

***Final 2021 Nationwide Permit (NWP) Regional Conditions
for the State of California***

*(NWPs 12, 21, 29, 39, 40, 42-44, 48, 50-52, and 55-58,
Effective March 15, 2021 until March 15, 2026)*

A. Regional Conditions for the State of California:

1. The permittee shall submit a pre-construction notification (PCN) for all 2021 NWPs, in accordance with General Condition 32, in the following circumstances:

a. Activities involving new bank stabilization that do not incorporate bioengineering techniques. Bioengineering techniques include using live plants alone or in combination with dead or inorganic materials, including rock, sand, or gravel;

b. Activities resulting in a discharge of dredged or fill material in waters of the U.S. on Tribal Lands;

c. Activities involving the permanent channelization, realignment, or relocation of streams; and,

d. Activities that have the potential to adversely affect Essential Fish Habitat (EFH), as designated by the Pacific Fishery Management Council. The PCN shall include an EFH assessment and analysis of effects of the action on EFH, in accordance with 50 C.F.R. § 600.920 (e). For Federal permittees, if a PCN is required for the proposed activity, the Federal permittee must provide the district engineer with the appropriate documentation to demonstrate compliance with the Magnuson-Stevens Fishery Conservation and Management Act.

2. In the desert regions of Los Angeles District (USGS Hydrologic Unit Code accounting units: *Lower Colorado* - 150301, *Northern Mojave* - 180902, *Southern Mojave* - 181001, and *Salton Sea* - 181002), the use of NWP 12, 21, 29, 39, 40, 42, 43, 44, 50, 51, 52, 57 and 58 resulting in greater than 0.10-acre loss of wetlands, mudflats, vegetated shallows, or riffle and pool complexes, as defined at 40 CFR Part 230.40-45, is prohibited.

3. In the Los Angeles District, NWPs 29, 39, 42 and 43, and NWP 14 combined with any of those NWPs, cannot authorize a loss of waters of the United States greater than 0.25 acre within the Murrieta Creek and Temecula Creek watersheds in Riverside County.

4. In the Los Angeles District, all 2021 NWPs are revoked within the Special Area Management Plan areas of the San Diego Creek Watershed and San Juan Creek/Western San Mateo Creek Watersheds in Orange County, California.

5. In the Los Angeles District, the permittee shall submit a pre-construction notification (PCN) for all 2021 NWP, in accordance with General Condition 32, in the following circumstances:

a. Activities that would result in a loss of waters of the United States within the Murrieta and Temecula Creek watersheds in Riverside County, California; and,

b. Activities that would result in a loss of waters of the United States within Santa Clara River watershed in Los Angeles and Ventura County, California, including but not limited to Aliso Canyon, Agua Dulce Canyon, Sand Canyon, Bouquet Canyon, Mint Canyon, South Fork of the Santa Clara River, San Francisquito Canyon, Castaic Creek, Piru Creek, Sespe Creek and the main-stem of the Santa Clara River; and,

c. Activities that would result in a loss of waters of the United States within all watersheds in the Santa Monica Mountains in Los Angeles and Ventura County, California, bounded by Calleguas Creek on the west, by Highway 101 on the north and east, and by Sunset Boulevard and Pacific Ocean on the south; and,

d. Activities that would result in a loss of waters of the United States within all perennial waterbodies and special aquatic sites.

6. In the San Francisco District, the use of NWP 29 and 39 is prohibited within the San Francisco Bay diked baylands¹ (see figure 1).

7. In the San Francisco District, the permittee shall submit a pre-construction notification (PCN), in accordance with General Condition 32, for all 2021 NWP activities that will take place in waters or wetlands of the U.S. that are within the San Francisco Bay diked baylands¹ (see figure 1).

8. In the Sacramento District, the use of any 2021 NWP authorizing the discharge of dredged or fill material in peatlands² containing histosols, including bogs and fens, is prohibited.

¹The San Francisco Bay diked baylands are defined as undeveloped areas that are currently behind levees and are within the historic margin of the Bay. The historic margin of the Bay is defined as areas on the Nichols and Wright map (see figure 1) below the 5-foot contour line, National Geodetic Vertical Datum (NGVD) (Nichols, D.R., and N. A. Wright. 1971. Preliminary map of historic margins of marshland, San Francisco Bay, California. U.S. Geological Survey Open File Map).

²A peatland is defined as a wetland with saturated organic soil (greater than or equal to 16 inches in thickness) that is classified as a histosol in the Natural Resources Conservation Service (NRCS) Field Indicators of Hydric Soils in the United States (Version 8.0, 2016). A copy of the document can be obtained from the NRCS at: [http://www.nrcs.usda.gov/Internet/ DOCUMENTS/nrcs142p2_053171.pdf](http://www.nrcs.usda.gov/Internet/DOCUMENTS/nrcs142p2_053171.pdf)

B. 401 Water Quality Certification (401 WQC) Regional Conditions for California:

1. The following conditions from the attached December 11, 2020, 401 WQC granted by the U.S. Environmental Protection Agency (EPA), shall apply to NWP 43 on tribal lands within U.S. EPA Region 9³ boundaries in the State of California:

a. All applicants must provide notice to EPA Region 9 prior to commencing construction to provide EPA Region 9 with the opportunity to inspect the activity for the purposes of determining whether any discharge from the proposed project will violate this water quality certification. Where the Corps requires a PCN for the applicable NWP, the applicant should also provide the PCN to Region 9. Within 30 days, EPA Region 9 will provide written verification to the applicant that the proposed project will not violate the water quality certification of the NWP.

b. Projects or activities are not authorized under the NWP if the project will involve point source discharge into an active channel of a water of the U.S. identified as a section 303(d) or TMDL listed impaired waterbody and the discharge may result in further exceedance of a specific parameter (e.g. total suspended solids, dissolved oxygen, temperature) for which the waterbody is listed. The current lists of 303(d) and TMDL listed waterbodies are available on EPA Region 9's web site at: <https://www.epa.gov/tmdl/impaired-waters-and-tmdls-pacific-southwest-region-9>

2. The following conditions from the attached December 11, 2020, 401 WQC granted by the Morongo Band of Mission Indians, shall apply to NWPs 21, 29, 39, 40, 42, 43, 44, 48, 50, 51, and 52, on the Morongo Reservation within the **Los Angeles District** boundaries in the State of California:

a. All NWP-authorized projects proceeding on the Morongo Reservation must submit notification to the Tribe. In the case where a PCN is required by the Corps, the applicant shall submit a copy of the PCN to the Morongo Environmental Protection Department (MEPD). In the case where a PCN is not required by the Corps, the applicant must submit either a notification as outlined in NWP General Condition 32 or a modified notification subject to the criteria outlined in the attached December 11, 2020, 401 water quality certification granted by the Morongo Band of Mission Indians. If a waiver of impact limits is proposed beyond what is approved under this certification, applicants must include written determinations specified in this Certification's General Condition 2 Waivers for Tribal approval.

