



# TWENTY-NINE PALMS BAND OF MISSION INDIANS

46-200 Harrison Place . Coachella, California . 92236 . Ph. 760.863.2444 . Fax: 760.863.2449

December 7, 2020

David J. Castanon  
U.S. Army Corps of Engineers  
Los Angeles District  
915 Wilshire Boulevard, Suite 930  
Los Angeles, CA 90017

Dear Mr. Castanon:

This letter is in response to the **U.S. Army Corps of Engineers' (USACE) October 15, 2020 request for certification under the Clean Water Act (CWA) § 401 by the Twenty-Nine Palms Band of Mission Indians (Tribe) for the proposed issuance of the Nationwide Permits (NWP)**s). The Tribe reserves all rights and obligations stemming from tribal sovereignty and Treatment as a State under the CWA and recognizes that the USACE issues NWP in accordance with the CWA. The Tribe understands that USACE has made a good faith effort to develop proposed NWP which are both protective of Waters of the U.S. and that meet Tribal Water Quality Standards (TWQS). However, the Tribe is deeply concerned with the USACE's proposal removing the previous 300 linear foot limit for loss of stream bed and replacing it with a 0.5-acre limit for NWP thresholds. This significant change may result in *more* than minimal adverse environmental impacts that would not comply with TWQS. Furthermore, the Tribe is apprehensive about reviewing and being asked to certify *draft* permits which may be subject to future modification. Any changes that occur to the permits after a certification action could result in missing or inappropriate conditions, leaving the Tribe without an opportunity to remedy a deficient certification. This absence of information regarding a procedure to address any changes in the final permits is a glaring issue that impedes the Tribe's ability to adequately assess and certify the NWP.

Potential projects authorized under one of these proposed NWP, which relies solely on the 0.5-acre limit, could result in the loss of approximately 2,540 linear feet of a stream with a mean width of 8.6 feet (Downing et al. 2012) without being considered to have more than "minimal adverse effects." The mean width of the Whitewater River (River), located within the exterior boundaries of the Tribe's reservation, is the largest water body and only perennial water body, is approximately 8.5 feet for the segment that bisects the Tribe's land. This means that permittees would be allowed to impact roughly 2,500 linear feet of the nearly 4,500 feet of the River segment that passes through the reservation under a single project without compensatory mitigation.

Use designations specified in TWQS for the River include Groundwater Recharge, Municipal Domestic Supply, Agricultural Supply, Primary and Secondary Contact Recreation, Culturally Significant Wildlife and Livestock Habitat, and Warm Freshwater Habitat. Thus, the discharges permitted under the proposed NWP's will not comply with these water quality requirements. By allowing impacts up to 0.5 acre, adverse individual and cumulative impacts are likely.

The Culturally Significant use designation for this River describes water use for cultural purposes that may involve body contact with the water and provision of adequate flow for ceremonial purposes and plant gathering. The Tribe does not believe that a project can successfully demonstrate impacting up to 2,500 linear feet of a stream can be accomplished without adversely affecting this and the other listed TWQS designated uses, nor does the USACE provide any other assurances.

While there is a clear problem with the proposed review and certifying process, the draft proposed rule also does not outline a process for the Tribe to address changes made to the permit language in the final rule. The current procedure requires the Tribe to certify draft permits without a clearly articulated process for the Tribe to address any changes made in the final permits. The Tribe has a right and responsibility to know exactly what it is certifying to ensure discharges authorized by NWP's comply with TWQS. Future modifications to the NWP's may conceivably result in discharges that do not conform to the Tribe's TWQS. Considering this level of uncertainty and lack of information regarding potential changes, the Tribe cannot reasonably be asked to provide a water quality certification for a draft permit. In the spirit of transparency and cooperation, the Tribe has an obligation to review and issue a water quality certification decision on the final NWP's.

The Twenty-Nine Palms Band of Mission Indians hereby **denies** CWA § 401 certification for the USACE's proposed issuance of the NWP's as described in its October 15, 2020 letter due to the potential impacts on designated uses specified in TWQS and insufficient information related to addressing potential changes from the draft to final NWP's. Thank you for your request for water quality certification and your coordination with the Twenty-Nine Palms Tribal Environmental Protection Agency. Should you have questions or need additional information please contact Mrs. Shawn Muir, Tribal Programs Director at (760) 398-6767 or [smuir@29palmsbomi-nsn.gov](mailto:smuir@29palmsbomi-nsn.gov).

Sincerely,



Darrell Mike  
Tribal Chairman

cc. Shawn Muir, Tribal Programs Director