APPENDIX B:
Clean Water Act Section 404, 402, and 401

Farmer's Mutual Ditch Erosion Repair Project
Supplemental Environmental Assessment
Farmington, NM

August 2025

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US Army Corps
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Albuquerque District

Introduction

This appendix documents compliance with Section 404 and 401 of the Clean Water Act (CWA) for the Farmers Mutual Ditch Erosion Repair Project in Farmington, New Mexico. The proposed action qualifies for Nationwide Permit (NWP) 13, Bank Stabilization, which authorizes activities to protect shorelines and riverbanks from erosion when specific thresholds are met.

This project involves excavation below the Ordinary High-Water Mark (OHWM) of the San Juan River and the placement of approximately 32.25 cubic yards of new fill material, including riprap and articulated concrete block (ACB) to stabilize the 98.7 foot section of riverbank. All previously installed ACB matting and eroded material will be removed and disposed of offsite in accordance with applicable regulations. Because the total fill volume and length of stabilization are within the limits of NWP 13, and the design avoids impairing surface water flow or altering the stream channel, an individual 404(b)(1) analysis is not required.

The project also complies with the 2021 Regional Conditions for New Mexico and the State of New Mexico's Section 401 Water Quality Certification (WQC) for NWP 13. The WQC includes provisions for erosion control, revegetation, spill prevention, and sediment containment, all of which are addressed through best management practices (BMPs) described in the Supplemental Environmental Assessment (SEA). Since the project meets the conditions of the general certification, no individual 401 certification is required.

Because the total area of ground disturbance is only 0.51 acres, the project also falls below the threshold for Section 402 permitting under the National Pollutant Discharge Elimination System (NPDES). However, stormwater BMPs will still be implemented to reduce short-term construction impacts to water quality.

This appendix includes the following supporting documentation:

- Full text of Nationwide Permit 13
- 2021 Regional Conditions for New Mexico
- Section 401 Water Quality Certification for NWP 13 (New Mexico Environment Department)

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2021 Nationwide Permit Summary

NATIONWIDE PERMIT 13
Bank Stabilization
Effective Date: February 25, 2022
Expiration Date: March 14, 2026
(NWP Final Notice, 86 FR 73522)

Bank Stabilization. Bank stabilization activities necessary for erosion control or prevention, such as vegetative stabilization, bioengineering, sills, rip rap, revetment, gabion baskets, stream barbs, and bulkheads, or combinations of bank stabilization techniques, provided the activity meets all of the following criteria:

(a) No material is placed in excess of the minimum needed for erosion protection;

(b) The activity is no more than 500 feet in length along the bank, unless the district engineer waives this criterion by making a written determination concluding that the discharge of dredged or fill material will result in no more than minimal adverse environmental effects (an exception is for bulkheads—the district engineer cannot issue a waiver for a bulkhead that is greater than 1,000 feet in length along the bank);

(c) The activity will not exceed an average of one cubic yard per running foot, as measured along the length of the treated bank, below the plane of the ordinary high water mark or the high tide line, unless the district engineer waives this criterion by making a written determination concluding that the discharge of dredged or fill material will result in no more than minimal adverse environmental effects;

(d) The activity does not involve discharges of dredged or fill material into special aquatic sites, unless the district engineer waives this criterion by making a written determination concluding that the discharge of dredged or fill material will result in no more than minimal adverse environmental effects;

(e) No material is of a type, or is placed in any location, or in any manner, that will impair surface water flow into or out of any waters of the United States;

(f) No material is placed in a manner that will be eroded by normal or expected high flows (properly anchored native trees and treetops may be used in low energy areas);

(g) Native plants appropriate for current site conditions, including salinity, must be used for bioengineering or vegetative bank stabilization;

(h) The activity is not a stream channelization activity; and

(i) The activity must be properly maintained, which may require repairing it after severe storms or erosion events. This NWP authorizes those maintenance and repair activities if they require authorization.

This NWP also authorizes temporary structures, fills, and work, including the use of temporary mats, necessary to construct the bank stabilization activity. Appropriate measures must be taken to maintain normal downstream flows and minimize flooding to the maximum extent practicable, when temporary structures, work, and discharges of dredged or fill material, including cofferdams, are necessary for construction activities, access fills, or dewatering of construction sites. Temporary fills must consist of materials, and be placed in a manner, that will not be eroded by expected high flows. After construction, temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations. The areas affected by temporary fills must be revegetated, as appropriate.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity if the bank stabilization activity: (1) Involves discharges of dredged or fill material into special aquatic sites; or (2) is in excess of 500 feet in length; or (3) will involve the discharge of dredged or fill material of greater than an average of one cubic yard per running foot as measured along the length of the treated bank, below the plane of the ordinary high water mark or the high tide line. (See general condition 32.) (Authorities: Sections 10 and 404)

Note: In coastal waters and the Great Lakes, living shorelines may be an appropriate option for bank stabilization, and may be authorized by NWP 54.

Nationwide Permit General Conditions

Note: To qualify for NWP authorization, the prospective permittee must comply with the following general conditions, as applicable, in addition to any regional or case-specific conditions imposed by the division engineer or district engineer. Prospective permittees should contact the appropriate Corps district office to determine if regional conditions have been imposed on an NWP. Prospective permittees should also contact the appropriate Corps district office to determine the status of Clean Water Act Section 401 water quality certification and/or Coastal Zone Management Act consistency for an NWP. Every person who may wish to obtain permit authorization under one or more NWPs, or who is currently relying on an existing or prior permit authorization under one or more NWPs, has been and is on notice that all of the provisions of 33 CFR 330.1 through 330.6 apply to every NWP authorization. Note especially 33 CFR 330.5 relating to the modification, suspension, or revocation of any NWP authorization.

1. Navigation

(a) No activity may cause more than a minimal adverse effect on navigation.

(b) Any safety lights and signals prescribed by the U.S. Coast Guard, through regulations or otherwise, must be installed and maintained at the permittee's expense on authorized facilities in navigable waters of the United States.

(c) The permittee understands and agrees that, if future operations by the United States require the removal, relocation, or other alteration, of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his or her authorized representative, said structure or

work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the Corps of Engineers, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.

2. Aquatic Life Movements

No activity may substantially disrupt the necessary life cycle movements of those species of aquatic life indigenous to the waterbody, including those species that normally migrate through the area, unless the activity's primary purpose is to impound water. All permanent and temporary crossings of waterbodies shall be suitably culverted, bridged, or otherwise designed and constructed to maintain low flows to sustain the movement of those aquatic species. If a bottomless culvert cannot be used, then the crossing should be designed and constructed to minimize adverse effects to aquatic life movements.

3. Spawning Areas

Activities in spawning areas during spawning seasons must be avoided to the maximum extent practicable. Activities that result in the physical destruction (*e.g.,* through excavation, fill, or downstream smothering by substantial turbidity) of an important spawning area are not authorized.

4. Migratory Bird Breeding Areas

Activities in waters of the United States that serve as breeding areas for migratory birds must be avoided to the maximum extent practicable.

5. Shellfish Beds

No activity may occur in areas of concentrated shellfish populations, unless the activity is directly related to a shellfish harvesting activity authorized by NWPs 4 and 48 or is a shellfish seeding or habitat restoration activity authorized by NWP 27.

6. Suitable Material

No activity may use unsuitable material (*e.g.,* trash, debris, car bodies, asphalt, etc.). Material used for construction or discharged must be free from toxic pollutants in toxic amounts (see section 307 of the Clean Water Act).

7. Water Supply Intakes

No activity may occur in the proximity of a public water supply intake, except where the activity is for the repair or improvement of public water supply intake structures or adjacent bank stabilization.

8. Adverse Effects from Impoundments

If the activity creates an impoundment of water, adverse effects to the aquatic system due to accelerating the passage of water, and/or restricting its flow must be minimized to the maximum extent practicable.

