

Appendix E

Correspondence

Governor Dave Freudenthal Letter, April 30, 2010

USU Archeological Services, Inc. Letters

US Department of the Interior; Fish and Wildlife Service Letter, November 5, 2010

Wyoming Department of Environmental Quality Letter, December 21, 2010

US Army Corps of Engineers; Wetland Permit Letter, December 30, 2010

Wyoming State Historic Preservation Office Letter, January 28, 2011

NPS: Section 7 WSRA Evaluation Procedure under “Direct and Adverse Effect” Standard

USFS: Section 7 WSRA Evaluation Procedure under “Direct and Adverse Effect” Standard

Governor Dave Freudenthal Letter

April 30, 2010

Office of the Governor

April 30, 2010

The Honorable Lawrence E. Strickling
Assistant Secretary for Communications and Information
United States Department of Commerce
Washington, D.C. 20230

(via E-mail to imartinez.@ntia.doc.gov)

Dear Assistant Secretary Strickling:

I am writing to you in response to your invitation to comment on Broadband Technology Opportunity Program (BTOP) applications for Round Two grant proposals within Wyoming by May 3, 2010. The American Recovery and Reinvestment Act of 2009 (Recovery Act) authorizes the U.S. Department of Commerce's National Telecommunications and Information Administration (NTIA) to consult with states regarding allocation of grants funds to projects affecting each state.

Mr. Rob Hurless, my energy and telecommunications policy advisor, has worked with a team of specialists to prepare these comments. Mr. Hurless has been assisted by Mr. Alan B. Minier, Chairman of the Wyoming Public Service Commission, and Mr. Bob von Wolfradt, Wyoming Chief Information Officer. Mr. von Wolfradt is also responsible for Wyoming's participation in the national mapping project under the Broadband Data improvement Act and the Recovery Act.

The team identified all of the BTOP program applications filed under Round Two that propose to serve areas of Wyoming by visiting the Broadband USA Web site and searching the applications database for applications with proposed project areas in Wyoming.¹ We have chosen to confine our comments to proposals of particular interest.

The team selected four projects with qualities in common. The projects deploy broadband infrastructure, enhance broadband capacity at public computer centers, provide more effective cardiovascular disease (CVD) ambulatory diagnostic, therapeutic, and educational telecardiology program, and promote job creation and stimulate long-term growth and opportunity especially in rural areas of Wyoming.

The four projects are shown in Table 1 below.

¹ <http://www.ntia.doc.gov/broadbandgrants/applications/search.cfm>

Table 1				
Broadband USA applications for Wyoming				
Application ID	Applicant	Project Title	Project Type	Grant Request
6008	HOT SPRINGS GREATER LEARNING FOUNDATION, THERMOPOLIS, WY	Big Horn Basin Wyoming Center	Public Computer Center	\$4,000,000
6522	WYOMING HEALTH INFORMATION ORGANIZATION (WYHIO), CHEYENNE, WY	Southeast Wyoming Telehealth Network: Telecardiology Program (SEWTNTCP)	Sustainable Broadband Adoption	\$404,856
7080	SILVER STAR TELEPHONE COMPANY, INC. FREEDOM, WY	Delivering Opportunities: Investing in Rural Wyoming Broadband	Comprehensive Community Infrastructure	\$5,063,623
7357	SILVER STAR TELEPHONE COMPANY, INC. FREEDOM, WY	Expanding Greater Yellowstone Area Broadband Opportunities	Comprehensive Community Infrastructure	\$5,608,179
	Total			\$15,076,658

The first two proposals; from the Hot Springs Greater Learning Foundation (App # 6008), and the Wyoming Health Information Organization (App #6522), represent very special efforts to support the proposals with sophisticated broadband planning strategies and thoughtful academic analysis. Each of the proposals will fill a necessary space in the efforts of many important Wyoming partnering entities. Each of the proposals is based on credible project leadership and community involvement.

In particular, App # 6008, Hot Springs Greater Learning Foundation proposal is also supported by Engrossed House Bill 0239, Enrolled Act No. 116, passed during the 2009 Wyoming legislative session. I support community leadership working creatively to craft solutions that work at the local level. The idea of using the attributes of Hot Springs State Park and the many unique geological characteristics of the community of Thermopolis as the organizing principle for a computer center is the embodiment of a real world local solution. It is also a key strategic location geographically for the entire northern tier of our state.

The extensive partnerships with both private and public sectors entities set forth in Hot Springs proposal will go a long way toward aggregating demand that is so important to small, rural markets. These small, remote markets are often not understood by decision makers in larger, suburban, or urban settings. The Hot Springs applicant's insight into using the Public Computer Center approach as the glue holding together many seemingly diverse activities is key to the viability and sustainability in a rural community setting. Diversity of activity is not just a desirable goal it is likely a necessity for a project of this nature to be successful. Therefore, the range of activities and partners that might lead a reviewer to question the focus of the application is actually the indispensable heart of the proposal. Hot Springs obviously demonstrates both a thorough understanding of this concept and the hard work necessary to completing the application.

Southeast Wyoming Telehealth Network: Telecardiology Program (SEWTNTCP), App # 6522, will provide, via TeleHealth, the ability to "transport" medical specialists to rural facilities/communities. This is critical because Wyoming is a frontier state, where 509,294 people live in 97,100 square miles. It is currently 50th in population and 9th in size. Wyoming ranks 45th in physicians per 100,000 population and 50th in medical specialists per 100,000 population. Of the state's 23 counties, 15 qualify as primary care Health Professional Shortage Areas. The lack of cardiovascular specialists (total 19) in the state, significantly impacts the ability to offer acute and chronic care for Cardio Vascular Disease (CVD) patients. This situation is further aggravated by the challenges of distance, geography, inclement weather, and isolated communities.

A solution to this problem is the use of telehealth which provides the ability to "transport" specialists to rural facilities. The proposed program will result in more effective and efficient CVD care utilizing broadband network connections. The program will develop and implement "best practices" in CVD treatment through telehealth and create a sustainable model to include stroke, trauma, psychiatry, and other clinical services throughout the state.

