



STATE OF NEVADA  
Department of Conservation & Natural Resources  
Steve Sisolak, *Governor*  
Bradley Crowell, *Director*  
Greg Lovato, *Administrator*

December 11, 2020

Mr. Michael S. Jewell  
Chief, Regulatory Division  
US Army Corps of Engineers  
Sacramento District  
1325 J Street  
Sacramento, CA 95814

Dear Mr. Jewell:

The Nevada Division of Environmental Protection (NDEP), Bureau of Water Quality Planning (BWQP) submits the following document in response to the Army Corps of Engineers (Corps) October 13, 2020 request for water quality certification (WQC) under Section 401 of the Clean Water Act for the proposed Corps Nationwide Permits.

On September 15, 2020, the Corps published the Final Notice to reissue the existing 52 Nationwide Permits (NWP) and issue five new NWP in the Federal Register (Volume 85, Number 179, pages 57298-57395). Regional Conditions for Nevada were also proposed for comment and found to be acceptable additional controls to protect waters of the State.

In Nevada, BWQP is responsible for waiving, issuing or denying 401 WQC for the proposed NWP. In deciding to issue a WQC, there needs to be reasonable assurance that the proposed discharge will comply with all applicable Federal and State laws, policies and regulations governing the protection of the beneficial uses of the State's Waters. In determining WQC the State must make the determination that the proposed NWP will adequately protect the waters of the State for the permitted activities with only minimal individual or cumulative adverse effects on the aquatic environment. NDEP reviews 401 Certifications for those waters deemed Waters of the United States (WOTUS) and utilizes State regulations to protect these Federally jurisdictional waters of the State. To receive WQC, the proposed project must comply with Nevada State Law and provisions of the Clean Water Act Sections 301, 302, 303, 306 and 307.

All conditions of the Authorization to Discharge (Working in Waterways permit) issued by the Bureau of Water Pollution Control (BWPC) or any other permits issued by NDEP for the project must be followed pursuant to NRS 445A.475-.515 and NAC 445A.228-.272.

This 401 WQC is subject to the acquisition of all necessary local, regional, State and Federal permits and approvals as required by law. Failure to meet any conditions of this Certification, any other permit required by NDEP for this project or any violation of NRS Chapter 445A or NAC Chapter 445A may result in the revocation of 401 WQC.

NDEP reserves the right to amend certification of these NWP if the Corps makes substantial modifications to the proposed NWP, general conditions or regional conditions.

If you have any questions, please contact me via [bwidegren@ndep.nv.gov](mailto:bwidegren@ndep.nv.gov).

Sincerely,

A handwritten signature in blue ink, appearing to read "B. Widegren".

Birgit M. Widegren, CPM  
Nonpoint Source Branch Supervisor  
Environmental Scientist IV  
Bureau of Water Quality Planning

cc: Leah Fisher, ACOE Sacramento District  
Michael Nepstad, ACOE Sacramento District  
Paul Comba, Chief, NDEP Bureau of Water Quality Planning  
Jennifer Carr, NDEP Deputy Administrator  
Sam Ziegler, EPA Region IX

**Nevada Division of Environmental Protection**  
**Clean Water Act Section 401 Water Quality Certification NV-401-20-029**

This document is Nevada Division of Environmental Protection’s (NDEP) 401 water quality certification (WQC) for 85 FR 57298 (33 CFR Chapter 11) Proposal to Reissue and Modify Nationwide Permits proposing to reissue 52 existing nationwide permits (NWP) and issue five new NWP proposed by the Army Corps of Engineers (Corps), Sacramento District. The Certification covers Water of the United States (WOTUS) within the State of Nevada’s Jurisdiction.

