

CITY COUNCIL PROCEEDINGS  
January 28, 2026

The City Council of the City of David City, Nebraska, met in open public session at 7:00 p.m. in the meeting room of the City Office, 490 E Street, David City, Nebraska. The Public had been advised of the meeting by posting in four public places (City Office, US Post Office, Butler County Courthouse, and Hruska Public Library). The Mayor and members of the City Council acknowledged advance notice of the meeting by signing the Agenda, which is a part of these minutes. The advance notice to the Public, Mayor, and Council members conveyed the availability of the agenda, which was kept continuously current in the office of the City Clerk and was available for public inspection on the City's website. No new items were added to the agenda during the twenty-four hours immediately prior to the opening of the Council meeting.

Present for the meeting were: Mayor Jessica Miller, Council President Bruce Meysenburg, Council Members Jim Angell, Rick Holland, Jeremy Abel, Kevin Woita, Keith Marvin, City Administrator Intern Raiko Martinez, and City Clerk–Treasurer Lori Matchett. City Attorney Michael Sands attended via Zoom.

Also present for the meeting were: Electric Supervisor Patrick Hoeft, Water Plant Operator Daniel Sobota, Wastewater Operator Anthony Kobus, Account Clerk Elizabeth Parker, Police Chief Marla Schnell, Assistant Police Chief Devin Betzen, and Marlene Hein. Ethan Joy of JEO Consulting Group attended via Zoom.

Council member Jim Angell made a motion to approve the minutes of the January 14, 2026, meeting of the Mayor and City Council as presented. Council Member Rick Holland seconded the motion. The motion carried. Jeremy Abel: Yea, Jim Angell: Yea, Rick Holland: Yea, Keith Marvin: Yea, Bruce Meysenburg: Yea, Kevin Woita: Yea. Yea: 6, Nay: 0.

Electric Supervisor Patrick Hoeft introduced himself and informed the council that NPPD has increased electric rates and will continue to do so over the next couple of years. David City Utilities has not increased electric rates since 2012, except for net metering and high-tension, which were changed in 2019. Mr. Hoeft will ask JK Energy Consulting LLC to prepare a five-year rate projection for the rate study.

Council member Keith Marvin made a motion to hire JK Energy Consulting LLC to do an electric rate study. Council Member Jeremy Abel seconded the motion. The motion carried. Jeremy Abel: Yea, Jim Angell: Yea, Rick Holland: Yea, Keith Marvin: Yea, Bruce Meysenburg: Yea, Kevin Woita: Yea. Yea: 6, Nay: 0.

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January 14, 2026

Pat Hoefft  
City of David City  
PO Box 191  
David City, NE 68632

RE: Cost of Service / Rate Design Study Letter Agreement

Dear Pat:

JK Energy Consulting, LLC (JKEC) is pleased to submit this letter agreement to prepare a Cost of Service / Rate Design Study for the City of David City (City) and its electric utility (Utility). This proposal was prepared pursuant to your phone call on January 9, 2026, and includes the scope of services, fee proposal, deliverables, and schedule.

### ***Background***

The City last completed a cost of service and rate design study in 2019 (2019 Study). With the exception of Alley Light Rentals, the 2019 Study indicated that rate recovery from each rate class was reasonable and no adjustments to individual rate classes would be necessary. The 2019 Study recommended that the City's rate ordinance be revised to provide a more definitive method for recovering costs related to Power Factor Adjustment for the commercial service and industrial service rate classes. The proposed rate ordinance was approved by the City Council, effective October 19, 2019.

In 2023, JKEC assisted the City with an economic assessment for new subtransmission lines and substation equipment for a potential large customer. JKEC updated the rate ordinance to include the new High Tension rate class. The City Council approved the rate ordinance, effective February 1, 2023.

### ***Scope of Services***

**Task 1: Data Collection.** This task involves collecting retail usage, operating expense, purchased power, and other data necessary to complete the cost of service analysis. A data request will be prepared and submitted to the City. To the extent certain data is not available, alternatives to the requested data will be identified.

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John A. Krajewski, P.E.  
74408 Road 433  
Smithfield, Nebraska 68976  
402-440-0227  
jk@jkenergyconsulting.com  
www.jkenergyconsulting.com

Pat Hoeft  
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An on-site meeting with City staff will occur for purposes of discussing project goals and collecting the necessary data, particularly data from the City's billing system.

**Task 2: Calculate Revenue Requirements and Operating Results.** This task involves reviewing the projected operating expenses, non-retail revenues, debt service expenses and other elements that make up the projected revenue requirements. Revenue requirements will be calculated for a "Test Year" and for a projected period of three additional years. Projections will be prepared on a "cash basis" to ensure adequate cash flow to cover projected expenses, including capital improvement and debt service requirements. Projected retail revenues will be compared to projected expenses to develop projected operating results going forward. The purpose of this task is to identify necessary rate increases for future periods.

**Task 3: Prepare Cost of Service Analysis.** This task involves calculating the cost of service for each retail rate class, using generally accepted ratemaking principles for municipal utilities. Principles consistent with guidelines prepared by the American Public Power Association, the National Association of Regulatory Utilities Commissioners, the Federal Energy Regulatory Commission, and others will be followed.

The various expenses incurred by the City will be identified and assigned to a function based on the type of service provided, such as transmission, distribution, and customer service. An appropriate method for allocating expenses for each function among the various rate classes will be identified. For example, purchased energy costs may be allocated based on the energy purchased by each retail class, while customer service expenses may be allocated based on the weighted number of retail customers.

The allocated cost of service for each rate class will be compared to the projected revenues for each rate class to determine the need for future rate changes and provide guidance for the rate design process.

**Task 4: Rate Design.** This task involves designing retail rates for each rate class. This task considers the cost of service results as well as other goals established by the City. These goals may include long-term rate stability, competitiveness with neighboring utilities, financial stability, mitigation of large rate increases on particular rate classes, and funding of future capital projects. JKEC will visit with City staff to review these goals and establish rates that best accomplish the identified goals. Rate comparisons with neighboring utilities will be prepared.

**Task 5: Present Results.** This task involves preparing a formal report for presentation to the City Council. The report will be suitable for review by the City Council with tables that summarize the key results of the cost of service analysis. An updated rate ordinance will be provided to implement the proposed rates. JKEC staff will present the results at a meeting of the City Council and be available to answer any questions.

Pat Hoeft  
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### ***Schedule***

The following schedule is based on the City providing notice to proceed no later than February 1, 2026. Any delay in executing the agreement or providing requested data will result in a similar delay in subsequent milestones. All dates are approximate and will be adjusted to conform to the regular schedule for City Council meetings.

February 1, 2026:	Notice to proceed
February 15, 2026:	Kick-off meeting (at City office)
March 2, 2026:	Receive all requested data from City
June 3, 2026:	Draft report completed and sent to City Staff
June 16, 2026:	Review draft report with City staff via Zoom
July 2026:	Present final results to the City Council (in person) with intent for action on rate ordinance at this meeting
August 14, 2026:	Final report, including all work papers, sent to City

### ***Fee Proposal***

Based on JKEC's standard billing rate schedule, the cost to provide the above-listed Scope of Services will be a lump sum fee of \$9,000. Billing will be based on the following schedule:

- \$1,500 will be invoiced upon completion of the initial kickoff meeting.
- \$6,000 of the fixed fee will be invoiced upon completion and transmittal of the draft report.
- \$1,500 of the fixed fee will be invoiced upon presentation of the final report to the City Council.

Invoices will be transmitted electronically via email and are due upon receipt. Interest will accrue on unpaid balances after 30 days at a rate of 1% per month.

### ***Meetings***

The fee proposal includes two (2) site meetings. The purpose of the first visit will be to collect data and review the study process. This meeting will be held at the City offices. The purpose of the second meeting will be to present the final results to the City Council. If additional in-person meetings are requested, billing will be based on JKEC's standard billing rate schedule, which is shown in Attachment 1.

### ***Deliverables***

1. One electronic copy of the draft report (summary form of report with proposed rate ordinance).
2. One hard copy of final report, including all work papers.
3. One electronic copy of the final report, including all work papers, in Adobe Acrobat (.pdf) format.
4. One electronic copy of the proposed rate ordinance in Microsoft Word format.

5. Presentation of results to the City Council.

### ***City Responsibilities***

The City will be responsible for:

1. Providing requested data on a timely basis, including timely response to any questions or clarifications regarding the data provided.
2. Reviewing draft study results on a timely basis.
3. Scheduling appropriate meeting(s) with the City Council and others.

### ***Additional Services***

Any services not included in the above-listed Scope of Services will only be provided upon written agreement by the City and JKEC. Such services will be billed at JKEC's standard billing rate schedule (see Attachment 1).

JKEC appreciates the opportunity to provide this letter agreement to the City. If it is acceptable, please print this letter, sign and return it (electronically is acceptable) to JKEC.

Sincerely yours,



John A. Krajewski, P.E.  
JK Energy Consulting, LLC

Attachment

ACCEPTED BY:

City of David City, Nebraska

Signature: 

Printed Name: Jessica J Miller

Title: Mayor

Date: 1-28-26



## Standard Billing Rate Schedule Effective January 1, 2026

The following rate schedule will be used to determine monthly billings unless a fixed fee or other billing arrangement is specified. The rate schedule will also be used to determine charges for additional services requested but not included in the agreed-upon Scope of Services.

<u>Billable Item</u>	<u>Billing Rate</u>
John A. Krajewski, P.E.	\$160.00 per hour
Senior Consultant	\$130.00 per hour
Administrative Staff	\$70.00 per hour
Mileage	IRS standard rate for business use (will be updated when the IRS releases the 2026 rate)
Lodging, meals, other travel	Actual cost, without markup
Copies, faxes, postage, phone, other office overheads	Included in hourly billing rate
Outside professional services	Actual cost

Council Member Bruce Meysenburg introduced Ordinance No. 1526, updating the pay ordinance to include a 1.5% Cost of Living Adjustment. Mayor Jessica Miller read Ordinance No. 1526 by title.

Council member Bruce Meysenburg made a motion to suspend the statutory rule requiring an Ordinance to be read on three separate days. Council Member Rick Holland seconded the motion. The motion carried. Jeremy Abel: Yea, Jim Angell: Yea, Rick Holland: Yea, Keith Marvin: Yea, Bruce Meysenburg: Yea, Kevin Woita: Yea. Yea: 6, Nay: 0.

Council member Bruce Meysenburg made a motion to pass and approve Ordinance No. 1526, updating the pay ordinance to include a 1.5% Cost of Living Adjustment. Council Member Jim Angell seconded the motion. The motion carried. Jeremy Abel: Yea, Jim Angell: Yea, Rick Holland: Yea, Keith Marvin: Yea, Bruce Meysenburg: Yea, Kevin Woita: Yea. Yea: 6, Nay: 0

**ORDINANCE NO. 1526**

AN ORDINANCE ADOPTING A NEW PAY SCALE / SALARY FOR FULL-TIME AND PERMANENT PART-TIME EMPLOYEES; REPEALING ALL ORDINANCES OR PORTIONS OF ORDINANCES IN CONFLICT THEREWITH; PROVIDING FOR PUBLICATION OF THIS ORDINANCE IN PAMPHLET FORM; AND PROVIDING FOR A TIME WHEN THIS ORDINANCE SHALL TAKE EFFECT.

BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF DAVID CITY, NEBRASKA:

SECTION 1. The Mayor and City Council of David City, Nebraska, do hereby establish and fix the pay scales and salaries attached for the attached positions for the appointed officers and employees of the City of David City, Nebraska.

SECTION 2. Any Cost-of-Living Adjustments (COLA) shall be given as approved by the City Council. (Cost of Living Adjustment for 2026 of 1.5%)

SECTION 3. Any and all ordinances or sections thereof, passed and approved prior to the passage, approval and publication or posting of this ordinance, and in conflict with its provisions, are hereby repealed.

SECTION 4. This ordinance shall be published in pamphlet form and shall be in full force and effect on January 24, 2026, following its passage, approval, and publication as provided by law and city ordinance.

PASSED AND APPROVED this 28th day of January, 2026.

