



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

# INITIAL PUBLIC NOTICE

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## NATIONWIDE PERMIT REISSUANCE REQUEST FOR COMMENTS

On June 1, 2016, the U.S. Army Corps of Engineers published in the Federal Register its proposal to reissue the 50 existing nationwide permits (NWP) and issue two new NWP.

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

National Issues Concerning the Proposed NWP: The Federal Register notice is the public's opportunity to comment on the proposed NWP, general conditions, and definitions. Comments on national issues relating to these NWP should be submitted to docket number COE-2015-0017 at [www.regulations.gov](http://www.regulations.gov), or by email to [NWP2017@usace.army.mil](mailto:NWP2017@usace.army.mil) or by mail to Headquarters, U.S. Army Corps of Engineers, Directorate of Civil Works, ATTN: CECW-CO-R, 441 G Street, N.W., Washington, D.C. 20314-1000. Instructions for submitting comments are provided in the June 1, 2016 Federal Register notice. Comments on the proposed NWP are due by August 1, 2016.

Regional Issues Concerning the Proposed NWP, Including Regional Conditioning: Division engineers are authorized to add regional conditions specific to the needs and/or requirements of a particular region or state. Regional conditions are important mechanisms to ensure that the adverse environmental effects of activities authorized by the NWP are no more than minimal, both individually and cumulatively. Division engineers may also suspend or revoke specific NWP in certain geographic areas (e.g., states or watersheds) or high-value aquatic systems where the adverse environmental effects caused by activities authorized by those NWP may be more than minimal. An enclosure for this public notice (Enclosure 2) lists the proposed regional conditions currently under consideration by the South Pacific Division for the State of New Mexico. The Albuquerque District is seeking comments on the proposed regional conditions and seeking comments on the need for additional regional conditions to help ensure that the adverse environmental effects of activities authorized by the proposed NWP are no more than minimal, individually and cumulatively. Unless otherwise noted, all proposed regional conditions listed on this enclosure are applicable for activities in the State of New Mexico. Comments on regional issues relating to the proposed NWP and proposed regional conditions should be sent to U.S. Army Corps of Engineers, Albuquerque District, Regulatory Division, 4101 Jefferson Plaza NE, Albuquerque, NM 87109 or [CESPA-RD-NM@usace.army.mil](mailto:CESPA-RD-NM@usace.army.mil). Please contact the Albuquerque District at 505-342-3678 or 505-342-3216 for questions regarding the

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regional conditions in the State of New Mexico. Comments relating to regional conditions are due by August 11, 2016. Similar public notices proposing regional conditions in other regions or States are being published concurrently by other division or district offices.

After the final NWP are issued, the final regional conditions will be issued after they are approved by the Division Commander. After the final NWP are issued, States and Tribes will make their Clean Water Act Section 401 (401) water quality certification and States will make their Coastal Zone Management Act (CZMA) consistency determination decisions. The 401/CZMA decisions must be made within 90 days of the Federal Register notice announcing the issuance of the NWP. The final NWP will go into effect on March 19, 2017.

Draft decision documents for each of the proposed NWP, which include environmental documentation prepared for the purposes of the National Environmental Policy Act, have been written by Corps Headquarters. The decision documents will address compliance of the NWP with the requirements for issuance under the Corps general permit authority. These documents, as well as the proposed NWP, are available for viewing at [www.regulations.gov](http://www.regulations.gov), docket number COE-2015-0017. Final decision documents will be prepared for the NWP that are issued. In addition, the final national NWP decision documents will be supplemented by division engineers to address their decisions concerning regional conditions for the NWP.

Enclosed is an index of the proposed NWP and conditions. Anyone wishing to provide comments may obtain a full text copy of the NWP through the Corps Home Page at <http://www.usace.army.mil/Missions/CivilWorks/RegulatoryProgramandPermits/NationwidePermits.aspx>, at [www.regulations.gov](http://www.regulations.gov) in docket number COE-2015-0017, or at the Federal Register, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250-7954 or call 202-512-1800.

