



**US Army Corps  
of Engineers®**

**Albuquerque District**

# **SPECIAL PUBLIC NOTICE**

## **Nationwide Permits and Regional Conditions, Colorado**

**March 19, 2012**

---

### **PUBLIC NOTICE FOR FEDERAL REGISTER NOTICE ANNOUNCING THE REISSUANCE OF THE NATIONWIDE PERMITS**

On February 21, 2012, the U.S. Army Corps of Engineers (Corps) published the notice in the *Federal Register* announcing the reissuance of all existing nationwide permits (NWP), general conditions, and definitions with some modifications. The Corps also issued two new NWPs, three new general conditions, and three new definitions. The NWPs will be effective on March 19, 2012, and will expire on March 18, 2017.

After publication of this *Federal Register* notice, Corps districts were required to finalize their regional conditions for the new and reissued NWPs. Regional conditions will provide additional protection for the aquatic environment, and will help ensure that the NWPs authorize only those activities with minimal adverse effects on the aquatic environment. Regional conditions will help ensure protection of high value waters within Colorado.

The publication of this *Federal Register* notice also began the 60-day period for states, Indian Tribes, and the Environmental Protection Agency (EPA) to complete their water quality certification (WQC) process for the NWPs. The 60-day period for WQC will end on April 20, 2012.

While the states, Indian Tribes, and EPA complete their WQC processes, the use of an NWP to authorize a discharge into waters of the United States is contingent upon obtaining individual water quality certification or a case-specific WQC waiver.

The February 21, 2012, *Federal Register* notice is available for viewing at the Corps of Engineers offices for the Albuquerque, Omaha and Sacramento District Offices within Colorado (see addresses below) or on the Internet at

<http://www.usace.army.mil/Missions/CivilWorks/RegulatoryProgramandPermits/NationwidePermits.aspx> . As an alternate, Internet users can access the *Federal Register* through the U.S.

Government Printing Office at

<http://www.gpo.gov/fdsys/browse/collection.action?collectionCode=FR> .

Albuquerque District,  
Southern Colorado Regulatory Office  
200 South Santa Fe Ave, Suite 301  
Pueblo, Colorado 81003

Omaha District, Denver Office  
9307 South Wadsworth Blvd  
Littleton, Colorado 80128

Sacramento District, Grand Junction Office  
Wayne N. Aspinall Federal Building  
Grand Junction, Colorado 81501-2563

The Corps has also issued final decision documents for the new and reissued NWP's. These documents are also available on the Internet at <http://www.usace.army.mil/Missions/CivilWorks/RegulatoryProgramandPermits/NationwidePermits.aspx> and Corps district offices. Furthermore, the NWP decision documents will be supplemented by Division Engineers to address decisions concerning the addition of regional conditions to the NWP's.

Enclosed is a copy of the final NWP's, general conditions, further information, and definitions. They are also available through Corps Home Page or the *Federal Register*.

Also attached are the regional conditions for Colorado, for use by Albuquerque, Omaha, and Sacramento Districts for NWP's issued within that state.

Index of Nationwide Permits, Conditions, District Engineer's Decision, Further Information, and Definitions

Nationwide Permits

1. Aids to Navigation
2. Structures in Artificial Canals
3. Maintenance
4. Fish and Wildlife Harvesting, Enhancement, and Attraction Devices and Activities
5. Scientific Measurement Devices
6. Survey Activities
7. Outfall Structures and Associated Intake Structures
8. Oil and Gas Structures on the Outer Continental Shelf
9. Structures in Fleeting and Anchorage Areas
10. Mooring Buoys
11. Temporary Recreational Structures
12. Utility Line Activities
13. Bank Stabilization
14. Linear Transportation Projects

