



**NORTHERN CHEYENNE TRIBE
ENVIRONMENTAL PROTECTION DEPARTMENT
P.O. BOX 128
LAME DEER MT 59043**

December 11, 2020

**SENT VIA EMAIL
DIGITAL READ RECEIPT REQUESTED**

Colonel Mark R. Himes, P.E.
Army Corps of Engineers
Omaha District Commander
1616 Capital Avenue
Omaha Nebraska 68102

Re: Clean Water Act § 401 Certification of the U.S. Army Corps of Engineers proposed 2020 Nationwide Permits for the Northern Cheyenne Tribe of Montana

Dear Colonel Himes:

The Northern Cheyenne Tribe (Tribe) received the U.S. Army Corps of Engineers, Omaha District, request for water quality certification under § 401 of the Clean Water Act (CWA) for the proposed 2020 Nationwide Permits (NWP) that may result in a discharge in waters of the United States in the Northern Cheyenne Reservation. The Northern Cheyenne Tribe Environmental Protection Department (EPD) has assumed the CWA Section 401 Certification and Section 303 Water Quality Standards Program responsibilities to provide certification on behalf of the Tribe. The Omaha District did not request certification on all of the proposed NWP, if the permits where certification has not been requested are used, an individual certification will be required. This letter transmits our certifications for these general permits.

This Certification applies to any potential point source discharges from potential projects authorized under the proposed re-issuance of the following U.S. Army Corps of Engineers CWA 404 Nationwide Permit (NWP) into waters of the United States that occur within Indian country lands of the Northern Cheyenne Tribe of Montana within Omaha District.

Section 401(a)(1) of the CWA requires applicants for Federal permits and licenses that may result in discharges into waters of the United States to obtain certification that potential discharges will comply with applicable provisions of the CWA, including Sections 301, 302, 303, 306 and 307. The Northern Cheyenne Indian Tribe of Montana does have the authority

to provide CWA § 401 certification for discharges occurring within Indian country lands of the Northern Cheyenne Reservation.

In summary, the Northern Cheyenne Tribe is certifying [25] of the 57 NWP's with conditions. We are waiving [4] NWP's, denying certification for [18] NWP's, and taking no action on [10] NWP's. These requirements will protect water quality and help ensure that the NWP program minimizes adverse impacts on the aquatic environment on tribal lands, both individually and cumulatively, as required by CWA Section 404(e). If a project is unable to meet the enclosed conditions, or if certification is denied for an applicable NWP, the applicant may request an individual certification from the NCEPD. An individual certification request must follow the requirements outlined in §121.5 of the U.S. Environmental Protection Agency's CWA § 401 Certification Rule, effective September 11, 2020.

The Northern Cheyenne Tribe would like to thank you for the opportunity to provide certification on the USACE proposed 2020 Nationwide Permits, and look forward to working with the staff. If you have any questions or concerns, please do not hesitate to contact me at (406) 477-6506.

Sincerely,

Y. Scott Williams for Charlene Alden

Charlene Alden, Director

Northern Cheyenne Environmental Protection Department

Enclosure:

CC: Tribal President
Tribal Water Quality Coordinator
ACOE MT Regulatory Office, Program Manager
USEPA, Region 8, Clean Water Section

Northern Cheyenne Tribe Water Quality Certification for the U.S. Corps of Engineers

**Northern Cheyenne Tribe Environmental Protection Department Clean Water Act Section 401
Water Quality Certification for the U.S. Corps of Engineers CWA Section 404
2020 Nationwide Permits Reissuance**

This Certification applies to any potential point source discharges from potential projects authorized under the proposed re-issuance of the following U.S. Army Corps of Engineers CWA 404 Nationwide Permit (NWP) into waters of the United States that occur within the Northern Cheyenne Reservation within the Omaha District of the U.S. Corps of Engineers.: NWP 3, 4, 5, 6, 7, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 25, 27, 29, 30, 31, 32, 33, 34, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 48, 49, 50, 51, 52, 53, 54, C, and D.

Section 401(a)(1) of the Clean Water Act requires applicants for Federal permits and licenses that may result in discharges into waters of the United States to obtain certification that potential discharges will comply with applicable provisions of the CWA, including Sections 301, 302, 303, 306 and 307. Where no state agency or tribe has authority to give such certification, the U.S. Environmental Protection Agency is the certifying authority. The Northern Cheyenne Tribe (Tribe) has obtained authority (August 2006) to provide CWA Section 401 certification for discharges occurring within the exterior boundaries of the Northern Cheyenne Reservation, therefore, the Tribe is making the certification decisions for discharges that may result from potential projects authorized under the proposed Corps CWA 404 NWP listed above.

This Certification does not apply to the following NWP: 1, 2, 8, 9, 10, 11, 24, 28, 35, A, and B. If any activity authorized by these listed NWP may result in a discharge into a water of the United States, the Corps must seek CWA section 401 certification from the Tribe for discharges that occur in Indian Country within the boundaries of the Northern Cheyenne Reservation in Montana within the Omaha District. In addition, this certification does not apply to NWP applied "after-the-fact" (i.e., after the discharge has occurred) or to NWP where a waiver on limits has been granted by the District or Division Engineer.

In summary the Northern Cheyenne Tribe is granting CWA Section 401 certification with the universal/general conditions for NWP 5, 6, 7, 14, 15, 18, 19, 20, 23, 25, 27, 30, 31, 32, 33, 36, 38, 41, 43, 45, 46, C, and E; granting CWA Section 401 certification with universal/general conditions **and** permit specific condition for the following NWP 3, 7, 13, 14, 15, 19, 27, 43, C, and E. The Northern Cheyenne Tribe is denying 401 certification for NWP 12, 16, 17, 21, 24, 29, 34, 37, 39, 40, 42, 44, 49, 50, 51, 52, 53 and D. The Tribe is waiving certification for NWP 4, 22, 48 and 54.