9. Management of Water Flows

To the maximum extent practicable, the pre-construction course, condition, capacity, and location of open waters must be maintained for each activity, including stream channelization, storm water management activities, and temporary and permanent road crossings, except as provided below. The activity must be constructed to withstand expected high flows. The activity must not restrict or impede the passage of normal or high flows unless the primary purpose of the activity is to impound water or manage high flows. The activity may alter the pre-construction course, condition, capacity, and location of open waters if it benefits the aquatic environment (*e.g.,* stream restoration or relocation activities).

10. Fills Within 100-Year Floodplains

The activity must comply with applicable FEMA-approved state or local floodplain management requirements.

11. Equipment

Heavy equipment working in wetlands or mudflats must be placed on mats, or other measures must be taken to minimize soil disturbance.

12. Soil Erosion and Sediment Controls

Appropriate soil erosion and sediment controls must be used and maintained in effective operating condition during construction, and all exposed soil and other fills, as well as any work below the ordinary high water mark or high tide line, must be permanently stabilized at the earliest practicable date. Permittees are encouraged to perform work within waters of the United States during periods of low-flow or no-flow, or during low tides.

13. Removal of Temporary Structures and Fills

Temporary structures must be removed, to the maximum extent practicable, after their use has been discontinued. Temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations. The affected areas must be revegetated, as appropriate.

14. Proper Maintenance

Any authorized structure or fill shall be properly maintained, including maintenance to ensure public safety and compliance with applicable NWP general conditions, as well as any activity-specific conditions added by the district engineer to an NWP authorization.

15. Single and Complete Project

The activity must be a single and complete project. The same NWP cannot be used more than once for the same single and complete project.

16. Wild and Scenic Rivers

(a) No NWP activity may occur in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a "study river" for possible inclusion in the system while the river is in an official study status, unless the appropriate Federal agency with

direct management responsibility for such river, has determined in writing that the proposed activity will not adversely affect the Wild and Scenic River designation or study status.

(b) If a proposed NWP activity will occur in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a "study river" for possible inclusion in the system while the river is in an official study status, the permittee must submit a pre-construction notification (see general condition 32). The district engineer will coordinate the PCN with the Federal agency with direct management responsibility for that river. Permittees shall not begin the NWP activity until notified by the district engineer that the Federal agency with direct management responsibility for that river has determined in writing that the proposed NWP activity will not adversely affect the Wild and Scenic River designation or study status.

(c) Information on Wild and Scenic Rivers may be obtained from the appropriate Federal land management agency responsible for the designated Wild and Scenic River or study river (*e.g.,* National Park Service, U.S. Forest Service, Bureau of Land Management, U.S. Fish and Wildlife Service). Information on these rivers is also available at: *http://www.rivers.gov/*.

17. Tribal Rights

No activity or its operation may impair reserved tribal rights, including, but not limited to, reserved water rights and treaty fishing and hunting rights.

18. Endangered Species

(a) No activity is authorized under any NWP which is likely to directly or indirectly jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation, as identified under the Federal Endangered Species Act (ESA), or which will directly or indirectly destroy or adversely modify designated critical habitat or critical habitat proposed for such designation. No activity is authorized under any NWP which "may affect" a listed species or critical habitat unless ESA section 7 consultation addressing the consequences of the proposed activity on listed species or critical habitat has been completed. See 50 CFR 402.02 for the definition of "effects of the action" for the purposes of ESA section 7 consultation, as well as 50 CFR 402.17, which provides further explanation under ESA section 7 regarding "activities that are reasonably certain to occur" and "consequences caused by the proposed action."

(b) Federal agencies should follow their own procedures for complying with the requirements of the ESA (see 33 CFR 330.4(f)(1)). If pre-construction notification is required for the proposed activity, the Federal permittee must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements. The district engineer will verify that the appropriate documentation has been submitted. If the appropriate documentation has not been submitted, additional ESA section 7 consultation may be necessary for the activity and the respective federal agency would be responsible for fulfilling its obligation under section 7 of the ESA.

(c) Non-federal permittees must submit a pre-construction notification to the district engineer if any listed species (or species proposed for listing) or designated critical habitat (or critical habitat proposed such designation) might be affected or is in the vicinity of the activity, or if the activity is located in designated critical habitat or critical habitat proposed for such designation, and shall not begin work on the activity until notified by the district engineer that the requirements of the

ESA have been satisfied and that the activity is authorized. For activities that might affect Federally-listed endangered or threatened species (or species proposed for listing) or designated critical habitat (or critical habitat proposed for such designation), the pre-construction notification must include the name(s) of the endangered or threatened species (or species proposed for listing) that might be affected by the proposed activity or that utilize the designated critical habitat (or critical habitat proposed for such designation) that might be affected by the proposed activity. The district engineer will determine whether the proposed activity "may affect" or will have "no effect" to listed species and designated critical habitat and will notify the non-Federal applicant of the Corps' determination within 45 days of receipt of a complete pre-construction notification. For activities where the non-Federal applicant has identified listed species (or species proposed for listing) or designated critical habitat (or critical habitat proposed for such designation) that might be affected or is in the vicinity of the activity, and has so notified the Corps, the applicant shall not begin work until the Corps has provided notification that the proposed activity will have "no effect" on listed species (or species proposed for listing or designated critical habitat (or critical habitat proposed for such designation), or until ESA section 7 consultation or conference has been completed. If the non-Federal applicant has not heard back from the Corps within 45 days, the applicant must still wait for notification from the Corps.

(d) As a result of formal or informal consultation or conference with the FWS or NMFS the district engineer may add species-specific permit conditions to the NWPs.

(e) Authorization of an activity by an NWP does not authorize the "take" of a threatened or endangered species as defined under the ESA. In the absence of separate authorization (*e.g.,* an ESA Section 10 Permit, a Biological Opinion with "incidental take" provisions, etc.) from the FWS or the NMFS, the Endangered Species Act prohibits any person subject to the jurisdiction of the United States to take a listed species, where "take" means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. The word "harm" in the definition of "take" means an act which actually kills or injures wildlife. Such an act may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering.

(f) If the non-federal permittee has a valid ESA section 10(a)(1)(B) incidental take permit with an approved Habitat Conservation Plan for a project or a group of projects that includes the proposed NWP activity, the non-federal applicant should provide a copy of that ESA section 10(a)(1)(B) permit with the PCN required by paragraph (c) of this general condition. The district engineer will coordinate with the agency that issued the ESA section 10(a)(1)(B) permit to determine whether the proposed NWP activity and the associated incidental take were considered in the internal ESA section 7 consultation conducted for the ESA section 10(a)(1)(B) permit. If that coordination results in concurrence from the agency that the proposed NWP activity and the associated incidental take were considered in the internal ESA section 7 consultation for the ESA section 10(a)(1)(B) permit, the district engineer does not need to conduct a separate ESA section 7 consultation for the proposed NWP activity. The district engineer will notify the non-federal applicant within 45 days of receipt of a complete pre-construction notification whether the ESA section 10(a)(1)(B) permit covers the proposed NWP activity or whether additional ESA section 7 consultation is required.

(g) Information on the location of threatened and endangered species and their critical habitat can be obtained directly from the offices of the FWS and NMFS or their world wide web pages at *http://www.fws.gov/* or *http://www.fws.gov/ipac* and *http://www.nmfs.noaa.gov/pr/species/esa/*, respectively.

19. Migratory Birds and Bald and Golden Eagles

The permittee is responsible for ensuring that an action authorized by an NWP complies with the Migratory Bird Treaty Act and the Bald and Golden Eagle Protection Act. The permittee is responsible for contacting the appropriate local office of the U.S. Fish and Wildlife Service to determine what measures, if any, are necessary or appropriate to reduce adverse effects to migratory birds or eagles, including whether "incidental take" permits are necessary and available under the Migratory Bird Treaty Act or Bald and Golden Eagle Protection Act for a particular activity.

