

Max Zuni
Governor



Lt. Governor, Eugene Jiron
Lt. Governor, Juan Rey Abeita

PUEBLO OF ISLETA
OFFICE OF THE GOVERNOR

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VIA EMAIL & CERTIFIED MAIL

January 6, 2023

Kelly Allen
Chief, Regulatory Division
Albuquerque District
U.S. Army Corps of Engineers
4101 Jefferson Plaza NE
Albuquerque, NM 87109
kelly.e.allen@usace.army.mil

Refer to: **Department of the Army Reissuance of Regional General Permit NM/West TX-17-01 for Emergency Repair and Protection Activities; Clean Water Act Section 401 Water Quality Certification**

Dear Ms. Allen:

The Pueblo of Isleta ("Pueblo") submits this letter, pursuant to Section 401 of the Clean Water Act, 33 U.S.C. 1341, and 40 C.F.R. Part 121, Water Quality Certification by a State or Indian Tribe, in response to the U.S. Army Corps of Engineers request for issuance of water quality certification for the Regional General Permit (RGP) NM/West TX-17-01 Emergency Repair and Protection Activities.

For projects within the exterior boundaries of the Pueblo, the Pueblo grants Clean Water Act (CWA) Section 401 water quality certification with conditions for the reissuance of RGP NM/West TX-17-01 Emergency Repair and Protection Activities. The conditions are as follows:

1. Removal of accumulated sediment, debris, and/or trash shall be to a temporary location or locations approved by the Governor of the Pueblo of Isleta.
 - a. **Justification.** This condition is necessary to ensure that activities allowed within the RGP comply with Pueblo of Isleta Surface Water Quality Standards ("WQS"), and that such activities do not create litter and result in sediment with contaminants that interfere with existing aquatic biota.
 - b. **Citation(s).** The following federal and Tribal laws authorize this condition:

- i. 40 C.F.R. 233.60, the CWA's recognition of the interest of Indian Tribes, subject to applicable eligibility requirements, in the administration of CWA regulatory programs on their reservations;
 - ii. Pueblo of Isleta WQS Section II(B)(1), "monitor water quality...to determine whether water quality standards are being attained";
 - iii. Pueblo of Isleta WQS Section III(B), "[s]urface waters shall be free from objectionable oils, scum, foam, grease, and other floating material and suspended substances of a persistent nature resulting from other than natural causes..."; and
 - iv. Pueblo of Isleta WQS Section III(P), "[s]ediment quality: man-made or man-induced activities shall not result in sediment with contaminants at concentrations which are toxic if absorbed by aquatic biota, livestock, wildlife or man or in quantities that interfere with the normal propagation, growth, and survival of the existing aquatic biota".
- 2. Location and access route of any containment structure, including erosion control basins or other basins constructed for temporary use, must be approved by the Governor of the Pueblo of Isleta before any initial operation begins.
 - a. **Justification.** This condition is necessary to ensure compliance with Pueblo of Isleta WQS; to support enforcement of federal permits by the U.S. Army Corps, including erosion control basins as an activity covered by the RGP, where such basins cannot be located within a perennial or intermittent stream. Further, in order to ensure that the Pueblo has the opportunity to inspect the activity or project prior to initial operation to determine whether there are violations of the certification, the project proponent must notify the Pueblo of the proposed location and access route of any containment structure in advance.
 - b. **Citation(s).** The following federal and Tribal laws authorize this condition:
 - i. 40 C.F.R. 233.60;
 - ii. Pueblo of Isleta WQS Section II(B)(1), "monitor water quality...to determine whether water quality standards are being attained";
 - iii. Pueblo of Isleta Section II(B)(10), "support the enforcement of federal permits by the...U.S. Army Corps of Engineers"; and
 - iv. 40 C.F.R. 121.11.
- 3. The Pueblo of Isleta Forest Supervisor shall approve the revegetation plan for the disturbed area.
 - a. **Justification.** This condition is necessary to ensure that affected areas that are revegetated both comply with Pueblo of Isleta WQS and do not contribute to nuisance aquatic vegetation. Further, the condition is necessary to provide the project proponent with clarity on what meets the Pueblo's requirement for appropriate revegetation as required by RGP General Condition 24.
 - b. **Citation(s).** The following federal and Tribal laws authorize this condition:
 - i. 40 C.F.R. 233.60; and
 - ii. Pueblo of Isleta WQS Section III(E), "[p]lant nutrients or other substances stimulating algal growth...shall not be present in concentrations that

