Nationwide Permit General Condition 27

Pre-Construction Notification Procedure

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

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

(2) If 45 calendar days have passed from the district engineer's receipt of the complete PCN and the prospective permittee has not received written notice from the district or division engineer. However, if the permittee was required to notify the Corps pursuant to general condition 17 that listed species or critical habitat might affected or in the vicinity of the project, or to notify the Corps pursuant to general condition 18 that the activity may have the potential to cause effects to historic properties, the permittee cannot begin the activity until receiving written notification from the Corps that is "no effect" on listed species or "no potential to cause effects" on historic properties, or that any consultation required under Section 7 of the Endangered Species Act (see 33 CFR 330.4(f)) and/or Section 106 of the National Historic Preservation (see 33 CFR 330.4(g)) is completed. Also, work cannot begin under NWPs 21, 49, or 50 until the permittee has received written approval from the Corps. If the proposed activity requires a written waiver to exceed specified limits of an NWP, the permittee cannot begin the activity until the district engineer issues the waiver. If the district or division engineer notifies the permittee in writing that an individual permit is required within 45 calendar days of receipt of a complete PCN, the permittee cannot begin the activity until an individual permit has been obtained. Subsequently, the permittee's right to proceed under the NWP may be modified, suspended, or revoked only in accordance with the procedure set forth in 33 CFR 330.5(d)(2).

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

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

(2) Location of the proposed project;

(3) A description of the proposed project; the project's purpose; direct and indirect adverse environmental effects the project would cause; any other NWP(s), regional general permit(s), or individual permit(s) used or intended to be used to authorize any part of the proposed project or any related activity. The description should be sufficiently detailed to allow the district engineer to determine that the adverse effects of the project will be minimal and to determine the need for compensatory mitigation. Sketches should be provided when necessary to show that the activity complies with the terms of the NWP. (Sketches usually clarify the project and when provided result in a quicker decision.) **Please refer to supplemental instructions for Nationwide Permit 27 at the end of this document.**;

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

(5) If the proposed activity will result in the loss of greater than 1/10 acre of wetlands and a PCN is required, the prospective permittee must submit a statement describing how the mitigation requirement will be satisfied. As an alternative, the prospective permittee may submit a conceptual or detailed mitigation plan.

(6) 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, for non-Federal applicants the PCN must include the name(s) of those endangered or threatened species that might be affected by the proposed work or utilize the designated critical habitat that may be affected by the proposed work. Federal applicants must provide documentation demonstrating compliance with the Endangered Species Act; and

(7) For an activity that may affect a historic property listed on, determined to be eligible for listing on, or potentially eligible for listing on, the National Register of Historic Places, for non-Federal applicants the PCN must state which historic property may be affected by the proposed work or include a vicinity map indicating the location of the historic property. Federal applicants must provide documentation demonstrating compliance with Section 106 of the National Historic Preservation Act.

(c) Form of Pre-Construction Notification. The standard individual permit application form (Form ENG 4345) may be used, but the completed application form must clearly indicate that it is a PCN and must include all of the information required in paragraphs (b)(1) through (7) of this general condition. A letter containing the required information may also be used.

(d) Agency Coordination. (1) The district engineer will consider any comments from Federal and state agencies concerning the proposed activity's compliance with the terms and conditions of the NWPs and the need for mitigation to reduce the project's adverse environmental effects to a minimal level.

(2) For all NWP 48 activities requiring pre-construction notification and for other NWP activities requiring pre-construction notification to the district engineer that result in the loss of greater than 1/2-acre of waters of the United States, the district engineer will immediately provide (e.g., via facsimile transmission, overnight mail, or other expeditious manner) a copy of the PCN to the appropriate Federal or state offices (U.S. FWS, state natural resource or water quality agency, EPA, State Historic Preservation Officer (SHPO) or Tribal Historic Preservation Office (THPO), and, if appropriate, the NMFS). With the exception of NWP 37, these agencies will then have 10 calendar days from the date the material is transmitted to telephone or fax the district engineer notice that they intend to provide substantive, site-specific comments. If so contacted by an agency, the district engineer will wait an additional 15 calendar days before making a decision on the pre-construction notification. The district engineer will fully consider agency comments received within the specified time frame, but will provide no response to the resource agency, except as provided below. The district engineer will indicate in the

administrative record associated with each pre-construction notification that the resource agencies' concerns were considered. For NWP 37, the emergency watershed protection and rehabilitation activity may proceed immediately in cases where there is an unacceptable hazard to life or a significant loss of property or economic hardship will occur. The district engineer will consider any comments received to decide whether the NWP 37 authorization should be modified, suspended, or revoked in accordance with the procedures at 33 CFR 330.5.

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

(4) Applicants are encouraged to provide the Corps multiple copies of pre-construction notifications to expedite agency coordination.

(5) For NWP 48 activities that require reporting, the district engineer will provide a copy of each report within 10 calendar days of receipt to the appropriate regional office of the NMFS.

(e) District Engineer's Decision. In reviewing the PCN for the proposed activity, the district engineer will determine whether the activity authorized by the NWP will result in more than minimal individual or cumulative adverse environmental effects or may be contrary to the public interest. If the proposed activity requires a PCN and will result in a loss of greater than 1/10 acre of wetlands, the prospective permittee should submit a mitigation proposal with the PCN. Applicants may also propose compensatory mitigation for projects with smaller impacts. The district engineer will consider any proposed compensatory mitigation the applicant has included in the proposal in determining whether the net adverse environmental effects to the aquatic environment of the proposed work are minimal. The compensatory mitigation proposal may be either conceptual or detailed. If the district engineer determines that the activity complies with the terms and conditions of the NWP and that the adverse effects on the aquatic environment are minimal, after considering mitigation, the district engineer will notify the permittee and include any conditions the district engineer deems necessary. The district engineer must approve any compensatory mitigation proposal before the permittee commences work. If the prospective permittee elects to submit a compensatory mitigation plan with the PCN, the district engineer will expeditiously review the proposed compensatory mitigation plan. The district engineer must review the plan within 45 calendar days of receiving a complete PCN and determine whether the proposed mitigation would ensure no more than minimal adverse effects on the aquatic environment. If the net adverse effects of the project on the aquatic environment (after consideration of the compensatory mitigation proposal) are determined by the district engineer to be minimal, the district engineer will provide a timely written response to the applicant. The response will state that the project can proceed under the terms and conditions of the NWP.

If the district engineer determines that the adverse effects of the proposed work are more than minimal, then the district engineer will notify the applicant either:

(1) That the project does not qualify for authorization under the NWP and instruct the applicant on the procedures to seek authorization under an individual permit;

(2) That the project is authorized under the NWP subject to the applicant's submission of a mitigation plan that would reduce the adverse effects on the aquatic environment to the minimal level; or

(3) That the project is authorized under the NWP with specific modifications or conditions. Where the district engineer determines that mitigation is required to ensure no more than minimal adverse effects occur to the aquatic environment, the activity will be authorized within the 45-day PCN period. The authorization will include the necessary conceptual or specific mitigation or a requirement that the applicant submit a mitigation plan that would reduce the adverse effects on the aquatic environment to the minimal level. When mitigation is required, no work in waters of the United States may occur until the district engineer has approved a specific mitigation plan.

