NEPA COMPLIANCE SURVEY
351

Project Information			
Project Title:	Buried flow line from 32-A-34 to 34-AX-34	Date:	7/16/2012
DOE Code:		Contractor Code:	
Project Lead:	Dan Smallwood		

Project Overview	
1. Brief project description [include anything that could impact the environment]	The purpose of this project is to replace a section of existing pipe that runs from well 32-A-34 to 33-A-34 and then to 34-AX-34. There is an existing line that runs from 32-A-34 to 34-AX-34 that has not been in use for approximately two years. The line was taken out of service because it had too many leak / corrosion problems. The new line will follow the exact course of the old line. This section of pipe will run approximately 1,040 feet. All of the new line will be 2 inch poly line that will be buried approximately 5 feet deep. This project will be conducted along with another production enhancement project in the same area, which will have a separate NCS. For information that is more technical please see the attached production enhancement write-up by Dan Smallwood. Note: Originally this project had an added line item that was for a new flow line to be buried between 42-AX-34 and 32-A-34. That part of the project was cancelled because of the environmental issues that were encountered. Due to the cost and time consuming nature of a cultural resource survey, the new section of pipe was put on indefinite hold.
2. Legal location	32-A-34 to 34-AX-34
3. Duration of the project	3 weeks
4. Major equipment to be used	Backhoe, welder, Ford cherry picker truck

The table below is to be completed by the Project Lead and reviewed by the Environmental Specialist and the DOE NEPA Compliance Officer. NOTE: If Change of Scope occurs, Project Lead must submit a new NEPA Compliance Survey and contact the Technical Assurance Department.

	Impacts Anticipated?			If YES, then complete below
Water Quality	Yes	No	NA	If the anticipated impact might be unacceptable, recommend mitigation measures:
Does the proposed project present potential for impacts on water resources or water quality?	☒	☐	☐	The proposed project area will include a typically dry drainage that has been classified as a water of the state. However, all job related activities will occur during fair weather and the chances of encountering any run off in the area is very slim. The area within the classified drainage will be completed quickly with all excavated soil being removed as soon as the pipe is buried.
Does the project affect surface water quantity or quality under both normal operations and accident conditions?	☒	☐	☐	The proposed project area will include a typically dry drainage that has been classified as a water of the state. However, all job related activities will occur during fair weather and the chances of

NEPA COMPLIANCE SURVEY
351

				encountering any run off in the area is very slim. The area within the classified drainage will be completed quickly with all excavated soil being removed as soon as the pipe is buried.
Does the proposed project affect groundwater quantity or quality under both normal operations and accident conditions?	☐	☒	☐	
Will the project area include "Waters of the State?"	☒	☐	☐	The project will cross a section of a typically dry drainage that has been classified as a water of the state. The activity in that area is covered under the USACE Nationwide Permit 12.
Will the project area require a Corps of Engineers permit?	☐	☒	☐	According to a conversation with Thomas Johnson of USACE, Cheyenne, on 6/18/2012. A USACE permit is not required because the activity will be covered under Nationwide Permit 12 (attachment 1) and the WYDEQ Certification letter (attachment 2). This project can proceed without further coordination with USACE or WYDEQ.

NEPA COMPLIANCE SURVEY
351

	Impacts Anticipated?			If YES, then complete below.
Geology & Soils	Yes	No	NA	If the anticipated impact might be unacceptable, recommend mitigation measures:
Does the proposed project present potential for impacts related to geology or soils?	☒	☐	☐	The surface soil that will be disturbed for this project will all be replaced when the line is being buried. The soil will be tamped down to ensure there is no sediment migration in drainages or to drainages.
Does the proposed project alter, excavate or otherwise disturb land area consistent with other land use and habitat area?	☐	☒	☐	
Is the proposed project likely to impact local seismicity?	☐	☒	☐	
If the project involved disturbance of surface soils, are erosion and storm water control measures addressed?	☒	☐	☐	Erosion controls will be in place during the duration of the project. RMOTC BMP's for erosion control during a project include but are not limited to runoff ditches, hay bales, and job completion during fair weather. When the project is complete, erosion will no longer be an issue.
Air Quality	Yes	No	NA	If the anticipated impact might be unacceptable, recommend mitigation measures:
Does the proposed action present potential for impacts on ambient air quality under both normal and accident conditions?	☐	☒	☐	
Are potential emissions (gases and/or airborne particulates including dust) outside of the normal scope for oil field operations?	☐	☒	☐	
Does the project present risk to human health and the environment from exposure to radiation and hazardous chemicals in emissions?	☐	☒	☐	
Is the project subject to New Source Performance Standards?	☐	☒	☐	

NEPA COMPLIANCE SURVEY
351

Is the project subject to National Emissions Standards for Hazardous Air Pollutants?	☐	☒	☐	
Is the project subject to emissions limitations in an Air Quality Control Region?	☐	☒	☐	
	Impacts Anticipated?			If YES, then complete below.
Wildlife and Habitat	Yes	No	NA	If the anticipated impact might be unacceptable, recommend mitigation measures:
Does the proposed action present potential for impacts on wildlife or habitat?	☐	☒	☐	
Does the project impact state or federally listed threatened and endangered species?	☐	☒	☐	
Human Health Effects	Yes	No	NA	If the anticipated impact might be unacceptable, recommend mitigation measures:
Does the proposed project present potential for effects on human health? e.g.: Hanta virus, radiological exposure, or chemical exposure (must provide MSDS)	☐	☒	☐	
Transportation	Yes	No	NA	If the anticipated impact might be unacceptable, recommend mitigation measures:
Does the proposed project involve transportation of radiological sources or hazardous materials (including explosives)?	☐	☒	☐	
Waste Management and Waste Minimization	Yes	No	NA	If the anticipated impact might be unacceptable, recommend mitigation measures:
Are pollution prevention and waste minimization practices needed in the proposed project?	☐	☒	☐	
Does project plan establish procedures in compliance with local, state and/or federal laws and guidelines affecting the generation, transportation, treatment, storage or disposal of hazardous and other wastes?	☐	☒	☐	

NEPA COMPLIANCE SURVEY
351

	Impacts Anticipated?			If YES, then complete below.
Cultural Impact	Yes	No	NA	If the anticipated impact might be unacceptable, recommend mitigation measures:
Is there potential for impact on cultural (historic) resources?	☐	☒	☐	The area that will be disturbed has been covered by the RMOTC-2 Teapot Dome Arch Survey and no significant cultural resources were found.
Community Impact	Yes	No	NA	If the anticipated impact might be unacceptable, recommend mitigation measures:
Will the proposed project introduce significantly adverse auditory, visual, or other impact?	☐	☒	☐	
Will the proposed project adversely affect the community's use of public land/resources?	☐	☒	☐	
Will the proposed project adversely affect the community's access to private land?	☐	☒	☐	

NOTE: Topography Map and Wetlands Map are required to be attached. Attach applicable SOPs for Risk Assessment Level 2 & 3 and specific test procedures.

