



DEPARTMENT OF THE ARMY
CORPS OF ENGINEERS, OMAHA DISTRICT
1616 CAPITOL AVE.
OMAHA, NEBRASKA 68102-9000

July 25, 2016

Mr. Joey Mahmoud, SVP
Dakota Access Pipeline, LLC
1300 Main,
Houston, Texas 77002

Dear Mr. Mahmoud:

Concerning your proposal to discharge dredged or fill material into Waters of the United States (WOUS), and conduct work under navigable waters, for work associated with the construction of utility pipeline crossings for the Dakota Access Pipeline, we have reviewed the information provided within your Pre-Construction Notifications (PCNs) for South Dakota PCNs 4, 6, 7, 8, 9, 10, 12, 13, 14, and 17. The information included addendums, cultural resources surveys, biological assessment, and supplemental information received in our office between December 29, 2014, and May 20, 2016. The construction of the 30-inch crude oil pipeline known as the Dakota Access Pipeline Project (DAPL) will begin in the Bakken and Three Forks production Region in North Dakota and terminate at a crude oil market hub near Patoka, Illinois. The proposed pipeline will cross approximately 1,168 miles through three separate Corps Districts, including approximately 273 miles within the South Dakota portion of Omaha District transecting through portions of Campbell, McPherson, Edmunds, Faulk, Spink, Beadle, Kingsbury, Miner, Lake, McCook, Minnehaha, Turner, and Lincoln Counties in South Dakota. South Dakota PCN 3 is not included in this verification letter.

Based on the information you provided, this office has determined that your work is authorized by the Department of the Army Nationwide Permit No. (12), found in the February 21, 2012 Federal Register (77 FR 10184), Reissuance of Nationwide Permits. Enclosed is a fact sheet that fully describes this Nationwide Permit and lists the General Conditions that must be adhered to for this authorization to remain valid. The decision regarding this action is based on information found in the administrative record, which documents the District's decision-making process, the basis for the decision, and the final decision. Please note that deviations from the original plans and specifications of your project could require additional authorization from this office.

The Corps has determined construction of the DAPL project within Corps Action Areas will have no adverse effect on significant cultural resources provided the permittee adheres to Nationwide Permit General Condition No. 21 – Discovery of Previously Unknown Remains and Artifacts and the management recommendations outlined in the approved avoidance plans: Horizontal Directional Drill Plan for Archaeological Site Avoidance, Unanticipated Discoveries Plan Cultural Resources, Human Remains, Paleontological Resources & Contaminated Media, Dakota Access Pipeline Project (DAPL) for South Dakota.

Multiple special conditions have been incorporated into this DA authorization to protect the quality, integrity, and abundance of aquatic resources, cultural and historic properties, and federally threatened and endangered species. In accordance with NWP General Condition 27, you must comply with the following project specific special conditions:

1. The permittee shall comply and implement the plans described in the Pre-Construction Notifications (PCNs) dated December 29, 2014 (SD) and subsequent addendums. The plans were listed in the appendices and included the HDD crossing plans, Open Trench crossing plans, HDD Contingency Plan, Draft Spill Prevention, Containment and Countermeasures Plan, and others listed.

2. Tribal Monitoring: DAPL shall offer Tribal Monitoring for all PCN areas in South Dakota. The monitoring shall be in accordance with the attached Monitoring Plan.

3. Topeka Shiner – BO This project (PCNs 6, 7, 8, 9) will affect the federally endangered Topeka shiner. In compliance with General Condition 18, this project shall be implemented in accordance with the Terms and Conditions (Pages 19 - 21) mandated by the enclosed Biological Opinion issued by the United States Fish and Wildlife Service. The implementation of all Terms and Conditions of the Biological Opinion, including post-project monitoring, shall be the responsibility of the permittee. All monitoring reports completed as a condition of the Biological Opinion shall be forwarded to the Corps South Dakota Regulatory Office.

4. With the exception of farmed wetlands, a minimum of 15 different wetlands species (native grasses, sedges, rushes, forbs, and/or ferns) shall be seeded into the disturbed emergent wetlands and maintained open areas within forested and scrub shrub wetlands at a rate of 10 lbs. of pure live seed per acre to increase the diversity of native herbaceous wetland plants. Native plant plugs may also be used in conjunction or in substitution of seed. Oats and/or annual rye shall be incorporated into the seed mix to serve as a nurse crop.

5. Non-native plants and aggressive native cultivars such as switch grass (*Panicum virgatum*) shall not be used in seed mixes, and invasive species such as reed canary grass (*Phalaris arundinacea*), purple loosestrife (*Lythrum salicaria*), smooth brome grass (*Bromus inermis*), crown vetch (*Corinilla varia*), birdfoot trefoil (*Lotus corniculatus*), Canada thistle (*Cirsium arvense*), bull thistle (*Cirsium vulgare*), wild parsnip (*Pastinaca sativa*), common reed (*Phragmites australis*), Eurasian honeysuckles (*Lonicera* spp.), buckthorns (*Rhamnus cathartica* and *R. frangula*) and white and yellow sweet clovers (*Melilotus alba* and *M. officinalis*), and Japanese Hops (*Humulus japonicus*) will be controlled.

6. If excavation and construction are completed outside an optimal seeding period, temporary erosion control measure shall be implemented immediately upon completion of excavation and construction and shall be maintained until such time as wetland plantings can be completed during an optimal period. The permanent wetland plantings shall then be completed during the next optimal seeding period.

7. Nationwide Permit General Condition No. 12 of the attached Nationwide Permit Summary states “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 United States during periods of low-flow or no-flow”.

8. The unaffected waters of the U.S. delineated within the adjacent project area must be protected during land leveling and construction activities. The jurisdictional wetlands and stream channels may not be graded or used as staging areas, temporary crossings, temporary fill sites, etc., without prior authorization from the Corps of Engineers. Prior to the commencement of any physical work within the designated construction right-of-way, wetlands and waterbodies that are to remain undisturbed shall be clearly marked in the field and identified to the heavy equipment operators.

9. Removal of vegetation, including trees located in or adjacent to waters of the United States, shall be limited to that which is absolutely necessary for construction of this project. All woody debris shall be removed to an upland, non-wetland site.

10. All temporary impacts to waters of the United States, including wetlands, rivers, and streams, shall have sidecast material returned to the excavation site or removed within 90 days of the initial ground disturbance. Topsoil segregation piles and temporary construction travel lanes may remain until restoration is complete.

11. The applicant shall notify the District Engineer if extra workspace areas used for equipment and material staging and spoil storage are located in waters of the U.S. not previously identified in the application or design plans.

12. You are encouraged to conduct your construction activities during periods of low flow. If the banks are not armored, you are required to grade the streambanks on a minimum 2:1 slope and replant them with permanent perennial native grasses and forbs and a nurse crop of annual rye or oats.

13. Bank and shoreline protection shall consist of suitable clean materials (geotechnical fabric, native cobble, and quarry run rock) free from debris, trash, and other deleterious materials. Concrete rubble, broken asphalt, car bodies, and broken concrete containing asphalt are specifically excluded from this authorization.

14. Any land use conversion within the wetland and stream restoration/mitigation areas which may interfere with or be detrimental to the functions and values of these aquatic resources, is prohibited.

15. In wetlands, the top 12 inches of the trench shall be backfilled with the top 12 inches of topsoil excavated from the trench. All sidecast material shall be used as backfill in the trench or removed as excess material from the wetland to an upland disposal site. Backfilling with the sidecast material shall allow for soil settlement that could occur over an 18 to 24 month period. The maximum temporary crown allowed over the trench is 12 inches. All material beyond this 12-inch temporary crown is considered excess material.

16. You shall utilize timber mats, prefabricated equipment mats, and/or low-ground-pressure equipment in wetlands to minimize disturbance. Other than the temporary mats, this permit does not authorize the placement of fill material in wetlands for the construction of access roads and pads.

17. You are responsible for insuring that whoever performs, supervises, or oversees any portion of the physical work associated with the construction of the project has a copy of, is familiar with, and complies with all the terms and conditions of this permit.

18. The permittee must receive written approval from the District Engineer before proceeding with any alternative installation methods that are not described in the previously submitted plans with your application. For example, if you are unable to directionally drill under the James River or other previously designated waterways, you must provide written notification to our office and receive approval for any alternative method. This may require a new permit review and an Individual Permit.

19. You shall restore all temporary impacts to waters of the United States (including wetlands, streams, and rivers) to their pre-impact condition within 90 days of the initial ground disturbance (grading and/or excavation).

20. You shall perform the authorized work and restore the construction area in segments to limit the amount of area disturbed at any one time and to speed the establishment of vegetation.

21. For PCN 4 (James River Section 10 Crossing), the permittee understands and agrees that if future operation by the United States require the removal, relocation, or other alteration of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his authorized representative, said structure of work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the Corps of Engineers, to remove, relocate, or alter the structural work obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.

22. For PCN 4 (James River Section 10 Crossing), the facility shall not prohibit or interfere with future work, construction of weirs, or dikes, undertaken by the United States Government for navigation purposes.

23. For PCN 4 (James River Section 10 Crossing), the permitted structures shall be removed, at no cost to the United States Government, when deemed necessary for actions required by the United States Government (bankline repairs, construction of new structures, dredging, etc.).

24. Nationwide Permit General Condition No. 21 of the attached Nationwide Permit Summary states: "If you discover any previously unknown historic, cultural or archaeological remains and artifacts while accomplishing the activity authorized by this permit, you must immediately notify the district engineer of what you have found, and to the maximum extent practicable, avoid construction activities that may affect the remains and artifacts until the required coordination has been completed. The district engineer will initiate the Federal, Tribal and state coordination required to determine if the items or remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places".

25. The permittee will perform any corrective measures deemed necessary by the DE to insure the success of the wetland and stream restoration measures.

A Preliminary Jurisdictional Determination (JD) has been completed for PCNs (6, 7, 8, 9, 10, 12, 13, 14, and 17), which is a written indication that wetlands and waterways within your project area are Waters of the United States (Enclosed). If you concur with the findings of the Preliminary JD, please sign it and return it to the letterhead address within two weeks. The preliminary jurisdictional determination is not appealable. If you do not concur with the findings, you may request an approved jurisdictional determination from this office.

An approved jurisdictional determination (JD) has been completed for PCNs (1, 2, 4, and 15) on your project. The JD will be made available to you upon request, or it may be viewed at our website. The link to the website is shown below. The JD will be available on the website within 30 days. If you are not in agreement with the JD, you may request an administrative appeal under Corps of Engineers regulations found at 33 C.F.R. 331. Enclosed you will find a Notification of Administrative Appeal Options and Process and Request for Appeal form (RFA). Should you decide to submit an RFA form, it must be received by the Corps of Engineers Northwestern Division Office within 60 days from the date of this correspondence (by September 19, 2016). It is not necessary to submit a RFA if you do not object to the JD.

You are responsible for all work accomplished in accordance with the terms and conditions of the Nationwide Permit. If a contractor or other authorized representative will be accomplishing the work authorized by the Nationwide Permit on your behalf, it is strongly recommended that they be provided a copy of this letter and the attached conditions so that they are aware of the limitations of the applicable Nationwide Permit. Any activity that fails to comply with all of the terms and conditions of the Nationwide Permit will be considered unauthorized and subject to appropriate enforcement action.

In compliance with General Condition 30, the attached Compliance Certification form must be signed and returned to the address listed upon completion of the authorized work and any required mitigation.

This verification is valid until the Nationwide Permit is modified, reissued, or revoked. All of the existing Nationwide Permits are scheduled to be modified, reissued, or revoked prior to March 18, 2017. It is incumbent upon you to remain informed of changes to the Nationwide Permits. We will issue a public notice when the Nationwide Permits are reissued.

Furthermore, if you commence or are under contract to commence this activity before the date that the relevant Nationwide Permit is modified or revoked, you will have twelve (12) months from the date of the modification or revocation of the Nationwide Permit to complete the activity under the present terms and conditions of this Nationwide Permit.

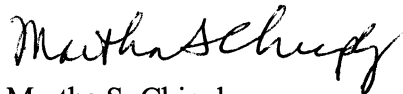
Should you at any time become aware that either an endangered and/or threatened species or its critical habitat exists within the project area, you must immediately notify this office.

You can obtain additional information about the Regulatory Program from our website: <http://www.nwo.usace.army.mil/Missions/RegulatoryProgram/SouthDakota.aspx>

The Omaha District, Regulatory Branch is committed to providing quality and timely service to our customers. In an effort to improve customer service, please take a moment to complete our Customer Service Survey found on our website at http://corpsmapu.usace.army.mil/cm_apex/f?p=regulatory_survey. If you do not have Internet access, you may call and request a paper copy of the survey that you can complete and return to us by mail or fax.

If you have any questions concerning this determination, please feel free to contact this office at the above Regulatory Office address, or telephone Jeff Breckenridge at (605) 341-3169, ext. 3621 and reference action ID NWO-2014-1809-PIE.

Sincerely,



Martha S. Chieply
Chief, Regulatory Branch
Omaha District