

Fond du Lac Band of Lake Superior Chippewa Resource Management Division

1720 Big Lake Road
Cloquet, MN 55720
Phone (218) 878-7101
Fax (218) 878-7130



Office of Water Protection 401 Water Quality Certification

APPLICANT: USACE St. Paul District

ISSUED: 07 November 2022

Administration
Conservation Enforcement
Environmental
Fisheries
Forestry
Land Information
Natural Resources
Wildlife

Pursuant to § 401 of the Clean Water Act (33 U.S.C. 1341), the Fond du Lac Band of Lake Superior Chippewa is required to certify whether the activity described below will not violate applicable water quality standards. Accordingly, the Fond du Lac Reservation Office of Water Protection requires reasonable assurance that the activity will not violate provisions of the Fond du Lac Band of Lake Superior Chippewa Water Quality Standards of the Fond du Lac Reservation, Ordinance #12/98 (Adopted by Resolution #1403/98 of the Fond du Lac Reservation Business Committee on December 10, 1998; Amended by Resolution #1286/01 of the Fond du Lac Reservation Business Committee on September 11, 2001 and by Resolution #1321 of the Reservation Business Committee on July 8, 2020), the Fond du Lac Band of Lake Superior Chippewa Water Quality Certification, Ordinance #01/06 (Adopted by Resolution #1033/06, as amended, of the Fond du Lac Reservation Business Committee on March 28, 2006; Amended by Resolution #1513 of the Reservation Business Committee on December 16, 2020), or of § 301, 302, 303, 306, or 307 of the Clean Water Act.

A request for Clean Water Act (CWA) § 401 Water Quality Certification has been received from the United States Army Corps of Engineers – St. Paul District for the 2023 Bank Stabilization and Habitat Improvement Regional General Permit. Fond du Lac's Water Quality Standards may be found at: <http://www.fdlrez.com/government/ords/12-98ord.pdf>

Applicant: **Regulatory Branch**
St. Paul District, Corps of Engineers
180 Fifth Street East, Suite 700
St. Paul, Minnesota 55101-1678

Authorized Work: The authorized work consists of regulated activities associated with bank bio-stabilization actions necessary for erosion control or prevention. Habitat improvement features associated with stabilization activities are also authorized by this RGP. Hard rock features, such as toe rock associated with integrated bank treatment, may be incorporated into the design provided it is a minor component of the design and is imperative to the integrity of the bio-stabilization activity. The maintenance of previously authorized structures or fills that do not qualify for CWA Section 404 Exemptions and

401 Certification – St. Paul Dist. USACE – RGP Bank Stabilization – Page 2 of 9

(Authorized Work continued):

activities associated with temporary construction access provided restoration to pre-construction and elevation is completed is also authorized by this RGP.

Location(s): Construction activities authorized under this Regional General Permit may occur anywhere permissible by the Permit and this Certification within the exterior boundaries of the Fond du Lac Reservation.

Background: The Fond du Lac Reservation Office of Water Protection (OWP) has examined the request for Certification, the Public Notice, and the Bank Stabilization and Habitat Improvement Regional General Permit, and based upon our evaluation of the supplied information that is relevant to Water Quality Certification considerations, we certify that there is reasonable assurance that activities associated with the Regional General Permit will be conducted in a manner that will not violate the Fond du Lac Band of Lake Superior Chippewa Water Quality Standards of the Fond du Lac Reservation Ordinance #12/98, as amended.

The §401 certification process ensures that Fond du Lac has the opportunity to establish conditions or even deny certification in order to protect our reservation water resources. The conditions that Fond du Lac believe are necessary to assure compliance with applicable provisions of CWA sections 208(e), 301, 302, 303, 306, and 307, and with appropriate requirements of tribal law (specifically, Fond du Lac Ordinance #12/98, as amended) are related to our interpretation of our narrative water quality standards and our antidegradation policies. The condition regarding turbidity (no more than 10% increase over ambient or background turbidity) defines the water quality based effluent limitation (WQBEL) and monitoring/reporting requirements necessary to assure that any applicant for this Federal permit will be in compliance with our water quality standards. Monitoring and reporting requirements allow Fond du Lac, USEPA, and USACE to confirm that the certification conditions intended to protect the existing high quality of our reservation waters are effective and being implemented. They can trigger adaptive management practices at a site, and can help inform the development of more robust certification conditions in the future. Monitoring and reporting activities help permittees to actually see and understand the impact, or avert an impact, on water quality resulting from their permitted actions. Over the ten (10) years period of EPA's Construction General Permit (now CGP 2017) had been in effect with the Fond du Lac turbidity limit and monitoring requirement, we have only encountered one incident of exceedance of this permit condition. This exceedance led to immediate corrective action that may not have otherwise been required without this specific condition in place.

Fond du Lac considers all waters of the reservation to be Tier 2 (higher quality, on a pollutant by pollutant basis, than the minimum quality necessary to maintain designated

(Background continued):

uses), and our primary wild rice lakes are Tier 3 or “Outstanding Reservation Resource Value” waters. It is entirely consistent with EPA guidance on antidegradation review¹, for instance, to define a significance threshold above which the effects on water quality require findings of necessity and social and economic importance to support any decision about the lowering of water quality in high quality waters. The significance threshold of 10% has been independently defined and approved by EPA through multiple processes that have included environmental groups, industry representatives, scientific experts, and public input, including Water Quality Guidance for the Great Lakes, and other states as well.

Fond du Lac believes that the turbidity-related condition cannot be made any less stringent without violating the requirements of tribal law. Section 301(h) of our water quality standards specifies “settleable and suspended solids (turbidity) should not reduce the depth of the compensation point for photosynthetic activity by more than 10% from the seasonally established norm for aquatic life”. Our comprehensive water quality monitoring data collected over the last eighteen years provides a defensible basis for defining ambient conditions and protecting the existing high quality and biological integrity in our surface waters.

Certification: Certification is **DENIED** to any new discharge to Outstanding Reservation Resource Waters (ORRW) as described in § 105 b. 3. of the Fond du Lac Water Quality Standards (Ordinance #12/98, as amended). Although additional waters may be designated in the future, currently Perch Lake, Rice Portage Lake, Miller Lake, Deadfish Lake, and Jaskari Lake are designated as ORRWs. New dischargers wishing to discharge to an ORRW must obtain a separate Water Quality Certification of such discharges.

[The Office of Water Protection will deny, due to insufficient information, any general license or permit with any new discharges into Outstanding Reservation Resource Waters (ORRW) as described in 105b.3 of the Fond du Lac Water Quality Standards (Ordinance #12/98, as amended) for the following reasons: 1. Aquatic resources are extremely important to the Fond du Lac Band of Lake Superior Chippewa and are quite extensive, comprising approximately 47% of the area within the external boundaries of the Fond du Lac Reservation. 2. Although the locations of these aquatic resources are known and mapped, the locations of the potential projects are not known. Therefore, the potential impacts to the aquatic resources cannot be quantified unless the actual project scope and location is known. 3. While a set of generic conditions may be adequate to protect water quality, until a specific project is proposed, it is difficult to determine what site-specific conditions may be appropriate to truly protect the water quality and aquatic resources that

¹ Memorandum from Ephraim S. King, Director, EPA Office of Science and Technology, to Water Management Division Directors, Regions 1-10, “Tier 2 Antidegradation Reviews and Significance Thresholds”, August 10, 2005.

(Certification continued):

Fond du Lac Band Members depend upon. Fond du Lac Water Quality Certification Ordinance (Ordinance #01/06), Section 203 c. 2) (A)-(D)].

As per § 201(e) of the Water Quality Certification Standards Ordinance #01/06 this Water Quality Certification is granted as **CERTIFICATION WITH CONDITIONS** for all other waters/wetlands within the Fond du Lac Reservation and therefore the following conditions apply:

1) A copy of the Pre-Construction Notification (PCN) MUST be sent to the Fond du Lac Office of Water Protection at the same time it is sent to the St. Paul District, Corps of Engineers. The PCN must include all applicable drawings, plans, and specifications for the project. The Fond du Lac Office of Water Protection must be invited to participate in any meetings between the St. Paul District and the applicant. The PCN can be submitted electronically to richardgitar@FDLREZ.com or by hardcopy sent to:

**Fond du Lac Reservation
Office of Water Protection
1720 Big Lake Road
Cloquet, MN 55720**

Bank Stabilization and Habitat Improvement Regional General Permit applicants are encouraged to work with the FdL Office of Water Protection (OWP) in the development of their project to determine whether their project will require a Wetland Activity Permit or Exemption Certificate under provisions of the Fond du Lac Wetlands Protection and Management Ordinance (WPMO) (Ordinance #03/06).

[This “Administrative Condition” helps the Office of Water Protection (OWP) track the applicant’s filings with the permit issuer. It also helps OWP stay informed of the project as it progresses and gives information to evaluate whether the project requires a Wetland Activity Permit (or possibly an Exemption) under the provisions of the Fond du Lac Wetlands Protection and Management Ordinance. Fond du Lac Water Quality Certification Ordinance (Ordinance #01/06), Section 204 a. 3)].

2) If the project will entail a discharge to any watercourse or open water body, the turbidity limit shall NOT exceed 10% of natural background within any receiving water(s) as determined by Office of Water Protection staff. For such discharges, turbidity sampling must take place within 24 hours of a ½-inch or greater rainfall event. The results of the sampling must be reported to the Office of Water Protection within 7 days of the sample collection. All sample reporting must include the date and time, location (GPS: UTM/Zone 15), and NTU. Regional General

(Condition #2 continued):

Permit applicants are encouraged to work with the Office of Water Protection in determining the most appropriate location(s) for sampling.

Water sample data reporting should be submitted electronically to richardgitar@FDLREZ.com or by hard copy sent to:

**Fond du Lac Reservation
Office of Water Protection
1720 Big Lake Road
Cloquet, MN 55720**

[This condition helps both the Office of Water Protection and the applicant in knowing whether or not their erosion control efforts are effective. Fond du Lac Water Quality Certification Ordinance (Ordinance #01/06), Section 204 b. 1)].

3) Receiving waters with open water must be sampled for turbidity prior to any authorized discharge as determined by Office of Water Protection staff. This requirement only applies to receiving waters in which no ambient turbidity data exists.

Water sample data reporting should be submitted electronically to richardgitar@FDLREZ.com or by hard copy sent to:

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1720 Big Lake Road
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[This condition allows the Office of Water Protection to obtain a baseline turbidity sample in which to compare to other samples. Fond du Lac Water Quality Certification Ordinance (Ordinance #01/06), Section 204 b. 2)].

4) The work shall be accomplished in conformance with the accepted plans, specifications, data, permit application materials (including the PCN), and other information submitted in support of the project application and the limitations, requirements and conditions set forth herein.

[This condition keeps the applicant from changing the scope and extent of the project without prior notification. Fond du Lac Water Quality Certification Ordinance (Ordinance #01/06), Section 204 a. 4)].

5) The Office of Water Protection shall be notified at least 48 hours prior to the commencement of work.

(Conditions continued):

[This condition allows the Office of Water Protection to know when a project will begin. Fond du Lac Water Quality Certification Ordinance (Ordinance #01/06), Section 204 a. 5)].

6) Impacts to waters of the Fond du Lac Reservation other than those specifically addressed in the plans, application materials, and this certification are prohibited. All lakes, streams, springs, and wetlands for which impacts are not authorized shall be fully protected prior to, during and after construction until the area is stabilized.

[This condition limits the discharge to only the waters that were identified at the time of the application and subsequent certification. Fond du Lac Water Quality Certification Ordinance (Ordinance #01/06), Section 204 a. 6)].

7) All work shall be carried out in such a manner as will prevent violations of water quality criteria as stated in the Water Quality Standards of the Fond du Lac Reservation, Ordinance 12/98, as amended. This includes, but is not limited to, the prevention of any discharge that causes a condition in which visible solids, bottom deposits, or turbidity impairs the usefulness of water of the Fond du Lac Reservation for any of the uses designated in the Water Quality Standards of the Fond du Lac Reservation. These uses include public water supply, wildlife, aquatic life, warm water fisheries, cold water fisheries, subsistence fishing (netting), primary contact recreation, secondary contact recreation, cultural, wild rice areas, aesthetic waters, agriculture, navigation, commercial and wetlands. It also includes the designated uses of wetlands including, but not limited to, baseflow discharge, cultural opportunities, flood flow attenuation, groundwater recharge, indigenous floral and faunal diversity and abundance, nutrient cycling, organic carbon export/cycling, protection of downstream water quality, recreation, resilience against climactic effects, sediment/shoreline stabilization, surface water storage, wild rice, and water dependent wildlife.

[In addition to listing the designated uses of waters of the Fond du Lac Reservation, this condition also limits the applicant to discharges that will not violate our Water Quality Standards. Fond du Lac Water Quality Certification Ordinance (Ordinance #01/06), Section 204 a. 7)].

8) Appropriate steps shall be taken to ensure that petroleum products or other chemical pollutants are prevented from entering waters of the Fond du Lac Reservation. All spills must be reported to the appropriate emergency management Agency (National Response Center AND the State Duty Officer), and measures shall be taken immediately to prevent the pollution of waters of the Fond du Lac Reservation, including groundwater. The Fond du Lac Office of Water Protection must also be notified immediately of any spill regardless of size.

(Conditions continued):

[This condition helps protect water quality and also reminds applicants of their responsibility in reporting spill events. Fond du Lac Water Quality Certification Ordinance (Ordinance #01/06), Section 204 b. 3)].

9) To prevent the introduction of invasive species, all contractors and sub-contractors must disclose information stating prior equipment location(s) and all known invasive species potentially being transported from said location(s). All equipment must undergo a high-pressure wash (including equipment mats) before entering the Fond du Lac Reservation. Personal equipment, such as work boots, gloves, vest, etc. must be clean of debris, dirt, and plant and animal material before entering the Fond du Lac Reservation. Equipment being transported from known infested areas must undergo a high pressure wash as soon as possible after leaving the infested site and again before entering the Fond du Lac Reservation to avoid transport of invasive species into areas surrounding the Reservation. Written certification of such must be provided to the Office of Water Protection. Upon arrival, all contractor and sub-contractor equipment will be inspected by appointed Fond du Lac staff (or an applicant designated inspector). If equipment is deemed unsatisfactory, the equipment must undergo a high-pressure wash until the equipment is cleared by the inspector, until such time, minimal travel will be allowed through the Reservation. The applicant shall be held responsible for the control of any invasive species introduced as a result of the project.

Notification can be emailed to richardgitar@FDLREZ.com or hard copy sent to:

**Fond du Lac Reservation
Office of Water Protection
1720 Big Lake Road
Cloquet, MN 55720**

[This condition requires the applicant to prevent the inadvertent introduction of invasive species by taking an active role in cleaning all vehicles, equipment, and equipment mats before entering the Reservation. This condition has been placed in certifications since 2012, due to the introduction of Wild Parsnip in 2011 from a pipeline contractor. It is much easier to prevent the introduction of an invasive species than it is to eradicate it once it has been introduced. Many invasive species form monocultures, preventing native plants from growing. This situation often leads to causes of erosion, which in turn effects water quality. Fond du Lac Water Quality Certification Ordinance (Ordinance #01/06), Section 204 g. 1)].

