

# GILA RIVER INDIAN COMMUNITY

*Executive Office of the Governor & Lieutenant Governor*

"Putting Our People First"

*Stephen Roe Lewis*  
Governor



*Robert Stone*  
Lieutenant Governor

December 15, 2020

David J. Castanon  
Chief, Regulatory Division,  
Los Angeles District,  
U.S. Army Corps of Engineers  
60 S. California St., Suite 201  
Ventura, CA 93001

Re: Clean Water Act Section 401 Water Quality Certification Determinations of the 2020 Nationwide Permits within the Gila River Indian Community

Dear Mr. Castanon,

The Gila River Indian Community (GRIC or Community), Department of Environmental Quality (DEQ), Water Quality Program (WQP), was awarded Treatment as a State (TAS) designation by the US Environmental Protection Agency (EPA) under Clean Water Act (CWA) Section 518 on October 30, 2018. This designation provides the authority to administer water quality standards and certification programs under CWA Section 303(c) and 401. As a result, the GRIC DEQ Water Quality Program has the responsibility to evaluate and certify federal permits, licenses, and Water Quality Certification applications for work within the Community.

The Community has reviewed your letter of October 15, 2020, requesting CWA Section 401 Water Quality Certification determinations for the U.S. Army Corps of Engineers' (USACE) proposed CWA Section 404 Nationwide Permits (NWP). The Community hereby transmits its certification determinations.

The Community is appreciative of the USACE's commitment to work cooperatively regarding this matter, and highly values the relationship that has been developed between the Community and USACE.

Sincerely,

A handwritten signature in black ink, appearing to be "SRL", written over a faint circular watermark of the Gila River Indian Community logo.

Stephen R. Lewis, Governor  
Gila River Indian Community

**DECISIONS OF THE GILA RIVER INDIAN COMMUNITY PURSUANT  
TO AUTHORITY UNDER THE CLEAN WATER ACT REGARDING  
CERTIFICATION OF THE NATIONWIDE PERMITS PROPOSED FOR  
REISSUANCE BY THE UNITED STATES ARMY CORPS OF ENGINEERS**

On September 15, 2020, the United States Army Corps of Engineers (USACE) issued its Proposal to Reissue and Modify Nationwide Permits.<sup>1</sup> Subsequently, on October 15, 2020, the USACE Los Angeles District requested water quality certification pursuant to Clean Water Act (CWA) § 401<sup>2</sup> for those proposed Nationwide Permits (NWP) that may result in a discharge in waters of the United States within the tribal lands of the Gila River Indian Community (GRIC or Community). That certification was requested within 60 days, which the letter states is the applicable “reasonable period of time.”

On October 30, 2018, the U.S. Environmental Protection Agency (EPA) approved the Community’s treatment in a similar manner as a state (TAS) application, pursuant to CWA § 518,<sup>3</sup> for purposes of administering water quality standards under CWA § 303<sup>4</sup> and water quality certifications under CWA § 401. This authorizes the Community to issue water quality certifications for proposed activities affecting waters on its lands. The Community vested this authority in the GRIC Department of Environmental Quality (DEQ), which is thus the certifying authority for CWA § 401.

The Community notes the inherent unfairness in the USACE’s request for final certification decisions on nationwide permits that remain in the rulemaking process, and thus are not themselves final, but rather are subject to change. The recently updated regulations governing water quality certifications<sup>5</sup> state that a failure to certify, certify with conditions, or deny a certification within a reasonable period of time constitutes a waiver of the right to certify, which removes the certifying authority’s right to issue such certifications. Therefore, the Community will nevertheless make its certification determinations in order to preserve its rights.

Moreover, the USACE has determined by regulation that a reasonable period of time will “generally” be 60 days<sup>6</sup> but that the District Engineer may allow a longer period of time as circumstances “may reasonably require.”<sup>7</sup> The USACE, however, has indicated that no request for extension will be entertained, thus denying the Community and other certifying authorities the opportunity to make certification decisions on finalized nationwide permits.

The regulations require that the certifying authority meet a specific burden in demonstrating that the NWP) will not comply with water quality requirements,<sup>8</sup> while providing the USACE with the

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<sup>1</sup> 85 Fed. Reg. 57,298 *et seq.*

<sup>2</sup> 33 U.S.C. § 1341.

<sup>3</sup> 33 U.S.C. § 1377.

<sup>4</sup> 33 U.S.C. § 1313.

<sup>5</sup> 40 C.F.R. Part 121.

<sup>6</sup> 33 C.F.R. § 330.4(c)(6).

<sup>7</sup> 33 C.F.R. § 325.2(b)(1)(ii).

<sup>8</sup> 40 C.F.R. § 121.7(e)(2).

sole discretion, without right of appeal, to determine whether this burden has been met.<sup>9</sup> Thus, in order to preserve its sovereign authority under TAS, the Community must provide specific objections to draft documents, with the USACE retaining the authority to determine whether these objections apply to the final permits it has not shared with the Community. A USACE change to a NWP before finalizing it could very well change whether and to what extent the NWP affects water quality. This approach is arbitrary and capricious.

While not waiving the above objections, GRIC DEQ is taking the following actions, pursuant to its authority granted under TAS, with respect to the Proposed Nationwide Permits:

- Nationwide Permits where the Community is taking no action pursuant to the USACE determination that such Nationwide Permits do not require section 401 water quality certification because such permits would authorize activities that could not reasonably be expected to result in a discharge into waters of the United States. **Nationwide Permits numbered 1, 2, 8, 9, 10, 11, 24, 26, 28, 35, 47, A, and B**
- Nationwide Permits where the Community is certifying: **Nationwide Permits numbered 3, 4, 5, 6, 13, 15, 16, 17, 21, 22, 23, 27, 29, 30, 31, 32, 33, 34, 36, 37, 38, 39, 42, 43, 45, 48, 49, 50, 51, 52, 53, and 54.**
- Nationwide Permits where the Community is denying certification: **Nationwide Permits numbered 7, 12, 14, 18, 19, 20, 25, 40, 41, 44, 46, C, D, and E.**

## **I. Community Water Quality Requirements**

The U.S. Environmental Protection Agency (EPA) has recognized in its CWA Section 401 Certification Rule<sup>10</sup> that, in the case of some tribal lands, the certifying agency will need to conduct individual review for some activities to ensure compliance with the applicable provisions of sections 301, 302, 303, 306, and 307 of the CWA and other appropriate provisions of Tribal law. The EPA further confirmed that “if a Tribe has adopted water quality standards under Tribal law that serve as a basis for effluent limitations or other requirements for point source discharges into waters of the United States, the certifying authority must consider those provisions when evaluating a certification request.”<sup>11</sup> Finally, in evaluating a certification request, the Tribe may properly “deny certification if it is unable to certify that the proposed discharge will comply with “water quality requirements.”<sup>12</sup>

The Community relies upon a number of Water Quality Requirements that satisfy the definition in 40 C.F.R. § 121.1(n) as “applicable provisions of §§ 301, 302, 303, 306, and 307 of the Clean Water Act, and state or tribal regulatory requirements for point source discharges into waters of the United States.” Where the Community has determined either that a potential discharge authorized by an NWP will not comply with a Community Water Quality Requirement or that the Community cannot determine whether a potential discharge will or will not comply with a

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<sup>9</sup> See 85 Fed. Reg. 42,210, 42,269 (Jul. 13, 2020).

<sup>10</sup> 85 Fed. Reg. 42,210 *et seq.* (Jul. 13, 2020).

<sup>11</sup> *Id.* at 42,254.

<sup>12</sup> *Id.* at 42,257.

Community Water Quality Requirement due to insufficient information, the Community has denied certification of that NWP.

The Water Quality Requirements that the Community has relied upon in making its certification decisions are as follows:

1. Section 5.9.1.5 of the Community's Criminal Code prohibits discharges of harmful substances into any water or waterway, including any river, stream, or canal, whether containing water or not, within the Community's Reservation, unless authorized to do so by the Community.
2. Community Pesticide Ordinance, GR-05-14, regulates application of pesticides within the Reservation, in order to protect the public health, safety, and environment, including water quality, of the Community. The ordinance establishes pesticide management areas, which are areas where application and use of pesticides is regulated or prohibited.
3. The Community Council passed Resolution GR-129-10 authorizing a conservation easement over the Pee Posh Wetlands for the purpose of restoring, protecting, managing, maintaining, and enhancing the functional value of the Pee Posh Wetlands, and for the conservation of natural values including fish and wildlife and their habitat. The Conservation Easement prohibits actions within the Pee Posh wetlands or use of the Pee Posh wetlands in a manner that is not consistent with the purpose of the easement.
4. The Community's Waste Management Ordinance, GR-04-14, was enacted in part for the purpose of protecting the Community's waters from "from solid waste pollution, including contamination of the Community's aquifers, groundwaters, surface waters, drinking water sources, and all other natural resources. §18.204(D). This includes restrictions that specifically target water quality. §18.229.
5. Community Ordinance GR-04-16, the Wastewater and Reclaimed Water Management Ordinance, is a comprehensive regulatory framework, including standards, regulations, and permits, that has the express purpose "to provide for the proper disposal and management of wastewater and septage, provide minimum performance standards and water quality limits for wastewater treatment, and provide safe utilization of reclaimed water, which is a valuable resource [and also] prevent[s] and minimize[s] environmental degradation and contamination of surface water and groundwater; and protect[s] the health, safety, and welfare of the members, nonmembers, residents, and employees of the Gila River Indian Community." § 15.601(A).
6. 40 CFR § 230.10(b)(3) prohibits discharge of dredge or fill materials that would jeopardize the continued existence of threatened or endangered species under the Endangered Species Act of 1973 or results in likelihood of the destruction or adverse modification of critical habitat.

7. 40 CFR § 230.10(c)(1) prohibits the discharge of dredged or fill material that will cause or contribute to significant degradation of the waters of the United States, which includes adverse effects on wildlife and special aquatic sites (which include wetlands).
8. 40 CFR § 230.10(c)(4) prohibits the discharge of dredged or fill material that will cause or contribute to significant degradation of the waters of the United States, including adverse effects on recreational, aesthetic, and economic values.
9. 40 C.F.R. § 230.54 requires the consideration of potential effects of the discharge of pollutants into areas that have been designated for, among other reasons, their historic value.
10. Ordinance GR-01-82, the Archaeological Licenses Ordinance, prohibits any person from knowingly excavating upon or removing, moving, destroying, injuring, defacing, or desecrating any protected place or object on Community lands. Protected places are defined broadly to include physical evidence of human habitation, occupation, use, or activity, which includes, but is not limited to, canals, reservoirs, and surface and subsurface structures and features.
11. Resolution GR-027-20, Land Review Development Procedure Ordinance, sets forth a review process and approval requirement for proposed development projects on Community lands. An enumerated purpose of this review and approval requirement is to protect the Community's natural environment by encouraging development practices that protect wildlife, vegetation, land, watercourses, air quality, and water quality and supply, as well as to avoid development that poses a threat to the Community's environment and members.
12. Arizona Water Claims Settlement Act of 2004 (AWSA)<sup>13</sup> provides for the delivery of Central Arizona Project (CAP) water to the Community, which is a resource that the United States holds in trust for the benefit of the Community. Based upon the Community's reliance upon its rights under federal law to the delivery of water, the Community is developing an expansive 1,000+ mile irrigation canal system pursuant to the Pima-Maricopa Irrigation Project (P-MIP) to deliver water throughout the Community to increase the number of acres that can be irrigated and to increase farming opportunities. Any action that limits or affects the quantity or quality of water deliveries and/or distribution throughout the Community would conflict with the AWSA mandates and deprive the Community of the water it needs to sustain these additional functions that are essential to the economy, culture, and well-being of the Community.

## **II. Community Considerations in Certification Decisions**

In determining whether a potential discharge will comply with a Community Water Quality Requirement or whether sufficient information exists for the Community to make a certification decision, the Community has considered potential effects upon, or whether a determination can be

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<sup>13</sup> P.L. 108-451.

made with respect to potential effects upon, certain wetlands and waterways of environmental sensitivity or significance to the Community. Locating physical infrastructure, dredging, or allowing discharges in or adjacent to these wetlands and waterways or modifying these areas could adversely affect: sensitive aquatic resources; Community preservation and enhancement activities; religious, spiritual, and educational uses of waterways; and wildlife and habitat (including the presence or anticipated presence of threatened and endangered species and/or critical habitat protected under the Endangered Species Act).

As referenced in the Community's certification denials below, the basis of many such denials is the Community's determination that potential discharges could violate Water Quality Requirements meant to protect such sensitive areas, or that insufficient information exists (*e.g.*, the location of potential discharges or type, timing, nature, and quantities of discharges, *etc.*) that would allow the Community to determine the effect of such discharges on such sensitive areas.

### **III. Notable Special Aquatic Sites, Other Sensitive Waters and Conveyance Channels on Community lands**

In addition to major rivers, canals, and other important waters, the Community contains a number of Special Aquatic Sites (as defined in 40 C.F.R. § 230 Subpart E) and other sensitive waters.

- **Managed Aquifer Recharge Sites.** The Managed Aquifer Recharge (MAR) project entails the Community's discharging its excess CAP irrigation water into the Gila River in order to create a live stream, re-establish native vegetation, and allow for subsurface aquifer recharge. In addition to providing these aquatic function and service benefits, re-establishing a live waterway and restoring vegetation within the Gila River has great cultural and spiritual significance for the Community and its members. In recognition of this, the Community has developed an interpretive trail and educational facility adjacent to its MAR 5 site. The Gila River MAR 5 Interpretive Trail is an outdoor educational living experience that enlightens visitors about the Community's farming legacy and includes design aspects representative of the Akimel O'otham (Pima), and the Pee-Posh (Maricopa) cultures, which also include ancient Huhugam. Visitors learn about Community native plants, animals, and landscapes, and can experience the flowing Gila River waters in its natural habitat. O'otham and Pee-Posh visitors come to reconnect to their heritage and culture and to listen to the water as it once again flows in the Gila River streambed.
- **Pee Posh Wetlands.** Pursuant to Resolution GR-129-10, the Community has placed a conservation easement over the Pee Posh Wetlands for the purpose of restoring, protecting, managing, maintaining, and enhancing the functional value of the Pee Posh Wetlands, for the conservation of fish and wildlife and their habitat. The Conservation Easement prohibits actions within or use of the Pee Posh wetlands that are not consistent with these easement purposes in order to ensure important water quality and environmental benefits.
- **Endangered Species Act Safe Harbor Conservation and Enhancement Areas.** The Community is taking a number of conservation and enhancement activities to improve the conditions of wetlands, waterways, aquatic resources, and other natural resources on the Community's lands. In addition to protecting and enhancing water quality, these activities

are expected reestablish the presence of threatened and endangered species and restore and maintain suitable habitat for these species. To facilitate this species recovery, the Community is working with the U.S. Department of the Interior, Fish and Wildlife Service (FWS) to prepare a Safe Harbor Agreement under the FWS Safe Harbor Agreement final policy,<sup>14</sup> FWA Safe Harbor Agreement final regulations and related amendments,<sup>15</sup> and the requirements of section 10(a)(1)(A) of the Endangered Species Act (ESA).<sup>16</sup>

- The Community's Central Arizona Project Water Distribution Network. CAP water, a trust resource that is guaranteed to the Community under the AWSA, is delivered to the Community and distributed via an expansive 1,000+ mile irrigation canal system consisting of a network of ditches, canals, and other waterways pursuant to the P-MIP. The P-MIP system delivers water throughout the Community to increase the number of acres that can be irrigated and to increase farming opportunities.

#### **IV. Cultural Significance of Community Waters**

The Gila River and Salt River on Community lands are culturally significant. In addition, springs and seeps are considered significant and some are important in religious/cultural ceremonies. The Community's waters and water supplies are essential to the spiritual, religious, and economic wellbeing of the Community's members. Many of the waterways on the Community's lands are sacred in part because of their natural character, as they have sustained the Community and its people for centuries. Community members also hold cultural and religious ceremonies at and in the vicinity of waterways.

#### **V. Gila River Indian Community Certification Decisions**

Set forth below are the Community's Certification Decisions. The Community hereby incorporates the information in Sections I-IV above into its decisions, as applicable. In addition, to satisfy the requirements of 40 CFR §121.7(e)(2), for each certification denial, the Community has provided a detailed explanation of applicable Water Quality Requirements, why discharges will not comply with such Water Quality Requirements, and areas of insufficient information.

- 1. NWP-01: Aids to Navigation** – No certification necessary.
- 2. NWP-02: Structures in Canals** – No certification necessary.
- 3. NWP-03: Maintenance** – Certified.
- 4. NWP-04: Fish and Wildlife Harvesting, Enhancement, Attraction Devices and Activities** – Certified.
- 5. NWP-05: Scientific Measurement Devices** – Certified.

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<sup>14</sup> 64 Fed. Reg. 32,717 (Jun. 17, 1999).

<sup>15</sup> 50 C.F.R. Parts 13 & 17.

<sup>16</sup> 16 U.S.C. § 1539(a)(1)(A).

**6. NWP-06: Survey Activities – Certified.**

**7. NWP-07: Outfall Structures and Associated Intake Structures – Denied.**

The Community **denies** certification for NWP 7: Outfall Structures and Associated Intake Structures. Any applicant seeking to use NWP 7 must apply to the GRIC DEQ Water Quality Program (WQP) for an individual Water Quality Certification.

The discharges that could be authorized by NWP 7 will not comply with one or more of the following Water Quality Requirements:

- (1) Criminal Code § 5.9.1.5;
- (2) Pesticide Ordinance GR-05-14;
- (3) Resolution GR-129-10;
- (4) Waste Management Ordinance GR-04-14;
- (5) Wastewater and Reclaimed Water Management Ordinance GR-04-16;
- (6) Land Review Development Procedure Ordinance GR-027-20;
- (7) Archaeological Licenses Ordinance GR-01-82;
- (8) 40 C.F.R. § 230.10(b)(3);
- (9) 40 C.F.R. § 230.10(c)(1);
- (10) 40 C.F.R. § 230.10(c)(4);
- (11) 40 C.F.R. § 230.54; and
- (12) P.L 108-451.

Outfall and intake structures could constitute or facilitate the discharge of harmful substances into a river, stream or canal, which is prohibited under Section 5.9.1.5 of the Community's Criminal Code.

