

# NATIONWIDE PERMIT PROCESS

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US Army Corps  
of Engineers®



# A YEAR OF CHANGE



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- Navigable Waters Protection Rule
  - Effective June 22<sup>nd</sup>, 2020
- National Environmental Policy Act (NEPA)
  - Finalized July 16<sup>th</sup>, 2020
- Clean Water Act Section 401 Certification Final Rule
  - Effective September 11, 2020
- Endangered Species Act
  - Effective January 15, 2021
- Nationwide Permit Reissuance
  - Effective March 15<sup>th</sup>, 2021



# REGULATORY REVISIONS



# STATUS OF REGULATORY REVISIONS



- Corps regulations and Regulatory Guidance Letters (RGLs) are proposed for revision to comport with the new rule:
  - New RGL to replace RGL 19-02 (under review)
  - New RGL to update RGL 06-02 (under review)
  - Update to 33 CFR 320, 323, 324, 325, 326, 330 (under review)
  - Update to provisional permit language and regulatory process
  - Update to SOP
  - Update Section 401 portion of Individual Permit Decision Documents
- Regulations and guidance documents went to ASA(CW) for review on October 11, 2020.
- Updates to 33 CFR and RGLs will not be finalized for several months (estimated publish date in Federal Register for 60-day comment period is June 2021).



# GRANDFATHERING



# 2021 NWP GRANDFATHERING



- For permittees holding verification letters for activities replaced by the 2021 final rule (e.g., NWP 29 or 39) and the previously verified activity continues to comply with the reissued NWP in the final rule, including applicable regional conditions and 401 certification, then that verification letter continues to be valid until March 18, 2022, unless the district engineer specified a different expiration date in the NWP verification letter.
- If the activity (i.e., utility lines activities for telecommunication lines or water and other substances that no longer fall under NWP 12) is not authorized by any of the 12 reissued NWPs, then the permittee has 12 months or until March 15, 2022, to complete the authorized activity, as long as they have commenced construction or were under contract to commence construction before March 15, 2021 (see 33 CFR 330.6(b)).



# 401 RULE OVERVIEW





# 401 RULE: OVERVIEW



- The new 401 WQC process applies to the following actions **on or after** September 11, 2020 :
  - All 401 WQC requests received;
  - Permit modifications that warrant reconsideration of the 401 WQC; and,
  - Instances where a 401 WQC expires prior to the permittees completing the discharges authorized by the Corps permit.
- Certification requests submitted **before** September 11, 2020 will be processed in accordance with the 1971 regulations.



# 401 RULE: OVERVIEW



- When does the project proponent need a 401 WQC
  - ✓ potential for
  - ✓ the federally licensed or permitted activity
  - ✓ to result in a discharge from a point source
  - ✓ into a water of the United States
- The certifying authority determines the need for 401 WQC – not the Corps
- If general 401 WQC has been issued to the Corps for a NWP, the Corps determines if the proposed activity will meet the terms and conditions of the general 401 WQC.
- Alternatively, a project proponent may determine they cannot comply with one or more conditions of a general WQC issued to the Corps and can request individual 401 WQC to fulfill the 401 requirement (see the changes to NWP general condition 25).



