

# Rincon Band of Luiseño Indians



One Government Center Lane | Valley Center | CA 92082  
(760) 749-1051 | Fax: (760) 749-8901 | rincon-nsn.gov

## VIA E-MAIL ONLY

David.J.Castanon@usace.army.mil  
antal.j.szijj@usace.army.mil

December 15, 2020

David J. Castanon  
Chief, Regulatory Division  
Los Angeles District

Department of the Army  
U.S. Army Corps of Engineers  
Los Angeles District  
915 Wilshire Boulevard, Suite 930  
Los Angeles, California 90017

## **RE: RINCON BAND DENIES WATER QUALITY CERTIFICATION UNDER SECTION 401 OF THE CLEAN WATER ACT FOR PROPOSED NATIONWIDE PERMITS**

Dear Mr. Castanon:

Thank you for submitting your letter to the Rincon Band of Luiseño Indians (the “Tribe”), dated October 15, 2020, requesting water quality certification under Section 401 of the Clean Water Act for the proposed issuance of Nationwide Permits (NWP) that may result in a discharge in waters of the United States within the exterior boundaries of the Rincon Reservation. It has been noted that a pre-filing meeting request, was submitted to the Tribe on September 14, 2020, 31 days prior to the filing of this request.

The Tribe is treated in the same manner as a state for purposes of Section 401 of the Clean Water Act and is presently working with the Environmental Protection Agency, Region IX (“EPA”) to adopt water quality standards as a matter of Tribal Law. However, until those tribal water quality standards are approved, the Tribe is using federal water quality criteria established by EPA.

Your request has been reviewed, and unfortunately water quality certification under Section 401 of the Clean Water Act is being denied by the Tribe for all requested NWPs. The certification action for each NWP is as indicated in the table below.

Nationwide Permit	Description	Certification Action
<b>NWPs Authorizing Activities That May Result in a Discharge Requiring Section 401 Water Quality Certification</b>		
NWP 15	U.S. Coast Guard Approved Bridges	Deny <sup>1</sup>
NWP 16	Return Water From Upland Contained Disposal Areas	Deny <sup>1</sup>
NWP 17	Hydropower Projects	Deny <sup>1</sup>
NWP 18	Minor Discharges	Deny <sup>1</sup>
NWP 21	Surface Coal Mining Activities	Deny <sup>1</sup>
NWP 25	Structural Discharges	Deny <sup>1</sup>
NWP 29	Residential Developments	Deny <sup>1</sup>
NWP 30	Moist Soil Management for Wildlife	Deny <sup>1</sup>
NWP 34	Cranberry Production Activities	Deny <sup>1</sup>
NWP 39	Commercial and Institutional Developments	Deny <sup>1</sup>
NWP 40	Agricultural Activities	Deny <sup>1</sup>
NWP 41	Reshaping Existing Drainage and Irrigation Ditches	Deny <sup>1</sup>
NWP 42	Recreational Facilities	Deny <sup>1</sup>
NWP 43	Stormwater Management Facilities	Deny <sup>1</sup>
NWP 46	Discharges in Ditches	Deny <sup>1</sup>
NWP 49	Coal Remining Activities	Deny <sup>1</sup>
NWP 50	Underground Coal Mining Activities	Deny <sup>1</sup>
NWP E	Water Reclamation and Reuse Facilities	Deny <sup>1</sup>

Nationwide Permit	Description	Certification Action
<b>NWPs Authorizing Activities, Some of Which May Result in a Discharge Requiring Section 401 Water Quality Certification</b>		
NWP 3	<p>Maintenance</p> <p>(a) Repair, rehabilitation, or replacement of previously authorized, currently serviceable structures or fills</p> <p>b) Discharges associated with removal of accumulated sediments and debris in the vicinity of existing structures, including intake and outfall structures and associated canals</p> <p>(c) Temporary structures, fills, and work necessary to conduct maintenance activity</p>	Deny <sup>1</sup>
NWP 4	Fish and Wildlife Harvesting, Enhancement, and Attraction Devices and Activities	Deny <sup>1</sup>
NWP 5	Scientific Measurement Devices	Deny <sup>1</sup>
NWP 6	Survey Activities	Deny <sup>1</sup>
NWP 7	Outfall Structures and Associated Intake Structures	Deny <sup>1</sup>
NWP 12	Oil or Natural Gas Pipeline Activities	Deny <sup>1</sup>
NWP 13	Bank Stabilization	Deny <sup>1</sup>
NWP 14	U.S. Coast Guard Approved Bridges	Deny <sup>1</sup>
NWP 19	Minor Dredging	Deny <sup>1</sup>
NWP 20	Response Operations for Oil or Hazardous Substances	Deny <sup>1</sup>
NWP 22	Removal of Vessels	Deny <sup>1</sup>
NWP 23	Approved Categorical Exclusions	Deny <sup>1</sup>
NWP 27	Aquatic Habitat Restoration, Enhancement, and Establishment Activities	Deny <sup>1</sup>
NWP 31	Maintenance of Existing Flood Control Facilities	Deny <sup>1</sup>
NWP 32	Completed Enforcement Actions	Deny <sup>1</sup>
NWP 33	Temporary Construction, Access, and Dewatering	Deny <sup>1</sup>

