US Army Corps of Engineers®

PUBLIC NOTICE

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Omaha District, Regulatory Division, Montana Branch

Announcing the 2026 Nationwide Permits (NWPs), Regional Conditions, and 401 Water Quality Certifications (WQCs)

REISSUANCE OF NWPs: On January 8, 2026, the U.S. Army Corps of Engineers (Corps) published a final action in the *Federal Register* (91 FR 768) announcing the reissuance of 56 existing nationwide permits (NWPs) and one new NWP, as well as the reissuance of NWP general conditions and definitions with some modifications. One NWP was not reissued. **These 57 NWPs will go into effect on March 15, 2026, and will expire on March 15, 2031.**

EXPIRATION OF 2021 NWPs: The 56 existing NWPs published in the January 8, 2026, final action replace the 2021 versions of these NWPs. The 2021 versions of these NWPs expire on March 14, 2026.

REGIONAL CONDITIONS: The Omaha District has finalized regional conditions for these 57 NWPs. Regional conditions will provide additional protection for the aquatic environment, and will help ensure that the NWPs authorized only those activities with no more than minimal adverse environmental effects. Regional conditions will help ensure protection of high value waters across states within the Omaha District. Additionally, Omaha District determined that conditions of the water quality certifications issued by states, tribes, and EPA for the issuance of these NWPs are conditions of these NWPs. **Attached to this Public Notice are the 2026 Regional Conditions and 401 Water Quality Certifications applicable to the State of Montana.**

STATUS OF EXISTING PERMITS: When the Corps reissues existing NWPs, the reissued NWPs replace the prior versions of those NWPs so that there are not two sets of NWPs in effect at the same time. The expiration date of the 57 NWPs that went into effect on March 15, 2021, and February 25, 2022, is March 14, 2026. An activity completed under the authorization provided by a 2021 NWP continues to be authorized by that NWP (see 33 CFR part 330.6(b)). Activities authorized by the 2021 NWPs that have commenced or are under contract to commence by March 14, 2026, will have one year (i.e., until March 14, 2027) to complete those activities (see 33 CFR 330.6(b)). Activities previously authorized by the 2021 NWPs that have not commenced or are not under contract to commence by March 14, 2026, or that will not be completed by March 14, 2027, will require reauthorization under the 2026 NWPs, provided those activities still comply with the terms and conditions, and qualify for authorization under the 2026

NWPs. If those activities no longer qualify for NWP authorization because they do not meet the terms and conditions of the 2026 NWPs (including any regional conditions), the project proponent will need to obtain an individual permit, or seek authorization under a regional general permit, if such a general permit is available in the applicable Corps district and can be used to authorize the proposed activity.

FOR ADDITIONAL INFORMATION: The January 8, 2026, *Federal Register* notice containing the 2026 Nationwide Permits, General Conditions, and Definitions that are effective on March 15, 2026, is available for viewing at: https://www.federalregister.gov/documents/2026/01/08/2026-00121/reissuance-and-modification-of-nationwide-permits

As an alternative, interested parties can access the January 8, 2026, final action and related documents at: https://www.usace.army.mil/Missions/Civil-Works/Regulatory-Program-and-Permits/Nationwide-Permits/

If you have questions about the final action to reissue or issue the 2026 NWPs, you may contact Corps Headquarters at U.S. Army Corps of Engineers, Attn: CECW-CO-R, 441 G Street NW, Washington, DC 20314-1000 or see further contact information in the January 8, 2026, *Federal Register* notice (91 FR 768).

If you have questions concerning Montana's 2026 Regional Conditions, please contact Jenn Bergner at Montana.Reg@usace.army.mil. If additional information is needed about permit requirements, please contact the Montana Regulatory Office of the Omaha District, as provided at the following link: https://www.nwo.usace.army.mil/Missions/RegulatoryProgram/Montana.aspx

Enclosures:
1. Montana 2026 Regional Conditions
2. 401 WQC – Blackfeet Nation
3. 401 WQC – Confederated Salish and Kootenai Tribes
4. 401 WQC – EPA Region 8 (MT)
5. 401 WQC – Fort Peck Tribes
6. 401 WQC – Montana Department of Environmental Quality
7. 401 WQC – Northern Cheyenne Tribe

US Army Corps of Engineers ®
Omaha District

2026 Nationwide Permits
Final Regional Conditions
Omaha District
State of Montana

The following Nationwide Permit (NWP) regional conditions will be used in the State of Montana. The issuance of the 2026 NWPs was announced in the June 18, 2025, publication of the Federal Register (90 FR 26100); the final action was published in the Federal Register (91 FR 768) on January 8, 2026. Regional conditions are placed on NWPs to ensure projects result in no more than minimal adverse impacts to the aquatic environment and to address local resources concerns.

A. PRECONSTRUCTION NOTIFICATION REQUIREMENTS APPLICABLE TO ALL NWPs

For all NWPs, permittees must notify the Corps in accordance with General Condition 32 Preconstruction Notification (PCN) requirements for regulated activities located within or comprised of the following:

1. **Aquatic Resources of Special Concern:**

   Aquatic resources of special concern are resources that are difficult to replace, unique, and/or have high ecological functions. PCN required for any regulated activity located in aquatic resources of special concern that fall into the categories listed below. The District Engineer may authorize activities under NWPs only after determining that the impacts to the following aquatic resources of special concern will be no more than minimal:

   a. **Wetlands classified as peatlands:** For purposes of this condition, peatlands are permanently or seasonally waterlogged areas with a surface accumulation of peat (organic matter) 30 centimeters (12 inches) or more thick. Under cool, anaerobic, and acidic conditions, the rate of organic matter accumulation exceeds organic decay. Any peat- covered areas, including fens, bogs, and muskegs, are all peatlands.

      i. PCN required for NWP 3, 5, 6, 20, 27, 32, 38, and 45.

      ii. All NWPs not listed above are revoked for use in peatlands.

   b. **Natural Springs:** Within 100 feet of the water source in natural spring areas. For the purpose of this condition, a spring water source is defined as any location where there is flow emanating from a distinct point at any time during the growing season. Springs do not include seeps and other groundwater discharge areas where there is no distinct point source of waters. Springs do not include drain tile outlets.

   c. **Specific Waters:** Within the following waters and their impoundments:

      i. Bitterroot River
      ii. Clark Fork River
      iii. East Rosebud Creek
      iv. Flathead Lake
      v. Flathead River
      vi. Kootenai River
      vii. Milk River
      viii. Missouri River
      ix. Yellowstone River

d. **Special River Management Zone (SRMZ) of the Upper Yellowstone River:** Within the SRMZ. This area is defined within the Special Area Management Plan (SAMP) as the 48-mile reach of the upper Yellowstone River (River Miles 531.8 to 483.6) from upstream of Emigrant River downstream to a few miles below the Shields River and Mission Creek confluences (0.7 miles downstream from the bridge at the community of Springdale). It includes secondary channels, side channels, and the main (primary) channels, and adjacent wetlands within the channel migration zone (CMZ) or, in absence of a CMZ, within areas flooded by the 100-year discharge. The SMRZ is located entirely within Park County, Montana.

i. In addition to any NWP revocations, restrictions, and regional conditions listed here, additional revocations, restrictions, and conditions apply within the SRMZ described above.

ii. See the current Special Area Management Plan (SAMP) found here: https://www.nwo.usace.army.mil/Missions/Regulatory-Program/Montana/EA-Upper-Yellowstone-River/.

2. **Tribal Reservations and Tribal Trust Lands:**

PCN required for any regulated activity located within Tribal Reservations and Tribal Trust Lands. The following link provides a map showing Tribal Reservations and Tribal Trust Lands: https://onemap-bia-geospatial.hub.arcgis.com/apps/718497a94a15450d8d48b51625dc330f/explore

3. **Bank Stabilization Activities (verified under any NWP).**

PCN required for any regulated activity that involves bank stabilization impacting an area greater than 3/100 of an acre (1,306.8 square feet) of streambed below the Ordinary High-Water Mark or includes features that extend out from the existing bank line greater than 25% of the bankfull channel width.

B. CONSTRUCTION PRACTICES

1. **Suitable Material:**

Permittees are reminded of General Condition No. 6 which prohibits use of unsuitable material. A list of materials prohibited or restricted as fill material in waters of the United States within the Omaha District can be found at: http://www.nwo.usace.army.mil/Media/FactSheets/FactSheetArticleView/tabid/2034/Article/12320/ prohibited-restricted-materials.aspx

2. **Revegetation of Disturbed Areas:**

   All jurisdictional waters disturbed by construction shall be revegetated with appropriate perennial, native grasses and forbs and maintained in this condition. Seed mixes shall not include invasive or noxious species. The following link provides information and resources on invasive species: https://www.invasivespeciesinfo.gov/us

3. **Culvert Countersinking:**

   For all NWPs in streams with relatively permanent flow and a stable stream bed, culvert stream crossings shall be installed with the bottom of the culvert set below the natural stream channel flow line. This regional condition does not apply in instances where the lowering of the bottom of the culvert would allow a headcut to migrate upstream of the project into an unaffected stream reach or result in lowering the elevation of the stream reach.

   a. The stream's flow line (or the main path of the water) will be determined by calculating the average elevation along the streambed during periods when the stream is at its lowest flow levels.

   b. The slope of the culvert should be parallel to the slope of the stream flow line.

   c. Riprap inlet and outlet protection shall be placed to match the height of the bottom of the culvert.

4. **Intake Structures:**

   In USFWS identified Pallid Sturgeon waterways (http://www.fws.gov/ipac), any intake structure shall meet the following criteria to protect the pallid sturgeon:

   a. Intake screens with a mesh opening of ¼ inch or less shall be installed, inspected annually, and maintained.

   b. For Johnson intake screens, the maximum width between wires shall not exceed 1/8 inch.

   c. Water velocity at the intake screen shall not exceed ½ foot per second.

   d. Intakes must be located in the deepest water available and be elevated off the bottom of the riverbed or lakebed.

5. **Bank Stabilization Activities:**

   The following additional requirements apply to all bank stabilization activities:

   a. The revetment must conform to the existing bank, unless such work is determined by the Corps to be biologically or geomorphically beneficial for the system; must not extend above the top of the bank (i.e., no new levees); and the slopes must be flatter than the angle of repose for the selected revetment material (i.e., rock riprap normally needs to be placed on a slope flatter than 1.5 Horizontal to 1 Vertical (1.5H:1V).

   b. The revetment must not wholly or partially block flows from entering a side channel or an overflow channel.

6. **Soil Erosion and Sediment Control Measures:**

   A PCN is required for any regulated activity seeking a waiver of the conditions pertaining to soil erosion and sediment control measures identified in item "c" below.

   a. Temporary Measures: Temporary controls (e.g., silt fences, netting, mats) must be removed and disposed of once they have served their purpose.

   b. Permanent Measures: Permanent controls used in or near waters of the U.S. must be made of 100% biodegradable, non-plastic materials (such as jute, sisal, or coir). Plastic alternatives (including any degradable or oxo-degradable materials) are not authorized unless the district engineer gives prior approval.

   c. Waivers: A waiver from these requirements may be requested through a PCN. The district engineer may approve nondegradable materials for permanent use on a case-by-case basis if it is demonstrated that they will not harm fish, wildlife, or public safety.

7. **NWP-3 – Maintenance and NWP-45 – Repair of Uplands Damaged by Discrete Events Definition of "Discrete Event":**

   The definition of "discrete event," as used in these permits, includes, but is not limited to, unexpected natural and human-caused events such as fires, storms, landslides, avalanches, earthquakes, accidents, debris or ice jams, and floods. For the purpose of the NWPs, discrete event floods are stream flow events that overflow the OHWM.

Blackfeet Tribes Clean Water Act Section 401
Water Quality Certification for the U.S. Corps of Engineers CWA Section 404
2026 Nationwide Permits Reissuance

This Certification 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 CWA 404 Nationwide Permit (NWPs) into waters of the United States that occur within the Blackfeet Indian Reservation in Montana within the Omaha Corps District: NWP 3, 4, 5, 6, 7, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 25, 27, 29, 30, 31, 32, 33, 34, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 48, 49, 50, 51, 52, 53, 54, 57, 58, 59 and A.

Section 401(a)(1) of the Clean Water Act requires applicants for Federal permits and licenses that may result in discharges into waters of the United States to obtain certification that potential discharges will comply with applicable provisions of the CWA, including Sections 301, 302, 303, 306 and 307. The EPA has approved the Blackfeet Tribe (BLACKFEET) for Treatment as a State (TAS), authorizing the BLACKFEET to issue these certifications.

This Certification does not apply to the following NWPs: 1, 2, 8, 9, 10, 11, 24, 28, 35, and 55. If any activity authorized by these listed NWPs may result in a discharge into a water of the United States, the Corps must seek CWA section 401 certification from BLACKFEET directly for discharges that occur in the Blackfeet Indian Reservation in Montana within the Omaha District. In addition, this certification does not apply to 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.

BLACKFEET is expressly waiving its authority to act on the CWA § 401 certification request for the following proposed NWPs:

NWPs Waived (121.9(a)(1))

4. Fish and Wildlife Harvesting, Enhancement, and Attraction Devices and Activities
22. Removal of Vessels
48. Commercial Shellfish Mariculture
54. Living Shorelines

NWPs Granted with Conditions (121.7(d)(2))

CWA Section 401 certification is granted with the following conditions for NWPs 3, 5, 6, 7, 13, 14, 15, 18, 19, 20, 23, 25, 27, 30, 31, 32, 33, 36, 38, 41, 43, 45, 46, 57, and 59. BLACKFEET has determined that any discharge authorized under these proposed NWPs will comply with water quality requirements, including applicable provisions of Sections 301, 302, 303, 306, and 307 of the Clean Water Act, and tribal regulatory requirements for point source discharges into waters of the United States, subject to the following conditions pursuant to Section 401(d).

