



DEPARTMENT OF THE ARMY
SAN FRANCISCO DISTRICT, U.S. ARMY CORPS OF ENGINEERS
450 GOLDEN GATE AVENUE
SAN FRANCISCO, CALIFORNIA 94102

MARCH 7, 2023

Regulatory Division

Subject: File Number SPN-2019-00233N

Mr. Josh Nelson
Vero Fiber Networks
PO Box 1110
Boulder, CO 80306
jnelson@veronetworks.com

Dear Mr. Nelson:

This correspondence is in reference to your submittal of July 22, 2021, on behalf of Vero Networks, concerning Department of the Army (DA) authorization to install approximately 300 linear miles of fiber optic network cable that would support portions of Humboldt, Trinity, and Shasta counties between Cottonwood, California in the Central Valley, and Eureka, California on the Pacific Coast. The project includes the above- and below-ground installation of fiber optic cable and various network support facilities.

Work within U.S. Army Corps of Engineers' (Corps) jurisdiction will include crossing of jurisdictional waters of the U.S. in 499 locations within a 25-foot corridor along the project alignment. Of these crossings, 267 would temporarily disturb 0.80 acres and 12,212 linear feet of waters subject to jurisdiction pursuant to Section 404 of the Clean Water Act (CWA). In addition, the project would temporarily impact 0.01 acre of navigable waters subject to jurisdiction pursuant to of Section 10 of the Rivers and Harbors Act (RHA). All work shall be completed in accordance with the plans and drawings titled "USACE File #2019-00233, Digital 299 Broadband Project, November 8, 2022, Figure 1 to 3," provided as enclosure 1.

Section 404 of the Clean Water Act (CWA) generally regulates the discharge of dredged or fill material below the plane of ordinary high water in non-tidal waters of the United States, below the high tide line in tidal waters of the United States, and within the lateral extent of wetlands adjacent to these waters. Section 10 of the Rivers and Harbors Act (RHA) generally regulates construction of structures and work, including excavation, dredging, and discharges of dredged or fill material occurring below the plane of mean high water in tidal waters of the United States; in former diked baylands currently below mean high water; outside the limits of mean high water but affecting the navigable capacity of tidal waters; or below the plane of ordinary high water in non-tidal waters designated as navigable waters of the United States. Navigable waters of the United States generally include all waters subject to the ebb and flow of the tide; and/or all waters presently used, or have been used in the past, or may be susceptible for future use to transport interstate or foreign commerce.

Based on a review of the information in your submittal, the project qualifies for authorization under Department of the Army Nationwide Permit (NWP) 57 for Electric Utility Line and

Telecommunications Activities (86 Fed. Reg. 2744, January 13, 2021, pursuant to Section 404 of the CWA of 1972, as amended (33 U.S.C. § 1344 *et seq.*) and Section 10 of the RHA of 1899, as amended (33 U.S.C. § 403 *et seq.*). The project must be in compliance with the terms of the NWP, the general conditions of the Nationwide Permit Program, and the San Francisco District regional conditions cited on our website (www.spn.usace.army.mil/Missions/Regulatory/Permitting/Nationwide/). You must also be in compliance with any special conditions specified in this letter for the NWP authorization to remain valid. Non-compliance with any term or condition could result in the revocation of the NWP authorization for your project, thereby requiring you to obtain an Individual Permit from the Corps. This NWP authorization does not obviate the need to obtain other State or local approvals required by law.

This verification will remain valid until March 14, 2026, unless the NWP authorization is modified, suspended, or revoked. Activities which have commenced (i.e., are under construction) or are under contract to commence in reliance upon a NWP will remain authorized provided the activity is completed within 12 months of the date of a NWP'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 C.F.R. § 330.4(e) and 33 C.F.R. § 330.5(c) or (d). This verification will remain valid if, during the time period between now and March 14, 2026, the activity complies with any subsequent modification of the NWP authorization. The Chief of Engineers will periodically review NWPs and their conditions and will decide to modify, reissue, or revoke the permits. If a NWP is not modified or reissued within five years of its effective date, it automatically expires and becomes null and void. It is incumbent upon you to remain informed of any changes to the NWPs. Changes to the NWPs would be announced by Public Notice posted on our website (www.spn.usace.army.mil/Missions/Regulatory/Public-Notices.aspx). Upon completion of the project and all associated mitigation requirements, you shall sign and return the Certification of Compliance, enclosure 2, verifying that you have complied with the terms and conditions of the permit.

