



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

# FINAL PUBLIC NOTICE

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## **PUBLIC NOTICE FOR FEDERAL REGISTER NOTICE ANNOUNCING THE REISSUANCE OF THE NATIONWIDE PERMITS**

On January 6, 2017, the U.S. Army Corps of Engineers (Corps) published the notice in the *Federal Register* announcing the reissuance of all 50 existing nationwide permits (NWP), general conditions, and definitions with some modifications. The Corps also issued two new NWPs, one new general condition, and five new definitions. The 2017 NWPs will go into effect on March 19, 2017, and will expire on March 18, 2022.

With the publication of this *Federal Register* notice, Corps districts will begin finalizing their regional conditions for the new and reissued NWPs. Regional conditions will provide additional protection for the aquatic environment, and will help ensure that the NWPs authorize only those activities with no more than minimal adverse environmental effects. Regional conditions will help ensure protection of high value waters within the Albuquerque District.

The publication of this *Federal Register* notice also begins the 60-day period for states, Tribes, and the Environmental Protection Agency (EPA) to complete their water quality certification (WQC) processes for the NWPs. The 60-day period for WQC will end on March 6, 2017. This *Federal Register* notice also begins the 90-day period for coastal states to complete their Coastal Zone Management Act (CZMA) consistency determination processes. The 90-day period for CZMA consistency determinations will end on April 5, 2017.

If coastal states do not complete their CZMA consistency determination processes before the 2017 NWPs go into effect on March 19, 2017, the use of an NWP to authorize an activity within, or outside, a state's coastal zone that will affect land or water uses or natural resources of that state's coastal zone, is contingent upon obtaining an individual CZMA consistency determination, or a case-specific presumption of CZMA concurrence.

The January 6, 2017, *Federal Register* notice is available for viewing at the Albuquerque District main office located at 4101 Jefferson Plaza Northeast, Albuquerque, New Mexico 87109 or on the Internet at <http://www.usace.army.mil/Missions/CivilWorks/RegulatoryProgramandPermits/NationwidePermits.aspx>. As an alternative, interested parties can access the January 6, 2017, final rule that was published in the *Federal Register* through the U.S. Government Printing Office at <http://www.gpo.gov/fdsys/browse/collection.action?collectionCode=FR>.

The Corps has also issued final decision documents for the new and reissued NWPs. These documents are available at [www.regulations.gov](http://www.regulations.gov) at docket number COE-2015-0017. Furthermore, the national NWP decision documents will be supplemented by Division Engineers to address decisions concerning the addition of regional conditions to the NWPs.

# Enclosure 1

## Index of Nationwide Permits, Conditions, District Engineer's Decision, Further Information, and Definitions

### Nationwide Permits

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



## 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-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.

#### **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.

## **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*)

**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  
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

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