October 13, 2021

U.S. Environmental Protection Agency Region 8 Clean Water Act Section 401 Water Quality Certification for the U.S. Corps of Engineers CWA Section 404 2021 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 Indian country[1] lands within the state of North Dakota: NWP 3, 4, 5, 6, 7, 13, 14, 15, 16, 17, 18, 19, 20, 22, 23, 25, 27, 30, 31, 32, 33, 34, 36, 37, 38, 41, 45, 46, 49, 53, 54, and 59/E.[2]

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. Where no state agency or tribe has authority to give such certification, the U.S. Environmental Protection Agency (EPA) is the certifying authority. In this case, the Sisseton-Wahpeton Oyate, Spirit Lake Tribe, Standing Rock Sioux Tribe, Three Affiliated Tribes (the Mandan, Hidatsa and Arikara Nation), and Turtle Mountain Band of Chippewa Indians currently are not authorized to provide CWA Section 401 certifications for discharges occurring on reservations, or any other Indian country lands, within the State of North Dakota, therefore, the EPA is making the certification decisions for discharges that may result from potential projects authorized under the proposed Corps CWA 404 NWPs listed above. Although the above Tribes currently are not authorized to provide CWA Section 401 certifications, EPA will condition certifications using Tribal water quality requirements where applicable and appropriate.

General Information

The general information provided in this section is intended to provide context for EPA's certification decision and does not itself constitute a certification condition(s). The information in this section is being provided to help project proponents comply with the terms and conditions of the CWA Section 401 certification on the NWPs on applicable Indian country lands.

- Prior to work commencing, project proponents should notify the appropriate Tribal Environmental Office.
- The project proponents for projects authorized under the NWPs should obtain all other permits, licenses, and certifications that may be required by federal, state, or tribal authority.

[1] Indian country is defined in 18 U.S.C. Section 1151. Indian country in North Dakota generally includes (1) lands within the exterior boundaries of the following Indian reservations located within North Dakota: the Fort Berthold Indian Reservation, the Spirit Lake Reservation, the Lake Traverse Reservation, the Standing Rock Sioux Reservation, and the Turtle Mountain Reservation; (2) any land held in trust by the United States for an Indian tribe; and (3) any other areas that are "Indian country" within the meaning of 18 U.S.C. Section 1151.

[2] This Certification does not apply to the following NWPs: 1, 2, 8, 9, 10, 11, 24, 28, and 35. The Corps has not requested certification for these NWPs. If any activity authorized by these listed NWPs may result in a discharge into a water of the United States, the project proponent should contact the Corps or EPA to determine if a CWA Section 401 certification is required. Furthermore, NWPs 12, 21, 29, 39, 40, 42, 43, 44, 48, 50, 51, 52, A/55, B/56, C/57, and D/58 were reissued in January 2021. 86 FR 2744. EPA denied certification for all these NWPs, except NWP 48. Project proponents must apply for an individual CWA Section 401 certification from EPA for all NWPs reissued in January 2021, except NWP 48, for which EPA expressly waived certification authority.

- If a project is unable to meet the enclosed conditions, or if certification is denied for an applicable NWP, the project proponent should request an individual CWA Section 401 certification from EPA. An individual certification request is subject to the requirements outlined in 40 CFR 121.
- Copies of this certification should be kept on the job site and readily available for reference.
- Pursuant to CWA section 308(a), EPA representatives may inspect the authorized activity and any mitigation areas to determine compliance with the terms and conditions of the NWP.
- If you have questions regarding this certification, or need assistance contacting the appropriate tribe, please contact EPA Region 8 at: R8CWA401@epa.gov and Aaron Blair at (303) 312-6883 or via email at blair.aaron@epa.gov or Toney Ott at (303) 312-6906 or via email at ott.toney@epa.gov. Additional information on tribes in EPA Region 8 also can be found at: https://www.epa.gov/tribal/region-8-tribal-program.

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

On behalf of the tribes listed above, 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, 37, 38, 41, 45, 46, and 59/E. EPA Region 8 has determined that any discharge authorized under these proposed NWPs will comply with water quality requirements, as defined in 40 C.F.R. 121.1(n), subject to the following conditions pursuant to Section 401(d). Note that all correlating justification statements and citations as required by 40 CFR 121.7(d)(2) are included in Appendix A.

General Condition 1: Point source discharges shall not occur in jurisdictional waters of these special aquatic resources: (1) fens, bogs, or other peatlands; (2) within 100 feet of the point of discharge of a known natural spring source; (3) riffle-pool complexes of streams; or (4) water sources above hanging gardens. Projects or activities expected to have potential discharges into these areas are not covered by this certification and require a project-specific CWA Section 401 certification from EPA Region 8.