20. Historic Properties

(a) No activity is authorized under any NWP which may have the potential to cause effects to properties listed, or eligible for listing, in the National Register of Historic Places until the requirements of Section 106 of the National Historic Preservation Act (NHPA) have been satisfied.

(b) Federal permittees should follow their own procedures for complying with the requirements of section 106 of the National Historic Preservation Act (see 33 CFR 330.4(g)(1)). If pre-construction notification is required for the proposed NWP activity, the Federal permittee must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements. The district engineer will verify that the appropriate documentation has been submitted. If the appropriate documentation is not submitted, then additional consultation under section 106 may be necessary. The respective federal agency is responsible for fulfilling its obligation to comply with section 106.

(c) Non-federal permittees must submit a pre-construction notification to the district engineer if the NWP activity might have the potential to cause effects to any historic properties listed on, determined to be eligible for listing on, or potentially eligible for listing on the National Register of Historic Places, including previously unidentified properties. For such activities, the pre-construction notification must state which historic properties might have the potential to be affected by the proposed NWP activity or include a vicinity map indicating the location of the historic properties or the potential for the presence of historic properties. Assistance regarding information on the location of, or potential for, the presence of historic properties can be sought from the State Historic Preservation Officer, Tribal Historic Preservation Officer, or designated tribal representative, as appropriate, and the National Register of Historic Places (see 33 CFR 330.4(g)). When reviewing pre-construction notifications, district engineers will comply with the current procedures for addressing the requirements of section 106 of the National Historic Preservation Act. The district engineer shall make a reasonable and good faith effort to carry out appropriate identification efforts commensurate with potential impacts, which may include background research, consultation, oral history interviews, sample field investigation, and/or field survey. Based on the information submitted in the PCN and these identification efforts, the district engineer shall determine whether the proposed NWP activity has the potential to cause effects on the historic properties. Section 106 consultation is not required when the district

engineer determines that the activity does not have the potential to cause effects on historic properties (see 36 CFR 800.3(a)). Section 106 consultation is required when the district engineer determines that the activity has the potential to cause effects on historic properties. The district engineer will conduct consultation with consulting parties identified under 36 CFR 800.2(c) when he or she makes any of the following effect determinations for the purposes of section 106 of the NHPA: No historic properties affected, no adverse effect, or adverse effect.

(d) Where the non-Federal applicant has identified historic properties on which the proposed NWP activity might have the potential to cause effects and has so notified the Corps, the non-Federal applicant shall not begin the activity until notified by the district engineer either that the activity has no potential to cause effects to historic properties or that NHPA section 106 consultation has been completed. For non-federal permittees, the district engineer will notify the prospective permittee within 45 days of receipt of a complete pre-construction notification whether NHPA section 106 consultation is required. If NHPA section 106 consultation is required, the district engineer will notify the non-Federal applicant that he or she cannot begin the activity until section 106 consultation is completed. If the non-Federal applicant has not heard back from the Corps within 45 days, the applicant must still wait for notification from the Corps.

(e) Prospective permittees should be aware that section 110k of the NHPA (54 U.S.C. 306113) prevents the Corps from granting a permit or other assistance to an applicant who, with intent to avoid the requirements of section 106 of the NHPA, has intentionally significantly adversely affected a historic property to which the permit would relate, or having legal power to prevent it, allowed such significant adverse effect to occur, unless the Corps, after consultation with the Advisory Council on Historic Preservation (ACHP), determines that circumstances justify granting such assistance despite the adverse effect created or permitted by the applicant. If circumstances justify granting the assistance, the Corps is required to notify the ACHP and provide documentation specifying the circumstances, the degree of damage to the integrity of any historic properties affected, and proposed mitigation. This documentation must include any views obtained from the applicant, SHPO/THPO, appropriate Indian tribes if the undertaking occurs on or affects historic properties on tribal lands or affects properties of interest to those tribes, and other parties known to have a legitimate interest in the impacts to the permitted activity on historic properties.

21. Discovery of Previously Unknown Remains and Artifacts

Permittees that discover any previously unknown historic, cultural, or archeological remains and artifacts while accomplishing the activity authorized by an NWP, they must immediately notify the district engineer of what they have found, and to the maximum extent practicable, avoid construction activities that may affect the remains and artifacts until the required coordination has been completed. The district engineer will initiate the Federal, Tribal, and state coordination required to determine if the items or remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.

22. Designated Critical Resource Waters

Critical resource waters include, NOAA-managed marine sanctuaries and marine monuments, and National Estuarine Research Reserves. The district engineer may designate, after notice and opportunity for public comment, additional waters officially designated by a state as having

particular environmental or ecological significance, such as outstanding national resource waters or state natural heritage sites. The district engineer may also designate additional critical resource waters after notice and opportunity for public comment.

(a) Discharges of dredged or fill material into waters of the United States are not authorized by NWPs 7, 12, 14, 16, 17, 21, 29, 31, 35, 39, 40, 42, 43, 44, 49, 50, 51, 52, 57 and 58 for any activity within, or directly affecting, critical resource waters, including wetlands adjacent to such waters.

(b) For NWPs 3, 8, 10, 13, 15, 18, 19, 22, 23, 25, 27, 28, 30, 33, 34, 36, 37, 38, and 54, notification is required in accordance with general condition 32, for any activity proposed by permittees in the designated critical resource waters including wetlands adjacent to those waters. The district engineer may authorize activities under these NWPs only after she or he determines that the impacts to the critical resource waters will be no more than minimal.

23. Mitigation

The district engineer will consider the following factors when determining appropriate and practicable mitigation necessary to ensure that the individual and cumulative adverse environmental effects are no more than minimal:

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

(b) Mitigation in all its forms (avoiding, minimizing, rectifying, reducing, or compensating for resource losses) will be required to the extent necessary to ensure that the individual and cumulative adverse environmental effects are no more than minimal.

(c) Compensatory mitigation at a minimum one-for-one ratio will be required for all wetland losses that exceed 1/10-acre and require pre-construction notification, unless the district engineer determines in writing that either some other form of mitigation would be more environmentally appropriate, or the adverse environmental effects of the proposed activity are no more than minimal and provides an activity-specific waiver of this requirement. For wetland losses of 1/10-acre or less that require pre-construction notification, the district engineer may determine on a case-by-case basis that compensatory mitigation is required to ensure that the activity results in only minimal adverse environmental effects.

(d) Compensatory mitigation at a minimum one-for-one ratio will be required for all losses of stream bed that exceed 3/100-acre and require pre-construction notification, unless the district engineer determines in writing that either some other form of mitigation would be more environmentally appropriate, or the adverse environmental effects of the proposed activity are no more than minimal and provides an activity-specific waiver of this requirement. This compensatory mitigation requirement may be satisfied through the restoration or enhancement of riparian areas next to streams in accordance with paragraph (e) of this general condition. For losses of stream bed of 3/100-acre or less that require pre-construction notification, the district engineer may determine on a case-by-case basis that compensatory mitigation is required to ensure that the activity results in only minimal adverse environmental effects. Compensatory mitigation for losses of streams should be provided, if practicable, through stream rehabilitation, enhancement, or preservation, since streams are difficult-to-replace resources (see 33 CFR 332.3(e)(3)).

