



410 17th Street, Suite 1400  
Denver, CO 80202  
(720) 440-6100 phone  
(720) 305-0804 fax

[Bonanzacrk.com](http://Bonanzacrk.com)

09 January 2013

U.S. Army Corps of Engineers  
Denver Regulatory Office  
9307 South Wadsworth Blvd.  
Littleton, CO 80128-6901

via Certified Mail  
Return Receipt  
7011 3500 0001 2342 2889

RE: Certification of Completed Work – Nationwide Permit No. 18  
Corps File No. NWO-2012-135-DEN

Dear Sir or Madam:

Please be advised the work performed under the requirements of the referenced Preliminary JD Nationwide Permit No. 18 has been completed. Per the requirements of the referenced permit, discharges of fill was limited to 0.9 acres. Reclamation of the construction area, consisting of re-vegetation has been performed. Additional drill seeding may be required during the next growing season, and the site will be monitored to confirm desired vegetation has been re-established. Until such time that it is determined that re-vegetation of the construction area is established, stormwater erosion control measures will be maintained in good condition.

No additional mitigation was required.

Please refer to the signed Certification of Completed Work (enclosed).

Additionally, a copy of the approved permit is enclosed for your reference.

Please do not hesitate to call me with any questions or comments. My direct line is (720) 440-6112.

Thank you for your cooperation in this matter.

Sincerely,  
BONANZA CREEK ENERGY, INC.  
BONANZA CREEK ENERGY OPERATING COMPANY, LLC.

A handwritten signature in blue ink that reads 'Keith S. Caplan'.

Keith S. Caplan

enclosures

cc: Eric Berg, LWR Consultants  
Steve Wolfe

## Certification of Completed Work

Corps File Number: NWO - 2012 - 135 - DEN

Name of Permittee: Keith Caplan, Bonanza Creek Energy, Inc.

Date of Issuance: January 17, 2012

Expiration Date: January 17, 2013

Upon completion of the activity authorized by this permit and any mitigation required by the permit, sign this certification and return it to the following address:

U. S. Army Corps of Engineers  
Denver Regulatory Office  
9307 South Wadsworth Blvd.  
Littleton, Colorado 80128-6901

Phone (303) 979-4120  
Fax (303) 979-0602

Please note that your permitted activity is subject to a compliance inspection by a U. S. Army Corps of Engineers representative. If you fail to comply with this permit you are subject to permit suspension, modification, or revocation.

I hereby certify that the work authorized by the above referenced permit has been completed in accordance with the terms and conditions of said permit, and required mitigation was completed in accordance with the permit conditions.<sup>1</sup>



Signature of Permittee

<sup>1</sup> If your permit included wetlands monitoring and annual reports, these activities will continue after submittal of this form until you are notified by the Denver Regulatory Office that your mitigation is successful and monitoring reports are no longer required.



DEPARTMENT OF THE ARMY  
CORPS OF ENGINEERS, OMAHA DISTRICT  
DENVER REGULATORY OFFICE, 9307 SOUTH WADSWORTH BOULEVARD  
LITTLETON, COLORADO 80128-6901

January 17, 2012

Mr. Keith Caplan  
Bonanza Creek Energy, Inc.  
410 17<sup>th</sup> Street, Suite 1500  
Denver, CO 80202

**RE: Bonanza Creek Energy North Platte 14-34 Well Pad Development with Access Road, 0.09 Acre of Wetland Impact  
Nationwide Permit No. 18, Corps File No. NWO-2012-135-DEN**

Dear Mr. Caplan:

Reference is made to the above-mentioned project submitted to my office on your behalf by Mr. Eric Berg of LWR Consultants, Inc. This project is located at 40.350088; -104.430490, Weld County, Colorado.

Based on the information provided, this office has determined that the work within Colorado is authorized by the **Department of the Army Nationwide Permit No. 18**, found in the March 12, 2007, Federal Register. Enclosed is a fact sheet, which fully describes this Nationwide Permit and lists the General Conditions, Section 404 Only Conditions, and Colorado Regional Conditions, which must be adhered to for this authorization to remain valid.

Although an Individual Department of the Army permit will not be required for this work, this does not eliminate the requirement that any other applicable Federal, state, tribal or local permits be obtained as required. Please be advised that deviations from the original plans and specifications of this project could require additional authorization from this office.

The applicant is responsible for all work accomplished in accordance with the terms and conditions of the nationwide permit. If a contractor or other authorized representative will be accomplishing the work authorized by the nationwide permit on behalf of the applicant, it is strongly recommended that they be provided a copy of this letter and the attached conditions so that they are aware of the limitations of the applicable nationwide permit. Any activity which fails to comply with all the terms and conditions of the nationwide permit will be considered unauthorized and subject to appropriate enforcement action.

**This verification is valid until the NWP is modified, reissued, or revoked. All of the existing NWPs are scheduled to be modified, reissued, or revoked prior to March 18, 2012. It is incumbent upon you to remain informed of changes to the NWPs. We will issue a public notice when the NWPs are reissued. Furthermore, if you commence or are under contract to commence this activity before the date that the relevant NWP is modified or revoked, you will have twelve (12) months from the date of the modification or revocation of the NWP to complete the activity under the present terms and conditions of this NWP. In compliance with general Condition 14, the attached "Certification of Completed Work" form (blue) must be signed and returned to this office upon completion of the authorized work and any required mitigation.**

A Department of the Army will not be required for the 24-34 Well Pad.

