



## WATER QUALITY PROGRAM

ENVIRONMENTAL PROGRAMS DEPARTMENT

SOUTHERN UTE INDIAN TRIBE

PO BOX 737, MS 84, IGNACIO, CO 81137

(970) 563 – 0135 · (970) 563 – 0384 FAX

August 29, 2025

SENT VIA EMAIL: [christina.l.schroeder@usace.army.mil](mailto:christina.l.schroeder@usace.army.mil)

Christina Schroeder  
Acting Chief, Regulatory Division  
U.S. Army Corps of Engineers Albuquerque District  
4101 Jefferson Plaza NE  
Albuquerque, NM 87109-3435

**Re: 2026 Nationwide Permits 401 Water Quality Certification (Request for Certification)**

Dear Ms. Schroeder:

The Southern Ute Indian Tribe's Environmental Programs Department (EPD) received a 401 certification request from the U.S. Army Corps of Engineers (Army Corps) for 2026 Nationwide Permits (NWP) on June 18, 2025. A pre-filing meeting was requested on May 2, 2025, and held on May 28, 2025.

### **Actions on 401 Certification Request for Proposed 2026 NWPs**

EPD takes the following water quality certification actions under Section 401 of the Clean Water Act on the Army Corps' proposed NWPs:

- “After-the-Fact” NWPs: Permits determined to be applicable after a project or associated discharge has occurred – Deny
- Provisional NWPs: All provisional verification letters from the Army Corps authorizing coverage for a project subject to individual certification by the certifying authority – Deny
- NWPs where the District or Division Engineer has granted a waiver on limits – Deny

NWP#	Title	Certification Action
1	Aids to Navigation	Waive
2	Structures in Artificial Canals	Certify with Conditions; Deny when there is a trenching activity or when activities have potential to discharge into perennial streams or special aquatic sites including wetlands
3	Maintenance	Certify with Conditions; Deny when there is a trenching activity or when activities require a Pre-Construction Notice (PCN) or have potential to discharge into perennial streams or special aquatic sites including wetlands

4	Fish and Wildlife Harvesting, Enhancement, and Attraction Devices and Activities	Certify with Conditions
5	Scientific Measurement Devices	Certify with Conditions
6	Survey Activities	Certify with Conditions; Deny when there is a trenching activity or when activities have potential to discharge into perennial streams or special aquatic sites including wetlands
7	Outfall Structures and Associated Intake Structures	Deny
8	Oil and Gas Structures on the Outer Continental Shelf	Waive
9	Structures in Fleeting and Anchorage Areas	Waive
10	Mooring Buoys	Waive
11	Temporary Recreational Structures	Waive
12	Oil or Natural Gas Pipeline Activities	Deny
13	Bank Stabilization	Deny
14	Linear Transportation Projects	Deny
15	U.S. Coast Guard Approved Bridges	Waive
16	Return Water from Upland Contained Disposal Areas	Deny
17	Hydropower Projects	Deny
18	Minor Discharges	Deny
19	Minor Dredging	Certify with Conditions
20	Response Operations for Oil or Hazardous Substances	Deny
21	Surface Coal Mining Activities	Deny
22	Removal of Vessels	Certify with Conditions
23	Approved Categorical Exclusions	Certify with Conditions
24	Indian Tribe or State Administered Section 404 Programs	Deny
25	Structural Discharges	Certify with Conditions
26	[Reserved]	N/A
27	Aquatic Habitat Restoration, Establishment, and Enhancement Activities	Certify with Conditions
28	Modifications of Existing Marinas	Waive
29	Residential Developments	Deny
30	Moist Soil Management for Wildlife	Certify with Conditions