A peatland is defined by the U.S. Forest Service as any type of peat covered terrain with an accumulation of at least 20 to 40 centimeters of peat within the upper 80 centimeters of the soil profile. More resources on peatlands and hanging gardens can be found here:
https://www.fws.gov/mountain-prairie/es/fen/FWSRegion6FenPolicy1999.pdf
https://www.fs.fed.us/wildflowers/beauty/California_Fens/what.shtml
https://cnhp.colostate.edu/cnhpblog/2009/08/11/hanging-gardens/
https://springstewardshipinstitute.org/hanging-garden

General Condition 2: Except as specified in the project plan, no debris, silt, sand, cement, concrete, oil or petroleum, organic material, or other construction related materials or wastes shall be allowed to enter or be stored within 100 feet of waters of the U.S. If materials are stored within 100 feet of waters of the U.S., the project plan shall identify the measures and controls that will be used to ensure the materials will not enter waters of the U.S. No activities shall result in an unconfined discharge of liquid cement into waters of the U.S.

Any materials not specified in the project plan that do enter waters of the U.S. shall be reported to EPA (R8CWA401@epa.gov) with a remediation plan within 15 days.

For emergency spills, including any spills of petroleum products, contact EPA's National Response Center at 1-800-424-8802, the appropriate Tribal Environmental Office, and local spill response hotlines within 24 hours.

General Condition 3: Activities that may result in a point source discharge shall occur during seasonal low flow or no flow periods. Activities that cannot meet this condition require a project-specific CWA Section 401 certification from EPA Region 8.

General Condition 4: When operating equipment or otherwise undertaking construction activities (including grouting riprap) in aquatic resources:

- Work shall be completed in the dry, unless justification for working in the wet can be documented by the project proponent prior to construction.[3]
- Concrete grouting shall be allowed to dry thoroughly before exposure to waters of the U.S.
- All equipment shall be cleaned prior to arriving on the project site. All equipment shall be inspected daily and prior to entering any streams or wetlands for oil, gas, diesel, anti-freeze, hydraulic fluid, and other petroleum leaks.
- All contaminated areas shall be cleaned immediately, and contaminated soil removed from the site or contained in enclosed containers. Containers shall not be stored within 100 feet of waters of the U.S. If site conditions do not allow for storage at least 100 feet away from waters of the U.S., or if the topography is such that storage can occur within 100 feet without risk to waters of the U.S., the project proponent shall document this along with the measures and controls that will be used to ensure contaminants will not enter waters of the U.S. All equipment detected with leaks shall be repaired promptly or moved offsite within 24 hours.
- Containment booms and/or absorbent material shall be available onsite. In the case of spills, containment booms and/or absorbent materials shall be employed immediately to prevent discharges from reaching waters of the U.S.

General Condition 5: For projects that require coverage under EPA's Construction General Permit, the project proponent shall submit the Stormwater Pollution Prevention Plan (SWPPP) to EPA Region 8 (R8CWA401@epa.gov).

For projects that do not require the development of a SWPPP, the project proponent shall document how the project will utilize construction techniques, including soil erosion and sediment controls, to prevent or minimize water quality degradation because of the project. Projects shall not permanently impact the overall health of the aquatic resource; beneficial uses shall not be lost or impaired.

General Condition 6: Vegetation in jurisdictional wetlands and waterbodies shall be protected except where its removal is necessary for completion of the work. Locations disturbed by construction activities shall be revegetated with appropriate native vegetation in a manner that optimizes plant establishment for the specific site (e.g., stockpiling of existing topsoil that is weed-seed free). Revegetation may include topsoil replacement, planting, seeding, fertilization, liming, and weed-free mulching. 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. Exceptions to native revegetation include agricultural lands that are being returned to crop or pasture vegetation, with Corps permission.

Where removal of vegetation occurs, the project proponent shall develop a restoration plan prior to initiating construction on the project. The restoration plan shall include measures, including but not limited to:

- The project proponent shall describe and photo document where the disturbance or removal of riparian/wetland vegetation will occur during the completion of the work.

[3] See "Working in the dry: Cofferdams, in-river construction, and the United States Army Corps of Engineers" https://usace.contentdm.oclc.org/digital/collection/p16021coll4/id/156/

- The project proponent shall revegetate disturbed jurisdictional areas within three months of completion of construction, based on pre-disturbance or reference site conditions, including percent cover and native species diversity.
- The project proponent shall revegetate any disturbed wetland soil with native plant species. Non-native and invasive species shall not be used for restoration activities.