10) ALL seed mixes, whether used for temporary stabilization or permanent seeding, shall NOT contain any annual ryegrass (*Lolium* species). Canadian Wild

(Condition #10 continued):

Rye (*Elymus* species) or Oats (*Avena* species) may be used as a replacement in upland seed mixes. Upland seed mixes approved by the Minnesota Department of Transportation (MnDOT) may be used without Office of Water Protection approval provided they do NOT contain annual ryegrass. Seed mixes 21-111 (Oats Cover Crop) and 21-112 (Winter Wheat Cover Crop) are approved for use on the Fond du Lac Reservation.

[This condition prevents the use of annual ryegrass on the Reservation. Annual ryegrass is allelopathic, which means it produces biochemicals in its roots that inhibit the growth of other native plants. If used in seed mixes, annual ryegrass could contribute to erosion, especially on slopes. However, the condition also specifies substitute grasses that germinate almost as fast as annual ryegrass for use as a cover crop to prevent erosion. Fond du Lac Water Quality Certification Ordinance (Ordinance #01/06), Section 204 f. 1)].

11) Seed mixes used in wetlands MUST be approved by Office of Water Protection staff prior to use. Wetland seed mixes approved by the Minnesota Board of Water and Soil Resources (BWSR) may be used without Office of Water Protection approval if they do NOT contain annual ryegrass. Seed mixes 34-171 (Wetland Rehabilitation), 34-181 (Emergent Wetland), 34-361 (Riparian Northeast) and 34-371 (Wet Meadow Northeast) are approved and recommended for use on the Fond du Lac Reservation. The use of mulch is NOT allowed in wetlands. If seed mix approval is required under this condition, applicants should contact the following:

**Richard Gitar, Water Regulatory Specialist
Phone: 218-878-7122
Email: richardgitar@FDLREZ.com
Address: Fond du Lac Reservation
1720 Big Lake Road
Cloquet, MN 55720**

[This condition requires the approval of wetland seed mixes by Office of Water Protection staff. The BWSR seed mixes listed have already been review by OWP staff and are pre-approved. Mulch is not allowed in wetlands because it often reduces germination of wetland plants and also does not break down the same as in upland situations. Fond du Lac Water Quality Certification Ordinance (Ordinance #01/06), Section 204 f. 2)].

12) ALL erosion and sediment control Best Management Practices (BMPs) shall be properly installed, maintained, inspected for effectiveness, replaced if not effective, repaired or replaced if defective, and removed once the area has been properly

(Condition #12 continued):

stabilized or re-vegetated. All BMPs shall be inspected at least once per week and within 24 hours after a ½ inch or greater rainfall event.

[This condition places the burden on the applicant to ensure that their BMPs are functioning properly to prevent erosion and sedimentation, thus preventing degradation of water quality. Fond du Lac Water Quality Certification Ordinance (Ordinance #01/06), Section 204 c. 1)].

13) For temporary impacts, all appropriate steps shall be taken to ensure proper restoration of the site, including the separation, storage and replacement of soil horizons, removal of all rutting from maintenance operations, removal of all equipment, materials and construction BMPs, and returning the site to the original contours as much as possible.

[This condition reminds applicants that propose temporary impacts (usually in wetlands) of their responsibilities in restoring the site so the impacts are truly temporary in nature. Fond du Lac Water Quality Certification Ordinance (Ordinance #01/06), Section 204 c. 2)].

14) It is the responsibility of the applicant to convey all terms and conditions of this certification to all appropriate staff, workers, contractors and sub-contractors.

[This condition requires the applicant to inform everyone under their control of the conditions of the certification so that all can aid in compliance of those conditions. Fond du Lac Water Quality Certification Ordinance (Ordinance #01/06), Section 204 a. 8)].

Authorization of Certification: I, Reginald DeFoe, do grant Clean Water Act § 401 Water Quality Certification With Conditions to the U. S. Army Corps of Engineers – St. Paul District for the 2023 Bank Stabilization and Habitat Improvement Regional General Permit on the Fond du Lac Reservation.

Signed: _____



Date: _____

11/07/72

Reginald DeFoe
Resource Management Director
Fond du Lac Reservation

Fond du Lac Band of Lake Superior Chippewa Resource Management Division

1720 Big Lake Road
Cloquet, MN 55720
Phone (218) 878-7101
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Office of Water Protection 401 Water Quality Certification

APPLICANT: USACE St. Paul District

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Pursuant to § 401 of the Clean Water Act (33 U.S.C. 1341), the Fond du Lac Band of Lake Superior Chippewa is required to certify whether the activity described below will not violate applicable water quality standards. Accordingly, the Fond du Lac Reservation Office of Water Protection requires reasonable assurance that the activity will not violate provisions of the Fond du Lac Band of Lake Superior Chippewa Water Quality Standards of the Fond du Lac Reservation, Ordinance #12/98 (Adopted by Resolution #1403/98 of the Fond du Lac Reservation Business Committee on December 10, 1998; Amended by Resolution #1286/01 of the Fond du Lac Reservation Business Committee on September 11, 2001 and by Resolution #1321 of the Reservation Business Committee on July 8, 2020), the Fond du Lac Band of Lake Superior Chippewa Water Quality Certification, Ordinance #01/06 (Adopted by Resolution #1033/06, as amended, of the Fond du Lac Reservation Business Committee on March 28, 2006; Amended by Resolution #1513 of the Reservation Business Committee on December 16, 2020), or of § 301, 302, 303, 306, or 307 of the Clean Water Act.

A request for Clean Water Act (CWA) § 401 Water Quality Certification has been received from the United States Army Corps of Engineers – St. Paul District for the 2023 Beach Creation and Nourishment Regional General Permit. Fond du Lac's Water Quality Standards may be found at: <http://www.fdlrez.com/government/ords/12-98ord.pdf>

Applicant: **Regulatory Branch**
St. Paul District, Corps of Engineers
180 Fifth Street East, Suite 700
St. Paul, Minnesota 55101-1678

Authorized Work: The authorized work consists of regulated activities associated with the placement of sand or pea gravel for the creation of new recreational beaches or nourishment of established beaches, including temporary impacts necessary to complete beach creation and nourishment within the external boundaries of the Fond du Lac Reservation. The RGP may not be used to authorize the installation of plant barriers or liners.

(Certification continued):

Location(s): Construction activities authorized under this Regional General Permit may occur anywhere permissible by the Permit and this Certification within the exterior boundaries of the Fond du Lac Reservation.

Background: The Fond du Lac Reservation Office of Water Protection (OWP) has examined the request for Certification, the Public Notice, and the Beach Creation and Nourishment Regional General Permit, and based upon our evaluation of the supplied information that is relevant to Water Quality Certification considerations, we certify that there is reasonable assurance that activities associated with the Regional General Permit will be conducted in a manner that will not violate the Fond du Lac Band of Lake Superior Chippewa Water Quality Standards of the Fond du Lac Reservation Ordinance #12/98, as amended.

The §401 certification process ensures that Fond du Lac has the opportunity to establish conditions or even deny certification in order to protect our reservation water resources. The conditions that Fond du Lac believe are necessary to assure compliance with applicable provisions of CWA sections 208(e), 301, 302, 303, 306, and 307, and with appropriate requirements of tribal law (specifically, Fond du Lac Ordinance #12/98, as amended) are related to our interpretation of our narrative water quality standards and our antidegradation policies. The condition regarding turbidity (no more than 10% increase over ambient or background turbidity) defines the water quality based effluent limitation (WQBEL) and monitoring/reporting requirements necessary to assure that any applicant for this Federal permit will be in compliance with our water quality standards.

Monitoring and reporting requirements allow Fond du Lac, USEPA, and USACE to confirm that the certification conditions intended to protect the existing high quality of our reservation waters are effective and being implemented. They can trigger adaptive management practices at a site, and can help inform the development of more robust certification conditions in the future. Monitoring and reporting activities help permittees to actually see and understand the impact, or avert an impact, on water quality resulting from their permitted actions. Over the ten (10) years period of EPA's Construction General Permit (now CGP 2017) had been in effect with the Fond du Lac turbidity limit and monitoring requirement, we have only encountered one incident of exceedance of this permit condition. This exceedance led to immediate corrective action that may not have otherwise been required without this specific condition in place.

Fond du Lac considers all waters of the reservation to be Tier 2 (higher quality, on a pollutant by pollutant basis, than the minimum quality necessary to maintain designated uses), and our primary wild rice lakes are Tier 3 or "Outstanding Reservation Resource Value" waters. It is entirely consistent with EPA guidance on antidegradation review¹, for

¹ Memorandum from Ephraim S. King, Director, EPA Office of Science and Technology, to Water Management Division Directors, Regions 1-10, "Tier 2 Antidegradation Reviews and Significance Thresholds", August 10, 2005.

(Background continued):

instance, to define a significance threshold above which the effects on water quality require findings of necessity and social and economic importance to support any decision about the lowering of water quality in high quality waters. The significance threshold of 10% has been independently defined and approved by EPA through multiple processes that have included environmental groups, industry representatives, scientific experts, and public input, including Water Quality Guidance for the Great Lakes, and other states as well.

Fond du Lac believes that the turbidity-related condition cannot be made any less stringent without violating the requirements of tribal law. Section 301(h) of our water quality standards specifies “settleable and suspended solids (turbidity) should not reduce the depth of the compensation point for photosynthetic activity by more than 10% from the seasonally established norm for aquatic life”. Our comprehensive water quality monitoring data collected over the last eighteen years provides a defensible basis for defining ambient conditions and protecting the existing high quality and biological integrity in our surface waters.

Certification: Certification is **DENIED** to any new discharge to Outstanding Reservation Resource Waters (ORRW) as described in § 105 b. 3. of the Fond du Lac Water Quality Standards (Ordinance #12/98, as amended). Although additional waters may be designated in the future, currently Perch Lake, Rice Portage Lake, Miller Lake, Deadfish Lake, and Jaskari Lake are designated as ORRWs. New dischargers wishing to discharge to an ORRW must obtain a separate Water Quality Certification of such discharges.

[The Office of Water Protection will deny, due to insufficient information, any general license or permit with any new discharges into Outstanding Reservation Resource Waters (ORRW) as described in 105b.3 of the Fond du Lac Water Quality Standards (Ordinance #12/98, as amended) for the following reasons: 1. Aquatic resources are extremely important to the Fond du Lac Band of Lake Superior Chippewa and are quite extensive, comprising approximately 47% of the area within the external boundaries of the Fond du Lac Reservation. 2. Although the locations of these aquatic resources are known and mapped, the locations of the potential projects are not known. Therefore, the potential impacts to the aquatic resources cannot be quantified unless the actual project scope and location is known. 3. While a set of generic conditions may be adequate to protect water quality, until a specific project is proposed, it is difficult to determine what site-specific conditions may be appropriate to truly protect the water quality and aquatic resources that Fond du Lac Band Members depend upon. Fond du Lac Water Quality Certification Ordinance (Ordinance #01/06), Section 203 c. 2) (A)-(D)].

As per § 201(e) of the Water Quality Certification Standards Ordinance #01/06 this Water Quality Certification is granted as **CERTIFICATION WITH CONDITIONS** for

(Certification continued):

all other waters/wetlands within the Fond du Lac Reservation and therefore the following conditions apply:

1) A copy of the Pre-Construction Notification (PCN) MUST be sent to the Fond du Lac Office of Water Protection at the same time it is sent to the St. Paul District, Corps of Engineers. The PCN must include all applicable drawings, plans, and specifications for the project. The Fond du Lac Office of Water Protection must be invited to participate in any meetings between the St. Paul District and the applicant. The PCN can be submitted electronically to richardgitar@FDLREZ.com or by hardcopy sent to:

**Fond du Lac Reservation
Office of Water Protection
1720 Big Lake Road
Cloquet, MN 55720**

Beach Creation and Nourishment Regional General Permit applicants are encouraged to work with the FdL Office of Water Protection (OWP) in the development of their project to determine whether their project will require a Wetland Activity Permit or Exemption Certificate under provisions of the Fond du Lac Wetlands Protection and Management Ordinance (WPMO) (Ordinance #03/06).

[This “Administrative Condition” helps the Office of Water Protection (OWP) track the applicant’s filings with the permit issuer. It also helps OWP stay informed of the project as it progresses and gives information to evaluate whether the project requires a Wetland Activity Permit under the provisions of the Fond du Lac Wetlands Protection and Management Ordinance. Fond du Lac Water Quality Certification Ordinance (Ordinance #01/06), Section 204 a. 3)].

2) If the project will entail a discharge to any watercourse or open water body, the turbidity limit shall NOT exceed 10% of natural background within any receiving water(s) as determined by Office of Water Protection staff. For such discharges, turbidity sampling must take place within 24 hours of a ½-inch or greater rainfall event. The results of the sampling must be reported to the Office of Water Protection within 7 days of the sample collection. All sample reporting must include the date and time, location (GPS: UTM/Zone 15), and NTU. Regional General Permit applicants are encouraged to work with the Office of Water Protection in determining the most appropriate location(s) for sampling.

Water sample data reporting should be submitted electronically to richardgitar@FDLREZ.com or by hard copy sent to:

(Condition #2 continued):

**Fond du Lac Reservation
Office of Water Protection
1720 Big Lake Road
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[This condition helps both the Office of Water Protection and the applicant in knowing whether or not their erosion control efforts are effective. Fond du Lac Water Quality Certification Ordinance (Ordinance #01/06), Section 204 b. 1)].

3) Receiving waters with open water must be sampled for turbidity prior to any authorized discharge as determined by Office of Water Protection staff. This requirement only applies to receiving waters in which no ambient turbidity data exists.

Water sample data reporting should be submitted electronically to richardgitar@FDLREZ.com or by hard copy sent to:

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[This condition allows the Office of Water Protection to obtain a baseline turbidity sample in which to compare to other samples. Fond du Lac Water Quality Certification Ordinance (Ordinance #01/06), Section 204 b. 2)].

4) The work shall be accomplished in conformance with the accepted plans, specifications, data, permit application materials (including the PCN), and other information submitted in support of the project application and the limitations, requirements and conditions set forth herein.

[This condition keeps the applicant from changing the scope and extent of the project without prior notification. Fond du Lac Water Quality Certification Ordinance (Ordinance #01/06), Section 204 a. 4)].

5) The Office of Water Protection shall be notified at least 48 hours prior to the commencement of work.

[This condition allows the Office of Water Protection to know when a project will begin. Fond du Lac Water Quality Certification Ordinance (Ordinance #01/06), Section 204 a. 5)].

(Conditions continued):

6) Impacts to waters of the Fond du Lac Reservation other than those specifically addressed in the plans, application materials, and this certification are prohibited. All lakes, streams, springs, and wetlands for which impacts are not authorized shall be fully protected prior to, during and after construction until the area is stabilized.

[This condition limits the discharge to only the waters that were identified at the time of the application and subsequent certification. Fond du Lac Water Quality Certification Ordinance (Ordinance #01/06), Section 204 a. 6)].