We have prepared a Preliminary Jurisdictional Determination (JD) which is a written indication that wetlands and waterways within your project area may be Waters of the United States (attached). Such waters will be treated as jurisdictional Waters of the US for purposes of computation of impacts and compensatory mitigation requirements. If you concur with the findings of the Preliminary JD, please sign it and return it to the letterhead address within two weeks. If you believe the Preliminary JD is inaccurate, you may request an Approved JD, which is an official determination regarding the presence or absence of Waters of the US. If an approved JD is requested, the Corps will complete one and you may not begin work on the proposed project until after the Approved JD is complete. If you do not want the Corps to complete an Approved JD, you may proceed with the proposed project.

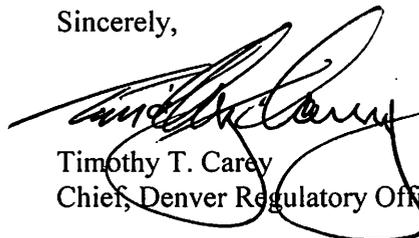
Please notify your consultant, Mr. Eric Berg of your receipt of this nationwide permit verification letter.

In accordance with the Endangered Species Act, the Corps of Engineers has reviewed your project for potential impacts to threatened and endangered (T&E) species and their critical habitat. We have determined that no T&E species or critical habitats are present in the activity area. However, should anyone at any time become aware that either an endangered and/or threatened species or its critical habitat exists within the project area, this office must be notified immediately.

The Omaha District, Regulatory Branch is committed to providing quality and timely service to our customers. In an effort to improve customer service, please take a moment to complete our Customer Service Survey found on our website at <http://per2.nwp.usace.army.mil/survey.html>. If you do not have Internet access, you may call and request a paper copy of the survey that you can complete and return to us by mail or fax (Completing the survey is a voluntary action).

If there are any questions call Mr. Terry McKee of my office at (303) 979-4120 and reference Corps File No. NWO-2012-135-DEN.

Sincerely,



Timothy T. Carey  
Chief, Denver Regulatory Office

tm

Enclosures

Copies Furnished:

U.S. Fish & Wildlife Service  
Colorado Department of Public Health & Environment  
Environmental Protection Agency  
Colorado Division of Wildlife  
State Historic Preservation Office

## **PRELIMINARY JURISDICTIONAL DETERMINATION FORM**

This preliminary JD finds that there “*may be*” waters of the United States on the subject project site, and identifies all aquatic features on the site that could be affected by the proposed activity, based on the following information:

**A. Report Completion Date for Preliminary Jurisdictional Determination (JD):**

January 17, 2012

**B. Name and Address of Person Requesting Preliminary JD:**

Mr. Keith Caplan  
 Bonanza Creek Energy, Inc.  
 410 17<sup>th</sup> Street, Suite 1500  
 Denver, CO 80202

**C. District Office, File Name, and Number:**

Denver Regulatory Office, Bonanza Creek Energy North Platte 14-34 Well Pad Development with Access Road, 0.09 Acre of Wetland Impact, NWO-2012-135-DEN

**D. PROJECT LOCATION(S), BACKGROUND INFORMATION, AND WATERS:**

State: Colorado

City:

County: Weld

Name of nearest waterbody: Wetland adjacent to the Empire Intake Canal and the South Platte River

Identify amount of waters in the review area: unknown, only the wetland boundary in the area was identified

Name of any water bodies on the site that have been identified as Section 10 waters:

Tidal:

Non-Tidal:

**Table 1 - Waters of the U.S.**

Site	Latitude	Longitude	Stream Flow	Cowardin Class	Estimated amount of aquatic resources in review area	Estimated amount of aquatic resource impact	Class of aquatic resource
Wetland adjacent to the Empire Intake Canal and the South Platte River	40.35008	-104.43049		Palustrine	unknown	.09 acre	Non-tidal

**E. REVIEW PERFORMED FOR SITE EVALUATION (CHECK ALL THAT APPLY):**

- Office (Desk) Determination. Date: January 17, 2012
- Field Determination. Date(s):

**F. SUPPORTING DATA:**

Data reviewed for preliminary JD (check all that apply - checked items should be included in case file and, where checked and requested, appropriately reference sources below):

- Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant: LWR Consultants, Inc.
  - Office concurs with data sheets/delineation report.
  - Office does not concur with data sheets/delineation report.
- Data sheets prepared by the Corps:
- Corps navigable waters' study:
- U.S. Geological Survey Hydrologic Atlas:
  - USGS NHD data.
  - USGS 8 and 12 digit HUC maps.
- U.S. Geological Survey map(s). Site quad name: 1:24000, Hardin.
- USDA Natural Resources Conservation Service Soil Survey. Citation: GIS.
- National wetlands inventory map(s). Cite name: GIS.
- State/Local wetland inventory map(s):
- FEMA/FIRM maps:
- 100-year Floodplain Elevation is: (National Geodetic Vertical Datum of 1929)
- Photographs:  Aerial (Name & Date): Project site,  
or  Other (Name & Date): Project site, .
- Previous determination(s). File no. and date of response letter:
- Other information (please specify):