General Condition 7: The placement of material (discharge) for the construction of new dams is not certified, except for stream restoration projects. Activities that cannot meet this condition require a project-specific CWA Section 401 certification from EPA Region 8.

General Condition 8 – Applicable only to the following NWPs: 3, 7, 13, 14, 15, 19, 23, 27, 37, and 59/E. Project proponents shall provide notice to EPA Region 8 at least 30 days prior to commencing work in water of the U.S. to provide EPA Region 8 with the opportunity to review and inspect the activity for the purposes of determining whether any discharge from the proposed project will violate this water quality certification. In cases where the Corps requires a PCN for the applicable NWP, in accordance with Corps' National General Condition 32(b), Pre-Construction Notification (86 FR 2873), the applicant shall also provide the PCN to Region 8.

Additionally, the applicant shall include a summary of communications with the affected Tribe's water quality staff regarding the project, including any concerns or issues, in its submission to EPA.

NWP-Specific Conditions:

NWP 3, Specific Condition 1: No more than 25 cubic yards of new or additional riprap shall be placed to protect the structure or fill. If a project proponent seeking NWP authorization plans to use more than 25 cubic yards of new or additional riprap to protect the structure or fill, the project proponent shall request a project-specific CWA Section 401 certification from EPA Region 8.

NWP 3, Specific Condition 2: Bridge replacements shall span the bankfull width and/or the ordinary highwater mark of the affected waters of the U.S. Projects or activities that cannot meet this condition require a project-specific CWA Section 401 certification from EPA Region 8.

NWP 3, Specific Condition 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. Original land contour dimensions shall be documented prior to construction to confirm contours are returned to these dimensions post-maintenance activities.

NWP 3, Specific Condition 4: Silt and sediment removal shall not exceed:

1) 50 linear feet for low water crossings; and
2) 100 linear feet for bridge crossings.

Projects or activities that cannot meet this condition require a project-specific CWA Section 401 certification from EPA Region 8.

NWP 7, Specific Condition 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. Pipe sizing selection methods and justification that high pressure discharge will be minimized shall be documented by the

project proponent.

NWP 7, Specific Condition 2: Outfall structures shall not be constructed in jurisdictional wetlands. If a project proponent plans to construct an outfall structure in a jurisdictional wetland, the project proponent shall request a project-specific CWA Section 401 certification from EPA Region 8.

NWP 7, Specific Condition 3: For activities that do not require a SWPPP, the project proponent shall submit to EPA, an erosion and sediment control plan prior to construction that includes outfall stabilization controls. (Projects or activities requiring a SWPPP must submit the SWPPP to EPA per General Condition 5.)

The plan shall describe type, location, and maintenance schedules for all controls to be put in place prior to, during, and after construction 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. The plan shall provide for maintenance of measures, and adaptive management processes if any measures are determined to be ineffective. During monitoring and maintenance, if water quality requirements are exceeded or if measures are identified as ineffective, then descriptions of additional measures taken to ensure compliance shall be sent to EPA within 48 hours of the exceedance or measure failure.

Rip rap aprons and/or energy dissipation structures shall be constructed to provide protection from the erosive potential of high-velocity flows, as documented in the erosion and sediment control plan, with adaptive management in place for potential structure failures.

NWP 7, Specific Condition 4: The project proponent shall submit a monitoring plan to EPA Region 8 prior to initiating construction on the project.

- The project proponent shall monitor the project site through the next growing season or until the site is restored to pre-disturbance or reference site conditions. The monitoring plan shall contain the restoration plan (as outlined in General Condition 6) and any additional adaptive management methods if the site is not achieving pre-disturbance or reference site conditions.
- The project proponent shall use referenced photographs to document the status of all relevant locations at the project site prior to construction, during project construction, after project completion, and upon completion of all restoration activities, consistent with the monitoring plan.
- The project proponent shall submit electronic photos (prior to, during and post-construction, and post-restoration) in an annual monitoring report to EPA Region 8 (R8CWA401@epa.gov). The report shall be labeled with the project name and Corps District number.

NWP 13, Specific Condition 1: The project proponent shall submit a project plan with design techniques and stabilization methods to EPA Region 8 prior to construction. Activities shall use 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 predominately 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.

Any project proposing bank stabilization solely using hard armoring methods, or where the scope of the entire project is greater than 500 linear feet, is not authorized under this certification and the project proponent shall seek a project-specific CWA Section 401 certification from EPA Region 8.

