



# Ute Mountain Ute Tribe

Environmental Programs Department

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**Re: Certification of the proposed U.S. Army Corps of Engineers 2025 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 issuance of Proposed Nationwide Permits (NWP) listed in the June 18, 2025 Federal Register for Clean Water Act (CWA) Section 401 water quality certification and the CWA 401 certification correspondence from the U.S. Army Corps of Engineers Albuquerque District beginning May 2, 2025.

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).

Permit applicants need to request individual certification from UMUT for NWP that are denied herein. If a project is unable to meet the enclosed conditions despite being eligible for a NWP, or if a certification is denied for an applicable NWP, the applicant may request an individual certification from UMUT. An individual certification letter must follow the requirements outlined in Section 121.5 of EPA's CWA Section 401 Certification Rule. Projects that qualify for a NWP that also meet the enclosed conditions must notify UMUT personnel pursuant to General Condition #1; these may proceed after verifying that notification was received by UMUT 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 storm water 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 de minimus 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 NWP 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. Inquiries, pre-filing meeting requests and certification requests should be sent to [abishop@utemountain.org](mailto:abishop@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.

Sincerely,



Scott Clow  
Director

CC: Selwyn Whiteskunk, Chairman, Ute Mountain Ute Tribe  
Tribal Council, Ute Mountain Ute Tribe  
Megan Mustoe, Associate General Counsel, Ute Mountain Ute Tribe  
[SPKRegulatoryMailbox@usace.army.mil](mailto:SPKRegulatoryMailbox@usace.army.mil)

Enclosure: Ute Mountain Ute Tribe Clean Water Act Section 401 Water Quality Certification  
for U.S. Army Corps of Engineers CWA Section 404 2025 Nationwide Permits Reissuance



**Ute Mountain Ute Tribe Clean Water Act Section 401  
Water Quality Certification for the U.S. Corps of  
Engineers CWA Section 404  
2025 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 (NWP) 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, 46, 48, 49, 50, 51, 52, 53, 54, 57, 58, 59.

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, and A. 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.
- 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 N.WPs: **NWPs Waived (121.9(a)(I)):**

- 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, 57, and 59. 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 pertaining to all NWP's (Authorizing citations in parentheses):**

1. All applicants, including federal agencies, must notify the UMUT Environmental Programs Department of the use of all NWP's for which certification has been granted prior to commencing work on the project. Notification must be at least 7 days prior to the commencement of construction. (CWA sections 301, 302, 303, 306, and 307; CWA 308(a); 40 CFR 121.11(a))<sup>1</sup>

Notifications must include:

- Project location (latitude, longitude)
- Applicable NWP, specific to the permitted activity
- Quantity of permanent and temporary fill
- Written summary of proposed activity, including all associated permits or licenses for the project
- Contact information for applicant and contractors (name, company affiliation, telephone, email, postal address)
- Detailed description of best management practices to be used

Notifications should be directed to: Adrian Bishop, Water Quality Specialist, Ute Mountain Ute Tribe, PO Box 448, Towaoc, CO 81334; [abishop@utemountain.org](mailto:abishop@utemountain.org); 970-564-5435.

2. Point Source discharges may not occur:
  - a. In fens, bogs, or other peatlands
  - b. Within 100 feet of the point of discharge of a natural spring source
  - c. In hanging gardens
  - d. In culturally sensitive waters(40 CFR 230 Subpart E; Ute Mountain)
3. 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 they may enter into water of the U.S. (40 CFR 230.10(d), 40 CFR 230.71; Ute Mountain)
4. Silt fences, straw wattles, and other techniques shall be employed as appropriate to protect waters of the U.S. from sedimentation and related pollutants. . (40 CFR 230.10(d), 40 CFR 230.72; Ute Mountain)
5. Erosion control matting that is biodegradable blankets or loose-weave mesh must be used to the