Depending on the location of an outfall or intake structure, the structure itself, the effluent that it may discharge, or the water that it may intake could constitute an activity prohibited by GR-129-10, which authorized a conservation easement over the Pee Posh Wetlands for the purpose of restoring, protecting, managing, maintaining, and enhancing the functional value of the Pee Posh Wetlands, and for the conservation of natural values including fish and wildlife and their habitat. Further, even if the outfall or intake structure is located outside of the easement area, the discharge could affect the water quality within the Pee Posh Wetlands, a sensitive aquatic site protected by 40 C.F.R. § 230.10(c)(1), which prohibits the discharge of dredged or fill material that will cause or contribute to significant degradation of waters of the United States, including adverse effects on wildlife and special aquatic sites (which include wetlands). For this reason, it is necessary for the Community to know the location and information about the discharge and fill associated with a specific outfall or intake structure in order to determine compliance with Water Quality Requirements.

Other sensitive resources on Community lands that are protected by the Community's Water Quality Requirements could be similarly impacted by an outfall or intake structure. One such example is the Community's MAR 5 site, which the Community has established for the express



purposes of creating a live and continuous flowing river, establishing vegetation, attracting wildlife, and serving as a location where Community members can learn, recreate, and partake in the spiritual significance of the re-emergence and sounds of the flows associated with a live river. An outfall structure that results in discharge that adversely impacts water quality or an intake structure that removes water to reduce flows would adversely affect the MAR 5 site, in violation of 40 C.F.R. § 230.10(c)(4), which prohibits the discharge of dredged or fill material that will cause or contribute to significant degradation of the waters of the United States, including adverse effects on recreational, aesthetic, and economic values.

A further example are the areas that are being restored, conserved, and enhanced by the Community and are expected to reestablish the presence of wildlife, including threatened and endangered species and their critical habitat. Outfall and intake structures in these locations could violate: (i) 40 C.F.R. § 230.10(b)(3), which prohibits discharge of dredge or fill materials that would jeopardize the continued existence of threatened or endangered species under the Endangered Species Act of 1973 or results in likelihood of the destruction or adverse modification of critical habitat; and (ii) 40 C.F.R. § 230.10(c)(1), which prohibits the discharge of dredged or fill material that will cause or contribute to significant degradation of the waters of the United States, including adverse effects on wildlife and special aquatic sites (which include wetlands).

The Community also lacks sufficient information to determine whether the outfall or intake structure itself, the effluent that it may discharge, or the water that it may intake fails to meet the restrictions that specifically target water quality under the Community's Waste Management Ordinance, GR-04-14, which was enacted in part for the purpose of protecting the Community's waters from "from solid waste pollution, including contamination of the Community's aquifers, groundwaters, surface waters, drinking water sources, and all other natural resources." §18.204(D).

Because the Community has insufficient knowledge concerning what an outfall structure may discharge, the discharge associated with an outfall structure could fail to comply with the minimum performance standards and water quality limits imposed under Community Ordinance GR-04-16, the Wastewater and Reclaimed Water Management Ordinance. Community Ordinance GR-04-16 is a comprehensive regulatory framework that includes standards, regulations, and permits, that "provide[s] for the proper disposal and management of wastewater and septage, provide[s] minimum performance standards and water quality limits for wastewater treatment, and provide[s] safe utilization of reclaimed water, which is a valuable resource [and also] prevent[s] and minimize[s] environmental degradation and contamination of surface water and groundwater; and protect[s] the health, safety, and welfare of the members, nonmembers, residents, and employees of the Gila River Indian Community." § 15.601(A).

The inability to receive notice of a proposed dredge or fill activity that could occur with a programmatic certification of NWP 7, and the inherent unknowns regarding outfall and intake structures and the facilities associated with such structures that could be authorized under NWP 7, could allow a development project to avoid review under Resolution GR-027-20, the Community's Land Review Development Procedure Ordinance. The Land Review Development Procedure Ordinance sets forth a review process and approval requirements for proposed development projects on Community lands. An enumerated purpose of this review and approval requirement is

to protect the Community's natural environment by encouraging and requiring development practices that protect, among other resources, wildlife, vegetation, watercourses, and water quality and supply.

An intake structure authorized under NWP 7 could also affect, including by intaking water from, a waterway that is part of the Community's P-MIP system that conveys CAP water, which is a resource that the United States holds in trust for the benefit of the Community. Without further information regarding the location and operation/purpose of such an intake structure, which would not be available to the Community if NWP 7 were programmatically certified, it is not possible for the Community to know whether such an action would limit or affect the quality of water distributed by the P-MIP system or would otherwise deprive the Community of waters that are delivered pursuant to and protected under the AWSA and are needed by the Community for agricultural and other purposes that are essential to the economy, culture, and well-being of the Community.

Outfall structures and intake structures could interfere with the aesthetic values that are central to the spiritual character of Community waterways, and therefore could violate the prohibition in 40 C.F.R. § 230.10(c)(4) on discharge of pollutants with significant adverse effects on aesthetic values. The Gila River and Salt River on Community lands are culturally significant. In addition, springs and seeps are considered significant and some are important in religious/cultural ceremonies. The Community's waters and water supplies are essential to the spiritual, religious, and economic wellbeing of the Community's members. Many of the waterways on the Community's lands are sacred in part because of their natural character, as they have sustained the Community and our people for centuries.

Moreover, some of the waters and associated banks may qualify as or include in their areas Traditional Cultural Properties that qualify for protection under the National Historic Preservation Act. As such, the potential effects of discharges on reducing or eliminating their historic value must be considered per 40 C.F.R. § 230.54.

Additionally, Ordinance GR-01-82 prohibits any person from knowingly excavating upon or removing, moving, destroying, injuring, defacing, or desecrating any protected place or object on Community lands. Protected places are defined broadly to include physical evidence of human habitation, occupation, use, or activity, which includes, but is not limited to, canals, reservoirs, and surface and subsurface structures and features. Thus, a waterbody could be a protected place. NWP 7 could authorize an outfall structure or intake structure in a protected place, clearly resulting in excavating upon, destroying, or otherwise injuring that protected place in violation of Ordinance GR-01-82.

Further, it is not clear whether all activities authorized by NWP 7 would comply with the Community's Wastewater and Reclaimed Water Management Ordinance. For example, §15.606(C) of that Ordinance has particular quantitative water quality standards for discharge of reclaimed water, including for turbidity, and it is not clear whether an outfall structure authorized under NWP 7 will necessarily comply with those requirements.

Additionally, this NWP does not appear to prohibit structures in Special Aquatic Sites and may therefore cause significant degradation of such sites on Community lands in violation of 40 C.F.R. § 230.10(c)(1).

While the type of water quality data or information needed to assure compliance with water quality requirements will vary on a case-by-case basis, it is likely to include some of the following: the name or segment of the receiving water; the specific location of the project's discharge; an expected Area of Potential Effects for the discharge; the amount, area, and material of the discharge; available baseline assessment of the receiving waterbody; monitoring data of the water body receiving the discharge; information regarding visual appearance and noise associated with the discharge; any available information regarding historic and cultural resources in the expected Area of Potential Effects; information about the type, timing, quality, and quantity of the discharge flowing through the outfall structure; and any measures the project will implement to avoid, minimize, or mitigate potential adverse effects.

**8. NWP-08: Oil and gas structures on the Outer Continental Shelf – No certification necessary.**

**9. NWP-09: Structures in Fleeting and Anchorage Areas – No certification necessary.**

**10. NWP-10: Mooring Buoys – No certification necessary.**

**11. NWP-11: Temporary Recreational Structures – No certification necessary.**

**12. NWP-12: Oil or Natural Gas Pipeline Activities – Denied.**

The Community **denies** certification for NWP 12: Oil or Natural Gas Pipeline Activities. Any applicant seeking to use NWP 12 must apply to the GRIC DEQ WQP for an individual Water Quality Certification.

The discharges that could be authorized by NWP 12 will not comply with one or more of the following water quality requirements:

- (1) Criminal Code § 5.9.1.5;
- (2) Pesticide Ordinance GR-05-14;
- (3) Resolution GR-129-10;
- (4) Waste Management Ordinance GR-04-14;
- (5) Wastewater and Reclaimed Water Management Ordinance GR-04-16;
- (6) Land Review Development Procedure Ordinance GR-027-20;
- (7) Archaeological Licenses Ordinance GR-01-82;
- (8) 40 C.F.R. § 230.10(b)(3);
- (9) 40 C.F.R. § 230.10(c)(1);
- (10) 40 C.F.R. § 230.10(c)(4);
- (11) 40 C.F.R. § 230.54; and
- (12) P.L 108-451.

Oil or natural gas pipeline activities, including oil or natural gas pipelines, oil or natural gas pipeline substations, and associated foundations and access roads, could constitute or facilitate the discharge of harmful substances into a river, stream, or canal, which is prohibited under Section 5.9.1.5 of the Community's Criminal Code. An oil or natural gas pipeline that leaks or results in discharges during installation may similarly constitute a prohibited discharge.

Depending on the location of the oil or natural gas pipeline activity and the activity itself, it may constitute an activity prohibited by Ordinance GR-129-10, which authorized a conservation easement over the Pee Posh Wetlands for the purpose of restoring, protecting, managing, maintaining, and enhancing the functional value of the Pee Posh Wetlands, and for the conservation of natural values including fish and wildlife and their habitat. NWP 12 authorizes activities that may result in the loss of up to ½ acre of waters of the United States. As such, an oil or natural gas pipeline activity permitted by NWP 12 could destroy up to ½ acre of the Pee Posh Wetlands in violation of Ordinance GR-129-10. Further, even if the oil or natural gas pipeline activity is located outside of the easement area, the discharge could affect the water quality within the Pee Posh Wetlands, a sensitive aquatic site protected by 40 C.F.R. § 230.10(c)(1), which prohibits the discharge of dredged or fill material that will cause or contribute to significant degradation of the waters of the United States, including adverse effects on wildlife and special aquatic sites (defined to include wetlands). For this reason, it is necessary for the Community to know the location and information about the discharge and fill associated with the oil or natural gas pipeline activities in order to determine compliance with Water Quality Requirements.

Other sensitive resources on the Community lands that are protected by the Community's Water Quality Requirements could be similarly impacted by oil or natural gas pipeline activity. One such example is the Community's MAR 5 site, which the Community has established for the express purposes of creating a live and continuous flowing river, establishing vegetation, attracting wildlife, and serving as a location where Community members can learn, recreate, and partake in the spiritual significance of the re-emergence and sounds of the flows associated with a live river. An oil or natural gas pipeline, a substation, or access road in that area or its vicinity, could adversely affect the MAR 5 site, including its Interpretive Trail and educational functions, in violation of 40 C.F.R. § 230.10(c)(4), which prohibits the discharge of dredged or fill material that will cause or contribute to significant degradation of the waters of the United States, including adverse effects on recreational, aesthetic, and economic values.

A further example are the areas that are being restored, conserved, and enhanced by the Community and are expected to reestablish the presence of wildlife, including threatened and endangered species and their critical habitat. Oil or natural gas pipeline activities in or near these locations could violate: (i) 40 C.F.R. § 230.10(b)(3), which prohibits discharge of dredge or fill materials that would jeopardize the continued existence of threatened or endangered species under the Endangered Species Act of 1973 or results in likelihood of the destruction or adverse modification of critical habitat; and (ii) 40 C.F.R. § 230.10(c)(1), which prohibits the discharge of dredged or fill material that will cause or contribute to significant degradation of the waters of the United States, including adverse effects on wildlife and special aquatic sites (which include wetlands).

The Community also lacks sufficient information to determine whether the oil or natural gas pipeline activities could constitute a discharge that fails to meet the restrictions that specifically target water quality under the Community's Waste Management Ordinance, GR-04-14, which was enacted in part for the purpose of protecting the Community's waters from "from solid waste pollution, including contamination of the Community's aquifers, groundwaters, surface waters, drinking water sources, and all other natural resources." §18.204(D). For example, the material used to construct an access road or other pipeline infrastructure could be a recycled material that meets the Ordinance's definition of solid waste, and thus is prohibited or subject to regulation.

Because the Community has insufficient knowledge concerning the size, extent, and impact of the specific oil or natural gas pipeline activities, those activities could fail to comply with the minimum performance standards and water quality limits imposed under Community Ordinance GR-04-16, the Wastewater and Reclaimed Water Management Ordinance. Community Ordinance GR-04-16 is a comprehensive regulatory framework that includes standards, regulations, and permits, that "provide[s] for the proper disposal and management of wastewater and septage, provide[s] minimum performance standards and water quality limits for wastewater treatment, and provide[s] safe utilization of reclaimed water, which is a valuable resource [and also] prevent[s] and minimize[s] environmental degradation and contamination of surface water and groundwater; and protect[s] the health, safety, and welfare of the members, nonmembers, residents, and employees of the Gila River Indian Community." § 15.601(A). For example, installation of pipelines and infrastructure authorized by NWP 12 may nevertheless violate the Ordinance's restrictions regarding turbidity.

The inability to receive notice of a proposed dredge or fill activity that could occur with a programmatic certification of NWP 12, and the inherent unknowns regarding oil or natural gas pipeline activities that could be authorized under NWP 12, could allow a development project to avoid review under Resolution GR-027-20, the Community's Land Review Development Procedure Ordinance. The Land Review Development Procedure Ordinance sets forth a review process and approval requirement for proposed development projects on Community lands. An enumerated purpose of this review and approval requirement is to protect the Community's natural environment by encouraging and requiring development practices that protect, among other resources, wildlife, vegetation, land, watercourses, and water quality and supply.

Pipelines and associated infrastructure authorized under NWP 12 could also be located within a waterway that is part of the Community's P-MIP system that conveys CAP water, which is a resource that the United States holds in trust for the benefit of the Community. Without further information regarding the location and operation/purpose of the pipelines and associated infrastructure, which would not be available to the Community if NWP 12 were programmatically certified, it is not possible for the Community to know whether such an action would or affect the quality or quantity of water distributed by the P-MIP system or would otherwise deprive the Community of waters that are delivered pursuant to and protected under the AWSA and are needed by the Community for agricultural and other purposes that are essential to the economy, culture, and well-being of the Community.

Oil or natural gas pipeline activities could interfere with the aesthetic values that are central to the spiritual character of Community waterways, and therefore could violate the prohibition in 40 C.F.R. § 230.10(c)(4) on discharge of pollutants with significant adverse effects on aesthetic values. The Gila River and Salt River on Community lands are culturally significant. In addition, springs and seeps are considered significant and some are important in religious/cultural ceremonies. The Community's waters and water supplies are essential to the spiritual, religious, and economic wellbeing of the Community's members. Many of the waterways on the Community's lands are sacred in part because of their natural character, as they have sustained the Community and our people for centuries.

Moreover, some of the waters and associated banks may qualify as or include in their areas Traditional Cultural Properties that qualify for protection under the National Historic Preservation Act. As such, the potential effects of discharges on reducing or eliminating their historic value must be considered per 40 C.F.R. § 230.54, and the Water Quality Certification is the appropriate process for considering this impact.

Additionally, Ordinance GR-01-82 prohibits any person from knowingly excavating upon or removing, moving, destroying, injuring, defacing, or desecrating any protected place or object on Community lands. Protected places are defined broadly to include physical evidence of human habitation, occupation, use, or activity, which includes, but is not limited to, canals, reservoirs, and surface and subsurface structures and features. Thus, a waterbody could be a protected place. NWP 12 could authorize excavations, removal, destruction, or other injury to a protected place or object in violation of the Ordinance.

Further, it is not clear whether all activities authorized by NWP 12 would comply with the Community's Wastewater and Reclaimed Water Management Ordinance. For example, §15.606(C) of that Ordinance has particular quantitative water quality standards for discharge of reclaimed water, including for turbidity, and it is not clear whether pipeline infrastructure itself or its installation, as authorized under NWP 12, will necessarily comply with those requirements.

Additionally, NWP 12 does not appear to prohibit structures in Special Aquatic Sites and may therefore cause significant degradation of such sites on Community lands in violation of 40 C.F.R. § 230.10(c)(1).

While the type of water quality data or information needed to assure compliance with water quality requirements will vary on a case-by-case basis, it is likely to include some of the following: the nature of the oil or natural gas pipeline activity; the name or segment of the receiving water; the specific location of the oil or natural gas pipeline activity; an expected Area of Potential Effects for the discharge; the amount, area, and material of the discharge; available baseline assessment of the receiving waterbody; monitoring data of the water body receiving the discharge; information regarding visual appearance and noise associated with the discharge; any available information regarding historic and cultural resources in the expected Area of Potential Effects; information about the type, timing, quantity, and quality of the discharge flowing through any outfall structure; and any measures the project will implement to avoid, minimize, or mitigate potential adverse effects.

**13. NWP-13: Bank Stabilization – Certified.**

**14. NWP-14: Linear Transportation Projects – Denied.**

The Community **denies** certification for NWP 14: Linear Transportation Projects. Any applicant seeking to use NWP 14 must apply to the GRIC DEQ WQP for an individual Water Quality Certification.

The discharges that could be authorized by NWP 14 will not comply with one or more of the following water quality requirements:

- (1) Criminal Code § 5.9.1.5;
- (2) Pesticide Ordinance GR-05-14;
- (3) Resolution GR-129-10;
- (4) Waste Management Ordinance GR-04-14;
- (5) Wastewater and Reclaimed Water Management Ordinance GR-04-16;
- (6) Land Review Development Procedure Ordinance GR-027-20;
- (7) Archaeological Licenses Ordinance GR-01-82;
- (8) 40 C.F.R. § 230.10(b)(3);
- (9) 40 C.F.R. § 230.10(c)(1);
- (10) 40 C.F.R. § 230.10(c)(4);
- (11) 40 C.F.R. § 230.54; and
- (12) P.L 108-451.

Linear transportation projects, including associated temporary activities, could constitute or facilitate the discharge of harmful substances into a river, stream, or canal, which is prohibited under Section 5.9.1.5 of the Community’s Criminal Code.