NWP 13, Specific Condition 2: The slopes of disturbed banks shall be configured to mimic a stable reference reach and not reduce the bottom width of the stream. Pre-construction cross sections shall be included in the project plan submitted to EPA Region 8.

NWP 13, Specific Condition 3: The project proponent shall submit a monitoring plan to EPA Region 8 prior to initiating construction on the project.

- The project proponent shall monitor the project site through the next growing season or until the site is restored to pre-disturbance or reference site conditions. The monitoring plan shall contain the restoration plan (as outlined in General Condition 6) and any additional adaptive management methods if the site is not achieving pre-disturbance or reference site conditions.
- The project proponent shall use referenced photographs to document the status of all relevant locations at the project site prior to construction, during project construction, after project completion, and upon completion of all restoration activities, consistent with the monitoring plan.
- The project proponent shall submit electronic photos (prior to, during and post-construction, and post-restoration) in an annual monitoring report to EPA Region 8 (R8CWA401@epa.gov). The report shall be labeled with the project name and Corps District number (if available).

NWP 14, Specific Condition 1: NWP 14 is conditionally certified, except that a project-specific CWA section 401 certification is required for projects authorized under one or more NWP by the Corps that result(s) in:

1. Greater than 1/10 acre of impacts to waters of the U.S.; or
2. Greater than 300 linear feet of impacts to waters of the U.S.

NWP 14, Specific Condition 2: The project proponent shall submit a project design plan to EPA Region prior to construction. Affected streambanks shall be sloped such that the stream bottom width is not reduced, and bottom elevations are restored to original elevations. Stream bank slopes should not be steeper than 3:1. Justification for banks steeper than 3:1 shall be included in the project design plan. The project design plan also shall document how all temporary fills and structures will be removed, and the area restored to pre-project conditions.

NWP 14, Specific Condition 3: Permanent culverts shall be installed using an established culvert analysis and design tool (ex. HY-8, HEC-RAS, USGS CAP, etc.). Culverts shall span the bankfull width and/or ordinary high-water mark of the affected waterbody. The culvert bottom shall be installed below the existing streambed elevation to allow aquatic organism passage and the natural substrate to reestablish.

NWP 14, Specific Condition 4: The project proponent shall submit a monitoring plan to EPA Region 8 prior to initiating construction on the project.

- The project proponent shall monitor the project site through the next growing season or until the site is restored to pre-disturbance or reference site conditions. The monitoring plan shall contain the restoration plan (as outlined in General Condition 6) and any additional adaptive management methods if the site is not achieving pre-disturbance or reference site conditions.
- Impacts to aquatic resource buffers shall be avoided. If avoidance is not possible, methods for buffer restoration and monitoring shall be in the monitoring plan.
- The project proponent shall use referenced photographs to document the status of all relevant locations at the project site prior to construction, during project construction, after project completion, and upon completion of all restoration activities, consistent with the monitoring plan.

- The project proponent shall submit electronic photos (prior to, during and post-construction, and post-restoration) in an annual monitoring report to EPA Region 8 (R8CWA401@epa.gov). The report shall be labeled with the project name and Corps District number (if available).

NWP 15, Specific Condition 1: Fill or dredged material shall not result in an increase in land contour height beyond the original dimensions of the waterbody. Original land contour dimensions shall be documented prior to construction to confirm contours are restored to pre-disturbance conditions. Affected streambanks shall be sloped such that the stream bottom width is not reduced, and bottom elevations are restored to original elevations. Stream bank slopes should not be steeper than 3:1. Justification for banks steeper than 3:1 shall be included in the project design plan. The project design plan also shall document how all temporary fills and structures will be removed, and the area restored to pre-project conditions.

NWP 15, Specific Condition 2: Crossings shall be placed perpendicular to the water course, unless the project proponent can document that this would result in increased impacts to aquatic resources or compromise the safety of the structure.

NWP 15, Specific Condition 3: Bridge decks shall be designed such that they do not drain directly into the waterbody.

NWP 15, Specific Condition 4: Bridges shall span the bankfull width, adjacent wetlands, and/or ordinary high-water mark of the affected waterbody. Projects that cannot meet this condition require a project-specific CWA Section 401 certification from EPA Region 8.

NWP 19, Specific Condition 1: Dredged or fill materials shall be placed in non-jurisdictional areas and controlled such that it cannot return to waters of the U.S. Dredged or fill material shall not be placed on 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 project proponent can document that the vegetation and geomorphology signify a long-term stable configuration (e.g., areas of sediment accumulation are not formed from temporary situations such as drought conditions or upstream reservoir release conditions).