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Nationwide Permit 27 Preconstruction Notification Supplement

The following is a list of documentation that should be provided with all preconstruction notifications (PCN) for Nationwide Permit 27 in the State of Wyoming to facilitate review by the U.S. Army Corps of Engineers and Wyoming Department of Environmental Quality. These items are not mandatory for all projects and some may not be applicable but omission of important documentation could delay or preclude processing if the PCN does not contain adequate information.

1. Project Purpose and Design Criteria. Provide a complete description of the project purpose indicating precisely how a net gain in aquatic resource functions would be achieved as compared to current conditions along with design details on all project features including but not limited to:

(a) dimensions of all project features such as dams, dikes, weirs, vanes, etc;
(b) source and volume of all fill materials for each project feature;
(c) area of wetland filled due to construction of each project feature;
(d) area of wetland inundation due to impoundment of water and for areas affected by excavation;
(e) area within stream channels filled due to creation of lateral bars, bankfull benches, channel constrictions, islands, etc.;
(f) area within stream channels affected by excavation and volume of dredged materials; and
(g) areas and types of wetland restored, enhanced, and created.

Design details listed above should be displayed on appropriate drawings, graphs, and other media whenever possible to improve understanding of the project.

2. Project Construction Criteria. Provide a complete description of all construction activities including but not limited to:

(a) type of construction equipment to be used;
(b) location of all borrow and disposal areas on-site;
(c) total area of surface disturbance, including uplands; and
(d) reclamation standards including timing, grading, topsoil placement, seed mixes, etc.

3. Stream Channel Stability. Water quality standards established by the WDEQ are based on protecting designated uses. Unstable channel conditions could potentially harm those uses. Projects that result in manipulation of stream channel dimensions, pattern, or profile could have adverse consequences on channel stability and consequently designated use support if stream flow and sediment transport dynamics are not considered during design. Geomorphic principles and methodologies are most commonly used to design stream restoration or habitat enhancement projects and assess resultant channel stability, but other methods of hydraulic modeling may also be appropriate. Regardless of the method(s) used, for any activity that would alter channel dimension, pattern, or profile, the applicant must be able to quantitatively demonstrate that the channel will be able to transport stream flow and sediment while maintaining dimension, pattern, and profile, without excessive aggradation or degradation. Copies of all input data and associated analyses used to arrive at the final project design meeting this criterion must be provided. Examples of input data commonly used in stream restoration or habitat enhancement projects include but are not limited to reference and project reach survey data, gage station data, regional

curves, sediment competency and capacity data, and hydraulic modeling techniques. Minor channel alterations due to pool excavation and installation of bank stabilization or grade control structures are excluded from this requirement.

4. Best Management Practices. Provide a description of techniques that would be implemented to protect surface water quality through control of pollutants, storm water runoff, and turbidity.

5. Class 1 Waters and Turbidity Waivers. The Wyoming Department of Environmental Quality (WDEQ) encourages permittees to apply for a turbidity waiver for excavation activities in Class 1 or 2 waters that are likely to cause an increase in turbidity of more than 10 NTU above ambient background concentrations. Those applications should be submitted to the WDEQ concurrent with submittal of a PCN, especially if Class 1 waters would be affected. The WDEQ must distribute a 30-day public notice for all proposed activities in Class 1 waters and for all turbidity waivers so a combined notice for a single project is preferable.

6. Agency Coordination. Provide name, address, and telephone number of all federal, state, or local agencies that provide funding for the project or a definitive statement that no public sources of funding are involved. The amount of funding does not need to be disclosed. Permittees should also coordinate project planning with the Wyoming Game and Fish Department for any activity that may affect a fishery and provide documentation of that coordination, preferably as a letter from the WGFD commenting on the merits of the project.

Nationwide Permit Definitions

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

***Compensatory Mitigation*:** The restoration, establishment (creation), enhancement, or preservation of aquatic resources for the purpose of compensating for unavoidable adverse impacts which remain after all appropriate and practicable avoidance and minimization has been achieved.

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

***Discharge*:** The term "discharge" means any discharge of dredged or fill material and any activity that causes or results in such a discharge.

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

***Ephemeral Stream*:** An ephemeral stream has flowing water only during, and for a short duration after, precipitation events in a typical year. Ephemeral stream beds are located above the water table year-round. Groundwater is not a source of water for the stream. Runoff from rainfall is the primary source of water for stream flow.

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

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

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

***Intermittent Stream*:** An intermittent stream has flowing water during certain times of the year, when groundwater provides water for stream flow. During dry periods, intermittent streams may not have flowing water. Runoff from rainfall is a supplemental source of water for stream flow.

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

***Non-tidal Wetland*:** A non-tidal wetland is a wetland that is not subject to the ebb and flow of tidal waters. The definition of a wetland can be found at 33 CFR 328.3(b). Non-tidal wetlands contiguous to tidal waters are located landward of the high tide line (i.e., spring high tide line).

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

***Ordinary High Water Mark*:** An ordinary high water mark is a line on the shore established by the fluctuations of water and indicated by physical characteristics, or by other appropriate means that consider the characteristics of the surrounding areas (see 33 CFR 328.3(e)).

***Perennial Stream*:** A perennial stream has flowing water year-round during a typical year. The water table is located above the stream bed for most of the year. Groundwater is the primary source of water for stream flow. Runoff from rainfall is a supplemental source of water for stream flow.

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

***Pre-construction Notification*:** A request submitted by the project proponent to the Corps for confirmation that a particular activity is authorized by nationwide permit. The request may be a permit application, letter, or similar document that includes information about the proposed work and its anticipated environmental effects. Pre-construction notification may be required by the terms and conditions of a nationwide permit, or by regional conditions. A pre-construction notification may be voluntarily submitted in cases where pre-construction notification is not required and the project proponent wants confirmation that the activity is authorized by nationwide permit.

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

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

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

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

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

***Riparian Areas*:** Riparian areas are lands adjacent to streams, lakes, and estuarine-marine shorelines. Riparian areas are transitional between terrestrial and aquatic ecosystems, through which surface and subsurface hydrology connects waterbodies with their adjacent uplands. Riparian areas provide a variety of ecological functions and services and help improve or maintain local water quality. (See General Condition 20.)

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

***Single and Complete Project*:** The term "single and complete project" is defined at 33 CFR 330.2(i) as the total project proposed or accomplished by one owner/developer or partnership or other association of owners/developers. A single and complete project must have independent utility (see definition). For linear projects, a "single and complete project" is all crossings of a single water of the United States (i.e., a single waterbody) at a specific location. For linear projects crossing a single waterbody several times at separate and distant locations, each crossing is considered a single and complete project. However, individual channels in a braided stream or river, or individual arms of a large, irregularly shaped wetland or lake, etc., are not separate waterbodies, and crossings of such features cannot be considered separately.