7) All work shall be carried out in such a manner as will prevent violations of water quality criteria as stated in the Water Quality Standards of the Fond du Lac Reservation, Ordinance 12/98, as amended. This includes, but is not limited to, the prevention of any discharge that causes a condition in which visible solids, bottom deposits, or turbidity impairs the usefulness of water of the Fond du Lac Reservation for any of the uses designated in the Water Quality Standards of the Fond du Lac Reservation. These uses include public water supply, wildlife, aquatic life, warm water fisheries, cold water fisheries, subsistence fishing (netting), primary contact recreation, secondary contact recreation, cultural, wild rice areas, aesthetic waters, agriculture, navigation, commercial and wetlands. It also includes the designated uses of wetlands including, but not limited to, baseflow discharge, cultural opportunities, flood flow attenuation, groundwater recharge, indigenous floral and faunal diversity and abundance, nutrient cycling, organic carbon export/cycling, protection of downstream water quality, recreation, resilience against climactic effects, sediment/shoreline stabilization, surface water storage, wild rice, and water dependent wildlife.

[In addition to listing the designated uses of waters of the Fond du Lac Reservation, this condition also limits the applicant to discharges that will not violate our Water Quality Standards. Fond du Lac Water Quality Certification Ordinance (Ordinance #01/06), Section 204 a. 7)].

8) Appropriate steps shall be taken to ensure that petroleum products or other chemical pollutants are prevented from entering waters of the Fond du Lac Reservation. All spills must be reported to the appropriate emergency management Agency (National Response Center AND the State Duty Officer), and measures shall be taken immediately to prevent the pollution of waters of the Fond du Lac Reservation, including groundwater. The Fond du Lac Office of Water Protection must also be notified immediately of any spill regardless of size.

[This condition helps protect water quality and also reminds applicants of their responsibility in reporting spill events. Fond du Lac Water Quality Certification Ordinance (Ordinance #01/06), Section 204 b. 3)].

(Conditions continued):

9) To prevent the introduction of invasive species, all contractors and sub-contractors must disclose information stating prior equipment location(s) and all known invasive species potentially being transported from said location(s). All equipment must undergo a high-pressure wash (including equipment mats) before entering the Fond du Lac Reservation. Personal equipment, such as work boots, gloves, vest, etc. must be clean of debris, dirt, and plant and animal material before entering the Fond du Lac Reservation. Equipment being transported from known infested areas must undergo a high pressure wash as soon as possible after leaving the infested site and again before entering the Fond du Lac Reservation to avoid transport of invasive species into areas surrounding the Reservation. Written certification of such must be provided to the Office of Water Protection. Upon arrival, all contractor and sub-contractor equipment will be inspected by appointed Fond du Lac staff (or an applicant designated inspector). If equipment is deemed unsatisfactory, the equipment must undergo a high-pressure wash until the equipment is cleared by the inspector, until such time, minimal travel will be allowed through the Reservation. The applicant shall be held responsible for the control of any invasive species introduced as a result of the project.

Notification can be emailed to richardgitar@FDLREZ.com or hard copy sent to:

Fond du Lac Reservation
Office of Water Protection
1720 Big Lake Road
Cloquet, MN 55720

[This condition requires the applicant to prevent the inadvertent introduction of invasive species by taking an active role in cleaning all vehicles, equipment, and equipment mats before entering the Reservation. This condition has been placed in certifications since 2012, due to the introduction of Wild Parsnip in 2011 from a pipeline contractor. It is much easier to prevent the introduction of an invasive species than it is to eradicate it once it has been introduced. Many invasive species form monocultures, preventing native plants from growing. This situation often leads to causes of erosion, which in turn effects water quality. Fond du Lac Water Quality Certification Ordinance (Ordinance #01/06), Section 204 g. 1)].

10) ALL seed mixes, whether used for temporary stabilization or permanent seeding, shall NOT contain any annual ryegrass (*Lolium* species). Canadian Wild Rye (*Elymus* species) or Oats (*Avena* species) may be used as a replacement in upland seed mixes. Upland seed mixes approved by the Minnesota Department of Transportation (MnDOT) may be used without Office of Water Protection approval provided they do NOT contain annual ryegrass. Seed mixes 21-111 (Oats Cover

(Condition #10 continued):

Crop) and 21-112 (Winter Wheat Cover Crop) are approved for use on the Fond du Lac Reservation.

[This condition prevents the use of annual ryegrass on the Reservation. Annual ryegrass is allelopathic, which means it produces biochemicals in its roots that inhibit the growth of other native plants. If used in seed mixes, annual ryegrass could contribute to erosion, especially on slopes. However, the condition also specifies substitute grasses that germinate almost as fast as annual ryegrass for use as a cover crop to prevent erosion. Fond du Lac Water Quality Certification Ordinance (Ordinance #01/06), Section 204 f. 1)].

11) Seed mixes used in wetlands MUST be approved by Office of Water Protection staff prior to use. Wetland seed mixes approved by the Minnesota Board of Water and Soil Resources (BWSR) may be used without Office of Water Protection approval if they do NOT contain annual ryegrass. Seed mixes 34-171 (Wetland Rehabilitation), 34-181 (Emergent Wetland), 34-361 (Riparian Northeast) and 34-371 (Wet Meadow Northeast) are approved and recommended for use on the Fond du Lac Reservation. The use of mulch is NOT allowed in wetlands. If seed mix approval is required under this condition, applicants should contact the following:

Richard Gitar, Water Regulatory Specialist

Phone: 218-878-7122

Email: richardgitar@FDLREZ.com

Address: Fond du Lac Reservation

1720 Big Lake Road

Cloquet, MN 55720

[This condition requires the approval of wetland seed mixes by Office of Water Protection staff. The BWSR seed mixes listed have already been review by OWP staff and are pre-approved. Mulch is not allowed in wetlands because it often reduces germination of wetland plants and also does not break down the same as in upland situations. Fond du Lac Water Quality Certification Ordinance (Ordinance #01/06), Section 204 f. 2)].

12) ALL erosion and sediment control Best Management Practices (BMPs) shall be properly installed, maintained, inspected for effectiveness, replaced if not effective, repaired or replaced if defective, and removed once the area has been properly stabilized or re-vegetated. All BMPs shall be inspected at least once per week and within 24 hours after a ½ inch or greater rainfall event.

[This condition places the burden on the applicant to ensure that their BMPs are functioning properly to prevent erosion and sedimentation, thus preventing degradation

(Conditions continued):

of water quality. Fond du Lac Water Quality Certification Ordinance (Ordinance #01/06), Section 204 c. 1)].

13) For temporary impacts, all appropriate steps shall be taken to ensure proper restoration of the site, including the separation, storage and replacement of soil horizons, removal of all rutting from maintenance operations, removal of all equipment, materials and construction BMPs, and returning the site to the original contours as much as possible.

[This condition reminds applicants that propose temporary impacts (usually in wetlands) of their responsibilities in restoring the site so the impacts are truly temporary in nature. Fond du Lac Water Quality Certification Ordinance (Ordinance #01/06), Section 204 c. 2)].

14) It is the responsibility of the applicant to convey all terms and conditions of this certification to all appropriate staff, workers, contractors and sub-contractors.

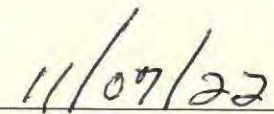
[This condition requires the applicant to inform everyone under their control of the conditions of the certification so that all can aid in compliance of those conditions. Fond du Lac Water Quality Certification Ordinance (Ordinance #01/06), Section 204 a. 8)].

Authorization of Certification: I, Reginald DeFoe, do grant Clean Water Act § 401 Water Quality Certification With Conditions to the U. S. Army Corps of Engineers – St. Paul District for the 2023 Beach Creation and Nourishment Regional General Permit on the Fond du Lac Reservation.

Signed: _____



Date: _____



Reginald DeFoe
Resource Management Director
Fond du Lac Reservation

Fond du Lac Band of Lake Superior Chippewa Resource Management Division

1720 Big Lake Road
Cloquet, MN 55720
Phone (218) 878-7101
Fax (218) 878-7130



Office of Water Protection 401 Water Quality Certification

APPLICANT: USACE St. Paul District

ISSUED: 07 November 2022

Administration
Conservation Enforcement
Environmental
Fisheries
Forestry
Land Information
Natural Resources
Wildlife

Pursuant to § 401 of the Clean Water Act (33 U.S.C. 1341), the Fond du Lac Band of Lake Superior Chippewa is required to certify whether the activity described below will not violate applicable water quality standards. Accordingly, the Fond du Lac Reservation Office of Water Protection requires reasonable assurance that the activity will not violate provisions of the Fond du Lac Band of Lake Superior Chippewa Water Quality Standards of the Fond du Lac Reservation, Ordinance #12/98 (Adopted by Resolution #1403/98 of the Fond du Lac Reservation Business Committee on December 10, 1998; Amended by Resolution #1286/01 of the Fond du Lac Reservation Business Committee on September 11, 2001 and by Resolution #1321/20 of the Reservation Business Committee on July 8, 2020), the Fond du Lac Band of Lake Superior Chippewa Water Quality Certification, Ordinance #01/06 (Adopted by Resolution #1033/06, as amended, of the Fond du Lac Reservation Business Committee on March 28, 2006; Amended by Resolution #1513/20 of the Reservation Business Committee on December 16, 2020), or of § § 301, 302, 303, 306, or 307 of the Clean Water Act.

A request for Clean Water Act (CWA) § 401 Water Quality Certification has been received from the United States Army Corps of Engineers – St. Paul District for the 2023 Beach Raking Regional General Permit. Fond du Lac's Water Quality Standards may be found at: <http://www.fdlrez.com/government/ords/12-98ord.pdf>

Applicant: **Regulatory Branch**
St. Paul District, Corps of Engineers
180 Fifth Street East, Suite 700
St. Paul, Minnesota 55101-1678

Authorized Work: The authorized work consists of regulated activities in waters of the United States associated with mechanical beach raking activities for the purpose of removing accumulated debris below the ordinary high water mark of a beach, including but not limited to, woody debris, algae, and dead aquatic plants and shellfish within the external boundaries of the Fond du Lac Reservation.

401 Certification – St. Paul Dist. USACE – RGP Beach Raking – Page 2 of 9

(Certification continued):

Location(s): Activities authorized under this Regional General Permit may occur anywhere permissible by the Permit and this Certification within the exterior boundaries of the Fond du Lac Reservation.

Background: The Fond du Lac Reservation Office of Water Protection (OWP) has examined the request for Certification, the Public Notice, and the Beach Raking Regional General Permit, and based upon our evaluation of the supplied information that is relevant to Water Quality Certification considerations, we certify that there is reasonable assurance that activities associated with the Regional General Permit will be conducted in a manner that will not violate the Fond du Lac Band of Lake Superior Chippewa Water Quality Standards of the Fond du Lac Reservation Ordinance #12/98, as amended.

The §401 certification process ensures that Fond du Lac has the opportunity to establish conditions or even deny certification in order to protect our reservation water resources. The conditions that Fond du Lac believe are necessary to assure compliance with applicable provisions of CWA sections 208(e), 301, 302, 303, 306, and 307, and with appropriate requirements of tribal law (specifically, Fond du Lac Ordinance #12/98, as amended) are related to our interpretation of our narrative water quality standards and our antidegradation policies. The condition regarding turbidity (no more than 10% increase over ambient or background turbidity) defines the water quality based effluent limitation (WQBEL) and monitoring/reporting requirements necessary to assure that any applicant for this Federal permit will be in compliance with our water quality standards. Monitoring and reporting requirements allow Fond du Lac, USEPA, and USACE to confirm that the certification conditions intended to protect the existing high quality of our reservation waters are effective and being implemented. They can trigger adaptive management practices at a site, and can help inform the development of more robust certification conditions in the future. Monitoring and reporting activities help permittees to actually see and understand the impact, or avert an impact, on water quality resulting from their permitted actions. Over the ten (10) years period of EPA's Construction General Permit (now CGP 2017) had been in effect with the Fond du Lac turbidity limit and monitoring requirement, we have only encountered one incident of exceedance of this permit condition. This exceedance led to immediate corrective action that may not have otherwise been required without this specific condition in place.

Fond du Lac considers all waters of the reservation to be Tier 2 (higher quality, on a pollutant by pollutant basis, than the minimum quality necessary to maintain designated uses), and our primary wild rice lakes are Tier 3 or "Outstanding Reservation Resource Value" waters. It is entirely consistent with EPA guidance on antidegradation review¹, for instance, to define a significance threshold above which the effects on water quality

¹ Memorandum from Ephraim S. King, Director, EPA Office of Science and Technology, to Water Management Division Directors, Regions 1-10, "Tier 2 Antidegradation Reviews and Significance Thresholds", August 10, 2005.

(Background continued):

require findings of necessity and social and economic importance to support any decision about the lowering of water quality in high quality waters. The significance threshold of 10% has been independently defined and approved by EPA through multiple processes that have included environmental groups, industry representatives, scientific experts, and public input, including Water Quality Guidance for the Great Lakes, and other states as well.

Fond du Lac believes that the turbidity-related condition cannot be made any less stringent without violating the requirements of tribal law. Section 301(h) of our water quality standards specifies “settleable and suspended solids (turbidity) should not reduce the depth of the compensation point for photosynthetic activity by more than 10% from the seasonally established norm for aquatic life”. Our comprehensive water quality monitoring data collected over the last eighteen years provides a defensible basis for defining ambient conditions and protecting the existing high quality and biological integrity in our surface waters.

Certification: Certification is **DENIED** to any new discharge to Outstanding Reservation Resource Waters (ORRW) as described in § 105 b. 3. of the Fond du Lac Water Quality Standards (Ordinance #12/98, as amended). Although additional waters may be designated in the future, currently Perch Lake, Rice Portage Lake, Miller Lake, Deadfish Lake, and Jaskari Lake are designated as ORRWs. New dischargers wishing to discharge to an ORRW must obtain a separate Water Quality Certification of such discharges.

[The Office of Water Protection will deny, due to insufficient information, any general license or permit with any new discharges into Outstanding Reservation Resource Waters (ORRW) as described in 105b.3 of the Fond du Lac Water Quality Standards (Ordinance #12/98, as amended) for the following reasons: 1. Aquatic resources are extremely important to the Fond du Lac Band of Lake Superior Chippewa and are quite extensive, comprising approximately 47% of the area within the external boundaries of the Fond du Lac Reservation. 2. Although the locations of these aquatic resources are known and mapped, the locations of the potential projects are not known. Therefore, the potential impacts to the aquatic resources cannot be quantified unless the actual project scope and location is known. 3. While a set of generic conditions may be adequate to protect water quality, until a specific project is proposed, it is difficult to determine what site-specific conditions may be appropriate to truly protect the water quality and aquatic resources that Fond du Lac Band Members depend upon. Fond du Lac Water Quality Certification Ordinance (Ordinance #01/06), Section 203 c. 2) (A)-(D)].

As per § 201(e) of the Water Quality Certification Standards Ordinance #01/06 this Water Quality Certification is granted as **CERTIFICATION WITH CONDITIONS** for

(Certification continued):

all other waters/wetlands within the Fond du Lac Reservation and therefore the following conditions apply:

1) When a Pre-Construction Notification (PCN) is required, a copy of the PCN MUST be sent to the Fond du Lac Office of Water Protection at the same time it is sent to the St. Paul District, Corps of Engineers. The PCN must include all applicable drawings, plans, and specifications for the project. The Fond du Lac Office of Water Protection must be invited to participate in any meetings between the St. Paul District and the applicant. The PCN can be submitted electronically to richardgitar@FDLREZ.com or by hardcopy sent to:

**Fond du Lac Reservation
Office of Water Protection
1720 Big Lake Road
Cloquet, MN 55720**

Beach Raking Regional General Permit applicants are encouraged to work with the FdL Office of Water Protection (OWP) in the development of their project to determine whether their project will require a Wetland Activity Permit or Exemption Certificate under provisions of the Fond du Lac Wetlands Protection and Management Ordinance (WPMO) (Ordinance #03/06).

