

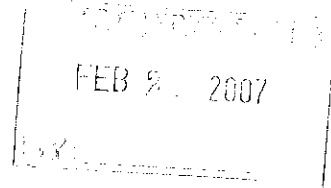
**Appendix A. Corps 404 Nationwide Permit**



DEPARTMENT OF THE ARMY  
ALBUQUERQUE DISTRICT, CORPS OF ENGINEERS  
EL PASO REGULATORY OFFICE  
PO BOX 6096  
FORT BLISS TX 79906-0096

February 20, 2007

Operations Division  
Regulatory Branch



Peggy Ulman  
Marron and Associates, Inc.  
7511 Fourth Street NW  
Albuquerque, NM 87107

Dear Ms. Ulman:

This replies to your January 5, 2007, letter regarding the New Mexico Interstate Stream Commission's proposed installation of a pipeline system to convey groundwater from wells to Brantley Reservoir, near Carlsbad, Eddy County, New Mexico. We have assigned Action No. SPA-2007-72-ELP to this activity. The proposed pipeline would require crossing two ephemeral streams, and installing an outfall structure in a wetland area adjacent to Brantley Reservoir.

The Corps of Engineers has published Nationwide Permits pursuant to Section 404 of the Clean Water Act (33 CFR 330). Nationwide Permit No. 12 authorizes discharges of dredged or fill materials into waters of the United States for Utility Line Activities. Nationwide Permit No. 7 authorizes discharges of dredged or fill materials into waters of the United States for Outfall Structures and Maintenance. Summaries of Nationwide Permit Nos. 12 and 7 are enclosed for your information.

The New Mexico Interstate Stream Commission's utility line and outfall structure can be constructed under authority of the nationwide permits. The permittee must insure compliance with all conditions of the permits, including submittal of the enclosed Compliance Certification required by General Condition No. 14. In addition to the conditions described in the permit summaries, the following Special Conditions must be met:

SPECIAL CONDITONS for SPA-2007-72-ELP

1. The Permittee shall implement the Wetland Restoration and Habitat Enhancement (stipulated on page 20-22 of the Wetland Determination and Delineation for the Proposed Seven Rivers Pipeline in Eddy County, New Mexico - prepared by Marron and Associates, Inc., November 2006) proposed as mitigation for the permanent loss of 1312 square feet of wetland associated with the

installation of the outfall structure (copy enclosed). The mitigation plan can be summarized as follows: Approximately 4150 square feet of disturbed wetland and shoreline habitat would be restored by planting approximately 95 coyote willow whips and 12 cottonwood trees (as cottonwood poles).

2. The Permittee shall follow the planting techniques and installation timeline as stipulated in the referenced document in Special Condition 1, including an annual submittal of a report, with photographs, to the El Paso Regulatory Office for three years (beginning at the completion of the installation of the mitigation) to demonstrate mitigation success. Success criteria for the coyote willow and cottonwood tree plantings will be reasonable and practicable, and in the event the plantings, or a significant portion thereof, fail to survive, replanting may be required to maintain permit compliance.

Portions of the proposed project are located in ephemeral streams. Water quality certification for activities in ephemeral streams was issued by the New Mexico Environment Department (NMED) on March 15, 2002, for use of this nationwide permit (copy enclosed). Please note the special conditions in the certification.

Other portions of the proposed project are located in jurisdictional wetland. You are required to contact the NMED prior to discharging dredged or fill material to obtain a water quality certification for these portions. It is the understanding of the Corps you have initiated this process. Under separate cover I am providing the NMED (POC Chris Canavan 505-647-7926) information about this project.

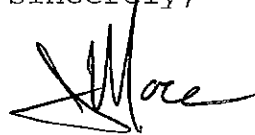
General Condition No. 11 requires that no activity is authorized under any Nationwide Permit which is likely to jeopardize the continued existence of a listed or proposed threatened or endangered species, as identified under the Federal Endangered Species Act, or which is likely to destroy or adversely modify the critical habitat of such species. We have determined that your proposed work, as described, will have no effect on any listed or proposed endangered or threatened species or its critical habitat.

This verification will be valid for 2 years unless the nationwide permit is modified, reissued or revoked. The verification will remain valid if, during that time, the nationwide permit is reissued without modification or the activity complies with any subsequent modification of the nationwide permit authorization. If the nationwide permit

authorization expires, is suspended, revoked, or modified such that the activity would no longer comply with the terms and conditions of the nationwide permit, the provisions of 33 CFR 330.6(b) will apply.

If you have any questions regarding these regulations, please feel free to write or call me at (915) 568-1359 or by e-mail at james.e.mace@usace.army.mil.

Sincerely,

A handwritten signature in black ink, appearing to read "J. Mace", written over a horizontal line.

James E. Mace  
Chief, El Paso Regulatory Office

3 Enclosures:

1. Nationwide Permit Summary
2. Compliance Certification form
3. WQ Cert Ltr

Copies furnished:

NMED, Las Cruces

USACE, El Paso

**Certification of Compliance  
with Department of the Army Nationwide Permit**

Action Number:           **SPA-2007-72-ELP**

Name of Permittee:   **New Mexico Interstate Stream Commission  
                          Attn: Timothy R. Murrell**

Nationwide Permit:   **No. 12, Utility Lines  
                          No. 7, Outfall Structures and Maintenance**

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

District Engineer  
Albuquerque District, Corps of Engineers  
ATTN: Regulatory Branch  
4101 Jefferson Plaza, NE  
Albuquerque, New Mexico 87109-3435

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

Please enclose photographs showing the completed project (if available).

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.

Date Work Started \_\_\_\_\_

Date Work Completed \_\_\_\_\_

\_\_\_\_\_  
Date

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