Depending on the location of the linear transportation project and the nature of the project itself, it may constitute an activity prohibited by Ordinance GR-129-10, which authorized a conservation easement over the Pee Posh Wetlands for the purpose of restoring, protecting, managing, maintaining, and enhancing the functional value of the Pee Posh Wetlands, and for the conservation of natural values including fish and wildlife and their habitat. NWP 14 authorizes activities that may result in the loss of up to ½ acre of waters of the United States. As such, a linear transportation project permitted by NWP 14 could destroy up to ½ acre of the Pee Posh Wetlands in violation of Ordinance GR-129-10. Further, even if the linear transportation project is located outside of the easement area, the discharge could affect the water quality within the Pee Posh Wetlands, a sensitive aquatic site protected by 40 C.F.R. § 230.10(c)(1), which prohibits the discharge of dredged or fill material that will cause or contribute to significant degradation of the waters of the United States, including adverse effects on wildlife and special aquatic sites (defined to include wetlands). For this reason, it is necessary for the Community to know the location and information about the discharge and fill associated with the linear transportation project to determine its compliance with Water Quality Requirements.

Other sensitive resources on the Community lands that are protected by the Community’s Water Quality Requirements could be similarly impacted by a linear transportation project. One such

example is the Community's MAR 5 site, which the Community has established for the express purposes of creating a live and continuous flowing river, establishing vegetation, attracting wildlife, and serving as a location where Community members can learn, recreate, and partake in the spiritual significance of the re-emergence and sounds of the flows associated with a live river. A linear transportation project in that area, or construction thereof, could adversely affect the MAR 5 site, or its educational facilities and functions, including the MAR 5 Interpretive Trail, in violation of 40 C.F.R. § 230.10(c)(4), which prohibits the discharge of dredged or fill material that will cause or contribute to significant degradation of the waters of the United States, including adverse effects on recreational, aesthetic, and economic values.

A further example are the areas that are being restored, conserved, and enhanced by the Community and are expected to reestablish the presence of wildlife, including threatened and endangered species and their critical habitat. Thus, linear transportation projects in these locations could violate: (i) 40 C.F.R. § 230.10(b)(3), which prohibits discharge of dredge or fill materials that would jeopardize the continued existence of threatened or endangered species under the Endangered Species Act of 1973 or results in likelihood of the destruction or adverse modification of critical habitat; and (ii) 40 C.F.R. § 230.10(c)(1), which prohibits the discharge of dredged or fill material that will cause or contribute to significant degradation of the waters of the United States, including adverse effects on wildlife and special aquatic sites (which include wetlands).

The Community also lacks sufficient information to determine whether linear transportation projects could constitute a discharge that fails to meet the restrictions that specifically target water quality under the Community's Waste Management Ordinance, GR-04-14, which was enacted in part for the purpose of protecting the Community's waters from "from solid waste pollution, including contamination of the Community's aquifers, groundwaters, surface waters, drinking water sources, and all other natural resources." §18.204(D). For example, the material used to construct a road could be a recycled material that meets the Ordinance's definition of solid waste, and thus may be prohibited or regulated.

Because the Community has insufficient knowledge concerning the size, extent, and impact of the specific linear transportation project, those projects could fail to comply with the minimum performance standards and water quality limits imposed under Community Ordinance GR-04-16, the Wastewater and Reclaimed Water Management Ordinance. Community Ordinance GR-04-16 is a comprehensive regulatory framework that includes standards, regulations, and permits, that "provide[s] for the proper disposal and management of wastewater and septage, provide[s] minimum performance standards and water quality limits for wastewater treatment, and provide[s] safe utilization of reclaimed water, which is a valuable resource [and also] prevent[s] and minimize[s] environmental degradation and contamination of surface water and groundwater; and protect[s] the health, safety, and welfare of the members, nonmembers, residents, and employees of the Gila River Indian Community." § 15.601(A). For example, NWP 14 calls for "appropriate measures...to maintain downstream flows" but nevertheless authorizes activities such as cofferdams. In a desert environment, where waters of the United States may be seasonal or intermittent, this NWP may authorize activities that dramatically change the velocities and extent of inconsistent flows, thereby potentially harming an ecosystem that depends on receiving those



flows or affecting the recharge of groundwater. Without more information about the specific activities that a linear transportation project will entail, the Community cannot determine that it will comply with this Ordinance.

The inability to receive notice of a proposed dredge or fill activity that could occur with a programmatic certification of NWP 14, and the inherent unknowns regarding linear transportation projects that could be authorized under NWP 14, could allow a development project to avoid review under Resolution GR-027-20, the Community's Land Review Development Procedure Ordinance. The Land Review Development Procedure Ordinance sets forth a review process and approval requirement for proposed development projects on Community lands. An enumerated purpose of this review and approval requirement is to protect the Community's natural environment by encouraging and requiring development practices that protect, among other resources, wildlife, vegetation, land, watercourses, and water quality and supply.

A linear transportation project or associated construction activities (such as dewatering) authorized under NWP 14 could also remove water from a waterway that is part of the Community's P-MIP system that conveys CAP water, which is a resource that the United States holds in trust for the benefit of the Community. Without further information regarding the nature, location, and operation/purpose of the activity, which would not be available to the Community if NWP 14 were programmatically certified, it is not possible for the Community to know whether such an action would limit or affect the quality of water distributed by the P-MIP system or would otherwise deprive the Community of waters that are delivered pursuant to and protected under the AWSA and are needed by the Community for agricultural and other purposes that are essential to the economy, culture, and well-being of the Community.

Linear transportation projects could also interfere with the aesthetic values that are central to the spiritual character of Community waterways, and therefore could violate the prohibition in 40 C.F.R. § 230.10(c)(4) on discharge of pollutants with significant adverse effects on aesthetic values. The Gila River and Salt River on Community lands are culturally significant. In addition, springs and seeps are considered significant and some are important in religious/cultural ceremonies. The Community's waters and water supplies are essential to the spiritual, religious, and economic wellbeing of the Community's members. Many of the waterways on the Community's lands are sacred in part because of their natural character, as they have sustained the Community and our people for centuries.

Moreover, some of the waters and associated banks may qualify as or include in their areas Traditional Cultural Properties that qualify for protection under the National Historic Preservation Act. As such, the potential effects of discharges on reducing or eliminating their historic value must be considered per 40 C.F.R. § 230.54, and the Water Quality Certification is the appropriate process for considering this impact.

Additionally, Ordinance GR-01-82 prohibits any person from knowingly excavating upon or removing, moving, destroying, injuring, defacing, or desecrating any protected place or object on Community lands. Protected places are defined broadly to include physical evidence of human habitation, occupation, use, or activity, which includes, but is not limited to, canals, reservoirs, and

surface and subsurface structures and features. Thus, a waterbody could be a protected place. NWP 14 could authorize excavations, removal, destruction, or other injury to a protected place or object in violation of the Ordinance.

Further, it is not clear whether all activities authorized by NWP 14 would comply with the Community's Wastewater and Reclaimed Water Management Ordinance. For example, §15.606(C) of that Ordinance has particular quantitative water quality standards for discharge of reclaimed water, including for turbidity, and it is not clear whether impoundments and releases authorized under NWP 14 will necessarily comply with those requirements.

Additionally, NWP 14 does not appear to prohibit structures in Special Aquatic Sites, but rather only requires notification of the USACE (not of the Community), and therefore activities authorized by NWP may cause significant degradation of such sites on Community lands in violation of 40 C.F.R. § 230.10(c)(1).

While the type of water quality data or information needed to assure compliance with water quality requirements will vary on a case-by-case basis, it is likely to include some of the following: the nature, size, and material of the linear transportation project; the name or segment of the receiving water; the specific location of the linear transportation project; an expected Area of Potential Effects for the discharge; the amount, area, and material of the discharge; available baseline assessment of the receiving waterbody; monitoring data of the water body receiving the discharge; information regarding visual appearance and noise associated with the linear transportation project; any available information regarding historic and cultural resources in the expected Area of Potential Effects; information about the type, timing, quantity, and quality of the discharge flowing through any temporary or permanent structure; and any measures the project will implement to avoid, minimize, or mitigate potential adverse effects.

**15. NWP-15: U.S. Coast Guard Approved Activities – Certified.**

**16. NWP-16: Return Water from Upland Contained Disposal Areas – Certified.**

**17. NWP-17: Hydropower Projects – Certified.**

**18. NWP-18: Minor Discharges – Denied.**

The Community **denies** certification for NWP 18: Minor Discharges. Any applicant seeking to use NWP 18 must apply to the GRIC DEQ WQP for an individual Water Quality Certification.

The discharges that could be authorized by NWP 18 will not comply with one or more of the following Water Quality Requirements:

- (1) Criminal Code § 5.9.1.5;
- (2) Pesticide Ordinance GR-05-14;
- (3) Resolution GR-129-10;
- (4) Waste Management Ordinance GR-04-14;
- (5) Wastewater and Reclaimed Water Management Ordinance GR-04-16;

- (6) Land Review Development Procedure Ordinance GR-027-20;
- (7) Archaeological Licenses Ordinance GR-01-82;
- (8) 40 C.F.R. § 230.10(b)(3);
- (9) 40 C.F.R. § 230.10(c)(1);
- (10) 40 C.F.R. § 230.10(c)(4);
- (11) 40 C.F.R. § 230.54; and
- (12) P.L 108-451.

Given the lack of requirements in NWP 18 regarding what material or substance might be discharged, minor discharges could constitute the discharge of harmful substances into a river, stream, or canal, which is prohibited under Section 5.9.1.5 of the Community's Criminal Code.

Depending on the location of the minor discharge and the nature of the discharge itself, it may constitute an activity prohibited by Ordinance GR-129-10, which authorized a conservation easement over the Pee Posh Wetlands for the purpose of restoring, protecting, managing, maintaining, and enhancing the functional value of the Pee Posh Wetlands, and for the conservation of natural values including fish and wildlife and their habitat. NWP 18 authorizes activities that may result in the loss of up to 1/10 acre of waters of the United States. As such, a minor discharge permitted by NWP 18 could destroy up to 1/10 acre of the Pee Posh Wetlands in violation of Ordinance GR-129-10. Further, even if the minor discharge is located outside of the easement area, the discharge could affect the water quality within the Pee Posh Wetlands, a sensitive aquatic site protected by 40 C.F.R. § 230.10(c)(1), which prohibits the discharge of dredged or fill material which will cause or contribute to significant degradation of the waters of the United States, including adverse effects on wildlife and special aquatic sites (defined to include wetlands). For this reason, it is necessary for the Community to know the location and information about the discharge and fill associated with the use of this NWP in order to determine compliance with Community Water Quality Requirements.

Other sensitive resources on the Community lands that are protected by the Community's Water Quality Requirements could be similarly impacted by a minor discharge. One such example is the Community's MAR 5 site, which the Community has established for the express purposes of creating a live and continuous flowing river, establishing vegetation, attracting wildlife, and serving as a location where Community members can learn, recreate, and partake in the spiritual significance of the re-emergence and sounds of the flows associated with a live river. Depending on its quality and location, a minor discharge in that area could adversely affect the MAR 5 site, in violation of 40 C.F.R. § 230.10(c)(4), which prohibits the discharge of dredged or fill material which will cause or contribute to significant degradation of the waters of the United States, including adverse effects on recreational, aesthetic, and economic values.

A further example are the areas that are being restored, conserved, and enhanced by the Community and are expected to reestablish the presence of wildlife, including threatened and endangered species and their critical habitat. Thus, minor discharges in these locations could violate: (i) 40 C.F.R. § 230.10(b)(3), which prohibits discharge of dredge or fill materials that would jeopardize the continued existence of threatened or endangered species under the Endangered Species Act of 1973 or results in likelihood of the destruction or adverse modification

of critical habitat; and (ii) 40 C.F.R. § 230.10(c)(1), which prohibits the discharge of dredged or fill material that will cause or contribute to significant degradation of the waters of the United States, including adverse effects on wildlife and special aquatic sites (which include wetlands).

The Community also lacks sufficient information to determine whether minor discharges could constitute a discharge that fails to meet the restrictions that specifically target water quality under the Community's Waste Management Ordinance, GR-04-14, which was enacted in part for the purpose of protecting the Community's waters from "from solid waste pollution, including contamination of the Community's aquifers, groundwaters, surface waters, drinking water sources, and all other natural resources." §18.204(D). For example, the material discharged may be one that meets the Ordinance's definition of solid waste and is thus prohibited.

Because the Community has insufficient knowledge concerning the size, extent, and impact of the specific minor discharge, those projects could fail to comply with the minimum performance standards and water quality limits imposed under Community Ordinance GR-04-16, the Wastewater and Reclaimed Water Management Ordinance. Community Ordinance GR-04-16 is a comprehensive regulatory framework that includes standards, regulations, and permits, that "provide[s] for the proper disposal and management of wastewater and septage, provide[s] minimum performance standards and water quality limits for wastewater treatment, and provide[s] safe utilization of reclaimed water, which is a valuable resource [and also] prevent[s] and minimize[s] environmental degradation and contamination of surface water and groundwater; and protect[s] the health, safety, and welfare of the members, nonmembers, residents, and employees of the Gila River Indian Community." § 15.601(A). For example, NWP 18 says that the minor discharge may not be for the "purpose" of stream diversion, but does not address whether it may incidentally cause stream diversion. In a desert environment, where waters of the United States may be seasonal or intermittent, this NWP may authorize activities that dramatically change the location, velocities, and extent of inconsistent flows, thereby potentially harming an ecosystem that depends on receiving those flows or affecting the recharge of groundwater. Without more information about the specific activities that a minor discharge will entail, the Community cannot determine that it will comply with this Ordinance.

The inability to receive notice of a proposed dredge or fill activity that could occur with a programmatic certification of NWP 18, and the inherent unknowns regarding minor discharges (*e.g.*, location or fill material) that could be authorized under NWP 18, could allow a development project to avoid review under Resolution GR-027-20, the Community's Land Review Development Procedure Ordinance. The Land Review Development Procedure Ordinance sets forth a review process and approval requirement for proposed development projects on Community lands. An enumerated purpose of this review and approval requirement is to protect the Community's natural environment by encouraging and requiring development practices that protect, among other resources, wildlife, vegetation, land, watercourses, and water quality and supply.

A minor discharge authorized under NWP 18 could also remove water from a waterway that is part of the Community's P-MIP system that conveys CAP water, which is a resource that the United States holds in trust for the benefit of the Community. As noted above, the NWP appears

to authorize discharges that may incidentally divert streams. Without further information regarding the nature, location, and operation/purpose of the discharge, which would not be available to the Community if NWP 18 were programmatically certified, it is not possible for the Community to know whether such an action would limit or affect the quality of water distributed by the P-MIP system or would otherwise deprive the Community of waters that are delivered pursuant to and protected under the AWSA and are needed by the Community for agricultural and other purposes that are essential to the economy, culture, and well-being of the Community.

Minor discharges could interfere with the aesthetic values that are central to the spiritual character of Community waterways, and therefore could violate the prohibition in 40 C.F.R. § 230.10(c)(4) on discharge of pollutants with significant adverse effects on aesthetic values. The Gila River and Salt River on Community lands are culturally significant. In addition, springs and seeps are considered significant and some are important in religious/cultural ceremonies. The Community's waters and water supplies are essential to the spiritual, religious, and economic wellbeing of the Community's members. Many of the waterways on the Community's lands are sacred in part because of their natural character, as they have sustained the Community and our people for centuries.

Moreover, some of the waters and associated banks may qualify as or include in their areas Traditional Cultural Properties that qualify for protection under the National Historic Preservation Act. As such, the potential effects of discharges on reducing or eliminating their historic value must be considered per 40 C.F.R. § 230.54, and the Water Quality Certification is the appropriate process for considering this impact.

Additionally, Ordinance GR-01-82 prohibits any person from knowingly excavating upon or removing, moving, destroying, injuring, defacing, or desecrating any protected place or object on Community lands. Protected places are defined broadly to include physical evidence of human habitation, occupation, use, or activity, which includes, but is not limited to, canals, reservoirs, and surface and subsurface structures and features. Thus, a waterbody could be a protected place. NWP 18 could authorize excavations, removal, destruction, or other injury to a protected place or object in violation of the Ordinance.

Further, it is not clear whether all activities authorized by NWP 18 would comply with the Community's Wastewater and Reclaimed Water Management Ordinance. For example, §15.606(C) of that Ordinance has particular quantitative water quality standards for discharge of reclaimed water, including for turbidity, and it is not clear whether discharges authorized under NWP 18 will necessarily comply with those requirements.

Additionally, NWP 18 does not appear to prohibit structures in Special Aquatic Sites, but rather only requires providing notification to the USACE (not to the Community), and therefore activities authorized by this NWP may cause significant degradation of such sites on Community lands in violation of 40 C.F.R. § 230.10(c)(1).

While the type of water quality data or information needed to assure compliance with water quality requirements will vary on a case-by-case basis, it is likely to include some of the following: the nature of the minor discharge; the name or segment of the receiving water; the specific location of

the discharge; an expected Area of Potential Effects for the discharge; the amount, area, and material of the discharge; available baseline assessment of the receiving waterbody; monitoring data of the water body receiving the discharge; information regarding visual appearance and noise associated with the minor discharge; any available information regarding historic and cultural resources in the expected Area of Potential Effects; information about the type, timing, quantity, and quality of the discharge flowing through any temporary or permanent structure; and any measures the project will implement to avoid, minimize, or mitigate potential adverse effects.

**19. NWP-19: Minor Dredging – Denied.**

The Community **denies** certification for NWP 19: Minor Dredging. Any applicant seeking to use NWP 19 must apply to the GRIC DEQ WQP for an individual Water Quality Certification.

The discharges that could be authorized by NWP 18 will not comply with one or more of the following water quality requirements:

- (1) Criminal Code § 5.9.1.5;
- (2) Pesticide Ordinance GR-05-14;
- (3) Resolution GR-129-10;
- (4) Waste Management Ordinance GR-04-14;
- (5) Wastewater and Reclaimed Water Management Ordinance GR-04-16;
- (6) Land Review Development Procedure Ordinance GR-027-20;
- (7) Archaeological Licenses Ordinance GR-01-82;
- (8) 40 C.F.R. § 230.10(b)(3);
- (9) 40 C.F.R. § 230.10(c)(1);
- (10) 40 C.F.R. § 230.10(c)(4);
- (11) 40 C.F.R. § 230.54; and
- (12) P.L 108-451.

Minor dredging could violate Ordinance GR-129-10, which authorized a conservation easement over the Pee Posh Wetlands for the purpose of restoring, protecting, managing, maintaining, and enhancing the functional value of the Pee Posh Wetlands, and for the conservation of natural values including fish and wildlife and their habitat. Dredging located outside of the easement area could nevertheless affect the water quality within the Pee Posh Wetlands, a sensitive aquatic site protected by 40 C.F.R. § 230.10(c)(1), which prohibits the discharge of dredged or fill material that will cause or contribute to significant degradation of the waters of the United States, including adverse effects on wildlife and special aquatic sites (defined to include wetlands). For this reason, it is necessary for the Community to know the location and information about the dredging associated with the use of this NWP.