15. U.S. Coast Guard Approved Bridges
16. Return Water From Upland Contained Disposal Areas
17. Hydropower Projects
18. Minor Discharges
19. Minor Dredging
20. Response Operations for Oil and Hazardous Substances
21. Surface Coal Mining Activities
22. Removal of Vessels
23. Approved Categorical Exclusions
24. Indian Tribe or State Administered Section 404 Programs
25. Structural Discharges
26. [Reserved]
27. Aquatic Habitat Restoration, Establishment, and Enhancement Activities
28. Modifications of Existing Marinas
29. Residential Developments
30. Moist Soil Management for Wildlife
31. Maintenance of Existing Flood Control Facilities
32. Completed Enforcement Actions
33. Temporary Construction, Access, and Dewatering
34. Cranberry Production Activities
35. Maintenance Dredging of Existing Basins
36. Boat Ramps
37. Emergency Watershed Protection and Rehabilitation
38. Cleanup of Hazardous and Toxic Waste
39. Commercial and Institutional Developments
40. Agricultural Activities
41. Reshaping Existing Drainage Ditches
42. Recreational Facilities
43. Stormwater Management Facilities
44. Mining Activities
45. Repair of Uplands Damaged by Discrete Events
46. Discharges in Ditches
47. [Reserved]
48. Commercial Shellfish Aquaculture Activities
49. Coal Remining Activities
50. Underground Coal Mining Activities
51. Land-Based Renewable Energy Generation Facilities
52. Water-Based Renewable Energy Generation Pilot Projects

#### Nationwide Permit General Conditions

1. Navigation
2. Aquatic Life Movements
3. Spawning Areas
4. Migratory Bird Breeding Areas
5. Shellfish Beds

6. Suitable Material
7. Water Supply Intakes
8. Adverse Effects from Impoundments
9. Management of Water Flows
10. Fills Within 100-Year Floodplains
11. Equipment
12. Soil Erosion and Sediment Controls
13. Removal of Temporary Fills
14. Proper Maintenance
15. Single and Complete Project
16. Wild and Scenic Rivers
17. Tribal Rights
18. Endangered Species
19. Migratory Bird and Bald and Golden Eagle Permits
20. Historic Properties
21. Discovery of Previously Unknown Remains and Artifacts
22. Designated Critical Resource Waters
23. Mitigation
24. Safety of Impoundment Structures
25. Water Quality
26. Coastal Zone Management
27. Regional and Case-by-Case Conditions
28. Use of Multiple Nationwide Permits
29. Transfer of Nationwide Permit Verifications
30. Compliance Certification
31. Pre-Construction Notification

#### District Engineer's Decision

#### Further Information

#### Definitions

Best management practices (BMPs)  
Compensatory mitigation  
Currently serviceable  
Direct effects  
Discharge  
Enhancement  
Ephemeral stream  
Establishment (creation)  
High Tide Line  
Historic property  
Independent utility  
Indirect effects  
Intermittent stream

Loss of waters of the United States  
Non-tidal wetland  
Open water  
Ordinary high water mark  
Perennial stream  
Practicable  
Pre-construction notification  
Preservation  
Re-establishment  
Rehabilitation  
Restoration  
Riffle and pool complex  
Riparian areas  
Shellfish seeding  
Single and complete linear project  
Single and complete non-linear project  
Stormwater management  
Stormwater management facilities  
Stream bed  
Stream channelization  
Structure  
Tidal wetland  
Vegetated shallows  
Waterbody



# 2012 Regional Conditions in Colorado

U.S. Army Corps of Engineers  
Albuquerque District

## REGIONAL CONDITIONS TO NATIONWIDE PERMITS IN THE STATE OF COLORADO

### Regional Conditions Applicable to Specific Nationwide Permits within the State of Colorado

1. Nationwide Permit No. 12 Utility Line Activities. Notification to the District Engineer in accordance with General Condition No. 31, pre-construction notification (PCN) is required for utility line activities that either require open trenching in perennial waters or are for the purpose of water transmission. The purpose for requiring a PCN for water transmission projects is to determine whether the project will result in withdrawal of water from a stream/river, and if so, whether the effects of the withdrawal are minimal.

2. Nationwide Permit Nos. 12 and 14, Utility Line Activities and Linear Transportation Projects. PCN is required for utility lines and transportation activities crossing perennial waters and/or special aquatic resources, including wetlands, in the Colorado River Basin (all tributaries to the Colorado River within Colorado).