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

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

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

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

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

***Tidal Wetland*:** A tidal wetland is a wetland (i.e., water of the United States) that is inundated by tidal waters. The definitions of a wetland and tidal waters can be found at 33 CFR 328.3(b) and 33 CFR 328.3(f), respectively. Tidal waters rise and fall in a predictable and measurable rhythm or cycle due to the gravitational pulls of the moon and sun. Tidal waters end where the rise and fall of the water surface can no longer be practically measured in a predictable rhythm due to masking by other waters, wind, or other effects. Tidal wetlands are located channelward of the high tide line, which is defined at 33 CFR 328.3(d).

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

***Waterbody*:** For purposes of the NWPs, a waterbody is a jurisdictional water of the United States that, during a year with normal patterns of precipitation, has water flowing or standing above ground to the extent that an ordinary high water mark (OHWM) or other indicators of jurisdiction can be determined, as well as any wetland area (see 33 CFR 328.3(b)). If a jurisdictional wetland is adjacent--meaning bordering, contiguous, or neighboring--to a jurisdictional waterbody displaying an OHWM or other indicators of jurisdiction, that waterbody and its adjacent wetlands are considered together as a single aquatic unit (see 33 CFR 328.4(c)(2)). Examples of "waterbodies" include streams, rivers, lakes, ponds, and wetlands.

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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

March 20, 2007

Mr. Matt Bilodeau
US Army Corps of Engineers
Wyoming Regulatory Office
2232 Del Range Blvd., Suite 210
Cheyenne, WY 82009

RE: Section 401 Certification of Nationwide permits in Wyoming

Dear Mr. Bilodeau:

In accordance with the provisions of the state certification program for activities requiring dredge and fill permits from the U.S. Army Corps of Engineers, this office has reviewed the proposed nationwide program and has made the following determinations:

In view of the current state water quality standards and regulations, we have found that some of the nationwide permits are acceptable as written, some require additional conditions to assure compliance with our standards and a few must be denied certification. There are also a number of nationwide permits for which we are waiving certification either because they do not involve discharges to waters of the state or have little or no applicability in Wyoming.

WAIVER OF 401 CERTIFICATION

Nationwide permits 1, 2, 4, 8, 9, 10, 11, 15, 19, 22, 24, 28, 34, 35 and 48 are determined by this department to either not involve discharges or have little or no application in this state and, therefore, certification is waived.

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

ADMIN/OUTREACH	ABANDONED MINES	AIR QUALITY	INDUSTRIAL SITING	LAND QUALITY	SOLID & HAZ. WASTE	WATER QUALITY
(307) 777-7937	(307) 777-6145	(307) 777-7391	(307) 777-7369	(307) 777-7756	(307) 777-7752	(307) 777-7781
FAX 777-3610	FAX 777-6462	FAX 777-5616	FAX 777-5973	FAX 777-5864	FAX 777-5973	FAX 777-5973

DENIAL OF 401 CERTIFICATION - ALL WATERS

401 certification of the following nationwide permits is denied on all waters in the state:

NWP 16 Return Water From Upland Contained Disposal Areas. Making water quality determinations on these return flows requires a site specific analysis. Very often these effluents will require a discharge permit from the State of Wyoming. The only way that proper state review can occur is by blanket denial of certification. Therefore, certification of NWP 16 is denied.

NWP 17 Hydropower Projects. The Federal Energy Regulatory Commission does not have an office in the state, nor does this department have an MOU or any other agreement with FERC on permit processing. Because we have a poor understanding of their procedures and we are certain that they have little understanding of our standards and regulations, we cannot issue a blanket certification of FERC licensed activities. Therefore, certification of NWP 17 is denied.

NWP 23 Approved Categorical Exclusions. This nationwide permit has been used almost exclusively on Federal Highway Administration projects and can be used to authorize activities which may have significant adverse affects on water quality. Furthermore, we believe that the proposed nationwide program coupled with existing regional general permits adequately covers most instances where use of this permit would be appropriate. Therefore, certification of NWP 23 is denied.

NWP 27 Wetland and Riparian Restoration and Creation Activities. This nationwide permit authorizes a great variety of activities which are not limited by scale or size. Projects authorized may involve a considerable amount of construction in existing waterbodies. Though this NWP may provide a less burdensome permit process for wetland creation and restoration projects, it cannot provide assurance that these projects will be constructed in compliance with water quality standards. We believe that it is necessary to evaluate each project individually and add specific conditions relative to water quality protection as needed. Therefore, certification of NWP 27 is denied.

NWP 31 Maintenance of Existing Flood Control Facilities. This new nationwide permit may have significant effects on water quality depending upon the scale of the project and site specific circumstances. This is especially true when used for the dredging of detention basins where there may be an accumulation of toxic substances or nutrients. Because we are unsure of

exactly how this permit may be applied, we believe it is prudent to evaluate each project individually and add specific conditions relative to water quality protection as needed. Therefore, certification of NWP 27 is denied.

NWP 40 Farm Buildings. This NWP has never been used in Wyoming and we are not sure what its actual applicability is. We believe, however, that it is necessary to individually review each proposal to make an appropriate certification decision. Therefore, certification of NWP 40 is denied.

NWP 43 Storm Water Management Facilities. This NWP may have significant effect on water quality depending on the scale and location of project. Depending on the source of storm water runoff, it is conceivable that significant concentrations of metals, turbidity, substances with high biological oxygen demand (BOD), oil and grease or other contaminants may be introduced into state waters. Because we are unsure of exactly what consequences to water quality may result from application of this permit, we believe it is prudent to evaluate each proposed project individually and add specific conditions relative to the protection of water quality. Therefore, certification of NWP 43 is denied.

NWP 44 Mining Activities. This NWP authorizes aggregate and hard rock/mineral mining and in and adjacent to specific water bodies. Beneficiation activities for hard rock/mineral mining are authorized within 200 feet of an "ordinary high water mark: of any open water body. The activities authorized by this NWP may have considerable , deleterious effects on water quality. Because of the potential impacts to water quality, we believe that it is necessary to review each proposed activity and add any conditions necessary to protect water quality. Therefore, certification of NWP 44 is denied.

DENIAL OF CERTIFICATION ON CLASS 1 WATERS

Class 1 waters are defined by the state water quality regulations as those in which no further water quality degradation by point source discharges other than from dams will be allowed. Nonpoint source discharges will be controlled by the implementation of best management practices designed to maintain existing water quality. Because of the high level of protection afforded to these waters by the regulations, authorization of the activities covered by the above NWPs without individual departmental review is inappropriate.

Therefore, 401 certification for NWPs 3, 5, 6, 7, 12, 13, 14, 18, 25, 26, 29, 30, 32, 33, 36, 37, 39, 41, 42, 45, 46 and 47 is denied on Wyoming Class 1 waters. These nationwide permits are certified for use on Wyoming class 2, 3, and 4 waters *(all other waters)*

provided that the general conditions, management practices, and other provisions of the nationwide program are strictly followed.