Nevada Division of Environmental Protection certifies there is reasonable assurance that discharge from the proposed NWP will comply with Nevada Revised Statute (NRS) Chapter 445A, Nevada Administrative Code (NAC) Chapter 445A and Clean Water Act (CWA) Sections 301, 302, 303, 306 and 307 as proposed, with exceptions delineated in this document, provided that the project proponent complies with all WQC conditions listed below. All WQC conditions contained herein shall be incorporated into the Federal license or permit for the proposed NWP and are enforceable by the Corps. Conditions are necessary to ensure that projects certified under the proposed NWP meet all Federal and State water quality laws, protect Nevada’s designated beneficial uses, provide assurance that receiving waters are not degraded and are consistent with Nevada’s water quality standards. All exceptions and conditions are justified as required by 40 CFR Part 121.7, with statements justifying why an exception or condition is necessary to assure that the discharge from a proposed permit or license will comply with water quality requirement(s) and citations to appropriate Federal and/or State water quality law that authorizes the condition.

Nevada Division of Environmental Protection reserves the right to request an individual 401 Certification for projects that may negatively impact Nevada’s beneficial uses, exceed water quality standards or may violate Nevada water law per Chapter 445A of NRS, Chapter 445A of NAC, or CWA Sections 301, 302, 303, 306 or 307. More specifically, NDEP reserves the right to request an individual 401 Certification for projects that may cause a water quality violation per NAC 445A.228, which prohibits discharge of a pollutant from a point source into water of the State without obtaining a permit, and NRS 445A.565 which states that no discharges of waste may be made which will result in lowering the quality of higher quality surface waters. Additionally, NDEP reserves the right to request an individual 401 Certification for any projects that may result in the direct discharge of wastes into Lake Tahoe per NRS 445A.175 or may deposit any fill or deleterious material in Lake Tahoe per NRS 445A.170. Lastly, per NRS 445A.170, construction or alteration of the Lake Tahoe shoreline below the high water elevation (6,229.1 feet) requires written permission from the State Department of Conservation and Natural Resources.

Based on NDEP’s review of the available information on the potential impacts of discharges authorized by the Corps, the NWP are certified as follows:

For the NWP listed below in Group A, WQC is not required.

**GROUP A: Nationwide Permits for which 401 Certification is Waived**

No.	Description	Conditions
21	Surface Coal Mining Operations	None
34	Cranberry Production Activities	None
48	Commercial Shellfish Mariculture Activities	None
49	Coal Remining Activities	None
50	Underground Coal Mining Activities	None
54	Living Shorelines	None

For the NWP listed below in Group B, the NWP is certified for water quality. However, NDEP requires notification be provided by the applicant completing and submitting a Pre-Construction Notification (PCN) or Modified PCN (MPCN) to BWQP as described below. If an applicant is not contacted via email by BWQP within 30 days of the date the application is received, the applicant may assume that the project meets certification requirements and may proceed with the project

with all appropriate Best Management Practices (BMPs) in place to protect water quality. Certification will be subject to the acquisition of all other necessary local, regional, State and Federal permits and approvals as required by law. Any modifications to original project submittal must be reviewed and approved prior to implementation. Nevada Division of Environmental Protection reserves the right to require an individual 401 Certification if review indicates that water quality requirements stated in Federal or State law may not be met, as described above.

**GROUP B: Nationwide Permits for which 401 Certification is Certified with Notification**

No.	Description	Conditions
4	Fish & Wildlife Harvesting, Enhancement, Attraction Devices & Activities	None
5	Scientific Measurement Devices	None
6	Survey Activities	None
20	Response Operations for Oil and Hazardous Substances	None
22	Removal of Vessels	None
30	Moist Soil Management for Wildlife	None
32	Completed Enforcement Actions	None
38	Cleanup of Hazardous and Toxic Waste	None

For the NWP listed below in Group C, programmatic Certification is granted with conditions and each project receiving the following NWP will require PCN or MPCN as described. Each condition of water quality certification below will abide by 40 CRF 121.7, which requires a justification for the condition explaining why it is necessary to comply with water quality requirements and also includes a citation to the appropriate authorizing Federal or State law.