³The EPA 401 WQC does not apply to activities proceeding in the territories of the 23 tribes in Region 9 that have been approved as Section 401 certifying authorities —the Navajo Nation, Hualapai Tribe, Paiute-Shoshone of the Bishop Community, Big Pine Paiute-Shoshone Tribe, Twenty-Nine Palms Band of Mission Indians, Hoopa Valley Tribe, Hopi Tribe, Pyramid Lake Paiute Tribe, Dry Creek Rancheria of Pomo Indians, Pala Band of Mission Indians, Cortina Band of Wintun Indians, Walker River Paiute Tribe, Yerington Paiute, Duck Valley, Confederated Tribes of the Goshute Reservation, Gila River Indian Community, San Carlos Apache, Morongo Band of Mission Indians, Big Pine Paiute Tribe of the Owen Valley, Rincon Band of Luiseno Indians, Cabazon, Quartz Valley, Karuk and White Mountain Apache Tribe. In limited circumstances, some lands within tribal boundaries fall outside a tribe's Section 401 certifying authority and are subject to this certification.

b. To ensure that tribal waters receive an adequate level of protection, and to prevent the NWP Program from having more than minimal adverse impacts to the aquatic environment, all proposed impact limit waivers are denied under this certification unless the Tribe approves a written determination that the waiver will not exceed minimal impacts to aquatic resource functions.

c. To ensure authorized activities will cause no more minimal adverse environmental effects, individually and cumulatively, 300 linear foot limits are included in the conditions for NWPs 21, 29, 39, 40, 42, 43, 44, 50, 51, and 52.

d. For NWPs 21, 29, 39, 40, 42, 43, 44, 50, 51, and 52: impacts are limited to either 1/2 acre or 300 linear feet of waters of the U.S. The discharge must not cause the loss of more than 300 linear feet of stream bed. The loss of stream bed, plus any other losses of jurisdictional wetlands and waters caused by the NWP activity, cannot exceed 1/2-acre.

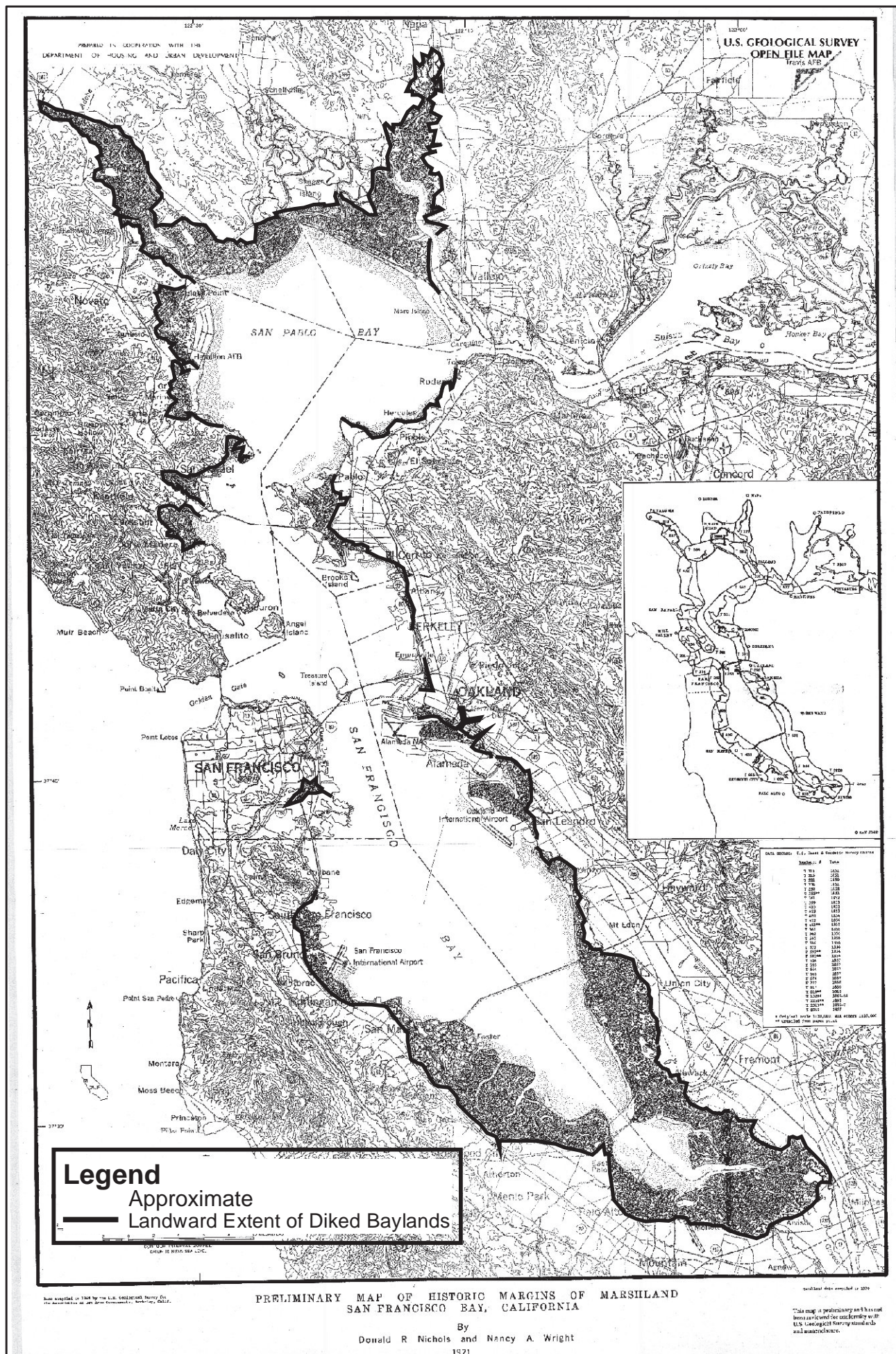
3. The following conditions from the attached December 14, 2020, 401 WQC granted by the Pala Band of Mission Indians, shall apply to all 2021 NWPs on the Pala Reservation within the **Los Angeles District** boundaries in the State of California:

a. The applicant for any NWP-authorized project on the Pala Reservation shall provide notification to the Pala Band of Mission Indians Environmental Department (PED) when the application for an NWP is submitted to the Corps. If an NWP requires a PCN, the applicant can satisfy this condition by providing a copy of the PCN to PED as its 401 notification in advance of any authorization letter from the Corps allowing the applicant to proceed under an NWP. If an NWP does not require a PCN, the applicant still must notify PED prior to receipt of an authorization letter from the Corps allowing the applicant to proceed under an NWP. In either situation, submittals shall be written, may be electronic, and shall be made to Pala Environmental Department, 35008 Pala Temecula Road Pala, CA 92059, Attn: Section 401 Group. All submittals for projects using one of the conditionally certified NWPs shall include the criteria outlined in the attached December 14, 2020, 401 water quality certification granted by the Pala Band of Mission Indians.

b. Except as allowed by the applicable NWP, no debris, silt, sand, cement, concrete, oil or petroleum, organic material, or other construction materials or wastes shall enter any waters of the U.S. or be stored where it may be washed by runoff into any waters of the U.S. Silt fences, straw wattles, and other techniques shall be employed as appropriate to protect waters of the U.S. from such discharges. Permittees and their contractors shall minimize channel and bank erosion within the waters of the U.S.

c. The permittee shall allow PED to inspect the authorized activity and any mitigation areas at any reasonable time that PED deems necessary to determine if the project complies with the terms and conditions of the NWP and this certification or any project-specific certification.

Figure 1: Map of Diked Baylands





UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105-3901

Brigadier General Paul E. Owen
Division Engineer, South Pacific Division
U.S. Army Corps of Engineers
1455 Market Street
San Francisco, CA 94103-1398

Subject: Programmatic Clean Water Act, Section 401 Certification of the Draft 2020 Nationwide Permits for Tribal Lands within the Region 9 coverage area of the U.S. Environmental Protection Agency

Dear General Owen,

The U.S. Environmental Protection Agency Region 9 (EPA) has responsibility under section 401 of the Clean Water Act (CWA) to evaluate and certify water quality protections for federal permits or licenses issued for work on tribal lands (40 CFR 121.13(a)). We have reviewed the U.S. Army Corps of Engineers (Corps) Federal Register notice dated September 15, 2020, announcing the proposed issuance of the Corps' CWA Section 404 Nationwide Permits (NWP). We have also reviewed the regional conditions proposed for each District within the South Pacific Division and hereby transmit our programmatic water quality certification of these general permits. The enclosed conditions of the NWPs become binding requirements of NWPs issued for work on tribal lands within EPA Region 9.^{1,2} Please instruct your regulatory staff to provide this certification to anyone contacting the Corps with applicable projects.