- maximum extent possible. . (40 CFR 230.10(d), 40 CFR 230.72; Ute Mountain)
6. Water used in dust suppression shall not contain contaminants that could violate water quality standards. . (40 CFR 230.10(d), 40 CFR 230.71; Ute Mountain)
  7. All equipment used in waters of the U.S. must be inspected for fluid leaks and invasive species (seed transport) prior to and during use on a project. All fluid leaks shall be repaired and equipment cleaned prior to use, or when discovered or equipment shall be immediately decommissioned from the project or not used at all on the project. Invasive species seed transport shall be prevented by cleaning offsite prior to use on the project. (40 CFR 230.10(d), 40 CFR 230.74; Ute Mountain)
  8. Vegetation shall be protected except where its removal is necessary for the project. Disturbed soil caused by the project shall be revegetated with appropriate native vegetation in a manner that optimizes plant establishment for the specific project site.
    - a. This may include topsoil replacement, planting, seeding, fertilization, liming, and weed-free mulching, as necessary.
    - b. When practical, stockpile weed-free topsoil and replace it on disturbed areas.
    - c. All revegetation materials, including plants and seed shall be on site or scheduled for delivery prior to or upon completion of earth moving activities.  
(40 CFR 230.10(d), 40 CFR 230.75; Ute Mountain)
  9. 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. (40 CFR 230.10(d), 40 CFR 230.71 CWA 307, Ute Mountain)
  10. Activities that may result in a point source discharge shall occur during seasonal low flow or no flow periods to the maximum extent practicable. (40 CFR 230.10(d), 40 CFR 230.72 (d), 40 CFR 230.23, 40 CFR 230.24, Ute Mountain)
  11. The placement of material (discharge) for the construction of new dams is not certified, except for stream restoration. (40 CFR 230.23, 40 CFR 230.24, Ute Mountain)

**NWPs Granted with Permit-Specific Conditions in addition to the Conditions listed above. (121.7(d)(2))<sup>1,2</sup>:**

**NWP #3: Maintenance**

- a. No more than 25 cubic yards of new or additional riprap may be placed to protect the structure or fill;
- b. Bridge replacements must span the bank full width and/or the ordinary high water mark of the affected waters of the U.S.
- c. 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.
- d. Silt and sediment removal associated with low water crossings shall not exceed 50 linear feet.
- e. Silt and sediment removal associated with bridge crossings shall not exceed 100 linear feet.  
(40 CFR 230.10(d), 40 CFR 230.73 (d), 40 CFR 230.75, Ute Mountain)

**NWP #7: Outfall Structures**

- a. 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 storm water.
- b. Outfall structures shall not be constructed in wetlands.
- c. 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.
- d. Structures shall not result in a loss of waters of the U.S. (e.g. tile systems).

(40 CFR 230.10(d), 40 CFR 230.70, 40 CFR 230.73, CWA 303(a), Ute Mountain)

**NWP#13: Bank Stabilization**

- a. 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.

b. 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.

c. 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.  
(40 CFR 230.10(d), 40 CFR 230.70, 40 CFR 230.72, CWA 303(a), Ute Mountain)

#### **NWP# 14: Linear Transportation Projects**

a. Storm water 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.)

b. Affected streambanks must be sloped such that the stream 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.

c. Crossings must be placed as close to perpendicular to the water course as possible.  
(40 CFR 230.10, 40 CFR 230.70, CWA 303(a), Ute Mountain)

#### **NWP# 15: Bridges**

a. Storm water 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.)

b. Affected streambanks must be sloped such that the stream bottom width is not reduced, and bottom elevations are restored to original elevations.

c. Crossings must be placed as close to perpendicular to the watercourse as possible.

d. Bridge decks must be designed such that they do not drain directly into the waterbody.

e. Bridges must span the bank full 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.

(40 CFR 230.10(d), 40 CFR 230.70, 40 CFR 230.72, CWA 303(a), Ute Mountain)

#### **NWP# 19: Minor Dredging**

a. 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).