The following is a listing of current class 1 waters in Wyoming:

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 stream 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 Kortes 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;

17. Wetlands adjacent to the above listed Class 1 waters.

APPROVED 401 CERTIFICATION

Nationwide permits 20, 21, 38, 49 and 50 are acceptable as written on all waters in the state so long as the general conditions, management practices, and other provisions of the nationwide program are strictly followed.

ADDITIONAL CONDITIONS ON ALL NWPS.

Every authorization by the Corps for any activity which is not subject to an individual 401 certification must include the following language:

> *The Wyoming Department of Environmental Quality has certified that the use of this nationwide permit for the proposed activity is acceptable provided that all of the terms and conditions of the nationwide permit are followed and that construction is conducted in a manner which does not result in a violation of any applicable water quality standard. This authorization in no way relieves any person from compliance with water quality standards or any other federal, state, or local laws or regulations, nor does it provide exemption from legal action by private citizens for damage to property which the activity may cause.*

The following conditions apply when operating equipment or otherwise undertaking construction in a water of the state:

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

   Fording the stream at one location is acceptable, however, vehicles and equipment should not push or pull material along the streambed below the existing water level. Work below the water which is essential for 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 or unnecessary stream channel disturbance. Frequent fording should not occur in areas where extensive turbidity will be created. In all cold water fisheries and drinking water supplies (Classes 1, 2AB, 2A and 2B) in stream activities associated with this permit shall not increase turbidity by more than 10 nephelometric turbidity units (NTUs). In all warmwater or non-game fisheries (Classes 1, 2AB, 2A, 2B and 2C) in stream activities associated with this permit shall not increase turbidity by more than 15 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) and (b) 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.

b. 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.

c. Care should be taken to cause only the minimum necessary disturbance. Streambank 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 out of the stream channel or adjacent wetland areas where it cannot reenter the channel during high stream flow or runoff events.

All cut and fill slopes that will not be protected with riprap should be revegetated with appropriate species to prevent erosion.

d. All fill material should be placed and compacted and subsequently protected from erosion. Areas to be filled should be cleared of all vegetation, debris and other materials that would be objectional to the fill.

e. The period and timing of construction should be adjusted as necessary to minimize conflicts with fish migration and spawning.

f. Care must be taken to prevent any petroleum products, chemicals, or other deleterious materials from entering the water. A spill contingency 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.

The Wyoming Department of Environmental Quality certifies that these permits are acceptable as described above, provided the procedures described in the application for state certification are followed and reasonable care is taken to ensure that all disturbed areas are protected from erosion. 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. Upon adoption of updated standards, this certification may be revoked and modified appropriately.

Please be aware that this letter constitutes state certification of this permit as required by Section 401 of the federal Clean Water Act. It does not provide an exemption 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 which the activity may cause.

If you have any questions or would like to discuss any part of this certification, please feel free to contact Jeremy Lyon of my staff at (307) 777-7588.

Sincerely,

John V. Corra
Director
Department of Environmental Quality

JVC/JFW/JML/rm/7-0224

cc: John Emmerich, Wyoming Game and Fish, Cheyenne
Toney Ott, US EPA Region 8, 1595 Wynkoop Street, Denver, CO 80202-1129
Brian Kelly, US FWS, 5353 Yellowstone Road, Suite 308, Cheyenne, WY 82009
Rick Chancellor, LQD

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Wyoming State Historic Preservation Office Letter

January 28, 2011

ARTS. PARKS. HISTORY.
Wyoming State Parks & Cultural Resources

State Historic Preservation Office
2301 Central Ave
Cheyenne, WY 82001
307-777-7697

January 28, 2011

Jamie Schoen, Forest Archaeologist
Bridger-Teton National Forest
P. O. Box 1888
Jackson, WY 83001

re: Expanding Broadband Communication Opportunities in the Greater Yellowstone Area (SHPO File # 1210LKN003)

Dear Mr. Schoen:

Thank you for consulting with the Wyoming State Historic Preservation Office (SHPO) regarding the above referenced project. We have reviewed the project report and find the documentation meets the Secretary of the Interior's Standards for Archaeology and Historic Preservation (48 FR 44716-42). We concur with your finding that properties 48TE1453, the Old Teton Road, and 48TE1847, Hobbs/Enterprise Ditch, are eligible for listing in the National Register of Historic Places (NRHP) and will not be adversely affected by the project as planned. We also concur that property 48TE1846, River Gauge Station, is not eligible for the NRHP. At this time, we recommend property 48TE1848, Uhl Ditch/Wolff Ditch remain unevaluated due to a lack of adequate justification for significance, since the property will be avoided either way, the project will still have a no adverse effect on historic properties.

We recommend the United States Forest Service, the National Park Service, and the Department of Commerce allow the project to proceed in accordance with state and federal laws subject to the following stipulation:

> If any cultural materials are discovered during construction, work in the area shall halt immediately, the federal agency and SHPO staff be contacted, and the materials be evaluated by an archaeologist or historian meeting the Secretary of the Interior's Professional Qualification Standards (48 FR 22716, Sept. 1983).

This letter should be retained in your files as documentation of a SHPO concurrence with your finding of no historic properties affected. Please refer to SHPO project #1210LKN003 on any future correspondence regarding this project. If you have any questions, please contact me at 307-777-6179.

Sincerely,

Laura Nowlin

Laura Nowlin
Historic Preservation Specialist

Cc: Mary Gibson Scott, Grand Teton National Park Superintendent

Matt Mead, Governor
Milward Simpson, Director

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

Section 7 WSRA Evaluation Procedure under "Direct and Adverse Effect" Standard

WORKSHEET

Step 1: **Project Description: Briefly describe the situation that may prompt action. Include as appropriate: (For Grand Teton National Park)**

Project Proponent

- Silver Star Telephone Co., Inc.
- P.O. Box 226
- Freedom, WY 83120
- (307)883-6631

Purpose

- Silver Star Telephone, based in Freedom, Wyoming was selected by the U.S. Department of Commerce, National Telecommunications and Information Administration (NTIA) to build approximately 102 miles of buried high-speed broadband fiber optic cable under the provisions of two new programs of the NTIA called the Broadband Technology Opportunities Program (BTOP) and the Agricultural Department's Rural Utility Service's (RUS) Broadband Initiatives Program (BIP). The purpose of these projects is to improve overall broadband communications throughout Wyoming by filling several gaps in the current communications infrastructure and completing the loops. The award to SST by NTIA through the BTOP is tied to the American Recovery and Reinvestment Act (ARRA, 2009). There is a strict timeline to obligate and use these funds driven by the laws and regulations governing the use of the ARRA grant funding (PL 111-5 (Feb 17, 2009), 123 STAT.115).