Based on a thorough review of the materials provided by the Corps, EPA made a determination as to whether potential discharges authorized by the proposed NWPs will comply with applicable provisions of Sections 301, 302, 303, 306 and 307 of the CWA. In summary, of the 57 proposed active permits, EPA is conditionally certifying 19 NWPs, denying 12 NWPs, and waiving certification for 15 NWPs. The Corps is not requesting certification for 11 NWPs.³ The 401 certification conditions are necessary to assure that potential discharges authorized by the NWPs will comply with applicable water quality requirements. A table summarizing the certification status for each NWP, is included in the attached certification. The attached programmatic 401 certification will remain in effect for the authorization

¹ This water quality certification does not apply to activities proceeding in the territories of the 23 tribes in Region 9 that have been approved as Section 401 certifying authorities —the Navajo Nation, Hualapai Tribe, Paiute-Shoshone of the Bishop Community, Big Pine Paiute-Shoshone Tribe, Twenty-Nine Palms Band of Mission Indians, Hoopa Valley Tribe, Hopi Tribe, Pyramid Lake Paiute Tribe, Dry Creek Rancheria of Pomo Indians, Pala Band of Mission Indians, Cortina Band of Wintun Indians, Walker River Paiute Tribe, Yerington Paiute, Duck Valley, Confederated Tribes of the Goshute Reservation, Gila River Indian Community, San Carlos Apache, Morongo Band of Mission Indians, Big Pine Paiute Tribe of the Owen Valley, Rincon Band of Luiseno Indians, Cabazon, Quartz Valley, Karuk and White Mountain Apache Tribe. In limited circumstances some lands within tribal boundaries fall outside a tribe's Section 401 certifying authority and are subject to this certification.

² Consistent with the *EPA Policy on Consultation and Coordination with Indian Tribes*, EPA sent a letter dated September 29, 2020, offering to consult with tribes in Region 9 on this certification. EPA did not receive any formal requests for consultation or any written comments on the draft certification.

³ The 11 NWPs are as follows: 1, 2, 8, 9, 10 11, 24, 28, 35, A, B.

period of the 2020 NWP's and will be re-evaluated when the NWP's are next proposed for reissuance and revisions in 2025.

If a project fails to meet the enclosed conditions, the applicant must contact EPA Region 9 for individual project certification. Please advise project proponents who seek authorization under the NWP's for individual project certification on tribal lands within EPA Region 9 to submit their questions, pre-filing meeting requests, and subsequent 401 certification requests when required to: R9-401-Certs@epa.gov.

Thank you for your ongoing partnership in implementing the regulatory programs of the CWA. Please contact me at (415) 972-3337 with any questions regarding this conditional certification, or have your staff contact Elizabeth Goldmann at (415) 972-3398 or goldmann.elizabeth@epa.gov.

Sincerely,

Tomás Torres
Director
Water Division

Enclosure:

U.S. Environmental Protection Agency Region 9's Programmatic Clean Water Act Section 401
Certification of the 2020 Nationwide Permits for Projects on Applicable Tribal Lands in California,
Nevada, Arizona and Navajo Allottee Lands

cc:

All federally recognized Indian Tribes within EPA Region 9
James Mazza, Regulatory Branch Chief, San Francisco District
Michael Jewel, Regulatory Branch Chief, Sacramento District
David Castanon, Regulatory Branch Chief, Los Angeles District
Kelly Allen, Regulatory Branch Chief, Albuquerque District
Wade Eakle, Corps, South Pacific Division
Trevor Baggione, Arizona Department of Environmental Quality
Paul Hann, California State Water Resources Control Board
Birgit Widegren, Nevada Division of Environmental Protection

Enclosure

U.S. Environmental Protection Agency Region 9's Programmatic Clean Water Act Section 401 Certification of the 2020 Nationwide Permits for Projects on applicable Tribal Lands in California, Nevada, Arizona and Navajo Allottee Lands

This Certification applies to any potential point source discharges from potential projects authorized under the proposed re-issuance of the following U.S. Army Corps of Engineers (Corps) CWA 404 Nationwide Permits (NWP) into waters of the United States that occur within applicable tribal lands in California, Nevada, Arizona and Navajo Allottee land in the corresponding Sacramento, San Francisco, Los Angeles and Albuquerque Corps Districts: 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, and 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 CWA requires applicants for Federal permits and licenses that may result in discharges into waters of the United States, to obtain certification that any such 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, U.S. Environmental Protection Agency (EPA) Region 9 is the certifying authority. In this case, the EPA is making the certification decision for potential discharges that may result from the projects authorized under the proposed Corps CWA 404 NWPs listed above.¹

Project 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

¹ This water quality certification does not apply to activities proceeding in the territories of the 23 tribes in Region 9 that have been approved as Section 401 certifying authorities —the Navajo Nation, Hualapai Tribe, Paiute-Shoshone of the Bishop Community, Big Pine Paiute-Shoshone Tribe, Twenty-Nine Palms Band of Mission Indians, Hoopa Valley Tribe, Hopi Tribe, Pyramid Lake Paiute Tribe, Dry Creek Rancheria of Pomo Indians, Pala Band of Mission Indians, Cortina Band of Wintun Indians, Walker River Paiute Tribe, Yerington Paiute, Duck Valley, Confederated Tribes of the Goshute Reservation, Gila River Indian Community, San Carlos Apache, Morongo Band of Mission Indians, Big Pine Paiute Tribe of the Owen Valley, Rincon Band of Luiseno Indians, Cabazon, Quartz Valley, Karuk and White Mountain Apache Tribe. In limited circumstances some lands within tribal boundaries fall outside a tribe's Section 401 certifying authority and are subject to this certification.

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

General Information

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

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

Copies of this certification shall be kept on the job site and readily available for reference.

The project proponent for potential projects authorized under the NWP are encouraged to contact EPA Region 9 during the project planning phase if there are any questions about relevant best management practices (e.g., bioengineering techniques, biodegradable erosion control measures, revegetation using native plant species, suitable fill materials, and disposal of debris/construction materials preventing runoff) and resources that can assist with compliance.

Prior to work commencing, project proponents should notify the appropriate Tribal Environmental Office.

Project proponents for potential projects should also notify the appropriate Tribal Office and EPA Region 9 if spills or unauthorized discharges occur during the project.

Pursuant to CWA section 308(a), EPA Region 9 representatives are authorized to inspect the authorized activity and any mitigation areas to determine compliance with the terms and conditions of the NWP.

If you have questions regarding this certification, please contact EPA Region 9 at: R9-401-Certs@epa.gov.

Granted with Conditions (121.7(d)(2)):

On behalf the 125 federally recognized tribes with tribal lands within Region 9, CWA Section 401 certification, for the following proposed NWPs, is granted with conditions. EPA Region 9 has determined that any discharge authorized under the following proposed NWPs will comply with water quality requirements, as defined at 40 CFR 121.1(n), subject to the following conditions pursuant to Section 401(d).

NWPs 5, 6, 7, 18, 19, 20, 23, 25, 27, 32, 33, 36, 37, 38, 41, 43, 45, 53, and E.

Condition 1 – Notification to EPA

All applicants must provide notice to EPA Region 9 prior to commencing construction to provide EPA Region 9 with the opportunity to inspect the activity for the purposes of determining whether any discharge from the proposed project will violate this water quality certification. Where the Corps requires a PCN for the applicable NWP, the applicant should also provide the PCN to

Region 9. Within 30 days, EPA Region 9 will provide written verification to the applicant that the proposed project will not violate the water quality certification of the NWP.