NWP 27, Specific Condition 1: NWP 27 is conditionally certified, subject to the general conditions listed above, except for the following activities, where an individual project-specific CWA Section 401 certification is required: (1) the project involves dam removal; and/or (2) the project or activities involve greater than 1-acre of impacts to waters of the U.S.; and/or (3) the project impacts greater than 500 linear feet of waters of the U.S.

NWP 37, Specific Condition 1: Original and planned stream contours shall be documented by the project proponent. Construction activities shall not result in the channelization of streams or sloughs. 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.

NWP 37, Specific Condition 2: Construction activities shall not remove silt beyond what was deposited by the emergency event. Based on the original site conditions and planned project design, the project proponent shall justify the amount of silt identified for removal, such that the construction activities do not result in the removal of silt beyond what was deposited by the emergency event (e.g., excavating a wetland area to the point it's a stormwater retention pond, or deepening/widening a stream channel to accommodate higher flow capacity).

NWP 37, Specific Condition 3: Construction of temporary structures or drains for the purpose of reducing or preventing flood damage shall be removed within 60 days following the emergency event, unless justification for retaining the structures for a longer period is documented by the project proponent.

NWPs Denied (121.7(e)(2))

On behalf of the Sisseton-Wahpeton Oyate, Spirit Lake Tribe, Standing Rock Sioux Tribe, Three Affiliated Tribes (the Mandan, Hidatsa and Arikara Nation), and Turtle Mountain Band of Chippewa Indians, EPA Region 8 cannot certify that the range of discharges from potential projects authorized under the following proposed NWPs will comply with water quality requirements, as defined in 40 CFR 121.1(n). Therefore, CWA Section 401 water quality certification is denied for NWPs 16, 17, 34, 49, and 53 and applicants must request an individual water quality certification, consistent with 40 CFR 121.5.

Certification denial is due to insufficient information. 40 CFR 121.7(e)(2)(iii). In EPA's unique role certifying on behalf of a tribe, EPA lacks important information about tribal water resources. In the case of the Sisseton-Wahpeton Oyate, Spirit Lake Tribe, Standing Rock Sioux Tribe, Three Affiliated Tribes (the Mandan, Hidatsa and Arikara Nation), and Turtle Mountain Band of Chippewa Indians, EPA Region 8 lacks sufficient information on sensitive resources that may exist on these tribal lands, potential impaired waters on these tribal lands, and potential cultural importance of the water resources on these tribal lands. Additional information on these specific subjects would be needed for EPA Region 8 to assure that the range of discharges from potential projects authorized under NWPs 16, 17, 34, 49, and 53 will comply with water quality requirements, as defined in 40 CFR 121.1(n).

This information would also be necessary for EPA Region 8 to identify specific water quality requirements and evaluate whether the range of discharges from potential projects will comply with such requirements, in accordance with CWA section 401(a)(1) and 40 CFR 121.7(b). Lacking this information, EPA Region 8 is therefore denying certification.

NWPs Waived (121.9(a)(1))

On behalf of the Sisseton-Wahpeton Oyate, Spirit Lake Tribe, Standing Rock Sioux Tribe, Three Affiliated Tribes (the Mandan, Hidatsa and Arikara Nation), and Turtle Mountain Band of Chippewa Indians, EPA Region 8 is expressly waiving its authority to act on the CWA § 401 certification request for the following proposed NWPs: 4, 22, and 54.

Appendix A

Condition Justification Statements and Citations as Required by 40 CFR 121.7(d)(2)

Condition	Justification Statement	Citation
General Condition 1	This condition is necessary to ensure activities that may result in point source discharges into waters of the U.S. do not degrade these unique and difficult to replace aquatic resource types, which play an important role in maintaining water quality and hydrologic function in mountain and prairie ecoregions. This condition is consistent with Regional Conditions implemented by the Corps in Region 8 states.	40 CFR 230.10(c); 40 CFR 230 Subpart E; Tribal Water Quality Requirements[i]
General Condition 2	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. Requiring materials to be stored at least 100 feet away from waters of the U.S. reduces the risk that such materials would be mobilized by rainfall or runoff and enter waters of the U.S.	40 CFR 230.10(b); 40 CFR 230.10(d); 40 CFR 230.71; Tribal Water Quality Requirements[i]
General Condition 3	This condition is necessary because it 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(c); 40 CFR 230.10(d); 40 CFR 230.23; 40 CFR 230.24; 40 CFR 230.72(d); Tribal Water Quality Requirements[i]
General Condition 4	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 and provides for clean-up of potential contaminants before entering waters. Requiring materials to be stored at least 100 feet away from waters of the U.S. reduces the risk that such materials would be mobilized by rainfall or runoff and enter waters of the U.S. 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; Tribal Water Quality Requirements[i]
General Condition 5	This condition ensures that the project proponent is aware of and complies with CWA Section 402 construction stormwater management requirements. Compliance assistance tools, such as SWPPP guidance and a template can be found at: https://www.epa.gov/npdes/swpppguide. Activities authorized under NWPs that do not require a SWPPP also can also cause turbidity (e.g., total suspended and settleable solids) that can impair water quality. This condition is necessary because it minimizes turbidity and sedimentation caused by construction activities. It is necessary to ensure that water quality is not degraded, and biology of the waters are not negatively impacted by the project. This condition is also necessary to	40 CFR 230.10(d); 40 CFR 230.72; Tribal Water Quality Requirements[i]