31	Maintenance of Existing Flood Control Facilities	Deny
32	Completed Enforcement Actions	Certify with Conditions
33	Temporary Construction, Access, and Dewatering	Deny
34	Cranberry Production Activities	Waive
35	Maintenance Dredging of Existing Basins	Certify with Conditions
36	Boat Ramps	Waive
37	Emergency Watershed Protection and Rehabilitation	Certify with Conditions
38	Cleanup of Hazardous and Toxic Waste	Deny
39	Commercial and Institutional Developments	Deny
40	Agricultural Activities	Deny
41	Reshaping Existing Drainage Ditches	Certify with Conditions
42	Recreational Facilities	Deny
43	Stormwater Management Facilities	Deny
44	Mining Activities	Deny
45	Repair of Uplands Damaged by Discrete Events	Deny
46	Discharges in Ditches	Deny
47	[Reserved]	N/A
48	Commercial Shellfish Mariculture Activities	Waive
49	Coal Remining Activities	Deny
50	Underground Coal Mining Activities	Deny
51	Land-Based Renewable Energy Generation Facilities	Deny
52	Water-Based Renewable Energy Generation Pilot Projects	Deny
53	Removal of Low-Head Dams	Deny
54	Living Shorelines	Waive
55	Seaweed Mariculture Activities	Waive
56	Finfish Mariculture Activities	Waive
57	Electric Utility Line and Telecommunications Activities	Deny
58	Utility Line Activities for Water and Other Substances	Deny
59	Water Reclamation and Reuse Facilities	Deny

A	Activities to Improve Passage of Fish and Other Aquatic Organisms	Certify with Conditions; Deny when there is a trenching activity or when activities require a Pre-Construction Notice (PCN) or have potential to discharge into perennial streams or special aquatic sites including wetlands
---	---	--

### Conditions of Certification

Included in Table 1 are the justifications and appropriate citations for each condition. This project must also comply with the Tribe's certification requirements, which apply to all certifications unless specifically set forth otherwise in a certification decision. The Tribe's certification requirements are found in Section 4-106 of the 401 Certification Procedures, and a copy of the requirements is enclosed with this certification.

In addition to the Tribe's certification conditions, the project must be completed in accordance with applicable NWPs and their General Conditions, as well as applicable Regional Conditions to Nationwide Permits in the State of Colorado. Compliance with the terms and conditions of the Nationwide Permit, the Best Management Practices (BMPs) within Tribe's certification conditions, and the Tribe's certification requirements described below will provide reasonable assurances that the permitted activities will be conducted in a manner which will not violate water quality standards and will address the Tribe's most significant water quality concerns. Projects for which EPD has elected to certify with conditions will comply with water quality requirements as defined at 40 CFR 121.1(n), subject to the following conditions pursuant to Section 401(d):

**Condition 1:** A copy of the Tribe's 401 certification letter for NWPs shall be maintained on-site at all times and available for inspection.

**Condition 2:** The project proponent shall provide EPD a written description of sediment and erosion control BMPs and/or a site-specific Stormwater Pollution Prevention Plan (SWPPP) 10 days *prior* to initiating construction. These measures shall be used to fully maintain and protect all existing water uses throughout the duration of the project and prevent discharge of disturbed soil into the waterway from the shoreline. All sediment and erosion control measures shall be in place prior to the onset of construction or prior to work in a waterbody. These measures shall provide for implementation of BMPs during and after construction including:

- A method statement that describes the phasing of sediment and erosion control measures installation and construction activities to include:
  - Timing (i.e., date estimates) of pre-construction preparation, BMP installation, construction, and removal.
  - The types and locations of sediment and erosion control features that shall be used onsite, including sediment control fences, haybales, heavy mud mats, or other structures. The project proponent shall actively maintain these features during construction.
- Construction materials and equipment storage areas shall be at least 100 feet away from a waterbody. If it is not possible to site the storage area 100 feet away, the project proponent shall explain the additional measures that will be taken to ensure there is no sediment migration into the waterway.

**Condition 3:** The project proponent shall submit written description of site-specific aquatic resource restoration and monitoring measures to EPD 10 days *prior* to construction activities. The project

proponent shall restore and monitor the site consistent with the restoration and monitoring description. The described elements must include and/or expand upon the details supplied in this project's certification request:

- Pre-construction, the project proponent shall identify:
  - Mitigation measures for disturbed aquatic resources and upland areas, where they are adjacent to the aquatic resource, and restoration of disturbed riparian areas
  - Species for restoration and techniques for planting. The project proponent shall use identical native species or use salvaged plants removed during construction to the extent practicable. Non-native and invasive species shall not be used for restoration activities.
  - Monitoring success criteria such that species regrowth is functionally equivalent to the pre-disturbed site or achieves a 70% vegetative cover.
  - Monitoring protocol for at least three growing seasons or until replanted areas meet monitoring success criteria. The project proponent shall identify adaptive management measures to reestablish aquatic resource functions and values if restoration of the site does not meet monitoring success criteria.
- Post-construction, revegetation efforts shall occur in accordance with the restoration and monitoring description and elements provided to EPD. Disturbed soil and vegetation shall be restored to pre-disturbance reference conditions based on monitoring success criteria. Nursery and seed stock shall be acquired from localized sources and stockpile weed-free topsoil shall replace disturbed soil areas.
- Post-construction, the project proponent shall provide documentation of annual monitoring efforts, including photographs. At a minimum, photographs shall be submitted before construction and post-construction until the site meets monitoring success criteria. Monitoring reports and photographs shall be submitted to EPD at [wqs@southernute-nsn.gov](mailto:wqs@southernute-nsn.gov), subject line: CWA 401 Certification - NWP - Restoration Monitoring.

