



ENVIRONMENTAL PROGRAMS DEPARTMENT

SOUTHERN UTE INDIAN TRIBE
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August 21, 2024

Sent via email

Dylan Ruckel
Water Quality Scientist II – 319 Program
Southern Ute Indian Tribe
druckel@southernute-nsn.gov
970-563-2295

Re: Clean Water Act Section 401 Certification Request for the Stollsteimer Creek Restoration Project, under U.S. Army Corps of Engineers Section 404 Nationwide Permit 27 (SPA# 2024-214)

Dear Mr. Ruckel:

The Southern Ute Indian Tribe's Environmental Programs Department ("Department") received a Clean Water Act (CWA) Section 401 certification request and associated U.S. Army Corps of Engineers (USACE) Nationwide Permit (NWP) 27 forms on July 24, 2024 for the Stollsteimer Creek Restoration Project. As the project proponent/permittee, the 319 Program requested a pre-filing meeting on March 24, 2023 and held an updated pre-filing meeting with the Department on February 2, 2024 to cover changes to the project design.

The proposed project is located on Tribal trust lands within the exterior boundaries of the Southern Ute Indian Reservation; therefore, the Department is the certifying authority. The Department's decision is to grant a certification with conditions and applies to activities eligible under NWP 27.

Project Description

The Stollsteimer Creek Restoration Project is located in the NE corner of Section 15U, Township 34N, Range 4WU on the Chimney Rock, CO quadrangle map. The project site extends approximately 0.5 mile in Stollsteimer Creek (perennial) between Lake Capote and the confluence with the Piedra River. The proposed project aims to reduce nonpoint source pollution and restore riparian ecology and hydrology through the installation of multiple low-tech process-based restoration (LTPBR) structures called Post-Assisted Log Structures (PALS). Segments of Stollsteimer Creek possess eroding streambanks, incised channels, limited riparian vegetation, and water quality standard exceedances for multiple pollutants. PALS will be installed using wooden posts and other natural materials to encourage processes to reconnect Stollsteimer Creek with the historical floodplain, improve riparian vegetation and wildlife habitat, and reduce nonpoint source pollution. The installation phase for the project is anticipated to occur during

low flow conditions in Spring 2025 or Fall 2025.

Procedures and Decision Making

For coverage under nationwide or regional general permits for which the Tribe has denied certification, including NWP 27, the Department evaluates requests pursuant to the “[Southern Ute Indian Tribe’s Clean Water Act Section 401 Certification Procedures for Nationwide and Regional General Permits Issued by the U.S. Army Corps of Engineers \(“401 Certification Procedures”\)](#)” within the default or established reasonable period of time. On December 15, 2023, the Department categorically established reasonable periods of time (RPT) with the U.S. Army Corps of Engineers for Section 401 Individual Water Quality Certification on Southern Ute Indian Tribe lands by Department of Army permits. For general permits, including regional and nationwide permits, the Department agreed to a 60 calendar day RPT, unless an extension is requested and approved.

The certification request described the location and nature of the proposed project, the anticipated impacts and/or discharges to waters of the U.S., and best management practices (BMPs) that will be taken to avoid, minimize, and mitigate impacts to water quality and New Mexico Meadow Jumping Mouse populations and habitat. The request also provided a draft NWP 27 permit application and the required USACE pre-construction notification documentation. Based off the minimal ground disturbance and water quality impacts anticipated from the proposed project activities, maps and descriptions of temporary and permanent sediment and erosion control measures were not included in the request or required by the Department. However, BMPs for the inspection, cleaning, and fueling of hand tools; spill prevention protocols for post-pounder equipment; riparian habitat protections; reclamation/re-seeding if disturbance occurs; and the use of natural or native materials for structures were provided within the certification request.

Public Notice Process

The proposed project completed multiple internal Tribal reviews and the Department complied with the public notice procedures set forth in Section 4-102 of the Tribe’s 401 Certification Procedures. The public comment period was posted (Insert dates). (Insert amount) public comments were received for this project.

General Information

This 401 certification decision letter must be retained in your files with the applicable USACE permit verification. This certification is specifically associated with the USACE 404 permit (SPA# 2024-214) and expires concurrently with said permit.