Condition	Justification Statement	Citation
	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.	
General Condition 6	This 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. Revegetation maintains and improves water quality because riparian vegetation acts as a buffer to reduce the amount of sediment and pollutants that enter waterways. Riparian vegetation also benefits aquatic life by providing shade that keeps instream water temperatures cool and providing refugia and food sources). 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.	40 CFR 230.10(d); 40 CFR 230.75; Tribal Water Quality Requirements[i]
General Condition 7	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. Requiring a project-specific certification for new dams will provide for consideration of site-specific water quality conditions and local tribal regulatory requirements.	40 CFR 230.10(c); 40 CFR 230.10(d); 40 CFR 230.23; 40 CFR 230.24; Tribal Water Quality Requirements[i]
General Condition 8 Applies to NWPs 3, 7, 13, 14, 15, 19, 23, 27, 37, and 59/E	This condition is necessary to provide EPA Region 8 with notice and information to allow for an efficient and effective pre-operation inspection to determine if the certified discharge will violate the certification. If the project scope changes during the Corps review prior to initiation of the activity, it is also critical for EPA Region 8 to be provided any changes in the project design, scope, amount and location of discharges to inform the pre-operation inspection opportunity as provided by 40 CFR 121.11(a).	40 CFR 121.11(a) ; Tribal Water Quality Requirements[i]
NWP 3, Specific Condition 1	The effects of a discharge can be minimized by the manner in which it is dispersed, such as setting limitations on the amount of material to be discharged. 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. This limit is consistent with limits imposed by current and/or past Corps NWPs authorizing similar activities.	40 CFR 230.10(d); 40 CFR 230.70; 40 CFR 230.73; 40 CFR 230.75; Tribal Water Quality Requirements[i]
NWP 3, Specific Condition 2	Minimization of adverse effects on populations of plants and animals can be achieved by avoiding changes in water current and circulation patterns. In addition, the effects of the discharge can be minimized by locating and confining the discharge to minimize smothering of organisms and designing	40 CFR 230.10(d); 40 CFR 230.70; 40 CFR 230.73; 40

Condition	Justification Statement	Citation
	the discharge to avoid a disruption of periodic water inundation patterns. The placement of a bridge or 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 increased erosional forces, scour around the structure during bankfull flows, high sediment loads entering the waterbody, abandonment of the primary channel, and undermining of the structure itself. This condition would also support Nationwide Permit General Conditions 2 (Aquatic Life Movements) and 9 (Management of Water Flows).	CFR 230.75; Tribal Water Quality Requirements[i]
NWP 3, Specific Condition 3	Minimization of adverse effects on populations of plants and animals can be achieved by avoiding the destruction of remnant natural sites within areas already affected by development and avoiding changes in water current and circulation patterns. Minimization can also be achieved by using planning and construction practices to institute habitat development and restoration to produce a new or modified environmental state of higher ecological value by displacement of some or all of the existing environmental characteristics. 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.	40 CFR 230.10(d); 40 CFR 230.70; 40 CFR 230.73; 40 CFR 230.75; Tribal Water Quality Requirements[i]
NWP 3, Specific Condition 4	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 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.	40 CFR 230.10(d); 40 CFR 230.70; 40 CFR 230.73; 40 CFR 230.75; Tribal Water Quality Requirements[i]
NWP 7, Specific Condition 1	By specifying conditions on outfall 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.	40 CFR 230.10(d); 40 CFR 230.70; 40 CFR 230.73; Tribal Water Quality Requirements[i]
NWP 7, Specific Condition 2	Water quality certification on a project-by-project basis for projects planning to construct outfall structures in jurisdictional wetlands is necessary so the certifying authority can evaluate site-specific water quality characteristics to determine if the project will comply with water quality requirements, including tribal regulatory requirements. Details about the location and project-specific actions to be taken to minimize the adverse effects of the discharge would be evaluated in an individual project water quality certification review.	40 CFR 230.10(d); 40 CFR 230.70; 40 CFR 230.73; Tribal Water Quality Requirements[i]