(e) Compensatory mitigation plans for NWP activities in or near streams or other open waters will normally include a requirement for the restoration or enhancement, maintenance, and legal protection (*e.g.,* conservation easements) of riparian areas next to open waters. In some cases, the restoration or maintenance/protection of riparian areas may be the only compensatory mitigation required. If restoring riparian areas involves planting vegetation, only native species should be planted. The width of the required riparian area will address documented water quality or aquatic habitat loss concerns. Normally, the riparian area will be 25 to 50 feet wide on each side of the stream, but the district engineer may require slightly wider riparian areas to address documented water quality or habitat loss concerns. If it is not possible to restore or maintain/protect a riparian area on both sides of a stream, or if the waterbody is a lake or coastal waters, then restoring or maintaining/protecting a riparian area along a single bank or shoreline may be sufficient. Where both wetlands and open waters exist on the project site, the district engineer will determine the appropriate compensatory mitigation (*e.g.,* riparian areas and/or wetlands compensation) based on what is best for the aquatic environment on a watershed basis. In cases where riparian areas are determined to be the most appropriate form of minimization or compensatory mitigation, the district engineer may waive or reduce the requirement to provide wetland compensatory mitigation for wetland losses.

(f) Compensatory mitigation projects provided to offset losses of aquatic resources must comply with the applicable provisions of 33 CFR part 332.

(1) The prospective permittee is responsible for proposing an appropriate compensatory mitigation option if compensatory mitigation is necessary to ensure that the activity results in no more than minimal adverse environmental effects. For the NWPs, the preferred mechanism for providing compensatory mitigation is mitigation bank credits or in-lieu fee program credits (see 33 CFR 332.3(b)(2) and (3)). However, if an appropriate number and type of mitigation bank or in-lieu credits are not available at the time the PCN is submitted to the district engineer, the district engineer may approve the use of permittee-responsible mitigation.

(2) The amount of compensatory mitigation required by the district engineer must be sufficient to ensure that the authorized activity results in no more than minimal individual and cumulative adverse environmental effects (see 33 CFR 330.1(e)(3)). (See also 33 CFR 332.3(f).)

(3) Since the likelihood of success is greater and the impacts to potentially valuable uplands are reduced, aquatic resource restoration should be the first compensatory mitigation option considered for permittee-responsible mitigation.

(4) If permittee-responsible mitigation is the proposed option, the prospective permittee is responsible for submitting a mitigation plan. A conceptual or detailed mitigation plan may be used by the district engineer to make the decision on the NWP verification request, but a final mitigation plan that addresses the applicable requirements of 33 CFR 332.4(c)(2) through (14) must be approved by the district engineer before the permittee begins work in waters of the United States, unless the district engineer determines that prior approval of the final mitigation plan is not practicable or not necessary to ensure timely completion of the required compensatory mitigation (see 33 CFR 332.3(k)(3)). If permittee-responsible mitigation is the proposed option, and the proposed compensatory mitigation site is located on land in which another federal agency holds an easement, the district engineer will

coordinate with that federal agency to determine if proposed compensatory mitigation project is compatible with the terms of the easement.

(5) If mitigation bank or in-lieu fee program credits are the proposed option, the mitigation plan needs to address only the baseline conditions at the impact site and the number of credits to be provided (see 33 CFR 332.4(c)(1)(ii)).

(6) Compensatory mitigation requirements (*e.g.,* resource type and amount to be provided as compensatory mitigation, site protection, ecological performance standards, monitoring requirements) may be addressed through conditions added to the NWP authorization, instead of components of a compensatory mitigation plan (see 33 CFR 332.4(c)(1)(ii)).

(g) Compensatory mitigation will not be used to increase the acreage losses allowed by the acreage limits of the NWPs. For example, if an NWP has an acreage limit of 1/2-acre, it cannot be used to authorize any NWP activity resulting in the loss of greater than 1/2-acre of waters of the United States, even if compensatory mitigation is provided that replaces or restores some of the lost waters. However, compensatory mitigation can and should be used, as necessary, to ensure that an NWP activity already meeting the established acreage limits also satisfies the no more than minimal impact requirement for the NWPs.

(h) Permittees may propose the use of mitigation banks, in-lieu fee programs, or permittee-responsible mitigation. When developing a compensatory mitigation proposal, the permittee must consider appropriate and practicable options consistent with the framework at 33 CFR 332.3(b). For activities resulting in the loss of marine or estuarine resources, permittee-responsible mitigation may be environmentally preferable if there are no mitigation banks or in-lieu fee programs in the area that have marine or estuarine credits available for sale or transfer to the permittee. For permittee-responsible mitigation, the special conditions of the NWP verification must clearly indicate the party or parties responsible for the implementation and performance of the compensatory mitigation project, and, if required, its long-term management.

(i) Where certain functions and services of waters of the United States are permanently adversely affected by a regulated activity, such as discharges of dredged or fill material into waters of the United States that will convert a forested or scrub-shrub wetland to an herbaceous wetland in a permanently maintained utility line right-of-way, mitigation may be required to reduce the adverse environmental effects of the activity to the no more than minimal level.

24. Safety of Impoundment Structures

To ensure that all impoundment structures are safely designed, the district engineer may require non-Federal applicants to demonstrate that the structures comply with established state or federal, dam safety criteria or have been designed by qualified persons. The district engineer may also require documentation that the design has been independently reviewed by similarly qualified persons, and appropriate modifications made to ensure safety.

25. Water Quality

(a) Where the certifying authority (state, authorized tribe, or EPA, as appropriate) has not previously certified compliance of an NWP with CWA section 401, a CWA section 401 water quality certification for the proposed discharge must be obtained or waived (see 33 CFR 330.4(c)). If the permittee cannot comply with all of the conditions of a water quality certification previously issued by certifying authority for the issuance of the NWP, then the

permittee must obtain a water quality certification or waiver for the proposed discharge in order for the activity to be authorized by an NWP.

(b) If the NWP activity requires pre-construction notification and the certifying authority has not previously certified compliance of an NWP with CWA section 401, the proposed discharge is not authorized by an NWP until water quality certification is obtained or waived. If the certifying authority issues a water quality certification for the proposed discharge, the permittee must submit a copy of the certification to the district engineer. The discharge is not authorized by an NWP until the district engineer has notified the permittee that the water quality certification requirement has been satisfied by the issuance of a water quality certification or a waiver.

(c) The district engineer or certifying authority may require additional water quality management measures to ensure that the authorized activity does not result in more than minimal degradation of water quality.

26. Coastal Zone Management

In coastal states where an NWP has not previously received a state coastal zone management consistency concurrence, an individual state coastal zone management consistency concurrence must be obtained, or a presumption of concurrence must occur (see 33 CFR 330.4(d)). If the permittee cannot comply with all of the conditions of a coastal zone management consistency concurrence previously issued by the state, then the permittee must obtain an individual coastal zone management consistency concurrence or presumption of concurrence in order for the activity to be authorized by an NWP. The district engineer or a state may require additional measures to ensure that the authorized activity is consistent with state coastal zone management requirements.

27. Regional and Case-By-Case Conditions

The activity must comply with any regional conditions that may have been added by the Division Engineer (see 33 CFR 330.4(e)) and with any case specific conditions added by the Corps or by the state, Indian Tribe, or U.S. EPA in its CWA section 401 Water Quality Certification, or by the state in its Coastal Zone Management Act consistency determination.

28. Use of Multiple Nationwide Permits

The use of more than one NWP for a single and complete project is authorized, subject to the following restrictions:

(a) If only one of the NWPs used to authorize the single and complete project has a specified acreage limit, the acreage loss of waters of the United States cannot exceed the acreage limit of the NWP with the highest specified acreage limit. For example, if a road crossing over tidal waters is constructed under NWP 14, with associated bank stabilization authorized by NWP 13, the maximum acreage loss of waters of the United States for the total project cannot exceed 1/3-acre.

