

## **2002 NATIONWIDE PERMIT (NWP) REGIONAL CONDITIONS – KANSAS**

All regional conditions presented herein, are in addition to, not in lieu of, the terms and conditions of the NWPs as published in the January 15, 2002, Federal Register, Issuance of Nationwide Permits; Notice (67 FR 2020-2095), and in the February 13, 2002 Federal Register, Issuance of Nationwide Permits; Notice; Correction (67 FR 6692-6695).

**NOTE:** These regional conditions do not pertain to paragraph a. of NWP 40.

**1. NWP 3 – Maintenance.** The permittee must notify the District Engineer when repairing, rehabilitating or replacing low water crossings if: discharges of fill or dredged material would raise or lower the lowest elevation of the crossing by a total of 12-inches or more, or when removing the structure. The permittee must propose and employ measures to mitigate the potential impact of impounding gravel above the low water crossing or of releasing impounded-gravel downstream of the structure. Such mitigation might include: removing impounded gravel in the unstable area upstream of the low water crossing to prevent it from being transported downstream and/or constructing a notched weir to slow the release of impounded gravel from upstream of the low water crossing.

**2. NWP 12 - Utility Activities.** Except for a minimal corridor that is essential for operation and maintenance of the utility line, the right-of-way must be allowed to re-vegetate naturally to native tree species when forested wetlands or riparian wooded areas are cleared in order to construct the utility line. This does not preclude the planting of native vegetation.

**3. NWP 23 - Approved Categorical Exclusions.** The permittee must notify the District Engineer in accordance with the "Notification" general condition of the NWPs (general condition 13) when a Federal agency's categorically excluded activities are in or affect waters of the United States. This notification must include a delineation of special aquatic sites, including wetlands. In addition to information required by NWP general condition 13 (b), the notification must identify the approved categorical exclusion that applies (i.e. list Federal Register citation) and include documentation that the project fits the categorical exclusion.

**4. NWP 27 - Stream and Wetland Restoration Activities.** NWP 27 will not be used to authorize discharges associated with relocation of forested wetlands.

**5. NWP 43 - Stormwater Management Facilities.** The permittee must notify the District Engineer in accordance with the "Notification" general condition of the NWPs (general condition 13) when a regulated in-stream basin impacts an intermittent stream. The permittee must submit a mitigation plan specifically identifying measures to prevent the export of contaminants directed into the in-stream basin by the upland collection system. The permittee must also include mitigation for any in-stream projects that would adversely impact normal aquatic life migration. This NWP does not authorize the retention of water, in excess of that required to meet stormwater management requirements, for other purposes such as recreational lakes, reflecting pools and irrigation.

**6. Recording Mitigation (Applicable To All NWPs).** NWPs with mitigation may require recording of the permit mitigation areas with the Registrar of Deeds or other appropriate official charged with the responsibility for maintaining records of title to or interest in real property and provide proof of recording to the Corps.

**7. Notification Requirements.** For discharges of dredged or fill material in waters of the United States for the category of activities listed in items a through d below, the permittee must notify the District Engineer in accordance with "Notification" general condition 13.

**a. Concrete Channel Lining and similar activities.** For discharges of dredged or fill material associated with lining channels with concrete, placing streams in culverts (except culverts for road crossings), channel bed armoring, placing liquid concrete or bagged cement in waters of the United States and/or placement of grouted riprap across the bottom of the channel.

**b. Fens and Bogs.** For any regulated activity that impacts a fen or bog of any size.

**c. Playa Wetlands.** For discharges of dredged or fill material into jurisdictional playa wetlands of any size.

**d. Forested Wetlands.** For discharges of dredged or fill material into forested wetlands in the state of Kansas, which impact greater than 1/10 acre of these wetlands. Note: Forested wetlands are characterized by woody vegetation that is 20 feet tall or taller.

**8. Exclusion.** All NWP's are prohibited from use in that reach of Big Soldier Creek located on or within the boundaries of the property owned by the Prairie Band of Potawatomi Nation in Kansas. This high quality water was identified by the Tribe as constituting an outstanding National resource of exceptional recreational, ecological, or culture significance.

**9. Outstanding National Resource Waters (ONRW)/Exceptional State Waters (ESW)/Special Aquatic Life Uses (SALU).** NWP General Condition 25 (Designated Critical Resource Waters) references ONRW. The designation of waters as ONRW, ESW and SALU is subject to change in accordance with Kansas state law. The current list of ONRW, ESW and SALU waters is attached as Appendix I.

Proposed discharges of dredged or fill material in waters designated by the state of Kansas as ONRWs, ESW, or SALU, will require all persons performing work under the NWP program to adhere to the following regional conditions.

**a. NWP 44 – Mining Activities.** Excluded from use in all ONRW, ESW and SALU waters.

**b. Notification.** Where notification under General Condition 13 is required for any NWP in an ONRW, ESW or SALU water, which also impacts adjacent riparian areas, the permittee must provide with each notification a "Woodland Habitat Assessment", as developed by the Kansas Department of Wildlife and Parks (attached as Appendix II to this notice).

**c. Impoundments.** NWP's are prohibited from use to authorize all discharges of dredged or fill material in all ONRW, ESW and SALU waters associated with the construction of dams resulting in creation of an impoundment and/or that does not allow the passage of aquatic species indigenous to the affected water body. *Note for impoundments:* Construction and maintenance of impoundments whose primary purpose is farm and/or stock related is generally not prohibited by or otherwise subject to regulation under Section 404. If you have questions concerning the construction of farm and/or stock ponds contact the Kansas City District.