Are environmental permits required? If YES, list below:	Yes ☐	No ☒

Section below to be reviewed by Environmental Specialist and DOE NCO.

Adequate Mitigation Measures Provided?				Adequate Mitigation Measures Provided?	
	Yes	No		Yes	No
Water Quality Impacts	☒	☐	Transportation Impacts	☒	☐
Air Quality Impacts	☒	☐	Waste Management Impacts	☒	☐
"Wildlife and Habitat Impacts	☒	☐	Cultural Impacts	☒	☐
Geology and Soils Impacts	☒	☐	Community Impact	☒	☐
Human Health Impacts	☒	☐	Categorical Exclusion	☒	☐

Approvals

Comments and Conditions:

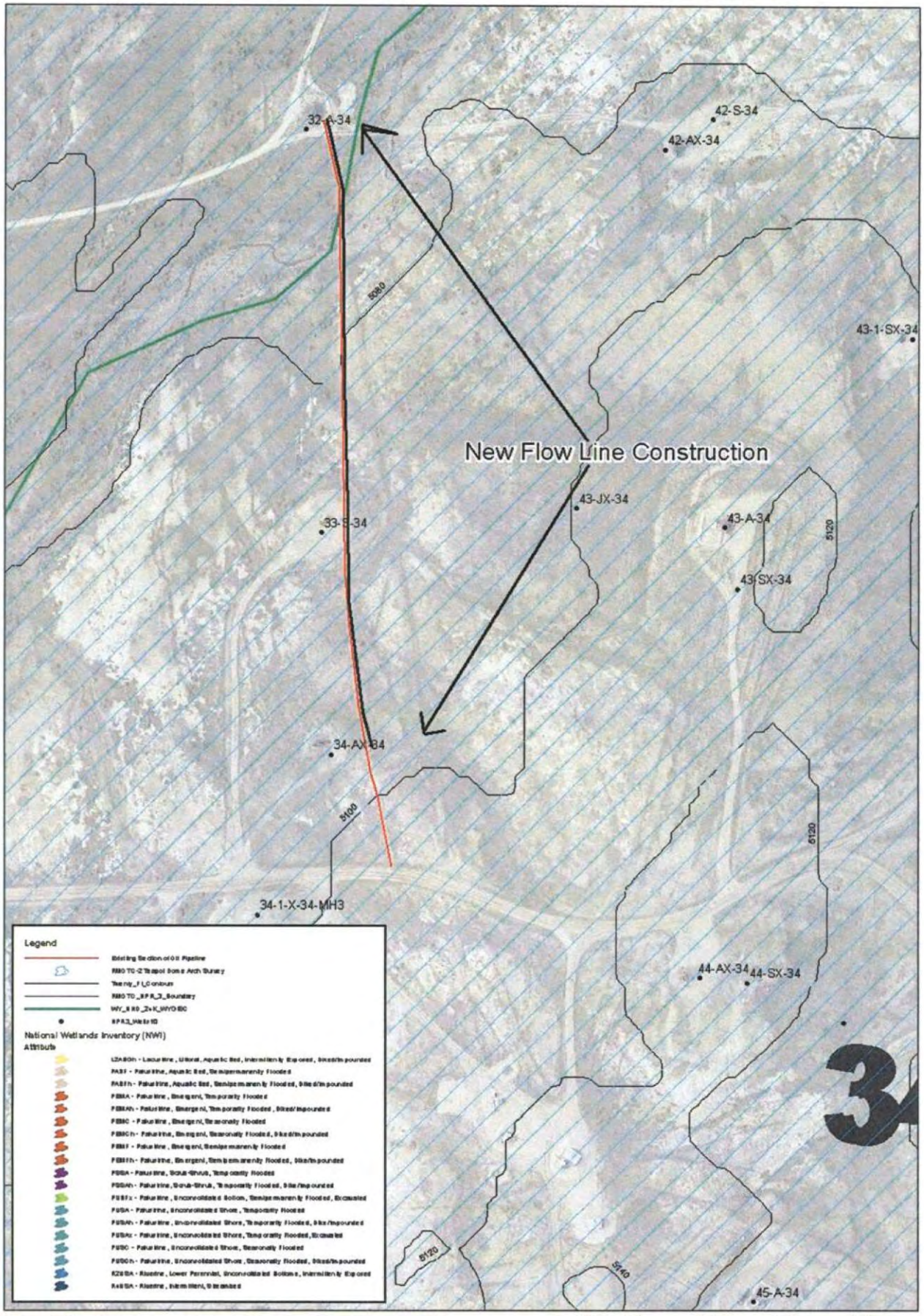
B2.5 Facility safety and environmental improvements
Safety and environmental improvements of a facility (including, but not limited to, replacement and upgrade of facility components) that do not result in a significant change in the expected useful life, design capacity, or function of the facility and during which operations may be suspended and then resumed. Improvements include, but are not limited to, replacement/upgrade of control valves, in-core monitoring devices, facility air filtration systems, or substation transformers or capacitors; addition of structural bracing to meet earthquake standards and/or sustain high wind loading; and replacement of aboveground or belowground tanks and related piping, provided that there is no evidence of leakage, based on testing in accordance with applicable requirements (such as 40 CFR part 265, "Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities" and 40 CFR part 280, "Technical Standards and Corrective Action Requirements for Owners and Operators of Underground Storage Tanks"). These actions do not include rebuilding or modifying substantial portions of a facility (such as replacing a reactor vessel).

B5.2 Modifications to pumps and piping
Modifications to existing pump and piping configurations (including, but not limited to, manifolds, metering systems, and other instrumentation on such configurations conveying materials such as air, brine, carbon dioxide, geothermal system fluids, hydrogen gas, natural gas, nitrogen gas, oil,

NEPA COMPLIANCE SURVEY
351

	produced water, steam, and water). Covered modifications would not have the potential to cause significant changes to design process flow rates or permitted air emissions. *B5.4 Repair or replacement of pipelines* Repair, replacement, upgrading, rebuilding, or minor relocation of pipelines within existing rights-of-way, provided that the actions are in accordance with applicable requirements (such as Army Corps of Engineers permits under section 404 of the Clean Water Act). Pipelines may convey materials including, but not limited to, air, brine, carbon dioxide, geothermal system fluids, hydrogen gas, natural gas, nitrogen gas, oil, produced water, steam, and water.	
Contractor ESS&H	Anne Theriault	Date 7/11/2012
Comments and Conditions:	SOIL DISTURBANCE / CONSTRUCTION SHALL BE WITHIN 25' FROM CENTERLINE OF EXISTING RIGHT OF WAY FOR PIPELINE. DISTURBED SOIL SHALL BE SEEDED AT EARLIEST OPPORTUNITY.	
	The actions listed in this NEPA Compliance Survey are classes of actions (categorical exclusions) that DOE has determined do not individually or cumulatively have a significant effect on the human environment. The activity fits within a class of actions that is listed in appendix A or B to 10 CFR Part 1021. Based on my review of information conveyed to me and in my possession (or attached) concerning the proposed action, as NEPA Compliance Officer (as authorized under DOE Order 451.1A), I have determined that the proposed actions fit within the specified class of actions, the other regulatory requirements set forth above are met, and the proposed actions are hereby categorically excluded from further NEPA review	
DOE NEPA Compliance Officer	CXs B2.5, B5.2, + B5.4 Michael J Taylor	Date 7-17-12