[This “Administrative Condition” helps the Office of Water Protection (OWP) track the applicant’s filings with the permit issuer. It also helps OWP stay informed of the project as it progresses and gives information to evaluate whether the project requires a Wetland Activity Permit under the provisions of the Fond du Lac Wetlands Protection and Management Ordinance. Fond du Lac Water Quality Certification Ordinance (Ordinance #01/06), Section 204 a. 3)].

2) If the project will entail a discharge to any watercourse or open water body, the turbidity limit shall NOT exceed 10% of natural background within any receiving water(s) as determined by Office of Water Protection staff. For such discharges, turbidity sampling must take place within 24 hours of a ½-inch or greater rainfall event. The results of the sampling must be reported to the Office of Water Protection within 7 days of the sample collection. All sample reporting must include the date and time, location (GPS: UTM/Zone 15), and NTU. Regional General Permit applicants are encouraged to work with the Office of Water Protection in determining the most appropriate location(s) for sampling.

Water sample data reporting should be submitted electronically to richardgitar@FDLREZ.com or by hard copy sent to:

(Condition #2 continued):

**Fond du Lac Reservation
Office of Water Protection
1720 Big Lake Road
Cloquet, MN 55720**

[This condition helps both the Office of Water Protection and the applicant in knowing whether or not their erosion control efforts are effective. Fond du Lac Water Quality Certification Ordinance (Ordinance #01/06), Section 204 b. 1)].

3) Receiving waters with open water must be sampled for turbidity prior to any authorized discharge as determined by Office of Water Protection staff. This requirement only applies to receiving waters in which no ambient turbidity data exists.

Water sample data reporting should be submitted electronically to richardgitar@FDLREZ.com or by hard copy sent to:

**Fond du Lac Reservation
Office of Water Protection
1720 Big Lake Road
Cloquet, MN 55720**

[This condition allows the Office of Water Protection to obtain a baseline turbidity sample in which to compare to other samples. Fond du Lac Water Quality Certification Ordinance (Ordinance #01/06), Section 204 b. 2)].

4) The work shall be accomplished in conformance with the accepted plans, specifications, data, permit application materials (including the PCN), and other information submitted in support of the project application and the limitations, requirements and conditions set forth herein.

[This condition keeps the applicant from changing the scope and extent of the project without prior notification. Fond du Lac Water Quality Certification Ordinance (Ordinance #01/06), Section 204 a. 4)].

5) The Office of Water Protection shall be notified at least 48 hours prior to the commencement of work.

[This condition allows the Office of Water Protection to know when a project will begin. Fond du Lac Water Quality Certification Ordinance (Ordinance #01/06), Section 204 a. 5)].

(Conditions continued):

6) Impacts to waters of the Fond du Lac Reservation other than those specifically addressed in the plans, application materials, and this certification are prohibited. All lakes, streams, springs, and wetlands for which impacts are not authorized shall be fully protected prior to, during and after construction until the area is stabilized.

[This condition limits the discharge to only the waters that were identified at the time of the application and subsequent certification. Fond du Lac Water Quality Certification Ordinance (Ordinance #01/06), Section 204 a. 6)].

7) All work shall be carried out in such a manner as will prevent violations of water quality criteria as stated in the Water Quality Standards of the Fond du Lac Reservation, Ordinance 12/98, as amended. This includes, but is not limited to, the prevention of any discharge that causes a condition in which visible solids, bottom deposits, or turbidity impairs the usefulness of water of the Fond du Lac Reservation for any of the uses designated in the Water Quality Standards of the Fond du Lac Reservation. These uses include public water supply, wildlife, aquatic life, warm water fisheries, cold water fisheries, subsistence fishing (netting), primary contact recreation, secondary contact recreation, cultural, wild rice areas, aesthetic waters, agriculture, navigation, commercial and wetlands. It also includes the designated uses of wetlands including, but not limited to, baseflow discharge, cultural opportunities, flood flow attenuation, groundwater recharge, indigenous floral and faunal diversity and abundance, nutrient cycling, organic carbon export/cycling, protection of downstream water quality, recreation, resilience against climactic effects, sediment/shoreline stabilization, surface water storage, wild rice, and water dependent wildlife.

[In addition to listing the designated uses of waters of the Fond du Lac Reservation, this condition also limits the applicant to discharges that will not violate our Water Quality Standards. Fond du Lac Water Quality Certification Ordinance (Ordinance #01/06), Section 204 a. 7)].

8) Appropriate steps shall be taken to ensure that petroleum products or other chemical pollutants are prevented from entering waters of the Fond du Lac Reservation. All spills must be reported to the appropriate emergency management Agency (National Response Center AND the State Duty Officer), and measures shall be taken immediately to prevent the pollution of waters of the Fond du Lac Reservation, including groundwater. The Fond du Lac Office of Water Protection must also be notified immediately of any spill regardless of size.

[This condition helps protect water quality and also reminds applicants of their responsibility in reporting spill events. Fond du Lac Water Quality Certification Ordinance (Ordinance #01/06), Section 204 b. 3)].

(Conditions continued):

9) To prevent the introduction of invasive species, all contractors and sub-contractors must disclose information stating prior equipment location(s) and all known invasive species potentially being transported from said location(s). All equipment must undergo a high-pressure wash (including equipment mats) before entering the Fond du Lac Reservation. Personal equipment, such as work boots, gloves, vest, etc. must be clean of debris, dirt, and plant and animal material before entering the Fond du Lac Reservation. Equipment being transported from known infested areas must undergo a high pressure wash as soon as possible after leaving the infested site and again before entering the Fond du Lac Reservation to avoid transport of invasive species into areas surrounding the Reservation. Written certification of such must be provided to the Office of Water Protection. Upon arrival, all contractor and sub-contractor equipment will be inspected by appointed Fond du Lac staff (or an applicant designated inspector). If equipment is deemed unsatisfactory, the equipment must undergo a high-pressure wash until the equipment is cleared by the inspector, until such time, minimal travel will be allowed through the Reservation. The applicant shall be held responsible for the control of any invasive species introduced as a result of the project.

Notification can be emailed to richardgitar@FDLREZ.com or hard copy sent to:

Fond du Lac Reservation
Office of Water Protection
1720 Big Lake Road
Cloquet, MN 55720

[This condition requires the applicant to prevent the inadvertent introduction of invasive species by taking an active role in cleaning all vehicles, equipment, and equipment mats before entering the Reservation. This condition has been placed in certifications since 2012, due to the introduction of Wild Parsnip in 2011 from a pipeline contractor. It is much easier to prevent the introduction of an invasive species than it is to eradicate it once it has been introduced. Many invasive species form monocultures, preventing native plants from growing. This situation often leads to causes of erosion, which in turn effects water quality. Fond du Lac Water Quality Certification Ordinance (Ordinance #01/06), Section 204 g. 1)].

10) ALL seed mixes, whether used for temporary stabilization or permanent seeding, shall NOT contain any annual ryegrass (*Lolium* species). Canadian Wild Rye (*Elymus* species) or Oats (*Avena* species) may be used as a replacement in upland seed mixes. Upland seed mixes approved by the Minnesota Department of Transportation (MnDOT) may be used without Office of Water Protection approval

(Condition #10 continued):

provided they do NOT contain annual ryegrass. Seed mixes 21-111 (Oats Cover Crop) and 21-112 (Winter Wheat Cover Crop) are approved for use on the Fond du Lac Reservation.

[This condition prevents the use of annual ryegrass on the Reservation. Annual ryegrass is allelopathic, which means it produces biochemicals in its roots that inhibit the growth of other native plants. If used in seed mixes, annual ryegrass could contribute to erosion, especially on slopes. However, the condition also specifies substitute grasses that germinate almost as fast as annual ryegrass for use as a cover crop to prevent erosion. Fond du Lac Water Quality Certification Ordinance (Ordinance #01/06), Section 204 f. 1)].

11) Seed mixes used in wetlands MUST be approved by Office of Water Protection staff prior to use. Wetland seed mixes approved by the Minnesota Board of Water and Soil Resources (BWSR) may be used without Office of Water Protection approval if they do NOT contain annual ryegrass. Seed mixes 34-171 (Wetland Rehabilitation), 34-181 (Emergent Wetland), 34-361 (Riparian Northeast) and 34-371 (Wet Meadow Northeast) are approved and recommended for use on the Fond du Lac Reservation. The use of mulch is NOT allowed in wetlands. If seed mix approval is required under this condition, applicants should contact the following:

**Richard Gitar, Water Regulatory Specialist
Phone: 218-878-7122
Email: richardgitar@FDLREZ.com
Address: Fond du Lac Reservation
1720 Big Lake Road
Cloquet, MN 55720**

[This condition requires the approval of wetland seed mixes by Office of Water Protection staff. The BWSR seed mixes listed have already been review by OWP staff and are pre-approved. Mulch is not allowed in wetlands because it often reduces germination of wetland plants and also does not break down the same as in upland situations. Fond du Lac Water Quality Certification Ordinance (Ordinance #01/06), Section 204 f. 2)].

12) ALL erosion and sediment control Best Management Practices (BMPs) shall be properly installed, maintained, inspected for effectiveness, replaced if not effective, repaired or replaced if defective, and removed once the area has been properly stabilized or re-vegetated. All BMPs shall be inspected at least once per week and within 24 hours after a ½ inch or greater rainfall event.

401 Certification – St. Paul Dist. USACE – RGP Beach Raking – Page 9 of 9

(Conditions continued):

[This condition places the burden on the applicant to ensure that their BMPs are functioning properly to prevent erosion and sedimentation, thus preventing degradation of water quality. Fond du Lac Water Quality Certification Ordinance (Ordinance #01/06), Section 204 c. 1)].

13) For temporary impacts, all appropriate steps shall be taken to ensure proper restoration of the site, including the separation, storage and replacement of soil horizons, removal of all rutting from maintenance operations, removal of all equipment, materials and construction BMPs, and returning the site to the original contours as much as possible.

[This condition reminds applicants that propose temporary impacts (usually in wetlands) of their responsibilities in restoring the site so the impacts are truly temporary in nature. Fond du Lac Water Quality Certification Ordinance (Ordinance #01/06), Section 204 c. 2)].

14) It is the responsibility of the applicant to convey all terms and conditions of this certification to all appropriate staff, workers, contractors and sub-contractors.

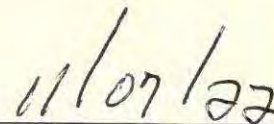
[This condition requires the applicant to inform everyone under their control of the conditions of the certification so that all can aid in compliance of those conditions. Fond du Lac Water Quality Certification Ordinance (Ordinance #01/06), Section 204 a. 8)].

Authorization of Certification: I, Reginald DeFoe, do grant Clean Water Act § 401 Water Quality Certification With Conditions to the U. S. Army Corps of Engineers – St. Paul District for the 2023 Beach Raking Regional General Permit on the Fond du Lac Reservation.

Signed: _____



Date: _____



Reginald DeFoe
Resource Management Director
Fond du Lac Reservation

Fond du Lac Band of Lake Superior Chippewa Resource Management Division

1720 Big Lake Road
Cloquet, MN 55720
Phone (218) 878-7101
Fax (218) 878-7130



Office of Water Protection 401 Water Quality Certification

APPLICANT: USACE St. Paul District

ISSUED: 07 November 2022

Administration
Conservation Enforcement
Environmental
Fisheries
Forestry
Land Information
Natural Resources
Wildlife

Pursuant to § 401 of the Clean Water Act (33 U.S.C. 1341), the Fond du Lac Band of Lake Superior Chippewa is required to certify whether the activity described below will not violate applicable water quality standards. Accordingly, the Fond du Lac Reservation Office of Water Protection requires reasonable assurance that the activity will not violate provisions of the Fond du Lac Band of Lake Superior Chippewa Water Quality Standards of the Fond du Lac Reservation, Ordinance #12/98 (Adopted by Resolution #1403/98 of the Fond du Lac Reservation Business Committee on December 10, 1998; Amended by Resolution #1286/01 of the Fond du Lac Reservation Business Committee on September 11, 2001 and by Resolution #1321/20 of the Reservation Business Committee on July 8, 2020), the Fond du Lac Band of Lake Superior Chippewa Water Quality Certification, Ordinance #01/06 (Adopted by Resolution #1033/06, as amended, of the Fond du Lac Reservation Business Committee on March 28, 2006; Amended by Resolution #1513/20 of the Reservation Business Committee on December 16, 2020), or of § § 301, 302, 303, 306, or 307 of the Clean Water Act.

A request for Clean Water Act (CWA) § 401 Water Quality Certification has been received from the United States Army Corps of Engineers – St. Paul District for the 2023 Minor Discharges Regional General Permit. Fond du Lac's Water Quality Standards may be found at: <http://www.fdlrez.com/government/ords/12-98ord.pdf>

Applicant: **Regulatory Branch**
St. Paul District, Corps of Engineers
180 Fifth Street East, Suite 700
St. Paul, Minnesota 55101-1678

Authorized Work: The authorized work consists of regulated activities associated with minor permanent and temporary discharges of dredged or fill material in waters of the United States for a single and complete non-linear project within the external boundaries of the Fond du Lac Reservation. Discharges that would impound a tributary or lake, or are associated with utility, transportation, or pier or dock projects are NOT authorized.

401 Certification – St. Paul Dist. USACE – RGP Minor Discharges – Page 2 of 9

(Certification continued):

Location(s): Activities authorized under this Regional General Permit may occur anywhere permissible by the Permit and this Certification within the exterior boundaries of the Fond du Lac Reservation.

Background: The Fond du Lac Reservation Office of Water Protection (OWP) has examined the request for Certification, the Public Notice, and the Minor Discharges Regional General Permit, and based upon our evaluation of the supplied information that is relevant to Water Quality Certification considerations, we certify that there is reasonable assurance that activities associated with the Regional General Permit will be conducted in a manner that will not violate the Fond du Lac Band of Lake Superior Chippewa Water Quality Standards of the Fond du Lac Reservation Ordinance #12/98, as amended.

The §401 certification process ensures that Fond du Lac has the opportunity to establish conditions or even deny certification in order to protect our reservation water resources. The conditions that Fond du Lac believe are necessary to assure compliance with applicable provisions of CWA sections 208(e), 301, 302, 303, 306, and 307, and with appropriate requirements of tribal law (specifically, Fond du Lac Ordinance #12/98, as amended) are related to our interpretation of our narrative water quality standards and our antidegradation policies. The condition regarding turbidity (no more than 10% increase over ambient or background turbidity) defines the water quality based effluent limitation (WQBEL) and monitoring/reporting requirements necessary to assure that any applicant for this Federal permit will be in compliance with our water quality standards.