# 401 WQC PROCESS



# INDIVIDUAL 401 WQC PROCESS

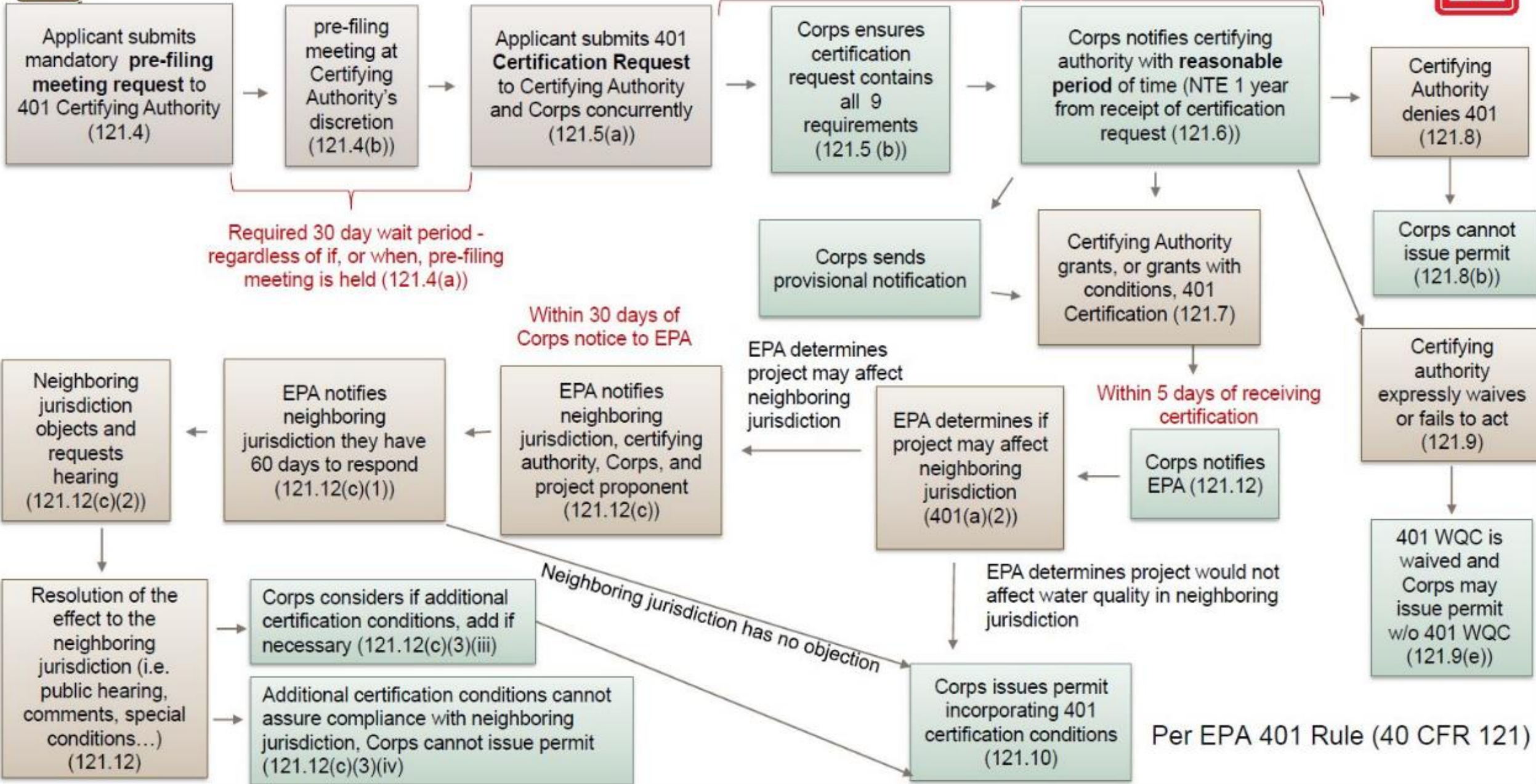


- 1) Project proponent submits mandatory pre-filing meeting request to the certifying authority (CA).
- 2) Project proponent waits mandatory 30-days before submitting 401 WQC request to CA and Corps **concurrently**.
- 3) Within 15-days of receipt of 401 WQC request, Corps notifies CA of Reasonable Period of Time (RPOT).
- 4) Within the RPOT the CA must grant, waive, or deny 401 WQC. If denied, Corps cannot issue NWP verification. If expressly waived, or CA fails or refused to act, Corps may issue NWP verification.
- 5) If granted, within 5-days of receipt, Corps must send (a)(2) notification to EPA.
- 6) Within 30-days, EPA determines if activity may affect neighboring jurisdiction (NJ).
- 7) If EPA determines no effect/objection, Corps can issue permit verification and incorporates 401 rule compliant WQC condition(s) into permit as special condition(s).
- 8) If EPA determines may affect, EPA sends notification to everyone, and neighboring jurisdiction has 60-days to request a hearing.
- 9) After public hearing, Corps considers adding conditions to the permit; if necessary, to ensure compliance with NJ water quality standards. If additional conditions cannot assure compliance with NJ water quality standards, Corps cannot issue permit.