Within 30 days of the Department’s 401 certification decision, any person aggrieved by the decision may seek judicial review in the Southern Ute Indian Tribal Court. The review shall be on the record without taking additional evidence. If the court finds that the Department exceeded its authority, made an erroneous interpretation of the law, acted in an arbitrary and capricious manner, or made a determination which is unsupported by the evidence in the record, the court may reverse or modify the Department’s decision or action. Otherwise, the decision of the Department shall be affirmed. Upon request by the court, the Department shall provide the court

with a certified copy of all documents, records, transcripts, or other information which formed the basis for any decision or action for which an aggrieved party seeks judicial review.

Conditions of Certification

After consideration of the factors set forth in Section 4-104 of the 401 Certification Procedures, the Department has decided to grant certification with conditions for the Stollsteimer Creek Restoration Project. This project must comply with the Tribe's certification requirements, which apply to all certifications unless specifically set forth otherwise in a certification decision. The Tribe's certification requirements are found in Section 4-106 of the 401 Certification Procedures, and a copy of the requirements is enclosed with this certification. Furthermore, the project must be completed in accordance with NWP 27 and General Conditions as well as applicable Regional Conditions to Nationwide Permits in the State of Colorado or others assigned through permit consultation with the U.S. Fish and Wildlife Service. Compliance with Tribe's certification conditions and the terms and conditions of NWP 27 will provide reasonable assurances that the permitted activities will comply with water quality requirements, will be conducted in a manner which will not cause or contribute to a violation of water quality standards, and will address the Tribe's water quality concerns. The Stollsteimer Creek Restoration Project 401 certification is subject to the following conditions:

Condition 1: Reporting: The project proponent shall submit the 319 Program's Annual Reports for this project, as required by Environmental Protection Agency grant funding, to the Department until the project is completed. This report shall include photo documentation of sites identified in the monitoring plan and provide written descriptions of pre- and post-installation and monitoring results.

If you have questions about the Tribe's certification decision, please contact Mandy Eskelson (meskelson@southernute-nsn.gov, 970-563-2256) or Geoffrey Hensgen (ghensgen@southernute-nsn.gov, 970-563-2805).

Sincerely,

Mark Hutson, Director
Environmental Programs Department
mhutson@southernute-nsn.gov

Enclosure: Southern Ute Indian Tribe's 401 Water Quality Certification Requirements

cc: Albuquerque District-Southern Colorado Branch, U.S. Army Corps of Engineers, SPA-RD-CO@usace.army.mil
Tucker Feyder, Tucker.J.Feyder@usace.army.mil
David Smith, SUIT Legal Department, dasmith@southernute-nsn.gov
Brennah Wilson, SUIT Legal Department, brwilson@southernute-nsn.gov

Attachment
Supporting Information for Certification Conditions

Numbered Condition	Why the condition is necessary to assure the activity will comply with water quality requirements	Citation that authorizes the condition
Condition 1 Reporting	This condition is necessary to protect water quality because it ensures that the project proponent is using planning, installation, and monitoring practices that will maintain the integrity of the site's designated uses, hydrology, and riparian and aquatic resource functions and values.	40 CFR 230.10(d); 40 CFR 230.70; 40 CFR 230.75; SUIT WQS Sections 6.1.1, 6.1.3, 6.1.6, 6.1.8, 7.1, 7.2, 13.1; SUIT 401 Procedures Sections 4-106(1)(e)-(g), 4-106(1)(i), 4-106(1)(o)-(t), 4-106(2)(a)-(b)

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Southern Ute Indian Tribe (SUIT) 401 Water Quality Certification Requirements

SUIT Clean Water Act Section 401 Certification Procedures for Nationwide Permits, Regional General Permits, and Individual Section 404 Permits Issued by the U.S. Army Corps of Engineers

Article 4-106. Certification Requirements

(1) The following requirements shall apply to all certifications unless specifically authorized by the 401 certification issued by the Division:

(a) A water quality certification shall require the project owner and operator to notify the Division Head of all changes in the project subsequent to certification.

(b) A water quality certification shall not be transferable without the written approval of the Division Head.

(c) Authorized representatives from the Division shall be permitted to enter upon the site where the construction activity or operation of the project is taking place for purposes of inspection of compliance with BMPs and certification conditions.

(d) In the event of any changes in control or ownership of facilities where the construction activity or operation of the project is taking place, the successor shall be notified in writing by his predecessor of the existence of the BMPs and certification conditions. The permittee shall provide a copy of such notification to the Division.

