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**Pinyon Pipeline Company LLC, & Ruby Pipeline, LLC**  
NV Energy Valmy Lateral Pipeline Project  
Clean Water Act Section 401 Water Quality Certification Application

March 27, 2024

To Whom It May Concern,

Mott MacDonald, on behalf of Pinyon Pipeline Company, LLC (Pinyon) and Ruby Pipeline, L.L.C. (Ruby), is requesting a Clean Water Act Section 401 water quality certification for the proposed NV Energy Valmy Lateral Pipeline (Project) in Humboldt County, Nevada.

The Project is intended to support the conversion of the Sierra Pacific Power Company's (SPPC) North Valmy Generating Station from a coal-fired to a natural gas-fired power plant to support NV Energy's emissions reductions goals and the state of Nevada's emissions reduction goals. The Project comprises two actions: The Pinyon Pipeline Project (PPP) and the Ruby Interconnect. The PPP comprises approximately 15.9 miles of new, 24-inch diameter natural gas steel pipeline, along with associated measurement facilities. The Ruby Interconnect comprises a new interconnect and meter station to supply natural gas to the PPP. The two actions will jointly transport approximately 170 million cubic feet (MMcf) of natural gas per day and will operate at a maximum allowable operating pressure of 1,440 pounds per square inch gauge (psig).

Standard pipeline construction techniques would be employed. This typically includes staking, clearing and grading, ditching, stringing and bending, welding, joint coating, lowering and backfilling, hydrostatic testing, and cleanup and reclamation. Project construction is anticipated to start in June 2025.

Attached to this request you will find the Clean Water Act Section 401 Water Quality Certification Application (Attachment A) and supporting materials (Attachment B – Attachment G). The attached documents comply with the requirements found in the NDEP Clean Water Act Section 401 Water Quality Certification Application Guidance.

If you have any questions regarding this application, please feel free to contact me.

Sincerely,



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Project File - 507108407-002

Enclosed Attachments:

Attachment A: Clean Water Act Section 401 Water Quality Certification Application

Attachment B: Project Details

Attachment C: Aquatic Resources Delineation Report

Attachment D: Crossing Table and Figures

Attachment E: Permit Matrix

Attachment F: Drawings and Construction Typicals

Attachment G: USACE NWP12

**Attachment A:**  
**Clean Water Act Section 401 Water Quality  
Certification Application**



**Clean Water Act Section 401 Water Quality Certification Application**

Please refer to the “Clean Water Act Section 401 Water Quality Certification Application Guidance” document for assistance with completing this application.

<b>A. Pre-Filing Meeting</b>	
Please provide the date that a pre-filing meeting was requested from Nevada Division of Environmental Protection (NDEP) Bureau of Water Quality Planning (BWQP).	February 22, 2024
<i>Note: If a pre-filing meeting has not been requested, please schedule a pre-filing meeting with NDEP BWQP.</i>	

<b>B. Contact Information</b>			
<b>Project Proponent Information</b>			
Company Name: Pinyon Pipeline Company, LLC & Ruby Pipeline, L.L.C.		Address: 9 Greenway Plaza, Suite 1100	
Applicant Name: Scott Kemmerer		City: Houston	
Phone: 832-729-9766	Fax:	State: Texas	
Email: scott.kemmerer@tallgrass.com		Zip Code: 77046	
<b>Agent Information</b>			
Company Name: Mott MacDonlad		Address: 6975 South Union Park Center, Suite 600 <span style="float: right;">+</span>	
Agent Name: Zachary Fink		City: Midvale <span style="float: right;">+</span>	
Phone: 571-321-5643	Fax:	State: Utah <span style="float: right;">+</span>	
Email: Zachary.Fink@mottmac.com		Zip Code: 84047 <span style="float: right;">+</span>	

<b>C. Project General Information</b>			
<b>Project Location</b>			
Project/Site Name: NV Energy Valmy Lateral Pipeline Project		Name of receiving waterbody: Humboldt River	
Address: State Rte 18A, 0.18mi south of the intersection with NV-789		Type of waterbody present at project location ( <i>select all that apply</i> ): <input checked="" type="checkbox"/> Perennial River or Stream <input checked="" type="checkbox"/> Intermittent River or Stream <input checked="" type="checkbox"/> Ephemeral River or Stream <input type="checkbox"/> Lake/Pond/Reservoir <input checked="" type="checkbox"/> Wetland <input checked="" type="checkbox"/> Other: <u>Playa</u>	
City: Golconda			
County: Humboldt			
State: Nevada			
Zip Code: 89414			
Latitude (UTM or Dec/Deg): 41.0729902°N		Longitude (UTM or Dec/Deg): 117.2746882°W	
Township: 37N	Range: 42E	Section: 20	¼ Section: NW1/4

Project Details		
Project purpose:	See Attachment B- Project Details	
Describe current site conditions:  Attachments can include, but are not limited to, relevant site data, photographs that represent current site conditions, or other relevant documentation.	See Attachment B and Attachment C- Aquatic Resources Delineation Report	
Describe the proposed activity including methodology of each project element:	See Attachment B	
Estimate the nature, specific location, and number of discharge(s) expected to be authorized by the proposed activity:	See Attachment D- Crossing Table and Figures	
Provide the date(s) on which the proposed activity is planned to begin and end and the approximate date(s) when any discharge(s) may commence:	See Attachment B	
Provide a list of the federal permit(s) or license(s) required to conduct the activity which may result in a discharge into regulated waters (see mandatory attachments):	See Attachment E- Permit Matrix	
Provide a list of all other federal, state, interstate, tribal, territorial, or local agency authorizations required for the proposed activity and the current status of each authorization:	See Attachment E	
Total area of impact to regulated waterbodies (acres):	39.46 acres (calculated for the full construction workspace)  All impacts are temporary. See Attachment D for details.	
Total distance of impact to regulated waterbodies (linear feet):	14,016 linear feet (calculated along the trenchline)  All impacts are temporary. See Attachment D for Details. <span style="float: right;">+</span>	
Amount excavation and/or fill discharged within regulated waters (acres, linear feet, and cubic yards):	Temporary:	Permanent: NO PERM
	9.01 acres (28' wide trench at top x 14,016' trench line crossing)	
	14,016 linear feet (along trench line)	
Amount of dredge material discharged within regulated waters (acres, linear feet, and cubic yards):	Temporary:	Permanent:
	61,774 cubic yards (trench 7'deep x 3' wide at 2:1 slope) <span style="float: right;">+</span>	
	None	None
Describe the reason(s) why avoidance of temporary fill in regulated waters is not practicable (if applicable):	No temporary or permanent fill. The pipeline will be installed beneath regulated waters and the crossing area returned to pre-existing conditions. All above-ground facilities are sited outside of regulated waters. As the pipeline is a linear project spanning 15+ miles, complete avoidance of regulated waters is not possible. <span style="float: right;">+</span>	

<p>Describe the Best Management Practices (BMPs) to be implemented to avoid and/or minimize impacts to regulated waters:</p> <p>Examples include sediment and erosion control measures, habitat preservation, flow diversions, dewatering, hazardous materials management, water quality monitoring, equipment or plans to treat, control, or manage discharges, etc.</p>	<p>See Attachment B and Attachment F- Drawings and Construction Typical</p>
<p>Describe how the activity has been designed to avoid and/or minimize adverse effects, both temporary and permanent, to regulated waters:</p>	<p>See Attachment B and Attachment F</p>
<p>Describe any compensatory mitigation planned for this project (if applicable):</p>	<p>All impacts to waters will be temporary; compensatory mitigation is not anticipated.</p>

D. Signature		
<p>Name and Title (Print): Zack Fink (Agent)</p>	<p>Phone Number: 703.798.9837</p>	<p>Date: March 27, 2023</p>
<div style="display: flex; align-items: center;"> <div style="margin-right: 20px;">  </div> <div style="border-top: 1px solid black; width: 250px; margin-left: 10px;"></div> </div> <p>Signature of Responsible Official</p>		

**Mandatory Attachments:**

- **Federal Permit or License Identification:**

- Project proponents seeking a federal general permit or license must include a copy of the draft federal license or permit and any readily available water quality-related materials that informed the development of the draft federal license or permit, or;
- Project proponents seeking a federal individual permit or license must include a copy of the federal permit or license application and any readily available water quality-related materials that informed the development of the federal license or permit application.

- **Site Map** - A map or diagram of the proposed project site including project boundaries in relation to regulated waters, local streets, roads, and highways.

- **Engineered Drawings** - Engineered drawings are preferred to be submitted at the 70% design level. If only conceptual designs are available at the time of application, plans for construction should be submitted prior to the start of the project. Specific locations of the proposed activities and details of specific work elements planned

See Attachment G-NWP12

See Attachments C, D

See Attachment F

for the project should be identified (e.g., staging areas, concrete washouts, perimeter controls, water diversions, or other BMPs).

Submit the completed application materials to NDEP ([ndep401@ndep.nv.gov](mailto:ndep401@ndep.nv.gov)) with the appropriate U.S. Army Corps of Engineers Regulatory Office copied on the communication (<http://www.spk.usace.army.mil/Missions/Regulatory/Contacts/Contact-Your-Local-Office/>).

# **Attachment B: Project Details**



### **Project purpose:**

The Pinyon Pipeline Company, LLC (Pinyon) proposes to construct, operate, and maintain a new natural gas pipeline and associated aboveground facilities north of Valmy, Nevada, referred to as the Pinyon Pipeline Project (PPP). The PPP is composed of approximately 15.9 miles of miles of new, 24-inch diameter natural gas steel pipeline, along with associated measurement facilities. In addition to the PPP, Ruby Pipeline, LLC (Ruby), proposes to construct, operate, and maintain a new interconnect and meter station to supply natural gas to the PPP. The two actions are connected and will jointly transport approximately 170 million cubic feet (MMcf) of natural gas per day and will operate at a maximum allowable operating pressure of 1,440 pounds per square inch gauge (psig). The two projects are collectively referred to herein as the "NV Energy Valmy Lateral Pipeline Project" or the "Project". This Project is intended to support the conversion of the Sierra Pacific Power Company's North Valmy Generating Station from a coal-fired to a natural gas-fired power plant to support NV Energy's and the state of Nevada's emissions reduction goals.

### **Describe current site conditions:**

The site comprises 10 land cover types as defined by the U.S. Geological Survey (USGS) National Land Cover Database (NLCD) and identified in the Aquatic Resources Delineation Report (Attachment D). Roughly 87% of the site is within Shrub/Scrub cover type and only 1% is considered developed. The remaining 12% consists of herbaceous grassland, wetlands, barren land, and open water. Representative photos are included in Appendix F of the Aquatic Resources Delineation Report (Attachment D). Field investigations confirmed dominant land cover types and undeveloped site conditions.

### **Describe the proposed activity including methodology of each Project element:**

The Project will include approximately 15.9 miles of new, 24-inch diameter natural gas steel pipeline originating at the proposed Ruby Interconnect Station, just south of the intersection of State Highway 789 and County Road 18A and extend southeast approximately 15.9 miles to the Valmy Meter Station located within the North Valmy Generating Station (NVGS) site located approximately 6.2-miles north of Valmy, Humboldt County, Nevada. See Figures 1 and 2 in Appendix A of the Aquatic Resources Delineation Report (Attachment D) for depictions of the Project location. The Project will include the following facilities: Valmy Meter Station, Ruby Interconnect Site, and the Pinyon Pipeline. Table 2.1-1 of the Aquatic Resources Delineation Report (Attachment D) details these facilities. The construction methodology for each Project element is outlined in the following sections.

#### **Pipeline Methodology**

Standard pipeline construction techniques would be employed along the Project route. Those techniques typically involve the following sequential operations:

- Staking- the construction workspace is demarcated with lathe and flagging
- Clearing and Grading- vegetation is cleared, the permanent easement is leveled and topsoil is segregated
- Ditching- the ditch for the pipeline is excavated
- Stringing and Bending- sections of pipe are transported to the workspace and bent as needed to follow the route
- Welding and Joint Coating- individual sections of pipeline are welded together and sealed with a protective coating
- Lowering and Backfilling- the welded pipeline is lifted and lowered into the trench and the trench is covered with the excavated spoils
- Hydrostatic Testing- water is injected into constructed segments of the pipeline and pressurized to test integrity and ensure the pipeline can safely transport product. The water is then discharged into dissipation structures set in upland areas to prevent erosion and sedimentation.
- Cleanup and Restoration- the construction ROW is returned to existing contours, soil compaction alleviated, and revegetated with native vegetation approved by appropriate agencies and/or landowners

The Project will minimize water quality impacts on waterbodies during construction to the greatest extent practicable. All but one waterbody in the Project area is ephemeral or intermittent and the Project plans to cross these waterbodies when they are not flowing. A single stream, Spring Creek, is perennial; the Project plans to cross this stream via one of the dry-ditch methods described in the BMP section of this attachment. At all waterbody crossings, the pipeline will be installed to allow for appropriate depth of cover (generally at least 60 inches, or 5-ft, for waterbody crossings). Spoil removed during the trenching would be stored at least 10 feet away from the water's edge (topographic conditions permitting). A section of pipe long enough to span the entire crossing would be fabricated on one bank and lowered into the trench. Concrete coating or geotextile pipe weights will be utilized, as needed, to provide negative buoyancy. Once trenches are backfilled, the banks will be stabilized. Stabilization techniques will include seeding and installation of erosion control blankets. Excavated material not

required for backfill will be removed and disposed of in accordance with applicable local, state, and federal regulations at an upland disposal site.

#### Aboveground Facilities Methodology

General construction activities and storage of construction materials and equipment would be confined to areas within the approved workspaces. Debris and wastes generated from construction would be disposed of in accordance with applicable local, state, and federal regulations. Installation of the interconnect meter stations would meet the same standards and requirements established for the pipeline construction.

Foundation excavation would be performed as necessary to accommodate the helical pile foundations required for the new facilities. Once the piles are set, any backfill would be compacted in place, and excess soil would be used elsewhere or distributed around the site in non-wetlands.

All pipe connections associated with the facilities that are not flanged or screwed would be welded. All welders and welding procedures would be qualified in accordance with 49 CFR Part 192, as administered by the USDOT. All welds would be verified by a non-destructive testing method to ensure compliance with code requirements.

All components in high-pressure natural gas service would be pressure tested prior to being placed into service. Before being placed in service, all controls and safety equipment and systems, including emergency shutdown, relief valves, gas and fire detection, and vibration would be checked or tested.

Upon completion, temporary disturbances at aboveground facilities would be revegetated according to BLM and/or individual landowner requirements.

#### Access Roads Methodology

The Project proposes to use existing paved and gravel/dirt roads for construction access to the greatest extent practicable. Additional access roads may be incorporated as design progresses.

The Project intends to use the existing access roads in their current condition. However, some access roads may require improvements during construction. Access roads will generally be improved via grading, filling/graveling, use of timber-matting and/or widening to no more than 30-feet. Applicable authorizations, and clearances would be obtained prior to performing improvements to any access road.

Following construction, any temporary access roads used in the construction of the Project will be returned to pre-construction conditions unless the landowner or land management agency requests otherwise in writing, except for grading and/or graveling of existing roads with similar surfaces and replacement of existing culverts. Restoration would include removal of fill material and gravel, soil ripping to loosen compacted soils, grading to blend in with the terrain, and seeding with an approved seed mix adapted to local soils and vegetation types.

#### On-Site Construction Equipment

Typical equipment expected for construction and restoration activities includes:

- Semi-Truck - Pipe Delivery
- Vacuum Lifter or Crane
- D8, D9 or D10 Dozer - Blade and/or Loader
- Trencher - Track Unit
- Excavator - Track Unit
- Backhoe
- Side-Boom Tractor
- Super Padder - Track Unit
- Pipelayer
- Pipe Bender - Track Unit
- Dump Truck
- Stakebed Truck - w/Stinger
- Welding Truck
- Water Truck
- Fuel/Lube Truck
- Tractor
- No-till drill seeder
- Haybuster Drill Seeder

**Estimate the nature, specific location, and number of discharge(s) expected to be authorized by the proposed activity:**

All aquatic resource crossings will be conducted using the wet open-cut method. See Attachment D for crossing details and Attachment F for construction typicals.

**Provide the date(s) on which the proposed activity is planned to begin and end and the approximate date(s) when any discharge(s) may commence:**

Pending regulatory approval, Project construction is anticipated to start in June 2025 and expected to be completed by November 2025.

**Describe the Best Management Practices (BMPs) to be implemented to avoid and/or minimize impacts to regulated waters: Examples include sediment and erosion control measures, habitat preservation, flow diversions, dewatering, hazardous materials management, water quality monitoring, equipment or plans to treat, control, or manage discharges, etc.**

The following best management practices are adapted from the FERC Wetland and Waterbody Construction and Mitigation Procedures (FERC Procedures) and the FERC Upland Erosion Control, Revegetation, and Maintenance Plan (FERC Plan) and will be implemented to avoid or minimize impacts to waters crossed by the Project. **These BMPs are illustrated in construction typical drawings included in Attachment F.**

## **WATERBODY CROSSINGS**

### **Extra Work Areas**

- Locate all extra work areas (such as staging areas and additional spoil storage areas) at least 50 feet away from water's edge, except where the adjacent upland consists of cultivated or rotated cropland or other disturbed land.
- Limit the size of extra work areas to the minimum needed to construct the waterbody crossing.

### **General Crossing Procedures**

- Comply with the USACE, or its delegated agency, permit terms and conditions.
- Construct crossings as close to perpendicular to the axis of the waterbody channel as engineering and routing conditions permit.
- Where pipelines parallel a waterbody, maintain at least 15 feet of undisturbed vegetation between the waterbody (and any adjacent wetland) and the construction ROW, except where maintaining this offset will result in greater environmental impact.
- Where waterbodies meander or have multiple channels, route the pipeline to minimize the number of waterbody crossings.
- Maintain adequate waterbody flow rates to protect aquatic life and prevent the interruption of existing downstream uses.
- Waterbody buffers (e.g., extra work area setbacks, refueling restrictions) must be clearly marked in the field with signs and/or highly visible flagging until construction-related ground disturbing activities are complete.
- Crossing of waterbodies when they are dry or frozen and not flowing may proceed using standard upland construction techniques, provided that the Inspector verifies that water is unlikely to flow between initial disturbance and final stabilization of the feature.

### **Spoil Pile Placement and Control**

- All spoil from minor and intermediate waterbody crossings, and upland spoil from major waterbody crossings, must be placed in the construction ROW at least 10 feet from the water's edge or in additional extra work areas.
- Use sediment barriers to prevent the flow of spoil or silt-laden water into any waterbody.

### **Equipment Bridges**

- Only clearing equipment and equipment necessary for installation of equipment bridges may cross waterbodies prior to bridge installation. Limit the number of such crossings of each waterbody to one per piece of clearing equipment.
- Construct and maintain equipment bridges to allow unrestricted flow and to prevent soil from entering the waterbody.
- Design and maintain each equipment bridge to withstand and pass the highest flow expected to occur while the bridge is in place. Align culverts to prevent bank erosion or streambed scour. If necessary, install energy dissipating devices downstream of the culverts.
- Design and maintain equipment bridges to prevent soil from entering the waterbody.
- Remove temporary equipment bridges as soon as practicable after permanent seeding.

If there will be more than one (1) month between final cleanup and the beginning of permanent seeding and reasonable alternative access to the ROW is available, remove temporary equipment bridges as soon as practicable after final cleanup.

### Dry-Ditch Crossing Methods

Unless approved otherwise by the appropriate federal or state agency, install the pipeline using one of the dry-ditch methods outlined below for crossings of waterbodies up to 30 feet wide (at the water's edge at the time of construction) that are state-designated as either coldwater or significant coolwater or warmwater fisheries, or federally-designated as critical habitat.

#### *Dam and Pump*

The dam-and-pump method may be used without prior approval for crossings of waterbodies where pumps can adequately transfer streamflow volumes around the work area, and there are no concerns about sensitive species passage. Implementation of the dam-and-pump crossing method must meet the following performance criteria:

- use sufficient pumps, including on-site backup pumps, to maintain downstream flows;
- construct dams with materials that prevent sediment and other pollutants from entering the waterbody (e.g., sandbags or clean gravel with plastic liner);
- screen pump intakes to minimize entrainment of fish;
- prevent streambed scour at pump discharge; and
- continuously monitor the dam and pumps to ensure proper operation throughout the waterbody crossing.

