

Title: Water Resources
Date: September 30, 2019
SOP No.: 22
Issued by the Office of Planning and Environment (TPE)

1. Purpose

This document provides guidance on the analysis required for projects or actions affecting water resources to comply with the Clean Water Act (33 U.S.C. § 1344), Rivers and Harbors Act of 1899 (33 U.S.C. § 401 *et seq.*), Executive Order 11990—*Protection of Wetlands*, U.S. Department of Transportation (DOT) Order 5660.1A—*Preservation of the Nation's Wetlands*, Executive Order 11988—*Floodplain Management*, DOT Order 5650.2—*Floodplain Management and Protection*, Coastal Zone Management Act of 1972 (16 U.S.C. § 1451 *et seq.*), Coastal Resources Barrier Act of 1982 (16 U.S.C. § 3501 *et seq.*), Wild and Scenic Rivers Act of 1968 (16 U.S.C. § 1271-1287), and Safe Water Drinking Act (42 U.S.C. § 300f *et seq.*), as appropriate. This standard operating procedure also addresses the need for permits or authorizations associated with these Federal environmental requirements.

2. Applicability/Scope

The National Environmental Policy Act (NEPA) requires analysis and consideration of the effects of a proposed project on environmental resources, including water resources, such as coastal zones, floodplains, wild and scenic rivers, navigable waterways, wetlands and other waters of the U.S., as applicable. Consideration of impacts to water resources applies to any Federal Transit Administration (FTA)-funded project, regardless of class of action (i.e., categorical exclusion (CE), environmental assessment (EA), or environmental impact statement (EIS)).

3. Responsibilities

FTA Regional staff, in coordination with the project sponsor, is responsible for ensuring the environmental documents include identification of potential impacts to water resources and their proper analysis. FTA Regional staff is also responsible for ensuring the Federal and/or State permitting agencies agree that the analysis will support a future permit application, and for tracking applicable permit application activities to ensure the project sponsor obtains the necessary permits or authorizations prior to project construction.

4. Standard Procedures

4.1. Clean Water Act (CWA). The CWA applies to “waters of the United States,” which includes jurisdictional wetlands and navigable waters.

4.1.1. Definitions.

- **Waters of the United States (WOTUS)**, for purposes of the Clean Water Act means:

1. All waters which are currently used, or were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide;
2. All interstate waters, including interstate wetlands;
3. All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds, the use, degradation or destruction of which could affect interstate or foreign commerce including any such waters:
 - a. Which are or could be used by interstate or foreign travelers for recreational or other purposes; or
 - b. From which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or
 - c. Which are used or could be used for industrial purposes by industries in interstate commerce;
4. All impoundments of waters otherwise defined as waters of the United States under this definition;
5. Tributaries of waters identified in paragraphs (1) through (4) of this section;
6. The territorial sea;
7. Wetlands adjacent to waters (other than waters that are themselves wetlands) identified in paragraphs (1) through (6) of this section¹. (See 40 CFR § 230.3(s)).

- **Wetlands** are those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas” (40 CFR § 230.3, 33 CFR § 328.3). The U.S. Environmental Protection Agency (EPA) and the U.S. Army Corps of Engineers (USACE) use the “1987 Corps Wetland Delineation Manual” and its Regional Supplements (Corps Manual)² to define wetlands for the CWA Section 404 permit program.
- **Navigable waters** are those waters that are subject to the ebb and flow of the tide and/or are used, have been used in the past, or may be susceptible to use to transport interstate or foreign commerce (33 CFR § 329.4).

4.1.2. **Identification of WOTUS.** FTA Regional staff, in coordination with project sponsor, is responsible for ensuring that any WOTUS, including wetlands, present in the project area are identified. Identification methods may include reviewing the U.S. Fish and Wildlife Service (USFWS) National Wetland Inventory³ or the U.S. Geological Survey topographic maps,⁴ conducting a site visit, or

¹ <https://www.epa.gov/cwa-404/definition-waters-united-states-under-clean-water-act>

² https://www.usace.army.mil/Missions/Civil-Works/Regulatory-Program-and-Permits/reg_supp/

³ <https://www.fws.gov/wetlands/>

⁴ <https://www.usgs.gov/core-science-systems/national-geospatial-program/topographic-maps>

conducting a jurisdictional delineation using the Corps Manual and then requesting a jurisdictional determination from the USACE (when appropriate).

