



PALA BAND OF MISSION INDIANS

PMB 50, 35008 Pala Temecula Road
Pala, CA 92059
Phone 760-891-3500 | Fax 760-742-1411

December 14, 2020

David Castanon
U.S. Army Corps of Engineers
Chief, Regulatory Division
Los Angeles District
915 Wilshire, Suite 930
Los Angeles, CA 90013

Re: Pala Band of Mission Indians – Conditional Section 401 Water Quality Certification 2020
Nationwide Permits

Dear Mr. Castanon:

The Pala Band of Mission Indians (PBMI) is a federally recognized Native American Tribe authorized to implement the Section 401 water quality certification requirements of the Clean Water Act (CWA) under the CWA's "treatment as a state" provisions. In accordance with that authority, PBMI has reviewed the proposed reissuance of Nationwide Permits (NWP) by the United States Army Corps of Engineers (Corps) under CWA Section 404 as published in the Federal Register on September 15, 2020. PBMI provides the following programmatic water quality certification for all the proposed NWP subject to the conditions described below, which shall be binding requirements for work on the Pala Reservation in San Diego County, California.

PBMI has adopted the water quality standards established by the State of California applicable to those watercourses that are located on or flow through the Pala Reservation. This is a link to the Regional Board's website which specifies the standards for those watercourses.

<https://www.waterboards.ca.gov/sandiego/waterissues/programs/basinplan/docs/R9BasinPlan.pdf> Based on the information on the NWP that has been provided, PBMI cannot conclude that the discharges authorized by the NWP discharges will comply with applicable provisions of the CWA and PBMI's water quality standards as required under 40 C.F.R. § 121.7(f). Consequently, PBMI has determined that specific conditions are required under Section 401 to ensure that the Tribe's water quality standards are not violated and to protect the (1) public health and welfare of PBMI and its members and other residents of its Reservation, and (2) present and future use of surface water and groundwater on the Reservation for public, domestic, fish and wildlife, recreation, agricultural, cultural, commercial, industrial, and other uses.

As part of this certification, PBMI requires that any authorized project that cannot comply with these general conditions is denied Section 401 certification without prejudice and the applicant must apply to the PBMI Environmental Department (PED) for an individual water quality certification. If an individual certification is required, PED will use its best efforts to issue, deny, or waive certification within 60 days of receipt of complete project information.

PBMI's Section 401 water quality certification applies only to projects that are eligible for coverage under the NWP, as limited by any Regional Conditions applicable in the Corps'

Los Angeles District. This certification also does not apply to any project that requires an individual CWA Section 404 permit. Any project that qualifies for an NWP but fails to meet the conditions described in this certification will not be eligible for coverage under this programmatic certification and must obtain individual project certification from PBMI. This conditional certification will remain in effect for the authorization period of the reissued 2020 NWPs.

Condition 1: Notification

The applicant for any NWP-authorized project on the Pala Reservation shall provide notification to PED when the application for an NWP is submitted to the Corps. If an NWP requires a pre-construction notice (PCN), the applicant can satisfy this condition by providing a copy of the PCN to PED as its 401 notification in advance of any authorization letter from the Corps allowing the applicant to proceed under an NWP. If an NWP does not require a PCN, the applicant still must notify PED prior to receipt of an authorization letter from the Corps allowing the applicant to proceed under an NWP. In either situation, submittals shall be written, may be electronic, and shall be made to:

Pala Environmental Department
35008 Pala Temecula Road
Pala, CA 92059
Attn: Section 401 Group

All submittals for projects using one of the conditionally certified NWPs shall include the following information:

- a) The name, address, telephone numbers, and e-mail addresses of the applicant and any of its agents, representatives or contact persons
- b) The purpose of the proposed project
- c) The location and dimensions of the project, including the area of any temporary and/or permanent fill in WUS
- d) The best management practices (BMPs) to be used during construction, and if BMPs are not proposed, why their use is not practicable or necessary
- e) The source and quality of any fill to be used in the project
- f) Any proposed compensatory mitigation for project impacts.

PBMI has determined that this condition is necessary to assure that the Tribe is aware of any activities that are covered by an NWP or which the Corps approves that will occur within the PBMI Reservation, an area over which PBMI has jurisdiction as a sovereign nation. This condition also is required to assure compliance with PBMI's strict water quality standards. For example, the water quality standards PBMI has adopted for the San Luis Rey River and all its tributaries on the PBMI Reservation are 500 mg/l for total dissolved solids (TDS) and 20 NTU for turbidity. These water quality standards, and those for other water quality criteria, could easily be exceeded in Tribal watercourses by projects that involve discharges into WUS. Requiring notice of work to be conducted within the boundaries of the Pala Reservation also is authorized by PBMI's sovereign authority over its Reservation lands and all activities on those lands and by its authority to enforce PBMI Ordinance No. 15, which prohibits the discharge of any pollutant into any waters on the PBMI Reservation.

Condition 2: Best Management Practices

Except as allowed by the applicable NWP, no debris, silt, sand, cement, concrete, oil or petroleum, organic material, or other construction materials or wastes shall enter any WUS or be stored where it may be washed by runoff into any WUS. Silt fences, straw wattles, and other techniques shall be employed as appropriate to protect WUS from such discharges. Permittees and their contractors shall minimize channel and bank erosion within the WUS.

PBMI has determined that this condition is necessary to assure compliance with PBMI's strict water quality standards. For example, the water quality standards for the San Luis Rey River and all its tributaries on the PBMI Reservation are 500 mg/l for TDS and 20 NTU for turbidity. These water quality standards, and those for other water quality criteria, could easily be exceeded in Tribal watercourses by projects that involve discharges into WUS. This condition also is authorized by PBMI's sovereign authority over its Reservation lands and all activities on those lands and by its authority to enforce PBMI Ordinance No. 15, which prohibits the discharge of any pollutant into any waters on the PBMI Reservation.

Condition 3: Inspections

The permittee shall allow PED to inspect the authorized activity and any mitigation areas at any reasonable time that PED deems necessary to determine if the project complies with the terms and conditions of the NWP and this certification or any project-specific certification.

PBMI has determined that this condition is necessary to assure compliance with PBMI's strict water quality standards. For example, the water quality standards adopted by PBMI for the San Luis Rey River and all its tributaries on the PBMI Reservation are 500 mg/l for TDS and 20 NTU for turbidity. These water quality standards, and those for other water quality criteria, could easily be exceeded in Tribal watercourses by projects that involve discharges into WUS. This condition also is authorized by PBMI's sovereign authority over its Reservation lands and all activities on those lands and by its authority to enforce PBMI Ordinance No. 15, which prohibits the discharge of any pollutant into any waters on the PBMI Reservation.

With these conditions, PBMI hereby conditionally certifies the 2020 NWPs under its Section 401 authority. Please contact Shasta Gaughen, Pala Environmental Director, at (760) 891-3515 or sgaughen@palatribe.com if you have any questions concerning this conditional certification.

Sincerely,



Robert Smith, Chairman
Pala Band of Mission Indians

Cc: Shasta Gaughen, Environmental Director