(e) If the permittee discovers that certification conditions are not being implemented as designed, or are not operating or functioning as designed, or if there is an exceedance of water quality standards despite compliance with the certification conditions by the permittee, the permittee shall verbally notify the Division of such failure or exceedance within two working days of becoming aware of the same. Within ten working days of such notification, the permittee shall provide to the Division, in writing, the following:

i. In the case of the failure to comply with the certification conditions, a description of (i) the nature of such failure, (ii) any reasons for such failure, (iii) the period of non-compliance, and (iv) the measures to be taken to correct such failure to comply; and

ii. In the case of the exceedance of water quality criteria, (i) an explanation, to the extent known after reasonable investigation, of the relationship between the project and the exceedance, (ii) the identity of any other known contributions to the exceedance, and (iii) a proposal to modify the certification conditions so as to remedy the contribution of the project to the exceedance.

(f) Any anticipated change in discharge location, quantities, or composition associated with the project must be reported to the Division by submission of a written notice by the permittee no less than ten days before the change. If the change is determined to be significant, the permittee

will be notified within ten days, and the change will be acknowledged and approved or disapproved.

(g) Any diversion from or bypass of facilities necessary to maintain compliance with the terms and conditions herein is prohibited, except (i) where unavoidable to prevent loss of life or severe property damage, or (ii) where excessive storm drainage or runoff would damage any facilities necessary for compliance with limitations and prohibitions herein. The Division shall be notified immediately in writing of each such diversion or bypass.

(h) At least 5 days before commencement of a project in a watercourse, which the Division has certified, or conditionally certified, the permittee shall notify the Division.

(i) Immediately upon discovery of any spill or other discharge to waters of the United States not authorized by the applicable license or permit, the permittee shall notify the Division.

(j) Construction operations within watercourses and water bodies shall be restricted to only those project areas specified in the federal license or permit.

(k) No construction equipment shall be operated below the existing water surface.

(l) Work should be carried out diligently and completed as soon as practicable. To the maximum extent practicable, discharges of dredged or fill material shall be restricted to those periods when impacts to designated uses are minimal.

(m) The project shall incorporate provisions for operation, maintenance, and replacement of BMPs to assure compliance with the conditions identified in this section, and any other conditions placed in the permit or certification.

All such provisions shall be identified and complied with in an operation and maintenance plan which will be retained by the project owner and available for inspection within a reasonable timeframe upon request by any authorized representative of the Division.

(n) The use of chemicals during construction and operation shall be in accordance with the manufacturers' specifications. There shall be no excess application and introduction of chemicals into waters of the United States.

(o) All solids, sludges, dredged or stockpiled materials and all fuels, lubricants, or other toxic materials shall be controlled in a manner so as to prevent such materials from entering waters of the United States.

(p) All seed, mulching material and straw used in the project shall be certified weed-free.

(q) Discharges of dredged or fill material in excess of that necessary to complete the project are not permitted.

(r) Discharges to waters of the United States not identified in the license or permit and not certified in accordance therewith are not allowed.

(s) No discharge shall be allowed which causes non-attainment of federal or tribal narrative water quality or biological criteria.

(t) Before any equipment touches the water, the project proponent must provide to the Division:

(i) a certification that (a) the equipment has not been used in waters with the possibility of aquatic nuisance species infestation and (b) the equipment has been thoroughly decontaminated using water that is heated to a temperature necessary to kill aquatic nuisance species,

(ii) evidence that the equipment has passed a Colorado Parks and Wildlife invasive species inspection, or

(iii) a certification in a form that is acceptable to the Division, signed by a third-party consultant, certifying that the equipment has undergone a waters of the United States-specific preventative decontamination using water that is heated to a temperature necessary to kill aquatic nuisance species.

(2) Best Management Practices.

(a) BMPs are required for all projects for which Division certification is issued except for section 402 permits. Project proponents must select and propose BMPs to the Division to be employed in their project.

(b) All certification requests for certifications which require BMPs shall include a map of project location, a site plan, and a listing of the selected BMPs chosen for the project. At a minimum, each project must provide for the following:

i. Permanent erosion and sediment control measures that shall be installed at the earliest practicable time consistent with good construction practices and that shall be maintained and replaced as necessary throughout the life of the project.

ii. Temporary erosion and sediment control measures that shall be coordinated with permanent measures to assure economical, effective, and continuous control throughout the construction phase and during the operation of the project.