#### *Flume Crossing*

The flume crossing method requires implementation of the following steps:

- install flume pipe before any trenching;
- use sand bag or sand bag and plastic sheeting diversion structure or equivalent to develop an effective seal and to divert stream flow through the flume pipe (some modifications to the stream bottom may be required to achieve an effective seal);
- properly align flume pipe(s) to prevent bank erosion and streambed scour;
- do not remove flume pipe during trenching, pipelaying, or backfilling activities, or initial streambed restoration efforts; and
- remove all flume pipes and dams that are not also part of the equipment bridge as soon as final cleanup of the stream bed and bank is complete.

### Crossings of Minor Waterbodies (0-10' wide)

Where a dry-ditch crossing is not required, minor waterbodies may be crossed using the open-cut crossing method, with the following restrictions:

- complete instream construction activities (including trenching, pipe installation, backfill, and restoration of the streambed contours) within 24 hours. Streambanks and unconsolidated streambeds may require additional restoration after this period;
- limit use of equipment operating in the waterbody to that needed to construct the crossing; and
- equipment bridges are not required at minor waterbodies that do not have a state-designated fishery classification or protected status (e.g., agricultural or intermittent drainage ditches). However, if an equipment bridge is used it must be constructed as described above.

### Crossings of Intermediate Waterbodies (10-100' wide)

Where a dry-ditch crossing is not required, intermediate waterbodies may be crossed using the open-cut crossing method, with the following restrictions:

- complete instream construction activities within 48 hours, unless site-specific conditions make completion within 48 hours infeasible;
- limit use of equipment operating in the waterbody to that needed to construct the crossing; and
- all other construction equipment must cross on an equipment bridge as specified above.

### Crossings of Major Waterbodies (100' + wide)

The Project does not anticipate crossing major waterbodies while they contain flowing or standing water; some playa crossings exceed 100 feet in length however the Project plans to cross these features in dry conditions.

#### Temporary Erosion and Sediment Control

Install sediment barriers immediately after initial disturbance of the waterbody or adjacent upland. Sediment barriers must be properly maintained throughout construction until replaced by permanent erosion controls or restoration of adjacent upland areas is complete. The following temporary erosion and sediment control measures will be implemented at stream crossings:

- install sediment barriers across the entire construction ROW at all waterbody crossings, where necessary to prevent the flow of sediments into the waterbody. Removable sediment barriers (or driveable berms) must be installed across the travel lane. These removable sediment barriers can be removed during the construction day, but must be re-installed after construction has stopped for the day and/or when heavy precipitation is imminent;
- where waterbodies are adjacent to the construction ROW and the ROW slopes toward the waterbody, install sediment barriers along the edge of the construction ROW as necessary to contain spoil within the construction ROW and prevent sediment flow into the waterbody; and
- use temporary trench plugs at all waterbody crossings, as necessary, to prevent diversion of water into upland portions of the pipeline trench and to keep any accumulated trench water out of the waterbody.

#### Restoration

- For open-cut crossings, stabilize waterbody banks and install temporary sediment barriers within 24 hours of completing instream construction activities. For dry-ditch crossings, complete streambed and bank stabilization before returning flow to the waterbody channel.
- Return all waterbody banks to preconstruction contours or to a stable angle of repose as approved by the Inspector.
- Install erosion control fabric or a functional equivalent on waterbody banks at the time of final bank recontouring. Do not use synthetic monofilament mesh/netted erosion control materials in areas designated as sensitive wildlife habitat unless the product is specifically designed to minimize harm to wildlife. Anchor erosion control fabric with staples or other appropriate devices.
- Revegetate disturbed riparian areas with native species of conservation grasses, legumes, and woody species, similar in density to adjacent undisturbed lands.
- Install a permanent slope breaker across the construction ROW at the base of slopes greater than five (5) percent that are less than 50 feet from the waterbody, or as needed to prevent sediment transport into the waterbody. In addition, install sediment barriers.

In some areas, with the approval of the Inspector, an earthen berm may be suitable as a sediment barrier adjacent to the waterbody.

#### Post-Construction Maintenance

- Limit routine vegetation mowing or clearing adjacent to waterbodies to allow a riparian strip at least 25 feet wide, as measured from the waterbody's mean high-water mark, to permanently revegetate with native plant species across the entire construction ROW. However, to facilitate periodic corrosion/leak surveys, a corridor centered on the pipeline and up to 10 feet wide may be cleared at a frequency necessary to maintain the 10-foot corridor in an herbaceous state. In addition, trees that are located within 15 feet of the pipeline that have roots that could compromise the integrity of the pipeline coating may be cut and removed from the permanent ROW.
- Do not use herbicides or pesticides in or within 100 feet of a waterbody except as allowed by the appropriate land management or state agency.

### **WETLAND CROSSINGS**

- Conduct a wetland delineation using the current federal methodology and file a wetland delineation report with the USACE and/or applicable land management agency before construction.

This report should identify:

- by milepost all wetlands that would be affected;
- the National Wetlands Inventory (NWI) classification for each wetland;
- the crossing length of each wetland in feet; and
- the area of permanent and temporary disturbance that would occur in each wetland by NWI classification type.

The requirements outlined in this section do not apply to wetlands in actively cultivated or rotated cropland. Standard upland protective measures, including workspace and topsoiling requirements, apply to these agricultural wetlands.

- Route the pipeline to avoid wetland areas to the maximum extent possible. If a wetland cannot be avoided or crossed by following an existing ROW, route the new pipeline in a manner that minimizes disturbance to wetlands.

- Wetland boundaries and buffers must be clearly marked in the field with signs and/or highly visible flagging until construction-related ground disturbing activities are complete.
- Do not locate aboveground facilities in any wetland, except where the location of such facilities outside of wetlands would prohibit compliance with U.S. Department of Transportation regulations.

#### Extra Work Areas and Access Roads

- Locate all extra work areas (such as staging areas and additional spoil storage areas) at least 50 feet away from wetland boundaries, except where the adjacent upland consists of cultivated or rotated cropland or other disturbed land.
- The construction ROW may be used for access when the wetland soil is firm enough to avoid rutting or the construction ROW has been appropriately stabilized to avoid rutting (e.g., with timber riprap, prefabricated equipment mats, or terra mats).  
In wetlands that cannot be appropriately stabilized, all construction equipment other than that needed to install the wetland crossing shall use access roads located in upland areas. Where access roads in upland areas do not provide reasonable access, limit all other construction equipment to one pass through the wetland using the construction ROW.
- The only access roads, other than the construction ROW, that can be used in wetlands are those existing roads that can be used with no modifications or improvements, other than routine repair, and results in no impact on the wetland.

#### Crossing Procedures

- Comply with USACE, or its delegated agency, permit terms and conditions.
- Assemble the pipeline in an upland area unless the wetland is dry enough to adequately support skids and pipe.
- Use “push-pull” or “float” techniques to place the pipe in the trench where water and other site conditions allow.
- Minimize the length of time that topsoil is segregated and the trench is open. Do not trench the wetland until the pipeline is assembled and ready for lowering in.
- Limit construction equipment operating in wetland areas to that needed to clear the construction ROW, dig the trench, fabricate and install the pipeline, backfill the trench, and restore the construction ROW.
- Cut vegetation just above ground level, leaving existing root systems in place, and remove it from the wetland for disposal.
- Limit pulling of tree stumps and grading activities to directly over the trenchline. Do not grade or remove stumps or root systems from the rest of the construction ROW in wetlands unless the Inspector determines that safety-related construction constraints require grading or the removal of tree stumps from under the working side of the construction ROW.
- Segregate topsoil from the area disturbed by trenching, except in areas where standing water is present or soils are saturated. Immediately after backfilling is complete, restore the segregated topsoil to its original location.
- Do not use rock, soil imported from outside the wetland, tree stumps, or brush riprap to support equipment on the construction ROW.
- If standing water or saturated soils are present, or if construction equipment causes ruts or mixing of the topsoil and subsoil in wetlands, use low-ground-weight construction equipment, or operate normal equipment on timber riprap, prefabricated equipment mats, or terra mats.
- Remove all project-related material used to support equipment on the construction ROW upon completion of construction.

#### Temporary Sediment Control

- Install sediment barriers immediately after initial disturbance of the wetland or adjacent upland. Sediment barriers must be properly maintained throughout construction. Except as noted below, maintain sediment barriers until replaced by permanent erosion controls or restoration of adjacent upland areas is complete.
- Install sediment barriers across the entire construction ROW immediately upslope of the wetland boundary at all wetland crossings where necessary to prevent sediment flow into the wetland.
- Where wetlands are adjacent to the construction ROW and the ROW slopes toward the wetland, install sediment barriers along the edge of the construction ROW as necessary to contain spoil within the construction ROW and prevent sediment flow into the wetland.
- Install sediment barriers along the edge of the construction ROW as necessary to contain spoil and sediment within the construction ROW through wetlands. Remove these sediment barriers during ROW cleanup.

#### Restoration

- Where the pipeline trench may drain a wetland, construct trench breakers at the wetland boundaries and/or seal the trench bottom as necessary to maintain the original wetland hydrology.

- Restore pre-construction wetland contours to maintain the original wetland hydrology.
- For each wetland crossed, install a trench breaker at the base of slopes near the boundary between the wetland and adjacent upland areas. Install a permanent slope breaker across the construction ROW at the base of slopes greater than five (5) percent where the base of the slope is less than 50 feet from the wetland, or as needed to prevent sediment transport into the wetland. In some areas, with the approval of the Inspector, an earthen berm may be suitable as a sediment barrier adjacent to the wetland.
- Do not use fertilizer, lime, or mulch unless required in writing by the appropriate federal or state agency.
- Consult with the appropriate federal or state agencies to develop a project-specific wetland restoration plan. The restoration plan shall include measures for re-establishing herbaceous and/or woody species, controlling the invasion and spread of invasive species and noxious weeds, and monitoring the success of the revegetation and weed control efforts.
- Until a project-specific wetland restoration plan is developed and/or implemented, temporarily revegetate the construction ROW with annual ryegrass at a rate of 40 pounds/acre (unless standing water is present).
- Ensure that all disturbed areas successfully revegetate with wetland herbaceous and/or woody plant species.
- Remove temporary sediment barriers located at the boundary between wetland and adjacent upland areas after revegetation and stabilization of adjacent upland areas are judged to be successful per criteria determined by the appropriate agencies.

**Post-Construction Maintenance and Reporting**

- Do not use herbicides or pesticides in or within 100 feet of a wetland, except as allowed by the appropriate federal or state agency.
- Monitor and record the success of revegetation per conditions stated in relevant permits/authorizations until the stated success criteria is achieved.

**TRENCH DEWATERING**

Trench dewatering may be periodically required along portions of the pipeline prior to and/or subsequent to installation of the pipeline to remove collected water from the trench.

- Conduct dewatering in such a manner that it does not cause erosion and does not result in silt-laden water flowing into any waterbody or wetland.
- Place pumps in secondary containment to prevent the release of hazardous materials into the environment
- Elevate and screen the intakes of hoses used to withdraw the water from the trench to minimize pumping of deposited sediments.
- Discharge water into areas where adequate vegetation is present adjacent to the construction ROW to function as a filter medium.
- Where vegetation is absent or in the vicinity of waterbody/ wetland areas, pump into a filter bag or through a structure composed of ECDs. When using filter bags, secure the discharge hose to the bag with a clamp.
- Remove dewatering structures as soon as practicable after the completion of dewatering activities.

**EROSION CONTROL DEVICES**

The following temporary and permanent erosion control measures will be implemented to avoid or minimize the upland erosion potential caused by the Project.

Install temporary erosion controls immediately after initial disturbance of the soil. Temporary erosion controls must be properly maintained throughout construction until replaced by permanent erosion controls or restoration is complete.

**Temporary Slope Breakers**

- Temporary slope breakers are intended to reduce runoff velocity and divert water off the construction ROW. Temporary slope breakers may be constructed of materials such as soil, silt fence, staked hay or straw bales, or sandbags.
- Install temporary slope breakers on all disturbed areas, as necessary to avoid excessive erosion. Temporary slope breakers must be installed on slopes greater than five percent where the base of the slope is less than 50 feet from waterbody, wetland, and road crossings at the following spacing (closer spacing shall be used if necessary):

Slope (%)	Spacing (feet)
5 – 15	300
>15 – 30	200
>30	100

- Direct the outfall of each temporary slope breaker to a stable, well vegetated area or construct an energy-dissipating device at the end of the slope breaker and off the construction ROW.
- Position the outfall of each temporary slope breaker to prevent sediment discharge into wetlands, waterbodies, or other sensitive environmental resource areas.

### Temporary Trench Plugs

Temporary trench plugs are intended to segment a continuous open trench prior to backfill.

- Temporary trench plugs may consist of unexcavated portions of the trench, compacted subsoil, sandbags, or some functional equivalent.
- Position temporary trench plugs, as necessary, to reduce trenchline erosion and minimize the volume and velocity of trench water flow at the base of slopes.

### Sediment Barriers

Sediment barriers are intended to stop the flow of sediments and to prevent the deposition of sediments beyond approved workspaces or into sensitive resources.

- Sediment barriers may be constructed of materials such as silt fence, staked hay or straw bales, compacted earth (e.g., driveable berms across travelways), sandbags, or other appropriate materials.
- At a minimum, install and maintain temporary sediment barriers across the entire construction ROW at the base of slopes greater than five percent where the base of the slope is less than 50 feet from a waterbody, wetland, or road crossing until revegetation is successful. Leave adequate room between the base of the slope and the sediment barrier to accommodate ponding of water and sediment deposition.
- Where wetlands or waterbodies are adjacent to and downslope of construction work areas, install sediment barriers along the edge of these areas, as necessary to prevent sediment flow into the wetland or waterbody.

### Mulch

- Apply mulch on all slopes (except in cultivated cropland) concurrent with or immediately after seeding, where necessary to stabilize the soil surface and to reduce wind and water erosion. Spread mulch uniformly over the area to cover at least 75 percent of the ground surface at a rate of two tons/acre of straw or its equivalent, unless the local soil conservation authority, landowner, or land managing agency approves otherwise in writing.
- Mulch can consist of weed-free straw or hay, wood fiber hydromulch, erosion control fabric, or some functional equivalent.
- Mulch all disturbed upland areas (except cultivated cropland) before seeding if:
  - final grading and installation of permanent erosion control measures will not be completed in an area within 20 days after the trench in that area is backfilled (10 days in residential areas); or
  - construction or restoration activity is interrupted for extended periods, such as when seeding cannot be completed due to seeding period restrictions.
- If mulching before seeding, increase mulch application on all slopes within 100 feet of waterbodies and wetlands to a rate of three tons/acre of straw or equivalent.
- If wood chips are used as mulch, do not use more than one ton/acre and add the equivalent of 11 lbs/acre available nitrogen (at least 50 percent of which is slow release).
- Ensure that mulch is adequately anchored to minimize loss due to wind and water.
- When anchoring with liquid mulch binders, use rates recommended by the manufacturer. Do not use liquid mulch binders within 100 feet of wetlands or waterbodies, except where the product is certified environmentally non-toxic by the appropriate state or federal agency or independent standards-setting organization.
- Do not use synthetic monofilament mesh/netted erosion control materials in areas designated as sensitive wildlife habitat, unless the product is specifically designed to minimize harm to wildlife. Anchor erosion control fabric with staples or other appropriate devices

### Trench Breakers

- Trench breakers are intended to slow the flow of subsurface water along the trench. Trench breakers may be constructed of materials such as sandbags or polyurethane foam. Do not use topsoil in trench breakers.
- An engineer or similarly qualified professional shall determine the need for and spacing of trench breakers. Otherwise, trench breakers shall be installed at the same spacing as and upslope of permanent slope breakers.



- In agricultural fields and residential areas where slope breakers are not typically required, install trench breakers at the same spacing as if permanent slope breakers were required.
- At a minimum, install a trench breaker at the base of slopes greater than five percent where the base of the slope is less than 50 feet from a waterbody or wetland and where needed to avoid draining a waterbody or wetland. Install trench breakers at wetland boundaries, as specified in the Procedures. Do not install trench breakers within a wetland.

#### Permanent Slope Breakers

- Permanent slope breakers are intended to reduce runoff velocity, divert water off the construction ROW, and prevent sediment deposition into sensitive resources. Permanent slope breakers may be constructed of materials such as soil, stone, or some functional equivalent.
- Construct and maintain permanent slope breakers in all areas, except cultivated areas and lawns, unless requested by the landowner, using spacing recommendations obtained from the local soil conservation authority or applicable land management agency.

In the absence of written recommendations, use the following spacing unless closer spacing is necessary to avoid excessive erosion on the construction ROW:

Slope (%)	Spacing (feet)
5 – 15	300
>15 – 30	200
>30	100

- Construct slope breakers to divert surface flow to a stable area without causing water to pool or erode behind the breaker. In the absence of a stable area, construct appropriate energy-dissipating devices at the end of the breaker.
- Slope breakers may extend slightly (about four feet) beyond the edge of the construction ROW to effectively drain water off the disturbed area. Where slope breakers extend beyond the edge of the construction ROW, they are subject to compliance with all applicable requirements.

### **SPILL PREVENTION MEASURES**

#### Containers

- All containers 55-gallons or greater shall be stored on pallets or indoors and surrounded with secondary containment.
- Secondary containment will include but will not be limited to temporary earthen berms with polyethylene underlining the entire contained area with a minimum of 10-millimeter (mm) thickness or a portable containment system constructed of steel, polyvinyl chloride (PVC) or other suitable material.
- Containment areas shall be capable of containing 110 percent of the volume of the largest container in the area.
- All container storage areas shall be inspected daily for leaks and deterioration.
- Leaking and/or deteriorated containers shall be replaced as soon as the condition is first detected, and cleanup measures must be implemented to remediate all contamination.
- No storage area shall be unattended for periods longer than three (3) days.

#### Loading/Unloading Areas

- The area beneath loading/unloading locations shall be inspected for spills before and after each use. Corrective measures shall be implemented if spills occur.
- Transferring of liquids and refueling shall only occur in pre-designated locations at least 100 feet from all water bodies and 200 feet from any water well. Where conditions require that construction equipment (e.g., trench dewatering pumps or hydrostatic test water pumps) be refueled within 100 feet of water bodies or wetlands, these operations must be manned continuously to ensure that over filling, leaks, or spills do not occur. Where stationary equipment must remain within 100 feet of a waterbody or wetland, adequate secondary containment must be provided.
- All pre-designated areas where transferring of liquid and refueling take place must be equipped with an emergency response kit.
- Service vehicles used to transport lubricants and fuel must be equipped with a spill response kit.
- Each refueling vehicle shall have a sufficient number of shovels, brooms, 10 mm polyethylene sheeting, and fire protection equipment to contain a moderate oil/fuel spill.

### Oil/Fuel Spill Procedures

- Small spills and leaks must be remediated as soon as feasible. Use absorbent pads wherever possible to reduce the amount of contaminated articles.
- Restrict spills to the containment area, if possible, by stopping or diverting flow from the oil/fuel tank.
- If the release exceeds the containment system capacity, immediately construct additional containment using sandbags or fill material. Every effort must be made to prevent the seepage of oil into soils and waterways.
- If a release occurs into a facility drain or nearby stream/washes, immediately pump any floating layer into drums. For streams, place a barrier between the release area and the site boundary. This barrier may include but is not limited to oil booms, straw bales, under flow dams or means to contain the release. As soon as possible, excavate contaminated soils and sediments.
- After all recoverable oil has been collected and drummed, place contaminated soils and articles in containers.
- For larger quantity of soils, construct temporary waste piles using plastic liners. Plastic-lined roll-off bins should be leased for storing this material as soon as feasible.
- Dispose of oily soils and contaminated articles in accordance with applicable federal, state, and local regulations.

## **HYDROSTATIC TESTING**

Hydrostatic testing for the Project is still under development; water sources and discharge locations are not yet determined. The Project will secure the necessary permits and approvals for the use of and disposal of test water. The Project will also comply with the rules and regulations specified by appropriate agencies.

