Ute Mountain Ute Tribe

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December 14, 2020

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Regulatory Division
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DATE: 12/11/2020

SENT VIA EMAIL
DIGITAL READ RECEIPT REQUESTED

Re: Certification of the proposed U.S. Army Corps of Engineers 2020 Nationwide Permits pursuant to Section 401 of the Clean Water Act for lands of the Ute Mountain Ute Tribe in Colorado, New Mexico and Utah in the Albuquerque, Sacramento and Omaha Districts.

The Ute Mountain Ute Tribe (UMUT) has responsibility under Section 401 of the Clean Water Act (CWA) to evaluate and certify water quality protection for federal permits or licenses issued for work on lands within the boundary of the Ute Mountain Ute Reservation.

This certification is in response to the US Army Corps of Engineers Notice of Issuance of Proposed Nationwide Permits (NWPs) listed in the September 15, 2020 Federal Register for Clean Water Act (CWA) Section 401 water quality certification and the CWA 401 certification request from the U.S. Army Corps of Engineers Albuquerque District on October 15, 2020.

This certification applies to any potential point source discharges from potential projects authorized under the proposed U.S. Corps of Engineers Nationwide Permit Reissuance (Federal Register September 15, 2020) into waters of the United States that occur within the Ute Mountain Ute Reservation. It is the responsibility of the applicant to determine the proper CWA Section 401 authority through coordination and recommendations of status through the UMUT or certification of land status by the Bureau of Indian Affairs (BIA).

Section 401(a)(1) of the Clean Water Act requires applicants for Federal permits and licenses that may result in discharges into waters of the United States to obtain certification that potential discharges will comply with applicable provisions of the CWA including Sections 301, 302, 303, 306 and 307.

These requirements will protect water quality and help ensure that the NWP program minimizes adverse impacts on the aquatic environment on tribal lands, both individually and cumulatively, as required by CWA Section 404(e).

Project applicants will need to request an individual certification from UMUT for NWP that are denied. If a project is unable to meet the enclosed conditions, or if certification is denied for an applicable NWP, the applicant may request an individual certification from UMUT. An individual certification request must follow the requirements outlined in §121.5 of EPA's CWA § 401 Certification Rule, effective September 11, 2020.

Projects failing to meet the enclosed conditions, despite qualifying for use of a NWP are not eligible for coverage under this programmatic certification and must contact UMUT for individual project certification. Projects qualifying for use of a NWP and meeting the enclosed conditions must notify UMUT pursuant to General Condition #1, but may proceed after verifying that notification has been received and without further written verification from UMUT.

General Information

The general information provided in this cover letter section does not constitute a certification condition(s). The Applicant is responsible for obtaining all other permits, licenses, and certifications that may be required by federal, state or tribal authorities where applicable, including an EPA general construction CWA Section 402 stormwater permit notice of intent. This certification must be retained in your files with the applicable NWPs as documentation of UMUT certification for the above-referenced proposed NWPs. This certification is specifically associated with the proposed NWPs and expires when these NWPs expire.

UMUT has not received the final nationwide permits, national or regional conditions from the Corps. Therefore, if nationwide permits, national conditions and/or regional conditions are modified significantly, UMUT expects notifications of these modifications and that the Corps of Engineers will follow the spirit of 40 CFR Part 121 and request new or revised 401 certifications to reflect the significant changes in the permits.

The Corps and applicants should consider contacting UMUT Environmental Programs Department as early as possible for potential permits and actions that may be complicated and when early discussions may be beneficial to all parties. UMUT requests notification when the Corps District Engineer intends to exert discretionary authority or waive the acreage, linear feet or cubic yard limits of any of the 2020 proposed Nationwide Permits. We would like the opportunity to discuss the rationale and finding of DeMinnimus impact in these instances. The Corps should be aware of UMUT lands outside of commonly known reservation boundaries including but not limited to tribal trust lands that are outside of reservation boundaries. A state certification is not valid on these waters, and without a valid 401 certification, a permit is not valid.

For NWPs or projects that do require an individual 401 certification, a request for certification must follow the requirements outlined in Section 121.5 of EPA's final 401 regulation, effective September 11, 2020. Inquiries, prefiling meeting requests and certification requests should be sent to clarrick@utemountain.org. Suggested minimum information needed by UMUT is available by request. If minimum information is not included, the information will be requested after receipt of the certification request. UMUT may decide to Public Notice certification requests and offer the public an opportunity to request a public hearing on all individually requested certifications. This additional time should be considered in setting the reasonable time period for certifications.

If there are any questions or if any clarification is necessary please contact Colin Larrick, Water Quality Program Manager, at 970-564-5430 or clarrick@utemountain.org

Sincerely,

Scott Clow
Environmental Programs Director
Ute Mountain Ute Tribe

Ute Mountain Ute Tribe Clean Water Act Section 401
Water Quality Certification for the U.S. Corps of Engineers CWA Section 404
2020 Nationwide Permits Reissuance

This Certification applies to any potential point source discharges from potential projects authorized under the proposed re-issuance of the following U.S. Army Corps of Engineers CWA 404 Nationwide Permit (NWPs) into waters of the United States that occur within the Ute Mountain Ute Reservation within the Albuquerque, Omaha and Sacramento Corps Districts: NWP 3, 4, 5, 6, 7, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 25, 27, 29, 30, 31, 32, 33, 34, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 48, 49, 50, 51, 52, 53, 54, C, and D.