The Northern Cheyenne Tribe is expressly waiving its authority to act on the CWA § 401 certification request for the following proposed NWP:

Northern Cheyenne Tribe Water Quality Certification for the U.S. Corps of Engineers

4. Fish and Wildlife Harvesting, Enhancement, and Attraction Devices and Activities
22. Removal of Vessels
48. Commercial Shellfish Mariculture
54. Living Shorelines

NWPs Granted with Conditions (121.7(d)(2))

CWA Section 401 certification is granted with the following conditions for NWPs 3, 5, 6, 7, 13, 14, 15, 18, 19, 20, 23, 25, 27, 30, 31, 32, 33, 36, 38, 41, 43, 45, 46, C, and E. The Northern Cheyenne Tribe has determined that any discharge authorized under these proposed NWPs will comply with water quality requirements, including applicable provisions of Sections 301, 302, 303, 306, and 307 of the Clean Water Act, and tribal regulatory requirements for point source discharges into waters of the United States, subject to the following conditions pursuant to Section 401(d).

All conditionally certified NWPs, including those with additional permit-specific conditions, must comply with the following conditions:

General Conditions Applicable to all NWPs	Why the condition is necessary to assure the proposed project will comply with water quality requirements	Citation that authorizes the condition
<p>All applicants, including federal agencies, must notify EPA and the Tribal Environmental Program of the use of all NWPs for which certification has been granted prior to commencing work on the project.</p> <p>Notifications must include:</p> <ul style="list-style-type: none"> • project location (lat. Long., exact point on map); • NWP that will be used and the specific activity that will be authorized under the NWP; • amount of permanent and temporary fills; 	<p>Notification will ensure that the Tribes are aware of all Corps-authorized activities potentially affecting Northern Cheyenne Tribal lands. It also will ensure the Corps, EPA, and the Tribe can demonstrate that the NWP program has no more than minimal impacts to the aquatic environment, individually and cumulatively, and that the activities will not adversely impact cultural and historic uses of tribal waters.</p> <p>In order to ensure that EPA and the Tribal programs have the opportunity to inspect the project prior to the onset of operations, the</p>	<p>CWA sections 301, 302, 303, 306, and 307ⁱ</p> <p>CWA 308(a)</p> <p>NCWQS Part VIII</p> <p>40 CFR 121.11(a)</p>

Northern Cheyenne Tribe Water Quality Certification for the U.S. Corps of Engineers

<ul style="list-style-type: none"> • a short summary of the proposed activity, and all other federal, state, tribal or local permits or licenses required for the project; • complete contact information of both the applicant and contractor (name, name of the company or property if applicable, telephone, mobile, and email); and, • summary of best management practices that will be used. • A summary of communications with the Tribe's water quality staff regarding the project, including any concerns or issues. • Notify EPA and the Tribe at least 7 days before the completion of construction and operations begin. 	<p>applicant must notify EPA and the tribal government in a timely manner of the status of the project construction.</p>	
<p>Point source discharges may not occur: (1) in fens, bogs or other peatlands; (2) within 100 feet of the point of discharge of a known natural spring source; or (3) hanging gardens.</p>	<p>This condition is necessary to ensure activities that may result in point source discharges into waters of the United States do not degrade these unique and difficult to replace wetland types, which play an important role in maintaining water quality and hydrologic function in mountain and prairie ecoregions.</p>	<p>40 CFR 230 Subpart E; 40 CFR 230.93(e)(3); NCWQS Part III</p>
<p>Except as specified in the application, no debris, silt, sand, cement, concrete, oil or petroleum, organic material, or other construction related materials or wastes shall be allowed to enter into or be stored where it may enter into waters of the U.S.</p>	<p>This condition is necessary to ensure water quality is not degraded by toxic pollutants in toxic amounts, raw materials, oil, grease, gasoline, or other types of fluids used to operate and maintain equipment used to complete the project.</p>	<p>40 CFR 230.10(d); 40 CFR 230.71; NCWQS Parts III and VII</p>
<p>Silt fences, straw wattles, and other techniques shall be employed as appropriate to protect waters of the U.S. from sedimentation and other pollutants.</p>	<p>This condition minimizes turbidity and sediment caused by construction activities, minimizes equipment contact with water (and potential for oil, gas, invasive species, etc. contamination), and allows for clean-up of potential spills before entering waters. It is necessary to ensure that water quality is not</p>	<p>40 CFR 230.10(d) and 230.72 NCWQS Parts III and VIII</p>

Northern Cheyenne Tribe Water Quality Certification for the U.S. Corps of Engineers

	degraded, and biology of the waters are not negatively impacted by the project.	
Water used in dust suppression shall not contain contaminants that could violate water quality standards.	This condition is necessary to ensure water quality is not degraded by toxic material in toxic amounts, raw materials, oil, grease, gasoline, or other types of fluids used to operate and maintain equipment used to complete the project.	40 CFR 230.10(d); 40 CFR 230.71; NCWQS Parts III, VII and Numeric Criteria
Erosion control matting that is either biodegradable blankets or loose-weave mesh must be used to the maximum extent practicable.	Condition is necessary to provide clarity on how to meet “appropriate soil erosion and sediment controls,” as required by NWP General Condition 12. Use of other “appropriate” measures is not prohibited, but the inclusion of this condition ensures that water quality impacts of dredged or fill material are minimized.	40 CFR 230.10(d); 40 CFR 230.72 NCWQS Parts III and VIII
All equipment used in waters of the U.S. must be inspected for fluid leaks and invasive species prior to use on a project. All fluid leaks shall be repaired and cleaned prior to use or when discovered, or if the fluid leak can't be repaired, the equipment shall not be used on site. Equipment used in waters with the possibility of aquatic nuisance species infestation must be thoroughly cleaned before they are used on the project.	This condition is necessary to ensure water quality is not degraded by oil, grease, gasoline, or other types of fluids used to operate and maintain equipment used to complete the project. This condition helps protect the native biology of the impacted waters by preventing the spread of invasive or nuisance species.	40 CFR 230.10(d); 40 CFR 230.74 NCWQS Parts III and VIII
Vegetation should be protected except where its removal is necessary for completion of the work. Locations disturbed by construction activities should be revegetated with appropriate native vegetation in a manner that optimizes plant establishment for the specific site. Revegetation may include topsoil replacement, planting, seeding, fertilization, liming, and weed-free mulching, as necessary.	Condition is necessary to provide the project proponent with clarity on what meets the requirement for appropriate revegetation as required by NWP General Condition 13. Revegetation maintains and improves water quality because riparian vegetation acts as buffer to reduce the amount of sediment and pollutants that enter waterways. Native vegetation, because it is adapted to local	40 CFR 230.10(d); 40 CFR 230.75; NCWQS Parts III and VIII