3. Nationwide Permit No. 13 Bank Stabilization. PCN is required for bank stabilization activities either exceeding 250 linear feet or that are necessary for erosion prevention in streams with an average width of less than 20 feet (measured between the ordinary high water marks (OHWM)). Bank stabilization activities in these small streams are limited to the placement of no more than ¼ cubic yard of fill material per linear foot below the plane of the OHWM unless the Corps determines on a case-by-case basis that the use of larger or greater quantities of material is appropriate.

4. Nationwide Permit No. 23 Approved Categorical Exclusions. PCN is required for all projects utilizing Categorical Exclusions.

5. Nationwide Permit No. 27 Stream and Wetland Restoration Activities. This permit is revoked for activities that include a fishery enhancement component in perennial streams. These types of projects must be authorized by the Regional Permit No. 12 for Aquatic Habitat Improvement for Stream Channels in Colorado.

- a. Channel realignment is not authorized by this permit unless it is demonstrated that the realignment is consistent with the natural morphological evolution of the stream.
- b. Structures authorized by this permit must allow for the upstream and downstream passage of aquatic organisms, including fish native to the reach, unless waived in writing by the District Engineer.
- c. Structures authorized by this permit must not impede waterborne navigation, including recreational watercrafts, unless waived in writing by the District Engineer.
- d. The use of concrete/grouting is not allowed in perennial streams unless waived in writing by the District Engineer.
- e. The construction of water parks (e.g. kayak courses) and flood control projects are not authorized by this permit.

6. Nationwide Permits No's 29 and 39; residential Developments and Commercial and Industrial Developments. A copy of the Existing FEMA/locally-approved floodplain map must be submitted with the PCN.

### Regional Conditions Applicable to All Nationwide Permits within the State of Colorado

7. Important Spawning Areas. GC No. 3 (Spawning Areas) is amended by adding the following: Activities are not authorized by any Nationwide Permit except after case-by-case review and consultation with the Colorado Parks and Wildlife (CPW) if the activities would destroy important spawning areas or would be conducted in these waters during trout and Kokanee spawning seasons. Bio-engineering techniques, such as native riparian shrub plantings are required for all bank protection activities that exceed 50 linear feet in important spawning areas. Important spawning areas are identified in the list of Gold Medal Waters in Colorado (Attachment 2). Pre-construction notification is required for such activities and consultation

with CPW would be conducted in accordance with the timeframes established in GC 31.

8. Removal of Temporary Fills. GC No. 13 (Removal of Temporary Fills) is amended by adding the following: When temporary fills are placed in wetlands, a horizontal marker (i.e. fabric, certified weed-free straw, etc.) must be used to delineate the existing ground elevation of wetlands that will be temporarily filled during construction.

9. Fens. All Nationwide Permits, with the exception of 3, 5, 6, 20, 27, 32, 37, and 38 are revoked for activities located in fens and wetlands adjacent to fens. PCN is required for all other activities considered for authorization by Nationwide Permits. The permittee may not begin the activity until the Corps determines the adverse environmental effects are minimal.

A fen is defined as a groundwater-fed wetland with saturated fibric organic soil (greater than equal to 16") that is classified as a histosol in the Natural Resources Conservation Service's (NRCS) Field Indicators of Hydric Soils in the United States, Version 7.0, 2010. A copy of the document can be obtained at [ftp://ftp-fc.sc.gov.usda.gov/NSSC/Hydric\\_Soils/FieldIndicators\\_v7.pdf](ftp://ftp-fc.sc.gov.usda.gov/NSSC/Hydric_Soils/FieldIndicators_v7.pdf).

*Note: A fen may be part of a larger aquatic system (fen complex) where wetlands and other waters adjacent to the fen may provide a critical source of hydrology necessary for sustaining the fen.*

10. Springs. PCN is required for all Nationwide Permits if the activities occur within 100 feet of the discharge point of a spring. The Corps will determine if the proposed project will have more than a minimal effect to the site specific spring and may require an Individual Permit or project modification to reduce/eliminate the spring impacts. For the purposes of this regional condition, springs do not include seeps or other discharges that do not have a defined channel.

