

CESWT-RO

14 November 2006

MEMORANDUM FOR Chief, Planning and Environmental Division,  
ATTN: Sandy Stiles

SUBJECT: Section 404 Permit for temporary construction access road across the North Canadian River associated with the Canton Dam Safety Assurance Evaluation Study Supplement.

1. The subject has reviewed relative to Section 404 of the Clean Water Act. The proposed project is located in the Southwest 1/4 of Section 27, Township 19 North, Range 13 West, near Canton Lake, Blaine County, Oklahoma. We have reviewed the submitted data relative to Section 404 of the Clean Water Act.
2. Placement of dredged or fill material in the North Canadian River associated with the proposed project falls within the scope of the enclosed Nationwide Permit (NWP) for Temporary Construction, Access, And Dewatering, provided the conditions therein are met.
3. Complete and return the enclosed "Permittee Construction Schedule" form. Following completion of your activity, you must return the enclosed "Permittee Compliance Certification" form. This is the certification referred to in General Condition 14 of the NWP.
4. This NWP is scheduled to expire on March 19, 2007. This verification is valid until that date. It is incumbent on you to remain informed of changes to the NWPs. Furthermore, if you commence, or are under contract to commence, the activity before the date the NWP is modified or revoked, you will have twelve (12) months from the date of the modification or revocation to complete the activity under the present terms and conditions of this NWP.
5. Your permit has been assigned Identification Number 15866. Please reference this number during any future correspondence. If you have any questions please contact Mr. Shane Charlson at 918-669-7395.

FOR THE COMMANDER:

Encls

  
DAVID A. MANNING  
Chief, Regulatory Office

PERMITTEE CONSTRUCTION SCHEDULE WORKSHEET

\* MAIL TO ADDRESS ON REVERSE WITHIN 30 DAYS OF "DATE OF ISSUANCE".

PERMIT NO.: 15866

PERMITTEE NAME: United States Army Corps of Engineers  
Canton Lake

DATE OF ISSUANCE: 14 November 2006

----- (fold here so that address shows on outside) -----

Please provide the following information:

Anticipated/Known Construction Start Date: \_\_\_\_\_

Anticipated Completion Date: \_\_\_\_\_

I have read and understand the obligations and requirements of this authorization.

\_\_\_\_\_  
SIGNATURE OF PERMITTEE

\_\_\_\_\_  
DATE

----- (fold here and tape closed) -----

(FOR AGENCY USE ONLY - DO NOT WRITE BELOW THIS LINE)

PROJECT MANAGER: Mr. Shane Charlson

RECEIVED IN CESWT-RO: \_\_\_\_\_

INSPECTION NEEDED: Y / N

CONSTRUCTION INSPECTION SCHEDULED: \_\_\_\_\_

FINAL INSPECTION SCHEDULED: \_\_\_\_\_

Blaine County

PERMITTEE COMPLIANCE CERTIFICATION

Upon completion of the activity authorized by this permit and any mitigation required by this permit, sign and complete this certification form and return it to the address on the reverse side "within 30 days" of completion of the work.

PERMIT NO.: 15866

PERMITTEE NAME: United States Army Corps of Engineers  
Canton Lake

DATE OF ISSUANCE: 14 November 2006

----- (fold here so that address shows on outside) -----

(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.)

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.

\_\_\_\_\_  
SIGNATURE OF PERMITTEE

\_\_\_\_\_  
DATE

DATE WORK COMPLETED: \_\_\_\_\_

----- (fold here and tape closed) -----

(FOR AGENCY USE ONLY - DO NOT WRITE BELOW THIS LINE)

PROJECT MANAGER: Shane Charlson

RECEIVED IN CESWT-RO: \_\_\_\_\_

INSPECTION NEEDED: Y / N

FINAL INSPECTION SCHEDULED: \_\_\_\_\_

Section 401 Clean Water Act (CWA) Water Quality Certification (WQC)  
For Nationwide Permits (NWP) Under Section 404 CWA In Oklahoma  
January 25, 2006

The Oklahoma Department of Environmental Quality (DEQ) granted WQC pursuant to Section 401 CWA on June 23, 2003, for activities authorized under:

- a. NWP 3, 4, 5, 6, 13, 15, 18, 19, 20, 22, 23, 25, 27, 30, 32, 33, 36, 37, 38, and 41, at all locations within Oklahoma,
- b. NWP 7, 12, 14, 17, 21, 29, 31, 39, 40, 42, 43, and 44, at locations outside the watersheds of *Outstanding Resource Waters* (ORWs) as designated in Oklahoma's Water Quality Standards (WQS).

