC	Waived	Waived	Denied	CWQC	Waived	Waived	Waived	CWQC	CWQC	CWQC	Waived	CWQC
54	CWQC	GWC	Waived	Waived	Waived	CWQC	Waived	Waived	Waived	CWQC	CWQC	CWQC	Waived	CWQC
59	CWQC	GWC	Waived	Waived	Denied	CWQC	Waived	Waived	Waived	CWQC	CWQC	CWQC	Waived	CWQC



October 14, 2021

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

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

Dear Kelly Allen,

The Cabinet Secretary of the New Mexico Environment Department (NMED) delegated signatory authority for state certifications of federal Clean Water Act (CWA) permits to the Surface Water Quality Bureau (SWQB) Chief. NMED examined the September 15, 2020 Proposal to Reissue and Modify Nationwide Permits (NWP) under Section 404 of the CWA and Section 10 of the Harbors and Rivers Act, issued by the U.S. Army Corps of Engineers (Corps) (see 85 FR 57298) and the September 24, 2020 Albuquerque Corps District's public notice of the proposed NWP. Pursuant to State regulations for permit Certification at 20.6.2.2002 NMAC, NMED issued a public notice of this activity and announced a public comment period, printed in the Albuquerque Journal on November 1, 2020 and posted on the SWQB's web site: <https://www.env.nm.gov/surface-water-quality/public-notices/> on November 2, 2020. The public comment period ended on November 30, 2020. NMED received comments from Amigos Bravos and the New Mexico Mining Association, which were considered in NMED's CWA Section 401 Certification sent to the Corps on December 14, 2020.

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

**Applicable Water Quality Regulations:**

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

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

Sincerely,

Shelly Lemon, Chief  
Surface Water Quality Bureau

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



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

**General Conditions of Certification:**

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

***General Condition 1. Inspection***

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

[wpsprogram.manager@state.nm.us](mailto:wpsprogram.manager@state.nm.us)

Watershed Protection Program Manager, Surface Water Quality Bureau, NMED

Or mailed to (email is preferred):

Program Manager, Watershed Protection Section

Surface Water Quality Bureau

PO BOX 5469

Santa Fe, NM 87502

***General Condition 2. Impaired Water Bodies***

If a proposed activity will result in fill material in water bodies listed as impaired under Section 303(d) of the CWA, the Project Proponent shall select and implement specific measures or Best Management Practices (BMPs) to prevent further degradation of the water quality. The current EPA-approved New Mexico list of impaired waters is available at <https://www.env.nm.gov/surface-water-quality/303d-305b/> - see the most current summary spreadsheet "All Impairments (Category 4 or 5)" or contact NMED's Surface Water Quality Bureau if you have any questions or need assistance.

***General Condition 3. Best Management Practices (BMPs)***

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

**Scheduling** – Project activities must avoid times of predictable flooding to avoid working in high water (seasonal monsoons, snowmelt, or releases from dams).

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

**Diversions** – Flowing water that is diverted around the work area must remain within the existing channel and provide for aquatic life movement. Diversions must be non-erodible, such as sandbags, water bladders, concrete barriers, or channel lined with geotextile or plastic sheeting. Dirt cofferdams or unlined ditches are not acceptable diversion structures.

**Heavy equipment –**

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

**Fuel –**

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

**Construction materials –**

- Use appropriate fill material – broken concrete, tires, tire bales, treated lumber, and other refuse material shall not be used as fill material.
- All asphalt, concrete, drilling fluids and other construction materials must be properly handled and contained to prevent releases to surface water. Poured concrete must be fully contained in mortar-tight forms and/or placed behind non-erodible cofferdams to prevent contact with surface or ground waters. Appropriate measures must be used to prevent wastewater from concrete batching, vehicle and equipment wash-down, or aggregate processing from impacting surface waters and aquatic resources.

**Demolition, repair, and cleaning activities –** Materials associated with demolition, repair, and cleaning activities of bridges or associated structures must be kept out of the channel. Generally, impermeable containment material (e.g., plastic sheet, canvas, tarpaulins or other catchment devices) must be secured under the structure to capture falling debris. Sandblasting must include vacuum systems, or the structures must be completely bagged to collect all paint and concrete debris. Any debris that falls onto the containment area or channel must be properly disposed of in accordance with the New Mexico Solid Waste Regulations (20.9.1 NMAC). Applicable Safety Data Sheets of water repellants and surface finish treatments must be maintained at the project area and such products must follow safety procedures for use near open water.

**Trenching –**

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

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

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

**Erosion control –**

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

**Wetlands –**

- Avoid working in wetlands whenever possible.

- Flag or otherwise mark wetland boundaries so construction crews can avoid them.
- When wetlands must be crossed by heavy equipment, schedule work when wetland soils are frozen whenever possible.
- Avoid working in wetlands when soils are too saturated to support heavy machinery.
- Avoid permanent impacts to wetlands such as draining, filling, or other hydro-modifications.
- Install permeable fills to allow natural seepage flows.
- Use the smallest machinery that can handle the job – preferably non-mechanized equipment.
- Use wide tires, tracks, wooden mats, or board roads to disperse weight and minimize soil compaction when heavy machinery is required.
- Avoid turning wheels when the vehicle is stationary to prevent digging and damage to vegetation.
- Minimize wetland impacts by stockpiling vegetation and hydric soils to be reused during post-construction stabilization.

