



COEUR D'ALENE TRIBE

850 A STREET
P.O. BOX 408
PLUMMER, IDAHO 83851
(208) 686-1800 • Fax (208) 686-1182

REFERENCE:

December 2nd, 2020

Kelly J. Urbanek
Chief, Regulatory Division
U.S. Army Corps of Engineers
Boise Field Office
720 E. Park Boulevard, Suite 245
Boise, Idaho 83712

Re: Coeur d'Alene Tribe Section 401 Water Quality Certification for 2020 Nationwide Permits on Coeur d'Alene Tribe TAS Approved Waters.

Dear Ms. Urbanek:

The Coeur d'Alene Tribe Water Resource Program completed its review of the Federal Register Notice by the U.S. Army Corps of Engineers (USACE) dated September 15th, 2020 and of the Walla Walla Regulatory Division (State of Idaho) Regional conditions dated September 17th, 2020 to reissue and modify Nationwide Permits (NWP). This review was conducted in response to the request from the USACE to certify pursuant to Section 401 of the Clean Water Act (CWA) dated October 13th 2020.

Based on the available information we are unable to conclude that authorization of discharges under the USACE's proposed NWP and District's regional conditions will comply with applicable provisions of Sections 301, 302, 303, 306, and 307 of the Clean Water Act nor with Coeur d'Alene Tribal Code Chapter 42 (Water Quality Standards) sections 9 and 11 and Chapter 44 (Encroachments) section 1. The proposed NWP provide insufficient information to identify waters receiving discharges from potential projects that may be authorized, and thus it is impossible to make a determination under 40 C.F.R. § 121.7(f) whether Tribal water quality requirements are applicable to the potential projects and/or to conclude that Tribal water quality requirements would be met. Additionally, for potential projects that would discharge to TAS approved waters, due to the lack of specific information on the discharge types, quantities and specific locations, as well as the conditions of receiving waters and their quantities to be lost, we cannot determine whether these NWP, and the discharges they would authorize, will comply with Tribal water quality requirements. Therefore, we deny Clean Water Act 401 certification for the 2020 NWP and their applicable regional conditions.

In order to demonstrate that the range of discharges from potential projects authorized under the NWP would comply with the Tribe's water quality requirements, the following water quality

data and information would be needed for each such project: the specific location of the project, the nature of the point source discharge(s) (e.g., the amount of dredge or fill material and the area of impact, any available site-specific baseline monitoring data to document conditions of the receiving water body for the project specific site.

The only way to receive the required information is to conduct a case-by-case review of each project and associated discharges. Therefore, we deny 401 certification for all 57 NWP's to facilitate our individual review each project and make a project specific 401 certification decision for each NWP authorization.

Thank you for your attention to this matter. We look forward to working with the ACOE on 404 applications occurring within TAS approved waters of the Coeur d'Alene Tribe Reservation.

Sincerely,

Scott Fields
Water Resource Program Manager
Coeur d'Alene Tribe

CC: Shane Slate, ACOE, Coeur d'Alene Idaho
Tracy Peak, USEPA Boise Field Office
Shane Skaar, ACOE, Coeur d'Alene Idaho



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