

2017 NATIONWIDE PERMIT UTAH REGIONAL CONDITIONS

Prepared by Jason Gipson
For the Regulatory Program Workshop
25 April 2017

“The views, opinions and findings contained in this report are those of the author(s) and should not be construed as an official Department of the Army position, policy or decision, unless so designated by other official documentation.”



US Army Corps
of Engineers®



TOPICS

- What are Regional Conditions?
- Overview of 2017 Regional Conditions
 - Notable changes between 2012 and 2017
- Link to Regional Conditions found at:

<http://www.spk.usace.army.mil/Missions/Regulatory/Permitting/Nationwide-Permits/>



US Army Corps
of Engineers ®



WHAT ARE REGIONAL CONDITIONS?

- Regional Conditions are mandatory and in addition to General Conditions
- Includes:
 - Notification procedures
 - Design requirements
 - Revoked Nationwide Permits
- Issued by Sacramento District on March 22, 2017
- Utah
 - 23 RCs
 - 1 Revocation



**2017 Regional Conditions to Nationwide Permits
in the State of Colorado**

U.S. Army Corps of Engineers
Albuquerque District
Omaha District
Sacramento District

Regional Conditions Applicable to Specific Nationwide Permits within the State of Colorado

- Nationwide Permit No. 12: Utility Line Activities. Notification to the District Engineer (DE) in accordance with General Condition (GC) No. 32, pre-construction notification (PCN) is required for utility line activities that propose open trenching in perennial waters or for the purpose of creating a water intake.
- Nationwide Permit No. 13: Bank Stabilization. PCN is required for bank stabilization activities that are necessary for erosion prevention in streams with an average width of less than 20 feet (measured between the ordinary high water marks (OHWM)). Bank stabilization activities in these small streams are limited to the placement of no more than ¼ cubic yard of fill material per linear foot below the plane of the OHWM unless the Corps determines on a case-by-case basis that the use of larger or greater quantities of material is appropriate.
- Nationwide Permit No. 23: Approved Categorical Exclusions. PCN is required for all projects utilizing Categorical Exclusions.
- Nationwide Permit No. 27: Aquatic Habitat Restoration, Establishment, and Enhancement Activities. This permit is revoked for activities in which the project purpose is fishery enhancement in perennial streams. These types of projects may qualify for authorization under Regional General Permit No. 12 for Aquatic Habitat Improvement for Stream Channels in Colorado.
 - Channel realignment is not authorized by this permit unless it is demonstrated that the realignment is consistent with the natural morphological evolution of the stream.
 - The use of concrete/grouting is not allowed in perennial streams unless waived in writing by the DE.
 - The construction of water parks (e.g. kayak courses) and flood control projects are not authorized by this permit.

Regional Conditions Applicable to All Nationwide Permits within the State of Colorado

- Important Spawning Areas. Activities are not authorized by any nationwide permit except after case-by-case review and consultation with Colorado Parks and Wildlife (CPW) if the activities would adversely affect important spawning areas or would be conducted in these waters during trout and Kokanee spawning seasons. Bio-engineering techniques, such as native riparian shrub plantings, are required for all bank protection activities that exceed 50 linear feet in important spawning areas. For activities located in these important spawning areas, PCN is required and consultation with CPW must be conducted in accordance with the timeframes established in GC 32 (Pre-Construction Notification). Important spawning areas are considered Gold Medal Waters in Colorado (Attachment 2).

January 11, 2017 1



US Army Corps
of Engineers[®]



REGIONAL CONDITION (RC) CHANGES FROM 2012 NWPS

- Re-formatting
 - Section A: Revoked NWPs
 - Section B: RCs Applicable Before Authorization
 - Additional information required to be submitted with the PCN
 - Additional activities that require submittal of a PCN
 - Additional activity and NWP specific RCs to ensure the effects are no more than minimal
 - Section C: RCs Applicable After Authorization
 - Compensatory mitigation requirements
 - Measures that must be taken prior to/during construction to ensure the effects are no more than minimal
 - Post-construction reporting requirements



US Army Corps
of Engineers ®



REVOKED NATIONWIDE PERMITS IN UTAH



US Army Corps
of Engineers[®]



REGIONAL CONDITION A(1) FOR UTAH

All NWP's except 3, 6, 20, 27, 32, and 38 are revoked for activities in histosols, fens, bogs, peatlands, and in wetlands contiguous with fens. This condition does not apply to NWP's 1, 2, 8, 9, 10, 11, 19, 24, 28, 35 or 36, as these NWP's either apply to Section 10 only activities or do not authorize impacts to wetlands and/or other special aquatic sites. For NWP's 3, 6, 20, 27, and 38, see RC B(5).