**Post-construction stabilization –**

- The Project Proponent and their contractors shall take necessary steps to minimize channel and bank erosion during and after construction. Where applicable, banks must be reseeded or replanted with native vegetation.
- Disturbed areas outside stream channels that are not otherwise physically protected from erosion must be reseeded or planted with native vegetation so that species regrowth is functionally equivalent to the pre-disturbed site or a reference site. Stabilization measures including vegetation are required at the earliest practicable date, but by the end of the first full growing season following construction. Native woody riparian and/or wetland species must be used in areas that support such vegetation. The Corps will determine the requirements for post-construction monitoring on a case-by-case basis.

**General Condition 4. Fills Within Floodplains**

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

**General Condition 5. Low Impact Development**

When the discharge of fill material results in the replacement of wetlands or waters of the U.S. with impervious surfaces, the Project Proponent shall select and implement low impact development practices (e.g. native landscaping, bioretention and infiltration techniques, and constructed green spaces) to the extent practicable. More information including low impact concepts and definitions is available at: <https://www.epa.gov/nps/urban-runoff-low-impact-development>.

**General Condition 6. Spills**

Appropriate spill clean-up materials such as absorbent pads must be available on-site at all times during construction. The Project Proponent shall report all spills immediately to NMED as required by the New Mexico Water Quality Control Commission Regulations (20.6.2.1203 NMAC). For non-emergencies during normal business hours, call 505-428-2500. For non-emergencies after hours, call 866-428-6535. For emergencies only, call 505-827-9329 twenty-four hours a day (New Mexico Department of Public Safety).

**General Condition 7. Posting**

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

**Specific Conditions for Nationwide Permits:**

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

***Specific Condition for NWP-03 Maintenance –***

NMED certifies this NWP subject to the General Conditions above and with the following permit-specific conditions:

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

***Specific Condition for NWP-14 Linear Transportation Projects –***

NMED certifies this NWP subject to the General Conditions above and with the following permit-specific conditions:

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

***Specific Condition for NWP-31 Maintenance of Existing Flood Control Facilities –***

NMED certifies this NWP subject to the General Conditions above and with the following permit-specific conditions:

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

***Specific Condition for NWP-41 Reshaping Existing Drainage Ditches –***

NMED certifies this NWP subject to the General Conditions above and with the following permit-specific conditions:

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

**Specific Denials of Specific Nationwide Permits:**

***Specific Denial for NWP-13 Bank Stabilization –***

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

***Specific Denial for NWP-27 Aquatic Habitat Restoration, Establishment, and Enhancement Activities –***

NMED denies Certification for sediment releases from reservoirs. In these cases, the Project Proponent must apply to NMED for an Individual Certification pursuant to 20.6.2.2002 NMAC.

***Specific Denial for Outstanding National Resource Waters –***

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

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

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

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

<sup>1</sup> [https://www.epa.gov/sites/production/files/201508/documents/a\\_function\\_based\\_framework\\_for\\_stream\\_assessment\\_3.pdf](https://www.epa.gov/sites/production/files/201508/documents/a_function_based_framework_for_stream_assessment_3.pdf)

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

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

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

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

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

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

<sup>3</sup> <https://www.env.nm.gov/surface-water-quality/tmdl/>



**Comments that are not Conditions of Certification:**

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

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

- Dewatering discharges may be subject to NMED Discharge Permits. Regulations for ground and surface water protection at 20.6.2.1201 NMAC require any person intending to make a new water contaminant discharge to file a notice of intent to discharge with the Ground Water Quality Bureau (<https://www.env.nm.gov/gwqb/>) for discharges that may affect groundwater and/or with the Surface Water Quality Bureau (<https://www.env.nm.gov/swqb/>) for discharges that may affect surface water. Based on the information provided in the notice of intent, the appropriate Bureau will notify the Project Proponent if a discharge permit is required.
- Activities that disturb one (1) acre or more may require a National Pollutant Discharge Elimination System (NPDES) permit from the U.S. Environmental Protection Agency (EPA) under Section 402 of the Clean Water Act. The permittee should submit the appropriate application to EPA 14 days prior to initiating construction. In the case of emergency operations, operators must apply no later than 30 days after the start of construction and are considered provisionally covered under the terms and conditions of the EPA-issued general permit immediately, and fully covered 14 calendar days after EPA has acknowledged receipt of the application (Notice of Intent, or NOI), unless EPA notifies the permittee that the authorization has been delayed or denied. For additional information, contact:

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



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**  
REGION 6  
1201 ELM STREET, SUITE 500  
DALLAS, TEXAS 75270

December 14, 2020

Kelly E. Allen  
Chief, Regulatory Division  
Albuquerque District Corps of Engineers  
4101 Jefferson Plaza NE  
Albuquerque, NM 87109

RE: Clean Water Act Section 401 Water Quality Certification for the 2020 U.S. Army Corps of Engineers  
Section 404 Nationwide Permits Reissuance, on behalf of Indian tribes that have not received  
Treatment in a Similar Manner as a State for Section 401 in EPA Region 6.