Monitoring and reporting requirements allow Fond du Lac, USEPA, and USACE to confirm that the certification conditions intended to protect the existing high quality of our reservation waters are effective and being implemented. They can trigger adaptive management practices at a site, and can help inform the development of more robust certification conditions in the future. Monitoring and reporting activities help permittees to actually see and understand the impact, or avert an impact, on water quality resulting from their permitted actions. Over the ten (10) years period of EPA's Construction General Permit (now CGP 2017) had been in effect with the Fond du Lac turbidity limit and monitoring requirement, we have only encountered one incident of exceedance of this permit condition. This exceedance led to immediate corrective action that may not have otherwise been required without this specific condition in place.

Fond du Lac considers all waters of the reservation to be Tier 2 (higher quality, on a pollutant by pollutant basis, than the minimum quality necessary to maintain designated uses), and our primary wild rice lakes are Tier 3 or "Outstanding Reservation Resource Value" waters. It is entirely consistent with EPA guidance on antidegradation review¹, for

¹ Memorandum from Ephraim S. King, Director, EPA Office of Science and Technology, to Water Management Division Directors, Regions 1-10, "Tier 2 Antidegradation Reviews and Significance Thresholds", August 10, 2005.

(Background continued):

instance, to define a significance threshold above which the effects on water quality require findings of necessity and social and economic importance to support any decision about the lowering of water quality in high quality waters. The significance threshold of

10% has been independently defined and approved by EPA through multiple processes that have included environmental groups, industry representatives, scientific experts, and public input, including Water Quality Guidance for the Great Lakes, and other states as well.

Fond du Lac believes that the turbidity-related condition cannot be made any less stringent without violating the requirements of tribal law. Section 301(h) of our water quality standards specifies “settleable and suspended solids (turbidity) should not reduce the depth of the compensation point for photosynthetic activity by more than 10% from the seasonally established norm for aquatic life”. Our comprehensive water quality monitoring data collected over the last eighteen years provides a defensible basis for defining ambient conditions and protecting the existing high quality and biological integrity in our surface waters.

Certification: Certification is **DENIED** to any new discharge to Outstanding Reservation Resource Waters (ORRW) as described in § 105 b. 3. of the Fond du Lac Water Quality Standards (Ordinance #12/98, as amended). Although additional waters may be designated in the future, currently Perch Lake, Rice Portage Lake, Miller Lake, Deadfish Lake, and Jaskari Lake are designated as ORRWs. New dischargers wishing to discharge to an ORRW must obtain a separate Water Quality Certification of such discharges.

[The Office of Water Protection will deny, due to insufficient information, any general license or permit with any new discharges into Outstanding Reservation Resource Waters (ORRW) as described in 105b.3 of the Fond du Lac Water Quality Standards (Ordinance #12/98, as amended) for the following reasons: 1. Aquatic resources are extremely important to the Fond du Lac Band of Lake Superior Chippewa and are quite extensive, comprising approximately 47% of the area within the external boundaries of the Fond du Lac Reservation. 2. Although the locations of these aquatic resources are known and mapped, the locations of the potential projects are not known. Therefore, the potential impacts to the aquatic resources cannot be quantified unless the actual project scope and location is known. 3. While a set of generic conditions may be adequate to protect water quality, until a specific project is proposed, it is difficult to determine what site-specific conditions may be appropriate to truly protect the water quality and aquatic resources that Fond du Lac Band Members depend upon. Fond du Lac Water Quality Certification Ordinance (Ordinance #01/06), Section 203 c. 2) (A)-(D)].

(Certification continued):

As per § 201(e) of the Water Quality Certification Standards Ordinance #01/06 this Water Quality Certification is granted as **CERTIFICATION WITH CONDITIONS** for all other waters/wetlands within the Fond du Lac Reservation and therefore the following conditions apply:

1) Minor Discharges Regional General Permit applicants are encouraged to work with the FdL Office of Water Protection (OWP) in the development of their project to determine whether their project will require a Wetland Activity Permit or is eligible for an Exemption Certificate under provisions of the Fond du Lac Wetlands Protection and Management Ordinance (WPMO) (Ordinance #03/06).

[This condition gives the Office of Water Protection information to evaluate whether the project requires a Wetland Activity Permit under the provisions of the Fond du Lac Wetlands Protection and Management Ordinance (or might be eligible for an exemption under the same ordinance). Fond du Lac Water Quality Certification Ordinance (Ordinance #01/06), Section 204 a. 3)].

2) If the project will entail a discharge to any watercourse or open water body, the turbidity limit shall NOT exceed 10% of natural background within any receiving water(s) as determined by Office of Water Protection staff. For such discharges, turbidity sampling must take place within 24 hours of a ½-inch or greater rainfall event. The results of the sampling must be reported to the Office of Water Protection within 7 days of the sample collection. All sample reporting must include the date and time, location (GPS: UTM/Zone 15), and NTU. Regional General Permit applicants are encouraged to work with the Office of Water Protection in determining the most appropriate location(s) for sampling.

Water sample data reporting should be submitted electronically to richardgitar@FDLREZ.com or by hard copy sent to:

**Fond du Lac Reservation
Office of Water Protection
1720 Big Lake Road
Cloquet, MN 55720**

[This condition helps both the Office of Water Protection and the applicant in knowing whether or not their erosion control efforts are effective. Fond du Lac Water Quality Certification Ordinance (Ordinance #01/06), Section 204 b. 1)].

3) Receiving waters with open water must be sampled for turbidity prior to any authorized discharge as determined by Office of Water Protection staff. This

(Condition #3 continued):

requirement only applies to receiving waters in which no ambient turbidity data exists.

Water sample data reporting should be submitted electronically to richardgitar@FDLREZ.com or by hard copy sent to:

**Fond du Lac Reservation
Office of Water Protection
1720 Big Lake Road
Cloquet, MN 55720**

[This condition allows the Office of Water Protection to obtain a baseline turbidity sample in which to compare to other samples. Fond du Lac Water Quality Certification Ordinance (Ordinance #01/06), Section 204 b. 2)].

4) The work shall be accomplished in conformance with the accepted plans, specifications, data, permit application materials (if any), and other information submitted in support of the project application and the limitations, requirements and conditions set forth herein.

[This condition keeps the applicant from changing the scope and extent of the project without prior notification. Fond du Lac Water Quality Certification Ordinance (Ordinance #01/06), Section 204 a. 4)].

5) The Office of Water Protection shall be notified at least 48 hours prior to the commencement of work.

[This condition allows the Office of Water Protection to know when a project will begin. Fond du Lac Water Quality Certification Ordinance (Ordinance #01/06), Section 204 a. 5)].

6) Impacts to waters of the Fond du Lac Reservation other than those specifically addressed in the plans, application materials, and this certification are prohibited. All lakes, streams, springs, and wetlands for which impacts are not authorized shall be fully protected prior to, during and after construction until the area is stabilized.

[This condition limits the discharge to only the waters that were identified at the time of the application and subsequent certification. Fond du Lac Water Quality Certification Ordinance (Ordinance #01/06), Section 204 a. 6)].

7) All work shall be carried out in such a manner as will prevent violations of water quality criteria as stated in the Water Quality Standards of the Fond du Lac

(Condition #7 continued):

Reservation, Ordinance 12/98, as amended. This includes, but is not limited to, the prevention of any discharge that causes a condition in which visible solids, bottom deposits, or turbidity impairs the usefulness of water of the Fond du Lac Reservation for any of the uses designated in the Water Quality Standards of the Fond du Lac Reservation. These uses include public water supply, wildlife, aquatic life, warm water fisheries, cold water fisheries, subsistence fishing (netting), primary contact recreation, secondary contact recreation, cultural, wild rice areas, aesthetic waters, agriculture, navigation, commercial and wetlands. It also includes the designated uses of wetlands including, but not limited to, baseflow discharge, cultural opportunities, flood flow attenuation, groundwater recharge, indigenous floral and faunal diversity and abundance, nutrient cycling, organic carbon export/cycling, protection of downstream water quality, recreation, resilience against climactic effects, sediment/shoreline stabilization, surface water storage, wild rice, and water dependent wildlife.

[In addition to listing the designated uses of waters of the Fond du Lac Reservation, this condition also limits the applicant to discharges that will not violate our Water Quality Standards. Fond du Lac Water Quality Certification Ordinance (Ordinance #01/06), Section 204 a. 7)].

8) Appropriate steps shall be taken to ensure that petroleum products or other chemical pollutants are prevented from entering waters of the Fond du Lac Reservation. All spills must be reported to the appropriate emergency management Agency (National Response Center AND the State Duty Officer), and measures shall be taken immediately to prevent the pollution of waters of the Fond du Lac Reservation, including groundwater. The Fond du Lac Office of Water Protection must also be notified immediately of any spill regardless of size.

[This condition helps protect water quality and also reminds applicants of their responsibility in reporting spill events. Fond du Lac Water Quality Certification Ordinance (Ordinance #01/06), Section 204 b. 3)].

9) To prevent the introduction of invasive species, all contractors and sub-contractors must disclose information stating prior equipment location(s) and all known invasive species potentially being transported from said location(s). All equipment must undergo a high-pressure wash (including equipment mats) before entering the Fond du Lac Reservation. Personal equipment, such as work boots, gloves, vest, etc. must be clean of debris, dirt, and plant and animal material before entering the Fond du Lac Reservation. Equipment being transported from known infested areas must undergo a high pressure wash as soon as possible after leaving the infested site and again before entering the Fond du Lac Reservation to avoid

(Condition #9 continued):

transport of invasive species into areas surrounding the Reservation. Written certification of such must be provided to the Office of Water Protection. Upon arrival, all contractor and sub-contractor equipment will be inspected by appointed Fond du Lac staff (or an applicant designated inspector). If equipment is deemed unsatisfactory, the equipment must undergo a high-pressure wash until the equipment is cleared by the inspector, until such time, minimal travel will be allowed through the Reservation. The applicant shall be held responsible for the control of any invasive species introduced as a result of the project.

Notification can be emailed to richardgitar@FDLREZ.com or hard copy sent to:

**Fond du Lac Reservation
Office of Water Protection
1720 Big Lake Road
Cloquet, MN 55720**

[This condition requires the applicant to prevent the inadvertent introduction of invasive species by taking an active role in cleaning all vehicles, equipment, and equipment mats before entering the Reservation. This condition has been placed in certifications since 2012, due to the introduction of Wild Parsnip in 2011 from a pipeline contractor. It is much easier to prevent the introduction of an invasive species than it is to eradicate it once it has been introduced. Many invasive species form monocultures, preventing native plants from growing. This situation often leads to causes of erosion, which in turn effects water quality. Fond du Lac Water Quality Certification Ordinance (Ordinance #01/06), Section 204 g. 1)].

10) ALL seed mixes, whether used for temporary stabilization or permanent seeding, shall NOT contain any annual ryegrass (*Lolium* species). Canadian Wild Rye (*Elymus* species) or Oats (*Avena* species) may be used as a replacement in upland seed mixes. Upland seed mixes approved by the Minnesota Department of Transportation (MnDOT) may be used without Office of Water Protection approval provided they do NOT contain annual ryegrass. Seed mixes 21-111 (Oats Cover Crop) and 21-112 (Winter Wheat Cover Crop) are approved for use on the Fond du Lac Reservation.

[This condition prevents the use of annual ryegrass on the Reservation. Annual ryegrass is allelopathic, which means it produces biochemicals in its roots that inhibit the growth of other native plants. If used in seed mixes, annual ryegrass could contribute to erosion, especially on slopes. However, the condition also specifies substitute grasses that germinate almost as fast as annual ryegrass for use as a cover crop to prevent erosion. Fond du Lac Water Quality Certification Ordinance (Ordinance #01/06), Section 204 f. 1)].

(Conditions continued):

11) Seed mixes used in wetlands MUST be approved by Office of Water Protection staff prior to use. Wetland seed mixes approved by the Minnesota Board of Water and Soil Resources (BWSR) may be used without Office of Water Protection approval if they do NOT contain annual ryegrass. Seed mixes 34-171 (Wetland Rehabilitation), 34-181 (Emergent Wetland), 34-361 (Riparian Northeast) and 34-371 (Wet Meadow Northeast) are approved and recommended for use on the Fond du Lac Reservation. The use of mulch is NOT allowed in wetlands. If seed mix approval is required under this condition, applicants should contact the following:

**Richard Gitar, Water Regulatory Specialist
Phone: 218-878-7122
Email: richardgitar@FDLREZ.com
Address: Fond du Lac Reservation
1720 Big Lake Road
Cloquet, MN 55720**

[This condition requires the approval of wetland seed mixes by Office of Water Protection staff. The BWSR seed mixes listed have already been review by OWP staff and are pre-approved. Mulch is not allowed in wetlands because it often reduces germination of wetland plants and also does not break down the same as in upland situations. Fond du Lac Water Quality Certification Ordinance (Ordinance #01/06), Section 204 f. 2)].

12) ALL erosion and sediment control Best Management Practices (BMPs) shall be properly installed, maintained, inspected for effectiveness, replaced if not effective, repaired or replaced if defective, and removed once the area has been properly stabilized or re-vegetated. All BMPs shall be inspected at least once per week and within 24 hours after a ½ inch or greater rainfall event.

[This condition places the burden on the applicant to ensure that their BMPs are functioning properly to prevent erosion and sedimentation, thus preventing degradation of water quality. Fond du Lac Water Quality Certification Ordinance (Ordinance #01/06), Section 204 c. 1)].

13) For temporary impacts, all appropriate steps shall be taken to ensure proper restoration of the site, including the separation, storage and replacement of soil horizons, removal of all rutting from maintenance operations, removal of all equipment, materials and construction BMPs, and returning the site to the original contours as much as possible.

[This condition reminds applicants that propose temporary impacts (usually in wetlands) of their responsibilities in restoring the site so the impacts are truly temporary in nature.

401 Certification – St. Paul Dist. USACE – RGP Minor Discharges – Page 9 of 9

(Conditions continued):

Fond du Lac Water Quality Certification Ordinance (Ordinance #01/06), Section 204 c. 2)].

14) It is the responsibility of the applicant to convey all terms and conditions of this certification to all appropriate staff, workers, contractors and sub-contractors.

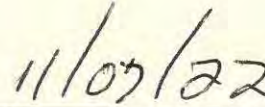
[This condition requires the applicant to inform everyone under their control of the conditions of the certification so that all can aid in compliance of those conditions. Fond du Lac Water Quality Certification Ordinance (Ordinance #01/06), Section 204 a. 8)].

Authorization of Certification: I, Reginald DeFoe, do grant Clean Water Act § 401 Water Quality Certification With Conditions to the U. S. Army Corps of Engineers – St. Paul District for the 2023 Minor Discharges Regional General Permit on the Fond du Lac Reservation.