The third and fourth applications, from Silver Star Telephone Company, Inc. (Silver Star) provide critical additional investment in backbone infrastructure facilities. A special priority for broadband stimulus in Wyoming is to complete a statewide fiber network with redundant, self-healing network architecture capable of supporting a robust broadband environment. Of course, connection to neighboring community of interest in Idaho is also a valuable improvement. The broadband steering committee has identified several physical infrastructure gaps that need to be addressed for the benefit of numerous entities and many of our citizens to provide modern broadband access and enable next generation, IP-enabled 911 and coordination, as well as electronic access to government, education, commerce, health, telework, and e-safety. This type of focus will encourage scalability and flexibility of projects. Although the projects ambitiously cross some of the most challenging terrain, the information in Silver Star's filings show credible evidence of their ability to complete the project in an appropriate manner.

We would underscore the fact that the need for completion of the project was discussed with, and within, Wyoming's telecommunications industry following the initial announcement

The Honorable Lawrence E. Strickling
April 30, 2010
Page 4

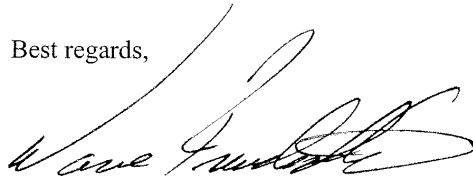
that ARRA funding might be available for this important infrastructure project. Without ARRA funding, we believe it will be many years before market forces alone will address this need.

Silverstar proposes to close an approximate 86 mile "gap" between the endpoints of an existing 960 route mile fiber network traversing nearly two-thirds the state of Wyoming. The "gap" is located in northwest Wyoming, between Togwotee Pass (on the continental divide) and Jackson, *Jackson - Moran - Togwotee*. When completed, this project will promote broadband network opportunities for 11 counties and 26 communities in Wyoming. Beneficiaries will include the University of Wyoming and five 2-year institutions (community colleges), 222 Wyoming Public Schools, 42 Participating Facilities (hospitals, community mental health centers, and substance abuse clinics) in the Wyoming Telehealth Network,² WYOLINK,³ and other local and statewide emergency response teams and related initiatives.⁴ Industry estimates place the cost of this proposed project at over 7 million dollars. Silver Star proposes to construct this project with a 22% cost match.

Silver Star also proposes to close an approximate 33-mile "gap" over Teton Pass between Wyoming and Idaho, *Jackson - Teton Pass - Victor, ID*. This will connect areas that have been isolated from other communications carriers, business entrepreneurs, health care providers, educational facilities, and community services. When completed, this project will create the capacity for new broadband network opportunities for 11 counties and 26 communities in Wyoming, and the same list of possible beneficiaries listed above. The proposed project is estimated to result in 69 created or saved jobs. Industry estimates place the cost of the Jackson, WY to Victor, Idaho Middle Mile Fiber Optic Project at almost 6.3 million dollars.

In conclusion, please accept these comments and explanations. If you have any questions or concerns, please contact Mr. Hurless.

Best regards,



Dave Freudenthal
Governor

DF:pjb

c: Ian Martinez, Senior Adviser and Director of Outreach, NTIA

² Note: WYOMINGTELEHEALTH NETWORK, Proposal to FCC Rural Health Care Pilot Program www.fcc.gov/cgb/rural/rhcp.html, Wyoming [Part 1].

³ Wyoming Homeland Security Communications Initiative; <http://wyolink.state.wy.us>.

⁴ <http://wyohomelandsecurity.state.wy.us/main.aspx>.

USU Archeological Services, Inc. Letters

USU, September 15, 2010

US Department of the Interior; GTNP, December 6, 2010

US Department of Agriculture; BTNF, December 13, 2010

USU, 3 February 2011

USU ARCHEOLOGICAL SERVICES, INC.

PO Box 3385
Logan, Utah 84323
435.797.3868 (office)
303.590.4960 (cell)
435.797.1240 (fax)
www.usuas.com



15 September 2010

Jill Dowling
Federal Preservation Officer
US Department of Commerce
HC Hoover Bldg, Room 1036
1401 Constitution Avenue, NW
Washington DC 20230

Subject: Investment in Expanding Broadband Communication Opportunities in the Greater Yellowstone Ecosystem

Dear Ms. Dowling:

USU Archeological Services, Inc., has been selected to be the subcontractor to Pioneer Environmental to conduct the Section 106 process of the National Historic Preservation Act for the *Investment in Expanding Broadband Communication Opportunities in the Greater Yellowstone Ecosystem*. This project was awarded to Silver Star Telephone through a BTOP grant. This letter provides a description of the project in order to initiate the Section 106 consultation process.

The project is located in Teton County, Wyoming and includes approximately 100 miles of designated fiber optic route which crosses lands with multiple ownership including private, the Town of Jackson, Teton County, Grand Teton National Park, the Bridger-Teton National Forest, the Shoshone National Forest, and the Targhee National Forest.

There are two sections of the project (based upon funding sources)-the Teton Pass Fiber Optic Line and the Togwotee Pass Fiber Optic Line. The Teton Pass section begins south of the Town of Jackson in South Park and follows Hwy 26 to the intersection of Hwy 22 (Figure 1). A portion of the route heads west into the Jackson High School area. The route follows Hwy 22 west over Teton Pass to the Idaho State border (Figures 2-3). Sections of the route along Hwy 22 will go to the Teton Science School and north on Hwy 390 where it ends at the C Bar V Ranch School. This route joins the Togwotee Pass section at this point (Figure 4).

The preferred route through the Town of Jackson heads east from the Hwy 26 section and will follow existing road right-of-ways (Figure 1). A franchise between Silver Star and the Town of Jackson is being developed and this route may change.

The section of the Teton Pass route that extends from the Town of Wilson to the Idaho Border has two potential alternatives. The proposed route follows Hwy 22 until it reaches Teton Pass and then goes upslope to follow the BPA transmission line for approximately 2 miles before rejoining Hwy 22 to the

Idaho state line. A possible alternative follows the Teton Pass bike path to Teton Pass. West of Teton Pass it follows Hwy 22 to the Idaho State Line. The preferred alignment for this portion of the route is still under discussion.