Buried Flow Line From 32-A-34 to 34-AX-34



Buried Flow Line From 32-A-34 to 34-AX-34

Author: A Theriault	Project Manager: M Parker	
	Date: 06/18/2012	Rev Date:
WY State Plane / East Central Zone / NAD27	Scale = 1:2,500	

Rocky Mountain Oilfield Testing Center

0 62.5 125 250 375 500 Feet

RMOTC
907 N Poplar, Suite 150
Casper, WY 82601
307-233-4100

Data represented on this map is for planning purposes only. RMOTC makes no warranties as to its accuracy, reliability or completeness. Any use of this data is strictly the responsibility of the user. This is an uncontrolled RMOTC drawing.

NEPA COMPLIANCE SURVEY
351

Attachment 1
Written by Dan Smallwood
Production Enhancement Project-5 T-2-34 to T-1-33

MIT all wells in this area to determine which are producing wells. There are 15 wells shut in this area because of no tank or shipping line. According to the old test sheet these wells make 24bbls oil and 120bbls of water. Two of these wells have leaks in the flow lines that will be fixed. One is 33-S-34 which could be run to 34-AX-34, about 400' .6 bbl/pd and the other is 35 shx 34 which could be run to 35-AX-34 which is about 200'.5bbl/pd. 42-AX-34 could be run to 32-AX-34 and then to 33-SX-34 to 34-AX-34. There are two manifolds at T-2-34, one with 10 wells and the other with 12. None of the flow lines have valves or checks in the lines. I propose we flush, disconnect, and plug all wells that are not producing and put valves and checks on the wells that are producing; I have added this cost to the estimate.
Wells in this project are – 23-a-34, 33-s-34, 34-a-34, 43-a-34, 44-a-34, 53-1-stx-34, 54-stx-34, 45-ax-34, 36-a-34, 35-1 shx-34,47-ax-34, 55-sx-34,42-ax-34,32-ax-34,35-shx-34
Total pipe needed would be 5,196' (from stock)
Wells Back On Production – (15)
Total material cost less pipe would be $5686.25
Total installation cost for this project would be $59,500.00
Total operating cost per year, including repairs $97,957.25
Total man-hours to install would be 579hrs
Total man-hours 1690
Total cost $157,800.00
Total benefit for this project would be $613,200.00 per year
Payout including operating costs for 1 year would be 94 days

HAZOP –JSA
Suck out old shipping line if possible – LOTO Manifold
Clear rite-of-way to prevent fires
Trench in new shipping line on original rite-of-way, 4' deep – locate all lines possible
Load, haul, and string 2" steel line pipe – handling pipe is hazardous
Put pipe on stands, weld, tar & tape – have help to lift pipe and move stands, welds will be hot
Put pipe in trench and backfill, bell hole and attach anode every 300' – entry & hot work permit
Connect ends of line to the manifold at each end with valve and check – inspect tools
Clear rite-of-way to prevent fires – NEPA required
Load, haul, and string 2" steel line pipe – handling pipe is hazardous
Put pipe on stands, weld, tar & tape – have help to lift pipe and move stands, welds will be hot
Put pipe in trench and backfill, bell hole and attach anode every 300' – entry & hot work permit
Install risers with checks at each well so lines can be treated or isolated.
Disconnect and plug unused lines at the manifolds, install valves and checks in line that are in use to prevent backflow into leaking lines.

NEPA COMPLIANCE SURVEY
351

Attachment 2
(See highlighted areas)
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 for each single and complete project.
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 water body.
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 activity, in combination with all other activities included in one 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.
This NWP may authorize utility lines in or affecting navigable waters of the United States even if there is no associated discharge of dredged or fill material (See 33 CFR Part 322). Overhead utility lines constructed over section 10 waters and utility lines that are routed in or under section 10 waters without a discharge of dredged or fill material require a section 10 permit.
This NWP also authorizes temporary structures, fills, and work necessary to conduct the utility line activity. Appropriate measures must be taken to maintain normal downstream flows and minimize flooding to the maximum extent practicable, when temporary structures, work, and discharges,

including cofferdams, are necessary for construction activities, access fills, or dewatering of construction sites. Temporary fills must consist of materials, and be placed in a manner, that will not be eroded by expected high flows. Temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations. The areas affected by temporary fills must be revegetated, as appropriate.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity if any of the following criteria are met: (1) the activity involves mechanized land clearing in a forested wetland for the utility line right-of-way; (2) a section 10 permit is required; (3) the utility line in waters of the United States, excluding overhead lines, exceeds 500 feet; (4) the utility line is placed within a jurisdictional area (i.e., water of the United States), and it runs parallel to or along a stream bed that is within that jurisdictional area; (5) discharges that result in the loss of greater than 1/10-acre of waters of the United States; (6) permanent access roads are constructed above grade in waters of the United States for a distance of more than 500 feet; or (7) permanent access roads are constructed in waters of the United States with impervious materials.

Note 1: Where the proposed utility line is constructed or installed in navigable waters of the United States (i.e., section 10 waters) within the coastal United States, the Great Lakes, and United States territories, copies of the pre-construction notification and NWP verification will be sent by the Corps to the National Oceanic and Atmospheric Administration (NOAA), National Ocean Service (NOS), for charting the utility line to protect navigation.

Note 2: Access roads used for both construction and maintenance may be authorized, provided they meet the terms and conditions of this NWP. Access roads used solely for construction of the utility line must be removed upon completion of the work, in accordance with the requirements for temporary fills.

Note 3: Pipes or pipelines used to transport gaseous, liquid, liquescent, or slurry substances over navigable waters of the United States are considered to be bridges, not utility lines, and may require a permit from the U.S. Coast Guard pursuant to Section 9 of the Rivers and Harbors Act of 1899. However, any discharges of dredged or fill material into waters of the United States associated with such pipelines will require a section 404 permit (see NWP 15).

Note 4: For overhead utility lines authorized by this NWP, a copy of the PCN and NWP verification will be provided to the Department of Defense Siting Clearinghouse, which will evaluate potential effects on military activities.

(Sections 10 and 404)

Nationwide Permit General Conditions

To qualify for NWP authorization, the prospective permittee must comply with the following general conditions, as applicable, in addition to any regional or case-specific conditions imposed by the division engineer or district engineer.