Northern Cheyenne Tribe Water Quality Certification for the U.S. Corps of Engineers

Where practical, stockpile weed-seed-free topsoil and replace it on disturbed areas. All revegetation materials, including plants and plant seed shall be on site or scheduled for delivery prior to or upon completion of the earth moving activities.	conditions (e.g., soil types and temperature) provide this function most efficiently. Native vegetation also protects the biology of waters by providing habitat for semi-aquatic organisms and other organisms that are a food source to aquatic life.	
Activities may not result in any unconfined discharge of liquid cement into waters of the U.S. Grouting riprap must occur under dry conditions with no exposure of wet concrete to the waterbody.	This condition is necessary to ensure water quality is not degraded and the biology of the waters are not negatively impacted by toxic compounds.	40 CFR 230.10(d); 40 CFR 230.71; CWA 307 (“No toxics in toxic amounts”) NCWQS Parts III and VIII
Activities that may result in a point source discharge shall occur during seasonal low flow or no flow periods to the extent practicable.	This condition minimizes turbidity and sediment caused by construction activities, minimizes equipment contact with water (and potential for oil, gas, invasive species, etc. contamination), and allows for clean-up of potential spills before entering waters. It is necessary to ensure that water quality is not degraded, and biology of the waters are not negatively impacted by the project.	40 CFR 230.10(d); 40 CFR 230.72(d); 40 CFR 230.23; 40 CFR 230.24; NCWQS Parts III and VIII
The placement of material (discharge) for the construction of new dams is not certified, except for stream restoration projects.	This condition is necessary to ensure impacts to water quality as a result of flow alterations are minimized to the maximum extent practicable, as required by NWP General Condition 8.	40 CFR 230.23; 40 CFR 230.24;) NCWQS Parts III and VIII

NWPs Granted with Permit-Specific Conditions in addition to the General Conditions listed above. (121.7(d)(2)):

Northern Cheyenne Tribe Water Quality Certification for the U.S. Corps of Engineers

NWP #	Permit-Specific Conditions	Why the condition is necessary to assure the proposed project will comply with water quality requirements	Citation that authorizes the condition
3. Maintenance	<p>1) No more than 25 cubic yards of new or additional riprap may be placed to protect the structure or fill;</p> <p>2) Bridge replacements must span the bankfull width and/or the ordinary highwater mark of the affected waters of the U.S.</p> <p>3) Fill or dredged material shall not result in an increase in land contour height beyond the original dimensions for the repair of low water crossings, or loss of stream cross section dimensions.</p> <p>4) Silt and sediment removal associated with low water crossings shall not exceed 50 linear feet.</p> <p>5) Silt and sediment removal associated with bridge crossings shall not exceed 100 linear feet.</p>	<p>1) The placement of new or additional riprap without limiting the amount of impacts authorized could result in more than minimal adverse effects on water quality. Limiting the placement of additional riprap to no more than 25 cubic yards will help ensure that the placement provides localized erosion control without causing undesirable consequences to water quality and degradation of physical habitat.</p> <p>2) The placement of a bridge/structure within bankfull width and/or the ordinary high water mark of a water of the U.S. would alter the hydrologic characteristics of the waterbody which could lead to an increased erosional force, scour around the bridge/structure during bankfull flows, high sediment loads to the waterbody, abandonment of the primary channel, and undermining of the structure itself.</p> <p>3) The discharge of dredged or fill material which alters the contours of a waterbody and/or its riparian zone can result in the loss or change of breeding and nesting areas, escape cover, travel corridors, and preferred food sources for resident and transient wildlife species associated with the aquatic ecosystem.</p> <p>Without a linear foot limit associated with silt and sediment removal in waters of the U.S., excess removal can result in varying degrees of change in the complex physical, chemical, and biological characteristics. Excess silt and sediment removal may alter the direction or velocity of water flow or otherwise change the dimensions of a water body which can result in adverse changes to structure and dynamics of aquatic communities, erosion</p>	40 CFR 230.10(d); 40 CFR 230.73; 40 CFR 230.75 NCWQS Parts III, IV and VII

Northern Cheyenne Tribe Water Quality Certification for the U.S. Corps of Engineers

		rates, and increases in suspended particulates. This justification applies to conditions 4 and 5.	
7. Outfall Structures	<p>1) Construction of the outfall structure shall be placed at the streambed elevation and, at a minimum, the pipe should be sized to prevent high pressure discharge of stormwater.</p> <p>2) Outfall structures shall not be constructed in wetlands.</p> <p>3) Controls shall be put in place to stabilize all areas of the bed and bank around and adjacent to the outfall structure and associated intake structures that may be affected by outfall or stream flows, respectively.</p> <p>4) Structures shall not result in a loss of waters of the U.S. (e.g. tile systems).</p>	<p>This justification covers condition 1 and 2. By specifying conditions on outfalls sizing, placement, and stabilization, these measures will help ensure that outfall structures are constructed such that they provide localized erosion control at the point(s) of discharge while minimizing habitat degradation and undesirable downstream impacts.</p> <p>3) Erosion from outfall structures can be caused by several factors, such as uncontrolled stormwater runoff, inadequate energy dissipation structures, nick point migration, poor slope stabilization, or extreme storm events that exceed design capacities. Without stabilization controls in place, construction of outfall structures can lead to changes in erosion and deposition rates, increases in suspended particulates in the waterbody, and undermining of the outfall structure itself.</p> <p>4) Structures that result in a loss of waters of the U.S. can degrade and/or eliminate aquatic habitat and adversely affect bottom-dwelling organisms at the site by smothering immobile forms or forcing mobile forms to migrate.</p> <p>These conditions are necessary to ensure that physical habitat and hydrologic characteristics of waters are not degraded; maintain the habitat and biology of the waters and ensure the hydrogeomorphology is not negatively impacted by the project.</p>	<p>CWA 303(a); 40 CFR 230.7; 40 CFR 230.10; 40 CFR 230.10(d); 40 CFR 230.73; 40 CFR 230.70</p> <p>NCWQS Parts III, IV and VIII</p>
13. Bank Stabilization	<p>1) Activities shall use of native vegetation or other bioengineered design techniques (e.g. willow plantings, root wads, large woody debris, etc.) or a combination of hard-armoring (e.g.</p>	<p>This justification applies to conditions 1-3. While effective at preventing localized erosion, hard armoring used as streambank stabilization can have a number of negative downstream effects such as increasing flow velocities,</p>	<p>CWA 303(a) 40 CFR 230.7;40 CFR 230.10(d); 40 CFR 230.72</p>

