



REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
CORPS OF ENGINEERS, OMAHA DISTRICT
WYOMING REGULATORY OFFICE
2232 DELL RANGE BOULEVARD, SUITE 210
CHEYENNE WY 82009-4942

RECEIVED
MAY 12 2010

BY:

May 10, 2010

Wyoming Regulatory Office

Mr. Jon Winter
Uranium One Americas, Inc.
907 North Poplar Street, Suite 260
Casper, Wyoming 82601

Dear Mr. Winter:

This letter is in response to a pre-construction notification (PCN) we received on April 26, 2010, concerning Department of the Army authorization to construct utilities and other infrastructure within the Moore Ranch Uranium Project near Pine Tree. The project area includes 7,104 acres located in Sections 30 and 31, Township 42 North, Range 74 West; Sections 25-28 and 33-36, Township 42 North, Range 75 West; and Sections 1-4, 9, and 10, Township 41 North, Range 75 West, Campbell County, Wyoming.

The U.S. Army Corps of Engineers regulates the placement of dredged and fill material into waters of the United States under Section 404 of the Clean Water Act (33 U.S.C. 1344). The Corps' regulations are published in the *Code of Federal Regulations* as 33 CFR Parts 320 through 332. Detailed information on Section 404 requirements in Wyoming can be obtained from our web site at: <https://www.nwo.usace.army.mil/html/od-rwy/Wyoming.htm>

On February 4, 2010, we received the final version of a *2007 Wetland Assessment for Uranium One Americas-Moore Ranch Uranium Project* report prepared by BKS Environmental Associates, Inc. dated December 21, 2009 (Appendix D10a of the Large Mine Noncoal Permit Application submitted to the Wyoming Department of Environmental Quality). Based on documentation in the report and supporting information provided with your correspondence dated January 25, 2010, we agree that methods used to identify wetlands within the project area are consistent with the *Corps of Engineers Wetland Delineation Manual* and *Great Plains Region* supplement. Therefore, Wetland Map 1 and 2 in Addendum 1 of the report provide an accurate depiction of all wetland and other surface water boundaries within the entire Moore Ranch Uranium Project area. This verification of the wetland delineation is valid for a period of 5 years, until **May 10, 2015**, unless new information or policies warrant reconsideration.

Proposed uranium mining activities include installation of an In-Situ Recovery system consisting of well fields, header house buildings, and a Satellite Plant facility. Well fields include injection and production wells that circulate a recovery solution to a manifold in the header house through a pipeline network. The main pipeline (trunk line) transfers production fluid from the header house to the Satellite Plant. At the present time Uranium One Americas, Inc. (UOAI) is planning to construct two well fields and one Satellite Plant in Sections 27, 34, and 35, Township 42 North, Range 75 West as shown on Figure 2 in the PCN. Well Field 1 and the Satellite Plant are located entirely in upland where no wetlands or other surface waters would be affected. Well Field 2 includes approximately 14 wells, production pipelines, and a trunk line that would be located in wetland adjacent to a tributary of Simmons Draw.

Based on the information provided, we have determined that Department of the Army authorization is not required for any construction activities within Well Field 1 and at the Satellite Plant. Installation of wells and associated pipelines within wetland areas at Well Field 2 are authorized by Nationwide Permit (NP) 12 as defined in Part II of the *Federal Register* published on March 12, 2007 (Vol. 72, No. 47). A copy of NP 12 is enclosed. Please take time to carefully review the terms and general conditions of NP 12. In addition, this verification was based on a preliminary jurisdictional determination concerning wetlands within Well Field 2 that would be affected by undertaking activities authorized by NP 12 as documented on the enclosed form. Please review the form and if it is acceptable, sign and return it to our office acknowledging that UOAI agrees to rely on this procedure as a means of expediting the authorization.

UOAI is authorized to commence with the activities described above in accordance with NP 12. UOAI is responsible for ensuring that all activities undertaken in wetlands comply with terms and conditions of NP 12. If a contractor or other authorized representative will be accomplishing any activities on behalf of UOAI, it is recommended that they be provided a copy of this letter and the attached permit so that they are also aware of the terms and conditions. Any regulated activities that do not comply with NP 12 will be considered unauthorized and all responsible parties will be subject to appropriate enforcement action.

In a letter dated March 20, 2007, the Wyoming Department of Environmental Quality (WDEQ) certified that the use of NP 12 for activities such as those described above is acceptable provided that all terms and conditions of NP 12 are followed and that construction is conducted in a manner which does not result in a violation of any applicable water quality standard. A copy of the WDEQ's letter is enclosed. Please note that the WDEQ has added specific conditions to its certification and those conditions have been incorporated as regional conditions of NP 12.