Why the condition is necessary to assure that any discharge authorized under the general license or permit will comply with water quality requirements:

This condition is necessary to provide EPA Region 9 with notice and information to allow for an efficient and effective pre-operation inspection to determine if the certified discharge will violate the certification. If the project scope changes during the Corps review prior to initiation of the activity, it is also critical for EPA Region 9 to be provided any changes in the project design, scope, amount and location of discharges to inform the pre-operation inspection opportunity as provided by 40 CFR 121.11(a).

Citation(s) that authorizes this condition: 40 CFR 121.11(a)

Condition 2 – Projects or Activities Discharging to Impaired Waters

Projects or activities are not authorized under the NWP if the project will involve point source discharge into an active channel of a water of the U.S. identified as a section 303(d) or TMDL listed impaired waterbody and the discharge may result in further exceedance of a specific parameter (e.g. total suspended solids, dissolved oxygen, temperature) for which the waterbody is listed. The current lists of 303(d) and TMDL listed waterbodies are available on EPA Region 9's web site at: <https://www.epa.gov/tmdl/impaired-waters-and-tmdls-pacific-southwest-region-9>.

Why the condition is necessary to assure that any discharge authorized under the general license or permit will comply with water quality requirements:

A 303(d) listed waterbody is impaired due to the cumulative effects of discharges of pollutants. The NWP does not provide necessary activity specific information to determine compliance with specific water quality requirements, such as limits on total suspended solids, temperature, dissolved oxygen, nutrients, or pH for which a specific waterbody could be listed as impaired. Site specific analysis is required to determine whether water quality requirements are met in the active channel of a water of the U.S. identified as a section 303(d) or TMDL listed impaired waterbody.²

Citation(s) that authorizes this condition: CWA section 303(d)

Denied (121.7(e)(2))

On behalf of the 125 federally recognized tribes with tribal lands within EPA Region 9, EPA Region 9 cannot certify that the range of discharges from potential projects authorized under the following proposed NWP will comply with water quality requirements, as defined in 40 CFR 121.1(n). Therefore, CWA Section 401 water quality certification is denied for NWP 3, 12, 13, 14, 29, 39, 40, 42, 44, 51, C and D, and applicants must request an individual water quality certification, consistent with 40 CFR 121.5.

Certification denial is due to insufficient information. 40 CFR 121.7(e)(2)(iii). In EPA's unique role certifying on behalf of a tribe, in a tribal jurisdiction where EPA is not the regulator, EPA lacks important information about tribal water resources. In the case of the 125 federally

²For example, Granite Creek in Arizona, a 303(d) listed as impaired for *e. coli*, runs through Yavapai Prescott Indian Reservation.

recognized tribes with tribal lands within EPA Region 9, EPA Region 9 lacks sufficient information on sensitive resources that may exist on these tribal lands, potential impaired waters on these tribal lands, and potential cultural importance of the water resources on these tribal lands. Additional information on these specific subjects would be needed for EPA Region 9 to assure that the range of discharges from potential projects authorized under NWPs 3, 12, 13, 14, 29, 39, 40, 42, 44, 51, C, and D will comply with water quality requirements, as defined in 40 CFR 121.1(n).

This information would also be necessary for EPA Region 9 to identify specific water quality requirements and evaluate whether the range of discharges from potential projects will comply with such requirements, in accordance with CWA section 401(a)(1) and 40 CFR 121.7(b). Lacking this information, EPA Region 9 is therefore denying certification.

Waived (121.9(a)(1)):

On behalf of the 125 federally recognized tribes with tribal lands within U.S. Environmental Protection Agency (EPA) Region 9, EPA Region 9 is expressly waiving its authority to act on the CWA Section 401 certification request for the following proposed NWPs:

NWPs 4, 15, 16, 17, 21, 22, 30, 31, 34, 46, 48, 49, 50, 52, 54

Summary Table – EPA Region 9 CWA § 401 Certification of NWPs

NWP	Certification Status			NWPs the Corps is not Requesting Certification	Specific Conditions
	Certified with Conditions	Denial	Waived		
1				X	
2				X	
3		X			
4			X		
5	X				Notice to EPA, NWP not applicable to 303(d) listed waters
6	X				Notice to EPA, NWP not applicable to 303(d) listed waters
7	X				Notice to EPA, NWP not applicable to 303(d) listed waters
8				X	
9				X	
10				X	
11				X	
12		X			
13		X			
14		X			

15			X		
16			X		
17			X		
18	X				Notice to EPA, NWP not applicable to 303(d) listed waters
19	X				Notice to EPA, NWP not applicable to 303(d) listed waters
20	X				Notice to EPA, NWP not applicable to 303(d) listed waters
21			X		
22			X		
23	X				Notice to EPA, NWP not applicable to 303(d) listed waters
24				X	
25	X				Notice to EPA, NWP not applicable to 303(d) listed waters
26				Reserved. This NWP is no longer in use.	
27	X				Notice to EPA, NWP not applicable to 303(d) listed waters
28				X	
29		X			
30			X		
31			X		
32	X				Notice to EPA, NWP not applicable to 303(d) listed waters
33	X				Notice to EPA, NWP not applicable to 303(d) listed waters
34			X		
35				X	
36	X				Notice to EPA, NWP not applicable to 303(d) listed waters
37	X				Notice to EPA, NWP not applicable to 303(d) listed waters
38	X				Notice to EPA, NWP not applicable to 303(d) listed waters
39	X				Notice to EPA, NWP not applicable to 303(d) listed waters
40		X			
41	X				Notice to EPA, NWP not applicable to 303(d) listed waters
42		X			
43		X			
44		X			

USEPA Region 9 Programmatic CWA§401 Certification of the 2020 NWP for projects on applicable tribal lands

45	X				Notice to EPA, NWP not applicable to 303(d) listed waters
46			X		
47				Reserved. This NWP is no longer in use.	
48			X		
49			X		
50			X		
51		X			
52			X		
53	X				Notice to EPA, NWP not applicable to 303(d) listed waters
54			X		
A				X	
B				X	
C		X			
D		X			
E	X				Notice to EPA, NWP not applicable to 303(d) listed waters

**Morongo Band of Mission Indians
Clean Water Act Section 401 Certification
2020 Army Corps of Engineers Nationwide Permits**

This is the conditional CWA §401 Certification of the 2020 NWP for projects on the Morongo Reservation. Section 401(a)(1) of the CWA requires Applicants for Federal permits and licenses that may result in discharges into waters of the U.S. to obtain certification that the discharge will comply with applicable provisions of the CWA, including Sections 301, 302, 303, 306 and 307. The Morongo Band of Mission Indians has received Treatment as a State authority to issue certification.

Applicable Water Quality Requirements

In exercising authority under 33 U.S.C. § 1341, the Tribe has reviewed the proposed permits for consistency with the following:

1. Applicable water quality-based, technology-based, and toxic or pretreatment effluent limitations as provided under 33 U.S.C. §§1311, 1312, 1313, 1316, and 1317 (FWPCA §§ 301, 302, 303, 306 and 307);
2. Federally approved water quality standards contained in California Water Quality Standards in the Water Quality Control Plan for the Colorado River Basin Region and authorized by 33 U.S.C. §1313 for protection of downstream waters;
3. Water quality objectives and protections provided for in the Morongo Band of Mission Indians Surface Water Quality Protection Ordinance (Ordinance 39); and
4. All known, available and reasonable methods to prevent and control pollution of waters of the U.S. (40 CFR 125.3).

This certification provides reasonable assurance that projects will comply with these federally approved water quality requirements, provided that the following conditions are adhered to.