1. Navigation. (a) No activity may cause more than a minimal adverse effect on navigation.

(b) Any safety lights and signals prescribed by the U.S. Coast Guard, through regulations or otherwise, must be installed and maintained at the permittee's expense on authorized facilities in navigable waters of the United States.

(c) The permittee understands and agrees that, if future operations by the United States require the removal, relocation, or other alteration, of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the Corps of Engineers, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.

2. Aquatic Life Movements. No activity may substantially disrupt the necessary life cycle movements of those species of aquatic life indigenous to the waterbody, including those species that normally migrate through the area, unless the activity's primary purpose is to impound water. All permanent and temporary crossings of waterbodies shall be suitably culverted, bridged, or otherwise designed and constructed to maintain low flows to sustain the movement of those aquatic species.

3. Spawning Areas. Activities in spawning areas during spawning seasons must be avoided to the maximum extent practicable. Activities that result in the physical destruction (e.g., through excavation, fill, or downstream smothering by substantial turbidity) of an important spawning area are not authorized.

4. Migratory Bird Breeding Areas. Activities in waters of the United States that serve as breeding areas for migratory birds must be avoided to the maximum extent practicable.

5. Shellfish Beds. No activity may occur in areas of concentrated shellfish populations, unless the activity is directly related to a shellfish harvesting activity authorized by NWPs 4 and 48, or is a shellfish seeding or habitat restoration activity authorized by NWP 27.

6. Suitable Material. No activity may use unsuitable material (e.g., trash, debris, car bodies, asphalt, etc.). Material used for construction or discharged must be free from toxic pollutants in toxic amounts (see Section 307 of the Clean Water Act).

7. Water Supply Intakes. No activity may occur in the proximity of a public water supply intake, except where the activity is for the repair or improvement of public water supply intake structures or adjacent bank stabilization.

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 and compliance with applicable NWP general conditions, as well as any activity-specific conditions added by the district engineer to an NWP authorization.

15. 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.

16. 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 responsible for the designated Wild and Scenic River or study river (e.g., National Park Service, U.S. Forest Service, Bureau of Land Management, U.S. Fish and Wildlife Service).

17. 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.

18. Endangered Species. (a) No activity is authorized under any NWP which is likely to directly or indirectly 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 directly or indirectly 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. The district engineer will review the documentation and determine whether it is sufficient to address ESA compliance for the NWP activity, or whether additional ESA consultation is necessary.

(c) Non-federal permittees must submit a pre-construction notification to 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 might be affected by the proposed work or that utilize the designated critical habitat that might 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. If the non-Federal applicant has not heard back from the Corps within 45 days, the applicant must still wait for notification from the Corps.

(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, The Endangered Species Act prohibits any person subject to the jurisdiction of the United States to take a listed species, where "take" means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. The word "harm" in the definition of "take" means an act which actually kills or injures wildlife. Such an act may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding or sheltering.

(f) 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/ or http://www.fws.gov/ipac and http://www.noaa.gov/fisheries.html respectively.

19. Migratory Birds and Bald and Golden Eagles. The permittee is responsible for obtaining any "take" permits required under the U.S. Fish and Wildlife Service's regulations governing compliance with the Migratory Bird Treaty Act or the Bald and Golden Eagle Protection Act. The permittee should contact the appropriate local office of the U.S. Fish and Wildlife Service to determine if such "take" permits are required for a particular activity.

20. Historic Properties. (a) In cases where the district engineer determines that the activity may affect properties listed, or eligible for listing, in the National Register of Historic Places, the activity is not authorized, until the requirements of Section 106 of the National Historic Preservation Act (NHPA) have been satisfied.

(b) Federal permittees should follow their own procedures for complying with the requirements of Section 106 of the National Historic Preservation Act. Federal permittees must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements. The district engineer will review the documentation and determine whether it is sufficient to address section 106 compliance for the NWP activity, or whether additional section 106 consultation is necessary.

(c) Non-federal permittees must submit a pre-construction notification to the district engineer if the authorized activity may have the potential to cause effects to any historic properties listed on, determined to be eligible for listing on, or potentially eligible for listing on the National Register of Historic Places, including previously unidentified properties. For such activities, the pre-construction notification must state which historic properties may be affected by the proposed work or include a vicinity map indicating the location of the historic properties or the potential for the presence of historic properties. Assistance regarding information on the location of or potential for the presence of historic resources can be sought from the State Historic Preservation Officer or Tribal Historic Preservation Officer, as appropriate, and the National Register of Historic Places (see 33 CFR 330.4(g)). When reviewing pre-construction notifications, district engineers will comply with the current procedures for addressing the requirements of Section 106 of the National Historic Preservation Act. The district engineer shall make a reasonable and good faith effort to carry out appropriate identification efforts, which may include background research, consultation, oral history interviews, sample field investigation,

and field survey. Based on the information submitted and these efforts, the district engineer shall determine whether the proposed activity has the potential to cause an effect on the historic properties. Where the non-Federal applicant has identified historic properties on which the activity may have the potential to cause effects and so notified the Corps, the non-Federal applicant shall not begin the activity until notified by the district engineer either that the activity has no potential to cause effects or that consultation under Section 106 of the NHPA has been completed.

(d) The district engineer will notify the prospective permittee within 45 days of receipt of a complete pre-construction notification whether NHPA Section 106 consultation is required. Section 106 consultation is not required when the Corps determines that the activity does not have the potential to cause effects on historic properties (see 36 CFR §800.3(a)). If NHPA section 106 consultation is required and will occur, the district engineer will notify the non-Federal applicant that he or she cannot begin work until Section 106 consultation is completed. If the non-Federal applicant has not heard back from the Corps within 45 days, the applicant must still wait for notification from the Corps.

(e) Prospective permittees should be aware that section 110k of the NHPA (16 U.S.C. 470h-2(k)) prevents the Corps from granting a permit or other assistance to an applicant who, with intent to avoid the requirements of Section 106 of the NHPA, has intentionally significantly adversely affected a historic property to which the permit would relate, or having legal power to prevent it, allowed such significant adverse effect to occur, unless the Corps, after consultation with the Advisory Council on Historic Preservation (ACHP), determines that circumstances justify granting such assistance despite the adverse effect created or permitted by the applicant. If circumstances justify granting the assistance, the Corps is required to notify the ACHP and provide documentation specifying the circumstances, the degree of damage to the integrity of any historic properties affected, and proposed mitigation. This documentation must include any views obtained from the applicant, SHPO/THPO, appropriate Indian tribes if the undertaking occurs on or affects historic properties on tribal lands or affects properties of interest to those tribes, and other parties known to have a legitimate interest in the impacts to the permitted activity on historic properties.

