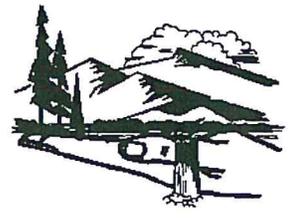




# Department of Environmental Quality

*To protect, conserve and enhance the quality of Wyoming's environment for the benefit of current and future generations.*



Matthew H. Mead, Governor



Todd Parfitt, Director

February 22, 2017

Mr. Mike Happold  
U.S. Army Corps of Engineers  
Wyoming Regulatory Office  
2232 Dell Range Blvd., Suite 210  
Cheyenne, Wyoming 82009

RE: Section 401 Certification of Issuance and Reissuance of the 2017 Department of the Army Nationwide Permits in Wyoming.

Dear Mr. Happold,

In accordance with the provisions of Section 401 of the Clean Water Act, the Wyoming Department of Environmental Quality (WDEQ) has reviewed the Nationwide Permits that become effective March 19, 2017 and has made the following determinations:

1. Certification is denied for all Nationwide Permits where authorized activities would occur on Class 1 waters. Certification for activities on Class 1 waters must be deferred to the WDEQ for individual 401 certification and public notice. The following list of Class 1 waters in Wyoming can also be found in Chapter 1 of the Wyoming Water Quality Rules and Regulations, Appendix A.
  - i. All surface waters located within the boundaries of national parks and congressionally designated wilderness areas as of January 1, 1999;
  - ii. The main stem of the Snake River through its entire length above the U.S. Highway 22 bridge (Wilson Bridge);
  - iii. The main stem of the Green River, including the Green River Lakes from the mouth of the New Fork River upstream to the wilderness boundary;
  - iv. The main stem of the Wind River from the Wedding of the Waters upstream to Boysen Dam;
  - v. The main stem of the North Platte River from the mouth of Sage Creek (approximately 15 stream miles downstream of Saratoga, Wyoming) upstream to the Colorado state line;
  - vi. The main stem of the North Platte River from the headwaters of Pathfinder Reservoir upstream to Kortez Dam (Miracle Mile segment);
  - vii. The main stem of the North Platte River from the Natrona County Road 309 bridge (Goose Egg bridge) upstream to Alcova Reservoir;
  - viii. The main stem of Sand Creek above the U.S. Highway 14 bridge;

- ix. The main stem of the Middle Fork of the Powder River through its entire length above the mouth of Buffalo Creek;
  - x. The main stem of the North Fork of the Tongue River, the main stem of the South Fork of the Tongue River and the main stem of the Tongue River above the U.S. Forest Service boundary;
  - xi. The main stem of the Sweetwater River above the mouth of Alkali Creek;
  - xii. The main stem of the Encampment River from the northern U.S. Forest Service boundary upstream to the Colorado state line;
  - xiii. The main stem of the Clarks Fork River from the U.S. Forest Service boundary upstream to the Montana state line;
  - xiv. All waters within the Fish Creek (near Wilson, Wyoming) drainage;
  - xv. The main stem of Granite Creek (tributary to the Hoback River) through its entire length;
  - xvi. Fremont Lake
  - xvii. Wetlands adjacent to the above listed Class 1 waters
2. Certification is approved for Nationwide Permit #20 (Response Operations for Oil or Hazardous Substances) on all waters, including Class 1 waters.
  3. Certification decisions for all Nationwide Permits where authorized activities would occur on non-Class 1 waters (all other waters) is shown in Table 1 of this document.
  4. Some Nationwide Permits require additional permit-specific conditions to assure attainment of Wyoming water quality standards. Refer to Table 1 for permit-specific certification conditions.
  5. In instances where the Corps is providing “after-the-fact” verification for completed activities authorized by Nationwide Permits that have been certified per determinations 2 and 3 of this letter; the WDEQ shall be notified of the Corps intent and provided an opportunity to propose special conditions to protect water quality as a part of the “after-the-fact” permit verification.
  6. All certifications authorized under a Department of the Army Nationwide Permit include the following standard conditions:
    - a) Vegetation must be protected except where its removal is absolutely necessary for completion of the work. Re-vegetate disturbed soil in a manner that optimizes plant establishment for that specific site. Revegetation may include topsoil replacement, planting, seeding, fertilization and weed-free mulching as necessary. Native material shall be used where appropriate and feasible. Re-vegetate cut and fill slopes with appropriate species to prevent erosion.
    - b) This certification requires all equipment to be inspected for oil, gas, diesel, anti-freeze, hydraulic fluid and other petroleum leaks. All such leaks will be properly repaired and equipment cleaned prior to being brought on-site. Leaks that occur after the equipment is on-site will be repaired within one day or removed from the project area. The equipment is not

allowed to continue operating upon discovery of a leak. In addition, compliance with all State and Federal requirements for storage of petroleum products and solvents is required.

