

January 10, 2023

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MORONGO
BAND OF
MISSION
INDIANS



A SOVEREIGN NATION

Re: Clean Water Act Section 401 Certification for the proposed Regional General Permit (RGP) for wildfire activities (SPK-2022-00120)

Dear Ms. Fisher,

This letter is in response to the U.S. Army Corps of Engineers Los Angeles, Sacramento, and San Francisco Districts' (Corps) request for water quality certification under Section 401 of the Clean Water Act (CWA) by the Morongo Band of Mission Indians (Tribe). The Tribe reserves all rights and obligations stemming from tribal sovereignty and Treatment as a State under the CWA. The RGP must specify conditions to adequately protect waters of the United States, including Tribal waters, and must assure compliance with the applicable provisions of CWA §§ 208(e), 301, 302, 303, 306, 307, and Tribal laws where applicable.

The Tribe has reviewed the Corps' certification application for the RGP and hereby includes a conditional programmatic water quality certification of this general permit. The enclosed certification contains important conditions that will be incorporated into any RGP issued on lands of the Tribe. Compliance with these conditions is necessary to assure that discharges from projects will comply with the CWA, Tribal laws, and applicable water quality requirements.

Questions or comments regarding this certification should be directed towards the Morongo Environmental Protection Department at (951) 755-5127 or epd@morongo-nsn.gov.

Sincerely,

Dana Morey, Environmental Director
Morongo Environmental Protection Department

cc. Ms. Sahrye Cohen, EPA Region 9, cohen.sahrye@epa.gov

This is the conditional CWA §401 Certification of the RGP for wildfire activities 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 permit 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

Notification requirements provide the Corps and the Tribe the opportunity to evaluate RGP projects to ensure the proposed activities will result in discharges being controlled as necessary to meet applicable water quality requirements. The Tribe has the expertise to evaluate effects of RGP projects issued on tribal land and ensure water quality requirements will be met. Additionally, tribal law requires notice to the Morongo Environmental Protection Department (MEPD) at least 30 days 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 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

¹ Morongo Band of Mission Indians Surface Water Protection Ordinance (MBMI Ordinance 39) Sections IX(C), IX(D), and IX(E).

² MBMI Ordinance 39 Section II. "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... 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

Under the RGP General Conditions 1(c), Pre-Construction Notification (PCN) is required for “discharges of dredged and/or fill material into waters of the U.S. on Tribal lands.” All contents required by the Corps PCN should be included in the PCN submitted to the MEPD.

- A. A copy of the PCN must be submitted (electronic submission preferred) to the MEPD no less than thirty (30) days before commencing construction activities³:

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

- B. A copy of the post-construction report must be sent to the MEPD at the same time it is submitted to the Corps.⁴
- C. Notice of any emergency-related work must be submitted to the MEPD within twenty-four (24) hours after commencing construction activities.⁵
- D. Spills, leaks, or unpermitted discharges must be reported to the MEPD within twenty-four (24) hours of the incident.⁶

2. Inspections

In accordance with tribal regulations, “the Environmental Protection Department has the authority to schedule and execute compliance assistance inspections of commercial and industrial developments located on the Reservation with the intent to assist those developments to reach and/or maintain compliance with federal and Tribal water laws, regulations and rules.”⁷ MEPD may conduct inspections at any time deemed necessary to ensure compliance with the RGP and applicable water quality requirements.

- E. Activities covered under the RGP will be subject to compliance inspections by MEPD staff.

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.

³ MBMI Ordinance 39 Section IX(C)

⁴ MBMI Ordinance 39 Section IX(A)

⁵ MBMI Ordinance 39 Section IX(D)

⁶ MBMI Ordinance 39 Section IX(E)

⁷ MBMI Ordinance 39 Section XII