Northern Cheyenne Tribe Water Quality Certification for the U.S. Corps of Engineers

	<p>rock) and native vegetation or bioengineered design techniques. Artificial soil stabilizing material (e.g. mulch, matting, netting, etc.) shall be used to reduce soil erosion. These materials, to include all plants and plant seed, shall be on site or scheduled for delivery prior to or upon completion of the earth moving activities. Sediment control measures shall be maintained in good working order at all times.</p> <p>2) The slopes of disturbed banks should be configured to mimic a stable reach of the same stream within ½ mile in either direction of the project and not reduce the bottom width of the stream.</p> <p>3) If flow conditions dictate the use of hardened structures, only appropriately sized angular rock may be used. Soil cement, concrete, grouted riprap, etc. may not be used.</p>	<p>impeding hydrologic interaction with the floodplain, and degrading physical habitat. Specifying the methods and techniques which can be used under NWP 13 will help prevent habitat degradation and minimize negative downstream impacts while also achieving localized streambank stabilization and erosion control..</p>	<p>NCWQS Parts III, IV and VIII</p>
<p>14. Linear Transportation Projects</p>	<p>1) Stormwater from the construction and operation of these projects must be routed into constructed runoff water quality control systems (e.g. sediment basins, wet ponds, etc.)</p> <p>2) Affected streambanks must be sloped such that the stream bottom width is not reduced, and bottom elevations are restored to original elevations. In general, stream bank slopes should not be steeper than 3:1 unless there is a compelling reason.</p> <p>3) Crossings must be placed as close to perpendicular to the water course as possible.</p>	<p><u>This justification applies to conditions 1 - 3.</u> Constructed water quality control systems sequester sediments and other pollutants from runoff, as well as reduce velocity of those flows, prior to entry into waters of the United States. Maintaining natural stream bottom widths and elevations limits increases in streamflow velocity and reduces the potential for streambed scouring and bank incising. Limiting bank slope reduces the potential for erosion, undercutting and slumping, which add sediment to streams. Perpendicular stream crossings minimize the length of stream bed and bank impacts for a project. Collectively, these controls will ensure that physical habitat and hydrologic characteristics of waters are not degraded, will maintain the habitat and biology of the waters and will ensure the hydrogeomorphology is not negatively impacted by the project.</p>	<p>CWA 303(a) 40 CFR 230.7 and 230.10</p> <p>NCWQS Parts III, IV and VIII</p>

Northern Cheyenne Tribe Water Quality Certification for the U.S. Corps of Engineers

<p>15. Bridges</p>	<p>1) Stormwater from the construction and operation of these projects (including runoff from bridge decks) must be routed into constructed runoff water quality control systems (e.g. sediment basins, wet ponds, etc.)</p> <p>2) Affected streambanks must be sloped such that the stream bottom width is not reduced, and bottom elevations are restored to original elevations.</p> <p>3) Crossings must be placed as close to perpendicular to the watercourse as possible.</p> <p>4) Bridge decks must be designed such that they do not drain directly into the waterbody.</p> <p>5) Bridges must span the bankfull width and/or ordinary high water mark of the affected waters of the U.S. Bridges may not impair flow under normal circumstances, should not produce eddies or unintended scour holes and should be designed to prevent accumulation of sediment that may block flows.</p>	<p><u>This justification applies to conditions 1 - 3.</u> Constructed water quality control systems sequester sediments and other pollutants from runoff, as well as reduce velocity of those flows, prior to entry into waters of the United States. Maintaining natural stream bottom widths and elevations limits increases in streamflow velocity and reduces the potential for streambed scouring and bank incising. Limiting bank slope reduces the potential for erosion, undercutting and slumping, which add sediment to streams. Perpendicular stream crossings minimize the length of stream bed and bank impacts for a project. Collectively, these controls will ensure that physical habitat and hydrologic characteristics of waters are not degraded, will maintain the habitat and biology of the waters and will ensure the hydrogeomorphology is not negatively impacted by the project.</p> <p>4) Drainage directly from the bridge decks may cause erosion, and introduce additional pollutants, such as oil, gas, sediment, and toxics. Directing bridge deck drainage into constructed runoff water quality control systems will help prevent erosion and keep pollutants from directly entering the waterway.</p> <p>5) The placement of a bridge/structure within bankfull width and/or the ordinary high water mark of a Water of the U.S. would alter the hydrologic characteristics of the waterbody which could lead to an increased erosional forces, scour around the bridge/structure during bankfull flows, high sediment loads to the waterbody, abandonment of the primary channel, and undermining of the structure itself.</p>	<p>303(a) 40 CFR 230.7; 40 CFR230.10(d); 40 CFR 230.72</p> <p>NCWQS Parts III, IV, VIII and Numeric Criteria</p>
<p>19. Minor Dredging</p>	<p>Dredged or fill materials must be placed in uplands and controlled such that it cannot return to waters of the U.S. Dredged or fill material may not be placed on temporary islet, islands,</p>	<p>Placement of dredged or fill material in these locations may be susceptible to being washed away by high flows, which would contribute to sedimentation and potential conveyance of pollutants downstream.</p>	<p>40 CFR 230.10(d); 40 CFR 230.70</p>

