



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10**

1200 Sixth Avenue, Suite 155
Seattle, WA 98101

WATER DIVISION

October 13, 2021

Ms. Kelly Urbanek
Branch Chief
Regulatory Branch
U.S. Army Corps of Engineers
Walla Walla District
720 East Park Boulevard, Suite 246
Boise, Idaho 83712-7767

Subject: Clean Water Act Section 401 Water Quality Certification (WQC) Decisions on the Remaining 41 U.S. Army Corps of Engineers 2021 Nationwide Permits on Tribal Lands where Tribes do not have Treatment in a Similar Manner as a State and Lands with Exclusive Federal Jurisdiction within Region 10 of the U.S. Environmental Protection Agency for the Walla Walla District.

Dear Ms. Urbanek:

The U.S. Environmental Protection Agency (EPA), Region 10 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 and for lands with exclusive federal jurisdiction (40 CFR 121.13(a)). The U.S. Army Corps of Engineers (Corps) Federal Register notice dated September 15, 2020, initially proposed issuance of 57 Nationwide Permits (NWP), reissuing 52 existing NWP, issuing five new NWP, making changes to eight general conditions, and removing three definitions.

On January 13, 2021, the Corps published in the Federal Register its final rule reissuing 12 NWP and issuing four new NWP, as well as the NWP general conditions and definitions. The Corps is now proposing to re-issue 40 existing NWP and one new NWP and associated general conditions and definitions, with some modifications. For these 41 remaining NWP that have not yet been issued, the Walla Walla District Corps sent EPA Region 10 a letter dated August 18, 2021, which extended the reasonable period of time to October 13, 2021, giving EPA Region 10 the opportunity to revise or reconsider our December 11, 2020, CWA Section 401 WQC decisions for these NWP.

In response to the Walla Walla District Corps letter, EPA Region 10 provides our revised CWA Section 401 WQC for the remaining 41 NWP in the enclosure. The enclosed conditions become binding requirements of the Walla Walla District Corps NWP that are issued on tribal lands and lands with exclusive federal jurisdiction within EPA Region 10. Please instruct your regulatory staff to provide this CWA Section 401 WQC to anyone contacting the Corps with applicable requests for authorization.

Based on EPA Region 10's review of the materials provided by the Corps, EPA Region 10 made a determination whether potential discharges from the proposed NWP will comply with applicable provisions of Sections 301, 302, 303, 306 and 307 of the CWA. In summary, of the remaining 41 proposed NWP, EPA Region 10 is conditionally certifying 32 NWP. The Corps is not requesting

certification for nine NWP's.¹ The attached CWA Section 401 WQC will remain in effect for the authorization period of the 2021 NWP's and will be re-evaluated when the NWP's are next proposed for reissuance and revisions.

This CWA Section 401 WQC applies to all NWP authorizations by the Corps for these 32 NWP's that may result in a point source discharge to waters of the U.S. where the EPA is the certifying authority in Walla Walla District.

If a proposed project does not meet the enclosed conditions, the applicant must contact EPA Region 10 for individual project-specific CWA Section 401 WQC. Please advise project proponents who seek authorization under a NWP for individual project-specific CWA Section 401 WQC to submit their questions, pre-filing meeting requests, and subsequent CWA Section 401 WQC requests when required to: R10-401-Certs@epa.gov and copy Ms. Linda Storm at storm.linda@epa.gov and Ms. Becky Garnett at garnett.becky@epa.gov of my staff.

Thank you for your ongoing partnership in implementing the regulatory programs of the CWA. Please do not hesitate to contact Ms. Linda Storm, Aquatic Ecologist, at 206-437-2293 or storm.linda@epa.gov, or Ms. Becky Garnett, Environmental Scientist, at 206-553-5512 or garnett.becky@epa.gov for any questions regarding EPA Region 10's CWA Section 401 WQC for these remaining Nationwide Permits.

Sincerely,

David Croxton, Manager
Wetlands and Oceans Section

Enclosure

cc (via electronic mail):

Ms. Tracy Peak, Walla Walla District Corps of Engineers, Tracy.T.Peak@usace.army.mil
Mr. James Joyner, Walla Walla District Corps of Engineers, James.M.Joyner@usace.army.mil
Mr. Ernie Stensgar, Coeur d'Alene Tribe, estensgar@cdatribe-nsn.gov
Mr. Scott Fields, Coeur D'Alene Tribe, sfields@cdatribe-nsn.gov
Mr. Gary Aitken, Jr. Kootenai Tribe of Idaho, garyjr@kootenai.org
Ms. Sue Ireland, Kootenai Tribe of Idaho, ireland@kootenai.org
Ms. Shannon Wheeler, Nez Perce Tribe, shannonw@nezperce.org
Mr. Ken Clark, Nez Perce Tribe, kenc@nezperce.org
Ms. Elizabeth Spelsberg, Idaho Department of Environmental Quality, Elizabeth.Spelsberg@deq.idaho.gov
Mr. Aaron Golart, Idaho Department of Water Resources, Aaron.Golart@idwr.idaho.gov
Mr. Chris Murphy, Idaho Department of Fish and Game, chris.murphy@idfg.idaho.gov

¹ The Corps has not requested certification for NWP's: 1, 2, 8, 9, 10, 11, 24, 28, and 35. If any activity authorized by these listed NWP's may result in a discharge into a water of the United States, the Corps must seek CWA Section 401 certification from the appropriate certifying authority.