11. Suitable Fill. PCN is required for the use of broken concrete as fill material within the State of Colorado. Permittees must demonstrate that soft engineering methods utilizing native or non-manmade materials are not practicable (with respect to cost, existing technology, and logistics), before broken concrete is allowed as suitable fill. Use of broken concrete with exposed rebar is prohibited. *Note: GC No. 6 prohibits the use of unsuitable*

*material, which includes but is not limited to organic debris, building waste, asphalt, car bodies, and junk materials.*

## ADDITIONAL INFORMATION

The following additional information relates to minimization of impacts to jurisdictional waters of the United States, and compliance with existing General Conditions:

1. **Permittees are reminded** that appropriate erosion and sediment controls are required in accordance with GC No. 12 in order to properly stabilize the site and prevent erosion and siltation into wetlands and other waters downstream. Streambed material or other small aggregate material placed alone for bank stabilization will not meet GC No. 12.

2. **Permittees are reminded** that all compensatory mitigation is required prior to or concurrent with project construction to ensure compliance with the Final Compensatory Mitigation Rule. A complete copy of the Final Compensatory Mitigation Rule may be obtained at the following website: [http://www.usace.army.mil/cecw/pages/final\\_cmr.aspx](http://www.usace.army.mil/cecw/pages/final_cmr.aspx).

3. **Permittees are encouraged** to clean heavy equipment prior to and after construction if equipment was previously used in another stream, river, lake, pond or wetland within 10 days of initiating work in order to prevent the spread of New Zealand Mud Snails and other aquatic hitchhikers:

- a. Remove all mud and debris from equipment (tracks, turrets, buckets, drags, teeth, etc.) and keep the equipment dry for 10 days; or
- b. Remove all mud and debris from equipment (tracks, turrets, buckets, drags, teeth, etc.) and spray/soak equipment with either a 1:1 solution of Formula 409 Household Cleaner and water, or other approved chemical solutions. Treated equipment must be kept moist for at least 10 minutes; or
- c. Remove all mud and debris from equipment (tracks, turrets, buckets, drags, teeth, etc.) and spray/soak equipment with water greater than 120 degrees F for at least 10 minutes.

**4. Designated Critical Resource Waters and Gold Medal Waters in Colorado.** Within the State of Colorado, the waters listed in **Attachment 1** are designated as critical resource waters. In accordance with General Condition 22 (Designated Critical Resource Waters), the discharge of dredged or fill material is not authorized by the following nationwide permits in these waters, including wetlands adjacent to such waters: NWPs 7, 12, 14, 16, 17, 21, 29, 31, 35, 39, 40, 42, 43, 44, 49, 50, A and B. In addition, in accordance with General Condition 30 (Pre-Construction Notification), notification to the District Engineer is required for use of the following nationwide permits in these waters, including adjacent wetlands: NWPs 3, 8, 10, 13, 15, 18, 19, 22, 23, 25, 27, 28, 30, 33, 34, 36, 37 and 38.

Within the State of Colorado, the waters listed in **Attachment 2**, Gold Medal Waters, fall under the requirements set forth in Regional Condition 7 (above).

**ATTACHMENT 1:**

**DESIGNATED CRITICAL RESOURCE WATERS**

**OUTSTANDING NATURAL RESOURCE WATERS**

In the State of Colorado, the following waters are designated as Critical Resource Waters.

**Animas and Florida River Basins.** All tributaries to the Animas River and Florida River, including wetlands, lakes, and reservoirs, located within the Weminuche Wilderness Area.

Hermosa Creek, including all tributaries, from the source to immediately below the confluence with Long Hollow Creek, except for the East Fork of Hermosa Creek.

**Bear Creek Basin.** The mainstem of Bear Creek and all tributaries, lakes, and reservoirs, including wetlands, within the Mt. Evans Wilderness Area.

**Big Thompson River Basin.** The mainstem of the Big Thompson River, including all tributaries, lakes, reservoirs, and wetlands, located within Rocky Mountain National Park (RMNP).