4.1.3. **Agency Coordination.** FTA Regional staff (or the project sponsor, as determined between parties) should coordinate with other agencies with jurisdiction over water resources early in the environmental review process to consider locations and ways to avoid or minimize impacts to wetlands or waterways. Coordination with the following agencies should occur early or during NEPA scoping if the proposed project may impact wetlands or other WOTUS, as applicable.

- **USACE.** The USACE is responsible for issuing the CWA Section 404 permit, Section 10 permit, and Section 408 review and authorization (33 U.S.C. § 1344; 33 CFR § 320 *et seq.*). USACE makes the jurisdictional determination based on the jurisdictional delineation submitted by the project sponsor and may confer with EPA on this determination.
- **EPA.** Under Section 404(b) of the CWA (40 CFR part 230), EPA may veto a Section 404 permit issued by USACE. For projects on tribal lands, EPA issues Section 401 certifications for Section 404 permits unless the tribe has an EPA-certified water quality program.
- **USFWS.** This consultation focuses on how a project would affect aquatic habitats for protected species under the Endangered Species Act (ESA).
- **The National Marine Fisheries Service (NMFS).** Coordinate with NMFS when the proposed project would affect tidal wetlands, estuaries, or marine ecosystems under ESA.
- **The Natural Resource Conservation Service (NRCS).** Coordinate with NRCS if there are possible impacts to agricultural wetlands. NRCS's "The Food Security Act Manual"⁵ is used to delineate agricultural wetlands whereas delineation of non-agricultural wetlands follows the Corps Manual.

FTA Regional staff should also ask the project sponsor to check for possible State and local permit requirements.

4.1.4 **CWA Section 404 Permit-Impacts to Waters of the U.S.**⁶ A Section 404 permit, which is regulated by the USACE, is required for any discharge of dredged or fill materials into WOTUS, including wetlands (33 U.S.C § 1344; 33 CFR parts 320-330). The type of authorization or permit would depend on the degree of impacts. Coordination with the USACE during the environmental review process will help to determine which Section 404 authorization or permit would be required for the proposed project.

- **General Permits:** There are three types of general permits: Nationwide Permits (NWP), Regional General Permits (RGPs) and Programmatic General Permits (PGPs).⁷ General Permits, including NWPs, would be issued for projects with minimal impacts and if the conditions of the permit are met. The most common general permits are NWPs. NWPs are

⁵ <https://www.nrcs.usda.gov/wps/portal/nrcs/detailfull/national/technical/?&cid=stelprdb1045954>

⁶ The information presented in this SOP is high-level. For more information on the Section 404 permitting process, please visit <https://www.usace.army.mil/Missions/Civil-Works/Regulatory-Program-and-Permits/>

⁷ <https://www.usace.army.mil/Missions/Civil-Works/Regulatory-Program-and-Permits/Obtain-a-Permit/>

issued for five-year periods and thereafter must be renewed by the USACE. The conditions vary from permit to permit. Some NWP and RGP require individual water quality certification (see Section 4.1.5 for further information) and authorization under many NWP is contingent upon the project sponsor's submittal of a preconstruction notification (PCN) to the USACE. The USACE website⁸ maintains a list of 52 NWP that are currently in effect. FTA Regional staff should contact the local USACE Regulatory District or Branch to identify or verify the proposed project's permitting need.