In order to minimize disturbance this portion of the route has been designed to follow existing corridors adjacent to the roads, or in the case of the BPA transmission line corridor, to follow corridors that have already been surveyed. Portions of this route may be excluded from additional survey based upon previous disturbance or previous cultural resource surveys. However, this will be determined only after a file search has been conducted and consultation with the WY SHPO and the US Forest Service.

The Togwotee Pass section begins on Hwy 390 at the C Bar V Ranch School and heads north (Figure 4). A short leg heads west to Teton Village. After Teton Village the route heads northeast along the Moose-Wilson Road and before reaching the Grand Teton National Park entrance follows a private two-track where the line will be bored under the Snake River. This section of the route that parallels the park boundary will be placed between the road and the NPS fence. An irrigation ditch along this section may be historically significant.

After crossing the Snake River the route crosses private property and follows the road alignment of Zenith Road then south along Spring Gulch Road, west to Gros Ventre Junction and north along Hwy 26 (Figure 5). This portion of the route is within the boundary of Grand Teton National Park. This portion of the route has been designed for placement of the line adjacent to an existing Qwest fiber optic line and along an old two-track about 25 meters east of Hwy 26. This, again, is designed to minimize impacts and new ground disturbance. Two spurs will head west from Hwy 26, one to the Jackson Hole Airport and a second to Moose. Each of these will follow existing road alignments. The NPS has conducted numerous cultural resource surveys in the Moose area associated with various construction projects.

At the north end of Blacktail Butte the route will follow Antelope Flats Road to the east and north (Figures 5-6). The proposed route will stay close to the road and follow the existing Qwest and powerline corridor. At the junction of Antelope Flats Road and Mormon Road is a historic homestead listed on the National Register. Impacts to this historic property are not likely to occur since it is at least 50 meters north of the preferred route. However, this is a historic property that will need to be considered.

Heading northeast the route turns north along Shadow Mountain Road for about 2.5 km then crosses the road and follows the existing powerline corridor (Figure 6). The route then returns to the road near Lost Creek Ranch heading north and rejoining Hwy 26 crossing to the west and following the existing powerline. The route continues for approximately 2.5 km where it heads northeast along Wolf Ranch Road following an the existing powerline to the Buffalo Fork where the line will be bored under the river. (Figure 7). After crossing under the Buffalo Fork the route continues on the north side of Hwy 26 with a section going west to Moran Junction (Figure 7).

Heading east the route follows Hwy 26 out of Grand Teton National Park and into the Bridger-Teton National Forest. The preferred route is to stay on the north side of the road in the existing Qwest corridor (Figure 8). At the Blackrock Ranger Station the route heads north and follows the existing gravel road then east and north along the existing powerline as it climbs Rosies Ridge (Figure 9). This area contains historic structures and at least one recorded prehistoric site. This section of Hwy 26 has been surveyed by the State of Wyoming Office of State Archaeologists and may potentially be excluded from additional cultural resource surveys.

Following Rosies Ridge the route will follow a Forest Service Road that parallels Hwy 26 until it reaches Togwotee Lodge (Figures 9-10). The route then continues along the Hwy 26 ROW until reaching Togwotee Pass. The very terminus of the route is within the Shoshone National Forest (Figures 11-12).

USUAS is prepared to conduct the Class III survey following the standards and protocol established by the Wyoming SHPO. This includes a file search with the WY SHPO, a pedestrian survey, and final report production. We are fully prepared to be involved in the consultation process with the WY SHPO and all pertinent federal agencies to ensure the completion of the Section 106 process in a timely and professional manner within the framework of the EA schedule.

The Principal Investigator, Dr. Kenneth Cannon, has been working in Wyoming since 1987, largely in the Jackson Hole region. He has conducted numerous projects in the area for the National Park Service, Bridger-Teton National Forest, US Fish and Wildlife Service, and Federal Highway Administration.

I understand that this letter initiates the Section 106 consultation process with the NTIA. I look forward to working with you and all other agencies on this project.

Sincerely,

Kenneth P. Cannon, PhD, RPA
Director, USU Archeological Services, Inc.

Enclosure: 12 maps



IN REPLY REFER TO:

United States Department of the Interior
NATIONAL PARK SERVICE

GRAND TETON NATIONAL PARK
P.O. DRAWER 170
MOOSE, WYOMING 83012



H30(GRTE)

DEC 06 2010

Ms. Mary Hopkins
State Historic Preservation Officer
Wyoming State Historic Preservation Office
2301 Central Avenue, 3rd Floor
Cheyenne, WY 82002

Reference: §106 Compliance for expanding broadband communication opportunities in the Greater Yellowstone Area through Grand Teton National Park

Dear Ms. Hopkins:

Enclosed for your review is a copy of *The Cultural Resource Investigations for the Investment in Expanding Broadband Communication Opportunities in the Greater Yellowstone Area* completed by USU Archeological Services, Inc. in November, 2010. As a result of this inventory two sites that are eligible for inclusion in the National Register of Historic Places were recorded within Grand Teton National Park. One additional cultural resource was identified but determined not to be eligible for inclusion in the national register due to a lack of historical significance.

We have determined that that the proposed project will have no adverse effect to cultural resources. Should archaeological remains be uncovered during the implementation of the proposed project, activity will cease and the appropriate state, federal, and tribal agencies will be contacted immediately. If you have any questions or need additional information, please contact Katherine Longfield at 307-739-3671.

Sincerely,

fa Mary Gibson Scott
Superintendent

Enclosure



United States
Department of
Agriculture

Forest
Service

Bridger-Teton
National Forest

340 North Cache
P.O. Box 1888
Jackson, WY 83001-1888

File Code: 2360-3

Date: December 13, 2010

Mary Hopkins
Wyoming State Historic Preservation Office
2301 Central, Barrett Building
Cheyenne, Wyoming 82002

Dear Ms. Hopkins,

I have reviewed the Class III *Cultural Resource Report for the Expanding Broadband Communication Opportunities in the Greater Yellowstone Area* as prepared by USU Archeological Services, Inc and concur with the eligibility recommendations for sites 48TE1453, 48TE1846, 48TE1847 and 48TE1848. I also concur with the findings of this report that no historic properties will be adversely affected by the proposed project. No further cultural resource survey or evaluations are required prior to project implementation. However, should archeological remains be uncovered during the implementation of this project, activity will cease and the appropriate state, federal, and tribal agencies will be contacted immediately.