21. Discovery of Previously Unknown Remains and Artifacts. If you discover any previously unknown historic, cultural or archeological remains and artifacts while accomplishing the activity authorized by this permit, you must immediately notify the district engineer of what you have found, and to the maximum extent practicable, avoid construction activities that may affect the remains and artifacts until the required coordination has been completed. The district engineer will initiate the

Federal, Tribal and state coordination required to determine if the items or remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.

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

(a) Discharges of dredged or fill material into waters of the United States are not authorized by NWPs 7, 12, 14, 16, 17, 21, 29, 31, 35, 39, 40, 42, 43, 44, 49, 50, 51, and 52 for any activity within, or directly affecting, critical resource waters, including wetlands adjacent to such waters.

(b) For NWPs 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 31, 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.

23. 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 for resource losses) 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 either some other form of mitigation would be more environmentally appropriate or the adverse effects of the proposed activity are minimal, 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. Compensatory mitigation projects provided to offset losses of aquatic resources must comply with the applicable provisions of 33 CFR part 332.

(1) The prospective permittee is responsible for proposing an appropriate compensatory mitigation option if compensatory mitigation is necessary to ensure that the activity results in minimal adverse effects on the aquatic environment.

(2) 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.

(3) If permittee-responsible mitigation is the proposed option, the prospective permittee is responsible for submitting a mitigation plan. A conceptual or detailed mitigation plan may be used by the district engineer to make the decision on the NWP verification request, but a final mitigation plan that addresses the applicable requirements of 33 CFR 332.4(c)(2) – (14) must be approved by the district engineer before the permittee begins work in waters of the United States, unless the district engineer determines that prior approval of the final mitigation plan is not practicable or not necessary to ensure timely completion of the required compensatory mitigation (see 33 CFR 332.3(k)(3)).

(4) If mitigation bank or in-lieu fee program credits are the proposed option, the mitigation plan only needs to address the baseline conditions at the impact site and the number of credits to be provided.

(5) Compensatory mitigation requirements (e.g., resource type and amount to be provided as compensatory mitigation, site protection, ecological performance standards, monitoring requirements) may be addressed through conditions added to the NWP authorization, instead of components of a compensatory mitigation plan.

(d) For losses of streams or other open waters that require pre-construction notification, the district engineer may require compensatory mitigation, such as stream rehabilitation, enhancement, or preservation, 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.

(f) Compensatory mitigation plans for projects in or near streams or other open waters will normally include a requirement for the restoration or establishment, maintenance, and legal protection (e.g., conservation easements) of riparian areas next to open waters. In some cases, riparian areas may be the only compensatory mitigation required. Riparian areas should consist of native species. The width of the required riparian area will address documented water quality or aquatic habitat loss concerns. Normally, the riparian area will be 25 to 50 feet wide on each side of the stream, but the district engineer may require slightly wider riparian areas to address documented water quality or habitat loss concerns. If it is not possible to establish a riparian area on both sides of a stream, or if the waterbody is a lake or coastal waters, then restoring or establishing a riparian area along a single bank or shoreline may be

sufficient. Where both wetlands and open waters exist on the project site, the district engineer will determine the appropriate compensatory mitigation (e.g., riparian areas and/or wetlands compensation) based on what is best for the aquatic environment on a watershed basis. In cases where riparian areas are determined to be the most appropriate form of compensatory mitigation, the district engineer may waive or reduce the requirement to provide wetland compensatory mitigation for wetland losses.

(g) Permittees may propose the use of mitigation banks, in-lieu fee programs, or separate permittee-responsible mitigation. For activities resulting in the loss of marine or estuarine resources, permittee-responsible compensatory mitigation may be environmentally preferable if there are no mitigation banks or in-lieu fee programs in the area that have marine or estuarine credits available for sale or transfer to the permittee. For permittee-responsible mitigation, the special conditions of the NWP verification must clearly indicate the party or parties responsible for the implementation and performance of the compensatory mitigation project, and, if required, its long-term management.

(h) Where certain functions and services of waters of the United States are permanently adversely affected, such as the conversion of a forested or scrub-shrub wetland to a herbaceous wetland in a permanently maintained utility line right-of-way, mitigation may be required to reduce the adverse effects of the project to the minimal level.

24. Safety of Impoundment Structures. To ensure that all impoundment structures are safely designed, the district engineer may require non-Federal applicants to demonstrate that the structures comply with established state dam safety criteria or have been designed by qualified persons. The district engineer may also require documentation that the design has been independently reviewed by similarly qualified persons, and appropriate modifications made to ensure safety.

25. Water Quality. Where States and authorized Tribes, or EPA where applicable, have not previously certified compliance of an NWP with CWA Section 401, individual 401 Water Quality Certification must be obtained or waived (see 33 CFR 330.4(c)). The district engineer or State or Tribe may require additional water quality management measures to ensure that the authorized activity does not result in more than minimal degradation of water quality.

26. Coastal Zone Management. In coastal states where an NWP has not previously received a state coastal zone management consistency concurrence, an individual state coastal zone management consistency concurrence must be obtained, or a presumption of concurrence must

occur (see 33 CFR 330.4(d)). The district engineer or a State may require additional measures to ensure that the authorized activity is consistent with state coastal zone management requirements.

27. Regional and Case-By-Case Conditions. The activity must comply with any regional conditions that may have been added by the Division Engineer (see 33 CFR 330.4(e)) and with any case specific conditions added by the Corps or by the state, Indian Tribe, or U.S. EPA in its section 401 Water Quality Certification, or by the state in its Coastal Zone Management Act consistency determination.

The following regional conditions are applicable to all nationwide permit authorizations in the State of Wyoming to ensure projects result in less than minimal adverse impacts to the aquatic environment and to address local resources concerns.

(a) Wetlands Classified as Peatland.

Permittees must notify the Wyoming Regulatory Office (WRO) in accordance with General Condition 31 (Pre-Construction Notification) prior to undertaking any authorized activities in wetlands classified as peatland. Peatlands are saturated and inundated wetlands where conditions inhibit organic matter decomposition and allow for the accumulation of peat. Under cool, anaerobic, and acidic conditions, the rate of organic matter accumulation exceeds organic decay. Peatlands can be primarily classified into ombrotrophic bogs and minerotrophic fens; the latter subdivided into poor, moderate-rich, and extreme-rich fens, each with distinctive indicator species, community physiognomy, acidity, alkalinity, and base cation content.

(b) Waters Adjacent to Natural Springs.

Permittees must notify the WRO in accordance with General Condition 31 (Pre-Construction Notification) prior to undertaking any authorized activities within 100 feet of the water source in natural spring areas. For purposes of this condition, a spring source is defined as any location where there is artesian flow emanating from a distinct point source at any time during the growing season. Springs do not include seeps and other groundwater discharge areas where there is no distinct point source.

(c) Class 1 Waters.

Permittees must notify the WRO in accordance with General Condition 31 (Pre-Construction Notification) prior to undertaking any authorized activities in Class 1 waters.