- Teton County, Wyoming is in a geographically challenged area due to physical barriers, rural setting, and severe winter weather. These facts magnify the importance of and reliance on technology and modern fiber network for communication in and out of the county. The overall purpose of the awards is to have Silver Star complete fiber optic projects from Jackson to Moran and over Togwotee Pass and from Jackson through Wilson and over Teton Pass to the Idaho border near Victor, Idaho. These projects will complete

two major networks or loops across Wyoming, significantly advancing the broadband capabilities in the region, particularly improving the reliability of communications within the State of Wyoming. Governor Dave Freudenthal has designated this broadband project as a high priority for completion and implementation based on his letter of April 30, 2010.

Geographic Location

- The portion of this Broadband Opportunities project that must cross 3 Wild and Scenic River segments in Grand Teton National Park is the Togwotee Pass route. The intent of the project is to expand broadband communications opportunities to underserved portions of the country. In Wyoming, federal lands (National Forests, BLM, and National Parks) are major owners of the landscape and need to be crossed to serve these more isolated communities. The Togwotee Segment must cross the Snake River at Moose, Wyoming to provide broadband services to the National Park Headquarters unit at that location. It must also cross the Buffalo Fork near Moran to provide services to facilities at Moran and to continue on to its destination along US 26. The crossing on the Buffalo Fork as the line leaves the Park will be hung from the existing bridge in a 4" conduit. It will then proceed east to where it joins with the DTE fiber optic installation coming from the east at Togwotee Pass.

- The preferred alternative for the Expanding Greater Yellowstone Broadband Opportunities project is described below and is broken down into the two segments, the Teton Pass Segment and the Togwotee Pass Segment. The route of the installations starts at the Idaho border and Hwy 22 and proceeds east to Jackson, then from Jackson north and northeast along highways 89 and 26, with several diversions in Jackson, to Teton Village, and onto dirt roads and existing ROWs to Togwotee Pass where it connects to a DTE line coming from the east. The route will cross 3 National Forests (Caribou-Targhee, Bridger-Teton, and Shoshone) and Grand Teton National Park. The installation is primarily within existing roads, ROWs and utility easements.

Installations

- **Teton Pass Segment** - This route will not cross any Wild and Scenic Rivers in the National Park.

  Togwotee Pass Segment - There are three Wild and Scenic River crossings along the Togwotee Pass Segment in the GTNP. These WSR crossings take place on the Snake River bridge at Moose, the Buffalo Fork where the stream passes southeast of Moran, and where US 26 crosses it east of Moran. In each case, the Wild and Scenic Character of these streams will not be affected.

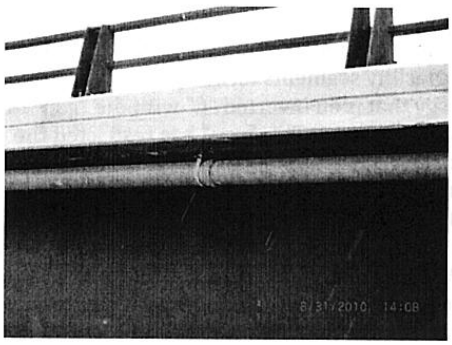
  The proposed Togwotee Pass Segment requires installation of approximately 65.9 miles of fiber optic cable and associated facilities from Jackson to the existing DTE facilities near Togwotee Pass, WY. In addition, this segment would include stubs off of the main route in order to provide connections to schools, medical services, government buildings, and other anchor institutions in Jackson and Teton County.

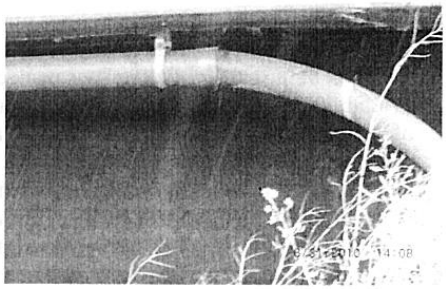
  The proposed route goes north out of Jackson along US 89/26 to the Jackson Hole Airport and to the National Park Headquarters in Moose. Continuing north from Moose Junction the proposed line continues north across Ditch Creek (boring to cross the actual creek) to the Antelope Flats Road near the existing buried Qwest line along the US 26 ROW. At that junction, the SST line would follow Antelope Flats Road east to Shadow Mountain Road then turn north where it would parallel the existing overhead power line. The cable would

follow the existing power line until that line intersects with Forest Service Road 30333 near Lost Creek Ranch where it continues north. These roads are mostly on National Park Service (NPS) property, with some bordering on National Forest System Land. The route would re-enter the US 26 ROW again at the parking lot near the Cunningham Cabin Historic Site and continue north along US 89.

Just north of Spread Creek the line would turn east onto Wolff Ranch Road, then following the road the line would turn north then parallel the existing overhead power line route eventually being bored under the Buffalo Fork River within GTNP to US 26, just east of Moran. The Buffalo River is part of the Upper Snake River Wild and Scenic River System. To avoid unnecessary temporary visual impacts along the river, the installation will be bored under the river from a point about 200 feet south of the river bank to the edge of US 26. Hand hole connections would be installed at the bore site and where the bore comes out at the edge of US 26.

At this point, another bore will install the cable under US 26 to the north side of the highway where another hand hole junction box will be installed. The conduit and cable will be buried (plowed in or bored or hung on bridges) from this point in 2 directions, west along US 26 to Moran and east to Togwotee Pass. The stub west to Moran would provide service access to the Moran Elementary School, fire station, Moran Post Office, Grand Teton National Park entrance gate, and other NPS facilities. The line east is the main service that will continue to the east, crossing the Buffalo Fork at the park boundary on a US 26 bridge.





The route east generally follows along US 26, FS Road 30060, and FS Road 30040 to where it would terminate near Togwotee Pass at a communications complex and DTE facility. All proposed wetlands and water crossings would be done under the provisions and limitations identified under Nationwide Permit #12 issued by the US Army Corps of Engineers for this project. No dredging or filling of wetlands would be necessary in order to implement the proposed project.

Duration

- Construction of the proposed project will occur over two spring/summer/fall seasons beginning in May/June 2011 on the southern and lower elevations. The work at higher elevations will be completed as snow, ground, and soil conditions become appropriate. Some specific sites may require that construction take place at times when concerns for wildlife and other resources can be accommodated. Work is anticipated to be completed by October 2012 or before. Where any trees need to be cut and removed, they will be removed before April 1 or after August 15 of the year to avoid impacting nesting birds. The installation should be considered permanent once installed. Multiple crews will install the

conduits in order to complete the project within the limited construction seasons available. The installation across the Snake River and Buffalo Fork River on the existing bridges would take about 2-3 days each while the bore under the Buffalo Fork River would take from 5-10 days to complete.

