



**ASSOCIATION OF
METROPOLITAN
WATER AGENCIES**

LEADERS IN WATER

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November 13, 2020

Lieutenant General Scott A. Spellmon
Chief of Engineers and Commanding General
U.S. Army Corps of Engineers
Department of Defense

Via Regulations.gov

Re: Docket No. Docket Number: COE–2020–0002, Proposal to Reissue and Modify
Nationwide Permits

Dear Lieutenant General Spellmon,

The Association of Metropolitan Water Agencies (AMWA) appreciates the opportunity to comment on the U.S. Army Corps of Engineers (USACE) proposed rulemaking: *Proposal To Reissue and Modify Nationwide Permits*. The USACE’s Nationwide Permits (NWP) are an immensely useful tool for simplifying and streamlining the process of obtaining environmental permits for projects which would impact waters of the United States but would “result in no more than minimal individual and cumulative adverse environmental effects.”

AMWA appreciates and supports two of the newly proposed nationwide permits, which would directly impact drinking water utilities: NWP D Utility Line Activities for Water and Other Substances; and NWP E Water Reclamation and Reuse Facilities. The association agrees with USACE’s assessment that, although these activities already qualify for other existing NWPs, creating these two new permits provides greater clarity and will help to streamline the permit process.

Within the proposal USACE asks “whether there is a legal, regulatory, policy, or scientific basis for imposing a more restrictive limit on losses of stream bed versus losses of non-tidal wetlands and other non-tidal waters.” AMWA appreciates USACE’s recognition of the need to protect large swaths of riverine ecosystems by requiring the 0.5 acre threshold for impacts and agrees with the agency’s assertion that by only looking at stream bed impacts you could be missing the full scope of the impacts of a project.

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However, AMWA is extremely concerned with the agency's proposal to drop the 300 linear feet threshold entirely in favor of a 0.5 acre threshold. The USACE does an exemplary job of highlighting why solely judging a project off the linear feet threshold can be problematic and may allow for an immense amount of impacts to higher order streams. However, the agency fails to illuminate the opposite side of this coin. With lower order streams, such as headwaters, relying solely on a half-acre threshold means that thousands of feet of stream could be impacted before going through the more extensive review of an individual 404 permit.

Take, for example, a stream which is ten feet across. Under current NWP's, if the project impacts 300 linear feet of that stream or more, you would need to go through the more scrutinized individual permit process. However, under these proposed revisions, that same project on that portion of stream would only cover 3000 square feet and would now be eligible for the NWP as it is well below 0.5 acres. In fact, in order for the project to have enough impacts to require an individual permit and therefore further review, the project would need to impact 2200 linear feet – for a total of 22000 square feet or slightly over the half acre threshold. AMWA believes that this no longer meets the USACE's own requirement for projects which have "minimal impacts".

This change is even more problematic for projects like pipelines where impacts are only considered at the basis of a single impact, and not the project as a whole. Currently, an applicant could have a pipeline project with 10 different crossings, where each single and complete crossing impacts 299 linear feet of stream (for a total of 2990 linear feet of impacts) and would not need to go through the more scrutinized individual permit process. This would be greatly exacerbated under the new proposal to expand the allowable threshold of impacts. Under those new qualifiers, it appears that a single pipeline project with ten crossings across a ten-foot stream could impact up to 22,000 linear feet, or over five acres. AMWA fails to see how this would qualify as minimal impact.

As USACE highlights within this rulemaking, headwaters are extremely important for storing and transporting water, retaining and transforming nutrients and contaminants, collecting and transforming organic matter that supports the production of aquatic organisms such as invertebrates and fish, influencing water temperature, and providing habitats for various species of fish, amphibians, and invertebrates. Therefore, the association believes it would make the most sense to include an either/or qualifier for project impacts. Following this thought process, if a project impacts 300 linear feet of regulated stream bed OR half an acre of non-tidal wetlands and other non-tidal waters, the project would not qualify for the relevant general permits.

The agency goes on to solicit comment on "whether there is a scientific, policy, regulatory, or legal basis for a more restrictive limit on losses of headwater stream bed versus losses of stream bed for the larger streams that are further down in the stream network of a watershed." AMWA would argue that this comparison is an unnecessary one. The agency can protect both resources and AMWA exhorts USACE to do so as impacts to headwaters move downstream to affect the source waters that drinking water utilities use to provide safe and reliable drinking water to their

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customers. Similarly, larger streams may often be the source those utilities are utilizing for drinking water supply.

Finally, AMWA would like to highlight another issue of concern within the proposal. Under the current NWP certain activities such as oil and natural gas pipelines or linear transportation projects, may impact a great number of waters of the United States due to the fact that those projects' impacts are not considered cumulatively, as stated in the example above. Instead, each "single and complete crossing" of a water of the United States qualifies for its own NWP. This method of reviewing impacts would carry over into the newly proposed NWPs. AMWA highly suggests USACE reconsider this procedure for reviewing impacts. Our environment does not exist as a mesocosm but rather a system in which multiple impacts will often have cumulative and compounding effects on that system. AMWA urges the USACE to approach the NWPs with this idea in mind.

AMWA thanks USACE for the opportunity to provide input on this important rulemaking. If you would like to further discuss our concerns, please contact Stephanie Hayes Schlea, Director of Regulatory and Scientific Affairs, at schlea@amwa.net.

Sincerely,



Diane VanDe Hei

Chief Executive Officer

Association of Metropolitan Water Agencies

cc: David Ross, Assistant Administrator, Office of Water
Jennifer McLain, Office of Ground Water and Drinking Water