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March 1, 2017

Mr. Allan Steinle
U.S. Army Corps of Engineers
Albuquerque District, Regulatory Branch
4101 Jefferson Plaza NE
Albuquerque, New Mexico 87109-3434

Re: Clean Water Act Section 401 Water Quality Certification
United States Army Corps of Engineers 2017 Nationwide Permits

Dear Mr. Steinle:

The New Mexico Environment Department (NMED) has examined both the January 6, 2017 final notice of the Reissuance of Nationwide Permits (NWP) under the Clean Water Act (CWA) §404 and Section 10 of the Harbors and Rivers Act, issued by the U.S. Army Corps of Engineers ("Corps") (see 84-4 FR 1860) and the January 6, 2017 Corps Albuquerque District public notice of the final NWP and NMED's intent to consider certification of those permits under the CWA §401 (Certification). Certification is required by CWA §401 to ensure that the NWP are consistent with state law, comply with the state Water Quality Standards (20.6.4 NMAC), the Water Quality Management Plan/Continuing Planning Process, including Total Maximum Daily Loads (TMDLs), and the Antidegradation Policy. Certification is also required to comply with General Condition 25 (Water Quality) and General Condition 27 (Regional and Case-By-Case Conditions) of the NWP.

Pursuant to State regulations for permit certification (20.6.2.2002, NMAC), NMED issued a public notice of this activity and announced a public comment period, posted on the Surface Water Quality Bureau's web site: (www.nmenv.state.nm.us/swqb/WQA/Notice) on January 10, 2017. The public comment period ended on February 7, 2017. No comments were received.

The following conditions are necessary to assure compliance with the applicable provisions of the Clean Water Act §§301, 302, 303, 306, and 307 and with applicable requirements of State law. Compliance with the terms and conditions of the permit and this certification will provide reasonable assurance that the permitted activities will be conducted in a manner which will not violate applicable water quality standards or the Statewide Water Quality Management Plan, and will be in compliance with the state's antidegradation policy. The State of New Mexico certifies that the discharge will comply with these provisions and requirements upon inclusion of the following conditions in the permit:

Conditional Section 401 Certification of NWPs:

The following conditions apply to all uses of NWPs within State of New Mexico 401 certification authority area or region:

1. All proposed projects must avoid discharges to the maximum extent practicable; however, if discharges cannot be avoided the project must utilize the best available and practicable means to minimize adverse impacts. NMED encourages approaches based on natural ecosystem processes. Examples of Best Management Practices (BMPs) that may be applicable include:
 - Limit work in the channel to periods of no flow.
 - Store fuel, oil, hydraulic fluid, lubricants, and other petrochemicals in a secondary containment system capable of containing twice the volume of the product.
 - Restrict temporary crossings to a single location and construct perpendicular to and at a narrow point of the stream or wetland to minimize disturbance.
 - Design and install permeable fills in wetlands when practicable.
 - For culvert projects, NMED encourages lower-impact techniques such as bottomless and embedded culverts.
 - Schedule construction activities in wetlands during low water or winter (frozen) conditions.

2. NMED notification:
 - a. Activities that require preconstruction notification to NMED can be found in the USACE's New Mexico Regional Condition 2.b. NMED preconstruction notification must include:
 - i. Detailed project purpose and construction plans, including why the proposed approach does not result in more than minimal impact to the aquatic resource.
 1. Notification of projects to maintain or repair existing structures must include a description of how the existing structure failed and what will be done to prevent failure in the future.
 2. Notification of projects to extend existing bank stabilization must include a description of the existing bank stabilization, including the length, location, and the type of materials that were used.
 3. Notification of projects to install or repair culverts must include a description of how the culvert sizing was determined.
 4. Notification of projects to reshape an existing drainage ditch must describe the handling of excavation materials and how the structure, when fully operational, will maintain or improve water quality.
 - ii. Description of potential adverse water quality impacts including the project's potential impact on turbidity, an optical measurement of water affected by the amount of suspended material, as well as oil, grease, or hydraulic fluid, and all other potential contaminants.
 - iii. Description of methods to be used to prevent water quality impacts, including BMPs designed to minimize sediment, oil, grease, and other pollutants from entering the water.