**IMPORTANT NOTE: The information recorded on this form has not necessarily been verified by the Corps and should not be relied upon for later jurisdictional determinations.**

*T. McKee*                      January 17, 2012

Signature and date of  
Regulatory Project Manager  
(REQUIRED)

*Keith S. ...*                      2/16/2012

Signature and date of  
person requesting preliminary JD  
(REQUIRED, unless obtaining the  
signature is impracticable)

**G. EXPLANATION OF PRELIMINARY AND APPROVED JURISDICTIONAL DETERMINATIONS:**

1. The Corps of Engineers believes that there may be jurisdictional waters of the United States on the subject site, and the permit applicant or other affected party who requested this preliminary JD is hereby advised of his or her option to request and obtain an approved jurisdictional determination (JD) for that site. Nevertheless, the permit applicant or other person who requested this preliminary JD has declined to exercise the option to obtain an approved JD in this instance and at this time.
  
2. In any circumstance where a permit applicant obtains an individual permit, or a Nationwide General Permit (NWP) or other general permit verification requiring "pre-construction notification" (PCN), or requests verification for a non-reporting NWP or other general permit, and the permit applicant has not requested an approved JD for the activity, the permit applicant is hereby made aware of the following: (1) the permit applicant has elected to seek a permit authorization based on a preliminary JD, which does not make an official determination of jurisdictional waters; (2) that the applicant has the option to request an approved JD before accepting the terms and conditions of the permit authorization, and that basing a permit authorization on an approved JD could possibly result in less compensatory mitigation being required or different special conditions; (3) that the applicant has the right to request an individual permit rather than accepting the terms and conditions of the NWP or other general permit authorization; (4) that the applicant can accept a permit authorization and thereby agree to comply with all the terms and conditions of that permit, including whatever mitigation requirements the Corps has determined to be necessary; (5) that undertaking any activity in reliance upon the subject permit authorization without requesting an approved JD constitutes the applicant's acceptance of the use of the preliminary JD, but that either form of JD will be processed as soon as is practicable; (6) accepting a permit authorization (e.g., signing a proffered individual permit) or undertaking any activity in reliance on any form of Corps permit authorization based on a preliminary JD constitutes agreement that all wetlands and other water bodies on the site affected in any way by that activity are jurisdictional waters of the United States, and precludes any challenge to such jurisdiction in any administrative or judicial compliance or enforcement action, or in any administrative appeal or in any Federal court; and (7) whether the applicant elects to use either an approved JD or a preliminary JD, that JD will be processed as soon as is practicable. Further, an approved JD, a proffered individual permit (and all terms and conditions contained therein), or individual permit denial can be administratively appealed pursuant to 33 C.F.R. Part 331, and that in any administrative appeal, jurisdictional issues can be raised (see 33 C.F.R. 331.5(a)(2)). If, during that administrative appeal, it becomes necessary to make an official determination whether CWA jurisdiction exists over a site, or to provide an official delineation of jurisdictional waters on the site, the Corps will provide an approved JD to accomplish that result, as soon as is practicable.

**FACT SHEET  
NATIONWIDE PERMIT 18**

**MINOR DISCHARGES.** Minor discharges of dredged or fill material into all waters of the United States, provided the activity meets all of the following criteria:

- (a) The quantity of discharged material and the volume of area excavated do not exceed 25 cubic yards below the plane of the ordinary high water mark or the high tide line;
- (b) The discharge will not cause the loss of more than 1/10 acre of waters of the United States; and
- (c) The discharge is not placed for the purpose of a stream diversion.

**Notification:** The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity if: (1) The discharge or the volume of area excavated exceeds 10 cubic yards below the plane of the ordinary high water mark or the high tide line, or (2) the discharge is in a special aquatic site, including wetlands. (Sections 10 and 404)

**General Conditions:** To qualify for NWP authorization, the prospective permittee must comply with the following general conditions, as appropriate, in addition to any regional or case-specific conditions imposed by the division engineer or district engineer.

**1. Navigation.** (a) No activity may cause more than a minimal adverse effect on navigation.

(b) Any safety lights and signals prescribed by the U.S. Coast Guard, through regulations or otherwise, must be installed and maintained at the permittee's expense on authorized facilities in navigable waters of the United States.

(c) The permittee understands and agrees that, if future operations by the United States require the removal, relocation, or other alteration, of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the Corps of Engineers, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.

**2. Aquatic Life Movements.** No activity may substantially disrupt the necessary life cycle movements of those species of aquatic life indigenous to the waterbody, including those species that normally migrate through the area, unless the activity's primary purpose is to impound water. Culverts placed in streams must be installed to maintain low flow conditions.

3. **Spawning Areas**. Activities in spawning areas during spawning seasons must be avoided to the maximum extent practicable. Activities that result in the physical destruction (e.g., through excavation, fill, or downstream smothering by substantial turbidity) of an important spawning area are not authorized.

4. **Migratory Bird Breeding Areas**. Activities in waters of the United States that serve as breeding areas for migratory birds must be avoided to the maximum extent practicable.

5. **Shellfish Beds**. No activity may occur in areas of concentrated shellfish populations, unless the activity is directly related to a shellfish harvesting activity authorized by NWP 4 and 48.

6. **Suitable Material**. No activity may use unsuitable material (e.g., trash, debris, car bodies, asphalt, etc.). Material used for construction or discharged must be free from toxic pollutants in toxic amounts (see Section 307 of the Clean Water Act).