Section 401(a)(1) of the Clean Water Act requires applicants for Federal permits and licenses that may result in discharges into waters of the United States to obtain certification that potential discharges will comply with applicable provisions of the CWA, including Sections 301, 302, 303, 306 and 307.

This Certification does not apply to the following NWPs: 1, 2, 8, 9, 10, 11, 24, 28, 35, A, and B. If any activity authorized by these listed NWPs may result in a discharge into a water of the United States, the Corps must seek CWA section 401 certification from the Ute Mountain Ute Tribe for discharges that occur in the boundaries of the Ute Mountain Ute Tribe within the Albuquerque, Omaha and Sacramento Corps Districts. In addition, this certification does not apply to NWPs applied "after-the-fact" (i.e., after the discharge has occurred) or to NWPs where a waiver on limits has been granted by the District or Division Engineer.

General Information

The general information provided in this section is intended to provide context for UMUT's certification decision and does not itself constitute a certification condition(s). The information in this section is being provided to help ensure applicants comply with the terms and conditions of the CWA § 401 certifications of the NWPs on applicable UMUT lands.

- The Applicant and applicants for projects authorized under the NWPs should obtain all other permits, licenses, and certifications that may be required by federal, state, or tribal authority.
- If a project is unable to meet the enclosed conditions, or if certification is denied for an applicable NWP, the Applicant may request an individual certification from UMUT. An individual certification request must follow the requirements outlined in 40 CFR 121.5 of EPA's CWA § 401 Certification Rule, effective September 11, 2020.
- Copies of this certification should be kept on the job site and readily available for reference.
- If the project is constructed and/or operated in a manner not consistent with the applicable NWP, general conditions, or regional conditions, the permittee may be in violation of this certification.
- UMUT representatives may inspect the authorized activity and any mitigation areas to determine compliance with the terms and conditions of the NWP. CWA Section 308(a).

UMUT is expressly waiving its authority to act on the CWA § 401 certification request for the following proposed NWPs: **NWPs Waived (121.9(a)(1))**

4. Fish and Wildlife Harvesting, Enhancement, and Attraction Devices and Activities
22. Removal of Vessels
48. Commercial Shellfish Mariculture
54. Living Shorelines

NWPs Granted with Conditions (121.7(d)(2))

CWA Section 401 certification is granted with the following conditions for NWPs 3, 5, 6, 7, 13, 14, 15, 18, 19, 20, 23, 25, 27, 30, 31, 32, 33, 36, 38, 41, 43, 45, 46, C, and E. UMUT has determined that any discharge authorized under these proposed NWPs will comply with water quality requirements, including applicable provisions of Sections 301, 302, 303, 306, and 307 of the Clean Water Act, and tribal regulatory requirements for point source discharges into waters of the United States, subject to the following conditions pursuant to Section 401(d).

All conditionally certified NWPs, including those with additional permit-specific conditions, must comply with the following conditions:

Conditions Applicable to all NWPs	**Why the condition is necessary to assure the proposed project will comply with water quality requirements**	**Citation that authorizes the condition**
All applicants, including federal agencies, must notify UMUT's Tribal Environmental Department of the use of all NWPs for which certification has been granted prior to commencing work on the project. Notifications must include: • project location (lat. Long., exact point on map); • NWP that will be used and the specific activity that will be authorized under the NWP; • amount of permanent and temporary fills; • a short summary of the proposed activity, and all other federal, state, tribal or local permits or licenses required for the project; • complete contact information of both the applicant and contractor (name, name of the company or property if applicable, telephone, mobile, and email); and, • summary of best management practices that will be used.	Notification will ensure that UMUT is aware of all Corps-authorized activities potentially affecting Indian country lands. It also will ensure the Corps and UMUT can demonstrate that the NWP program has no more than minimal impacts to the aquatic environment, individually and cumulatively, and that the activities will not adversely impact cultural and historic uses of tribal waters. In order to ensure that UMUT has the opportunity to inspect the project prior to the onset of operations, the applicant must notify the tribal government in a timely manner of the status of the project construction.	CWA sections 301, 302, 303, 306, and 307[i] CWA 308(a) 40 CFR 121.11(a) Endnotes (ii-iv)