**Blue River Basin.** North Fork of the Swan River, including all tributaries and wetlands, from the source to the confluence with the Swan River.

All tributaries to the Blue River, including wetlands within the Eagle Nest and Ptarmigan Peak Wilderness Areas.

All lakes and reservoirs within the Eagle Nest and Ptarmigan peak Wilderness Areas.

**Boulder Creek Basin.** All tributaries to Boulder Creek, including lakes, reservoirs, and wetlands, located within the Indian Peaks Wilderness Area.

**Cache la Poudre River Basin.** All tributaries to the Cache La Poudre River, including lakes, reservoirs, and wetlands, located within RMNP and Rawah, Neota, Comanche Peak, and Cache La Poudre Wilderness Areas.

**Clear Creek Basin.** All tributaries to Clear Creek, including lakes, reservoirs, and wetlands, located within Mt. Evans Wilderness Area.

**San Luis Valley (Closed Basin).** All tributaries in the Closed Basin, including wetlands, lakes, and reservoirs, located within the La Garita Wilderness Area.

The mainstem of Sand Creek, including all tributaries and wetlands, from the source to the mouth.

The mainstem of Medano Creek, including all tributaries and wetlands, from the source to the mouth.

**Colorado River Basin.** The Mainstem of the Colorado River, including all tributaries and wetlands, located within or flowing into RMNP.

All tributaries to the Colorado River and Frasier River within RMNP and within the Never Summer, Indian Peaks, Byers, Vasquez, Eagles Nest, and Flat Top Wilderness Areas.

Mainstem of Northwater Creek and Trapper Creek, including all tributaries and wetlands, from their source to the confluence with the East Fork of Parachute Creek. East Middle Fork of Parachute Creek, including all tributaries and wetlands from the source to the confluence with Middle Fork of Parachute Creek.

Battlement Creek, including all tributaries and wetlands, from its source to a point immediately downstream boundary of BLM lands.

Mainstem of Rapid Creek, including all tributaries and wetlands, from the source to a point immediately below the confluence with Cottonwood Creek including Kruzen Springs.

**Dolores River Basin.** All tributaries to the Dolores River and West Dolores River, including wetlands, tributaries, lakes, and reservoirs, located within the Lizard Head Wilderness Area.

**Eagle River Basin.** All tributaries to the Eagle River system, including lakes, reservoirs, and wetlands, located within the Eagle Nest and Holy Cross Wilderness Areas of the Gore Range.

Abrams Creek, including all tributaries and wetlands, from the source to the eastern boundary of the BLM lands.

**Fountain Creek Basin.** Severy Creek, including all tributaries, from the source to a point just upstream of where the Forest Service Road 330 crosses the stream.

Bear Creek, including all tributaries, from the source to a point upstream of GPS coordinated N3847682, W10454917 (this location is at elevation 8,200 feet above sea level at a 250 degree angle and 3,000 feet from the trailhead of the Mount Buckhorn Trail off High Drive).

**Gunnison River Basin.** All tributaries to the Gunnison River, including lakes, reservoirs, and wetlands, located within the La Garita and Powderhorn Wilderness Areas.

All tributaries to the Gunnison River, including lakes, reservoirs, and wetlands, located within the West Elk, Collegiate Peaks, Maroon Bells, Raggeds, and Fossil Ridge Wilderness Areas.

All tributaries to the Gunnison River, including lakes, reservoirs, and wetlands, located within the Uncompahgre Wilderness Area.

All tributaries to the Smith Fork, including lakes, reservoirs, and wetlands, located within the West Elk Wilderness Area.

**Laramie River Basin.** All tributaries to the Laramie River system, including lakes, reservoirs, and wetlands, located within the Rawah Wilderness Area.

**Los Pinos River Basin.** All tributaries to the Los Pinos River, including lakes, reservoirs, and wetlands, located within the Weminunche Wilderness Area.