- Letters of Permission (LOP): The USACE may issue a LOP, which is a form of an individual permit issued through an abbreviated process, for proposed activities similar to previous USACE-approved activities when the proposed activity is minor and does not have significant impacts. The LOP includes coordination with Federal and State resource agencies and public interest evaluation but does not require a public notice.
- Individual Permits (IP): If a proposed project exceeds the allowable impact threshold or does not meet the requirements of a general permit and cannot be authorized by a LOP, an IP is required. The USACE will only issue an IP if: a) the proposed project is not contrary to the public interest and b) the permit application satisfies Section 404 (b)(1) Guidelines requirements. Those guidelines include conducting an analysis demonstrating the proposal is the least environmentally damaging practicable alternative (LEDPA) (40 CFR § 230.10(a)). To increase the likelihood the LEDPA required for an IP and FTA's preferred alternative are the same alternative, FTA Regional staff should coordinate with the USACE early and often in the environmental review process.

During the early environmental review process, FTA Regional staff, in coordination with the project sponsor, should consider alternatives that avoid and/or minimize impacts to WOTUS as the degree of impact affects the type of Section 404 permit or authorization required for a proposed project. For any project that may require a Section 404 IP, FTA Regional staff should (1) coordinate with the USACE and other agencies (e.g., EPA, USFWS) early for all classes of action, and (2) invite them to be a cooperating or participating agency⁹ in the NEPA process for an EIS. In addition, FTA should seek concurrence from the USACE at specific milestones such as the purpose and need, alternatives, and the preferred alternative. This will increase efficiency in consideration of alternatives requirements under NEPA and the CWA Section 404(b)(1) and public concerns, as well as increase the likelihood that the permitting agency will adopt the FTA environmental document when making decisions pertaining to a permit for the proposed activities affecting WOTUS in a timely manner.

- 4.1.5 **CWA Section 401--Water Quality Certification.** Section 401 of the CWA (40 CFR part 121) establishes the state certification process to ensure that Federal permits (e.g., Section 404) are in compliance with the CWA and the state water quality standards (i.e., a Federal agency may not issue a permit to conduct any activity that may result in any discharge into WOTUS without Section 401 water quality certification from a State or authorized tribe). Most States issue a "blanket" Section

⁸ <https://www.usace.army.mil/Missions/Civil-Works/Regulatory-Program-and-Permits/Nationwide-Permits/>

⁹ FTA identifies an agency as a cooperating or participating agency by their responsibilities or interest, as defined in 40 CFR 1508.5 and 23 U.S.C. §139(d). See FTA SOP #20 for more information.

401 certification for activities covered under NWP and RGP. However, certain Section 404 permits (e.g., IP, NWP for projects on tribal lands) will require Individual Section 401 water quality certifications. In general, a Section 404 permit is contingent upon Section 401 certification from the state water quality agency, tribe, or EPA for projects occurring on tribal lands. FTA Regional staff should ensure that the project sponsor coordinates with the appropriate state permitting agencies, authorized tribes, or EPA early for any project requiring an Individual Section 401 certification because the Individual Section 401 certification could take up to 1 year to process.

4.1.6 **CWA Section 402--National Pollutant Discharge Elimination System (NPDES).** Section 402 of the CWA (40 CFR part 122) creates the NPDES permit program for discharges of pollutants from all point sources into WOTUS. NPDES may also be referred to as the “stormwater” permit. The EPA, or a State to which EPA has delegated NPDES authority, is responsible for the oversight of Section 402, including issuing the NPDES permit for stormwater discharges due to construction activities. A NPDES permit would be required for any project that would disturb one acre or more.¹⁰ FTA Regional staff is responsible for ensuring the project sponsor contacts the State agency or EPA Regional Office responsible for issuing NPDES permits to obtain the appropriate permit prior to project construction.

4.1.7 **Documentation.** The environmental document should discuss the degree of impact (e.g., location, quantity or size), identify the type of permit (e.g., NWP, IP) and any identified mitigation measures to compensate for the impact or loss of WOTUS (including wetlands) due to the proposed project (23 CFR 771.105(a)). Mitigation measures may include in-lieu fee, on-site banking, or off-site banking, and are coordinated with the USACE. Issuance of a Section 404 permit is not needed to complete the NEPA document, but the environmental document presents the results of agency coordination and the project sponsor’s Section 404 permit application status or plan.