### Water Source and Testing

Hydrostatic test water will either be taken from a municipal source or a natural source (stream).

If the test water is taken from a natural source (stream), then the appropriate permit will be obtained from the state. If pumps for hydrostatic testing are to be used within 100-ft of any waterbody or wetland, secondary containment measures (such as bermed depression lined with visquene plastic, plastic troughs, or other containment structure) will be used to prevent any spilled fuels or oils from reaching the waterbody or wetland. The intake will be supported or floated and screened to prevent entrainment of fish, mussels or other animals and/or unwanted debris.

If a municipal source is used, the hydrostatic water will be trucked from the municipal source to frac-tanks near the pipeline fill point. High-pressure pumps will be utilized to propel poly pigs through the pipeline in a manner that will fill the pipeline with water and displace the air. Test pressure will be achieved by pumping additional water to the pipeline with a high-pressure pump.

### Water Discharge

Discharge points will be selected to avoid waterways and wetlands. Landowners will also be consulted when finalizing discharge points. All discharge points will utilize discharge dispersion devices. The devices are designed to capture discharge water to limit erosion, scour, and filter contaminants. These devices are typically constructed of geotextile fabric, silt fence/filter cloth and straw bales. At the completion of the hydrostatic test, the pressure will be removed from the pipeline and the water released from the test section by propelling a pig with air from each end, forcing the water from the pipeline and into the dissipation device. The rate of discharge will be monitored to prevent the device from being ineffective or overwhelmed by the volume of water. Discharge lines will be sufficient in strength and will be secured and constrained at the discharge end to prevent whipping during the dewatering operation.

If water sampling is required, sample bottles will be obtained from the certified testing laboratory. Analysis of the samples will be in accordance with permit requirements.

### Describe how the activity has been designed to avoid and/or minimize adverse effects, both temporary and permanent, to regulated waters:

The Project was designed to avoid and/or minimize adverse effects to waters through iterative route design and optimization. Multiple preliminary alternative routes that accounted for impact to sensitive resources were considered before the current pipeline route was selected. Where possible, the pipeline route and workspaces were refined to avoid impacts to wetland and waterbodies. Above-ground facilities have been sited away from aquatic resources. As the Project is nearly 16 miles of linear infrastructure linking fixed points, outright avoidance of all aquatic resources is not possible.

## **J. Delineated Stream Characteristics**

Stream Characteristics Table

ID	Flow Type <sup>1</sup>	Alterations <sup>2</sup>	OHWM Width (feet) <sup>3</sup>	OHWM Depth (feet)	ToB Width <sup>4</sup> (feet)	Bank Height <sup>5</sup> (feet)	Bank Slope (°)	Channel Substrate	Aquatic Vegetation	Aquatic Fauna	Water Quality <sup>6</sup>	Riparian Vegetation	Note
S1	EPH	none	4	0.5	5	2	31-45°	Sand/Silt	none	none	Dry	<i>Sarcobatus vermiculatus</i>	-
S2	EPH	none	3	0.5	6	3	31-45°	Sand/Silt	none	none	Dry	<i>Artemisia tridentata</i> , <i>Sarcobatus vermiculatus</i> ,	-
S3	INT	none	4	0.5	6	2	16-30°	Silt/Clay	none	none	Dry	<i>Artemisia tridentata</i> , <i>Sarcobatus vermiculatus</i> , <i>Ericameria nauseosa</i> , <i>Chrysothamnus viscidiflora</i> , <i>Atriplex confertifolia</i>	-
S4	INT	none	3	1	5	1	0-15°	Silt/Clay	none	none	Dry	<i>Ericameria nauseosa</i> , <i>Leymus cinerius</i> , <i>Distichilis spicata</i>	<b>Kelly Creek</b>
S5	INT	none	4	1	6	2	16-30°	Silt/Clay	none	none	Dry	<i>Ericameria nauseosa</i> , <i>Leymus cinerius</i> , <i>Distichilis spicata</i>	<b>Kelly Creek</b>
S6	PER	Manmade Ditch	4	1	6	3	46-60°	Silt/Clay	Algae	none	Clear	<i>Juncus balticus</i> , <i>Eleocharis palustris</i> , unknown weed	S6 is a ditch which diverts flow from Kelly Creek south into Spring
S7	PER	Ditched Flow Controls	8	2.5	12	4	46-60°	Silt/Clay	Algae	Macro-inverts	Clear	<i>Salix laevigata</i> , <i>Ericameria nauseosa</i> , <i>Sarcobatus vermiculatus</i> <i>Eleocharis palustris</i> , <i>Leymus cinerius</i>	<b>Spring Branch.</b> Potentially fish bearing. Excessive algae.
S8	INT	none	3	0.5	8	1	0-15°	Silt/Clay	none	none	Dry	<i>Sarcobatus vermiculatus</i> , <i>Salsola tragus</i> , <i>Distichilis spicata</i>	-
S9	INT	none	8	1.5	20	3	16-30°	Silt/Clay	none	none	Dry	<i>Sarcobatus vermiculatus</i> , <i>Bassia scoparia</i> , <i>Bolboschoenus maritimes</i>	-
S10	INT	none	5	0.5	10	1	0-15°	Silt/Clay	none	none	Dry	<i>Sarcobatus vermiculatus</i>	-
S11	INT	none	5	0.5	10	1	0-15°	Silt/Clay	none	none	Dry	<i>Sarcobatus vermiculatus</i>	-
S12	INT	none	5	0.5	10	1	0-15°	Silt/Clay	none	none	Dry	<i>Sarcobatus vermiculatus</i>	-

ID	Flow Type <sup>1</sup>	Alterations <sup>2</sup>	OHWM Width (feet) <sup>3</sup>	OHWM Depth (feet)	ToB Width <sup>4</sup> (feet)	Bank Height <sup>5</sup> (feet)	Bank Slope (°)	Channel Substrate	Aquatic Vegetation	Aquatic Fauna	Water Quality <sup>6</sup>	Riparian Vegetation	Note
S13	INT	none	6	0.5	10	1	0-15°	Silt/Clay	none	none	Dry	<i>Sarcobatus vermiculatus</i>	-
S14	INT	none	8	0.5	12	1	0-15°	Silt/Clay	none	none	Dry	<i>Sarcobatus vermiculatus</i> , <i>Artemisia tridentata</i> , <i>Chrysothamnus viscidiflora</i> <i>Leymus cinerius</i> , <i>Atriplex confertifolia</i>	-
S15	INT	none	3	1	8	2	16-30°	Silt/Clay	none	none	Dry	<i>Sarcobatus vermiculatus</i> , <i>Distichlis spicata</i>	-
S16	INT	none	8	0.5	12	1	0-15°	Silt/Clay	none	none	Dry	<i>Sarcobatus vermiculatus</i> , <i>Distichlis spicata</i>	-
S17	INT	none	9	0.5	15	1	16-30°	Silt/Clay	none	none	Dry	<i>Sarcobatus vermiculatus</i> , <i>Distichlis spicata</i>	-
S18	EPH	none	1	0.5	6	1	16-30°	Sand/Silt	none	none	Dry	<i>Sarcobatus vermiculatus</i> , <i>Bromus tectorum</i>	-
S19	EPH	none	5	0.5	8	2	0-15°	Sand/Silt	none	none	Dry	<i>Sarcobatus vermiculatus</i> , <i>Bromus tectorum</i>	-
S20	EPH	none	1	0.25	4	1	16-30°	Sand/Silt	none	none	Dry	<i>Sarcobatus vermiculatus</i> , <i>Bromus tectorum</i>	-

<sup>1</sup> PER= Perennial; INT= Intermittent; EPH = Ephemeral. Perennial and Intermittent waters are considered USACE "Relatively Permanent Waters" (RPW).

<sup>2</sup> Alterations refer to anthropogenic impacts such as ditching, culverts, check dams, riparian corridor clearing etc.

<sup>3</sup> OHWM refers to "Ordinary High Water Mark" as defined by the USACE.

<sup>4</sup> ToB refers to "Top of Bank"

<sup>5</sup> Bank height is measured from the bottom of the channel to the ToB

<sup>6</sup> Qualitative observations regarding degraded water quality are reported such as odor, sheen, coloration, turbidity or the lack thereof (clear)

# **Attachment D: Crossing Table and Figures**

**Aquatic Resource Impacts Summary Table**

Name	Cowardin Class <sup>1</sup>	Total Areal Impact <sup>2</sup> (acres)	Linear Crossing Distance <sup>3</sup> (feet)	Excavation Impacts <sup>4</sup> (cubic yards)	Stream Reach Impacted <sup>5</sup> (feet)	Impact Duration <sup>6</sup>	Flow Type <sup>7</sup>	Construction Method	WOTUS Type <sup>8,9</sup>
<b>Wetlands</b>									
W2*	PEM	0.80	469	2,067.07	NA	Temporary	NA	Open Cut	(a)(4)
W3*	PEM	0.35	204	899.11	NA	Temporary	NA	Open Cut	(a)(4)
W4*	PEM	1.91	1,115	4,914.25	NA	Temporary	NA	Open Cut	(a)(4)
<i>Subtotal:</i>		<i>3.06</i>	<i>1,788</i>	<i>7,880</i>	<i>--</i>				
<b>Playas</b>									
P1	PUS3J	0.39	98	431.93	NA	Temporary	INT	Open Cut	non-WOTUS
P3	PUS3J	0.26	NA	NA	NA	Temporary	INT	Open Cut	non-WOTUS
P4	PUS3J	0.04	14	61.70	NA	Temporary	INT	Open Cut	non-WOTUS
P5	PUS3J	0.01	NA	NA	NA	Temporary	INT	Open Cut	non-WOTUS
P6	PUS3J	0.08	48	211.56	NA	Temporary	INT	Open Cut	non-WOTUS
P7	PUS3J	0.03	6	26.44	NA	Temporary	INT	Open Cut	non-WOTUS
P8	PUS3J	1.16	455	2,005.37	NA	Temporary	INT	Open Cut	non-WOTUS
P10	PUS3J	0.31	157	691.96	NA	Temporary	INT	Open Cut	non-WOTUS
P11	PUS3J	0.00	NA	NA	NA	Temporary	INT	Open Cut	non-WOTUS
P14	PUS3J	0.37	137	603.81	NA	Temporary	INT	Open Cut	non-WOTUS
P15	PUS3J	0.82	267	1,176.78	NA	Temporary	INT	Open Cut	non-WOTUS
P17	PUS3J	0.13	31	136.63	NA	Temporary	INT	Open Cut	non-WOTUS
P19	PUS3J	1.37	491	2,164.03	NA	Temporary	INT	Open Cut	non-WOTUS
P20	PUS3J	0.07	NA	NA	NA	Temporary	INT	Open Cut	non-WOTUS
P22	PUS3J	0.01	NA	NA	NA	Temporary	INT	Open Cut	non-WOTUS
P23	PUS3J	0.08	NA	NA	NA	Temporary	INT	Open Cut	non-WOTUS
P24	PUS3J	0.67	184	810.96	NA	Temporary	INT	Open Cut	non-WOTUS
P25	PUS3J	0.01	NA	NA	NA	Temporary	INT	Open Cut	non-WOTUS
P26	PUS3J	0.05	22	96.96	NA	Temporary	INT	Open Cut	non-WOTUS
P28	PUS3J	0.30	66	290.89	NA	Temporary	INT	Open Cut	non-WOTUS
P29	PUS3J	0.58	199	877.07	NA	Temporary	INT	Open Cut	non-WOTUS
P30	PUS3J	1.25	408	1,798.22	NA	Temporary	INT	Open Cut	non-WOTUS

Name	Cowardin Class <sup>1</sup>	Total Areal Impact <sup>2</sup> (acres)	Linear Crossing Distance <sup>3</sup> (feet)	Excavation Impacts <sup>4</sup> (cubic yards)	Stream Reach Impacted <sup>5</sup> (feet)	Impact Duration <sup>6</sup>	Flow Type <sup>7</sup>	Construction Method	WOTUS Type <sup>8,9</sup>
P32	PUS3J	0.14	NA	NA	NA	Temporary	INT	Open Cut	non-WOTUS
P33	PUS3J	0.03	28	123.41	NA	Temporary	INT	Open Cut	non-WOTUS
P34	PUS3J	1.05	462	2,036.22	NA	Temporary	INT	Open Cut	(a)(5)
P35	PUS3J	1.74	477	2,102.33	NA	Temporary	INT	Open Cut	(a)(5)
P36	PUS3J	0.03	14	61.70	NA	Temporary	INT	Open Cut	non-WOTUS
P38	PUS3J	0.57	164	722.81	NA	Temporary	INT	Open Cut	(a)(5)
P39	PUS3J	1.03	380	1,674.81	NA	Temporary	INT	Open Cut	(a)(5)
P40	PUS3J	0.91	323	1,423.59	NA	Temporary	INT	Open Cut	(a)(5)
P41	PUS3J	0.21	109	480.41	NA	Temporary	INT	Open Cut	non-WOTUS
P42	PUS3J	2.77	901	3,971.07	NA	Temporary	INT	Open Cut	(a)(5)
P43	PUS3J	9.65	3,578	15,769.69	NA	Temporary	INT	Open Cut	(a)(5)
P45	PUS3J	1.73	556	2,450.52	NA	Temporary	INT	Open Cut	(a)(5)
P46	PUS3J	1.43	746	3,287.92	NA	Temporary	INT	Open Cut	(a)(5)
P47	PUS3J	0.18	41	180.70	NA	Temporary	INT	Open Cut	non-WOTUS
P48	PUS3J	0.67	163	718.41	NA	Temporary	INT	Open Cut	(a)(5)
P49	PUS3J	0.62	206	907.93	NA	Temporary	INT	Open Cut	(a)(5)
P50	PUS3J	0.28	115	506.85	NA	Temporary	INT	Open Cut	(a)(5)
P51	PUS3J	0.58	196	863.85	NA	Temporary	INT	Open Cut	(a)(5)
P52	PUS3J	0.06	NA	NA	NA	Temporary	INT	Open Cut	non-WOTUS
P53	PUS3J	1.02	368	1,621.92	NA	Temporary	INT	Open Cut	(a)(5)
P54	PUS3J	0.51	53	233.59	NA	Temporary	INT	Open Cut	(a)(5)
P55	PUS3J	0.05	74	326.15	NA	Temporary	INT	Open Cut	non-WOTUS
P57	PUS3J	0.03	NA	NA	NA	Temporary	INT	Open Cut	(a)(5)
P59	PUS3J	1.19	493	2,172.85	NA	Temporary	INT	Open Cut	(a)(5)
P61	PUS3J	0.99	9	39.67	NA	Temporary	INT	Open Cut	(a)(5)
P62	PUS3J	0.01	NA	NA	NA	Temporary	INT	Open Cut	non-WOTUS
P63	PUS3J	0.02	NA	NA	NA	Temporary	INT	Open Cut	non-WOTUS
P65	PUS3J	0.00	NA	NA	NA	Temporary	INT	Open Cut	non-WOTUS
P66	PUS3J	0.05	NA	NA	NA	Temporary	INT	Open Cut	non-WOTUS



Name	Cowardin Class <sup>1</sup>	Total Areal Impact <sup>2</sup> (acres)	Linear Crossing Distance <sup>3</sup> (feet)	Excavation Impacts <sup>4</sup> (cubic yards)	Stream Reach Impacted <sup>5</sup> (feet)	Impact Duration <sup>6</sup>	Flow Type <sup>7</sup>	Construction Method	WOTUS Type <sup>8,9</sup>
P67	PUS3J	0.05	51	224.78	NA	Temporary	INT	Open Cut	non-WOTUS
P68	PUS3J	0.27	NA	0.00	NA	Temporary	INT	Open Cut	(a)(5)
<b>Subtotal:</b>		<b>35.86</b>	<b>12,090</b>	<b>53,285</b>	<b>--</b>				
<b>Linear Waterbodies</b>									
S2	R6	0.05	NA	NA	753	Temporary	EPH	Open Cut	non-WOTUS
S3	R4SB5	0.01	4	17.63	154	Temporary	INT	Open Cut	(a)(3)
S4*	R4SB5	0.01	3	13.22	83	Temporary	INT	Open Cut	(a)(3)
S5*	R4SB5	0.01	4	17.63	82	Temporary	INT	Open Cut	(a)(3)
S7*	R2UB3Hd	0.02	9	39.67	83	Temporary	PER	Dry Ditch	(a)(3)
S8	R4SB5	0.01	4	17.63	137	Temporary	INT	Open Cut	(a)(3)
S9	R4SB5	0.03	13	57.30	158	Temporary	INT	Open Cut	(a)(3)
S10	R4SB5	0.02	6	26.44	159	Temporary	INT	Open Cut	(a)(3)
S11	R4SB5	0.02	5	22.04	144	Temporary	INT	Open Cut	(a)(3)
S12	R4SB5	0.02	10	44.07	212	Temporary	INT	Open Cut	(a)(3)
S13	R4SB5	0.05	20	88.15	341	Temporary	INT	Open Cut	(a)(3)
S14	R4SB5	0.20	29	127.81	1,095	Temporary	INT	Open Cut	(a)(3)
S15	R4SB5	0.01	NA	NA	177	Temporary	INT	Open Cut	(a)(3)
S17	R4SB5	0.06	22	96.96	304	Temporary	INT	Open Cut	(a)(3)
S18	R6	0.00	1	4.41	126	Temporary	EPH	Open Cut	non-WOTUS
S19	R6	0.02	7	30.85	131	Temporary	EPH	Open Cut	non-WOTUS
S20	R6	0.00	1	4.41	144	Temporary	EPH	Open Cut	non-WOTUS
<b>Subtotal:</b>		<b>0.54</b>	<b>138</b>	<b>608</b>	<b>4,283</b>				
<b>Total:</b>		<b>39.46</b>	<b>14,016</b>	<b>61,774</b>	<b>4,283</b>				

<sup>1</sup>Field determined, Cowardin Classification (Cowardin et al., 1979) and Hydrogeomorphic Classification (Brinson, 1993).

<sup>2</sup>Includes all impacts associated with the construction footprint (temp workspace, additional temp workspace, permanent easement). For streams, this is the area of the OHWM falling within the construction footprint.

<sup>3</sup>Crossing distance of each aquatic resource is calculated in linear feet along the pipeline centerline. For streams, this is the linear distance across the OHWM (OHWM width). NA values indicate that the pipeline does not cross the resource.

<sup>4</sup>Excavation impacts are reported in cubic yards and calculated for a trench measuring 7' deep by 3' wide at depth with sides sloping at 2:1. NA values indicate that the pipeline centerline does not cross the resource and there will not be excavation within the resource.

<sup>5</sup>Stream reach impacted is the linear distance of stream reach that falls within the construction footprint.

<sup>6</sup>**All impacts to aquatic resources will be temporary in nature;** the pipeline will be installed beneath the surface of these waters and the impact area restored to pre-existing conditions. As all impacts are temporary, the complete construction footprint (a 125-foot corridor throughout the Project excepting a reduction to 75 feet across perennial waters) was used to calculate impact acreages, lengths and volumes.

<sup>7</sup>PER = Perennial; INT= Intermittent; EPH = Ephemeral. Perennial and Intermittent waters are considered USACE "Relatively Permanent Waters" (RPW).

<sup>8</sup>(a)(4) and (a)(5) waters require a "continuous surface connection" to (a)(1) through (a)(3) waters to be considered WOTUS in their own right. Mott MacDonald applied the following codes to describe the means of the continuous surface connections observed during aquatic resource delineations: 1- directly abutting an (a)(1)-(a)(3) water; 2- channelized ephemeral connection to an (a)(1)-(a)(3) water such as an ephemeral stream, ditch or culvert; 3- non-channelized ephemeral connection to an (a)(1)-(a)(3) water such as a gully, swale or erosional feature; 4- no surface connection to an (a)(1)-(a)(3) water; 5- undetermined.