• Notify UMUT at least 7 days before the completion of construction and operations begin.		
Point source discharges may not occur: (1) in fens, bogs or other peatlands; (2) within 100 feet of the point of discharge of a known natural spring source; or (3) hanging gardens or (4) culturally sensitive waters.	This condition is necessary to ensure activities that may result in point source discharges into waters of the United States do not degrade these unique and difficult to replace wetland types, which play an importation role in maintaining water quality and hydrologic function in mountain and prairie ecoregions.	40 CFR 230 Subpart E; Ute Mountain (iv) Endnotes (i-iv)
Except as specified in the application, no debris, silt, sand, cement, concrete, oil or petroleum, organic material, or other construction related materials or wastes shall be allowed to enter into or be stored where it may enter into waters of the U.S.	This condition is necessary to ensure water quality is not degraded by toxic pollutants in toxic amounts, raw materials, oil, grease, gasoline, or other types of fluids used to operate and maintain equipment used to complete the project.	40 CFR 230.10(d); 40 CFR 230.71; Ute Mountain (iv) Endnotes (i-iv)
Silt fences, straw wattles, and other techniques shall be employed as appropriate to protect waters of the U.S. from sedimentation and other pollutants.	This condition minimizes turbidity and sediment caused by construction activities, minimizes equipment contact with water (and potential for oil, gas, invasive species, etc. contamination), and allows for clean-up of potential spills before entering waters. It is necessary to ensure that water quality is not degraded, and biology of the waters are not negatively impacted by the project.	40 CFR 230.10(d) and 230.72 Ute Mountain (iv)
Water used in dust suppression shall not contain contaminants that could violate water quality standards.	This condition is necessary to ensure water quality is not degraded by toxic material in toxic amounts, raw materials, oil, grease, gasoline, or other types of fluids used to operate and maintain equipment used to complete the project.	40 CFR 230.10(d); 40 CFR 230.71; Endnotes (i-iv Ute Mountain (iv)
Erosion control matting that is either biodegradable blankets or loose-weave mesh must be used to the maximum extent practicable.	Condition is necessary to provide clarity on how to meet "appropriate soil erosion and sediment controls," as required by NWPs General Condition 12. Use of other "appropriate" measures is not prohibited, but the inclusion of this condition ensures that water quality impacts of dredged or fill material are minimized.	40 CFR 230.10(d); 40 CFR 230.72 Ute Mountain (iv)
All equipment used in waters of the U.S. must be inspected for fluid leaks and invasive species prior to use on a project. All fluid leaks shall be repaired and cleaned prior to use or when discovered, or if the fluid leak can't be	This condition is necessary to ensure water quality is not degraded by oil, grease, gasoline, or other types of fluids used to operate and maintain equipment used to complete the project. This condition helps protect the native	40 CFR 230.10(d); 40 CFR 230.74 Ute Mountain (iv)

repaired, the equipment shall not be used on site. Equipment used in waters with the possibility of aquatic nuisance species infestation must be thoroughly cleaned before they are used on the project.	biology of the impacted waters by preventing the spread of invasive or nuisance species.	
Vegetation should be protected except where its removal is necessary for completion of the work. Locations disturbed by construction activities should be revegetated with appropriate native vegetation in a manner that optimizes plant establishment for the specific site. Revegetation may include topsoil replacement, planting, seeding, fertilization, liming, and weed-free mulching, as necessary. Where practical, stockpile weed-seed-free topsoil and replace it on disturbed areas. All revegetation materials, including plants and plant seed shall be on site or scheduled for delivery prior to or upon completion of the earth moving activities.	Condition is necessary to provide the project proponent with clarity on what meets the requirement for appropriate revegetation as required by NWPs General Condition 13. Revegetation maintains and improves water quality because riparian vegetation acts as buffer to reduce the amount of sediment and pollutants that enter waterways. Native vegetation, because it is adapted to local conditions (e.g., soil types and temperature) provided this function most efficiently. Native vegetation also protects the biology of waters by providing habitat for semi-aquatic organisms and other organisms that are a food source to aquatic life.	40 CFR 230.10(d); 40 CFR 230.75; Ute Mountain (iv)
Activities may not result in any unconfined discharge of liquid cement into waters of the U.S. Grouting riprap must occur under dry conditions with no exposure of wet concrete to the waterbody.	This condition is necessary to ensure water quality is not degraded and the biology of the waters are not negatively impacted by toxic compounds.	40 CFR 230.10(d); 40 CFR 230.71; CWA 307 ("No toxics in toxic amounts") Ute Mountain (iv)
Activities that may result in a point source discharge shall occur during seasonal low flow or no flow periods to the extent practicable.	This condition minimizes turbidity and sediment caused by construction activities, minimizes equipment contact with water (and potential for oil, gas, invasive species, etc. contamination), and allows for clean-up of potential spills before entering waters. It is necessary to ensure that water quality is not degraded, and biology of the waters are not negatively impacted by the project.	40 CFR 230.10(d); 40 CFR 230.72(d); 40 CFR 230.23; 40 CFR 230.24; Ute Mountain (iv)
The placement of material (discharge) for the construction of new dams is not certified, except for stream restoration projects.	This condition is necessary to ensure impacts to water quality as a result of flow alterations are minimized to the maximum extent practicable, as required by NWPs General Condition 8.	40 CFR 230.23; 40 CFR 230.24; Ute Mountain (iv)

*****SEE NEXT PAGE FOR LIST OF NWPS GRANTED WITH CONDITIONS*****

NWPs Granted with Permit-Specific Conditions in addition to the Conditions listed above. (121.7(d)(2)):