Also enclosed is a Compliance Certification form. Please complete the form and return it to this office within 30 days after project completion as required by General Condition 26. The purpose of the form is to document which activities were actually completed and to certify that the activities were accomplished in compliance with terms and conditions of NP 12.

Please be aware that authorization granted by a Department of the Army permit does not eliminate requirements to obtain any other applicable federal, state, tribal or local permits. In addition, any deviations from plans for Well Field 2, as provided in the PCN dated April 21, 2010, could require additional authorization.

This verification will be valid until the nationwide permits expire on **March 18, 2012**, unless NP 12 is modified, suspended, or revoked prior to that date. However, up to one year is allowed to complete authorized activities in accordance with current terms and conditions of NP 12 if an activity has commenced or is under contract to commence before the expiration date. Please contact Mr. Thomas Johnson at (307) 772-2300 if you have any questions concerning this verification and reference file NWO-2008-00503.

Sincerely,



Matthew A. Bilodeau
Program Manager
Wyoming Regulatory Office

Enclosures

Copy Furnished:

Jeremy Zumberge
Wyoming Department of Environmental Quality
Water Quality Division
1866 South Sheridan Avenue
Sheridan, Wyoming 82801

The Omaha District, Regulatory Branch, Wyoming Regulatory Office is committed to providing quality and timely service to our customers. In an effort to improve customer service, please take a moment to complete a Customer Service Survey found on our web site at <https://www.nwo.usace.army.mil/html/od-rwy/survey.htm> Paper copies of the survey are also available upon request for those without Internet access.

PRELIMINARY JURISDICTIONAL DETERMINATION FORM

BACKGROUND INFORMATION

A. REPORT COMPLETION DATE FOR PRELIMINARY JURISDICTIONAL DETERMINATION (JD): 10 May 2010

B. NAME AND ADDRESS OF PERSON REQUESTING PRELIMINARY JD:

Uranium One Americas, Inc.
907 North Poplar Street, Suite 260
Casper, Wyoming 82601

C. DISTRICT OFFICE, FILE NAME, AND NUMBER: Omaha District, Wyoming Regulatory Office, Moore Ranch Uranium Project, NWO-2008-00503.

**D. PROJECT LOCATION(S) AND BACKGROUND INFORMATION:
(USE THE ATTACHED TABLE TO DOCUMENT MULTIPLE WATERBODIES AT DIFFERENT SITES)**

State: Wyoming County: Campbell City: n/a
Center coordinates of site (decimal format): Lat. 43.341283°, Long. -105.504972°.
Universal Transverse Mercator: n/a
Name of nearest waterbody: Ninemile Creek

Identify (estimate) amount of waters in the review area:

Non-wetland waters: n/a
Cowardin Class:
Stream Flow:
Wetlands: Approximately 4.3 acres adjacent to an unnamed tributary of Simmons Draw within Well Field 2.
Cowardin Class: Palustrine emergent

Name of any water bodies on the site that have been identified as Section 10 waters:

Tidal: n/a
Non-Tidal: none

E. REVIEW PERFORMED FOR SITE EVALUATION (CHECK ALL THAT APPLY):

- Office (Desk) Determination. Date: 10 May 2010
- Field Determination. Date(s):

1. The Corps of Engineers believes that there may be jurisdictional waters of the United States on the subject site, and the permit applicant or other affected party who requested this preliminary JD is hereby advised of his or her option to request and obtain an approved jurisdictional determination (JD) for that site. Nevertheless, the permit applicant or other person who requested this preliminary JD has declined to exercise the option to obtain an approved JD in this instance and at this time.

- 100-year Floodplain Elevation is: (National Geodetic Vertical Datum of 1929)
- Photographs: Aerial (Name & Date): Color infrared, 2001.
and Other (Name & Date): Various locations and dates.
- Previous determination(s). File no. and date of response letter:
- Other information (please specify):

IMPORTANT NOTE: The information recorded on this form has not necessarily been verified by the Corps and should not be relied upon for later jurisdictional determinations.