Northern Cheyenne Tribe Water Quality Certification for the U.S. Corps of Engineers

	sandbars, landmass or other area of sediment accumulation within the banks of a stream, shore of lake, edge of wetland or other type of waterbody, unless the vegetation and geomorphology signify a long term stable configuration (e.g. areas of accumulation are not formed from temporary situations such as drought conditions or temporary upstream reservoir release conditions).	This condition is necessary to ensure that physical habitat and hydrologic characteristics of waters are not degraded; maintain the habitat and biology of the waters and ensure the hydrogeomorphology is not negatively impacted by the project.	NCWQS Parts III, IV, VIII and Numeric Criteria
27. Aquatic Habitat Restoration	Activities that may result in a discharge into waters of the United States shall not result in conversion of one habitat type to another (e.g. wetlands to open water).	<p>Aquatic habitat restorations that convert from one habitat type to another can alter the functions and services provided by the existing resources resulting in a functional loss.</p> <p>This condition is necessary to ensure that physical habitat and hydrologic characteristics of waters are not degraded; maintain the habitat and biology of the waters and ensure the hydrogeomorphology is not negatively impacted by the project.</p>	<p>40 CFR 230.10(d); 40 CFR 230.75</p> <p>NCWQS Parts III, IV and VIII</p>
43. Stormwater Management Facilities	Certification is granted with conditions only for replacement and repair activities that impact (e.g., fill, relocate, realign or straighten) no more than 300 LF of stream or 1/10 acre of waters of the U.S.	<p>Activities with more than 300 LF or 1/10 acre of waters of the U.S. of stream impact could result in more than minimal adverse environmental effects to water quality.</p> <p>This condition is necessary to ensure that water quality is not degraded, the biology of the waters are not negatively impacted by the project, and that no toxic compounds in toxic amounts will be used.</p>	<p>40 CFR 230.10(d); 40 CFR 230.73; 40 CFR 230.75;</p> <p>NCWQS Parts III, IV, VIII and Numeric Criteria</p>
C. Electric Utility Line and Telecom Activities	Construction activities shall not impact (e.g., fill, relocate, realign or straighten) more than 300 LF of stream for a single and complete project.	<p>Activities with more than 300 LF of stream impact could result in more than minimal adverse environmental effects to water quality.</p> <p>This condition is necessary to ensure that physical habitat and hydrologic characteristics of waters are not degraded; maintain the habitat and biology of the waters and ensure the hydrogeomorphology is not negatively impacted by the project.</p>	<p>CWA sections 301, 302, 303, 306, and 307 (see endnote i);</p> <p>NCWQS Parts III, IV and VIII</p>

Northern Cheyenne Tribe Water Quality Certification for the U.S. Corps of Engineers

E. Water Reclamation and Reuse	Activities shall not impact (e.g., fill, relocate, realign or straighten) more than 300 LF of stream channel for a single and complete project.	<p>Activities with more than 300 LF of stream impact could result in more than minimal adverse environmental effects to water quality.</p> <p>This condition is necessary to ensure that physical habitat and hydrologic characteristics of waters are not degraded; maintain the habitat and biology of the waters and ensure the hydrogeomorphology is not negatively impacted by the project.</p>	<p>CWA sections 301, 302, 303, 306, and 307 (see endnote i);</p> <p>NCWQS Parts III, IV and VIII</p>
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NWPs Denied (121.7(e)(2))

For the reasons below, the Northern Cheyenne Tribe has determined that the discharges from the following NWPs will not comply with water quality requirements. Therefore, CWA Section 401 certification is denied, and applicants must apply for an individual water quality certification. Denials apply to all Indian Country lands and waters of the Northern Cheyenne Reservation.

*** Reviewer NOTE: For readability of the table we have removed the column with the heading, "The following water quality data or information would be needed to assure that the range of discharges from potential projects will comply with water quality requirements." This information follows the table and is the same for all NWPs where certification is denied. ***

NWP #	Water quality requirement with which discharges that could be authorized by the general license or permit will not comply	Brief statement explaining why discharges that could be authorized by the general license or permit will not comply with this water quality requirement
12. O&G Pipeline Activities	<p>CWA sections 301, 302, 303, 306, and 307 (see endnote i); 40 CFR 230 Subpart C Section 311 and implementing regulations</p> <p>NCWQS Parts III, IV, VIII and Numeric Criteria</p>	<p>The activities permitted under this NWP will not comply with this water quality requirement because there are no limits on the linear foot impacts to streams. Without the 300 linear foot limit in place, discharges permitted under this NWP would allow many thousands of linear feet of impacts resulting in more than minimal adverse effects to water quality individually and cumulatively.</p> <p>In addition, the removal of the PCN requirement for activities that involve mechanized land clearing in forested wetlands does not allow the evaluation of the functional loss from conversion of wetland type from a forested wetland, which may modify habitat and alter water levels beyond normal water fluctuations, inhibiting the existing uses of the waterbody.</p> <p>This NWP is denied because of historic issues with crossings. The two main construction methods for crossing aquatic resources are trenching and horizontal</p>

Northern Cheyenne Tribe Water Quality Certification for the U.S. Corps of Engineers