Condition	Justification Statement	Citation
NWP 7, Specific Condition 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.	40 CFR 230.10(d); 40 CFR 230.70; 40 CFR 230.73; Tribal Water Quality Requirements[i]
NWP 7, Specific Condition 4	This condition is necessary because documenting the project will make it possible to determine that water quality is maintained, or protected better than, the existing conditions; given that the selection of the discharge location and the actions taken to control the materials after discharge can help minimize the adverse effects of the discharge. This condition is necessary to 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. Monitoring for at least one growing season, or until replanted areas meet pre-disturbance or reference site conditions, will provide an adequate indication that the sediment and erosion control plan efforts are successful. This condition is necessary to sustain aquatic resource functions and value characteristics, measure the progress of riparian revegetation, and ensure planned measures are effective.	40 CFR 230.10(d); 40 CFR 230.70; 40 CFR 230.72; Tribal Water Quality Requirements[i]
NWP 13, Specific Condition 1	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.	40 CFR 230.10(d); 40 CFR 230.72; Tribal Water Quality Requirements[i]
NWP 13, Specific Condition 2	This condition is necessary to ensure that bank stabilization is effective at preventing localized erosion without promoting adverse downstream effects such as increasing flow velocities, impeding hydrologic interaction with the floodplain, and degrading physical habitat. Establishing design criteria based on a stable channel reference reach can help ensure successful stabilization, prevent habitat degradation, and minimize negative downstream impacts while also achieving localized streambank stabilization and erosion control.	40 CFR 230.10(d); 40 CFR 230.72; Tribal Water Quality Requirements[i]
NWP 13, Specific Condition 3	This condition is necessary because documenting the project will make it possible to determine that water quality is maintained, or protected better than, the existing conditions; given that the selection of the discharge location and the actions taken to control the materials after discharge can help minimize the adverse effects of the discharge. This condition is necessary to 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. Monitoring for at least one growing season, or until replanted areas meet pre-disturbance or reference site conditions, will	40 CFR 230.10(d); 40 CFR 230.70; 40 CFR 230.72; Tribal Water Quality Requirements[i]

Condition	Justification Statement	Citation
	provide an adequate indication that the restoration plan efforts are successful. This condition is necessary to sustain aquatic resource functions and value characteristics, measure the progress of riparian revegetation, and ensure planned measures are effective.	
NWP 14, Specific Condition 1	The proposed NWP 14 would allow up to ½ acre of impacts for each linear transportation crossing. This means that multiple crossings for the same project could be authorized for ½ acre impacts each for an unlimited number of crossings. Without a 1/10 acre and 300 linear feet restriction on all crossings in total for a specific project, linear transportation projects could result in more than minimal adverse environmental effects and degrade water quality. Activities authorized by NWPs and other general permits must be similar in nature, cause only minimal adverse environmental effects when performed separately, and have only minimal adverse effect on the environment. Without the 300 linear feet restriction, authorized activities to streams, many of which are already stressed or impaired, would be more than minimal, or could even result in significant impacts to water quality. The 1/10 acre and 300 linear feet limits help ensure that these NWPs are protective of water quality and will result in no more than minimal individual and cumulative adverse environmental effects as required by the CWA. These thresholds for the individual project-specific CWA Section 401 certifications are based on EPA's best professional judgement as well as past practice and consistency with Corps NWP General Condition 23 that requires compensatory mitigation for 1/10 acre or greater impact as well as former Corps conditions limiting impacts to 300 linear feet. The condition is necessary to allow for individual review of activities that could result in more than minimal adverse impacts.	40 CFR 230.10(d); 40 CFR 230.72; 40 CFR 122.26; Tribal Water Quality Requirements[i]
NWP 14, Specific Condition 2	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 steepness reduces the potential for erosion, undercutting and slumping, which add sediment to streams. 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.	40 CFR 230.10(d); 40 CFR 230.72; 40 CFR 122.26; Tribal Water Quality Requirements[i]
NWP 14, Specific Condition 3	This condition is necessary to ensure that discharges associated with culvert placement minimally affect water current patterns and circulation, maintain water flow direction and velocity, do no obstruct flow or change the dimensions of a waterbody. This condition also will minimize adverse effects to the reproductive and feeding movements of some species of fish and crustacea.	40 CFR 230.3; 40 CFR 230.10(d); 40 CFR 230.74; 40 CFR 230.75; Tribal Water Quality Requirements[i]
NWP 14, Specific Condition 4	This condition is necessary because documenting the project will make it possible to determine that water quality is maintained, or protected better than, the existing conditions; given that the selection of the discharge location and the actions taken to control the materials after discharge can	40 CFR 230.10(d); 40 CFR 230.70; 40