- c) Construction equipment should not operate below the existing water surface except as follows:
  - i. Fording at one location is acceptable; however, vehicles should not push or pull material along the bed or banks below the existing water level. Impacts from fording must be minimized.
  - ii. Work below the waterline which is essential must be carried out in a manner which minimizes impacts to the aquatic system and water quality.
- d) Activities associated with this certification shall not increase turbidity by more than 10 nephelometric turbidity units (NTUs) in all cold-water fisheries and/or drinking water supplies (Classes 1, 2AB, 2A and 2B) or by more than 15 NTUs in all warm water or nongame fisheries (Classes 1, 2ABww, 2Bww and 2C). However, in accordance with Section 23(c)(2) of Chapter 1 of the Wyoming Water Quality Rules and Regulations, the administrator of the Water Quality Division may authorize temporary increases in turbidity above the limits described above in response to an individual application for a waiver. The waiver must be approved before the authorized activity may elevate turbidity above these limits.
- e) For activities that occur within ten stream miles of a downstream public water supply intake, the responsible parties for the public water supply intake shall be notified and all concerns addressed prior to the commencement of the activities. Documentation of this notification and how concerns were addressed shall be kept on file and be made available upon request.
- f) Any temporary crossings, bridge supports, cofferdams or other structures must be designed to handle high flows/water anticipated to occur while these structures are present. All temporary structures must be completely removed from the waterbody at the conclusion of the permitted activity and the area restored to a natural appearance.
- g) All excess stockpiled, dredged or excavated material shall be disposed of at an upland site, not in a wetland or watercourse. All measures and precautions shall be taken to prevent entry of said material into a watercourse or wetland during high water/flow events.
- h) All fill material should be placed and compacted and subsequently protected from erosion. Where applicable, areas proposed for fill should be cleared of all vegetation, debris and other materials that may destabilize the fill.
- i) The timing and duration of construction must minimize conflicts with fish spawning in accordance with Nationwide Permits General Condition #27.
- j) A WYPDES storm water permit for construction activities is required from the Wyoming Department of Environmental Quality (WDEQ) before any surface disturbance takes place for any project that will clear, grade or otherwise disturb **one or more acres**. A general permit has been established for this purpose and either the project sponsor or general contractor is responsible for complying with the provisions of the general permit if total disturbance exceeds one acre, and for filing a Notice of Intent (NOI) if total disturbance exceeds five acres. The NOI should be filed no later than 30 days prior to the start of construction activity.

Please contact the WDEQ Stormwater Permitting Program at 307-777-7570 for additional information.

The major requirements of the storm water general permit pertain to the development and implementation of a pollution prevention plan along with regular inspection of pollution control activities. The permit is required for the surface disturbances associated with construction of the project, access roads, construction of wetland mitigation sites, borrow and stockpile areas, and equipment staging and maintenance areas.

- k) A WYPDES discharge permit from the WDEQ may be required for point source discharges to surface waters not related to storm water runoff such as discharges from gravel crushing and washing operations, cofferdam or site dewatering, vehicle or machinery washing, or other material processing operations if they are conducted. Depending on the type of operation, the length of operation, and the type of discharge, either a general temporary discharge permit or an individual discharge permit may be required. Please be advised that if an individual permit is required, processing will require at least 90 days. Please contact the WDEQ WYPDES Program at 307-777-7090 for additional information.
- l) If above ground storage of petroleum products exceeds 1,320 gallons in total or more than 660 gallons in a single tank, a Spill Prevention Control and Countermeasures plan may have to be developed as provided for in the Environmental Protection Agency's Oil Pollution Prevention regulations (40 CFR 112). The Region 8 EPA office in Denver should be contacted for guidance.

This letter constitutes State certification of the 2017 Nationwide Permits that become effective March 19, 2017 as required by Section 401 of the Clean Water Act. This letter does not provide an exemption from any other federal, state or local laws or regulations, nor does it provide exemption from legal action by private citizens for damage to property that the activity may cause. The WDEQ also reserves the right to amend this certification and any of its terms and conditions as may be appropriate or necessary to protect water quality and associated designated uses.