		<p>directional drilling (HDD). Trenching and HDD potential discharges and impacts to the aquatic resources are significantly different and require significantly different conditions to address the potential water quality impacts. There is a high percentage of failures for HDD, either complete or partial. Trenching also runs into significant issues that require reconsideration, re-permitting and, in the past, amended certifications. Both have been known to trigger scour and expose pipelines that can be addressed with certification conditions.</p> <p>Past projects have experienced many failures, such as blowouts, the inability to continue drilling due to rock blockages, sandy or fine silt conditions that lead to collapse and surface failures lost and other failure events. HDD introduces many additional compounds that are often released into the aquatic resources: drilling fluids often contain compounds that are toxic, harmful (caustic or acidic), anti-corrosives, drag-reducing agents, or drag-reducing polymers, welding residues. There is also the known impacts of leaks in high-pressure pipes after installation, which erode the soil above the borehole.</p> <p>Failures are common in Region 8 for numerous reasons including drilling spec that include steep angles too steep for conditions, failure to address geology and hydrogeology characteristics (migrating streams and rivers), not addressing the issue with soils. Soil type greatly impacts the feasibility of an HDD installation fine and fragile soils, sandy soils, mixed soils such as disturbance sites, riparian and flood plains with glacial till, soils with blocking pebbles, boulders, gravelly soils require design and construction mitigation measures, or may make an HDD installation infeasible. Failure to have on site surveillance during drilling can increase the levels of impacts such as surface heave or humping. This is usually a result of excess pumping of drilling fluids after a loss of circulation.</p> <p>Trenching crossing on the other hand or a change from HDD construction to trenching leads to other concerns including sediment release during trenching, backfilling and stabilizing bed and bank, must divert waters, significantly disturbing the bank and bed, fishery life cycles, including breeding and migration, and passage issues; failures of diversion structures during high flows, failure to address the basic geological history of the area and the resulting natural resources. Trenching is much more difficult in areas of rock or frequent rock outcrops. Impacts and effect effects include alterations to streambed conditions and characteristics; reductions in the abundance and diversity of benthic invertebrate communities; and reductions in the abundance of fish populations and impacting life cycles due to imbedded sediment</p>
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Northern Cheyenne Tribe Water Quality Certification for the U.S. Corps of Engineers

16. Return Water from Upland Contained Disposal Areas	40 CFR § 230.23 CWA 307 toxics NCWQS Parts III, VIII and Numeric Criteria	Return water from upland contained disposal areas can contain debris, sediment, and other pollutants which would be discharged into aquatic resources under this NWP. The return water itself can modify current patterns and dimensions of a waterbody while any debris or sediment in the return water can result in adverse impacts through sedimentation and oxygen depletion from nutrient adsorption of suspended material.
17. Hydropower Projects	40 CFR 230.23 40 CFR 230.24 NCWQS Parts III, IV, VIII and Numeric Criteria	Discharges of dredged or fill material associated with hydropower projects having less than 10,000 kW of total generating capacity can alter the normal water-level fluctuation pattern of an area, resulting in prolonged periods of inundation, exaggerated extremes of high and low water, or a static, nonfluctuating water level. These alterations can change salinity patterns, alter erosion or sedimentation rates, alter water temperatures.
21. Surface Coal Mining Activities	CWA sections 301, 302, 303, 306, and 307 (see endnote i); 40 CFR 230 Subpart C, Subpart D NCWQS Parts III, IV, VIII and Numeric Criteria	The activities permitted under this NWP will not comply with this water quality requirement because there are no limits on the linear foot impacts to streams. Without the 300 linear foot limit in place, discharges permitted under this NWP would allow many thousands of linear feet of impacts resulting in more than minimal adverse water quality effects individually and cumulatively. Discharges associated with surface coal mining activities can result in varying degrees of change in the complex physical, chemical, and biological characteristics of the substrate. These changes can adversely affect the level of water quality such that existing instream water uses will no longer be maintained and protected.
24. Indian Tribe or State Administered Section 404 Programs	CWA 404(g) implementing regulations NCWQS Parts III and VIII	These conditions will help ensure applicants comply with the terms and conditions of the CWA § 404 certifications of the NWPs on applicable Northern Cheyenne Tribal lands.
29. Residential Developments	CWA sections 301, 302, 303, 306, and 307 (see endnote i); 40 CFR 230 Subpart C, Subpart D	The activities permitted under this NWP will not comply with this water quality requirement because there are no limits on the linear foot impacts to streams. Without the 300 linear foot limit in place, discharges permitted under this NWP would allow many thousands of linear feet of impacts resulting in more than minimal adverse water quality effects individually and cumulatively.

Northern Cheyenne Tribe Water Quality Certification for the U.S. Corps of Engineers

	<p>NCWQS Parts III, IV, VIII and Numeric Criteria</p>	<p>Discharges associated with residential developments under NWP 29 can result in significant losses to ecosystem services provided by existing aquatic resources. Adverse impacts may result from changes in water levels, flow, chemical content, substrate characteristics, or salinity and can result in losses to important breeding and nesting areas, food sources, and travel corridors for aquatic wildlife.</p>
<p>34. Cranberry Production</p>	<p>40 CFR 230.23 40 CFR 230.24</p> <p>NCWQS Parts III, IV and VIII</p>	<p>Discharges of dredged or fill material associated with cranberry production can alter the normal water-level fluctuation pattern of an area, resulting in prolonged periods of inundation, exaggerated extremes of high and low water, or a static, nonfluctuating water level. These alterations can change salinity patterns, alter erosion or sedimentation rates, and alter water temperatures which can alter or destroy communities and populations of aquatic animals and vegetation, induce populations of nuisance organisms, modify habitat, reduce food supplies, restrict movement of aquatic fauna, destroy spawning areas, and change surrounding areas.</p>
<p>37. Emergency Watershed Protection and Rehabilitation</p>	<p>NCWQS Parts III, IV, VIII and Numeric Criteria</p>	<p>Certification is denied for channelization of streams or sloughs or for removal of silt beyond what was deposited by the emergency. <i>Channelization is defined, for this purpose, as the placement of excess material in a manner that modifies the bank alignment, and subsequently the channel alignment, from its present condition.</i></p> <p>Certification is denied for a discharge of fill or dredged material into special aquatic sites if a practicable alternative that does not involve discharge into a special aquatic site is available. If discharge into a special aquatic site is unavoidable, discharge must be minimized. The applicant must provide a delineation of any special aquatic sites that may be impacted by the project discharges.</p> <p>A delineation of riparian areas to be cleared and an analysis of alternatives and necessity of such clearing must be submitted. The disturbing or clearing of riparian areas shall be minimized to enough space to provide equipment access.</p> <p>Construction of temporary structures or drains for the purpose of reducing or preventing flood damage is certified if the site is returned to pre-flood condition within 60 days following the emergency.</p>