This certification is subject to the following special conditions:

1. All spills of fuel or other pollutants in excess of five gallons shall be reported to the DEQ, within twenty-four (24) hours, to the pollution prevention hotline at 1-800-522-0206.
2. All fueling and servicing of vehicles and equipment shall be done above the Ordinary High Water Mark (OHWM).
3. Permittee shall provide access to the property for DEQ inspection purposes.
4. Any material and fuels used in the project shall be stored and/or stockpiled above the OHWM and shall be removed from a likely flood zone prior to any predicted flood.
5. If a stormwater discharge permit for construction activities is required, one can be obtained from the DEQ at 405-702-8100.

Coordination of Pre-Construction Notifications (PCN):

For activities under NWP 3, 13, 18, 27, 33, and 41, located adjacent to or within the watershed of an ORW (see below), the PCN and other project information will be provided to the DEQ for a 10-day review opportunity with 5 days to comment prior to verification of the NWP.

Regional Denial of WQC for Activities Located within the Watersheds of ORWs:

For NWP 7, 12, 14, 16, 17, 21, 29, 31, 39, 40, 42, 43, and 44, Section 401 WQC is denied for all activities in the watersheds of ORWs. In these areas, these NWP will not be issued provisionally because the Tulsa District has included these waters in the designation of Critical Resource Waters (CRW), making NWP General Condition 25 relevant. The ORWs are designated in Oklahoma's WQSs, Oklahoma Administrative Code Title 785, Chapter 45 Appendix A, as follows (including tributaries):

- a. Flint Creek tributaries in Adair County,
- b. Illinois River in Cherokee, Adair, and Delaware Counties,
- c. Barren (Baron) Fork River in Cherokee and Adair Counties,
- d. Mountain Fork River - Upstream of the 600 feet above mean sea level ( 'msl) elevation (Broken Bow Reservoir) in McCurtain and LeFlore Counties,
- e. Big Lee Creek - Above 420 'msl elevation in Sequoyah County,
- f. Little Lee Creek in Adair and Sequoyah Counties.

Statewide Denial of WQC:

For NWP 24, 26, and 34, DEQ has denied Section 401 WQC within Oklahoma.

For NWP 16, DEQ placed Total Suspended Solids limitations on the WQC which the Corps Southwestern Division Commander determined were not practicable and not reasonably enforceable. Consequently, the WQC on NWP16 is considered denied. Individuals intending to accomplish work under a provisional NWP 16 must obtain an activity-specific Section 401 WQC from DEQ before commencing work.

Note 1: This WQC supersedes all previous WQCs for NWP in the State of Oklahoma.

Note 2: ORWs, ORW watersheds, and High Quality Waters as designated by Oklahoma have been listed as CRWs by the Corps and are thus subject to NWP General Condition 25. A complete list of CRWs is available on the Corps website: <http://www.swt.usace.army.mil/permits/NPP.cfm>

Note 3: WQC is not required for the following NWP issued under the sole authority of Section 10 of the Rivers and Harbors Act of 1899: 1, 2, 8, 9, 10, 11, 28, and 35.

Nationwide Permit for Temporary Construction, Access and Dewatering (NWP 33)

Temporary structures, work and discharges, including cofferdams, necessary for construction activities or access fills or dewatering of construction sites; provided that the associated primary activity is authorized by the U.S. Army Corps of Engineers (Corps) or the U.S. Coast Guard (USCG), or for other construction activities not subject to the Corps or USCG regulations. Appropriate measures must be taken to maintain near normal downstream flows and to minimize flooding. Fill must be of materials, and placed in a manner, that will not be eroded by expected high flows. The use of dredged material may be allowed if it is determined by the District Engineer (DE) that it will not cause more than minimal adverse effects on aquatic resources. Temporary fill must be entirely removed to upland areas, or dredged material returned to its original location, following completion of the construction activity, and the affected areas must be restored to the pre-project conditions. Cofferdams cannot be used to dewater wetlands or other aquatic areas to change their use. Structures left in place after cofferdams are removed require a Section 10 permit if located in navigable waters of the U.S. (See 33 CFR Part 322). The permittee must notify the DE in accordance with the "Notification" General Condition. The notification must also include a restoration plan of reasonable measures to avoid and minimize adverse effects to aquatic resources. The DE will add Special Conditions, where necessary, to ensure environmental adverse effects is minimal. Such conditions may include: limiting the temporary work to the minimum necessary; requiring seasonal restrictions; modifying the restoration plan; and requiring alternative construction methods (e.g., construction mats in wetlands where practicable).