**GROUP C: Nationwide Permits for which 401 Certification is Certified with Notification and Conditions**

No.	Description	Conditions
3	Maintenance: (a) (b) and (c)	All NWPs in Group C are subject to General Conditions 1 – 18 and Special Condition 1 if the proposed project is in Lake Tahoe
7	Outfall Structures and Associated Intake Structures	
12	Utility Line Activities: (a) (b) and (c)	
13	Bank Stabilization	
14	Linear Transportation Projects	
15	U.S. Coast Guard Approved Bridges	
16	Return Water From Upland Contained Disposal Areas	
17	Hydropower Projects	
18	Minor Discharges	
19	Minor Dredging	
23	Approved Categorical Exclusions	
25	Structural Discharges	
27	Aquatic Habitat Restoration, Establishment, and Enhancement Activities	
29	Residential Developments	
31	Maintenance of Existing Flood Control Facilities	
33	Temporary Construction, Access, and Dewatering	
36	Boat Ramps	
37	Emergency Watershed Protection and Rehabilitation	
39	Commercial and Institutional Developments	
40	Agricultural Activities	
41	Reshaping Existing Drainage Ditches	
42	Recreational Facilities	
43	Stormwater Management Facilities	

No.	Description	Conditions
44	Mining Activities	All NWP's in Group C are subject to General Conditions 1 – 18 and Special Condition 1 if the proposed project is in Lake Tahoe
45	Repair of Uplands Damaged by Discrete Events	
46	Discharges in Ditches	
51	Land Based Renewable Energy Generation Facilities	
52	Water Based Renewable Energy Generation Pilot Projects	
53	Low Head Dams	
C	Electric Utility Line and Telecommunications Activities	
D	Utility Line Activities for Water and Other Substances	
E	Water Reclamation and Reuse Facilities	

### General Conditions for Group C NWP's:

The conditions listed below are required for all NWP's listed in Group C. Condition justification and citations follows below the General Condition table.

### General Conditions

Condition Number	Condition Title	Condition Description and Reference to Federal, and/or State and/or Water Quality Standard
1	Reservation of 401 Certification Requirement	NDEP reserves the right to request an individual 401 Certification for any project requiring a Federal license or permit that may result in point source discharges of pollutants into waters of the State. The Clean Water Act states that any applicant for a Federal license or permit must first receive certification from the State in which the discharge originates or will originate to verify that a project complies with Federal and State regulations, will meet State water quality standards and not degrade the receiving waters (CWA 401(a)(1); NRS 445A.620; NRS 445A.720; NRS 445A.520; NAC 445A.118-445A.2234).
2	Permits and Licenses	All other required Federal and State permits or licenses must be obtained prior to construction commencement to ensure compliance with all Federal and State regulations (NRS 445A.300-445A.730; NAC 445A.228).
3	Pre-Construction Notification And Modified Pre-Construction Notification	When a PCN is required by the Corps, a copy of the PCN shall be sent to NDEP BWQP for 401 notification and shall include the requirements requested in the Modified PCN (MPCN) listed in Appendix I (NWPR GC 32). When a PCN is not required by the Corps for the NWP's listed in Group C, a MPCN is required to be sent to NDEP as soon as possible and prior to project commencement under a NWP (see Appendix A for MPCN format). Permitted activities listed in Group C have the potential to pollute waters of the State, exceed water quality standards and prevent attainment of a waterbody's beneficial uses. However, a MPCN allows the State to take into consideration site-specific conditions to minimize adverse water quality effects and avoid violation of State and local law. The State shall respond within 30 days with a determination of the proposed project's level of impact and whether an individual certification is necessary (NRS 445A.620; NRS 445A.720).
4	Waiver	When the Corps issues a waiver for impact thresholds on a waterbody by issuing a determination ensuring that any point source discharges will have minimal adverse effects to waters of the State, NDEP requires review of any determination. This review allows NDEP to ensure that the proposed project complies with State water quality standards and will have minimal adverse effects to waters of the State. Applicants receiving a waiver from the Corps must submit a MPCN to NDEP (NRS 445A.720; NAC 445A.228).
5	Federal Exemption	Any proposed project with a potential to discharge to waters of the State from a point source where a Federal agency is exempted from PCN which would