NWP #	Permit-Specific Conditions	Why the condition is necessary to assure the proposed project will comply with water quality requirements	Citation that authorizes the condition
3. Maintenance	1) No more than 25 cubic yards of new or additional riprap may be placed to protect the structure or fill; 2) Bridge replacements must span the bankfull width and/or the ordinary highwater mark of the affected waters of the U.S. 3) Fill or dredged material shall not result in an increase in land contour height beyond the original dimensions for the repair of low water crossings, or loss of stream cross section dimensions. 4) Silt and sediment removal associated with low water crossings shall not exceed 50 linear feet. 5) Silt and sediment removal associated with bridge crossings shall not exceed 100 linear feet.	1) The placement of new or additional riprap without limiting the amount of impacts authorized could result in more than minimal adverse effects on water quality. Limiting the placement of additional riprap to no more than 25 cubic yards will help ensure that the placement provides localized erosion control without causing undesirable consequences to water quality and degradation of physical habitat. 2) The placement of a bridge/structure within bankfull width and/or the ordinary high water mark of a water of the U.S. would alter the hydrologic characteristics of the waterbody which could lead to an increased erosional force, scour around the bridge/structure during bankfull flows, high sediment loads to the waterbody, abandonment of the primary channel, and undermining of the structure itself. 3) The discharge of dredged or fill material which alters the contours of a waterbody and/or its riparian zone can result in the loss or change of breeding and nesting areas, escape cover, travel corridors, and preferred food sources for resident and transient wildlife species associated with the aquatic ecosystem. Without a linear foot limit associated with silt and sediment removal in waters of the U.S., excess removal can result in varying degrees of change in the complex	40 CFR 230.10(d); 40 CFR 230.73; 40 CFR 230.75 Ute Mountain (iv)

		physical, chemical, and biological characteristics. Excess silt and sediment removal may alter the direction or velocity of water flow or otherwise change the dimensions of a water body which can result in adverse changes to structure and dynamics of aquatic communities, erosion rates, and increases in suspended particulates. This justification applies to conditions 4 and 5.	
7. Outfall Structures	1) Construction of the outfall structure shall be placed at the streambed elevation and, at a minimum, the pipe should be sized to prevent high pressure discharge of stormwater. 2) Outfall structures shall not be constructed in wetlands. 3) Controls shall be put in place to stabilize all areas of the bed and bank around and adjacent to the outfall structure and associated intake structures that may be affected by outfall or stream flows, respectively. 4) Structures shall not result in a loss of waters of the U.S. (e.g. tile systems).	This justification covers condition 1 and 2. By specifying conditions on outfalls sizing, placement, and stabilization, these measures will help ensure that outfall structures are constructed such that they provide localized erosion control at the point(s) of discharge while minimizing habitat degradation and undesirable downstream impacts. 3) Erosion from outfall structures can be caused by several factors, such as uncontrolled stormwater runoff, inadequate energy dissipation structures, nick point migration, poor slope stabilization, or extreme storm events that exceed design capacities. Without stabilization controls in place, construction of outfall structures can lead to changes in erosion and deposition rates, increases in suspended particulates in the waterbody, and undermining of the outfall structure itself. 4) Structures that result in a loss of waters of the U.S. can degrade and/or eliminate aquatic habitat and adversely affect bottom-dwelling organisms at the site by smothering immobile forms or forcing mobile forms to migrate. These conditions are necessary to ensure that physical habitat and hydrologic characteristics of waters are not	Ute Mountain (iv) 303(a); 40 CFR 230.7; 40 CFR 230.10; 40 CFR 230.10(d); 40 CFR 230.73; 40 CFR 230.70

		degraded; maintain the habitat and biology of the waters and ensure the hydrogeomorphology is not negatively impacted by the project.	
13. Bank Stabilization	1) Activities shall use of native vegetation or other bioengineered design techniques (e.g. willow plantings, root wads, large woody debris, etc.) or a combination of hard-armoring (e.g. rock) and native vegetation or bioengineered design techniques. Artificial soil stabilizing material (e.g. mulch, matting, netting, etc.) shall be used to reduce soil erosion. These materials, to include all plants and plant seed, shall be on site or scheduled for delivery prior to or upon completion of the earth moving activities. Sediment control measures shall be maintained in good working order at all times. 2) The slopes of disturbed banks should be configured to mimic a stable reach of the same stream within ½ mile in either direction of the project and not reduce the bottom width of the stream. 3) If flow conditions dictate the use of hardened structures, only appropriately sized angular rock may be used. Soil cement, concrete, grouted riprap, etc. may not be used.	This justification applies to conditions 1-3. While effective at preventing localized erosion, hard armoring used as streambank stabilization can have a number of negative downstream effects such as increasing flow velocities, impeding hydrologic interaction with the floodplain, and degrading physical habitat. Specifying the methods and techniques which can be used under NWP 13 will help prevent habitat degradation and minimize negative downstream impacts while also achieving localized streambank stabilization and erosion control.	Ute Mountain (iv) 303(a) 40 CFR 230.7;40 CFR 230.10(d); 40 CFR 230.72
14. Linear Transportation Projects	1) Stormwater from the construction and operation of these projects must be routed into constructed runoff water quality control systems (e.g. sediment basins, wet ponds, etc.)	This justification applies to conditions 1 - 3. Constructed water quality control systems sequester sediments and other pollutants from runoff, as well as reduce velocity of those flows, prior to entry into waters of the United States. Maintaining natural stream bottom widths and elevations limits increases in streamflow velocity and	Ute Mountain (iv) 303(a) 40 CFR 230.7 and 230.10

