DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, VICKSBURG DISTRICT
4155 CLAY STREET
VICKSBURG, MISSISSIPPI 39183-3435

October 20, 2020

Regulatory Division

Ms. Diana Woods
U.S. Environmental Protection Agency, Region 4
61 Forsyth Street, SW
Atlanta, Georgia 30303

Dear Ms. Woods:

The purpose of this letter is to request that your agency begin its consideration of water quality certification (WQC) decisions for the proposed 2020 Nationwide Permits (NWPs) on Mississippi Band of Choctaw Indians lands within Mississippi. As you are aware, Clean Water Act Section 401 WQC decisions are required for NWPs that can be used to issue authorizations under authority of Section 404 of the Clean Water Act. The following provides background information regarding this request.

On September 15, 2020, the U.S. Army Corps of Engineers (Corps) published in the *Federal Register* its proposal to reissue 52 existing Nationwide Permits (NWPs) and issue five new NWPs. Enclosed is a copy of the *Federal Register* notice to reissue and modify the NWPs (enclosure 1). The current 2017 NWPs are set to expire on March 18, 2022. The notification in the *Federal Register* served as the Corps' advanced notice to interested parties that the Corps believes the proposed 2020 NWPs are conditioned to meet State and/or other applicable regional (e.g. Indian Country Lands) water quality standards. For this purpose, the Vicksburg District is not proposing to add regional conditions for the NWPs specific to Mississippi. The proposal to exclude regional conditions was announced by the Vicksburg District via a Special Public Notice on September 30, 2020 (enclosure 2).

Following the referenced *Federal Register* notice and the enclosed Special Public Notice, the Vicksburg District requested that the Mississippi Department of Environmental Quality begin consideration of WQC decisions for the 2020 NWPs throughout Mississippi, with the exception of lands in Mississippi owned by the Mississippi Band of Choctaw Indians. The Vicksburg District requests your decision regarding water quality certification under Section 401 of the Clean Water Act for the proposed issuance of those NWPs that may result in a discharge in waters of the United States on lands owned by the Mississippi Band of Choctaw Indians in the State of Mississippi.

The Corps' goal with regard to WQC is to develop NWPs that each State or Tribe, or EPA Regional Office acting on behalf of a Tribe, can certify as consistent with their water quality standards. To achieve this goal, the Vicksburg District is available to discuss issues of concern and to identify regional modifications to the scope of waters, activities, discharges, and pre-construction notifications, and other approaches, as appropriate, to resolve those issues. If you determine it will be necessary to request and schedule a meeting for the NWP reissue, our point of contact is Ms. Cori Carraway. You can contact Ms. Carraway at the Vicksburg District office, telephone (601) 631-5369, or email address: Cori.Carraway@usace.army.mil.

In accordance with Corps regulations at 33 CFR 330.4(c), if you deny WQC for certain activities authorized by the proposed NWPs within lands owned by the Mississippi Band of Choctaw Indians in the State of Mississippi, then the Corps will deny without prejudice authorization for those activities. Anyone wanting to perform such activities must first obtain an activity specific WQC or waiver thereof from you before proceeding under the NWP.

The Corps will generally defer to States, Tribes, or EPA regional offices regarding conditions for WQCs. Any conditions of the WQC provided by the State, Tribe, or EPA Regional Office become conditions of issued NWP authorizations. However, if the Corps determines those conditions do not meet our permit conditioning policy at 33 CFR 325.4, the Corps may use its enforcement discretion on those conditions. Moreover, if a WQC condition would impose an unacceptable level of additional work by the Corps, we will view that condition as a denial without prejudice.

Thank you for your attention regarding this matter. We remain available to discuss issues or proposed conditions you may be considering for the NWPs. We look forward to continued work with your office in the near future.

I am sending a copy of this letter via email to Mr. Jerry Cain, P.E., BCEE, Environmental Manager, Office of Environmental Protection, Mississippi Band of Choctaw Indians, Mr. Bill Ainslie (EPA Region 4), Ms. Molly Martin (EPA Region 4), and Ms. Rosemary Hall (EPA Region 4).

Sincerely,

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Jennifer A. Mallard
Chief, Regulatory Division

Enclosures