		normally be required under the NWP conditions must submit a MPCN to NDEP (NRS 445A.720; NAC 445A.228). Both NDEP and the Corps must have a chance review projects proposed by Federal agencies to ensure that projects have no adverse individual or cumulative impacts on the aquatic environment and do not violate water quality standards (NAC 445A.118-445A.2234). State water quality standards apply to all applicants proposing activities in waters of the State, and exemptions shall not be permitted unless approved by NDEP (NRS 445A.720).
6	Pre-Construction Inspection	Prior to initial operation under a Federal license or permit which NDEP has issued certification, NDEP shall be allowed to review the manner in which the facility or activity shall be operated or conducted for the purposes of assuring that applicable effluent limitations or other limitations or other applicable water quality requirements will not be violated (40 CFR 121.11; NRS 445A.655).
7	Water Quality Standards/Beneficial Uses	Any point source discharge associated with the proposed project shall not exceed State water quality standards or impair the beneficial uses of any water of the State. Beneficial uses define the water quality criteria required to protect the uses of a waterbody and exceedances are a violation of State law. No exceedances of water quality standards or impairment of beneficial uses of the waterbody are permitted (NRS 445A.520; NRS445A.720; NAC 445A.118-445A.2234).
8	High Quality Waters	Any surface waters of the State whose quality is higher than the applicable water quality standards, as of the date when those standards become effective, must be maintained in their higher quality. No discharges of a pollutant from a point source may be made which will result in lowering the quality of these waters (NRS 445A.565).
9	Waters with Approved TMDLs and 303(d) Listed Waters	If the proposed project would discharge from a point source into a waterbody listed as impaired and on the current 303(d) list or has an approved TMDL, the applicant must submit a MPCN to NDEP. For the most current list of impaired waterbodies and list of approved TMDLs for Nevada, please refer to NDEP's Water Quality Integrated Report ( <a href="https://ndep.nv.gov/uploads/water-wqm-docs/IR2018_FINAL_IR_April_2020.pdf">https://ndep.nv.gov/uploads/water-wqm-docs/IR2018_FINAL_IR_April_2020.pdf</a> ). Waters listed as impaired or with approved TMDLs are not meeting the requirements for their designated beneficial uses and NDEP requires review to ensure the proposed project will not exceed numeric or narrative water quality criteria for the waterbody and that BMPs for the project adhere to suggested BMPs outlined in applicable TMDLs (NRS 445A.520; NRS 445A.720; NAC 445A.228).
10	Best Management Practices	Work in or adjacent to waters of the State must be performed in such a way as to minimize point source discharges of pollutants to the waterbody. Best Management Practices to control and mitigate inputs of pollutants must be implemented and functional prior to commencement of work and maintained and modified throughout the duration of work performed to assure that State water quality standards are met. Pollutants are defined as artificially made or induced alterations to the physical, chemical, or biological integrity of the water (NRS 445A.525; NAC 445A.121).
11	Equipment Use	<ol style="list-style-type: none"> <li>a. Equipment used in-channel must be in proper working condition and free from leaks to prevent discharge of debris, oil, grease, scum and other floating materials to waters of the State which could have adverse effects on the chemical, physical or biological function of the waterbody (NAC 445A.121).</li> <li>b. Equipment fueling, staging, maintenance and repair must be conducted in an upland position where discharge of pollutants incidental to these activities do not have the potential to pollute waters of the State (NAC 445A.121).</li> <li>c. Equipment operation should be conducted in a manner that minimizes impacts to waters of the State (NAC 445A.121).</li> </ol>
12	Construction	Except those authorized by this certification, no pollutants associated with this project will be discharged from a point source or allowed to remain in a position where a pollutant can be carried to waters of the State by any means. Material

