



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IX

75 Hawthorne Street

San Francisco, CA 94105-3901

MAR 15 2002

General Robert L. Davis
U.S. Army Corps of Engineers
South Pacific Division
333 Market Street
San Francisco, California 94105-2197

Attn: Mr. Wade Eakle

Subject: EPA's Denial of Water Quality Certification for Twelve Nationwide Permits on Tribal Lands

Dear General Davis:

As you know, under the Clean Water Act (CWA) Section 401, most states and some eligible tribes have the authority to condition, deny, approve, or waive certification of any federal license or permit that may result in discharges to their waters. In cases where the state or tribe does not have authority to issue such certifications, EPA has the authority to do so under CWA §401(a). Currently, we have the authority to issue certifications on tribal lands coinciding with the boundaries of your Division's District Offices based in Los Angeles, Sacramento, and San Francisco, as well as the Navajo Tribal Lands in New Mexico. Both the Hoopa Tribe and the White Mountain Apache Tribe have become authorized to condition, deny, approve, or waive certification for Nationwide Permits (NWP's).

As you are also aware, several of the old permits (including some for which we previously denied water quality certification) expired on 11 February 2002, and reissuance for these permits will not be effective until all of the new NWP's take effect 18 March 2002. As a supplement to our letter of 24 September 2001 (attached), we are responding to the Federal Register Notice published by the Corps on 15 January 2002 regarding the reissuance of the NWP's for discharge of dredge or fill materials into waters of the United States.

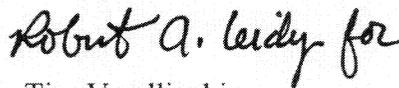
In the interim between the expiration and reissuance dates, we are reaffirming our denial of §401 certification on the eleven Nationwide Permits outlined in our letter of 24 September 2001, and deny water quality certification for Nationwide 21: Surface Coal Mining Activities. Coal mining can affect significant expanses of landscape and impact waters of the United States through myriad means, and the language authorizing activities under Nationwide 21 is too broad to warrant generic water quality certification from EPA. Therefore, by way of summary, the

following list of **twelve** Nationwide Permits are denied §401 certification on tribal lands within EPA Region IX:

- NWP 3 Maintenance
- NWP 7 Outfall Structures and Maintenance
- NWP 12 Utility Line Activities
- NWP 14 Linear Transportation Projects
- **NWP 21 Surface Coal Mining Activities**
- NWP 31 Maintenance of Existing Flood Control Facilities
- NWP 39 Residential, Commercial and Institutional Developments
- NWP 40 Agricultural Activities
- NWP 41 Reshaping Existing Drainage Ditches
- NWP 42 Recreational Facilities
- NWP 43 Stormwater Management Facilities
- NWP 44 Mining

On 8 January 2002, Corps Districts based in San Francisco, Los Angeles, and Sacramento afforded us the opportunity to discuss the NWP program, the proposed Regulatory Guidance Letter on mitigation policy, and the need for NWP regional conditions. As regional conditions are developed and finalized, we hope to reduce the list of activities where water quality certification is denied.

Sincerely,



Tim Vendlinski
Supervisor
Wetlands Regulatory Office

attachment: EPA letter to the Corps (9/24/01)

cc: Sacramento Corps District
San Francisco Corps District
Los Angeles Corps District
Albuquerque Corps District
Applicable Tribal Governments