**Condition 4:** When operating equipment or undertaking construction riparian areas or waterways:

- Prior to arriving on the project site and entering a waterway, all equipment shall be cleaned, and the project proponent must provide to EPD evidence or certification of equipment cleaning/decontamination outlined in Article 4-106(t) to avoid aquatic nuisance species infestation. Remove all plants, animals, or mud and thoroughly wash equipment that have come in contact with the water before leaving a lake or stream.
- All equipment shall be inspected daily and prior to entering any waterway, for oil, gas, diesel, anti-freeze, hydraulic fluid, and other petroleum leaks. Before equipment is used on a project and upon discovery of any fluid leaks, all fluid leaks must be repaired. If a fluid leak cannot be repaired promptly, the equipment shall not be used on site and moved offsite within 24 hours.
- All contaminated areas shall be cleaned immediately, and contaminated soil removed from the site or contained in enclosed containers. Containers shall be located no closer than 100 feet to a waterbody or wetland. If it is not possible to site the storage area 100 feet away, the project proponent shall explain additional measures in their sediment and erosion control BMPs.
- Containment booms and/or absorbent material shall be available onsite. In the case of spills, containment booms and/or absorbent materials shall be employed immediately to prevent discharges from reaching waters of the U.S. Any spills shall be reported to the Army Corps, and EPD at [wqs@southernute-nsn.gov](mailto:wqs@southernute-nsn.gov) within 24 hours.

**Condition 5:** Except as specified in the application, the project proponent shall not allow debris, concrete, oil or petroleum, organic material, or other construction related materials or wastes to enter into or be stored within 100 feet of where it may enter into waters of the U.S.

**Condition 6:** The project proponent shall notify EPD when construction activities are complete at [wqs@southernute-nsn.gov](mailto:wqs@southernute-nsn.gov).

### **Conclusion**

Thank you for your ongoing partnership in the implementation of the regulatory programs of the Clean Water Act. If you have questions about this certification, please contact me or Geoff Hensgen, Water Quality Program Manager at (970) 563-2805 or [ghensgen@southernute-nsn.gov](mailto:ghensgen@southernute-nsn.gov).

Sincerely,

Mitchell Dorsk  
Southern Ute Indian Tribe  
Water Quality and Remediation Division Head  
P.O. Box 737 MS# 84  
Ignacio, Colorado 81137  
970-563-2272  
[mdorsk@southernute-nsn.gov](mailto:mdorsk@southernute-nsn.gov)

Enclosures:

1. Southern Ute Indian Tribe 401 Certification Requirements
2. Table 1: Supporting Information for Certification Conditions

CC:

Daniel Delgado, USACE, [daniel.i.delgado@usace.army.mil](mailto:daniel.i.delgado@usace.army.mil)  
401 Notifications, USACE, [SPA-RD-CO@usace.army.mil](mailto:SPA-RD-CO@usace.army.mil)  
Steven Crosson, USACE, [steven.b.crosson@usace.army.mil](mailto:steven.b.crosson@usace.army.mil)  
Matthew Montgomery, USACE, [matthew.r.montgomery@usace.army.mil](mailto:matthew.r.montgomery@usace.army.mil)  
Kiel Downing, USACE, [kiel.g.downing@usace.army.mil](mailto:kiel.g.downing@usace.army.mil)  
Estella Moore, USEPA, [Moore.Estella@epa.gov](mailto:Moore.Estella@epa.gov)  
Jeffrey Ullman, USEPA, [ullman.jeffrey@epa.gov](mailto:ullman.jeffrey@epa.gov)

**Southern Ute Indian Tribe (SUIT)**  
**401 Water Quality Certification Requirements**

**SUIT Clean Water Act Section 401 Certification Procedures for Nationwide Permits, Regional General Permits, and Individual Section 404 Permits Issued by the U.S. Army Corps of Engineers**