		permitted to enter waters of the State must be stabilized in position to prevent excessive erosion. Pollutants are defined as artificially made or induced alterations to the physical, chemical, or biological integrity of the water. Pollutants can include, but are not limited to, soil, sand, silt, rock, dredge material, chemical waste, biological material, heat, concrete, concrete washings and discarded equipment (NRS 445A.400; NRS 445A.465).
13	Concrete	Wet and uncured concrete shall not be allowed to enter waters of the State. Impermeable covers must be placed over concrete not poured into forms to prevent degradation of waters of the State through seepage and leaching of uncured concrete (NRS 445A.465).
14	Linear Distance Requirement	No proposed project shall exceed 300 linear feet of dredged material or fill material in waters of the State unless the applicant submits a MPCN to NDEP. Projects exceeding 300 linear feet cannot be guaranteed to have minimal single or cumulative adverse effects on the aquatic environment without a review of the proposed project by NDEP (NAC 445A.228; NRS 445A.720).
15	Invasive Species Management	If natural materials such as mulch, straw bales or coir logs are selected as BMPs, they should be certified as weed free. Certified weed free straw based BMPs are necessary to prevent the spread of invasive species throughout the State (NRS 555.010; NRS 555.150).
16	Revegetation and Site Restoration	Disturbance of native vegetation shall not exceed the minimum necessary to complete the project. Vegetation that has been removed and areas affected in the process of construction shall be revegetated with native vegetation appropriate for the site to prevent erosion, decrease sediment inputs into waters of the State and reduce encroachment of invasive species in denuded areas since invasive species are associated with modified hydrologic regimes and deleterious impacts to the aquatic environment (NRS 445A.305(2)).
17	Post-Construction	Upon completion of the project, all temporary and excess materials and installments used during construction must be removed from the site to prevent pollutants from entering waters of the State by any means and affected areas must be returned to pre-construction elevations (NRS 445A.465).
18	Certification Duration	This certification is valid for the duration of the Federal license or permit given that no modifications to the project and that no changes in conditions have occurred (NRS 445A.600).

**Special Conditions:**

Condition Number	Condition Title	Condition Description and Reference to Federal, and/or State and/or Water Quality Standard
1	Lake Tahoe Specific Regulations	NDEP reserves the right to request an individual 401 Certification for any projects that may result in the direct discharge of wastes into Lake Tahoe per NRS 445A.175 or may deposit any fill or deleterious material in Lake Tahoe per NRS 445A.170. Additionally, per NRS 445A.170, construction or alteration of the Lake Tahoe shoreline below the high water elevation (6,229.1 feet) requires written permission from the State Department of Conservation and Natural Resources.

**General Condition Justification and Citations**

The conditions above are a reflection of the State’s responsibility to assure minimal individual and cumulative adverse effects on the aquatic environment and to ensure the continued use and enjoyment of Nevada’s water resources for future generations (NRS 445A.720). The State has an obligation to protect the beneficial uses of waterbodies across its jurisdiction through the development of water quality standards and criteria (NRS 445A.530; NAC 445A.118-445A.2234). Projects which require a Federal license or permit must first receive certification from the State in which the discharge originates, or will originate, to verify that any proposed activity complies with Federal, State and local regulation (CWA 401(a)(1); NRS 445A.620; NRS 445A.720). The conditions above have been developed for NWP’s listed in Group C because these activities have been determined have an increased potential to pollute waters of the State and projects requesting these NWP’s must take steps to reduce the risks associated with these activities (NRS 445A.525; NRS 445A.565). The State

must develop limitations necessary to meet water quality standards, treatment standards and schedules of compliance established pursuant to the laws of this State and any other Federal law or regulation, and are required to implement any applicable water quality standard established pursuant to NRS 445A.300 to 445A.730, inclusive, such limitations shall be established and enforced (NRS 445A.530; NAC 445A.118-445A.2234). Narrative statements justifying the conditions listed by number follows below.