(40CFR 230.10(d), 40 CFR 230.70, Ute Mountain)

**NWP# 27: Aquatic Habitat Restoration**

- a. 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).  
(40 CFR 230.10(d), 40 CFR 230.75, Ute Mountain)

**NWP #43: Storm Water Management Facilities**

- a. 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.  
(40 CFR 230.10(d), 40 CFR 230.73, 40 CFR 230.75, Ute Mountain)

**NWP # 57: Electric Utilities and Telecom Activities**

- a. Construction activities shall not impact (e.g., fill, relocate, realign or straighten) more than 300 LF of stream for a single and complete project.  
(CWA 301, 302, 303, 306, 307, Ute Mountain)

**NWP #59 Water Reclamation and Reuse Facilities**

- a. Activities shall not impact (e.g., fill, relocate, realign or straighten) more than 300 LF of stream channel for a single and complete project.  
(CWA 301, 302, 303, 306, 307, Ute Mountain)

**NWP's Denied (121.7(e)(2))<sup>1,3</sup>**

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.

**NWP #12: Oil and Gas pipeline Activities**

(CWA 301, 302, 303, 306, 307, 311, 40 CFR 230 Subpart C, Ute Mountain)

**NWP# 16: Return Water from Upland Contained Disposal Areas**

(40 CFR 230.23, CWA 307, Ute Mountain)

**NWP# 17: Hydropower Projects**

(40 CFR 230.23, 40 CFR 230.24, Ute Mountain)

**NWP #21: Surface Coal Mining Activities**

(CWA 301, 302, 303, 306, 307, 40 CFR 230 Subpart C, Subpart D, Ute Mountain)

**NWP # 24: Indian Tribe or State Administered 404 Programs**

(CWA 404(g))

**NWP #29: Residential Developments**

(CWA 301, 302, 303, 306, 307, 40 CFR 230 Subpart C, Subpart D, Ute Mountain)

**NWP #34: Cranberry Production**

(40 CFR 230.23, 40 CFR 230.24, Ute Mountain)

**NWP #37: Emergency Watershed Protection and Rehabilitation**

(Ute Mountain)

**NWP #39: Commercial Development**

(CWA 301, 302, 303, 306, 307, 40 CFR 230 Subpart C, Subpart D, Ute Mountain)

**NWP #40: Agricultural Activities**

(CWA 301, 302, 303, 306, 307, 40 CFR 230 Subpart C, Subpart D, Ute Mountain)

**NWP #42: Recreational Facilities**

(CWA 301, 302, 303, 306, 307, 40 CFR 230 Subpart C, Subpart D, Ute Mountain)

**NWP #44: Mining Activities**

(CWA 301, 302, 303, 306, 307, 40 CFR 230 Subpart C, Subpart D, Ute Mountain)

**NWP #49: Coal Remining**

(40 CFR 230.23, 40 CFR 230.24, Ute Mountain)

**NWP #50: Underground Coal Mining**

(CWA 301, 302, 303, 306, 307, 40 CFR 230 Subpart C, Subpart D, Ute Mountain)

**NWP #51: Land-Based Renewable Energy**

(CWA 301, 302, 303, 306, 307, 40 CFR 230 Subpart C, Subpart D, Ute Mountain)

**NWP #52: Water-Based Renewable Energy**

(CWA 301, 302, 303, 306, 307, 40 CFR 230 Subpart C, Subpart D, Ute Mountain)

**NWP #53: Removal of Low Head Dams**

(40 CFR 230.23, 40 CFR 230.24, Ute Mountain)

**NWP #58: Utility Line Activities for Water and Other Substances**

(40 CFR 230.20, 40 CFR 230.23, 40 CFR 230.24, Ute Mountain)

**Footnotes:**

1- Citations

- a. 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).

- b. CWA - 40 CFR § 230 Subpart C - Potential Impacts on Physical and Chemical Characteristics of the Aquatic Ecosystem
  - c. CWA - 40 CFR § 230 Subpart D - Potential Impacts on Biological Characteristics of the Aquatic Ecosystem
  - d. (Ute Mountain) 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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- 2- For further explanation regarding rationale for NWP specific conditions, contact the Ute Mountain Ute Tribe's Environmental Programs Department.
  - 3- For further explanation regarding rationale for NWP denials, contact the Ute Mountain Ute Tribe's Environmental Programs Department.