(b) If one or more of the NWPs used to authorize the single and complete project has specified acreage limits, the acreage loss of waters of the United States authorized by those NWPs cannot exceed their respective specified acreage limits. For example, if a commercial development is constructed under NWP 39, and the single and complete project includes the filling of an upland ditch authorized by NWP 46, the maximum acreage loss of waters of the United States for the

commercial development under NWP 39 cannot exceed 1/2-acre, and the total acreage loss of waters of United States due to the NWP 39 and 46 activities cannot exceed 1 acre.

29. Transfer of Nationwide Permit Verifications

If the permittee sells the property associated with a nationwide permit verification, the permittee may transfer the nationwide permit verification to the new owner by submitting a letter to the appropriate Corps district office to validate the transfer. A copy of the nationwide permit verification must be attached to the letter, and the letter must contain the following statement and signature:

"When the structures or work authorized by this nationwide permit are still in existence at the time the property is transferred, the terms and conditions of this nationwide permit, including any special conditions, will continue to be binding on the new owner(s) of the property. To validate the transfer of this nationwide permit and the associated liabilities associated with compliance with its terms and conditions, have the transferee sign and date below."

_____

(Transferee)

_____

(Date)

30. Compliance Certification

Each permittee who receives an NWP verification letter from the Corps must provide a signed certification documenting completion of the authorized activity and implementation of any required compensatory mitigation. The success of any required permittee-responsible mitigation, including the achievement of ecological performance standards, will be addressed separately by the district engineer. The Corps will provide the permittee the certification document with the NWP verification letter. The certification document will include:

(a) A statement that the authorized activity was done in accordance with the NWP authorization, including any general, regional, or activity-specific conditions;

(b) A statement that the implementation of any required compensatory mitigation was completed in accordance with the permit conditions. If credits from a mitigation bank or in-lieu fee program are used to satisfy the compensatory mitigation requirements, the certification must include the documentation required by 33 CFR 332.3(l)(3) to confirm that the permittee secured the appropriate number and resource type of credits; and

(c) The signature of the permittee certifying the completion of the activity and mitigation.

The completed certification document must be submitted to the district engineer within 30 days of completion of the authorized activity or the implementation of any required compensatory mitigation, whichever occurs later.

31. Activities Affecting Structures or Works Built by the United States

If an NWP activity also requires review by, or permission from, the Corps pursuant to 33 U.S.C. 408 because it will alter or temporarily or permanently occupy or use a U.S. Army Corps of Engineers (USACE) federally authorized Civil Works project (a "USACE project"), the prospective permittee must submit a pre-construction notification. See paragraph (b)(10) of general condition 32. An activity that requires section 408 permission and/or review is not authorized by an NWP until the appropriate Corps office issues the section 408 permission or completes its review to alter, occupy, or use the USACE project, and the district engineer issues a written NWP verification.

32. Pre-Construction Notification

(a) *Timing.* Where required by the terms of the NWP, the prospective permittee must notify the district engineer by submitting a pre-construction notification (PCN) as early as possible. The district engineer must determine if the PCN is complete within 30 calendar days of the date of receipt and, if the PCN is determined to be incomplete, notify the prospective permittee within that 30 day period to request the additional information necessary to make the PCN complete. The request must specify the information needed to make the PCN complete. As a general rule, district engineers will request additional information necessary to make the PCN complete only once. However, if the prospective permittee does not provide all of the requested information, then the district engineer will notify the prospective permittee that the PCN is still incomplete and the PCN review process will not commence until all of the requested information has been received by the district engineer. The prospective permittee shall not begin the activity until either:

(1) He or she is notified in writing by the district engineer that the activity may proceed under the NWP with any special conditions imposed by the district or division engineer; or

(2) 45 calendar days have passed from the district engineer's receipt of the complete PCN, and the prospective permittee has not received written notice from the district or division engineer. However, if the permittee was required to notify the Corps pursuant to general condition 18 that listed species or critical habitat might be affected or are in the vicinity of the activity, or to notify the Corps pursuant to general condition 20 that the activity might have the potential to cause effects to historic properties, the permittee cannot begin the activity until receiving written notification from the Corps that there is "no effect" on listed species or "no potential to cause effects" on historic properties, or that any consultation required under Section 7 of the Endangered Species Act (see 33 CFR 330.4(f)) and/or section 106 of the National Historic Preservation Act (see 33 CFR 330.4(g)) has been completed. If the proposed activity requires a written waiver to exceed specified limits of an NWP, the permittee may not begin the activity until the district engineer issues the waiver. If the district or division engineer notifies the permittee in writing that an individual permit is required within 45 calendar days of receipt of a complete PCN, the permittee cannot begin the activity until an individual permit has been obtained. Subsequently, the permittee's right to proceed under the NWP may be modified, suspended, or revoked only in accordance with the procedure set forth in 33 CFR 330.5(d)(2).

(b) *Contents of Pre-Construction Notification*: The PCN must be in writing and include the following information:

(1) Name, address, and telephone numbers of the prospective permittee;

(2) Location of the proposed activity;

(3) Identify the specific NWP or NWP(s) the prospective permittee wants to use to authorize the proposed activity;

(4) (i) A description of the proposed activity; the activity's purpose; direct and indirect adverse environmental effects the activity would cause, including the anticipated amount of loss of wetlands, other special aquatic sites, and other waters expected to result from the NWP activity, in acres, linear feet, or other appropriate unit of measure; a description of any proposed mitigation measures intended to reduce the adverse environmental effects caused by the proposed activity; and any other NWP(s), regional general permit(s), or individual permit(s) used or intended to be used to authorize any part of the proposed project or any related activity, including other separate and distant crossings for linear projects that require Department of the Army authorization but do not require pre-construction notification. The description of the proposed activity and any proposed mitigation measures should be sufficiently detailed to allow the district engineer to determine that the adverse environmental effects of the activity will be no more than minimal and to determine the need for compensatory mitigation or other mitigation measures.

(ii) For linear projects where one or more single and complete crossings require pre-construction notification, the PCN must include the quantity of anticipated losses of wetlands, other special aquatic sites, and other waters for each single and complete crossing of those wetlands, other special aquatic sites, and other waters (including those single and complete crossings authorized by an NWP but do not require PCNs). This information will be used by the district engineer to evaluate the cumulative adverse environmental effects of the proposed linear project and does not change those non-PCN NWP activities into NWP PCNs.

(iii) Sketches should be provided when necessary to show that the activity complies with the terms of the NWP. (Sketches usually clarify the activity and when provided results in a quicker decision. Sketches should contain sufficient detail to provide an illustrative description of the proposed activity (*e.g.,* a conceptual plan), but do not need to be detailed engineering plans);

(5) The PCN must include a delineation of wetlands, other special aquatic sites, and other waters, such as lakes and ponds, and perennial and intermittent streams, on the project site. Wetland delineations must be prepared in accordance with the current method required by the Corps. The permittee may ask the Corps to delineate the special aquatic sites and other waters on the project site, but there may be a delay if the Corps does the delineation, especially if the project site is large or contains many wetlands, other special aquatic sites, and other waters. Furthermore, the 45-day period will not start until the delineation has been submitted to or completed by the Corps, as appropriate;

(6) If the proposed activity will result in the loss of greater than 1/10-acre of wetlands or 3/100-acre of stream bed and a PCN is required, the prospective permittee must submit a statement describing how the mitigation requirement will be satisfied or explaining why the adverse environmental effects are no more than minimal and why compensatory mitigation

should not be required. As an alternative, the prospective permittee may submit a conceptual or detailed mitigation plan.