Dear Ms. Allen:

This water quality certification applies to any potential point source discharges from potential projects authorized under the proposed reissuance of the following U.S. Army Corps of Engineers (Corps) Nationwide Permits (NWP) into waters of the United States that occur within tribal boundaries within the State of New Mexico: 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, 45, 46, 48, 49, 50, 51, 52, 53, 54, C, D and E. The Corps is not requesting certification for 11 NWPs: 1, 2, 8, 9, 10, 11, 24, 28, 35, A, and B.

Section 401(a)(1) of the Clean Water Act (CWA) 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. Where no state agency or tribe has authority to give such certification, the U.S.

Environmental Protection Agency (EPA) is the certifying authority. In this case, the Pueblos of Cochiti, Jemez, Santo Domingo, San Felipe, San Ildefonso, Zia, Zuni, the Mescalero Apache Tribe, and Jicarilla Apache Nation do not have the authority to provide CWA Section 401 certification for discharges occurring within the boundaries of the aforementioned tribal lands, therefore, EPA Region 6 is making the certification decisions for discharges that may result from the potential projects authorized under the proposed Corps CWA 404 NWPs.<sup>1</sup> Consistent with the *EPA Policy on Consultation and Coordination with Indian Tribes*, EPA Region 6 circulated a letter dated September 18, 2020 offering to consult with tribes on the certification process and invite their participation.

**Reissuance of NWPs Description**

The Corps is proposing to re-issue its existing NWPs and associated general conditions and definitions, with some modifications. The Corps states that it is “proposing these modifications to simplify and clarify the NWPs, reduce burdens on the regulated public, and continue to comply with the statutory requirement that these NWPs authorize only activities with no more than minimal individual and cumulative adverse environmental effects.” 85 FR 57298. For more details:

<https://www.usace.army.mil/Missions/Civil-Works/Regulatory-Program-and-Permits/Nationwide-Permits/>.

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<sup>1</sup> Ysleta del Sur Pueblo does not have TAS and falls within Corps Albuquerque District. The pueblo is situated within Texas. The pueblo will be covered under the certification letter for Texas.

### **General Information**

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

Project proponents for potential projects authorized under the NWP's are responsible for obtaining all other permits, licenses, and certifications that may be required by federal, state, or tribal authorities.

Project proponents for potential projects authorized under the NWP's should conduct all work in such a manner as to comply with all Corps Section 404 permit conditions.

Copies of the Corps permit including this certification should be kept on the job site and readily available to the public for reference.

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.

During project planning, EPA highly recommends the project proponent notify the appropriate tribal environmental office of the project details and location.

### **Certification Determination**

#### **Grant (121.7(c)):**

On behalf of the Pueblos of Cochiti, Jemez, Santo Domingo, San Felipe, San Ildefonso, Zia, Zuni, the Mescalero Apache Tribe, and Jicarilla Apache Nation, CWA Section 401 certification, for the following proposed NWP's, is granted with no conditions. EPA Region 6 has determined that any discharge that could be authorized under the following proposed NWP's will comply with water quality requirements, as defined at 40 CFR 121.1(n).

**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, 45, 46, 48, 49, 50, 51, 52, 53, 54, C, D, and E**

Thank you for your ongoing partnership in implementing the regulatory programs of the CWA. Should your office have any questions, please feel free to contact Brianna Wadley of my staff at 214-665-2723, [Wadley.Brianna@epa.gov](mailto:Wadley.Brianna@epa.gov).

Sincerely,

*Charles Maguire*

Charles W. Maguire  
Director  
Water Division



**Acoma Environment Department  
P.O. Box 309**

**Phone: 505-552-5161  
Acoma, NM 87034**

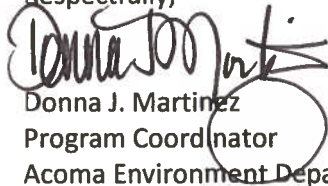
Kelly E. Allen  
Chief, Regulatory Division  
Albuquerque District  
Department of the Army  
Corp of Engineers  
4101 Jefferson Plaza NE  
Albuquerque, NM 87109-3435

Ms. Allen:

I am writing regarding your letter dated August 20, 2021 regarding the 41 Proposed NWP's. After review of the Text of the 41 NWP's provided by the USACE, the Pueblo of Acoma at this time, hereby Waives its Authority.

I apologize in the delay for the submission but appreciate the extended time that was given to the certifying authority to review and reconsider any previous response.