Please feel free to contact me at (307) 739-5528 if you have any further questions regarding this project.

Sincerely,

Jamie Schoen

Archeologist



Caring for the Land and Serving People

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USU ARCHEOLOGICAL SERVICES, INC.

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www.usuas.com



3 February 2011

Roy Hugie, PhD
Pioneer Environmental Services
980 West 1800 South
Logan, Utah 84321

Subject: Time Line for Review of Cultural Resource Investigations for the Investment in Expanding Broadband Communication Opportunities in The Greater Yellowstone Area, Teton County, Wyoming

USU Archeological Services Technical Report Number 2010-010

21 November 2010 Draft copy of report submitted to Jamie Schoen (Bridger-Teton National Forest) and Katherine Longfield (Grand Teton National Park). Report was submitted electronically via <https://bft.usu.edu>.

23 November 2010 Email from Jamie Schoen with minor comments on report.

6 December 2010 Comments received via email from Grand Teton National Park. Comments were from Katherine Longfield and Jacquelin St Clair.

14 December 2010 Comments addressed by USUAS and report was mailed to Laura Nowlin for review at the Wyoming State Historic Preservation Office.

20 December 2010 Letter of concurrence received from Laura Nowlin, Wyoming SHPO.

Kenneth P. Cannon, Ph.D., RPA
Director, **USU Archeological Services**

US Department of the Interior; Fish and Wildlife Service Letter

November 5, 2010



United States Department of the Interior

FISH AND WILDLIFE SERVICE

Ecological Services
5353 Yellowstone Road, Suite 308A
Cheyenne, Wyoming 82009

NOV 05 2010

In Reply Refer To:
ES-61411/WY11TA0035

Mr. Frank Monteferrante
U.S. Department of Commerce/NTIA
1401 Constitution Ave.
Washington, D.C. 20230

Dear Mr. Monteferrante:

On October, 26, 2010 we received from Pioneer Environmental Services (R. Hugie, Project Manager), a project description, environmental analyses, and detailed maps of the proposed Silver Star Broadband Fiber Optic Line project. The U.S. Fish and Wildlife Service (Service) understands that the proposed project will entail the installation of approximately 102 miles of high-capacity broadband fiber optic cable within Teton County, Wyoming. Conduit will be installed using a tracked cable plow along existing rights-of-ways negating the need to surface blade or remove vegetation. Should a need to remove vegetation be later identified, vegetation removal will occur outside of the nesting season of migratory birds or that nest searches will be conducted concurrent with operations to protect migratory birds.

The project description provided sufficient information for the U.S. Fish and Wildlife Service to evaluate the effects of this project to federally listed species. Based on the information provided, it is unlikely that the proposed work will adversely affect any threatened or endangered species or migratory birds.

Please note that since this project may require an action (e.g., an approval) from a Federal agency, the Service is required to consult directly with the Federal agency unless that agency has formally designated a non-federal representative, e.g., Pioneer Environmental Services (50 CFR 402.08). In order to expedite the environmental review process, it is the responsibility of the Federal agency to concur with Pioneer Environmental Service's findings of "no effect" for Ute ladies' tresses (*Spiranthes diluvialis*), Canada lynx (*Lynx canadensis*), gray wolf (*Canis lupus*), Grizzly bear (*Ursus arctos horribilis*), mountain plover (*Charadrius montanus*), greater sage grouse (*Centrocercus urophasianus*), and yellow-billed cuckoo (*Coccyzus americanus*). If this is the case, then you may consider this action to be in compliance with the requirements of Section 7(a)(2) of the Endangered Species Act of 1973, as amended (Act), 16 U.S.C. 1531 *et seq.* and the Migratory Bird Treaty Act, 16 U.S.C. 703. Also please note that although Service concurrence is not required for "no effect" determinations, we do appreciate receiving your information.

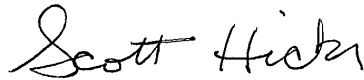
This project should be re-analyzed if new information reveals effects of the action that may affect listed species or designated or proposed critical habitat (1) in a manner or to an extent not considered in this letter, (2) if the action is subsequently modified in a manner that causes an

effect to a listed species or designated or proposed critical habitat that was not considered in this letter, and/or (3) if a new species is listed or critical habitat is designated that may be affected by this project.

Because the project will occur within an area that may be occupied by grizzly bears (*Ursus horribilis*), we recommend implementation of best management practices (e.g., waste disposal, food storage) designed to minimize human – bear conflict. We recommend coordination with the Bridger-Teton National Forest and Grand Teton National Park to identify appropriate measures to ensure safety of all field personnel working in bear habitat.

We appreciate your efforts to ensure the conservation of endangered, threatened, and candidate species and migratory birds. If you have further questions regarding this letter or your responsibilities under the Act, please contact Clark McCreedy of our office at the letterhead address or phone (307) 772-2374 ext. 228.

Sincerely,



Scott Hicks
Acting Field Supervisor
Wyoming Field Office

cc: BTNF, Biologist, Jackson, WY (K. Murphy)
GTNP, Biologist, Moose, WY (S. Cain)
PES, Project Manager, Logan, UT (R. Hugie)
SS, Engineering Manager, Freedom, WY (K. Ricks)
WGFD, Non-game Coordinator, Lander, WY (B. Oakleaf)
WGFD, Statewide Habitat Protection Coordinator, Cheyenne, WY (M. Flanderka)

Wyoming Department of Environmental Quality Letter

December 21, 2010



Department of Environmental Quality

To protect, conserve and enhance the quality of Wyoming's environment for the benefit of current and future generations.