	2) Affected streambanks must be sloped such that the steam bottom width is not reduced, and bottom elevations are restored to original elevations. In general, stream bank slopes should not be steeper than 3:1 unless there is a compelling reason. 3) Crossings must be placed as close to perpendicular to the water course as possible.	reduces the potential for streambed scouring and bank incising. Limiting bank slope reduces the potential for erosion, undercutting and slumping, which add sediment to streams. Perpendicular stream crossings minimize the length of stream bed and bank impacts for a project. Collectively, these controls will ensure that physical habitat and hydrologic characteristics of waters are not degraded, will maintain the habitat and biology of the waters and will ensure the hydrogeomorphology is not negatively impacted by the project.	
15. Bridges	1) Stormwater from the construction and operation of these projects (including runoff from bridge decks) must be routed into constructed runoff water quality control systems (e.g. sediment basins, wet ponds, etc.) 2) Affected streambanks must be sloped such that the steam bottom width is not reduced, and bottom elevations are restored to original elevations. 3) Crossings must be placed as close to perpendicular to the watercourse as possible. 4) Bridge decks must be designed such that they do not drain directly into the waterbody. 5) Bridges must span the bankfull width and/or ordinary high water mark of the affected waters of the U.S. Bridges may not impair flow under normal circumstances, should not produce eddies or unintended scour holes and should be designed to prevent accumulation of sediment that may block flows.	This justification applies to conditions 1 - 3. Constructed water quality control systems sequester sediments and other pollutants from runoff, as well as reduce velocity of those flows, prior to entry into waters of the United States. Maintaining natural stream bottom widths and elevations limits increases in streamflow velocity and reduces the potential for streambed scouring and bank incising. Limiting bank slope reduces the potential for erosion, undercutting and slumping, which add sediment to streams. Perpendicular stream crossings minimize the length of stream bed and bank impacts for a project. Collectively, these controls will ensure that physical habitat and hydrologic characteristics of waters are not degraded, will maintain the habitat and biology of the waters and will ensure the hydrogeomorphology is not negatively impacted by the project. 4) Drainage directly from the bridge decks may cause erosion, and introduce additional pollutants, such as oil, gas, sediment, and toxics. Directing bridge deck drainage into constructed runoff water quality control systems will help prevent erosion and keep pollutants from directly entering the waterway.	Ute Mountain (iv) 303(a) 40 CFR 230.7; 40 CFR230.10(d); 40 CFR 230.72

		5) The placement of a bridge/structure within bankfull width and/or the ordinary high water mark of a Water of the U.S. would alter the hydrologic characteristics of the waterbody which could lead to an increased erosional forces, scour around the bridge/structure during bankfull flows, high sediment loads to the waterbody, abandonment of the primary channel, and undermining of the structure itself.	
19. Minor Dredging	Dredged or fill materials must be placed in uplands and controlled such that it cannot return to waters of the U.S. Dredged or fill material may not be placed on temporary islet, islands, sandbars, landmass or other area of sediment accumulation within the banks of a stream, shore of lake, edge of wetland or other type of waterbody, unless the vegetation and geomorphology signify a long term stable configuration (e.g. areas of accumulation are not formed from temporary situations such as drought conditions or temporary upstream reservoir release conditions).	Placement of dredged or fill material in these locations may be susceptible to being washed away by high flows, which would contribute to sedimentation and potential conveyance of pollutants downstream. This condition is necessary to ensure that physical habitat and hydrologic characteristics of waters are not degraded; maintain the habitat and biology of the waters and ensure the hydrogeomorphology is not negatively impacted by the project.	Ute Mountain (iv) 40 CFR 230.10(d); 40 CFR 230.70
27. Aquatic Habitat Restoration	Activities that may result in a discharge into waters of the United States shall not result in conversion of one habitat type to another (e.g. wetlands to open water).	Aquatic habitat restorations that convert from one habitat type to another can alter the functions and services provided by the existing resources resulting in a functional loss. This condition is necessary to ensure that physical habitat and hydrologic characteristics of waters are not degraded; maintain the habitat and biology of the waters and ensure the hydrogeomorphology is not negatively impacted by the project.	Ute Mountain (iv) 40 CFR 230.10(d); 40 CFR 230.75

