



KLETSEL ENVIRONMENTAL REGULATORY AUTHORITY

P O BOX 1630 ♦ Williams, CA 95987-1630

October 11, 2021

Michael Jewell, Chief, Regulatory Division
US Army Corps of Engineers, Sacramento District
1325 J Street
Sacramento, CA 95814-2922

Sent via U.S. mail and email: micheal.s.jewell@usace.army.mil

Re: Request for Certification of the Nationwide Permits under Section 401.

Dear Mr. Jewell:

The Kletsel Dehe Wintun Nation would like to thank you for the opportunity to comment on the new U.S. Army Corps of Engineers proposal to reissue the Nationwide Permits (NWP). According to your letter of August 18, 2021, the 41 proposed NWPs subject to this extension of the reasonable period of time are: 3, 4, 5, 7, 13, 14, 1516, 17, 18, 19, 20, 22, 23, 25, 27, 30, 31, 32, 33, 34, 36, 37, 38, 41, 45, 46, 53, and 59.

The Nation will be commenting on only 3, 6, 13, 18, 38. The remainder of the NWPs the Nation is certifying without conditions.

EPA Region 9:

The Nation is aware that on behalf of tribes in the Region, Region 9 denied certification for NWPs 12, 14, 29, 39, 40, 42, 44, and 51 on the grounds of insufficient information to certify that the range of discharges would comply with the water quality requirements. Further they believe they have insufficient on what areas might contain sensitive resources or resources of cultural importance. They also area unaware of whether there is currently any impaired waters on the tribal lands and lack specific information on water quality requirements for those reservations.

The Nation believes that if the EPA itself feels the need to deny blanket certification of those NWPs, instead requiring review on a case-by-case basis, that denial should be accepted.

The Nation's Comments:

The Nation will be denying certification for NWP's 3, 6, 13, 18, and 38.

#3 Maintenance – Subpart (c) would not meet specific Kletsel Dehe water quality standard's because in this dry climate, the soil is highly erodible, and the Nation's standards would require evaluation of whether all of the temporary fill would need to be removed in order to maintain appropriate water quality standards.

See Kletsel Dehe Water Quality Standards, Sensitive Waters:

§4.1(D)(2)(i) "In permitting any activity that could impact in sensitive water bodies, the Nation shall require the most stringent statutory and regulatory requirements for all new and existing non-point sources and all cost effective and reasonable BMPs for non-point control."

§4.1(D)(3)(ii) "No degradation of Outstanding Tribal Resource Waters shall be permitted."

§5.0 "No person shall engage in any activity that violates or causes the violation of these standards. All discharges from point sources, all in-stream activities, rate non-point source pollution shall be conducted so as to comply with this document and all applicable requirements."

#6 Survey Activities – The NWP would not meet the Kletsel Dehe Solid Waste Management Plan of 2000, because the Nation has unstable seismic areas in addition to the highly erodible soils which would affect how surveys are conducted and strict review by Kletsel Environmental Regulatory Authority (KERA) to assure maintaining appropriate standards.

#13 Bank Stabilization - The NWP would not meet the Kletsel Dehe Non-Point Source Management Plan because the Cortina NPS Management Program states:

"If you are planning a construction project that will disturb more than one acre of land you are required to have permit from EPA. You should also have erosion and sediment controls in place for runoff from your site before construction begins. Information can be found in the *Clean Water Act Requirements for Construction Projects in Indian Country* EPA-909-F-04-008 August 2004. This summarizes your responsibilities for permit coverage and for erosion and sediment controls, as required under the Federal Clean Water Act to limit water pollution from construction sites. Contractors can also reference, *Managing Your Environmental Responsibilities: A Planning Guide for Construction and Development* EPA/305-B-04-003 April 2005.

#18 Minor Discharges - The NWP would not meet the Kletsel Dehe NPS Management Program Plan because under the Program, the value of the resource served, and site characteristics will influence the choice of road construction standards and maintenance activities. Most Rancheria roads are built by excavating a road surface. When

constructing roads fill or substrate should be obtained from available Sources on the Rancheria. Road design and layout on-the-ground show machine operators the proper cut slopes and indicate cut slope steepness. The bulldozer starts at the top of the cut slope, excavating and side casting material until the desired road grade and width is obtained. Material from cuts is often pushed in front of the blade to areas where fill is needed. Road fill is used to cover culverts and build up flat areas. Since fill must support traffic, it needs to be spread and compacted in layers to develop strength.

#38 Cleanup of Hazardous and Toxic Waste - The NWP would not meet the Kletsel Dehe Antidegradation requirements for Wetlands (Water Quality Standards §4.2.3) because they were designed to not allow for the accident to happen in the first place rather than to let it occur and then try to clean it up.

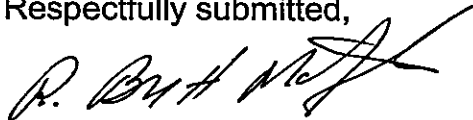
§ 4.2.3 Wetlands Antidegradation Requirements

For all wetlands, as defined by the Nation, the following antidegradation requirements shall apply:

- i. Maintenance and protection of existing instream water uses and the level of water quality necessary to protect the existing uses.
- ii. No net loss to the water quality, functions, values, area, or ecological integrity of high- quality wetlands, unless, after satisfying applicable antidegradation provisions including avoidance, minimization, and mitigation/replacement requirements, the Nation determines that allowing degradation is necessary to accommodate important social or economic development in the area in which the wetlands are located consistent with this section; and
- iii. No loss to the water quality, functions, values, area, or ecological integrity of wetlands assigned as Outstanding National Resource.

The Nation looks forward to continuing to work with the ACOE on assuring that the Nation's water quality standards are met on the Rancheria by all requesting permits.

Respectfully submitted,



R. Brett Matzke

ED, Kletsel Environmental Regulatory Authority.

Cc. KERA Files