



DEPARTMENT OF THE ARMY  
ALBUQUERQUE DISTRICT, CORPS OF ENGINEERS  
4101 Jefferson Plaza NE  
Albuquerque, NM 87109-3435  
505-342-3284  
FAX 505-344-1514

March 27, 2013

REPLY TO  
ATTENTION OF:

Regulatory Division  
New Mexico/Texas Branch

SUBJECT: Action No. SPA-2012-00050-ABQ, McCann, LANL, Sandia Canyon, Wetland, Los Alamos County, NM

Mr. John McCann  
Los Alamos National Security, LLC  
PO Box 1663, MS M992  
Los Alamos, NM 87545

Dear Mr. McCann:

The U.S. Army Corps of Engineers (Corps) is in receipt of your preconstruction notification dated March 20, 2013, requesting authorization for the proposed construction of three grade control structures in Sandia Canyon and abutting wetlands in Los Alamos, Los Alamos County, New Mexico. The purpose of the project is to construct three grade control structures to eliminate channel headcutting and restore damaged wetlands to retain chromium and PCB contaminants onsite. The project is located 35.8745N; -106.3119W, in Los Alamos County, New Mexico. We have assigned Action No. SPA-2012-00050-ABQ to your file. To avoid delay, please include this number in all future correspondence concerning this project.

We have reviewed this project in accordance with Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act of 1899. Under Section 404, the Corps regulates the discharge of dredged and fill material into waters of the United States (U.S.), including wetlands. Our responsibility under Section 10 is to regulate any work in, or affecting, navigable waters of the U.S. Based on your description of the proposed work, and other information available to us, we have determined that the proposed project will involve activities subject to Section 404. Therefore, a Department of the Army permit is required.

We have determined that this project is authorized by Nationwide Permit (NWP) 38 for Cleanup of Hazardous and Toxic Waste. A summary of this permit and the regional conditions for New Mexico are available on our website at [www.spa.usace.army.mil/reg/NWP](http://www.spa.usace.army.mil/reg/NWP). You are only authorized to conduct the work described in your submittal. To use this permit, you must



ensure that the work complies with the terms and conditions listed in the permit and the special conditions listed below. The special conditions for this permit are:

1. The Planting and Stabilization Plan shown on Sheet C-1007 will be implemented as shown and its performance will be noted in the annual monitoring report.
2. You are required to submit an annual monitoring report documenting the monitoring discussed below for a period of not less than five years. The monitoring report shall be provided to the Corps by December 15<sup>th</sup> of each year after the monitoring period. Should observed conditions indicate improved function or, at a minimum, lack of impairment due to the project, you may request to be released from monitoring after the third year.
3. The annual monitoring report shall include:
  - a. Photographic documentation of the baseline conditions (first year only).
  - b. A discussion of peak flows during spring and monsoon peak events and the installed structures' response to high flows. This discussion should be cumulative from year to year to enable the reader to obtain an overall understanding of the structures' efficacy since installation.
  - c. Photographs of not less than 3 locations adjacent to each structure installed to determine both the efficacy of the structure as well as the growth and regrowth of wetland vegetation. The same locations shall be photographed annually and displayed in the monitoring report. Differences shall be prominently noted, both in the report text and annotated in the photo captions. Submitted photos should be formatted to print on a standard 8 1/2" x 11" paper, dated, and clearly labeled with the direction from which the photo was taken and description of the photo contents. The photo location points should also be identified on the appropriate maps.
  - d. Discussion of any unusual events that might have impacted or may impact the structures or the stream in the future, such as upstream landslides, unusually large snowpack, large-scale erosion event, etc.
  - e. Success of the revegetation discussed in Item 1 will be included to ensure the plan is restoring the wetlands lost to headcutting and construction impacts.

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4. Matting will be used when equipment is being used in wetlands and will be removed upon completion of construction.