Please contact Eric Hargett at 307-777-6701 for further information.

Sincerely,



Todd Parfitt  
Director  
Department of Environmental Quality

TP/KF/EGH/rm/17-0120

cc: Kevin Fredrick – WDEQ Water Quality Division Administrator, Cheyenne  
David Waterstreet – WDEQ Watershed Protection Program Manager, Cheyenne  
Mary Flanderka, Wyoming Game & Fish Department, 5400 Bishop Blvd., Cheyenne, WY 82006  
Paul Dey, Wyoming Game & Fish Department, 5400 Bishop Blvd., Cheyenne, WY 82006  
Julia McCarthy, U.S. Environmental Protection Agency – Region 8, 1595 Wynkoop St., Denver, CO 80202

Table 1 - Wyoming 401 Certification of 2017 Nationwide Permits

Permit	Permit Name	2017 401 Certification ** (see footnote)	2017 Permit-specific 401 Certification Conditions
1	Aids to Navigation	Waived	
2	Structures in Artificial Canals	Waived	
3	Maintenance	Certified (non-Class 1 waters)	Removal of accumulated sediment should be limited to low-flow conditions, except in cases of emergency situations that threaten life or property.
4	Fish & Wildlife Harvesting, Enhancement, and Attraction Devices and Activities	Waived	
5	Scientific Measurement Devices	Certified (non-Class 1 waters)	Weirs and flumes may not prohibit upstream fish migration in Class 1, 2B, 2AB and 2C waters
6	Survey Activities	Certified (non-Class 1 waters)	Discharge of drilling fluids and cuttings to a water of the State must be authorized by a WYPDES permit. All temporary pits for holding drilling fluids and cuttings must be lined and all contents removed following completion of the activity authorized by the nationwide permit
7	Outfall Structures and Associated Intake Structures	Certified (non-Class 1 waters)	
8	Oil & Gas Structures on the Outer Continental Shelf	Waived	
9	Structures in Fleeting and Anchorage Areas	Waived	
10	Mooring Buoys	Waived	
11	Temporary Recreation Structures	Waived	
12	Utility Line Activities	Certified (non-Class 1 waters)	Culverted stream crossings must meet the following criteria : 1) culverts shall be placed in a relatively straight section of stream channel and outflows shall not be directed into a stream bank, 2) culvert dimensions shall not create water depths or velocities that prohibit upstream fish migration, 3) culvert slope shall be no steeper than the channel gradient immediately upstream and downstream of the culvert, and generally should match the overall channel gradient, 4) culvert outlet elevations or downstream bed scour shall not prohibit upstream fish migration, and 5) culverts shall be adequately sized to handle expected high flows.
13	Bank Stabilization	Certified (non-Class 1 waters)	Structures used for bank stabilization must meet the following criteria: 1) hydraulic drop over the structure crest should not exceed 0.5 feet to maintain fish passage, 2) where applicable header rocks should be spaced at least 1/4 to 1/3 of the average head rock diameter, 3) the tops of all in-stream structures should not exceed the bankfull elevation, 4) the tops of toe wood and vanes should intercept the bank at approximately 0.5 of the bankfull elevation, and 5) structure vane angles should not exceed 30 degrees as measured upstream from the vane arm to the tangent line where the vane intercepts the bank.
14	Linear Transportation Projects	Certified (non-Class 1 waters)	See Nationwide Permit #12 for culverted stream crossing criteria. Where applicable, see Nationwide Permit #13 for bank stabilization structure criteria.
15	U.S. Coast Guard Approved Bridges	Waived	
16	Return Water from Upland Contained Disposal Areas	Denied	
17	Hydropower Projects	Denied	
18	Minor Discharges	Certified (non-Class 1 waters)	
19	Minor Dredging	Waived	
20	Response Operations for Oil and Hazardous Substances	Certified (all waters)	
21	Surface Coal Mining Activities	Certified (non-Class 1 waters)	
22	Removal of Vessels	Waived	
23	Approved Categorical Exclusions	Denied	
24	Indian Tribe or State Administered Section 404 Programs	Waived	
25	Structural Discharges	Certified (non-Class 1 waters)	
27	Aquatic Habitat Restoration, Establishment, and Enhancement Activities	See Attachment 1 of this document	See Attachment 1-Nationwide Permit #27 certification and permit-specific conditions