This NWP is authorized pursuant to Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act. This NWP (33 CFR 330) became effective March 18, 2002, following publication in the Federal Register.

General Conditions: The following general conditions must be followed for any authorization by this NWP to be valid:

1. Navigation. No activity may cause more than a minimal adverse effect on navigation.
  2. Proper Maintenance. Any structure or fill authorized shall be properly maintained, including maintenance to ensure public safety.
  3. Soil Erosion and Sediment Controls. Appropriate soil erosion and sediment controls must be used and maintained in effective operating condition during construction, and all exposed soil and other fills, as well as any work below the ordinary high water mark or high tide line, must be permanently stabilized at the earliest practicable date. Permittees are encouraged to perform work within waters of the U.S. during periods of low flow or no flow.
  4. Aquatic Life Movements. No activity may substantially disrupt the necessary life-cycle movements of those species of aquatic life indigenous to the waterbody, including those species that normally migrate through the area, unless the activity's primary purpose is to impound water. Culverts placed in streams must be installed to maintain low-flow conditions.
  5. Equipment. Heavy equipment working in wetlands must be placed on mats, or other measures must be taken to minimize soil disturbance.
  6. Regional and Case-By-Case Conditions. The activity must comply with any regional conditions that may have been added by the Division Engineer (see 33 CFR 330.4(e)) and with any case specific conditions added by the Corps or by the state or tribe in its Section 401 Water Quality Certification (see enclosure).
- For all discharges proposed for authorization under any NWP into the following habitat types or specific locations, the applicant shall notify the appropriate DE in accordance with the NWP General Condition 13. The Corps will coordinate with the resource agencies as specified in NWP General Condition 13(e).
- a. Wetlands, typically referred to as pitcher plant bogs, that are characterized by an organic surface soil layer and include vegetation such as pitcher plants (*Sarracenia* sp.), sundews (*Drosera* sp.), and sphagnum moss (*Sphagnum* sp.).
  - b. Swamps dominated by bald cypress (*Taxodium distichum*) and tupelo gum (*Nyssa aquatica*) tree species
7. Wild and Scenic Rivers. No activity may occur in a component of the National Wild and Scenic River System; or in a river officially designated by Congress as a "study river" for possible inclusion in the system, while the river is in an official study status; unless the appropriate Federal agency, with direct management responsibility for such river, has determined in writing that the proposed activity will not adversely affect the Wild and Scenic River designation, or study status. Information on Wild and Scenic Rivers may be obtained from the appropriate Federal land management agency in the area (e.g., National Park Service, U.S. Forest Service, Bureau of Land Management, U.S. Fish and Wildlife Service (USFWS)).
  8. Tribal Rights. No activity or its operation may impair reserved tribal rights, including, but not limited to, reserved water rights and treaty fishing and hunting rights.
  9. Water Quality. In certain states and tribal lands, an individual 401 Water Quality Certification must be obtained or waived (See 33 CFR 330.4(c) and enclosure).
  10. Coastal Zone Management. Not Applicable.
  11. Endangered Species.
    - a. No activity is authorized under any NWP which is likely to jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation, as identified under the Federal Endangered Species Act

(ESA), or which will destroy or adversely modify the critical habitat of such species. Non-Federal permittees shall notify the DE if any listed species or designated critical habitat might be affected or is in the vicinity of the project, or is located in the designated critical habitat and shall not begin work on the activity until notified by the DE that the requirements of the ESA have been satisfied and that the activity is authorized. For activities that may affect Federally-listed endangered or threatened species or designated critical habitat, the notification must include the name(s) of the endangered or threatened species that may be affected by the proposed work or that utilize the designated critical habitat that may be affected by the proposed work. As a result of formal or informal consultation with the USFWS, the DE may add species-specific regional endangered species conditions to the NWP.

b. Authorization of an activity by a NWP does not authorize the "take" of a threatened or endangered species as defined under the ESA. In the absence of separate authorization (e.g., an ESA Section 10 Permit, a Biological Opinion with "incidental take" provisions, etc.) from the USFWS, both lethal and non-lethal "takes" of protected species are in violation of the ESA. Information on the location of threatened and endangered species and their critical habitat can be obtained directly from the offices of the USFWS or their world wide web pages at <http://www.fws.gov/r9endspp/endspp.html>.