Dave Freudenthal, Governor

John Corra, Director

December 21, 2010

Karen Ricks
Silver Star Telephone Company
PO Box 226
Freedom, WY 83120

RE: Certification of Nationwide Permit #12, File NWO-2010-00191 to construct the Togwotee Pass and Teton Pass segments of the Wyoming Broadband Improvement Initiative in Teton County, WY.

Dear Ms. Ricks:

In accordance with the provisions of Section 401 of the Clean Water Act and the state certification program for activities requiring 404 permits from the U.S. Army Corps of Engineers, Wyoming Department of Environmental Quality (WDEQ) has reviewed the application submitted on your behalf and grants certification.

Please note that the following standard conditions apply when operating equipment or otherwise undertaking construction in water of the state:

1. Construction equipment should not be operated below the existing water surface except as follows:

Vehicles and equipment should not push or pull material along the channel bottom. Work below the water surface which is essential for project completion (such as preparation of culvert bedding or footing installations) is acceptable to the extent that it does not create turbidity in excess of the Chapter 1 Surface Water Standards. Fording a stream at only one location is preferred. In all cases, frequent fording should not occur in areas where extensive turbidity will be created. In all game fisheries, activities associated with this permit shall not increase turbidity by more than 10 nephelometric turbidity units (NTUs).

In accordance with Section 23(c)(2) of the Chapter 1 Surface Water Standards, the administrator of the Water Quality Division may authorize temporary increases in turbidity above the numeric criteria in Section 23 (a) of the Standards in response to an individual application for a specific activity. An application must be submitted and a variance approved by the administrator before any temporary increase in turbidity above the numeric limits takes place.

Herschler Building • 122 West 25th Street • Cheyenne, WY 82002 • <http://deq.state.wy.us>

ADMIN/OUTREACH (307) 777-7937 FAX 777-3610	ABANDONED MINES (307) 777-6145 FAX 777-6462	AIR QUALITY (307) 777-7391 FAX 777-5616	INDUSTRIAL SITING (307) 777-7369 FAX 777-5973	LAND QUALITY (307) 777-7756 FAX 777-5864	SOLID & HAZ. WASTE (307) 777-7752 FAX 777-5973	WATER QUALITY (307) 777-7781 FAX 777-5973
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2. Any temporary crossings, bridge supports, cofferdams, or other structures that will be needed during the period of construction should be designed to handle high flows that could be anticipated during the construction period. All structures should be completely removed from the stream channel at the conclusion of construction and the area restored to a natural appearance.
3. Care must be taken to minimize disturbance. Stream bank and wetland vegetation should be protected except where its removal is absolutely necessary for completion of the work.

Any vegetation, debris, or other material removed during construction must be disposed of at some location other than in a stream channel or wetland area, and where it cannot enter a stream channel or wetland during high stream flow or runoff events.

All cut and fill slopes that will not be protected with riprap should be re-vegetated with appropriate plant species to prevent erosion.

4. All fill should consist of suitable material and be compacted and subsequently protected from erosion. Areas to be filled should be cleared of all vegetation, debris and other materials that could destabilize the fill.
5. The period and timing of construction should be adjusted as necessary to minimize conflicts with fish migration and spawning, where applicable.
6. Measures must be taken to prevent any petroleum products, chemicals, or other deleterious materials from entering a water of the State. A spill contingency plan should be developed for all projects where a large amount of petroleum products or solvents will be stored on the project site, and must be prepared when storage of these materials exceeds the federal limits.

Other Related Water Quality Permitting Requirements

Erosion/Sediment Control: A WYPDES storm water permit for construction activities is required from the Wyoming Department of Environmental Quality (WDEQ) before any surface disturbance takes place for any project that will clear, grade, or otherwise disturb **one or more acres**. A general permit has been established for this purpose and either the project sponsor or general contractor is responsible for complying with the provisions of the general permit if total disturbance exceeds one acre, and for filing a Notice of Intent (NOI) if total disturbance exceeds five acres. The NOI should be filed no later than 30 days prior to the start of construction activity. Please contact Barb Sahl at 307-777-7570 for additional information.

The major requirements of the storm water general permit pertain to the development and implementation of a pollution prevention plan along with regular inspection of pollution control facilities. The permit is required for the surface disturbances

associated with construction of the project, access roads, construction of wetland mitigation sites, borrow and stockpiling areas, and equipment staging and maintenance areas.

Non-Storm Water Discharges: A WYPDES discharge permit from WDEQ may be required for point source discharges to surface waters not related to storm water runoff such as discharges from gravel crushing and washing operations, cofferdam or site dewatering, vehicle or machinery washing, or other material processing operations if they are conducted. Depending on the type of operation, the length of operation, and the type of discharge either a general temporary discharge permit or an individual discharge permit may be required. Please be advised that if an individual permit is required, processing will require at least 90 days. Contact Roland Peterson at 307-777-7090 for additional information.

SPCC (Spill Prevention Control and Countermeasures): If above ground storage of petroleum products exceeds 1,320 gallons in total or more than 660 gallons in a single tank an SPCC plan may have to be developed as provided for in the Environmental Protection Agency's Oil Pollution Prevention regulations (40CFR112). The Region 8 EPA office in Denver should be contacted for guidance.

Please be aware that this letter only constitutes state certification of this project as required by Section 401 of the Federal Clean Water Act and **is not an authorization to begin construction**. This letter does not exempt you or your contractor from any other federal, state or local laws or regulations, nor does it provide exemption from legal action by private citizens for damage to property that the activity may cause. The Department also reserves the right to amend, modify, suspend or revoke this certification or any of its terms or conditions as may be appropriate or necessary to protect water quality and associated beneficial uses.