Respectfully,



Donna J. Martinez  
Program Coordinator  
Acoma Environment Department



## PUEBLO OF ISLETA

CERTIFIED U.S. MAIL, RETURN RECEIPT AND BY E-MAIL

December 15, 2020

Kelly E. Allen  
Chief, Regulatory Division  
Albuquerque District  
U.S. Army Corps of Engineers  
4101 Jefferson Plaza, NE  
Albuquerque, NM 87109  
Kelly.e.allen@usace.army.mil

Refer to: Proposed Reissuance of USACE Nationwide Permits  
Clean Water Act Section 401 Water Quality Certification

Dear Ms. Allen,

The Pueblo of Isleta hereby submits this letter pursuant to Section 401 of the Clean Water Act ("CWA"), 33 U.S.C. 1341, and 40 C.F.R. Part 121, Water Quality Certification by a State or Indian Tribe, pursuant to the Pueblo of Isleta's Treatment as a State designation by U.S. EPA for water quality certification of federal permits.

The Pueblo of Isleta waives CWA Section 401 water quality certification for proposed Nationwide Permits (hereinafter "NWP" or "NWPs") numbered 1, 2, 8, 9, 10, 11, 24, 28, 35, A and B, which in the Corps' opinion would authorize activities that could not reasonably be expected to result in a discharge into waters of the United States. In addition, the Pueblo of Isleta waives water quality certification for NWPs 21, 22, 34, 48, 49, and 54 because they would authorize activities that are not likely to occur in waters within the exterior boundaries of the Pueblo of Isleta.

Notification and timing conditions apply to all uses of NWPs for discharges originating within the exterior boundaries of the Pueblo of Isleta, as follows:

To ensure compliance with the Pueblo of Isleta's Surface Water Quality Standards, NWP applicants shall provide the Pueblo's Environment Department with a copy of its preconstruction notification (PCN) and PCN application materials the same day the application is submitted to the Corps. Notification must be in writing and should be submitted to the Pueblo by e-mail to [Ramona.Montoya@isletapueblo.com](mailto:Ramona.Montoya@isletapueblo.com), or by mail to Ramona M. Montoya, Pueblo of Isleta, Environment Department, PO Box 1270, Isleta NM 87022.





In order to assure attainment of the Pueblo of Isleta's surface water quality standards and other applicable Tribal law relating to water quality during construction of a project, or the life of a project conducted or completed under the proposed NWP, the Pueblo of Isleta denies water quality certification, without prejudice, for NWP the Pueblo of Isleta has not waived (refer to paragraph 2 of this letter). Accordingly, for projects within the exterior boundaries of the Pueblo of Isleta where water quality certification is denied, the prospective permittee must apply for an individual permit where the Pueblo's certification will not impose conditions unrelated to water quality.

Sincerely,



Max A. Zuni  
Governor  
Pueblo of Isleta

cc:

Ramona M. Montoya, Water Quality Control Officer, [Ramona.Montoya@isletapueblo.com](mailto:Ramona.Montoya@isletapueblo.com)  
Pueblo of Isleta Office of General Counsel, [Francine.jaramillo@isletapueblo.com](mailto:Francine.jaramillo@isletapueblo.com); [Jaimie.park@isletapueblo.com](mailto:Jaimie.park@isletapueblo.com)

Ms. Kelly E. Allen  
Page 2  
December 15, 2020





## PUEBLO OF ISLETA

P. O. BOX 1270, ISLETA, NM 87022

October 13, 2021

Kelly E. Allen  
Chief, Regulatory Division  
Albuquerque District  
U.S. Army Corps of Engineers  
4101 Jefferson Plaza NE  
Albuquerque NM 87109

Submitted by email to: [kelly.e.allen@usace.army.mil](mailto:kelly.e.allen@usace.army.mil)

Refer to: Water Quality Certification request of August 20, 2021 for the 41 Nationwide Permits ("NWP") that have not yet been finalized

Dear Ms. Allen,

The Pueblo of Isleta hereby submits this letter pursuant to Section 401 of the Clean Water Act, 33 U.S.C. 1341, and 40 C.F.R. Part 121. Water Quality Certification by a State or Indian Tribe, pursuant to the Pueblo of Isleta's Treatment as a State designation by U.S. EPA for water quality certification of federal permits.

The Pueblo of Isleta affirms its CWA Section 401 water quality certification of December 15, 2020 of the Proposed Reissuance of USACE Nationwide Permits.

Regarding the 41 proposed NWPs subject to the extension of the reasonable period of time, the Pueblo of Isleta waives CWA Section 401 water quality certification for NWPs numbered 22, 34, 49, and 54 because they would authorize activities that are not likely to occur in waters within the exterior boundaries of the Pueblo of Isleta. To assure attainment of the Pueblo of Isleta's surface water quality standards and other applicable Tribal law relating to water quality during construction of a project, or the life of a project conducted or completed under the NWPs, the Pueblo of Isleta denies water quality certification, without prejudice, for NWPs 3, 4, 5, 6, 7, 13, 14, 15, 16, 17, 18, 19, 20, 23, 25, 27, 30, 31, 32, 33, 36, 37, 38, 41, 45, 46, 53, and 59.