Signed: _____



Date: _____



Reginald DeFoe

Resource Management Director

Fond du Lac Reservation

Fond du Lac Band of Lake Superior Chippewa Resource Management Division

1720 Big Lake Road
Cloquet, MN 55720
Phone (218) 878-7101
Fax (218) 878-7130



Office of Water Protection 401 Water Quality Certification

APPLICANT: USACE St. Paul District

ISSUED: 07 November 2022

Administration
Conservation Enforcement
Environmental
Fisheries
Forestry
Land Information
Natural Resources
Wildlife

Pursuant to § 401 of the Clean Water Act (33 U.S.C. 1341), the Fond du Lac Band of Lake Superior Chippewa is required to certify whether the activity described below will not violate applicable water quality standards. Accordingly, the Fond du Lac Reservation Office of Water Protection requires reasonable assurance that the activity will not violate provisions of the Fond du Lac Band of Lake Superior Chippewa Water Quality Standards of the Fond du Lac Reservation, Ordinance #12/98 (Adopted by Resolution #1403/98 of the Fond du Lac Reservation Business Committee on December 10, 1998; Amended by Resolution #1286/01 of the Fond du Lac Reservation Business Committee on September 11, 2001 and by Resolution #1321/20 of the Reservation Business Committee on July 8, 2020), the Fond du Lac Band of Lake Superior Chippewa Water Quality Certification, Ordinance #01/06 (Adopted by Resolution #1033/06, as amended, of the Fond du Lac Reservation Business Committee on March 28, 2006; Amended by Resolution #1513/20 of the Reservation Business Committee on December 16, 2020), or of § § 301, 302, 303, 306, or 307 of the Clean Water Act.

A request for Clean Water Act (CWA) § 401 Water Quality Certification has been received from the United States Army Corps of Engineers – St. Paul District for the 2023 Piers and Docks Regional General Permit. Fond du Lac's Water Quality Standards may be found at: <http://www.fdlrez.com/government/ords/12-98ord.pdf>

Applicant: **Regulatory Branch**
St. Paul District, Corps of Engineers
180 Fifth Street East, Suite 700
St. Paul, Minnesota 55101-1678

Authorized Work: The authorized work consists of regulated activities associated with the construction, installation, and modification of piers, docks, small rock cribs and ancillary features. Temporary structures, fills, and work, including the use of temporary mats, necessary to accomplish these activities are also authorized.

Location(s): Construction activities authorized under this Regional General Permit may occur anywhere permissible by the Permit and this Certification within the exterior boundaries of the Fond du Lac Reservation.

(Certification continued):

Background: The Fond du Lac Reservation Office of Water Protection (OWP) has examined the request for Certification, the Public Notice, and the Piers and Docks Regional General Permit, and based upon our evaluation of the supplied information that is relevant to Water Quality Certification considerations, we certify that there is reasonable assurance that activities associated with the Regional General Permit will be conducted in a manner that will not violate the Fond du Lac Band of Lake Superior Chippewa Water Quality Standards of the Fond du Lac Reservation Ordinance #12/98, as amended.

The §401 certification process ensures that Fond du Lac has the opportunity to establish conditions or even deny certification in order to protect our reservation water resources. The conditions that Fond du Lac believe are necessary to assure compliance with applicable provisions of CWA sections 208(e), 301, 302, 303, 306, and 307, and with appropriate requirements of tribal law (specifically, Fond du Lac Ordinance #12/98, as amended) are related to our interpretation of our narrative water quality standards and our antidegradation policies. The condition regarding turbidity (no more than 10% increase over ambient or background turbidity) defines the water quality based effluent limitation (WQBEL) and monitoring/reporting requirements necessary to assure that any applicant for this Federal permit will be in compliance with our water quality standards. Monitoring and reporting requirements allow Fond du Lac, USEPA, and USACE to confirm that the certification conditions intended to protect the existing high quality of our reservation waters are effective and being implemented. They can trigger adaptive management practices at a site, and can help inform the development of more robust certification conditions in the future. Monitoring and reporting activities help permittees to actually see and understand the impact, or avert an impact, on water quality resulting from their permitted actions. Over the ten (10) years period of EPA's Construction General Permit (now CGP 2017) had been in effect with the Fond du Lac turbidity limit and monitoring requirement, we have only encountered one incident of exceedance of this permit condition. This exceedance led to immediate corrective action that may not have otherwise been required without this specific condition in place.

Fond du Lac considers all waters of the reservation to be Tier 2 (higher quality, on a pollutant by pollutant basis, than the minimum quality necessary to maintain designated uses), and our primary wild rice lakes are Tier 3 or "Outstanding Reservation Resource Value" waters. It is entirely consistent with EPA guidance on antidegradation review¹, for instance, to define a significance threshold above which the effects on water quality require findings of necessity and social and economic importance to support any decision about the lowering of water quality in high quality waters. The significance threshold of

¹ Memorandum from Ephraim S. King, Director, EPA Office of Science and Technology, to Water Management Division Directors, Regions 1-10, "Tier 2 Antidegradation Reviews and Significance Thresholds", August 10, 2005.

401 Certification – St. Paul Dist. USACE – RGP Piers and Docks – Page 3 of 9

(Background continued):

10% has been independently defined and approved by EPA through multiple processes that have included environmental groups, industry representatives, scientific experts, and public input, including Water Quality Guidance for the Great Lakes, and other states as well.

Fond du Lac believes that the turbidity-related condition cannot be made any less stringent without violating the requirements of tribal law. Section 301(h) of our water quality standards specifies “settleable and suspended solids (turbidity) should not reduce the depth of the compensation point for photosynthetic activity by more than 10% from the seasonally established norm for aquatic life”. Our comprehensive water quality monitoring data collected over the last eighteen years provides a defensible basis for defining ambient conditions and protecting the existing high quality and biological integrity in our surface waters.

Certification: Certification is **DENIED** to any new discharge to Outstanding Reservation Resource Waters (ORRW) as described in § 105 b. 3. of the Fond du Lac Water Quality Standards (Ordinance #12/98, as amended). Although additional waters may be designated in the future, currently Perch Lake, Rice Portage Lake, Miller Lake, Deadfish Lake, and Jaskari Lake are designated as ORRWs. New dischargers wishing to discharge to an ORRW must obtain a separate Water Quality Certification of such discharges.

[The Office of Water Protection will deny, due to insufficient information, any general license or permit with any new discharges into Outstanding Reservation Resource Waters (ORRW) as described in 105b.3 of the Fond du Lac Water Quality Standards (Ordinance #12/98, as amended) for the following reasons: 1. Aquatic resources are extremely important to the Fond du Lac Band of Lake Superior Chippewa and are quite extensive, comprising approximately 47% of the area within the external boundaries of the Fond du Lac Reservation. 2. Although the locations of these aquatic resources are known and mapped, the locations of the potential projects are not known. Therefore, the potential impacts to the aquatic resources cannot be quantified unless the actual project scope and location is known. 3. While a set of generic conditions may be adequate to protect water quality, until a specific project is proposed, it is difficult to determine what site-specific conditions may be appropriate to truly protect the water quality and aquatic resources that Fond du Lac Band Members depend upon. Fond du Lac Water Quality Certification Ordinance (Ordinance #01/06), Section 203 c. 2) (A)-(D)].

As per § 201(e) of the Water Quality Certification Standards Ordinance #01/06 this Water Quality Certification is granted as **CERTIFICATION WITH CONDITIONS** for all other waters/wetlands within the Fond du Lac Reservation and therefore the following conditions apply:

(Conditions continued):

1) A copy of the Pre-Construction Notification (PCN) MUST be sent to the Fond du Lac Office of Water Protection at the same time it is sent to the St. Paul District, Corps of Engineers. The PCN must include all applicable drawings, plans, and specifications for the project. The Fond du Lac Office of Water Protection must be invited to participate in any meetings between the St. Paul District and the applicant. The PCN can be submitted electronically to richardgitar@FDLREZ.com or by hardcopy sent to:

**Fond du Lac Reservation
Office of Water Protection
1720 Big Lake Road
Cloquet, MN 55720**

Piers and Docks Regional General Permit applicants are encouraged to work with the FdL Office of Water Protection (OWP) in the development of their project to determine whether their project will require a Wetland Activity Permit or Exemption Certificate under provisions of the Fond du Lac Wetlands Protection and Management Ordinance (WPMO) (Ordinance #03/06).

[This “Administrative Condition” helps the Office of Water Protection (OWP) track the applicant’s filings with the permit issuer. It also helps OWP stay informed of the project as it progresses and gives information to evaluate whether the project requires a Wetland Activity Permit under the provisions of the Fond du Lac Wetlands Protection and Management Ordinance. Fond du Lac Water Quality Certification Ordinance (Ordinance #01/06), Section 204 a. 3)].

2) If the project will entail a discharge to any watercourse or open water body, the turbidity limit shall NOT exceed 10% of natural background within any receiving water(s) as determined by Office of Water Protection staff. For such discharges, turbidity sampling must take place within 24 hours of a ½-inch or greater rainfall event. The results of the sampling must be reported to the Office of Water Protection within 7 days of the sample collection. All sample reporting must include the date and time, location (GPS: UTM/Zone 15), and NTU. Regional General Permit applicants are encouraged to work with the Office of Water Protection in determining the most appropriate location(s) for sampling.

Water sample data reporting should be submitted electronically to richardgitar@FDLREZ.com or by hard copy sent to:

**Fond du Lac Reservation
Office of Water Protection**

(Condition #2 continued):

**1720 Big Lake Road
Cloquet, MN 55720**

[This condition helps both the Office of Water Protection and the applicant in knowing whether or not their erosion control efforts are effective. Fond du Lac Water Quality Certification Ordinance (Ordinance #01/06), Section 204 b. 1)].

3) Receiving waters with open water must be sampled for turbidity prior to any authorized discharge as determined by Office of Water Protection staff. This requirement only applies to receiving waters in which no ambient turbidity data exists.

Water sample data reporting should be submitted electronically to richardgitar@FDLREZ.com or by hard copy sent to:

**Fond du Lac Reservation
Office of Water Protection
1720 Big Lake Road
Cloquet, MN 55720**

[This condition allows the Office of Water Protection to obtain a baseline turbidity sample in which to compare to other samples. Fond du Lac Water Quality Certification Ordinance (Ordinance #01/06), Section 204 b. 2)].

4) The work shall be accomplished in conformance with the accepted plans, specifications, data, permit application materials (including the PCN), and other information submitted in support of the project application and the limitations, requirements and conditions set forth herein.

[This condition keeps the applicant from changing the scope and extent of the project without prior notification. Fond du Lac Water Quality Certification Ordinance (Ordinance #01/06), Section 204 a. 4)].

5) The Office of Water Protection shall be notified at least 48 hours prior to the commencement of work.

[This condition allows the Office of Water Protection to know when a project will begin. Fond du Lac Water Quality Certification Ordinance (Ordinance #01/06), Section 204 a. 5)].

6) Impacts to waters of the Fond du Lac Reservation other than those specifically addressed in the plans, application materials, and this certification are prohibited.

(Condition #6 continued):

All lakes, streams, springs, and wetlands for which impacts are not authorized shall be fully protected prior to, during and after construction until the area is stabilized.

[This condition limits the discharge to only the waters that were identified at the time of the application and subsequent certification. Fond du Lac Water Quality Certification Ordinance (Ordinance #01/06), Section 204 a. 6)].

7) All work shall be carried out in such a manner as will prevent violations of water quality criteria as stated in the Water Quality Standards of the Fond du Lac Reservation, Ordinance 12/98, as amended. This includes, but is not limited to, the prevention of any discharge that causes a condition in which visible solids, bottom deposits, or turbidity impairs the usefulness of water of the Fond du Lac Reservation for any of the uses designated in the Water Quality Standards of the Fond du Lac Reservation. These uses include public water supply, wildlife, aquatic life, warm water fisheries, cold water fisheries, subsistence fishing (netting), primary contact recreation, secondary contact recreation, cultural, wild rice areas, aesthetic waters, agriculture, navigation, commercial and wetlands. It also includes the designated uses of wetlands including, but not limited to, baseflow discharge, cultural opportunities, flood flow attenuation, groundwater recharge, indigenous floral and faunal diversity and abundance, nutrient cycling, organic carbon export/cycling, protection of downstream water quality, recreation, resilience against climactic effects, sediment/shoreline stabilization, surface water storage, wild rice, and water dependent wildlife.

[In addition to listing the designated uses of waters of the Fond du Lac Reservation, this condition also limits the applicant to discharges that will not violate our Water Quality Standards. Fond du Lac Water Quality Certification Ordinance (Ordinance #01/06), Section 204 a. 7)].

8) Appropriate steps shall be taken to ensure that petroleum products or other chemical pollutants are prevented from entering waters of the Fond du Lac Reservation. All spills must be reported to the appropriate emergency management Agency (National Response Center AND the State Duty Officer), and measures shall be taken immediately to prevent the pollution of waters of the Fond du Lac Reservation, including groundwater. The Fond du Lac Office of Water Protection must also be notified immediately of any spill regardless of size.

[This condition helps protect water quality and also reminds applicants of their responsibility in reporting spill events. Fond du Lac Water Quality Certification Ordinance (Ordinance #01/06), Section 204 b. 3)].

(Conditions continued):

9) To prevent the introduction of invasive species, all contractors and sub-contractors must disclose information stating prior equipment location(s) and all known invasive species potentially being transported from said location(s). All equipment must undergo a high-pressure wash (including equipment mats) before entering the Fond du Lac Reservation. Personal equipment, such as work boots, gloves, vest, etc. must be clean of debris, dirt, and plant and animal material before entering the Fond du Lac Reservation. Equipment being transported from known infested areas must undergo a high pressure wash as soon as possible after leaving the infested site and again before entering the Fond du Lac Reservation to avoid transport of invasive species into areas surrounding the Reservation. Written certification of such must be provided to the Office of Water Protection. Upon arrival, all contractor and sub-contractor equipment will be inspected by appointed Fond du Lac staff (or an applicant designated inspector). If equipment is deemed unsatisfactory, the equipment must undergo a high-pressure wash until the equipment is cleared by the inspector, until such time, minimal travel will be allowed through the Reservation. The applicant shall be held responsible for the control of any invasive species introduced as a result of the project.

Notification can be emailed to richardgitar@FDLREZ.com or hard copy sent to:

Fond du Lac Reservation
Office of Water Protection
1720 Big Lake Road
Cloquet, MN 55720

[This condition requires the applicant to prevent the inadvertent introduction of invasive species by taking an active role in cleaning all vehicles, equipment, and equipment mats before entering the Reservation. This condition has been placed in certifications since 2012, due to the introduction of Wild Parsnip in 2011 from a pipeline contractor. It is much easier to prevent the introduction of an invasive species than it is to eradicate it once it has been introduced. Many invasive species form monocultures, preventing native plants from growing. This situation often leads to causes of erosion, which in turn effects water quality. Fond du Lac Water Quality Certification Ordinance (Ordinance #01/06), Section 204 g. 1)].

10) ALL seed mixes, whether used for temporary stabilization or permanent seeding, shall NOT contain any annual ryegrass (*Lolium* species). Canadian Wild Rye (*Elymus* species) or Oats (*Avena* species) may be used as a replacement in upland seed mixes. Upland seed mixes approved by the Minnesota Department of Transportation (MnDOT) may be used without Office of Water Protection approval provided they do NOT contain annual ryegrass. Seed mixes 21-111 (Oats Cover

(Condition #10 continued):

Crop) and 21-112 (Winter Wheat Cover Crop) are approved for use on the Fond du Lac Reservation.

[This condition prevents the use of annual ryegrass on the Reservation. Annual ryegrass is allelopathic, which means it produces biochemicals in its roots that inhibit the growth of other native plants. If used in seed mixes, annual ryegrass could contribute to erosion, especially on slopes. However, the condition also specifies substitute grasses that germinate almost as fast as annual ryegrass for use as a cover crop to prevent erosion. Fond du Lac Water Quality Certification Ordinance (Ordinance #01/06), Section 204 f. 1)].

