



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

FINAL PUBLIC NOTICE

PUBLIC NOTICE FOR THE FINAL REGIONAL CONDITIONS IN NEW MEXICO APPLICABLE TO THE 16 NATIONWIDE PERMITS PUBLISHED IN THE FEDERAL REGISTER ON JANUARY 13, 2021

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 (NWP) and four new NWP, as well as the reissuance of NWP general conditions and definitions with some modifications. These 16 NWP will go 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 January 13, 2021, *Federal Register* notice is available for viewing at <https://www.federalregister.gov/documents/2021/01/13/2021-00102/reissuance-and-modification-of-nationwide-permits>. As an alternative, interested parties can access the January 13, 2021, final rule and related documents at: <https://www.usace.army.mil/Missions/Civil-Works/Regulatory-Program-and-Permits/Nationwide-Permits/>

There are 40 existing NWP that were not reissued or modified by the January 13, 2021 final rule. Those 40 NWP were published in the January 6, 2017, issue of the Federal Register (82 FR 1860) and those NWP remain in effect until the Corps issues a final rule reissuing those NWP or March 18, 2022, whichever comes first. The 40 2017 NWP that remain in effect are:

- 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

The regional conditions for these 40 NWPs that were approved by the Division Engineer in 2017 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 16 NWPs listed above:

1. All Activities Conducted Under NWPs: In accordance with CFR 33 Part 330.4(c), the Corps hereby incorporates the current conditions of CWA Section 401 WQCs 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>.

Note: For all actions that are determined by the Albuquerque District to meet the terms and conditions of a NWP and are located off tribal land, individual WQC must be obtained from the New Mexico Environment Department's Surface Water Quality Bureau. A copy of the individual WQC must be provided to the District Engineer prior to commencing the regulated activity. Conditions contained within the individual WQC that meet the procedural requirements of 40 CFR Part 121 will be incorporated as part of NWP verifications. For all actions that are determined by the Albuquerque District to meet the terms and conditions of a NWP and are located on tribal land, either a general WQC or conditional WQC has been granted, or the WQC has been waived or denied. As previously stated, these WQC decisions are provided as an attachment to this public notice and will be posted on the Albuquerque District's website.

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 32.

3. Individual Water Quality Certification and Pre-Construction Notification: For all activities subject to regulation under the CWA Section 404 where Section 401 individual water quality certification is required, the applicant must provide Pre-Construction Notification to the District Engineer in accordance with General Condition 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/>

Note: In accordance with 40 CFR 121.4, applicants for federal permits and licenses must submit a written request for a pre-filing meeting to the water quality certifying authority at least 30 calendar days prior to submitting a certification request. More information about CWA, Sec. 401 procedures are available on EPA's website at: <https://www.epa.gov/CWA-401>

4. Peatlands: The use of the NWPs published in the January 13, 2021 issue of the Federal Register (86 FR 2744) 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:

[http://www.nrcs.usda.gov/Internet/ DOCUMENTS/nrcs142p2_053171.pdf](http://www.nrcs.usda.gov/Internet/DOCUMENTS/nrcs142p2_053171.pdf).

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.

ADDITIONAL INFORMATION

The following provides additional information regarding minimization of impacts and compliance with existing General Conditions:

1. Permittees are reminded of **General Condition 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. **General Condition 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 **General Condition 12**.

401 Water Quality Certification (WQC) Decisions Summary Table - New Mexico

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 (GWQC), a Conditional Water Quality Certification (CWQC), deny certification, or waive certification.