7. **Water Supply Intakes**. No activity may occur in the proximity of a public water supply intake, except where the activity is for the repair or improvement of public water supply intake structures or adjacent bank stabilization.

8. **Adverse Effects From Impoundments**. If the activity creates an impoundment of water, adverse effects to the aquatic system due to accelerating the passage of water, and/or restricting its flow must be minimized to the maximum extent practicable.

9. **Management of Water Flows**. To the maximum extent practicable, the pre-construction course, condition, capacity, and location of open waters must be maintained for each activity, including stream channelization and storm water management activities, except as provided below. The activity must be constructed to withstand expected high flows. The activity must not restrict or impede the passage of normal or high flows, unless the primary purpose of the activity is to impound water or manage high flows. The activity may alter the pre-construction course, condition, capacity, and location of open waters if it benefits the aquatic environment (e.g., stream restoration or relocation activities).

10. **Fills Within 100-Year Floodplains**. The activity must comply with applicable FEMA-approved state or local floodplain management requirements.

11. **Equipment**. Heavy equipment working in wetlands or mudflats must be placed on mats, or other measures must be taken to minimize soil disturbance.

12. **Soil Erosion and Sediment Controls**. Appropriate soil erosion and sediment controls must be used and maintained in effective operating condition during construction, and all exposed soil and other fills, as well as any work below the ordinary high water mark or high tide line, must be permanently stabilized at the earliest

practicable date. Permittees are encouraged to perform work within waters of the United States during periods of low-flow or no-flow.

**13. Removal of Temporary Fills.** Temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations. The affected areas must be revegetated, as appropriate.

**14. Proper Maintenance.** Any authorized structure or fill shall be properly maintained, including maintenance to ensure public safety.

**15. Wild and Scenic Rivers.** No activity may occur in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a "study river" for possible inclusion in the system while the river is in an official study status, unless the appropriate Federal agency with direct management responsibility for such river, has determined in writing that the proposed activity will not adversely affect the Wild and Scenic River designation or study status. Information on Wild and Scenic Rivers may be obtained from the appropriate Federal land management agency in the area (e.g., National Park Service, U.S. Forest Service, Bureau of Land Management, U.S. Fish and Wildlife Service).

**16. Tribal Rights.** No activity or its operation may impair reserved tribal rights, including, but not limited to, reserved water rights and treaty fishing and hunting rights.

**17. Endangered Species.** (a) No activity is authorized under any NWP which is likely to jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation, as identified under the Federal Endangered Species Act (ESA), or which will destroy or adversely modify the critical habitat of such species. No activity is authorized under any NWP which "may affect" a listed species or critical habitat, unless Section 7 consultation addressing the effects of the proposed activity has been completed.

(b) Federal agencies should follow their own procedures for complying with the requirements of the ESA. Federal permittees must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements.

(c) Non-federal permittees shall notify the district engineer if any listed species or designated critical habitat might be affected or is in the vicinity of the project, or if the project is located in designated critical habitat, and shall not begin work on the activity until notified by the district engineer that the requirements of the ESA have been satisfied and that the activity is authorized. For activities that might affect Federally-listed endangered or threatened species or designated critical habitat, the pre-construction notification must include the name(s) of the endangered or threatened species that may be affected by the proposed work or that utilize the designated critical habitat that may be affected by the proposed work. The district engineer will determine whether the proposed activity "may affect" or will have "no effect" to listed species and designated critical habitat and will notify the non-Federal applicant of the Corps' determination within 45 days of receipt of a complete pre-construction notification. In cases where the non-Federal applicant has identified listed species or critical habitat that might be affected or

is in the vicinity of the project, and has so notified the Corps, the applicant shall not begin work until the Corps has provided notification the proposed activities will have “no effect” on listed species or critical habitat, or until Section 7 consultation has been completed.

(d) As a result of formal or informal consultation with the FWS or NMFS the district engineer may add species-specific regional endangered species conditions to the NWP.

(e) Authorization of an activity by a NWP does not authorize the “take” of a threatened or endangered species as defined under the ESA. In the absence of separate authorization (e.g., an ESA Section 10 Permit, a Biological Opinion with “incidental take” provisions, etc.) from the U.S. FWS or the NMFS, both lethal and non-lethal “takes” of protected species are in violation of the ESA. Information on the location of threatened and endangered species and their critical habitat can be obtained directly from the offices of the U.S. FWS and NMFS or their world wide Web pages at <http://www.fws.gov/> and <http://www.noaa.gov/fisheries.html> respectively.

**18. Historic Properties.** (a) In cases where the district engineer determines that the activity may affect properties listed, or eligible for listing, in the National Register of Historic Places, the activity is not authorized, until the requirements of Section 106 of the National Historic Preservation Act (NHPA) have been satisfied.

(b) Federal permittees should follow their own procedures for complying with the requirements of Section 106 of the National Historic Preservation Act. Federal permittees must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements.

