

**THE SHOSHONE-PAIUTE TRIBES
OF THE DUCK VALLEY INDIAN RESERVATION**

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September 28, 2021

Kelly Urbanek
Chief, Regulatory Division
U.S. Army Corps of Engineers
Boise Regulatory Office
900 North Skyline Drive, Suite A
Boise Idaho 83712

Re: Shoshone-Paiute Tribes WQC for Nationwide Permits Denial Letter

Dear Kelly Urbanek:

The Shoshone-Paiute Tribes Tribal Environmental Protection Program completed its review of the Federal Register and its proposal to reissue the Nationwide Permits for the remaining 41 NWP's by the U.S. Army Corps of Engineers (USACE) dated June 11, 2020. This review was conducted in response to the Corps requested for review pursuant to Section 401 of the Clean Water Act that there is reasonable assurance that the proposed reissuance and modifications to the Department of the Army, Corps of Engineers Nationwide Permits will comply with applicable provisions of Sections 301, 302, 303, 306 and 307 of the Clean Water Act and The Shoshone-Paiute Tribes Water Quality Standards, in those areas where the Shoshone Paiute Tribes is the certifying authority.

Section 401(a) of the CWA requires that applicants for Federal permits that may result in discharges into water of the United States obtain certification that the discharge will comply with various applicable provisions of the CWA. The Shoshone Paiute Tribes has EPA approval to administer a water quality standards program and to issue water quality certifications on the Shoshone-Paiute Tribes Reservation.

Based on the available information provided in the notice of proposed rulemaking a proposed change to regional conditions by the U.S. Army Corps of Engineers, we are unable to conclude that authorization of discharges under the USACE's proposed NWP's 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 Shoshone-Paiute Tribal Ordinance 93-SPO-03 (Water Quality Standards). The proposed NWP's 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 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's, and the discharges they would authorize, will comply with Tribal water quality requirements. Therefore, we deny Clean Water Act 401 certification for the 2021 NWP's and their applicable regional conditions. In order to demonstrate that the range of discharges from potential projects authorized under the NWP's 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 require information is to conduct a case-by-case review of each project and associated discharges. Therefore, we deny 401 certification for all 41 NWP's to facilitate our individual review each project and make a project specific 401 certification decision for NWP authorization.

The Shoshone-Paiute Tribes understand that the effect of these denials is that the Corps will deny, without prejudice, authorization for activities covered by the applicable NWP's. A project proponent must therefore obtain project specific CWA Section 401 Certification coordination with the Shoshone-Paiute Tribes Tribal Environmental Protection Program, please contact Ms. Marissa Snapp (208)759-3100 ext. 1229.

Sincerely,



Marissa Snapp
Environmental Director
Shoshone-Paiute Tribes