



WATER QUALITY & REMEDIATION DIVISION

ENVIRONMENTAL PROGRAMS DEPARTMENT
THE SOUTHERN UTE INDIAN TRIBE
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December 15, 2023

Kelly E. Allen, Chief,
Regulatory Division
Department of the Army
Corps of Engineers, Albuquerque District
4101 Jefferson Plaza NE
Albuquerque, NM 87109-3435

Re: Reasonable periods of time for certification under Section 401 of the Clean Water Act (“Sec. 401”) for Department of the Army (“DA”) permits

Dear Ms. Allen:

The Southern Ute Indian Tribe’s (“Tribe”) Environmental Programs Department (“EPD”) has examined the U.S. Army Corps of Engineer’s (“USACE”) request to categorically establish reasonable periods of time for Sec. 401 Individual Water Quality Certification on Southern Ute Indian Tribe lands by DA permit type, dated November 16, 2023.

Under Resolution No. 2015-16, adopted on February 17, 2015, the Southern Ute Indian Tribal Council delegated authority to the EPD, formerly the Environmental Programs Division, to exercise the Tribe’s Clean Water Act section 401 certification authority. Within EPD, the Water Quality & Remediation Division staff review 401 certification requests and provide draft certification letters for approval by the Environmental Programs Director.

To ensure 401 water quality certification reviews proceed in a timely and effective manner between federal agencies and the Tribe, EPD agrees with the following reasonable periods of time proposed by the USACE Albuquerque District for Sec. 401 Individual Water Quality Certification on Southern Ute Indian Tribe lands by DA permit type:

- a. General Permits – 60 calendar days, including proposed programmatic, regional, and nationwide general permits, and any requests (pre-construction notifications) for verification of authorization or assumed (non-notifying) authorization under an existing general permit;
- b. Letters of Permission and Standard Individual Permits that do not require an Environmental Impact Statement (“EIS”) under the National Environmental Policy Act (“NEPA”) – 80 calendar days; and
- c. Standard Individual Permits that require an EIS where the USACE is the lead NEPA agency – 120 calendar days.

EPD agrees that the USACE may, on a case-by-case basis, establish a reasonable period of time for Sec. 401 permits different from the above categorical timeframes, taking into consideration the complexity of the proposed project, the nature of the potential discharge, and the possible need for additional study or evaluation of water quality effects. EPD also anticipates that written requests to extend the reasonable period of time will be infrequent. EPD agrees to only submit one request per certification review at least two weeks before the initially established reasonable period of time ends. Additionally, EPD acknowledges that USACE will, when deemed appropriate, grant extensions on a limited time basis, generally not more than 30 calendar days.

If you have questions, please contact me at (970) 563-2256 or Geoff Hensgen at (970) 563-2805.

Sincerely,

Mandy Eskelson
Water Quality & Remediation Division Head
Southern Ute Indian Tribe

cc: Geoff Hensgen, Southern Ute Indian Tribe, ghensgen@southernute-nsn.gov
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