Class 1 Waters in Wyoming are defined as:

1. All surface waters located within the boundaries of national parks and congressionally designated wilderness areas as of January 1, 1999;
2. The main stem of the Snake River through its entire length above the U.S. Highway 22 Bridge (Wilson Bridge);
3. The main stem of the Green River, including the Green River Lakes, from the mouth of the New Fork River upstream to the wilderness boundary;
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 Kortes 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.

(d) Teton County.

Permittees must notify the WRO in accordance with General Condition 31 (Pre-Construction Notification) prior to undertaking any authorized activities in Teton County.

(e) Borrow Site Identification.

The permittee is responsible for ensuring that the Corps is notified of the location of any borrow site that will be used in conjunction with the construction of the authorized activity so that the Corps may evaluate the site for potential impacts to aquatic resources, historic properties, and endangered species. For projects where there is another lead Federal agency, the permittee shall provide the Corps documentation indicating that the lead Federal agency has complied with the National Historic Preservation Act and Endangered Species Act for the borrow site. The permittee shall not initiate work at the borrow site in conjunction with the authorized activity until approval is received from the Corps.

(f) Regional Conditions Applicable to Specific Nationwide Permits.

Nationwide Permit 23. Permittees must notify the WRO in accordance with General Condition 31 (Pre-Construction Notification) prior to undertaking any activities authorized by Nationwide Permit 23.

Nationwide Permit 27. Permittees must notify the WRO in accordance with General Condition 31 (Pre-Construction Notification) prior to undertaking any activities authorized by Nationwide Permit 27.

(g) Regional Conditions to supplement other General Conditions.

General Condition 3.

The following is additional information on requirements of General Condition (GC) 3 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.

Blue and Red Ribbon Trout Streams and Native Species Status 1, 2, and 3 Streams

The Wyoming Game and Fish Department (WGFD) can provide information on Blue Ribbon and Red Ribbon trout streams or waters that contain State Wildlife Action Plan Native Species Status 1, 2, and 3 fish species. Potential effects on these important resources should be considered when formulating a project plan with the intent of minimizing adverse affects. Early coordination with Fisheries Supervisors in WGFD Regional Offices should be conducted prior to submitting a Pre-Construction Notification (PCN) for activities located in these waters. Otherwise, the WRO may require project modifications to minimize adverse affects after receiving a PCN.

General Condition 6.

Permittees are reminded of General Condition 6 which prohibits use of unsuitable material. A list of materials prohibited or restricted as fill material in waters of the United States within Wyoming can be found at http://www.nwo.usace.army.mil/html/od-rwy/pn/spn20Oct11.pdf

28. Use of Multiple Nationwide Permits. The use of more than one NWP for a single and complete project is prohibited, except when the acreage loss of waters of the United States authorized by the NWPs does not exceed the acreage limit of the NWP with the highest specified acreage limit. For example, if a road crossing over tidal waters is constructed under NWP 14, with associated bank stabilization authorized by NWP 13, the maximum acreage loss of waters of the United States for the total project cannot exceed 1/3-acre.

29. 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)

30. Compliance Certification. Each permittee who receives an NWP verification letter from the Corps must provide a signed certification documenting completion of the authorized activity and any required compensatory mitigation. The success of any required permittee-responsible mitigation, including the achievement of ecological performance standards, will be addressed separately by the district engineer. The Corps will provide the permittee the certification document with the NWP verification letter. The certification document will include:
(a) A statement that the authorized work was done in accordance with the NWP authorization, including any general, regional, or activity-specific conditions;
(b) A statement that the implementation of any required compensatory mitigation was completed in accordance with the permit conditions. If credits from a mitigation bank or in-lieu fee program are used to satisfy the compensatory mitigation requirements, the certification must include the documentation required by 33 CFR 332.3(l)(3) to confirm that the permittee secured the appropriate number and resource type of credits; and
(c) The signature of the permittee certifying the completion of the work and mitigation.

31. Pre-Construction Notification. (a) Timing. Where required by the terms of the NWP, the prospective permittee must notify the district engineer by submitting a pre-construction notification (PCN) as early as possible. The district engineer must determine if the PCN is complete within 30 calendar days of the date of receipt and, if the PCN is determined to be incomplete, notify the prospective permittee within that 30 day period to request the additional information necessary to make the PCN complete. The request must specify the information needed to make the PCN complete. As a general rule, district engineers will request additional information necessary to make the PCN complete only once. However, if the prospective permittee does not provide all of the requested information, then the district engineer will notify the prospective permittee that the PCN is still incomplete and the PCN review process will not commence until all of the requested information has been received by the district engineer. The prospective permittee shall not begin the activity until either:
(1) He or she is notified in writing by the district engineer that the activity may proceed under the NWP with any special conditions imposed by the district or division engineer; or
(2) 45 calendar days have passed from the district engineer's receipt of the complete PCN and the prospective permittee has not received written notice from the district or division engineer. However, if
the permittee was required to notify the Corps pursuant to general condition 18 that listed species or critical habitat might be affected or in the vicinity of the project, or to notify the Corps pursuant to general condition 20 that the activity may have the potential to cause effects to historic properties, the permittee cannot begin the activity until receiving written notification from the Corps that there is "no effect" on listed species or "no potential to cause effects" on historic properties, or that any consultation required under Section 7 of the Endangered Species Act (see 33 CFR 330.4(f)) and/or Section 106 of the National Historic Preservation (see 33 CFR 330.4(g)) has been completed. Also,

work cannot begin under NWPs 21, 49, or 50 until the permittee has received written approval from the Corps. If the proposed activity requires a written waiver to exceed specified limits of an NWP, the permittee may not begin the activity until the district engineer issues the waiver. If the district or division engineer notifies the permittee in writing that an individual permit is required within 45 calendar days of receipt of a complete PCN, the permittee cannot begin the activity until an individual permit has been obtained. Subsequently, the permittee's right to proceed under the NWP may be modified, suspended, or revoked only in accordance with the procedure set forth in 33 CFR 330.5(d)(2).

(b) Contents of Pre-Construction Notification: *(Available as a separate document)*

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 the Federal Register (Volume 77, Number 34) published on February 21, 2012. Copies of the Federal Register are available upon request or by visiting the Wyoming Regulatory Office web site at http://www.nwo.usace.army.mil/html/od-rwy/Wyoming.htm

Nationwide Permit Definitions

Best management practices (BMPs): 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.

Compensatory mitigation: The restoration (re-establishment or rehabilitation), establishment (creation), enhancement, and/or in certain circumstances preservation of aquatic resources for the purposes of offsetting unavoidable adverse impacts which remain after all appropriate and practicable avoidance and minimization has been achieved.

Currently serviceable: Useable as is or with some maintenance, but not so degraded as to essentially require reconstruction.

Direct effects: Effects that are caused by the activity and occur at the same time and place.

Discharge: The term "discharge" means any discharge of dredged or fill material.