# EPA's 401 rule and Corps permit process timeline

Within 15 days of receipt of certification request





# INDIVIDUAL 401 CERTIFICATION: 9 REQUIRED COMPONENTS

## 40 CFR 121. 5(B)



- (1) Identify the project proponent(s) and a point of contact;
- (2) Identify the proposed project;
- (3) Identify the applicable federal license or permit (CWA 404/RHA 10 permit);
- (4) Identify the location and nature of any potential discharge that may result from the proposed project and the location of receiving waters;
- (5) Include a description of any methods and means proposed to monitor the discharge and the equipment or measures planned to treat, control, or manage the discharge;
- (6) Include a list of all other federal, interstate, tribal, state, territorial, or local agency authorizations required for the proposed project, including all approvals or denials already received;
- (7) Include documentation that a prefiling meeting request was submitted to the certifying authority at least 30 days prior to submitting the certification request;
- (8) Contain the following statement: 'The project proponent hereby certifies that all information contained herein is true, accurate, and complete to the best of my knowledge and belief'; and
- (9) Contain the following statement: 'The project proponent hereby requests that the certifying authority review and take action on this CWA 401 certification request within the applicable reasonable period of time.'



# NON-REPORTING



# NON-REPORTING NWP ACTIVITIES



- If no PCN is required, the project proponent may proceed under the authority of the NWP, provided they follow all general and regional conditions, and the 401 process is complete.
- Does the non-reporting activity meet the terms and conditions of an existing **general** 401 WQC or has the RWQCB/USEPA expressly waived 401 WQC? If yes, then the project proponent may proceed.
- Non-notifying NWP activities needing individual 401 WQC must go through the new 401 WQC process. The project proponent is responsible for notifying us **concurrently** with the certifying authority, of it's individual 401 WQC request.
- For all non-reporting NWP activities that require individual 401 WQC, the project proponent must provide a copy of the 401 WQC; or waiver thereof, to the Corps. If granted, the Corps will initiate the Neighboring Jurisdiction a(2) notification process with USEPA. The project proponent may not proceed with the work until they have been notified of USEPA's Neighboring Jurisdiction determination and the 401 process is complete.





# PRE-CONSTRUCTION NOTIFICATION (PCN)



# PRE-CONSTRUCTION NOTIFICATION (PCN)



- In order to qualify for use under a NWP, the activity must:
  1. Meet the terms of the NWP
  2. Meet the General Conditions of the NWP
  3. Meet the Regional Conditions of the NWP
  - If the activity does not meet all of these requirements, it does not qualify for authorization under a NWP
- Many NWPs require the submittal of a pre-construction notification (PCN) prior to beginning work. PCN requirements are found in the terms and conditions of the NWP, including regional conditions.
- Once it is determined the proposed activity will comply with all terms and conditions of the NWP, including all General and Regional Conditions, and the 401 process is complete, the permittee may proceed under the authority of the NWP.



# NWP PROCESS



# NWP PROCESS



1. Project proponent submits PCN to the Corps (ENG Form 6082 or SPD PCN Form & Checklist).
2. Corps determines if PCN is complete within 30 days. If PCN is not complete, the project proponent will be notified that the PCN is not complete and will be requested to submit additional information.
3. If PCN is complete, the Corps will determine if the activity qualifies for a NWP. If activity does not qualify for a NWP, the project proponent will be notified within 30 days that the activity will need to be evaluated under another type of permit (RGP, LOP or SP).
4. If activity qualifies for a NWP, the Corps will initiate any required consultations under Section 7 of the Endangered Species Act (ESA) and Section 106 of the National Historic Preservation Act (NHPA), including tribal coordination.
5. If general 401 Water Quality Certification (WQC) for the NWP activity has not been granted or waived, the project proponent must request individual 401 WQC from the Regional Water Quality Control Board.
6. Following completion of the 401 process, tribal coordination, ESA/NHPA consultation(s), and 408 process (if applicable), the Corps will proceed to **verify** the use of the NWP and will add any necessary special conditions to the NWP verification to ensure impacts to waters of the U.S. are no more than minimal.
7. **No work may be authorized/verified under a NWP until the 401 WQC process is complete.**



# THINGS TO REMEMBER



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- The 401 process is a separate process. The Corps encourages project proponents to start the 401 process before the 404/10 permit process.
- Project proponent must submit their 401 WQC request to both the certifying authority and the Corps **concurrently**, and it must include the 9 required components listed at 40 CFR 121.5(b).
- NWP activity/verification is not authorized **until the 401 process is complete.**
- The Corps determines whether the proposed NWP activity meets the terms and conditions of a general 401 WQC, not the certifying authority.