**10. Threatened & Endangered Species.** For discharges of dredged or fill material into waters of the United States that are located within the following ranges of Federally listed threatened or endangered species, the permittee must notify the District Engineer in accordance with the "Notification" general condition. If the Corps preliminary affect determination concerning Threatened or Endangered Species is a possible adverse affect, the prospective permittee will be notified that the project must not proceed until the Corps of Engineers has fulfilled its responsibilities pursuant to Section 7 of the Endangered Species Act.

The following locations and waters are subject to the Notification requirements stated above:

- a. **Arkansas River** – That portion flowing through Barton, Cowley, Edwards, Finney, Ford, Gray, Hamilton, Kearny, Kiowa, Pawnee, Reno, Sedgwick and Sumner Counties, excluding that reach upstream of the Kansas Route 27 bridge in Hamilton County and a 12.4 mile reach within the City of Wichita metropolitan area, extending from the westbound land of Kansas Route 96 downstream to Interstate 35 (Arkansas River Shiner, *Notropis girardi*). Designated critical habitat for the Arkansas River Shiner extends 300 feet riverward from each side of the river at the bankfull width.
- b. **Cimarron River** - That portion flowing through Clark, Comanche, and Meade Counties (Interior Least Tern, *Sterna antillarum* and Arkansas River Shiner, *Notropis girardi*). Designated critical habitat for

the Arkansas River Shiner extends 300 feet riverward from each side of the river at the bankfull width.

- c. **Cottonwood River** - From the point of discharge of Marion Dam to its confluence with the Neosho River in Lyon County (Neosho Madtom, *Noturus placidus*).
- d. **Neosho River** - From the point where it discharges from Council Grove Reservoir in Morris County to the point where it leaves Lyon County and from the point where it discharges from John Redmond Reservoir in Coffey County to the Kansas-Oklahoma border in Cherokee County (Neosho Madtom, *Noturus placidus*).
- e. **Spring River** - The entire mainstem portion within the state of Kansas in Cherokee County (Neosho Madtom, *Noturus placidus*).
- f. **Cow Creek and tributaries** - A 144 square mile area within Crawford County whose western boundary is highway K-7, whose southern boundary is the Crawford/Cherokee county line, whose eastern boundary is the Kansas/Missouri state line and whose northern boundary is highway K-57 east of the town of Girard extended to the state line. Also included in this area is all of Cow Creek in Cherokee County (Gray Bat, *Myotis grisescens*).
- g. **Kansas River** - From its origin in Geary County downstream to Lecompton in Shawnee County (Interior Least Tern, *Sterna Antillarum* and Piping Plover, *Charadrius melodus*).
- h. The following locations may contain the Topeka Shiner, *Notropis topeka*, which has been listed as endangered, and are subject to the notification requirement above:
  1. **Butler County** - Headwaters of the South Fork Cottonwood River (Sec. 4, 9, 16 & 21 T23S, R8E).
  2. **Chase County** - Bloody Creek, Collett Creek, Diamond Creek, Gannon Creek, Jack Creek, Little Cedar Creek, Mercer Creek, Mulvane Creek, Rock Creek, Schaeffer Creek, Shaw Creek, Unnamed tributary of Thurman Creek (Sec. 31 & 32 T22S, R9E), Unnamed tributary of Mercer Creek (Sec. 30 & 31 T22S, R 8E), Middle Creek, Unnamed tributary of Middle Creek (Sec. 4, 9 & 10 T19S, R6E), Unnamed tributary of Diamond Creek (Sec. 9 T19S, R7E), Unnamed tributary of Fox Creek (Sec. 31 T18S, R8E).
  3. **Dickinson County** - Cary Creek, Middle Branch Lyons Creek, Rock Springs Creek, West Brach Lyons Creek.
  4. **Geary County** - Rock Springs Creek, Davis Creek.
  5. **Greenwood County** - Thurman Creek, Unnamed tributaries of Thurman Creek (Sec. 6 T23S, R9E; Sec. 1 T23S, R8E).
  6. **Marion County** - Collett Creek, Middle Creek, Mud Creek.
  7. **Marshall County** - North Elm Creek, Clear Fork Creek.
  8. **Morris County** - Collett Creek, Middle Creek.
  9. **Pottawatomie County** - Clear Fork Creek.
  10. **Riley County** - Deep Creek, Seven-Mile Creek, Little Arkansas Creek, Walnut Creek, Wildcat Creek.

11. **Shawnee County** – Mission Creek.

12. **Wabaunsee County** – East Branch Mill Creek, Hendricks Creek, Illinois Creek, Kuenzli Creek, Loire Creek, Mission Creek, Mulberry Creek, Nehring Creek, Paw Paw Creek, Spring Creek (Paxico), Spring Creek (Tributary of West Branch Mill Creek), South Branch Mill Creek, West Branch Mill Creek.

13. **Wallace County** - Willow Creek.

i. The following waterways maintain critical habitat for the Whooping Crane, *Grus americana*, and are subject to the notification requirement above:

1. **Walnut Creek** – in Ness, Rush and Barton Counties which feeds Cheyenne Bottoms.

2. **Rattlesnake Creek** – in Edwards, Stafford and Pratt Counties which feeds Quivera National Wildlife Refuge.

**11. NWP Standard Operating Procedures in Kansas.** A separate document, “Nationwide Permit Standard Operating Procedures in Kansas,” has been created to provide further clarification of how the Kansas City District will implement certain aspects of the NWP program and to provide clarification on certain NWPs or General Conditions. This document, dated March 9, 2000, is available for viewing on the Kansas City District internet page

<https://nwk.usace.afpims.mil/Missions/RegulatoryBranch/NationWidePermits.aspx>