12. Historic Properties. No activity which may affect historic properties listed, or eligible for listing, in the National Register of Historic Places is authorized, until the DE has complied with the provisions of 33 CFR, Part 325, Appendix C. The prospective permittee must notify the DE if the authorized activity may affect any historic properties listed, determined to be eligible, or which the prospective permittee has reason to believe may be eligible for listing on the National Register of Historic Places, and shall not begin the activity until notified by the DE that the requirements of the National Historic Preservation Act have been satisfied and that the activity is authorized. Information on the location and existence of historic resources can be obtained from the State Historic Preservation Office and the National Register of Historic Places (see 33 CFR 330.4(g)). For activities that may affect historic properties listed in, or eligible for listing in, the National Register of Historic Places, the notification must state which historic property may be affected by the proposed work or include a vicinity map indicating the location of the historic property.

### 13. Notification.

a. Timing. Where required by the terms of the NWP, the prospective permittee must notify the DE with a preconstruction notification (PCN) as early as possible. The DE must determine if the notification is complete within 30 days of the date of receipt and can 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 DE will notify the prospective permittee that the notification is still incomplete and the PCN review process will not commence until all of the requested information has been received by the DE. The prospective permittee shall not begin the activity:

(1) Until notified in writing by the DE that the activity may proceed under the NWP with any special conditions imposed by the District or Division Engineer; or

(2) If notified in writing by the District or Division Engineer that an individual permit is required; or

(3) Unless 45 days have passed from the DE's receipt of the complete notification and the prospective permittee has not received written notice from the District or Division Engineer. 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 Notification. The notification 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) Brief 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. Sketches should be provided when necessary to show that the activity complies with the terms of the NWP (Sketches usually clarify the project and result in a quicker decision.);

(4) For NWP 33 (Temporary Construction, Access, and Dewatering), the PCN must also include a restoration plan of reasonable measures to avoid and minimize adverse effects to aquatic resources;

(5) For activities that may adversely affect Federally-listed endangered or threatened species, the PCN must include the name(s) of those endangered or threatened species that may be affected by the proposed work or utilize the designated critical habitat that may be affected by the proposed work; and

(6) For activities that may affect historic properties listed in, or eligible for listing in, the National Register of Historic Places, 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.

c. Form of Notification: The standard individual permit application form (Form ENG 4345) may be used as the notification but must clearly indicate that it is a PCN and must include all of the information required in (b)(1)-(6) of General Condition 13. A letter containing the requisite information may also be used.

21. Management of Water Flows. To the maximum extent practicable, the activity must be designed to maintain preconstruction downstream flow conditions (e.g., location, capacity, and flow rates). Furthermore, the activity must not permanently restrict or impede the passage of normal or expected high flows (unless the primary purpose of the fill is to impound waters) and the structure or discharge of dredged or fill material must withstand expected high flows. The activity must, to the maximum extent practicable, provide for retaining excess flows from the site, provide for maintaining surface flow rates from the site similar to preconstruction conditions, and provide for not increasing water flows from the project site, relocating water, or redirecting water flow beyond preconstruction conditions. Stream channelizing will be reduced to the minimal amount necessary, and the activity must, to the maximum extent practicable, reduce adverse effects such as flooding or erosion downstream and upstream of the project site, unless the activity is part of a larger system designed to manage water flows. In most cases, it will not be a requirement to conduct detailed studies and monitoring of water flow.

This condition is only applicable to projects that have the potential to affect waterflows. While appropriate measures must be taken, it is not necessary to conduct detailed studies to identify such measures or require monitoring to ensure their effectiveness. Normally, the Corps will defer to state and local authorities regarding management of water flow.

22. Adverse Effects From Impoundments. If the activity creates an impoundment of water, adverse effects to the aquatic system due to the acceleration of the passage of water, and/or restricting its flow shall be minimized to the maximum extent practicable. This includes structures and work in navigable waters of the U.S. or discharges of dredged or fill material.

23. Waterfowl Breeding Areas. Activities, including structures and work in navigable waters of the U.S. or discharges of dredged or fill material, into breeding areas for migratory waterfowl must be avoided to the maximum extent practicable.

24. Removal of Temporary Fills. Any temporary fills must be removed in their entirety and the affected areas returned to their preexisting elevation.