produce objectionable algal densities or nuisance aquatic vegetation, or that result in a dominance of nuisance species instream, or that cause nuisance conditions in any other fashion.”

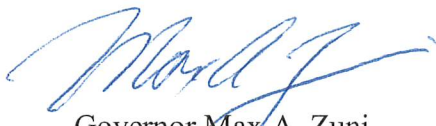
4. Work under this RGP may only be performed during daylight hours unless otherwise expressly authorized by the Governor of the Pueblo of Isleta.
 - a. **Justification.** This condition is necessary so that the Pueblo may monitor activities during daylight hours to ensure compliance with Pueblo of Isleta WQS, advise dischargers of discharge requirements, and to support enforcement of federal permits by the U.S. Army Corps of Engineers.
 - b. **Citation(s).** The following federal and Tribal laws authorize this condition:
 - i. 40 C.F.R. 233.60;
 - ii. Pueblo of Isleta WQS Section II(B)(1), “monitor water quality...to determine whether water quality standards are being attained”;
 - iii. Pueblo of Isleta WQS Section II(B)(3), “advise prospective dischargers of discharge requirements”; and
 - iv. Pueblo of Isleta Section II(B)(10) “support enforcement of federal permits by the...U.S. Army Corps of Engineers”.
5. For RGPs for which certification has been granted with conditions, the project proponent must notify the Pueblo in writing and phone call(s) of the use of the RGP before commencement of the project. Notification in writing and phone call must be made to all three contacts listed below. Dependent upon the nature of activity, project proponent may receive verbal or written permission for entry to Pueblo land. The notification to the Pueblo must include a short summary of the proposed summary of proposed activity, completed contact information of the applicant and contractor, permit notification(s), reports, any additional information submitted to the Army Corps of Engineers, and a summary of contacts.
 - a. **Justification.** This condition is necessary so that the Pueblo has notice of proposed projects and activities that will be taking place in water bodies within the Reservation. The condition is also necessary to ensure that the project proponent has considered the unique characteristics of the water body that will be impacted by the project, as best management practices used in or near one water body may not be applicable to activities at a different water body. Notification to the Pueblo is necessary to ensure that activities comply with Pueblo of Isleta WQS and will result in no more than minimal impacts to water quality. Last, in order to ensure that the Pueblo has the opportunity to inspect the activity or project prior to initial operation, the project proponent must notify the Pueblo in a timely manner.
 - b. **Citation(s).** The following federal and Tribal laws authorize this condition:
 - i. Pueblo of Isleta Constitution Article V, Section 2(e);
 - ii. Pueblo of Isleta Banishment Ordinance (adopted July 14, 1975);
 - iii. 40 C.F.R. 233.60;
 - iv. Pueblo of Isleta WQS Sections III(A)-(P), IV(A)-(E) (general standards applicable to all surface waters and standards specific to water body uses); and
 - v. 40 C.F.R. 121.11.

c. **Contacts.**

- i. Governor Max Zuni, Pueblo of Isleta, max.zuni@isletapueblo.com, (505) 869-3111
- ii. Ramona Montoya, Environment Department, Water Quality Control Officer, ramona.montoya@isletapueblo.com, (505) 869-7565
- iii. Emily Soli, Legal Department, emily.soli@isletapueblo.com, (505) 869-9716

If you have any questions on this matter, please contact Ms. Ramona Montoya via email and phone.

Respectfully,



Governor Max A. Zuni
Pueblo of Isleta

cc: Ramona Montoya, Environment Department, Water Quality Control Officer
Emily Soli, General Counsel