Thomas B. Jfk 10 May 2010
Project Manager and Date

Permittee and Date

2. In any circumstance where a permit applicant obtains an individual permit, or a Nationwide General Permit (NWP) or other general permit verification requiring “pre-construction notification” (PCN), or requests verification for a non-reporting NWP or other general permit, and the permit applicant has not requested an approved JD for the activity, the permit applicant is hereby made aware of the following: (1) the permit applicant has elected to seek a permit authorization based on a preliminary JD, which does not make an official determination of jurisdictional waters; (2) that the applicant has the option to request an approved JD before accepting the terms and conditions of the permit authorization, and that basing a permit authorization on an approved JD could possibly result in less compensatory mitigation being required or different special conditions; (3) that the applicant has the right to request an individual permit rather than accepting the terms and conditions of the NWP or other general permit authorization; (4) that the applicant can accept a permit authorization and thereby agree to comply with all the terms and conditions of that permit, including whatever mitigation requirements the Corps has determined to be necessary; (5) that undertaking any activity in reliance upon the subject permit authorization without requesting an approved JD constitutes the applicant’s acceptance of the use of the preliminary JD, but that either form of JD will be processed as soon as is practicable; (6) accepting a permit authorization (e.g., signing a proffered individual permit) or undertaking any activity in reliance on any form of Corps permit authorization based on a preliminary JD constitutes agreement that all wetlands and other water bodies on the site affected in any way by that activity are jurisdictional waters of the United States, and precludes any challenge to such jurisdiction in any administrative or judicial compliance or enforcement action, or in any administrative appeal or in any Federal court; and (7) whether the applicant elects to use either an approved JD or a preliminary JD, that JD will be processed as soon as is practicable. Further, an approved JD, a proffered individual permit (and all terms and conditions contained therein), or individual permit denial can be administratively appealed pursuant to 33 C.F.R. Part 331, and that in any administrative appeal, jurisdictional issues can be raised (see 33 C.F.R. 331.5(a)(2)). If, during that administrative appeal, it becomes necessary to make an official determination whether CWA jurisdiction exists over a site, or to provide an official delineation of jurisdictional waters on the site, the Corps will provide an approved JD to accomplish that result, as soon as is practicable. This preliminary JD finds that there “*may be*” waters of the United States on the subject project site, and identifies all aquatic features on the site that could be affected by the proposed activity, based on the following information:

SUPPORTING DATA. Data reviewed for preliminary JD (check all that apply)

- Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant:
- Data sheets prepared/submitted by or on behalf of the applicant/consultant.
 - Office concurs with data sheets/delineation report. *2007 Wetland Assessment for Uranium One Americas-Moore Ranch Uranium Project* report prepared by BKS Environmental Associates, Inc. dated December 21, 2009
 - Office does not concur with data sheets/delineation report.
- Data sheets prepared by the Corps:
- Corps navigable waters’ study:
- U.S. Geological Survey Hydrologic Atlas:
 - USGS NHD data.
 - USGS 8 and 12 digit HUC maps.
- U.S. Geological Survey map(s). Cite scale & quad name: Pine Tree, Wyoming, 1:24,000.
- USDA Natural Resources Conservation Service Soil Survey. Citation:
- National wetlands inventory map(s). Cite name:
- State/Local wetland inventory map(s):
- FEMA/FIRM maps:

NATIONWIDE PERMIT 12

UTILITY LINE ACTIVITIES

Activities required for the construction, maintenance, repair, and removal of utility lines and associated facilities in waters of the United States, provided the activity does not result in the loss of greater than 1/2 acre of waters of the United States.

Utility lines: This NWP authorizes the construction, maintenance, or repair of utility lines, including outfall and intake structures, and the associated excavation, backfill, or bedding for the utility lines, in all waters of the United States, provided there is no change in pre-construction contours. A "utility line" is defined as any pipe or pipeline for the transportation of any gaseous, liquid, liquescent, or slurry substance, for any purpose, and any cable, line, or wire for the transmission for any purpose of electrical energy, telephone, and telegraph messages, and radio and television communication. The term "utility line" does not include activities that drain a water of the United States, such as drainage tile or french drains, but it does apply to pipes conveying drainage from another area.

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

Utility line substations: This NWP authorizes the construction, maintenance, or expansion of substation facilities associated with a power line or utility line in non-tidal waters of the United States, provided the activity, in combination with all other activities included in one single and complete project, does not result in the loss of greater than 1/2 acre of waters of the United States. This NWP does not authorize discharges into non-tidal wetlands adjacent to tidal waters of the United States to construct, maintain, or expand substation facilities.

Foundations for overhead utility line towers, poles, and anchors: This NWP authorizes the construction or maintenance of foundations for overhead utility line towers, poles, and anchors in all waters of the United States, provided the foundations are the minimum size necessary and separate footings for each tower leg (rather than a larger single pad) are used where feasible.