The Corps based this decision on a preliminary jurisdictional determination (JD) that there may be waters of the United States on the project site. Preliminary JDs are advisory in nature and may not be appealed. An approved JD is an official Corps determination that waters of the U.S. and/or navigable waters of the U.S. are either present or absent on a particular site. An approved JD precisely identifies the limits of those waters on the project site determined to be jurisdictional under the CWA or RHA. If you wish, you may request that the USACE reevaluate this case and issue an approved JD. If you request an approved JD, you may not begin work until the approved JD, which may require coordination with the Environmental Protection Agency, is completed. Please contact me if you wish to request an approved JD for this case.

Under Section 401 of the Clean Water Act, certification of compliance with state or tribal water quality standards by the state water quality agency or tribal water quality certifying authority is required for any discharge of dredged and fill material into waters of the United States under Section 404 of the Clean Water Act. For State Water Quality Certification and a list of tribes with water quality certifying authority and their contact information please visit: <http://www.spa.usace.army.mil/Missions/RegulatoryProgramandPermits/WaterQualityCertification.aspx>.

In the State of New Mexico, the New Mexico Environment Department (NMED) has issued water quality certification (WQC) for activities that occur in waters of the U.S. Certification is denied in Outstanding National Resource Waters (ONRWs) and for activities authorized under NWP # 16 (Return Water from Upland Disposal Areas). You must comply with all conditions of the attached certification, including notification to NMED five days prior to initiation of construction (WQC Condition 16). To contact NMED, please use the information below:

Mr. Neal Schaeffer  
NMED - Surface Water Quality Bureau  
P.O. Box 5469  
Santa Fe, New Mexico 87502-5469  
(505) 476-3017

Our review of this project also addressed its effects on threatened and endangered species and historic properties in accordance with general conditions 18 and 20. Based on the

information provided, we concur with LANL's finding that the project may effect but not adversely effect the Mexican spotted owl in this area. LANL's USFWS consultation (# 2240-2010-I-0097) received concurrence from USFWS on July 28, 2010. The consultation determined that the proposed action will have insignificant and discountable effects to the MSO. The USFWS concurred with finding. The Corps has determined that this project will not affect any other species listed as threatened or endangered by the U.S. Fish and Wildlife Service within the permit area. We have also determined that this project will not affect historic properties listed, or eligible for listing, in the National Register of Historic Places. However, please note that you are responsible for meeting the requirements of general condition 18 on endangered species and general condition 20 on historic properties.

This verification is valid until March 18, 2017 (33 CFR 330.6), unless the nationwide permit is modified, suspended, revoked or reissued prior to that date. Continued confirmation that an activity complies with the terms and conditions, and any changes to the nationwide permit, is the responsibility of the permittee.

You must allow representatives from this office to inspect the authorized activity at any time deemed necessary to ensure that it is being, or has been, accomplished in accordance with the terms and conditions of the nationwide permit.

You must sign and submit to us the enclosed certification that the work, including any required mitigation, was completed in compliance with the nationwide permit. You should submit your certification within 30 days of the completion of work.

This permit is not an approval of the project design features, nor does it imply that the construction is adequate for its intended purpose. This permit does not authorize any injury to property or invasion of rights or any infringement of Federal, state or local laws or regulations. You must possess the authority, including property rights, to undertake the proposed work.

To remain valid the project must be in compliance with all conditions of NWP 38, this authorization, regional conditions and the applicable WQC. Non-compliance with any condition could result in the suspension, modification or revocation of this authorization, or initiation of a non-compliance action by the Corps. This NWP authorization does not obviate the need to obtain other approvals required by law.

A copy of this letter will be sent electronically to R. Gallegos, LANL and to N. Schaeffer, NM Environment Department. If you have any questions concerning our regulatory program, please contact me at 505-342-3284 or by e-mail at [William.M.Oberle@usace.army.mil](mailto:William.M.Oberle@usace.army.mil). **At your**

**convenience, please complete a Customer Service Survey on-line available at <http://per2.nwp.usace.army.mil/survey.html>.**

Sincerely,

A handwritten signature in black ink that reads "William M. Oberle". The signature is written in a cursive style with a large, prominent 'W' and 'O'.