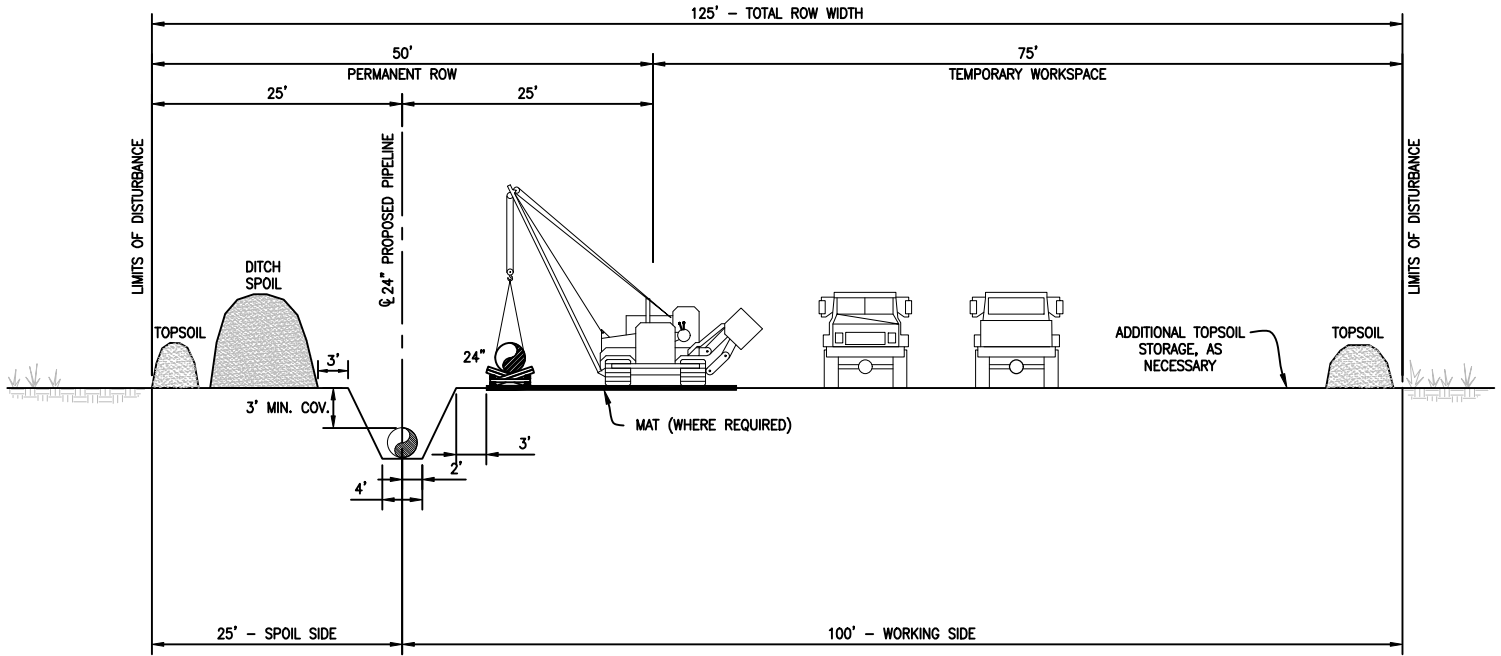
<sup>9</sup>The USACE is responsible for determining jurisdictional WOTUS. The WOTUS types listed here reflect Mott MacDonald's own analysis of site aquatic resources and current law and DO NOT constitute a regulatory determination.

\*The construction footprint will be reduced from 125 feet to 75 feet through the Spring Creek and Kelly Creek riparian area. This will reduce impacts to the maximum extent practicable in all wetlands in the Project area (W2, W3, W4) and the only perennial stream in the Project area (Spring Creek / S7).

# **Attachment E: Permit Matrix**

## Anticipated Environmental Permits, Reviews, and Consultations List for the Project

Agency	Permit/Approval/Consultation
<b>Federal</b>	
Bureau of Land Management – Winnemucca District Office; Humboldt River Field Office	Right of Way Grant (Form 299) and Temporary Use Permit (Federal Land Policy and Management Act of 1976 [42 USC 1702(0)])  Permit for Archaeological Investigations (Section 4 of the Archaeological Resources Protection Act)  Cultural Resources consultation (Section 106 of the National Historic Preservation Act [NHPA])  Consultation under Section 7 of the Endangered Species Act  Sensitive species consultation (BLM Manual Chapter 6840)
USACE – Sacramento Regulatory Office	Clean Water Act Section 404 –Nationwide Permit 12
USFWS – Reno Fish and Wildlife Office	Consultation under Section 7 of the Endangered Species Act (ESA), the Migratory Bird Treaty Act, and the Bald and Gold Eagle Protection Act
National Park Service Regional Trails Center	Consultation
Advisory Council on Historic Preservation	Section 106 Consultation, NHPA
Tribes	Native American consultation under NAGPRA
<b>State</b>	
Public Utilities Commission of Nevada	Utility Environmental Protection Act (UEPA) Permit to Construct
NV Department of Conservation and Natural Resources (NDCNR)	Division of Natural Heritage: Consultation on Protected Species (Section 7 of the ESA)  Division of Forestry: Consultation on Protected Plants (State Statute NRS 527.270)  Division of Forestry: Consultation on greater sage grouse habitat (NAC 232)
Nevada Department of Wildlife	Consultation regarding state protected species
Nevada Division of Environmental Protection (DEP); Bureau of Water Pollution Control	Water Quality Certificate (Section 401 of the CWA)  NPDES Stormwater Permit (Section 402 of the CWA)  Temporary Groundwater Discharge Permit (6-month coverage) (Section 402 of the CWA)  Permit for Working in Waterways (Section 402 of the CWA)
Bureau of Air Pollution Control	Class II Air Quality Permit for Stand-Alone Surface Area Disturbance
State Historic Preservation Office (SHPO)	Cultural resources consultation under Section 106 National Historic Preservation Act
<b>Local</b>	
Humboldt County	Building permit (TBD) Electrical permit (TBD) Mechanical permit (TBD)



**TYPICAL 125' CONSTRUCTION ROW**  
SCALE: N.T.S.


ISSUED FOR  
REVIEW  
02/21/2024

PINYON PIPELINE, LLC					
B	02/22/2024	LJW	ISSUED FOR REVIEW	EK	02/22/2024
A	02/20/2024	GRP	ISSUED FOR REVIEW	EK	02/20/2024
△	DATE	BY	DESCRIPTION	APPR	DATE
REVISIONS					

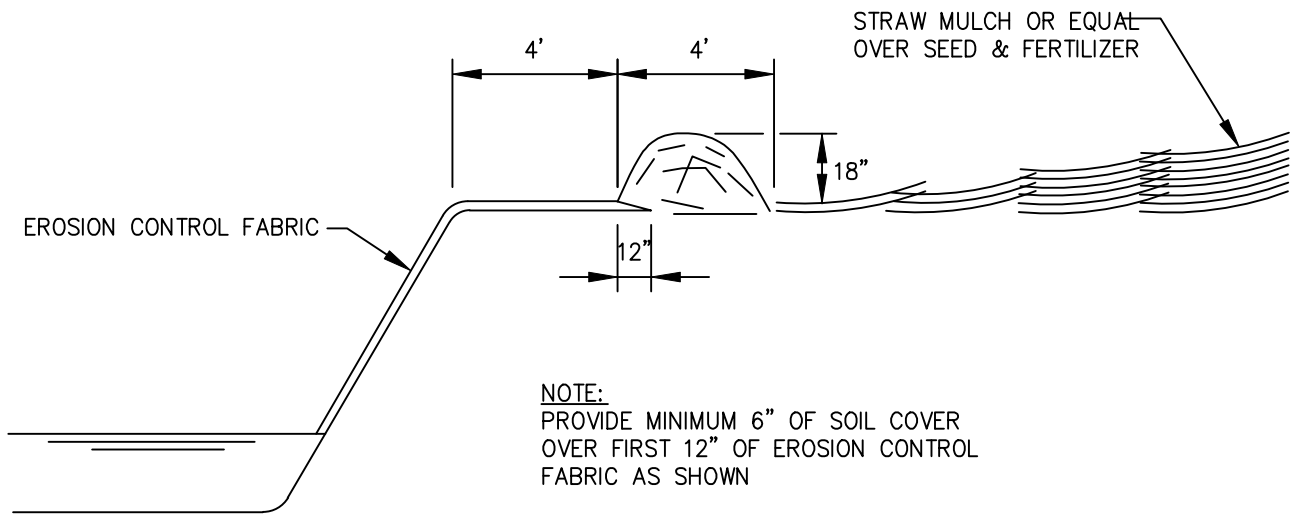
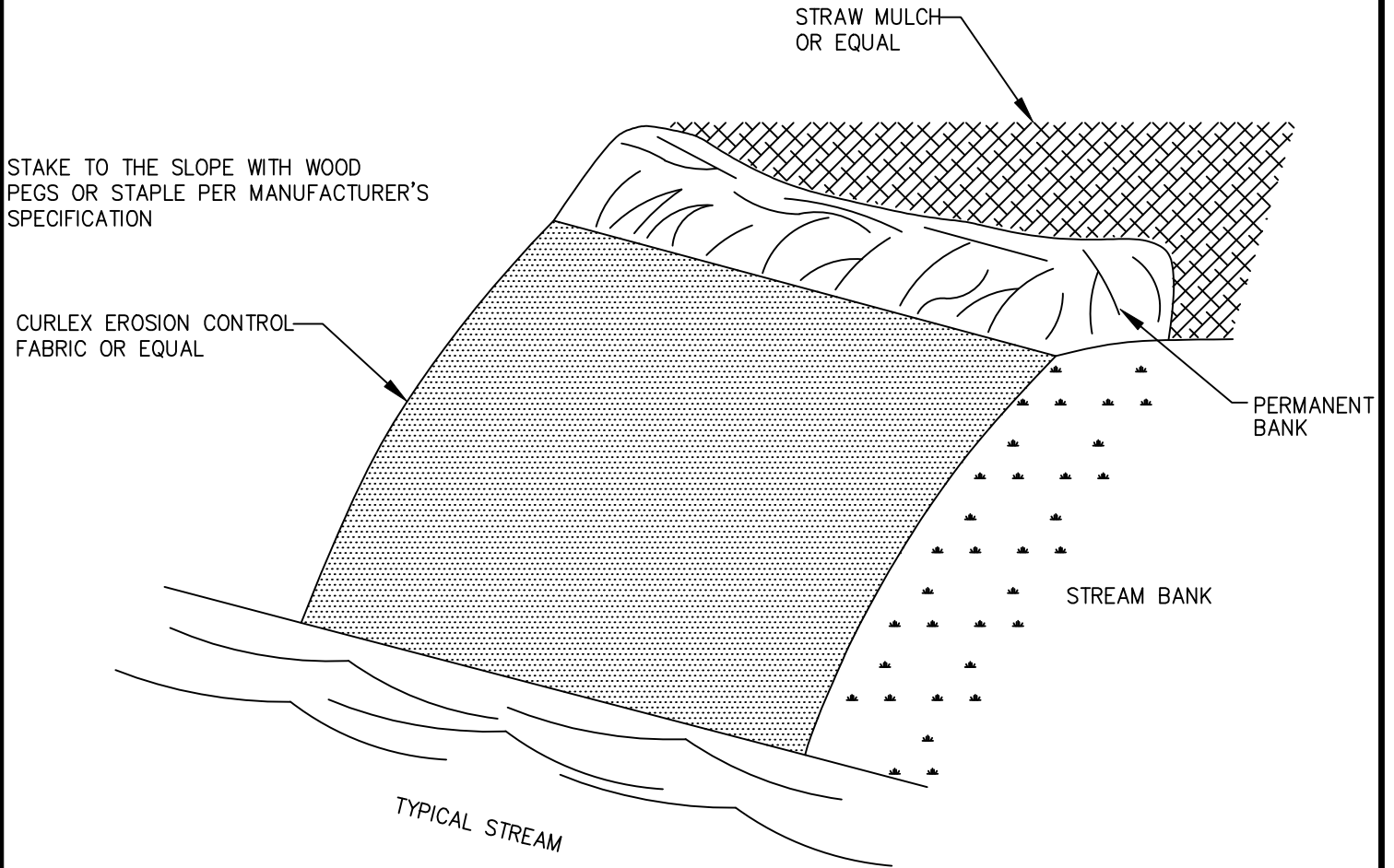


**TYPICAL 125' CONSTRUCTION ROW**

SCALE: N.T.S.	DRAWN BY: GRP 02/20/2024	CHECKED BY: EK 02/20/2024	REV: B
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DWG NAME: 64959-TYP-001	 <b>ENCOMPASS ENERGY SERVICES, LLC</b> <small>2750 S. WADSWORTH BLVD. SUITE C-202 DENVER, CO. 80227</small>
SHEET 1 OF 1	



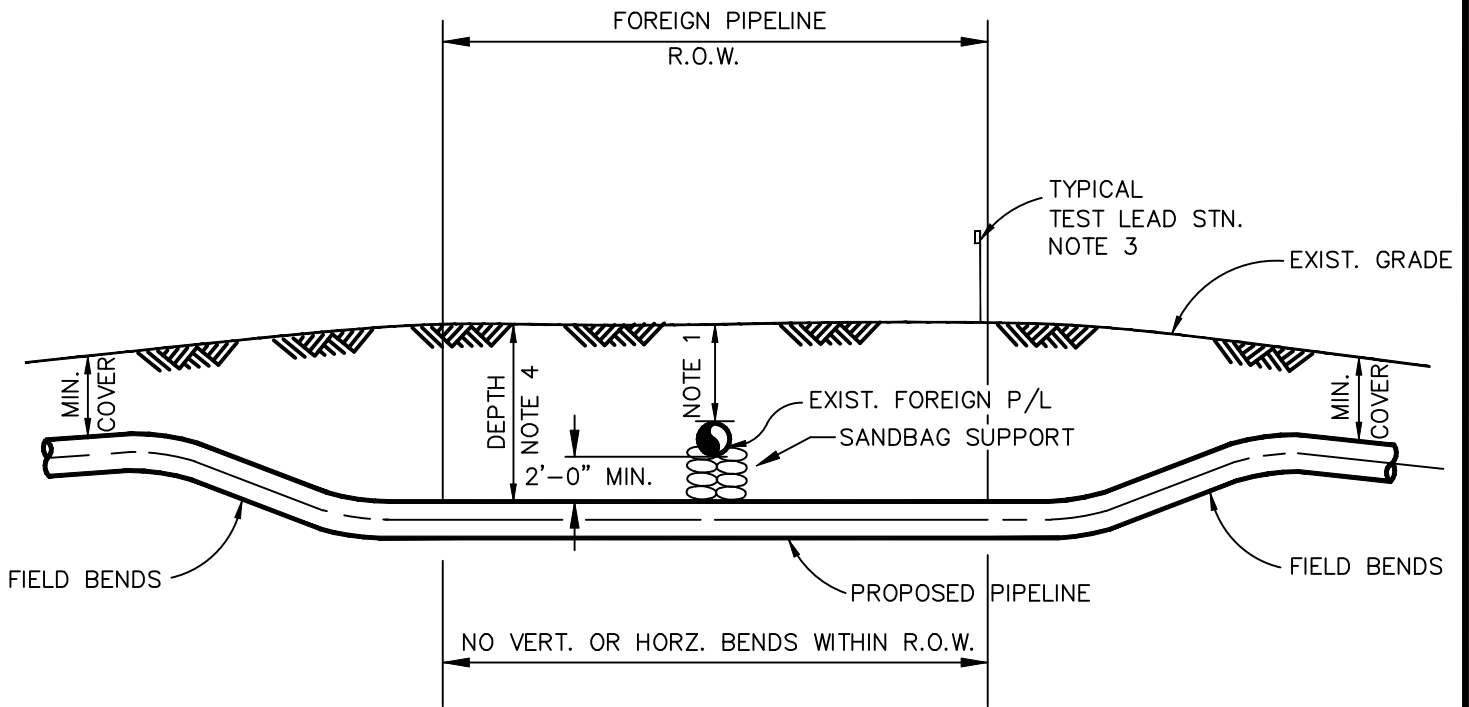


SLOPE SECTION  
N.T.S.

CONSTRUCTION TYPICAL  
EROSION CONTROL FABRIC DETAIL  
FOR STREAM BANKS

REV	DESCRIPTION	BY	DATE	CHK'D	APPR.

DRAW BY	CHK'D BY	REVISION	SHEET
SCALE N.T.S.	APP'V'D BY		
DATE			



**CROSS SECTION OF FOREIGN P/L R.O.W.**

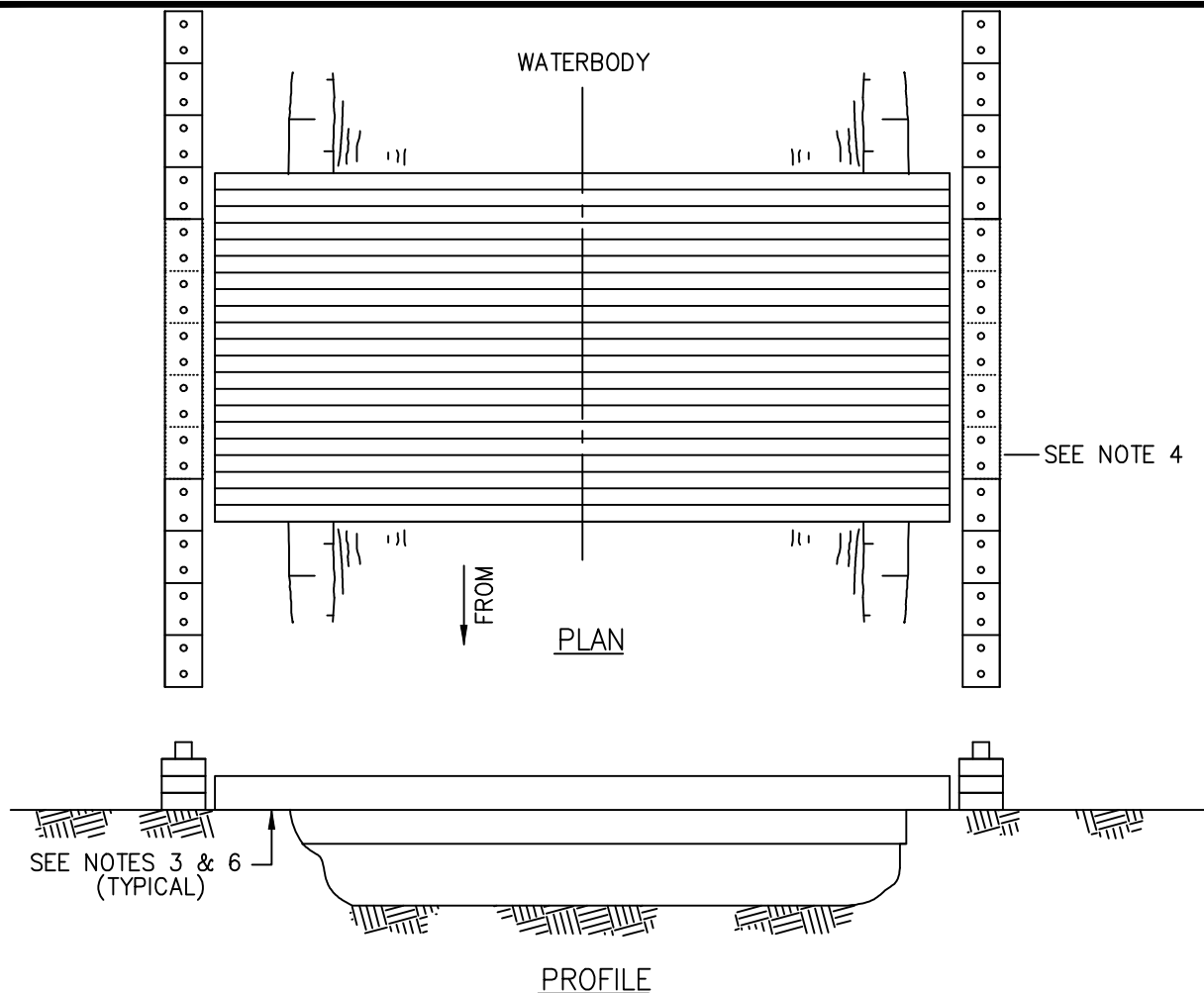
N.T.S.