**Article 4-106. Certification Requirements**

(1) The following requirements shall apply to all certifications unless specifically authorized by the 401 certification issued by the Department:

- (a) A water quality certification shall require the project owner and operator to notify the Division Head of all changes in the project subsequent to certification.
- (b) A water quality certification shall not be transferable without the written approval of the Division Head.
- (c) Authorized representatives from the Department shall be permitted to enter upon the site where the construction activity or operation of the project is taking place for purposes of inspection of compliance with BMPs and certification conditions.
- (d) In the event of any changes in control or ownership of facilities where the construction activity or operation of the project is taking place, the successor shall be notified in writing by their predecessor of the existence of the BMPs and certification conditions. The permittee shall provide a copy of such notification to the Division.
- (e) If the permittee discovers that certification conditions are not being implemented as designed, or are not operating or functioning as designed, or if there is an exceedance of water quality standards despite compliance with the certification conditions by the permittee, the permittee shall verbally notify the Division of such failure or exceedance within two working days of becoming aware of the same. Within ten working days of such notification, the permittee shall provide to the Division, in writing, the following:
  - i. In the case of the failure to comply with the certification conditions, a description of (i) the nature of such failure, (ii) any reasons for such failure, (iii) the period of non-compliance, and (iv) the measures to be taken to correct such failure to comply; and
  - ii. In the case of the exceedance of water quality criteria, (i) an explanation, to the extent known after reasonable investigation, of the relationship between the project and the exceedance, (ii) the identity of any other known contributions to the exceedance, and (iii) a proposal to modify the certification conditions so as to remedy the contribution of the project to the exceedance.
- (f) Any anticipated change in discharge location, quantities, or composition associated with the project must be reported to the Division by submission of a written notice by the permittee no less than ten days before the change. If the change is determined to be significant, the permittee will be notified within ten days, and the change will be acknowledged and approved or disapproved.

(g) Any diversion from or bypass of facilities necessary to maintain compliance with the terms and conditions herein is prohibited, except (i) where unavoidable to prevent loss of life or severe property damage, or (ii) where excessive storm drainage or runoff would damage any facilities necessary for compliance with limitations and prohibitions herein. The Division shall be notified immediately in writing of each such diversion or bypass.

(h) At least 5 days before commencement of a project in a watercourse, which the Division has certified, or conditionally certified, the permittee shall notify the Division.

(i) Immediately upon discovery of any spill or other discharge to waters of the United States not authorized by the applicable license or permit, the permittee shall notify the Division.

(j) Construction operations within watercourses and water bodies shall be restricted to only those project areas specified in the federal license or permit.

(k) No construction equipment shall be operated below the existing water surface.

(l) Work should be carried out diligently and completed as soon as practicable. To the maximum extent practicable, discharges of dredged or fill material shall be restricted to those periods when impacts to designated uses are minimal.

(m) The project shall incorporate provisions for operation, maintenance, and replacement of BMPs to assure compliance with the conditions identified in this section, and any other conditions placed in the permit or certification. All such provisions shall be identified and complied with in an operation and maintenance plan which will be retained by the project owner and available for inspection within a reasonable timeframe upon request by any authorized representative of the Division.

(n) The use of chemicals during construction and operation shall be in accordance with the manufacturers' specifications. There shall be no excess application and introduction of chemicals into waters of the United States.

(o) All solids, sludges, dredged or stockpiled materials and all fuels, lubricants, or other toxic materials shall be controlled in a manner so as to prevent such materials from entering waters of the United States.

(p) All seed, mulching material and straw used in the project shall be certified weed-free.

(q) Discharges of dredged or fill material in excess of that necessary to complete the project are not permitted.

(r) Discharges to waters of the United States not identified in the license or permit and not certified in accordance therewith are not allowed.

(s) No discharge shall be allowed which causes non-attainment of federal or tribal narrative water quality or biological criteria.

(t) Before any equipment touches the water, the project proponent must provide to the Division:



(i) a certification that (a) the equipment has not been used in waters with the possibility of aquatic nuisance species infestation and (b) the equipment has been thoroughly decontaminated using water that is heated to a temperature necessary to kill aquatic nuisance species,

(ii) evidence that the equipment has passed a Colorado Parks and Wildlife invasive species inspection, or

(iii) a certification in a form that is acceptable to the Division, signed by a third-party consultant, certifying that the equipment has undergone a waters of the United States-specific preventative decontamination using water that is heated to a temperature necessary to kill aquatic nuisance species.

