



## REGION 8

DENVER, CO 80202

December 16, 2025

### SENT VIA EMAIL

Sage L. Joyce  
U.S. Army Corps of Engineers  
Omaha District  
Montana Regulatory Office  
[Sage.L.Joyce@usace.army.mil](mailto:Sage.L.Joyce@usace.army.mil)

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

Dear Ms. Joyce:

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

---

<sup>1</sup> See 90 FR 26100 (June 18, 2025).

<sup>2</sup> Indian country is defined at 18 U.S.C. § 1151.

<sup>3</sup> Indian country in Montana generally includes (1) lands within the exterior boundaries of the following Indian reservations located within Montana: the Blackfeet Indian Reservation, the Crow Indian Reservation, the Flathead Reservation, the Fort Belknap Reservation, the Fort Peck Indian Reservation, the Northern Cheyenne Indian Reservation, and the Rocky Boy's Reservation; (2) any land held in trust by the United States for an Indian Tribe (including but not limited to the Little Shell Tribe of Chippewa Indians and the Turtle Mountain Band of Chippewa Indians); and (3) any other areas that are "Indian country" within the meaning of 18 U.S.C. Section 1151. The enclosed CWA Section 401 certification document specifies where these decisions apply.

<sup>4</sup> An inventory report compiled by the U.S. General Services Administration for federal properties as of 1962 identifies properties that may contain exclusive federal jurisdiction. This document is accessible at <https://www.congress.gov/116/meeting/house/110088/documents/HHRG-116-II13-20191017-SD044.pdf>. The EPA notes that this inventory report is not all-inclusive and that the information contained within it has not been recently confirmed

Please provide this certification to any project proponent (or their designated agent) contacting the Corps regarding applicable projects that may be authorized under the 2026 NWP. If a project proposal does not meet either the general or NWP-specific certification conditions contained herein, the project proponent must request an individual certification from EPA Region 8 at [R8CWA401@epa.gov](mailto:R8CWA401@epa.gov). Project proponents are encouraged to contact EPA Region 8 during the project planning phase if there are any questions about relevant best management practices (e.g., bioengineering techniques, biodegradable erosion control measures, revegetation using native plant species, suitable fill materials, and disposal of debris/construction materials preventing runoff) and resources that can assist with compliance. Prior to work commencing, EPA recommends that project proponents notify the appropriate Tribal Environmental Office, if applicable.

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

Sincerely,

**STEPHANIE  
DEJONG**

Digitally signed by  
STEPHANIE DEJONG  
Date: 2025.12.16 16:09:46  
-07'00'

Stephanie DeJong, Manager  
Clean Water Branch

Enclosure

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

---

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

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

December 16, 2026

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

---

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

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

### **Project Description**

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

### **The EPA's Public Notice Process**

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

### **General Information**

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

#### *General Applicability*

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

#### *Documentation Recommendations*

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

#### *Contact Information*

- The project proponents for potential projects authorized under an NWP are encouraged to contact EPA Region 8 during the project planning phase if there are any questions about relevant best management practices (e.g., bioengineering techniques, biodegradable erosion control measures, revegetation using native plant species, suitable fill materials, and disposal of debris/construction materials preventing runoff) and resources that can assist with compliance.

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

### ***Waiver of Certification***

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

### ***Grants of Certification without Conditions***

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

### ***Grants of Certification with Conditions***

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

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

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

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

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

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

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

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

using natural channel design.

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

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

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

implementation where employed measures were ineffective.

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

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

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

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

## **Condition #2: Special Aquatic Resources**

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

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

---

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

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

water. Pools are deeper areas associated with riffles. Pools are characterized by a slower stream velocity, a steaming flow, a smooth surface, and a finer substrate.

- **Wild rice (*Manoomin/Manomin*) Waters:** Wild rice is especially sensitive to changes in water quality, hydrology changes, competition with invasive plants, and habitat loss.<sup>5</sup>

**Why this condition is necessary:** This condition is necessary to ensure a case-by-case review of any point source discharges into waters of the United States that are proposed in these specific aquatic resource site types which are inherently difficult to replace and have important ecological functions and values. Discharges into these systems have the potential to alter water circulation patterns and hydroperiods, release nutrients causing shifts in native to non-native species composition, release chemicals that adversely impact biota (plants and animals), increase turbidity levels, reduce light penetration and photosynthesis, or otherwise change the capacity of these systems to support aquatic life uses and other beneficial uses of these special aquatic sites, including impairing their diverse and unique communities of aquatic organisms, including fish, wildlife and the habitats upon which they depend. Project specific information is needed to ensure compliance with water quality requirements.

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

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

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

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

---

<sup>5</sup> [https://plants.usda.gov/DocumentLibrary/plantguide/pdf/pg\\_ZIAQ.pdf](https://plants.usda.gov/DocumentLibrary/plantguide/pdf/pg_ZIAQ.pdf), last visited 11 Dec 2025.

<sup>6</sup> Chippewa Cree Tribe: Title 12 Environmental Protection Codes (Wetlands/Aquatic Lands Protection Code) 3.2 Prohibited Uses, 4.2 Activities, and 4.3 Approval, Modification and/or Denial of Application. Fort Belknap Indian Community (FBIC): Solid Waste Management Code Revised FBIC Res. #239-2019 (No discharge to tribal waters without FBIC permit) and Aquatic Resource Protection Ordinance.

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

**Citation:** 40 CFR 230.10(d); 40 CFR 230.72; 40 CFR 122.26; Tribal Water Quality Requirements<sup>7</sup>

**Condition #4: Specific condition for NWP 7**

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

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

**Citations:** 40 CFR 230.10(c)-(d); 40 CFR 230.30; 40 CFR 230.70; 40 CFR 230.73; 40 CFR 230.74; 40 CFR 230.75; Tribal Water Quality Requirements<sup>9</sup>

---

<sup>7</sup> Ibid.

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

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

### **Condition #5: Specific Condition for NWP 13**

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

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

**Citations:** 40 CFR 230.10(c)-(d); 40 CFR 230.72; 40 CFR 230.74; Tribal Water Quality Requirements<sup>10</sup>

### **Condition #6: Specific Condition for NWP 16**

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

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

**Citation:** 40 CFR 230.10(b)-(d); 40 CFR 230.11; 40 CFR 230.12; 40 CFR 230.22; 40 CFR 230.31; 40 CFR 230.32; 40 CFR 230.61; Tribal Water Quality Requirements<sup>11</sup>

### **Condition #7: Specific Condition for NWP 40**

---

<sup>10</sup> Ibid.

<sup>11</sup> Ibid.

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

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

**Citations:** 33 U.S.C. 1317(a)(1); 40 CFR 401.15; 40 CFR 230.10(c); 40 CFR 230.31; 40 CFR 230.32; Tribal Water Quality Requirements<sup>12</sup>

---

<sup>12</sup> Ibid.