

November 16, 2020

William H. Graham, Major General
U.S. Army Deputy Commanding General for Civil and Emergency Operations
U.S. Army Corps of Engineers
Attn: CECW-CO-R
441 G Street NW
Washington, DC 20314-1000

RE: #COE-2020-0002, Comments on Proposal to Reissue and Modify Nationwide Permits, submitted via email per Federal Register instructions

The Nevada Division of Environmental Protection (NDEP) presents this letter as formal comment on Federal Register Docket #COE-2020-0002, Proposal to Reissue and Modify Nationwide Permits. This correspondence focuses on overall concerns, and is separate from the State of Nevada's 401 Certification of the 57 proposed Nationwide Permits. NDEP has three main concerns with changes proposed in the draft Nationwide Permits. These concerns echo those of many other states as delineated in the Association of Clean Water Administrators' (ACWA) comment letter dated November 6, 2020. As a member of ACWA, NDEP supports ACWA's comment letter.

First, NDEP finds it challenging to review and comment on draft proposed Nationwide Permits (NWP) while simultaneously meeting concurrent federal timelines for certifying them for 401 determination. Conditions in 401 Certifications for the NWP could conceivably change if the final NWP are modified from the proposed versions. It is critical for States to be provided the opportunity to fully evaluate the final version of the NWP and modify 401 Certifications as necessary.

Second, NDEP is concerned about the proposed language exempting Federal agencies from submitting pre-construction notifications (PCNs) for NWP. If the U.S. Army Corps of Engineers (USACE) does not receive PCNs, it is not clear how regulating agencies can ascertain whether activities are properly permitted. Without the trigger of the PCN, NDEP questions how the USACE will be able to ensure that NWP conditions are being implemented correctly, especially since recent changes to the 401 Certification Rule preclude certifying authorities from monitoring or enforcing conditions of permitted activities. This has the clear potential to result in adverse impacts to waters of the United States. NDEP requests that PCNs remain required for Federal agencies performing activities under NWP.

Finally, NDEP is concerned that the USACE's proposal removes the 300 linear foot (LF) limit for streambed loss from ten NWP. Currently, these NWP state that impacts cannot exceed ½ acre loss or 300 LF for streambed loss. The dual requirement provides greater protection, especially in the arid West where

waterways may be narrow and a ½ acre impact could be detrimental to water quality and other environmental benefits. NDEP requests that both the 300 LF and ½ acre thresholds remain in these NWPs. The Nevada Division of Environmental Protection encourages the USACE to consider our comments. Thank you for the opportunity to comment on the Proposal to Reissue and Modify Nationwide Permits, as the changes impact Nevada's waterways and our ability to reasonably protect them. If you have any questions, please contact me via email at bwidegren@ndep.nv.gov.

Sincerely,



Birgit M. Widegren, CPM
Nonpoint Source Branch Supervisor
Environmental Scientist IV
Bureau of Water Quality Planning

cc: Bradley Crowell, Director, Department of Conservation and Natural Resources
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