Magnitude/Extent

- With few exceptions, the Togwotee route will be located in existing roads, ROWs or easements. Installation will result in temporary ground disturbance to a width of up to 20 feet (construction corridor)(often narrower-less than 3 feet). A permanent easement/ROW of 10 feet is normal for post-construction. During construction, personnel and equipment such as cable plows, small backhoes, boring equipment, trucks hauling conduit and cable, and rock sawing equipment may be present within the temporary construction corridor. In some cases, such as on remote roads, an offset plow tooth can be used to place the conduit near the shoulder or borrow ditch so that little off-road travel will be needed. The project will cross onto multiple jurisdictions including the Bridger-Teton, Caribou-Targhee, and Shoshone National Forests, Grand Teton National Park, the Wyoming Department of Transportation, Town of Jackson and Teton County. All river crossings will attach cable in conduit to existing vehicular bridge crossings structures or they will be bored under the water feature.

Relationship to past/future management activities

- Togwotee Pass Segment - The State of Wyoming is in a square shape with several population centers distributed near its perimeters and in its center. The existing telecommunications providers' fiber optic facility segments form a partial ring around these centers. In essence, a fiber network topology that is an inverted "C" with the "gap" in the network being the Togwotee Pass project as proposed. This "gap" has restricted the availability of robust and protected broadband opportunities for the citizens and businesses of Wyoming for over a decade. There is a "gap" between the endpoints of an existing 960 mile fiber network that traverses nearly two-thirds of the state of Wyoming. The "gap" is located in northwest Wyoming, between Togwotee Pass (on the continental divide) and Jackson, WY. The Governor's Office, the Wyoming Business Council, Office of the State Chief Information Officer (CIO), numerous state agencies, other communications carriers, business entrepreneurs, health care providers, educational facilities and community leaders have identified "closing the gap" as a highest priority broadband stimulus funded project for Wyoming. All of these installations should be considered permanent and will provide for continued public use well into the future.

To determine if an in-depth Section 7 evaluation is necessary, answer the questions listed in A - F on the following pages and provide a brief explanation to support the conclusion. Define and document the time scale over which any identified effects are likely to occur.

A. Describe any changes to within-channel conditions.

Would there likely be any discernable changes to channel location, geometry, slope, form, water quality, or navigation of the river? Also consider how likely within-channel changes affect ORVs.

Yes: No: X

Explain: The channels of live streams would not be altered because they will either be bored under the streambed or the cable will be suspended from an existing bridge in a 4" heavy duty steel conduit. Neither of these installation practices will alter stream flow or the channel. The borings will be below the river beds. They will enter and exit each boring away from the bank of each channel. Boring takes place at a rate of about 120 feet per day, which means it will take less about a week to bore under the 800-foot section of the Buffalo Fork River. However, the boring effort and the final installation will have no effect on any of the protected Wild and Scenic River's outstanding remarkable values (ORVs), water quality, or free-flowing character. The entire 102 miles of the combined Teton and Togwotee Pass installations involving both plowing and boring will be completed over 2 summer seasons but the work on the Buffalo Fork River would take place during one session at a time to be determined to be the least intrusive.

B. Describe any alteration to riparian or floodplain conditions.

Are there any meaningful changes to vegetation, soil compaction, exposure of bare ground, or bank stability or susceptibility to erosion?

Yes: **No: X**

Explain: There will be areas within ¼ mile of the Wild and Scenic River crossings where there will be short term vegetation disturbance where equipment tracks pass over vegetation, where the tooth plows in the conduit, and where the holes are dug to initiate the bore or install hand holes. The impact to vegetation will include crushing and breakage of vegetation but little vegetation will be killed as a result of the installation. Surface vegetation removed to excavate the bore hole starting point for the Buffalo Fork crossing will be reserved with adequate soil to be replaced over the excavation once installation is complete. The only remaining visible artifact of the installation will be the covers for the hand hole and the marker posts and identification signs. The sites affected are currently well vegetated and will respond well to re-seeding with native seed following installation. Also care will be taken to replace the vegetation that was removed. If deemed feasible it can be kept wet and alive so that it can be reinserted after the bore is complete. Topsoil will not be turned over or lost. There will be little evidence that the installation took place 2 years following installation other than the periodic markers used to identify and protect the line from damage tied to any future construction activity.

At the crossing of the Snake River by Moose, the conduit and fiber optic cable will be buried to a point just east and west of the bridge where the cable will transition from underground to the surface through a hand hole into the 4" conduit suspended from the bridge, across the bridge and out the other side of the conduit into another hand hole and back underground to proceed west along the road to the GTP Headquarters compound. The tops of the hand hole junction boxes are about 2' x 3' in size and will be kept as flush to the ground as possible at these locations. The 4" steel conduit will extend from the ground across the Snake River suspended close to the bridge structure so as not to be readily visible. An additional 100-200 feet of fiber optic cable will be stored in-line (hooked up) within each hand hole in case the is a need to work on the bridge. In this way service will not be affected during construction.

A single hand hole will also be installed at the Buffalo Fork River bore crossing north side of US 26 east of Moran. A bore hole will be needed on the south side of US 26 after the bore crosses the river but this hole will be filled, re-contoured, re-compacted, and reclaimed with native vegetation after the conduit has been spliced. The bore will originate from a point 200 feet south of the south bank of the river and extend about 800 feet to come up on the north side of the river but on the south

side of US 26 where another bore site (noted above) will be installed. The conduit will be installed on the north side of US 26 by boring under the highway to a bore hole that will serve as a hand hole as the conduit is directed west to Moran and the NPS facilities and east toward Togwotee Pass. The hole from the boring operation will be filled with the hand hole box and finished flush with the ground. Consequently, there will be no intrusions near the banks of the river.

At the bridge crossing of the Buffalo Fork River on US 26, the conduit and fiber optic cable will be buried to a point just east and west of the bridge where the cable will transition from underground to the surface through a hand hole into the 4" conduit suspended from the bridge, across the bridge and out the other side of the conduit into another hand hole and back underground to proceed east along US 26. An additional 100-200 feet of fiber optic cable will be stored in-line (hooked up) within each hand hole in case there is a future need to work on the bridge. In this way service will not be affected during construction. The tops of the hand hole junction boxes are about 2' x 3' in size and will be kept as flush to the ground as possible at these locations. The 4" steel conduit will extend from the ground across the Buffalo Fork suspended close to the bridge structure so as not to be readily visible.

C. Describe any alteration of upland conditions.

Are there any meaningful changes to vegetation, soil compaction, exposure of bare ground, drainage patterns, surface and sub-surface flows, or identified ORVs?

Yes: **No: X**

Explain: Following installation, the vegetation will be disturbed for about a 10 foot width along the length of the installation. Soil will be disturbed over a width of only 6- to 12-inches along the plow tooth, allowing installation to a depth of 36-inches. Since the installation equipment follows the shape of the land, there is no need to blade or re-shape the land following installation. The area disturbed by the tooth and vehicle tracks will be re-contoured, re-compacted, and seeded with native vegetation immediately following installation and is expected to return to its pre-existing condition within 2 years. There will be no alteration of drainage patterns, surface or subsurface flows because the surface shape of the land will not be altered except where the handholes are installed. At these sites (about 100-200 feet from either bank) but well within ¼ mile of the Wild and Scenic River, the lids of the hand holes will be installed flush with the ground surface. They will likely be covered by overhanging vegetation within several years following installation.