William M. Oberle  
Project Manager

Enclosure

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

Action Number: SPA-2012-00050-ABQ

Name of Permittee: Los Alamos National Security, LLC (John McCann)

Nationwide Permit: 38 for Cleanup of Hazardous and Toxic Waste

Project Location: Sandia Canyon and abutting wetlands

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

William Oberle  
Albuquerque District, U.S. Army Corps of Engineers  
4101 Jefferson Plaza NE  
Albuquerque, NM 87109-3435  
505-342-3284  
FAX 505-344-1514

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

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

I hereby certify that the work authorized by the above referenced permit has been completed in accordance with the terms and conditions of the said permit, and required mitigation was completed in accordance with the permit conditions.

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

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

\_\_\_\_\_  
Date

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



SUSANA MARTINEZ  
Governor

JOHN A. SANCHEZ  
Lieutenant Governor

NEW MEXICO  
ENVIRONMENT DEPARTMENT

*Surface Water Quality Bureau*

Harold Runnels Building, N2050  
1190 South St. Francis Drive (87505)  
P.O. Box 5469, Santa Fe, NM 87502-5469  
Phone (505) 827-0187 Fax (505) 827-0160  
[www.nmenv.state.nm.us](http://www.nmenv.state.nm.us)



DAVE MARTIN  
Secretary

BUTCH TONGATE  
Deputy Secretary

JAMES H. DAVIS, Ph.D.  
Director  
Resource Protection Division

April 13, 2012

**CERTIFIED MAIL NO. 700801830 0003 4175 8463**

Mr. Allan Steinle  
U.S. Army Corps of Engineers  
Albuquerque District, Regulatory Branch  
4101 Jefferson Plaza NE  
Albuquerque, New Mexico 87109-3434

**Re: Clean Water Act Section 401 Water Quality Certification  
United States Army Corps of Engineers 2012 Nationwide Permits**

Dear Mr. Steinle:

The New Mexico Environment Department (NMED) has examined both the February 21, 2012 final notice of the Reissuance of Nationwide Permits (NWP) under the Clean Water Act (CWA) §404, issued by the U.S. Army Corps of Engineers ("Corps") (*see* 77 FR 10184) and the February 23, 2012 Corps Albuquerque District public notice of the final NWP and NMED's intent to consider certification of those permits under the CWA §401 (Certification). Certification is required by CWA §401 to ensure that the NWP are consistent with state law, comply with the state Water Quality Standards (20.6.4 NMAC), the Water Quality Management Plan/Continuing Planning Process, including Total Maximum Daily Loads (TMDLs), and the Antidegradation Policy. Certification is also required to comply with General Condition 25 (Water Quality) and General Condition 27 (Regional and Case-By-Case Conditions) of the NWP.

The following conditions are necessary to assure compliance with the applicable provisions of the Clean Water Act §§301, 302, 303, 306, and 307 and with applicable requirements of State law. Compliance with the terms and conditions of the permit and this certification will provide reasonable assurance that the permitted activities will be conducted in a manner which will not violate applicable water quality standards and the water quality management plan and will be in compliance with the antidegradation policy. The State of New Mexico certifies that the discharge will comply with these provisions and requirements upon inclusion of the following conditions in the permit:

**Conditional Section 401 Certification of NWPs:**

1. Activities in intermittent and perennial surface waters of the state require notification to the NMED Surface Water Quality Bureau. The notification must include: 1) detailed construction plans (including proposed in-channel excavations and temporary diversions); 2) a description of potential adverse water quality impacts (including turbidity, which is a measurement of the amount of suspended material in water, as well as oil, grease, or hydraulic fluid, and all other potential contaminants); 3) a description of methods to be used to prevent water quality impacts (including detailed Best Management Practices, which must be designed to minimize sediment, oil, grease, and other pollutants from entering the water); 4) any surface water monitoring procedures; and 5) for any unavoidable surface water impacts, conceptual mitigation plans.
2. Fuel, oil, hydraulic fluid, lubricants, and other petrochemicals must not be stored within the 100-year floodplain and must have a secondary containment system capable of containing twice the volume of the product. Appropriate spill clean-up materials such as booms and absorbent pads must be available on-site at all times during construction.
3. All heavy equipment used in the project area must be pressure washed and/or steam cleaned before the start of the project and inspected daily for leaks. A written log of inspections and maintenance must be completed and maintained throughout the project period. Leaking equipment must not be used in or near surface water. Refuel equipment at least 100 feet from surface water.
4. Work in the stream channel should be limited to periods of no flow. Work during low-flow periods must have prior approval by the NMED. Requests for such approval must describe planned methods to minimize turbidity and to avoid spills. Releases from dams must be incorporated into the work schedule to avoid working in high water.
5. Temporary crossings should be restricted to a single location and perpendicular to and at a narrow point of the channel to minimize disturbance. Heavy equipment must be operated from the bank or work platforms and not enter surface water, unless otherwise approved in writing by NMED. Heavy equipment must not be parked within the stream channel. Unless otherwise approved by NMED, directional borehole (horizontal) drilling must be used instead of open-cut trenching for the placement of utility lines or other buried structures crossing the channel. Requests for such approval of deviations must include a description of planned methods to minimize turbidity, to avoid spills, and to salvage any drilling equipment that cannot be withdrawn from beneath the channel.
6. Unless otherwise approved by NMED, flowing water must be temporarily diverted around the work area, but remain within the existing channel to minimize erosion and turbidity and to provide for aquatic life movement. Diversion structures must be non-erodible, such as sand bags, water bladders, concrete barriers, or channel lined with geotextile or plastic sheeting. Dirt cofferdams are not acceptable diversion structures. Requests for such approval of deviations must include descriptions of planned methods to minimize turbidity,

to avoid spills, and to provide a continuous zone of passage for aquatic life through or around the project area in which the water quality meets all applicable criteria including turbidity.

7. All asphalt, concrete, drilling fluids and muds, and other construction materials must be properly handled and contained to prevent releases to surface water. Poured concrete must be fully contained in mortar-tight forms and/or placed behind non-erodible cofferdams to prevent contact with surface or ground water. Appropriate measures must be used to prevent wastewater from concrete batching, vehicle wash-down, or aggregate processing entering the watercourse. Dumping of any waste materials in or near watercourses is prohibited.
8. Protective measures must be used to prevent blast, ripped or excavated soil or rock from entering surface water. Construction excavation dewatering discharges are to be uncontaminated and include all practicable erosion control measures and turbidity control techniques.
9. Work or the use of heavy equipment in wetlands must be avoided or minimized unless the impacts are to be mitigated. Construction activities in wetlands must be scheduled during low water or winter (frozen) conditions. Unless otherwise approved by NMED, wetland crossings must be restricted to a single location and constructed perpendicular to and at a narrow point of the wetland. Requests for such approval of deviations must include descriptions of planned methods to minimize turbidity and avoid spills. Wetland vegetation and excavated material (top soil) must be retained and reused to improve seeding success. Permeable fills should be designed and installed when practicable, and flows to wetlands must not be permanently disrupted. Fill materials must be clean and consist of coarse material with minimal fines. Ditches or culverts in wetlands must have properly designed, installed and maintained siltation or sedimentation structures at the outfall.
10. During repair, demolition, treatments, or cleaning activities of bridges or associated structures (e.g., deck, pier, abutment, and wing walls), materials must be kept out of the channel. Before removing a bridge or related structures, impermeable containment material (e.g., plastic sheet, canvas, tarpaulins or other catchment devices) must be secured under the bridge and on the banks to capture any debris that may fall into the stream channel. Sandblasting operations must include vacuum systems on the bridge and associated structures must be completely bagged to collect all lead paint and concrete debris. Any debris that falls onto the containment area or channel must be properly disposed in accordance with the New Mexico Solid Waste Regulations (20.9.1 NMAC). Applicable Material Safety Data Sheets of water repellants and surface finish treatments must be maintained at the project area.
11. Bridges, culverts and structures at stream crossings must be properly designed, installed and maintained to allow passage of sediment, bedload, and woody debris, and to prevent erosion problems or diversion of the stream from its natural channel. Unless otherwise approved by NMED, projects must not alter the natural stream channel size or shape (width, depth, gradient, direction or meander pattern), streamflow velocity (sediment transport rates), or water flow capacity. Requests for such approval of deviations must include descriptions of