(c) Non-federal permittees must submit a pre-construction notification to the district engineer if the authorized activity may have the potential to cause effects to any historic properties listed, determined to be eligible for listing on, or potentially eligible for listing on the National Register of Historic Places, including previously unidentified properties. For such activities, the pre-construction notification must state which historic properties may be affected by the proposed work or include a vicinity map indicating the location of the historic properties or the potential for the presence of historic properties. Assistance regarding information on the location of or potential for the presence of historic resources can be sought from the State Historic Preservation Officer or Tribal Historic Preservation Officer, as appropriate, and the National Register of Historic Places (see 33 CFR 330.4(g)). The district engineer shall make a reasonable and good faith effort to carry out appropriate identification efforts, which may include background research, consultation, oral history interviews, sample field investigation, and field survey. Based on the information submitted and these efforts, the district engineer shall determine whether the proposed activity has the potential to cause an effect on the historic properties. Where the non-Federal applicant has identified historic properties which the activity may have the potential to cause effects and so notified the Corps, the non-Federal applicant shall not begin the activity until notified by the district engineer either that the activity has no potential to cause effects or that consultation under Section 106 of the NHPA has been completed.

(d) The district engineer will notify the prospective permittee within 45 days of receipt of a complete pre-construction notification whether NHPA Section 106

consultation is required. Section 106 consultation is not required when the Corps determines that the activity does not have the potential to cause effects on historic properties (see 36 CFR §800.3(a)). If NHPA section 106 consultation is required and will occur, the district engineer will notify the non-Federal applicant that he or she cannot begin work until Section 106 consultation is completed.

(e) Prospective permittees should be aware that section 110k of the NHPA (16 U.S.C. 470h-2(k)) prevents the Corps from granting a permit or other assistance to an applicant who, with intent to avoid the requirements of Section 106 of the NHPA, has intentionally significantly adversely affected a historic property to which the permit would relate, or having legal power to prevent it, allowed such significant adverse effect to occur, unless the Corps, after consultation with the Advisory Council on Historic Preservation (ACHP), determines that circumstances justify granting such assistance despite the adverse effect created or permitted by the applicant. If circumstances justify granting the assistance, the Corps is required to notify the ACHP and provide documentation specifying the circumstances, explaining the degree of damage to the integrity of any historic properties affected, and proposed mitigation. This documentation must include any views obtained from the applicant, SHPO/THPO, appropriate Indian tribes if the undertaking occurs on or affects historic properties on tribal lands or affects properties of interest to those tribes, and other parties known to have a legitimate interest in the impacts to the permitted activity on historic properties.

**19. Designated Critical Resource Waters.** Critical resource waters include, NOAA-designated marine sanctuaries, National Estuarine Research Reserves, state natural heritage sites, and outstanding national resource waters or other waters officially designated by a state as having particular environmental or ecological significance and identified by the district engineer after notice and opportunity for public comment. The district engineer may also designate additional critical resource waters after notice and opportunity for comment.

(a) Discharges of dredged or fill material into waters of the United States are not authorized by NWPs 7, 12, 14, 16, 17, 21, 29, 31, 35, 39, 40, 42, 43, 44, 49, and 50 for any activity within, or directly affecting, critical resource waters, including wetlands adjacent to such waters.

(b) For NWPs 3, 8, 10, 13, 15, 18, 19, 22, 23, 25, 27, 28, 30, 33, 34, 36, 37, and 38, notification is required in accordance with general condition 27, for any activity proposed in the designated critical resource waters including wetlands adjacent to those waters. The district engineer may authorize activities under these NWPs only after it is determined that the impacts to the critical resource waters will be no more than minimal.

**20. Mitigation.** The district engineer will consider the following factors when determining appropriate and practicable mitigation necessary to ensure that adverse effects on the aquatic environment are minimal:

(a) The activity must be designed and constructed to avoid and minimize adverse effects, both temporary and permanent, to waters of the United States to the maximum extent practicable at the project site (i.e., on site).

(b) Mitigation in all its forms (avoiding, minimizing, rectifying, reducing, or compensating) will be required to the extent necessary to ensure that the adverse effects to the aquatic environment are minimal.

(c) Compensatory mitigation at a minimum one-for-one ratio will be required for all wetland losses that exceed 1/10 acre and require pre-construction notification, unless the district engineer determines in writing that some other form of mitigation would be more environmentally appropriate and provides a project-specific waiver of this requirement. For wetland losses of 1/10 acre or less that require pre-construction notification, the district engineer may determine on a case-by-case basis that compensatory mitigation is required to ensure that the activity results in minimal adverse effects on the aquatic environment. Since the likelihood of success is greater and the impacts to potentially valuable uplands are reduced, wetland restoration should be the first compensatory mitigation option considered.

(d) For losses of streams or other open waters that require pre-construction notification, the district engineer may require compensatory mitigation, such as stream restoration, to ensure that the activity results in minimal adverse effects on the aquatic environment.

(e) Compensatory mitigation will not be used to increase the acreage losses allowed by the acreage limits of the NWP. For example, if an NWP has an acreage limit of 1/2 acre, it cannot be used to authorize any project resulting in the loss of greater than 1/2 acre of waters of the United States, even if compensatory mitigation is provided that replaces or restores some of the lost waters. However, compensatory mitigation can and should be used, as necessary, to ensure that a project already meeting the established acreage limits also satisfies the minimal impact requirement associated with the NWP.