NOTES:

1. FOREIGN PIPELINE LOCATIONS & DEPTHS TO BE DETERMINED BY ELECTRONIC MEANS IN ADVANCE OF PIPELINE CONSTRUCTION AND CONFIRMED BY CAREFULLY EXPOSING BY MECHANICAL EXCAVATION OR HAND DIGGING.
2. OWNER OF FOREIGN PIPELINE(S) SHALL BE NOTIFIED 48 HOURS IN ADVANCE OF EXCAVATION OF CROSSING.
3. TEST LEAD STATION TO BE INSTALLED WHERE PRACTICAL AT THE NEAREST FENCE, HEDGE ROW OR FIELD EDGE, AND WHERE READILY ACCESSIBLE.
4. DEPTH OF PIPELINE INCLUDING 2'-0" MIN. CLEARANCE SHALL BE MAINTAINED FOR THE FULL ANGULAR WIDTH OF FOREIGN PIPELINE R.O.W.
5. PROPOSED PIPELINE MAY ONLY CROSS ABOVE THE FOREIGN PIPELINE(S) WHERE REQUESTED BY OR APPROVED BY FOREIGN PIPELINE OWNER IN WRITING.

						CONSTRUCTION TYPICAL FOREIGN PIPELINE CROSSING		
REV	DESCRIPTION	BY	DATE	CHK'D	APPR.	DRAW BY	CHK'D BY	
						SCALE	N.T.S.	APP'V'D BY
						DATE		REVISION SHEET

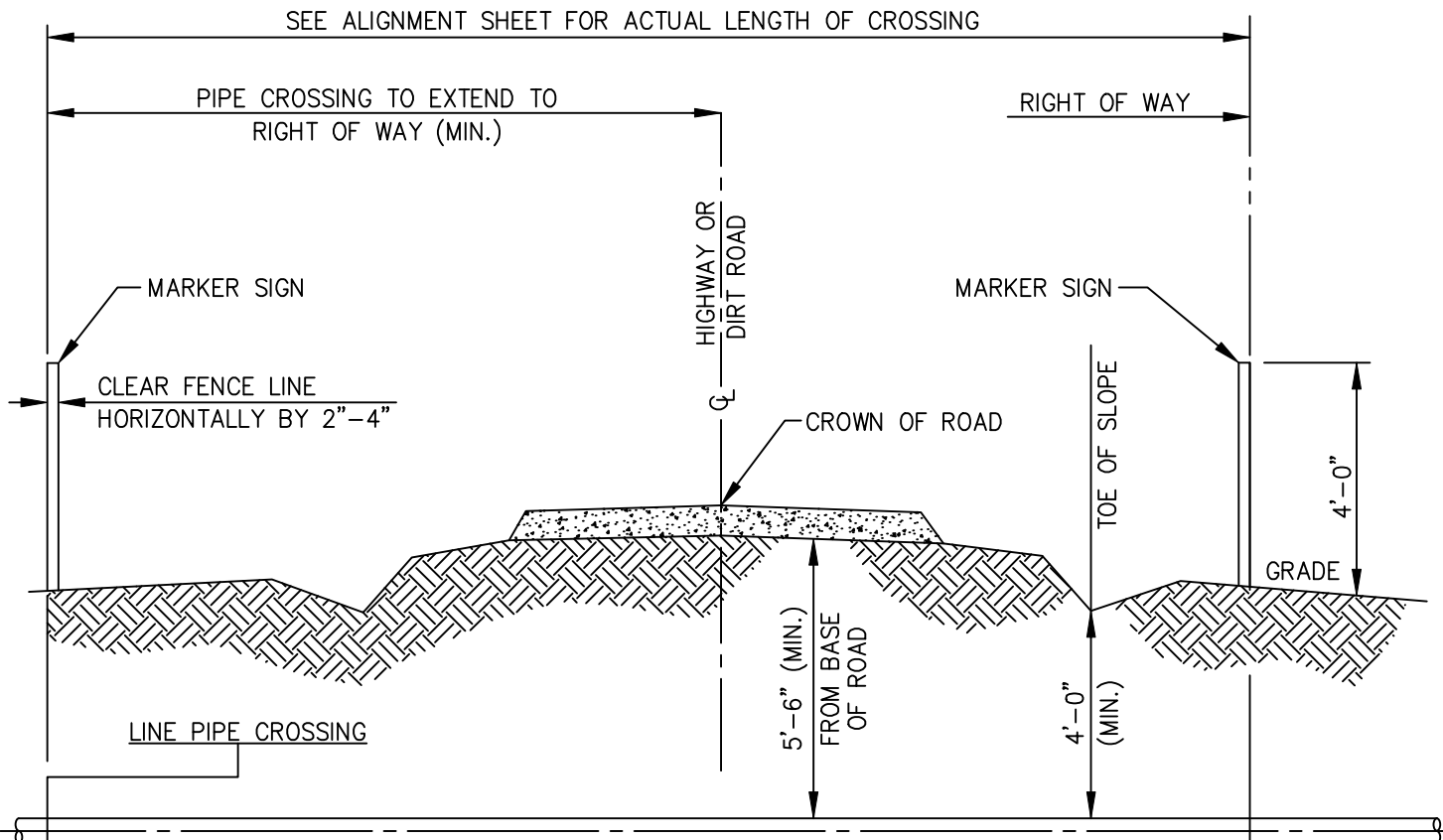




NOTES:

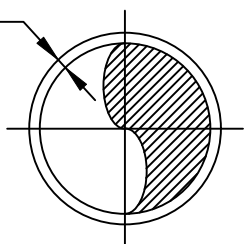
1. THIS TYPE OF BRIDGE IS GENERALLY USED ON NARROW CROSSINGS, LESS THAN 20 FEET WIDE WITH APPROPRIATE BANK CONFIGURATION. MULTIPLE MATS MAY BE LAYERED FOR HEAVIER EQUIPMENT CROSSINGS.
2. BRIDGE SHALL BE TEMPORARILY REMOVED IF HIGH WATER RENDERS IT UNSAFE TO USE.
3. IF REQUIRED, UTILIZE APPROACH FILLS OF CLEAN ROCK MATERIAL, SWAMP MATS, SKIDS OR OTHER SUITABLE MATERIALS TO AVOID CUTTING THE BANKS WHEREVER FEASIBLE. ENSURE ADEQUATE FREEBOARD. ENSURE THAT FILL MATERIAL, IF USED, DOES NOT SPILL INTO WATERCOURSE INCLUDING REMOVAL OF DIRT FROM DECK DURING OPERATION.
4. CONSTRUCT SEDIMENT BARRIERS ACROSS THE ENTIRE CONSTRUCTION R.O.W. TO PREVENT SILT LADEN WATER AND SPOIL FORM FLOWING BACK INTO WATERBODY. BARRIERS MAY BE TEMPORARILY REMOVED TO ALLOW CONSTRUCTION ACTIVITIES BUT MUST BE REPLACED BY THE END OF EACH WORK DAY. SILT FENCE, STRAW BALES OR SANDBAGS MAY BE USED INTERCHANGEABLE.
5. REMOVE TIMBER MATS AS SOON AS POSSIBLE AFTER PERMANENT SEEDING UNLESS OTHERWISE DIRECTED BY ALLIANCE. THE STRUCTURE IS TO BE REMOVED IF THERE IS MORE THAN ONE MONTH BETWEEN FINAL GRADING AND SEEDING, AND ALTERNATIVE ACCESS TO THE CONSTRUCTION R.O.W. IS AVAILABLE.
6. DISPOSE OF AN ROCK AS DIRECTED BY ALLIANCE.
7. RESTORE AND STABILIZE BED AND BANKS TO APPROXIMATE PRE-CONSTRUCTION CONDITIONS.

						CONSTRUCTION TYPICAL PROPOSED PIPELINE WATERBODY BRIDGE TIMER MAT			
						DRAW BY	CHK'D BY		
REV	DESCRIPTION	BY	DATE	CHK'D	APPR.	SCALE	N.T.S.	APP'V'D BY	
						DATE		REVISION	SHEET



TYPICAL UNCASD ROAD CROSSING  
BORED OR OPEN CUT

BORE DIAMETER TO BE NO LARGER THAN 1-1/2" GREATER THAN COATED LINE PIPE

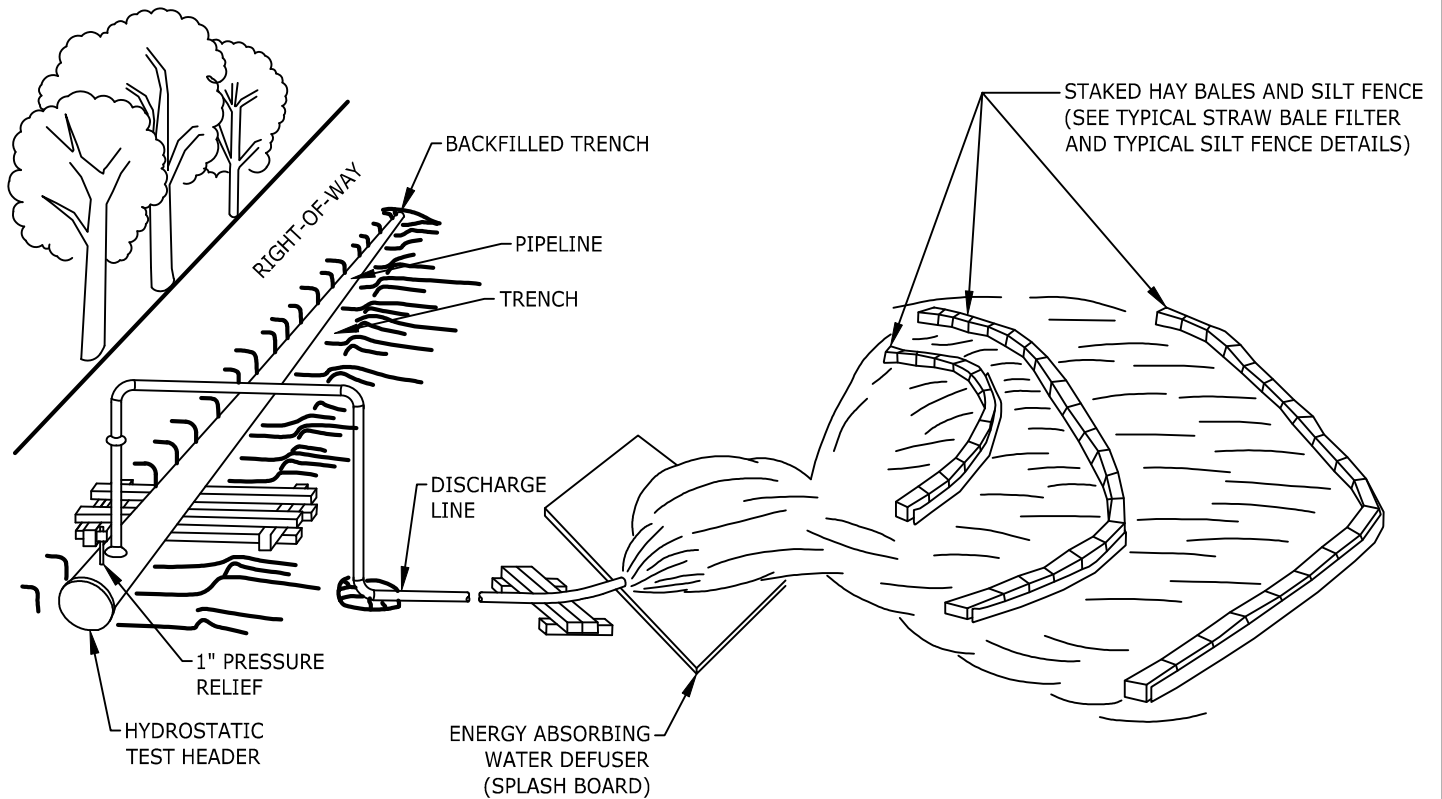


NOTES:

1. CROSSINGS SHALL BE IN ACCORDANCE WITH APPLICABLE PERMIT.
2. ROAD CROSSING PIPE SHALL EXTEND TO A MINIMUM RIGHT OF WAY LINE.
3. THE TYPE AND MINIMUM REQUIRED LENGTH OF PIPE FOR CROSSINGS OF PUBLIC ROADS SHALL BE AS SPECIFIED ON ALIGNMENT SHEETS.

						CONSTRUCTION TYPICAL UNCASD ROAD CROSSING BORED OR OPEN CUT			
						DRAW BY		CHK'D BY	
SCALE N.T.S.		APP'V'D BY							
REV	DESCRIPTION	BY	DATE	CHK'D	APPR.	DATE			



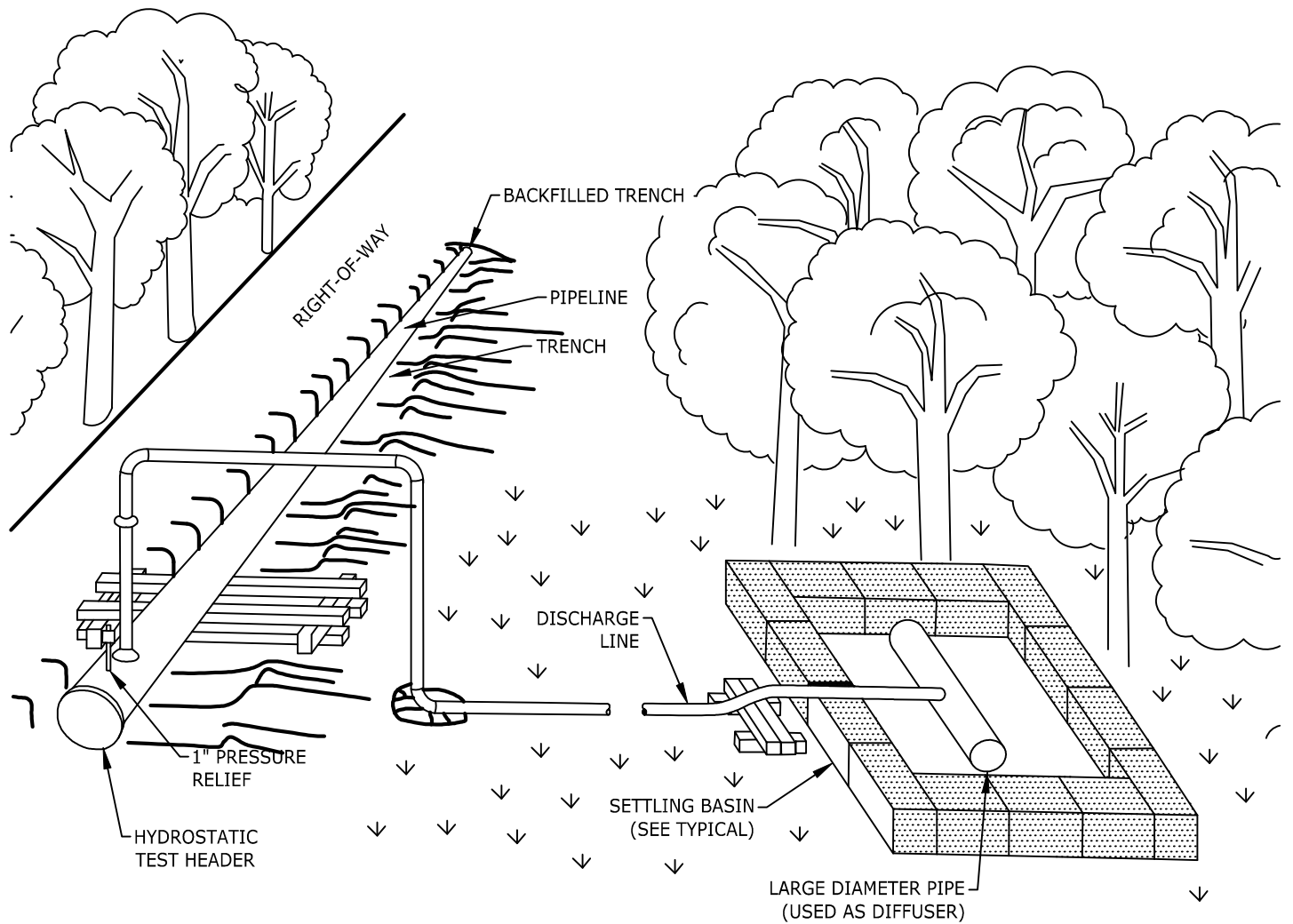


**TYPICAL HYDROSTATIC TEST DEWATERING USING HAY BALES AND SILT FENCE**

N.T.S.

**NOTES:**

1. PRESSURE IS RELEASED INITIALLY THROUGH 1" PRESSURE RELIEF. WATER IS THEN RELEASED THROUGH DISCHARGE LINE TO COMPANY APPROVED METHOD OF DISSIPATING WATER.
2. COMPANY MAY ALSO APPROVE OTHER METHODS OF DISSIPATING WATER.
3. THIS METHOD MAY ALSO BE INITIATED WHEN PUMPING WATER FORM DITCH.

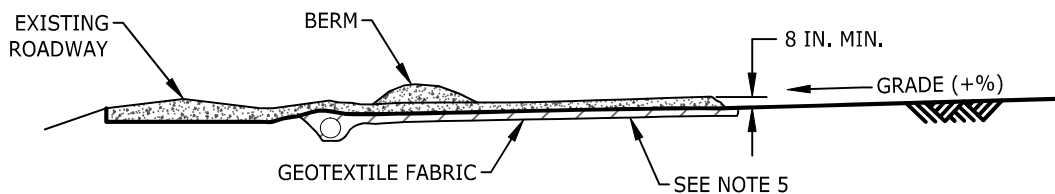
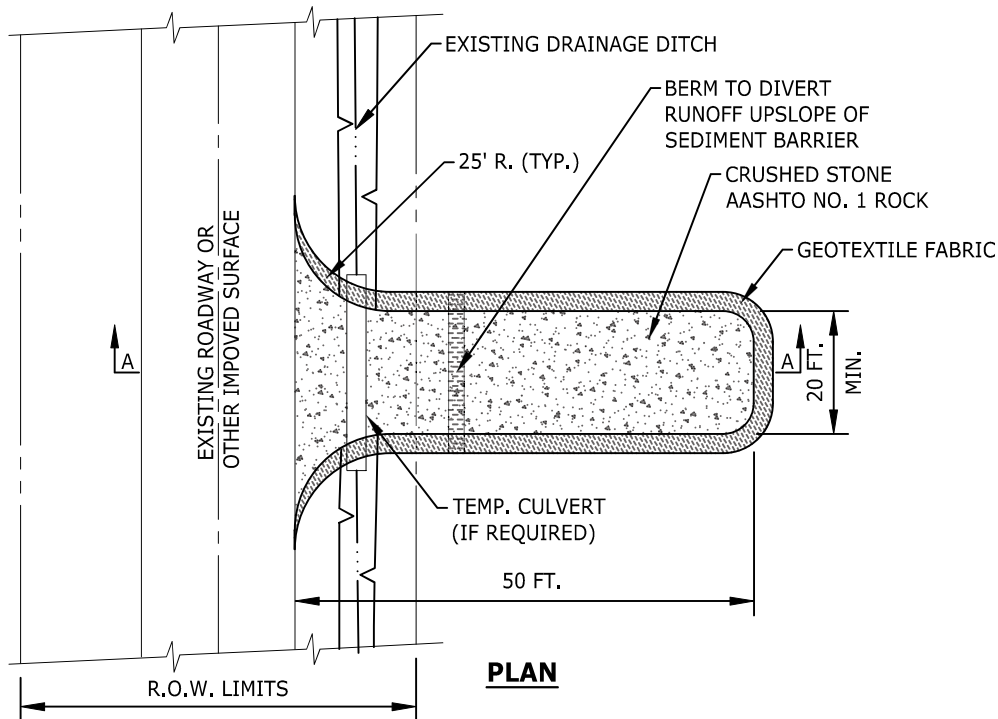


**TYPICAL HYDROSTATIC TEST DEWATERING USING SETTLING BASIN**

N.T.S.

**NOTES:**

1. PRESSURE IS RELEASED INITIALLY THROUGH 1" PRESSURE RELIEF. WATER IS THEN RELEASED THROUGH DISCHARGE LINE TO COMPANY APPROVED METHOD OF DISSIPATION WATER.
2. COMPANY MAY ALSO APPROVE OTHER METHODS OF DISSIPATING WATER.
3. THIS METHOD MAY ALSO BE INITIATED WHEN PUMPING WATER FORM DITCH.