1. NDEP reserves the right to request an individual 401 Certification for any projects requiring a Federal license or permit that may result in the direct discharge of pollutants into waters of the State from a point source. The Clean Water Act states that any applicant for a Federal license or permit must first receive certification from the State in which the discharge originates or will originate to verify compliance with Federal, State and local regulations (CWA 401(a)(1); NRS 445A.620; NRS 445A.720).
2. Programmatic certification does not negate the requirement for applicants to acquire all other required Federal and State permits or licenses prior to construction commencement which ensures compliance with all Federal and State regulations (NRS 445A.300-445A.730; NAC 445A.228).
3. The aforementioned condition stating that applicants for a Federal license or permit submit a Modified Pre-Construction Notification when seeking a NWP allows NDEP to ensure the project's compliance with Federal, State and local law, while minimizing the burden on the applicant of obtaining an individual 401 certification from the State and preventing programmatic denial of the proposed NWPs. This notification process ensures that Best Management Practices are tailored for the project and protect the receiving waters from pollution that would be sufficient to be toxic to human, animal, plant or aquatic life or in amounts sufficient to interfere with any beneficial use of the water (NAC 445A.121; NAC 445A.336). This notification prevents unnecessary and avoidable violations of the terms and conditions of issued permits and licenses which lead to project delays or suspensions (NRS 445A.600). A notification ensures point source discharges of pollutants into waters of the State are minimized and reduces impacts to beneficial uses of a waterbody such as municipal and domestic supply, recreation, aquatic life, wildlife, irrigation and water for livestock (NAC 445A.122). Upon receipt of a notification, NDEP will review the proposed project's compliance with Federal, State and local law including water quality standards and beneficial use criteria and shall determine whether an individual 401 certification is required within 30 days (NRS 445A.620; NRS 445A.720). Following NDEP's determination that a proposed project requires an individual 401 certification process, a formal 401 certification process shall begin (40 CFR 121; NRS 445A.720).
4. When the Corps issues a waiver for impact thresholds on a waterbody by determining that any point source discharges will have minimal adverse effects to waters of the State, applicants shall submit a MPCN to NDEP (NRS 445A.590; NRS 445A.720). Waived thresholds granted by the Corps cannot be guaranteed to comply with State and law and water quality standards (NAC 445A.118-445A.2234). Notification allows NDEP to ensure that the proposed project complies with State water quality standards and that the project will have minimal adverse effects to waters of the State (NRS 445A.720; NAC 445A.228).
5. Any proposed project with a potential to discharge to waters of the State from a point source where a Federal agency is exempted from PCN which would normally be required under the NWP conditions must submit a MPCN to NDEP (NRS 445A.720; NAC 445A.228). Both NDEP and the Corps must have a chance review projects proposed by Federal agencies to ensure that projects have no adverse individual or cumulative impacts on the aquatic environment and do not violate water quality standards (NAC 445A.118-445A.2234). State water quality standards apply to all applicants proposing activities in waters of the State and exemptions shall not be permitted unless NDEP has the opportunity to make a determination of a projects effects based on the information contained in a MPCN (NRS 445A.720).
6. NDEP reserves the right to inspect any activity or facility that requires the use of a NWP prior to initial commencement to ensure that applicable effluent limitations or other applicable water quality requirements will not be violated (40 CFR 121.11; NRS 445A.655).



7. To protect Nevada's water resources, any point source discharge associated with a project occurring in waters of the State shall not exceed State water quality standards or impair the beneficial uses for the applicable waterbody (NRS 445A.520). Beneficial uses define the water quality criteria required to support the existing uses of a waterbody and exceedances are a violation of State law. No exceedances of water quality standards or impairment of beneficial uses of the waterbody are permitted (NRS 445A.520; NRS445A.720; NAC 445A.118-445A.2234).
- 8/9. To protect the continued attainment of high quality waterbodies and to prevent further degradation of 303(d) listed waterbodies or a waterbody with an approved TMDL, no discharges of a pollutant from a point source may be made which will result in lowering the quality of these waters. NDEP requires review to ensure the proposed project will not exceed applicable numeric or narrative water quality standards for the waterbody and that BMPs promote the chemical, physical and biological integrity of these waters (NRS 445A.565; NRS 445A.720; NAC 445A.228).
10. Best Management Practices are effective measures to control and mitigate point source inputs of pollutants into a waterbody and prior to commencement of any work in waters of the State BMPs designed for the project must be in place, and shall be maintained throughout the duration of the project to ensure no more than minimal effects to the aquatic environment (NRS 445A.525; NAC 445A.121). A list of BMPs recommended by NDEP are available on the BWQP website: <https://ndep.nv.gov/water/rivers-streams-lakes/nonpoint-source-pollution-management-program/best-management-practices-toolbox>.
11. Equipment used in waters of the State must be in proper working condition and free from leaks, any maintenance, repair or staging of this equipment must be completed in an upland position to prevent discharge of debris, oil, grease, scum and other floating materials to waters of the State which could have adverse effects on the aquatic environment (NRS 445A.520 , NAC 445A.121.2).
12. Except those authorized by this certification, no pollutants associated with this project will be discharged from a point source or allowed to remain in a position where a pollutant can be carried to waters of the State by any means other than those authorized by this permit and material permitted to enter waters of the State must be stabilized in a way that prevents excessive erosion and a adherence to this condition prevents violations of water quality standards and State law (NRS 445A.400).
13. Wet and uncured concrete negatively impacts the chemical and physical integrity of water and poses a serious hazard to aquatic life. No wet or uncured concrete shall be allowed to enter water of the State by any means and impermeable covers shall be placed over any wet or uncured concrete to prevent leaching of this pollutant into a waterbody (NRS 445A.465).
14. No proposed project shall exceed 300 linear feet of dredged material or fill material in waters of the State since projects of this size cannot be guaranteed to have minimal single or cumulative adverse effects on the aquatic environment. Projects proposing impacts greater than 300 linear feet require MPCN submittal and review by NDEP (NRS 445A.720; NAC 445A.228).
- 15/16. Vegetation that has been removed and areas affected in the process of construction shall be revegetated with native vegetation appropriate for the site to prevent erosion, decrease sediment inputs into waters of the State, and reduce encroachment of invasive species in denuded areas since invasive species are associated with modified hydrologic regimes and deleterious impacts to the aquatic environment (NRS 445A.305(2)). When natural materials, such as mulch, straw bales or coir logs are selected as BMPs, should be certified as weed free to prevent the spread of invasive species which are associated with modified hydrologic regimes and deleterious impacts to the aquatic environment (NRS 555.010; NRS 555.150).