Sincerely,



John V. Corra
Director
Department of Environmental Quality

JVC/JFW/JRZ/rm/10-1100

cc: Julia McCarthy, US EPA Region 8, 1595 Wynkoop Street, Denver, CO 80202-1129
Thomas Johnson, USACE, 2232 Dell Range Blvd, Suite 210, Cheyenne, WY 82009

F:\Division\WQD\401\nationwide\2010\NWO-2010-00191

US Army Corps of Engineers; Wetland Permit Letter

December 30, 2010



REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
CORPS OF ENGINEERS, OMAHA DISTRICT
WYOMING REGULATORY OFFICE
2232 DELL RANGE BOULEVARD, SUITE 210
CHEYENNE WY 82009-4942

December 30, 2010

Wyoming Regulatory Office

Ms. Karen Ricks
Silver Star Telephone Company, Inc.
P.O. Box 226
Freedom, Wyoming 83120

Dear Ms. Ricks:

This letter is in response to a pre-construction notification we received from Pioneer Environmental Services, Inc. (Pioneer) on November 26, 2010, concerning Department of the Army authorization to construct the Togwotee Pass and Teton Pass Segments of the Wyoming Broadband Improvement Initiative (Wyoming Loop Completion Projects) in Teton County, Wyoming.

The Togwotee Pass Segment is 65.9 miles of fiber optic line originating at Lower Valley Energy in the NW ¼ of Section 34, Township 41 North, Range 116 West, extending north through Grand Teton National Park, with trunk lines to Moose and Moran, and the main line ending at a connection to Dubois Telephone Exchange on Togwotee Pass in the NW ¼ of Section 28, Townships 44 North, Range 110 West. The line would cross Flat Creek, Gros Ventre River, Snake River, Ditch Creek, Spread Creek, Buffalo Fork, Blackrock Creek, tributaries of those streams, and adjacent wetlands.

The Teton Pass Segment includes 35.6 miles of fiber optic line originating at Lower Valley Energy in the NE ¼ of Section 20, Township 40 North, Range 116 West, extending west along Highway 22, with a trunk line along Highway 390 to Teton Village, and the main line continuing to the Wyoming/Idaho border in the SE ¼ of Section 6, Townships 41 North, Range 118 West. The line would cross Flat Creek, Spring Creek, Snake River, Lake Creek, Fish Creek, Coal Creek, tributaries of those streams, and adjacent wetlands.

The U.S. Army Corps of Engineers regulates the placement of dredged and fill material into waters of the United States under Section 404 of the Clean Water Act (33 U.S.C. 1344). The Corps' regulations are published in the *Code of Federal Regulations* as 33 CFR Parts 320 through 332. Detailed information on Section 404 requirements in Wyoming can be obtained from our website at: <https://www.nwo.usace.army.mil/html/od-rwy/Wyoming.htm>

Proposed activities include burial of a 1.25-inch conduit using a plow instead of excavating a trench in wetland areas. This technique when implemented properly does not result in more than "incidental fallback" as defined in the January 17, 2001, edition of the *Federal Register* (Vol. 66, No. 11) so there should be no discharge of dredged material. Directional drilling would be utilized at stream crossings unless there is an opportunity to attach to a bridge. Overall, authorization would not be required if all these techniques were successful at all crossings. However, Pioneer requested verification that excavation of trenches at stream and wetland crossings is authorized in case the need arises due to unforeseen circumstances during construction.

Based on the information provided, it has been determined that excavation activities described above are authorized by Nationwide Permit (NP) 12 as defined in Part II of the *Federal Register* published on March 12, 2007 (Vol. 72, No. 47). A copy of NP 12 is enclosed. Please take time to carefully review the terms and general conditions of NP 12.

Silver Star Telephone Company, Inc. (Silver Star) is authorized to commence with excavation activities described above in accordance with NP 12. Silver Star is responsible for ensuring that all activities undertaken at the locations specified above comply with terms and conditions of NP 12. If a contractor or other authorized representative will be accomplishing any activities on behalf of Silver Star, it is recommended that they be provided a copy of this letter and the attached permit so that they are also aware of the terms and conditions. Any regulated activities that do not comply with NP 12 will be considered unauthorized and all responsible parties will be subject to appropriate enforcement action.

In a letter to you dated December 21, 2010, the Wyoming Department of Environmental Quality (WDEQ) certified that use of NP 12 for excavation activities described above is acceptable provided all terms and conditions of NP 12 are followed and that construction is conducted in a manner which does not result in a violation of any applicable water quality standard. Please note that the WDEQ has added specific conditions to its certification and those conditions have been incorporated as special conditions of NP 12 for this project.

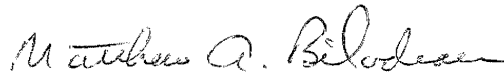
Also enclosed is a Compliance Certification form. Please complete the form and return it to this office within 30 days after project completion as required by General Condition 26. The purpose of the form is to document which activities were actually completed and to certify that the activities were accomplished in compliance with terms and conditions of NP 12.

Please be aware that authorization granted by a Department of the Army permit does not eliminate requirements to obtain any other applicable federal, state, tribal or local permits. In addition, any deviations from plans and specifications for the project, as provided by Pioneer on November 24, 2010, could require additional authorization.

This verification will be valid until the nationwide permits expire on March 18, 2012, unless NP 12 is modified, suspended, or revoked prior to that date. However, up to one year is allowed to complete authorized activities in accordance with current terms and conditions of NP 12 if an activity has commenced or is under contract to commence before the expiration date.

Please contact Mr. Thomas Johnson at (307) 772-2300 if you have any questions concerning this verification and reference file NWO-2010-00191.

Sincerely,



Matthew A. Bilodeau
Program Manager
Wyoming Regulatory Office

Enclosures

✓ Copies Furnished:

✓ Roy Hugie, Ph.D.
Pioneer Environmental Services, Inc.
980 West 1800 South
Logan, Utah 84321

Mary Gibson Scott, Superintendent
National Park Service
Grand Teton National Park
P.O. Drawer 170
Moose, Wyoming 83012

Jacqueline Buchanan, Forest Supervisor
Bridger-Teton National Forest
P.O. Box 1888
Jackson, Wyoming 83001

Jeremy Zumberge
Wyoming Department of Environmental Quality
Water Quality Division
1866 South Sheridan Avenue
Sheridan, Wyoming 82801

The Omaha District, Regulatory Branch. Wyoming Regulatory Office is committed to providing quality and timely service to our customers. In an effort to improve customer service, please take a moment to complete a Customer Service Survey found on our web site at <https://www.nwo.usace.army.mil/html/od-rwy/survey.htm> Paper copies of the survey are also available upon request for those without Internet access.