Nationwide Permit	Description	Certification Action
NWP 36	Boat Ramps	Deny <sup>1</sup>
NWP 37	Emergency Watershed Protection and Rehabilitation	Deny <sup>1</sup>
NWP 38	Cleanup of Hazardous and Toxic Waste	Deny <sup>1</sup>
NWP 44	Mining Activities	Deny <sup>1</sup>
NWP 45	Repair of Uplands Damaged by Discrete Events	Deny <sup>1</sup>
NWP 48	Commercial Shellfish Mariculture Activities	Deny <sup>1</sup>
NWP 51	Land-Based Renewable Energy Generation Facilities	Deny <sup>1</sup>
NWP 52	Water-Based Renewable Energy Generation Pilot Projects	Deny <sup>1</sup>
NWP 53	Removal of Low-Head Dams	Deny <sup>1</sup>
NWP 54	Living Shorelines	Deny <sup>1</sup>
NWP C	Electric Utility Line and Telecommunications Activities	Deny <sup>1</sup>
NWP D	Utility Line Activities for Water and Other Substances	Deny <sup>1</sup>

<sup>1</sup> Based upon our review, we have determined that discharges resulting from projects implemented under the above nationwide permits could result in exceeded water quality standards of waters within Rincon Tribal lands. In accordance with 40 CFR 121.7(e)(2), the reason for denying CWA 401 water quality certification for the above nationwide permits is due to insufficient information being provided that would allow the Rincon Tribe to confirm that project impacts would comply with the applicable provisions of sections 301, 302, 303, 306, and 407 of the Clean Water Act, and Tribal regulatory requirements for point source discharges into waters of the United States. Specifically, there is insufficient information provided to determine whether projects implemented under these Nationwide permits will meet water quality requirements for the following water quality parameters: pH, dissolved oxygen, nitrate (as N), E. coli, Total Suspended Solids (TSS), Total Dissolved Solids (TDS), Biological Oxygen Demand (BOD), and Chemical Oxygen Demand (COD).

**Specific water quality data/information required to assure that the discharge will comply with water quality requirements:**

U.S. EPA has developed surface water quality criteria for parameters including the following: metals, organochlorine pesticides, organophosphorus pesticides, N-Methylcarbamate herbicides, total trihalomethanes, general minerals, nitrite and nitrate (as N), total suspended solids (TSS) and total dissolved solids (TDS), physical parameters such as pH, dissolved oxygen, specific conductivity, cyanide, ammonia, biological oxygen demand (BOD), chemical oxygen demand (COD), total coliform and E. Coli, total organic carbon (TOC), and radionuclides (gross alpha, gross beta, RAD 226 & 228, uranium).

If a proposed project has the potential to affect any one or more of these water quality parameters, then the Tribe requires that all applicable water chemistry, discharge volume information, exact location of the discharge, and information relating to the timing and frequency of discharge must be provided to the Tribe along with the CWA Section 401 Water Quality Certification request, in order to properly analyze potential impacts that ensure that proposed projects will not cause avoidable environmental impacts to water quality and protected riparian buffers both on a per occurrence basis, and collectively over time.

In the event you have any questions, comments or concerns about this letter, please direct them to Ms. Camille Merchant, Director, Rincon Environmental Resources Department by telephone at (760) 749-1051 or email at [cmerchant@rincon-nsn.gov](mailto:cmerchant@rincon-nsn.gov). Thank you.

Sincerely,

**RINCON BAND OF LUISEÑO INDIANS**

A handwritten signature in black ink, appearing to read "Bo Mazzetti". The signature is written in a cursive, flowing style with a long horizontal stroke extending to the right.

Bo Mazzetti  
Tribal Chairman

Cc: Camille Merchant, Director, Rincon Environmental Department  
Denise Turner Walsh, Attorney General, Rincon Band of Luiseño Indians