Navajo Nation Environmental Protection Agency
P. O. Box 339, Window Rock, AZ 86515
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Russell Begaye.
President

Jonathan Nez,
Vice-President

March 6, 2017

Lieutenant Colonel James L. Booth
District Commander
U.S. Army Corps of Engineers Regulatory Branch
Albuquerque District
4101 Jefferson Plaza NE
Albuquerque, NM 8409-3435

Colonel Booth:

The Navajo Nation Environmental Protection Agency(NNEPA)Water Quality Program received its Treatment As State from the United States Environmental Protection Agency (USEPA), Region IX on January 20, 2006 for assumption of the federal Clean Water Action(CWA) Sections 303 & 401 authorities for all lands within (1) the formal Reservation excluding the former Bennet Freeze area and lands leased to the powerplants, (2) the 3 satellite reservations of Alamo, Tohajiilee, and Ramah, and (3) all tribal trust lands in the Eastern Navajo Agency. On March 23, 2006 the USEPA approved the Navajo Nation Surface Water Quality Standards (NNSWQS), which allows the Navajo Nation to issue federal permit certifications.

The Navajo Nation has reviewed the Federal Register notice *Proposed to Reissue and Modify Nationwide Permits* (FR Notice). The purpose of this letter is to notify the U.S. Army Corps of Engineers(USACOE) that the Navajo Nation does not waive water quality certification for any Nationwide Permits(NWP) and will require that the Navajo Nation certify each individual permit. Each individual applicant will need to apply for a § 401 permit from the NNEPA/Water Quality Program. By reviewing and certifying each individual permit request, the Navajo Nation ensures that individuals that apply for a NWP will comply with § 301, § 302, § 303, § 306, and § 307 of the federal CWA, the NNSWQS [RCN-191-99], and other applicable Navajo Nation requirements. These certification will provide reasonable assurance that the permitted activities will be conducted in a manner, which will not violate the Navajo Nation Surface Water Quality Standards and provisions of the CWA. Therefore, we respectfully DENY water quality certification for ALL NWP's.

Anyone requesting to perform such activities must first obtain a project specific Section 401 Water Quality Certification from the NNEPA Water Quality Program before proceeding under a NWP. Our office would also like to begin seeing the practice of NWP Condition 30-Compliance Certification communicated by documentation by the three districts (Sacramento, Los Angeles, and Albuquerque Districts). With a recent project causing national controversy involving cultural sensitivity, we would like to voice our concern about future projects on the Navajo Nation that may involve similar cultural sensitivity. Full adherence to NWP Condition 20 should address potential cultural sensitivity issues but, nonetheless, NNEPA and USACOE District should carefully consider such cultural sensitivities prior to issuing permit approvals or permit coverage. Hence, NWP activities must comply with Tribal Water Quality Standards. NNEPA Water Quality Program staff are available to work with your office regarding this manner.

If you have any questions, please contact Lee Anna M. Silversmith, 401 Certification Coordinator, NNEPA Water Quality Program at (928) 871-7700 or Ronnie Ben, Department Director, Surface and Ground Water Protection Department at (928) 871-7701.

Sincerely,

Dr. Donald Benn, Executive Director
Navajo Nation Environmental Protection Agency

cc: USEPA, Region IX-Jason Brush, Water Division, 75 Hawthorne Street, San Francisco, CA 94105
USACOE, Albuquerque District, Chris Wrbas, 1970 East 3rd Ave. Suite 109, Durango, CO 81301
NNEPA WQP, Lee Anna M. Silversmith, PO Box 339, Window Rock, AZ 86515