NATIONWIDE PERMIT 12

UTILITY LINE ACTIVITIES

Activities required for the construction, maintenance, repair, and removal of utility lines and associated 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.

Utility lines: This NWP authorizes the construction, maintenance, or repair of utility lines, including outfall and intake structures, and the associated excavation, backfill, or bedding for the utility lines, in all waters of the United States, provided there is no change in pre-construction contours. A “utility line” is defined as any pipe or pipeline for the transportation of any gaseous, liquid, liquescent, or slurry substance, for any purpose, and any cable, line, or wire for the transmission for any purpose of electrical energy, telephone, and telegraph messages, and radio and television communication. 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 power line or utility line 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 result in the loss of greater than 1/2 acre of waters of the United States. This NWP does not authorize discharges into non-tidal wetlands adjacent to tidal waters of the United States to construct, maintain, or expand substation facilities.

Foundations for overhead utility line towers, poles, and anchors: This NWP authorizes the construction or maintenance of foundations for overhead utility line towers, poles, and anchors in all waters of the United States, provided the foundations are the minimum size necessary and separate footings for each tower leg (rather than a larger single pad) are used where feasible.

Access roads: This NWP authorizes the construction of access roads for the construction and maintenance of utility lines, including overhead power lines and utility line substations, in non-tidal waters of the United States, provided the total discharge from a 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 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 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 also authorizes temporary structures, fills, and work 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, 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. 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. (Sections 10 and 404)

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity if any of the following criteria are met:

- (1) the activity involves mechanized land clearing in a forested wetland for the utility line right-of-way;
- (2) a section 10 permit is required;
- (3) utility line in waters of the United States, excluding overhead lines, exceeds 500 feet;
- (4) the utility line is placed within a jurisdictional area (i.e., water of the United States), and it runs parallel to a stream bed that is within that jurisdictional area;
- (5) discharges that result in the loss of greater than 1/10-acre of waters of the United States;
- (6) permanent access roads are constructed above grade in waters of the United States for a distance of more than 500 feet; or
- (7) permanent access roads are constructed in waters of the United States with impervious materials.

Note 1: Where the proposed utility line is constructed or installed in navigable waters of the United States (i.e., section 10 waters), copies of the pre-construction notification and 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: 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, accordance with the requirements for temporary fills.

Note 3: 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 Section 9 of the Rivers and Harbors Act of 1899. 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).

Contents adapted from Part II of the *Federal Register* (Volume 72, Number 47) published on March 12, 2007. Copies of the *Federal Register* are available upon request or by visiting the Wyoming Regulatory Office web site at <https://www.nwo.usace.army.mil/html/od-rwy/Wyoming.htm>.

Nationwide Permit General Conditions

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

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

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

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

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

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

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

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

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

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

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

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

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

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

12. Soil Erosion and Sediment Controls. Appropriate soil erosion and sediment controls must be used and maintained in effective operating condition during construction, and all exposed soil and other fills, as well as any work below the ordinary high water mark or high tide line, must be permanently stabilized at the earliest practicable date. Permittees are encouraged to perform work within waters of the United States during periods of low-flow or no-flow.

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

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

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

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

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

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

(c) Non-federal permittees shall notify the district engineer if any listed species or designated critical habitat might be affected or is in the vicinity of the project, or if the project is located in designated critical habitat, and shall not begin work on the activity until notified by the district engineer that the requirements of the ESA have been satisfied and that the activity is authorized. For activities that might affect Federally-listed endangered or threatened species or designated critical habitat, the pre-construction notification must include the name(s) of the endangered or threatened species that may be affected by the proposed work or that utilize the designated critical habitat that may be affected by the proposed work. The district engineer will determine whether the proposed activity “may affect” or will have “no effect” to listed species and designated critical habitat and will notify the non-Federal applicant of the Corps’ determination within 45 days of receipt of a complete pre-construction notification. In cases where the non-Federal applicant has identified listed species or critical habitat that might be affected or is in the vicinity of the project, and has so notified the Corps, the applicant shall not begin work until the Corps has provided notification the proposed activities will have “no effect” on listed species or critical habitat, or until Section 7 consultation has been completed.

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

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

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

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

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

(d) The district engineer will notify the prospective permittee within 45 days of receipt of a complete pre-construction notification whether NHPA Section 106 consultation is required. Section 106 consultation is not required when the Corps determines that the activity does not have the potential to cause effects on historic properties (see 36 CFR §800.3(a)). If NHPA section 106 consultation is required and will occur, the district engineer will notify the non-Federal applicant that he or she cannot begin work until Section 106 consultation is completed.

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

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

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

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

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

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

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

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

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

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

20. Mitigation. (continued)

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

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

(h) Where certain functions and services of waters of the United States are permanently adversely affected, such as the conversion of a forested or scrub-shrub wetland to a herbaceous wetland in a permanently maintained utility line right-of-way, mitigation may be required to reduce the adverse effects of the project to the minimal level.

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

22. Coastal Zone Management. Not Applicable.

23. Regional and Case-By-Case Conditions. The activity must comply with any regional conditions that may have been added by the Division Engineer (see 33 CFR 330.4(e)) and with any case specific conditions added by the Corps or by the state, Indian Tribe, or U.S. EPA in its section 401 Water Quality Certification, or by the state in its Coastal Zone Management Act consistency determination. **(Refer to list of Regional Conditions for authorized activities in Wyoming dated 11 May 2007)**

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

25. Transfer of Nationwide Permit Verifications. If the permittee sells the property associated with a nationwide permit verification, the permittee may transfer the nationwide permit verification to the new owner by submitting a letter to the appropriate Corps district office to validate the transfer. A copy of the nationwide permit verification must be attached to the letter, and the letter must contain the following statement and signature:
“When the structures or work authorized by this nationwide permit are still in existence at the time the property is transferred, the terms and conditions of this nationwide permit, including any special conditions, will continue to be binding on the new owner(s) of the property. To validate the transfer of this nationwide permit and the associated liabilities associated with compliance with its terms and conditions, have the transferee sign and date below.”