Enhancement: The manipulation of the physical, chemical, or biological characteristics of an aquatic resource to heighten, intensify, or improve a specific aquatic resource function(s). Enhancement results in the gain of selected aquatic resource function(s), but may also lead to a decline in other aquatic resource function(s). Enhancement does not result in a gain in aquatic resource area.

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.

Establishment (creation): The manipulation of the physical, chemical, or biological characteristics present to develop an aquatic resource that did not previously exist at an upland site. Establishment results in a gain in aquatic resource area.

High Tide Line: The line of intersection of the land with the water's surface at the maximum height reached by a rising tide. The high tide line may be determined, in the absence of actual data, by a line of oil or scum along shore objects, a more or less continuous deposit of fine shell or debris on the foreshore or berm, other physical markings or characteristics, vegetation lines, tidal gages, or other suitable means that delineate the general height reached by a rising tide. The line encompasses spring high tides and other high tides that occur with periodic frequency but does not include storm surges in which there is a departure from the normal or predicted reach of the tide due to the piling up of water against a coast by strong winds such as those accompanying a hurricane or other intense storm.

Historic Property: Any prehistoric or historic district, site (including archaeological site), building, structure, or other object included in, or eligible for inclusion in, the National Register of Historic Places maintained by the Secretary of the Interior. This term includes artifacts, records, and remains that are related to and located within such properties. The term includes properties of traditional religious and cultural importance to an Indian tribe or Native Hawaiian organization and that meet the National Register criteria (36 CFR part 60).

Independent utility: A test to determine what constitutes a single and complete non-linear 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.

Indirect effects: Effects that are caused by the activity and are later in time or farther removed in distance, but are still reasonably foreseeable.

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 United States: Waters of the United States that are permanently adversely affected by filling, flooding, excavation, or drainage because of the regulated activity. Permanent adverse effects include permanent discharges of dredged or fill material 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 United States is a threshold measurement of the impact to jurisdictional 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 services. The loss of stream bed includes the linear feet of stream bed that is filled or excavated. Waters of the United States temporarily filled, flooded, excavated, or drained, but restored to pre-construction contours and elevations after construction, are not included in the measurement of loss of waters of the United States. Impacts resulting from activities eligible for exemptions under Section 404(f) of the Clean Water Act are not considered when calculating the loss of waters of the United States.

Non-tidal wetland: A non-tidal wetland is a wetland that is not subject to the ebb and flow of tidal waters. The definition of a wetland can be found at 33 CFR 328.3(b). Non-tidal wetlands contiguous to tidal waters are located landward of the high tide line (i.e., spring high tide line).

Open water: For purposes of the NWPs, an open water is any area that in a year with normal patterns of precipitation has water flowing or standing above ground to the extent that an ordinary high water mark can be determined. Aquatic vegetation within the area of standing or flowing water is either non-emergent, sparse, or absent. Vegetated shallows are considered to be open waters. Examples of "open waters" include rivers, streams, lakes, and ponds.

Ordinary High Water Mark: An ordinary high water mark is a line on the shore established by the fluctuations of water and indicated by physical characteristics, or by other appropriate means that consider the characteristics of the surrounding areas (see 33 CFR 328.3(e)).

Perennial stream: A perennial stream has flowing water year-round during a typical year. The water table is located above the stream bed for most of the year. Groundwater is the primary source of water for stream flow. Runoff from rainfall is a supplemental source of water for stream flow.

Practicable: Available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes.

Pre-construction notification: A request submitted by the project proponent to the Corps for confirmation that a particular activity is authorized by nationwide permit. The request may be a permit application, letter, or similar document that includes information about the proposed work and its anticipated environmental effects. Pre-construction notification may be required by the terms and conditions of a nationwide permit, or by regional conditions. A pre-construction notification may be

voluntarily submitted in cases where pre-construction notification is not required and the project proponent wants confirmation that the activity is authorized by nationwide permit.

Preservation: The removal of a threat to, or preventing the decline of, aquatic resources by an action in or near those aquatic resources. This term includes activities commonly associated with the protection and maintenance of aquatic resources through the implementation of appropriate legal and physical mechanisms. Preservation does not result in a gain of aquatic resource area or functions.

Re-establishment: The manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural/historic functions to a former aquatic resource. Re-establishment results in rebuilding a former aquatic resource and results in a gain in aquatic resource area and functions.

Rehabilitation: The manipulation of the physical, chemical, or biological characteristics of a site with the goal of repairing natural/historic functions to a degraded aquatic resource. Rehabilitation results in a gain in aquatic resource function, but does not result in a gain in aquatic resource area.

Restoration: The manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural/historic functions to a former or degraded aquatic resource. For the purpose of tracking net gains in aquatic resource area, restoration is divided into two categories: re-establishment and rehabilitation.

Riffle and pool complex: Riffle and pool complexes are special aquatic sites under the 404(b)(1) Guidelines. Riffle and pool complexes sometimes characterize steep gradient sections of streams. Such stream sections are recognizable by their hydraulic characteristics. The rapid movement of water over a course substrate in riffles results in a rough flow, a turbulent surface, and high dissolved oxygen levels in the water. Pools are deeper areas associated with riffles. A slower stream velocity, a streaming flow, a smooth surface, and a finer substrate characterize pools.

Riparian areas: Riparian areas are lands adjacent to streams, lakes, and estuarine-marine shorelines. Riparian areas are transitional between terrestrial and aquatic ecosystems, through which surface and subsurface hydrology connects riverine, lacustrine, estuarine, and marine waters with their adjacent wetlands, non-wetland waters, or uplands. Riparian areas provide a variety of ecological functions and services and help improve or maintain local water quality. (See general condition 23.)

Shellfish seeding: The placement of shellfish seed and/or suitable substrate to increase shellfish production. Shellfish seed consists of immature individual shellfish or individual shellfish attached to shells or shell fragments (i.e., spat on shell). Suitable substrate may consist of shellfish shells, shell fragments, or other appropriate materials placed into waters for shellfish habitat.

Single and complete linear project: A linear project is a project constructed for the purpose of getting people, goods, or services from a point of origin to a terminal point, which often involves multiple crossings of one or more waterbodies at separate and distant locations. The term "single and complete project" is defined as that portion of the total linear project proposed or accomplished by one owner/developer or partnership or other association of owners/developers that includes all crossings of a single water of the United States (i.e., a single waterbody) at a specific location. For linear projects crossing a single or multiple waterbodies several times at separate and distant locations, each crossing is considered a single and complete project for purposes of NWP authorization. However, individual channels in a braided stream or river, or individual arms of a large, irregularly shaped wetland or lake, etc., are not separate waterbodies, and crossings of such features cannot be considered separately.

Single and complete non-linear project: For non-linear projects, the term "single and complete project" is defined at 33 CFR 330.2(i) as the total project proposed or accomplished by one owner/developer or partnership or other association of owners/developers. A single and complete non-linear project must have independent utility (see definition of "independent utility"). Single and complete non-linear projects may not be "piecemealed" to avoid the limits in an NWP authorization.