# RESOURCES AND INFORMATION



USACE Sacramento District – Regulatory NWP Webpage

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

85 FR 42210 – Clean Water Act Section 401 Certification Rule

[https://cops.usace.army.mil/sites/RD/RegulatoryDocuments/External%20Coordination/State%20Agency/401%20WQC%20Resources/Clean%20Water%20Act%20Section%20401%20Certification%20Rule%2085%20FR%2042210\\_20200713.pdf](https://cops.usace.army.mil/sites/RD/RegulatoryDocuments/External%20Coordination/State%20Agency/401%20WQC%20Resources/Clean%20Water%20Act%20Section%20401%20Certification%20Rule%2085%20FR%2042210_20200713.pdf)

USEPA – State and Tribal Webinars for the Clean Water Act Section 401 Certification Rule

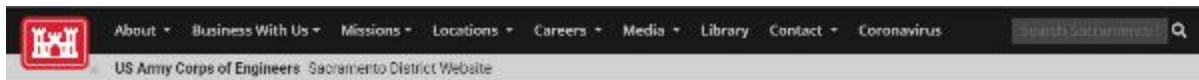
<https://www.epa.gov/cwa-401/state-and-tribal-webinars-clean-water-act-section-401-certification-rule>

State Water Resources Control Board – 401 Water Quality Certification and Wetlands Program

[https://www.waterboards.ca.gov/water\\_issues/programs/cwa401/#faqs](https://www.waterboards.ca.gov/water_issues/programs/cwa401/#faqs)



# CORPS SACRAMENTO DISTRICT WEBSITE



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## Nationwide Permits

Nationwide permits (NWP) are general permits issued on a nationwide basis to streamline the Department of the Army (DA) authorization of activities that result in minimal individual and cumulative adverse effects on the aquatic environment. In order to qualify for the use of a NWP, prospective permittees must comply with all of the terms, general conditions (GCs), and regional conditions (RCs) of the NWP, including any requirements for the submittal of a pre-construction notification (PCN). Many of the NWPs, GCs and RCs require the submittal of a PCN before commencing the work, to ensure that activities authorized by those NWPs have minimal individual and cumulative adverse effects on the aquatic environment. If the proposed activity complies with the terms, GCs and RCs of the NWP, a DA NWP verification letter will be sent to the prospective permittee. The NWP verification letter may include additional case-specific conditions Special Conditions (SC) to ensure the activity will not result in no more than minimal individual and cumulative adverse effects. The verification letter will indicate the specific period of time that the verification is valid, which is generally until the NWPs expire (i.e. March 18, 2022), unless the NWP authorization is modified, suspended, or revoked. Per regulation, the NWPs must be reissued every five years. The reissuance process involves a full interagency and public interest review.

Links to NWP pages:

- [2021 Nationwide Permits](#)
- [2017 Nationwide Permits](#)

## Grandfathering Provision

Activities authorized by the 2017 NWPs remain authorized by those NWPs until March 18, 2022. For permittees holding authorizations for activities for any of the 12 NWPs replaced by this final rule, if the previously verified activity continues to qualify for NWP authorization under any of the 12 NWPs reissued in this final rule, that verification letter continues to be in effect until March 18, 2022, unless the district engineer specified a different expiration date in the NWP verification letter. As long as the verified NWP activities continue to comply with the terms and conditions of the 12 existing NWPs issued in this final rule, those activities continue to be authorized by the applicable NWP(s) until March 18, 2022, unless a district engineer modifies, suspends, or revokes a specific NWP authorization. For permittees with authorizations for activities that were authorized by the 2017 NWPs, but no longer qualify for authorization under the 12 existing NWPs that are reissued in this final rule (i.e., the reissued NWP has been modified so that the activity that was authorized is no longer covered), those activities continue to be authorized by the 2017 NWP(s) for 12 months of the



## 401 Water Quality Certification

Clean Water Act (CWA) Section 401 water quality certification was requested from all certifying authorities within the Sacramento District's Area of Responsibility. This includes the states of California, Nevada, and Utah, individual tribes with certification authority, and the USEPA for all other tribal lands. The certification status of each NWP for the states of California, Nevada, and Utah are provided in the District's summary tables below. The certification status of each NWP for the state of Colorado is provided in Albuquerque District's summary table. This includes the certification status of the 40 2017 NWPs that were not reissued and remain in effect under the January 7, 2017 final rule.