\_\_\_\_\_  
Jessica Miller, Mayor

\_\_\_\_\_  
Lori Matchett, City Clerk

City Council Proceedings

January 28, 2026

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	1.5% Cost of Living Adjustment									
<u>Department</u>										
<u>Position</u>	1	2	3	4	5	6	7	8	9	10
<u>City Hall</u>										
Clerical I	\$15.23	\$15.68	\$16.04	\$16.34	\$16.77	\$17.14	\$17.53	\$17.92	\$18.32	\$18.74
Acct Clerk I	\$21.21	\$21.85	\$22.50	\$23.18	\$23.87	\$24.59	\$25.33	\$26.09	\$26.88	\$27.68
Acct Clerk II	\$26.43	\$27.22	\$28.04	\$28.88	\$29.75	\$30.64	\$31.56	\$32.51	\$33.48	\$34.49
(incl .50/hr if CMC; Ord. 1	\$26.93	\$27.72	\$28.54	\$29.38	\$30.25	\$31.14	\$32.06	\$33.01	\$33.98	\$34.99
<u>Power Plant</u>	1	2	3	4	5	6	7	8	9	10
Power Plant Op I	\$24.97	\$25.72	\$26.49	\$27.28	\$28.11	\$28.95	\$29.81	\$30.70	\$31.63	\$32.58
Power Plant Supervisor	\$37.43	\$38.56	\$39.72	\$40.90	\$42.13	\$43.39	\$44.70	\$46.04	\$47.42	\$48.84
<u>Electric</u>	1	2	3	4	5	6	7	8	9	10
Lineman Intern/School Tra	\$21.32									
Apprentice Lineman	\$26.31	\$27.10	\$27.91	\$28.74	\$29.61	\$30.50	\$31.41	\$32.36	\$33.32	\$34.33
Lineman 2nd Class	\$27.59	\$28.42	\$29.27	\$30.15	\$31.05	\$31.98	\$32.94	\$33.93	\$34.95	\$35.99
Lineman 2nd Class w/pass	\$28.34	\$29.17	\$30.02	\$30.90	\$31.80	\$32.73	\$33.69	\$34.68	\$35.70	\$36.74
Lineman 2nd Class w/pass	\$29.09	\$29.92	\$30.77	\$31.65	\$32.55	\$33.48	\$34.44	\$35.43	\$36.45	\$37.49
Lineman 2nd Class w/pass	\$29.84	\$30.67	\$31.52	\$32.40	\$33.30	\$34.23	\$35.19	\$36.18	\$37.20	\$38.24
Lineman 2nd Class w/Journ	\$33.34	\$34.17	\$35.02	\$35.90	\$36.80	\$37.73	\$38.69	\$39.68	\$40.70	\$41.74
Lineman 1st Class	\$32.61	\$33.59	\$34.60	\$35.64	\$36.70	\$37.81	\$38.94	\$40.11	\$41.31	\$42.55
Lineman 1st Class w/pass	\$33.36	\$34.34	\$35.35	\$36.39	\$37.45	\$38.56	\$39.69	\$40.86	\$42.06	\$43.30
Lineman 1st Class w/pass	\$34.11	\$35.09	\$36.10	\$37.14	\$38.20	\$39.31	\$40.44	\$41.61	\$42.81	\$44.05
Lineman 1st Class w/pass	\$34.86	\$35.84	\$36.85	\$37.89	\$38.95	\$40.06	\$41.19	\$42.36	\$43.56	\$44.80
Lineman 1st Class w/Journ	\$38.36	\$39.34	\$40.35	\$41.39	\$42.45	\$43.56	\$44.69	\$45.86	\$47.06	\$48.30
Line Foreman	\$38.47	\$39.63	\$40.81	\$42.03	\$43.30	\$44.60	\$45.93	\$47.31	\$48.73	\$50.42
Line Foreman w/pass mod	\$39.22	\$40.38	\$41.56	\$42.78	\$44.05	\$45.35	\$46.68	\$48.06	\$49.48	\$51.17
Line Foreman w/pass mod	\$39.97	\$41.13	\$42.31	\$43.53	\$44.80	\$46.10	\$47.43	\$48.81	\$50.23	\$51.92
Line Foreman w/pass mod	\$40.72	\$41.88	\$43.06	\$44.28	\$45.55	\$46.85	\$48.18	\$49.56	\$50.98	\$52.67
Line Foreman w/Journeym	\$44.22	\$45.38	\$46.56	\$47.78	\$49.05	\$50.35	\$51.68	\$53.06	\$54.48	\$56.17
Electric Supervisor	\$42.96	\$44.25	\$45.58	\$46.95	\$48.35	\$49.81	\$51.30	\$52.84	\$54.42	\$56.06
Electric Supervisor w/pass	\$43.71	\$45.00	\$46.33	\$47.70	\$49.10	\$50.56	\$52.05	\$53.59	\$55.17	\$56.81
Electric Supervisor w/pass	\$44.46	\$45.75	\$47.08	\$48.45	\$49.85	\$51.31	\$52.80	\$54.34	\$55.92	\$57.56
Electric Supervisor w/pass	\$45.21	\$46.50	\$47.83	\$49.20	\$50.60	\$52.06	\$53.55	\$55.09	\$56.67	\$58.31
Electric Supervisor w/Jourr	\$48.71	\$50.00	\$51.33	\$52.70	\$54.10	\$55.56	\$57.05	\$58.59	\$60.17	\$61.81
<i>*Week on call \$3.00 per hour increase to pay when the department is at four or less employees for rotation.</i>										
<u>Water/Wastewater</u>	1	2	3	4	5	6	7	8	9	10
Water/Wastewater Operate	\$23.45	\$24.15	\$24.88	\$25.62	\$26.39	\$27.18	\$27.99	\$28.84	\$29.70	\$30.59
Water/Wastewater Operate	\$26.64	\$27.45	\$28.27	\$29.11	\$29.98	\$30.89	\$31.81	\$32.76	\$33.75	\$34.76
Water/Wastewater Data Ma	\$29.48	\$30.36	\$31.27	\$32.21	\$33.17	\$34.18	\$35.20	\$36.26	\$37.34	\$38.46
Water Plant Manager w/Gr	\$33.17	\$34.16	\$35.19	\$36.25	\$37.33	\$38.46	\$39.61	\$40.79	\$42.02	\$43.28
Water Field Supervisor	\$26.49	\$27.28	\$28.11	\$28.95	\$29.82	\$30.71	\$31.63	\$32.58	\$33.56	\$34.56
Water Supervisor	\$33.59	\$34.59	\$35.64	\$36.70	\$37.80	\$38.94	\$40.10	\$41.31	\$42.55	\$43.82
Wastewater Supervisor	\$32.17	\$33.13	\$34.12	\$35.15	\$36.21	\$37.29	\$38.41	\$39.55	\$40.74	\$41.97



Assistant Police Chief Devin Betzen introduced himself, presented to the City Council upgrades to current equipment, and ensured that the police department is covered for maintenance and repairs. Stellar Arms would hold the contract to repair and maintain the new firearms. The contract would cover all repairs to equipment, equipment maintenance, and the provision of additional equipment while our equipment is being repaired or maintained. The contract would cover the life of the equipment or until we no longer own the equipment. The equipment that we would be purchasing is not available for public purchase; it is contracted only to police departments. All repairs and maintenance are through Stellar Arms. Assistance Police Chief Betzen was also seeking approval to trade in current equipment to upgrade to newer equipment.

Council member Keith Marvin made a motion to approve contracting with Stellar Arms for police equipment and trading in current equipment. Council Member Bruce Meysenburg seconded the motion. The motion carried. Jeremy Abel: Yea, Jim Angell: Yea, Rick Holland: Yea, Keith Marvin: Yea, Bruce Meysenburg: Yea, Kevin Woita: Yea. Yea: 6, Nay: 0

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Ethan Joy of JEO Consulting introduced himself. Ethan explained to the Council the need to purchase wetland mitigation credits for the Wastewater Treatment Facility Project, stating that Ducks Unlimited has available credits based on recommendations from the Corps of Engineers of the Department of Defense, with the Department of the Army.

Council member Bruce Meysenburg made a motion to purchase wetland mitigation credits for the Wastewater Treatment Facility project, not to exceed \$75,000.00. Council Member Keith Marvin seconded the motion. The motion carried. Jeremy Abel: Yea, Jim Angell: Yea, Rick Holland: Yea, Keith Marvin: Yea, Bruce Meysenburg: Yea, Kevin Woita: Yea. Yea: 6, Nay: 0.

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DEPARTMENT OF THE ARMY  
CORPS OF ENGINEERS, OMAHA DISTRICT  
NEBRASKA REGULATORY OFFICE  
8901 SOUTH 154TH STREET, SUITE 2  
OMAHA, NE 68138-3635

January 22, 2026

SUBJECT: Nationwide Permit Verification, NWO-2025-00468-WEH, David City WWTF Improvements

Ms. Jessica Miller  
Mayor, City of David City  
490 E Street  
David City, NE 68632

Dear Ms. Miller:

This letter is in response to your December 29, 2025 Pre-construction Notification (PCN), requesting Department of the Army (DA) Nationwide Permit (NWP) verification for the above-referenced project. The project site is located at Latitude 41.2423577°, Longitude -97.1424214°; Section 25, Township 9 North, Range 10 East; In Butler County, Nebraska.

For the above-referenced project you propose to conduct improvements to the David City wastewater treatment facility. To facilitate the improvements, you propose to replace the existing lift station and headworks building, install two 12-inch diameter and 16-inch diameter force main utility lines, construct an 18-inch corrugated metal pipe culvert (CMP) with a riprap pad at the outlet, and perform site grading for construction of the new facility and a raised berm.

Up to 0.343 acre of wetland A will be graded to fit the new lift station and headworks building. Grading will include the footprint of the new buildings, a granular access drive and a raised berm for facility flood protection. Additionally, up to 7 cubic yards of NDOT Type "B" riprap will be placed within wetland A to construct a riprap outlet splashpad for the new 18-inch CMP. In addition to the proposed improvements, a temporary trench within Wetland A has been constructed. Following construction, the temporarily impacted area within wetland A will be returned to pre-construction contours.

Total permanent impacts from the project will be 0.343-acre of PEMA/C riverine channel wetland. Total temporary impacts will be 0.005-acre of PEMA/C riverine channel wetland.

The U.S. Army Corps of Engineers (Corps) regulates the discharge of dredged and fill material into waters of the United States under Section 404 of the Clean Water Act

(CWA) (33 U.S.C. 1344). The Corps' regulations are published in the *Code of Federal Regulations* at 33 CFR parts 320 through 332. NWP's are defined in the *Federal Register* published on December 27, 2021 (86 FR 73522). Based on a review of the information you furnished and available to us, we have determined the above referenced work requires DA authorization under Section 404 of the CWA.

Based upon the information you provided, we hereby verify that the work described above, which would be performed in accordance with the plans you provided (sheets 02-C-10 and 02-C-22), is authorized by NWP 58, Utility Line Activities for Water and Other Substances. Please note that deviations from the original plans and specifications of your project could require additional authorization from this office. This NWP and associated Regional and General Conditions are enclosed and can be accessed on our website at: <https://www.nwo.usace.army.mil/Missions/Regulatory-Program/Nebraska/>. Failure to comply with the General and Regional Conditions of this NWP, or the project-specific special conditions of this authorization, may result in the suspension or revocation of your authorization, and you may be subject to appropriate enforcement action. You shall comply with all terms and conditions associated with this NWP, including the following special conditions.

**Special Conditions:**

1. You shall comply with all terms and conditions of the enclosed October 12, 2021 Section 401 of the Clean Water Act Water Quality Certification.
2. To compensate for the loss of 0.343-acre of PEMA/C riverine channel wetland, you shall purchase 0.686 credits of PEM play depressional wetlands at Ducks Unlimited Turkey Creek Wetland Mitigation Bank. Evidence of this purchase shall be provided to this office prior to initiation of construction activities in waters of the U.S. authorized by this permit/verification.

Unless this NWP is suspended, modified, or revoked, it is valid until **March 14, 2026**. It is incumbent upon you to remain informed of changes to this NWP. We will issue a public notice when the NWP's 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 unless discretionary authority has been exercised on a case-by-case basis to modify, suspend, or revoke the authorization as per 33 CFR 330.6(b). Any project specific conditions listed in this letter continue to remain in effect after the NWP verification expires unless the district engineer removes those conditions.

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To assist in your compliance with NWP General Condition 30, enclosed is a "Compliance Certification" form, which shall be signed and returned within 30 days of completion of the project, including any required mitigation. Your signature on this form certifies that you have completed the work in accordance with the terms and conditions of the NWP. Activities completed under the authorization of an NWP which was in effect at the time the activity was completed continue to be authorized by that NWP.

Authorizations under this NWP does not relieve permittees from obtaining permits or other authorizations from any required federal, state, or local agency.

If you have any questions, please contact Katrina Stanek via email at [katrina.g.stanek@usace.army.mil](mailto:katrina.g.stanek@usace.army.mil), by mail at the address above, or by phone at (402) 896-0896.

Sincerely,



Katrina Stanek  
Project Manager

4 Enclosures

1. NWP Fact Sheet with General Conditions
2. Compliance Certification
3. Nebraska Regional Conditions
4. Section 401 Water Quality Certification

cc:

NDWEE (Russell)  
JEO (Joe)

**COMPLIANCE CERTIFICATION**

**Corps File Number:** NWO-2025-00468-WEH  
**Permit Type:** Nationwide Permit 58  
**Name of Permittee:** Jessica Miller  
**County:** Butler  
**Date of Issuance:** January 22, 2026  
**Corps Project Manager:** Katrina Stanek

Within 30 days of completion of the activity authorized by this permit and any mitigation required by the permit, sign this certification and return it to the following:

ne404reg@usace.army.mil

**OR**

U.S. Army Corps of Engineers, Omaha District  
Nebraska Regulatory Office  
8901 South 154th Street, Suite 2  
Omaha, NE 68138-3635

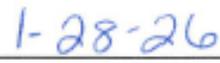
Please provide a copy of the signed compliance certification to the Nebraska Department of Environment and Energy. The copy may be delivered to the Department's Lincoln office located at 245 Fallbrook Boulevard, Lincoln, Nebraska 68521, sent electronically by email to [ndee.401certification@nebraska.gov](mailto:ndee.401certification@nebraska.gov), or mailed or faxed to:

Nebraska Department of Environment and Energy  
Attn: CWA Section 401 Coordinator  
245 Fallbrook Boulevard  
Lincoln, NE 68509-8922

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 the conditions of 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 the said permit, and required mitigation was completed in accordance with the permit conditions.

  
\_\_\_\_\_  
Signature of Permittee

  
\_\_\_\_\_  
Date

NEBRASKA

Good Life. Great Resources.