- **Changes from 2012 NWP RC:**
 - Included NWP 19 (minor dredging) in list of NWP's where this condition is not applicable.
 - Eliminated PCN requirement for NWP 32



US Army Corps
of Engineers[®]



REGIONAL CONDITIONS APPLICABLE BEFORE AUTHORIZATION



US Army Corps
of Engineers[®]



REGIONAL CONDITION B(1) FOR UTAH

Requirements for additional information required to be submitted with a PCN.

- **Changes from 2012 NWP RC:**
 - Added subparagraphs (d) through (o).
 - Delineations
 - BMPs
 - Temp access
 - Dewatering
 - Linear transportation crossings
 - Waivers
 - Cat Ex
 - Bio-engineering



US Army Corps
of Engineers[®]



REGIONAL CONDITION B(2) FOR UTAH

Permittee shall submit a PCN in the following circumstances:

- a) Discharges below the ordinary high water mark in the Great Salt Lake in areas containing bioherms (microbialites) (B)(2)(a)
- b) New/Replacement linear transportation crossings of perennial, intermittent, or ephemeral drainages or other open waters of the U.S., where the pre-construction bankfull width of WOUS at the crossing would be reduced. (B)(2)(b)
- c) Activities within 100-feet of point of discharge of a known natural spring source (B)(2)(c)
- d) Activities on tribal lands. (B)(2)(d)
- e) Activities proposing in-stream grouted outfall structures or grouting of stream bottoms (B)(2)(e)



US Army Corps
of Engineers ®



REGIONAL CONDITION B(2) FOR UTAH

- **Changes from 2012 NWP RC:**
 - B(2)(a): previous elevation-based criteria in GSL and Utah lake were eliminated
 - B(2)(b): included ephemeral drainages; identifies only for new/replacement linear transportation crossings of drainages/open waters, and only where the pre-construction bankfull width of WOUS at the crossing would be reduced.
 - B(2)(d): new condition
 - B(2)(e): new condition



US Army Corps
of Engineers[®]



REGIONAL CONDITION B(3) FOR UTAH

PCN shall be submitted for all utility lines when:

- a) Result in loss of >100 lf of perennial, intermittent, ephemeral drainages or other open waters
- b) Trenches in WOUS would not be restored within 30 days
- c) Discharge of excess material associated with installation of utility line trench into WOUS



US Army Corps
of Engineers[®]



REGIONAL CONDITION B(3) FOR UTAH

- **Changes from 2012 NWP RC:**
 - Changed from only NWP 12 to all utility lines
 - B(3)(a): removed requirement for PCN for all perennial waters, wetlands, mudflats, vegetated shallows, riffle and pool complexes, sanctuaries, or coral reefs
 - B(3)(b): PCN now required for ephemeral, intermittent, perennial, or other open waters waters if loss of greater than 100 lf
 - Added B(3)(c) requiring a PCN if excess material would be discharged into WOUS.



US Army Corps
of Engineers[®]



REGIONAL CONDITION B(4) FOR UTAH

All new bank stabilization activities shall involve either the sole use of native vegetation/bioengineered design techniques or combination of hard-armoring and native vegetation/bioengineered design techniques, unless specifically determined to be not practicable.