NWP	New Mexico Environment Department	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	Administratively Denied	GWQC	Waived	Waived	Denied	CWQC	Waived	Waived	Waived	Waived	CWQC	CWQC	Waived	CWQC
4	Administratively Denied	GWQC	Waived	Waived	Denied	CWQC	Waived	Waived	Waived	Waived	CWQC	CWQC	Waived	CWQC
5	Administratively Denied	GWQC	Waived	Waived	Denied	CWQC	Waived	Waived	Waived	Waived	CWQC	CWQC	Waived	CWQC
6	Administratively Denied	GWQC	Waived	Waived	Denied	CWQC	Waived	Waived	Waived	Waived	CWQC	CWQC	Waived	CWQC
7	Administratively Denied	GWQC	Waived	Waived	Denied	CWQC	Waived	Waived	Waived	Waived	CWQC	CWQC	Waived	CWQC
12	Administratively Denied	GWQC	Waived	Waived	Denied	CWQC	Waived	Waived	Waived	Waived	CWQC	CWQC	Waived	CWQC
13	Administratively Denied	GWQC	Waived	Waived	Denied	CWQC	Waived	Waived	Waived	Waived	CWQC	CWQC	Waived	CWQC
14	Administratively Denied	GWQC	Waived	Waived	Denied	CWQC	Waived	Waived	Waived	Waived	CWQC	CWQC	Waived	CWQC
15	Administratively Denied	GWQC	Waived	Waived	Denied	CWQC	Waived	Waived	Waived	Waived	CWQC	CWQC	Waived	CWQC
16	Administratively Denied	GWQC	Waived	Waived	Denied	CWQC	Waived	Waived	Waived	Waived	CWQC	CWQC	Waived	CWQC
17	Administratively Denied	GWQC	Waived	Waived	Denied	CWQC	Waived	Waived	Waived	Waived	CWQC	CWQC	Waived	CWQC
18	Administratively Denied	GWQC	Waived	Waived	Denied	CWQC	Waived	Waived	Waived	Waived	CWQC	CWQC	Waived	CWQC
19	Administratively Denied	GWQC	Waived	Waived	Denied	CWQC	Waived	Waived	Waived	Waived	CWQC	CWQC	Waived	CWQC
20	Administratively Denied	GWQC	Waived	Waived	Denied	CWQC	Waived	Waived	Waived	Waived	CWQC	CWQC	Waived	CWQC
21	Administratively Denied	GWQC	Waived	Waived	Waived	CWQC	Waived	Waived	Waived	Waived	CWQC	CWQC	Waived	CWQC
22	Administratively Denied	GWQC	Waived	Waived	Waived	CWQC	Waived	Waived	Waived	Waived	CWQC	CWQC	Waived	CWQC
23	Administratively Denied	GWQC	Waived	Waived	Denied	CWQC	Waived	Waived	Waived	Waived	CWQC	CWQC	Waived	CWQC
25	Administratively Denied	GWQC	Waived	Waived	Denied	CWQC	Waived	Waived	Waived	Waived	CWQC	CWQC	Waived	CWQC
27	Administratively Denied	GWQC	Waived	Waived	Denied	CWQC	Waived	Waived	Waived	Waived	CWQC	CWQC	Waived	CWQC
29	Administratively Denied	GWQC	Waived	Waived	Denied	CWQC	Waived	Waived	Waived	Waived	CWQC	CWQC	Waived	CWQC
30	Administratively Denied	GWQC	Waived	Waived	Denied	CWQC	Waived	Waived	Waived	Waived	CWQC	CWQC	Waived	CWQC
31	Administratively Denied	GWQC	Waived	Waived	Denied	CWQC	Waived	Waived	Waived	Waived	CWQC	CWQC	Waived	CWQC
32	Administratively Denied	GWQC	Waived	Waived	Denied	CWQC	Waived	Waived	Waived	Waived	CWQC	CWQC	Waived	CWQC
33	Administratively Denied	GWQC	Waived	Waived	Denied	CWQC	Waived	Waived	Waived	Waived	CWQC	CWQC	Waived	CWQC
34	Administratively Denied	GWQC	Waived	Waived	Waived	CWQC	Waived	Waived	Waived	Waived	CWQC	CWQC	Waived	CWQC
36	Administratively Denied	GWQC	Waived	Waived	Denied	CWQC	Waived	Waived	Waived	Waived	CWQC	CWQC	Waived	CWQC
37	Administratively Denied	GWQC	Waived	Waived	Denied	CWQC	Waived	Waived	Waived	Waived	CWQC	CWQC	Waived	CWQC
38	Administratively Denied	GWQC	Waived	Waived	Denied	CWQC	Waived	Waived	Waived	Waived	CWQC	CWQC	Waived	CWQC
39	Administratively Denied	GWQC	Waived	Waived	Denied	CWQC	Waived	Waived	Waived	Waived	CWQC	CWQC	Waived	CWQC
40	Administratively Denied	GWQC	Waived	Waived	Denied	CWQC	Waived	Waived	Waived	Waived	CWQC	CWQC	Waived	CWQC
41	Administratively Denied	GWQC	Waived	Waived	Denied	CWQC	Waived	Waived	Waived	Waived	CWQC	CWQC	Waived	CWQC
42	Administratively Denied	GWQC	Waived	Waived	Denied	CWQC	Waived	Waived	Waived	Waived	CWQC	CWQC	Waived	CWQC
43	Administratively Denied	GWQC	Waived	Waived	Denied	CWQC	Waived	Waived	Waived	Waived	CWQC	CWQC	Waived	CWQC
44	Administratively Denied	GWQC	Waived	Waived	Denied	CWQC	Waived	Waived	Waived	Waived	CWQC	CWQC	Waived	CWQC
45	Administratively Denied	GWQC	Waived	Waived	Denied	CWQC	Waived	Waived	Waived	Waived	CWQC	CWQC	Waived	CWQC
46	Administratively Denied	GWQC	Waived	Waived	Denied	CWQC	Waived	Waived	Waived	Waived	CWQC	CWQC	Waived	CWQC
48	Administratively Denied	GWQC	Waived	Waived	Waived	CWQC	Waived	Waived	Waived	Waived	CWQC	CWQC	Waived	CWQC
49	Administratively Denied	GWQC	Waived	Waived	Waived	CWQC	Waived	Waived	Waived	Waived	CWQC	CWQC	Waived	CWQC
50	Administratively Denied	GWQC	Waived	Waived	Denied	CWQC	Waived	Waived	Waived	Waived	CWQC	CWQC	Waived	CWQC
51	Administratively Denied	GWQC	Waived	Waived	Denied	CWQC	Waived	Waived	Waived	Waived	CWQC	CWQC	Waived	CWQC
52	Administratively Denied	GWQC	Waived	Waived	Denied	CWQC	Waived	Waived	Waived	Waived	CWQC	CWQC	Waived	CWQC
53	Administratively Denied	GWQC	Waived	Waived	Denied	CWQC	Waived	Waived	Waived	Waived	CWQC	CWQC	Waived	CWQC