All conditionally certified NWPs, including those with additional permit-specific conditions, must comply with the following conditions:

Conditions Applicable to all NWPs	Why the condition is necessary to assure the proposed project will comply with water quality requirements	Citation that authorizes the condition
• The Applicant and applicants for projects authorized under the NWPs should obtain all other permits, licenses, and certifications that may be required by federal, state, or tribal authority. Primary relevant tribal permits will be ALCO and/ or SPO permit (Ordinance 64a or 87a). Others may apply. It is the applicant's responsibility to know the tribal and local ordinances and complete all necessary permissions before they can commence work. • If a project is unable to meet the enclosed conditions, or if certification is denied for an applicable NWP, the Applicant may request an individual certification from BLACKFEET. An individual certification request must follow the requirements outlined in 40 CFR 121.5 of EPA's CWA § 401 Certification Rule, effective September 11, 2020. • Copies of this certification should be kept on the job site and readily available for reference. • If the project is constructed and/or operated in a manner not consistent with the applicable NWP, general conditions, or regional conditions, the permittee may be in violation of this certification. • BLACKFEET and EPA representatives may inspect the authorized activity and any mitigation areas to determine	These conditions will help ensure applicants comply with the terms and conditions of the CWA § 401 certifications of the NWPs on applicable BLACKFEET lands.	BLACKFEET Ordinances 1A, 18A, 4D, 45B, 57A, 58A, 61A, 64A, 75A, 76A, 79A, 87A, 89B, 95A, 109A, 110A, BLACKFEET TAS 1993, and BLACKFEET Tribal Water Quality Standards.

compliance with the terms and conditions of the NWP. • This NWP Reissuance does not reduce Tribal authority under any other rule.		
All applicants, including federal agencies, must notify EPA and the BLACKFEET's Natural Resources Department and water quality program of the use of all NWPs for which certification has been granted prior to commencing work on the project. Notifications must include: • project location (lat. Long., exact point on map); • NWP that will be used and the specific activity that will be authorized under the NWP; • amount of permanent and temporary fills; • a short summary of the proposed activity, and all other federal, state, tribal or local permits or licenses required for the project; • complete contact information of both the applicant and contractor (name, name of the company or property if applicable, telephone, mobile, and email); and, • summary of best management practices that will be used. • A summary of communications with the affected Tribe's water quality staff regarding the project, including any concerns or issues. • Notify BLACKFEET and EPA at least 7 days before the completion of construction and operations begin.	Notification will ensure that the Tribes are aware of all Corps-authorized activities potentially affecting the Blackfeet Indian Reservation. It also will ensure the Corps and EPA can demonstrate that the NWP program has no more than minimal impacts to the aquatic environment, individually and cumulatively, and that the activities will not adversely impact cultural and historic uses of tribal waters. In order to ensure that EPA and the BLACKFEET's Natural Resources Department and water quality program have the opportunity to inspect the project prior to the onset of operations, the applicant must notify BLACKFEET and EPA in a timely manner of the status of the project construction.	CWA sections 301, 302, 303, 306, and 307[i] 40 CFR 121.11(a) BLACKFEET Ordinances 1A, 18A, 4D, 45B, 57A, 58A, 61A, 64A, 75A, 76A, 79A, 87A, 89B, 95A, 109A, 110A, BLACKFEET TAS 1993, and BLACKFEET Tribal Water Quality Standards.
Point source discharges may not occur: (1) in fens, bogs or other peatlands; (2) within 100 feet of the point of discharge of a known natural spring source; or (3) hanging gardens.	This condition is necessary to ensure activities that may result in point source discharges into waters of the United States do not degrade these unique and difficult to replace wetland types, which play an importation role in maintaining water quality and hydrologic function in mountain and prairie ecoregions.	40 CFR 230 Subpart E; 40 CFR 230.93(e)(3) BLACKFEET Ordinances 1A, 18A, 4D, 45B, 57A, 58A, 61A,

		64A, 75A, 76A, 79A, 87A, 89B, 95A, 109A, 110A, BLACKFEET TAS 1993, and BLACKFEET Tribal Water Quality Standards.
Except as specified in the application, no debris, silt, sand, cement, concrete, oil or petroleum, organic material, or other construction related materials or wastes shall be allowed to enter into or be stored where it may enter into waters of the U.S.	This condition is necessary to ensure water quality is not degraded by toxic pollutants in toxic amounts, raw materials, oil, grease, gasoline, or other types of fluids used to operate and maintain equipment used to complete the project.	40 CFR 230.10(d); 40 CFR 230.71 BLACKFEET Ordinances 1A, 18A, 4D, 45B, 57A, 58A, 61A, 64A, 75A, 76A, 79A, 87A, 89B, 95A, 109A, 110A, BLACKFEET TAS 1993, and BLACKFEET Tribal Water Quality Standards.
Silt fences, straw wattles, and other techniques shall be employed as appropriate to protect waters of the U.S. from sedimentation and other pollutants.	This condition minimizes turbidity and sediment caused by construction activities, 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. It is necessary to ensure that water quality is not degraded, and biology of the waters are not negatively impacted by the project.	40 CFR 230.10(d) and 230.72 BLACKFEET Ordinances 1A, 18A, 4D, 45B, 57A, 58A, 61A, 64A, 75A, 76A, 79A, 87A, 89B, 95A, 109A, 110A, BLACKFEET TAS 1993, and BLACKFEET Tribal Water Quality Standards.
Water used in dust suppression shall not contain contaminants that could violate water quality standards.	This condition is necessary to ensure water quality is not degraded by toxic material in toxic amounts, raw materials, oil, grease, gasoline, or other types of fluids used to	40 CFR 230.10(d); 40 CFR 230.71 BLACKFEET Ordinances 1A,

	operate and maintain equipment used to complete the project.	18A, 4D, 45B, 57A, 58A, 61A, 64A, 75A, 76A, 79A, 87A, 89B, 95A, 109A, 110A, BLACKFEET TAS 1993, and BLACKFEET Tribal Water Quality Standards.
Erosion control matting that is either biodegradable blankets or loose-weave mesh must be used to the maximum extent practicable.	Condition is necessary to provide clarity on how to meet "appropriate soil erosion and sediment controls," as required by NWPs General Condition 12. Use of other "appropriate" measures is not prohibited, but the inclusion of this condition ensures that water quality impacts of dredged or fill material are minimized.	40 CFR 230.10(d); 40 CFR 230.72 BLACKFEET Ordinances 1A, 18A, 4D, 45B, 57A, 58A, 61A, 64A, 75A, 76A, 79A, 87A, 89B, 95A, 109A, 110A, BLACKFEET TAS 1993, and BLACKFEET Tribal Water Quality Standards.
All equipment used in waters of the U.S. must be inspected for fluid leaks and invasive species prior to use on a project. All fluid leaks shall be repaired and cleaned prior to use or when discovered, or if the fluid leak can't be repaired, the equipment shall not be used on site. Equipment used in waters with the possibility of aquatic nuisance species infestation must be thoroughly cleaned and effectively decontaminated before they are used on the project.	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. This condition helps protect the native biology of the impacted waters by preventing the spread of invasive or nuisance species.	40 CFR 230.10(d); 40 CFR 230.74 BLACKFEET Ordinances 1A, 18A, 4D, 45B, 57A, 58A, 61A, 64A, 75A, 76A, 79A, 87A, 89B, 95A, 109A, 110A, BLACKFEET TAS 1993, and BLACKFEET Tribal Water Quality Standards.
Vegetation should be protected except where its removal is necessary for completion of the work. Locations disturbed by construction activities should be revegetated with	Condition is necessary to provide the project proponent with clarity on what meets the requirement for appropriate revegetation as required by NWPs General Condition 13.	40 CFR 230.10(d); 40 CFR 230.75

appropriate native vegetation in a manner that optimizes plant establishment for the specific site. Revegetation may include topsoil replacement, planting, seeding, fertilization, liming, and weed-free mulching, as necessary. Where practical, stockpile weed-seed-free topsoil and replace it on disturbed areas. All revegetation materials, including plants and plant seed shall be on site or scheduled for delivery prior to or upon completion of the earth moving activities.	Revegetation maintains and improves water quality because riparian vegetation acts as buffer to reduce the amount of sediment and pollutants that enter waterways. Native vegetation, because it is adapted to local conditions (e.g., soil types and temperature) provided this function most efficiently. Native vegetation also protects the biology of waters by providing habitat for semi-aquatic organisms and other organisms that are a food source to aquatic life.	BLACKFEET Ordinances 1A, 18A, 4D, 45B, 57A, 58A, 61A, 64A, 75A, 76A, 79A, 87A, 89B, 95A, 109A, 110A, BLACKFEET TAS 1993, and BLACKFEET Tribal Water Quality Standards.
Activities may not result in any unconfined discharge of liquid cement into waters of the U.S. Grouting riprap must occur under dry conditions with no exposure of wet concrete to the waterbody.	This condition is necessary to ensure water quality is not degraded and the biology of the waters are not negatively impacted by toxic compounds.	40 CFR 230.10(d); 40 CFR 230.71; CWA 307 (“No toxics in toxic amounts”) BLACKFEET Ordinances 1A, 18A, 4D, 45B, 57A, 58A, 61A, 64A, 75A, 76A, 79A, 87A, 89B, 95A, 109A, 110A, BLACKFEET TAS 1993, and BLACKFEET Tribal Water Quality Standards.
Activities that may result in a point source discharge shall occur during seasonal low flow or no flow periods to the extent practicable.	This condition minimizes turbidity and sediment caused by construction activities, 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. It is necessary to ensure that water quality is not degraded, and biology of the waters are not negatively impacted by the project.	40 CFR 230.10(d); 40 CFR 230.72(d); 40 CFR 230.23; 40 CFR 230.24 BLACKFEET Ordinances 1A, 18A, 4D, 45B, 57A, 58A, 61A, 64A, 75A, 76A, 79A, 87A, 89B, 95A, 109A, 110A, BLACKFEET TAS 1993, and BLACKFEET Tribal

		Water Quality Standards.
The placement of material (discharge) for the construction of new dams is not certified, except for stream restoration projects.	This condition is necessary to ensure impacts to water quality as a result of flow alterations are minimized to the maximum extent practicable, as required by NWPs General Condition 8.	40 CFR 230.23; 40 CFR 230.24; BLACKFEET Ordinances 1A, 18A, 4D, 45B, 57A, 58A, 61A, 64A, 75A, 76A, 79A, 87A, 89B, 95A, 109A, 110A, BLACKFEET TAS 1993, and BLACKFEET Tribal Water Quality Standards.

*****SEE NEXT PAGE FOR LIST OF NWPS GRANTED WITH CONDITIONS*****

NWPs Granted with Permit-Specific Conditions in addition to the Conditions listed above. (121.7(d)(2)):

NWP #	Permit-Specific Conditions	Why the condition is necessary to assure the proposed project will comply with water quality requirements	Citation that authorizes the condition
3. Maintenance	1) No more than 25 cubic yards of new or additional riprap may be placed to protect the structure or fill; 2) Bridge replacements must span the bankfull width and/or the ordinary highwater mark of the affected waters of the U.S. 3) Fill or dredged material shall not result in an increase in land contour height beyond the original dimensions for the repair of low water crossings, or loss of stream cross section dimensions. 4) Silt and sediment removal associated with low water crossings shall not exceed 50 linear feet. 5) Silt and sediment removal associated with bridge crossings shall not exceed 100 linear feet.	1) The placement of new or additional riprap without limiting the amount of impacts authorized could result in more than minimal adverse effects on water quality. Limiting the placement of additional riprap to no more than 25 cubic yards will help ensure that the placement provides localized erosion control without causing undesirable consequences to water quality and degradation of physical habitat. 2) The placement of a bridge/structure within bankfull width and/or the ordinary high water mark of a water of the U.S. would alter the hydrologic characteristics of the waterbody which could lead to an increased erosional force, scour around the bridge/structure during bankfull flows, high sediment loads to the waterbody, abandonment of the primary channel, and undermining of the structure itself. 3) The discharge of dredged or fill material which alters the contours of a waterbody and/or its riparian zone can result in the loss or change of breeding and nesting areas, escape cover, travel corridors, and preferred food sources for resident and transient wildlife species associated with the aquatic ecosystem. Without a linear foot limit associated with silt and sediment removal in waters of the U.S., excess removal can result in varying degrees of change in the complex	40 CFR 230.10(d); 40 CFR 230.73; 40 CFR 230.75 BLACKFEET Ordinances 1A, 18A, 4D, 45B, 57A, 58A, 61A, 64A, 75A, 76A, 79A, 87A, 89B, 95A, 109A, 110A, BLACKFEET TAS 1993, and BLACKFEET Tribal Water Quality Standards.

		physical, chemical, and biological characteristics. Excess silt and sediment removal may alter the direction or velocity of water flow or otherwise change the dimensions of a water body which can result in adverse changes to structure and dynamics of aquatic communities, erosion rates, and increases in suspended particulates. This justification applies to conditions 4 and 5.	
7. Outfall Structures	1) Construction of the outfall structure shall be placed at the streambed elevation and, at a minimum, the pipe should be sized to prevent high pressure discharge of stormwater. 2) Outfall structures shall not be constructed in wetlands. 3) Controls shall be put in place to stabilize all areas of the bed and bank around and adjacent to the outfall structure and associated intake structures that may be affected by outfall or stream flows, respectively. 4) Structures shall not result in a loss of waters of the U.S. (e.g. tile systems).	This justification covers condition 1 and 2. By specifying conditions on outfalls sizing, placement, and stabilization, these measures will help ensure that outfall structures are constructed such that they provide localized erosion control at the point(s) of discharge while minimizing habitat degradation and undesirable downstream impacts. 3) Erosion from outfall structures can be caused by several factors, such as uncontrolled stormwater runoff, inadequate energy dissipation structures, nick point migration, poor slope stabilization, or extreme storm events that exceed design capacities. Without stabilization controls in place, construction of outfall structures can lead to changes in erosion and deposition rates, increases in suspended particulates in the waterbody, and undermining of the outfall structure itself. 4) Structures that result in a loss of waters of the U.S. can degrade and/or eliminate aquatic habitat and adversely affect bottom-dwelling organisms at the site by smothering immobile forms or forcing mobile forms to migrate. These conditions are necessary to ensure that physical habitat and hydrologic characteristics of waters are not degraded; maintain the habitat and biology of the waters	40 CFR 230.7; 40 CFR 230.10; 40 CFR 230.10(d); 40 CFR 230.73; 40 CFR 230.70 BLACKFEET Ordinances 1A, 18A, 4D, 45B, 57A, 58A, 61A, 64A, 75A, 76A, 79A, 87A, 89B, 95A, 109A, 110A, BLACKFEET TAS 1993, and BLACKFEET Tribal Water Quality Standards.