General Conditions

1. Notification

Pre-construction notification requirements provide the Corps and the Tribe the opportunity to evaluate certain NWP activities on a case-by-case basis to ensure the proposed activity will cause no more than minimal adverse environmental effects individually and cumulatively. Notification allows the Corps to evaluate project impacts at a regional scale (e.g., waterbody or watershed) and determine whether to restrict NWP use in sensitive resource areas. The Corps can also add conditions to NWPs such as best management practices or compensatory mitigation to offset authorized losses of waters of the U.S., including wetlands.

The Tribe has the expertise to evaluate effects of NWPs issued on tribal land and ensure water quality requirements will be met. Additionally, tribal law requires notice to the Environmental Protection Department prior to an activity that will result in a discharge to tribal waters, within 24 hours of emergency activity, and in the case of an unpermitted discharge.¹ Notification for projects on tribal land

¹ Morongo Band of Mission Indians Surface Water Protection Ordinance Sections VI(C), VI(D), and VI(E).

will also ensure compliance with the protection of downstream waters under the jurisdiction of the State of California. Without notification, there is no way to determine whether effects will be minimal or meet water quality requirements found in tribal law.²

All NWP-authorized projects proceeding on the Morongo Reservation must submit notification to the Tribe. In the case where a PCN is required by the Corps, the applicant shall submit a copy of the PCN to the Morongo Environmental Protection Department (MEPD). In the case where a PCN is not required by the Corps, the applicant must submit either a notification as outlined in NWP General Condition 32 or a modified notification subject to the criteria below. If a waiver of impact limits is proposed beyond what is approved under this certification, applicants must include written determinations specified in this Certification's General Condition 2 *Waivers* for Tribal approval.

- 1) Timing. Applicants shall submit notice to the MEPD as early as possible and at least 30 days before initialing a project under a NWP. When a Tribal approval is required by condition in this certification, the Tribe will act within 30 days of receiving a complete notification.
- 2) Content. The notification must be in writing (email is acceptable) and include the following information:
 - a. Name, address, email address, and telephone numbers of the applicant and any agents or representatives;
 - b. Location of the proposed project;
 - c. A description of the proposed project and impacts sufficiently detailed to determine compliance with NWP and Tribal 401 conditions including:
 - i. The project purpose;
 - ii. Direct and indirect adverse environmental effects the project would cause, including the proposed acreages and linear feet (for streams) of waters impacted, avoided, and where applicable, created or otherwise mitigated;
 - iii. Any other permits used or intended to be used to authorize any part of the proposed project or related activity;
 - iv. A written statement describing how the activity has been designed to avoid or minimize adverse effects, both temporary and permanent, to waters of the United States;
 - v. Drawings, including plan and cross-section views, clearly depicting the location, size and dimensions of the proposed activity;

² Morongo Band of Mission Indians Surface Water Protection Ordinance 39 states "The purpose of this Ordinance is to carry out the provisions of the Morongo Environmental Protection Ordinance, Section IV(C)(1), to protect surface water quality on the Reservation. Carrying out this purpose includes, among other things, protecting the health, safety and welfare of Tribal members and all other persons within the exterior boundaries of the Reservation; preventing the deterioration of water quality and other natural resources resulting from surface water pollution; and protecting the cultural, social, and economic stability of the Reservation. The Tribe intends to carry out the purpose of this Ordinance by reducing and/or controlling present and future sources of surface water pollution within the exterior boundaries of the Reservation in a manner that achieves a quality of water that maintains the chemical, physical, and biological integrity of the waters within the jurisdiction of the Tribe in order to preserve and enhance the environment within the Reservation and on the lands immediately surrounding the Reservation.

- d. A description of proposed construction best management practices (BMPs) to be used during construction of the proposed activities. If no BMPs are proposed, the notification shall include a description of why their use is not practicable or necessary;
- e. For activities proposed for the purpose of temporary access and construction which would result in the placement of dredged or fill material into the waters of the U.S., provide:
 - i. The reason(s) why avoidance of temporary fill is not practicable;
 - ii. A description of the proposed temporary fill, including the type and amount (in cubic yards) or material to be placed;
 - iii. The area (in acres) and length (in linear feet) of waters where the temporary fill is proposed to be placed; and
 - iv. A proposed plan for restoration of the temporary fill area to pre-project contours and conditions'
- f. Consistent with this Certification General Condition 2 *Waivers*, a written demonstration that any proposed impact limit waiver that may be allowable under this certification will result in minimal impacts to aquatic resource functions;
- g. The name(s) of any species listed as endangered or threatened under the Endangered Species Act which may be adversely affected by the proposed work, either directly or by impacting designated critical habitat;
- h. Identification of any cultural or historic properties listed in, or eligible for listing in, the National Register of Historic Places that may be adversely affected by the proposed work.

Correspondence should be submitted to:

Morongo Band of Mission Indians
Environmental Protection Department
12700 Pumarra Road
Banning, CA 92220
Email: epd@morongo-nsn.gov

2. *Waivers*

For Certain NWP, Corps District Engineers may waive impact thresholds by making written documentation that the discharges will result in minimal adverse effects. To ensure that tribal waters receive an adequate level of protection, and to prevent the NWP Program from having more than minimal adverse impacts to the aquatic environment, all proposed impact limit waivers are denied under this certification unless the Tribe approves a written determination that the waiver will not exceed minimal impacts to aquatic resource functions. Tribal waiver review is consistent with the avoidance of "substantial" impacts required in Morongo Ordinance 39 and will allow for compliance with all tribal laws relating to water quality impacts.³ Without tribal waiver review, there is not sufficient information that the discharge from the NWP activity will comply with water quality requirements.

³ Morongo Band of Mission Indians Surface Water Protection Ordinance 39 states "Any activity shall not cause substantial alteration of hydroperiod, flows, groundwater or surface water quality, or fish and wildlife habitat. All activities shall comply with all applicable federal and Morongo Band of Mission Indian laws, including those related

The Tribe will act within 30 days of receiving a complete PCN or modified notification as outlined in General Condition 1 *Notification* when tribal approval is required for a waiver.

3. Retention of 300 Foot Linear Limit

The Corps' 2020 NWP eliminates the 300 linear foot (LF) limit for streambed losses that currently applies to 10 NWPs. The 300 LF limit helps ensure that using these 10 NWPs results in no more than minimal individual and cumulative adverse environmental effects as required by the CWA.

The 2017 NWPs 21, 29, 39, 40, 42, 43, 44, 50, 51, and 52 include a two-part threshold for use: impacts can't exceed 1/2-acre or 300 LF of a streambed loss. The two-part threshold ensures that adverse impacts covered by these NWPs are no more than minimal.

The existing process to assess stream impacts is an efficient and defensible two-part threshold to estimate the magnitude of impact. Looking at area alone (1/2-acre threshold) does not provide a reliable measure of the extent of impact. Many tribal waters are narrow and a 1/2-acre threshold may result in thousands of feet of impact that could potentially exceed minimal adverse effects and no longer comply with water quality requirements such as limits on sediment and suspended solids as outlined in Morongo Ordinance 39.⁴ Tribal law requires the avoidance of substantial impacts including but not limited to flow, surface water quality, and fish habitat.⁵ In many of the narrow, headwater streams that exist on the Reservation, impacted stream length will affect the aquatic function along the longitudinal gradient.⁶

To ensure that they will cause no more minimal adverse environmental effects individually and cumulatively, 300 LF limits are included in the conditions for NWPs 21, 29, 39, 40, 42, 43, 44, 50, 51, and 52.

Specific Nationwide Permits

1. Aids to Navigation

Does not require section 401 water quality certification because they would authorize activities which, in the opinion of the Corps, could not reasonably be expected to result in a discharge into waters of the United States.