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## Enclosure 1

### *Index of Proposed Nationwide Permits, Conditions, and Definitions*

#### *Nationwide Permits*

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

**News Release**

42. Recreational Facilities
43. Stormwater Management Facilities
44. Mining Activities
45. Repair of Uplands Damaged by Discrete Events
46. Discharges in Ditches
47. [Reserved]
48. Commercial Shellfish Aquaculture Activities
49. Coal Remining Activities
50. Underground Coal Mining Activities
51. Land-Based Renewable Energy Generation Facilities
52. Water-Based Renewable Energy Generation Pilot Projects
  - A. Removal of Low-Head Dams
  - B. Living Shorelines

***Nationwide Permit General Conditions***

1. Navigation
2. Aquatic Life Movements
3. Spawning Areas
4. Migratory Bird Breeding Areas
5. Shellfish Beds
6. Suitable Material
7. Water Supply Intakes
8. Adverse Effects from Impoundments
9. Management of Water Flows
10. Fills Within 100-Year Floodplains
11. Equipment
12. Soil Erosion and Sediment Controls
13. Removal of Temporary Fills
14. Proper Maintenance
15. Single and Complete Project
16. Wild and Scenic Rivers
17. Tribal Rights
18. Endangered Species
19. Migratory Bird and Bald and Golden Eagle Permits
20. Historic Properties
21. Discovery of Previously Unknown Remains and Artifacts
22. Designated Critical Resource Waters
23. Mitigation
24. Safety of Impoundment Structures
25. Water Quality
26. Coastal Zone Management
27. Regional and Case-by-Case Conditions
28. Use of Multiple Nationwide Permits
29. Transfer of Nationwide Permit Verifications
30. Compliance Certification
31. Activities Affecting Structures or Works Built by the United States

**News Release**

## 32. Pre-Construction Notification

### *District Engineer's Decision*

#### *Further Information*

##### *Definitions*

Best management practices (BMPs)  
Compensatory mitigation  
Currently serviceable  
Direct effects  
Discharge  
Enhancement  
Ephemeral stream  
Establishment (creation)  
High Tide Line  
Historic property  
Independent utility  
Indirect effects  
Intermittent stream  
Loss of waters of the United States  
Non-tidal wetland  
Open water  
Ordinary high water mark  
Perennial stream  
Practicable  
Pre-construction notification  
Preservation  
Re-establishment  
Rehabilitation  
Restoration  
Riffle and pool complex  
Riparian areas  
Shellfish seeding  
Single and complete linear project  
Single and complete non-linear project  
Stormwater management  
Stormwater management facilities  
Stream bed  
Stream channelization  
Structure  
Tidal wetland  
Vegetated shallows  
Waterbody

**Enclosure 2**  
**New Mexico Regional Conditions**

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## 2017 Regional Conditions to Nationwide Permits in the State of New Mexico

U.S. Army Corps of Engineers  
Albuquerque District

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

1. All Activities Conducted Under Nationwide Permits. In accordance with Code of Federal Regulations (CFR) 33 Part 330.4(c), the U.S. Army Corps of Engineers (USACE) 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 Intermittent and Perennial Streams, and Special Aquatic Sites: (a) For all activities subject to regulation under the CWA Section 404 in 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.

(b) For projects in intermittent and perennial streams in which the New Mexico Environment Department (NMED) is the water quality certifying agency, the applicant must also notify the NMED Surface Water Quality Bureau and obtain confirmation of CWA, Section 401 Water Quality Certification prior to commencing work. A copy of NMED's confirmation must be provided to the USACE within 10 days of NMED's receipt of the applicant's notification.

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 notification is provided 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.

4. Special Status Waters in New Mexico. The waters listed in **Attachment 1** have been designated by the State of New Mexico as waters important for the protection of water quality or the protection and conservation of certain species. For all activities subject to regulation under the CWA Section 404 occurring in these waters, Pre-Construction Notification is required to the USACE in accordance with General Condition 32. The applicant must also provide Pre-

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Construction Notification to the New Mexico Department of Game and Fish, Ecological and Environmental Planning Division. Electronic submittals are preferred.

5. Activities in all Waters of the United States. Any activity subject to regulation under the CWA Section 404 that exceeds 1/2 acre of permanent fill in waters of the United States will require Pre-Construction Notification to the USACE in accordance with General Condition 32.

6. Springs. For all discharges of dredged or fill material within 100 feet of the point of groundwater discharge of natural springs, Pre-Construction Notification is required to the USACE in accordance with General Condition 32. A natural spring is defined as any location where ground water emanates from a point in the ground and has a defined surface water connection to another waters of the United States. For purposes of this regional condition, springs do not include seeps or other groundwater discharges which lack a defined surface water connection.

7. Channelization. General Condition 9 for Management of Water Flows is amended to add the following: Projects that would result in permanent channelization to previously un-channelized streams require Pre-Construction Notification to the District Engineer in accordance with General Condition 32.

8. 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 or used tires (loose or formed into bales) is prohibited in all waters of the United States.