Other sensitive resources on the Community lands that are protected by the Community's Water Quality Requirements could be similarly impacted by a minor discharge. One such example is the Community's MAR 5 site, which the Community has established for the express purposes of creating a live and continuous flowing river, establishing vegetation, attracting wildlife, and serving as a location where Community members can learn, recreate, and partake in the spiritual significance of the re-emergence and sounds of the flows associated with a live river. Depending

on the extent of the dredging and the dredging location, dredging in or proximate to that area could adversely affect the MAR 5 site, in violation of 40 C.F.R. § 230.10(c)(4), which prohibits the discharge of dredged or fill material which will cause or contribute to significant degradation of the waters of the United States, including adverse effects on recreational, aesthetic, and economic values.

A further example are the areas that are being restored, conserved, and enhanced by the Community and are expected to reestablish the presence of wildlife, including threatened and endangered species and their critical habitat. Dredging in these locations could violate: (i) 40 C.F.R. § 230.10(b)(3), which prohibits discharge of dredge or fill materials that would jeopardize the continued existence of threatened or endangered species under the Endangered Species Act of 1973 or results in likelihood of the destruction or adverse modification of critical habitat; and (ii) 40 C.F.R. § 230.10(c)(1), which prohibits the discharge of dredged or fill material that will cause or contribute to significant degradation of the waters of the United States, including adverse effects on wildlife and special aquatic sites (which include wetlands).

Because the Community has insufficient knowledge concerning the size, extent, and impact of the specific dredging projects, those projects could fail to comply with the minimum performance standards and water quality limits imposed under Community Ordinance GR-04-16, the Wastewater and Reclaimed Water Management Ordinance. Community Ordinance GR-04-16 is a comprehensive regulatory framework that includes standards, regulations, and permits, that “provide[s] for the proper disposal and management of wastewater and septage, provide[s] minimum performance standards and water quality limits for wastewater treatment, and provide[s] safe utilization of reclaimed water, which is a valuable resource [and also] prevent[s] and minimize[s] environmental degradation and contamination of surface water and groundwater; and protect[s] the health, safety, and welfare of the members, nonmembers, residents, and employees of the Gila River Indian Community.” § 15.601(A). For example, NWP 19 provides no guarantee that waters will not be diverted through the dredged area. In a desert environment, where waters of the United States may be seasonal or intermittent, this NWP may authorize activities that dramatically change the location, velocities, and extent of inconsistent flows, thereby potentially harming an ecosystem that depends on receiving those flows or affecting the recharge of groundwater. Without more information about the specific activities that a minor dredging will entail, the Community cannot determine that it will comply with this Ordinance.

The inability to receive notice of a proposed dredging activity that could occur with a programmatic certification of NWP 19, and the inherent unknowns regarding dredging (*e.g.*, location, quantity, timing) that could be authorized under NWP 19, could allow a development project to avoid review under Resolution GR-027-20, the Community’s Land Review Development Procedure Ordinance. The Land Review Development Procedure Ordinance sets forth a review process and approval requirement for proposed development projects on Community lands. An enumerated purpose of this review and approval requirement is to protect the Community’s natural environment by encouraging and requiring development practices that protect, among other resources, wildlife, vegetation, land, watercourses, and water quality and supply.

A dredging activity authorized under NWP 19 could also remove water from a waterway that is part of the Community's P-MIP system that conveys CAP water, which is a resource that the United States holds in trust for the benefit of the Community. As noted above, the NWP appears to lack any prohibition on dredging that diverts streams. Without further information regarding the nature, location, and operation/purpose of the dredging, which would not be available to the Community if NWP 19 were programmatically certified, it is not possible for the Community to know whether such an action would limit or affect the quality of water distributed by the P-MIP system or would otherwise deprive the Community of waters that are delivered pursuant to and protected under the AWSA and are needed by the Community for agricultural and other purposes that are essential to the economy, culture, and well-being of the Community.

Minor dredging could interfere with the aesthetic values that are central to the spiritual character of Community waterways, and therefore could violate the prohibition in 40 C.F.R. § 230.10(c)(4) on discharge of pollutants with significant adverse effects on aesthetic values. The Gila River and Salt River on Community lands are culturally significant. In addition, springs and seeps are considered significant and some are important in religious/cultural ceremonies. The Community's waters and water supplies are essential to the spiritual, religious, and economic wellbeing of the Community's members. Many of the waterways on the Community's lands are sacred in part because of their natural character, as they have sustained the Community and our people for centuries.

Moreover, some of the waters and associated banks may qualify as or include in their areas Traditional Cultural Properties that qualify for protection under the National Historic Preservation Act. As such, the potential effects of dredging on reducing or eliminating their historic value must be considered per 40 C.F.R. § 230.54, and the Water Quality Certification is the appropriate process for considering this impact.

Additionally, Ordinance GR-01-82 prohibits any person from knowingly excavating upon or removing, moving, destroying, injuring, defacing, or desecrating any protected place or object on Community lands. Protected places are defined broadly to include physical evidence of human habitation, occupation, use, or activity, which includes, but is not limited to, canals, reservoirs, and surface and subsurface structures and features. Thus, a waterbody could be a protected place. NWP 19 could authorize excavations, removal, destruction, or other injury to a protected place or object in violation of the Ordinance.

Additionally, NWP 19 does not appear to prohibit dredging occurring in or that would affect Special Aquatic Sites, but rather only for wetlands (a subcategory of Special Aquatic Sites), and therefore activities authorized by this NWP may cause significant degradation of such sites on Community lands in violation of 40 C.F.R. § 230.10(c)(1).

While the type of water quality data or information needed to assure compliance with water quality requirements will vary on a case-by-case basis, it is likely to include some of the following: the nature of the minor dredging; the name or segment of the receiving water; the specific location of the dredging; an expected Area of Potential Effects for the dredging; the timing, amount, and area of the dredging; available baseline assessment of the receiving waterbody; monitoring data of the



water body receiving the dredging; information regarding visual appearance and noise associated with the dredging; any available information regarding historic and cultural resources in the expected Area of Potential Effects; information about the type, timing, quantity, and quality of any changes to flows; and any measures the project will implement to avoid, minimize, or mitigate potential adverse effects.

## **20. NWP-20: Response Operations for Oil and Hazardous Substances – Denied.**

The Community **denies** certification for NWP 20: Response Operations for Oil and Hazardous Substances. Any applicant seeking to use NWP 20 must apply to the GRIC DEQ WQP for an individual Water Quality Certification.

The discharges that could be authorized by NWP 20 will not comply with one or more of the following water quality requirements:

- (1) Criminal Code § 5.9.1.5;
- (2) Pesticide Ordinance GR-05-14;
- (3) Resolution GR-129-10;
- (4) Waste Management Ordinance GR-04-14;
- (5) Wastewater and Reclaimed Water Management Ordinance GR-04-16;
- (6) Land Review Development Procedure Ordinance GR-027-20;
- (7) Archaeological Licenses Ordinance GR-01-82;
- (8) 40 C.F.R. § 230.10(b)(3);
- (9) 40 C.F.R. § 230.10(c)(1);
- (10) 40 C.F.R. § 230.10(c)(4);
- (11) 40 C.F.R. § 230.54; and
- (12) P.L 108-451.

Given the lack of specificity in NWP 20 about what response operations would entail, operations authorized by this NWP could constitute or facilitate the discharge of harmful substances into a river, stream, or canal, which is prohibited under Section 5.9.1.5 of the Community's Criminal Code.

Depending on the location of the response operations, the substance in question, and the nature of the response operations (including whether temporary or permanent), these may constitute an activity prohibited by Ordinance GR-129-10, which authorized a conservation easement over the Pee Posh Wetlands for the purpose of restoring, protecting, managing, maintaining, and enhancing the functional value of the Pee Posh Wetlands, and for the conservation of natural values including fish and wildlife and their habitat. For example, NWP 20 authorizes temporary fills and structures in waters of the United States for purposes of spill response training exercises without limitations on quantity, material, timing, or location of those fills and structures. Therefore, NWP 20 could authorize the destruction or degradation of a portion of the Pee Posh Wetlands in violation of Ordinance GR-129-10 (even in the absence of a spill, in the case of training operations). Further, even if the response operations occur outside of the easement area, those operations could affect the water quality within the Pee Posh Wetlands, a sensitive aquatic site protected by 40 C.F.R. §

230.10(c)(1), which prohibits the discharge of dredged or fill material that will cause or contribute to significant degradation of the waters of the United States, including adverse effects on wildlife and special aquatic sites (defined to include wetlands). For this reason, it is necessary for the Community to know the location and information about the specific operations associated with the use of this NWP.

Other sensitive resources on the Community lands that are protected by the Community's Water Quality Requirements could be similarly impacted by a response operation. One such example is the Community's MAR 5 site, which the Community has established for the express purposes of creating a live and continuous flowing river, establishing vegetation, attracting wildlife, and serving as a location where Community members can learn, recreate, and partake in the spiritual significance of the re-emergence and sounds of the flows associated with a live river. A response operation or a training operation in that area could adversely affect the MAR 5 site or its educational interpretive trail, in violation of 40 C.F.R. § 230.10(c)(4), which prohibits the discharge of dredged or fill material which will cause or contribute to significant degradation of the waters of the United States, including adverse effects on recreational, aesthetic, and economic values.

A further example are the areas that are being restored, conserved, and enhanced by the Community and are expected to reestablish the presence of wildlife, including threatened and endangered species and their critical habitat. Thus, response operations or training operations in these locations could violate: (i) 40 C.F.R. § 230.10(b)(3), which prohibits discharge of dredge or fill materials that would jeopardize the continued existence of threatened or endangered species under the Endangered Species Act of 1973 or results in likelihood of the destruction or adverse modification of critical habitat; and (ii) 40 C.F.R. § 230.10(c)(1), which prohibits the discharge of dredged or fill material that will cause or contribute to significant degradation of the waters of the United States, including adverse effects on wildlife and special aquatic sites (which include wetlands).

The Community also lacks sufficient information to determine whether response operations could result in a discharge that fails to meet the restrictions that specifically target water quality under the Community's Waste Management Ordinance, GR-04-14, which was enacted in part for the purpose of protecting the Community's waters from "from solid waste pollution, including contamination of the Community's aquifers, groundwater, surface waters, drinking water sources, and all other natural resources." §18.204(D). For example, if any loss of the substance being responded to is anticipated, that could constitute a prohibited discharge of solid waste, or a substance used for training could as well.

Because the Community has insufficient knowledge concerning the size, extent, and impact of spilled substances and the associated response or training operations, those operations could fail to comply with the minimum performance standards and water quality limits imposed under Community Ordinance GR-04-16, the Wastewater and Reclaimed Water Management Ordinance. Community Ordinance GR-04-16 is a comprehensive regulatory framework that includes standards, regulations, and permits, that "provide[s] for the proper disposal and management of wastewater and septage, provide[s] minimum performance standards and water quality limits for

wastewater treatment, and provide[s] safe utilization of reclaimed water, which is a valuable resource [and also] prevent[s] and minimize[s] environmental degradation and contamination of surface water and groundwater; and protect[s] the health, safety, and welfare of the members, nonmembers, residents, and employees of the Gila River Indian Community.” § 15.601(A). For example, in a desert environment with inconsistent and weather-dependent flow regimes, the exact nature of the spilled substance and remedial efforts must take into account timing, weather, expected flow regimes, possible flooding, and other variables in order to avoid impacts to downstream water quality that would violate the Ordinance. Without more information about the specific activities that the response operations or training operations would entail, the Community cannot say with certainty that these operations will comply with the Ordinance.

The inability to receive notice of a proposed dredge or fill activity that could occur with a programmatic certification of NWP 20, and the inherent unknowns regarding response operations (*e.g.*, location, substance, method, timing, permanence, *etc.*) that could be authorized under NWP 20, could allow a development project to avoid review under Resolution GR-027-20, the Community’s Land Review Development Procedure Ordinance. The Land Review Development Procedure Ordinance sets forth a review process and approval requirement for proposed development projects on Community lands. An enumerated purpose of this review and approval requirement is to protect the Community’s natural environment by encouraging and requiring development practices that protect, among other resources, wildlife, vegetation, land, watercourses, and water quality and supply.

A response operation authorized under NWP 20 could also adversely affect a waterway that is part of the Community’s P-MIP system that conveys CAP water, which is a resource that the United States holds in trust for the benefit of the Community. The Community cannot say with certainty that this NWP would not adversely affect waterways within the P-MIP system without further information regarding the nature, location, and operation/purpose of the response operations, which would not be available to the Community if NWP 20 were programmaticly certified. Therefore, it is not possible for the Community to know whether such actions would limit or affect the quantity or quality of water distributed by the P-MIP system or would otherwise deprive the Community of waters that are delivered pursuant to and protected under the AWSA and are needed by the Community for agricultural and other purposes that are essential to the economy, culture, and well-being of the Community.

Response operations could interfere with the aesthetic values that are central to the spiritual character of Community waterways, and therefore could violate the prohibition in 40 C.F.R. § 230.10(c)(4) on discharge of pollutants with significant adverse effects on aesthetic values. The Gila River and Salt River on Community lands are culturally significant. In addition, springs and seeps are considered significant and some are important in religious/cultural ceremonies. The Community’s waters and water supplies are essential to the spiritual, religious, and economic wellbeing of the Community’s members. Many of the waterways on the Community’s lands are sacred in part because of their natural character, as they have sustained the Community and our people for centuries.

Moreover, some of the waters and associated banks may qualify as or include in their areas Traditional Cultural Properties that qualify for protection under the National Historic Preservation Act. As such, the potential effects of discharges on reducing or eliminating their historic value must be considered per 40 C.F.R. § 230.54, and the Water Quality Certification is the appropriate process for considering this impact.

Additionally, Ordinance GR-01-82 prohibits any person from knowingly excavating upon or removing, moving, destroying, injuring, defacing, or desecrating any protected place or object on Community lands. Protected places are defined broadly to include physical evidence of human habitation, occupation, use, or activity, which includes, but is not limited to, canals, reservoirs, and surface and subsurface structures and features. Thus, a waterbody could be a protected place. NWP 20 could authorize excavations, removal, destruction, or other injury to a protected place or object in violation of the Ordinance.

Further, it is not clear whether all activities authorized by NWP 20 would comply with the Community's Wastewater and Reclaimed Water Management Ordinance. For example, §15.606(C) of that Ordinance has particular quantitative water quality standards for discharge of reclaimed water, including for turbidity, and it is not clear whether discharges pursuant to response operations authorized under NWP 20 will necessarily comply with those requirements.

Additionally, NWP 20 does not appear to prohibit activities in Special Aquatic Sites or contain special requirements for activities in such sites, and therefore activities authorized by this NWP may cause significant degradation of such sites on Community lands in violation of 40 C.F.R. § 230.10(c)(1).

While the type of water quality data or information needed to assure compliance with water quality requirements will vary on a case-by-case basis, it is likely to include some of the following: the nature of the spill and response operations; the name or segment of the receiving water; the specific location of the response operations; an expected Area of Potential Effects for the operations; the amount, area, and material of the discharge; available baseline assessment of the receiving waterbody; monitoring data of the water body receiving the discharge; information regarding visual appearance and noise associated with the response operations; any available information regarding historic and cultural resources in the expected Area of Potential Effects; information about the type, timing, quantity, and quality of the discharge flowing through any temporary or permanent structure; the need for training operations including at specific proposed locations; and any measures the project will implement to avoid, minimize, or mitigate potential adverse effects.

**21. NWP-21: Surface Coal Mining Activities – Certified.**

**22. NWP-22: Removal of Vessels – Certified.**

**23. NWP-23: Approved Categorical Exclusions – Certified.**

**24. NWP-24: Indian Tribe or State Administered Section 404 Programs – No certification necessary.**

## **25. NWP-25: Structural Discharges – Denied.**

The Community **denies** certification for NWP 25: Structural Discharges. Any applicant seeking to use NWP 25 must apply to the GRIC DEQ WQP for an individual Water Quality Certification.

The discharges that could be authorized by NWP 25 will not comply with one or more of the following water quality requirements:

- (1) Criminal Code § 5.9.1.5;
- (2) Pesticide Ordinance GR-05-14;
- (3) Resolution GR-129-10;
- (4) Waste Management Ordinance GR-04-14;
- (5) Wastewater and Reclaimed Water Management Ordinance GR-04-16;
- (6) Land Review Development Procedure Ordinance GR-027-20;
- (7) Archaeological Licenses Ordinance GR-01-82;
- (8) 40 C.F.R. § 230.10(b)(3);
- (9) 40 C.F.R. § 230.10(c)(1);
- (10) 40 C.F.R. § 230.10(c)(4);
- (11) 40 C.F.R. § 230.54; and
- (12) P.L 108-451.

Given the lack of requirements in NWP 25 regarding what material or substance might be discharged (the NWP merely gives some examples), structural discharges could constitute or facilitate the discharge of harmful substances into a river, stream, or canal, which is prohibited under Section 5.9.1.5 of the Community's Criminal Code.

Depending on the location of the structural discharge and the nature of the discharge itself, it may constitute an activity prohibited by Ordinance GR-129-10, which authorized a conservation easement over the Pee Posh Wetlands for the purpose of restoring, protecting, managing, maintaining, and enhancing the functional value of the Pee Posh Wetlands, and for the conservation of natural values including fish and wildlife and their habitat. NWP 25 authorizes activities that enable larger structures, such as bridges, that could result in the loss or change in function of a portion of the Pee Posh Wetlands in violation of Ordinance GR-129-10. Further, even if the structural discharge is located outside of the easement area, the discharge could affect the upstream flows and thus water quality within the Pee Posh Wetlands, a sensitive aquatic site protected by 40 C.F.R. § 230.10(c)(1), which prohibits the discharge of dredged or fill material which will cause or contribute to significant degradation of the waters of the United States, including adverse effects on wildlife and special aquatic sites (defined to include wetlands). For this reason, it is necessary for the Community to know the location and information about the discharge and fill associated with the use of this NWP to determine compliance with Community Water Quality Requirements.