17. All temporary and excess materials and installments used during construction must be removed from the site upon project completion to prevent pollutants from entering waters of the State by any means, and affected areas must be returned to pre-construction elevations to prevent unauthorized alterations to a waterbody once a project is complete (NRS 445A.465).
18. Programmatic certification of these NWP's is valid for the duration of the permitted or licensed activity given that no modifications to the project and that no changes in conditions have occurred (NRS 445A.600).

### **Special Condition Justification and Citations**

1. Nevada designated Lake Tahoe as a *Water of Extraordinary Ecological or Aesthetic Value*. Lake Tahoe specific regulation was developed by Nevada for its protection (NRS 445A.170-190). Therefore, NDEP reserves the right to request an individual 401 Certification for any projects that may result in the direct discharge of wastes into Lake Tahoe per NRS 445A.175 or may deposit any fill or deleterious material in Lake Tahoe per NRS 445A.170. Additionally, per NRS 445A.170, construction or alteration of the Lake Tahoe shoreline below the high water elevation (6,229.1 feet) requires written permission from the Department of Conservation and Natural Resources.

## Definitions

**303(d) List** – a list of waterbodies throughout the State that have water quality impairments or are threatened to have water quality impairments, adopted to implement Clean Water Act Section 303(d).

**Applicant** - entity applying for a Federal license or permit to conduct any activity including, but not limited to, the construction or operation of facilities, which may result in a discharge into Waters of the United States.

**Beneficial uses** - Uses specified in State water quality standards for each waterbody and/or waterbody segment, whether or not those uses are being attained (40 CFR 131.3).

**Best Management Practices** - structural, vegetative, or managerial practices utilized to prevent, treat or reduce pollutants from entering surface waters.

**Condition** - Requirement of 401 Certification under referenced Corps' Nationwide Permit which must be implemented in order for the 401 Certification to remain valid.

**Discharge** - any addition of a pollutant or pollutants to water (NRS 445A.345, NAC 445A.082).

**Invasive Species** - any species not native to Nevada that causes harm to the environment (NRS 555.010; NRS 555.150).

**Nevada State Water Quality Standards** - Definitions for terms described in State water quality standards are found in NAC 445A.11704-NAC 445A.1178. State Water Quality Standards are described in detail in NAC 445A.118-NAC 445A.2234.

**Point Source** - any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged. The term does not include return flows from irrigated agriculture (NRS 445A.395). The term includes wheeled, track, stationary or floating equipment used for earth-moving activity from which pollutants are or may be discharged (NAC 445A.100).

**Pollutant** - dredged soil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal and agricultural waste discharged into water. (NRS 445A.400, NAC 445A.101).