43. Stormwater Management Facilities	Certification is granted with conditions only for replacement and repair activities that impact (e.g., fill, relocate, realign or straighten) no more than 300 LF of stream or 1/10 acre of waters of the U.S.	Activities with more than 300 LF or 1/10 acre of waters of the U.S. of stream impact could result in more than minimal adverse environmental effects to water quality. This condition is necessary to ensure that water quality is not degraded, the biology of the waters are not negatively impacted by the project, and that no toxic compounds in toxic amounts will be used.	40 CFR 230.10(d); 40 CFR 230.73; 40 CFR 230.75; Ute Mountain (iv)
C. Electric Utility Line and Telecom Activities	Construction activities shall not impact (e.g., fill, relocate, realign or straighten) more than 300 LF of stream for a single and complete project.	Activities with more than 300 LF of stream impact could result in more than minimal adverse environmental effects to water quality. This condition is necessary to ensure that physical habitat and hydrologic characteristics of waters are not degraded; maintain the habitat and biology of the waters and ensure the hydrogeomorphology is not negatively impacted by the project.	CWA sections 301, 302, 303, 306, and 307 (see endnote i); Ute Mountain (iv)
E. Water Reclamation and Reuse	Activities shall not impact (e.g., fill, relocate, realign or straighten) more than 300 LF of stream channel for a single and complete project.	Activities with more than 300 LF of stream impact could result in more than minimal adverse environmental effects to water quality. This condition is necessary to ensure that physical habitat and hydrologic characteristics of waters are not degraded; maintain the habitat and biology of the waters and ensure the hydrogeomorphology is not negatively impacted by the project.	CWA sections 301, 302, 303, 306, and 307 (see endnote i); Ute Mountain (iv)

NWPs Denied (121.7(e)(2))

UMUT has determined that the discharges from the following NWPs will not comply with water quality requirements. Therefore, CWA Section 401 certification is denied, and applicants must apply for an individual water quality certification. Denials apply to all UMUT lands.

*** Reviewer NOTE: For readability of the table we have removed the column with the heading, "The following water quality data or information would be needed to assure that the range of discharges from potential projects will comply with water quality requirements." This information follows the table and is the same for all NWPs where certification is denied. ***

NWP #	Water quality requirement with which discharges that could be authorized by the general license or permit will not comply	Brief statement explaining why discharges that could be authorized by the general license or permit will not comply with this water quality requirement
12. O&G Pipeline Activities	CWA sections 301, 302, 303, 306, and 307 (see endnote i); 40 CFR 230 Subpart C Section 311 and implementing regulations Ute Mountain (iv)	The activities permitted under this NWP will not comply with this water quality requirement because there are no limits on the linear foot impacts to streams. Without the 300 linear foot limit in place, discharges permitted under this NWP would allow many thousands of linear feet of impacts resulting in more than minimal adverse effects to water quality individually and cumulatively. In addition, the removal of the PCN requirement for activities that involve mechanized land clearing in forested wetlands does not allow the evaluation of the functional loss from conversion of wetland type from a forested wetland, which may modify habitat and alter water levels beyond normal water fluctuations, inhibiting the existing uses of the waterbody.
16. Return Water from Upland Contained Disposal Areas	40 CFR § 230.23 307 toxics Ute Mountain (iv)	Return water from upland contained disposal areas can contain debris, sediment, and other pollutants which would be discharged into aquatic resources under this NWP. The return water itself can modify current patterns and dimensions of a waterbody while any debris or sediment in the return water can result in adverse impacts through sedimentation and oxygen depletion from nutrient adsorption of suspended material.
17. Hydropower Projects	40 CFR 230.23 40 CFR 230.24 Ute Mountain (iv)	Discharges of dredged or fill material associated with hydropower projects having less than 10,000 kW of total generating capacity can alter the normal water-level fluctuation pattern of an area, resulting in prolonged periods of inundation, exaggerated extremes of high and low water, or a static, nonfluctuating water level. These alterations can change salinity patterns, alter erosion or sedimentation rates, alter water temperatures.
21. Surface Coal Mining Activities	CWA sections 301, 302, 303, 306, and 307 (see endnote i); 40 CFR 230 Subpart C, Subpart D Ute Mountain (iv)	The activities permitted under this NWP will not comply with this water quality requirement because there are no limits on the linear foot impacts to streams. Without the 300 linear foot limit in place, discharges permitted under this NWP would allow many thousands of linear feet of impacts resulting in more than minimal adverse water quality effects individually and cumulatively.

		Discharges associated with surface coal mining activities can result in varying degrees of change in the complex physical, chemical, and biological characteristics of the substrate. These changes can adversely affect the level of water quality such that existing instream water uses will no longer be maintained and protected.
24. Indian Tribe or State Administered Section 404 Programs	CWA 404(g) implementing regulations	
29. Residential Developments	CWA sections 301, 302, 303, 306, and 307 (see endnote i); 40 CFR 230 Subpart C, Subpart D Ute Mountain (iv)	The activities permitted under this NWP will not comply with this water quality requirement because there are no limits on the linear foot impacts to streams. Without the 300 linear foot limit in place, discharges permitted under this NWP would allow many thousands of linear feet of impacts resulting in more than minimal adverse water quality effects individually and cumulatively. Discharges associated with residential developments under NWP 29 can result in significant losses to ecosystem services provided by existing aquatic resources. Adverse impacts may result from changes in water levels, flow, chemical content, substrate characteristics, or salinity and can result in losses to important breeding and nesting areas, food sources, and travel corridors for aquatic wildlife.
34. Cranberry Production	40 CFR 230.23 40 CFR 230.24 Ute Mountain (iv)	Discharges of dredged or fill material associated with cranberry production can alter the normal water-level fluctuation pattern of an area, resulting in prolonged periods of inundation, exaggerated extremes of high and low water, or a static, nonfluctuating water level. These alterations can change salinity patterns, alter erosion or sedimentation rates, and alter water temperatures which can alter or destroy communities and populations of aquatic animals and vegetation, induce populations of nuisance organisms, modify habitat, reduce food supplies, restrict movement of aquatic fauna, destroy spawning areas, and change surrounding areas.
37. Emergency Watershed	Ute Mountain (iv)	