DEPT. OF ENVIRONMENT AND ENERGY



Pete Ricketts, Governor

Mr. John Moeschel  
Nebraska Regulatory Office  
U.S. Army Corps of Engineers  
8901 South 154<sup>th</sup> Street, Suite 1  
Omaha, NE 68138-3621

October 12, 2021

**RE: Final Water Quality Certification of the 2020 Nationwide Permits**

The Nebraska Department of Environment and Energy (NDEE) has completed its review of the United States Department of the Army, Corps of Engineers (Corps) Nationwide Permit (NWP) proposed Rule as published in the Federal Register (85 FR 179). As the state water pollution control agency with jurisdictional authority over Nebraska's surface waters, NDEE is tasked, pursuant to § 401 of the Clean Water Act (CWA) of 1987, and Title 120, Nebraska Administrative Code (NAC), Rule and Regulations Pertaining to Certification by The State of Nebraska, with review and Water Quality Certification (WQC) of NWPs. In accordance with 33CFR § 330.4(c)(1), NDEE is issuing WQC with conditions for the 2020 NWPs. This letter certifies that activities which are carried out under a NWP, and in accordance with this conditional certification, will be in compliance with Title 117, NAC, – Nebraska Surface Water Quality Standards (Title 117). NDEE is the agency of the State of Nebraska charged with exercising exclusive supervision of the implementation and enforcement of the Nebraska Environmental Protection Act (NEPA), Neb. Rev. Stat. §81-1501 et seq. Pursuant to the Nebraska Environmental Quality Council's authority to adopt and promulgate rules and regulations as expressed in Neb. Rev. Stat. § 81-1505(1)(2), the Council adopted rules and regulations codified as Neb. Admin. Code, Title 117, Nebraska Surface Water Quality Standards (Title 117).

**GENERAL CONDITIONS UNDER WHICH THE 2020 NWPs ARE GRANTED CERTIFICATION**

The State of Nebraska hereby grants Water Quality Certification for 2020 NWPs 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 44, 45, 46, 48, 49, 50, 51, 52, 53, 54, 55, 56, and 59 as published in the Federal Register, subject to the following conditions:

- A. Springs.** No filling, whether permanent or temporary, of any spring (natural artesian discharge of ground water to the surface where the point of origin is an aquifer) associated with a water body's point of origin, or those located in a stream bed, shall be allowed under a nationwide permit prior to the issuance of individual WQC. Impacting springs may impact water quality of surface waters and violate the Antidegradation Clause in Title 117 Ch. 3., Neb. Rev. Stat. 81-1505.

- B. Waivers.** No individual action shall be allowed under a nationwide permit prior to the issuance of an individual WQC when such an action may result in a discharge into a special aquatic site or surface waters where the Corps District Engineer waives the impact threshold related to linear feet or width. This condition is applicable to the following NWP: 13, 36, and 54 and ensures compliance with the Antidegradation Clause in Title 117 Ch. 3., Neb. Rev. Stat. 81-1505.
- C. State Resource Waters – Class A.** No individual action shall be allowed under a nationwide permit prior to the issuance of an individual WQC when such an action may result in a discharge into water bodies designated as State Resource Waters – Class A pursuant to Title 117 - Nebraska Surface Water Quality Standards (Ch. 5 -6) and Neb. Rev. Stat. 81-1505. Class A designated waters constitute outstanding State or National resources where the existing water quality shall be maintained and protected. Additional information and maps regarding State Resource Waters can be acquired by contacting the NDEE.
- D. First and Second Order Streams.** No individual action shall be allowed under a nationwide permit prior to the issuance of an individual WQC when such an action may result in a loss of 300 linear feet or more of stream bed determined to be a first or second order stream. Stream order will be identified utilizing the Strahler method (1957) and the mean stream widths identified by Downing et. al (2012). Impacting first and second order headwater streams may impact water quality of surface waters and violate the Antidegradation Clause in Title 117 Ch. 3., Neb. Rev. Stat. 81-1505.
- E. State Endangered and Threatened Species.** No individual action which may jeopardize the continued existence of a state listed Endangered or Threatened Species (pursuant to the Nebraska Nongame and Endangered Species Conservation Act, or NESCA, Neb. Rev. Stat. 37-801 to 37-811 and Title 117 Ch. 4 003.01J, Neb. Rev. Stat. 81-1505 (1)(2)), or results in the destruction or modification of habitat of such species which is determined by the commission to be critical, or results in a take of such species shall be allowed under a nationwide permit prior to the issuance of an individual WQC. Federal and state agencies conducting activities under a NWP which includes a current programmatic agreement with Nebraska Game and Parks Commission, and state agencies with to which the Federal Highway Administration has assigned its responsibilities pursuant to 23 U.S.C. 327, are exempted from this condition. A list of Nebraska T&E Species may be found at:
- [http://outdoornebraska.gov/wp-content/uploads/formidable/5/Nebraska-State-Species-List\\_May2020.pdf](http://outdoornebraska.gov/wp-content/uploads/formidable/5/Nebraska-State-Species-List_May2020.pdf)
- The Nebraska Conservation and Environmental Review Tool (CERT) is an interactive tool for conservation planning and NGPC environmental review for proposed projects of potential impacts to threatened, endangered, and special concern species.
- <https://cert.outdoornebraska.gov/>
- F. Rainwater Basin Wetlands.** The Rainwater Basin Wetlands of Nebraska are a unique set of wetland complexes that provide filtration buffers for water quality and assist with aquifer recharge (40 CFR part 230.41 and Neb. Rev. Stat. 81-1505 (1)(2)). With the exception of state/federal-private partnerships or state and federal agencies undertaking restoration projects under NWP 27, no individual action which may result in a discharge into traditional Rainwater Basin wetlands located in the 21-county Rainwater Basin Complex of south central Nebraska shall be allowed under a nationwide permit prior to the issuance of an individual WQC. The

following link provides a map showing the general location of the Rainwater Basin Complex geographic area:

<http://rwbjv.org/rainwater-basin-joint-venture/about-the-rainwater-basin/>

- G. Eastern Saline Wetlands.** These wetlands support an ecosystem of endangered and threatened species found only in salt marshes (Neb. Rev. Stat. 81-1505 (1)(2) and Neb. Rev. Stat. 37-801 to 37-811). With the exception of state/federal-private partnerships or local, state, and federal agencies undertaking restoration projects under NWP 27, no individual action which may result in a discharge into Category I Eastern Saline wetlands (as defined by Gilbert, M.C. and R.C. Stutheit, eds. Resource Categorization of Nebraska Eastern Saline Wetlands Interagency Study Project. U.S. Army Corps of Engineers, Omaha District and Nebraska Game and Parks Commission, 1994) shall be allowed under a nationwide permit prior to the issuance of an individual WQC.
- H. Compensatory mitigation for wetlands.** Compensatory mitigation shall be required for all unavoidable and permanent impacts to wetlands that exceed 1/10<sup>th</sup> of an acre (0.10 acres). Compensatory mitigation shall be accomplished by restoring or establishing functionally equivalent, in-kind habitat at a minimum ratio of 1.5 restored or established acres for every 1.0 acre of affected area. Wetland compensatory mitigation, through the use of credits at a certified wetland mitigation bank, at a minimum ratio of 1.0:1.0, or through the use of in-lieu fee program credits, as approved by the Corps District Engineer, will also fulfill any requirements issued by the Nebraska Department of Environment and Energy. Compensatory mitigation located in upland habitat shall not substitute for replacement of wetland habitat. Compensatory mitigation is recommended within the wetland complex boundary (based on *The Guide to Nebraska's Wetlands and Their Conservation Needs* (LaGrange 2005)), where the impact occurred. Compensatory mitigation utilizing out-of-kind habitat, and requirements established by the Corps as a condition of a NWP, may exceed the minimum ratios described above. U.S. Army Corps of Engineers 33 CRF part 230.
- I. Compensatory mitigation for rivers and streams.** When activities resulting in unavoidable and permanent impacts to rivers and streams require compensatory mitigation as set forth in NWP General Condition 23(d), mitigation should be accomplished through in-kind rehabilitation, enhancement, or preservation, if practicable. Compensatory mitigation shall be based on beneficial use(s) and assessed stream function of the impacted stream segment as described in Nebraska Title 117 (Chapter 5). Mitigation shall be implemented in a manner such that self-sustaining ecological function is established, as demonstrated by meeting Corps District Engineer-approved performance standards. U.S. Army Corps of Engineers 33 CFR part 230
- J. Reporting of project completion.** Each permittee who receives a NWP verification letter from the U.S. Army Corps of Engineers shall provide a copy of the signed compliance certification to NDEE (concurrently to submission to the Corps) documenting completion of the authorized activity and any required compensatory mitigation, as set forth in Nationwide Permit General Condition 30. The copy may be sent electronically by email to [ndee.401certification@nebraska.gov](mailto:ndee.401certification@nebraska.gov), or mailed to:

Nebraska Department of Environment and Energy  
Attn: CWA Section 401 Coordinator  
PO Box 98922  
Lincoln, NE 68509-8922

**CONDITIONS FOR CERTIFICATION FOR CERTAIN ACTIVITIES AUTHORIZED BY  
SPECIFIC 2020 NWP's**

NWP's 12, 43, 57 and 58 are granted WQC subject to General Conditions and under the following conditions and/or denial of certain activities:

- A. NWP 12, 57 and 58, All Utility Line Activities.** Nebraska Department of Environment and Energy shall be notified within 24 hours in the event of release of muds and drilling fluids into surface waters, that occur via sub-surface fissures or fractures during horizontal directional drilling activities. The following telephone numbers are available for notification; during regular business hours please call 1-877-253-2603 (toll free) or (402) 471-2186; after hours, or on weekends and holidays, please call Nebraska State Patrol Dispatch (402) 471-4545. Antidegradation Clause in Title 117 Ch. 3., Neb. Rev. Stat. 81-1505
- B. NWP 43 Storm Water Management Facilities.** Compensatory mitigation for permanent and unavoidable impacts shall be located outside the storm water management facility or structure. Neb. Rev. Stat. 81-1505 Title 119 Ch. 10 002.01.

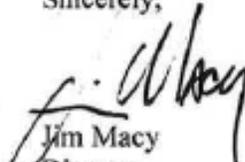
**CERTIFICATION FOR NWP's 26 and 47**

NWP 26 has been reserved. The NDEE is not issuing a WQC for NWP 26 at this time until the Corps issues an actual permit for review.

NWP 47 has been reserved. The NDEE is not issuing a WQC for NWP 47 at this time until the Corps issues an actual permit for review.

If you have any questions please contact Laura Johnson, CWA 404 Section Supervisor at 402-471-8389 or by email at [laura.r.johnson@nebraska.gov](mailto:laura.r.johnson@nebraska.gov).

Sincerely,



Jim Macy  
Director

cc: Matt Wray, U.S. Army Corps of Engineers  
Brooke Stansberry, U.S. Fish & Wildlife Service  
Melissa Marinovich, Nebraska Game & Parks Commission  
Justin Kensinger, U.S. Environmental Protection Agency  
Gabriel Dupree, U.S. Environmental Protection Agency



**US Army Corps  
of Engineers**®  
Omaha District

**2021 Nationwide Permits  
Regional Conditions  
Omaha District  
State of Nebraska**

The following Nationwide Permit (NWP) regional conditions will be used in the State of Nebraska. The issuance of the NWPs was announced in the January 13, 2021, issue of the Federal Register (86 FR 2744) and December 27, 2021, issue of the Federal Register (86 FR 73522). Regional conditions are placed on NWPs to ensure projects result in no more than minimal adverse impacts to the aquatic environment and to address local resources concerns.

**A. PRECONSTRUCTION NOTIFICATION REQUIREMENTS APPLICABLE TO ALL NWPs**

For all NWPs, permittees must notify the Corps in accordance with General Condition 32 Preconstruction Notification (PCN) requirements for regulated activities located within or comprised of the following:

**1. Wetlands Classified as Peatlands:**

PCN required for any regulated activity in wetlands classified as peatlands. For purposes of this condition, peatlands are permanently or seasonally waterlogged areas with a surface accumulation of peat (organic matter) 30 centimeters (12 inches) or more thick. Under cool, anaerobic, and acidic conditions, the rate of organic matter accumulation exceeds organic decay. Any peat-covered areas, including fens, bogs, and muskegs, are all peatlands.

**2. Waters Adjacent to Natural Springs:**

PCN required for any regulated activity located within 100 feet of the water source in natural spring areas. For the purpose of this condition, a spring water source is defined as any location where there is flow emanating from a distinct point at any time during the growing season.

Springs do not include seeps and other groundwater discharge areas where there is no distinct point source of waters. Springs do not include drain tile outlets.

**3. Rainwater Basin Wetlands:**

PCN required for any regulated activity in any traditional Rainwater Basin wetlands found in the 21 county Rainwater Basin area of south-central Nebraska. The following link provides a map showing the general location of the Rainwater Basin geographic area:

[http://www.fws.gov/refuge/rainwater\\_basin\\_wmd/](http://www.fws.gov/refuge/rainwater_basin_wmd/)

**4. Stream Channelization and Relocation Projects:**

PCN required for any regulated activity that involves permanent stream channelization or relocation of an existing intermittent or perennial stream channel. For the purpose of this condition, stream channelization is defined as “the manipulation of a stream’s course, condition, capacity or location that causes more than minimal interruption of normal stream processes.” Examples of stream channelization include, but are not limited to straightening, relocating, shifting, tubing (i.e., placement of a culvert in an open channel for construction purposes).

**5. Tribal Reservations and Tribal Trust Lands:**

PCN and coordination with the Tribal Authority required for all NWPs requested by applicants other than the Tribal Authority for use within the reservation boundaries and tribal trust lands of Indian Country.