### 401 Water Quality Certification Status of the Nationwide Permits

- [California 401 Summary Table](#)
- [Nevada 401 Summary Table](#)
- [Utah 401 Summary Table](#)

401 certifications for the 2021 NWPs are provided below:

### California

- California State Water Resources Control Board (SWRCB):** On December 9, 2020, the SWRCB conditionally granted certification for NWPs 12, 57, and 58, and denied certification for NWPs 21, 29, 39, 40, 42, 43, 44, 48, 50, 51, and 52. However, Finding 5 of the General Order does not comply with the requirements of Section 401 of the Clean Water Act or with 40 CFR Part 121. As a result, the certification is not valid. Individual 401 WQC, or waiver thereof, is required for all 2021 NWP activities on non-tribal land in California.
- U.S. Environmental Protection Agency (USEPA), Region IX:** On December 11, 2020, the USEPA, Region 9 conditionally granted certification for NWP 43, denied certification for NWPs 12, 29, 39, 40, 42, 44, 51, 57, and 58, and expressly waived certification for NWPs 21, 48, 50, and 52 for activities on applicable tribal land within USEPA's Region 9 coverage area in California. Based on the information provided, the denial meets the requirements of 40 CFR 121.7(e)(2) and the conditions meet the requirements of 40 CFR 121.7(d)(2). For NWP 43, 401 WQC is granted with conditions, and for NWPs 12, 29, 39, 40, 42, 44, 51, 57, and 58, individual 401 WQC, or waiver thereof, is required on applicable tribal land within USEPA's Region 9 coverage area in California.
- Kletsel Dehe Wintun Nation:** On October 30, 2020, the Kletsel Dehe Wintun Nation denied 401 WQC for all NWPs. However, the tribe did not provide the information required in 40 CFR 121.7(e)(2). Thus, certification is waived. There is no requirement to obtain individual 401 certification for any 2021 NWP activity on Kletsel Dehe Wintun Nation reservation land in California.





# CORPS WEBSITE - 401 WQC SUMMARY TABLES




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## 401 Water Quality Certification Status of the Nationwide Permits in the State of California

Nationwide Permit Number (2021 NWPs in bold)	Version	Expiration date*	U.S. Environmental Protection Agency (EPA), Region 9**	State Water Resources Control Board (SWRCB)
<b>NWP 1</b> Aids to Navigation	2017	3/18/22	Certified subject to conditions	Certified subject to conditions
<b>NWP 2</b> Structures in Artificial Canals	2017	3/18/22	Certified subject to conditions	Not certified
<b>NWP 3</b> Maintenance	2017	3/18/22	Certified subject to conditions	Not certified
<b>NWP 4</b> Fish & Wildlife Activities	2017	3/18/22	Certified subject to conditions	Certified subject to conditions
<b>NWP 5</b> Scientific Measuring Devices	2017	3/18/22	Certified subject to conditions	Certified subject to conditions
<b>NWP 6</b>	2017	3/18/22	Certified subject to conditions	Certified subject to conditions


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## 401 Water Quality Certification Status of the Nationwide Permits in the State of Utah

Nationwide Permit Number (2021 NWPs in bold)	Version	Expiration date*	U.S. Environmental Protection Agency (EPA), Region 8**	Utah Department of Environmental Quality (UT DEQ)	Ute Mountain Ute Tribe (UMUT)
<b>NWP 1</b> Aids to Navigation	2017	3/18/22	Not certified	Certified subject to conditions	Not certified
<b>NWP 2</b> Structures in Artificial Canals	2017	3/18/22	Not certified	Certified subject to conditions	Not certified
<b>NWP 3</b> Maintenance	2017	3/18/22	Certified subject to conditions	Certified subject to conditions	Not certified
<b>NWP 4</b> Fish & Wildlife Activities	2017	3/18/22	Not certified	Certified subject to conditions	Not certified
<b>NWP 5</b> Scientific Measuring Devices	2017	3/18/22	Certified subject to conditions	Certified subject to conditions	Not certified



**THANK YOU**

**ANY QUESTIONS?**