		and ensure the hydrogeomorphology is not negatively impacted by the project.	
13. Bank Stabilization	1) Activities shall use of native vegetation or other bioengineered design techniques (e.g. willow plantings, root wads, large woody debris, etc.) or a combination of hard-armoring (e.g. rock) and native vegetation or bioengineered design techniques. Artificial soil stabilizing material (e.g. mulch, matting, netting, etc.) shall be used to reduce soil erosion. These materials, to include all plants and plant seed, shall be on site or scheduled for delivery prior to or upon completion of the earth moving activities. Sediment control measures shall be maintained in good working order at all times. 2) The slopes of disturbed banks should be configured to mimic a stable reach of the same stream within ½ mile in either direction of the project and not reduce the bottom width of the stream. 3) If flow conditions dictate the use of hardened structures, only appropriately sized angular rock may be used. Soil cement, concrete, grouted riprap, etc. may not be used.	This justification applies to conditions 1-3. While effective at preventing localized erosion, hard armoring used as streambank stabilization can have a number of negative downstream effects such as increasing flow velocities, impeding hydrologic interaction with the floodplain, and degrading physical habitat. Specifying the methods and techniques which can be used under NWP 13 will help prevent habitat degradation and minimize negative downstream impacts while also achieving localized streambank stabilization and erosion control.	CWA 303(a) 40 CFR 230.7;40 CFR 230.10(d); 40 CFR 230.72. BLACKFEET Ordinances 1A, 18A, 4D, 45B, 57A, 58A, 61A, 64A, 75A, 76A, 79A, 87A, 89B, 95A, 109A, 110A, BLACKFEET TAS 1993, and BLACKFEET Tribal Water Quality Standards.
14. Linear Transportation Projects	1) Stormwater from the construction and operation of these projects must be routed into constructed runoff water quality control systems (e.g. sediment basins, wet ponds, etc.) 2) Affected streambanks must be sloped such that the steam bottom width is not reduced, and bottom elevations are restored to original	This justification applies to conditions 1 - 3. Constructed water quality control systems sequester sediments and other pollutants from runoff, as well as reduce velocity of those flows, prior to entry into waters of the United States. Maintaining natural stream bottom widths and elevations limits increases in streamflow velocity and reduces the potential for streambed scouring and bank incising. Limiting bank slope reduces the potential for	40 CFR 230.7 and 230.10 BLACKFEET Ordinances 1A, 18A, 4D, 45B, 57A, 58A, 61A, 64A, 75A, 76A,

	elevations. In general, stream bank slopes should not be steeper than 3:1 unless there is a compelling reason. 3) Crossings must be placed as close to perpendicular to the water course as possible.	erosion, undercutting and slumping, which add sediment to streams. Perpendicular stream crossings minimize the length of stream bed and bank impacts for a project. Collectively, these controls will ensure that physical habitat and hydrologic characteristics of waters are not degraded, will maintain the habitat and biology of the waters and will ensure the hydrogeomorphology is not negatively impacted by the project.	79A, 87A, 89B, 95A, 109A, 110A, BLACKFEET TAS 1993, and BLACKFEET Tribal Water Quality Standards.
15. Bridges	1) Stormwater from the construction and operation of these projects (including runoff from bridge decks) must be routed into constructed runoff water quality control systems (e.g. sediment basins, wet ponds, etc.) 2) Affected streambanks must be sloped such that the steam bottom width is not reduced, and bottom elevations are restored to original elevations. 3) Crossings must be placed as close to perpendicular to the watercourse as possible. 4) Bridge decks must be designed such that they do not drain directly into the waterbody. 5) Bridges must span the bankfull width and/or ordinary high water mark of the affected waters of the U.S. Bridges may not impair flow under normal circumstances, should not produce eddies or unintended scour holes and should be designed to prevent accumulation of sediment that may block flows.	<u>This justification applies to conditions 1 - 3.</u> Constructed water quality control systems sequester sediments and other pollutants from runoff, as well as reduce velocity of those flows, prior to entry into waters of the United States. Maintaining natural stream bottom widths and elevations limits increases in streamflow velocity and reduces the potential for streambed scouring and bank incising. Limiting bank slope reduces the potential for erosion, undercutting and slumping, which add sediment to streams. Perpendicular stream crossings minimize the length of stream bed and bank impacts for a project. Collectively, these controls will ensure that physical habitat and hydrologic characteristics of waters are not degraded, will maintain the habitat and biology of the waters and will ensure the hydrogeomorphology is not negatively impacted by the project. 4) Drainage directly from the bridge decks may cause erosion, and introduce additional pollutants, such as oil, gas, sediment, and toxics. Directing bridge deck drainage into constructed runoff water quality control systems will help prevent erosion and keep pollutants from directly entering the waterway.	CWA 303(a) 40 CFR 230.7; 40 CFR230.10(d); 40 CFR 230.72 BLACKFEET Ordinances 1A, 18A, 4D, 45B, 57A, 58A, 61A, 64A, 75A, 76A, 79A, 87A, 89B, 95A, 109A, 110A, BLACKFEET TAS 1993, and BLACKFEET Tribal Water Quality Standards.

		5) The placement of a bridge/structure within bankfull width and/or the ordinary high water mark of a Water of the U.S. would alter the hydrologic characteristics of the waterbody which could lead to an increased erosional forces, scour around the bridge/structure during bankfull flows, high sediment loads to the waterbody, abandonment of the primary channel, and undermining of the structure itself.	
19. Minor Dredging	Dredged or fill materials must be placed in uplands and controlled such that it cannot return to waters of the U.S. Dredged or fill material may not be placed on temporary islet, islands, sandbars, landmass or other area of sediment accumulation within the banks of a stream, shore of lake, edge of wetland or other type of waterbody, unless the vegetation and geomorphology signify a long term stable configuration (e.g. areas of accumulation are not formed from temporary situations such as drought conditions or temporary upstream reservoir release conditions).	Placement of dredged or fill material in these locations may be susceptible to being washed away by high flows, which would contribute to sedimentation and potential conveyance of pollutants downstream. This condition is necessary to ensure that physical habitat and hydrologic characteristics of waters are not degraded; maintain the habitat and biology of the waters and ensure the hydrogeomorphology is not negatively impacted by the project.	40 CFR 230.10(d); 40 CFR 230.70 BLACKFEET Ordinances 1A, 18A, 4D, 45B, 57A, 58A, 61A, 64A, 75A, 76A, 79A, 87A, 89B, 95A, 109A, 110A, BLACKFEET TAS 1993, and BLACKFEET Tribal Water Quality Standards.
27. Aquatic Ecosystem Restoration, Enhancement, and Establishment Activities	Activities that may result in a discharge into waters of the United States shall not result in conversion of one habitat type to another (e.g. wetlands to open water).	Aquatic habitat restorations that convert from one habitat type to another can alter the functions and services provided by the existing resources resulting in a functional loss. This condition is necessary to ensure that physical habitat and hydrologic characteristics of waters are not degraded;	Tribal WQR (see endnote ii-xiv); 40 CFR 230.10(d); 40 CFR 230.75

		maintain the habitat and biology of the waters and ensure the hydrogeomorphology is not negatively impacted by the project.	BLACKFEET Ordinances 1A, 18A, 4D, 45B, 57A, 58A, 61A, 64A, 75A, 76A, 79A, 87A, 89B, 95A, 109A, 110A, BLACKFEET TAS 1993, and BLACKFEET Tribal Water Quality Standards.
43. Stormwater Management Facilities	Certification is granted with conditions only for replacement and repair activities that impact (e.g., fill, relocate, realign or straighten) no more than 300 LF of stream or 1/10 acre of waters of the U.S.	Activities with more than 300 LF or 1/10 acre of waters of the U.S. of stream impact could result in more than minimal adverse environmental effects to water quality. This condition is necessary to ensure that water quality is not degraded, the biology of the waters are not negatively impacted by the project, and that no toxic compounds in toxic amounts will be used.	40 CFR 230.10(d); 40 CFR 230.73; 40 CFR 230.75 BLACKFEET Ordinances 1A, 18A, 4D, 45B, 57A, 58A, 61A, 64A, 75A, 76A, 79A, 87A, 89B, 95A, 109A, 110A, BLACKFEET TAS 1993, and BLACKFEET Tribal Water Quality Standards.

57. Electric Utility Line and Telecom Activities	Construction activities shall not impact (e.g., fill, relocate, realign or straighten) more than 300 LF of stream for a single and complete project.	Activities with more than 300 LF of stream impact could result in more than minimal adverse environmental effects to water quality. This condition is necessary to ensure that physical habitat and hydrologic characteristics of waters are not degraded; maintain the habitat and biology of the waters and ensure the hydrogeomorphology is not negatively impacted by the project.	CWA sections 301, 302, 303, 306, and 307 BLACKFEET Ordinances 1A, 18A, 4D, 45B, 57A, 58A, 61A, 64A, 75A, 76A, 79A, 87A, 89B, 95A, 109A, 110A, BLACKFEET TAS 1993, and BLACKFEET Tribal Water Quality Standards.
59. Water Reclamation and Reuse	Activities shall not impact (e.g., fill, relocate, realign or straighten) more than 300 LF of stream channel for a single and complete project.	Activities with more than 300 LF of stream impact could result in more than minimal adverse environmental effects to water quality. This condition is necessary to ensure that physical habitat and hydrologic characteristics of waters are not degraded; maintain the habitat and biology of the waters and ensure the hydrogeomorphology is not negatively impacted by the project.	CWA sections 301, 302, 303, 306, and 307 BLACKFEET Ordinances 1A, 18A, 4D, 45B, 57A, 58A, 61A, 64A, 75A, 76A, 79A, 87A, 89B, 95A, 109A, 110A, BLACKFEET TAS 1993, and BLACKFEET Tribal Water

			Quality Standards.

NWPs Denied (121.7(e)(2))

For the reasons below, BLACKFEET has determined that the discharges from the following NWPs will not comply with water quality requirements. Therefore, CWA Section 401 certification is denied, and applicants must apply for an individual water quality certification. Denials apply to all BLACKFEET lands and waters of the Tribes.

*** Reviewer NOTE: For readability of the table we have removed the column with the heading, "The following water quality data or information would be needed to assure that the range of discharges from potential projects will comply with water quality requirements." This information follows the table and is the same for all NWPs where certification is denied. ***

NWP #	Water quality requirement with which discharges that could be authorized by the general license or permit will not comply	Brief statement explaining why discharges that could be authorized by the general license or permit will not comply with this water quality requirement
12. O&G Pipeline Activities	CWA sections 301, 302, 303, 306, and 307 (see endnote i); 40 CFR 230 Subpart C Section 311 and implementing regulations BLACKFEET Ordinances 1A, 18A, 4D, 45B, 57A, 58A, 61A, 64A, 75A, 76A, 79A, 87A, 89B, 95A, 109A, 110A, BLACKFEET TAS 1993, and BLACKFEET Tribal Water Quality Standards.	The activities permitted under this NWP will not comply with this water quality requirement because there are no limits on the linear foot impacts to streams. Without the 300 linear foot limit in place, discharges permitted under this NWP would allow many thousands of linear feet of impacts resulting in more than minimal adverse effects to water quality individually and cumulatively. In addition, the removal of the PCN requirement for activities that involve mechanized land clearing in forested wetlands does not allow the evaluation of the functional loss from conversion of wetland type from a forested wetland, which may modify habitat and alter water levels beyond normal water fluctuations, inhibiting the existing uses of the waterbody. This NWP is denied because of historic issues with crossings. The two main construction methods for crossing aquatic resources are trenching and horizontal directional drilling (HDD). Trenching and HDD potential discharges and impacts to the aquatic resources are significantly different and require significantly different conditions to address the potential water quality impacts. There is a high percentage of failures for HDD, either complete or partial. Trenching also runs into

		significant issues that require reconsideration, re-permitting and, in the past, amended certifications. Both have been known to trigger scour and expose pipelines that can be addressed with certification conditions. Past projects have experienced many failures, such as blow outs, the inability to continue drilling due to rock blockages, sandy or fine silt conditions that lead to collapse and surface failures lost and other failure events. HDD introduces many additional compounds that are often released into the aquatic resources: drilling fluids often contain compounds that are toxic, harmful (caustic or acidic), anti-corrosives, drag-reducing agents, or drag-reducing polymers, welding residues. There is also the known impacts of leaks in high-pressure pipes after installation, which erode the soil above the bore hole. Failures are common in Region 8 for numerous reasons including drilling spec that include steep angles too steep for conditions, failure to address geology and hydrogeology characteristics (migrating streams and rivers), not addressing the issue with soils. Soil type greatly impacts the feasibility of an HDD installation fine and fragile soils, sandy soils, mixed soils such as disturbance sites, riparian and flood plains with glacial till, soils with blocking pebbles, boulders, gravelly soils require design and construction mitigation measures, or may make an HDD installation infeasible. Failure to have on site surveillance during drilling can increase the levels of impacts such as surface heave or humping. This is usually a result of excess pumping of drilling fluids after a loss of circulation. **Trenching** crossing on the other hand or a change from HDD construction to trenching leads to other concerns including sediment release during trenching, backfilling and stabilizing bed and bank, must divert waters, significantly disturbing the bank and bed, fishery life cycles, including breading and migration, and passage issues; failures of diversion structures during high flows, failure to address the basic geological history of the area and the resulting natural resources. Trenching is much more difficult in areas of rock or frequent rock outcrops. Impacts and effect effects include alterations to streambed conditions and characteristics; reductions in the abundance and diversity of benthic invertebrate

