



Environmental & Natural Resources Department

December 15, 2020

Kelly Allen, Chief  
Regulatory Division  
Army Corps of Engineers, Albuquerque District  
4101 Jefferson Plaza NE  
Albuquerque, NM 87109-3435

Subject: Pueblo of Laguna Clean Water Act Section 401 Certification the U.S. Army Corps of Engineers  
Nationwide Permits.

Chief Allen:

The Pueblo of Laguna (the Pueblo) received treatment in a similar manner as a State to administer water quality standards and certification programs under the Clean Water Act (CWA) sections 303(c) and 401, U.S.C. section 1313(c) and 1341 by the U.S Environmental Protection Agency in December 2016. The Pueblo has initiated a review of the U.S. Army Corps of Engineers' (the Corps) Federal Register notice *Proposal to Reissue and Modify Nationwide Permits (NWP)*s.

The Pueblo is disappointed the Corps' leadership has continued efforts to reissue NWP's two-years ahead of schedule during a global pandemic. The Pueblo declared a Public Health Emergency in March of 2020 and has continued operating severely restricted conditions. By request of Governor Herrera, Jr., on November 24, 2020, all non-essential operations were suspended and tribal employees are to perform work outside of our normal job descriptions to assist the Pueblo's overburdened Emergency Operation Center. The Governor's mandate prioritizes our emergency response to the pandemic above all else. This has greatly impeded our ability to meet this unnecessarily accelerated timeline. We remain suspicious of the effort to push this action through while we see many other national efforts diminished or delayed in activity. The Corps has active NWP's established. The permits are not required to be re-issued until 2022. Based on this, we do not see justification give this effort precedent over our current critical COVID response.

The Pueblo respectfully requested an additional 60-days after the Pueblo lifts its Public Health Emergency response measures to certify the NWP's. The extension was denied.

In an optimal situation, the 60-day timeframe allocated to certify the NWP's is unreasonable due to the lack of clear CWA section 401 guidance from the Environmental Protection Agency. As noted above, this is not an optimal situation. The Pueblo's focus remains on our community as we respond to this ongoing crisis. Under normal circumstances, the Pueblo would choose to deny all NWP's and require individual certification for activities within our boundary in accordance with the new CWA section 401 Rule. Due to the strain of COVID-19, the Pueblo has not had the opportunity to fully review and implement the new CWA section 401 rule. To request certification of the reissuance of the NWP's under new and limited guidance on an accelerated timeline is dismissive of the current peril our Pueblo and Nation faces and shows

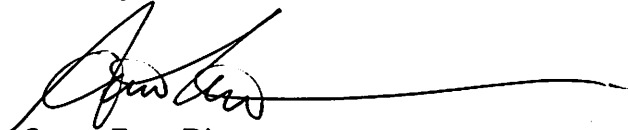
questionable prioritization by the Corps' leadership. The Corps leadership's determination to pursue this effort at this time only creates unnecessary animosity and erodes our decades-long partnership with the Corps. The Pueblo is grateful for the dedication of the Albuquerque District's staff who have consistently offered thoughtful guidance and patience throughout this process.

The Pueblo of Laguna certifies all NWP's with the following condition:

1. To ensure compliance with the Pueblo's Water Quality Standards Sections 11-2-1(A)(3)<sup>1</sup>, 11-2-8<sup>2</sup>, and 11-2-22(3)(4)(7)<sup>3</sup>, the Pueblo shall require Nationwide Permit applicants provide the Pueblo's Environmental & Natural Resources Department with their preconstruction notification form the same day the application is submitted to the Corps to [ewoodward@pol-nsn.gov](mailto:ewoodward@pol-nsn.gov), or by mail at the address below c/o the Environmental & Natural Resources Department.

If you have any questions, please contact E.N. Woodward, Water Quality Specialist, [ewoodward@pol-nsn.gov](mailto:ewoodward@pol-nsn.gov), or Steve Etter, Director, Environmental & Natural Resources Department, [setter@pol-nsn.gov](mailto:setter@pol-nsn.gov), or 505-552-7512. All non-Tribal entities are required to obtain an access permit through the Pueblo of Laguna's Secretary's Office. Accessing Pueblo lands without a permit is considered trespassing as per the Pueblo's General Civil Trespassing Code.

Sincerely,



Steven Etter, Director  
Environmental & Natural Resources Department

<sup>1</sup>Section 11-2-1(A)(3) – Authority and Purpose – Assure that degradation of Pueblo waters shall be minimized and that economic growth shall occur consistent with preserving the Pueblo's existing clean water resources.

<sup>2</sup>Section 11-2-8 – Collaboration with Federal and State Agencies – The Pueblo will collaborate with federal and state agencies to prevent, reduce, and eliminate water pollution in coordination with programs for managing water resources.

<sup>3</sup>Section 11-2-22 – Implementation

(3) Obtain and assess information on the impact of effluents on receiving waters, including the capability of receiving waters to support designated uses and achieve these LWQS (Laguna Water Quality Standards);

(4) Advise prospective dischargers of discharge requirements, and coordinate with the appropriate permitting agencies as to the same;

(7) Require that effluent limitations or other appropriate limitations applicable to activities with the potential to discharge into Pueblo waters be included in any permit as a condition for certification by the Pueblo pursuant to CWA § 401, 33 U.S.C. § 1341, as amended.