**2021 Nationwide Permits  
Regional Conditions  
Omaha District  
State of Nebraska**

**6. Specific Waterways:**

PCN required for any regulated activity located on the Missouri River, North Platte River, South Platte River, Platte River, Loup River, Elkhorn River, Republican River and all jurisdictional Class A State Resource Waters and all regulated adjacent wetlands within their floodplain/valley. A list of Class A State Resource Waters can be found at:

[http://deq.ne.gov/RuleAndR.nsf/pages/PDF/%24FILE/Title117\\_2019.pdf](http://deq.ne.gov/RuleAndR.nsf/pages/PDF/%24FILE/Title117_2019.pdf)

Eastern Saline Wetlands, Salt Creek and its tributaries, including Rock Creek and its tributaries, in Saunders or Lancaster Counties:

- a. PCN required for any regulated activity within any Eastern Saline wetlands, Salt Creek, and its tributaries, including Rock Creek and its tributaries, found in Saunders or Lancaster Counties. The map located at the end of this document shows the Salt Creek Tiger Beetle recovery areas and projects in these areas will receive additional analysis.
- b. All mitigation involving Eastern Saline wetlands shall be conducted pursuant to the Eastern Saline Mitigation Guidelines. The Guidelines can be found at:  
<http://www.nwo.usace.army.mil/Missions/Regulatory-Program/Nebraska/Mitigation/>

**B. PRECONSTRUCTION NOTIFICATION REQUIREMENTS APPLICABLE TO SPECIFIC NWP**

**1. NWP 23 – Approved Categorical Exclusions**

In addition to PCN requirements identified in Regulatory Guidance Letter (RGL) 05-07 or the applicable Corps RGL, PCN is required prior to initiating any regulated activity under NWP 23 that would permanently impact an area greater than 1/2 an acre of waters of the United States. In addition to information required for PCN, the applicant must identify the approved categorical exclusion that applies in RGL 05-07 or the applicable Corps RGL and provide documentation that the project fits the categorical exclusion.

**C. BEST MANAGEMENT PRACTICES**

**Required Best Management Practices**

In addition to the Regional Conditions above, additional required best management practices apply to NWPs within the Omaha District. These are available at:

<https://www.nwo.usace.army.mil/Missions/Regulatory-Program/Nation-Wide-Permit-Information/>



## Nationwide Permit 58: Utility Line Activities for Water and Other Substances

Activities required for the construction, maintenance, repair, and removal of utility lines for water and other substances, excluding oil, natural gas, products derived from oil or natural gas, and electricity. Oil or natural gas pipeline activities or electric utility line and telecommunications activities may be authorized by NWP 12 or 57, respectively. This NWP also authorizes associated utility line facilities in waters of the United States, provided the activity does not result in the loss of greater than 1/2-acre of waters of the United States for each single and complete project.

*Utility lines:* This NWP authorizes discharges of dredged or fill material into waters of the United States and structures or work in navigable waters for crossings of those waters associated with the construction, maintenance, or repair of utility lines for water and other substances, including outfall and intake structures. There must be no change in pre-construction contours of waters of the United States. A "utility line" is defined as any pipe or pipeline for the transportation of any gaseous, liquid, liquescent, or slurry substance, for any purpose that is not oil, natural gas, or petrochemicals. Examples of activities authorized by this NWP include utility lines that convey water, sewage, stormwater, wastewater, brine, irrigation water, and industrial products that are not petrochemicals. The term "utility line" does not include activities that drain a water of the United States, such as drainage tile or french drains, but it does apply to pipes conveying drainage from another area.

Material resulting from trench excavation may be temporarily sidecast into waters of the United States for no more than three months, provided the material is not placed in such a manner that it is dispersed by currents or other forces. The district engineer may extend the period of temporary side casting for no more than a total of 180 days, where appropriate. In wetlands, the top 6 to 12 inches of the trench should normally be backfilled with topsoil from the trench. The trench cannot be constructed or backfilled in such a manner as to drain waters of the United States (e.g., backfilling with extensive gravel layers, creating a french drain effect). Any exposed slopes and stream banks must be stabilized immediately upon completion of the utility line crossing of each waterbody.

*Utility line substations:* This NWP authorizes the construction, maintenance, or expansion of substation facilities associated with a utility line in non-tidal waters of the

*Contents adapted from the Federal Register ([82 FR 2744](#)) published on Jan. 13, 2021.*



United States, provided the activity, in combination with all other activities included in one single and complete project, does not result in the loss of greater than 1/2-acre of waters of the United States. This NWP does not authorize discharges of dredged or fill material into non-tidal wetlands adjacent to tidal waters of the United States to construct, maintain, or expand substation facilities.

*Foundations for above-ground utility lines:* This NWP authorizes the construction or maintenance of foundations for above-ground utility lines in all waters of the United States, provided the foundations are the minimum size necessary.

*Access roads:* This NWP authorizes the construction of access roads for the construction and maintenance of utility lines, including utility line substations, in non-tidal waters of the United States, provided the activity, in combination with all other activities included in one single and complete project, does not cause the loss of greater than 1/2-acre of non-tidal waters of the United States. This NWP does not authorize discharges of dredged or fill material into non-tidal wetlands adjacent to tidal waters for access roads. Access roads must be the minimum width necessary (see Note 2, below). Access roads must be constructed so that the length of the road minimizes any adverse effects on waters of the United States and must be as near as possible to pre-construction contours and elevations (e.g., at grade corduroy roads or geotextile/gravel roads). Access roads constructed above pre-construction contours and elevations in waters of the United States must be properly bridged or culverted to maintain surface flows.

This NWP may authorize utility lines in or affecting navigable waters of the United States even if there is no associated discharge of dredged or fill material (see [33 CFR part 322](#)). Overhead utility lines constructed over section 10 waters and utility lines that are routed in or under section 10 waters without a discharge of dredged or fill material require a section 10 permit.

This NWP authorizes, to the extent that Department of the Army authorization is required, temporary structures, fills, and work necessary for the remediation of inadvertent returns of drilling fluids to waters of the United States through sub-soil fissures or fractures that might occur during horizontal directional drilling activities conducted for the purpose of installing or replacing utility lines. These remediation activities must be done as soon as practicable, to restore the affected waterbody. District engineers may add special conditions to this NWP to require a remediation plan



for addressing inadvertent returns of drilling fluids to waters of the United States during horizontal directional drilling activities conducted for the purpose of installing or replacing utility lines.

This NWP also authorizes temporary structures, fills, and work, including the use of temporary mats, necessary to conduct the utility line activity. Appropriate measures must be taken to maintain normal downstream flows and minimize flooding to the maximum extent practicable, when temporary structures, work, and discharges of dredged or fill material, including cofferdams, are necessary for construction activities, access fills, or dewatering of construction sites. Temporary fills must consist of materials, and be placed in a manner, that will not be eroded by expected high flows. After construction, temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations. The areas affected by temporary fills must be revegetated, as appropriate.

*Notification:* The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity if: (1) A section 10 permit is required; or (2) the discharge will result in the loss of greater than 1/10-acre of waters of the United States. (See general condition 32.)

(Authorities: Sections 10 and 404)

*Note 1:* Where the utility line is constructed, installed, or maintained in navigable waters of the United States (*i.e.*, section 10 waters) within the coastal United States, the Great Lakes, and United States territories, a copy of the NWP verification will be sent by the Corps to the National Oceanic and Atmospheric Administration (NOAA), National Ocean Service (NOS), for charting the utility line to protect navigation.

*Note 2:* For utility line activities crossing a single waterbody more than one time at separate and distant locations, or multiple waterbodies at separate and distant locations, each crossing is considered a single and complete project for purposes of NWP authorization. Utility line activities must comply with [33 CFR 330.6\(d\)](#).

*Note 3:* Access roads used for both construction and maintenance may be authorized, provided they meet the terms and conditions of this NWP. Access roads used solely for construction of the utility line must be removed upon completion of the work, in accordance with the requirements for temporary fills.



*Note 4:* Pipes or pipelines used to transport gaseous, liquid, liquescent, or slurry substances over navigable waters of the United States are considered to be bridges, not utility lines, and may require a permit from the U.S. Coast Guard pursuant to the General Bridge Act of 1946. However, any discharges of dredged or fill material into waters of the United States associated with such pipelines will require a section 404 permit (see NWP 15).

*Note 5:* This NWP authorizes utility line maintenance and repair activities that do not qualify for the Clean Water Act section 404(f) exemption for maintenance of currently serviceable fills or fill structures.

*Note 6:* For activities that require pre-construction notification, the PCN must include any other NWP(s), regional general permit(s), or individual permit(s) used or intended to be used to authorize any part of the proposed project or any related activity, including other separate and distant crossings that require Department of the Army authorization but do not require pre-construction notification (see paragraph (b)(4) of general condition 32). The district engineer will evaluate the PCN in accordance with Section D, "District Engineer's Decision." The district engineer may require mitigation to ensure that the authorized activity results in no more than minimal individual and cumulative adverse environmental effects (see general condition 23).



## C. General Conditions

*Note:* To qualify for NWP authorization, the prospective permittee must comply with the following general conditions, as applicable, in addition to any regional or case-specific conditions imposed by the division engineer or district engineer. Prospective permittees should contact the appropriate Corps district office to determine if regional conditions have been imposed on an NWP. Prospective permittees should also contact the appropriate Corps district office to determine the status of Clean Water Act Section 401 water quality certification and/or Coastal Zone Management Act consistency for an NWP. Every person who may wish to obtain permit authorization under one or more NWPs, or who is currently relying on an existing or prior permit authorization under one or more NWPs, has been and is on notice that all of the provisions of [33 CFR 330.1](#) through 330.6 apply to every NWP authorization. Note especially [33 CFR 330.5](#) relating to the modification, suspension, or revocation of any NWP authorization.

### **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 or her 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. All permanent and temporary crossings of waterbodies shall be suitably culverted, bridged, or otherwise designed and constructed to maintain low flows to



sustain the movement of those aquatic species. If a bottomless culvert cannot be used, then the crossing should be designed and constructed to minimize adverse effects to aquatic life movements.

### **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, or is a shellfish seeding or habitat restoration activity authorized by NWP 27.

### **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, storm water management activities, and temporary and permanent road crossings, 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, or during low tides.

### **13. Removal of Temporary Structures and Fills.**

Temporary structures must be removed, to the maximum extent practicable, after their use has been discontinued. 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 and compliance with applicable NWP general conditions, as well as any activity-specific conditions added by the district engineer to an NWP authorization.

#### **15. 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.

#### **16. Wild and Scenic Rivers.**

(a) No NWP 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.

(b) If a proposed NWP activity will 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, the permittee must submit a pre-construction notification (see general condition 32). The district engineer will coordinate the PCN with the Federal agency with direct management responsibility for that river. Permittees shall not begin the NWP activity until notified by the district engineer that the Federal agency with direct management responsibility for that river has determined in writing that the proposed NWP activity will not adversely affect the Wild and Scenic River designation or study status.

(c) Information on Wild and Scenic Rivers may be obtained from the appropriate Federal land management agency responsible for the designated Wild and Scenic River or study river (e.g., National Park Service, U.S. Forest Service, Bureau of Land Management, U.S. Fish and Wildlife Service). Information on these rivers is also available at: <http://www.rivers.gov/>.

#### **17. 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.



## **18. Endangered Species.**

(a) No activity is authorized under any NWP which is likely to directly or indirectly 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 directly or indirectly destroy or adversely modify designated critical habitat or critical habitat proposed for such designation. No activity is authorized under any NWP which "may affect" a listed species or critical habitat, unless ESA section 7 consultation addressing the consequences of the proposed activity on listed species or critical habitat has been completed. See [50 CFR 402.02](#) for the definition of "effects of the action" for the purposes of ESA section 7 consultation, as well as [50 CFR 402.17](#), which provides further explanation under ESA section 7 regarding "activities that are reasonably certain to occur" and "consequences caused by the proposed action."

(b) Federal agencies should follow their own procedures for complying with the requirements of the ESA (see [33 CFR 330.4\(f\)\(1\)](#)). If pre-construction notification is required for the proposed activity, the Federal permittee must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements. The district engineer will verify that the appropriate documentation has been submitted. If the appropriate documentation has not been submitted, additional ESA section 7 consultation may be necessary for the activity and the respective federal agency would be responsible for fulfilling its obligation under section 7 of the ESA.

(c) Non-federal permittees must submit a pre-construction notification to the district engineer if any listed species (or species proposed for listing) or designated critical habitat (or critical habitat proposed such designation) might be affected or is in the vicinity of the activity, or if the activity is located in designated critical habitat or critical habitat proposed for such designation, 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 species proposed for listing) or designated critical habitat (or critical habitat proposed for such designation), the pre-construction notification must include the name(s) of the endangered or threatened species (or species proposed for listing) that might be affected by the proposed activity or that utilize the designated critical habitat (or critical habitat proposed for such designation) that might be affected by the proposed activity. 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. For activities where the non-Federal applicant has identified listed species (or species proposed for listing) or designated critical habitat (or critical habitat proposed for such designation) that might be affected or is in the vicinity of the activity, and has so notified the Corps, the applicant shall not begin work until the Corps has provided notification that the proposed activity will have "no effect" on listed species (or species proposed for listing or designated critical habitat (or critical habitat proposed for such designation), or until ESA section 7 consultation or conference has been completed. If the non-Federal applicant has not heard back from the Corps within 45 days, the applicant must still wait for notification from the Corps.

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

(e) Authorization of an activity by an 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 FWS or the NMFS, the Endangered Species Act prohibits any person subject to the jurisdiction of the United States to take a listed species, where "take" means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. The word "harm" in the definition of "take" means an act which actually kills or injures wildlife. Such an act may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding or sheltering.

(f) If the non-federal permittee has a valid ESA section 10(a)(1)(B) incidental take permit with an approved Habitat Conservation Plan for a project or a group of projects that includes the proposed NWP activity, the non-federal applicant should provide a copy of that ESA section 10(a)(1)(B) permit with the PCN required by paragraph (c) of this general condition. The district engineer will coordinate with the agency that issued the ESA section 10(a)(1)(B) permit to determine whether the proposed NWP activity and the associated incidental take were considered in the internal ESA section 7 consultation conducted for the ESA section 10(a)(1)(B) permit. If that coordination results in concurrence from the agency that the proposed NWP activity and the associated incidental take were considered in the internal ESA section 7 consultation for



the ESA section 10(a)(1)(B) permit, the district engineer does not need to conduct a separate ESA section 7 consultation for the proposed NWP activity. The district engineer will notify the non-federal applicant within 45 days of receipt of a complete pre-construction notification whether the ESA section 10(a)(1)(B) permit covers the proposed NWP activity or whether additional ESA section 7 consultation is required.