Accordingly, for projects within the exterior boundaries of the Pueblo of Isleta where water quality certification is denied, the prospective permittee must apply for an individual permit where the Pueblo's certification will not impose conditions unrelated to water quality.

Under the Pueblo of Isleta Public Health Emergency Order 2021-04 effective October 11, 2021 in which access to the Pueblo is restricted to all non-residents, with the exception of tribal members of the Pueblo of Isleta, the Pueblo of Isleta requires all non-tribal parties to obtain a Permission Agreement to Enter Pueblo of Isleta Reservation Lands.

Please contact Isleta Tribal Administration at 505-869-3111, or Ramona Montoya, Water Quality Control Officer at 505-869-7565 or [Ramona.Montoya@isletapueblo.com](mailto:Ramona.Montoya@isletapueblo.com), if you have any questions.

Respectfully submitted,

**PUEBLO OF ISLETA**

*FOR*  **2ND LT. GOVERNOR**  
**Vernon B. Abeita**  
**Governor**







Environmental & Natural Resources Department

December 15, 2020

Kelly Allen, Chief  
Regulatory Division  
Army Corps of Engineers, Albuquerque District  
4101 Jefferson Plaza NE  
Albuquerque, NM 87109-3435

Subject: Pueblo of Laguna Clean Water Act Section 401 Certification the U.S. Army Corps of Engineers  
Nationwide Permits.

Chief Allen:

The Pueblo of Laguna (the Pueblo) received treatment in a similar manner as a State to administer water quality standards and certification programs under the Clean Water Act (CWA) sections 303(c) and 401, U.S.C. section 1313(c) and 1341 by the U.S Environmental Protection Agency in December 2016. The Pueblo has initiated a review of the U.S. Army Corps of Engineers' (the Corps) Federal Register notice *Proposal to Reissue and Modify Nationwide Permits (NWP)*s).

The Pueblo is disappointed the Corps' leadership has continued efforts to reissue NWPs two-years ahead of schedule during a global pandemic. The Pueblo declared a Public Health Emergency in March of 2020 and has continued operating severely restricted conditions. By request of Governor Herrera, Jr., on November 24, 2020, all non-essential operations were suspended and tribal employees are to perform work outside of our normal job descriptions to assist the Pueblo's overburdened Emergency Operation Center. The Governor's mandate prioritizes our emergency response to the pandemic above all else. This has greatly impeded our ability to meet this unnecessarily accelerated timeline. We remain suspicious of the effort to push this action through while we see many other national efforts diminished or delayed in activity. The Corps has active NWPs established. The permits are not required to be re-issued until 2022. Based on this, we do not see justification give this effort precedent over our current critical COVID response.

The Pueblo respectfully requested an additional 60-days after the Pueblo lifts its Public Health Emergency response measures to certify the NWPs. The extension was denied.

In an optimal situation, the 60-day timeframe allocated to certify the NWPs is unreasonable due to the lack of clear CWA section 401 guidance from the Environmental Protection Agency. As noted above, this is not an optimal situation. The Pueblo's focus remains on our community as we respond to this ongoing crisis. Under normal circumstances, the Pueblo would choose to deny all NWPs and require individual certification for activities within our boundary in accordance with the new CWA section 401 Rule. Due to the strain of COVID-19, the Pueblo has not had the opportunity to fully review and implement the new CWA section 401 rule. To request certification of the reissuance of the NWPs under new and limited guidance on an accelerated timeline is dismissive of the current peril our Pueblo and Nation faces and shows

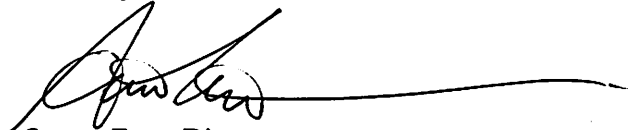
questionable prioritization by the Corps' leadership. The Corps leadership's determination to pursue this effort at this time only creates unnecessary animosity and erodes our decades-long partnership with the Corps. The Pueblo is grateful for the dedication of the Albuquerque District's staff who have consistently offered thoughtful guidance and patience throughout this process.

The Pueblo of Laguna certifies all NWP's with the following condition:

1. To ensure compliance with the Pueblo's Water Quality Standards Sections 11-2-1(A)(3)<sup>1</sup>, 11-2-8<sup>2</sup>, and 11-2-22(3)(4)(7)<sup>3</sup>, the Pueblo shall require Nationwide Permit applicants provide the Pueblo's Environmental & Natural Resources Department with their preconstruction notification form the same day the application is submitted to the Corps to [ewoodward@pol-nsn.gov](mailto:ewoodward@pol-nsn.gov), or by mail at the address below c/o the Environmental & Natural Resources Department.

If you have any questions, please contact E.N. Woodward, Water Quality Specialist, [ewoodward@pol-nsn.gov](mailto:ewoodward@pol-nsn.gov), or Steve Etter, Director, Environmental & Natural Resources Department, [setter@pol-nsn.gov](mailto:setter@pol-nsn.gov), or 505-552-7512. All non-Tribal entities are required to obtain an access permit through the Pueblo of Laguna's Secretary's Office. Accessing Pueblo lands without a permit is considered trespassing as per the Pueblo's General Civil Trespassing Code.