11) Seed mixes used in wetlands MUST be approved by Office of Water Protection staff prior to use. Wetland seed mixes approved by the Minnesota Board of Water and Soil Resources (BWSR) may be used without Office of Water Protection approval if they do NOT contain annual ryegrass. Seed mixes 34-171 (Wetland Rehabilitation), 34-181 (Emergent Wetland), 34-361 (Riparian Northeast) and 34-371 (Wet Meadow Northeast) are approved and recommended for use on the Fond du Lac Reservation. The use of mulch is NOT allowed in wetlands. If seed mix approval is required under this condition, applicants should contact the following:

Richard Gitar, Water Regulatory Specialist

Phone: 218-878-7122

Email: richardgitar@FDLREZ.com

Address: Fond du Lac Reservation

1720 Big Lake Road

Cloquet, MN 55720

[This condition requires the approval of wetland seed mixes by Office of Water Protection staff. The BWSR seed mixes listed have already been review by OWP staff and are pre-approved. Mulch is not allowed in wetlands because it often reduces germination of wetland plants and also does not break down the same as in upland situations. Fond du Lac Water Quality Certification Ordinance (Ordinance #01/06), Section 204 f. 2)].

12) ALL erosion and sediment control Best Management Practices (BMPs) shall be properly installed, maintained, inspected for effectiveness, replaced if not effective, repaired or replaced if defective, and removed once the area has been properly stabilized or re-vegetated. All BMPs shall be inspected at least once per week and within 24 hours after a ½ inch or greater rainfall event.

[This condition places the burden on the applicant to ensure that their BMPs are functioning properly to prevent erosion and sedimentation, thus preventing degradation

401 Certification – St. Paul Dist. USACE – RGP Piers and Docks – Page 9 of 9

(Conditions continued):

of water quality. Fond du Lac Water Quality Certification Ordinance (Ordinance #01/06), Section 204 c. 1)].

13) For temporary impacts, all appropriate steps shall be taken to ensure proper restoration of the site, including the separation, storage and replacement of soil horizons, removal of all rutting from maintenance operations, removal of all equipment, materials and construction BMPs, and returning the site to the original contours as much as possible.

[This condition reminds applicants that propose temporary impacts (usually in wetlands) of their responsibilities in restoring the site so the impacts are truly temporary in nature. Fond du Lac Water Quality Certification Ordinance (Ordinance #01/06), Section 204 c. 2)].

14) It is the responsibility of the applicant to convey all terms and conditions of this certification to all appropriate staff, workers, contractors and sub-contractors.

[This condition requires the applicant to inform everyone under their control of the conditions of the certification so that all can aid in compliance of those conditions. Fond du Lac Water Quality Certification Ordinance (Ordinance #01/06), Section 204 a. 8)].

Authorization of Certification: I, Reginald DeFoe, do grant Clean Water Act § 401 Water Quality Certification With Conditions to the U. S. Army Corps of Engineers – St. Paul District for the 2023 Piers and Docks Regional General Permit on the Fond du Lac Reservation.

Signed: _____



Date: _____

11/07/22

Reginald DeFoe
Resource Management Director
Fond du Lac Reservation

Fond du Lac Band of Lake Superior Chippewa Resource Management Division

1720 Big Lake Road
Cloquet, MN 55720
Phone (218) 878-7101
Fax (218) 878-7130



Office of Water Protection 401 Water Quality Certification

APPLICANT: USACE St. Paul District

ISSUED: 07 November 2022

Administration
Conservation Enforcement
Environmental
Fisheries
Forestry
Land Information
Natural Resources
Wildlife

Pursuant to § 401 of the Clean Water Act (33 U.S.C. 1341), the Fond du Lac Band of Lake Superior Chippewa is required to certify whether the activity described below will violate applicable water quality standards. Accordingly, the Fond du Lac Reservation Office of Water Protection requires reasonable assurance that the activity will not violate provisions of the Fond du Lac Band of Lake Superior Chippewa Water Quality Standards of the Fond du Lac Reservation, Ordinance #12/98 (Adopted by Resolution #1403/98 of the Fond du Lac Reservation Business Committee on December 10, 1998; Amended by Resolution #1286/01 of the Fond du Lac Reservation Business Committee on September 11, 2001 and by Resolution #1321 of the Reservation Business Committee on July 8, 2020), the Fond du Lac Band of Lake Superior Chippewa Water Quality Certification, Ordinance #01/06 (Adopted by Resolution #1033/06, as amended, of the Fond du Lac Reservation Business Committee on March 28, 2006; Amended by Resolution #1513 of the Reservation Business Committee on December 16, 2020), or of § § 301, 302, 303, 306, or 307 of the Clean Water Act.

A request for Clean Water Act (CWA) § 401 Water Quality Certification has been received from the United States Army Corps of Engineers – St. Paul District for the 2023 Transportation Regional General Permit. Fond du Lac's Water Quality Standards may be found at: <http://www.fdlrez.com/government/ords/12-98ord.pdf>

Applicant: **Regulatory Branch**
St. Paul District, Corps of Engineers
180 Fifth Street East, Suite 700
St. Paul, Minnesota 55101-1678

Authorized Work: Category 1: Minor Maintenance – Linear Transportation: Regulated activities required for crossings of waters of the United States associated with minor repairs, rehabilitation, or replacement of a previously authorized currently serviceable linear transportation project, provided that the structure or fill is not to be put to uses differing from those specified or contemplated in the original permit or the most recently authorized modification. Regulated activities associated with tributary channelization, slope widening, road widening, new lanes, trails, railways, and runways, or new storm water ponds are NOT authorized by this category. Category 2: Modification – Linear Transportation: Regulated activities required for crossings of waters of the

(Authorized Work continued):

United States associated with the expansion, modification, improvement or minor realignments of an existing transportation project (e.g., roads, highways, attached frontage roads, railways, trails, airport runways, and taxiways), including the temporary structures, fills, and work, including mats, necessary for those activities. Category 3: New Construction – Linear Transportation: Regulated activities required for crossings of waters of the United States associated with the construction of a linear transportation project (e.g., roads, highways, railways, trails, airport runways, and taxiways). Examples of eligible activities include: discharges for the construction of: (1) new roads or major realignments of existing roadways; (2) new railroad spurs or tracks; (3) new or detached frontage roads; (4) new airport runways; (5) new or detached trails; (6) associated linear infrastructure for those new construction projects, and (7) temporary structures, fills, and work, including the use of temporary mats, necessary for activities 1-6. Category 4: Non-Linear Transportation Projects: Regulated activities required for the construction, expansion, or maintenance of non-linear features associated with transportation projects, including the use of temporary discharges necessary to conduct those activities. Such projects may include: vehicle maintenance or storage buildings, weigh stations, rest-stops, parking lots, train stations, aircraft hangers, and associated infrastructure, including storm water management facilities. Category 5: Transportation Surveying: Regulated temporary activities required for surveying activities necessary for transportation projects, such as core sampling, exploratory-type bore holes, exploratory trenching, soil surveys, sediment sampling, sample plots or transects for wetland delineations, historic resources surveys, and temporary access roads necessary to perform those activities.

Location(s): Construction activities authorized under this Regional General Permit may occur anywhere permissible by the Permit and this Certification within the exterior boundaries of the Fond du Lac Reservation.

Background: The Fond du Lac Reservation Office of Water Protection (OWP) has examined the request for Certification, the Public Notice, and the Transportation Regional General Permit, and based upon our evaluation of the supplied information that is relevant to Water Quality Certification considerations, **at this time we DO NOT CERTIFY** that there is reasonable assurance that activities associated with the Regional General Permit will be conducted in a manner that will not violate the Fond du Lac Band of Lake Superior Chippewa Water Quality Standards of the Fond du Lac Reservation Ordinance #12/98, as amended.

The §401 certification process ensures that Fond du Lac has the opportunity to establish conditions or even deny certification in order to protect our reservation water resources. The conditions that Fond du Lac believe are necessary to assure compliance with applicable provisions of CWA sections 208(e), 301, 302, 303, 306, and 307, and with appropriate requirements of tribal law (specifically, Fond du Lac Ordinance #12/98, as amended) are related to our interpretation of our narrative water quality standards and our

(Background continued):

antidegradation policies. The condition regarding turbidity (no more than 10% increase over ambient or background turbidity) defines the water quality based effluent limitation (WQBEL) and monitoring/reporting requirements necessary to assure that any applicant for this Federal permit will be in compliance with our water quality standards. Monitoring and reporting requirements allow Fond du Lac, USEPA, and USACE to confirm that the certification conditions intended to protect the existing high quality of our reservation waters are effective and being implemented. They can trigger adaptive management practices at a site, and can help inform the development of more robust certification conditions in the future. Monitoring and reporting activities help permittees to actually see and understand the impact, or avert an impact, on water quality resulting from their permitted actions. Over the ten (10) years period of EPA's Construction General Permit (now CGP 2017) had been in effect with the Fond du Lac turbidity limit and monitoring requirement, we have only encountered one incident of exceedance of this permit condition. This exceedance led to immediate corrective action that may not have otherwise been required without this specific condition in place.

Fond du Lac considers all waters of the reservation to be Tier 2 (higher quality, on a pollutant by pollutant basis, than the minimum quality necessary to maintain designated uses), and our primary wild rice lakes are Tier 3 or "Outstanding Reservation Resource Value" waters. It is entirely consistent with EPA guidance on antidegradation review¹, for instance, to define a significance threshold above which the effects on water quality require findings of necessity and social and economic importance to support any decision about the lowering of water quality in high quality waters. The significance threshold of

10% has been independently defined and approved by EPA through multiple processes that have included environmental groups, industry representatives, scientific experts, and public input, including Water Quality Guidance for the Great Lakes, and other states as well.

Fond du Lac believes that the turbidity-related condition cannot be made any less stringent without violating the requirements of tribal law. Section 301(h) of our water quality standards specifies "settleable and suspended solids (turbidity) should not reduce the depth of the compensation point for photosynthetic activity by more than 10% from the seasonally established norm for aquatic life". Our comprehensive water quality monitoring data collected over the last eighteen years provides a defensible basis for defining ambient conditions and protecting the existing high quality and biological integrity in our surface waters.

¹ Memorandum from Ephraim S. King, Director, EPA Office of Science and Technology, to Water Management Division Directors, Regions 1-10, "Tier 2 Antidegradation Reviews and Significance Thresholds", August 10, 2005.

(Certification continued):

Certification: Certification is **DENIED** to any new discharge to Outstanding Reservation Resource Waters (ORRW) as described in § 105 b. 3. of the Fond du Lac Water Quality Standards (Ordinance #12/98, as amended). Although additional waters may be designated in the future, currently Perch Lake, Rice Portage Lake, Miller Lake, Deadfish Lake, and Jaskari Lake are designated as ORRWs. New dischargers wishing to discharge to an ORRW must obtain a separate Water Quality Certification of such discharges.

[The Office of Water Protection will deny, due to insufficient information, any general license or permit with any new discharges into Outstanding Reservation Resource Waters (ORRW) as described in 105b.3 of the Fond du Lac Water Quality Standards (Ordinance #12/98, as amended) for the same reasons as listed below. Fond du Lac Water Quality Certification Ordinance (Ordinance #01/06), Section 203 c. 2) (A)].

As per § 201(e) of the Water Quality Certification Standards Ordinance #01/06 this Water Quality Certification is **DENIED WITHOUT PREJUDICE** for all other waters/wetlands within the Fond du Lac Reservation for the following reasons:

- 1) Aquatic resources are extremely important to the Fond du Lac Band of Lake Superior Chippewa and are quite extensive, comprising approximately 47% of the area within the external boundaries of the Fond du Lac Reservation.
- 2) Although the locations of these aquatic resources are known and mapped, the locations of potential transportation projects are not known. Therefore, the potential impacts to the aquatic resources cannot be quantified unless the actual project scope and location is known.
- 3) While a set of generic conditions may be adequate to protect water quality, until a specific transportation project is proposed, it is difficult to determine what site-specific conditions may be appropriate to truly protect the water quality and aquatic resources that Fond du Lac Band Members depend upon.

[Fond du Lac Water Quality Certification Ordinance (Ordinance #01/06), Section 203 c. 2) (A)-(D)].

Fond du Lac has chosen to Deny Without Prejudice this 401 Water Quality Certification as to not create any undue burden on the applicant or the Corps of Engineers. It will allow the applicant to use the Transportation Regional General Permit, yet allow Fond du Lac the opportunity to review the applicant's project and develop a set of conditions to an individual 401 Water Quality Certification that is project-specific.

401 Certification – St. Paul Dist. USACE – RGP Transportation – Page 5 of 5

(Certification continued):

Authorization of Certification: I, Reginald DeFoe, do Deny Without Prejudice Clean Water Act § 401 Water Quality Certification to the U. S. Army Corps of Engineers – St. Paul District for the 2023 Transportation Regional General Permit on the Fond du Lac Reservation.

Signed: Reginald DeFoe Date: 11/07/22

Reginald DeFoe
Resource Management Director
Fond du Lac Reservation

Fond du Lac Band of Lake Superior Chippewa Resource Management Division

1720 Big Lake Road
Cloquet, MN 55720
Phone (218) 878-7101
Fax (218) 878-7130



Office of Water Protection 401 Water Quality Certification

APPLICANT: USACE St. Paul District

ISSUED: 07 November 2022

Administration
Conservation Enforcement
Environmental
Fisheries
Forestry
Land Information
Natural Resources
Wildlife

Pursuant to § 401 of the Clean Water Act (33 U.S.C. 1341), the Fond du Lac Band of Lake Superior Chippewa is required to certify whether the activity described below will violate applicable water quality standards. Accordingly, the Fond du Lac Reservation Office of Water Protection requires reasonable assurance that the activity will not violate provisions of the Fond du Lac Band of Lake Superior Chippewa Water Quality Standards of the Fond du Lac Reservation, Ordinance #12/98 (Adopted by Resolution #1403/98 of the Fond du Lac Reservation Business Committee on December 10, 1998; Amended by Resolution #1286/01 of the Fond du Lac Reservation Business Committee on September 11, 2001 and by Resolution #1321 of the Reservation Business Committee on July 8, 2020), the Fond du Lac Band of Lake Superior Chippewa Water Quality Certification, Ordinance #01/06 (Adopted by Resolution #1033/06, as amended, of the Fond du Lac Reservation Business Committee on March 28, 2006; Amended by Resolution #1513 of the Reservation Business Committee on December 16, 2020), or of § 301, 302, 303, 306, or 307 of the Clean Water Act.

A request for Clean Water Act (CWA) § 401 Water Quality Certification has been received from the United States Army Corps of Engineers – St. Paul District for the 2023 Utility Regional General Permit. Fond du Lac's Water Quality Standards may be found at: <http://www.fdlrez.com/government/ords/12-98ord.pdf>

Applicant: **Regulatory Branch**
St. Paul District, Corps of Engineers
180 Fifth Street East, Suite 700
St. Paul, Minnesota 55101-1678

Authorized Work: Regulated activities associated with the five items listed below are eligible for authorization using the Utility RGP. The Utility RGP may be used to authorize losses and temporary impacts in waters of the United States necessary to accomplish the activities listed below:

- a. Utility Lines: Regulated activities for single and complete linear projects to construct, maintain, or repair utility lines, including foundations for overhead utility line towers, poles, and anchors. This includes utility lines strung above, and routed in and under, Section 10 waters.