25. Designated Critical Resource Waters. Critical resource waters include National Wild and Scenic Rivers, critical habitat for Federally-listed threatened and endangered species, state natural heritage sites, and outstanding National resource waters or other waters officially designated by a state as having particular environmental or ecological significance and identified by the DE after notice and opportunity for public comment. The DE may also designate additional critical resource waters after notice and opportunity for comment.

For NWP 33, notification is required in accordance with General Condition 13, for any activity proposed in the designated critical resource waters including wetlands adjacent to those waters. The DE may authorize activities under these NWPs only after it is determined that the impacts to the critical resource waters will be no more than minimal.

26. Fills Within 100-Year Floodplains. For purposes of this General Condition, 100-year floodplains will be identified through the existing Federal Emergency Management Agency's (FEMA) Flood Insurance Rate Maps or FEMA-approved local floodplain maps. The permittee must comply with any applicable FEMA-approved state or local floodplain management requirements.

27. Construction Period. For activities that have not been verified by the Corps and the project was commenced or under contract to commence by the expiration date of the NWP (or modification or revocation date), the work must be completed within 12 months after such date (including any modification that affects the project).

For activities that have been verified and the project was commenced or under contract to commence within the verification period, the work must be completed by the date determined by the Corps.

For projects that have been verified by the Corps, an extension of a Corps approved completion date maybe requested. This request must be submitted at least 1 month before the previously approved completion date.

#### Further Information.

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

For additional information concerning the NWP, please contact the Regulatory Branch, Tulsa District, U.S. Army Corps of Engineers, 1645 South 101st East Avenue, Tulsa, OK 74128-4609, or telephone 918-669-7400.

**Section 401 Clean Water Act (CWA) Water Quality Certification (WQC)  
For Nationwide Permits (NWP) Under Section 404 CWA In Oklahoma**  
May 29, 2002

The Oklahoma Department of Environmental Quality (DEQ) grants WQC pursuant to Section 401 CWA for activities authorized under NWP 3, 4, 5, 6, 7, 12, 13, 14, 15, 17, 18, 19, 20, 21, 22, 23, 25, 27, 29, 30, 31, 32, 33, 36, 37, 38, 39, 40, 41, 42, 43, and 44, at locations outside the watersheds of Outstanding Resource Waters (ORWs), subject to the following special conditions:

1. All spills of fuel or other pollutants in excess of five gallons shall be reported to the DEQ, within twenty-four (24) hours, to the pollution prevention hotline at 1-800-522-0206.
2. All fueling and servicing of vehicles and equipment shall be done above the Ordinary High Water Mark (OHWM).
3. Permittee shall provide access to the property for DEQ inspection purposes.
4. Any material and fuels used in the project shall be stored and/or stockpiled above the Ordinary High Water Mark (OHWM) and shall be removed from a likely flood zone prior to any predicted flood.
5. If a stormwater discharge permit for construction activities is required, one can be obtained from the DEQ at 405-702-8100.

Denial of Water Quality Certification: For NWP 16 and 34, Section 401 WQC is denied within Oklahoma.

Denial of Water Quality Certification for Activities Located within the Watersheds of ORWs: For NWP 3, 4, 5, 6, 7, 12, 13, 14, 15, 16, 17, 18, 19, 21, 22, 23, 25, 27, 29, 30, 31, 32, 33, 36, 39, 40, 41, 42, 43, and 44, Section 401 WQC is denied for all activities in the watersheds of ORWs. This WQC denial does not apply to NWP 20, 37, and 38 which are certified by the above conditions statewide. ORWs are designated in Oklahoma's Water Quality Standards (OWQSS), Oklahoma Administrative Code Title 785, Chapter 45 Appendix A, as follows (including tributaries):

- (1) Flint Creek tributaries in Adair County,
- (2) Illinois River in Cherokee, Adair, and Delaware Counties,
- (3) Barren (Baron) Fork River in Cherokee and Adair Counties,
- (4) Mountain Fork River - Upstream of the 600 feet above mean sea level (' msl) elevation (Broken Bow Reservoir) in McCurtain and LeFlore Counties,
- (5) Big Lee Creek - Above 420 feet above mean sea level (' msl) elevation in Sequoyah County,
- (6) Little Lee Creek in Adair and Sequoyah Counties.

This WQC supercedes all previous WQCs for NWP in the state of Oklahoma.