(7) For non-federal permittees, if any listed species (or species proposed for listing) or designated critical habitat (or critical habitat proposed for such designation) might be affected or is in the vicinity of the activity, or if the activity is located in designated critical habitat (or critical habitat proposed for such designation), the PCN must include the name(s) of those endangered or threatened species (or species proposed for listing) that might be affected by the proposed activity or utilize the designated critical habitat (or critical habitat proposed for such designation) that might be affected by the proposed activity. For NWP activities that require pre-construction notification, Federal permittees must provide documentation demonstrating compliance with the Endangered Species Act;

(8) For non-federal permittees, if the NWP activity might have the potential to cause effects to a historic property listed on, determined to be eligible for listing on, or potentially eligible for listing on, the National Register of Historic Places, the PCN must state which historic property might have the potential to be affected by the proposed activity or include a vicinity map indicating the location of the historic property. For NWP activities that require pre-construction notification, Federal permittees must provide documentation demonstrating compliance with section 106 of the National Historic Preservation Act;

(9) For an activity that will occur in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a "study river" for possible inclusion in the system while the river is in an official study status, the PCN must identify the Wild and Scenic River or the "study river" (see general condition 16); and

(10) For an NWP activity that requires permission from, or review by, the Corps pursuant to 33 U.S.C. 408 because it will alter or temporarily or permanently occupy or use a U.S. Army Corps of Engineers federally authorized civil works project, the pre-construction notification must include a statement confirming that the project proponent has submitted a written request for section 408 permission from, or review by, the Corps office having jurisdiction over that USACE project.

(c) *Form of Pre-Construction Notification*: The nationwide permit pre-construction notification form (Form ENG 6082) should be used for NWP PCNs. A letter containing the required information may also be used. Applicants may provide electronic files of PCNs and supporting materials if the district engineer has established tools and procedures for electronic submittals.

(d) *Agency Coordination*: (1) The district engineer will consider any comments from Federal and state agencies concerning the proposed activity's compliance with the terms and conditions of the NWPs and the need for mitigation to reduce the activity's adverse environmental effects so that they are no more than minimal.

(2) Agency coordination is required for: (i) All NWP activities that require pre-construction notification and result in the loss of greater than 1/2-acre of waters of the United States; (ii) NWP 13 activities in excess of 500 linear feet, fills greater than one cubic yard per running foot, or involve discharges of dredged or fill material into special aquatic sites; and (iii) NWP 54 activities in excess of 500 linear feet, or that extend into the waterbody more than 30 feet from the mean low water line in tidal waters or the ordinary high water mark in the Great Lakes.

(3) When agency coordination is required, the district engineer will immediately provide (*e.g.,* via email, facsimile transmission, overnight mail, or other expeditious manner) a copy of the complete PCN to the appropriate Federal or state offices (FWS, state natural resource or water quality agency, EPA, and, if appropriate, the NMFS). With the exception of NWP 37, these agencies will have 10 calendar days from the date the material is transmitted to notify the district engineer via telephone, facsimile transmission, or email that they intend to provide substantive, site-specific comments. The comments must explain why the agency believes the adverse environmental effects will be more than minimal. If so contacted by an agency, the district engineer will wait an additional 15 calendar days before making a decision on the pre-construction notification. The district engineer will fully consider agency comments received within the specified time frame concerning the proposed activity's compliance with the terms and conditions of the NWPs, including the need for mitigation to ensure that the net adverse environmental effects of the proposed activity are no more than minimal. The district engineer will provide no response to the resource agency, except as provided below. The district engineer will indicate in the administrative record associated with each pre-construction notification that the resource agencies' concerns were considered. For NWP 37, the emergency watershed protection and rehabilitation activity may proceed immediately in cases where there is an unacceptable hazard to life, or a significant loss of property or economic hardship will occur. The district engineer will consider any comments received to decide whether the NWP 37 authorization should be modified, suspended, or revoked in accordance with the procedures at 33 CFR 330.5.

(4) In cases of where the prospective permittee is not a Federal agency, the district engineer will provide a response to NMFS within 30 calendar days of receipt of any Essential Fish Habitat conservation recommendations, as required by section 305(b)(4)(B) of the Magnuson-Stevens Fishery Conservation and Management Act.

(5) Applicants are encouraged to provide the Corps with either electronic files or multiple copies of pre-construction notifications to expedite agency coordination.

District Engineer's Decision

1. In reviewing the PCN for the proposed activity, the district engineer will determine whether the activity authorized by the NWP will result in more than minimal individual or cumulative adverse environmental effects or may be contrary to the public interest. If a project proponent requests authorization by a specific NWP, the district engineer should issue the NWP verification for that activity if it meets the terms and conditions of that NWP, unless he or she determines, after considering mitigation, that the proposed activity will result in more than minimal individual and cumulative adverse effects on the aquatic environment and other aspects of the public interest and exercises discretionary authority to require an individual permit for the proposed activity. For a linear project, this determination will include an evaluation of the single and complete crossings of waters of the United States that require PCNs to determine whether they individually satisfy the terms and conditions of the NWP(s), as well as the cumulative effects caused by all of the crossings of waters of the United States authorized by an NWP. If an applicant requests a waiver of an applicable limit, as provided for in NWPs 13, 36, or 54, the district engineer will only grant the waiver upon a written determination that the NWP activity will result in only minimal individual and cumulative adverse environmental effects.

2. When making minimal adverse environmental effects determinations the district engineer will consider the direct and indirect effects caused by the NWP activity. He or she will also consider the cumulative adverse environmental effects caused by activities authorized by an NWP and whether those cumulative adverse environmental effects are no more than minimal. The district engineer will also consider site specific factors, such as the environmental setting in the vicinity of the NWP activity, the type of resource that will be affected by the NWP activity, the functions provided by the aquatic resources that will be affected by the NWP activity, the degree or magnitude to which the aquatic resources perform those functions, the extent that aquatic resource functions will be lost as a result of the NWP activity (*e.g.,* partial or complete loss), the duration of the adverse effects (temporary or permanent), the importance of the aquatic resource functions to the region (*e.g.,* watershed or ecoregion), and mitigation required by the district engineer. If an appropriate functional or condition assessment method is available and practicable to use, that assessment method may be used by the district engineer to assist in the minimal adverse environmental effects determination. The district engineer may add case-specific special conditions to the NWP authorization to address site-specific environmental concerns.

3. If the proposed activity requires a PCN and will result in a loss of greater than 1/10-acre of wetlands or 3/100-acre of stream bed, the prospective permittee should submit a mitigation proposal with the PCN. Applicants may also propose compensatory mitigation for NWP activities with smaller impacts, or for impacts to other types of waters. The district engineer will consider any proposed compensatory mitigation or other mitigation measures the applicant has included in the proposal in determining whether the net adverse environmental effects of the proposed activity are no more than minimal. The compensatory mitigation proposal may be either conceptual or detailed. If the district engineer determines that the activity complies with the terms and conditions of the NWP and that the adverse environmental effects are no more than minimal, after considering mitigation, the district engineer will notify the permittee and include any activity-specific conditions in the NWP verification the district engineer deems necessary. Conditions for compensatory mitigation requirements must comply with the appropriate provisions at 33 CFR 332.3(k). The district engineer must approve the final mitigation plan before the permittee commences work in waters of the United States, unless the district engineer determines that prior approval of the final mitigation plan is not practicable or not necessary to ensure timely completion of the required compensatory mitigation. If the prospective permittee elects to submit a compensatory mitigation plan with the PCN, the district engineer will expeditiously review the proposed compensatory mitigation plan. The district engineer must review the proposed compensatory mitigation plan within 45 calendar days of receiving a complete PCN and determine whether the proposed mitigation would ensure that the NWP activity results in no more than minimal adverse environmental effects. If the net adverse environmental effects of the NWP activity (after consideration of the mitigation proposal) are determined by the district engineer to be no more than minimal, the district engineer will provide a timely written response to the applicant. The response will state that the NWP activity can proceed under the terms and conditions of the NWP, including any activity-specific conditions added to the NWP authorization by the district engineer.