1. Projects to remove riparian vegetation must describe methods to prevent subsequent erosion into aquatic resources.
 2. Projects that would result in dredge or fill in waterbodies listed as impaired under Section 303(d) of the CWA must include specific measures that will be used to avoid causing or contributing to a violation of water quality standards. The current EPA-approved New Mexico list of impaired waters is available at <https://www.env.nm.gov/swqb/303d-305b/> (see "All Impairments (Cat. 4 or 5)" spreadsheet).
- b. Additionally, the following types of projects require notification to NMED:
- i. NMED must be notified at least five days before starting construction to allow time to schedule monitoring or inspections.
 - ii. NMED must be notified immediately if the project results in an exceedance of applicable water quality standards. This condition applies to projects in any water of the State, including ephemeral waters.
 - iii. NMED must be notified if the project is delayed into times of predictable flooding (seasonal monsoons or snowmelt). Notification must describe BMPs to protect the stream from excessive turbidity, such as diversion structures capable of conveying the potential flood flows.
 - iv. NMED must be notified if the project involves work in standing or flowing surface water. Notification must include a description of planned methods to minimize turbidity in the stream and to avoid spills that would contaminate the surface water.
 - v. NMED must be notified of any proposed project to channelize a stream, whether previously channelized or not. Notification must include the information described under certification condition 2.a, above.
 - vi. NMED must be notified at least five days before starting construction to allow time to schedule monitoring or inspections. The NMED must be notified immediately if the project results in an exceedance of applicable Standards.
3. Unless approved by NMED:
- a. Projects must not alter the natural stream channel size or shape (width, depth, gradient, direction or meander pattern), streamflow velocity (sediment transport rates), or water flow capacity. Requests for approval of such deviations must include descriptions of planned methods to minimize turbidity and avoid spills, as well as to stabilize the modified hydraulic geometry.
 - b. Bank stabilization projects must incorporate native vegetation or other bioengineered design techniques (e.g. willow plantings, root wads, large woody debris, etc.). Requests for such approval must describe why native vegetation or other bioengineered design techniques were rejected.
 - c. Stormwater management structures must not be located within natural drainage systems, such as sediment basins within a stream channel. Requests for such approval must include a description of "off-line" designs considered and why they were rejected.
 - d. Flowing water must be temporarily diverted around the work area, but remain within the existing channel to minimize erosion and turbidity and to provide for aquatic life movement. Requests for such approval must include descriptions of planned methods to minimize turbidity, to avoid

- spills, and to provide a continuous zone of passage for aquatic life through or around the project area in which the water quality meets all applicable criteria including turbidity.
- e. Heavy equipment must be operated from the bank or work platforms and not enter surface water. Requests for such approval must include a description of BMPs to minimize turbidity and to avoid spills.
 - f. Disturbed areas outside stream channels that are not otherwise physically protected from erosion must be reseeded or planted with native vegetation. Requests for approval of deviation from this condition must describe methods to minimize turbidity and avoid spills, as well as final grading plans.
 - g. All areas adjacent to the watercourse that are disturbed because of the project, including temporary access roads, stockpiles and staging areas, must be restored to pre-project elevations.
 - h. Culvert design must allow for the passage of fish and other aquatic organisms.
 - i. Wetland crossings must be restricted to a single location and constructed perpendicular to and at a narrow point of the wetland.
4. The permittee shall allow NMED representatives to inspect the authorized activity and any mitigation areas at any time deemed necessary to determine compliance with applicable State Water Quality Standards.
5. Structure design:
- a. Structures at stream crossings must be properly designed, installed and maintained to allow passage of sediment, bedload, and woody debris, and to prevent erosion problems or post-construction diversion of the stream from its natural channel.
 - b. Culverts at stream crossings must be designed and installed to prevent upstream headcutting, downstream channel incision, and erosion of the stream banks or the crossing. Culverts at stream crossings must also be designed to prevent flood flows from being diverted away from the natural channel when the culvert is overtopped.
6. Scheduling: Project activities must avoid times of predictable flooding (seasonal monsoons or snowmelt) to avoid working in high water. Releases from dams must be incorporated into the work schedule to avoid working in high water.
7. Construction diversions: Diversion structures must be non-erodible, such as sand bags, water bladders, concrete barriers, or channel lined with geotextile or plastic sheeting. Dirt cofferdams are not acceptable diversion structures.
8. Use of heavy equipment:
- a. All heavy equipment used in the project area must be pressure washed and/or steam cleaned before the start of the project and inspected daily for leaks. A written log of inspections and maintenance must be completed and maintained throughout the project period. Leaking equipment must not be used in or near surface water.
 - b. Fuel, oil, hydraulic fluid, lubricants, and other petrochemicals must not be stored within the 100-year floodplain. Refuel equipment at least 100 feet from surface water.