(Authorized Work continued):

b. Utility Survey Activities: Temporary regulated activities for survey projects. Survey activities include core sampling, exploratory-type bore holes, exploratory trenching, soil surveys, sampling, sample plots or transects for wetland delineations, and historic resources surveys.

c. Substation Facilities: Regulated activities for single and complete non-linear projects required to construct, maintain, or expand substation facilities.

d. Access Roads: Regulated activities for single and complete linear projects to construct permanent and temporary access roads necessary for the construction, repair, and maintenance of utility lines and substations, and to provide access to utility survey locations.

e. Remediation of Inadvertent Returns of Drilling Fluid: Regulated activities necessary for the remediation of inadvertent returns of drilling fluids through sub-soil fissures that might occur during directional drilling or boring activities conducted for the purpose of installing or replacing utility lines. These remediation activities must be done as soon as practicable to restore the affected waterbody. The Corps may add special conditions to RGP verification to require a remediation plan for addressing inadvertent returns of drilling fluids to waters of the United States during drilling and boring activities conducted for installing or replacing utility lines.

Location(s): Construction activities authorized under this Regional General Permit may occur anywhere permissible by the Permit and this Certification within the exterior boundaries of the Fond du Lac Reservation.

Background: The Fond du Lac Reservation Office of Water Protection (OWP) has examined the request for Certification, the Public Notice, and the Utility Regional General Permit, and based upon our evaluation of the supplied information that is relevant to Water Quality Certification considerations, **at this time we DO NOT CERTIFY** that there is reasonable assurance that activities associated with the Regional General Permit will be conducted in a manner that will not violate the Fond du Lac Band of Lake Superior Chippewa Water Quality Standards of the Fond du Lac Reservation Ordinance #12/98, as amended.

The §401 certification process ensures that Fond du Lac has the opportunity to establish conditions or even deny certification in order to protect our reservation water resources. The conditions that Fond du Lac believe are necessary to assure compliance with applicable provisions of CWA sections 208(e), 301, 302, 303, 306, and 307, and with appropriate requirements of tribal law (specifically, Fond du Lac Ordinance #12/98, as amended) are related to our interpretation of our narrative water quality standards and our

(Background continued):

antidegradation policies. The condition regarding turbidity (no more than 10% increase over ambient or background turbidity) defines the water quality based effluent limitation (WQBEL) and monitoring/reporting requirements necessary to assure that any applicant for this Federal permit will be in compliance with our water quality standards.

Monitoring and reporting requirements allow Fond du Lac, USEPA, and USACE to confirm that the certification conditions intended to protect the existing high quality of our reservation waters are effective and being implemented. They can trigger adaptive management practices at a site, and can help inform the development of more robust certification conditions in the future. Monitoring and reporting activities help permittees to actually see and understand the impact, or avert an impact, on water quality resulting from their permitted actions. Over the ten (10) years period of EPA's Construction General Permit (now CGP 2017) had been in effect with the Fond du Lac turbidity limit and monitoring requirement, we have only encountered one incident of exceedance of this permit condition. This exceedance led to immediate corrective action that may not have otherwise been required without this specific condition in place.

Fond du Lac considers all waters of the reservation to be Tier 2 (higher quality, on a pollutant by pollutant basis, than the minimum quality necessary to maintain designated uses), and our primary wild rice lakes are Tier 3 or "Outstanding Reservation Resource Value" waters. It is entirely consistent with EPA guidance on antidegradation review¹, for instance, to define a significance threshold above which the effects on water quality require findings of necessity and social and economic importance to support any decision about the lowering of water quality in high quality waters. The significance threshold of

10% has been independently defined and approved by EPA through multiple processes that have included environmental groups, industry representatives, scientific experts, and public input, including Water Quality Guidance for the Great Lakes, and other states as well.

Fond du Lac believes that the turbidity-related condition cannot be made any less stringent without violating the requirements of tribal law. Section 301(h) of our water quality standards specifies "settleable and suspended solids (turbidity) should not reduce the depth of the compensation point for photosynthetic activity by more than 10% from the seasonally established norm for aquatic life". Our comprehensive water quality monitoring data collected over the last eighteen years provides a defensible basis for defining ambient conditions and protecting the existing high quality and biological integrity in our surface waters.

¹ Memorandum from Ephraim S. King, Director, EPA Office of Science and Technology, to Water Management Division Directors, Regions 1-10, "Tier 2 Antidegradation Reviews and Significance Thresholds", August 10, 2005.

401 Certification – St. Paul Dist. USACE – RGP Transportation – Page 4 of 5

(Certification continued):

Certification: Certification is **DENIED** to any new discharge to Outstanding Reservation Resource Waters (ORRW) as described in § 105 b. 3. of the Fond du Lac Water Quality Standards (Ordinance #12/98, as amended). Although additional waters may be designated in the future, currently Perch Lake, Rice Portage Lake, Miller Lake, Deadfish Lake, and Jaskari Lake are designated as ORRWs. New dischargers wishing to discharge to an ORRW must obtain a separate Water Quality Certification of such discharges.

[The Office of Water Protection will deny, due to insufficient information, any general license or permit with any new discharges into Outstanding Reservation Resource Waters (ORRW) as described in 105b.3 of the Fond du Lac Water Quality Standards (Ordinance #12/98, as amended) for the same reasons as listed below. Fond du Lac Water Quality Certification Ordinance (Ordinance #01/06), Section 203 c. 2) (A)].

As per § 201(e) of the Water Quality Certification Standards Ordinance #01/06 this Water Quality Certification is **DENIED WITHOUT PREJUDICE** for all other waters/wetlands within the Fond du Lac Reservation for the following reasons:

- 1) Aquatic resources are extremely important to the Fond du Lac Band of Lake Superior Chippewa and are quite extensive, comprising approximately 47% of the area within the external boundaries of the Fond du Lac Reservation.
- 2) Although the locations of these aquatic resources are known and mapped, the locations of potential utility projects are not known. Therefore, the potential impacts to the aquatic resources cannot be quantified unless the actual project scope and location is known.
- 3) While a set of generic conditions may be adequate to protect water quality, until a specific utility project is proposed, it is difficult to determine what site-specific conditions may be appropriate to truly protect the water quality and aquatic resources that Fond du Lac Band Members depend upon.

[Fond du Lac Water Quality Certification Ordinance (Ordinance #01/06), Section 203 c. 2) (A)-(D)].


Fond du Lac has chosen to Deny Without Prejudice this 401 Water Quality Certification as to not create any undue burden on the applicant or the Corps of Engineers. It will allow the applicant to use the Utility Regional General Permit, yet allow Fond du Lac the opportunity to review the applicant's project and develop a set of conditions to an individual 401 Water Quality Certification that is project-specific.

401 Certification – St. Paul Dist. USACE – RGP Transportation – Page 5 of 5

(Certification continued):

Authorization of Certification: I, Reginald DeFoe, do Deny Without Prejudice Clean Water Act § 401 Water Quality Certification to the U. S. Army Corps of Engineers – St. Paul District for the 2023 Utility Regional General Permit on the Fond du Lac Reservation.

Signed: _____



Date: _____

11/07/22

Reginald DeFoe
Resource Management Director
Fond du Lac Reservation

Fond du Lac Band of Lake Superior Chippewa Resource Management Division

1720 Big Lake Road
Cloquet, MN 55720
Phone (218) 878-7101
Fax (218) 878-7130



Office of Water Protection 401 Water Quality Certification

APPLICANT: USACE St. Paul District

ISSUED: 07 November 2022

Administration
Conservation Enforcement
Environmental
Fisheries
Forestry
Land Information
Natural Resources
Wildlife

Pursuant to § 401 of the Clean Water Act (33 U.S.C. 1341), the Fond du Lac Band of Lake Superior Chippewa is required to certify whether the activity described below will violate applicable water quality standards. Accordingly, the Fond du Lac Reservation Office of Water Protection requires reasonable assurance that the activity will not violate provisions of the Fond du Lac Band of Lake Superior Chippewa Water Quality Standards of the Fond du Lac Reservation, Ordinance #12/98 (Adopted by Resolution #1403/98 of the Fond du Lac Reservation Business Committee on December 10, 1998; Amended by Resolution #1286/01 of the Fond du Lac Reservation Business Committee on September 11, 2001 and by Resolution #1321 of the Reservation Business Committee on July 8, 2020), the Fond du Lac Band of Lake Superior Chippewa Water Quality Certification, Ordinance #01/06 (Adopted by Resolution #1033/06, as amended, of the Fond du Lac Reservation Business Committee on March 28, 2006; Amended by Resolution #1513 of the Reservation Business Committee on December 16, 2020), or of § § 301, 302, 303, 306, or 307 of the Clean Water Act.

A request for Clean Water Act (CWA) § 401 Water Quality Certification has been received from the United States Army Corps of Engineers – St. Paul District for the 2023 Wildlife Ponds Regional General Permit. Fond du Lac's Water Quality Standards may be found at: <http://www.fdlrez.com/government/ords/12-98ord.pdf>

Applicant: **Regulatory Branch**
St. Paul District, Corps of Engineers
180 Fifth Street East, Suite 700
St. Paul, Minnesota 55101-1678

Authorized Work: Regulated activities, including losses and temporary impacts required for the construction of small ponds for wildlife habitat.

Location(s): Construction activities authorized under this Regional General Permit may occur anywhere permissible by the Permit and this Certification within the exterior boundaries of the Fond du Lac Reservation.

Background: The Fond du Lac Reservation Office of Water Protection (OWP) has examined the request for Certification, the Public Notice, and the Wildlife Ponds

(Background continued):

Regional General Permit, and based upon our evaluation of the supplied information that is relevant to Water Quality Certification considerations, **at this time we DO NOT CERTIFY** that there is reasonable assurance that activities associated with the Regional General Permit will be conducted in a manner that will not violate the Fond du Lac Band of Lake Superior Chippewa Water Quality Standards of the Fond du Lac Reservation Ordinance #12/98, as amended.

The §401 certification process ensures that Fond du Lac has the opportunity to establish conditions or even deny certification in order to protect our reservation water resources. The conditions that Fond du Lac believe are necessary to assure compliance with applicable provisions of CWA sections 208(e), 301, 302, 303, 306, and 307, and with appropriate requirements of tribal law (specifically, Fond du Lac Ordinance #12/98, as amended) are related to our interpretation of our narrative water quality standards and our antidegradation policies. The condition regarding turbidity (no more than 10% increase over ambient or background turbidity) defines the water quality based effluent limitation (WQBEL) and monitoring/reporting requirements necessary to assure that any applicant for this Federal permit will be in compliance with our water quality standards.

Monitoring and reporting requirements allow Fond du Lac, USEPA, and USACE to confirm that the certification conditions intended to protect the existing high quality of our reservation waters are effective and being implemented. They can trigger adaptive management practices at a site, and can help inform the development of more robust certification conditions in the future. Monitoring and reporting activities help permittees to actually see and understand the impact, or avert an impact, on water quality resulting from their permitted actions. Over the ten (10) years period of EPA's Construction General Permit (now CGP 2017) had been in effect with the Fond du Lac turbidity limit and monitoring requirement, we have only encountered one incident of exceedance of this permit condition. This exceedance led to immediate corrective action that may not have otherwise been required without this specific condition in place.

Fond du Lac considers all waters of the reservation to be Tier 2 (higher quality, on a pollutant by pollutant basis, than the minimum quality necessary to maintain designated uses), and our primary wild rice lakes are Tier 3 or "Outstanding Reservation Resource Value" waters. It is entirely consistent with EPA guidance on antidegradation review¹, for instance, to define a significance threshold above which the effects on water quality require findings of necessity and social and economic importance to support any decision about the lowering of water quality in high quality waters. The significance threshold of

10% has been independently defined and approved by EPA through multiple processes that have included environmental groups, industry representatives, scientific experts, and

¹ Memorandum from Ephraim S. King, Director, EPA Office of Science and Technology, to Water Management Division Directors, Regions 1-10, "Tier 2 Antidegradation Reviews and Significance Thresholds", August 10, 2005.

(Background continued):

public input, including Water Quality Guidance for the Great Lakes, and other states as well.

Fond du Lac believes that the turbidity-related condition cannot be made any less stringent without violating the requirements of tribal law. Section 301(h) of our water quality standards specifies “settleable and suspended solids (turbidity) should not reduce the depth of the compensation point for photosynthetic activity by more than 10% from the seasonally established norm for aquatic life”. Our comprehensive water quality monitoring data collected over the last eighteen years provides a defensible basis for defining ambient conditions and protecting the existing high quality and biological integrity in our surface waters.

Certification: Certification is **DENIED** to any new discharge to Outstanding Reservation Resource Waters (ORRW) as described in § 105 b. 3. of the Fond du Lac Water Quality Standards (Ordinance #12/98, as amended). Although additional waters may be designated in the future, currently Perch Lake, Rice Portage Lake, Miller Lake, Deadfish Lake, and Jaskari Lake are designated as ORRWs. New dischargers wishing to discharge to an ORRW must obtain a separate Water Quality Certification of such discharges.

[The Office of Water Protection will deny, due to insufficient information, any general license or permit with any new discharges into Outstanding Reservation Resource Waters (ORRW) as described in 105b.3 of the Fond du Lac Water Quality Standards (Ordinance #12/98, as amended) for the same reasons as listed below. Fond du Lac Water Quality Certification Ordinance (Ordinance #01/06), Section 203 c. 2) (A)].

As per § 201(e) of the Water Quality Certification Standards Ordinance #01/06 this Water Quality Certification is **DENIED WITHOUT PREJUDICE** for all other waters/wetlands within the Fond du Lac Reservation for the following reasons:

- 1) Aquatic resources are extremely important to the Fond du Lac Band of Lake Superior Chippewa and are quite extensive, comprising approximately 47% of the area within the external boundaries of the Fond du Lac Reservation.
- 2) Although the locations of these aquatic resources are known and mapped, the locations of the potential projects are not known. Therefore, the potential impacts to the aquatic resources cannot be quantified unless the actual project scope and location is known.
- 3) While a set of generic conditions may be adequate to protect water quality, until a specific project is proposed, it is difficult to determine what site-specific conditions may

401 Certification – St. Paul Dist. USACE – RGP Wildlife Ponds – Page 4 of 4

(Certification continued):

be appropriate to truly protect the water quality and aquatic resources that Fond du Lac Band Members depend upon.

[Fond du Lac Water Quality Certification Ordinance (Ordinance #01/06), Section 203 c. 2) (A)-(D)].

Fond du Lac has chosen to Deny Without Prejudice this 401 Water Quality Certification as to not create any undue burden on the applicant or the Corps of Engineers. It will allow the applicant to use the Wildlife Regional General Permit, yet allow Fond du Lac the opportunity to review the applicant's project, determine the merits of the project, and develop a set of conditions to an individual 401 Water Quality Certification that is project-specific.

Authorization of Certification: I, Reginald DeFoe, do Deny Without Prejudice Clean Water Act § 401 Water Quality Certification to the U. S. Army Corps of Engineers – St. Paul District for the 2023 Wildlife Ponds Regional General Permit on the Fond du Lac Reservation.

Signed: _____



Date: _____

11/07/22

Reginald DeFoe
Resource Management Director
Fond du Lac Reservation