(f) Compensatory mitigation plans for projects in or near streams or other open waters will normally include a requirement for the establishment, maintenance, and legal protection (e.g., conservation easements) of riparian areas next to open waters. In some cases, riparian areas may be the only compensatory mitigation required. Riparian areas should consist of native species. The width of the required riparian area will address documented water quality or aquatic habitat loss concerns. Normally, the riparian area will be 25 to 50 feet wide on each side of the stream, but the district engineer may require slightly wider riparian areas to address documented water quality or habitat loss concerns. Where both wetlands and open waters exist on the project site, the district engineer will determine the appropriate compensatory mitigation (e.g., riparian areas and/or wetlands compensation) based on what is best for the aquatic environment on a watershed basis. In cases where riparian areas are determined to be the most appropriate form of compensatory mitigation, the district engineer may waive or reduce the requirement to provide wetland compensatory mitigation for wetland losses.

(g) Permittees may propose the use of mitigation banks, in-lieu fee arrangements or separate activity-specific compensatory mitigation. In all cases, the mitigation provisions will specify the party responsible for accomplishing and/or complying with the mitigation plan.

(h) Where certain functions and services of waters of the United States are permanently adversely affected, such as the conversion of a forested or scrub-shrub wetland to a herbaceous wetland in a permanently maintained utility line right-of-way,

mitigation may be required to reduce the adverse effects of the project to the minimal level.

**21. Water Quality.** Where States and authorized Tribes, or EPA where applicable, have not previously certified compliance of an NWP with CWA Section 401, individual 401 Water Quality Certification must be obtained or waived (see 33 CFR 330.4(c)). The district engineer or State or Tribe may require additional water quality management measures to ensure that the authorized activity does not result in more than minimal degradation of water quality.

**22. Coastal Zone Management.** *Not Applicable.*

**23. Regional and Case-By-Case Conditions.** The activity must comply with any regional conditions that may have been added by the Division Engineer (see 33 CFR 330.4(e)) and with any case specific conditions added by the Corps or by the state, Indian Tribe, or U.S. EPA in its section 401 Water Quality Certification, or by the state in its Coastal Zone Management Act consistency determination.

**24. Use of Multiple Nationwide Permits.** The use of more than one NWP for a single and complete project is prohibited, except when the acreage loss of waters of the United States authorized by the NWPs does not exceed the acreage limit of the NWP with the highest specified acreage limit. For example, if a road crossing over tidal waters is constructed under NWP 14, with associated bank stabilization authorized by NWP 13, the maximum acreage loss of waters of the United States for the total project cannot exceed 1/3-acre.

**25. Transfer of Nationwide Permit Verifications.** If the permittee sells the property associated with a nationwide permit verification, the permittee may transfer the nationwide permit verification to the new owner by submitting a letter to the appropriate Corps district office to validate the transfer. A copy of the nationwide permit verification must be attached to the letter, and the letter must contain the following statement and signature:

“When the structures or work authorized by this nationwide permit are still in existence at the time the property is transferred, the terms and conditions of this nationwide permit, including any special conditions, will continue to be binding on the new owner(s) of the property. To validate the transfer of this nationwide permit and the associated liabilities associated with compliance with its terms and conditions, have the transferee sign and date below.”

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(Transferee)

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(Date)

**26. Compliance Certification.** Each permittee who received an NWP verification from the Corps must submit a signed certification regarding the completed work and any required mitigation. The certification form must be forwarded by the Corps with the NWP verification letter and will include:

(a) A statement that the authorized work was done in accordance with the NWP authorization, including any general or specific conditions;

(b) A statement that any required mitigation was completed in accordance with the permit conditions; and

(c) The signature of the permittee certifying the completion of the work and mitigation.

**27. Pre-Construction Notification.** *Not Applicable.*

**28. Single and Complete Project.** The activity must be a single and complete project. The same NWP cannot be used more than once for the same single and complete project.

#### **Further Information**

1. District Engineers have authority to determine if an activity complies with the terms and conditions of an NWP.

2. NWPs do not obviate the need to obtain other federal, state, or local permits, approvals, or authorizations required by law.

3. NWPs do not grant any property rights or exclusive privileges.

4. NWPs do not authorize any injury to the property or rights of others.

5. NWPs do not authorize interference with any existing or proposed Federal project.

**Nationwide Permit (March 12, 2007)  
Finalized Regional Conditions for the  
State of Colorado**

**Final Regional Conditions Applicable to Specific Nationwide Permits within Colorado**

**a. Nationwide Permit Nos. 12 and 14, Utility Line Activities and Linear Transportation Projects.** In the Colorado River Basin, utility line and road activities crossing perennial waters or special aquatic sites require notification to the District Engineer in accordance with General Condition 27 (Pre-Construction Notification). In addition, post-construction reporting for activities in all other jurisdictional waters is required and must include information required by General Condition 27 (Pre-Construction Notification) including location, supporting drawings and maps. The post-construction reporting must also include a statement certifying that the General Conditions of the nationwide permits have been followed.