Executive Order (EO) 11990, Section 2(b) requires Federal agencies to provide opportunity for early public review of any plans or proposals for new construction in wetlands. FTA may use the NEPA public involvement process to satisfy that requirement and to collect public and resource agency input for evaluating wetland impacts or to identify other information needed for wetland related approvals or permits. Further, per EO 11990 and DOT Order 5660.1A, for new construction located in wetlands, the decision document (i.e., finding of no significant impact (FONSI), combined Final EIS (FEIS)/record of decision (ROD), or ROD) must include a written finding on wetland impacts. The environmental document should contain information to support the FONSI, combined FEIS/ROD or ROD, as applicable:

- There is no practicable alternative to the construction; and
- The proposed action includes all practicable measures to minimize harm to wetlands that action would cause.

¹⁰ <https://www.epa.gov/npdes/stormwater-discharges-construction-activities>

The NEPA document should also discuss stormwater and/or sediment runoff associated with the proposed project and the need for a NPDES permit, as applicable, per 23 CFR 771.105(a). Note, projects with new construction in wetlands do not generally receive a CE determination.

FTA Regional staff is responsible for ensuring the project sponsor (permittee) complies with all terms and conditions of the applicable permits during the project implementation phase (23 CFR 771.109(b)(1)).

4.2. Rivers and Harbors Act of 1899 (33 U.S.C. § 401, *et seq.*)

- 4.2.1. **Section 10 (Navigable Waters) and Section 9 (Bridge) Permits.** Section 10 of the Rivers and Harbor Act (33 U.S.C. § 403; 33 CFR part 322) requires authorization from the Secretary of the Army for constructing any obstacle (e.g., jetty, wharf, pier) in any port, harbor, canal, navigable water, or other U.S. waters located outside fixed harbor lines or in areas where no harbor line exists. A Section 10 permit is administered by the USACE and can be jointly issued with a Section 404 (CWA) permit. If a project involves construction of a bridge or causeway over or in navigable waterways, a Section 9 permit from the U.S. Coast Guard would also be required (33 CFR parts 114-115). FTA Regional staff will need to ensure early and often coordination with the applicable permitting agencies for potential impacts to navigable waters and that required permits are obtained by the project sponsor prior to any construction activities occurring within any navigable water or WOTUS.
- 4.2.2. **Section 408 (Civil Works).** Section 14 of the Rivers and Harbors Act of 1899, 33 U.S.C. § 408 (Section 408), requires that any proposed alteration or modification or use of an existing USACE Civil Works project (i.e., levees, dams, sea walls, bulkheads, jetties, dikes, wharfs, piers, etc.) be authorized by the Secretary of the Army. The USACE may grant such permission if it determines the proposed alteration “will not be injurious to the public interest and will not impair the usefulness” of the Civil Works project.¹¹ For any project affecting a navigable water and a USACE Civil Works project (e.g. levee), the USACE cannot issue a Section 404 permit until Section 408 review and approval is complete. In that case, FTA Regional staff will coordinate with both USACE Civil Works program office (Section 408 review) and the USACE Regulatory program (Section 10, CWA Section 404) early in the NEPA process. FTA Regional staff will need to ensure required Section 408 approvals are obtained by the project sponsor prior to project construction.
- 4.2.3. **Documentation.** The environmental document should discuss the impacts and the need for applicable permits, results of permitting agency coordination, and the project sponsor’s commitment to obtain and to comply with the terms and conditions of the permits required for the project (23 CFR 771.105(a)).

4.3. Floodplains. Per Section 2(a) of EO 11988, *Floodplain Management*, and paragraph 3 of the U.S. DOT Order 5650.2, *Floodplain Management and Protection*, FTA must avoid adverse impacts associated with the occupancy and modification of land within floodplains if a practicable alternative exists and to the extent possible. Additionally, if no practicable alternative exists, development in a floodplain must be

¹¹ <https://www.usace.army.mil/Missions/Civil-Works/Section408/>

designed to minimize adverse impact to the floodplain's natural and beneficial values as well as to minimize the potential risks for flood-related property loss and the loss of human life.