planned methods to minimize turbidity and avoid spills, as well as to stabilize modified hydraulic geometry.

12. Culverts at stream crossings must be designed and installed to prevent upstream headcutting, downstream channel incision, and erosion of the streambanks on the crossing. Culverts should be designed to pass 100-year flow events. Culvert design must allow for the passage of fish and other aquatic organisms. The road grade at culvert stream crossings must prevent the diversion of the stream from its channel in the event of culvert failure due to plugging or the exceedance of capacity. If the flow overtops the road, it must return to its natural channel instead of running down the road into a new channel.
13. Excavated trenches must be backfilled and compacted to match the bulk density and elevation of the adjacent undisturbed soil.
14. Unless otherwise approved by NMED, all areas adjacent to the watercourse that are disturbed because of the project, including temporary access roads, stockpiles and staging areas, must be restored to pre-project elevations. Disturbed areas outside the channel that are not otherwise physically protected from erosion must be reseeded or planted with native vegetation. Stabilization measures including vegetation are required at the earliest practicable date, but by the end of first full growing season following construction. Native woody riparian and/or wetland species must be used in areas that support such vegetation. Measures to prevent damage by beavers, wildlife, or livestock are required until trees are established. Plantings must be monitored and replaced for an overall survival rate of at least 80 percent by the end of the second growing season. Once established, native plants adapted to the site must be able to thrive with no supplemental water or treatment. Requests for approval of deviation from this condition must include descriptions of planned methods to minimize turbidity and avoid spills, as well as final grading plans.
15. A copy of this Certification must be kept at the project site during all phases of construction. All contractors involved in the project must be provided a copy of this certification and made aware of the conditions prior to starting construction.
16. The NMED must be notified at least five days before starting construction to allow time to schedule monitoring or inspections. The NMED must be notified immediately if the project results in an exceedance of applicable Standards.

#### **Denial of Certification of NWP's**

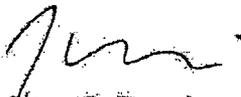
NMED denies Certification of NWP's for any activities in Outstanding National Resource Waters (ONRW) designated in 20.6.4.9 NMAC, and NWP 16 (Return Water From Upland Contained Disposal Areas). Although state WQS provide for temporary and short-term degradation of water quality in an ONRW under very limited circumstances if approved by the Water Quality Control Commission as specified at 20.6.4.8.A NMAC, the approval process required for these activities does not lend itself for use for projects covered under these NWP's. This condition is necessary to ensure that no degradation is allowed in ONRW's by requiring proposed discharges

Mr. Allan Steinle  
April 13, 2012  
Page 5

of dredged or fill material to be reviewed under the individual permit process. Also, in accordance with General Condition 25 of the Nationwide Permits, a project-specific Certification must be obtained (see 33 CFR 330.4(c)) for discharges authorized under NWP 16 prior to construction. The NMED requires a complete CWA §404 application prior to commencing the water quality certification review in these cases. This certification process will be conducted pursuant to NMAC 20.6.2.2002.

Please contact Neal Schaeffer of my staff at (505)476-3017 should you have any question.

Sincerely,



James P. Bearzi  
Chief  
Surface Water Quality Bureau

JPB: cns

xc: Tom Nystrom, Wetlands, Region 6, USEPA  
Jill Wick, New Mexico Department of Game and Fish  
U.S. Fish and Wildlife Service  
401 Certification File 897