9. Fens. All nationwide permits, except 3, 5, 6, 20, 27, 32 and 38, are revoked in fens and wetlands adjacent to fens. For activities in fens and wetlands adjacent to fens, use of nationwide permits 3, 20, and 27 requires Pre-Construction Notification to the District Engineer, in accordance with General Condition 32. For the purposes of this regional condition, fens are defined as follows:

Fens are peat-forming wetlands consisting of soils (histosols) that are normally saturated throughout the growing season, although they may not be during drought conditions. The primary source of hydrology for fens is the surrounding watershed in inflowing streams and groundwater. Histosols are defined by the U.S. Department of Agriculture, Natural Resources Conservation Service (NRCS) publications on Keys to Soil Taxonomy and Field Indicators of Hydric Soils in the United States (<http://www.nrcs.usda.gov/wps/portal/nrcs/main/soils/survey/class/taxonomy/> and [http://www.nrcs.usda.gov/Internet/FSE\\_DOCUMENTS/nrcs142p2\\_050723.pdf](http://www.nrcs.usda.gov/Internet/FSE_DOCUMENTS/nrcs142p2_050723.pdf)).

Additionally, peat-forming wetlands with spongy, water-logged soil containing a histosol or a mineral soil with a histic epipedon that may be termed in some literature as cienagas, marshes, or bogs (for example, the Alamo bog complex and the floating mat fen complex at Santo Domingo Pueblo) are included in this regional condition.

**News Release**

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

10. Nationwide Permit No. 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 1/4 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 'a' under Additional Information regarding suitable fill.

11. Nationwide Permit No. 23 – Approved Categorical Exclusions. Pre-Construction Notification to the District Engineer in accordance with General Condition 32 is required for all proposed activities under Nationwide Permit 23.

12. Nationwide Permit No. 27 – Aquatic Habitat Restoration, Establishment, and Enhancement Activities. For all proposed activities under Nationwide Permit 27 that require Pre-Construction Notification, 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 USACE. (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:

a. Permittees are reminded of **General Condition 6** which prohibits the use of unsuitable material. Organic debris, building waste, asphalt, car bodies, individual tires and trash are **not** suitable fill material. Also, **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**.

b. Permittees are reminded that Nationwide Permit 19 for Minor Dredging cannot be used in CWA, Section 404-only waters in accordance with the Nationwide Permit reissuance preamble in the Federal Register, Vol. 61, No. 241, Friday, December 13, 1996, page 65888.

**News Release**

## **ATTACHMENT 1** **SPECIAL STATUS WATERS**

### **OUTSTANDING NATIONAL RESOURCE WATERS**

Waters listed by the State of New Mexico under 20.6.4.9.B New Mexico Administrative Code. A list of the Outstanding National Resource Waters in New Mexico is available at:  
<http://164.64.110.239/nmac/parts/title20/20.006.0004.htm>

### **SPECIAL REPTILE AND AMPHIBIAN HABITAT**

**All perennial reaches of the Gila River, the San Francisco River and Mule Creek.** These waters are native habitat for the Narrowhead garter snake (*Thamnophis rufipunctatus*) and the Mexican garter snake (*Thamnophis eques*).

**Black River, Delaware River and lower Pecos River below Carlsbad.** These waters are occupied by state-listed western river cooter (*Pseudemys gorzugi*) and plainbelly watersnake (*Nerodia erythrogaster*).

**Ute Creek, Cieneguilla Creek, Canadian River and tributaries below Maxwell, Bitter Lake National Wildlife Refuge (NWR) wetlands and Pecos River and tributaries downstream of Bitter Lake NWR, including the Black River, Delaware River, and lower Pecos River below Carlsbad.** These waters are occupied by the state-listed western ribbon snake (*Thamnophis proximus*).

### **SPECIAL MAMMAL HABITAT**

**San Francisco River and tributaries.** These waters are occupied by the state-listed Arizona montane vole (*Microtus montanus arizonensis*). This vole occupies mesic sedge and grass meadows bordering small creeks and marshes in the San Francisco drainage.

**Tucumcari Lake, Salt Lake on Grulla NWR, and Bitter Lake National Wildlife Refuge and vicinity in the Pecos River Valley, including Bottomless Lakes State Park and BLM Overflow Wetlands.** These waters are occupied by the state-listed least shrew (*Cryptotis parva*). Aquatic habitats this shrew occupies include mesic meadows with willows and cattails, and bulrush marshes.

### **SPECIAL INVERTEBRATE HABITAT**

**Blue Spring and associated riparian corridor, Eddy County.** Blue Spring is the primary hydrologic source for perennial reaches of the Black River, and provides habitat for the endemic Pecos springsnail (*Pyrgulopsis pecosensis*) and the ovate vertigo land snail (*Vertigo ovate*).