**SECTION 'A-A'**

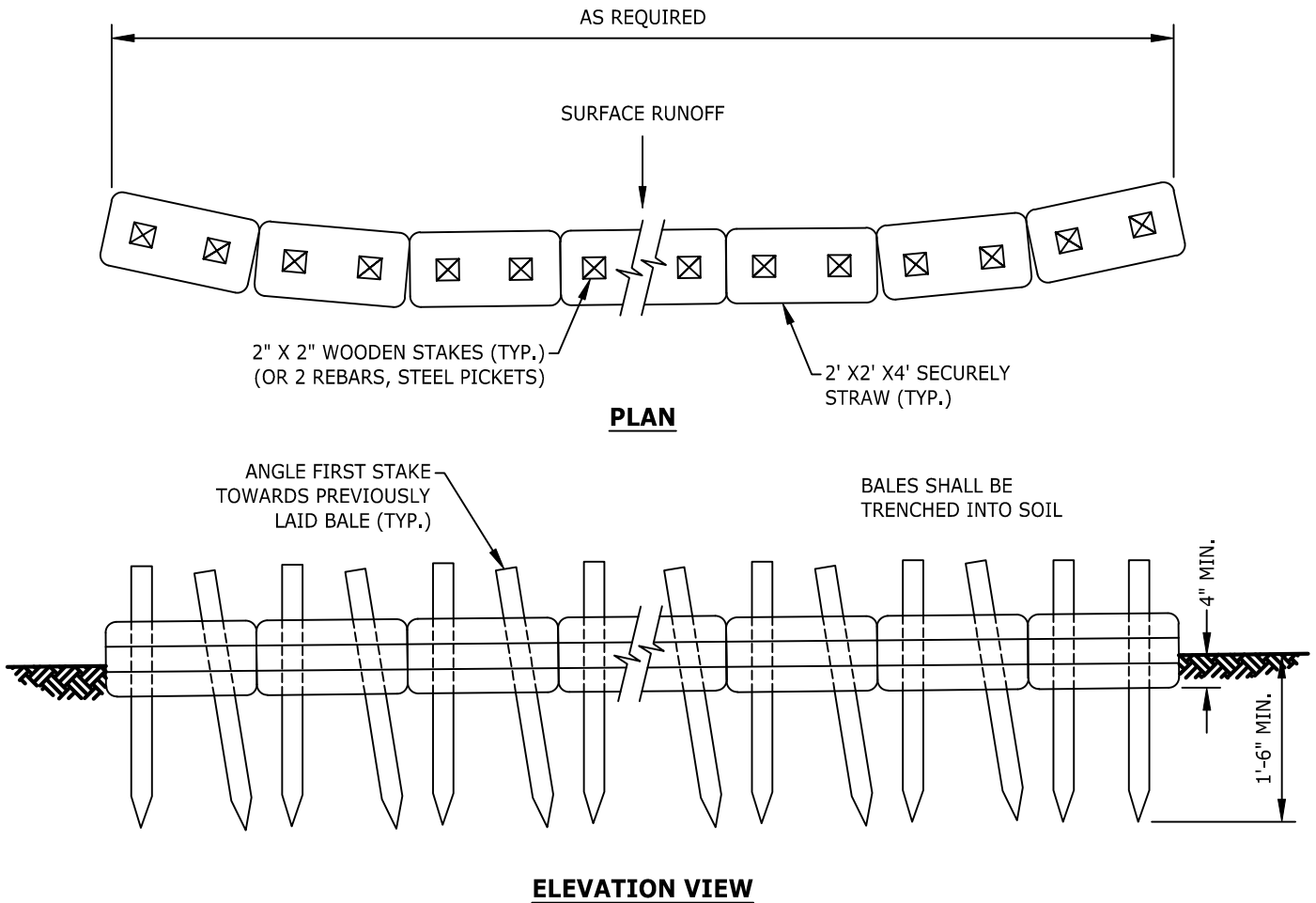
**NOTES:**

1. STABILIZED ENTRANCE SHALL BE INSTALLED WHERE EQUIPMENT ENTERS AND EXITS CONSTRUCTION SITES ONTO PAVED ROADWAY OR OTHER IMPROVED SURFACE.
2. LOCATE ALL ROADWAY CROSSINGS AND ENTRANCES TO ENSURE SAFE AND ACCESSIBLE CONDITIONS THROUGHOUT THE CONSTRUCTION PHASE.
3. THE ENTRANCE SHALL BE MAINTAINED THROUGHOUT CONSTRUCTION IN A CONDITION WHICH WILL MINIMIZE TRACKING OF SEDIMENT ONTO A PUBLIC ROADWAY.
4. ALL SEDIMENT TRACKED ONTO PAVEMENT SHALL BE REMOVED IMMEDIATELY BY SWEEPING OR SCRAPING.
5. TOP SOIL SHALL BE REMOVED TO A MINIMUM DEPTH OF 6 INCHES PRIOR TO PLACEMENT OF GEOTEXTILE FABRIC AND STONE.
6. WHERE DRAINAGE DITCH EXISTS, CONTRACTOR SHALL PROVIDE AND INSTALL A FLUME PIPE IN ORDER TO PREVENT IMPEDEMENT OF WATER FLOW.
7. THE CONSTRUCTION ENTRANCE SHALL BE REMOVED AND AREA RESTORED AS PART OF FINAL GRADING AND CLEAN UP. REMOVAL IS NOT CONTINGENT UPON ESTABLISHMENT OF PERMANENT VEGETATION.
8. CONSTRUCTION ENTRANCE SHALL BE CONSTANTLY MAINTAINED TO THE SPECIFIED DIMENSION BY ADDING ROCK. A STOCKPILE SHALL BE MAINTAINED ON SITE FOR THIS PURPOSE.

**CONSTRUCTION ENTRANCE**  
**TEMPORARY EROSION CONTROL MEASURE**

CE

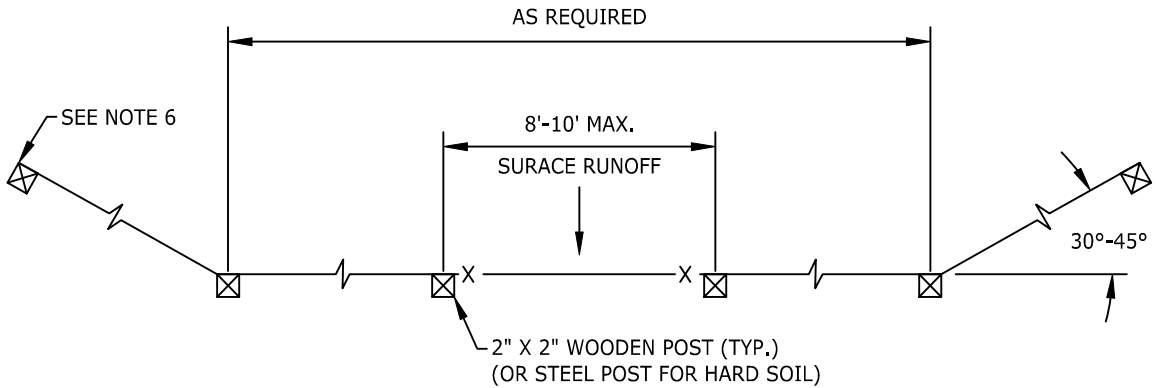
**HAY BALE SEDIMENT BARRIER  
TEMPORARY EROSION CONTROL MEASURE**



**NOTES:**

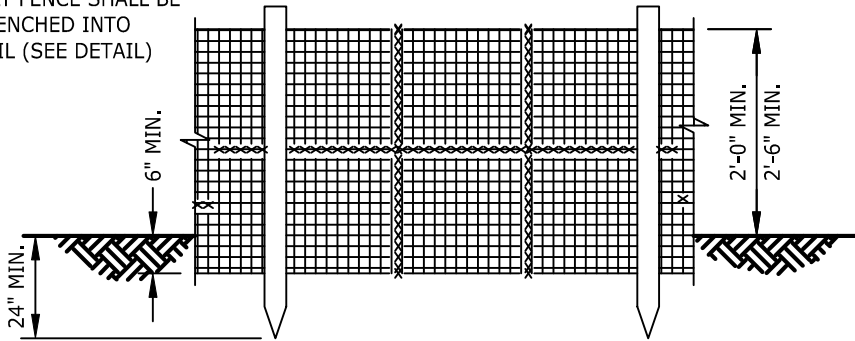
1. BALE BARRIERS OR SILT FENCE SHALL BE INSTALLED TO FILTER SEDIMENT FROM SURFACE RUNOFF.
2. INSTALLATIONS SHALL BE PERIODICALLY CHECKED AND IF FLOW IS OBSTRUCTED, BUILD-UP OF SEDIMENT SHALL BE REMOVED.
3. BALE BARRIERS SHALL BE LEFT IN PLACE UNTIL PERMANENT VEGETATION COVER IS INSTALLED. HAY OR STRAW FROM BALE BARRIERS MAY THEN BE USED AS MULCH OVER THE SURROUNDING AREA.
4. AREA DISTURBED AS A RESULT OF REMOVING THE BALE BARRIERS SHALL BE RESTABILIZED BY SEEDING ACCORDING TO THE REVEGETATION SPECIFICATIONS.
5. BALE BARRIERS SHALL BE PLACED TO FOLLOW (RUN PARALLEL TO) THE CONTOURS AND SHALL NOT BE LOCATED IN AREAS OF CONCENTRATED FLOW.
6. ON UPSLOPE INSTALLATIONS, BOTH ENDS OF THE BALE BARRIER SHALL BE TURNED AND EXTENDED UPSLOPE.

**FABRIC FENCE SEDIMENT BARRIER  
TEMPORARY EROSION CONTROL**

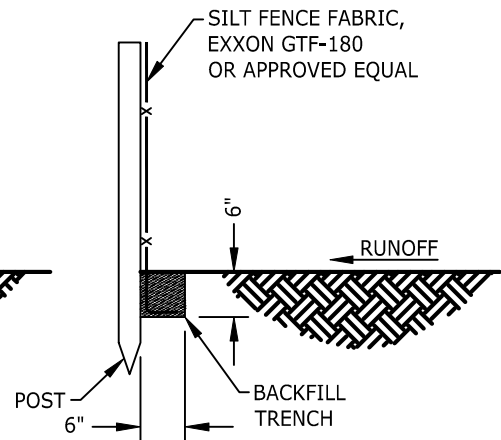


**PLAN**

SILT FENCE SHALL BE TRENCHED INTO SOIL (SEE DETAIL)



**ELEVATION VIEW**



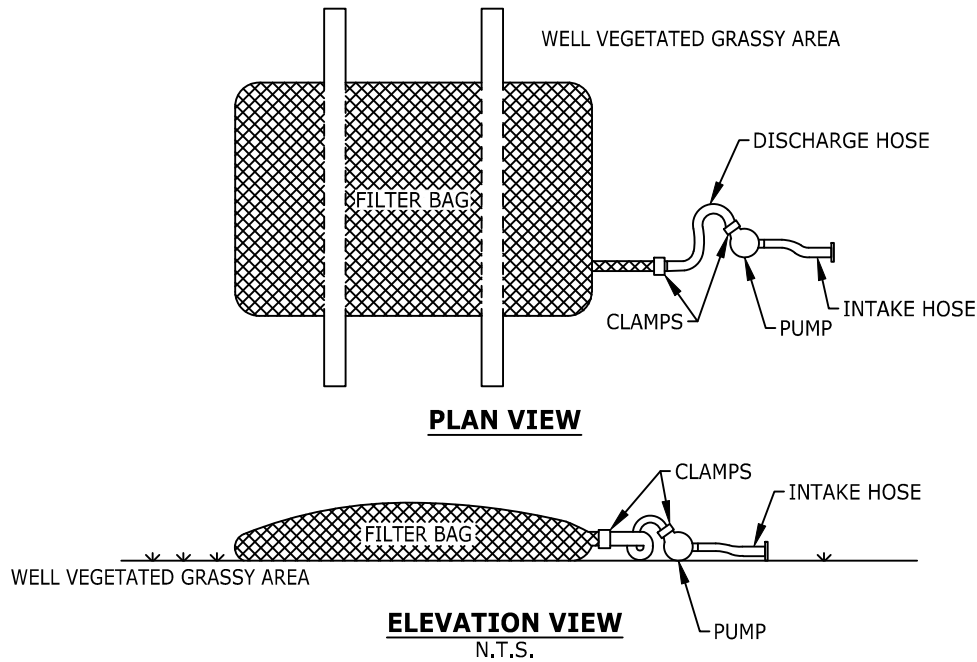
**TRENCH DETAIL**

**NOTES:**

1. SILT FENCE (OR BALE BARRIER) SHALL BE INSTALLED TO FILTER SEDIMENT FROM SURFACE RUNOFF.
2. BUILD-UP OF SEDIMENT SHALL BE REMOVED WHEN SEDIMENT REACHES 1/2 THE ABOVE GROUND HEIGHT OF THE FENCE.
3. SILT FENCE SHALL BE LEFT IN PLACE UNTIL PERMANENT VEGETATION COVER IS ESTABLISHED.
4. AREA DISTURBED AS A RESULT OF REMOVING THE SILT FENCE SHALL BE RESTABILIZED BY SEEDING ACCORDING TO THE REVEGETATION SPECIFICATIONS.
5. SILT FENCES SHALL BE PLACED TO FOLLOW (RUN PARALLEL TO) THE CONTOURS.
6. ON UPSLOPE INSTALLATIONS, BOTH ENDS OF THE SILT FENCE SHALL BE TURNED AND EXTENDED UPSLOPE.



## FILTER BAG/TEMPORARY EROSION CONTROL



LOW VOLUME FILTER BAGS SHALL BE MADE FROM NON- WOVEN GEOTEXTILE MATERIAL SEWN WITH HIGH STRENGTH, DOUBLE STITCHED "J" TYPE. THEY SHALL BE CAPABLE OF TRAPPING PARTICLES LARGER THAN 150 MICRONS. HIGH VOLUME FILTER BAGS MAY BE MADE FROM WOVEN GOETEXTILES THAT MEET THE FOLLOWING STANDARDS:

PROPERTY	TEST METHOD	MINIMUM STANDARD
AVG. WIDE WIDTH STRENGTH	ASTM D-4884	60 LB/IN
GRAB TENSILE	ASTM D-4632	205 LB
PUNCTURE	ASTM D-4833	110 LB
MULLEN BURST	ASTM D-3786	350 PSI
UV RESISTANCE	ASTM D-4355	70%
AOS% RETAINED	ASTM D-4751	80 SIEVE

1. A SUITABLE MEANS OF ACCESSING THE BAG WITH MACHINERY REQUIRED FOR DISPOSAL PURPOSES MUST BE PROVIDED. FILTER BAGS SHALL BE REPLACED WHEN THEY BECOME 1/2 FULL OF SEDIMENT. SPARE BAGS SHALL BE KEPT AVAILABLE FOR REPLACEMENT OF THOSE THAT HAVE FAILED OR ARE FILLED, BAGS TO BE PLACED ON STRAPS TO FACILITATE REMOVAL UNLESS BAGS COME WITH LIFTING STRAPS ALREADY ATTACHED.
2. BAGS SHALL BE LOCATED IN WELL-VEGETATED (GRASSY) AREA, AND DISCHARGE ONTO STABLE, EROSION RESISTANT AREAS. WHERE THIS IS NOT POSSIBLE, A GEOTEXTILE UNDERLAYMENT AND FLOW PATH SHALL BE PROVIDED. BAGS MAY BE PLACED ON FILTER STONE TO INCREASE DISCHARGE CAPACITY. BAGS SHALL NOT BE PLACED ON SLOPES GREATER THAN 5%, FOR SLOPES EXCEEDING 5% CLEAN ROCK OR OTHER NON-ERODIBLE AND NON-POLLUTING MATERIAL MAY BE PLACED UNDER THE BAG TO REDUCE SLOPE STEEPNESS.
3. NO DOWNSLOPE SEDIMENT BARRIER IS REQUIRED FOR MOST INSTALLATIONS. COMPOST BERM OF COMPOST FILTER SOCK TO BE INSTALLED BELOW BAGS LOCATED IN HQ OR EV WATERSHEDS, WITHIN 50 FEET OF ANY RECEIVING SURFACE WATER OF WHERE GRASSY AREA IS NOT AVAILABLE.
4. THE PUMP DISCHARGE HOSE SHALL BE INSERTED INTO THE BAGS IN THE MANNER SPECIFIED BY THE MANUFACTURER AND SECURELY CLAMPED. A PIECE OF PVC PIPE IS RECOMMENDED FOR THIS PURPOSE.
5. THE PUMPING RATE SHALL BE NO GREATER THAN 750 GPM OR 1/2 THE MAXIMUM SPECIFIED BY THE MANUFACTURER, WHICHEVER IS LESS. PUMP INTAKES SHALL BE FLOATING AND SCREENED.
6. FILTER BAGS SHALL BE INSPECTED DAILY. IF ANY PROBLEM IS DETECTED, PUMPING SHALL CEASE IMMEDIATELY AND NOT RESUME UNTIL THE PROBLEM IS CORRECTED.

# **Attachment G: USACE NWP12**



U S Army Corps of  
Engineers  
Sacramento District

# 2021 Nationwide Permit Summary

33 CFR Part 330; Issuance of Nationwide  
Permits – March 15, 2021

**12. Oil or Natural Gas Pipeline Activities.** Activities required for the construction, maintenance, repair, and removal of oil and natural gas pipelines and associated facilities in waters of the United States, provided the activity does not result in the loss of greater than 1/2-acre of waters of the United States for each single and complete project.

Oil or natural gas pipelines: This NWP authorizes discharges of dredged or fill material into waters of the United States and structures or work in navigable waters for crossings of those waters associated with the construction, maintenance, or repair of oil and natural gas pipelines. There must be no change in pre-construction contours of waters of the United States. An “oil or natural gas pipeline” is defined as any pipe or pipeline for the transportation of any form of oil or natural gas, including products derived from oil or natural gas, such as gasoline, jet fuel, diesel fuel, heating oil, petrochemical feedstocks, waxes, lubricating oils, and asphalt.

Material resulting from trench excavation may be temporarily sidecast into waters of the United States for no more than three months, provided the material is not placed in such a manner that it is dispersed by currents or other forces. The district engineer may extend the period of temporary side casting for no more than a total of 180 days, where appropriate. In wetlands, the top 6 to 12 inches of the trench should normally be backfilled with topsoil from the trench. The trench cannot be constructed or backfilled in such a manner as to drain waters of the United States (e.g., backfilling with extensive gravel layers, creating a french drain effect). Any exposed slopes and stream banks must be stabilized immediately upon completion of the utility line crossing of each waterbody.

Oil or natural gas pipeline substations: This NWP authorizes the construction, maintenance, or expansion of substation facilities (e.g., oil or natural gas or gaseous fuel custody transfer stations, boosting stations, compression stations, metering stations, pressure regulating stations) associated with an oil or natural gas pipeline in non-tidal waters of the United States, provided the activity, in combination with all other activities included in one single and complete project, does not result in the loss of greater than 1/2-acre of waters of the United States. This NWP does not authorize discharges of dredged or fill material into non-tidal wetlands adjacent to tidal waters of the United States to construct, maintain, or expand substation facilities.

Foundations for above-ground oil or natural gas pipelines: This NWP authorizes the construction or maintenance of foundations for above-ground oil or natural gas pipelines in all waters of the United States, provided the foundations are the minimum size necessary.

Access roads: This NWP authorizes the construction of access roads for the construction and maintenance of oil or natural gas pipelines, in non-tidal waters of the United States, provided the activity, in combination with all other activities included in one single and complete project, does not cause the loss of greater than 1/2-acre of non-tidal waters of the United States. This NWP does not authorize discharges of dredged or fill material into non-tidal wetlands adjacent to tidal waters for access roads. Access roads must be the minimum width necessary (see Note 2, below). Access roads must be constructed so that the length of the road minimizes any adverse effects on waters of the United States and must be as near as possible to pre-construction contours and elevations (e.g., at grade corduroy roads or geotextile/gravel roads). Access roads constructed above pre-construction contours and elevations in waters of the United States must be properly bridged or culverted to maintain surface flows.