You shall comply with all terms and conditions set forth by the "Water Quality Order No. 2023-0014-DWQ Clean Water Act Section 401 Water Quality Certification and Order for the Digital 299 Broadband Project" issued by the State Water Resources Control Board on February 28, 2023. You shall consider such conditions to be an integral part of the NWP authorization for your project.

General Condition 18 stipulates that project authorization under a NWP does not allow for the incidental take of any federally-listed species in the absence of a biological opinion with incidental take provisions. As the principal federal lead agency for this project, the Corps initiated consultation with the United States Fish and Wildlife Service (USFWS) and National Marine Fisheries Service (NMFS) to address project related impacts to listed species, pursuant to

Section 7(a) of the Endangered Species Act of 1973, as amended, 16 U.S.C. § 1531 *et seq.* By letter of February 16, 2022, and January 25, 2022, NMFS and USFWS, respectively, concurred with the determination that the project was not likely to adversely affect SONCC coho salmon, NC Steelhead, CV steelhead, SR Chinook salmon, CC Chinook salmon, CV Chinook salmon, Southern DPS Green Sturgeon, Southern DPS Pacific Eulachon, marbled murrelet, northern spotted owl and tidewater goby and designated critical habitat for these species.

In order to ensure compliance with this NWP authorization, the following special conditions shall be implemented:

1. The USFWS and NMFS concurred with the determination that the project was not likely to adversely affect SONCC coho salmon, NC Steelhead, CV steelhead, SR Chinook salmon, CC Chinook salmon, CV Chinook salmon, Southern DPS Green Sturgeon, Southern DPS Pacific Eulachon, marbled murrelet, northern spotted owl and tidewater goby and designated critical habitat for these species. This concurrence was premised, in part, on project work restrictions and the description of the proposed action. These work restrictions are incorporated as special conditions to the NWP authorization for your project to ensure unauthorized incidental take of species and loss of critical habitat does not occur.
2. Excess material removed from the trench shall be disposed of at an upland site away from any wetlands or other waters of the U.S. so as to prevent this material from being washed into aquatic areas.
3. Access roads shall be properly stabilized and maintained during and following construction to prevent erosion. Construction of the road fill shall occur in a manner that minimizes the encroachment of trucks, tractors, bulldozers, or other heavy equipment within waters of the United States (including adjacent wetlands) that lie outside the lateral boundaries of the fill itself. Vegetative disturbance in the waters of the U.S. shall be kept to a minimum. Borrow material shall be taken from upland sources whenever feasible.
4. Any change in the project design, materials, or construction methods, must be approved by the Corps in writing.

You may refer any questions on this matter to myself by telephone at 707-443-0855 or by e-mail at l.k.sirkin@usace.army.mil. All correspondence should be addressed to the Regulatory Division, North Branch, referencing the file number at the head of this letter.

The San Francisco District is committed to improving service to our customers. My Regulatory staff seeks to achieve the goals of the Regulatory Program in an efficient and

cooperative manner while preserving and protecting our nation's aquatic resources. If you would like to provide comments on our Regulatory Program, please complete the Customer Service Survey Form available on our website: <http://www.spn.usace.army.mil/Missions/Regulatory.aspx>

Sincerely,



L. Kasey Sirkin
Team lead, RRTC
South Pacific Division

Enclosures

Copy Furnished (w/o encls):

Ms. Jess Alden, Transcon Environmental, jalden@transcon.com
Ms. Karen Collins, Vero Networks, kcollins@veronetworks.com
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