(g) Information on the location of threatened and endangered species and their critical habitat can be obtained directly from the offices of the FWS and NMFS or their world wide web pages at <http://www.fws.gov/> or <http://www.fws.gov/ipac> and <http://www.nmfs.noaa.gov/pr/species/esa/> respectively.

#### **19. Migratory Birds and Bald and Golden Eagles.**

The permittee is responsible for ensuring that an action authorized by an NWP complies with the Migratory Bird Treaty Act and the Bald and Golden Eagle Protection Act. The permittee is responsible for contacting the appropriate local office of the U.S. Fish and Wildlife Service to determine what measures, if any, are necessary or appropriate to reduce adverse effects to migratory birds or eagles, including whether "incidental take" permits are necessary and available under the Migratory Bird Treaty Act or Bald and Golden Eagle Protection Act for a particular activity.

#### **20. Historic Properties.**

(a) No activity is authorized under any NWP which may have the potential to cause effects to properties listed, or eligible for listing, in the National Register of Historic Places 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 (see [33 CFR 330.4\(g\)\(1\)](#)). If pre-construction notification is required for the proposed NWP activity, the Federal permittee must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements. The district engineer will verify that the appropriate documentation has been submitted. If the appropriate documentation is not submitted, then additional consultation under section 106 may be necessary. The respective federal agency is responsible for fulfilling its obligation to comply with section 106.



(c) Non-federal permittees must submit a pre-construction notification to the district engineer if the NWP activity might have the potential to cause effects to any historic properties listed on, 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 might have the potential to be affected by the proposed NWP activity 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 properties can be sought from the State Historic Preservation Officer, Tribal Historic Preservation Officer, or designated tribal representative, as appropriate, and the National Register of Historic Places (see [33 CFR 330.4\(g\)](#)). When reviewing pre-construction notifications, district engineers will comply with the current procedures for addressing the requirements of section 106 of the National Historic Preservation Act. The district engineer shall make a reasonable and good faith effort to carry out appropriate identification efforts commensurate with potential impacts, which may include background research, consultation, oral history interviews, sample field investigation, and/or field survey. Based on the information submitted in the PCN and these identification efforts, the district engineer shall determine whether the proposed NWP activity has the potential to cause effects on the historic properties. Section 106 consultation is not required when the district engineer determines that the activity does not have the potential to cause effects on historic properties (see [36 CFR 800.3\(a\)](#)). Section 106 consultation is required when the district engineer determines that the activity has the potential to cause effects on historic properties. The district engineer will conduct consultation with consulting parties identified under [36 CFR 800.2\(c\)](#) when he or she makes any of the following effect determinations for the purposes of section 106 of the NHPA: No historic properties affected, no adverse effect, or adverse effect.

(d) Where the non-Federal applicant has identified historic properties on which the proposed NWP activity might have the potential to cause effects and has 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 to historic properties or that NHPA section 106 consultation has been completed. For non-federal permittees, 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. If NHPA section 106 consultation is required, the district engineer will notify



the non-Federal applicant that he or she cannot begin the activity until section 106 consultation is completed. If the non-Federal applicant has not heard back from the Corps within 45 days, the applicant must still wait for notification from the Corps.

(e) Prospective permittees should be aware that section 110k of the NHPA ([54 U.S.C. 306113](#)) 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, 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.

#### **21. Discovery of Previously Unknown Remains and Artifacts.**

Permittees that discover any previously unknown historic, cultural or archeological remains and artifacts while accomplishing the activity authorized by an NWP, they must immediately notify the district engineer of what they have found, and to the maximum extent practicable, avoid construction activities that may affect the remains and artifacts until the required coordination has been completed. The district engineer will initiate the Federal, Tribal, and state coordination required to determine if the items or remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.

#### **22. Designated Critical Resource Waters.**

Critical resource waters include, NOAA-managed marine sanctuaries and marine monuments, and National Estuarine Research Reserves. The district engineer may designate, after notice and opportunity for public comment, additional waters officially designated by a state as having particular environmental or ecological significance, such as outstanding national resource waters or state natural heritage sites. The district



engineer may also designate additional critical resource waters after notice and opportunity for public 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, 50, 51, 52, 57 and 58 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, 38, and 54, notification is required in accordance with general condition 32, for any activity proposed by permittees in the designated critical resource waters including wetlands adjacent to those waters. The district engineer may authorize activities under these NWPs only after she or he determines that the impacts to the critical resource waters will be no more than minimal.

### **23. Mitigation.**

The district engineer will consider the following factors when determining appropriate and practicable mitigation necessary to ensure that the individual and cumulative adverse environmental effects are no more than 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 for resource losses) will be required to the extent necessary to ensure that the individual and cumulative adverse environmental effects are no more than 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 either some other form of mitigation would be more environmentally appropriate or the adverse environmental effects of the proposed activity are no more than minimal, and provides an activity-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 only minimal adverse environmental effects.



(d) Compensatory mitigation at a minimum one-for-one ratio will be required for all losses of stream bed that exceed 3/100-acre and require pre-construction notification, unless the district engineer determines in writing that either some other form of mitigation would be more environmentally appropriate or the adverse environmental effects of the proposed activity are no more than minimal, and provides an activity-specific waiver of this requirement. This compensatory mitigation requirement may be satisfied through the restoration or enhancement of riparian areas next to streams in accordance with paragraph (e) of this general condition. For losses of stream bed of 3/100-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 only minimal adverse environmental effects. Compensatory mitigation for losses of streams should be provided, if practicable, through stream rehabilitation, enhancement, or preservation, since streams are difficult-to-replace resources (see [33 CFR 332.3\(e\)\(3\)](#)).

(e) Compensatory mitigation plans for NWP activities in or near streams or other open waters will normally include a requirement for the restoration or enhancement, maintenance, and legal protection (e.g., conservation easements) of riparian areas next to open waters. In some cases, the restoration or maintenance/protection of riparian areas may be the only compensatory mitigation required. If restoring riparian areas involves planting vegetation, only native species should be planted. 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. If it is not possible to restore or maintain/protect a riparian area on both sides of a stream, or if the waterbody is a lake or coastal waters, then restoring or maintaining/protecting a riparian area along a single bank or shoreline may be sufficient. 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 minimization or compensatory mitigation, the district engineer may waive or reduce the requirement to provide wetland compensatory mitigation for wetland losses.



(f) Compensatory mitigation projects provided to offset losses of aquatic resources must comply with the applicable provisions of [33 CFR part 332](#).

(1) The prospective permittee is responsible for proposing an appropriate compensatory mitigation option if compensatory mitigation is necessary to ensure that the activity results in no more than minimal adverse environmental effects. For the NWP, the preferred mechanism for providing compensatory mitigation is mitigation bank credits or in-lieu fee program credits (see [33 CFR 332.3\(b\)\(2\)](#) and (3)). However, if an appropriate number and type of mitigation bank or in-lieu credits are not available at the time the PCN is submitted to the district engineer, the district engineer may approve the use of permittee-responsible mitigation.

(2) The amount of compensatory mitigation required by the district engineer must be sufficient to ensure that the authorized activity results in no more than minimal individual and cumulative adverse environmental effects (see [33 CFR 330.1\(e\)\(3\)](#)). (See also [33 CFR 332.3\(f\)](#).)

(3) Since the likelihood of success is greater and the impacts to potentially valuable uplands are reduced, aquatic resource restoration should be the first compensatory mitigation option considered for permittee-responsible mitigation.

(4) If permittee-responsible mitigation is the proposed option, the prospective permittee is responsible for submitting a mitigation plan. A conceptual or detailed mitigation plan may be used by the district engineer to make the decision on the NWP verification request, but a final mitigation plan that addresses the applicable requirements of [33 CFR 332.4\(c\)\(2\)](#) through (14) must be approved by the district engineer before the permittee begins work in waters of the United States, unless the district engineer determines that prior approval of the final mitigation plan is not practicable or not necessary to ensure timely completion of the required compensatory mitigation (see [33 CFR 332.3\(k\)\(3\)](#)). If permittee-responsible mitigation is the proposed option, and the proposed compensatory mitigation site is located on land in which another federal agency holds an easement, the district engineer will coordinate with that federal agency to determine if proposed compensatory mitigation project is compatible with the terms of the easement.

(5) If mitigation bank or in-lieu fee program credits are the proposed option, the mitigation plan needs to address only the baseline conditions at the impact site and the number of credits to be provided (see [33 CFR 332.4\(c\)\(1\)\(ii\)](#)).



(6) Compensatory mitigation requirements (e.g., resource type and amount to be provided as compensatory mitigation, site protection, ecological performance standards, monitoring requirements) may be addressed through conditions added to the NWP authorization, instead of components of a compensatory mitigation plan (see [33 CFR 332.4\(c\)\(1\)\(ii\)](#)).

(g) Compensatory mitigation will not be used to increase the acreage losses allowed by the acreage limits of the NWPs. For example, if an NWP has an acreage limit of 1/2-acre, it cannot be used to authorize any NWP activity 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 an NWP activity already meeting the established acreage limits also satisfies the no more than minimal impact requirement for the NWPs.

(h) Permittees may propose the use of mitigation banks, in-lieu fee programs, or permittee-responsible mitigation. When developing a compensatory mitigation proposal, the permittee must consider appropriate and practicable options consistent with the framework at [33 CFR 332.3\(b\)](#). For activities resulting in the loss of marine or estuarine resources, permittee-responsible mitigation may be environmentally preferable if there are no mitigation banks or in-lieu fee programs in the area that have marine or estuarine credits available for sale or transfer to the permittee. For permittee-responsible mitigation, the special conditions of the NWP verification must clearly indicate the party or parties responsible for the implementation and performance of the compensatory mitigation project, and, if required, its long-term management.

(i) Where certain functions and services of waters of the United States are permanently adversely affected by a regulated activity, such as discharges of dredged or fill material into waters of the United States that will convert 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 environmental effects of the activity to the no more than minimal level.

#### **24. Safety of Impoundment Structures.**

To ensure that all impoundment structures are safely designed, the district engineer may require non-Federal applicants to demonstrate that the structures comply with established state or federal, dam safety criteria or have been designed by qualified



persons. The district engineer may also require documentation that the design has been independently reviewed by similarly qualified persons, and appropriate modifications made to ensure safety.

### **25. Water Quality.**

(a) Where the certifying authority (state, authorized tribe, or EPA, as appropriate) has not previously certified compliance of an NWP with CWA section 401, a CWA section 401 water quality certification for the proposed discharge must be obtained or waived (see [33 CFR 330.4\(c\)](#)). If the permittee cannot comply with all of the conditions of a water quality certification previously issued by certifying authority for the issuance of the NWP, then the permittee must obtain a water quality certification or waiver for the proposed discharge in order for the activity to be authorized by an NWP.

(b) If the NWP activity requires pre-construction notification and the certifying authority has not previously certified compliance of an NWP with CWA section 401, the proposed discharge is not authorized by an NWP until water quality certification is obtained or waived. If the certifying authority issues a water quality certification for the proposed discharge, the permittee must submit a copy of the certification to the district engineer. The discharge is not authorized by an NWP until the district engineer has notified the permittee that the water quality certification requirement has been satisfied by the issuance of a water quality certification or a waiver.

(c) The district engineer or certifying authority may require additional water quality management measures to ensure that the authorized activity does not result in more than minimal degradation of water quality.

### **26. Coastal Zone Management.**

In coastal states where an NWP has not previously received a state coastal zone management consistency concurrence, an individual state coastal zone management consistency concurrence must be obtained, or a presumption of concurrence must occur (see [33 CFR 330.4\(d\)](#)). If the permittee cannot comply with all of the conditions of a coastal zone management consistency concurrence previously issued by the state, then the permittee must obtain an individual coastal zone management consistency concurrence or presumption of concurrence in order for the activity to be authorized by an NWP. The district engineer or a state may require additional measures to ensure that the authorized activity is consistent with state coastal zone management requirements.



## **27. 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 CWA section 401 Water Quality Certification, or by the state in its Coastal Zone Management Act consistency determination.

## **28. Use of Multiple Nationwide Permits.**

The use of more than one NWP for a single and complete project is authorized, subject to the following restrictions:

(a) If only one of the NWPs used to authorize the single and complete project has a specified acreage limit, the acreage loss of waters of the United States cannot 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.

(b) If one or more of the NWPs used to authorize the single and complete project has specified acreage limits, the acreage loss of waters of the United States authorized by those NWPs cannot exceed their respective specified acreage limits. For example, if a commercial development is constructed under NWP 39, and the single and complete project includes the filling of an upland ditch authorized by NWP 46, the maximum acreage loss of waters of the United States for the commercial development under NWP 39 cannot exceed 1/2-acre, and the total acreage loss of waters of United States due to the NWP 39 and 46 activities cannot exceed 1 acre.

## **29. 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.”

(Transferee)

(Date)

### **30. Compliance Certification.**

Each permittee who receives an NWP verification letter from the Corps must provide a signed certification documenting completion of the authorized activity and implementation of any required compensatory mitigation. The success of any required permittee-responsible mitigation, including the achievement of ecological performance standards, will be addressed separately by the district engineer. The Corps will provide the permittee the certification document with the NWP verification letter. The certification document will include:

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

(b) A statement that the implementation of any required compensatory mitigation was completed in accordance with the permit conditions. If credits from a mitigation bank or in-lieu fee program are used to satisfy the compensatory mitigation requirements, the certification must include the documentation required by [33 CFR 332.3\(l\)\(3\)](#) to confirm that the permittee secured the appropriate number and resource type of credits; and

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

The completed certification document must be submitted to the district engineer within 30 days of completion of the authorized activity or the implementation of any required compensatory mitigation, whichever occurs later.