**Mancos River Basin.** All tributaries of the Mancos River located within Mesa Verde National Park.

**North Fork of the Gunnison River Basin.** All tributaries to North Fork of the Gunnison River, including lakes, reservoirs, and wetlands, located within the West Elk and Raggeds Wilderness Areas.

**North Platte River Basin.** All tributaries to the North Platte River and Encampment Rivers, including lakes and reservoirs.

All wetlands located within the Mount Zirkle, Never Summer, and Platte River Wilderness Areas.

**Piedra River Basin.** All tributaries to the Piedra River, including lakes, reservoirs, and wetlands, located within the Weminunche Wilderness Area.

**Rio Grande Basin.** All tributaries to the Rio Grande, including lakes, reservoirs, and wetlands, located within the Weminunche Wilderness Area.

**Roaring Fork River.** All tributaries of the Roaring Fork River system, including lakes and reservoirs, located within the Maroon Bells/Snowmass, Holy Cross, Raggled, Collegiate Peaks, and Hunter/Fryingpan Wilderness Areas.

**San Juan River Basin.** All tributaries to the San Juan River, Rio Blanco, and Navajo River, including lakes, reservoirs, and wetlands, located within the Weminunche and South San Juan Wilderness Areas.

**San Miguel River Basin.** All tributaries to the San Miguel River, including lakes, reservoirs, and wetlands, located within the Lizard Head and Mt. Sneffles Wilderness Areas.

**South Platte River Basin.** All tributaries to the South Platte River, including lakes, reservoirs, and wetlands, located within the Lost Creek and Mt. Evans Wilderness Areas.

**St. Vrain Creek Basin.** All tributaries to St. Vrain Creek, including lakes, reservoirs, and wetlands, located within the Indian Peaks Wilderness Areas and RMNP.

**Uncompahgre River Basin.** All tributaries to the Uncompahgre River, including lakes, reservoirs, and wetlands, located within the Mt. Sneffels and Uncompahgre Wilderness Areas.

**White River Basin.** All tributaries to the White River, including lakes, reservoirs, and wetlands, located within the Flat Tops Wilderness Area, including Trapper's Lake.

**Yampa River Basin.** All tributaries to the Yampa River, including lakes, reservoirs, and wetlands, located within Zirkle, Flat Tops, and Sarvis Creek Wilderness Areas.

## ATTCHMENT 2

### GOLD MEDAL WATERS

The following list of important spawning areas has been defined as Gold Medal Waters by the State of Colorado.

**Animas River.** From Lightner Creek to Rivera Crossing Bridge.

**Blue River.** From Dillon Reservoir Dam downstream to the confluence with the Colorado River (34 miles).

**Colorado River.** From Fraser River downstream to the confluence with Troublesome Creek (20 miles).

**Fryingpan River.** From Ruedi Reservoir Dam downstream to the confluence with the Roaring Fork River (14 miles).

**Gore Creek.** From Red Sandstone Creek downstream to Eagle River (4.5 miles).

**Gunnison River.** From the upper boundary of the Black Canyon of the Gunnison National Monument downstream to the confluence with the North Fork of the Gunnison River (26 miles).

**North Delaney Lake.** Ten miles west of Walden.

**North Platte River.** From the Routt National Forest boundary to the Wyoming border (5.3 miles).

**Rio Grande.** From Farmers' Union Canal upstream to the upper boundary of Collier State Wildlife Area (22.5 miles).

**Roaring Fork River.** From the confluence with Crystal River downstream to the confluence with the Colorado River (12 miles).

**South Platte River.** The Middle Fork of the South Platte River downstream from U.S. Route 285, the South Fork of the South Platte River downstream from the outlet at Antero Reservoir, and from the confluence of the Middle and South Forks of the South Platte River downstream to the inlet of Spinney Mountain Reservoir.

From the outlet of Spinney Mountain Reservoir downstream to the inlet of Eleven Mile Canyon Reservoir.

From Cheesman Reservoir Dam downstream to the confluence with the North Fork of the South Platte River (19.5 miles).

**Spinney Mountain Reservoir.** On the South Platte River, five miles upstream from Eleven Mile Canyon Reservoir.on Reservoir.