Protection and Rehabilitation		
39. Commercial Development	CWA sections 301, 302, 303, 306, and 307 (see endnote i); 40 CFR 230 Subpart C, Subpart D Ute Mountain (iv)	The activities permitted under this NWP will not comply with this water quality requirement because there are no limits on the linear foot impacts to streams. Without the 300 linear foot limit in place, discharges permitted under this NWP would allow many thousands of linear feet of impacts resulting in more than minimal adverse water quality effects individually and cumulatively. Discharges of dredged or fill material associated with commercial development activities permitted under NWP 39 can result in degradation of water quality such that existing instream water uses are no longer maintained. These activities can result in changes to the physical, chemical, and biological characteristics of the aquatic ecosystem that may result in water quality which does not support the propagation of fish, shellfish, and wildlife and recreation in and on the water.
40. Agricultural Activities	CWA sections 301, 302, 303, 306, and 307 (see endnote i); 40 CFR 230 Subpart C, Subpart D Ute Mountain (iv)	The activities permitted under this NWP will not comply with this water quality requirement because there are no limits on the linear foot impacts to streams. Without the 300 linear foot limit in place, discharges permitted under this NWP would allow many thousands of linear feet of impacts resulting in more than minimal adverse water quality effects individually and cumulatively. Agricultural activities under NWP 40 which may result in the discharge of dredged or fill material can change the material chemistry and physical characteristics of a waterbody through the introduction of chemical constituents in suspended or dissolved form. These changes may reduce or eliminate the suitability of waterbodies for aquatic organisms, human consumption, or recreation.
42. Recreational Facilities	CWA sections 301, 302, 303, 306, and 307 (see endnote i); 40 CFR 230 Subpart C, Subpart D Ute Mountain (iv)	The activities permitted under this NWP will not comply with this water quality requirement because there are no limits on the linear foot impacts to streams. Without the 300 linear foot limit in place, discharges permitted under this NWP would allow many thousands of linear feet of impacts resulting in more than minimal adverse water quality effects individually and cumulatively. Discharges of dredged or fill material associated with recreational facilities permitted under NWP 42 can result in degradation of water quality such that existing instream water uses are no longer maintained. These activities can result

44. Mining Activities	CWA sections 301, 302, 303, 306, and 307 (see endnote i); 40 CFR 230 Subpart C, Subpart D Ute Mountain (iv)	in changes to the physical, chemical, and biological characteristics of the aquatic ecosystem that may result in water quality which does not support the propagation of fish, shellfish, and wildlife and recreation in and on the water. The activities permitted under this NWP will not comply with this water quality requirement because there are no limits on the linear foot impacts to streams. Without the 300 linear foot limit in place, discharges permitted under this NWP would allow many thousands of linear feet of impacts resulting in more than minimal adverse water quality effects individually and cumulatively. Discharges associated with mining activities may result in an increase in turbidity to the extent which reduces the water quality necessary to support the propagation of fish, shellfish, wildlife, and recreation in and on the water. The biological and chemical context of the suspended material may also react with the dissolved oxygen in the water which can result in oxygen depletion. Toxic compounds absorbed or adsorbed to fine-grained particulates in suspended material may become biologically available to organisms either in the water column or on the substrate. Discharges from these activities may increase the availability of contaminants in the aquatic ecosystem which may lead to the bioaccumulation of such contaminants in wildlife.
49. Coal Remining	40 CFR 230.23 40 CFR 230.24 Ute Mountain (iv)	Discharges associated with the remining and reclamation of lands that were previously mined for coal may result in an increase in turbidity to the extent which reduces the water quality necessary to support the propagation of fish, shellfish, wildlife, and recreation in and on the water. The biological and chemical context of the suspended material may also react with the dissolved oxygen in the water which can result in oxygen depletion. Toxic compounds absorbed or adsorbed to fine-grained particulates in suspended material may become biologically available to organisms either in the water column or on the substrate.
50. Underground Coal Mining	CWA sections 301, 302, 303, 306, and 307 (see endnote i); 40 CFR 230 Subpart C, Subpart D Ute Mountain (iv)	The activities permitted under this NWP will not comply with this water quality requirement because there are no limits on the linear foot impacts to streams. Without the 300 linear foot limit in place, discharges permitted under this NWP would allow many thousands of linear feet of impacts resulting in more than minimal adverse water quality effects individually and cumulatively.