(Transferee)

(Date)

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

- (a) A statement that the authorized work was done in accordance with the NWP authorization, including any general or specific conditions;
- (b) A statement that any required mitigation was completed in accordance with the permit conditions; and
- (c) The signature of the permittee certifying the completion of the work and mitigation.

27. Pre-Construction Notification. Refer to separate instructions on pre-construction notification procedure.

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

Further Information

- 1. District Engineers have authority to determine if an activity complies with the terms and conditions of an NWP.
- 2. NWPs do not obviate the need to obtain other federal, state, or local permits, approvals, or authorizations required by law.
- 3. NWPs do not grant any property rights or exclusive privileges.
- 4. NWPs do not authorize any injury to the property or rights of others.
- 5. NWPs do not authorize interference with any existing or proposed Federal project.

Contents adapted from Part II of the *Federal Register* (Volume 72, Number 47) published on March 12, 2007. Copies of the *Federal Register* are available upon request or by visiting the Wyoming Regulatory Office web site at <https://www.nwo.usace.army.mil/html/od-rwy/Wyoming.htm>.

General Condition 23 (continued)

Regional Conditions for Activities Authorized by Nationwide Permits In The State of Wyoming

The Corps' Wyoming Regulatory Office has enacted the following regional conditions pursuant to General Condition 23 of the nationwide permits. **However, pre-construction notification requirements defined below are not applicable to Nationwide Permit 47.**

23(a). Wetlands Classified as Fens

Permittees must notify the Wyoming Regulatory Office (WRO) in accordance with General Condition 27 (Pre-Construction Notification) prior to undertaking any authorized activities in wetlands classified as fens. Fens are wetlands that develop where a relatively constant supply of ground water to the plant rooting zone maintains saturated conditions most of the time. The substrate is carbon-accumulating, ranging from muck to peat and often supports a wide variety of vegetation types. Fens may occur on slopes, in depressions, or on flats (different hydrogeomorphic classes; after: Brinson 1993). Additional information can be obtained from the following web site. <http://www.epa.gov/owow/wetlands/types/fen.html>

23(b). Waters Adjacent to Natural Springs

Permittees must notify the WRO in accordance with General Condition 27 (Pre-Construction Notification) prior to undertaking any authorized activities within 100 feet of the water source in natural spring areas. For purposes of this condition, a spring source is defined as any location where there is artesian flow emanating from a distinct point source at any time during the growing season. Springs do not include seeps and other groundwater discharge areas where there is no distinct point source.

23(c). Class 1 Waters

Permittees must notify the WRO in accordance with General Condition 27 (Pre-Construction Notification) prior to undertaking any authorized activities in Class 1 waters.

Class 1 Waters in Wyoming are defined as:

1. All surface waters located within the boundaries of national parks and congressionally designated wilderness areas as of January 1, 1999;
2. The main stem of the Snake River through its entire length above the U.S. Highway 22 Bridge (Wilson Bridge);
3. The main stem of the Green River, including the Green River Lakes, from the mouth of

- the New Fork River upstream to the wilderness boundary;
4. The main stem of the Wind River from the Wedding of the Waters upstream to Boysen Dam;
 5. The main stem of the North Platte River from the Mouth of Sage Creek (approximately 15 miles downstream of Saratoga, Wyoming) upstream to the Colorado state line;
 6. The main stem of the North Platte River from the headwaters of Pathfinder Reservoir upstream to Kortess Dam (Miracle Mile segment);
 7. The main stem of the North Platte River from the Natrona County Road 309 bridge (Goose Egg Bridge) upstream to Alcova Reservoir;
 8. The main stem of Sand Creek above the U.S. Highway 14 bridge;
 9. The main stem of the Middle Fork of the Powder River through its entire length above the mouth of Buffalo Creek;
 10. The main stem of the Tongue River, the main stem of the North Fork of the Tongue River, and the main stem of the South Fork of the Tongue River above the U.S. Forest Service boundary;
 11. The main stem of the Sweetwater River above the mouth of Alkali Creek;
 12. The main stem of the Encampment River from the northern U.S. Forest Service boundary upstream to the Colorado state line;
 13. The main stem of the Clarks Fork River from the U.S. Forest Service boundary upstream to the Montana state line;
 14. All waters within the Fish Creek (near Wilson, Wyoming) drainage;
 15. The main stem of Granite Creek (tributary of the Hoback River) through its entire length;
 16. Fremont Lake; and
 17. Wetlands adjacent to the above listed Class 1 waters.

23(d). Statewide Pre-Construction Notification

Permittees must notify the WRO in accordance with General Condition 27 (Pre-Construction Notification) prior to undertaking any activities authorized by Nationwide Permits 23 and 27.

23(e). Teton County Pre-Construction Notification

Permittees must notify the WRO in accordance with General Condition 27 (Pre-Construction Notification) prior to undertaking any authorized activities in Teton County.

23(f). Spawning Seasons

The following is additional information on requirements of General Condition (GC) 3 (Spawning Areas) regarding trout species. However, this information does not diminish the scope of GC 3, which is applicable to all fish species.

Spawning seasons for common trout species are:

Rainbow and Cutthroat Trout - March 15 through July 31

Brown and Brook Trout - September 15 through November 30

Site specific information on spawning seasons and spawning areas for all fish species may be obtained from Fisheries Supervisors in Wyoming Game and Fish Department Regional Offices.

23(g). Historic Properties.

The following is additional information on requirements of General Condition 18 (Historic Properties) regarding procedures to be enacted if there is a discovery of historic or archeological remains during construction.

The permittee, contractors, or any of the employees, subcontractors or other persons working in the performance of a contract(s) to complete activities authorized by a nationwide permit shall cease work and report the discovery of any previously unknown historic or archeological remains to the WRO. Notification shall be by telephone to (307) 772-2300 or by facsimile to (307) 772-2920 within 24 hours after discovery. Reports must also be submitted in writing within 48 hours after discovery to the following address:

U.S. Army Corps of Engineers
Wyoming Regulatory Office
2232 Dell Range Boulevard, Suite 210
Cheyenne, Wyoming 82009

Work shall not resume until the WRO provides the permittee a notice to proceed.