**Thermal spring in Socorro County\*.** Habitat for the endemic New Mexico springsnail (*Pyrgulopsis neomexicana*)

## **News Release**

**Ute River, Conchas Lake, and Ute Reservoir.** Habitat for the paper pondshell mussel (*Utterbackia imbecillis*)

**All perennial reaches of the Black River, Eddy County,** from Black River Village downstream to the Carlsbad Irrigation District dam. Habitat for Texas hornshell mussel (*Popenaias popeii*)

**Gila springsnail (*Pyrgulopsis gilae*)**

Jordon Hot Springs, Middle Fork Gila River, Catron County  
Unnamed thermal springs along Middle Fork Gila River, Catron County  
Unnamed thermal springs along East Fork Gila River, Grant County  
Unnamed springs along Beaver Creek, East Fork Gila River, Catron County  
Unnamed springs along Taylor Creek, Catron County  
Alum Hot Spring, Gila River, Grant County

**New Mexico springsnail (*Pyrgulopsis thermalis*)**

Unnamed thermal springs along East Fork Gila River, Grant County  
Alum Hot Spring, Gila River, Grant County

**Middle Fork Lake.** Habitat for the state threatened Sangre de Cristo peaclam (*Pisidium sanguinichristi*).

**Nambe Lake.** Habitat for the state threatened Lilljeborg's peaclam (*Pisidium lilljeborgi*).

**Road Canyon Creek.** Habitat for state threatened swamp fingernailclam (*Musculium partumeium*).

**Cieneguilla Creek (Colfax County).** Habitat for state threatened lake fingernailclam (*Musculium lacustre*).

**Road Canyon Creek, Ute Creek, and Clayton Lake (Union County), Cabra Springs (San Miguel County).** Habitat for state threatened wide fingernailclam (*Musculium transversum*).

\* Release of site-specific locality information precluded by NMDGF Regulation 19.33.4.8, "Release of Confidential Data Regarding Endangered Species."

**SPECIAL FISH HABITAT**

**Roundtail chub (*Gila robusta*) and Headwater chub (*Gila nigra*):**

Gila River: New Mexico reaches of the  
Upper East Fork of the Gila River  
Lower Middle fork of the Gila River  
Lower most West Fork of the Gila River  
Mainstem Gila River from confluence of East & West forks Gila River downstream to AZ/NM border

**News Release**

West Fork Gila River—from its confluence with East Fork Gila River upstream to Gila Wilderness boundary.

Middle Fork Gila River—from its confluence with West Fork Gila River upstream to Gila Wilderness boundary.

East Fork Gila River—from its confluence with West Fork Gila River upstream to confluence of Beaver and Taylor creeks.

Beaver Creek—from its confluence with Taylor Creek upstream to FS Road 150.

Taylor Creek—from its confluence with Beaver Creek upstream to Wall Lake.

San Juan River Drainage: New Mexico reaches of the

Mancos River

La Plata River

Animas River

Navajo River

**Peppered chub (*Macrhybopsis tetranemus*):**

South Canadian River, downstream of Ute Dam to the Texas/New Mexico border.

**Suckermouth minnow (*Phenacobius mirabilis*):**

South Canadian

Dry Cimarron River

Lower reaches of Mora River

**Southern redbelly dace (*Phoxinus erythrogaster*):**

Headwaters of the Mora River, including Coyote Creek and tributaries to Black Lake Wetland associated with Mora River, located just east of Mora

**Blue Sucker (*Cycleptus elongatus*):**

Pecos River, downstream from Brantley Dam to the Texas - New Mexico border

Lower reaches of the Black River

**Gray Redhorse (*Moxostoma congestum*):**

Pecos River, from Carlsbad downstream to the New Mexico - Texas border

Lower reaches of the Black River.

**Mexican tetra (*Astyanas mexicanus*):**

Pecos River and associated floodplain habitats from Bitter Lake National Wildlife Refuge downstream to the New Mexico - Texas border

Black River

Delaware River

**Pecos pupfish (*Cyprinodon pecosensis*):**

Pecos River and associated floodplain habitats from Bitter Lake National Wildlife Refuge downstream to near Malaga Bend

Gypsum sinkholes, isolated oxbows and artificial impoundments on Bitter Lake National Wildlife Refuge

**News Release**

Aquatic habitats on Bottomless Lakes State Park  
BLM Overflow Area on Bottomless Lakes State Park

**Bigscale Logperch (*Percina macrolepida*):**

Pecos River between Santa Rosa and Fort Sumner Reservoir  
Lower Pecos (Bitter Lake NWR downstream to Brantley Reservoir)  
Black River

**Greenthroat darter (*Etheostoma lepidum*):**

Bitter Creek and gravel-bottomed ponds on Bitter Lake National Wildlife Refuge  
Cottonwood Creek, Blue Spring and Rattlesnake Springs in Carlsbad  
Caverns National Park