		communities; and reductions in the abundance of fish populations and impacting life cycles due to imbedded sediment
16. Return Water from Upland Contained Disposal Areas	40 CFR § 230.23 307 toxics BLACKFEET Ordinances 1A, 18A, 4D, 45B, 57A, 58A, 61A, 64A, 75A, 76A, 79A, 87A, 89B, 95A, 109A, 110A, BLACKFEET TAS 1993, and BLACKFEET Tribal Water Quality Standards.	Return water from upland contained disposal areas can contain debris, sediment, and other pollutants which would be discharged into aquatic resources under this NWP. The return water itself can modify current patterns and dimensions of a waterbody while any debris or sediment in the return water can result in adverse impacts through sedimentation and oxygen depletion from nutrient adsorption of suspended material.
17. Hydropower Projects	40 CFR 230.23 40 CFR 230.24 BLACKFEET Ordinances 1A, 18A, 4D, 45B, 57A, 58A, 61A, 64A, 75A, 76A, 79A, 87A, 89B, 95A, 109A, 110A, BLACKFEET TAS 1993, and BLACKFEET Tribal Water Quality Standards.	Discharges of dredged or fill material associated with hydropower projects having less than 10,000 kW of total generating capacity can alter the normal water-level fluctuation pattern of an area, resulting in prolonged periods of inundation, exaggerated extremes of high and low water, or a static, nonfluctuating water level. These alterations can change salinity patterns, alter erosion or sedimentation rates, alter water temperatures.
21. Surface Coal Mining Activities	CWA sections 301, 302, 303, 306, and 307 (see endnote i); 40 CFR 230 Subpart C, Subpart D BLACKFEET Ordinances 1A, 18A, 4D, 45B, 57A, 58A, 61A, 64A, 75A, 76A, 79A, 87A, 89B, 95A, 109A, 110A, BLACKFEET TAS 1993, and BLACKFEET Tribal Water Quality Standards.	The activities permitted under this NWP will not comply with this water quality requirement because there are no limits on the linear foot impacts to streams. Without the 300 linear foot limit in place, discharges permitted under this NWP would allow many thousands of linear feet of impacts resulting in more than minimal adverse water quality effects individually and cumulatively. Discharges associated with surface coal mining activities can result in varying degrees of change in the complex physical, chemical, and biological characteristics of the substrate. These changes can adversely effect the level of water quality such that existing instream water uses will no longer be maintained and protected.
24. Indian Tribe or State Administered	CWA 404(g) implementing regulations BLACKFEET Ordinances 1A, 18A, 4D, 45B, 57A, 58A, 61A, 64A, 75A, 76A, 79A, 87A,	These conditions will help ensure applicants comply with the terms and conditions of the CWA § 404 certifications of the NWPs on applicable BLACKFEET lands.

Section 404 Programs	89B, 95A, 109A, 110A, BLACKFEET TAS 1993, and BLACKFEET Tribal Water Quality Standards.	
29. Residential Developments	CWA sections 301, 302, 303, 306, and 307 (see endnote i); 40 CFR 230 Subpart C, Subpart D BLACKFEET Ordinances 1A, 18A, 4D, 45B, 57A, 58A, 61A, 64A, 75A, 76A, 79A, 87A, 89B, 95A, 109A, 110A, BLACKFEET TAS 1993, and BLACKFEET Tribal Water Quality Standards.	The activities permitted under this NWP will not comply with this water quality requirement because there are no limits on the linear foot impacts to streams. Without the 300 linear foot limit in place, discharges permitted under this NWP would allow many thousands of linear feet of impacts resulting in more than minimal adverse water quality effects individually and cumulatively. Discharges associated with residential developments under NWP 29 can result in significant losses to ecosystem services provided by existing aquatic resources. Adverse impacts may result from changes in water levels, flow, chemical content, substrate characteristics, or salinity and can result in losses to important breeding and nesting areas, food sources, and travel corridors for aquatic wildlife.
34. Cranberry Production	40 CFR 230.23 40 CFR 230.24 BLACKFEET Ordinances 1A, 18A, 4D, 45B, 57A, 58A, 61A, 64A, 75A, 76A, 79A, 87A, 89B, 95A, 109A, 110A, BLACKFEET TAS 1993, and BLACKFEET Tribal Water Quality Standards.	Discharges of dredged or fill material associated with cranberry production can alter the normal water-level fluctuation pattern of an area, resulting in prolonged periods of inundation, exaggerated extremes of high and low water, or a static, nonfluctuating water level. These alterations can change salinity patterns, alter erosion or sedimentation rates, and alter water temperatures which can alter or destroy communities and populations of aquatic animals and vegetation, induce populations of nuisance organisms, modify habitat, reduce food supplies, restrict movement of aquatic fauna, destroy spawning areas, and change surrounding areas.
37. Emergency Watershed Protection and Rehabilitation	BLACKFEET Ordinances 1A, 18A, 4D, 45B, 57A, 58A, 61A, 64A, 75A, 76A, 79A, 87A, 89B, 95A, 109A, 110A, BLACKFEET TAS 1993, and BLACKFEET Tribal Water Quality Standards.	Certification is denied for channelization of streams or sloughs or for removal of silt beyond what was deposited by the emergency. *Channelization is defined, for this purpose, as the placement of excess material in a manner that modifies the bank alignment, and subsequently the channel alignment, from its present condition.* Certification is denied for a discharge of fill or dredged material into special aquatic sites if a practicable alternative that does not involve discharge into a special aquatic site is available. If discharge into a special aquatic site is unavoidable,

		discharge must be minimized. The applicant must provide a delineation of any special aquatic sites that may be impacted by the project discharges. A delineation of riparian areas to be cleared and an analysis of alternatives and necessity of such clearing must be submitted. The disturbing or clearing of riparian areas shall be minimized to enough space to provide equipment access. Construction of temporary structures or drains for the purpose of reducing or preventing flood damage is certified if the site is returned to pre-flood condition within 60 days following the emergency. Repair of permanent structures damaged by floodwaters is certified to the extent that it returns the structure to pre-flood condition.
39. Commercial Development	CWA sections 301, 302, 303, 306, and 307 (see endnote i); 40 CFR 230 Subpart C, Subpart D BLACKFEET Ordinances 1A, 18A, 4D, 45B, 57A, 58A, 61A, 64A, 75A, 76A, 79A, 87A, 89B, 95A, 109A, 110A, BLACKFEET TAS 1993, and BLACKFEET Tribal Water Quality Standards.	The activities permitted under this NWP will not comply with this water quality requirement because there are no limits on the linear foot impacts to streams. Without the 300 linear foot limit in place, discharges permitted under this NWP would allow many thousands of linear feet of impacts resulting in more than minimal adverse water quality effects individually and cumulatively. Discharges of dredged or fill material associated with commercial development activities permitted under NWP 39 can result in degradation of water quality such that existing instream water uses are no longer maintained. These activities can result in changes to the physical, chemical, and biological characteristics of the aquatic ecosystem that may result in water quality which does not support the propagation of fish, shellfish, and wildlife and recreation in and on the water.
40. Agricultural Activities	CWA sections 301, 302, 303, 306, and 307 (see endnote i); 40 CFR 230 Subpart C, Subpart D BLACKFEET Ordinances 1A, 18A, 4D, 45B, 57A, 58A, 61A, 64A, 75A, 76A, 79A, 87A, 89B, 95A, 109A, 110A, BLACKFEET TAS 1993,	The activities permitted under this NWP will not comply with this water quality requirement because there are no limits on the linear foot impacts to streams. Without the 300 linear foot limit in place, discharges permitted under this NWP would allow many thousands of linear feet of impacts resulting in more than minimal adverse water quality effects individually and cumulatively.

	and BLACKFEET Tribal Water Quality Standards.	Agricultural activities under NWP 40 which may result in the discharge of dredged or fill material can change the material chemistry and physical characteristics of a waterbody through the introduction of chemical constituents in suspended or dissolved form. These changes may reduce or eliminate the suitability of waterbodies for aquatic organisms, human consumption, or recreation.
42. Recreational Facilities	CWA sections 301, 302, 303, 306, and 307 (see endnote i); 40 CFR 230 Subpart C, Subpart D BLACKFEET Ordinances 1A, 18A, 4D, 45B, 57A, 58A, 61A, 64A, 75A, 76A, 79A, 87A, 89B, 95A, 109A, 110A, BLACKFEET TAS 1993, and BLACKFEET Tribal Water Quality Standards.	The activities permitted under this NWP will not comply with this water quality requirement because there are no limits on the linear foot impacts to streams. Without the 300 linear foot limit in place, discharges permitted under this NWP would allow many thousands of linear feet of impacts resulting in more than minimal adverse water quality effects individually and cumulatively. Discharges of dredged or fill material associated with recreational facilities permitted under NWP 42 can result in degradation of water quality such that existing instream water uses are no longer maintained. These activities can result in changes to the physical, chemical, and biological characteristics of the aquatic ecosystem that may result in water quality which does not support the propagation of fish, shellfish, and wildlife and recreation in and on the water.
44. Mining Activities	CWA sections 301, 302, 303, 306, and 307 (see endnote i); 40 CFR 230 Subpart C, Subpart D BLACKFEET Ordinances 1A, 18A, 4D, 45B, 57A, 58A, 61A, 64A, 75A, 76A, 79A, 87A, 89B, 95A, 109A, 110A, BLACKFEET TAS 1993, and BLACKFEET Tribal Water Quality Standards.	The activities permitted under this NWP will not comply with this water quality requirement because there are no limits on the linear foot impacts to streams. Without the 300 linear foot limit in place, discharges permitted under this NWP would allow many thousands of linear feet of impacts resulting in more than minimal adverse water quality effects individually and cumulatively. Discharges associated with mining activities may result in an increase in turbidity to the extent which reduces the water quality necessary to support the propagation of fish, shellfish, wildlife, and recreation in and on the water. The biological and chemical context of the suspended material may also react with the dissolved oxygen in the water which can result in oxygen depletion. Toxic compounds absorbed or adsorbed to fine-grained particulates in suspended material may become biologically available to organisms either in the water column or on the substrate. Discharges from these activities may increase the availability of contaminants in the aquatic ecosystem which may lead to the bioaccumulation of such contaminants in wildlife.

49. Coal Remining	40 CFR 230.23 40 CFR 230.24 BLACKFEET Ordinances 1A, 18A, 4D, 45B, 57A, 58A, 61A, 64A, 75A, 76A, 79A, 87A, 89B, 95A, 109A, 110A, BLACKFEET TAS 1993, and BLACKFEET Tribal Water Quality Standards.	Discharges associated with the remining and reclamation of lands that were previously mined for coal may result in an increase in turbidity to the extent which reduces the water quality necessary to support the propagation of fish, shellfish, wildlife, and recreation in and on the water. The biological and chemical context of the suspended material may also react with the dissolved oxygen in the water which can result in oxygen depletion. Toxic compounds absorbed or adsorbed to fine-grained particulates in suspended material may become biologically available to organisms either in the water column or on the substrate.
50. Underground Coal Mining	CWA sections 301, 302, 303, 306, and 307 (see endnote i); 40 CFR 230 Subpart C, Subpart D BLACKFEET Ordinances 1A, 18A, 4D, 45B, 57A, 58A, 61A, 64A, 75A, 76A, 79A, 87A, 89B, 95A, 109A, 110A, BLACKFEET TAS 1993, and BLACKFEET Tribal Water Quality Standards.	The activities permitted under this NWP will not comply with this water quality requirement because there are no limits on the linear foot impacts to streams. Without the 300 linear foot limit in place, discharges permitted under this NWP would allow many thousands of linear feet of impacts resulting in more than minimal adverse water quality effects individually and cumulatively. Discharges associated with underground coal mining activities may result in an increase in turbidity to the extent which reduces the water quality necessary to support the propagation of fish, shellfish, wildlife, and recreation in and on the water. The biological and chemical context of the suspended material may also react with the dissolved oxygen in the water which can result in oxygen depletion. Toxic compounds absorbed or adsorbed to fine-grained particulates in suspended material may become biologically available to organisms either in the water column or on the substrate. Discharges from these activities may increase the availability of contaminants in the aquatic ecosystem which may lead to the bioaccumulation of such contaminants in wildlife.
51. Land-based Renewable Energy	CWA sections 301, 302, 303, 306, and 307 (see endnote i); 40 CFR 230 Subpart C, Subpart D BLACKFEET Ordinances 1A, 18A, 4D, 45B, 57A, 58A, 61A, 64A, 75A, 76A, 79A, 87A, 89B, 95A, 109A, 110A, BLACKFEET TAS 1993,	The activities permitted under this NWP will not comply with this water quality requirement because there are no limits on the linear foot impacts to streams. Without the 300 linear foot limit in place, discharges permitted under this NWP would allow many thousands of linear feet of impacts resulting in more than minimal adverse water quality effects individually and cumulatively.

	and BLACKFEET Tribal Water Quality Standards.	Land-based renewable energy activities may result in an increase in suspended particulates entering waterbodies as a result of land runoff and direct dredging or filling. Suspended particulates may remain in the water column for varying amounts of time, reducing light penetration and lowering photosynthesis rates for aquatic vegetation.
52. Water-based Renewable Energy	CWA sections 301, 302, 303, 306, and 307 (see endnote i); 40 CFR 230 Subpart C, Subpart D BLACKFEET Ordinances 1A, 18A, 4D, 45B, 57A, 58A, 61A, 64A, 75A, 76A, 79A, 87A, 89B, 95A, 109A, 110A, BLACKFEET TAS 1993, and BLACKFEET Tribal Water Quality Standards.	The activities permitted under this NWP will not comply with this water quality requirement because there are no limits on the linear foot impacts to streams. Without the 300 linear foot limit in place, discharges permitted under this NWP would allow many thousands of linear feet of impacts resulting in more than minimal adverse water quality effects individually and cumulatively. Discharges associated with water-based renewable resources can have adverse impacts on water-related recreation including both consumptive and non-consumptive uses. Impacts from these activities may impair or water use by changing turbidity, increasing suspended particulates, altering water temperature, changing habitat, and other changes to the aquatic ecosystem.
53. Removal of Low Head Dams	40 CFR 230.23 40 CFR 230.24 BLACKFEET Ordinances 1A, 18A, 4D, 45B, 57A, 58A, 61A, 64A, 75A, 76A, 79A, 87A, 89B, 95A, 109A, 110A, BLACKFEET TAS 1993, and BLACKFEET Tribal Water Quality Standards.	The removal of low head dams in the arid and semi-arid west, where natural recovery can be slow, many times requires active restoration to achieve a net increase in ecological functions and services. Otherwise, the removal of the dam can lead to adverse impacts including significant increases in suspended particulate levels and sedimentation downstream which may cause oxygen depletion and destruction of habitat.
58. Utility Line Activities for Water and other Substances	40 CFR 230.20 40 CFR 230.23 40 CFR 230.24 BLACKFEET Ordinances 1A, 18A, 4D, 45B, 57A, 58A, 61A, 64A, 75A, 76A, 79A, 87A, 89B, 95A, 109A, 110A, BLACKFEET TAS 1993, and BLACKFEET Tribal Water Quality Standards.	Discharges resulting from the numerous activities permitted under this NWP may directly impact bottom-dwelling organisms by limiting aquatic organism movement, by smothering immobile forms, or by forcing mobile forms to migrate to potentially unsuitable habitat. Erosion, slumping, or lateral displacement of surrounding bottom can adversely affect areas of the substrate outside of discharge location by changing or destroying habitat. These changes may degrade water quality such that the waters no longer support the propagation of fish, shellfish, wildlife, and recreation in and on the waterbody.