4. If the district engineer determines that the adverse environmental effects of the proposed activity are more than minimal, then the district engineer will notify the applicant either: (a) That the activity does not qualify for authorization under the NWP and instruct the applicant on the procedures to seek authorization under an individual permit; (b) that the activity is authorized

under the NWP subject to the applicant's submission of a mitigation plan that would reduce the adverse environmental effects so that they are no more than minimal; or (c) that the activity is authorized under the NWP with specific modifications or conditions. Where the district engineer determines that mitigation is required to ensure no more than minimal adverse environmental effects, the activity will be authorized within the 45-day PCN period (unless additional time is required to comply with general conditions 18, 20, and/or 31), with activity-specific conditions that state the mitigation requirements. The authorization will include the necessary conceptual or detailed mitigation plan or a requirement that the applicant submit a mitigation plan that would reduce the adverse environmental effects so that they are no more than minimal. When compensatory mitigation is required, no work in waters of the United States may occur until the district engineer has approved a specific mitigation plan or has determined that prior approval of a final mitigation plan is not practicable or not necessary to ensure timely completion of the required compensatory mitigation.

Further Information

1. District engineers have authority to determine if an activity complies with the terms and conditions of an NWP.

2. NWPs do not obviate the need to obtain other federal, state, or local permits, approvals, or authorizations required by law.

3. NWPs do not grant any property rights or exclusive privileges.

4. NWPs do not authorize any injury to the property or rights of others.

5. NWPs do not authorize interference with any existing or proposed Federal project (see general condition 31).

Definitions

Best management practices (BMPs): Policies, practices, procedures, or structures implemented to mitigate the adverse environmental effects on surface water quality resulting from development. BMPs are categorized as structural or non-structural.

Compensatory mitigation: The restoration (re-establishment or rehabilitation), establishment (creation), enhancement, and/or in certain circumstances preservation of aquatic resources for the purposes of offsetting unavoidable adverse impacts which remain after all appropriate and practicable avoidance and minimization has been achieved.

Currently serviceable: Useable as is or with some maintenance, but not so degraded as to essentially require reconstruction.

Direct effects: Effects that are caused by the activity and occur at the same time and place.

Discharge: The term “discharge” means any discharge of dredged or fill material into waters of the United States.

Ecological reference: A model used to plan and design an aquatic habitat and riparian area restoration, enhancement, or establishment activity under NWP 27. An ecological reference may

be based on the structure, functions, and dynamics of an aquatic habitat type or a riparian area type that currently exists in the region where the proposed NWP 27 activity is located. Alternatively, an ecological reference may be based on a conceptual model for the aquatic habitat type or riparian area type to be restored, enhanced, or established as a result of the proposed NWP 27 activity. An ecological reference takes into account the range of variation of the aquatic habitat type or riparian area type in the region.

Enhancement: The manipulation of the physical, chemical, or biological characteristics of an aquatic resource to heighten, intensify, or improve a specific aquatic resource function(s). Enhancement results in the gain of selected aquatic resource function(s) but may also lead to a decline in other aquatic resource function(s). Enhancement does not result in a gain in aquatic resource area.

Establishment (creation): The manipulation of the physical, chemical, or biological characteristics present to develop an aquatic resource that did not previously exist at an upland site. Establishment results in a gain in aquatic resource area.

High Tide Line: The line of intersection of the land with the water's surface at the maximum height reached by a rising tide. The high tide line may be determined, in the absence of actual data, by a line of oil or scum along shore objects, a more or less continuous deposit of fine shell or debris on the foreshore or berm, other physical markings or characteristics, vegetation lines, tidal gages, or other suitable means that delineate the general height reached by a rising tide. The line encompasses spring high tides and other high tides that occur with periodic frequency but does not include storm surges in which there is a departure from the normal or predicted reach of the tide due to the piling up of water against a coast by strong winds such as those accompanying a hurricane or other intense storm.

Historic Property: Any prehistoric or historic district, site (including archaeological site), building, structure, or other object included in, or eligible for inclusion in, the National Register of Historic Places maintained by the Secretary of the Interior. This term includes artifacts, records, and remains that are related to and located within such properties. The term includes properties of traditional religious and cultural importance to an Indian tribe or Native Hawaiian organization and that meet the National Register criteria (36 CFR part 60).

Independent utility: A test to determine what constitutes a single and complete non-linear project in the Corps Regulatory Program. A project is considered to have independent utility if it would be constructed absent the construction of other projects in the project area. Portions of a multi-phase project that depend upon other phases of the project do not have independent utility. Phases of a project that would be constructed even if the other phases were not built can be considered as separate single and complete projects with independent utility.

Indirect effects: Effects that are caused by the activity and are later in time or farther removed in distance but are still reasonably foreseeable.

Loss of waters of the United States: Waters of the United States that are permanently adversely affected by filling, flooding, excavation, or drainage because of the regulated activity. The loss of stream bed includes the acres of stream bed that are permanently adversely affected by filling

or excavation because of the regulated activity. Permanent adverse effects include permanent discharges of dredged or fill material that change an aquatic area to dry land, increase the bottom elevation of a waterbody, or change the use of a waterbody. The acreage of loss of waters of the United States is a threshold measurement of the impact to jurisdictional waters or wetlands for determining whether a project may qualify for an NWP; it is not a net threshold that is calculated after considering compensatory mitigation that may be used to offset losses of aquatic functions and services. Waters of the United States temporarily filled, flooded, excavated, or drained, but restored to pre-construction contours and elevations after construction, are not included in the measurement of loss of waters of the United States. Impacts resulting from activities that do not require Department of the Army authorization, such as activities eligible for exemptions under section 404(f) of the Clean Water Act, are not considered when calculating the loss of waters of the United States.

Navigable waters: Waters subject to section 10 of the Rivers and Harbors Act of 1899. These waters are defined at 33 CFR part 329.

Non-tidal wetland: A non-tidal wetland is a wetland that is not subject to the ebb and flow of tidal waters. Non-tidal wetlands contiguous to tidal waters are located landward of the high tide line (*i.e.,* spring high tide line).

Open water: For purposes of the NWPs, an open water is any area that in a year with normal patterns of precipitation has water flowing or standing above ground to the extent that an ordinary high water mark can be determined. Aquatic vegetation within the area of flowing or standing water is either non-emergent, sparse, or absent. Vegetated shallows are considered to be open waters. Examples of "open waters" include rivers, streams, lakes, and ponds.

Ordinary High Water Mark: The term ordinary high water mark means that line on the shore established by the fluctuations of water and indicated by physical characteristics such as a clear, natural line impressed on the bank, shelving, changes in the character of soil, destruction of terrestrial vegetation, the presence of litter and debris, or other appropriate means that consider the characteristics of the surrounding areas.

Perennial stream: A perennial stream has surface water flowing continuously year-round during a typical year.

Practicable: Available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes.

Pre-construction notification: A request submitted by the project proponent to the Corps for confirmation that a particular activity is authorized by nationwide permit. The request may be a permit application, letter, or similar document that includes information about the proposed work and its anticipated environmental effects. Pre-construction notification may be required by the terms and conditions of a nationwide permit, or by regional conditions. A pre-construction notification may be voluntarily submitted in cases where pre-construction notification is not required, and the project proponent wants confirmation that the activity is authorized by nationwide permit.

Preservation: The removal of a threat to, or preventing the decline of, aquatic resources by an action in or near those aquatic resources. This term includes activities commonly associated with the protection and maintenance of aquatic resources through the implementation of appropriate legal and physical mechanisms. Preservation does not result in a gain of aquatic resource area or functions.

Re-establishment: The manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural/historic functions to a former aquatic resource. Re-establishment results in rebuilding a former aquatic resource and results in a gain in aquatic resource area and functions.