- 4.3.1 **Definition and Identification of Floodplains.** Per Section 6 (b)-(c) of EO 11988, floodplains (also referred to as "base floodplains") are the lowlands and relatively flat areas adjoining inland and coastal waters, including flood prone areas of offshore islands, at a minimum, that are prone to the 100-year flood (i.e., there is a one percent chance of a flood occurring in any given year).

Regulatory floodway is defined as the floodplain area that is reserved by federal, State or local requirements to provide for the discharge of the base flood so the cumulative increase in water surface elevation is no more than a designated amount (not to exceed one foot as set by the National Flood Insurance Program) (44 CFR § 9.4).

To determine whether a proposed project encroaches on the floodplain, FTA Regional staff reviews the applicable Federal Emergency Management Agency (FEMA)-developed Flood Insurance Rate Map (FIRM).¹² If a FIRM is not available, then contact the USACE, the NRCS, or State or local floodplain management agencies for assistance in determining the floodplain boundary.

- 4.3.2 **Significant encroachment.** Significant encroachments on the floodplain are rare for transit projects. Expansion of a facility already located within a floodplain usually would not be considered a significant encroachment. According to DOT Order 5650.2, a significant encroachment would result in one or more of the following construction or flood-related impacts:
- A considerable probability of loss of human life;
 - Likely future damage associated with the encroachment that could be substantial in cost or extent, including interruption of service on or loss of a vital transportation facility; or
 - A notable adverse impact on natural and beneficial floodplain values.

FTA Regional staff should encourage the project sponsor to avoid significant encroachment through early coordination with the local floodplain management agencies and/or design modifications.

- 4.3.3 **Public Involvement.** Section 2(a)(4) of EO 11988 and paragraph 7 of the DOT Order 5650.2 require FTA to provide an opportunity for early public review of any plan or proposal that would encroach on the floodplain and the public notices must identify significant encroachments. FTA may use the NEPA public involvement process to meet the public notification requirements for a project encroaching on a floodplain.
- 4.3.4 **Documentation.** As applicable, the floodplain section in the environmental document should describe the project location and activities within the limits of the base floodplain (i.e., encroachment), type of the floodplain (e.g., 100-year or regulatory floodway), the natural and beneficial floodplain values, and measures to minimize floodplain impacts or measures to restore

¹² <https://msc.fema.gov/portal/home>

and preserve natural and beneficial floodplain values (23 CFR 771.105(a)). Any required local floodplain permit should also be noted in the environmental document. To comply with Section 2(a)(1) of EO 11988, if the preferred alternative involves significant encroachment on the floodplain, the final environmental document must include:

- A description of why the proposed project must be located within the floodplain, including a discussion of reasonable alternatives and why they were not practicable;
- A statement indicating that the project conforms to applicable State and/or local floodplain standards.

4.4. Coastal Zone Management Act (CZMA) (16 U.S.C. § 1451-1464). "Coastal zone" means "the coastal waters (including the lands therein and thereunder) and the adjacent shorelands (including the waters therein and thereunder), strongly influenced by each other and in proximity to the shorelines of the several coastal states, and includes islands, transitional and intertidal areas, salt marshes, wetlands, and beaches" (16 U.S.C. § 1453(1)). See 16 U.S.C. § 1453(1) for the complete definition. The CZMA applies when a proposed project occurs in a coastal zone or impacts coastal zone resources of any State with a National Oceanic and Atmospheric Administration (NOAA)-approved Coastal Zone Management Plan (CZMP) (15 CFR part 930). FTA Regional staff must ensure the project sponsor certifies that the proposed project is consistent with the policies of the State's CZMP, per CZMA (15 CFR §§ 930.50-930.66). Under CZMA, FTA may not fund a proposed project impacting coastal zone resources, unless:

- the State agency managing the CZMP agrees with the project sponsor's certification that the action is consistent with the applicable CZMP;
- State concurrence is conclusively presumed; or
- The Secretary of Commerce determines the activity is either consistent with the objectives of the CZMA or it is needed for national security (15 CFR §§ 930.60-930.64).

If a proposed project occurs in or may impact a coastal zone of a State having an approved CZMP, FTA Regional staff should ensure the project sponsor consults with the State's CZM agencies¹³ to determine whether the proposed project is consistent with the State's CZMP.