Table 1 (cont.) - Wyoming 401 Certification of 2017 Nationwide Permits

Permit	Permit Name	2017 401 Certification ** (see footnote)	2017 Permit-specific 401 Certification Conditions
28	Modifications of Existing Marinas	Waived	
29	Residential Developments	Certified (non-Class 1 waters)	See Nationwide Permit #12 for culverted stream crossing criteria
30	Moist Soil Management for Wildlife	Certified (non-Class 1 waters)	
31	Maintenance of Existing Flood Control Facilities	Denied	
32	Completed Enforcement Actions	Denied	
33	Temporary Construction, Access, and Dewatering	Certified (non-Class 1 waters)	
34	Cranberry Production Activities	Denied	
35	Maintenance Dredging of Existing Basins	Certified (non-Class 1 waters)	
36	Boat Ramps	Certified (non-Class 1 waters)	
37	Emergency Watershed Protection and Rehabilitation	Certified (non-Class 1 waters)	Representative project area-wide pre- and post-construction photographs required for all PCNs
38	Cleanup of Hazardous and Toxic Waste	Denied	
39	Commercial and Institutional Developments	Certified (non-Class 1 waters)	See Nationwide Permit #12 for culverted stream crossing criteria
40	Agricultural Activities	Denied	
41	Reshaping Existing Drainage Ditches	Certified (non-Class 1 waters)	
42	Recreational Facilities	Certified (non-Class 1 waters)	See Nationwide Permit #12 for culverted stream crossing criteria
43	Stormwater Management Facilities	Denied	
44	Mining Activities	Denied	
45	Repair of Uplands Damaged by Discrete Events	Certified (non-Class 1 waters)	
46	Discharges in Ditches	Certified (non-Class 1 waters)	
48	Commercial Shellfish Aquaculture Activities	Waived	
49	Coal Remining Activities	Certified (non-Class 1 waters)	
50	Underground Coal Mining Activities	Certified (non-Class 1 waters)	
51	Land-Based Renewable Energy Generation Activities	Certified (non-Class 1 waters)	See Nationwide Permit #12 for culverted stream crossing criteria
52	Water-based Renewable Energy Generation Pilot Projects	Denied	
53	Removal of Low-Head Dams	Denied	
54	Living Shorelines	Waived	

\*\* Certified: Categorical 401 Certification Granted for Specific Waters; Denied: Individual 401 Certification Required; Waived: No 401 Certification Required

## Attachment 1 - Nationwide Permit #27 certification and permit-specific conditions

1. Certification is granted under Nationwide Permit #27 on all non-class 1 streams and rivers that meet criteria 1(a) and 1(b). Permit-specific certification conditions are listed under 1(c).
  - a. The continuous length of stream channel treated (defined as distance from the most upstream treatment to the most downstream treatment) is less than 500 feet, AND
  - b. Treatments are limited to the following:
    - i. Excavation of existing pools to mitigate pool aggradation, provided that excavated material will not be redistributed within the channel unless associated with treatments 1(b)(ii) through 1(b)(xi)
    - ii. Grade control sills, provided the surface elevation is at the same grade as the channel bed
    - iii. Bankfull benches
    - iv. Random rocks or rock clusters
    - v. Straight vanes or similar structures
    - vi. Cross vanes, J-hook vanes, vortex rock weirs or similar structures
    - vii. Toe-wood treatments and fish habitat structures, such as habitat logs or revetments (rootwad, log)
    - viii. Riffle enhancement, such as addition of spawning gravels
    - ix. Enhancement of existing point bars
    - x. Minor redistribution of bed material
    - xi. Vegetative plantings, geotextile fabrics, vegetated geogrids, or similar treatments
  - c. Permit-specific certification conditions for Nationwide Permit #27 include:
    - i. The tops of all structures (excluding 1(b)(vii)) should not exceed the bankfull elevation
    - ii. The tops of toe wood and similar treatments under 1(b)(vii) should not exceed  $\frac{1}{2}$  the bankfull elevation and should intercept the bank at approximately  $\frac{1}{2}$  the bankfull elevation
    - iii. Treatments result in minimal change to channel dimension, pattern and profile
    - iv. Placement of boulders, rock clusters or logs in the channel shall be done in a way that minimizes lateral convergence scour on streambanks and bar formation
    - v. Where applicable, adequate stabilization and erosion control measures are required for all treatments described under 1(b) to minimize erosion of these enhancements during high flows/water. Stabilization and erosion control measures shall include only native material where appropriate and feasible
    - vi. Where applicable, the hydraulic drop over the structure crest should not exceed 0.5 feet to maintain fish passage
    - vii. Where applicable, header rocks should be spaced at least  $\frac{1}{4}$  to  $\frac{1}{3}$  of the average header rock diameter
    - viii. No activities or treatments shall result in accelerated bed or bank erosion or excessive aggradation
    - ix. Where applicable, permit-specific certification conditions for Nationwide Permit #13
    - x. All standard conditions of certification apply