Other sensitive resources on the Community lands that are protected by the Community's Water Quality Requirements could be similarly impacted by a structural discharge. One such example is

the Community's MAR 5 site, which the Community has established for the express purposes of creating a live and continuous flowing river, establishing vegetation, attracting wildlife, and serving as a location where Community members can learn, recreate, and partake in the spiritual significance of the re-emergence and sounds of the flows associated with a live river. Depending on its quality and location, a structural discharge in that area could enable a pile-supported structure that would adversely affect the MAR 5 site, in violation of 40 C.F.R. § 230.10(c)(4), which prohibits the discharge of dredged or fill material which will cause or contribute to significant degradation of the waters of the United States, including adverse effects on recreational, aesthetic, and economic values.

A further example are the areas that are being restored, conserved, and enhanced by the Community and are expected to reestablish the presence of wildlife, including threatened and endangered species and their critical habitat. Structural discharges in these locations could violate: (i) 40 C.F.R. § 230.10(b)(3), which prohibits discharge of dredge or fill materials that would jeopardize the continued existence of threatened or endangered species under the Endangered Species Act of 1973 or results in likelihood of the destruction or adverse modification of critical habitat; and (ii) 40 C.F.R. § 230.10(c)(1), which prohibits the discharge of dredged or fill material that will cause or contribute to significant degradation of the waters of the United States, including adverse effects on wildlife and special aquatic sites (which include wetlands).

The Community also lacks sufficient information to determine whether structural discharges could constitute or contribute to a discharge that fails to meet the restrictions that specifically target water quality under the Community's Waste Management Ordinance, GR-04-14, which was enacted in part for the purpose of protecting the Community's waters from "from solid waste pollution, including contamination of the Community's aquifers, groundwater, surface waters, drinking water sources, and all other natural resources." §18.204(D).

Because the Community has insufficient knowledge concerning the size, extent, material and impact of the specific structural discharge, those projects could fail to comply with the minimum performance standards and water quality limits imposed under Community Ordinance GR-04-16, the Wastewater and Reclaimed Water Management Ordinance. Community Ordinance GR-04-16 is a comprehensive regulatory framework that includes standards, regulations, and permits, that "provide[s] for the proper disposal and management of wastewater and septage, provide[s] minimum performance standards and water quality limits for wastewater treatment, and provide[s] safe utilization of reclaimed water, which is a valuable resource [and also] prevent[s] and minimize[s] environmental degradation and contamination of surface water and groundwater; and protect[s] the health, safety, and welfare of the members, nonmembers, residents, and employees of the Gila River Indian Community." § 15.601(A). For example, NWP 25 contains no limitations on whether the structural discharges might result in stream diversion or impoundment, or what effect they have on flow velocities and characteristics. In a desert environment, where waters of the United States may be seasonal or intermittent, this NWP may authorize activities that dramatically change the location, velocities, characteristics, and extent of inconsistent flows, thereby potentially harming an ecosystem that depends on receiving those flows or affecting the

recharge of groundwater. Without more information about the specific activities that a structural discharge will entail, the Community cannot determine that it will comply with this Ordinance.

The inability to receive notice of a proposed dredge or fill activity that could occur with a programmatic certification of NWP 25, and the inherent unknowns regarding structural discharges (*e.g.*, location, size, or material) that could be authorized under NWP 25, could allow a development project to avoid review under Resolution GR-027-20, the Community's Land Review Development Procedure Ordinance. The Land Review Development Procedure Ordinance sets forth a review process and approval requirement for proposed development projects on Community lands. An enumerated purpose of this review and approval requirement is to protect the Community's natural environment by encouraging and requiring development practices that protect, among other resources, wildlife, vegetation, land, watercourses, and water quality and supply.

A structural discharge authorized under NWP 25 could also adversely affect a waterway that is part of the Community's P-MIP system that conveys CAP water, which is a resource that the United States holds in trust for the benefit of the Community. As noted above, the NWP does not contain limitations preventing diversion of streams. Without further information regarding the nature, location, and operation/purpose of the discharge, which would not be available to the Community if NWP 25 were programmatic certified, it is not possible for the Community to know whether such an action would limit or affect the quality of water distributed by the P-MIP system or would otherwise deprive the Community of waters that are delivered pursuant to and protected under the AWSA and are needed by the Community for agricultural and other purposes that are essential to the economy, culture, and well-being of the Community.

Structural discharges could interfere with the aesthetic values that are central to the spiritual character of these waterways, and therefore could violate the prohibition in 40 C.F.R. § 230.10(c)(4) on discharge of pollutants with significant adverse effects on aesthetic values. The Gila River and Salt River on Community lands are culturally significant. In addition, springs and seeps are considered significant and some are important in religious/cultural ceremonies. The Community's waters and water supplies are essential to the spiritual, religious, and economic wellbeing of the Community's members. Many of the waterways on the Community's lands are sacred in part because of their natural character, as they have sustained the Community and our people for centuries.

Moreover, some of the waters and associated banks may qualify as or include in their areas Traditional Cultural Properties that qualify for protection under the National Historic Preservation Act. As such, the potential effect of discharges on reducing or eliminating their historic value must be considered per 40 C.F.R. § 230.54, and the Water Quality Certification is the appropriate process for considering this impact.

Additionally, Ordinance GR-01-82 prohibits any person from knowingly excavating upon or removing, moving, destroying, injuring, defacing, or desecrating any protected place or object on Community lands. Protected places are defined broadly to include physical evidence of human habitation, occupation, use, or activity, which includes, but is not limited to, canals, reservoirs, and

surface and subsurface structures and features. Thus, a waterbody or its bottom could be a protected place. NWP 25 could authorize excavations, removal, destruction, or other injury to a protected place or object in violation of the Ordinance.

Further, it is not clear whether all activities authorized by NWP 25 would comply with the Community's Wastewater and Reclaimed Water Management Ordinance. For example, §15.606(C) of that Ordinance has particular quantitative water quality standards for discharge of reclaimed water, including for turbidity, and it is possible that a structural discharge could be located so as to affect compliance with the water quality requirements associated with wastewater discharges (such as near an outfall in a way that affects velocities or turbidity).

Additionally, NWP 25 does not appear to prohibit structures in Special Aquatic Sites, and therefore activities authorized by this NWP may cause significant degradation of such sites on Community lands in violation of 40 C.F.R. § 230.10(c)(1).

While the type of water quality data or information needed to assure compliance with water quality requirements will vary on a case-by-case basis, it is likely to include some of the following: the nature of the structural discharge; the name or segment of the receiving water; the specific location of the structural discharge; an expected Area of Potential Effects for the discharge; the amount, area, and material of the discharge; available baseline assessment of the receiving waterbody; monitoring data of the water body receiving the discharge; information regarding visual appearance and noise associated with the minor discharge; any available information regarding historic and cultural resources in the expected Area of Potential Effects; information about the type, timing, quantity, and quality of the discharge flowing through or around any temporary or permanent structural discharge; and any measures the project will implement to avoid, minimize, or mitigate potential adverse effects.

**26. NWP-26: (Reserved) – No certification necessary.**

**27. NWP-27: Aquatic Habitat Restoration, Establishment, and Enhancement Activities – Certified.**

**28. NWP-28: Modifications of Existing Marinas – No certification necessary.**

**29. NWP-29: Residential Developments – Certified.**

**30. NWP-30: Moist Soil Management for Wildlife – Certified.**

**31. NWP-31: Maintenance of Existing Floor Control Facilities – Certified.**

**32. NWP-32: Completed Enforcement Activities – Certified.**

**33. NWP-33: Temporary Construction, Access, and Dewatering – Certified.**

**34. NWP-34: Cranberry Production Activities – Certified.**



**35. NWP-35: Maintenance Dredging of Existing Basins – No certification necessary.**

**36. NWP-36: Boat Ramps – Certified.**

**37. NWP-37: Emergency Watershed Protection and Rehabilitation – Certified.**

**38. NWP-38: Cleanup of Hazardous and Toxic Waste – Certified.**

**39. NWP-39: Commercial and Institutional Developments – Certified.**

**40. NWP-40: Agricultural Activities – Denied.**

The Community **denies** certification for NWP 40: Agricultural Activities. Any applicant seeking to use NWP 40 must apply to the GRIC DEQ WQP for an individual Water Quality Certification.

The discharges that could be authorized by NWP 40 will not comply with one or more of the following water quality requirements:

- (1) Criminal Code § 5.9.1.5;
- (2) Pesticide Ordinance GR-05-14;
- (3) Resolution GR-129-10;
- (4) Waste Management Ordinance GR-04-14;
- (5) Wastewater and Reclaimed Water Management Ordinance GR-04-16;
- (6) Land Review Development Procedure Ordinance GR-027-20;
- (7) Archaeological Licenses Ordinance GR-01-82;
- (8) 40 C.F.R. § 230.10(b)(3);
- (9) 40 C.F.R. § 230.10(c)(1);
- (10) 40 C.F.R. § 230.10(c)(4);
- (11) 40 C.F.R. § 230.54; and
- (12) P.L 108-451.

Agricultural activities, including but not limited to building pads, drainage ditches, levees, farm ponds, and land leveling, could constitute or facilitate the discharge of harmful substances into a river, stream, or canal, which is prohibited under Section 5.9.1.5 of the Community's Criminal Code. For example, the activity could result in a harmful product that was applied to the land entering a protected water in violation of the Code.

Depending on the location of the agricultural activity and the nature of the activity itself, it may constitute an activity prohibited by Ordinance GR-129-10, which authorized a conservation easement over the Pee Posh Wetlands for the purpose of restoring, protecting, managing, maintaining, and enhancing the functional value of the Pee Posh Wetlands, and for the conservation of natural values including fish and wildlife and their habitat. NWP 40 authorizes activities that may result in the loss of up to ½ acre of waters of the United States. As such, an

agricultural activity permitted by NWP 40 could destroy up to ½ acre of the Pee Posh Wetlands in violation of Ordinance GR-129-10. Further, even if the agricultural activity is located outside of the easement area, the discharge could affect the water quality within the Pee Posh Wetlands, a sensitive aquatic site protected by 40 C.F.R. § 230.10(c)(1), which prohibits the discharge of dredged or fill material that will cause or contribute to significant degradation of the waters of the United States, including adverse effects on wildlife and special aquatic sites (defined to include wetlands). For this reason, it is necessary for the Community to know the location and additional information about the particular agricultural activity.

Other sensitive resources on the Community lands that are protected by the Community's Water Quality Requirements could be similarly impacted by agricultural activities. One such example is the Community's MAR 5 site, which the Community has established for the express purposes of creating a live and continuous flowing river, establishing vegetation, attracting wildlife, and serving as a location where Community members can learn, recreate, and partake in the spiritual significance of the re-emergence and sounds of the flows associated with a live river. Agricultural activities in that area could adversely affect the MAR 5 site, in violation of 40 C.F.R. § 230.10(c)(4), which prohibits the discharge of dredged or fill material which will cause or contribute to significant degradation of the waters of the United States, including adverse effects on recreational, aesthetic, and economic values.

A further example are the areas that are being restored, conserved, and enhanced by the Community and are expected to reestablish the presence of wildlife, including threatened and endangered species and their critical habitat. Thus, agricultural activities in these locations could violate: (i) 40 C.F.R. § 230.10(b)(3), which prohibits discharge of dredge or fill materials that would jeopardize the continued existence of threatened or endangered species under the Endangered Species Act of 1973 or results in likelihood of the destruction or adverse modification of critical habitat; and (ii) 40 C.F.R. § 230.10(c)(1), which prohibits the discharge of dredged or fill material that will cause or contribute to significant degradation of the waters of the United States, including adverse effects on wildlife and special aquatic sites (which include wetlands).

The Community also lacks sufficient information to determine whether agricultural activities could constitute a discharge that fails to meet the restrictions that specifically target water quality under the Community's Waste Management Ordinance, GR-04-14, which was enacted in part for the purpose of protecting the Community's waters from "from solid waste pollution, including contamination of the Community's aquifers, groundwater, surface waters, drinking water sources, and all other natural resources." §18.204(D). For example, the material used to construct a building pad, levee, or other structure could be a recycled material that meets the Ordinance's definition of solid waste, and thus may be prohibited or otherwise regulated.

Because the Community has insufficient knowledge concerning the nature, size, extent, and impact of the specific agricultural activities that would be authorized under this NWP, those activities could fail to comply with the minimum performance standards and water quality limits imposed under Community Ordinance GR-04-16, the Wastewater and Reclaimed Water Management Ordinance. Community Ordinance GR-04-16 is a comprehensive regulatory framework that includes standards, regulations, and permits, that "provide[s] for the proper disposal and

management of wastewater and septage, provide[s] minimum performance standards and water quality limits for wastewater treatment, and provide[s] safe utilization of reclaimed water, which is a valuable resource [and also] prevent[s] and minimize[s] environmental degradation and contamination of surface water and groundwater; and protect[s] the health, safety, and welfare of the members, nonmembers, residents, and employees of the Gila River Indian Community.” § 15.601(A). For example, NWP 40 authorizes construction of levees and building pads, or construction and relocation of drainage ditches. In a desert environment, where waters of the United States may be seasonal or intermittent, this NWP may authorize activities that dramatically change the velocities and extent of inconsistent flows, thereby potentially harming an ecosystem that depends on receiving those flows or affecting the recharge of groundwater. Without more information about the specific activities that would be authorized under this NWP, the Community cannot determine whether they will comply with this Ordinance.

The inability to receive notice of a proposed agricultural activity that could occur with a programmatic certification of NWP 40, and the inherent unknowns regarding agricultural activities that could be authorized under NWP 40, could allow a development project to avoid review under Resolution GR-027-20, the Community’s Land Review Development Procedure Ordinance. The Land Review Development Procedure Ordinance sets forth a review process and approval requirement for proposed development projects on Community lands. An enumerated purpose of this review and approval requirement is to protect the Community’s natural environment by encouraging and requiring development practices that protect, among other resources, wildlife, vegetation, land, watercourses, and water quality and supply.

Agricultural activities authorized under NWP 40 (including associated construction activities, diversions, impoundments, and more) could also remove water from a waterway that is part of the Community’s P-MIP system that conveys CAP water, which is a resource that the United States holds in trust for the benefit of the Community. Without further information regarding the nature, location, and operation/purpose of the activity, which would not be available to the Community if NWP 40 were programmatic certified, it is not possible for the Community to know whether such an action would limit or affect the quality of water distributed by the P-MIP system or would otherwise deprive the Community of waters that are delivered pursuant to and protected under the AWSA and are needed by the Community for agricultural and other purposes that are essential to the economy, culture, and well-being of the Community.

Agricultural activities could interfere with the aesthetic values that are central to the spiritual character of these waterways, and therefore could violate the prohibition in 40 C.F.R. § 230.10(c)(4) on discharge of pollutants with significant adverse effects on aesthetic values. The Gila River and Salt River on Community lands are culturally significant. In addition, springs and seeps are considered significant and some are important in religious/cultural ceremonies. The Community’s waters and water supplies are essential to the spiritual, religious, and economic wellbeing of the Community’s members. Many of the waterways on the Community’s lands are sacred in part because of their natural character, as they have sustained the Community and our people for centuries.

Moreover, some of the waters and associated banks may qualify as or include in their areas Traditional Cultural Properties that qualify for protection under the National Historic Preservation Act. As such, the potential effects of discharges on reducing or eliminating their historic value must be considered per 40 C.F.R. § 230.54, and the Water Quality Certification is the appropriate process for considering this impact.

Additionally, Ordinance GR-01-82 prohibits any person from knowingly excavating upon or removing, moving, destroying, injuring, defacing, or desecrating any protected place or object on Community lands. Protected places are defined broadly to include physical evidence of human habitation, occupation, use, or activity, which includes, but is not limited to, canals, reservoirs, and surface and subsurface structures and features. Thus, a waterbody could be a protected place. NWP 40 could authorize excavations, movement, removal, destruction, or other injury to a protected place or object in violation of the Ordinance.

Further, it is not clear whether all activities authorized by NWP 40 would comply with the Community's Wastewater and Reclaimed Water Management Ordinance. For example, §15.606(C) of that Ordinance has particular quantitative water quality standards for discharge of reclaimed water, including for turbidity, and it is not clear whether impoundments and releases authorized under NWP 40 will necessarily comply with those requirements.

Additionally, NWP 40 does not appear to prohibit activities in Special Aquatic Sites, but rather only requires providing notification to the USACE (not to the Community), and therefore activities authorized by NWP may cause significant degradation of such sites on Community lands in violation of 40 C.F.R. § 230.10(c)(1).

While the type of water quality data or information needed to assure compliance with water quality requirements will vary on a case-by-case basis, it is likely to include some of the following: the nature of the agricultural activity; the name or segment of the receiving water; the specific location of the agricultural activity; an expected Area of Potential Effects for the agricultural activity; the amount, area, and material of the discharge; available baseline assessment of the receiving waterbody; monitoring data of the water body receiving the discharge; information regarding visual appearance and noise associated with the agricultural activity; any available information regarding historic and cultural resources in the expected Area of Potential Effects; information about the type, timing, quantity, and quality of the discharge flowing through any temporary or permanent structure; and any measures the project will implement to avoid, minimize, or mitigate potential adverse effects.

#### **41. NWP-41: Reshaping Existing Drainage Ditches – Denied.**

The Community **denies** certification for NWP 41: Reshaping Existing Drainage Ditches. Any applicant seeking to use NWP 41 must apply to the GRIC DEQ WQP for an individual Water Quality Certification.

The discharges that could be authorized by NWP 41 will not comply with one or more of the following water quality requirements:

- (1) Criminal Code § 5.9.1.5;
- (2) Pesticide Ordinance GR-05-14;
- (3) Resolution GR-129-10;
- (4) Waste Management Ordinance GR-04-14;
- (5) Wastewater and Reclaimed Water Management Ordinance GR-04-16;
- (6) Land Review Development Procedure Ordinance GR-027-20;
- (7) Archaeological Licenses Ordinance GR-01-82;
- (8) 40 C.F.R. § 230.10(b)(3);
- (9) 40 C.F.R. § 230.10(c)(1);
- (10) 40 C.F.R. § 230.10(c)(4);
- (11) 40 C.F.R. § 230.54; and
- (12) P.L 108-451.