- c. Heavy equipment must not be parked within the stream channel.

9. Construction materials and fuels:

- a. Except as specified in the application, no debris, silt, sand, cement, concrete, oil or petroleum, organic material, or other construction related materials or wastes shall be allowed to enter into or be stored where it may be washed by rainfall or runoff into aquatic resources. Appropriate spill clean-up materials such as booms and absorbent pads must be available on-site at all times during construction. Dumping of any waste materials is prohibited.
- b. 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 wash-down, or aggregate processing impacting aquatic resources.

10. Construction (temporary) impacts:

- a. Water used in dust suppression shall not contain contaminants that could violate water quality standards.
- b. Protective measures must be used to prevent blast, ripped or excavated soil or rock from entering surface waters.
- c. Materials associated with repair, demolition, treatments, or 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 in accordance with the New Mexico Solid Waste Regulations (20.9.1 NMAC). Applicable Material Safety Data Sheets of water repellants and surface finish treatments must be maintained at the project area.

11. Trenching:

- a. Excavated trenches within or adjacent to aquatic resources must be backfilled and compacted to match the adjacent undisturbed soil.
- b. Except for dewatering activities described in the submitted construction plans, excavated trenches must not result in draining any aquatic resource including wetlands.
- c. Excavation dewatering discharges must be uncontaminated. Aquatic resources must be protected from excessive turbidity associated with dewatering, such as discharging to an uplands area behind a vegetative buffer. Note that dewatering discharges may be subject to NMED Discharge Permits. 20.6.2.1201 NMAC requires 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/gwb/>) for discharges that may affect ground water 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 Bureau will notify the person if a discharge permit is required.

12. Wetlands: Wetland vegetation and excavated top soil must be retained and reused to improve seeding success. Flows to wetlands must not be permanently disrupted.
13. Post-construction stabilization:
 - a. Permittees and their contractors shall take necessary steps to minimize channel and bank erosion during and after construction. Where applicable, banks shall be reseeded or replanted with native vegetation.
 - b. Disturbed areas outside stream channels that are not otherwise physically protected from erosion must be reseeded or planted with native vegetation. 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. Plantings must be monitored and replaced for an overall survival rate of at least 80 percent by the end of the second growing season. Once established, native plants adapted to the site must be able to thrive with no supplemental water or treatment. Silt fences, seed free straw mulch, biodegradable straw wattles, and other techniques must be employed as appropriate to protect waters from sedimentation and other pollutants.
14. Posting: A copy of this Certification must be kept at the project site during all phases of construction. All contractors involved in the project must be provided a copy of this certification and made aware of the conditions prior to starting construction.

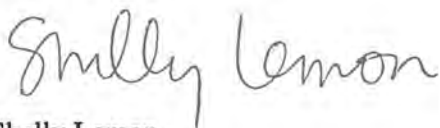
Denial of Certification of NWPs

NMED denies Certification for NWP-37 (Emergency Repair Activities), in favor of handling "emergency repairs" with an Emergency Regional General Permit Number (Repair and Protection Activities in Emergency Situations) or expedited permitting under another NWP permit.

For proposed activities in Outstanding National Resource Waters (ONRW, 20.6.4.9 NMAC) NMED denies Certification of all NWP's except NWP-27. NMED hereby certifies NWP-27 for restoration activities within ONRWs, pursuant to 20.6.4.8.A.4 NMAC. The certification process for activities covered by nationwide permits other than NWP-27 will be conducted pursuant to 20.6.2.2002 NMAC.

Please contact Neal Schaeffer of my staff at (505) 476-3017 should you have any questions.

Sincerely,



Shelly Lemon
Acting Chief
Surface Water Quality Bureau

SL: cns

xc: Tom Nystrom, Wetlands, Region 6, USEPA
Matthew Wunder, New Mexico Department of Game and Fish
U.S. Fish and Wildlife Service
401 Certification File 1299