This NWP may authorize oil or natural gas pipelines in or affecting navigable waters of the United States even if there is no associated discharge of dredged or fill material (see 33 CFR part 322). Oil or natural gas pipelines routed in, over, or under section 10 waters without a discharge of dredged or fill material may require a section 10 permit.

This NWP authorizes, to the extent that Department of the Army authorization is required, temporary structures, fills, and work necessary for the remediation of inadvertent returns of drilling fluids to waters of the United States through sub-soil fissures or fractures that might occur during horizontal directional drilling activities conducted for the purpose of installing or replacing oil or natural gas pipelines. These remediation activities must be done as soon as practicable, to restore the affected waterbody. District engineers may add special conditions to this NWP to require a remediation plan for addressing inadvertent returns of drilling fluids to waters of the United States during horizontal directional drilling activities conducted for the purpose of installing or replacing oil or natural gas pipelines.

This NWP also authorizes temporary structures, fills, and work, including the use of temporary mats, necessary to conduct the oil or natural gas pipeline 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

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**U.S. ARMY CORPS OF ENGINEERS – SACRAMENTO DISTRICT**

1325 J ST. – SACRAMENTO, CA 95814

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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:

- (1) a section 10 permit is required;
- (2) the discharge will result in the loss of greater than 1/10-acre of waters of the United States; or
- (3) the proposed oil or natural gas pipeline activity is associated with an overall project that is greater than 250 miles in length and the project purpose is to install new pipeline (vs. conduct repair or maintenance activities) along the majority of the distance of the overall project length. If the proposed oil or gas pipeline is greater than 250 miles in length, the pre-construction notification must include the locations and proposed impacts (in acres or other appropriate unit of measure) for all crossings of waters of the United States that require DA authorization, including those crossings authorized by an NWP would not otherwise require pre-construction notification. (See general condition 32.) (Authorities: Sections 10 and 404)

**Note 1:** Where the oil or natural gas pipeline is constructed, installed, or maintained in navigable waters of the United States (i.e., section 10 waters) within the coastal United States, the Great Lakes, and United States territories, a copy of the NWP verification will be sent by the Corps to the National Oceanic and Atmospheric Administration (NOAA), National Ocean Service (NOS), for charting the oil or natural gas pipeline to protect navigation.

**Note 2:** For oil or natural gas pipeline activities crossing a single waterbody more than one time at separate and distant locations, or multiple waterbodies at separate and distant locations, each crossing is considered a single and complete project for purposes of NWP authorization. Oil or natural gas pipeline activities must comply with 33 CFR 330.6(d).

**Note 3:** Utility lines consisting of aerial electric power transmission lines crossing navigable waters of the United States (which are defined at 33 CFR part 329) must comply with the applicable minimum clearances specified in 33 CFR 322.5(i).

**Note 4:** Pipes or pipelines used to transport gaseous, liquid, liquescent, or slurry substances over navigable waters of the United States are considered to be bridges and may require a permit from the U.S. Coast Guard pursuant to the General Bridge Act of 1946. However, any discharges of dredged or fill material into waters of the United States associated with such oil or natural gas pipelines will require a section 404 permit (see NWP 15).

**Note 5:** This NWP authorizes oil or natural gas pipeline maintenance and repair activities that do not qualify for the Clean Water Act section 404(f) exemption for maintenance of currently serviceable fills or fill structures.

**Note 6:** For NWP 12 activities that require pre-construction notification, the PCN must include 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 that require Department of the Army authorization but do not require

pre-construction notification (see paragraph (b)(4) of general condition 32). The district engineer will evaluate the PCN in accordance with Section D, "District Engineer's Decision." The district engineer may require mitigation to ensure that the authorized activity results in no more than minimal individual and cumulative adverse environmental effects (see general condition 23).

#### A. 2021 Regional Conditions

1. [Regional Conditions for California](#)
2. [Regional Conditions for Nevada and Utah](#)

#### B. 2021 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 NWP 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 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: <https://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 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, 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 <https://www.fws.gov/> or <https://www.fws.gov/ipac/> and <https://www.fisheries.noaa.gov/topic/endangered-species-conservation> 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 110(k) 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 NWP 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 a 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.”

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(Transferee)

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(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 e-mail, 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 e-mail 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.

### C. 2021 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.

#### D. 2021 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).

#### E. 2021 Nationwide Permit 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 NWP, 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 channel ward 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 NFPs, 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)).



**Final 2021 Nationwide Permit (NWP) Regional Conditions  
for the States of Nevada and Utah**  
(Effective February 25, 2022 until March 14, 2026)

**A. Regional Conditions for the States of Nevada and Utah:**

1. The permittee shall submit a pre-construction notification (PCN), in accordance with General Condition 32, in the following circumstances:

a. Activities involving new bank stabilization that do not incorporate bioengineering techniques. Bioengineering techniques include using live plants alone or in combination with dead or inorganic materials, including rock, sand, or gravel;

b. Activities resulting in a discharge of dredged or fill material in waters of the U.S. on Tribal Lands; and,

c. Activities involving the permanent channelization, realignment, or relocation of streams.

2. The use of NWPs 4, 5, 7, 12 - 15, 17, 18, 21 - 23, 25, 29 – 31, 33, 34, 39 - 51, 57, or 58, authorizing the discharge of dredged and/or fill material is prohibited:

a. in peatlands<sup>1</sup> containing histosols, including bogs and fens; and,

b. below the ordinary high-water mark of the Great Salt Lake containing bioherms (microbialites).

**B. 401 Water Quality Certification (401 WQC) Regional Conditions for Nevada:**

1. For NWPs 3, 5 – 7, 13, 14, 18 – 20, 23, 25, 27, 31 – 33, 36 – 38, 41, 45, 46 and 59, on **tribal lands within U.S. Environmental Protection Agency (EPA) Region 9<sup>2</sup> boundaries in the State of Nevada**, the permittee shall comply with all terms and conditions of the attached October 12, 2021, 401 WQC granted by the U.S. EPA, Region 9.

<sup>1</sup>A peatland is defined as a wetland with saturated organic soil (greater than or equal to 16 inches in thickness) that is classified as a histosol in the Natural Resources Conservation Service (NRCS) Field Indicators of Hydric Soils in the United States (Version 8.0, 2016). A copy of the document can be obtained from the NRCS at: [http://www.nrcs.usda.gov/Internet/\\_DOCUMENTS/nrcs142p2\\_053171.pdf](http://www.nrcs.usda.gov/Internet/_DOCUMENTS/nrcs142p2_053171.pdf)

<sup>2</sup>EPA, Region 9 401 WQC does not apply to activities proceeding in the territories of the 25 tribes in Region 9 that have been approved as Section 401 certifying authorities – the Navajo Nation, Paiute-Shoshone of the Bishop Community, Big Pine Paiute-Shoshone Tribe, Twenty-Nine Palms Band of Mission Indians, Hoopa Valley Tribe, Hopi Tribe, Pyramid Lake Paiute Tribe, Dry Creek Rancheria of Pomo Indians, Pala Band of Mission Indians, Cortina Band of Wintun Indians, Walker River Paiute Tribe, Yerington Paiute, Duck Valley, Confederated Tribes of the Goshute Reservation, Gila River Indian Community, San Carlos Apache, Morongo Band of Mission Indians, Big Pine Paiute Tribe of Owen Valley, Rincon Band of Luiseno Indians, Cabazon, Quartz Valley, Karuk, White Mountain Apache Tribe, Table Mountain Rancheria, Resighini Rancheria, La Posta Band of Diegueno Mission Indians. In limited circumstances some lands within tribal boundaries fall outside a tribe's Section 401 certifying authority and are subject to this certification.

2. For NWP 43, on **tribal lands within U.S. Environmental Protection Agency (EPA) Region 9<sup>2</sup> boundaries in the State of Nevada**, the permittee shall comply with all terms and conditions of the attached December 11, 2020, 401 WQC granted by the U.S. EPA, Region 9.

### **C. 401 Water Quality Certification (401 WQC) Regional Conditions for Utah:**

1. For all NWPs, except those that involve dam maintenance/rehabilitation or reservoir dewatering, on **non-tribal lands within the State of Utah**, the permittee shall comply with all terms and conditions of the attached December 8, 2020, 401 WQC granted by the State of Utah, Department of Environmental Quality.

2. For NWPs 3, 5 – 7, 13 – 15, 18 – 20, 23, 25, 27, 30 – 33, 36 – 38, 41, 45, 46, and 59, on **Indian country<sup>3</sup> in the State of Utah (except Indian country lands of the Navajo Nation and the Confederated Tribes of the Goshute Reservation)** the permittee shall comply with all terms and conditions of the attached October 12, 2021, 401 WQC granted by the U.S. EPA, Region 8.

3. For NWPs 3, 5 – 7, 13 – 15, 18 – 20, 23, 25, 27, 30 – 33, 36, 38, 41, 43, 45, 46, 57, and 59, except NWPs applied “after-the-fact” (i.e., after the discharge has occurred) or to NWPs where a waiver on limits has been granted by the District or Division Engineer, on the **Ute Mountain Ute Reservation in the State of Utah**, the permittee shall comply with all terms and conditions of the attached December 14, 2020, 401 WQC granted by Ute Mountain Ute Tribe.

<sup>3</sup>Indian country in Utah generally includes: (1) lands within the exterior boundaries of the following Indian reservations located within Utah, in part or in full: the Goshute Reservation, the Navajo Indian Reservation, the reservation lands of the Paiute Indian Tribe of Utah (Cedar Band of Paiutes, Kanosh Band of Paiutes, Koosharem Band of Paiutes, Indian Peaks Band of Paiutes, and Shivwits Band of Paiutes), the Skull Valley Indian Reservation, the Uintah and Ouray Reservation (subject to federal court decisions removing certain lands from Indian country status within the Uintah and Ouray Reservation), and the Washakie Reservation; (2) any land held in trust by the United States for an Indian tribe; and (3) any other areas that are “Indian country” within the meaning of 18 U.S.C. section 1151.

# ATTACHMENTS

*401 Water Quality  
Certifications*



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION IX  
75 Hawthorne Street  
San Francisco, CA 94105-3901

Colonel Antoinette Gant  
Division Engineer, South Pacific Division  
U.S. Army Corps of Engineers  
1455 Market Street  
San Francisco, CA 94103-1398

Subject: Clean Water Act, Section 401 Certification of the 41 proposed Nationwide Permits in the June 11, 2021 draft final rule for Tribal Lands within the Region 9 coverage area of the U.S. Environmental Protection Agency.

Dear Colonel Gant,

The U.S. Environmental Protection Agency Region 9 (EPA) has responsibility under Section 401 of the Clean Water Act (CWA) to evaluate and certify water quality protections for federal permits and licenses issued for work on tribal lands (40 C.F.R 123.12(a)). EPA has reviewed the U.S. Army Corps of Engineers (Corps) CWA Section 404 Nation Wide Permits (NWPs), including the regional conditions proposed for each South Pacific Division District and hereby transmit our water quality certification. The enclosed NWP conditions become binding requirements for activities on tribal lands within EPA Region 9 and will remain in effect for the authorization period of the 2021 NWPs.<sup>1,2</sup>

Please instruct your regulatory staff to provide this certification to anyone contacting the Corps with applicable projects. If a project fails to meet the enclosed conditions, the applicant must contact EPA Region 9 at **R9cwa401@epa.gov** for individual project-specific certifications, to schedule pre-filing meeting requests, or for any certification-related questions.

EPA appreciates our long-standing partnership and coordination in implementing Section 401 of the CWA. Please contact me at (415) 972-3337 or [torres.tomas@epa.gov](mailto:torres.tomas@epa.gov) should you have any questions, or


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<sup>1</sup> This water quality certification does not apply to activities proceeding in the territories of the 25 tribes in Region 9 that have been approved as Section 401 certifying authorities – the Navajo Nation, Paiute-Shoshone of the Bishop Community, Big Pine Paiute-Shoshone Tribe, Twenty-Nine Palms Band of Mission Indians, Hoopa Valley Tribe, Hopi Tribe, Pyramid Lake Paiute Tribe, Dry Creek Rancheria of Pomo Indians, Pala Band of Mission Indians, Cortina Band of Wintun Indians, Walker River Paiute Tribe, Yerington Paiute, Duck Valley, Confederated Tribes of the Goshute Reservation, Gila River Indian Community, San Carlos Apache, Morongo Band of Mission Indians, Big Pine Paiute Tribe of Owen Valley, Rincon Band of Luiseno Indians, Cabazon, Quartz Valley, Karuk, White Mountain Apache Tribe, Table Mountain Rancheria, Resighini Rancheria, La Posta Band of Diegueno Mission Indians. In limited circumstances some lands within tribal boundaries fall outside a tribe's Section 401 certifying authority and are subject to this certification.

<sup>2</sup> Consistent with the *EPA Policy on Consultation and Coordination with Indian Tribes*, EPA sent a letter dated September 2, 2021, offering to consult with the tribes in Region 9 on this certification. EPA did not receive any formal request for consultation or any written comments on the draft certification.

your staff may contact our Wetlands Section Manager, Sahrye Cohen at (415) 972-3523 or cohen.sahrye@epa.gov.

Sincerely,  
**TOMAS  
TORRES**  
Tomás Torres  
Director, Water Division

 Digitally signed by  
TOMAS TORRES  
Date: 2021.10.12  
13:49:49 -07'00'

Enclosure

cc:

All federally recognized Indian Tribes within EPA Region 9  
James Mazza, Regulatory Branch Chief, San Francisco District  
Michael Jewell, Regulatory Branch Chief, Sacramento District  
David Castanon, Regulatory Branch Chief, Los Angeles District  
Kelly Allen, Regulatory Branch Chief, New Mexico District  
Todd Tillinger, Corps South Pacific Division  
Trevor Baggio, Arizona Department of Environmental Quality  
Paul Hann, California State Water Resources Control Board  
Brigit Widegren, Nevada Division of Environmental Protection

## **Enclosure**

### **U.S. Environmental Protection Agency Region 9's Clean Water Act Section 401 Certification of the 41 Nationwide Permits (2021) on applicable Tribal Lands in California, Nevada, Arizona, and Navajo Allottee Lands**

This Clean Water Act (CWA) Section 401 water quality certification (WQC) applies to any potential point source discharges from potential projects authorized under the proposed re-issuance of the following U.S. Army Corps of Engineers (Corps) Nation Wide Permits (NWP) into waters of the U.S. that occur within tribal lands where tribes do not have treatment in a similar manner as a state and lands with exclusive federal jurisdiction in California, Nevada, Arizona, and Navajo Allottee land in the corresponding Sacramento, San Francisco, Los Angeles and Albuquerque Corps Districts: NWP 3, 4, 5, 6, 7, 13, 14, 15, 16, 17, 18, 19, 20, 22, 23, 25, 27, 30, 31, 32, 33, 34, 36, 37, 38, 41, 45, 46, 49, 53, 54, and 59. The Corps is not requesting certification for the following NWPs: 1, 2, 8, 9, 10, 11, 24, 28, and 35.

Section 401(a)(1) of the CWA requires applicants for Federal permits and licenses that may result in discharges into waters of the United States, to obtain certification that any such discharges will comply with applicable provisions of the CWA including Sections 301, 302, 303, 306 and 307. Where no state agency or tribe has authority to give such certification, the U.S. Environmental Protection Agency Region 9 (EPA) is the certifying authority. In this case, the EPA is making the certification decision for potential discharges that may result from the projects authorized under the proposed CWA Section 404 NWPs listed above.<sup>1</sup>

#### **Project Description**

On September 15, 2020, the Corps published in the Federal Register its proposal to reissue the NWPs.<sup>2</sup>

On January 13, 2021, the Corps published in the Federal Register its final rule reissuing 12 NWPs and issuing 4 new NWPs, as well as the NWP general conditions and definitions. The Corps is now proposing to re-issue 40 existing NWPs and one new NWP and associated general conditions and definitions, with some modifications. The Corps states that it is “proposing these modifications to simplify and clarify the NWPs, reduce burdens on the regulated public, and continue to comply with the statutory requirement that these NWPs authorize only activities with no more than minimal individual and cumulative adverse environmental effects”: 85 FR 57298. For the 41 proposed NWPs that have not been issued, the Corps has extended the reasonable period of time within which CWA Section 401 certifying authorities must act and has provided the opportunity for those CWA Section 401 certifying authorities to revise or reconsider their

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<sup>1</sup> This water quality certification does not apply to activities proceeding in the territories of the 25 tribes in Region 9 that have been approved as Section 401 certifying authorities – the Navajo Nation, Paiute-Shoshone of the Bishop Community, Big Pine Paiute-Shoshone Tribe, Twenty-Nine Palms Band of Mission Indians, Hoopa Valley Tribe, Hopi Tribe, Pyramid Lake Paiute Tribe, Dry Creek Rancheria of Pomo Indians, Pala Band of Mission Indians, Cortina Band of Wintun Indians, Walker River Paiute Tribe, Yerington Paiute, Duck Valley, Confederated Tribes of the Goshute Reservation, Gila River Indian Community, San Carlos Apache, Morongo Band of Mission Indians, Big Pine Paiute Tribe of Owen Valley, Rincon Band of Luiseno Indians, Cabazon, Quartz Valley, Karuk, White Mountain Apache Tribe, Table Mountain Rancheria, Resighini Rancheria, La Posta Band of Diegueno Mission Indians. In limited circumstances some lands within tribal boundaries fall outside a tribe's Section 401 certifying authority and are subject to this certification.

<sup>2</sup> See 85 FR 57298.

prior CWA Section 401 WQC decisions. For more details:

<https://www.usace.army.mil/Missions/Civil-Works/Regulatory-Program-and-Permits/Nationwide-Permits/>

## **General Information**

The general information provided in this section does not constitute a certification condition or conditions.

The project proponents for potential activities authorized under the NWP are responsible for obtaining all other permits, licenses, and certifications that may be required by federal, state, or tribal authorities.

Project proponents for potential projects authorized under the NWP should retain this certification in their files with the applicable NWP as documentation of EPA CWA Section 401 WQC for the above-referenced proposed final NWP. This CWA Section 401 WQC is specifically associated with the NWP described above and expires when those NWP expire.

Copies of this certification shall be kept on the job site and readily available for reference.

The project proponent for potential activities authorized under the NWP are encouraged to contact EPA during the project planning phase if they have any questions about relevant best management practices (e.g., bioengineering techniques, biodegradable erosion control measures, revegetation using native plant species, suitable fill materials, and disposal of debris/construction materials preventing runoff) and resources that can assist with compliance. Planning and construction practices, such as the use of native vegetation and bioengineering techniques, can be used to minimize adverse impacts to plants and animals and improve water quality.

As required by Condition 1, project proponents shall provide notice to EPA at least 30 days prior to commencing construction to provide EPA with the opportunity to inspect the activity for the purposes of determining whether any discharge from the proposed project will violate this water quality certification. Where the Corps requires a PCN for the applicable NWP, the project proponent should also provide the PCN to Region 9. If additional information is required per the conditions of this certification, that information shall be submitted with the PCN notification to the EPA. Concurrent with notification to the EPA, project proponents shall notify the appropriate Tribal Environmental or Governmental Office. Within 30 days of complete submittal, EPA will review the proposed project to determine compliance with this 401 certification.

Project proponents shall also notify EPA and the appropriate Tribal Environmental Office if spills or unauthorized discharges occurring during the project.

Pursuant with CWA Section 308(a), EPA representatives are authorized to inspect the authorized activity and any mitigation areas to determine compliance with the 401 certification and conditions.

To submit a project for review, or if you have questions regarding this certification, please contact EPA at: [R9cwa401@epa.gov](mailto:R9cwa401@epa.gov)

## **Granted with Conditions (121.7(d)(2)):**

On behalf of 123 federally recognized tribes within the purview of EPA Region 9, CWA Section 401 certification for the following proposed NWP is granted with conditions. EPA has determined that any discharge authorized under the following proposed NWP will comply with water quality requirements, as defined at 40 C.F.R. 121.1(n), subject to the following conditions pursuant to Section 401(d).

NWPs: 3, 5, 6, 7, 13, 14, 18, 19, 20, 23, 25, 27, 31, 32, 33, 36, 37, 38, 41, 45, 46, 59

EPA has determined that any discharge authorized under the following NWP will comply with water quality requirements as defined in 40 CFR 121.1(m) subject to the following conditions pursuant to CWA Section 401(d).