Northern Cheyenne Tribe Water Quality Certification for the U.S. Corps of Engineers

		Repair of permanent structures damaged by floodwaters is certified to the extent that it returns the structure to pre-flood condition.
39. Commercial Development	CWA sections 301, 302, 303, 306, and 307 (see endnote i); 40 CFR 230 Subpart C, Subpart D NCWQS Parts III, IV, VIII and Numeric Criteria	The activities permitted under this NWP will not comply with this water quality requirement because there are no limits on the linear foot impacts to streams. Without the 300 linear foot limit in place, discharges permitted under this NWP would allow many thousands of linear feet of impacts resulting in more than minimal adverse water quality effects individually and cumulatively. Discharges of dredged or fill material associated with commercial development activities permitted under NWP 39 can result in degradation of water quality such that existing instream water uses are no longer maintained. These activities can result in changes to the physical, chemical, and biological characteristics of the aquatic ecosystem that may result in water quality which does not support the propagation of fish, shellfish, and wildlife and recreation in and on the water.
40. Agricultural Activities	CWA sections 301, 302, 303, 306, and 307 (see endnote i); 40 CFR 230 Subpart C, Subpart D NCWQS Parts III, IV, VIII and Numeric Criteria	The activities permitted under this NWP will not comply with this water quality requirement because there are no limits on the linear foot impacts to streams. Without the 300 linear foot limit in place, discharges permitted under this NWP would allow many thousands of linear feet of impacts resulting in more than minimal adverse water quality effects individually and cumulatively. Agricultural activities under NWP 40 which may result in the discharge of dredged or fill material can change the material chemistry and physical characteristics of a waterbody through the introduction of chemical constituents in suspended or dissolved form. These changes may reduce or eliminate the suitability of waterbodies for aquatic organisms, human consumption, or recreation.
42. Recreational Facilities	CWA sections 301, 302, 303, 306, and 307 (see endnote i); 40 CFR 230 Subpart C, Subpart D NCWQS Parts III, IV, VIII and Numeric Criteria	The activities permitted under this NWP will not comply with this water quality requirement because there are no limits on the linear foot impacts to streams. Without the 300 linear foot limit in place, discharges permitted under this NWP would allow many thousands of linear feet of impacts resulting in more than minimal adverse water quality effects individually and cumulatively. Discharges of dredged or fill material associated with recreational facilities permitted under NWP 42 can result in degradation of water quality such that existing instream water uses are no longer maintained. These activities can result in changes to the physical, chemical, and biological characteristics of the aquatic

Northern Cheyenne Tribe Water Quality Certification for the U.S. Corps of Engineers

		ecosystem that may result in water quality which does not support the propagation of fish, shellfish, and wildlife and recreation in and on the water.
44. Mining Activities	CWA sections 301, 302, 303, 306, and 307 (see endnote i); 40 CFR 230 Subpart C, Subpart D NCWQS Parts III, IV, VIII and Numeric Criteria	<p>The activities permitted under this NWP will not comply with this water quality requirement because there are no limits on the linear foot impacts to streams. Without the 300 linear foot limit in place, discharges permitted under this NWP would allow many thousands of linear feet of impacts resulting in more than minimal adverse water quality effects individually and cumulatively.</p> <p>Discharges associated with mining activities may result in an increase in turbidity to the extent which reduces the water quality necessary to support the propagation of fish, shellfish, wildlife, and recreation in and on the water. The biological and chemical context of the suspended material may also react with the dissolved oxygen in the water which can result in oxygen depletion. Toxic compounds absorbed or adsorbed to fine-grained particulates in suspended material may become biologically available to organisms either in the water column or on the substrate. Discharges from these activities may increase the availability of contaminants in the aquatic ecosystem which may lead to the bioaccumulation of such contaminants in wildlife.</p>
49. Coal Remining	40 CFR 230.23 40 CFR 230.24 NCWQS Parts III, IV, VIII and Numeric Criteria	Discharges associated with the remining and reclamation of lands that were previously mined for coal may result in an increase in turbidity to the extent which reduces the water quality necessary to support the propagation of fish, shellfish, wildlife, and recreation in and on the water. The biological and chemical context of the suspended material may also react with the dissolved oxygen in the water which can result in oxygen depletion. Toxic compounds absorbed or adsorbed to fine-grained particulates in suspended material may become biologically available to organisms either in the water column or on the substrate.
50. Underground Coal Mining	CWA sections 301, 302, 303, 306, and 307 (see endnote i); 40 CFR 230 Subpart C, Subpart D NCWQS Parts III, IV, VIII and Numeric Criteria	<p>The activities permitted under this NWP will not comply with this water quality requirement because there are no limits on the linear foot impacts to streams. Without the 300 linear foot limit in place, discharges permitted under this NWP would allow many thousands of linear feet of impacts resulting in more than minimal adverse water quality effects individually and cumulatively.</p> <p>Discharges associated with underground coal mining activities may result in an increase in turbidity to the extent which reduces the water quality necessary to support the propagation of fish, shellfish, wildlife, and recreation in and on the</p>

Northern Cheyenne Tribe Water Quality Certification for the U.S. Corps of Engineers