The Community maintains an extensive 1,000+ mile irrigation canal system, including drainage ditches. Much of this irrigation infrastructure dates back many decades. Over the years, in a harsh desert environment, the characteristics of these drainage ditches has changed dramatically. Because NWP 41 authorizes reshaping that restores drainage ditches to their original as-built capacity and drainage area, it might authorize activities that would result in drainage ditches with capacities and drainage areas not experienced in multiple decades. This could in turn have a dramatic effect on the delicate balance of the existing system, including causing significant impacts to water quality throughout the system. In addition, due to the antiquated origins of some of this infrastructure, there may not be good records of what original as-built capacity and drainage area was, resulting in uncertainty about the extent of the activities this NWP will authorize.

Depending on the location of the reshaping activity and the nature of the activity itself, it may constitute an activity prohibited by Ordinance GR-129-10, which authorized a conservation easement over the Pee Posh Wetlands for the purpose of restoring, protecting, managing, maintaining, and enhancing the functional value of the Pee Posh Wetlands, and for the conservation of natural values including fish and wildlife and their habitat. The reshaping could result in different drainage capacity that may result in the loss of a portion of the Pee Posh Wetlands in violation of Ordinance GR-129-10. Further, even if the reshaping activity is located outside of the easement area, the resulting difference in drainage could affect the water quality within the Pee Posh Wetlands, a sensitive aquatic site protected by 40 C.F.R. § 230.10(c)(1), which prohibits the discharge of dredged or fill material that will cause or contribute to significant degradation of the waters of the United States, including adverse effects on wildlife and special aquatic sites (defined to include wetlands). For this reason, it is necessary for the Community to know the location and information about the specific reshaping activity.

Other sensitive resources on the Community lands that are protected by the Community's Water Quality Requirements could be similarly impacted by reshaping of drainage ditches. One such example is the Community's MAR 5 site, which the Community has established for the express purposes of creating a live and continuous flowing river, establishing vegetation, attracting wildlife, and serving as a location where Community members can learn, recreate, and partake in the spiritual significance of the re-emergence and sounds of the flows associated with a live river.

A significant change to drainage in that area could adversely affect the MAR 5 site, in violation of 40 C.F.R. § 230.10(c)(4), which prohibits the discharge of dredged or fill material which will cause or contribute to significant degradation of the waters of the United States, including adverse effects on recreational, aesthetic, and economic values.

A further example are the areas that are being restored, conserved, and enhanced by the Community and are expected to reestablish the presence of wildlife, including threatened and endangered species and their critical habitat. Thus, changes to drainage in these locations could violate: (i) 40 C.F.R. § 230.10(b)(3), which prohibits discharge of dredge or fill materials that would jeopardize the continued existence of threatened or endangered species under the Endangered Species Act of 1973 or results in likelihood of the destruction or adverse modification of critical habitat; and (ii) 40 C.F.R. § 230.10(c)(1), which prohibits the discharge of dredged or fill material that will cause or contribute to significant degradation of the waters of the United States, including adverse effects on wildlife and special aquatic sites (which include wetlands).

The Community also lacks sufficient information to determine whether reshaping drainage ditches could constitute a discharge that fails to meet the restrictions that specifically target water quality under the Community's Waste Management Ordinance, GR-04-14, which was enacted in part for the purpose of protecting the Community's waters from "from solid waste pollution, including contamination of the Community's aquifers, groundwater, surface waters, drinking water sources, and all other natural resources." §18.204(D). For example, returning a drainage ditch to an "original" capacity might result in significant changes in flows in another area, changing the concentration levels of any pollutants found therein.

Because the Community has insufficient knowledge concerning the size, extent, and impact of the specific drainage ditch reshaping activities, those activities could fail to comply with the minimum performance standards and water quality limits imposed under Community Ordinance GR-04-16, the Wastewater and Reclaimed Water Management Ordinance. Community Ordinance GR-04-16 is a comprehensive regulatory framework that includes standards, regulations, and permits, that "provide[s] for the proper disposal and management of wastewater and septage, provide[s] minimum performance standards and water quality limits for wastewater treatment, and provide[s] safe utilization of reclaimed water, which is a valuable resource [and also] prevent[s] and minimize[s] environmental degradation and contamination of surface water and groundwater; and protect[s] the health, safety, and welfare of the members, nonmembers, residents, and employees of the Gila River Indian Community." § 15.601(A). For example, NWP 41 authorizes restoring drainage ditches to their original as-built capacity and drainage area. In a desert environment, where waters of the United States may be seasonal or intermittent, this NWP may authorize activities that change how drainage has worked for decades, yielding dramatic changes to the velocities and extent of inconsistent flows, thereby potentially harming an ecosystem that depends on receiving those flows or affecting the recharge of groundwater. Without more information about the specific activities that a reshaping activity will entail, the Community cannot determine that it will comply with this Ordinance.

A reshaping activity authorized under NWP 41 could also adversely affect drainage ditches that are a part of the Community's P-MIP system that conveys CAP water, which is a resource that the

United States holds in trust for the benefit of the Community. Without further information regarding the nature, location, and operation/purpose of the activity, which would not be available to the Community if NWP 41 were programmatically certified, it is not possible for the Community to know whether such an action would limit or affect the quality of water distributed by the P-MIP system or would otherwise deprive the Community of waters that are delivered pursuant to and protected under the AWSA and are needed by the Community for agricultural and other purposes that are essential to the economy, culture, and well-being of the Community.

Reshaping existing drainage ditches could interfere with the aesthetic values that are central to the spiritual character of Community waterways, and therefore could violate the prohibition in 40 C.F.R. § 230.10(c)(4) on discharge of pollutants with significant adverse effects on aesthetic values. The Gila River and Salt River on Community lands are culturally significant. In addition, springs and seeps are considered significant and some are important in religious/cultural ceremonies. The Community's waters and water supplies are essential to the spiritual, religious, and economic wellbeing of the Community's members. Many of the waterways on the Community's lands are sacred in part because of their natural character, as they have sustained the Community and our people for centuries.

Moreover, some of the waters and associated banks, including canals and ditches, may qualify as or include in their areas Traditional Cultural Properties that qualify for protection under the National Historic Preservation Act. As such, the potential effects of discharges on reducing or eliminating their historic value must be considered per 40 C.F.R. § 230.54, and the Water Quality Certification is the appropriate process for considering this impact.

Additionally, Ordinance GR-01-82 prohibits any person from knowingly excavating upon or removing, moving, destroying, injuring, defacing, or desecrating any protected place or object on Community lands. Protected places are defined broadly to include physical evidence of human habitation, occupation, use, or activity, which includes, but is not limited to, canals, reservoirs, and surface and subsurface structures and features. Thus, a waterbody – including a drainage ditch – could be a protected place. NWP 41 could authorize excavations, removal, destruction, or other injury to a protected place or object in violation of the Ordinance.

Further, it is not clear whether all activities authorized by NWP 41 would comply with the Community's Wastewater and Reclaimed Water Management Ordinance. For example, §15.606(C) of that Ordinance has particular quantitative water quality standards for discharge of reclaimed water, including for turbidity, and it is not clear whether changes in drainage resulting from reshaping activities will necessarily comply with those requirements.

Additionally, NWP 41 does not appear to prohibit activity in Special Aquatic Sites, and therefore activities authorized by NWP may cause significant degradation of such sites on Community lands in violation of 40 C.F.R. § 230.10(c)(1).

While the type of water quality data or information needed to assure compliance with water quality requirements will vary on a case-by-case basis, it is likely to include some of the following: the nature of the reshaping activity; the name or segment of the receiving water; the specific location of the drainage ditch; an expected Area of Potential Effects for the discharge; the amount, area,

timing, and material of the reshaping activity; available baseline assessment of the receiving waterbody; monitoring data of the water body receiving the discharge; information regarding visual appearance and noise associated with the reshaping activity; any available information regarding historic and cultural resources in the expected Area of Potential Effects; information about the type, timing, quantity, and quality of the discharge flowing through the drainage ditch; information that may exist demonstrating the original as-built capacity and drainage area of the drainage ditch; modeling or other estimations of the effects of the reshaping activities on flows in other ditches, canals, and waters; and any measures the project will implement to avoid, minimize, or mitigate potential adverse effects.

**42. NWP-42: Recreational Facilities – Certified.**

**43. NWP-43: Stormwater Management Facilities – Certified.**

**44. NWP-44: Mining Activities – Denied.**

The Community **denies** certification for NWP 44: Mining Activities. Any applicant seeking to use NWP 44 must apply to the GRIC DEQ WQP for an individual Water Quality Certification.

The discharges that could be authorized by NWP 44 will not comply with one or more of the following water quality requirements:

- (1) Criminal Code § 5.9.1.5;
- (2) Pesticide Ordinance GR-05-14;
- (3) Resolution GR-129-10;
- (4) Waste Management Ordinance GR-04-14;
- (5) Wastewater and Reclaimed Water Management Ordinance GR-04-16;
- (6) Land Review Development Procedure Ordinance GR-027-20;
- (7) Archaeological Licenses Ordinance GR-01-82;
- (8) 40 C.F.R. § 230.10(b)(3);
- (9) 40 C.F.R. § 230.10(c)(1);
- (10) 40 C.F.R. § 230.10(c)(4);
- (11) 40 C.F.R. § 230.54; and
- (12) P.L 108-451.

In general, because mining activities are not defined or limited by material, substance, timing, extent, or other parameters (other than allowing the loss of up to ½ acre of waters of the United States), the Community cannot determine that all activities authorized under NWP 44 would comply with water quality requirements.

Mining activities could constitute or facilitate the discharge of harmful substances into a river, stream, or canal, which is prohibited under Section 5.9.1.5 of the Community’s Criminal Code. For example, the mining activity could result in a harmful mineral or byproduct entering a protected water in violation of the Code.



Depending on the location of the mining activity and the nature of the activity itself, it may constitute an activity prohibited by Ordinance GR-129-10, which authorized a conservation easement over the Pee Posh Wetlands for the purpose of restoring, protecting, managing, maintaining, and enhancing the functional value of the Pee Posh Wetlands, and for the conservation of natural values including fish and wildlife and their habitat. NWP 44 authorizes activities that may result in the loss of up to ½ acre of waters of the United States. As such, a mining activity permitted by NWP 44 could destroy up to ½ acre of the Pee Posh Wetlands in violation of Ordinance GR-129-10. Further, even if the mining activity is located outside of the easement area, the discharge could affect the water quality within the Pee Posh Wetlands, a sensitive aquatic site protected by 40 C.F.R. § 230.10(c)(1), which prohibits the discharge of dredged or fill material which will cause or contribute to significant degradation of the waters of the United States, including adverse effects on wildlife and special aquatic sites (defined to include wetlands). For this reason, it is necessary for the Community to know the location and additional information about the particular mining activity to determine compliance with the Community Water Quality Requirements.

Other sensitive resources on the Community lands that are protected by the Community's Water Quality Requirements could be similarly impacted by mining activities. One such example is the Community's MAR 5 site, which the Community has established for the express purposes of creating a live and continuous flowing river, establishing vegetation, attracting wildlife, and serving as a location where Community members can learn, recreate, and partake in the spiritual significance of the re-emergence and sounds of the flows associated with a live river. Mining activities in that area could adversely affect the MAR 5 site, in violation of 40 C.F.R. § 230.10(c)(4), which prohibits the discharge of dredged or fill material that will cause or contribute to significant degradation of the waters of the United States, including adverse effects on recreational, aesthetic, and economic values.

A further example are the areas that are being restored, conserved, and enhanced by the Community and are expected to reestablish the presence of wildlife, including threatened and endangered species and their critical habitat. Mining activities in these locations could violate: (i) 40 C.F.R. § 230.10(b)(3), which prohibits discharge of dredge or fill materials that would jeopardize the continued existence of threatened or endangered species under the Endangered Species Act of 1973 or results in likelihood of the destruction or adverse modification of critical habitat; and (ii) 40 C.F.R. § 230.10(c)(1), which prohibits the discharge of dredged or fill material that will cause or contribute to significant degradation of the waters of the United States, including adverse effects on wildlife and special aquatic sites (which include wetlands).

The Community also lacks sufficient information to determine whether mining activities could constitute a discharge that fails to meet the restrictions that specifically target water quality under the Community's Waste Management Ordinance, GR-04-14, which was enacted in part for the purpose of protecting the Community's waters from "from solid waste pollution, including contamination of the Community's aquifers, groundwater, surface waters, drinking water sources, and all other natural resources." §18.204(D).

Because the Community has insufficient knowledge concerning the nature, size, extent, and impact of the specific mining activities that would be authorized under this NWP, those activities could fail to comply with the minimum performance standards and water quality limits imposed under Community Ordinance GR-04-16, the Wastewater and Reclaimed Water Management Ordinance. Community Ordinance GR-04-16 is a comprehensive regulatory framework that includes standards, regulations, and permits, that “provide[s] for the proper disposal and management of wastewater and septage, provide[s] minimum performance standards and water quality limits for wastewater treatment, and provide[s] safe utilization of reclaimed water, which is a valuable resource [and also] prevent[s] and minimize[s] environmental degradation and contamination of surface water and groundwater; and protect[s] the health, safety, and welfare of the members, nonmembers, residents, and employees of the Gila River Indian Community.” § 15.601(A). For example, NWP 44 authorizes undefined activities that could result in the loss of up to ½ acre of waters of the United States. It lacks limits on water impoundment, diversion, or release. In a desert environment, where waters of the United States may be seasonal or intermittent, this NWP may authorize activities that dramatically change the velocities and extent of inconsistent flows, thereby potentially harming an ecosystem that depends on receiving those flows or affecting the recharge of groundwater. Without more information about the specific activities that would be authorized under this NWP, the Community cannot determine whether they will comply with this Ordinance.

The inability to receive notice of a proposed mining activity that could occur with a programmatic certification of NWP 44, and the inherent unknowns regarding undefined mining activities that could be authorized under NWP 44, could allow a development project to avoid review under Resolution GR-027-20, the Community’s Land Review Development Procedure Ordinance. The Land Review Development Procedure Ordinance sets forth a review process and approval requirement for proposed development projects on Community lands. An enumerated purpose of this review and approval requirement is to protect the Community's natural environment by encouraging and requiring development practices that protect, among other resources, wildlife, vegetation, land, watercourses, and water quality and supply.

Mining activities authorized under NWP 44 (potentially including associated construction activities, diversions, impoundments, and more) could also adversely affect a waterway that is part of the Community’s P-MIP system that conveys CAP water, which is a resource that the United States holds in trust for the benefit of the Community. Without further information regarding the nature, location, and operation/purpose of the activity, which would not be available to the Community if NWP 44 were programmatically certified, it is not possible for the Community to know whether such an action would limit or affect the quality of water distributed by the P-MIP system or would otherwise deprive the Community of waters that are delivered pursuant to and protected under the AWSA and are needed by the Community for agricultural and other purposes that are essential to the economy, culture, and well-being of the Community.

Mining activities could interfere with the aesthetic values that are central to the spiritual character of Community waterways, and therefore could violate the prohibition in 40 C.F.R. § 230.10(c)(4) on discharge of pollutants with significant adverse effects on aesthetic values. The Gila River and

Salt River on Community lands are culturally significant. In addition, springs and seeps are considered significant and some are important in religious/cultural ceremonies. The Community's waters and water supplies are essential to the spiritual, religious, and economic wellbeing of the Community's members. Many of the waterways on the Community's lands are sacred in part because of their natural character, as they have sustained the Community and our people for centuries.

Moreover, some of the waters and associated banks may qualify as or include in their areas Traditional Cultural Properties that qualify for protection under the National Historic Preservation Act. As such, the potential effects of discharges on reducing or eliminating their historic value must be considered per 40 C.F.R. § 230.54, and the Water Quality Certification is the appropriate process for considering this impact.

Additionally, Ordinance GR-01-82 prohibits any person from knowingly excavating upon or removing, moving, destroying, injuring, defacing, or desecrating any protected place or object on Community lands. Protected places are defined broadly to include physical evidence of human habitation, occupation, use, or activity, which includes, but is not limited to, canals, reservoirs, and surface and subsurface structures and features. Thus, a waterbody could be a protected place. NWP 44 could authorize excavations, movement, removal, destruction, or other injury to a protected place or object in violation of the Ordinance.

Further, it is not clear whether all activities authorized by NWP 44 would comply with the Community's Wastewater and Reclaimed Water Management Ordinance. For example, §15.606(C) of that Ordinance has particular quantitative water quality standards for discharge of reclaimed water, including for turbidity, and it is not clear whether impoundments and releases that may be authorized under NWP 44 will necessarily comply with those requirements.

Additionally, NWP 44 does not appear to prohibit activities in Special Aquatic Sites, but rather only requires notification of the USACE (not of the Community)), and therefore activities authorized by NWP may cause significant degradation of such sites on Community lands in violation of 40 C.F.R. § 230.10(c)(1).

While the type of water quality data or information needed to assure compliance with water quality requirements will vary on a case-by-case basis, it is likely to include some of the following: the nature of the mining activity; the name or segment of the receiving water; the specific location of the mining activity; an expected Area of Potential Effects for the discharge; the amount, area, and material of the discharge; available baseline assessment of the receiving waterbody; monitoring data of the water body receiving the discharge; information regarding visual appearance and noise associated with the mining activity; any available information regarding historic and cultural resources in the expected Area of Potential Effects; information about the type, timing, quantity, and quality of the discharge flowing through any temporary or permanent structure; and any measures the project will implement to avoid, minimize, or mitigate potential adverse effects.

**45. NWP-45: Repair of Uplands Damaged by Discrete Events – Certified.**

**46. NWP-46: Discharges in Ditches – Denied.**

The Community **denies** certification for NWP 46: Discharges in Ditches. Any applicant seeking to use NWP 46 must apply to the GRIC DEQ WQP for an individual Water Quality Certification.

The discharges that could be authorized by NWP 46 will not comply with one or more of the following water quality requirements:

- (1) Criminal Code § 5.9.1.5;
- (2) Pesticide Ordinance GR-05-14;
- (3) Resolution GR-129-10;
- (4) Waste Management Ordinance GR-04-14;
- (5) Wastewater and Reclaimed Water Management Ordinance GR-04-16;
- (6) Land Review Development Procedure Ordinance GR-027-20;
- (7) Archaeological Licenses Ordinance GR-01-82;
- (8) 40 C.F.R. § 230.10(b)(3);
- (9) 40 C.F.R. § 230.10(c)(1);
- (10) 40 C.F.R. § 230.10(c)(4);
- (11) 40 C.F.R. § 230.54; and
- (12) P.L 108-451.