- The permittee shall submit a PCN in accordance with General Condition 32 and RC B(1) for any new bank stabilization activity that involves any hard-armoring or the placement of any non-vegetated or non-bioengineered technique below the ordinary high water mark or, if tidal waters, the high tide line of waters of the U.S.
- **Changes from 2012 NWP RC:**
 - Clarified that only applies to “new” bank stabilization



US Army Corps
of Engineers[®]



REGIONAL CONDITION B(5) FOR UTAH

For NWP 3, 6, 20, and 27: The permittee shall submit a PCN in accordance with General Condition 32 and RC B(1) for activities in histosols, fens, bogs, peatlands, and in wetlands contiguous with fens.

- **Changes from 2012 NWP RC:**

- Removed requirement for a PCN for NWP 32.



US Army Corps
of Engineers[®]



REGIONAL CONDITION B(6) FOR UTAH

For NWP 23 (Cat Ex Activities): The permittee shall submit a PCN for all activities proposed under this NWP, in accordance with General Condition 32 and RC B(1). (CG, FHWA and BOR)



US Army Corps
of Engineers[®]



REGIONAL CONDITION B(7) FOR UTAH

For NWP 27, submit a PCN for activities that result in a discharge of dredged/fill material into WOUS. The following restrictions apply:

- a) Facilities for controlling stormwater runoff, construction of water parks such as kayak courses, and the use of grout or concrete to construct in-stream structures are not authorized
 - b) Post-project stream sinuosity shall be appropriate to geomorphology of surrounding area and equal to or greater than pre-project sinuosity
 - c) Structures shall allow passage of aquatic organisms, recreational water craft or other navigational activities unless specifically waived in writing by the Corps.
- **Changes from 2012 NWP RC:**
 - Modified to require a PCN for all discharges of dredged/fill material into WOUS, including ephemeral drainages

REGIONAL CONDITION B(8) FOR UTAH

For NWPs 29 and 39: Channelization or relocation of perennial or intermittent drainages is not authorized, except when, as determined by the Corps, the proposed channelization or relocation would result in a net increase in aquatic resource functions and services.

- This RC does not apply to man-made ditches, unless, as determined by the Corps, the ditch (1) was constructed through an aquatic resource or is a relocated drainage; (2) the ditch receives water from an area determined to be a water of the U.S.; and (3) the ditch diverts water to an area determined to be a water of the U.S.
- **Changes from 2012 NWP RC:**
 - Added “channelization” in second part of the first sentence
 - Added clarification that condition does not apply to certain ditches



US Army Corps
of Engineers[®]



REGIONAL CONDITION B(9) FOR UTAH

For NWP 46: The discharge shall not cause the loss of greater than 0.5 acre or 300 linear feet of waters of the U.S., unless specifically waived in writing by the Corps.

- **Changes from 2012 NWP RC:**
 - Minor changes in wording for clarification



US Army Corps
of Engineers[®]



REGIONAL CONDITION B(10) UTAH

The following criteria apply to linear transportation crossings (e.g. roads, highways, railways, trails, bridges, culverts)

- a) For activities in WOUS that are suitable habitat for Federally-listed fish species, including designated critical habitat for such species, design new or substantially reconstructed crossings to ensure passage and/or spawning of fish is not hindered. Permittee shall employ bridge designs that span the stream or river or designs that use a bottomless arch culvert with a natural stream bed
- b) Linear transportation crossings shall be constructed to maintain the pre-construction course, condition, capacity, and location of open waters unless it can be demonstrated by permittee, and Corps' concurs, that the activity would result in a net increase in aquatic resource functions and services. For existing crossings, pre-construction course, condition, capacity, and location determined based on the upstream and downstream waters
- c) Unless determined to be not practicable by the Corps, all linear transportation crossings proposed to be replaced shall be designed to approximate the bankfull width and depth of upstream and downstream open waters.



US Army Corps
of Engineers[®]



REGIONAL CONDITION B(10) FOR UTAH

- **Changes from 2012 NWP RC:**
 - Modified to clarify “linear transportation crossings” instead of “road crossings” and include examples
 - Subparagraph (a) modified to add “including designated critical habitat for such species,” and to specify that the condition applies to new or substantially reconstructed linear transportation crossings
 - Subparagraphs (b) through (d) deleted and replaced



US Army Corps
of Engineers[®]



REGIONAL CONDITION B(11) FOR UTAH

Unless determined to be not practicable by the Corps, no dredged/fill material shall be discharged within standing or flowing waters.