Access roads: This NWP authorizes the construction of access roads for the construction and maintenance of utility lines, including overhead power lines and utility line substations, in non-tidal waters of the United States, provided the total discharge from a single and complete project does not cause the loss of greater than 1/2-acre of non-tidal waters of the United States. This NWP does not authorize discharges into non-tidal wetlands adjacent to tidal waters for access roads. Access roads must be the minimum width necessary (see Note 2, below). Access roads must be constructed so that the length of the road minimizes any adverse effects on waters of the United States and must be as near as possible to pre-construction contours and elevations (e.g., at grade corduroy roads or geotextile/gravel roads). Access roads constructed above pre-construction contours and elevations in waters of the United States must be properly bridged or culverted to maintain surface flows.

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

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

10. *Fills Within 100-Year Floodplains.* The activity must comply with applicable FEMA-approved state or local floodplain management requirements.

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

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

13. *Removal of Temporary Fills.* Temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations. The affected areas must be revegetated, as appropriate.

14. *Proper Maintenance.* Any authorized structure or fill shall be properly maintained, including maintenance to ensure public safety.

15. *Wild and Scenic Rivers.* No activity may occur in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a "study river" for possible inclusion in the system while the river is in an official study status, unless the appropriate Federal agency with direct management responsibility for such river, has determined in writing that the proposed activity will not adversely affect the Wild and Scenic River designation or study status. Information on Wild and Scenic Rivers may be obtained from the appropriate Federal land management agency in the area (e.g., National Park Service, U.S. Forest Service, Bureau of Land Management, U.S. Fish and Wildlife Service).

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

17. Endangered Species. (a) No activity is authorized under any NWP which is likely to jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation, as identified under the Federal Endangered Species Act (ESA), or which will destroy or adversely modify the critical habitat of such species. No activity is authorized under any NWP which "may affect" a listed species or critical habitat, unless Section 7 consultation addressing the effects of the proposed activity has been completed.

(b) Federal agencies should follow their own procedures for complying with the requirements of the ESA. Federal permittees must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements.

(c) Non-federal permittees shall notify the district engineer if any listed species or designated critical habitat might be affected or is in the vicinity of the project, or if the project is located in designated critical habitat, and shall not begin work on the activity until notified by the district engineer that the requirements of the ESA have been satisfied and that the activity is authorized. For activities that might affect Federally-listed endangered or threatened species or designated critical habitat, the pre-construction notification must include the name(s) of the endangered or threatened species that may be affected by the proposed work or that utilize the designated critical habitat that may be affected by the proposed work. The district engineer will determine whether the proposed activity "may affect" or will have "no effect" to listed species and designated critical habitat and will notify the non-Federal applicant of the Corps' determination within 45 days of receipt of a complete pre-construction notification. In cases where the non-Federal applicant has identified listed species or critical habitat that might be affected or is in the vicinity of the project, and has so notified the Corps, the applicant shall not begin work until the Corps has provided notification the proposed activities will have "no effect" on listed species or critical habitat, or until Section 7 consultation has been completed.

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

(e) Authorization of an activity by a NWP does not authorize the "take" of a threatened or endangered species as defined under the ESA. In the absence of separate authorization (e.g., an ESA Section 10 Permit, a Biological Opinion with "incidental take" provisions, etc.) from the U.S. FWS or the NMFS, both lethal and non-lethal "takes" of protected species are in violation of the ESA. Information on the location of threatened and endangered species and their critical habitat can be obtained directly from the offices of the U.S. FWS and NMFS or their world wide Web pages at <http://www.fws.gov/> and <http://www.noaa.gov/fisheries.html> respectively.

19. Designated Critical Resource Waters. Critical resource waters include NOAA-designated marine sanctuaries, National Estuarine Research Reserves, state natural heritage sites, and outstanding national resource waters or other waters officially designated by a state as having particular environmental or ecological significance and identified by the district engineer after notice and opportunity for public comment. The district engineer may also designate additional critical resource waters after notice and opportunity for comment.

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

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

20. Mitigation. The district engineer will consider the following factors when determining appropriate and practicable mitigation necessary to ensure that adverse effects on the aquatic environment are minimal:

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

(b) Mitigation in all its forms (avoiding, minimizing, rectifying, reducing, or compensating) will be required to the extent necessary to ensure that the adverse effects to the aquatic environment are minimal.

(c) Compensatory mitigation at a minimum one-for-one ratio will be required for all wetland losses that exceed 1/10 acre and require pre-construction notification, unless the district engineer determines in writing that some other form of mitigation would be more environmentally appropriate and provides a project-specific waiver of this requirement. For wetland losses of 1/10 acre or less that require pre-construction notification, the district engineer may determine on a case-by-case basis that compensatory mitigation is required to ensure that the activity results in minimal adverse effects on the aquatic environment. Since the likelihood of success is greater and the impacts to potentially valuable uplands are reduced, wetland restoration should be the first compensatory mitigation option considered.