D. Describe any on-site changes that will alter hydrologic or biological processes.

Are there any meaningful changes to the ability of the channel to change course, re-occupy former segments; inundate the floodplain; change the amount, timing, or pattern of channel flow; affect flood storage; affect biological processes such as fish spawning, amphibian/mollusk needs, and streamside vegetation?

Yes: **No: X**

Explain: The effects on vegetation will only be temporary and mostly in the form of broken vegetation, especially grasses and willows. The surface of the land will not be reshaped by the installation process. Nothing will alter the ability of existing channels to change course, re-occupy former segments, inundate the floodplain; change the amount, timing, or pattern of channel flow;

affect flood storage; affect biological processes such as fish spawning, amphibian/mollusk needs, and streamside vegetation?

E. Describe any magnitude and spatial extent of any off-site change.

Are there specific processes involved (such as water and sediment) that might be meaningfully influenced in other parts of the river system, what these changes might be, and the likelihood they would occur?

Yes: ☐ **No: X**

Explain: The extent of the noticeable impact is limited to a very narrow corridor where the plow tooth penetrated the ground or where the tracks or tires traversed an area. Those disturbed areas are restored. The area where the plow tooth disturbs the soil will be re-contoured, re-compacted, and revegetated as needed over the roughly 102 mile length of the linear project. The installation is permanent and does not have any permanent effect on the sites other than occupying a space about 1.75 inches by 3 inches 36 inches below the surface over the length of the project, except where the hand holes and huts are installed. Only one hut will be installed within ¼ mile of any Wild and Scenic River and that will be within the Park Headquarters compound at Moose.

F. Describe Effects to Management Goals.

Are there any meaningful effects to management goals relative to free flow, water quality, riparian area and floodplain conditions, ORV's and river classification?

Yes: ☐ **No: X**

Explain: : Although the installation will not in itself alter any management goals, the fact that this improved fiber optic network is in place may provide more management opportunities to land managers by improving communications between individuals, field based monitoring tools, and emergency and support institutions like universities. It would also enable the installation of the state-of-the-art monitoring equipment such as gauging stations, webcams, and auto-reporting weather devices that could be beneficial to meeting management goals.

Step 2: Section 7 Determination.

Based upon the above analysis two possible decisions can be reached, (1) an in-depth Section 7 evaluation is required or (2) the analysis in Step 1 provides enough available information to determine that under Section 7 the proposed project will not have a "direct and adverse effect" to the values (free-flow, water quality, or outstandingly remarkable values) for which the river was added to the National System.

The signature block below needs to be completed with the accompanying worksheets and sent to the Regional Office for finalization. Any proposed project that has the likelihood to have a "direct and adverse effect" requires an in-depth Section 7 evaluation.

	Signature	Name	Date
Prepared by:			
Review:	Margaret Wilson	Margaret Wilson	12/6/10
Supervisor Review:		~~[illegible]~~ Jennifer Carpenter	12/6/10

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

Section 7 WSRA
Evaluation Procedure
Under
"Direct and Adverse Effect" Standard

WORKSHEET

Step 1: **Project Description: Briefly describe the situation that may prompt action. Include as appropriate:**

- **Project proponent**

    - Silver Star Telephone Co., Inc.
    - P.O. Box 226
    - Freedom, WY 83120
    - (307)883-6631

- **Purpose**

- Silver Star Telephone, based in Freedom, Wyoming was selected by the U.S. Department of Commerce, National Telecommunications and Information Administration (NTIA) to build approximately 102 miles of buried high-speed broadband fiber optic cable under the provisions of two new programs of the NTIA called the Broadband Technology Opportunities Program (BTOP) and the Agricultural Department's Rural Utility Service's (RUS) Broadband Initiatives Program (BIP). The purpose of these projects is to improve overall broadband communications throughout Wyoming by filling several gaps in the current communications infrastructure and completing the loops. The award to SST by NTIA through the BTOP is tied to the American Recovery and Reinvestment Act (ARRA, 2009).

- Teton County, Wyoming is in a geographically challenged area due to physical barriers, rural setting, and severe winter weather. These facts magnify the importance of and reliance on technology and modern fiber network for communication in and out of the county. The overall purpose of the awards is to have Silver Star complete fiber optic projects from Jackson to Moran and over Togwotee Pass and from Jackson through Wilson and over Teton Pass to the Idaho border near Victor, Idaho. These projects will complete two major networks or loops across Wyoming, significantly advancing the broadband capabilities in the region, particularly improving the reliability of communications within the State of Wyoming. Governor Dave Freudenthal has designated this broadband project as a high priority for completion and implementation based on his letter of April 30, 2010.

Geographic location

- There are two sections of this project, one of which is called the Teton Pass Segment and the other which is called the Togwotee Pass Segment. Only one of these proposed segments, the Togwotee Pass Segment, has any potential to affect resources protected under the WSRA (1968, as amended). Consequently, the remainder of the descriptions and discussions are generally limited to only that segment. The route of the installations starts at the Idaho border and Hwy 22 and proceeds east to Jackson, then from Jackson north and northeast along highways 89 and 26, with several diversions in Jackson, to Teton Village, and onto dirt roads and existing ROWs to Togwotee Pass where it connects to a DTE line coming from the east. The route will cross 3 National Forests (Caribou-Targhee, Bridger-Teton, and Shoshone) and Grand Teton National Park. The installation is primarily within existing roads, ROWs and utility easements.

Togwotee Pass Segment - There is one Wild and Scenic River crossing along the Togwotee Pass Segment on the BTNF. This WSR crossing takes place on Blackrock Creek across US 26, north of the Blackrock Ranger Station. At Blackrock Creek, it is proposed to run the line north from a hand hole by US 26 and plow the line in to a point about 50 feet north of the stream bank. At this point a 4 inch bore would start approximately 50 ft. south of the south bank of the stream and come up an equal distance away on the north side of the north bank, from which point the cable plow would continue with the buried installation (Figure 1). There will be minor ground disturbance at the bore site as depicted on Figure 1. The two holes about 2'W x 5'L x 3'D need to be dug on either side of the creek in order to bore under it. These holes will be refilled and rehabbed as necessary immediately following installation. Boring under Blackrock Creek at this site should take about 3 days to complete. This should not affect the bed or banks of Blackrock Creek.

Duration

- Construction of this section of the proposed project will occur for approximately 3 days between April and November of either 2011 or 2012.

Magnitude/Extent

- Boring under Blackrock Creek will begin and end approximately 50 ft. outside of the ordinary high water mark. There will be a 4 inch bore under the creek for approximately 160 ft.

