



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 6
1201 ELM STREET, SUITE 500
DALLAS, TEXAS 75270

December 14, 2020

Kelly E. Allen
Chief, Regulatory Division
Albuquerque District Corps of Engineers
4101 Jefferson Plaza NE
Albuquerque, NM 87109

RE: Clean Water Act Section 401 Water Quality Certification for the 2020 U.S. Army Corps of Engineers
Section 404 Nationwide Permits Reissuance, on behalf of Indian tribes that have not received
Treatment in a Similar Manner as a State for Section 401 in EPA Region 6.

Dear Ms. Allen:

This water quality certification applies to any potential point source discharges from potential projects authorized under the proposed reissuance of the following U.S. Army Corps of Engineers (Corps) Nationwide Permits (NWP) into waters of the United States that occur within tribal boundaries within the State of New Mexico: NWP 3, 4, 5, 6, 7, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 25, 27, 29, 30, 31, 32, 33, 34, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 48, 49, 50, 51, 52, 53, 54, C, D and E. The Corps is not requesting certification for 11 NWPs: 1, 2, 8, 9, 10, 11, 24, 28, 35, A, and B.

Section 401(a)(1) of the Clean Water Act (CWA) requires applicants for Federal permits and licenses that may result in discharges into waters of the United States to obtain certification that potential discharges will comply with applicable provisions of the CWA, including Sections 301, 302, 303, 306 and 307. Where no state agency or tribe has authority to give such certification, the U.S.

Environmental Protection Agency (EPA) is the certifying authority. In this case, the Pueblos of Cochiti, Jemez, Santo Domingo, San Felipe, San Ildefonso, Zia, Zuni, the Mescalero Apache Tribe, and Jicarilla Apache Nation do not have the authority to provide CWA Section 401 certification for discharges occurring within the boundaries of the aforementioned tribal lands, therefore, EPA Region 6 is making the certification decisions for discharges that may result from the potential projects authorized under the proposed Corps CWA 404 NWPs.¹ Consistent with the *EPA Policy on Consultation and Coordination with Indian Tribes*, EPA Region 6 circulated a letter dated September 18, 2020 offering to consult with tribes on the certification process and invite their participation.

Reissuance of NWPs Description

The Corps is proposing to re-issue its existing NWPs and associated general conditions and definitions, with some modifications. The Corps states that it is “proposing these modifications to simplify and clarify the NWPs, reduce burdens on the regulated public, and continue to comply with the statutory requirement that these NWPs authorize only activities with no more than minimal individual and cumulative adverse environmental effects.” 85 FR 57298. For more details:

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

¹ Ysleta del Sur Pueblo does not have TAS and falls within Corps Albuquerque District. The pueblo is situated within Texas. The pueblo will be covered under the certification letter for Texas.

General Information

The general information provided in this section does not constitute a certification condition(s).

Project proponents for potential projects authorized under the NWP's are responsible for obtaining all other permits, licenses, and certifications that may be required by federal, state, or tribal authorities.

Project proponents for potential projects authorized under the NWP's should conduct all work in such a manner as to comply with all Corps Section 404 permit conditions.

Copies of the Corps permit including this certification should be kept on the job site and readily available to the public for reference.

Project proponents for potential projects authorized under the NWP's should retain this certification in their files with the applicable NWP's as documentation of EPA's certification decisions for the above-referenced proposed NWP's. This certification is specifically associated with the proposed NWP's described above and expires when those NWP's expire, five years from Corps issuance date.

During project planning, EPA highly recommends the project proponent notify the appropriate tribal environmental office of the project details and location.

Certification Determination

Grant (121.7(c)):

On behalf of the Pueblos of Cochiti, Jemez, Santo Domingo, San Felipe, San Ildefonso, Zia, Zuni, the Mescalero Apache Tribe, and Jicarilla Apache Nation, CWA Section 401 certification, for the following proposed NWP's, is granted with no conditions. EPA Region 6 has determined that any discharge that could be authorized under the following proposed NWP's will comply with water quality requirements, as defined at 40 CFR 121.1(n).

NWP 3, 4, 5, 6, 7, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 25, 27, 29, 30, 31, 32, 33, 34, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 48, 49, 50, 51, 52, 53, 54, C, D, and E

Thank you for your ongoing partnership in implementing the regulatory programs of the CWA. Should your office have any questions, please feel free to contact Brianna Wadley of my staff at 214-665-2723, Wadley.Brianna@epa.gov.

Sincerely,

Charles Maguire

Charles W. Maguire
Director
Water Division