(d) For losses of streams or other open waters that require pre-construction notification, the district engineer may require compensatory mitigation, such as stream restoration, to ensure that the activity results in minimal adverse effects on the aquatic environment.

(e) Compensatory mitigation will not be used to increase the acreage losses allowed by the acreage limits of the NWPs. For example, if an NWP has an acreage limit of 1/2 acre, it cannot be used to authorize any project resulting in the loss of greater than 1/2 acre of waters of the United States, even if compensatory mitigation is provided that replaces or restores some of the lost waters. However, compensatory mitigation can and should be used, as necessary, to ensure that a project already meeting the established acreage limits also satisfies the minimal impact requirement associated with the NWPs.

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

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

(Transferee)

(Date)

26. *Compliance Certification.* Each permittee who received an NWP verification from the Corps must submit a signed certification regarding the completed work and any required mitigation. The certification form must be forwarded by the Corps with the NWP verification letter and will include:

- (a) A statement that the authorized work was done in accordance with the NWP authorization, including any general or specific conditions;
- (b) A statement that any required mitigation was completed in accordance with the permit conditions; and
- (c) The signature of the permittee certifying the completion of the work and mitigation.

27. *Pre-Construction Notification.* Refer to separate instructions on pre-construction notification procedure.

28. *Single and Complete Project.* The activity must be a single and complete project. The same NWP cannot be used more than once for the same single and complete project.

Further Information

1. District Engineers have authority to determine if an activity complies with the terms and conditions of an NWP.
2. NWPs do not obviate the need to obtain other federal, state, or local permits, approvals, or authorizations required by law.
3. NWPs do not grant any property rights or exclusive privileges.
4. NWPs do not authorize any injury to the property or rights of others.
5. NWPs do not authorize interference with any existing or proposed Federal project.

Contents adapted from Part II of the *Federal Register* (Volume 72, Number 47) published on March 12, 2007. Copies of the *Federal Register* are available upon request or by visiting the Wyoming Regulatory Office web site at <https://www.nwo.usace.army.mil/html/od-rwy/Wyoming.htm>.

- the New Fork River upstream to the wilderness boundary;
4. The main stem of the Wind River from the Wedding of the Waters upstream to Boysen Dam;
 5. The main stem of the North Platte River from the Mouth of Sage Creek (approximately 15 miles downstream of Saratoga, Wyoming) upstream to the Colorado state line;
 6. The main stem of the North Platte River from the headwaters of Pathfinder Reservoir upstream to Kortez Dam (Miracle Mile segment);
 7. The main stem of the North Platte River from the Natrona County Road 309 bridge (Goose Egg Bridge) upstream to Alcova Reservoir;
 8. The main stem of Sand Creek above the U.S. Highway 14 bridge;
 9. The main stem of the Middle Fork of the Powder River through its entire length above the mouth of Buffalo Creek;
 10. The main stem of the Tongue River, the main stem of the North Fork of the Tongue River, and the main stem of the South Fork of the Tongue River above the U.S. Forest Service boundary;
 11. The main stem of the Sweetwater River above the mouth of Alkali Creek;
 12. The main stem of the Encampment River from the northern U.S. Forest Service boundary upstream to the Colorado state line;
 13. The main stem of the Clarks Fork River from the U.S. Forest Service boundary upstream to the Montana state line;
 14. All waters within the Fish Creek (near Wilson, Wyoming) drainage;
 15. The main stem of Granite Creek (tributary of the Hoback River) through its entire length;
 16. Fremont Lake; and
 17. Wetlands adjacent to the above listed Class 1 waters.

23(d). Statewide Pre-Construction Notification

Permittees must notify the WRO in accordance with General Condition 27 (Pre-Construction Notification) prior to undertaking any activities authorized by Nationwide Permits 23 and 27.

23(e). Teton County Pre-Construction Notification

Permittees must notify the WRO in accordance with General Condition 27 (Pre-Construction Notification) prior to undertaking any authorized activities in Teton County.

23(f). Spawning Seasons

The following is additional information on requirements of General Condition (GC) 3 (Spawning Areas) regarding trout species. However, this information does not diminish the scope of GC 3, which is applicable to all fish species.