		Discharges associated with underground coal mining activities may result in an increase in turbidity to the extent which reduces the water quality necessary to support the propagation of fish, shellfish, wildlife, and recreation in and on the water. The biological and chemical context of the suspended material may also react with the dissolved oxygen in the water which can result in oxygen depletion. Toxic compounds absorbed or adsorbed to fine-grained particulates in suspended material may become biologically available to organisms either in the water column or on the substrate. Discharges from these activities may increase the availability of contaminants in the aquatic ecosystem which may lead to the bioaccumulation of such contaminants in wildlife.
51. Land-based Renewable Energy	CWA sections 301, 302, 303, 306, and 307 (see endnote i); 40 CFR 230 Subpart C, Subpart D Ute Mountain (iv)	The activities permitted under this NWP will not comply with this water quality requirement because there are no limits on the linear foot impacts to streams. Without the 300 linear foot limit in place, discharges permitted under this NWP would allow many thousands of linear feet of impacts resulting in more than minimal adverse water quality effects individually and cumulatively. Land-based renewable energy activities may result in an increase in suspended particulates entering waterbodies as a result of land runoff and direct dredging or filling. Suspended particulates may remain in the water column for varying amounts of time, reducing light penetration and lowering photosynthesis rates for aquatic vegetation.
52. Water-based Renewable Energy	CWA sections 301, 302, 303, 306, and 307 (see endnote i); 40 CFR 230 Subpart C, Subpart D Ute Mountain (iv)	The activities permitted under this NWP will not comply with this water quality requirement because there are no limits on the linear foot impacts to streams. Without the 300 linear foot limit in place, discharges permitted under this NWP would allow many thousands of linear feet of impacts resulting in more than minimal adverse water quality effects individually and cumulatively. Discharges associated with water-based renewable resources can have adverse impacts on water-related recreation including both consumptive and non-consumptive uses. Impacts from these activities may impair or water use by

		changing turbidity, increasing suspended particulates, altering water temperature, changing habitat, and other changes to the aquatic ecosystem.
53. Removal of Low Head Dams	40 CFR 230.23 40 CFR 230.24 Ute Mountain (iv)	The removal of low head dams in the arid and semi-arid west, where natural recovery can be slow, many times requires active restoration to achieve a net increase in ecological functions and services. Otherwise, the removal of the dam can lead to adverse impacts including significant increases in suspended particulate levels and sedimentation downstream which may cause oxygen depletion and destruction of habitat.
D. Utility Line Activities for Water and other Substances	40 CFR 230.20 40 CFR 230.23 40 CFR 230.24 Ute Mountain (iv)	Discharges resulting from the numerous activities permitted under this NWP may directly impact bottom-dwelling organisms by limiting aquatic organism movement, by smothering immobile forms, or by forcing mobile forms to migrate to potentially unsuitable habitat. Erosion, slumping, or lateral displacement of surrounding bottom can adversely affect areas of the substrate outside of discharge location by changing or destroying habitat. These changes may degrade water quality such that the waters no longer support the propagation of fish, shellfish, wildlife, and recreation in and on the waterbody.

[i] CWA sections 301, 302, 303, 306, and 307 are listed in CWA section 401(a)(1) and, therefore, those sections and federal regulations implementing those sections can be considered water quality requirements and provide a legal basis for certification grants, denials or conditions. Section 303 and EPA's implementing regulations at Part 131 establish "existing uses" as "the absolute floor of water quality in all waters of the United States." 48 Fed. Reg. 51,400, 51,403 (Nov. 8, 1983). Existing uses are "those uses actually attained in the water body on or after November 28, 1975, *whether or not they are included in the water quality standards*." 40 C.F.R. § 131.3(e) (emphasis added). As a result, States are prohibited from removing designated uses from a waterbody segment if they are existing uses unless establishing a use with even more stringent criteria, 40 C.F.R. § 131.10(h), and existing instream water uses and the level of water quality necessary to protect the existing uses shall be maintained and protected even if degradation is allowed under a State antidegradation policy, 40 C.F.R. § 131.12(a)(1). As a result, regardless of what water quality standards may be applicable to a water of the US, no discharge may be authorized under the CWA that would be so extensive as to change or destroy an existing use of that waterbody. Additionally, Section 404 is incorporated by reference into section 401(a)(1) and 401(d) by virtue of section 301(a), which prohibits the discharge of any pollutant by any person"[e]xcept as in compliance with this section and section[] . . . 404 of this title..." Section 404(a) authorizes the permitting of discharges of dredge or fill material "into the navigable waters at specified disposal sites." Under Section 404(b), those sites must be specified "through the application of guidelines developed by the Administrator, in conjunction with the Secretary." These guidelines, the CWA 404(b)(1) Guidelines, are contained at 40 CFR Part 230, establish

requirements for all permitted Section 404 discharges, including a requirement that such discharges must comply with all State water quality standards. 40 C.F.R. § 230.10(b)(1) & (2).

[ii] CWA - 40 CFR § 230 Subpart C - Potential Impacts on Physical and Chemical Characteristics of the Aquatic Ecosystem

[iii] CWA - 40 CFR § 230 Subpart D - Potential Impacts on Biological Characteristics of the Aquatic Ecosystem

[iv] Water Quality Standards For Surface Waters of the Ute Mountain Ute Indian Reservation – Section 4 Anti-degradation Policy, Section 5. Narrative Water Quality Criteria, Section 6. Narrative Biological Criterion, Section 12 Designated Uses and Criteria

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