- Ephemeral or intermittent drainages: construction during the dry season.
 - Perennial drainages: dewatering of the work area.
 - All dewatering shall be conducted to allow fish and wildlife passage during construction.
 - All dewatering structures and/or fills shall be removed within 30 days
- **Changes from 2012 NWP RC:**
 - New RC for 2017. 2012 RC 6 for road crossings included similar language. RC now applies to all activities that result in a discharge of dredged/fill material into WOUS.



US Army Corps
of Engineers[®]



REGIONAL CONDITION B(12) FOR UTAH

For activities in which the Corps designates another Federal agency as the lead for compliance with ESA, MSFCMA, NHPA

- Prospective permittee shall provide all relevant documentation to the Corps demonstrating any previous consultation efforts as it pertains to the Corps Regulatory permit area (for ESA and MSFCMA compliance) and the Corps Regulatory area of potential effect (APE) (for Section 106 compliance).
 - For activities requiring a PCN, this information shall be submitted with the PCN. If the Corps does not designate another Federal agency as the lead for ESA, EFH and/or NHPA, the Corps will initiate consultation for compliance, as appropriate.
- **Changes from 2012 NWP RC:**
 - Replaced “lead Federal agency” with “prospective permittee”



US Army Corps
of Engineers[®]



REGIONAL CONDITIONS APPLICABLE AFTER AUTHORIZATION



US Army Corps
of Engineers[®]



REGIONAL CONDITION C(1) FOR UTAH

The permittee shall record the NWP verification letter with the Registrar of Deeds or other appropriate official charged with the responsibility for maintaining records of title to or interest in real property for:

- Areas required to be preserved as a special condition of the NWP verification letter
 - Areas where boat ramps, docks, marinas, piers, or permanently moored vessels will be constructed or placed in or adjacent to navigable waters.
 - The recordation shall also include a map showing the surveyed location of the required preserve area or authorized structure. Evidence of the recordation of the NWP verification shall be provided to the Corps with the compliance certification.
- **Changes from 2012 NWP RC:**
 - Added requirement that evidence of recordation be submitted to Corps changes for clarification



US Army Corps
of Engineers[®]



REGIONAL CONDITION C(2) FOR UTAH

Compensatory Mitigation Requirements

- a) For permittee-responsible compensatory mitigation, the permittee shall develop and submit to the Corps, for review and approval, a final mitigation and monitoring plan following the SPD mitigation and monitoring guidelines or most recent update
 - b) Permittee shall complete construction of any compensatory mitigation before or concurrent with construction of the authorized activity, except when determined to be not practicable by the Corps. Proof of Mitigation Bank or In-Lieu Fee credit purchase shall be submitted to the Corps prior to commencement of construction of the authorized activity in WOUS
- **Changes from 2012 NWP RC:**
 - Combined 2012 RCs 9 and 10 into subparagraphs (a) and (b)
 - Modified subparagraph (a) to require that plans meet the SPD Mitigation and Monitoring guidelines or most recent update



US Army Corps
of Engineers[®]



REGIONAL CONDITION C(3) FOR UTAH

Unless determined to be not practicable or appropriate by the Corps, for activities that result in the discharge of dredged and/or fill material into waters of the U.S., the permittee shall employ construction BMPs.

- Methods include appropriate measures to intercept and capture sediment prior to entering WOUS.
 - Shall be in place prior to initiation of construction and remain until construction completed
 - BMPs shall be maintained until construction activities are completed and site soils are stabilized.
- **Changes from 2012 NWP RC:**
 - New RC



US Army Corps
of Engineers[®]



REGIONAL CONDITION C(4) FOR UTAH

Unless determined to be not practicable or appropriate by the Corps, for discharge of dredged and/or fill material into waters of the U.S., clearly identify the limits of the authorized activity in the field with highly visible markers (e.g. construction fencing, flagging, silt barriers, etc.) prior to commencement of construction activities in WOUS.