A. Activities to Improve Passage of Fish and Other Aquatic Organisms	40 CFR 230.23 40 CFR 230.24 BLACKFEET Ordinances 1A, 18A, 4D, 45B, 57A, 58A, 61A, 64A, 75A, 76A, 79A, 87A, 89B, 95A, 109A, 110A, BLACKFEET TAS 1993, and BLACKFEET Tribal Water Quality Standards.	Discharges that could be authorized under a general license or permit will not comply with this water quality requirement because the proposed activities to improve passage of fish and aquatic organisms involve site-specific conditions and potential short-term disturbances (e.g., sediment mobilization, flow alteration, or habitat disruption) that cannot be adequately evaluated or controlled under the standardized conditions of a general authorization. Compliance with water quality standards for fish and aquatic organism passage requires project-specific review, timing, and mitigation measures to ensure protection of designated uses, which necessitates individual authorization.

Blackfeet Tribe Water Quality Certification for the U.S. Corps of Engineers

Water quality data or information would be needed to assure that the range of discharges from potential projects will comply with water quality requirements.

- the name or segment identifier for the receiving water, conditions and types of receiving waters and the quantities to be lost, impacts to known beneficial and current Tribal uses
- the exact and specific location of the project discharge and project site
- the project site to be impacted, primary discharge location of the project, any possible additional discharges, bypasses or fill locations. Locations should be submitted in a format that adequately shows the fill or discharge location: point, line or polygon
    - ArcGIS File Geodatabase with accompanying Feature Classes
    - ArcGIS Shapefile
    - CAD file, DXF or DWG file projected to WGS 84 Decimal Degrees
    - KMZ/KML (Google Earth)
    - Decimal Latitude/longitude for a discrete point, line or polygon
- any available site-specific baseline conditions or monitoring data for the project site (chemical, biological or physical characteristic assessments and data).
- Cultural and historic surveys, endangered and threatened species information, species of cultural concern information
- Downstream uses of the water, distance to a downstream or adjacent jurisdiction
- Construction methodology, including placement, trenching, directional drilling, use of temporary diversions, amount of fill, type of fill etc.

- Any potential for toxics in toxic amounts, any potential oil and gas discharges during construction or operation (narrative standards)
- Restoration and mitigation plans.

Any potential for toxics in toxic amounts, any potential oil and gas discharges during construction or operation (narrative standards)

Blackfeet Tribe Water Quality Certification for the U.S. Corps of Engineers

BLACKFEET Ordinances Cited

Ordinance 1A. 1944. Fish and Game Regulations Governing Fishing, Hunting and Trapping within the Boundaries of the Blackfeet Indian Reservation, Montana. Blackfeet Tribe.

Ordinance 18A. 1953. Membership of Confederated Tribes. Blackfeet Tribe.

Ordinance 44D. 1986. Tribal Hunting and Fishing Conservation Ordinance. Blackfeet Tribe.

Ordinance 45B. 2004. Blackfeet Tribe Consolidated Land Ordinance.

Ordinance 57A. 1974. Ordinance Governing the Lease of all Tribal Lands Below the High Water Mark of the South Half of Flathead Lake. Blackfeet Tribe.

Ordinance 58A. 1974. Ordinance for the Flathead Reservation Concerning the Protection of Streams and other Waterways. Blackfeet Tribe.

Ordinance 61A. 1986. Flathead Reservation Tribal Permit Policy and Regulations. Blackfeet Tribe.

Ordinance 64A. 1977. Shoreline Protection Ordinance. Blackfeet Tribe.

Ordinance 75A. 1982. Water Code of the Blackfeet Tribe of the Flathead Reservation, Montana.

Ordinance 76A. 1982. Water Planning Ordinance of the Blackfeet Tribe of the Flathead Reservation, Montana.

Ordinance 79A. 1982. An Ordinance Establishing the Mission Mountain Tribal Wilderness and Outlining Broad Guidelines and Policies for its Management. Blackfeet Tribe.

Ordinance 87A. 1985. Aquatic Lands Conservation Ordinance. Blackfeet Tribe.

Ordinance 89B. 1990. Water Quality Management Ordinance. Blackfeet Tribe.

Ordinance 95A. 1995. Cultural Resource Protection Ordinance. Blackfeet Tribe.

Ordinance 109A. 2011. Marine Even Ordinance. Blackfeet Tribe.

Ordinance 110A. 2020. Blackfeet Indian Reservation Research Protection Ordinance. Blackfeet Tribe.
BLACKFEET Water Quality Standards. 2018. Surface Water Quality Standards and Antidegradation Policy. Blackfeet Tribe.

BLACKFEET Treatment as a State (TAS). 1993. Decision Document: Approval of Blackfeet Tribe Application for Treatment as a State Under Section 303 of the Clean Water Act.

[i] CWA sections 301, 302, 303, 306, and 307 are listed in CWA section 401(a)(1) and, therefore, those sections and federal regulations implementing those sections can be considered water quality requirements and provide a legal basis for certification grants, denials or conditions. Section 303 and EPA's implementing regulations at Part 131 establish "existing uses" as "the absolute floor of water quality in all waters of the United States." 48 Fed. Reg. 51,400, 51,403 (Nov. 8, 1983). Existing uses are "those uses actually attained in the water body on or after November 28, 1975, *whether or not they are included in the water quality standards*." 40 C.F.R. § 131.3(e) (emphasis added). As a result, States are prohibited from removing designated uses from a waterbody segment if they are existing uses unless establishing a use with even more stringent criteria, 40 C.F.R. § 131.10(h), and existing instream water uses and the level of water quality necessary to protect the existing uses shall be maintained and protected even if degradation is allowed under a State antidegradation policy, 40 C.F.R. § 131.12(a)(1). As a result, regardless of what water quality standards may be applicable to a water of the US, no discharge may be authorized under the CWA that would be so extensive as to change or destroy an existing use of that waterbody. Additionally, Section 404 is incorporated by reference into section 401(a)(1) and 401(d) by virtue of section 301(a), which prohibits the discharge of any pollutant by any person"[e]xcept as in compliance with this section and section[] . . . 404 of this title…" Section 404(a) authorizes the permitting of discharges of dredge or fill material "into the navigable waters at specified disposal sites." Under Section 404(b), those sites must be specified "through the application of guidelines developed by the Administrator, in conjunction with the Secretary." These guidelines, the CWA 404(b)(1) Guidelines, are contained at 40 CFR Part 230, establish requirements for all permitted Section 404 discharges, including a requirement that such discharges must comply with all State water quality standards. 40 C.F.R. § 230.10(b)(1) & (2).

FLATHEAD
SALISH KOOTENAI
NATION

A Confederation of the Salish,
Pend d' Oreille
and Kootenai Tribes

THE CONFEDERATED SALISH AND KOOTENAI TRIBES
OF THE FLATHEAD NATION
P.O. BOX 278
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Website:www.cskt.org

A People of Vision

November 17th, 2025

Sage L. Joyce
Montana Section Chief
U.S. Army Corps of Engineers
100 Neill Avenue
Helena, Montana 59601

RE: 401 Water Quality Certification Request for 2026 NWPs - RPT Reminders

Dear Ms. Joyce,

The Confederated Salish and Kootenai Tribes' (CSKT) Natural Resources Department (NRD) received a 401 Certification request from The Omaha District regarding the Water Quality Certification Request for 2026 NWPs. The Tribal NRD Water Quality Program has reviewed the 401-certification request and certifies the general permit with no conditions. CSKT does not have a public notice and response to comment for 401 certifications.

CSKT recognizes that he following Nationwide Permit (NWP) regional conditions will be used in the State of Montana. The issuance of the 2026 NWPs was announced in the June 18, 2025, issue of the Federal Register (90 FR 26100). Regional conditions are placed on NWPs to ensure projects result in no more than minimal adverse impacts to the aquatic environment and to address local resources concerns.

Sincerely,

Rich Janssen,
Natural Resources Department Head

Cc: Chauncey Means, Environmental Protection Division Manager
Frank Acevedo, Shoreline Protection Administrator
John Harrison, Tribal Attorney

REGION 8
DENVER, CO 80202

December 16, 2025

SENT VIA EMAIL

Sage L. Joyce
U.S. Army Corps of Engineers
Omaha District
Montana Regulatory Office
Sage.L.Joyce@usace.army.mil

RE: Clean Water Act Section 401 Water Quality Certification of the U.S. Army Corps of Engineers 2026 Nationwide Permits in Montana

Dear Ms. Joyce:

Please find enclosed the water quality certification decisions consistent with Section 401 of the Clean Water Act (CWA) for the reissuance of the Nationwide Permits (NWP). On June 18, 2025, the U.S. Environmental Protection Agency, Region 8 received the U.S. Army Corps of Engineers' requests for water quality certification under CWA Section 401 for the proposed 2026 NWPs. The EPA reviewed the June 18, 2025, Federal Register[1] notice announcing the reissuance of the NWPs, along with the regional conditions proposed by the Omaha District for Montana. The enclosed CWA section 401 water quality certification decision applies where the EPA is the certifying authority and includes Indian country[2] lands within the state of Montana[3] and lands of exclusive federal jurisdiction in relevant respects within the state of Montana.[4]

[1] See 90 FR 26100 (June 18, 2025).
[2] Indian country is defined at 18 U.S.C. § 1151.
[3] Indian country in Montana generally includes (1) lands within the exterior boundaries of the following Indian reservations located within Montana: the Blackfeet Indian Reservation, the Crow Indian Reservation, the Flathead Reservation, the Fort Belknap Reservation, the Fort Peck Indian Reservation, the Northern Cheyenne Indian Reservation, and the Rocky Boy's Reservation; (2) any land held in trust by the United States for an Indian Tribe (including but not limited to the Little Shell Tribe of Chippewa Indians and the Turtle Mountain Band of Chippewa Indians); and (3) any other areas that are "Indian country" within the meaning of 18 U.S.C. Section 1151. The enclosed CWA Section 401 certification document specifies where these decisions apply.
[4] An inventory report compiled by the U.S. General Services Administration for federal properties as of 1962 identifies properties that may contain exclusive federal jurisdiction. This document is accessible at https://www.congress.gov/116/meeting/house/110088/documents/HHRG-116-II13-20191017-SD044.pdf. The EPA notes that this inventory report is not all-inclusive and that the information contained within it has not been recently confirmed

Please provide this certification to any project proponent (or their designated agent) contacting the Corps regarding applicable projects that may be authorized under the 2026 NWPs. If a project proposal does not meet either the general or NWP-specific certification conditions contained herein, the project proponent must request an individual certification from EPA Region 8 at R8CWA401@epa.gov. Project proponents are encouraged to contact EPA Region 8 during the project planning phase if there are 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. Prior to work commencing, EPA recommends that project proponents notify the appropriate Tribal Environmental Office, if applicable.

Thank you for your ongoing partnership and coordination in implementing CWA regulatory programs. Please contact Tanya Code with any questions at (303) 312-6110 or Code.Tanya@epa.gov. If your staff have questions, please have them contact Estella Moore at (303) 312-6357 or R8CWA401@epa.gov.

Sincerely,

Stephanie DeJong, Manager
Clean Water Branch

Enclosure

CC: Wilfred Lambert, Acting Environmental Director, Assiniboine and Sioux Tribes
Gerald Wagner, Environmental Program Director, Blackfeet Tribe
Daryl Wright, Environmental Program Director, Chippewa Cree Indians
Marvin Stops, Jr., Environmental Program Director, Crow Tribe
Mitch Healy, Acting Environmental Program Director, Fort Belknap Indian Community
Charlene Alden, Environmental Program Director, Northern Cheyenne Tribe

and/or updated. Please contact EPA Region 8 at R8CWA401@epa.gov with questions regarding the jurisdictions where this certification decision applies.