### **31. Activities Affecting Structures or Works Built by the United States.**

If an NWP activity also requires review by, or permission from, the Corps pursuant to [33 U.S.C. 408](#) because it will alter or temporarily or permanently occupy or use a U.S. Army Corps of Engineers (USACE) federally authorized Civil Works project (a “USACE project”), the prospective permittee must submit a pre-construction notification. See



paragraph (b)(10) of general condition 32. An activity that requires section 408 permission and/or review is not authorized by an NWP until the appropriate Corps office issues the section 408 permission or completes its review to alter, occupy, or use the USACE project, and the district engineer issues a written NWP verification.

### **32. Pre-Construction Notification.**

(a) *Timing.* Where required by the terms of the NWP, the prospective permittee must notify the district engineer by submitting a pre-construction notification (PCN) as early as possible. The district engineer must determine if the PCN is complete within 30 calendar days of the date of receipt and, if the PCN is determined to be incomplete, notify the prospective permittee within that 30 day period to request the additional information necessary to make the PCN complete. The request must specify the information needed to make the PCN complete. As a general rule, district engineers will request additional information necessary to make the PCN complete only once. However, if the prospective permittee does not provide all of the requested information, then the district engineer will notify the prospective permittee that the PCN is still incomplete and the PCN review process will not commence until all of the requested information has been received by the district engineer. The prospective permittee shall not begin the activity until either:

(1) He or she is notified in writing by the district engineer that the activity may proceed under the NWP with any special conditions imposed by the district or division engineer; or

(2) 45 calendar days have passed from the district engineer's receipt of the complete PCN and the prospective permittee has not received written notice from the district or division engineer. However, if the permittee was required to notify the Corps pursuant to general condition 18 that listed species or critical habitat might be affected or are in the vicinity of the activity, or to notify the Corps pursuant to general condition 20 that the activity might have the potential to cause effects to historic properties, the permittee cannot begin the activity until receiving written notification from the Corps that there is "no effect" on listed species or "no potential to cause effects" on historic properties, or that any consultation required under Section 7 of the Endangered Species Act (see [33 CFR 330.4\(f\)](#)) and/or section 106 of the National Historic Preservation Act (see [33 CFR 330.4\(g\)](#)) has been completed. If the proposed activity requires a written waiver to exceed specified limits of an NWP, the permittee may not begin the activity until the



district engineer issues the waiver. If the district or division engineer notifies the permittee in writing that an individual permit is required within 45 calendar days of receipt of a complete PCN, the permittee cannot begin the activity until an individual permit has been obtained. Subsequently, the permittee's right to proceed under the NWP may be modified, suspended, or revoked only in accordance with the procedure set forth in [33 CFR 330.5\(d\)\(2\)](#).

(b) *Contents of Pre-Construction Notification:* The PCN must be in writing and include the following information:

(1) Name, address and telephone numbers of the prospective permittee;

(2) Location of the proposed activity;

(3) Identify the specific NWP or NWP(s) the prospective permittee wants to use to authorize the proposed activity;

(4) (i) A description of the proposed activity; the activity's purpose; direct and indirect adverse environmental effects the activity would cause, including the anticipated amount of loss of wetlands, other special aquatic sites, and other waters expected to result from the NWP activity, in acres, linear feet, or other appropriate unit of measure; a description of any proposed mitigation measures intended to reduce the adverse environmental effects caused by the proposed activity; and any other NWP(s), regional general permit(s), or individual permit(s) used or intended to be used to authorize any part of the proposed project or any related activity, including other separate and distant crossings for linear projects that require Department of the Army authorization but do not require pre-construction notification. The description of the proposed activity and any proposed mitigation measures should be sufficiently detailed to allow the district engineer to determine that the adverse environmental effects of the activity will be no more than minimal and to determine the need for compensatory mitigation or other mitigation measures.

(ii) For linear projects where one or more single and complete crossings require pre-construction notification, the PCN must include the quantity of anticipated losses of wetlands, other special aquatic sites, and other waters for each single and complete crossing of those wetlands, other special aquatic sites, and other waters (including those single and complete crossings authorized by an NWP but do not require PCNs). This information will be used by the district engineer to evaluate the cumulative adverse



environmental effects of the proposed linear project, and does not change those non-PCN NWP activities into NWP PCNs.

(iii) Sketches should be provided when necessary to show that the activity complies with the terms of the NWP. (Sketches usually clarify the activity and when provided results in a quicker decision. Sketches should contain sufficient detail to provide an illustrative description of the proposed activity (e.g., a conceptual plan), but do not need to be detailed engineering plans);

(5) The PCN must include a delineation of wetlands, other special aquatic sites, and other waters, such as lakes and ponds, and perennial and intermittent streams, on the project site. Wetland delineations must be prepared in accordance with the current method required by the Corps. The permittee may ask the Corps to delineate the special aquatic sites and other waters on the project site, but there may be a delay if the Corps does the delineation, especially if the project site is large or contains many wetlands, other special aquatic sites, and other waters. Furthermore, the 45-day period will not start until the delineation has been submitted to or completed by the Corps, as appropriate;

(6) If the proposed activity will result in the loss of greater than 1/10-acre of wetlands or 3/100-acre of stream bed and a PCN is required, the prospective permittee must submit a statement describing how the mitigation requirement will be satisfied, or explaining why the adverse environmental effects are no more than minimal and why compensatory mitigation should not be required. As an alternative, the prospective permittee may submit a conceptual or detailed mitigation plan.

(7) For non-federal permittees, if any listed species (or species proposed for listing) or designated critical habitat (or critical habitat proposed for such designation) might be affected or is in the vicinity of the activity, or if the activity is located in designated critical habitat (or critical habitat proposed for such designation), the PCN must include the name(s) of those endangered or threatened species (or species proposed for listing) that might be affected by the proposed activity or utilize the designated critical habitat (or critical habitat proposed for such designation) that might be affected by the proposed activity. For NWP activities that require pre-construction notification, Federal permittees must provide documentation demonstrating compliance with the Endangered Species Act;



(8) For non-federal permittees, if the NWP activity might have the potential to cause effects to a historic property listed on, determined to be eligible for listing on, or potentially eligible for listing on, the National Register of Historic Places, the PCN must state which historic property might have the potential to be affected by the proposed activity or include a vicinity map indicating the location of the historic property. For NWP activities that require pre-construction notification, Federal permittees must provide documentation demonstrating compliance with section 106 of the National Historic Preservation Act;

(9) For an activity that will 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, the PCN must identify the Wild and Scenic River or the "study river" (see general condition 16); and

(10) For an NWP activity that requires permission from, or review by, the Corps pursuant to [33 U.S.C. 408](#) because it will alter or temporarily or permanently occupy or use a U.S. Army Corps of Engineers federally authorized civil works project, the pre-construction notification must include a statement confirming that the project proponent has submitted a written request for section 408 permission from, or review by, the Corps office having jurisdiction over that USACE project.

(c) *Form of Pre-Construction Notification:* The nationwide permit pre-construction notification form (Form ENG 6082) should be used for NWP PCNs. A letter containing the required information may also be used. Applicants may provide electronic files of PCNs and supporting materials if the district engineer has established tools and procedures for electronic submittals.

(d) *Agency Coordination:* (1) The district engineer will consider any comments from Federal and state agencies concerning the proposed activity's compliance with the terms and conditions of the NWPs and the need for mitigation to reduce the activity's adverse environmental effects so that they are no more than minimal.

(2) Agency coordination is required for: (i) All NWP activities that require pre-construction notification and result in the loss of greater than 1/2-acre of waters of the United States; (ii) NWP 13 activities in excess of 500 linear feet, fills greater than one cubic yard per running foot, or involve discharges of dredged or fill material into special aquatic sites; and (iii) NWP 54 activities in excess of 500 linear feet, or that extend into



the waterbody more than 30 feet from the mean low water line in tidal waters or the ordinary high water mark in the Great Lakes.

(3) When agency coordination is required, the district engineer will immediately provide (e.g., via email, facsimile transmission, overnight mail, or other expeditious manner) a copy of the complete PCN to the appropriate Federal or state offices (FWS, state natural resource or water quality agency, EPA, and, if appropriate, the NMFS). With the exception of NWP 37, these agencies will have 10 calendar days from the date the material is transmitted to notify the district engineer via telephone, facsimile transmission, or email that they intend to provide substantive, site-specific comments. The comments must explain why the agency believes the adverse environmental effects will be more than minimal. If so contacted by an agency, the district engineer will wait an additional 15 calendar days before making a decision on the pre-construction notification. The district engineer will fully consider agency comments received within the specified time frame concerning the proposed activity's compliance with the terms and conditions of the NWPs, including the need for mitigation to ensure that the net adverse environmental effects of the proposed activity are no more than minimal. The district engineer will provide no response to the resource agency, except as provided below. The district engineer will indicate in the administrative record associated with each pre-construction notification that the resource agencies' concerns were considered. For NWP 37, the emergency watershed protection and rehabilitation activity may proceed immediately in cases where there is an unacceptable hazard to life or a significant loss of property or economic hardship will occur. The district engineer will consider any comments received to decide whether the NWP 37 authorization should be modified, suspended, or revoked in accordance with the procedures at [33 CFR 330.5](#).

(4) In cases of where the prospective permittee is not a Federal agency, the district engineer will provide a response to NMFS within 30 calendar days of receipt of any Essential Fish Habitat conservation recommendations, as required by section 305(b)(4)(B) of the Magnuson-Stevens Fishery Conservation and Management Act.

(5) Applicants are encouraged to provide the Corps with either electronic files or multiple copies of pre-construction notifications to expedite agency coordination.



### E. 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 (see general condition 31).



## F. Definitions

### **Best management practices (BMPs):**

Policies, practices, procedures, or structures implemented to mitigate the adverse environmental effects on surface water quality resulting from development. BMPs are categorized as structural or non-structural.

### **Compensatory mitigation:**

The restoration (re-establishment or rehabilitation), establishment (creation), enhancement, and/or in certain circumstances preservation of aquatic resources for the purposes of offsetting unavoidable adverse impacts which remain after all appropriate and practicable avoidance and minimization has been achieved.

### **Currently serviceable:**

Useable as is or with some maintenance, but not so degraded as to essentially require reconstruction.

### **Direct effects:**

Effects that are caused by the activity and occur at the same time and place.

### **Discharge:**

The term "discharge" means any discharge of dredged or fill material into waters of the United States.

### **Ecological reference:**

A model used to plan and design an aquatic habitat and riparian area restoration, enhancement, or establishment activity under NWP 27. An ecological reference may be based on the structure, functions, and dynamics of an aquatic habitat type or a riparian area type that currently exists in the region where the proposed NWP 27 activity is located. Alternatively, an ecological reference may be based on a conceptual model for the aquatic habitat type or riparian area type to be restored, enhanced, or established as a result of the proposed NWP 27 activity. An ecological reference takes into account the range of variation of the aquatic habitat type or riparian area type in the region.



**Enhancement:**

The manipulation of the physical, chemical, or biological characteristics of an aquatic resource to heighten, intensify, or improve a specific aquatic resource function(s). Enhancement results in the gain of selected aquatic resource function(s), but may also lead to a decline in other aquatic resource function(s). Enhancement does not result in a gain in aquatic resource area.

**Establishment (creation):**

The manipulation of the physical, chemical, or biological characteristics present to develop an aquatic resource that did not previously exist at an upland site. Establishment results in a gain in aquatic resource area.

**High Tide Line:**

The line of intersection of the land with the water's surface at the maximum height reached by a rising tide. The high tide line may be determined, in the absence of actual data, by a line of oil or scum along shore objects, a more or less continuous deposit of fine shell or debris on the foreshore or berm, other physical markings or characteristics, vegetation lines, tidal gages, or other suitable means that delineate the general height reached by a rising tide. The line encompasses spring high tides and other high tides that occur with periodic frequency but does not include storm surges in which there is a departure from the normal or predicted reach of the tide due to the piling up of water against a coast by strong winds such as those accompanying a hurricane or other intense storm.

**Historic Property:**

Any prehistoric or historic district, site (including archaeological site), building, structure, or other object included in, or eligible for inclusion in, the National Register of Historic Places maintained by the Secretary of the Interior. This term includes artifacts, records, and remains that are related to and located within such properties. The term includes properties of traditional religious and cultural importance to an Indian tribe or Native Hawaiian organization and that meet the National Register criteria ([36 CFR part 60](#)).



**Independent utility:**

A test to determine what constitutes a single and complete non-linear project in the Corps Regulatory Program. A project is considered to have independent utility if it would be constructed absent the construction of other projects in the project area. Portions of a multi-phase project that depend upon other phases of the project do not have independent utility. Phases of a project that would be constructed even if the other phases were not built can be considered as separate single and complete projects with independent utility.

**Indirect effects:**

Effects that are caused by the activity and are later in time or farther removed in distance, but are still reasonably foreseeable.

**Loss of waters of the United States:**

Waters of the United States that are permanently adversely affected by filling, flooding, excavation, or drainage because of the regulated activity. The loss of stream bed includes the acres of stream bed that are permanently adversely affected by filling or excavation because of the regulated activity. Permanent adverse effects include permanent discharges of dredged or fill material that change an aquatic area to dry land, increase the bottom elevation of a waterbody, or change the use of a waterbody. The acreage of loss of waters of the United States is a threshold measurement of the impact to jurisdictional waters or wetlands for determining whether a project may qualify for an NWP; it is not a net threshold that is calculated after considering compensatory mitigation that may be used to offset losses of aquatic functions and services. Waters of the United States temporarily filled, flooded, excavated, or drained, but restored to pre-construction contours and elevations after construction, are not included in the measurement of loss of waters of the United States. Impacts resulting from activities that do not require Department of the Army authorization, such as activities eligible for exemptions under section 404(f) of the Clean Water Act, are not considered when calculating the loss of waters of the United States.