- Maintain identification until construction is complete and soils stabilized
 - Permittee prohibited from any activity that impacts WOUS outside permit limits
- **Changes from 2012 NWP RC:**
 - Clarified that condition is applicable unless determined to be not practicable or appropriate by the Corps
 - Clarified that the condition is applicable to activities that result in a discharge of dredged/fill material into WOUS.



US Army Corps
of Engineers[®]



REGIONAL CONDITION C(5) FOR UTAH

For temporary access/construction activities resulting in temporary fill in WOUS the permittee shall:

- a) Utilize spawning quality gravel, where appropriate as determined by the Corps for all temporary fills within WOUS supporting fisheries
- b) Install a horizontal mark to delineate the existing bottom elevation of waters temporarily filled during construction prior to the placement of temporary fill in WOUS.
- c) Remove all temporary fill and restore the area to pre-project contours and conditions within 30 days following completion of construction activities in waters of the U.S.

• **Changes from 2012 NWP RC:**

- For subparagraph (a), deleted requirement for “clean and washed gravel” and clarified that the condition applies to WOUS supporting all fisheries instead of “anadromous fisheries”
- Subparagraph (c) modified to specify that temporary fills must be removed and the area restored within 30 days

REGIONAL CONDITION C(6) FOR UTAH

For all utility line activities:

- a) Ensure the utility line does not result in the draining of WOUS
- b) Unless determined not practicable or appropriate by the Corps, remove and stockpile the top 6-12 inches of topsoil and replace stockpiled topsoil on top and seed the area with native vegetation
- c) Unless determined to be not practicable by the Corps ensure that excess material associated with the utility line trench is disposed of in an upland location outside of WOUS.

- **Changes from 2012 NWP RC:**

- Now applicable to all NWPs instead of just NWP 12
- Requirements from main paragraph of 2012 RC 16 are now subparagraphs (a) and (b)
- Subparagraph (c) new for 2017



US Army Corps
of Engineers[®]



REGIONAL CONDITION C(7) FOR UTAH

The permittee is responsible for all authorized work and ensuring that all contractors and workers are made aware of and adhere to the terms and conditions of the permit authorization. The permittee shall ensure that a copy of the permit authorization and associated drawings are available and visible for quick reference at the site until all construction activities are completed.



US Army Corps
of Engineers[®]



REGIONAL CONDITION C(8) FOR UTAH

The permittee shall allow Corps representatives to inspect the authorized activity and any avoidance, preservation, and/or compensatory mitigation areas at any time deemed necessary to determine compliance with the terms and conditions of the NWP verification. The permittee will be notified by the Corps in advance of an inspection.

- **Changes from 2012 NWP RC:**
 - Replaced “mitigation areas” with “avoidance, preservation, and/or compensatory mitigation”



US Army Corps
of Engineers[®]



REGIONAL CONDITION C(9) FOR UTAH

For NWP's requiring a PCN, the permittee shall submit the following additional information with the compliance certificate required under General Condition 30, within 30-days following completion of construction activities in WOUS

- a) As-built drawings: plan-view drawing showing the authorized work footprint & work as constructed, and cross-section view drawing (where appropriate) of the work as constructed
- b) Numbered and dated post-construction photographs of
 - Work within a representative sample of the permanently filled WOUS
 - All partially filled WOUS
 - All avoided WOUS

Compass angle and similar to the required pre-construction photographs and identified on the plan-view drawings.

- c) Description/photo-documentation of BMPs
- d) For temporary fill, a description and photo-documentation of all restored WOUS. If not restored to pre-project contours or conditions, description and photo-documentation of the temporary fill and information on why restoration has not been completed.



US Army Corps
of Engineers[®]



REGIONAL CONDITION C(9) FOR UTAH

- **Changes from 2012 NWP RC:**
 - Added requirement that the information required within 30 days
 - For subparagraph (a), clarified that as-built drawings are required for the work conducted on the site and/or permittee responsible compensatory mitigation areas. Included a requirement for cross-section view drawing if appropriate
 - For subparagraph (b), included a list of required post-construction photographs
 - Added new subparagraphs (c) and (d)



US Army Corps
of Engineers[®]



QUESTIONS?



US Army Corps
of Engineers[®]