Stormwater management: Stormwater management is the mechanism for controlling stormwater runoff for the purposes of reducing downstream erosion, water quality degradation, and flooding and mitigating the adverse effects of changes in land use on the aquatic environment.

Stormwater management facilities: Stormwater management facilities are those facilities, including but not limited to, stormwater retention and detention ponds and best management practices, which retain water for a period of time to control runoff and/or improve the quality (i.e., by reducing the concentration of nutrients, sediments, hazardous substances and other pollutants) of stormwater runoff.

Stream bed: The substrate of the stream channel between the ordinary high water marks. The substrate may be bedrock or inorganic particles that range in size from clay to boulders. Wetlands contiguous to the stream bed, but outside of the ordinary high water marks, are not considered part of the stream bed.

Stream channelization: The manipulation of a stream's course, condition, capacity, or location that causes more than minimal interruption of normal stream processes. A channelized stream remains a water of the United States.

Structure: An object that is arranged in a definite pattern of organization. Examples of structures include, without limitation, any pier, boat dock, boat ramp, wharf, dolphin, weir, boom, breakwater, bulkhead, revetment, riprap, jetty, artificial island, artificial reef, permanent mooring structure, power transmission line, permanently moored floating vessel, piling, aid to navigation, or any other manmade obstacle or obstruction.

Tidal wetland: A tidal wetland is a wetland (i.e., water of the United States) 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, which is defined at 33 CFR 328.3(d).

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: For purposes of the NWPs, a waterbody is a jurisdictional water of the United States. If a jurisdictional wetland is adjacent – meaning bordering, contiguous, or neighboring – to a waterbody determined to be a water of the United States under 33 CFR 328.3(a)(1)-(6), that waterbody and its adjacent wetlands are considered together as a single aquatic unit (see 33 CFR 328.4(c)(2)). Examples of "waterbodies" include streams, rivers, lakes, ponds, and wetlands.

Contents adapted from the Federal Register (Volume 77, Number 34) published on February 21, 2012. Copies of the Federal Register are available upon request or by visiting the Wyoming Regulatory Office web site at http://www.nwo.usace.army.mil/html/od-rwy/Wyoming.htm

Attacment 3
WYDEQ Nationwide Permit Certification Letter

Department of Environmental Quality

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

Matthew H. Mead, Governor

John Corra, Director

March 16, 2012

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

Dear Mr. Bilodeau,

In accordance with Section 401 of the Clean Water Act, the Wyoming Department of Environmental Quality (WDEQ) reviewed the nationwide general permits that become effective March 19, 2012, and made the following determinations:

1. Certification is denied for all nationwide permits where authorized activities would occur on Class 1 waters. Individual certification reviews are required. Refer to Attachment 1 of this letter for a list of Class 1 waters.

2. Certification is approved for nationwide permit #20 (Response Operations for Oil and Hazardous Substances) on all waters, including Class 1 waters.

3. Certification of all nationwide permits where authorized activities would occur on non-Class 1 waters (all other waters) is shown in Table 1 of this document.

4. Some nationwide permits require additional permit-specific conditions to assure attainment of Wyoming water quality standards. Refer to Table 1 for permit-specific certification conditions.

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

ADMIN/OUTREACH	ABANDONED MINES	AIR QUALITY	INDUSTRIAL SITING	LAND QUALITY	SOLID & HAZ. WASTE	WATER QUALITY
(307) 777-7758	(307) 777-6145	(307) 777-7391	(307) 777-7369	(307) 777-7756	(307) 777-7752	(307) 777-7781
FAX 777-7682	FAX 777-6462	FAX 777-5616	FAX 777-6937	FAX 777-5864	FAX 777-5973	FAX 777-5973

5. All certifications include the following standard conditions:
    a. Vegetation should be protected except where its removal is absolutely necessary for completion of the work. Disturbed soil should be revegetated in a manner that optimizes plant establishment for that specific site. Revegetation may include topsoil replacement, planting, seeding, fertilization, and weed-free mulching as necessary. Native material should be used where appropriate and feasible. All cut and fill slopes should be revegetated with appropriate species to prevent erosion.

    b. This certification requires all equipment to be inspected for oil, gas, diesel, anti-freeze, hydraulic fluid and other petroleum leaks. All such leaks will be properly repaired and equipment cleaned prior to being brought on-site. Leaks that occur after the equipment is on-site will be repaired within one day or removed from the project area. The equipment is not allowed to continue operating upon discovery of a leak. In addition, compliance with all State and Federal requirements for storage of petroleum products and solvents is required.

    c. Construction equipment should not be operated below the existing water surface except as follows:
        i. Fording at one location is acceptable; however, vehicles should not push or pull material along the bed or banks below the existing water level. Impacts from fording should be minimized.
        ii. Work below the waterline which is essential should be carried out in a manner which minimizes impacts to the aquatic system and water quality.

    d. In all coldwater fisheries and drinking water supplies (Class 1, 2A, 2AB, and 2B streams), activities associated with this permit shall not increase turbidity by more than 10 nephelometric turbidity units (NTUs). In all warmwater or nongame fisheries (Class 2AB or 2C streams), turbidity shall not be increased by more than 15 NTUs.

    In accordance with Section 23(c)(2) of Chapter 1 of the Wyoming Water Quality Rules and Regulations, the administrator of the Water Quality Division may authorize temporary increases in turbidity above the limits described above in response to an individual application for a variance. The variance must be approved before the authorized activity may elevate turbidity above these limits.

e. Any temporary crossings, bridge supports, cofferdams or other structures should be designed to handle high flows anticipated to occur while these structures are present. All temporary structures should be completely removed from the waterbody at the conclusion of the permitted activity and the area restored to a natural appearance.

f. WDEQ may consult with other state or federal agencies on individual certification reviews, as appropriate.

g. The timing and duration of construction should be adjusted as necessary to minimize conflicts with fish migration and spawning

Informational copies of preconstruction notification documents should be provided to WDEQ for the following nationwide permits that have been certified for non-class 1 waters: 13, 14, 21, 27, 29, 37, 39, and 49.

This letter describes state certification of the 2012 nationwide permits as required by Section 401 of the Clean Water Act. It does not provide exemption from other regulations or legal action by private citizens due to property damage resulting from the authorized activity. WDEQ reserves the right to amend the certification determinations or conditions.

Please contact Jeremy ZumBerge at (307) 675-5638 for further information.

Sincerely,

John V. Corra
Director

JVC/JFW/DHW/JRZ/rm/12-0211

cc: Mary Flanderka, WGFD, Cheyenne
Julia McCarthy, USEPA Region 8, 1595 Wynkoop St, Denver, CO 80202
John Wagner, WDEQ, Cheyenne
David Waterstreet, WDEQ, Cheyenne