**Pollution** - the artificially made or artificially induced alteration of the chemical, physical, biological and radiological integrity of water (NRS 445A.405, NAC 445A.102).

**Total Maximum Daily Load (TMDL)** - the calculation and distribution of the maximum amount of a pollutant that can enter a water body with the water body still able to meet water quality standards for that pollutant.

**Waters of the State** - all waters situated wholly or partly within or bordering upon this State, including but not limited to: All streams, lakes, ponds, impounding reservoirs, marshes, water courses, waterways, wells, springs, irrigation systems and drainage systems; and all bodies or accumulations of water, surface and underground, natural or artificial (NRS 445A.415, NAC 445A.114).

**Waters of the United States** – waters defined in the Navigable Waters Protection Rule in the Federal Register on April 21, 2020 by the Corps and the Environmental Protection Agency, effective June 22, 2020 (33 CFR 328, 40 CFR 110, 112, 116, 117, 120, 122, 230, 232, 300, 302, 401).

**Water Quality Standard** - the degree of pollution of water or the physical, chemical or biological condition of water, as expressed numerically or descriptively, used for controlling the quality of water in each segment of a stream and each other body of surface water in this State (NRS 445A.420).

**Water Quality Standards or Limitations**- any applicable State or Federal water quality standards or limitations, including but not limited to water quality criteria, water use classifications, implementation plans and compliance schedules, effluent standards and limitations, prohibitions, standards of performance and pretreatment standards (NAC 445A.113).

**Appendix A - Modified Pre-Construction Notification**

**NDEP Modified Pre-Construction Notification (MPCN) Form**

In addition to completing the form below, please include engineered drawings of the proposed project, clearly depicting the location, size and dimensions of the proposed activity, as well as the location of delineated Waters of the United States. The drawings shall contain a title block, legend and scale, amount (in cubic yards) and area (in acres) of fill in waters of the State, including both permanent and temporary fills/structures. The ordinary high water mark should be shown (in feet), based on an appropriately referenced elevation. Please also include digital color photographs that are representative of waters proposed to be impacted on the site as well as a delineation of wetland resources present on the proposed project site. Please also include any draft or proposed general license or permit as an attachment to this MPCN.

**A. Contact Information**

Applicant Information	
Company Name:	Zip Code:
Applicant Name:	Phone:
Address:	Fax:
City:	Email:
State:	

Agent Information	
Company Name:	Zip Code:
Agent Name:	Phone:
Address:	Fax:
City:	Email:
State:	

**B. Project General Information**

1. Project/Site Name:	
2. Project Location (include the type and name of impacted waterbodies, latitude/longitude and township, range, section and ¼ section):	
3. Project Purpose:	
4. Describe the direct and indirect adverse environmental effects of the project and list the acreage/ linear feet of waters impacted:	
5. Estimate the number of discharges expected to be authorized by the proposed general license or permit each year:	
6. List any other NWP(s), regional general permit(s), or individual permit(s) used or intended to be used to authorize any part of the proposed project or any related activity:	

7. Describe how the activity has been designed to avoid and minimize adverse effects, both temporary and permanent, to waters of the State.	
8. Describe any compensatory mitigation plans planned for this project (if applicable):	

**C. Best Management Practices**

1. Describe all proposed best management practices (BMPs) to be implemented to avoid and/or minimize impacts to waters of the State, including sediment/erosion control measures, habitat preservation, project scheduling, flow diversions, dewatering, hazardous materials management etc. If no BMPs are proposed, provide a description of why their use is not practicable or necessary:	
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**D. Dredge and Fill Material**

1. Describe the proposed temporary fill, including the type and amount (in cubic yards) of material to be placed:	
2. Describe the reason(s) why avoidance of temporary fill in waters of the U.S. is not practicable:	
3. List the area (in acres) of waters of the State and the length (in linear feet) where the temporary will be placed:	

**E. Statement Certification**

I certify that the information in this notification is complete and accurate and that I have personally examined and am familiar with the information in this application and any attached documents: _____ (initial)	
Name and Title (Print):	Phone Number:
Signature of Responsible Official:	Date: