



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, FORT WORTH DISTRICT
P. O. BOX 17300
FORT WORTH, TEXAS 76102-0300

February 13, 2020

Regulatory Division

SUBJECT: Project Number SWF-2018-00227, Permian Highway Pipeline

Mr. Michael Letson
Permian Highway Pipeline LLC
1001 Louisiana Street, Suite 1000
Houston, Texas 77002

Dear Mr. Letson:

This letter is in regard to information received May 16, 2019 and subsequent submittals received June 19, 2019, August 28, 2019, and January 23, 2020, concerning a proposal by Permian Highway Pipeline LLC to discharge dredged or fill materials into the waters of the United States to facilitate the installations of 267 miles of natural gas pipeline located in multiple counties throughout the Fort Worth District. This project has been assigned Project Number SWF-2018-00227. Please include this number in all future correspondence concerning this project.

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

We have reviewed this project under the pre-construction notification procedures of Nationwide Permit General Condition 32 (Federal Register, Vol. 82, No. 4, Friday, January 6, 2017). We have determined the discharge of dredged or fill materials into waters of the United States associated with this project is authorized by Nationwide Permit 12 for Utility Line Activities. To use this permit, the permittee must ensure the work is in compliance with the specifications and conditions for the permit listed above, found at <https://www.swf.usace.army.mil/Missions/Regulatory/Permitting/Nationwide-General-Permits/>, and the special conditions listed below. Additionally, all activities must comply with the water quality certification conditions of the Texas Commission on Environmental Quality (TCEQ) located at

<http://www.swf.usace.army.mil/Portals/47/Users/053/21/821/NWP%202017%20Texas%20401c.ert.pdf>. The special conditions are as follows:

- 1) This USACE permit does not authorize you to take a threatened or endangered species, or a species proposed for listing, including the Golden-cheeked warbler (*Dendroica chrysoparia*) and Tobusch fishhook cactus (*Sclerocactus brevihamatus* ssp. *Tobuschii*). In order to legally take a listed species, you must have authorization separate from this letter under the Endangered Species Act (ESA) (e.g., and ESA Section 10 permit, or a Biological Opinion (BO) under ESA Section 7, with “incidental take” provisions with which you must comply). The enclosed U.S. Fish and Wildlife Service (FWS) BO for consultation number 02ETAU00-2019-F-1895, dated February 3, 2020, covers a total of 1,204.6 acres of impact to listed species habitat under the ESA contained within the USACE Section 404 Action Area(s) in the Fort Worth District. The BO contains mandatory terms and conditions to implement the reasonable and prudent measures that are associated with incidental take within the USACE Action Area(s) in the Fort Worth District. Your authorization under this USACE permit is conditional upon you implementing and abiding by all project elements identified in the enclosed FWS BO that are subject to the USACE Action Area(s) of 1,204.6 acres in the Fort Worth District and your compliance with all of the mandatory terms and conditions associated with incidental take identified in the enclosed BO pertaining to such specific area(s). The terms and conditions of the BO that are applicable to USACE Action Area(s) in the Fort Worth District are incorporated by reference in this permit. Failure to comply with the terms and conditions that are applicable to the USACE action area within the Fort Worth District would constitute non-compliance with your USACE permit. Further, failure to comply with the applicable terms and conditions for the USACE action area within the Fort Worth District invalidates the incidental take authorization and any take of a listed species would constitute an unauthorized take, and it would also constitute non-compliance with your Corps permit. USACE retains oversight to ensure compliance with the terms and conditions applicable to the USACE action area within the Fort Worth District, however the FWS is the appropriate authority to determine compliance with the terms and conditions of its BO and with the ESA.

Please note that the USFWS BO includes conservation recommendations applicable within the USACE Action Area(s) in the Fort Worth District as well as outside of such areas, that if implemented, would further minimize the potential impacts of the project on federally listed threatened and endangered species. While these recommendations for activities within the USACE Action Area(s) in the Fort Worth District are not conditions of this authorization, we encourage you to include each of these recommendations in this and future projects that may affect the species in question.

- 2) The permittee shall take the following measures to ensure that eight archeological sites (41SL193, 41KM314, 41KM322, 41KM329, 41GL283, 41GL512, 41GL547, and 41BC198) are protected during construction. As detailed in the Letter of Commitment from the permittee dated August 5, 2019, the permittee shall adhere to the proposed avoidance measures listed within this letter. If impacts to properties listed on or eligible for the National Register of Historic Places are identified, the permittee shall immediately contact the USACE and avoid further impacts to the historic properties until assessment and the requirements for any additional work are determined. Additionally, the permittee

shall conduct a meeting with construction contractors prior to construction in the vicinity of these archeological sites.

- 3) The permittee shall conduct a meeting with the construction contractor or contractors detailing the terms and conditions of this permit prior to commencing construction activities of the project. The permittee shall provide 24 hour advance notice to the Regulatory Division, Fort Worth District, U.S. Army Corps of Engineers (USACE) of the pre-construction meeting. Within two weeks following the meeting, the permittee will also provide meeting minutes to the USACE.

Failure to comply with these specifications and conditions invalidates the authorization and may result in a violation of the Clean Water Act.

Our verification for the discharge of dredged or fill material into waters of the U.S. under this nationwide permit is valid until March 18, 2022, unless prior to that date the nationwide permit is suspended, revoked, or modified such that the activity would no longer comply with the terms and conditions of the nationwide permit on a regional or national basis. The USACE will issue a public notice announcing the changes when they occur. Furthermore, activities that have commenced, or are under contract to commence, in reliance on a nationwide permit will remain authorized provided the activity is completed within 12 months of the date of the nationwide permit's expiration, modification, or revocation, unless discretionary authority has been exercised on a case-by-case basis to modify, suspend, or revoke the authorization in accordance with 33 CFR 330.4(e) and 33 CFR 330.5(c) or (d). Continued confirmation that an activity complies with the specifications and conditions, and any changes to the nationwide permit, is the responsibility of the permittee.

The USACE based this decision on a preliminary jurisdictional determination (PJD) that there are waters of the United States on the project site. A PJD is not appealable. At any time you have the right to request and obtain an Approved Jurisdictional Determination (AJD), which can be appealed. If it is your intent to request an AJD, do not begin work until one is obtained.

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

This permit should not be considered as an approval of the design features of any activity authorized or an implication that such construction is considered adequate for any purpose intended. It does not authorize any damages to private property, invasion of private rights, or any infringement of federal, state, or local laws or regulations.

Thank you for your interest in our nation's water resources. If you have any questions concerning our regulatory program, please refer to our website at <http://www.swf.usace.army.mil/Missions/Regulatory> or contact Mr. Jimmy Barrera at the address above, by telephone (817) 886-1838, or by email james.e.barrera@usace.army.mil, and refer to your assigned project number.

Please help the regulatory program improve its service by completing the survey on the following website: http://corpsmapu.usace.army.mil/cm_apex/f?p=regulatory_survey.

Sincerely,

for Brandon W. Mobley
Chief, Regulatory Division

Enclosure

Copy Furnished:

Mr. Adam Zerrenner
Supervisor, Austin Field Office
U.S. Fish and Wildlife Service
10711 Burnet Road, Suite 200
Austin, Texas 78758

Mr. Mark Wolfe
State Historic Preservation Officer
Texas Historical Commission
Post Office Box 12276
Austin, Texas 78711

Mr. Mike Crow
SWCA Environmental Consultants
10245 West Little York, Suite 600
Houston, Texas 77040

PERMIT COMPLIANCE CERTIFICATION

U.S. Army Corps of Engineers Project Number: SWF-2018-00227

Name of Permittee: Permian Highway Pipeline LLC, 1001 Louisiana Street, Suite 1000
Houston, Texas, 77002

Date of Issuance: February 13, 2020

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:

Regulatory Division
CESWF-DE-R
U.S. Army Corps of Engineers
P.O. Box 17300
Fort Worth, Texas 76102-0300

Please note that your permitted activity is subject to a compliance inspection by a 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 was 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