54	Administratively Denied	GWQC	Waived	Waived	Waived	CWQC	Waived	Waived	Waived	Waived	CWQC	CWQC	Waived	CWQC
57(C)	Administratively Denied	GWQC	Waived	Waived	Denied	CWQC	Waived	Waived	Waived	Waived	CWQC	CWQC	Waived	CWQC
58(D)	Administratively Denied	GWQC	Waived	Waived	Denied	CWQC	Waived	Waived	Waived	Waived	CWQC	CWQC	Waived	CWQC
E	Administratively Denied	GWQC	Waived	Waived	Denied	CWQC	Waived	Waived	Waived	Waived	CWQC	CWQC	Waived	CWQC



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.¹ 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/>.

¹ 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.

Sincerely,

Charles Maguire

Charles W. Maguire
Director
Water Division



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, 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
Pueblo of Isleta Office of General Counsel, Francine.jaramillo@isletapueblo.com; Jaimie.park@isletapueblo.com

Ms. Kelly E. Allen
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December 15, 2020





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

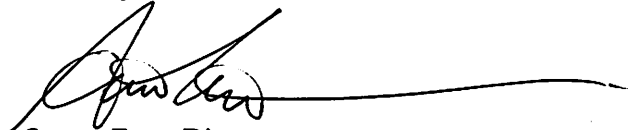
questionable prioritization by the Corps' leadership. The Corps leadership's determination to pursue this effort at this time only creates unnecessary animosity and erodes our decades-long partnership with the Corps. The Pueblo is grateful for the dedication of the Albuquerque District's staff who have 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)¹, 11-2-8², and 11-2-22(3)(4)(7)³, 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, 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, or Steve Etter, Director, Environmental & Natural Resources Department, 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

¹Section 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.

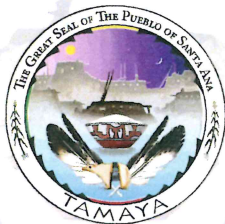
²Section 11-2-8 – Collaboration with Federal and State Agencies – The Pueblo will collaborate with federal and state agencies to prevent, reduce, and eliminate water pollution in coordination with programs for managing water resources.

³Section 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.



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.

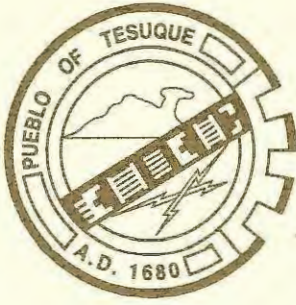
The condition noted above is necessary to assure protection of the water quality in Santa Clara Pueblo from permitted discharges. This conditional certification is issued under the authority of the Santa Clara Pueblo Water Quality Code, adopted as amended by Santa Clara Tribal Council Resolution No. 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

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

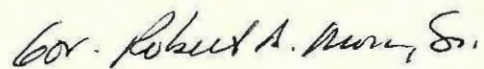
Materials can be hand delivered to the above address or emailed to the Director, Environment and Natural Resources. Please call 505-983-2667 to make arrangements. This condition applies to both the proposed NWP's and the final version of the proposed NWP's. If the Pueblo of Tesuque itself is applying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

Sincerely,

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

Governor Robert A. Mora, Sr.