Relationship to Past/Future Management Activities

Togwotee Pass Segment - The State of Wyoming is in a square shape with several population centers distributed near its perimeters and in its center. The existing telecommunications providers' fiber optic facility segments form a partial ring around these centers. In essence, a fiber network topology that is an inverted "C" with the "gap" in the network being the Togwotee Pass project as proposed. This "gap" has restricted the availability of redundant and protected broadband opportunities for the citizens and businesses of Wyoming for over a decade. There is a "gap" between the endpoints of an existing 960 mile fiber network that traverses nearly two-thirds of the state of Wyoming. The "gap" is located in northwest Wyoming, between Togwotee Pass (on the continental divide) and Jackson, WY. The Governor's Office, the Wyoming Business Council, Office of the State Chief Information Officer (CIO), numerous state agencies, other communications carriers, business entrepreneurs, health care providers, educational facilities and community leaders have identified "closing the gap" as a highest priority broadband stimulus funded project for Wyoming.

- The installation at Blackrock Creek will take place at a location already surrounded by a variety of developments including the Ranger Station, the bridge, several roads, and the residences and stables north of the stream. The cable installation will be far less visible than any of these facilities. The only visible evidence remaining after the installation will be the hand holes on either side of US 26.

Figure 1. Proposed crossing of Blackrock Creek (Scenic, WSRA 1968 as amended) near Blackrock RS.

To determine if an in-depth Section 7 evaluation is necessary, answer the questions listed in A - F on the following pages and provide a brief explanation to support the conclusion. Define and document the time scale over which any identified effects are likely to occur.

A. Describe any changes to within-channel conditions.
Would there likely be any discernable changes to channel location, geometry, slope, form, water quality, or navigation of the river? Also consider how likely within-channel changes affect ORVs.

Yes: **No: X**

Explain: The channels of the live stream would not be altered because Silver Star will bore under the streambed. This practice will not alter stream flow or the channel. The borings will be below the creek bed. They will enter and exit each boring away from the bank of each channel. Boring takes place at a rate of about 120 feet per day, which means it will take about 2-3 days to bore under Blackrock Creek. However, the boring effort and the final installation will have no effect on any of the protected Wild and Scenic River's outstanding remarkable values (ORVs), water quality, or free-flowing character.

B. Describe any alteration to riparian or floodplain conditions.

Are there any meaningful changes to vegetation, soil compaction, exposure of bare ground, or bank stability or susceptibility to erosion?

Yes: **No:** **X**

Explain: There will be areas within 50 ft. of the Wild and Scenic River crossing where there will be short term vegetation disturbance where equipment tracks pass over vegetation, where the tooth plows in the conduit, and where holes are dug to initiate the bore or install hand holes. The impact to vegetation will include crushing and breakage of vegetation but little vegetation will be killed as a result of the installation. Surface vegetation removed to excavate the bore hole starting point for the Blackrock Creek crossing will be reserved with adequate soil to be replaced over the excavation once installation is complete. The site affected is currently well vegetated and will respond well to additional re-seeding with native seed following installation. Topsoil will not be turned over or lost. There will be little evidence that the installation took place 2 years following installation other than the periodic markers used to identify and protect the line from damage from any future construction activity.

A hand hole will be installed at the Blackrock Ranger Station south of US 26. The cable will be routed from there under US 26 to another hand hole. From this hand hole the line will be plowed in to about 50 feet south of the bank of Blackrock Creek. A bore will be started at this point and bored to the north under Blackrock Creek, coming up about 50 feet north of the north bank where the plow will pick up the installation and proceed north to the Forest Service compound (Figure 1). There will be no evidence of the installation following completion except for the line markers and the hand holes by US 26 and the Ranger Station.

C. Describe any alteration of upland conditions.

Are there any meaningful changes to vegetation, soil compaction, exposure of bare ground, drainage patterns, surface and sub-surface flows, or identified ORVs?

Yes: **No: X**

Explain: Following installation, the vegetation along the route in general will appear disturbed for about a 10 foot width along the length of the installation. Soil will be disturbed over a width of 6 to 12 inches along the plow blade installation line to a depth of 3 feet. Since the installation equipment follows the shape of the land, there is no need to blade or re-shape the land following installation. The area disturbed by the blade and vehicle tracks will be seeded with native vegetation immediately following installation and is expected to return to its pre-existing condition within 2 years. There will be no alteration of drainage patterns, surface or subsurface flows because the surface shape of the land will not be altered except where the hand holes are installed. At these sites within ¼-mile of the Wild and Scenic River, the lid of the handhole will be installed flush with the ground surface. They will likely be covered by overhanging vegetation within several years following installation.

D. Describe any on-site changes that will alter hydrologic or biological processes.

Are there any meaningful changes to the ability of the channel to change course, re-occupy former segments; inundate the floodplain; change the amount, timing, or pattern of channel flow; affect flood storage; affect biological processes such as fish spawning, amphibian/mollusk needs, and streamside vegetation?

Yes: **No: X**

Explain: No disturbance of vegetation (including riparian species) would occur any closer than 50 feet from the actual bank of the stream. The surface of the land will not be reshaped by the installation process. Nothing will alter the ability of existing channels to change course, re-occupy former segments, inundate the floodplain; change the amount, timing, or pattern of channel flow; affect flood storage; affect biological processes such as fish spawning, amphibian/mollusk needs, and streamside vegetation.

E. Describe any magnitude and spatial extent of any off-site change.

Are there specific processes involved (such as water and sediment) that might be meaningfully influenced in other parts of the river system, what these changes might be, and the likelihood they would occur?

Yes: ☐ **No: X**

Explain: This installation involves boring a conduit under Blackrock Creek. The expectation is that the bed and banks of Blackrock Creek will not e disturbed. Therefore, other parts of the river system would not be affected.

F. Describe Effects to Management Goals.

Are there any meaningful effects to management goals relative to free flow, water quality, riparian area and floodplain conditions, ORV's and river classification?

Yes: ☐ **No: X**

Explain: Boring of the conduit below Blackrock Creek, by having it begin and end 50 ft. away from the creek so that it does not affect the bed and banks, will have no direct or adverse effects on the free flow, water quality, and floodplain conditions, ORVs, and river classification of Blackrock Creek. Riparian area impacts will be transient as the disturbed area recovers after construction. Disturbance is expected to take no more than 3 days. The Outstandingly Remarkable Values for this river segment are Scenic, History, Wildlife, Other Values, and Recreation. The installation criteria described above will protect all Outstandingly Remarkable Values associated with Blackrock Creek.

Step 2: Section 7 Determination.

Based upon the above analysis two possible decisions can be reached, (1) an in-depth Section 7 evaluation is required or (2) the analysis in Step 1 provides enough available information to determine that under Section 7 the proposed project will not have a "direct and adverse effect" to the values (free-flow, water quality, or outstandingly remarkable values) for which the river was added to the National System.

The signature block below needs to be completed with the accompanying worksheets and sent to the Regional Office for finalization. Any proposed project that has the likelihood to have a "direct and adverse effect" requires an in-depth Section 7 evaluation.

	Signature	Name	Date
Prepared by:	Deidre Witsen	Deidre Witsen	12/7/2010
District Ranger Review:		Thomas Matza	12/07/2010
Forest Supervisor Review:			12/8/10