Sincerely,



Steven Etter, Director  
Environmental & Natural Resources Department

<sup>1</sup>Section 11-2-1(A)(3) – Authority and Purpose – Assure that degradation of Pueblo waters shall be minimized and that economic growth shall occur consistent with preserving the Pueblo's existing clean water resources.

<sup>2</sup>Section 11-2-8 – Collaboration with Federal and State Agencies – The Pueblo will collaborate with federal and state agencies to prevent, reduce, and eliminate water pollution in coordination with programs for managing water resources.

<sup>3</sup>Section 11-2-22 – Implementation

(3) Obtain and assess information on the impact of effluents on receiving waters, including the capability of receiving waters to support designated uses and achieve these LWQS (Laguna Water Quality Standards);

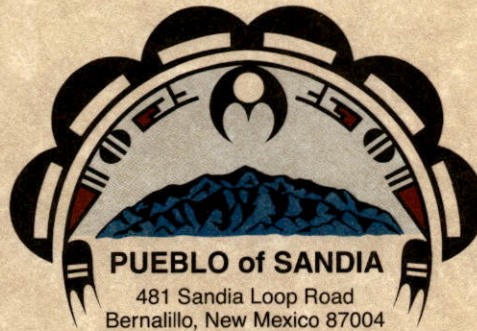
(4) Advise prospective dischargers of discharge requirements, and coordinate with the appropriate permitting agencies as to the same;

(7) Require that effluent limitations or other appropriate limitations applicable to activities with the potential to discharge into Pueblo waters be included in any permit as a condition for certification by the Pueblo pursuant to CWA § 401, 33 U.S.C. § 1341, as amended.



Stuart Paisano  
Governor

Alex Lujan  
Lt. Governor



(505) 867-3317  
Fax (505) 867-9235  
[www.sandiapueblo.nsn.us](http://www.sandiapueblo.nsn.us)

October 12, 2021

Kelly E. Allen  
Chief, Regulatory Division  
Department of the Army  
Corps of Engineers, Albuquerque District  
4101 Jefferson Plaza NE  
Albuquerque, New Mexico 87109-3435

RE: Sec 401 Reasonable Period of Time Extension USACE Nationwide Permits

Dear Ms. Allen:

The United States Army Corps of Engineers (USACE) granted the Pueblo of Sandia (Pueblo) a reasonable period of time extension to provide 401 Certification for the proposed 2020 USACE Nationwide Permits. The Pueblo is authorized to certify the proposed 2020 Nationwide Permits (NWP) under CWA Section 401.

The Pueblo certifies all proposed NWPs with the following conditions:

- 1) Applicants for authorization to discharge under any of the proposed NWPs on or within .5 miles upstream of the Pueblo's boundary shall, at the time of application to the U.S. Army Corps of Engineers, supply the Pueblo with a copy of the application materials including the completed Pre-Construction Notification (PCN) form, all drawings, data, and any other attachments. If after an inspection of the submitted materials, the Pueblo determines that the discharge from the project will violate the Pueblo's water quality standards, the Pueblo shall notify the project proponent and the USACE in writing to recommend modifications necessary to bring the project into compliance with the its water quality standards. The Pueblo will provide an "Authorization to Proceed" notice after review and approval of the final application materials.

Application materials will be sent electronically to the Pueblo at the following addresses:

Electronic Addresses:

Amy Rosebrough (Water Quality Manager) via e-mail at [arosebrough@sandiapueblo.nsn.us](mailto:arosebrough@sandiapueblo.nsn.us)



Greg Kaufman (Environment Director) via e-mail at [gkaufman@sandiapueblo.nsn.us](mailto:gkaufman@sandiapueblo.nsn.us)

- a) This condition is necessary to ensure the Pueblo's Environment Department has an opportunity to inspect the activity prior to the initial construction for the purpose of determining whether the discharge from the certified project will violate the Pueblo's Water Quality Standards.
  - b) Citations that authorizes this condition: 40 CFR 121.11(a), 40 CFR 121.11(b), and the Pueblo of Sandia Water Quality Standards (2009)\*.
- 2) Any correspondence between the applicant and the USACE related to corrective action, enforcement, monitoring, or adverse incident written reports should likewise be routed to the Pueblo of Sandia Environment Department at the aforementioned electronic addresses.
- a) This condition is necessary to ensure that the Pueblo of Sandia's Water Quality Standards are not being violated.
  - b) Citations that authorizes this condition: Pueblo of Sandia Water Quality Standards (2009)\*.
- 3) The permittee could be required to perform water quality monitoring, sampling, or analysis during the active permit dates for appropriate constituents determined by the Pueblo. The Pueblo will make this determination in the Authorization to Proceed.
- a) This condition is necessary to ensure that the Pueblo of Sandia's Water Quality Standards are not being violated.
  - b) Citations that authorizes this condition: Pueblo of Sandia Water Quality Standards (2009)\*.

