

# TECHNICAL NOTES

U.S. DEPARTMENT OF AGRICULTURE STATE OF WYOMING NATURAL RESOURCES CONSERVATION SERVICE

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## BIOLOGY TECHNICAL NOTE NO. 46

October 2015

To: All Field and Area Offices

From: Brian Jensen, State Biologist

### **Clean Water Act Compliance Documentation, Wetland Determinations, Corps of Engineers Notification, and Nationwide Permits for Spring Developments**

Section 404 of the Clean Water Act (CWA) requires authorization from the US Army Corps of Engineers (USACE) to discharge dredged or fill material into waters of the United States, which include most streams, canals, reservoirs, lakes, and adjacent wetlands. USACE authorization comes in the form of exemptions, nationwide permits, or individual permits. Only USACE can review and determine if the planned project is a regulated activity, and if so, what permit will cover it. The client is responsible for obtaining authorization prior to commencing with regulated activities.

A certified wetland determination will be required and will need to be completed by personnel with up-to-date Food Security Act training to do so, as per NRCS national policy. This technical note clarifies the planning steps pertaining to USACE. When planning a spring development, use the following protocol:

1. Complete the Clean Water Act Compliance Verification Form and submit to USACE for their review and finding. Use the Word version of the document at the following link: [http://efotg.sc.egov.usda.gov/references/public/WY/NRCS\\_USACE\\_S404\\_Compliance\\_Documentation.docx](http://efotg.sc.egov.usda.gov/references/public/WY/NRCS_USACE_S404_Compliance_Documentation.docx)
2. Review USACE “Nationwide Permits” (NP) and “Nationwide Permit Regional Conditions for Wyoming”, paying special attention to NP 12 and regional conditions 27(a) and (b) at the following link: <http://www.nwo.usace.army.mil/Missions/RegulatoryProgram/Wyoming.aspx>
3. According to USACE, most spring developments and related activities are authorized by NP 12, “Utility Line Activities”. A pre-construction notification (PCN) is always required when the site is within 100 feet of a “natural spring”. These are defined as any location where there is an artesian flow emanating from a distinct point source at any time during the growing season. A PCN is also required if the site contains peatlands, such as fens.
4. If USACE determines that a PCN is required, take pictures of the site, develop maps of the area, and provide to your Area Resource Conservationist (ARC) for initial email coordination with USACE. Such situations may require a formal jurisdictional determination and a wetland delineation must be completed if USACE confirms that a PCN is required. Planners should anticipate project delays to complete that process as well as any additional coordination and mitigation.

5. If developing the more common spring developments associated with “seeps” without any unusual construction activities that would alter the “pre-construction contours”, a PCN is not required. With the exception of Teton County, NP 12 authorizes trenching and pipeline construction associated with collecting seep water and piping it to a livestock watering facility.
6. When a PCN is required, coordination with the USACE will need to occur to determine who will complete the certified wetland delineation. If USACE will accept the NRCS determination that was completed for Food Security Act and EO 11990 compliance as required above, the producer will need to provide that data to them.. If they will not accept our determination, the producer will need to request that the USACE conduct the determination.