**NOTE:** *The above condition does not apply in the Omaha District portion of Colorado.*

**b. Nationwide Permit No. 13 Bank Stabilization.** In Colorado, bank stabilization activities necessary for erosion prevention in streams that average less than 20 feet in width (measured between the ordinary high water marks) are limited to the placement of no more than 1/4 cubic yard of suitable fill\* material per running foot below the plane of the ordinary high water mark. Activities greater than 1/4 cubic yard may be authorized if the permittee notifies the District Engineer in accordance with General Condition 27 (Pre-Construction Notification) and the Corps determines the adverse environmental effects are minimal. [\* See (g) for definition of Suitable Fill]

**c. Nationwide Permit No. 27 Aquatic Habitat Restoration, Establishment, and Enhancement Activities.**

(1) For activities that include a fishery enhancement component, the Corps will send the Preconstruction Notification to the Colorado Division of Wildlife (CDOW) for review. In accordance with General Condition 27 (Pre-construction Notification), CDOW will have 10 days from receipt of Corps notification to indicate that they will be commenting on the proposed project. CDOW will then have an additional 15 days after the initial 10-day period to provide those comments. If CDOW raises concerns, the applicant may either modify their plans, in coordination with CDOW, or apply for a standard individual permit.

(2) For activities involving the length of a stream, the post-project stream sinuosity will not be significantly reduced, unless it is demonstrated that the reduction in sinuosity is consistent with the natural morphological evolution of the stream (sinuosity is the ratio of stream length to project reach length).

(3) Structures will allow the upstream and downstream passage of aquatic organisms, including fish native to the reach, as well as recreational water craft or other navigational activities, unless specifically waived in writing by the District Engineer. The use of grout and/or concrete in building structures is not authorized by this nationwide permit.

(4) The construction of water parks (i.e. kayak courses) and flood control projects are not authorized by this nationwide permit.

**d. Nationwide Permits Nos. 29 and 39; Residential Developments and Commercial and Institutional Developments.** A copy of the existing FEMA/locally-approved floodplain map must be submitted with the Pre-Construction Notification. When reviewing proposed developments, the Corps will utilize the most accurate and reliable FEMA/locally-approved pre-project floodplain mapping, not post-project floodplain mapping based on a CLOMR or LOMR. However, the Corps will accept revisions to existing floodplain mapping if the revisions resolve inaccuracies in the original floodplain mapping and if the revisions accurately reflect pre-project conditions.

## Regional Conditions Applicable to All Nationwide Permits within Colorado (Continued)

**e. Removal of Temporary Fills.** General Condition 13 (Removal of Temporary Fills) is amended by adding the following: When temporary fills are placed in wetlands in Colorado, a horizontal marker (i.e. fabric, certified weed-free straw, etc.) must be used to delineate the existing ground elevation of wetlands that will be temporarily filled during construction.

**f. Spawning Areas.** General Condition 3 (Spawning Areas) is amended by adding the following: In Colorado, all Designated Critical Resource Waters (see enclosure 1) are considered important spawning areas. Therefore, in accordance with General Condition 19 (Designated Critical Resource Waters), the discharge of dredged or fill material is not authorized by the following nationwide permits in these waters: NWP 7, 12, 14, 16, 17, 21, 29, 31, 35, 39, 40, 42, 43, 44, 49 and 50. In addition, in accordance with General Condition 27 (Pre-Construction Notification), notification to the District Engineer is required for use of the following nationwide permits in these waters: NWP 3, 8, 10, 13, 15, 18, 19, 22, 23, 25, 27, 28, 30, 33, 34, 36, 37 and 38.

**g. Suitable Fill.** In Colorado, use of broken concrete as fill material requires notification to the District Engineer in accordance with General Condition 27 (Pre-Construction Notification). Permittees must demonstrate that soft engineering methods utilizing native or non-manmade materials are not practicable (with respect to cost, existing technology, and logistics), before broken concrete is allowed as suitable fill. Use of broken concrete with exposed rebar is prohibited in perennial waters and special aquatic sites.

**h. Invasive Aquatic Species.** General Condition 11 is amended by adding the following condition for work in perennial or intermittent waters of the United States: If heavy equipment is used for the subject project that was previously working in another stream, river, lake, pond or wetland within 10 days of initiating work, one of the following procedures is necessary to prevent the spread of New Zealand Mud Snails and other aquatic hitchhikers:

(1) Remove all mud and debris from equipment (tracks, turrets, buckets, drags, teeth, etc.) and keep the equipment dry for 10 days; or

(2) Remove all mud and debris from equipment (tracks, turrets, buckets, drags, teeth, etc.) and spray/soak equipment with either a 1:1 solution of Formula 409 Household Cleaner and water, or a solution of Sparquat 256 (5 ounces Sparquat per gallon of water). Treated equipment must be kept moist for at least 10 minutes; or

(3) Remove all mud and debris from equipment (tracks, turrets, buckets, drags, teeth, etc.) and spray/soak equipment with water greater than 120 degrees F for at least 10 minutes.

## Regional Conditions for Revocations Specific to Certain Geographic Areas

**i. Fens:** All Nationwide permits, except permit Nos. 3, 6, 20, 27, 32, 38 and 47, are revoked in fens and wetlands adjacent to fens. Use of nationwide permit Nos. 3, 20, 27 and 38, requires notification to the District Engineer, in accordance with General Condition 27 (Pre-Construction Notification), and the permittee may not begin the activity until the Corps determines the adverse environmental effects are minimal. The following defines a fen:

Fen soils (histosols) are normally saturated throughout the growing season, although they may not be during drought conditions. The primary source of hydrology for fens is groundwater. Histosols are defined in accordance with the U.S. Department of Agriculture, Natural Resources Conservation Service publications on Keys to Soil Taxonomy and Field Indicators of Hydric Soils in the United States (<http://soils.usda.gov/technical/classification/taxonomy>).