The Community maintains an extensive 1,000+ mile irrigation canal system, including numerous ditches. NWP 46 would authorize discharges into ditches that are waters of the United States and/or convey waters of the United States. This could have a dramatic effect on the water quality in the Community's irrigation system for delivering CAP water or on the delicate balance of the existing system.

Discharges into ditches authorized by this NWP could constitute or facilitate the discharge of harmful substances into a river, stream, or canal, which is prohibited under Section 5.9.1.5 of the Community's Criminal Code.

Depending on the location of the discharge and the amount, timing, and material discharged, it may constitute an activity prohibited by Ordinance GR-129-10, which authorized a conservation easement over the Pee Posh Wetlands for the purpose of restoring, protecting, managing, maintaining, and enhancing the functional value of the Pee Posh Wetlands, and for the conservation of natural values including fish and wildlife and their habitat. NWP 46 authorizes discharges that may result in the loss of up to 1 acre of waters of the United States. As such, the discharges permitted by this NWP could result in loss of up to 1 acre of the Pee Posh Wetlands in violation of Ordinance GR-129-10. Further, even if the discharge is located outside of the easement area, the resulting flows or changes in drainage could affect the water quality within the Pee Posh Wetlands, a sensitive aquatic site protected by 40 C.F.R. § 230.10(c)(1), which prohibits the discharge of dredged or fill material which will cause or contribute to significant degradation of the waters of the United States, including adverse effects on wildlife and special aquatic sites (defined to include wetlands). For this reason, it is necessary for the Community to know the location, timing, material, and other information about the specific discharge.

Other sensitive resources on the Community lands that are protected by the Community's Water Quality Requirements could be similarly impacted by discharges into ditches. One such example is the Community's MAR 5 site, which the Community has established for the express purposes of creating a live and continuous flowing river, establishing vegetation, attracting wildlife, and serving as a location where Community members can learn, recreate, and partake in the spiritual significance of the re-emergence and sounds of the flows associated with a live river. The water that facilitates the recharge is conveyed through ditches that could be impacted by activities covered under this NWP. A discharge into such a ditch could adversely affect the MAR 5 site, in violation of 40 C.F.R. § 230.10(c)(4), which prohibits the discharge of dredged or fill material which will cause or contribute to significant degradation of the waters of the United States, including adverse effects on recreational, aesthetic, and economic values.

A further example are the areas that are being restored, conserved, and enhanced by the Community and are expected to reestablish the presence of wildlife, including threatened and endangered species and their critical habitat. Thus, discharges in these locations could violate: (i) 40 C.F.R. § 230.10(b)(3), which prohibits discharge of dredge or fill materials that would jeopardize the continued existence of threatened or endangered species under the Endangered Species Act of 1973 or results in likelihood of the destruction or adverse modification of critical habitat; and (ii) 40 C.F.R. § 230.10(c)(1), which prohibits the discharge of dredged or fill material that will cause or contribute to significant degradation of the waters of the United States, including adverse effects on wildlife and special aquatic sites (which include wetlands).

The Community also lacks sufficient information to determine whether discharges authorized under NWP 46 could constitute a discharge that fails to meet the restrictions that specifically target water quality under the Community's Waste Management Ordinance, GR-04-14, which was enacted in part for the purpose of protecting the Community's waters from "from solid waste pollution, including contamination of the Community's aquifers, groundwater, surface waters, drinking water sources, and all other natural resources." §18.204(D). For example, the discharged material may include material that meets the definition of solid waste under the Ordinance and thus may be prohibited or regulated.

Because the Community has insufficient knowledge concerning the location, quantity, timing, material, and other features of the specific discharges, those activities could fail to comply with the minimum performance standards and water quality limits imposed under Community Ordinance GR-04-16, the Wastewater and Reclaimed Water Management Ordinance. Community Ordinance GR-04-16 is a comprehensive regulatory framework that includes standards, regulations, and permits, that "provide[s] for the proper disposal and management of wastewater and septage, provide[s] minimum performance standards and water quality limits for wastewater treatment, and provide[s] safe utilization of reclaimed water, which is a valuable resource [and also] prevent[s] and minimize[s] environmental degradation and contamination of surface water and groundwater; and protect[s] the health, safety, and welfare of the members, nonmembers, residents, and employees of the Gila River Indian Community." § 15.601(A). For example, NWP 46 authorizes discharges without regard to the material or substance discharged. The resulting flows will likely reach waters of the United States and thus impact the water quality thereof.

Moreover, the discharges could cause substantial changes in velocities or characteristics of resulting flows, thereby potentially harming an ecosystem that depends on receiving those flows or affecting the recharge of groundwater. Without more information about the specifics of the discharges authorized under this NWP will entail, the Community cannot determine that it will comply with this Ordinance.

The inability to receive notice of a proposed discharge that could occur with a programmatic certification of NWP 46, and the inherent unknowns regarding discharges that could be authorized under NWP 46, could allow a development project to avoid review under Resolution GR-027-20, the Community's Land Review Development Procedure Ordinance. The Land Review Development Procedure Ordinance sets forth a review process and approval requirement for proposed development projects on Community lands. An enumerated purpose of this review and approval requirement is to protect the Community's natural environment by encouraging and requiring development practices that protect, among other resources, wildlife, vegetation, land, watercourses, and water quality and supply.

A discharge authorized under NWP 46 could also result in a discharge into a waterway that is part of the Community's P-MIP system that conveys CAP water, which is a resource that the United States holds in trust for the benefit of the Community. Without further information regarding the nature, location, and type of the discharge, which would not be available to the Community if NWP 46 were programmatically certified, it is not possible for the Community to know whether such a discharge will adversely affect the quality of water distributed by the P-MIP system or would otherwise deprive the Community of waters that are delivered pursuant to and protected under the AWSA and are needed by the Community for agricultural and other purposes that are essential to the economy, culture, and well-being of the Community.

Discharges into ditches could interfere with the aesthetic values that are central to the spiritual character of Community waterways, and therefore could violate the prohibition in 40 C.F.R. § 230.10(c)(4) on discharge of pollutants with significant adverse effects on aesthetic values. The Gila River and Salt River on Community lands are culturally significant. In addition, springs and seeps are considered significant and some are important in religious/cultural ceremonies. The Community's waters and water supplies are essential to the spiritual, religious, and economic wellbeing of the Community's members. Many of the waterways on the Community's lands are sacred in part because of their natural character, as they have sustained the Community and our people for centuries.

Moreover, some of the waters and associated banks, including canals and ditches, may qualify as or include in their areas Traditional Cultural Properties that qualify for protection under the National Historic Preservation Act. As such, the potential effect of discharges on reducing or eliminating their historic value must be considered per 40 C.F.R. § 230.54, and the Water Quality Certification is the appropriate process for considering this impact.

Additionally, Ordinance GR-01-82 prohibits any person from knowingly excavating upon or removing, moving, destroying, injuring, defacing, or desecrating any protected place or object on Community lands. Protected places are defined broadly to include physical evidence of human

habitation, occupation, use, or activity, which includes, but is not limited to, canals, reservoirs, and surface and subsurface structures and features. Thus, a waterbody – including a drainage ditch – could be a protected place. NWP 46 could authorize destruction, injury, or desecration of a protected place or object in violation of the Ordinance.

Further, it is not clear whether all activities authorized by NWP 46 would comply with the Community's Wastewater and Reclaimed Water Management Ordinance. For example, §15.606(C) of that Ordinance has particular quantitative water quality standards for discharge of reclaimed water, including for turbidity, and it is not clear whether the discharges authorized by this NWP, which may include discharges of reclaimed water, will necessarily comply with those requirements.

Additionally, NWP 46 does not appear to prohibit activities in Special Aquatic Sites, and therefore activities authorized by NWP may cause significant degradation of such sites on Community lands in violation of 40 C.F.R. § 230.10(c)(1).

While the type of water quality data or information needed to assure compliance with water quality requirements will vary on a case-by-case basis, it is likely to include some of the following: the nature of the discharge; the name or segment of the receiving ditch; the specific location of the drainage ditch; an expected Area of Potential Effects for the discharge; the amount, area, timing, and material of the discharge; available baseline assessment of the receiving ditch and connected waterbodies; monitoring data of the waterbodies receiving the discharge; information regarding visual appearance and noise associated with the discharge ; any available information regarding historic and cultural resources in the expected Area of Potential Effects; information about the type, timing, quantity, and quality of the any resulting discharge flowing through the drainage ditch; modeling or other estimations of the effects of the discharge on waters of the United States or other ditches, canals, and waters; and any measures the project will implement to avoid, minimize, or mitigate potential adverse effects.

**47. NWP-47: (Reserved) – No certification necessary.**

**48. NWP-48: Commercial Shellfish Aquaculture Activities – Certified.**

**49. NWP-49: Coal Mining Activities – Certified.**

**50. NWP-50: Underground Coal Mining Activities – Certified.**

**51. NWP-51: Land Based Renewable Energy Generation Facilities – Certified.**

**52. NWP-52: Water Based Renewable Energy Generation Pilot Projects – Certified.**

**53. NWP-53: Removal of Low Head Dams – Certified.**

**54. NWP-54: Living Shorelines – Certified.**

**A. Seaweed Mariculture Activities** – No certification necessary.

**B. Finfish Mariculture Activities** – No certification necessary.

**C. Electric Utility Line and Telecommunications Activities** – Denied.

The Community **denies** certification for NWP C: Electric Utility Line and Telecommunications Activities. Any applicant seeking to use NWP C must apply to the GRIC DEQ WQP for an individual Water Quality Certification.

The discharges that could be authorized by NWP C will not comply with one or more of the following Water Quality Requirements:

- (1) Criminal Code § 5.9.1.5;
- (2) Pesticide Ordinance GR-05-14;
- (3) Resolution GR-129-10;
- (4) Waste Management Ordinance GR-04-14;
- (5) Wastewater and Reclaimed Water Management Ordinance GR-04-16;
- (6) Land Review Development Procedure Ordinance GR-027-20;
- (7) Archaeological Licenses Ordinance GR-01-82;
- (8) 40 C.F.R. § 230.10(b)(3);
- (9) 40 C.F.R. § 230.10(c)(1);
- (10) 40 C.F.R. § 230.10(c)(4);
- (11) 40 C.F.R. § 230.54; and
- (12) P.L 108-451.

Electric utility line and telecommunications activities, including electric utility lines, telecommunications lines, and associated substations, foundations, and access roads, could constitute or facilitate the discharge of harmful substances into a river, stream, or canal, which is prohibited under Section 5.9.1.5 of the Community's Criminal Code.

Depending on the location of the electric utility line and telecommunications activity and the activity itself, it may constitute an activity prohibited by Ordinance GR-129-10, which authorized a conservation easement over the Pee Posh Wetlands for the purpose of restoring, protecting, managing, maintaining, and enhancing the functional value of the Pee Posh Wetlands, and for the conservation of natural values including fish and wildlife and their habitat. NWP C authorizes activities that may result in the loss of up to ½ acre of waters of the United States. As such, an electric utility line and telecommunications activity permitted by NWP C could destroy up to ½ acre of the Pee Posh Wetlands in violation of Ordinance GR-129-10. Further, even if the electric utility line and telecommunications activity is located outside of the easement area, the discharge could affect the water quality within the Pee Posh Wetlands, a sensitive aquatic site protected by 40 C.F.R. § 230.10(c)(1), which prohibits the discharge of dredged or fill material which will cause or contribute to significant degradation of the waters of the United States, including adverse effects on wildlife and special aquatic sites (defined to include wetlands). For this reason, it is necessary



for the Community to know the location and information about the discharge and fill associated with the electric utility line and telecommunications activity in order to determine compliance with Water Quality Requirements.

Other sensitive resources on the Community lands that are protected by the Community's Water Quality Requirements could be similarly impacted by an electric utility line or telecommunications activity. One such example is the Community's MAR 5 site, which the Community has established for the express purposes of creating a live and continuous flowing river, establishing vegetation, attracting wildlife, and serving as a location where Community members can learn, recreate, and partake in the spiritual significance of the re-emergence and sounds of the flows associated with a live river. An electric utility line or telecommunications line crossing that area, or a substation or access road in the vicinity, could adversely affect the MAR 5 site and its adjacent interpretive trail in violation of 40 C.F.R. § 230.10(c)(4), which prohibits the discharge of dredged or fill material which will cause or contribute to significant degradation of the waters of the United States, including adverse effects on recreational, aesthetic, and economic values.

A further example are the areas that are being restored, conserved, and enhanced by the Community and are expected to reestablish the presence of wildlife, including threatened and endangered species and their critical habitat. Electric utility line and telecommunications activities in these locations could violate: (i) 40 C.F.R. § 230.10(b)(3), which prohibits discharge of dredge or fill materials that would jeopardize the continued existence of threatened or endangered species under the Endangered Species Act of 1973 or results in likelihood of the destruction or adverse modification of critical habitat; and (ii) 40 C.F.R. § 230.10(c)(1), which prohibits the discharge of dredged or fill material that will cause or contribute to significant degradation of the waters of the United States, including adverse effects on wildlife and special aquatic sites (which include wetlands).

The Community also lacks sufficient information to determine whether the electric utility line and telecommunications activities could constitute a discharge that fails to meet the restrictions that specifically target water quality under the Community's Waste Management Ordinance, GR-04-14, which was enacted in part for the purpose of protecting the Community's waters from "from solid waste pollution, including contamination of the Community's aquifers, groundwater, surface waters, drinking water sources, and all other natural resources." §18.204(D). For example, the material used to construct an access road could be a recycled material that meets the Ordinance's definition of solid waste, the discharge of which is prohibited or regulated by GR-04-14.

Because the Community has insufficient knowledge concerning the size, extent, nature, and impact of the specific electric utility line and telecommunications activities, those activities could fail to comply with the minimum performance standards and water quality limits imposed under Community Ordinance GR-04-16, the Wastewater and Reclaimed Water Management Ordinance. Community Ordinance GR-04-16 is a comprehensive regulatory framework that includes standards, regulations, and permits, that "provide[s] for the proper disposal and management of wastewater and septage, provide[s] minimum performance standards and water quality limits for wastewater treatment, and provide[s] safe utilization of reclaimed water, which is a valuable resource [and also] prevent[s] and minimize[s] environmental degradation and contamination of

surface water and groundwater; and protect[s] the health, safety, and welfare of the members, nonmembers, residents, and employees of the Gila River Indian Community.” § 15.601(A). For example, inadvertent returns to waters of the United States of drilling fluids associated with horizontal directional drilling, which are contemplated in the NWP, may violate the Ordinance.

The inability to receive the notice of a proposed dredge or fill activity that could occur with a programmatic certification of NWP C, and the inherent unknowns regarding electric utility line and telecommunications activities that could be authorized under NWP C, could allow a development project to avoid review under Resolution GR-027-20, the Community’s Land Review Development Procedure Ordinance. The Land Review Development Procedure Ordinance sets forth a review process and approval requirement for proposed development projects on Community lands. An enumerated purpose of this review and approval requirement is to protect the Community’s natural environment by encouraging and requiring development practices that protect, among other resources, wildlife, vegetation, land, watercourses, and water quality and supply.

An electric utility line and telecommunications activity or associated construction activities (such as dewatering) authorized under NWP C could also adversely affect a waterway that is part of the Community’s P-MIP system that conveys CAP water, which is a resource that the United States holds in trust for the benefit of the Community. Without further information regarding location, which would not be available to the Community if NWP C were programmaticly certified, it is not possible for the Community to know whether such an action would limit or affect the quality of water distributed by the P-MIP system or would otherwise deprive the Community of waters that are delivered pursuant to and protected under the AWSA and are needed by the Community for agricultural and other purposes that are essential to the economy, culture, and well-being of the Community.

Electric utility line and telecommunications activities could interfere with the aesthetic values that are central to the spiritual character of certain community waterways, and therefore could violate the prohibition in 40 C.F.R. § 230.10(c)(4) on discharge of pollutants with significant adverse effects on aesthetic values. The Gila River and Salt River on Community lands are culturally significant. In addition, springs and seeps are considered significant and some are important in religious/cultural ceremonies. The Community’s waters and water supplies are essential to the spiritual, religious, and economic wellbeing of the Community’s members. Many of the waterways on the Community’s lands are sacred in part because of their natural character, as they have sustained the Community and our people for centuries.

Moreover, some of the waters and associated banks may qualify as or include in their areas Traditional Cultural Properties that qualify for protection under the National Historic Preservation Act. As such, the potential effects of discharges on reducing or eliminating their historic value must be considered per 40 C.F.R. § 230.54, and the Water Quality Certification is the appropriate process for considering this impact.

Additionally, Ordinance GR-01-82 prohibits any person from knowingly excavating upon or removing, moving, destroying, injuring, defacing, or desecrating any protected place or object on

Community lands. Protected places are defined broadly to include physical evidence of human habitation, occupation, use, or activity, which includes, but is not limited to, canals, reservoirs, and surface and subsurface structures and features. Thus, a waterbody could be a protected place. NWP C could authorize excavations, removal, destruction, or other injury to a protected place or object in violation of the Ordinance.

Further, it is not clear whether all activities authorized by NWP C would comply with the Community's Wastewater and Reclaimed Water Management Ordinance. For example, §15.606(C) of that Ordinance has particular quantitative water quality standards for discharge of reclaimed water, including for turbidity, and it is not clear whether impoundments and releases authorized under NWP C will necessarily comply with those requirements.

Additionally, NWP C does not appear to prohibit structures in Special Aquatic Sites and may therefore cause significant degradation of such sites on Community lands in violation of 40 C.F.R. § 230.10(c)(1).

While the type of water quality data or information needed to assure compliance with water quality requirements will vary on a case-by-case basis, it is likely to include some of the following: the nature of the electric utility line or telecommunications activity; the name or segment of the receiving water; the specific location of the electric utility line or telecommunications activity; an expected Area of Potential Effects for the discharge; the amount, area, and material of the discharge; available baseline assessment of the receiving waterbody; monitoring data of the water body receiving the discharge; information regarding visual appearance and noise associated with the discharge; any available information regarding historic and cultural resources in the expected Area of Potential Effects; information about the type, timing, quantity, and quality of the discharge flowing through any temporary or permanent structure; and any measures the project will implement to avoid, minimize, or mitigate potential adverse effects.