Spawning seasons for common trout species are:

Rainbow and Cutthroat Trout - March 15 through July 31

Brown and Brook Trout - September 15 through November 30

Site specific information on spawning seasons and spawning areas for all fish species may be obtained from Fisheries Supervisors in Wyoming Game and Fish Department Regional Offices.

DEFINITIONS

Best Management Practices (BMPs). BMPs are policies, practices, procedures, or structures implemented to mitigate the adverse environmental effects on surface water quality resulting from development. BMPs are categorized as structural or non-structural. A BMP policy may affect the limits on a development.

Compensatory Mitigation. For purposes of Section 10/404, compensatory mitigation is the restoration, creation, enhancement, or in exceptional circumstances, preservation of wetlands and/or other aquatic resources for the purpose of compensating for unavoidable adverse impacts which remain after all appropriate and practicable avoidance and minimization has been achieved.

Creation. The establishment of a wetland or other aquatic resource where one did not formerly exist.

Enhancement. Activities conducted in existing wetlands or other aquatic resources that increase one or more aquatic functions.

Ephemeral Stream. An ephemeral stream has flowing water only during and for a short duration after, precipitation events in a typical year. Ephemeral stream beds are located above the water table year-round. Groundwater is not a source of water for the stream. Runoff from rainfall is the primary source of water for stream flow.

Farm Tract. A unit of contiguous land under one ownership that is operated as a farm or part of a farm.

Flood Fringe. That portion of the 100-year floodplain outside of the floodway (often referred to as Afloodway fringe).

Floodway. The area regulated by Federal, state, or local requirements to provide for the discharge of the base flood so the cumulative increase in water surface elevation is no more than a designated amount (not to exceed one foot as set by the National Flood Insurance Program) within the 100-year floodplain.

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

Intermittent Stream. An intermittent stream has flowing water during certain times of the year, when groundwater provides water for stream flow. During dry periods, intermittent streams may not have flowing water. Runoff from rainfall is a supplemental source of water for stream flow.

Loss of Waters of the U.S. Waters of the U.S. that include the filled area and other waters that are permanently adversely affected by flooding, excavation, or drainage because of the regulated activity. Permanent adverse effects include permanent above-grade, at-grade, or below-grade fills that change an aquatic area to dry land, increase the bottom elevation of a waterbody, or change the use of a waterbody. The acreage of loss of waters of the U.S. is the threshold measurement of the impact to existing waters for determining whether a project may qualify for an NWP; it is not a net threshold that is calculated after considering compensatory mitigation that may be used to offset losses of aquatic functions and values. The loss of stream bed includes the linear feet of stream bed that is filled or excavated. Impacts to ephemeral streams are not included in the linear foot measurement of loss of stream bed for the purpose of determining compliance with the linear foot limits of NWPs 39, 40, 42, and 43. Waters of the U.S. temporarily filled, flooded, excavated, or drained, but restored to preconstruction contours and elevations after construction, are not included in the measurement of loss of waters of the U.S. Impacts to ephemeral waters are only not included in the acreage or linear foot measurements of loss of waters of the U.S. or loss of stream bed, for the purpose of determining compliance with the threshold limits of the NWPs.

DEFINITIONS (continued)

Stream Channelization. The manipulation of a stream channel to increase the rate of water flow through the stream channel. Manipulation may include deepening, widening, straightening, armoring, or other activities that change the stream cross-section or other aspects of stream channel geometry to increase the rate of water flow through the stream channel. A channelized stream remains a water of the U.S., despite the modifications to increase the rate of water flow.

Tidal Wetland. A tidal wetland is a wetland (i.e., water of the U.S.) that is inundated by tidal waters. The definitions of a wetland and tidal waters can be found at 33 CFR 328.3(b) and 33 CFR 328.3(f), respectively. Tidal waters rise and fall in a predictable and measurable rhythm or cycle due to the gravitational pulls of the moon and sun. Tidal waters end where the rise and fall of the water surface can no longer be practically measured in a predictable rhythm due to masking by other waters, wind, or other effects. Tidal wetlands are located channelward of the high tide line (i.e., spring high tide line) and are inundated by tidal waters two times per lunar month, during spring high tides.