- 2. Certification is denied for activities on streams and rivers that do not meet the criteria under 1(a) and 1(b), and an individual certification is required. For an individual certification under Nationwide Permit #27, the following supplemental information is required to be submitted as a pre-construction notification (PCN):**
- a. A complete description of the project purpose and need including but not limited to, a description of the existing conditions being restored or enhanced by the project and precisely how a net gain in aquatic resource, fluvial, and other functions or conditions would be achieved.
  - b. Representative, on-site pre-construction photographs of existing conditions must be included
  - c. Describe the hydrological and/or ecological basis for the proposed treatments.
  - d. For activities that would alter channel dimension, pattern or profile, the PCN should include the following where applicable:
    - i. Summaries of empirical data and results of associated analyses used in project design including all resultant design criteria
    - ii. Purpose and function behind each proposed treatment
    - iii. Explanation for the basis of the design criteria and whether the design conforms to expected stable morphological conditions
    - iv. Typical plan, profile and cross-section design illustrations along with associated design specifications (i.e. bankfull width, slope, vane angles, etc.) for all proposed treatments
    - v. Project design plan map(s) with locations of proposed treatments, existing structures, cross-sections, longitudinal profiles, etc.
    - vi. Overlays of existing and design conditions at the plan, profile and cross-sectional views
    - vii. Quantitative demonstration that the channel will effectively transport stream flow and sediment while maintaining a stable dimension, pattern and profile without excessive aggradation or degradation
    - viii. Quantitative demonstration that treatments will withstand shear stresses and entrainment at bankfull and higher flows
    - ix. Provide reasonable assurances that the treatments will not result in adverse impacts to the channel and banks or designated uses upstream and downstream of the project area
  - e. A description, typical designs and location map of techniques that would be implemented to protect surface water quality through control of pollutants, storm water runoff and turbidity during and post-construction
  - f. Additional information may be requested at the discretion of the WDEQ
  - g. Post-construction monitoring may be required at the discretion of WDEQ. Details of photographic and other monitoring requirements will be project-specific and included in the certification from WDEQ
  - h. Documentation of coordination with a Wyoming Game and Fish Department (WGFD) aquatic habitat or fisheries biologist should be provided with all PCNs for projects on fish-bearing streams, preferably as a letter from the WGFD commenting on the merits of the project and any recommendations for improvement. At any time, WDEQ, at its own discretion, may coordinate with WGFD on the certification review.

- 3. Certification is granted under Nationwide Permit #27 on all non-class 1 wetlands that meet criteria 3(a). Permit-specific certification conditions are listed under 3(b).**
  - a. Loss of existing wetland is limited to one acre or less
  - b. Permit-specific certification conditions for Nationwide Permit #27 include:
    - i. Adequate stabilization and erosion control measures are required for all treatments/structures to minimize erosion of these items during high flows/water. Stabilization and erosion control measures shall include only native material where appropriate and feasible
    - ii. No activities or treatments shall result in accelerated bed, bank or shoreline erosion or excessive aggradation
    - iii. Where applicable, permit-specific certification conditions for Nationwide Permits #12 and #13
    - iv. All standard conditions of certification apply
  
- 4. Certification is denied on activities in wetlands that do not meet criteria under 3(a), and an individual certification is required. For an individual certification under Nationwide Permit #27, the following supplemental information is required to be submitted as a pre-construction notification (PCN):**
  - a. A complete description of the project purpose and need including but not limited to, a description of the existing conditions being restored or enhanced by the project and precisely how a net gain in aquatic resource, fluvial and other functions or conditions would be achieved.
  - b. Representative, on-site pre-construction photographs of existing conditions must be included
  - c. Describe the hydrological and/or ecological basis for the proposed treatments
  - d. A description, typical designs and location map of techniques that would be implemented to protect surface water quality through control of pollutants, storm water runoff and turbidity during and post-construction
  - e. Additional information may be requested at the discretion of the WDEQ
  - f. Post-construction monitoring may be required at the discretion of WDEQ. Details of photographic and other monitoring requirements will be project-specific and included in the certification from WDEQ.