Condition	Justification Statement	Citation
	help minimize the adverse effects of the discharge. This condition is necessary to 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. Monitoring for at least one growing season, or until replanted areas meet pre-disturbance or reference site conditions, will provide an adequate indication that the sediment and erosion control plan efforts are successful. This condition is necessary to sustain aquatic resource functions and value characteristics, measure the progress of riparian revegetation, and ensure planned measures are effective.	CFR 230.73; 40 CFR 230.75
NWP 15, Specific Condition 1	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 steepness reduces the potential for erosion, undercutting and slumping, which add sediment to streams. 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.	40 CFR 230.10(d); 40 CFR 230.72; 40 CFR 122.26; Tribal Water Quality Requirements[i]
NWP 15, Specific Condition 2	Perpendicular stream crossings minimize the length of stream bed and bank impacts for a project. 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.	40 CFR 230.10(d); 40 CFR 230.72; 40 CFR 122.26; Tribal Water Quality Requirements[i]
NWP 15, Specific Condition 3	This condition is necessary because 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.	40 CFR 230.10(d); 40 CFR 230.72; 40 CFR 122.26; Tribal Water Quality Requirements[i]
NWP 15, Specific Condition 4	The placement of a bridge structures within bankfull width, adjacent wetlands, and/or ordinary high water mark of the affected waterbody would alter the hydrologic characteristics of the waterbody, which could lead to increased erosional forces, scour around the structure during bankfull flows, high sediment loads entering the waterbody, abandonment of the primary channel, and undermining of the structure itself. Requiring an individual CWA Section 401 certification for projects that cannot meet this condition will allow EPA Region 8 to ensure the project does not adversely impact water quality.	40 CFR 230.10(d); 40 CFR 230.72; 40 CFR 122.26
NWP 19, Specific Condition 1	This condition is necessary because it minimizes turbidity and sedimentation caused by dredging and help to ensure the hydrologic and hydrogeomorphic characteristics of the affected waterbody are not degraded.	40 CFR 230.10(d); 40 CFR 230.70; Tribal Water

Condition	Justification Statement	Citation
		Quality Requirements[i]
NWP 27, Specific Condition 1	The condition and associated limits are necessary to provide site specific review of those actions and activities that exceed these thresholds to ensure the project meets the requirements for net-increase in aquatic resource functions, and during construction meets all applicable and relevant water quality requirements. For example, for release of accumulated sediments behind a dam, or dam removal projects, EPA Region 8 would need to ensure that sediments do not contain contaminants and/or meet appropriate sediment management requirements. Additionally, EPA Region 8 would need to review the project to determine if there were additional individual CWA Section 401 conditions necessary to meet other water quality requirements, such as instream work-timing restrictions or measures to ensure that water quality discharge parameters are met for erosion control.	40 CFR 230.10(d); 40 CFR 230.21; 40 CFR 230.71 40 CFR 230.72; Tribal Water Quality Requirements[i]
NWP 37, Specific Condition 1	This condition is necessary because the discharge of dredged or fill material that alters the contours of a waterbody and/or its riparian zone can lead to increased erosion and sediment loads to the waterbody and the loss or change of habitat and preferred food sources for wildlife species associated with the aquatic ecosystem.	40 CFR 230.10(d); 40 CFR 230.73 40 CFR 230.75; Tribal Water Quality Requirements[i]
NWP 37, Specific Condition 2	This condition is necessary because 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.	40 CFR 230.10(d); 40 CFR 230.73 40 CFR 230.75; Tribal Water Quality Requirements[i]
NWP 37, Specific Condition 3	This condition is necessary to ensure that the natural physical habitat and hydrologic characteristics of the waterbody are not negatively impacted by the project over the long term.	40 CFR 230.10(c)-(d) ; Tribal Water Quality Requirements[i]

[i] Three Affiliated Tribes: Antidegradation Policy, Narrative WQC(a)(1-5) and Pipeline Ordinance.
Spirit Lake Tribe: Water Quality Code, Sections 4-8; Antidegradation Policy; Narrative WQS.
Sisseton-Wahpeton Oyate: Title III Water Quality: Section 61-03-08, Antidegradation Policy, Narrative WQS.