The environmental document should state whether the project is consistent with the CZMP and present the results of coordination with the state CZM agency (23 CFR 771.105(a)).

4.5. Coastal Barrier Resources Act of 1982 (CBRA) (16 U.S.C. § 3501 *et seq.*)

The CBRA established the Coastal Barrier Resources System (CBRS), which is the designated coastal barrier units located along the Atlantic Ocean, Gulf of Mexico, Great Lakes, U.S. Virgin Islands, and Puerto Rico coasts. Section 5 of the CBRA prohibits Federal agencies from providing funding for almost all construction and development within the CBRS. Section 6 of CBRA provides exceptions (16 U.S.C. § 3505) that allow Federal agencies to provide funding for certain actions such as maintenance of existing channel improvements and related structures, and the maintenance, replacement, reconstruction, or repair (not expansion) of publicly-operated roads or facilities, but the expenditure must be consistent with the CBRA.

¹³ <https://coast.noaa.gov/czm/mystate/>

As applicable, FTA Regional staff asks the project sponsor to review USFWS-official CBRS maps¹⁴ to determine if a proposed project would occur within the CBRS and whether it is an excepted action. FTA, in coordination with the project sponsor, should consult USFWS to verify whether the proposed action would involve CBRA and whether it would be consistent with the CBRA. Prior to approving the environmental document, FTA Regional staff needs to ensure consultation with USFWS has occurred for any activity that would involve CBRS.

The environmental document should include the direct and indirect impacts to the coastal barrier unit(s), the result of USFWS coordination, and mitigation measures that would prevent or reduce an excepted action's effects on the barrier island's ecology, consistent with 23 CFR 771.105(a).

4.6. Wild and Scenic Rivers. The Wild and Scenic Rivers Act of 1968 (16 U.S.C. § 1271-1287) preserves certain rivers with remarkable scenic, historic, cultural, and recreational values in a free-flowing condition for the enjoyment of the public. Federal land management agencies National Park Service (NPS), Bureau of Land Management (BLM), USFWS, and the U.S. Forest Service (USFS) manage the Wild and Scenic Rivers Act. The National Wild and Scenic Rivers System (WSRS) is a list of rivers the Secretaries of the Interior or Agriculture have determined have remarkable scenic, recreational, geologic, fish and wildlife, historic or other similar values. The National Rivers Inventory (NRI) is a listing of more than 3,200 free-flowing river segments in the United States that possess one or more "outstandingly remarkable" natural or cultural values judged to be at least regionally significant.¹⁵ NRI river segments are potential candidates for inclusion in the WSRS.

Under the Wild and Scenic Rivers Act, section 5(d)(1) and 36 CFR part 297, all Federal agencies must seek to avoid or mitigate actions that would adversely affect WSRS or NRI river segments. Further, per Council on Environmental Quality (CEQ)'s *Procedures for Interagency Consultation to Avoid or Mitigate Adverse Effects on Rivers of the Nationwide Inventory* (45 FR 59190), Federal agencies must:

- determine if their actions would adversely affect the characteristics of an NRI river that would qualify it for the System; and
- study and develop reasonable alternatives that would avoid or mitigate impacts.

To identify whether a WSRS or NRI river is located within or near the proposed project area, review the National Wild and Scenic Rivers System website¹⁶ and Federal land management agencies' websites, including NPS,¹⁷ BLM,¹⁸ and USFS.¹⁹

¹⁴ <https://www.fws.gov/cbra/maps/index.html>

¹⁵ <https://www.nps.gov/orgs/1912/nationwide-rivers-inventory.htm>

¹⁶ <https://www.rivers.gov/national-system.php>

¹⁷ (<https://www.nps.gov/orgs/1912/index.htm>)

¹⁸ <https://www.blm.gov/programs/national-conservation-lands/wild-and-scenic-rivers>

¹⁹ <https://www.fs.fed.us/managing-land/wild-scenic-rivers>

If the proposed project involves a NRI river, FTA Regional staff should invite the agency managing that river to be a cooperating agency. The environmental document should include an analysis of impact to the river or within its ¼-mile boundary²⁰ and a summary of comments from the managing agency. FTA Regional staff should consult CEQ's *August 1980 Procedures for Interagency Consultation to Avoid or Mitigate Adverse Effects on Rivers in the National Inventory* for guidance.

