



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IX

75 Hawthorne Street  
San Francisco, CA 94105-3901

NOV 14 2016

Dear Honorable Leader:

The U.S. Environmental Protection Agency (EPA) is writing to inform you of an action that may affect your tribe, and which may be appropriate for government-to-government consultation, per the *EPA Policy on Consultation and Coordination with Indian Tribes*.<sup>1</sup> If you decide to seek consultation, EPA requests that you do so by **December 14, 2016** by notifying the contacts below.

EPA is reviewing the U.S. Army Corps of Engineers (Corps) Nationwide Permit (NWP) Program for activities in waters of the U.S., and developing a conditional blanket (or “programmatically”) Clean Water Act (CWA) section 401 certification covering most<sup>ii</sup> federally-recognized tribes in our region. You may recall receiving a letter from the EPA soliciting your tribe’s input for our 2012 certification of the NWP Program. That certification will expire on March 18, 2017; EPA’s pending certification will cover the Corps NWP’s valid from 2017-2022.

Projects proposed on tribal lands which involve a discharge of dredged or fill material directly into jurisdictional wetlands or streams—including seasonally dry arroyos or “washes”—need a CWA section 404 permit from the Corps. The 404 permit in turn triggers Section 401 of the CWA, which requires certification that water quality will be protected from the impacts of the fill. On federally-recognized tribal lands, this certification is performed by EPA unless the tribe has been federally approved to do so.

The Corps has a number of different types of permits under section 404, including the group of activity-specific NWP’s. All activities authorized under the NWP Program are meant to have minimal adverse environmental impact, both individually and cumulatively. The Corps reviews the entire program every five years for reauthorization and potential modification, and requests that section 401 certifying authorities provide a programmatic review and certification. When this review occurs, certifying authorities must decide whether to (1) certify the program as proposed; (2) certify the program with specific conditions; (3) certify some of the NWP’s, but reserve project-by-project review for others; or (4) deny or waive certification of some or all of the NWP’s.

The EPA is developing general and permit-specific 401 conditions, and determining whether to deny or waive certification of some or all NWP’s for the 2017-2022 program. This action affords EPA the opportunity to solicit input and to address any potential tribal concerns or suggestions during the certification process. If you elect to request consultation, please notify Leana Rosetti by December 12, 2016. You may reach Ms. Rosetti at [rosetti.leana@epa.gov](mailto:rosetti.leana@epa.gov), by calling (415) 972-3070, or by letter addressed to U.S. EPA Region 9, Water Division (WTR-2-4), 75 Hawthorne Street, San Francisco, CA 94105. EPA will presume you do not wish to consult on this topic if no response is received by this date. If you request consultation, the EPA will contact you to initiate the process.

Additional information on the aforementioned regulatory programs and the federal government’s roles in protecting and regulating aquatic resources are available on-line,<sup>iii</sup> as are the newly proposed 2017-2022 Nationwide Permits.<sup>iv</sup> We have also enclosed the 401 certification for tribal lands for the 2012 NWP’s for your reference, and a fact sheet describing 401 certification on tribal lands. We anticipate the 2017 certification to contain similar conditions.