(2) Best Management Practices.

(a) BMPs are required for all projects for which Division certification is issued except for section 402 permits. Project proponents must select and propose BMPs to the Division to be employed in their project.

(b) All certification requests for certifications which require BMPs shall include a map of project location, a site plan, and a listing of the selected BMPs chosen for the project. At a minimum, each project must provide for the following:

i. Permanent erosion and sediment control measures that shall be installed at the earliest practicable time consistent with good construction practices and that shall be maintained and replaced as necessary throughout the life of the project.

ii. Temporary erosion and sediment control measures that shall be coordinated with permanent measures to assure economical, effective, and continuous control throughout the construction phase and during the operation of the project.

**Table 1: Supporting Information for Certification Conditions**

<b>Numbered Condition</b>	<b>Why the condition is necessary to assure the activity will comply with water quality requirements</b>	<b>Citation that authorizes the condition</b>
<b>Condition 1, 6</b>	This condition is necessary to ensure that construction site operators are aware of and abide by Tribal 401 certification conditions, Tribal Certification Requirements, Nationwide Permit 18 and its General Conditions, as well as applicable Regional Conditions to Nationwide Permits in the State of Colorado.	SUIT 401 Certification Requirements 4-106(1)(a)-(d)
<b>Conditions 2, 4, 5</b>	These conditions are necessary to ensure water quality is not degraded by toxic pollutants in toxic amounts, raw materials, oil, grease, gasoline, sediment, soil, or construction materials.	40 CFR 230.10(c);40 CFR 230.10(d); 40 CFR 230.71; 40 CFR 230.75; SUIT 401 Procedures  Sections 4-106(1)(e)-(g), 4-106(1)(i), 4-106(1)(o)-(s), 4-106(2)(a)-(b)
<b>Conditions 3, 4</b>	These conditions are necessary to protect water quality because it ensures that the project proponent is using planning and construction practices that will maintain the aquatic resource functions and values. Monitoring for at least three growing seasons, or until replanted areas meet monitoring success criteria will provide an adequate indication that the restoration effort is able to demonstrate restoration is successful. This condition is necessary to ensure minimization of adverse effects on plants and animals and to preserve water quality benefits provided by vegetation in riparian and wetland vegetation, including protecting wildlife dependent on aquatic ecosystems. This condition is necessary to sustain aquatic resource functions and value characteristics ( <i>e.g.</i> , ensure minimization of potential adverse impacts on the aquatic ecosystem that often occurs through the placement and installation of hard armoring along streambanks), to measure the progress of wetland revegetation, and to ensure that non-native and invasive species do not become established. Revegetation with natives and stockpiling of weed-free topsoil are restoration techniques that minimize adverse impacts of potential point source discharges. Revegetation, of areas denuded by the discharge, with natives and stockpiling of weed-free topsoil are	40 CFR 230.10(d); 40 CFR 230.70; 40 CFR 230.75; SUIT WQS Sections 6.1.1, 6.1.3, 6.1.6, 6.1.8, 7.1, 7.2, 13.1; SUIT 401 Procedures Sections 4-106(1)(e)-(g), 4-106(1)(i), 4-106(1)(o)-(t), 4-106(2)(a)-(b)

	restoration techniques that can be used to minimize adverse impacts because riparian vegetation acts as buffer to reduce the amount of sediment and pollutants that enter waterways. Native vegetation, because it is adapted to local conditions ( <i>e.g.</i> , soil types and temperature) provides this function most efficiently. Native vegetation also protects the biological integrity of waters.	
<b>Condition 5</b>	This condition is necessary to ensure water quality is not degraded by oil, grease, gasoline, or other types of fluids used to operate and maintain equipment used to complete the project. This condition also helps protect the water quality and native biology of the impacted waters by preventing the spread of invasive or nuisance species.	40 CFR 230.10(c)-(d); 40 CFR 230.70; 40 CFR 230.71; 40 CFR 230.72; 40 CFR 230.74; SUIT WQS Sections 6.1.1, 6.1.2, 6.1.8, 7.1, 7.2, 13.1; SUIT 401 Procedures Sections 4-106(1)(e)-(g), 4-106(1)(i), 4-106(1)(o)-(s), 4-106(2)(a)-(b)