If the proposed project involves a WSRS river, FTA Regional staff must ensure that a Section 7 Consent Determination from the Secretary of Agriculture has been obtained prior to approving the environmental document (36 CFR § 297.5). Further guidance on the Section 7 Determination process can be found on the Wild and Scenic Rivers website.²¹

4.7. Safe Drinking Water Act (SDWA). Section 1424(e) of the SWDA (42 U.S.C. § 300f *et seq.*) prohibits Federal agencies from funding actions that would contaminate a sole source aquifer or its recharge area. In other words, FTA may not approve funds for any action if the EPA determines the action would contaminate a sole source aquifer. "Sole Source Aquifer" (SSA) means an aquifer that has been designated by EPA as the sole or principal source of drinking water for an area (40 CFR § 149.2).

To identify whether a SSA is located within the project area, review the EPA's Map of Sole Source Aquifer Locations.²² If the proposed action may affect a SSA, contact the state, tribal and local government agencies responsible for developing and managing a Comprehensive State Groundwater Protection Program or a SSA program and the EPA regional office responsible for reviewing that program.

The environmental document should discuss the SSA location in relation to the project activities, any potential threats to the integrity of public drinking water supplies or a SSA, project commitments or mitigation measures (e.g., identifying construction best management practices, developing response plans to contain potential spills, etc.), as appropriate, and summarize coordination results from EPA and the state, local, or tribal water quality agencies regarding these impacts.

5. **Permitting Dashboard**

FTA Regional staff is responsible for entering each permit or authorization action and associated milestone dates onto the Federal Permitting Dashboard²³ for FTA-funded projects that require either an EA or EIS.

6. **References**

- [Clean Water Act, 33 U.S.C. 1344 - Permits for Dredged or Fill Material](#)
- [33 CFR § 320-Authorities to Issues Permits; 33 CFR § 330- Nationwide Permit Program](#)
- [Rivers and Harbors Act, 33 U.S.C. 401](#)

²⁰ <https://www.rivers.gov/documents/q-a.pdf>

²¹ <https://www.rivers.gov/publications.php#section7>

²² <https://www.epa.gov/dwssa/map-sole-source-aquifer-locations>

²³ <https://www.permits.performance.gov>

- [Section 401 Water Quality, 40 CFR § 121](#)
- [Section 402 NPDES, 40 CFR § 122](#)
- [Coastal Zone Management Act, 16 U.S.C § 1451](#)
- [Coastal Zone Management Program, 15 CFR § 930](#)
- [Coastal Resources Barrier Act, 16 U.S.C § 3501](#)
- [Executive Order 11988, Floodplain Management](#)
- [Executive Order 11990, Protection of Wetlands](#)
- [Floodplain Management and Protection of Wetlands, 44 CFR § 9.4](#)
- [Section 408, 33 U.S.C. § 408](#)
- [CWA Section 404\(b\)\(1\) Guidelines, 40 CFR § 230](#)
- [Wild and Scenic Rivers Act, 16 U.S.C. § 1271-1287](#)
- [CEQ's Procedures for Interagency Consultation to Avoid or Mitigate Adverse Effects on Rivers in the Nationwide Inventory](#)
- [Section 7 Determination, 36 CFR § 297.5](#)
- [Safe Water Drinking Act, 42 U.S.C. § 300f et seq.](#)
- [Sole Source Aquifers, 49 CFR § 149](#)

APPROVAL:



Megan W. Blum
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DATE:

9/30/2019

This SOP is not legally binding in its own right and will not be relied upon by the Department as a separate basis for affirmative enforcement action or other administrative penalty. Conformity with this guidance document (as distinct from existing statutes and regulations) is voluntary only, and nonconformity will not affect rights and obligations under existing statutes and regulations.