2. Structures in Artificial Canals

Does not require section 401 water quality certification because they would authorize activities which, in the opinion of the Corps, could not reasonably be expected to result in a discharge into waters of the United States.

to sediment control, pollution control, floodplain restrictions, storm water management, and on-site wastewater disposal. All activities that could potentially cause a discharge shall follow all appropriate best management practices associated with that activity or required by the applicable permit.

⁴ Morongo Band of Mission Indians Surface Water Protection Ordinance Section V(A).

⁵ Morongo Band of Mission Indians Surface Water Protection Ordinance Section VI(A).

⁶ The linear or longitudinal gradient along streams is important in maintaining functions such as organic carbon and detrital biomass export, particulate retention, biogeochemical processes, and habitat interspersions and connectivity.

3. Maintenance

Subject to the General Conditions above, this NWP is hereby programmatically certified.

4. Fish and Wildlife Harvesting, Enhancement, and Attraction Devices and Activities

Subject to the General Conditions above, this NWP is hereby programmatically certified.

5. Scientific Measurement Devices

Subject to the General Conditions above, this NWP is hereby programmatically certified.

6. Survey Activities

Subject to the General Conditions above, this NWP is hereby programmatically certified.

7. Outfall Structures and Associated Intake Structures

Subject to the General Conditions above, this NWP is hereby programmatically certified.

8. Oil and Gas Structures on the Outer Continental Shelf

Does not require section 401 water quality certification because they would authorize activities which, in the opinion of the Corps, could not reasonably be expected to result in a discharge into waters of the United States.

9. Structures in Fleeting and Anchorage Areas

Does not require section 401 water quality certification because they would authorize activities which, in the opinion of the Corps, could not reasonably be expected to result in a discharge into waters of the United States.

10. Mooring Buoys

Does not require section 401 water quality certification because they would authorize activities which, in the opinion of the Corps, could not reasonably be expected to result in a discharge into waters of the United States.

11. Temporary Recreational Structures

Does not require section 401 water quality certification because they would authorize activities which, in the opinion of the Corps, could not reasonably be expected to result in a discharge into waters of the United States.

12. Oil or Natural Gas Pipeline Activities

Use of this NWP is not covered by this programmatic certification, and prospective users on tribal lands must seek individual project certification from the Tribe in all cases. There is insufficient information to ensure that projects proposed under this NWP will comply with water quality requirements.

This NWP is denied due to the potential for discharges to violate the Tribe's turbidity standard of "waters shall be free of changes in turbidity that cause nuisance or adversely affect beneficial uses."⁷ Oil and natural gas pipeline activities may need to cross a waterbody multiple times, have access roads created, and require linear excavation. These activities have the potential to discharge sediment to waterbodies in quantities that may exceed minimal impacts and could create an adverse effect to beneficial uses. Additionally, Hathaway Creek, Potrero Creek, and Deep Creek are all streams with headwaters in the Reservation and are listed on California's 2018 303(d) list for turbidity.⁸ While the listing does not apply to waters on the Reservation, the off-Reservation portions have been listed as impaired for turbidity and total maximum daily loads (TMDLs) will be required. There is insufficient information in the NWP to determine if discharges from the activities will be protective of downstream waters as required by 33 U.S.C. §1313 and meet criteria protective of the State's water quality standards as required by 40 CFR 131.10(b).⁹ Activity types, existence of multiple crossings, temporary impacts, access roads, potential for water drainage, and extent of pipeline trenches will need to be known prior to determining if discharges will comply with water quality requirements.

CWA section 401 certification for this NWP is denied without prejudice. Applicants for projects on tribal lands must apply to the Tribe for individual certification if this NWP is proposed to be used.

13. Bank Stabilization

Subject to the General Conditions above, this NWP is hereby programmatically certified.

14. Linear Transportation Projects

Subject to the General Conditions above, this NWP is hereby programmatically certified.

15. U.S. Coast Guard Approved Bridges

Subject to the General Conditions above, this NWP is hereby programmatically certified.

16. Return Water from Upland Contained Disposal Areas

Subject to the General Conditions above, this NWP is hereby programmatically certified.

17. Hydropower Projects

Subject to the General Conditions above, this NWP is hereby programmatically certified.

18. Minor Discharges

Subject to the General Conditions above, this NWP is hereby programmatically certified.

19. Minor Dredging

⁷ Morongo Band of Mission Indians Surface Water Protection Ordinance Section V(A)(15).

⁸ 2018 California Integrated Report (Clean Water Act Section 303(d) List and 305(b) Report)

⁹ Pursuant to sections 303 and 101(a) of the Clean Water Act, the federal regulation at 40 CFR 131.10(b) requires that "In designating uses of a water body and the appropriate criteria for those uses, the State shall take into consideration the water quality standards of downstream waters and shall ensure that its water quality standards provide for the attainment and maintenance of the water quality standards of downstream waters."

Subject to the General Conditions above, this NWP is hereby programmatically certified.

20. Response Operations for Oil or Hazardous Substances

Subject to the General Conditions above, this NWP is hereby programmatically certified.

21. Surface Coal Mining Activities

Subject to the General Conditions above, and the following permit-specific conditions, this NWP is hereby programmatically certified.

Impacts under this permit are limited to either of 1/2 acre or 300 linear feet of waters of the U.S. The discharge must not cause the loss of more than 300 linear feet of stream bed. The loss of stream bed plus any other losses of jurisdictional wetlands and waters caused by the NWP activity cannot exceed 1/2-acre.

22. Removal of Vessels

Subject to the General Conditions above, this NWP is hereby programmatically certified.

23. Approved Categorical Exclusions

Subject to the General Conditions above, this NWP is hereby programmatically certified.

24. Indian Tribe or State Administered Section 404 Programs

Does not require section 401 water quality certification because they would authorize activities which, in the opinion of the Corps, could not reasonably be expected to result in a discharge into waters of the United States.

25. Structural Discharges

Subject to the General Conditions above, this NWP is hereby programmatically certified.

26. [Reserved]

This NWP is not used and does not require section 401 water quality certification.

27. Aquatic Habitat Restoration, Establishment, and Enhancement Activities

Subject to the General Conditions above, this NWP is hereby programmatically certified.

28. Modifications of Existing Marinas

Does not require section 401 water quality certification because they would authorize activities which, in the opinion of the Corps, could not reasonably be expected to result in a discharge into waters of the United States.

29. Residential Developments

Subject to the General Conditions above, and the following permit-specific conditions, this NWP is hereby programmatically certified.

Impacts under this permit are limited to either of 1/2 acre or 300 linear feet of waters of the U.S. The discharge must not cause the loss of more than 300 linear feet of stream bed. The loss of stream bed plus any other losses of jurisdictional wetlands and waters caused by the NWP activity cannot exceed 1/2-acre.

30. Moist Soil Management for Wildlife

Subject to the General Conditions above, this NWP is hereby programmatically certified.

31. Maintenance of Existing Flood Control Facilities

Subject to the General Conditions above, this NWP is hereby programmatically certified.

32. Completed Enforcement Actions

Subject to the General Conditions above, this NWP is hereby programmatically certified.

33. Temporary Construction, Access, and Dewatering

Subject to the General Conditions above, this NWP is hereby programmatically certified.

34. Cranberry Production Activities

Subject to the General Conditions above, this NWP is hereby programmatically certified.

35. Maintenance Dredging of Existing Basins

Does not require section 401 water quality certification because they would authorize activities which, in the opinion of the Corps, could not reasonably be expected to result in a discharge into waters of the United States.

36. Boat Ramps

Subject to the General Conditions above, this NWP is hereby programmatically certified.