Rehabilitation: The manipulation of the physical, chemical, or biological characteristics of a site with the goal of repairing natural/historic functions to a degraded aquatic resource. Rehabilitation results in a gain in aquatic resource function but does not result in a gain in aquatic resource area.

Restoration: The manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural/historic functions to a former or degraded aquatic resource. For the purpose of tracking net gains in aquatic resource area, restoration is divided into two categories: Re-establishment and rehabilitation.

Riffle and pool complex: Riffle and pool complexes are special aquatic sites under the 404(b)(1) Guidelines. Riffle and pool complexes sometimes characterize steep gradient sections of streams. Such stream sections are recognizable by their hydraulic characteristics. The rapid movement of water over a course substrate in riffles results in a rough flow, a turbulent surface, and high dissolved oxygen levels in the water. Pools are deeper areas associated with riffles. A slower stream velocity, a streaming flow, a smooth surface, and a finer substrate characterize pools.

Riparian areas: Riparian areas are lands next to streams, lakes, and estuarine-marine shorelines. Riparian areas are transitional between terrestrial and aquatic ecosystems, through which surface and subsurface hydrology connects riverine, lacustrine, estuarine, and marine waters with their adjacent wetlands, non-wetland waters, or uplands. Riparian areas provide a variety of ecological functions and services and help improve or maintain local water quality. (See general condition 23.)

Shellfish seeding: The placement of shellfish seed and/or suitable substrate to increase shellfish production. Shellfish seed consists of immature individual shellfish or individual shellfish attached to shells or shell fragments (*i.e.,* spat on shell). Suitable substrate may consist of shellfish shells, shell fragments, or other appropriate materials placed into waters for shellfish habitat.

Single and complete linear project: A linear project is a project constructed for the purpose of getting people, goods, or services from a point of origin to a terminal point, which often involves multiple crossings of one or more waterbodies at separate and distant locations. The term "single and complete project" is defined as that portion of the total linear project proposed or accomplished by one owner/developer or partnership or other association of owners/developers that includes all crossings of a single water of the United States (*i.e.,* a single waterbody) at a

specific location. For linear projects crossing a single or multiple waterbodies several times at separate and distant locations, each crossing is considered a single and complete project for purposes of NWP authorization. However, individual channels in a braided stream or river, or individual arms of a large, irregularly shaped wetland or lake, etc., are not separate waterbodies, and crossings of such features cannot be considered separately.

Single and complete non-linear project: For non-linear projects, the term "single and complete project" is defined at 33 CFR 330.2(i) as the total project proposed or accomplished by one owner/developer or partnership or other association of owners/developers. A single and complete non-linear project must have independent utility (see definition of "independent utility"). Single and complete non-linear projects may not be "piecemealed" to avoid the limits in an NWP authorization.

Stormwater management: Stormwater management is the mechanism for controlling stormwater runoff for the purposes of reducing downstream erosion, water quality degradation, and flooding and mitigating the adverse effects of changes in land use on the aquatic environment.

Stormwater management facilities: Stormwater management facilities are those facilities, including but not limited to, stormwater retention and detention ponds and best management practices, which retain water for a period of time to control runoff and/or improve the quality (*i.e.,* by reducing the concentration of nutrients, sediments, hazardous substances, and other pollutants) of stormwater runoff.

Stream bed: The substrate of the stream channel between the ordinary high water marks. The substrate may be bedrock or inorganic particles that range in size from clay to boulders. Wetlands contiguous to the stream bed, but outside of the ordinary high water marks, are not considered part of the stream bed.

Stream channelization: The manipulation of a stream's course, condition, capacity, or location that causes more than minimal interruption of normal stream processes. A channelized jurisdictional stream remains a water of the United States.

Structure: An object that is arranged in a definite pattern of organization. Examples of structures include, without limitation, any pier, boat dock, boat ramp, wharf, dolphin, weir, boom, breakwater, bulkhead, revetment, riprap, jetty, artificial island, artificial reef, permanent mooring structure, power transmission line, permanently moored floating vessel, piling, aid to navigation, or any other manmade obstacle or obstruction.

Tidal wetland: A tidal wetland is a jurisdictional wetland that is inundated by tidal waters. Tidal waters rise and fall in a predictable and measurable rhythm or cycle due to the gravitational pulls of the moon and sun. Tidal waters end where the rise and fall of the water surface can no longer be practically measured in a predictable rhythm due to masking by other waters, wind, or other effects. Tidal wetlands are located channelward of the high tide line.

Tribal lands: Any lands title to which is either: (1) Held in trust by the United States for the benefit of any Indian tribe or individual; or (2) held by any Indian tribe or individual subject to restrictions by the United States against alienation.

Tribal rights: Those rights legally accruing to a tribe or tribes by virtue of inherent sovereign authority, unextinguished aboriginal title, treaty, statute, judicial decisions, executive order or agreement, and that give rise to legally enforceable remedies.

Vegetated shallows: Vegetated shallows are special aquatic sites under the 404(b)(1) Guidelines. They are areas that are permanently inundated and under normal circumstances have rooted aquatic vegetation, such as seagrasses in marine and estuarine systems and a variety of vascular rooted plants in freshwater systems.

Waterbody: For purposes of the NWPs, a waterbody is a "water of the United States." If a wetland is adjacent to a waterbody determined to be a water of the United States, that waterbody and any adjacent wetlands are considered together as a single aquatic unit (see 33 CFR 328.4(c)(2)).

Additional Information

For additional information concerning the nationwide permits or for a written determination regarding a specific project, please contact the office below:

New Mexico:

Albuquerque District Office
4101 Jefferson Plaza NE
Albuquerque, NM 87109-3435
Telephone: (505) 342-3280

Southern New Mexico and Western Texas:

Las Cruces Regulatory Office
200 E Griggs Avenue
Las Cruces, NM 88001-3516
Telephone: (505) 554-7943

Northwestern New Mexico, Southwestern Colorado, and the San Luis Valley of Colorado:

Durango Regulatory Office
1970 E 3rd Avenue, Suite 109
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Northwestern Colorado:

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Southeastern Colorado:

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201 W 8th Street, Suite 350
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Information about the U.S. Army Corps of Engineers regulatory program, including NWPs, may also be accessed on our website at www.spa.usace.army.mil/reg.

This NWP is effective February 25, 2022, and expires on March 14, 2026.

Summary Version: February 25, 2022

US Army Corps of Engineers®
Albuquerque District

FINAL PUBLIC NOTICE

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 (NWPs) and one new NWP as well as the reissuance of NWP general conditions and definitions with some modifications. These 41 NWPs 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, 2021and 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. Fo2021r 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.

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

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 (NWPs) 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 NWPs. 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 NWPs, which became effective on March 15, 2021. Subsequently, on June 11, 2021, the Corps submitted a draft final rule for the remaining 41 NWPs 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 NWPs 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 NWPs.

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 NWPs. 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 (NWPs)
October 14, 2021

General Conditions of Certification:

The following conditions apply to all uses of the 41 Nationwide Permits (NWPs) 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
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.

General & Specific Conditions	Why the condition is necessary to assure that the proposed project will comply with water quality requirements	A citation that authorizes the condition
General Condition 1	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.
General Condition 2	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.
General Condition 3	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.
General Condition 4	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[1]. 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

[1] 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.
General Condition 5	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[2]). 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.
General Condition 6	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.
General Condition 7	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.
Specific Condition for NWP 3	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.
Specific Condition for NWP 14	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

[2] 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.
Specific Condition for NWP 31	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.
Specific Condition for NWP 41	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

Denials	**(i) The specific water quality requirements with which discharges that could be authorized by the general license or permit will not comply;**	**(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**	**(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.**
Specific Denial for NWP-13	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[3]).	
Specific Denial for NWP-27	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.
Specific Denial for ONRWs	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.	

[3] 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