		<p>water. The biological and chemical context of the suspended material may also react with the dissolved oxygen in the water which can result in oxygen depletion. Toxic compounds absorbed or adsorbed to fine-grained particulates in suspended material may become biologically available to organisms either in the water column or on the substrate. Discharges from these activities may increase the availability of contaminants in the aquatic ecosystem which may lead to the bioaccumulation of such contaminants in wildlife.</p>
51. Land-based Renewable Energy	<p>CWA sections 301, 302, 303, 306, and 307 (see endnote i); 40 CFR 230 Subpart C, Subpart D</p> <p>NCWQS Part III, VIII and Numeric Criteria</p>	<p>The activities permitted under this NWP will not comply with this water quality requirement because there are no limits on the linear foot impacts to streams. Without the 300 linear foot limit in place, discharges permitted under this NWP would allow many thousands of linear feet of impacts resulting in more than minimal adverse water quality effects individually and cumulatively.</p> <p>Land-based renewable energy activities may result in an increase in suspended particulates entering waterbodies as a result of land runoff and direct dredging or filling. Suspended particulates may remain in the water column for varying amounts of time, reducing light penetration and lowering photosynthesis rates for aquatic vegetation.</p>
52. Water-based Renewable Energy	<p>CWA sections 301, 302, 303, 306, and 307 (see endnote i); 40 CFR 230 Subpart C, Subpart D</p> <p>NCWQS Parts III, IV, VIII and Numeric Criteria</p>	<p>The activities permitted under this NWP will not comply with this water quality requirement because there are no limits on the linear foot impacts to streams. Without the 300 linear foot limit in place, discharges permitted under this NWP would allow many thousands of linear feet of impacts resulting in more than minimal adverse water quality effects individually and cumulatively.</p> <p>Discharges associated with water-based renewable resources can have adverse impacts on water-related recreation including both consumptive and non-consumptive uses. Impacts from these activities may impair water bodies or prevent water use by changing turbidity, increasing suspended particulates, altering water temperature, changing habitat, and other changes to the aquatic ecosystem.</p>
53. Removal of Low Head Dams	<p>40 CFR 230.23</p> <p>40 CFR 230.24</p> <p>NCWQS Parts III, VIII and Numeric Criteria</p>	<p>The removal of low head dams in the arid and semi-arid west, where natural recovery can be slow, many times requires active restoration to achieve a net increase in ecological functions and services. Otherwise, the removal of the dam can lead to adverse impacts including significant increases in suspended</p>

Northern Cheyenne Tribe Water Quality Certification for the U.S. Corps of Engineers

		particulate levels and sedimentation downstream which may cause oxygen depletion and destruction of habitat.
D. Utility Line Activities for Water and other Substances	40 CFR 230.20 40 CFR 230.23 40 CFR 230.24 NCWQS Parts III, IV, VIII and Numeric Criteria	Discharges resulting from the numerous activities permitted under this NWP may directly impact bottom-dwelling organisms by limiting aquatic organism movement, by smothering immobile forms, or by forcing mobile forms to migrate to potentially unsuitable habitat. Erosion, slumping, or lateral displacement of surrounding bottom can adversely affect areas of the substrate outside of discharge location by changing or destroying habitat. These changes may degrade water quality such that the waters no longer support the propagation of fish, shellfish, wildlife, and recreation in and on the waterbody.
After the fact permits	40 CFR 230.20 40 CFR 230.23 40 CFR 230.24 CWA Section 301(b)(1)(c) NCWQS Parts III, IV, VIII and Numeric Criteria	These permits are denied because they will need additional scrutiny and review to determine the exact nature of the action completed without a Corps permit. It is necessary to determine what adverse impacts may have occurred, including increased turbidity, toxic pollutants, loss of habitat, significant degradation to beneficial uses, if restoration of the impacted site is necessary or if on reservation mitigation is needed.

Water quality data or information would be needed to assure that the range of discharges from potential projects will comply with water quality requirements.

- the name or segment identifier for the receiving water, conditions and types of receiving waters and the quantities to be lost, impacts to known beneficial and current Tribal uses
- the exact and specific location of the project discharge and project site
- the project site to be impacted, primary discharge location of the project, any possible additional discharges, bypasses or fill locations. Locations should be submitted in a format that adequately shows the fill or discharge location: point, line or polygon
 - ArcGIS File Geodatabase with accompanying Feature Classes
 - ArcGIS Shapefile
 - CAD file, DXF or DWG file projected to WGS 84 Decimal Degrees
 - KMZ/KML (Google Earth)
 - Decimal Latitude/longitude for a discrete point, line or polygon
- any available site-specific baseline conditions or monitoring data for the project site (chemical, biological or physical characteristic assessments and data).
- Cultural and historic surveys, endangered and threatened species information, species of cultural concern information

Northern Cheyenne Tribe Water Quality Certification for the U.S. Corps of Engineers

- Downstream uses of the water, distance to a downstream or adjacent jurisdiction
- Construction methodology, including placement, trenching, directional drilling, use of temporary diversions, amount of fill, type of fill etc.
- Any potential for toxics in toxic amounts, any potential oil and gas discharges during construction or operation (narrative standards)
- Restoration and mitigation plans

Ordinances Cited

Ordinance No. DOI-003 (2009)—Adopting the Revised Water Quality Standards of 2005 and making law the Revised Water Quality Standards and establishing the date for implementation and enforcement of the attached incorporated by reference the Northern Cheyenne Tribe’s Surface Water Quality Standards.

Northern Cheyenne Surface Water Quality Standards (2013)

Northern Cheyenne Treatment as a State (2006) Decision document: Approval of the Northern Cheyenne Tribes Application for Treatment as State under Section 303 of the Clean Water Act

ⁱ CWA sections 301, 302, 303, 306, and 307 are listed in CWA section 401(a)(1) and, therefore, those sections and federal regulations implementing those sections can be considered water quality requirements and provide a legal basis for certification grants, denials or conditions. Under CWA 303, EPA had issued and the Tribe has adopted regulations establishing “existing uses” as “the absolute floor of water quality in all waters of the United States.” 48 Fed. Reg. 51,400, 51,403 (Nov. 8, 1983). Existing uses are “those uses actually attained in the water body on or after November 28, 1975, whether or not they are included in the water quality standards.” 40 C.F.R. § 131.3(e). Section 404 is incorporated by reference into section 401(a)(1) by virtue of language in section 301(a)(1). Section 301(a) states “[e]xcept as in compliance with this section and sections 302, 306, 307, 318, 402, and 404 of this title, the discharge of any pollutant by any person shall be unlawful.” CWA 404(b)(1) Guidelines, 40 CFR Part 230