### **General EPA Conditions for Certification 2021 NWPs**

#### **Condition 1 – Notification to EPA**

Project proponents shall provide notice to EPA Region 9 prior to commencing construction to provide EPA with the opportunity to inspect the activity for the purposes of determining whether any discharge from the proposed project will violate this water quality certification. Where the Corps requires a PCN for the applicable NWP, the project proponent shall also provide the PCN to Region 9. Concurrent with notification to the EPA, project proponents shall notify the appropriate Tribal Environmental or Governmental Office.

***Why the condition is necessary to assure that any discharge authorized under the general license or permit will comply with water quality requirements:*** This condition is necessary to provide EPA Region 9 with notice and information to allow for an efficient and effective pre-operation inspection to determine if the certified discharge will violate the certification. If the project scope changes during the Corps review prior to initiation of the activity, it is also critical for EPA Region 9 to be provided any changes in the project design, scope, amount, and location of discharges to inform the pre-operation inspection opportunity as provided by 40 CFR 121.11(a).

***Citation(s) that authorizes this condition: 40 CFR 121.11(a)***

#### **Condition 2 – Projects or Activities Discharging to Impaired Waters**

Projects or activities are not authorized under the NWP if the project will involve point source discharge into an active channel of a water of the U.S. identified as a section 303(d) or TMDL listed impaired waterbody and the discharge may result in further exceedance of a specific parameter (e.g., total suspended solids, dissolved oxygen, temperature) for which the waterbody is listed. The current lists of 303(d) and TMDL listed waterbodies are available on EPA Region 9's web site at: <https://www.epa.gov/tmdl/impaired-waters-and-tmdls-pacific-southwest-region-9>.

***Why the condition is necessary to assure that any discharge authorized under the general license or permit will comply with water quality requirements:*** A 303(d) listed waterbody is



impaired due to the cumulative effects of discharges of pollutants. The NWP's do not provide necessary activity specific information to determine compliance with specific water quality requirements, such as limits on total suspended solids, temperature, dissolved oxygen, nutrients, or pH for which a specific waterbody could be listed as impaired. Site specific analysis is required to determine whether water quality requirements are met in the active channel of a water of the U.S. identified as a section 303(d) or TMDL listed impaired waterbody.

***Citation(s) that authorizes this condition: CWA section 303(d)***

### **Condition 3 – Dewatering**

For all dewatering activities that propose structures or fill in waters of the U.S. that require authorization from the Corps, projects or activities are authorized under the NWP's if the site is naturally dewatered (e.g., seasonally dry), or if an artificial dewatering plan is developed and implemented to ensure that erosion and unauthorized discharges do not occur prior to site restoration. The dewatering plan shall be submitted to EPA Region 9 in conjunction with the notification in Condition 1, prior to site disturbance.

The Dewatering Plan shall, at a minimum, include the following:

- Methods for dewatering;
- Equipment that would be used to conduct the dewatering;
- Length of time the area is to be dewatered;
- Area (acres) and length (linear feet) in waters of the U.S. of the structure and/or fill used for the dewatering;
- Method for removal of the temporary structures and/or fill;
- Method for pre-disturbance measurement and restoration, following construction, of the preconstruction contours and site conditions of the waters of the U.S. affected by the structure or fill;
- Frequency and methods for monitoring and maintenance of dewatering measures to ensure unauthorized discharges do not occur before the site restoration is complete; all dewatering measures should be assessed within 24 hours after a rain event and any damaged measures shall be repaired or modified as required to protect water quality; and
- Reporting and adaptive management processes if any of the dewatering methods cause erosion or if unauthorized discharges occur before the site restoration is complete.
- EPA Region 9 requires reporting of unauthorized discharges or water quality violations within 24 hours.

***Why the condition is necessary to assure that any discharge authorized under the general license or permit will comply with water quality requirements:*** General conditions included in the NWP's do not address dewatering activities. Dewatering activities can often be a point source

for pollutants entering waters of the United States. This condition is necessary to ensure that the authorized activity does not result in more than minimal degradation to water quality and the aquatic environment because the project proponent will complete pre-planning, monitoring, maintenance, reporting and adaptive management to achieve site restoration.

***Citation(s) that authorizes this condition: 40 CFR § 230.10(d); 40 CFR § 230.24; 40 CFR § 230.70; 40 CFR § 230.71; 40 CFR § 230.74***

#### **Condition 4 – Site Management and Construction Practices**

Except as specified in the permit application, the project proponent shall not allow debris, silt, sand, cement, concrete, oil or petroleum, organic material, or other construction related materials or wastes to enter or be stored within 100 feet of where it may enter waters of the U.S. The project proponent shall develop and implement a plan to prevent pollutants from entering jurisdictional wetlands and waterways. The plan shall be submitted to EPA Region 9 in conjunction with the notification in Condition 1, prior to site disturbance. The plan shall include, at a minimum, the following measures:

- Silt fences, straw wattles, and other standard erosion control techniques<sup>3</sup> shall be employed to protect waters of the U.S. from sedimentation and other pollutants.
- Water used in dust suppression shall not contain contaminants that could violate surface water or aquifer standards.
- Project activities (e.g., work during rain events, heavy equipment in flowing water, etc.) that may result in channel and bank erosion within waters of the United States during or after construction are not authorized under this certification. Precipitation forecasts shall be considered when planning construction activities. The project proponent shall monitor the 72- hour forecast from the National Weather Service at <http://www.nws.noaa.gov>. When there is a forecast of more than 80% chance of rain, or at the onset of unanticipated precipitation, the project proponent shall remove all equipment from waters of the United States and implement erosion and sediment control measures (e.g., jute, straw, coconut fiber erosion control fabric, coir logs, straw), and cease all project activities within the waters. Erosion control measures shall be inspected within 24 hours after each rain event and repaired or modified as required to protect water quality.
- All equipment shall be cleaned prior to arriving on the project site. All equipment shall be inspected daily and prior to entering any streams or wetlands, for oil, gas, diesel, anti-freeze, hydraulic fluid, and other petroleum leaks. All equipment detected with leaks shall be repaired promptly or moved offsite within 24 hours.

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<sup>3</sup> Many state and local agencies have developed erosion control manual and guidelines that provide detailed information on standard techniques and practices. Examples include the Los Angeles Construction Site Best Management Practices (BMPs) Manual: <http://dpw.lacounty.gov/cons/specs/bmpmanual.pdf> and the City of Sacramento's Administrative and Technical Procedures Manual for Grading and Erosion and Sediment Control: <http://www.cityofsacramento.org/-/media/Corporate/Files/DOU/Specs-Drawings/Sediment-control-manual.pdf?la=en>

- All contaminated areas shall be cleaned immediately, and contaminated soil removed from the site or contained in enclosed containers. Containers shall be located no closer than 100 feet to a jurisdictional wetland or waterbody. If it is not possible to site a storage area at least 100 feet away, the project proponent shall explain the reasons for the storage location and the additional measures that will be implemented to protect waters in their plan.
- Containment booms and/or absorbent material shall be available onsite. In the case of spills, containment booms and/or absorbent materials shall be employed immediately to prevent discharges from reaching waters of the U.S. Project proponents shall notify the appropriate Tribal government and EPA Region 9 within 24 hours if spills or unauthorized discharges occur during the project. As part of the notice, the project proponent shall provide plans for remedying the spill or unauthorized discharge.

***Why the condition is necessary to assure that any discharge authorized under the general license or permit will comply with water quality requirements:*** Protection of water quality includes implementation of suitable measures to control site runoff, spillage, waste disposal, and drainage from construction activities and raw material storage as such sources may contribute significant amounts of pollutants into waters of the United States. Timing the discharge of material, for instance by limiting fill during rain events, minimizes impacts to water quality. Measures minimize adverse effects to plant and animal populations by maintaining habitat for these species. The use of measures as required under this condition will ensure that the authorized activity does not result in more than minimal degradation to water quality. The condition is necessary to prevent the unauthorized release of pollutants into waters of the United States. This condition is necessary to ensure water quality is not degraded by oil, grease, gasoline, or other types of fluids used to operate and maintain equipment used to complete the project. The condition minimizes equipment contact with water (and potential for oil, gas, invasive species, etc. contamination) and allows for clean-up of potential spills before entering waters. This condition also helps protect the water quality and native biology of the impacted waters by preventing the spread of invasive or nuisance species. This condition is necessary to ensure minimization of adverse effects on populations of plants and animals and to preserve the water quality and flood protection benefits provided by vegetation in riparian areas adjacent wetlands and waterbodies. Inspection times are required to ensure that pollution and erosion controls remain effective or are repaired promptly.

***Citation(s) that authorizes this condition: 40 CFR § 230.10(d); 40 CFR § 230.70; 40 CFR § 230.72; 40 CFR § 230.74; 40 CFR § 230.75***

### **Condition 5 – Discharges in Aquatic Resources of Special Concern**

Activities resulting in a point source discharge in the following types of jurisdictional aquatic resources of special concern shall request a project-specific CWA Section 401 WQC: bogs, fens, and other peatlands; natural springs; vernal pools; alkali wetlands; riffle-pool complexes of streams; marine or estuarine mudflats; salt marshes; marine waters with native eelgrass or kelp beds; or marine nearshore forage fish habitat. These resources may be identified using USGS

topographic maps, the U.S. Fish and Wildlife Service National Wetland Inventory, or other aquatic resource identification documentation.

***Why the condition is necessary to assure that any discharge authorized under the general license or permit will comply with water quality requirements:*** Aquatic resources of special concern include special aquatic sites<sup>4</sup> and other aquatic resources that are specific waters of the U.S. that are difficult to replace, are unique, and/or have high ecological function. General permits, including NWP's, are only allowed for those discharges and associated activities that will cause no more than minimal adverse impacts to the aquatic environment. However, point source discharges to the types of aquatic resources of special concern listed above could have more than minimal adverse impacts on an individual or cumulative basis, because the discharge of dredged or fill material would impair and degrade the chemical, physical and biological conditions of these systems. As noted in 40 C.F.R. § 230.1(d), “[f]rom a national perspective, the degradation or destruction of special aquatic sites, such as filling operations in wetlands, is considered to be among the most severe environmental impacts covered by these Guidelines. The guiding principle should be that degradation or destruction of special sites may represent an irreversible loss of valuable aquatic resources.” Discharge of dredged or fill material into these systems can alter water circulation patterns and hydroperiods, which in turn can release nutrients causing shifts in native to non-native species composition; release chemicals that adversely impact biota (plants and animals), increase turbidity levels, reduce light penetration and photosynthesis, and ultimately change the capacity of these systems to support aquatic life uses and other beneficial uses of these special aquatic sites, including impairing their diverse and unique communities of aquatic organisms, including fish, wildlife and the habitats upon which they depend. Thus, this condition is established to ensure a case-by-case review of any actions or activities proposed in these specific aquatic resource site types which are inherently difficult to replace, have high ecological functions and values, and for which degradation cannot be determined to meet water quality requirements on a general permit basis.

***Citation(s) that authorizes this condition: 40 C.F.R. § 230.1(d); 40 C.F.R. § 230.10(c); 40 C.F.R. § 230.21; 40 C.F.R. § 230.23; 40 C.F.R. § 230.32; 40 C.F.R. Part 230, Subpart E.***

### **Condition 6 – Disturbance to Streambank Vegetation**

Disturbance to jurisdictional streambank vegetation shall be limited to no more than 0.5 acre of vegetation removal. Areas of vegetation removal shall be identified on construction plans and submitted to EPA as part of the notification. Areas of streambank vegetation adjacent to the planned disturbance area shall be clearly marked with signs, high visibility flagging, orange fencing, or some other method that clearly indicates the limits of the disturbance area to prevent encroachment into adjacent habitat. Revegetation of disturbed areas shall be based on pre-disturbance or reference site conditions, including percent cover and native species diversity. Therefore, the project proponent shall photo-document the site prior to, during and post-construction, and post-restoration. Revegetated areas shall use local or regionally sourced native seed and other plant materials. Non-native and invasive species shall not be used for restoration

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<sup>4</sup> See 40 C.F.R. Part 230 Subpart E.

activities. Stockpile weed-free topsoil shall replace disturbed soil areas. Revegetation measures may include topsoil replacement, planting, seeding, fertilization, liming, and weed-free mulching. Projects that will remove more than 0.5 acre of vegetation shall request a project-specific 401 certification.

***Why the condition is necessary to assure that any discharge authorized under the general license or permit will comply with water quality requirements:*** Streambank vegetation is important in stabilizing soils, reducing run-off, providing for shaded aquatic areas, and providing cover and habitat for aquatic wildlife. Invasive species are detrimental to functioning aquatic ecosystems. Revegetation planting with native plant species is necessary to ensure ecosystem functions and services. This condition is necessary to ensure minimization of adverse effects on water quality as well as populations of plants and animals that derive benefits provided by vegetation in riparian areas adjacent wetlands and waterbodies. This condition size limit is necessary to require project-specific CWA Section 401 WQC review so EPA Region 9 can ensure that projects will be conditioned to avoid and minimize adverse impacts to comply with water quality requirements.

***Citation(s) that authorizes this condition: 40 CFR § 230.10(d); 40 CFR § 230.70; 40 CFR § 230.72; 40 CFR § 230.74; 40 CFR § 230.75***

### **NWP Permit Specific Conditions**

#### **NWP-03 Maintenance**

NWP-03 is conditionally certified subject to the General Conditions above, and the following specific condition.

Replacement of "Currently serviceable structures" under this permit shall be appropriately sized culverts or structures<sup>5</sup> for the drainage area and/or anticipated peak flow so that structures do not cause or exacerbate channel incision, bank destabilization, and/or prevent fish and wildlife passage due to inadequate design or construction standards. Replacement of existing riprap is allowed but the placement of additional non-vegetated riprap beyond the original footprint is not authorized and requires an individual project-specific certification. If a PCN is required for the NWP, the project proponent shall submit design documentation used to determine the appropriate sizing of culverts and/or structures to EPA Region 9, the correlating Tribal government, and the authorizing Corps District.

***Why the condition is necessary to assure that any discharge authorized under the general license or permit will comply with water quality requirements:*** Improperly sized or undersized culverts constrict the channel, create flow hydraulics and channel conditions that are markedly dissimilar from those in the natural channel, and impede the movement fish and other aquatic organisms along the stream corridor. Areas covered by riprap limit the biological, chemical, and

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<sup>5</sup> For site where no hydrologic data is available methods such as Talbot's formula for culvert sizing: [http://www.sd-w.com/civil/talbots\\_formula.html](http://www.sd-w.com/civil/talbots_formula.html). Other established methods such as those described in the Handbook For Forest, Ranch And Rural Roads ([http://www.pacificwatershed.com/sites/default/files/12\\_-\\_appendix\\_a\\_-\\_culvert\\_sizing\\_procedures.pdf](http://www.pacificwatershed.com/sites/default/files/12_-_appendix_a_-_culvert_sizing_procedures.pdf)) may also be used.

physical processes that can occur in those aquatic resources. The lack of vegetation results in lower quality habitat and less carbon cycling and other ecosystem functions in aquatic and riparian areas. This condition is necessary to ensure the properly sized and designed replacement structures are used to protect aquatic habitat and to ensure that the authorize activities would result in more than a minimal degradation of water quality. Projects that require a PCN for NWP meet a size, location or resource threshold that requires design review to ensure that there are no more than minimal impacts to aquatic resources.

***Citation(s) that authorizes this condition: 40 CFR § 230.10(d); 40 CFR § 230.71; 40 CFR § 230.72***

### **NWP-07 Outfall Structures and Associated Intake Structures**

NWP-07 is conditionally certified subject to the General Conditions above, and the following specific condition.

Outfall structures shall be appropriately sized and designed to prevent high pressure discharge of stormwater that may result in localized scouring and erosion<sup>6</sup>. The project proponent shall submit project plans to EPA Region 9, the correlating Tribal government, and the authorizing Corps District. The project plans shall describe the design documentation used to determine the appropriate sizing of outfall structures in the final project design.

***Why the condition is necessary to assure that any discharge authorized under the general license or permit will comply with water quality requirements:*** Storm drain and outfall systems are dependent on topography, hydrology, surface hydraulics, outfall location and constraints for design layout. Outfall materials have a design maximum velocity to ensure that structures and surrounding areas do not have detrimental erosion. This condition is necessary to ensure outfall structures are designed and constructed in a manner that will prevent localized erosion at the point of discharge and will minimize impacts to downstream water quality.

***Citation(s) that authorizes this condition: 40 CFR § 230.10(d), 40 CFR § 230.70; 40 CFR § 230.73***

### **NWP-13 Bank Stabilization**

NWP-13 is conditionally certified subject to the General Conditions above, and the following specific condition.

For any activities that include bank stabilization, the project proponent shall use bioengineering techniques for bank stabilization activities instead of or in combination with hard armoring; this may be either the sole use of native vegetation or other bioengineered design techniques (e.g.,

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<sup>6</sup> Outfall design information for common types, like stormwater, may be found through state Departments of Transportation (e.g. Caltrans <https://dot.ca.gov/programs/design/hydraulics-stormwater>) and state water quality regulatory agencies (e.g. [https://www.waterboards.ca.gov/rwqcb2/water\\_issues/programs/stormwater/muni/nrdc/chapter%2013%20design%20examples%20part%202.pdf](https://www.waterboards.ca.gov/rwqcb2/water_issues/programs/stormwater/muni/nrdc/chapter%2013%20design%20examples%20part%202.pdf)). Local, county, state, and tribal resources may also be used to determine outfall design criteria and/or the maximum design velocity for stormwater and similar outfalls.

willow plantings, root wads, large woody debris, etc.), or a combination of hard-armoring (e.g., rock) and native vegetation or bioengineered design techniques. If it is not possible to solely rely on bioengineering techniques, the project proponent shall submit project plans to EPA Region 9, the correlating Tribal government, and the authorizing Corps District. Projects consisting entirely of riprap or similar rock techniques are limited to 300 linear feet under this conditional certification; project proponents with riprap or similar rock activities over 300 linear feet shall request a project-specific water quality verification. For both partially bioengineered projects, and those composed of riprap, the project plans shall describe the design techniques and stabilization methods assessed to determine the final project design. The use of soil cement, concrete, and grouted rip-rap hard armoring methods are not authorized under this certification and project proponents shall submit a request for a project-specific water quality certification.

***Why the condition is necessary to assure that any discharge authorized under the general license or permit will comply with water quality requirements:*** The use of native vegetation and bioengineering is necessary to ensure the activity incorporates appropriate measures to that will minimize potential adverse impacts of the discharge on water quality and the aquatic ecosystem. Planning and construction practices can be used to minimize adverse impacts to plants and animals and can compensate for destroyed habitat. This condition is necessary to provide the project proponent with clarity on how to meet appropriate soil erosion and sediment controls, as required by NWP's General Condition 12. These appropriate and practicable alternatives often include more ecologically beneficial soft or bioengineering techniques. In conjunction with other bank stabilization practices, this condition will ensure water quality impacts from potential discharges of dredged or fill material are minimized. As a result, this condition is necessary to require project-specific CWA Section 401 WQC review so EPA Region 9 can ensure that projects will be conditioned to avoid and minimize adverse impacts to comply with water quality requirements. Native vegetation and natural materials and structures, such as biodegradable erosion control blankets, staking and live cutting, biologs, coir fiber rolls, brush mattresses, etc. can be effective erosion control measures are when installed properly under the right conditions. Projects without bioengineering are limited to 300 linear feet due to the negative impacts of hard armoring on aquatic habitat functions and water quality. 300 linear feet is the previous restriction in the NWP's without waiver by the District Engineer and is supported by years of data on minimal adverse impacts to the aquatic environment.

***Citation(s) that authorizes this condition: 40 CFR § 230.10(d); 40 CFR § 230.71; 40 CFR § 230.72; 40 CFR § 230.75***

#### **NWP-14 Linear Transportation Projects**

NWP-14 is conditionally certified subject to the General Conditions above, and the following specific condition.

For replacement crossings that would result in a reduction in the pre-construction ordinary high water mark channel width and depth of open waters of the U.S. at the crossing, as compared to the upstream and downstream open waters the project proponent shall submit design plans and