**j. Springs:** Within the state of Colorado, all NWP, except permit 47 (original 'C'), require preconstruction notification pursuant to General Condition 27 for discharges of dredged or fill material within 100 feet of the point of groundwater discharge of natural springs. A spring source is defined as any location where

groundwater emanates from a point in the ground. For purposes of this regional condition, springs do not include seeps or other discharges which do not have a defined channel.

#### ADDITIONAL INFORMATION

The following provides additional information regarding minimization of impacts and compliance with existing general Conditions:

a. Permittees are reminded of the existing General Condition No. 6 which prohibits the use of unsuitable material. Organic debris, building waste, asphalt, car bodies, and trash are not suitable material. Also, General Condition 12 requires appropriate erosion and sediment controls (i.e. all fills must be permanently stabilized to prevent erosion and siltation into waters and wetlands at the earliest practicable date). Streambed material or other small aggregate material placed along a bank as stabilization will not meet General Condition 12. Also, use of erosion control mats that contain plastic netting may not meet General Condition 12 if deemed harmful to wildlife.

b. Designated Critical Resource Waters in Colorado. In Colorado, a list of designated Critical Resource Waters has been published in accordance with General Condition 19 (Designated Critical Resource Waters). This list will be published on the Albuquerque District Regulatory home page and will be attached to nationwide permit summaries distributed to the public. A copy is attached (see Enclosure 1).

c. Federally-Listed Threatened and Endangered Species. General Condition 17 requires that non-federal permittees notify the District Engineer if any listed species or designated critical habitat might be affected or is in the vicinity of the project. Information on such species, to include occurrence by county in Colorado, may be found at the following U.S. Fish and Wildlife Service website: <http://mountain-prairie.fws.gov/endspp/CountyLists/Colorado.htm>

### DESIGNATED CRITICAL RESOURCE WATERS IN COLORADO

The following waters within the State of Colorado are designated as critical resource waters. In accordance with General Condition 19 (Designated Critical Resource Waters), the discharge of dredged or fill material is not authorized by the following nationwide permits in these waters: NWP's 7, 12, 14, 16, 17, 21, 29, 31, 35, 39, 40, 42, 43, 44, 49 and 50. In addition, in accordance with General Condition 27 (Pre-Construction Notification), notification to the District Engineer is required for use of the following nationwide permits in these waters: NWP's 3, 8, 10, 13, 15, 18, 19, 22, 23, 25, 27, 28, 30, 33, 34, 36, 37 and 38.

#### a. Outstanding Natural Resource Waters:

- Cache la Poudre Basin: All tributaries to the Cache La Poudre River system, including all lakes and reservoirs, which are within Rock Mountain National Park;
- Laramie River: All tributaries to the Laramie River system, including all lakes and reservoirs which are in the Rawah Wilderness Area;
- North Fork Gunnison River: All tributaries to North Fork Gunnison River system, including lakes, reservoirs and wetlands within the West Elk and Raggeds Wilderness Area;
- North Platte River: All tributaries to the North Platte River and Encampment Rivers, including all lakes and reservoirs, which are in the Mount Zirkle Wilderness Area;
- San Miguel River: All tributaries, lakes, reservoirs, and wetlands within the boundaries of the Lizard Head and Mt. Sneffels Wilderness Area;
- Roaring Fork River: All tributaries to the Roaring Fork River system, including lakes, reservoirs and wetlands within the Maroon Bells/Snowmass Wilderness Area;
- Umcompahgre River: All tributaries to the Umcompahgre River system, including lakes, reservoirs, and wetlands within the Mt. Sneffels and Big Blue Wilderness Areas;
- Upper Arkansas River Basin: All streams, wetlands, lakes, and reservoirs within the Mount Massive and Collegiate Peaks Wilderness Areas;
- Upper Colorado River: Mainstem of the Colorado River system including tributaries, lakes, reservoirs, and wetlands within Rocky Mountain National Park;
- Upper Gunnison River Basin: All tributaries, lakes, reservoirs, and wetlands in the La Garita Wilderness Area. All tributaries to the Gunnison River system, including lakes, reservoirs, and wetlands within West Elk, Collegiate Peaks, Maroon Bells, Raggeds, Fossil Ridge, Oh-Be-Joyful and Big Blue Wilderness Areas;
- White River: Trapper's Lake and tributaries to Trapper's Lake;
- Yampa River: All tributaries to the Yampa River, including lakes, reservoirs and wetlands within Zirkle Wilderness Area.

**b. Gold Medal Waters.** Gold Medal Waters, as identified by the State of Colorado, are defined in the Colorado Fishing Season Information brochure, on the Colorado Division of Wildlife website (<http://wildlife.state.co.us>) or can be obtained at any Colorado Division of Wildlife or Corps office in Colorado.

**c. Cutthroat Trout Waters.** Waters designated as Cutthroat Trout Waters by the Colorado Division of Wildlife, Colorado Wildlife Commission, as listed in the Colorado Division of Wildlife's regulation at Chapter 0, Appendix C, which can be accessed via the following website address:  
<http://wildlife.state.co.us/NR/rdonlvres/4D6FFAC6-64EB-4516-A5E9-AE91B7392A95/0/Ch00.pdf>