\* Please be advised that the Pueblo passed and adopted the *Pueblo of Sandia Water Quality Standards* in 2009. The standards have been accepted by the EPA and are enforceable in the same manner that state water quality standards are enforceable.

Thank you for your attention regarding this matter. If you have any question or concerns, please feel free to contact Greg Kaufman, Environment Director or Amy Rosebrough, Water Quality Manager of my staff at (505) 867-4533.

Sincerely,

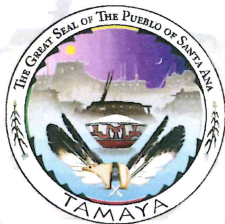


Stuart Paisano  
Governor

\AR

Cc: Greg Kaufman, Pueblo of Sandia Environment Department (via e-mail)  
Amy Rosebrough, Pueblo of Sandia Environment Department (via e-mail)  
File





# PUEBLO OF SANTA ANA

## OFFICE OF THE GOVERNOR

11 December 2020

Kelly E. Allen  
Chief, Regulatory Division  
Albuquerque District  
U.S. Army Corps of Engineers  
4101 Jefferson Plaza, NE  
Albuquerque, NM 87109

**Re: General Clean Water Act Section 401 Water Quality Certification; Nationwide Permit published in the Federal Registry, September 15, 2020**

Dear Mr. Allen,

The U.S. Environmental Protection Agency ("EPA") has published a final rule update to the Clean Water Act (the "CWA") water quality regulations in 40 CFR 121 to regulate discharges to U.S. waterways under the above-referenced NPDES general permit. A water quality certification by the Pueblo of Santa Ana ("Pueblo") is required under CWA section 401 to ensure that the action complies with Pueblo's Water Quality Standards.

The Pueblo appreciates the opportunity to review the CWA section 401 Nationwide Permit and grants certification subject to the enclosed conditions. These conditions are necessary to ensure compliance with the Pueblo's Water Quality Standards.

If you have any questions, please contact Tammy Montoya, Water Resources Division Hydrologist at (505) 771-6739.

Sincerely,

  
Pueblo of Santa Ana  
Lawrence A. Montoya, Governor

Enclosure

cc:

Andrew Sweetman, Water Resources Division Manager  
Tammy Montoya, Water Resources Division Hydrologist

02 DOVE ROAD ♦ SANTA ANA ♦ NM 87004

TEL: 505-771-6700 ♦ FAX: 505-771-6745 ♦ EMAIL: GOV@SANTAANA-NSN.GOV

## **The Pueblo's Clean Water Act, Section 401, Nationwide Permit Certification Conditions**

1. The permittee shall provide a copy of the Notice of Intent (NOI) to the Pueblo of Santa Ana (the Pueblo), at the same time it is submitted to the U.S. Environmental Protection Agency (EPA), for projects with discharges onto the lands of the Pueblo as defined in the Pueblo's antidegradation policy within the Pueblo of Santa Ana Water Quality Standards.
2. The permittee shall provide a final copy of the Stormwater Pollution Prevention Plan (SWPPP) to the Pueblo that is associated with any project identified in the NOI, at the same time that an NOI is submitted to the EPA. The SWPP should include any projects with discharges onto the lands of the Pueblo as defined in the antidegradation policy within the Pueblo of Santa Ana Water Quality Standards.
3. The permittee shall provide copies of inspections reports and of corrective action reports to the Pueblo at the address below for review, upon request.
4. Upon completion of the project identified in the NOI, the permittee will submit a Notice of Termination (NOT) to the Pueblo.
5. All required or requested permittee specific information identified above shall be submitted to the following address:  
  
Pueblo of Santa Ana Department of Natural Resources,  
Attention: Water Resources Division  
2 Dove Road  
Santa Ana Pueblo, NM, 87004
6. Discharges are not authorized by the permittee unless an accurate and complete NOI and SWPPP have been submitted to the Pueblo. Failure to provide an accurate and complete NOI and SWPPP may result in a denial of the discharge permit, or a delay in groundbreaking or construction.
7. The permittee will not proceed with site work until authorized by the Pueblo. The Pueblo requires review of the complete and final SWPP before authorization to proceed. The Pueblo will provide and "Authorization to Process" notice after review and approval of the SWPPP.
8. The permittee could be required to perform water quality monitoring, sampling, or analysis during the active permit dates for constituents determined by the Pueblo.
9. Before submitting a NOT, permittees must certify to the Pueblo's Department of Natural Resources in writing that requirements for site stabilization have been met, and any temporary erosion control structures have been removed.

Documentation of the Pueblo's review that such requirements have been reviewed and met will be provided for the permittee to add to the permittee's NOT submission to EPA. Copies of all NOT submitted to the EPA must also be sent to the Pueblo at the address provided above.