U.S. Environmental Protection Agency Region 8's Clean Water Act Section 401 Certification of the 2026 Nationwide Permits in the State of Montana

December 16, 2026

Clean Water Act (CWA) Section 401 requires applicants for Federal licenses or permits to conduct any activity which may result in any discharge into waters of the United States to obtain a certification or waiver from the certifying authority where the discharge originates or will originate. Where no state or Tribe has authority to give such certification, the U.S. Environmental Protection Agency is the certifying authority. 33 U.S.C. 1341(a)(1). In this case, the Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation, the Blackfeet Tribe, and the Northern Cheyenne Tribe have authority to provide CWA Section 401 certifications for projects occurring on their reservations, but not on Tribal trust lands outside of their reservations within the state of Montana. The Crow Tribe, the Fort Belknap Indian Community of the Fort Belknap Reservation, and the Chippewa Cree Indians of the Rocky Boy's Reservation also do not have authority to provide CWA Section 401 certifications for projects occurring on their reservations or any other Indian country[1] lands within the state of Montana, and the Turtle Mountain Band of Chippewa Indians does not have authority to provide CWA Section 401 certifications for projects occurring on their Tribal trust lands within the state of Montana. Therefore, the EPA is making the CWA Section 401 certification decision for the 2026 Nationwide Permit reissuance in the state of Montana within the reservation and other Indian country lands listed above where the Tribes do not have authority to make the certification decisions. Additionally, the state of Montana does not have authority to provide CWA section 401 certification for project within lands of exclusive federal jurisdiction in relevant respects.[2] Therefore, EPA is also making the certification decision for the 2026 NWP reissuance for projects within lands of exclusive federal jurisdiction in relevant respects that may be authorized under the 2026 NWPs.

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[1] Indian country in Montana generally includes (1) lands within the exterior boundaries of the following Indian reservations located within Montana: the Blackfeet Indian Reservation, the Crow Indian Reservation, the Flathead Reservation, the Fort Belknap Reservation, the Fort Peck Indian Reservation, the Northern Cheyenne Indian Reservation, and the Rocky Boy's Reservation; (2) any land held in trust by the United States for an Indian Tribe (including but not limited to the Little Shell Tribe of Chippewa Indians and the Turtle Mountain Band of Chippewa Indians); and (3) any other areas that are "Indian country" within the meaning of 18 U.S.C. Section 1151.

[2] An inventory report compiled by the U.S. General Services Administration for federal properties as of 1962 identifies properties that may contain exclusive federal jurisdiction. This document is accessible at https://www.congress.gov/116/meeting/house/110088/documents/HHRG-116-II13-20191017-SD044.pdf. The EPA notes that this inventory report is not all-inclusive and that the information contained within it has not been recently confirmed and/or updated. Please contact EPA Region 8 at R8CWA401@epa.gov with questions regarding the jurisdictions where this certification decision applies.

Project Description

On June 18, 2025, the Corps proposed to reissue 56 NWPs and 1 new NWP that would expire in March 2026. 90 FR 26100 (June 18, 2025). The purpose of the NWPs is to authorize categories of activities under CWA Section 404 and Section 10 of the Rivers and Harbors Act of 1899 that have no more than minimal individual and cumulative adverse environmental impacts. For more details see: https://www.usace.army.mil/Missions/Civil-Works/Regulatory-Program-and-Permits/Nationwide-Permits/

The EPA's Public Notice Process

On June 18, 2025, the EPA received a request for certification from the project proponent. On July 2, 2025, the EPA issued a public notice regarding the proposed project and provided the opportunity for the public to submit comments until August 2, 2025. EPA received no public comments during the public notice period.

General Information

The general information provided in this section does not constitute a certification condition(s).

General Applicability

- The Corps did not request for certification for NWPs 1, 2, 8, 9, 10, 11, 24, 28, 35 and 55, and as such, the certification process did not begin and EPA neither certified nor waived certification. Consequently, if any activity authorized by this NWP may result in a discharge into a water of the United States, on lands that EPA acts as the certifying authority, the Corps must seek CWA 401 certification from EPA.
- If a project proposal does not meet either the general or NWP-specific certification conditions, or if certification is denied for a specific NWP, the project proponent must request an individual certification from EPA Region 8.

Documentation Recommendations

- Project proponents for potential projects authorized under the NWPs should retain this certification in their files with the applicable NWPs as documentation of EPA's certification decisions for the above-referenced proposed NWPs. This certification is specifically associated with the proposed NWPs described above and expires when those NWPs expire, five years from Corps issuance date, or are otherwise superseded by subsequent reissuance if less than five years.
- Copies of this certification should be kept on the job site and made readily available for reference.

Contact Information

- The project proponents for potential projects authorized under an NWP are encouraged to contact EPA Region 8 during the project planning phase if there are 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.

- Prior to work commencing, EPA recommends that project proponents notify the appropriate Tribal Environmental Office, if applicable.
- In the case of a spill, EPA recommends that the project proponent notify EPA Region 8 within 8 hours from discovery. For emergency spills, EPA recommends that the project proponent contact the EPA's National Response Center at 1-800-424-8802 as well as the appropriate personnel identified in the project's Spill Prevention Control and Countermeasures, or similar plan, if applicable.
- If you have any questions regarding this certification, please contact R8CWA401@epa.gov.

Waiver of Certification

EPA Region 8 is expressly waiving its authority to act on the CWA § 401 request for certification for NWPs 4, 22, 34, 48, and 54.

Grants of Certification without Conditions

EPA is granting certification without conditions for NWPs 5, 20, 27, and 32. For NWPs that EPA grants certification without conditions, EPA has determined that the activity will comply with the applicable water quality requirements, including any limitation, standard, or other requirement under sections 301, 302, 303, 306, and 307 of the CWA; any Federal and State or Tribal laws or regulations implementing those sections; and any other water quality-related requirement of State or Tribal law.

Grants of Certification with Conditions

EPA is granting certification with conditions for NWPs 3, 6, 7, 12, 13, 14, 15, 16, 17, 18, 19, 21, 23, 25, 29, 30, 31, 33, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 49, 50, 51, 52, 53, 57, 58, 59, and A. For NWPs that EPA grants certification with conditions, EPA has determined that the activity will comply with the applicable water quality requirements, including any limitation, standard, or other requirement under sections 301, 302, 303, 306, and 307 of the CWA; any Federal and State or Tribal laws or regulations implementing those sections; and any other water quality-related requirement of State or Tribal law, subject to the conditions listed under the NWP below, pursuant to CWA Section 401(d).

Condition #1: Plan Development and Implementation for Projects that require Pre-Construction Notification (PCN)

Prior to construction for projects that require a PCN, the project proponent shall develop a plan that includes a copy of the PCN and the following information (if not already included in the PCN):

- Time stamped photo-documentation of the baseline conditions (i.e., 50 feet upstream of the project area, within the project area, and 100 feet downstream of the project area).
- Identifies on a site map, as applicable:
  - Project site with all waters of the U.S. demarcated. Identify all locations where the project will cross jurisdictional waterbodies and identify the ordinary high-water mark and/or wetland boundaries; the planned work area where wetlands/aquatic resources will be removed, disturbed, and/or protected; buffer zones; and areas to be

restored/reclaimed, as well as site access points and other approved work areas.
    - Staging areas and stockpiling of materials and equipment, including locations for containment booms and/or absorbent materials, and/or hazardous materials. Stockpiles (e.g., sediment, soil, or other construction materials) shall be stored at least 50 feet from where it may enter waters of the U.S.
    - Construction access points.
    - Disturbance limits.
    - Locations where site dredging and placement of dredged material activities will occur.
    - Locations where dewatering activities will occur including as applicable locations of cofferdams, temporary berms, piling, and/or dikes.
    - Locations of undergrounding or directional drilling (including bore pits).
    - Locations where hazardous materials are stored. Identify where containment booms and/or absorbent materials are located for corrective action if needed. Hazardous materials shall be stored in leak-proof containers with appropriate secondary containment measures (e.g., spill berms, dikes, spill containment pallets, absorbent materials).
    - Any silt/sediment fencing.
    - Photo-reference sites. The project proponent shall indicate the directional view and location where photos were taken on the site map.
- A description of how the site will be restored to pre-construction conditions, as applicable, including measures that will be used to promote and maintain:
    - Stream hydrology and stability.
    - Aquatic resource composition.
    - Diversity of native species existing on site and as introduced via restoration activities.
    - Stability of soils.
    - Establishment of vegetation at the same percent cover as pre-construction activities.
- The timeframe/schedule for revegetation following completion of construction. Revegetation should occur at the earliest practicable date following completion of construction. Drill seeding is the preferred method, where applicable.
- Non-native and invasive species shall not be used for restoration activities.
- Includes the following, as applicable:
    - <u>Cofferdams, temporary berms, pilings, and/or dikes</u>: Describe installation and maintenance practices for any cofferdams, temporary berms, pilings, and/or dikes.
    - <u>Dredging</u>: Describe how contaminated materials will be managed (e.g., sediment testing data and information to identify whether sediments are clean or contaminated), if included in the project dredged area. Describe methods for minimizing dredging impacts (*i.e.*, sedimentation resuspension) in the water column.
    - <u>Erosion and sediment control</u>: Identify the types and locations of sediment and erosion control features that shall be used onsite, including sediment control fences, haybales, heavy mud mats, and/or other structures. Biodegradable blankets and/or loose-weave mesh shall be used for erosion control matting. If using velocity dissipation structures (e.g., riprap aprons, check dams etc.), structures shall be constructed to include both peak flow rates and total stormwater volume, and provide protection from the erosive potential of high-velocity flows to minimize channel and streambank erosion and scour

in the immediate vicinity of discharge points. The project proponent shall ensure all erosion and sediment control measures are in place prior to the onset of construction.
    - Bank stabilization and channel modification: If the project requires bank stabilization or stream channel modification, include pre-construction cross sections. If the project includes steep bank slopes of 3:1 or greater, include revetment cross sections. Bioengineering techniques suitable for steep slope disturbances are preferred (e.g., vegetated toe, bioengineered boulder toe, etc.) Slopes of disturbed banks shall be designed and installed to not reduce the bottom width of the stream.
    - Dewatering: Work shall be completed in the dry unless coordinated with EPA Region 8. Describe methods for dewatering, including the equipment that would be used to conduct the dewatering activities. Identify the locations and timing, including length of time the area is to be dewatered. Explain removal method of the temporary structures and/or fill and what measures will be taken to minimize downstream turbidity and adaptive management measures that will be taken and employed to prevent the draining of waters of U.S., including wetlands.
    - Ditching and trenching: Explain ditching/trenching and material placement techniques and stabilization methods to be employed, as well as timing. In wetlands, the top 6 to 12 inches of the ditch/trench shall be backfilled with topsoil from the trench, unless other techniques are approved. Include activity timing needs for ditching and stabilization.
    - Undergrounding or directional drilling: Describe measures taken to prevent, contain and cleanup any inadvertent return of drilling fluid to the surface (i.e., "frac-outs").
- Submit the plan to EPA Region 8 at R8CWA401@epa.gov at least 30 days prior to commencing construction activities.

During construction for projects that require a PCN, the project proponent shall:

- Visually inspect construction activities daily.
- Prevent sediment, debris, silt, sand, cement, concrete, oil or petroleum, organic materials, or other construction debris or wastes from entering waters of the U.S. The discharge of unset cement, concrete, grout, or water that has contacted uncured concrete or cement, or related washout to waters of the U.S. is prohibited.
- Maintain documentation onsite that all equipment was cleaned of dirt, mud, and other materials prior to arriving on the project site.
- Inspect all equipment daily and prior to entering any waters of the U.S. for oil, gas, diesel, anti-freeze, hydraulic fluid, and other petroleum leaks. If the project proponent detects a leak from any equipment, they shall immediately remove the equipment from waters of the U.S.; and within 24 hours of detection of a leak, repair the equipment in a staging area or move it offsite.
- Limit vegetation clearing and disturbance to waters. Limit the clearing and grubbing of vegetation and disturbance to areas demarcated on the site map submitted as part of the vegetation restoration and monitoring plan. The boundaries of vegetation to protect shall be flagged in the field prior to beginning construction activities.
- Limit restoration of the channel bed to pre-existing contours and conditions. Any proposed deviations must be specified in advance. For example, if any improvements will be made

using natural channel design.

- Photo-document any failures or increased turbidity due to construction activities.
  - Within 24 hours of observing a failure or marked increase in turbidity associated with construction, the project proponent shall remedy and implement any additional adaptive management measures to stabilize the activity and prevent further unauthorized discharges into waters of the U.S. The project proponent shall photo-document the failure (i.e., 50 feet upstream of failure, at the incident site, and at least 100 feet downstream of the failure) and the adaptive management measures taken immediately following implementation. The project proponent shall take remediation condition photos at the same location(s) and direction(s) as in the failure condition photos.
  - Within 48 hours of observing any failure, the project proponent shall provide EPA Region 8 with the required photo-documentation, and descriptions of all observed failures and implemented remedies.
  - Within three weeks of observing a failure, the project proponent shall provide EPA Region 8 with a description of the impacts and effectiveness of the employed adaptive management measures.
- Carry out as applicable:
  - Erosion control: Inspect sediment and erosion control measures daily during project implementation and within 12 hours of precipitation events. After construction is complete, remove sediment and erosion control structures once vegetation is established to the same percent cover as pre-construction conditions, unless they are needed for long term stabilization purposes.
  - Dewatering: Assess all dewatering measures within 24 hours after a severe storm event.

Post construction for projects that require a PCN, the project proponent shall, as applicable:

- Submit a post-construction report, as defined below, within 90 days of completing construction activity to EPA Region 8 at R8CWA401@epa.gov or, if the Corps requires a post-construction report for the project activity, the applicant may submit that report to EPA to fulfill this post-construction requirement. The project proponent shall include the following items in the post-construction report:
  - Construction dates.
  - As-built drawings.
  - Documentation of site restoration activities using photographs and any field data sheets showing that the site was restored to pre-existing conditions or better. Include photographs of the site restoration areas on a map.
  - Any water quality data gathered before, during, and post-construction and associated maps showing the sample locations.
  - A description of any adaptive management strategies that were employed during construction, with a focus on strategy effectiveness.
  - Details on the removal of any sediment and erosion control structures, unless they are needed for long term stabilization purposes.
  - Effectiveness of the plan developed and implemented as required under this condition, and recommendations to remedy any deficiencies in plan development and

implementation where employed measures were ineffective.