#### **D. Utility Line Activities for Water and Other Substances – Denied.**

The Community **denies** certification for NWP D: Utility Line Activities for Water and Other Substances. Any applicant seeking to use NWP D must apply to the GRIC DEQ WQP for an individual Water Quality Certification.

The discharges that could be authorized by NWP D will not comply with one or more of the following Water Quality Requirements:

- (1) Criminal Code § 5.9.1.5;
- (2) Pesticide Ordinance GR-05-14;
- (3) Resolution GR-129-10;
- (4) Waste Management Ordinance GR-04-14;
- (5) Wastewater and Reclaimed Water Management Ordinance GR-04-16;
- (6) Land Review Development Procedure Ordinance GR-027-20;
- (7) Archaeological Licenses Ordinance GR-01-82;
- (8) 40 C.F.R. § 230.10(b)(3);
- (9) 40 C.F.R. § 230.10(c)(1);

- (10) 40 C.F.R. § 230.10(c)(4);
- (11) 40 C.F.R. § 230.54; and
- (12) P.L 108-451.

Utility lines activities for water and other substances, including utility lines and associated substations, foundations, and access roads, could constitute or facilitate the discharge of harmful substances into a river, stream, or canal, which is prohibited under Section 5.9.1.5 of the Community's Criminal Code. Further, leaks of other substances (depending on what they are) may constitute prohibited discharges.

Depending on the location of the utility line activity and the activity itself, it may constitute an activity prohibited by Ordinance GR-129-10, which authorized a conservation easement over the Pee Posh Wetlands for the purpose of restoring, protecting, managing, maintaining, and enhancing the functional value of the Pee Posh Wetlands, and for the conservation of natural values including fish and wildlife and their habitat. NWP D authorizes activities that may result in the loss of up to ½ acre of waters of the United States. As such, a utility line activity permitted by NWP D could destroy up to ½ acre of the Pee Posh Wetlands in violation of Ordinance GR-129-10. Further, even if the utility line activity is located outside of the easement area, the discharge could affect the water quality within the Pee Posh Wetlands, a sensitive aquatic site protected by 40 C.F.R. § 230.10(c)(1), which prohibits the discharge of dredged or fill material which will cause or contribute to significant degradation of the waters of the United States, including adverse effects on wildlife and special aquatic sites (defined to include wetlands). For this reason, it is necessary for the Community to know the location and information about the discharge and fill associated with the utility line activity in order to determine compliance with Water Quality Requirements.

Other sensitive resources on the Community lands that are protected by the Community's Water Quality Requirements could be similarly impacted by a utility line activity. One such example is the Community's MAR 5 site, which the Community has established for the express purposes of creating a live and continuous flowing river, establishing vegetation, attracting wildlife, and serving as a location where Community members can learn, recreate, and partake in the spiritual significance of the re-emergence and sounds of the flows associated with a live river. A utility line crossing that area, or a substation or access road in the vicinity, could adversely affect the MAR 5 site and its adjacent interpretive trail, in violation of 40 C.F.R. § 230.10(c)(4), which prohibits the discharge of dredged or fill material which will cause or contribute to significant degradation of the waters of the United States, including adverse effects on recreational, aesthetic, and economic values.

A further example are the areas that are being restored, conserved, and enhanced by the Community and are expected to reestablish the presence of wildlife, including threatened and endangered species and their critical habitat. Thus, utility line activities in these locations could violate: (i) 40 C.F.R. § 230.10(b)(3), which prohibits discharge of dredge or fill materials that would jeopardize the continued existence of threatened or endangered species under the Endangered Species Act of 1973 or results in likelihood of the destruction or adverse modification of critical habitat; and (ii) 40 C.F.R. § 230.10(c)(1), which prohibits the discharge of dredged or

fill material that will cause or contribute to significant degradation of the waters of the United States, including adverse effects on wildlife and special aquatic sites (which include wetlands).

The Community also lacks sufficient information to determine whether the utility line activities could constitute a discharge that fails to meet the restrictions that specifically target water quality under the Community's Waste Management Ordinance, GR-04-14, which was enacted in part for the purpose of protecting the Community's waters from "from solid waste pollution, including contamination of the Community's aquifers, groundwater, surface waters, drinking water sources, and all other natural resources." §18.204(D). For example, the material used to construct an access road could be a recycled material that meets the Ordinance's definition of solid waste, the discharge of which is prohibited or regulated by GR-104-14.

Because the Community has insufficient knowledge concerning the size, extent, impact, and transported substance of the specific utility line activities, those activities could fail to comply with the minimum performance standards and water quality limits imposed under Community Ordinance GR-04-16, the Wastewater and Reclaimed Water Management Ordinance. Community Ordinance GR-04-16 is a comprehensive regulatory framework that includes standards, regulations, and permits, that "provide[s] for the proper disposal and management of wastewater and septage, provide[s] minimum performance standards and water quality limits for wastewater treatment, and provide[s] safe utilization of reclaimed water, which is a valuable resource [and also] prevent[s] and minimize[s] environmental degradation and contamination of surface water and groundwater; and protect[s] the health, safety, and welfare of the members, nonmembers, residents, and employees of the Gila River Indian Community." § 15.601(A). For example, a water utility line transporting wastewater would fall within the regulatory purview of the Ordinance; similarly, an intake and outfall structure authorized by NWP D may nevertheless violate the Ordinance's restrictions regarding turbidity.

The inability to receive notice of a proposed dredge or fill activity that could occur with a programmatic certification of NWP D, and the inherent unknowns regarding the utility line activities that could be authorized under NWP D, could allow a development project to avoid review under Resolution GR-027-20, the Community's Land Review Development Procedure Ordinance. The Land Review Development Procedure Ordinance sets forth a review process and approval requirement for proposed development projects on Community lands. An enumerated purpose of this review and approval requirement is to protect the Community's natural environment by encouraging and requiring development practices that protect, among other resources, wildlife, vegetation, land, watercourses, and water quality and supply.

Utility lines authorized under NWP D could also adversely affect a waterway that is part of the Community's P-MIP system that conveys CAP water, which is a resource that the United States holds in trust for the benefit of the Community. Without further information regarding location, which would not be available to the Community if NWP D were programmaticly certified, it is not possible for the Community to know whether such an action would limit or affect the quality of water distributed by the P-MIP system or would otherwise deprive the Community of waters that are delivered pursuant to and protected under the AWSA and are needed by the Community

for agricultural and other purposes that are essential to the economy, culture, and well-being of the Community.

Utility line activities could interfere with the aesthetic values that are central to the spiritual character of Community waterways, and therefore could violate the prohibition in 40 C.F.R. § 230.10(c)(4) on discharge of pollutants with significant adverse effects on aesthetic values. The Gila River and Salt River on Community lands are culturally significant. In addition, springs and seeps are considered significant and some are important in religious/cultural ceremonies. The Community's waters and water supplies are essential to the spiritual, religious, and economic wellbeing of the Community's members. Many of the waterways on the Community's lands are sacred in part because of their natural character, as they have sustained the Community and our people for centuries.

Moreover, some of the waters and associated banks may qualify as or include in their areas Traditional Cultural Properties that qualify for protection under the National Historic Preservation Act. As such, the potential effects of discharges on reducing or eliminating their historic value must be considered per 40 C.F.R. § 230.54, and the Water Quality Certification is the appropriate process for considering this impact.

Additionally, Ordinance GR-01-82 prohibits any person from knowingly excavating upon or removing, moving, destroying, injuring, defacing, or desecrating any protected place or object on Community lands. Protected places are defined broadly to include physical evidence of human habitation, occupation, use, or activity, which includes, but is not limited to, canals, reservoirs, and surface and subsurface structures and features. Thus, a waterbody could be a protected place. NWP D could authorize excavations, removal, destruction, or other injury to a protected place or object in violation of the Ordinance.

Further, it is not clear whether all activities authorized by NWP D would comply with the Community's Wastewater and Reclaimed Water Management Ordinance. For example, §15.606(C) of that Ordinance has particular quantitative water quality standards for discharge of reclaimed water, including for turbidity, and it is not clear whether an outfall structure authorized under NWP D will necessarily comply with those requirements. Further, a water utility line carrying wastewater or reclaimed water would fall within the regulatory purview of the Ordinance.

Additionally, NWP D does not appear to prohibit structures in Special Aquatic Sites and may therefore cause significant degradation of such sites on Community lands in violation of 40 C.F.R. § 230.10(c)(1).

While the type of water quality data or information needed to assure compliance with water quality requirements will vary on a case-by-case basis, it is likely to include some of the following: the nature of the utility line activity; the substance to be carried by the utility line; the name or segment of the receiving water; the specific location of the utility line activity; an expected Area of Potential Effects for the discharge; the amount, area, and material of the discharge; available baseline assessment of the receiving waterbody; monitoring data of the water body receiving the discharge; information regarding visual appearance and noise associated with the discharge; any available information regarding historic and cultural resources in the expected Area of Potential Effects;

information about the type, timing, quantity, and quality of the discharge flowing through any outfall structure; and any measures the project will implement to avoid, minimize, or mitigate potential adverse effects.

**E. Water Reclamation and Reuse Activities – Denied.**

The Community **denies** certification for NWP E: Water Reclamation and Reuse Activities. Any applicant seeking to use NWP E must apply to the GRIC DEQ WQP for an individual Water Quality Certification.

The discharges that could be authorized by NWP E will not comply with one or more of the following water quality requirements:

- (1) Criminal Code § 5.9.1.5;
- (2) Pesticide Ordinance GR-05-14;
- (3) Resolution GR-129-10;
- (4) Waste Management Ordinance GR-04-14;
- (5) Wastewater and Reclaimed Water Management Ordinance GR-04-16;
- (6) Land Review Development Procedure Ordinance GR-027-20;
- (7) Archaeological Licenses Ordinance GR-01-82;
- (8) 40 C.F.R. § 230.10(b)(3);
- (9) 40 C.F.R. § 230.10(c)(1);
- (10) 40 C.F.R. § 230.10(c)(4);
- (11) 40 C.F.R. § 230.54; and
- (12) P.L 108-451.

Water reclamation and reuse activities, including associated temporary activities, could constitute or facilitate the discharge of harmful substances into a river, stream, or canal, which is prohibited under Section 5.9.1.5 of the Community's Criminal Code.

Depending on the location of the water reclamation and reuse activity, and the nature of the activity itself, it may constitute an activity prohibited by Ordinance GR-129-10, which authorized a conservation easement over the Pee Posh Wetlands for the purpose of restoring, protecting, managing, maintaining, and enhancing the functional value of the Pee Posh Wetlands, and for the conservation of natural values including fish and wildlife and their habitat. NWP E authorizes activities that may result in the loss of up to ½ acre of waters of the United States. As such, a water reclamation and reuse activity permitted by NWP E could destroy up to ½ acre of the Pee Posh Wetlands in violation of Ordinance GR-129-10. Further, even if the activity is located outside of the easement area, the discharge could affect the water quality within the Pee Posh Wetlands, a sensitive aquatic site protected by 40 C.F.R. § 230.10(c)(1), which prohibits the discharge of dredged or fill material which will cause or contribute to significant degradation of the waters of the United States, including adverse effects on wildlife and special aquatic sites (defined to include wetlands). For this reason, it is necessary for the Community to know the location and information about the discharge and fill associated with the water reclamation and reuse activity.

Other sensitive resources on the Community lands that are protected by the Community's Water Quality Requirements could be similarly impacted by a water reclamation and reuse activity. One such example is the Community's MAR 5 site, which the Community has established for the express purposes of creating a live and continuous flowing river, establishing vegetation, attracting wildlife, and serving as a location where Community members can learn, recreate, and partake in the spiritual significance of the re-emergence and sounds of the flows associated with a live river. A water reclamation and reuse activity in that area, or construction thereof, could adversely affect the MAR 5 site and its interpretive trail for education, in violation of 40 C.F.R. § 230.10(c)(4), which prohibits the discharge of dredged or fill material which will cause or contribute to significant degradation of the waters of the United States, including adverse effects on recreational, aesthetic, and economic values.

A further example are the areas that are being restored, conserved, and enhanced by the Community and are expected to reestablish the presence of wildlife, including threatened and endangered species and their critical habitat. Thus, water reclamation and reuse activities in these locations could violate: (i) 40 C.F.R. § 230.10(b)(3), which prohibits discharge of dredge or fill materials that would jeopardize the continued existence of threatened or endangered species under the Endangered Species Act of 1973 or results in likelihood of the destruction or adverse modification of critical habitat; and (ii) 40 C.F.R. § 230.10(c)(1), which prohibits the discharge of dredged or fill material that will cause or contribute to significant degradation of the waters of the United States, including adverse effects on wildlife and special aquatic sites (which include wetlands).

The Community also lacks sufficient information to determine whether water reclamation and reuse activities could constitute a discharge that fails to meet the restrictions that specifically target water quality under the Community's Waste Management Ordinance, GR-04-14, which was enacted in part for the purpose of protecting the Community's waters from "from solid waste pollution, including contamination of the Community's aquifers, groundwater, surface waters, drinking water sources, and all other natural resources." §18.204(D). For example, the material used to construct temporary facilities authorized by this NWP could be a recycled material that meets the Ordinance's definition of solid waste.

Because the Community has insufficient knowledge concerning the size, extent, and impact of the specific water reclamation and reuse activities, those activities could fail to comply with the minimum performance standards and water quality limits imposed under Community Ordinance GR-04-16, the Wastewater and Reclaimed Water Management Ordinance. Community Ordinance GR-04-16 is a comprehensive regulatory framework that includes standards, regulations, and permits, that "provide[s] for the proper disposal and management of wastewater and septage, provide[s] minimum performance standards and water quality limits for wastewater treatment, and provide[s] safe utilization of reclaimed water, which is a valuable resource [and also] prevent[s] and minimize[s] environmental degradation and contamination of surface water and groundwater; and protect[s] the health, safety, and welfare of the members, nonmembers, residents, and employees of the Gila River Indian Community." § 15.601(A). For example, NWP E calls for "appropriate measures...to maintain downstream flows" but nevertheless authorizes activities



such as cofferdams. In a desert environment, where waters of the United States may be seasonal or intermittent, this NWP may authorize activities that dramatically change the velocities and extent of inconsistent flows, thereby potentially harming an ecosystem that depends on receiving those flows or affecting the recharge of groundwater. Without more information about the specific activities that a water reclamation and reuse activity will entail, the Community cannot determine that it will comply with this Ordinance.

The inability to receive the notice of a proposed dredge or fill activity that could occur with a programmatic certification of NWP E, and the inherent unknowns regarding water reclamation and reuse activity that could be authorized under NWP E, could allow a development project to avoid review under Resolution GR-027-20, the Community's Land Review Development Procedure Ordinance. The Land Review Development Procedure Ordinance sets forth a review process and approval requirement for proposed development projects on Community lands. An enumerated purpose of this review and approval requirement is to protect the Community's natural environment by encouraging and requiring development practices that protect, among other resources, wildlife, vegetation, land, watercourses, and water quality and supply.

A water reclamation and reuse activity or associated construction activities (such as dewatering) authorized under NWP E could also remove water from a waterway that is part of the Community's P-MIP system that conveys CAP water, which is a resource that the United States holds in trust for the benefit of the Community. Without further information regarding the nature, location, and operation/purpose of the activity, which would not be available to the Community if NWP E were programmatic certified, it is not possible for the Community to know whether such an action would limit or affect the quality of water distributed by the P-MIP system or would otherwise deprive the Community of waters that are delivered pursuant to and protected under the AWSA and are needed by the Community for agricultural and other purposes that are essential to the economy, culture, and well-being of the Community.

Water reclamation and reuse activities could interfere with the aesthetic values that are central to the spiritual character of these waterways, and therefore could violate the prohibition in 40 C.F.R. § 230.10(c)(4) on discharge of pollutants with significant adverse effects on aesthetic values. The Gila River and Salt River on Community lands are culturally significant. In addition, springs and seeps are considered significant and some are important in religious/cultural ceremonies. The Community's waters and water supplies are essential to the spiritual, religious, and economic wellbeing of the Community's members. Many of the waterways on the Community's lands are sacred in part because of their natural character, as they have sustained the Community and our people for centuries.

Moreover, some of the waters and associated banks may qualify as or include in their areas Traditional Cultural Properties that qualify for protection under the National Historic Preservation Act. As such, the potential effects of discharges on reducing or eliminating their historic value must be considered per 40 C.F.R. § 230.54, and the Water Quality Certification is the appropriate process for considering this impact.

Additionally, Ordinance GR-01-82 prohibits any person from knowingly excavating upon or removing, moving, destroying, injuring, defacing, or desecrating any protected place or object on Community lands. Protected places are defined broadly to include physical evidence of human habitation, occupation, use, or activity, which includes, but is not limited to, canals, reservoirs, and surface and subsurface structures and features. Thus, a waterbody could be a protected place. NWP E could authorize excavations, removal, destruction, or other injury to a protected place or object in violation of the Ordinance.

Further, it is not clear whether all activities authorized by NWP E would comply with the Community's Wastewater and Reclaimed Water Management Ordinance. Given that the activities authorized by NWP E are exactly within the regulatory purview of the Ordinance, the Community requires more specific information in order to determine whether the activities would comply with the requirement. For example, §15.606(C) of that Ordinance has particular quantitative water quality standards for discharge of reclaimed water, including for turbidity, and it is not clear whether impoundments and releases authorized under NWP E will necessarily comply with those requirements.

Additionally, NWP E does not appear to prohibit structures in Special Aquatic Sites, but rather only requires notification of the USACE (not of the Community), and therefore activities authorized by NWP may cause significant degradation of such sites on Community lands in violation of 40 C.F.R. § 230.10(c)(1).

While the type of water quality data or information needed to assure compliance with water quality requirements will vary on a case-by-case basis, it is likely to include some of the following: the nature of the water reclamation and reuse activity; the name or segment of the receiving water; the specific location of the water reclamation and reuse activity; an expected Area of Potential Effects for the discharge; the amount, area, and material of the discharge; available baseline assessment of the receiving waterbody; monitoring data of the water body receiving the discharge; information regarding visual appearance and noise associated with the water reclamation and reuse activity; any available information regarding historic and cultural resources in the expected Area of Potential Effects; information about the type, timing, quantity, and quality of the discharge flowing through any temporary or permanent structure; modeling of the effects on other water uses and supplies from the reclamation and reuse activity; and any measures the project will implement to avoid, minimize, or mitigate potential adverse effects.