Copies of all Notifications (Notice of Intent, Notice of Termination, or other communications) associated analytical data, and written reports for actions covered under this permit occurring on Pueblo of Santa Ana lands or within five river miles of the northern exterior boundary of Pueblo of Santa Ana lands shall be provided to the Pueblo of Santa Ana Department of Natural Resources at same time they are provided to the U.S. Environmental Protection Agency.

Any correspondence between the applicant and EPA related to corrective action, enforcement, monitoring, or adverse incident written reports should likewise be routed to the Pueblo of Santa Ana Department of Natural Resources. The Pueblo of Santa Ana reserves the right to request additional information or study and may delay or deny a permit for cause. All requested materials shall be sent to: Pueblo of Santa Ana Department of Natural Resources, 2 Dove Road, Santa Ana Pueblo, NM, 87004.

# SANTA CLARA

POST OFFICE BOX 580  
(505) 753-7330  
(505) 753-5375 Fax



# INDIAN PUEBLO

ESPANOLA, NEW MEXICO  
87532  
OFFICE OF GOVERNOR

**December 14, 2020**

Kelly Allen, Project Manager  
US Army Corps of Engineers, Albuquerque District  
4101 Jefferson Plaza NE  
Albuquerque, New Mexico 87109

*Re: Santa Clara Pueblo Certification to USACE Nationwide Permits (NWP's)*

**Dear Ms. Allen:**


This letter serves as the Pueblo of Santa Clara's 401 conditional certification of the Department of the Army Corp of Engineers Nationwide Permits.

The Pueblo requests that a pre-construction Notice of Intent (NOI) and post-construction Notice of Termination (NOT) be provided by the applicant to the Santa Clara Pueblo Governor's Office at the same time it is provided to the US Army Corps of Engineers Albuquerque District.

The condition noted above is necessary to assure protection of the water quality in Santa Clara Pueblo from permitted discharges. This conditional certification is issued under the authority of the Santa Clara Pueblo Water Quality Code, adopted as amended by Santa Clara Tribal Council Resolution No. 2003-27 (July 15, 2003), and approved by the Secretary of the Interior effective as of August 5, 2003.

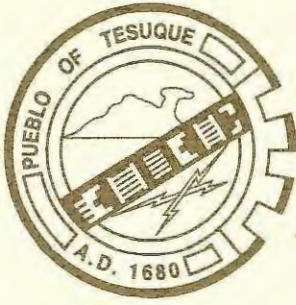
If you should have any questions, please do not hesitate to contact Bernardino Chavarria of the Santa Clara Pueblo Office of Environmental Affairs at (505) 753-7326 x1239.

**Sincerely,**

  
Governor J. Michael Chavarria  
Santa Clara Pueblo

Cc: file  
Environmental  
General Counsel





*Pueblo of Tesuque*  
Route 42 Box 360-T  
Santa Fe, New Mexico 87506

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December 15, 2020

Ms. Kelly E. Allen  
Chief, Regulatory Division  
Department of the Army  
Corps of Engineers, Albuquerque District  
4101 Jefferson Plaza NE  
Albuquerque, NM 87109-3435

**RE: Pueblo Certification of Proposed 2020 Nationwide Permits under CWA Section 401**

Dear Ms. Allen:

The Pueblo of Tesuque, by virtue of its *Treatment as a State* status as conferred by the U.S. EPA, is authorized to certify the proposed 2020 Nationwide Permits under CWA Section 401 (NWP's).

The Pueblo certifies all of the proposed NWP's with the following condition:

Applicants for authorization to discharge under any of the proposed NWP's shall, at the time of application to the U.S. Army Corps of Engineers, supply the Pueblo of Tesuque with a copy of the application materials including the completed Pre-Construction Notification (PCN) form, all drawings, data, and any other attachments. The materials will be sent to:

Pueblo of Tesuque  
Director, Environment and Natural Resources  
20 TP828 Administration Building  
Santa Fe, NM 87506

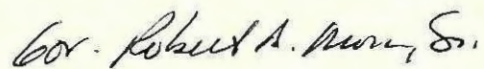
Materials can be hand delivered to the above address or emailed to the Director, Environment and Natural Resources. Please call 505-983-2667 to make arrangements. This condition applies to both the proposed NWP's and the final version of the proposed NWP's. If the Pueblo of Tesuque itself is applying for authorization to discharge under any of the proposed NWP's, this notification condition is waived.

To satisfy the requirements of 40 CFR 121.7(e)(2), be advised that the Pueblo passed and adopted the *Water Quality Code of the Pueblo of Tesuque* in 2005. The Code has been accepted by EPA and the standards it contains are enforceable in the same manner that state water quality standards are enforceable. The above certification condition is based on the Pueblo's necessity

to evaluate each application for a 404 general permit so that it can determine whether any of its water quality standards would be violated.

Your point of contact for this certification is Floyd Samuel, Director, Division of Administrative Services at 505-983-2667 or [fsamuel@pueblooftesuque.org](mailto:fsamuel@pueblooftesuque.org).

Sincerely,

A handwritten signature in black ink, reading "Gov. Robert A. Mora, Sr." in a cursive script.

Governor Robert A. Mora, Sr.