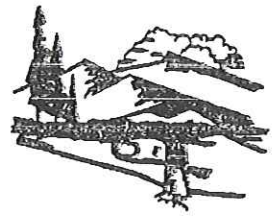
Vegetated Buffer. A vegetated upland or wetland area next to rivers, streams, lakes, or other open waters which separates the open water from developed areas, including agricultural land. Vegetated buffers provide a variety of aquatic habitat functions and values (e.g., aquatic habitat for fish and other aquatic organisms, moderation of water temperature changes, and detritus for aquatic food webs) and help improve or maintain local water quality. A vegetated buffer can be established by maintaining an existing vegetated area or planting native trees, shrubs, and herbaceous plants on land next to open-waters. Mowed lawns are not considered vegetated buffers because they provide little or no aquatic habitat functions and values. The establishment and maintenance of vegetated buffers is a method of compensatory mitigation that can be used in conjunction with the restoration, creation, enhancement, or preservation of aquatic habitats to ensure that activities authorized by NWP's result in minimal adverse effects to the aquatic environment. (See General Condition 19.)

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

Waterbody. A waterbody is any area that in a normal year has water flowing or standing above ground to the extent that evidence of an ordinary high water mark is established. Wetlands contiguous to the waterbody are considered part of the waterbody.



Department of Environmental Quality



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

Dave Freudenthal, Governor

John Corra, Director

March 20, 2007

Mr. Matt Bilodeau
US Army Corps of Engineers
Wyoming Regulatory Office
2232 Del Range Blvd., Suite 210
Cheyenne, WY 82009

RE: Section 401 Certification of Nationwide permits in Wyoming

Dear Mr. Bilodeau:

In accordance with the provisions of the state certification program for activities requiring dredge and fill permits from the U.S. Army Corps of Engineers, this office has reviewed the proposed nationwide program and has made the following determinations:

In view of the current state water quality standards and regulations, we have found that some of the nationwide permits are acceptable as written, some require additional conditions to assure compliance with our standards and a few must be denied certification. There are also a number of nationwide permits for which we are waiving certification either because they do not involve discharges to waters of the state or have little or no applicability in Wyoming.

WAIVER OF 401 CERTIFICATION

Nationwide permits 1, 2, 4, 8, 9, 10, 11, 15, 19, 22, 24, 28, 34, 35 and 48 are determined by this department to either not involve discharges or have little or no application in this state and, therefore, certification is waived.

US Army Corps of Engineers
WY Regulatory Office
Received

3/26/07

Herschler Building • 122 West 25th Street • Cheyenne, WY 82002 • <http://deq.state.wy.us>

ADMIN/OUTREACH (307) 777-7937 FAX 777-3610	ABANDONED MINES (307) 777-6145 FAX 777-6462	AIR QUALITY (307) 777-7391 FAX 777-5616	INDUSTRIAL SITING (307) 777-7369 FAX 777-5973	LAND QUALITY (307) 777-7756 FAX 777-5864	SOLID & HAZ. WASTE (307) 777-7752 FAX 777-5973	WATER QUALITY (307) 777-7781 FAX 777-5973
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exactly how this permit may be applied, we believe it is prudent to evaluate each project individually and add specific conditions relative to water quality protection as needed. Therefore, certification of NWP 27 is denied.

NWP 40 Farm Buildings. This NWP has never been used in Wyoming and we are not sure what its actual applicability is. We believe, however, that it is necessary to individually review each proposal to make an appropriate certification decision. Therefore, certification of NWP 40 is denied.

NWP 43 Storm Water Management Facilities. This NWP may have significant effect on water quality depending on the scale and location of project. Depending on the source of storm water runoff, it is conceivable that significant concentrations of metals, turbidity, substances with high biological oxygen demand (BOD), oil and grease or other contaminants may be introduced into state waters. Because we are unsure of exactly what consequences to water quality may result from application of this permit, we believe it is prudent to evaluate each proposed project individually and add specific conditions relative to the protection of water quality. Therefore, certification of NWP 43 is denied.

NWP 44 Mining Activities. This NWP authorizes aggregate and hard rock/mineral mining and in and adjacent to specific water bodies. Beneficiation activities for hard rock/mineral mining are authorized within 200 feet of an "ordinary high water mark: of any open water body. The activities authorized by this NWP may have considerable, deleterious effects on water quality. Because of the potential impacts to water quality, we believe that it is necessary to review each proposed activity and add any conditions necessary to protect water quality. Therefore, certification of NWP 44 is denied.

DENIAL OF CERTIFICATION ON CLASS 1 WATERS

Class 1 waters are defined by the state water quality regulations as those in which no further water quality degradation by point source discharges other than from dams will be allowed. Nonpoint source discharges will be controlled by the implementation of best management practices designed to maintain existing water quality. Because of the high level of protection afforded to these waters by the regulations, authorization of the activities covered by the above NWPs without individual departmental review is inappropriate.