- For activities that require dredging, submit a copy of the as-builts and a post dredged and disposal report within 45 days of each dredging or disposal event to EPA Region 8 at R8CWA401@epa.gov. The project proponent shall include the following items in the post-dredged and disposal report:
  - Dredging and disposal dates.
  - Updated site map displaying the disposal location(s).
  - Dredging and disposal volumes.
  - Water quality monitoring data.
  - Post-dredged bathymetry.
  - Updated site maps displaying any new ditches, spoil piles, widths, and depths.

Why these conditions are necessary: This condition is necessary to minimize suspended particulates /turbidity caused by construction activities and is necessary to ensure water quality is not degraded by toxic pollutants in toxic amounts, including construction materials, oil, grease, gasoline, or other types of fluids used to operate and maintain equipment used to complete the project, or discharges from dust abatement activities as well as contaminants in dredged material. This condition also appropriately minimizes impacts from access roads, staging areas, and stockpiling to further ensure that construction activities will result in no more than minimal individual and cumulative adverse environmental effects. This condition will protect water quality because it ensures that the project proponent is using planning and construction practices that will maintain the integrity of the site hydrology and maintain the aquatic resource functions and values and ensures that appropriate revegetation measures are used to re-establish riparian/wetland vegetation to minimize the adverse impacts of discharges of sediment and pollutants that enter waterways. Limiting the amount of vegetation that is disturbed will minimize the adverse environmental impacts of any potential discharges. Monitoring for at least three growing seasons, or until replanted areas meet monitoring success criteria, will provide an adequate indication that the restoration effort is able to demonstrate restoration is successful.

The general conditions in the Corps' NWP package do not address concerns about resuspension and turbidity caused by construction and dredging activities, thereby justifying the inclusion of this condition. GC 32 only requires agency coordination in certain circumstances. Additionally, GC 11 (equipment), GC 12 (soil erosion and sediment controls), and GC 13 (removal of temporary structures and fills) provide some aquatic resource protections, but greater specificity is needed to determine what measures are suitable to comply with applicable water quality requirements.

Citations: 33 U.S.C. 1341(a)(4); 40 CFR 230.10(c)-(d);40 CFR 230.10(d); 40 CFR 230.21(a); 40 CFR 230.70; 40 CFR 230.71; 40 CFR 230.72; 40 CFR 230.74; 40 CFR 230.75; Tribal Water Quality Requirements[3]

Condition #2: Special Aquatic Resources

Projects or activities expected to have potential discharges into the below special aquatic resources areas are not covered by this certification and applicants must request a project-specific CWA Section 401 certification from EPA Region 8 consistent with 40 CFR 121.5.

- **Wetlands Classified as Peatlands**: For the purposes of this condition, peatlands are permanently or seasonally waterlogged areas containing organic soils classified as a Histosol with a specific thickness of an accumulation of peat (i.e., organic matter) and include fens, bogs and muskegs.[4]
- **Natural Springs**: Within 100 feet of the water source in natural spring areas. For the purposes of this condition, a spring water source is defined as any location where there is flow emanating from a distinct point at any time during the growing season. Some examples of spring-fed wetlands are hanging gardens. Some examples of spring-fed headwater slopes are peat-accumulating wet meadows and fens (see above). These resources may be identified using U.S. Fish and Wildlife Service's online digital National Wetland Inventory maps, or other aquatic resource mapping tools.
- **Riffle and Pool Complexes**: For the purposes of this condition, riffle and pool complexes are steep gradient sections of streams recognizable by their hydraulic characteristics. The rapid movement of water over a coarse substrate in riffles results in a rough flow, a turbulent surface, and high dissolved oxygen levels in the

[3] Chippewa Cree Tribe: Title 12 Environmental Protection Codes (Wetlands/Aquatic Lands Protection Code) 3.2 Prohibited Uses, 4.2 Activities, and 4.3 Approval, Modification and/or Denial of Application. Fort Belknap Indian Community (FBIC): Solid Waste Management Code Revised FBIC Res. #239-2019 (No discharge to tribal waters without FBIC permit) and Aquatic Resource Protection Ordinance.

[4] It is a general rule that a soil is classified as an organic soil (Histosol) if more than half of the upper 80 cm (32 inches) of the soil is organic or if organic soil material of any thickness rests on rock or on fragmental material having interstices filled with organic materials. Generally, organic soil materials have organic carbon content by weight of 12 percent or more. See the following for more information on what constitutes "organic soil material", limits between Histosols and soils of other orders, problematic hydric soils situations, and other indicators to identify peatlands: Soil Survey Staff. 1999. Soil taxonomy: A basic system of soil classification for making and interpreting soil surveys. 2nd edition. Natural Resources Conservation Service. U.S. Department of Agriculture Handbook 436. https://www.nrcs.usda.gov/resources/guides-and-instructions/soil-taxonomy; United States Department of Agriculture, Natural Resources Conservation Service. 2025. Hydric soils of problematic conditions and altered materials, Version 1.0. https://usace.contentdm.oclc.org/utils/getfile/collection/p266001coll1/id/11824; United States Department of Agriculture, Natural Resources Conservation Service. 2024. Field Indicators of Hydric Soils in the United States, Version 9.0. https://www.nrcs.usda.gov/sites/default/files/2024-09/Field-Indicators-of-Hydric-Soils.pdf.

water. Pools are deeper areas associated with riffles. Pools are characterized by a slower stream velocity, a steaming flow, a smooth surface, and a finer substrate.
- **Wild rice (*Manoomin/Manomin*) Waters:** Wild rice is especially sensitive to changes in water quality, hydrology changes, competition with invasive plants, and habitat loss.[5]

Why this condition is necessary: This condition is necessary to ensure a case-by-case review of any point source discharges into waters of the United States that are proposed in these specific aquatic resource site types which are inherently difficult to replace and have important ecological functions and values. Discharges into these systems have the potential to alter water circulation patterns and hydroperiods, 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, or otherwise 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. Project specific information is needed to ensure compliance with water quality requirements.

Citations: 40 C.F.R. 230.1(d); 40 C.F.R. 230.10(a)(3); 40 C.F.R. 230.10(c); 40 C.F.R. 230.10(d); 40 C.F.R. 230.20-24; 40 C.F.R. 230.21-22; 40 CFR 230.41; 40 C.F.R. 230.45; 40 C.F.R. 230.75(c); Tribal Water Quality Requirements[6]

Condition #3: Specific Condition for Bridges for NWPs 3, 14, 15, 57, 58 and A

Project proponents shall use an established bridge analysis and hydraulic design tool when designing and constructing bridges (e.g., HEC-RAS, FHWA, etc.). Bridges shall be constructed in a manner such that stormwater does not drain directly into the waterbody. Bridges shall span greater than or equal to 1.2 times the bankfull width and adjacent wetlands of the affected waterbody, where feasible. Crossings shall be placed perpendicular to the direction of the stream flow where possible and account for potential future lateral migration in the stream, unless the project proponent can document that this would result in increased impacts to aquatic resources or compromise the safety of the structure.

Why this condition is necessary: This condition is necessary to ensure that discharges associated with bridge design and placement minimally affect water quality and aquatic resource functions and values. Perpendicular stream crossings minimize the impacts of bank erosion and scouring from length of stream bed and bank impacts for a project. Drainage

[5] https://plants.usda.gov/DocumentLibrary/plantguide/pdf/pg_ZIAQ.pdf, last visited 11 Dec 2025.
[6] Chippewa Cree Tribe: Title 12 Environmental Protection Codes (Wetlands/Aquatic Lands Protection Code) 3.2 Prohibited Uses, 4.2 Activities, and 4.3 Approval, Modification and/or Denial of Application. Fort Belknap Indian Community (FBIC): Solid Waste Management Code Revised FBIC Res. #239-2019 (No discharge to tribal waters without FBIC permit) and Aquatic Resource Protection Ordinance.

directly from the bridge decks may cause erosion and scouring, and introduce additional pollutants, such as oil, gas, sediment, and toxics. Directing bridge deck drainage into constructed runoff water quality control systems will help prevent erosion and keep pollutants from directly entering the waterway. This condition will ensure that physical habitat and hydrologic characteristics of waters are not degraded, will maintain the habitat and biology of the waters and will ensure the hydrogeomorphology is not negatively impacted by the project.

Citation: 40 CFR 230.10(d); 40 CFR 230.72; 40 CFR 122.26; Tribal Water Quality Requirements[7]

Condition #4: Specific condition for NWP 7

Outfall design and placement shall include an appropriate energy dissipation structure (e.g., rip rap aprons) and shall be sized to prevent high pressure discharge. For intake structures, project proponents shall use an intake screen that reduces the size of aquatic organisms that can be entrained (e.g., a Johnson-type screen/intake), where feasible. Intake velocities shall not exceed 0.5 feet per second.[8]

Why this condition is necessary: This condition is necessary to ensure that outfall structures and intakes are constructed such that they provide localized erosion control at the point(s) of discharge while minimizing habitat degradation and assimilative capacity of the waterbody. Erosion from outfall structures due to improperly designed and placed structures increases sedimentation that alters stream and wetland hydrology (e.g., scouring and deposition) and uncontrolled stormwater contaminants harm aquatic organisms and habitat. Impingement controls for intake structures reduce the size of aquatic organisms that can be entrained and minimize impacts to aquatic species.

Citations: 40 CFR 230.10(c)-(d); 40 CFR 230.30; 40 CFR 230.70; 40 CFR 230.73; 40 CFR 230.74; 40 CFR 230.75; Tribal Water Quality Requirements[9]

[7] Ibid.

[8] Additional guidance on water intakes is available from the U.S. Fish and Wildlife Service: https://www.fws.gov/sites/default/files/documents/water-intake-recommendations.pdf

[9] Chippewa Cree Tribe: Title 12 Environmental Protection Codes (Wetlands/Aquatic Lands Protection Code) 3.2 Prohibited Uses, 4.2 Activities, and 4.3 Approval, Modification and/or Denial of Application. Fort Belknap Indian Community (FBIC): Solid Waste Management Code Revised FBIC Res. #239-2019 (No discharge to tribal waters without FBIC permit) and Aquatic Resource Protection Ordinance.

Condition #5: Specific Condition for NWP 13

For projects using gabions, the project proponent shall visually inspect and repair any damage to gabions and the gabion installation area after construction is completed at least once a year after spring flows.

Why this condition is necessary: This condition is necessary to reduce the individual and cumulative adverse environmental effects caused by hard bank stabilization structures on aquatic biodiversity, habitat, and aquatic resource functions and services. This condition is also necessary to minimize the potential for gabion failure and corresponding water quality impacts. Gabion failure leads to erosion and sediment release, which can significantly affect aquatic ecosystem diversity, productivity and stability, and can potentially release wire into the environment that can impact aquatic habitat. Rock released from damaged gabions can impact channel flow, which can interfere with aquatic habitat processes and infrastructure.

Citations: 40 CFR 230.10(c)-(d); 40 CFR 230.72; 40 CFR 230.74; Tribal Water Quality Requirements[10]

Condition #6: Specific Condition for NWP 16

The project proponent shall provide EPA Region 8 with a description of the return water from the upland disposal area prior to discharge, including a description of the nature of the dredged material and a description of any contaminants present in the discharge. The project proponent shall also provide an analysis of how the return water may impact the physiochemical conditions of the receiving water prior to discharge, including a description of how the project proponent will ensure controls are in place to ensure compliance with applicable water quality requirements.

Why this condition is necessary: This condition is necessary to ensure any return water meets applicable water quality requirements and does not degrade receiving waters. Dredged material from industrial and urban areas, stormwater and agricultural runoff, as well as from areas of natural deposits of minerals and other natural substances, often contain contaminants from these sources and may have the potential to alter the chemistry of receiving waters, including but not limited to, nutrients, metals, organic carbon, and invasive species. To ensure that all appropriate and practicable measures to minimize harm to the aquatic ecosystem from contaminants are addressed, the project proponent should consider the unique nature of dredged material and the related contaminant pathway to understand the physicochemical conditions of each disposal site under consideration.

Citation: 40 CFR 230.10(b)-(d); 40 CFR 230.11; 40 CFR 230.12; 40 CFR 230.22; 40 CFR 230.31; 40 CFR 230.32; 40 CFR 230.61; Tribal Water Quality Requirements[11]

Condition #7: Specific Condition for NWP 40

[10] Ibid.
[11] Ibid.

The project proponent shall ensure that any return water flows back into waters of the U.S. does not contain levels of toxic and priority pollutants in excess of effluent limitation guidelines established under Section 307 of the Clean Water Act.

Why this condition is necessary : This condition is necessary to ensure that return water to waters of the U.S. meets water quality requirements. Agricultural runoff can degrade receiving waters due to contaminants, including toxic and priority pollutants that are subject to effluent limitations pursuant to Section 307 of the Clean Water Act. Project specific information is needed to consider the contaminants proposed for discharge and the aquatic environment at the proposed discharge site to ensure that all appropriate and practicable measures to minimize harm to the aquatic ecosystem are addressed.

Citations: 33 U.S.C. 1317(a)(1); 40 CFR 401.15; 40 CFR 230.10(c); 40 CFR 230.31; 40 CFR 230.32; Tribal Water Quality Requirements[12]

[12] Ibid.

DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, OMAHA DISTRICT
MONTANA REGULATORY OFFICE
100 NEILL AVENUE
HELENA, MONTANA 59601-3329

January 15, 2026

SUBJECT: 2026 NWP Re-Issuance Water Quality Certification Waiver

Mr. Wilfred Lambert
OEP Director
501 Medicine Bear Road, Box 1027
Poplar, Montana 59255

To the Fort Peck Assiniboine and Sioux Tribes:

The Omaha District, Montana Section, requested water quality certifications under Section 401 of the Clean Water Act (401 WQC) for the proposed reissuance of those 2026 Nationwide Permits (NWPs) that may result in a discharge in waters of the United States within the jurisdiction of Fort Peck Assiniboine and Sioux Tribes. Specifically, on June 18, 2025 the Omaha District, Montana Section, requested certification of NWPs 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 48, 49, 50, 51, 52, 53, 54, 55, 57, 58, 59, and A be provided on or before December 18, 2025, which was the end date of the reasonable period of time.

The established reasonable period of time to act on the request for certification has passed. The Fort Peck Assiniboine and Sioux Tribes took no action on the certification request within the reasonable period of time. In accordance with the U.S. Environmental Protection Agency's (EPA's) current water quality certification regulations at 40 CFR Part 121, the Omaha District, Montana Section, has determined that a waiver of the 401 WQC requirement has occurred for NWPs 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 48, 49, 50, 51, 52, 53, 54, 55, 57, 58, 59, and A. This constitutes your notice per 40 CFR 121.8 and 40 CFR 121.9 of the Omaha District, Montana Section's determination that the certification requirement has been waived as described above.

Thank you for your coordination and efforts on the re-issuance of the NWPs.

Sincerely,

Sage L. Joyce
Chief, Montana Section

cc:
USEPA Region 8
HQ USACE

Montana Department of Environmental Quality

December 15, 2025

Sage L. Joyce
U.S. Army Corps of Engineers, Omaha District
Montana Regulatory Office
100 Neill Avenue
Helena, Montana 59601-3329

Subject: Clean Water Act, Section 401 Certification Final Determination of the U.S. Army Corps of Engineers Proposed 2026 Nationwide Permits within the State of Montana

Dear Sage Joyce:

The Montana Department of Environmental Quality (DEQ) completed its review of the U.S. Army Corps of Engineers (USACE) Clean Water Act Section 404 proposed 2026 Nationwide Permits (NWPs) and the proposed regional conditions. The attachment to this letter (Parts A through D) constitutes DEQ's position on the subject Nationwide Permits. It should not result in an undue burden to either of our agencies, while still providing adequate water quality protection. Also, please find enclosed the Montana Department of Environmental Quality's December 5, 2000, 'Guidelines for Materials for Streambank Stabilization' as referenced in the attached certification.

Please instruct your regulatory staff to CC verification letters to DEQ's Section 401 certification coordinator when corresponding with permittees. If a project fails to meet the enclosed conditions direct the applicant to contact DEQ's Section 401 certification coordinator to request a pre-filing meeting, to apply for an individual Section 401 certification determination, and to inquire about Section 401 certification related questions.

We look forward to continuing the close cooperation and coordination between our two agencies. Please contact me at (406) 444-5546 if you have any questions.

Sincerely,

Tatiana Davila, Bureau Chief
Water Protection Bureau

CC: Estella Moore, USEPA Region 8, w/ Attachments, via email at: moore.estella@epa.gov

Enclosure

Montana Department of Environmental Quality Clean Water Act Section 401 Certification Final Determination of the 2026 Nationwide Permits

This Clean Water Act Section 401 certification determination applies to any potential projects or activities authorized under the reissuance of the U.S. Army Corps of Engineers (USACE) proposed 2026 Nationwide Permits (NWPs) into waters of the U.S. occurring where DEQ is the certifying authority in the State of Montana.

A. NWP Permit Certification Granted with Conditions[1]

Clean Water Act Section 401 certification for the following proposed NWPs is granted with the General Conditions listed in Section D.

NWPs: 1, 2, 4-11, 14-20, 22-25, 28, 30-36, 38, 41, 46, 48, 49, 54, 55, 58

B. NWP Permit Certification Granted with Specific Conditions[1]

NWP 3. Certified subject to the General Conditions listed in Section D. An Individual DEQ Section 401 review is required for projects or activities authorized under this NWP if:

- New work being proposed below the ordinary high water mark (OHWM) is greater than 10% of the existing footprint below OHWM.
- Cubic yardage of the new material placed exceeds an average of one cubic yard per running foot, as measured along the length of the treated bank, below the plane of the OHWM.

NWP 12. DEQ is granting Section 401 certification for projects or activities where a static or vibratory plow is used and/or where Horizontal Directional Drilling technology is implemented. DEQ denies Section 401 certification for all other projects or activities that qualify under this NWP.

NWPs 13, 21, 29, 37, 39, 40, 42, 43, 44, 45, 50. Certified subject to the General Conditions listed in Section D. An Individual DEQ Section 401 review is required for projects or activities authorized under these NWPs if:

- The project or activity results in total (cumulative) temporary and permanent impacts to streambanks or shorelines of greater than 500 feet for bank stabilization projects when natural or bioengineering techniques (e.g. sloping, vegetation, soil lifts) are utilized.
- The project or activity results in total (cumulative) temporary and permanent impacts to streambanks or shorelines of greater than 300 feet for bank stabilization projects when hard armoring techniques (e.g. rip-rap, gabion baskets, deflection walls) are utilized.
- The project or activity results in total (cumulative) loss of greater than 300 linear feet of stream bed or along the bank of streams, rivers, ditches, lakes, reservoirs by filling, channelization, piping, flooding, excavation, or drainage.
- The project or activity results in total (cumulative) permanent impacts greater than 1/4 acre to wetlands.

NWP 27. DEQ is granting Section 401 certification for the following projects or activities; all other projects or activities that qualify under this NWP require individual DEQ Section 401 review:

- DEQ is granting Section 401 certification for activities conducted on non-Federal public lands and private lands, in accordance with the terms and conditions of a binding stream enhancement or restoration agreement or wetland enhancement, restoration, or establishment agreement between the landowner and the FWS, NRCS, FSA, NMFS, NOS, USFS, BLM or their designated state cooperating agencies.
- DEQ is granting Section 401 certification for voluntary stream or wetland restoration or enhancement action, or wetland establishment action, documented by the NRCS or USDA Technical Service Provider pursuant to NRCS Field Office Technical Guide standards.

[1] MCA 75-5 et seq.; MCA 75-7 et seq.; MCA 87-5 et. seq.; ARM 17.30 et. seq.

- DEQ is granting Section 401 certification for the reclamation of surface coal mine lands, in accordance with a Surface Mining Control and Reclamation Act permit issued by the Office of Surface Mining Reclamation and Enforcement or the applicable state agency.
- DEQ is granting Section 401 certification for watershed implementation project activities conducted under a Clean Water Act Section 319 grant.
- DEQ is granting Section 401 certification for the construction of fish habitat improvement structures and fish attraction devices within lakes, ponds, and reservoirs; the discharge within the waterway involved shall not exceed 50 cubic yards.
- DEQ is granting Section 401 certification for projects or activities that will cause a physical alteration of equal to or less than a total (cumulative) of 500 linear feet in length of a stream or river when measured along the bank or 1/4 acre of wetlands.

C. NWPs Denied[2]

NWPs 51, 52, 53, 57, 59, Proposed NWP A. 'Activities to Improve Passage of Fish and Other Aquatic Organisms' are denied for the five-year cycle.

D. State General Conditions for all NWPs[2]

The following state general Section 401 certification conditions apply to all NWPs whether granted with conditions or granted with specific conditions in Montana where DEQ is the certifying authority.

1) This certification does not authorize the placement or construction of septic/leach systems or other sewage treatment facilities in wetlands.

2) This certification does not authorize construction of dams, except for aquatic restoration projects and temporary dams associated with construction activity.

3) This certification requires that materials used in stream bank or shore stabilization projects adhere to the Montana Department of Environmental Quality's December 5, 2000 'Guidelines for Materials for Streambank Stabilization'. Tires may not be used to stabilize any banks in state waters.

4) This certification requires that all equipment be inspected for oil, gas, diesel, anti-freeze, hydraulic fluid and other petroleum leaks. Equipment cannot continue operating in or near the water if a leak is discovered. All such leaks will be properly repaired prior to equipment being allowed on the project site. Leaks that occur after the equipment is moved to the project site will be fixed that same day or the next day or be removed from the project area. If equipment is to be operated in or near water, a spill containment kit shall be available at the project site and DEQ shall be notified of spills.

5) This certification requires that all permittees shall, to the maximum extent practicable, incorporate and construct design features that eliminate bridge deck run-off containing sediment, salt, or other pollutants from discharging directly into state water. To the extent practicable, bridge deck run-off should be directed to a detention basin of unspecified size prior to continuing into state waters.

6) This certification requires that riprap projects, to the extent practicable, avoid the use of geotextile fabric as riprap bedding material. To the extent practicable, riprap voids shall incorporate approximately 30-50% fines/soil and dormant plant material and/or root-stock.

7) Restored riparian areas shall be stable and should consist of native species.

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[2] MCA 75-5 et seq.; MCA 75-7 et seq.; MCA 87-5 et. seq.; ARM 17.30 et. seq.

Policy on Streambank Stabilization

This policy outlines the guidelines for approved materials to be used for streambank stabilization in Montana. This policy and a draft Environment Assessment were provided to the public for comment via public notice MT-00-10 issued September 18, 2000. Comments were accepted until October 17, 2000. The draft Environmental Assessment is adopted as the final Environmental Assessment with the Responses to Comments incorporated.

Signed into policy 12/05/00 by Bonnie Lovelace, Chief, Water Protection Bureau and 12/06/00 by Jan Sensibaugh, Administrator, Permitting & Compliance Division.

GUIDELINES FOR MATERIALS FOR STREAMBANK STABILIZATION

The following guidelines represent the efforts of a work group composed of Conservation District representatives, natural resource consultants, environmental interests, and state and federal regulatory agencies. They are suggested by the Montana Department of Environmental Quality and not necessarily endorsed by all the work group members. These guidelines are only for use in areas where the use of high-density, angular rock is not practicable. (The term "practicable" means available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes [40 CFR 230.3(q)]). Sandstone or broken concrete may be acceptable alternatives to high-density, angular rock in certain situations, although local regulation may prohibit their use. The use of any river training device/structure may directly or cumulatively alter the ecology of Montana rivers and streams. Cumulative impact considerations may preclude the use of any river training device.

Bank stabilization projects are sometimes authorized under the following jurisdictions: Local Conservation District -Natural Streambed & Land Conservation Act (31O); Montana Department of Fish Wildlife and Parks – Stream Protection Act (SPA124); County Floodplain Administrator -Floodplain Permit; U.S. Army Corps of Engineers – Section 404/10 Permit; Montana Department of Environmental Quality -75-5-318, MCA Authorization; Montana Department of Natural Resources and Conservation - Navigable Rivers Land Use License/Easement.

The following optional design concepts should be considered in conjunction with the guidelines to minimize environmental/aesthetic concerns:

- Utilize rock only in the lower* portion or toe of the riprap with woody structures/features, biodegradable fabric, etc. in the upper* portions.
  * The elevation at which the mean annual flow occurs is the division between "upper" and "lower."
- Incorporate soil in the upper portions of the project with appropriate woody (usually willow) plantings as near average water elevations as possible and herbaceous plantings elsewhere.
- Provide a temporary or permanent buffer strip (streamside area where protection promotes growth and sustenance of woody vegetation) along the project length to provide for vegetation stability where grazing or recreational use may impact plant growth.
- Preferably, plantings should be on slopes of 3:1 or flatter and irrigated, if possible.

(Note: Numerous documents with more detailed information are available. Contact the Natural Resource Conservation Service or the Department of Natural Resources and Conservation for their "Stream Project Manual.")

COMPLIANCE CERTIFICATION

Project or Activity: (Please attach a copy of the completed "Joint Application for Proposed Work in Montana's Streams, Wetlands, Floodplains, and Other Water Bodies.")

Upon completion of project activity, sign this certificate and return it to the following address:

Montana Department of Environmental Quality
Water Protection Bureau
Box 200901
Helena, MT 59620

Please answer the following questions:

1. What is the source of the concrete rubble?

2. What is the type of concrete rubble (curb/gutter, foundation, etc.)?

3. What was the cost of the rubble?
(The recipient of the rubble cannot be compensated for accepting the rubble without a landfill license.)

I hereby certify that the project work performed is in compliance with all applicable permits and in compliance with the "Guidelines for Materials for Streambank Stabilization."

_____ _____
Signature of Project Owner Date

I hereby certify that I provided the concrete rubble used in the project and that I did not compensate the owner for accepting the rubble.

_____ _____
Signature of Concrete Rubble Provider Date

From:	Joe Walksalong
To:	Bergner, Jennifer L CIV USARMY CENWO (USA)
Cc:	charlene.alden@cheyennenation.com; Joyce, Sage L CIV USARMY CENWO (USA)
Subject:	[Non-DoD Source] NWP reissuance 2026
Date:	Thursday, December 18, 2025 10:33:50 AM

Hello:

After review of the proposed draft NWPs the Northern Cheyenne Environmental Protection Department will agree and certify Nationwide permits numbered 15, 16, 17, 18, 21, 25, 29, 30, 34, 39, 40, 41, 42, 43, 46, 49, 50, and 59. also certifying Nationwide permits numbered 3, 4, 5, 6, 7, 12, 13, 14, 19, 20, 22, 23, 27, 31, 32, 33, 36, 37, 38, 44, 45, 48, 51, 52, 53, 54, 57, 58, and A.

The NCEPD reviewed Information required in a certification request as a certifying authority, defined at 40 CFR 121.5(d), is in the FRN, except for 40 CFR 121.5(b)(7) documentation that a pre-filing meeting request was noted and waived. The USACE submitted the pre-filing meeting request to the Northern Cheyenne Tribe on April 30, 2025.

further questions or comments can directed to Charlene Alden, Director, NCEPD or Joe Walksalong, Water Quality Coordinator.

Sincerely.

Joe Walksalong, Water Coordinator
Northern Cheyenne Environmental Protection Department.