37. Emergency Watershed Protection and Rehabilitation

Subject to the General Conditions above, this NWP is hereby programmatically certified.

38. Cleanup of Hazardous and Toxic Waste

Subject to the General Conditions above, this NWP is hereby programmatically certified.

39. Commercial and Institutional Developments

Subject to the General Conditions above, and the following permit-specific conditions, this NWP is hereby programmatically certified.

Impacts under this permit are limited to either of 1/2 acre or 300 linear feet of waters of the U.S. The discharge must not cause the loss of more than 300 linear feet of stream bed. The loss of stream bed plus any other losses of jurisdictional wetlands and waters caused by the NWP activity cannot exceed 1/2-acre.

40. Agricultural Activities

Subject to the General Conditions above, and the following permit-specific conditions, this NWP is hereby programmatically certified.

Impacts under this permit are limited to either of 1/2 acre or 300 linear feet of waters of the U.S. The discharge must not cause the loss of more than 300 linear feet of stream bed. The loss of stream bed plus any other losses of jurisdictional wetlands and waters caused by the NWP activity cannot exceed 1/2-acre.

41. Reshaping Existing Drainage Ditches

Subject to the General Conditions above, this NWP is hereby programmatically certified.

42. Recreational Facilities

Subject to the General Conditions above, and the following permit-specific conditions, this NWP is hereby programmatically certified.

Impacts under this permit are limited to either of 1/2 acre or 300 linear feet of waters of the U.S. The discharge must not cause the loss of more than 300 linear feet of stream bed. The loss of stream bed plus any other losses of jurisdictional wetlands and waters caused by the NWP activity cannot exceed 1/2-acre.

43. Stormwater Management Facilities

Subject to the General Conditions above, and the following permit-specific conditions, this NWP is hereby programmatically certified.

Impacts under this permit are limited to either of 1/2 acre or 300 linear feet of waters of the U.S. The discharge must not cause the loss of more than 300 linear feet of stream bed. The loss of stream bed plus any other losses of jurisdictional wetlands and waters caused by the NWP activity cannot exceed 1/2-acre.

44. Mining Activities

Subject to the General Conditions above, and the following permit-specific conditions, this NWP is hereby programmatically certified.

Impacts under this permit are limited to either of 1/2 acre or 300 linear feet of waters of the U.S. The discharge must not cause the loss of more than 300 linear feet of stream bed. The loss of stream bed plus any other losses of jurisdictional wetlands and waters caused by the NWP activity cannot exceed 1/2-acre.

45. Repair of Uplands Damaged by Discrete Events

Subject to the General Conditions above, this NWP is hereby programmatically certified.

46. Discharges in Ditches

Subject to the General Conditions above, this NWP is hereby programmatically certified.

47. [Reserved]

This NWP is not used and does not require section 401 water quality certification.

48. Commercial Shellfish Mariculture Activities

Subject to the General Conditions above, this NWP is hereby programmatically certified.

49. Coal Remining Activities

Subject to the General Conditions above, this NWP is hereby programmatically certified.

50. Underground Coal Mining Activities

Subject to the General Conditions above, and the following permit-specific conditions, this NWP is hereby programmatically certified.

Impacts under this permit are limited to either of 1/2 acre or 300 linear feet of waters of the U.S. The discharge must not cause the loss of more than 300 linear feet of stream bed. The loss of stream bed plus any other losses of jurisdictional wetlands and waters caused by the NWP activity cannot exceed 1/2-acre.

51. Land-Based Renewable Energy Generation Facilities

Subject to the General Conditions above, and the following permit-specific conditions, this NWP is hereby programmatically certified.

Impacts under this permit are limited to either of 1/2 acre or 300 linear feet of waters of the U.S. The discharge must not cause the loss of more than 300 linear feet of stream bed. The loss of stream bed plus any other losses of jurisdictional wetlands and waters caused by the NWP activity cannot exceed 1/2-acre.

52. Water-Based Renewable Energy Generation Pilot Projects

Subject to the General Conditions above, and the following permit-specific conditions, this NWP is hereby programmatically certified.

Impacts under this permit are limited to either of 1/2 acre or 300 linear feet of waters of the U.S. The discharge must not cause the loss of more than 300 linear feet of stream bed. The loss of stream bed plus any other losses of jurisdictional wetlands and waters caused by the NWP activity cannot exceed 1/2-acre.

53. Removal of Low-Head Dams

Subject to the General Conditions above, this NWP is hereby programmatically certified.

54. Living Shorelines

Subject to the General Conditions above, this NWP is hereby programmatically certified.

A. Seaweed Mariculture Activities

Does not require section 401 water quality certification because they would authorize activities which, in the opinion of the Corps, could not reasonably be expected to result in a discharge into waters of the United States.

B. Finfish Mariculture Activities

Does not require section 401 water quality certification because they would authorize activities which, in the opinion of the Corps, could not reasonably be expected to result in a discharge into waters of the United States.

C. Electric Utility Line and Telecommunications Activities

Use of this NWP is not covered by this programmatic certification, and prospective users on tribal lands must seek individual project certification from the Tribe in all cases. There is insufficient information to ensure that projects proposed under this NWP will comply with water quality requirements.

This NWP is denied due to the potential for discharges to violate the Tribe's turbidity standard of "waters shall be free of changes in turbidity that cause nuisance or adversely affect beneficial uses."¹⁰ Electric utility lines and telecommunications activities may need to cross a waterbody multiple times, have access roads created, and require linear excavation. These activities have the potential to discharge sediment to waterbodies in quantities that may exceed minimal impacts and could create an adverse effect to beneficial uses. Additionally, Hathaway Creek, Potrero Creek, and Deep Creek are all streams with headwaters in the Reservation and are listed on California's 2018 303(d) list for turbidity.¹¹ While the listing does not apply to waters on the Reservation, the off-Reservation portions have been listed as impaired for turbidity and total maximum daily loads (TMDLs) will be required. There is insufficient information in the NWP to determine if discharges from the activities will be protective of downstream waters as required by 33 U.S.C. §1313 and meet criteria protective of the State's water quality standards as required by 40 CFR 131.10(b). Activity types, existence of multiple crossings, temporary impacts, access roads, potential for water drainage, and extent of pipeline trenches will need to be known prior to determining if discharges will comply with water quality requirements.

CWA section 401 certification for this NWP is denied without prejudice. Applicants for projects on tribal lands must apply to the Tribe for individual certification if this NWP is proposed to be used.

D. Utility Line Activities for Water and Other Substances

Use of this NWP is not covered by this programmatic certification, and prospective users on tribal lands must seek individual project certification from the Tribe in all cases. There is insufficient information to ensure that projects proposed under this NWP will comply with water quality requirements.

This NWP is denied due to the potential for discharges to violate the Tribe's turbidity standard of "waters shall be free of changes in turbidity that cause nuisance or adversely affect beneficial uses."¹⁰ Electric utility lines and telecommunications activities may need to cross a waterbody multiple times, have access roads created, and require linear excavation. These activities have the potential to discharge sediment to waterbodies in quantities that may exceed minimal impacts and could create an adverse effect to beneficial uses. Additionally, Hathaway Creek, Potrero Creek, and Deep Creek are all streams with headwaters in the Reservation and are listed on California's 2018 303(d) list for turbidity.¹¹ While the listing does not apply to waters on the Reservation, the off-Reservation portions have been listed as impaired for turbidity and total maximum daily loads (TMDLs) will be required. There is insufficient

¹⁰ Morongo Band of Mission Indians Surface Water Protection Ordinance Section V(A)(15).