Therefore, 401 certification for NWPs 3, 5, 6, 7, 12, 13, 14, 18, 25, 26, 29, 30, 32, 33, 36, 37, 39, 41, 42, 45, 46 and 47 is denied on Wyoming Class 1 waters. These nationwide permits are certified for use on Wyoming class 2, 3, and 4 waters (*all other waters*)

14. All waters within the Fish Creek (near Wilson, Wyoming) drainage;
15. The main stem of Granite Creek (tributary of the Hoback River) through its entire length;
16. Fremont Lake;
17. Wetlands adjacent to the above listed Class 1 waters.

APPROVED 401 CERTIFICATION

Nationwide permits 20, 21, 38, 49 and 50 are acceptable as written on all waters in the state so long as the general conditions, management practices, and other provisions of the nationwide program are strictly followed.

ADDITIONAL CONDITIONS ON ALL NWPS.

Every authorization by the Corps for any activity which is not subject to an individual 401 certification must include the following language:

The Wyoming Department of Environmental Quality has certified that the use of this nationwide permit for the proposed activity is acceptable provided that all of the terms and conditions of the nationwide permit are followed and that construction is conducted in a manner which does not result in a violation of any applicable water quality standard. This authorization in no way relieves any person from compliance with water quality standards or any other federal, state, or local laws or regulations, nor does it provide exemption from legal action by private citizens for damage to property which the activity may cause.

The following conditions apply when operating equipment or otherwise undertaking construction in a water of the state:

- a. Construction equipment should not be operated below the existing water surface except as follows:

Fording the stream at one location is acceptable, however, vehicles and equipment should not push or pull material along the streambed below the existing water level. Work below the water which is essential for preparation of culvert bedding or footing installations is acceptable to the extent that it

Mr. Bilodeau
3/20/2007
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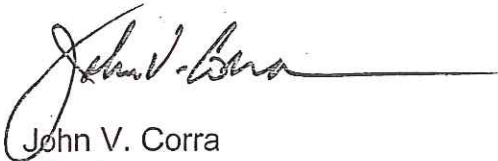
- f. Care must be taken to prevent any petroleum products, chemicals, or other deleterious materials from entering the water. A spill contingency should be developed for all projects where a large amount of petroleum products or solvents will be stored on the project site, and must be prepared when storage of these materials exceeds the federal limits.

The Wyoming Department of Environmental Quality certifies that these permits are acceptable as described above, provided the procedures described in the application for state certification are followed and reasonable care is taken to ensure that all disturbed areas are protected from erosion. The Department also reserves the right to amend, modify, suspend or revoke this certification or any of its terms or conditions as may be appropriate or necessary to protect water quality and associated beneficial uses. Upon adoption of updated standards, this certification may be revoked and modified appropriately.

Please be aware that this letter constitutes state certification of this permit as required by Section 401 of the federal Clean Water Act. It 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 which the activity may cause.

If you have any questions or would like to discuss any part of this certification, please feel free to contact Jeremy Lyon of my staff at (307) 777-7588.

Sincerely,



John V. Corra
Director
Department of Environmental Quality

JVC/JFW/JML/rm/7-0224

cc: John Emmerich, Wyoming Game and Fish, Cheyenne
Toney Ott, US EPA Region 8, 1595 Wynkoop Street, Denver, CO 80202-1129
Brian Kelly, US FWS, 5353 Yellowstone Road, Suite 308, Cheyenne, WY 82009
Rick Chancellor, LQD

COMPLIANCE CERTIFICATION

The purpose of this form is to document the completion of activities authorized under a Department of the Army Permit. Upon completion of the authorized activities and any mitigation required as a condition of the authorization, the permittee must complete and sign this form and return it to the following address within 30 days.

U.S. Army Corps of Engineers
Wyoming Regulatory Office
2232 Dell Range Boulevard, Suite 210
Cheyenne, Wyoming 82009-4942

Please complete the following information:

1. Name of Permittee:
2. County:
3. File Number:
4. Date of Issuance:
5. Description of Authorized Activities:

6. Date Construction Began:
7. Name, address, and phone number of Contractor (if applicable):

8. Date Construction Completed:
9. Was Mitigation Required (yes or no):
If yes, Date Mitigation was Completed:
10. OPTIONAL - Are photographs of the project area enclosed (yes or no):

Please note that authorized activities are subject to inspection by a U.S. Army Corps of Engineers representative. Failure to comply with the terms and conditions of the permit could result in permit suspension, modification, or revocation.

I hereby certify that the activities authorized by the permit referenced above have been completed in accordance with the terms and conditions of the referenced permit and that all mitigation required as a condition of the permit was completed in accordance with the mitigation guidelines provided.

Signature of Permittee