**Navigable waters:**

Waters subject to section 10 of the Rivers and Harbors Act of 1899. These waters are defined at [33 CFR part 329](#).



**Non-tidal wetland:**

A non-tidal wetland is a wetland that is not subject to the ebb and flow of tidal waters. Non-tidal wetlands contiguous to tidal waters are located landward of the high tide line (*i.e.*, spring high tide line).

**Open water:**

For purposes of the NWP, an open water is any area that in a year with normal patterns of precipitation has water flowing or standing above ground to the extent that an ordinary high water mark can be determined. Aquatic vegetation within the area of flowing or standing water is either non-emergent, sparse, or absent. Vegetated shallows are considered to be open waters. Examples of "open waters" include rivers, streams, lakes, and ponds.

**Ordinary High Water Mark:**

The term ordinary high water mark means that line on the shore established by the fluctuations of water and indicated by physical characteristics such as a clear, natural line impressed on the bank, shelving, changes in the character of soil, destruction of terrestrial vegetation, the presence of litter and debris, or other appropriate means that consider the characteristics of the surrounding areas.

**Perennial stream:**

A perennial stream has surface water flowing continuously year-round during a typical year.

**Practicable:**

Available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes.

**Pre-construction notification:**

A request submitted by the project proponent to the Corps for confirmation that a particular activity is authorized by nationwide permit. The request may be a permit application, letter, or similar document that includes information about the proposed work and its anticipated environmental effects. Pre-construction notification may be required by the terms and conditions of a nationwide permit, or by regional conditions. A pre-construction notification may be voluntarily submitted in cases where pre-



construction notification is not required and the project proponent wants confirmation that the activity is authorized by nationwide permit.

**Preservation:**

The removal of a threat to, or preventing the decline of, aquatic resources by an action in or near those aquatic resources. This term includes activities commonly associated with the protection and maintenance of aquatic resources through the implementation of appropriate legal and physical mechanisms. Preservation does not result in a gain of aquatic resource area or functions.

**Re-establishment:**

The manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural/historic functions to a former aquatic resource. Re-establishment results in rebuilding a former aquatic resource and results in a gain in aquatic resource area and functions.

**Rehabilitation:**

The manipulation of the physical, chemical, or biological characteristics of a site with the goal of repairing natural/historic functions to a degraded aquatic resource. Rehabilitation results in a gain in aquatic resource function, but does not result in a gain in aquatic resource area.

**Restoration:**

The manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural/historic functions to a former or degraded aquatic resource. For the purpose of tracking net gains in aquatic resource area, restoration is divided into two categories: Re-establishment and rehabilitation.

**Riffle and pool complex:**

Riffle and pool complexes are special aquatic sites under the 404(b)(1) Guidelines. Riffle and pool complexes sometimes characterize steep gradient sections of streams. Such stream sections are recognizable by their hydraulic characteristics. The rapid movement of water over a coarse substrate in riffles results in a rough flow, a turbulent surface, and high dissolved oxygen levels in the water. Pools are deeper areas associated with riffles. A slower stream velocity, a streaming flow, a smooth surface, and a finer substrate characterize pools.



### **Riparian areas:**

Riparian areas are lands next to streams, lakes, and estuarine-marine shorelines. Riparian areas are transitional between terrestrial and aquatic ecosystems, through which surface and subsurface hydrology connects riverine, lacustrine, estuarine, and marine waters with their adjacent wetlands, non-wetland waters, or uplands. Riparian areas provide a variety of ecological functions and services and help improve or maintain local water quality. (See general condition 23.)

### **Shellfish seeding:**

The placement of shellfish seed and/or suitable substrate to increase shellfish production. Shellfish seed consists of immature individual shellfish or individual shellfish attached to shells or shell fragments (*i.e.*, spat on shell). Suitable substrate may consist of shellfish shells, shell fragments, or other appropriate materials placed into waters for shellfish habitat.

### **Single and complete linear project:**

A linear project is a project constructed for the purpose of getting people, goods, or services from a point of origin to a terminal point, which often involves multiple crossings of one or more waterbodies at separate and distant locations. The term "single and complete project" is defined as that portion of the total linear project proposed or accomplished by one owner/developer or partnership or other association of owners/developers that includes all crossings of a single water of the United States (*i.e.*, a single waterbody) at a specific location. For linear projects crossing a single or multiple waterbodies several times at separate and distant locations, each crossing is considered a single and complete project for purposes of NWP authorization. However, individual channels in a braided stream or river, or individual arms of a large, irregularly shaped wetland or lake, etc., are not separate waterbodies, and crossings of such features cannot be considered separately.

### **Single and complete non-linear project:**

For non-linear projects, the term "single and complete project" is defined at [33 CFR 330.2\(i\)](#) as the total project proposed or accomplished by one owner/developer or partnership or other association of owners/developers. A single and complete non-linear project must have independent utility (see definition of "independent utility"). Single and complete non-linear projects may not be "piecemealed" to avoid the limits in an NWP authorization.



**Stormwater management:**

Stormwater management is the mechanism for controlling stormwater runoff for the purposes of reducing downstream erosion, water quality degradation, and flooding and mitigating the adverse effects of changes in land use on the aquatic environment.

**Stormwater management facilities:**

Stormwater management facilities are those facilities, including but not limited to, stormwater retention and detention ponds and best management practices, which retain water for a period of time to control runoff and/or improve the quality (*i.e.*, by reducing the concentration of nutrients, sediments, hazardous substances and other pollutants) of stormwater runoff.

**Stream bed:**

The substrate of the stream channel between the ordinary high water marks. The substrate may be bedrock or inorganic particles that range in size from clay to boulders. Wetlands contiguous to the stream bed, but outside of the ordinary high water marks, are not considered part of the stream bed.

**Stream channelization:**

The manipulation of a stream's course, condition, capacity, or location that causes more than minimal interruption of normal stream processes. A channelized jurisdictional stream remains a water of the United States.

**Structure:**

An object that is arranged in a definite pattern of organization. Examples of structures include, without limitation, any pier, boat dock, boat ramp, wharf, dolphin, weir, boom, breakwater, bulkhead, revetment, riprap, jetty, artificial island, artificial reef, permanent mooring structure, power transmission line, permanently moored floating vessel, piling, aid to navigation, or any other manmade obstacle or obstruction.

**Tidal wetland:**

A tidal wetland is a jurisdictional wetland that is inundated by tidal waters. Tidal waters rise and fall in a predictable and measurable rhythm or cycle due to the gravitational pulls of the moon and sun. Tidal waters end where the rise and fall of the



water surface can no longer be practically measured in a predictable rhythm due to masking by other waters, wind, or other effects. Tidal wetlands are located channelward of the high tide line.

**Tribal lands:**

Any lands title to which is either: (1) Held in trust by the United States for the benefit of any Indian tribe or individual; or (2) held by any Indian tribe or individual subject to restrictions by the United States against alienation.

**Tribal rights:**

Those rights legally accruing to a tribe or tribes by virtue of inherent sovereign authority, unextinguished aboriginal title, treaty, statute, judicial decisions, executive order or agreement, and that give rise to legally enforceable remedies.

**Vegetated shallows:**

Vegetated shallows are special aquatic sites under the 404(b)(1) Guidelines. They are areas that are permanently inundated and under normal circumstances have rooted aquatic vegetation, such as seagrasses in marine and estuarine systems and a variety of vascular rooted plants in freshwater systems.

**Waterbody:**

For purposes of the NWP, a waterbody is a "water of the United States." If a wetland is adjacent to a waterbody determined to be a water of the United States, that waterbody and any adjacent wetlands are considered together as a single aquatic unit (see [33 CFR 328.4\(c\)\(2\)](#)).



Great Plains Regional Office  
2525 River Road  
Bismarck, ND 58503-9011  
(701) 355-3500; fax (701) 355-3575  
www.ducks.org

11/14/2025

To: Ryan Joe  
JEO Consulting Group  
2000 Q Street # 500  
Lincoln, NE 68503

RE: Wetland Mitigation Credit Availability, Turkey Creek Mitigation Bank

Dear Mr. Joe:

You have requested availability of wetland mitigation credits for the David City Wastewater Treatment Facility Project. The project would have wetland impacts requiring mitigation. This letter is non-binding and for informational purpose only. USACE or NDEE would determine final mitigation requirements.

Compensatory wetland mitigation credits in the amount of 0.35 credits are available for purchase as of the date of this letter in the Turkey Creek Mitigation Bank service area.

Ducks Unlimited, Inc. is not responsible for holding, securing, or otherwise guaranteeing that these or any credits will be available to you at any future date. This letter does not constitute any agreement between Ducks Unlimited, Inc. and Permittee for the purchase of said credits or their future availability. The Wetland Mitigation credits are only secured when purchased and the permanent transfer for the mitigation liability to Ducks Unlimited, Inc. is only completed once we have received full payment, verified there are available credits and Ducks Unlimited acknowledges by Credit Sales letter signed in writing by Ducks Unlimited, Inc. This letter will expire 12 months from the date it is issued.

Respectfully,

Justin Williams  
Manager

Ethan Joy of JEO Consulting stated that the RO System requires several chemicals to function properly. One of the main chemicals used is an anti-scalant that prevents RO membranes from scaling up during use and extends their life. Pumps do not provide feedback on whether the flow is occurring, and staff do not know whether the pumps are flowing. Staff are requesting upgrades to ensure the pumps are working correctly and the flows are running properly.

Water Plant Operator Daniel Sobota introduced himself. During Thanksgiving, the pumps ran continually, but the flow of chemicals did not go through; therefore, the chemicals were not used. The proposal is to install a new pump and a backup pump in case the primary pump malfunctions. This would help prevent the RO system from scaling up. If they scale up, it will require a CIP cleaning to descale the system.

Council member Bruce Meysenburg made a motion to purchase a dosing pump, install kit, dosing cables, and a replacement dosing pump from Desalitech for the RO Units. Council Member Kevin Woita seconded the motion. The motion carried. Jeremy Abel: Yea, Jim Angell: Yea, Rick Holland: Yea, Keith Marvin: Yea, Bruce Meysenburg: Yea, Kevin Woita: Yea. Yea: 6, Nay: 0.



January 21, 2026

ATTN:

**CCRO SYSTEM:  
 SPARE PARTS  
 PROPOSAL**



Reference: Desalitech Project No.:

Desalitech is pleased to provide this proposal for J1 Antiscalant pump

Part No.	Description	Qty	UOM	U/Price (\$)	Total Price (\$)
12068448	Dosing Pump DDA 7.6-16 FCM Leadtime 6 weeks	1	Each	\$ 3,934.94	\$ 3,934.94
12068451	Dosing Pump DDA 7.5-16 install kit	1	Each	\$ 218.40	\$ 218.40
12069011	Dosing pump cable 5 m, Analog input	1	Each	\$ 136.50	\$ 136.50
12068029	Dosing Pump cable 5 m, Relay output	1	Each	\$ 136.50	\$ 136.50
----	Pricing includes standard ground shipment	1		\$	\$
					\$ 4,426.34

www.desalitech.com | info@desalitech.com

SCHEDULE:

Estimated ship date: 1-2 weeks ARO

PAYMENT TERMS:

Net 30 days upon shipment.

Thank you for your business!

9. Compliance with Laws; Permits. Buyer is responsible for compliance with all laws and regulations applicable to the storage, use, handling, installation, maintenance, removal, registration and labeling of all Goods from and after Buyer's receipt of the Goods, as well as for the proper management and disposal of all wastes and residues associated with the Goods (including but not limited to containers, excess or off-spec product, testing wastes, e.g., spent or expired lab reagents and test kits). Buyer agrees to ensure that all Goods and Services provided to Buyer for export are exported only in compliance with applicable export control laws and regulations. Permits and licenses, or which are required to operate apparatus or equipment or to use the Goods, shall be procured by Buyer at Buyer's sole expense.

10. Licensed IP. The Seller reserves all rights to the intellectual property rights, including, inter-alia, U.S. Patent No. 7,628,921 (SWRO- CCD process) and/or 7,695,614 (BWRO-CCD process) or any other corresponding patent and to all other proprietary rights, including but not limited to copyrights, trade secrets, formulas, research data, operating data, know-how, software, and specifications related to the inventions commonly known as the Closed Circuit Desalination process as well as the trademark "Desalitech" and other tradenames by the Seller (all together: "Licensed IP"). Seller grants to Buyer non-exclusive, non-transferable end-user license to make, use, and exploit the Licensed IP, solely in connection with the operation of the Goods and for no other purpose. Buyer undertakes not to challenge the Licensed IP during the term of this Agreement or thereafter, and not to support third parties in a challenge of the validity of the Licensed IP in any jurisdiction worldwide.

11. Force Majeure. Neither party will be responsible to the other (and no event of default will be deemed to have occurred) if uncontrollable events make it impracticable or commercially unreasonable for either party to perform under the terms of this Agreement, provided no force majeure shall apply to Buyer's obligation to pay in a timely manner for Goods and Services. Scheduled delivery dates are subject to extension when a force majeure event occurs.