¹¹ 2018 California Integrated Report (Clean Water Act Section 303(d) List and 305(b) Report)

information in the NWP to determine if discharges from the activities will be protective of downstream waters as required by 33 U.S.C. §1313 and meet criteria protective of the State's water quality standards as required by 40 CFR 131.10(b). Activity types, existence of multiple crossings, temporary impacts, access roads, potential for water drainage, and extent of pipeline trenches will need to be known prior to determining if discharges will comply with water quality requirements.

CWA section 401 certification for this NWP is denied without prejudice. Applicants for projects on tribal lands must apply to the Tribe for individual certification if this NWP is proposed to be used.

E. Water Reclamation and Reuse Facilities

Subject to the General Conditions above, this NWP is hereby programmatically certified.



**PALA BAND OF
MISSION INDIANS**

PMB 50, 35008 Pala Temecula Road
Pala, CA 92059
Phone 760-891-3500 | Fax 760-742-1411

December 14, 2020

David Castanon
U.S. Army Corps of Engineers
Chief, Regulatory Division
Los Angeles District
915 Wilshire, Suite 930
Los Angeles, CA 90013

Re: Pala Band of Mission Indians – Conditional Section 401 Water Quality Certification 2020
Nationwide Permits

Dear Mr. Castanon:

The Pala Band of Mission Indians (PBMI) is a federally recognized Native American Tribe authorized to implement the Section 401 water quality certification requirements of the Clean Water Act (CWA) under the CWA's "treatment as a state" provisions. In accordance with that authority, PBMI has reviewed the proposed reissuance of Nationwide Permits (NWP) by the United States Army Corps of Engineers (Corps) under CWA Section 404 as published in the Federal Register on September 15, 2020. PBMI provides the following programmatic water quality certification for all the proposed NWP subject to the conditions described below, which shall be binding requirements for work on the Pala Reservation in San Diego County, California.

PBMI has adopted the water quality standards established by the State of California applicable to those watercourses that are located on or flow through the Pala Reservation. This is a link to the Regional Board's website which specifies the standards for those watercourses.

<https://www.waterboards.ca.gov/sandiego/waterissues/programs/basinplan/docs/R9BasinPlan.pdf>
Based on the information on the NWP that has been provided, PBMI cannot conclude that the discharges authorized by the NWP discharges will comply with applicable provisions of the CWA and PBMI's water quality standards as required under 40 C.F.R. § 121.7(f). Consequently, PBMI has determined that specific conditions are required under Section 401 to ensure that the Tribe's water quality standards are not violated and to protect the (1) public health and welfare of PBMI and its members and other residents of its Reservation, and (2) present and future use of surface water and groundwater on the Reservation for public, domestic, fish and wildlife, recreation, agricultural, cultural, commercial, industrial, and other uses.

As part of this certification, PBMI requires that any authorized project that cannot comply with these general conditions is denied Section 401 certification without prejudice and the applicant must apply to the PBMI Environmental Department (PED) for an individual water quality certification. If an individual certification is required, PED will use its best efforts to issue, deny, or waive certification within 60 days of receipt of complete project information.

PBMI's Section 401 water quality certification applies only to projects that are eligible for coverage under the NWP, as limited by any Regional Conditions applicable in the Corps'

Los Angeles District. This certification also does not apply to any project that requires an individual CWA Section 404 permit. Any project that qualifies for an NWP but fails to meet the conditions described in this certification will not be eligible for coverage under this programmatic certification and must obtain individual project certification from PBMI. This conditional certification will remain in effect for the authorization period of the reissued 2020 NWPs.

Condition 1: Notification

The applicant for any NWP-authorized project on the Pala Reservation shall provide notification to PED when the application for an NWP is submitted to the Corps. If an NWP requires a pre-construction notice (PCN), the applicant can satisfy this condition by providing a copy of the PCN to PED as its 401 notification in advance of any authorization letter from the Corps allowing the applicant to proceed under an NWP. If an NWP does not require a PCN, the applicant still must notify PED prior to receipt of an authorization letter from the Corps allowing the applicant to proceed under an NWP. In either situation, submittals shall be written, may be electronic, and shall be made to:

Pala Environmental Department
35008 Pala Temecula Road
Pala, CA 92059
Attn: Section 401 Group

All submittals for projects using one of the conditionally certified NWPS shall include the following information:

- a) The name, address, telephone numbers, and e-mail addresses of the applicant and any of its agents, representatives or contact persons
- b) The purpose of the proposed project
- c) The location and dimensions of the project, including the area of any temporary and/or permanent fill in WUS
- d) The best management practices (BMPs) to be used during construction, and if BMPs are not proposed, why their use is not practicable or necessary
- e) The source and quality of any fill to be used in the project
- f) Any proposed compensatory mitigation for project impacts.

PBMI has determined that this condition is necessary to assure that the Tribe is aware of any activities that are covered by an NWP or which the Corps approves that will occur within the PBMI Reservation, an area over which PBMI has jurisdiction as a sovereign nation. This condition also is required to assure compliance with PBMI's strict water quality standards. For example, the water quality standards PBMI has adopted for the San Luis Rey River and all its tributaries on the PBMI Reservation are 500 mg/l for total dissolved solids (TDS) and 20 NTU for turbidity. These water quality standards, and those for other water quality criteria, could easily be exceeded in Tribal watercourses by projects that involve discharges into WUS. Requiring notice of work to be conducted within the boundaries of the Pala Reservation also is authorized by PBMI's sovereign authority over its Reservation lands and all activities on those lands and by its authority to enforce PBMI Ordinance No. 15, which prohibits the discharge of any pollutant into any waters on the PBMI Reservation.

Condition 2: Best Management Practices

Except as allowed by the applicable NWP, no debris, silt, sand, cement, concrete, oil or petroleum, organic material, or other construction materials or wastes shall enter any WUS or be stored where it may be washed by runoff into any WUS. Silt fences, straw wattles, and other techniques shall be employed as appropriate to protect WUS from such discharges. Permittees and their contractors shall minimize channel and bank erosion within the WUS.

PBMI has determined that this condition is necessary to assure compliance with PBMI's strict water quality standards. For example, the water quality standards for the San Luis Rey River and all its tributaries on the PBMI Reservation are 500 mg/l for TDS and 20 NTU for turbidity. These water quality standards, and those for other water quality criteria, could easily be exceeded in Tribal watercourses by projects that involve discharges into WUS. This condition also is authorized by PBMI's sovereign authority over its Reservation lands and all activities on those lands and by its authority to enforce PBMI Ordinance No. 15, which prohibits the discharge of any pollutant into any waters on the PBMI Reservation.

Condition 3: Inspections

The permittee shall allow PED to inspect the authorized activity and any mitigation areas at any reasonable time that PED deems necessary to determine if the project complies with the terms and conditions of the NWP and this certification or any project-specific certification.

PBMI has determined that this condition is necessary to assure compliance with PBMI's strict water quality standards. For example, the water quality standards adopted by PBMI for the San Luis Rey River and all its tributaries on the PBMI Reservation are 500 mg/l for TDS and 20 NTU for turbidity. These water quality standards, and those for other water quality criteria, could easily be exceeded in Tribal watercourses by projects that involve discharges into WUS. This condition also is authorized by PBMI's sovereign authority over its Reservation lands and all activities on those lands and by its authority to enforce PBMI Ordinance No. 15, which prohibits the discharge of any pollutant into any waters on the PBMI Reservation.

With these conditions, PBMI hereby conditionally certifies the 2020 NWPs under its Section 401 authority. Please contact Shasta Gaughen, Pala Environmental Director, at (760) 891-3515 or sgaughen@palatribe.com if you have any questions concerning this conditional certification.

Sincerely,



Robert Smith, Chairman
Pala Band of Mission Indians

Cc: Shasta Gaughen, Environmental Director