12. Confidentiality and Intellectual Property. Both parties agree to keep confidential the other party's proprietary non-public information, if any, which may be acquired in connection with this Agreement. Buyer will not, without Seller's advance written consent, subject Goods to testing, analysis, or any type of reverse engineering. Seller retains all intellectual property rights including copyright which it has in all drawings and data or other deliverables supplied or developed under this Agreement, subject to Buyer's right to use such drawings and data for its own use without additional cost. Buyer shall be fully liable for any infringement of patent rights of third parties arising out of the products supplied hereunder where the construction, and other characteristics of such products including modification of the Goods and Services, is prescribed to the Seller, or completed independently, by the Buyer or agent(s). Buyer shall fully defend and indemnify the Seller in case of such claim(s). Buyer shall defend and indemnify Seller in respect of any claim or liability suffered by Seller in connection with infringement of any third party rights based on design, specifications or requirements prescribed by Buyer or its agent.

13. Limitation on Liability. Except where expressly communicated to Seller, Seller shall have no liability for incompatibility of Goods with Buyer's actual space or design limitations. To the extent permitted by law, the total liability of the Seller for all claims arising out of or relating to the performance or breach of this Agreement or use of any Goods or Services shall not exceed the annual contract value of this Agreement. Seller shall not be liable for any advice, instruction, assistance or any services that are not required under this Agreement or for which Seller does not charge Buyer. In no event will either party

be liable to the other for lost profits or revenues, cost of capital or replacement or increased operating costs, lost or decreased production, claims of Buyer's customers for such damages or any similar or comparable damages, or for any incidental, special, consequential or indirect damages of any type or kind, irrespective of whether arising from actual or alleged breach of warranty, indemnification, product liability or strict liability, or any other legal theory. If Buyer is supplying Seller's Goods or Services to a third party, Buyer shall require the third party to agree to be bound by this clause. If Buyer does not obtain this agreement for Seller's benefit for any reason, Buyer shall indemnify and hold Seller harmless from all liability arising out of claims made by the third party in excess of the limitations and exclusion of this clause.

14. Conflicts; Survival, Assignment. If there is any conflict between this Agreement and any written proposal or quotation provided by Seller, then the terms and conditions set forth in the proposal or quotation shall prevail. If any term or condition of this Agreement or any accompanying terms and conditions are held invalid or illegal, then such terms and conditions shall be reformed to be made legal or valid, or deleted, but the remaining terms and conditions shall remain in full force and effect, and the Agreement shall be interpreted and implemented in a manner which best fulfills our intended agreement. This Agreement may only be assigned by Seller to any affiliate.

15. Termination and Cancellation. This Agreement and any performance pursuant to it may be terminated or suspended by either party if the other party (a) is the subject of bankruptcy or insolvency proceedings; or (b) defaults in its material obligations under this Agreement, and such default is not cured within sixty, (60) days. Upon the termination of this Agreement: (a) Buyer agrees to pay for all Goods in Buyer's possession or for which title has passed to Buyer, at current prices or at such other prices as have been agreed to in writing; and (b) all amounts owing, if any, for the unamortized value of equipment and tanks relating to those Goods shall immediately become due and shall be paid within thirty (30) days of receipt of an invoice. In the event of cancellation of an order by Buyer, a cancellation charge will be made against the Buyer, in proportion to the work completed by Seller, or obligated against the order, plus any cancellation charges assessed against Seller by Seller's suppliers.

16. Governing Law and Dispute Resolution. This Agreement shall be governed by the substantive laws of the State of Massachusetts. The UN Convention on the International Sale of Goods shall not apply. In the event of a dispute concerning this Agreement, the complaining party shall notify the other party in writing thereof. Management level representatives of both parties shall meet at an agreed location to attempt to resolve the dispute in good faith. Should the dispute not be resolved within thirty (30) days after such notice, the complaining party shall seek remedies exclusively through arbitration. The seat of arbitration shall be the federal district court in Boston, MA, and the rules of the arbitration will be the Commercial Arbitration Rules of the American Arbitration Association, which are incorporated by reference into this clause.

A. Order Acceptance Form

### Order Acceptance Form

For accurate and timely processing, please sign and send this page with the purchase order (PO). Upon receiving the PO, Desalitech send back signed and dated.

Please ensure the PO contains the following:

Reference proposal no.: 1137C r.1, dated September 12, 2023

1. List as separate line items base price plus adders and options selected per Equipment Pricing section of the proposal.
2. Communication:
  - a. Email reginald.agenor@dupont.com
  - b. Address Desalitech, Inc.  
455 Forest Ave  
Marlborough MA 01752  
United States
3. Payment Terms (per commercial section of the proposal)

*By signing this page, the buyer approves Desalitech to immediately proceed with procurement and fabrication of our standard ReFlex system(s) and/or products per this proposal to ensure timely product delivery. No approval of equipment data sheets or production drawings are required.*

**Buyer**

Name Jessica J Miller  
Signature Jessica J Miller  
Date 1-28-26

**Desalitech, Inc.**

Name Reginald Agenor  
Date September 12, 2023

Wastewater Operator Anthony Kobus introduced himself. We have had a few sewer back-ups that happened from Timpte to 10th Street on A Street. Tree roots grew into the lines and had Johnson Service camera in the area. C Street had a sewer main break, and the main has been replaced. Camera footage from 2021 showed that the sewer line was broken at that time, but it was not brought to our attention or included in the South Sewer Slip Lining.

Council member Rick Holland made a motion to hire Johnson Service Company to do slip lining on A Street between 11th and 12th Street and slip lining on C Street between 12th and 13th Street. Council Member Jim Angell seconded the motion. The motion carried. Jeremy



PO Box 1065  
 Kearney, NE 68848  
 (308) 237-6651 / (308) 440-8464  
 bretm@midlandscontracting.com

# Estimate

ESTIMATE#	1080355924
DATE	12/12/2025
PO#	

CUSTOMER
CITY OF DAVID CITY 557 4TH ST DAVID CITY NE 68632 (402) 367-2340

SERVICE LOCATION
557 4TH ST DAVID CITY NE 68632 susan@midlandscontracting.com

## DESCRIPTION

Estimate 1			
Description	Qty	Rate	Total
Mobilization (LS) Mobilization fees have been reduced, work will be performed in coordination with other work in the area.	1.00	2,000.00	2,000.00
10" CIPP (LS) MH#s A-11 to A-10 (A.St Between 11th & 12th St.)	1.00	21,800.00	21,800.00
Service Reinstatement (each)	3.00	250.00	750.00

CUSTOMER MESSAGE
CLARIFICATIONS: -Prices are valid for 120 days. -Work is scheduled in the 2026 budget year – timing will be based on our workload at time of acceptance. -City shall provide water for jetting and a waste disposal site. -We require the City to locate, expose, and provide access to all service points (manholes, cleanouts, etc.) -Basic cones and signs provided by Johnson Service. Any additional traffic control measures to be provided by City. -Pre- and post CCTV inspection is included in above pricing.

**Estimate Total: \$24,550.00**



PO Box 1065  
 Kearney, NE 68848  
 (308) 237-6651 / (308) 440-8464  
 bretm@midlandscontracting.com

# Estimate

ESTIMATE#	1080355924
DATE	12/12/2025
PO#	

CUSTOMER
CITY OF DAVID CITY 557 4TH ST DAVID CITY NE 68632 (402) 367-2340

SERVICE LOCATION
557 4TH ST DAVID CITY NE 68632 susan@midlandscontracting.com

**DESCRIPTION**

Estimate			
Description	Qty	Rate	Total
Mobilization (LS) Mobilization fees have been reduced, work will be performed in coordination with other work in the area.	1.00	2,000.00	2,000.00
8" CIPP (LS) MH#s D-12 to C-12 (C. St. Between 12th & 13th St.)	1.00	15,950.00	15,950.00
Service Reinstatement (each)	12.00	200.00	2,400.00

CUSTOMER MESSAGE
<p><b>CLARIFICATIONS:</b></p> <ul style="list-style-type: none"> <li>-Prices are valid for 120 days.</li> <li>-Work is scheduled in the 2026 budget year – timing will be based on our workload at time of acceptance.</li> <li>-City shall provide water for jetting and a waste disposal site.</li> <li>-We require the City to locate, expose, and provide access to all service points (manholes, cleanouts, etc.)</li> <li>-Basic cones and signs provided by Johnson Service. Any additional traffic control measures to be provided by City.</li> <li>-Pre- and post CCTV inspection is included in above pricing.</li> </ul>

**Estimate Total: \$20,350.00**

Wastewater Operator Anthony Kobus introduced himself again. There are actually six lift stations (Kozi, Bemis, Hildy, Campgrounds, Casey's, and State Yards). This would place alarms on the lift stations to notify staff of backups, and notifications would be sent to the SCADA system and the on-call system. Right now, we rely on lights on the buildings, with the public calling in when the lights turn on.

Council member Keith Marvin made a motion to approve having HOA Solutions do Lift Station Communication work at the 6 Lift Stations, not to exceed \$90,000.00. Council Member Bruce Meysenburg seconded the motion. The motion carried. Jeremy Abel: Yea, Jim Angell: Yea, Rick Holland: Yea, Keith Marvin: Yea, Bruce Meysenburg: Yea, Kevin Woita: Yea. Yea: 6, Nay: 0.



### Hydro Optimization and Automation Solutions

Budgetary Number Date: 6/10/25  
Budgetary Number to City of David City  
5 Lift Stations  
David City, NE  
by

Hydro Optimization and Automations Solutions, Inc

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#### SCOPE OF WORK

##### 5-Lift Stations Total-Each will comprise the following

- One (1) Control Enclosure
  - One (1) Back Panel
    - One (1) Siemens 1215C PLC
    - One (1) Siemens Digital IO Card
    - Two (2) Siemens Mixed Analog Card
    - One (1) 5 Channel Intrinsically Safe Relay and Pump Controller
    - One (1) 900 MHz Spread Spectrum Radio
    - One (1) 5A DC UPS
    - One (1) Ethernet Switch 5-port
    - All Components for a Complete Control Panel

##### Labor and Services

- Control Panel Submittal and As-Built Drawings
- O&M & Submittals for the above equipment.
- PLC Programming, Local HMI and SCADA Configuration
- Control Panel
- Factory and Site Acceptance Testing
- Customer Training
- Shipping, Mobilization, Travel and Mileage

**TOTAL BUDGETARY PRICE RANGE ..... \$75,000.00-\$90,000.00**

The budgetary number above was composed by HOA with sites unseen. The number will not exceed \$90,000.00 and yet, could be lower than the \$75,000.00 depending on sites and work needed at each site.

**\*\*NOTE: NO Sales Tax or Bonding Costs are included in this pricing.\*\***

## Hydro Optimization and Automation Solutions

**Terms:**

Payment is to be made Net 20 days from the date on the invoice. A service charge of 1.5% per month will be charged on accounts that are 30 days past the invoice date. Work will be suspended on projects that go 45 days or more past invoice date.

**Payment Schedule (unless otherwise specified)**

25% payment required at time of purchase order.  
50% payment at the time of equipment delivery.  
15% payment at the time of startup/commissioning.  
10% payment at the time HOA has completed punch list.

Any changes requested past 30 days of the punch list completion will be handled under warranty or as an additional work order depending on scope.

Final payment is due 30 days upon receipt of invoice after initial punch list completion as defined by HOA and owner to avoid above listed service charge.

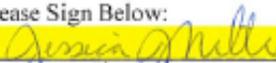
**Taxes:**

Sales tax is NOT included.

**Warranty:**

HOA Solutions warrants for a period of one (1) year from date of the Substantial Completion that product furnished under this contract will be of merchantable quality and free from defects in material, workmanship, and design as determined at the date of shipment by HOA Solution. This determination will be made by generally recognized, applicable, and accepted practices and procedures in the industry, to include any specifications specifically agreed to in writing by HOA Solutions prior to the date of shipment. This warranty is in lieu of all other warranties, whether expressed, implied, or statutory, including implied warranties of merchantability or fitness, and hereby excludes certifications or the like for product performance, use, or design with respect to any standard, regulation, or requirement (unless and to the extent independently approved in writing at HOA Solutions). In addition, the warranty extends only to the Buyer or customer purchasing directly from HOA Solutions or an authorized HOA Solutions distributor. Satisfaction of this warranty, consistent with other provisions herein, will be limited to the replacement or repair or modification of, or issuance of a credit for, the products involved, at HOA Solutions Inc's option, with HOA Solutions to determine the availability of service personnel and any absorption of associated service expenses; such warranty satisfaction available only if (a) HOA Solutions is promptly notified in writing upon discovery of an alleged defect and (b) HOA Solutions' examination of the subject product discloses to its satisfaction that defect has not been caused by misuse; neglect; improper installation; improper operation, repair, or alteration; accident; or unusual deterioration or degradation of the parts.

Please Sign Below:

  
Contractor Signature

Jessica J. Miller  
Contractor Printed Name

1-28-26

Date

\$

Approved Total

Mayor Jessica Miller announced to the Council and public that there is no need to go into closed session this evening.

Council member Bruce Meysenburg made a motion to adjourn at 7:31 p.m.. Council Member Jim Angell seconded the motion. The motion carried. Jeremy Abel: Yea, Jim Angell: Yea, Rick Holland: Yea, Keith Marvin: Yea, Bruce Meysenburg: Yea, Kevin Woita: Yea. Yea: 6, Nay: 0.



CERTIFICATION OF MINUTES

January 28, 2026

I, Lori Matchett, duly qualified and acting City Clerk for the City of David City, Nebraska, do hereby certify with regard to all proceedings of January 28, 2026; that all of the subjects included in the foregoing proceedings were contained in the agenda for the meeting, kept continually current and available for public inspection at the office of the City Clerk; that such subjects were contained in said agenda for at least twenty-four hours prior to said meeting; that the minutes of the meeting of the City Council of the City of David City, Nebraska, were in written form and available for public inspection within ten working days and prior to the next convened meeting of said body; that all news media requesting notification concerning meetings of said body were provided with advance notification of the time and place of said meeting and the subjects to be discussed at said meeting.

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Lori Matchett, City Clerk