



**Navajo Nation Environmental Protection Agency
Surface and Ground Water Protection Department**

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JONATHAN NEZ
President

MYRON LIZER
Vice-President

November 16, 2020

Kelly E. Allen
Chief, Regulatory Division
Albuquerque District
U.S. Army Corps of Engineers
4101 Jefferson Plaza, NE
Albuquerque, NM 87109

Re: U.S. Army Corps of Engineers request for water quality certification under § 401 of the CWA

Dear Kelly E. Allen:

The Navajo Nation Environmental Protection Agency (NNEPA) thanks the U.S. Army Corps of Engineers (Corps) for its October 15, 2020, letter, which states: "The Albuquerque, Los Angeles, and Sacramento Districts (Districts) request water quality certification under Section 401 of the Clean Water Act for the proposed issuance of those NWP's that may result in a discharge in waters of the United States in the Navajo Nation." The letter further states: "The Districts hereby request that the certifying authority review and take action on this Section 401 water quality certification request within the applicable reasonable period of time of 60 days from the date of receipt of this request." For procedural purposes, NNEPA will consider October 15, 2020, as the date of the Corps' request; sixty days from this date is December 14, 2020.

The United States Environmental Protection Agency (USEPA), Region IX, approved the Navajo Nation's eligibility for treatment as a state (TAS) on January 20, 2006, under the Clean Water Act (CWA) sections 303 and 401. Accordingly, NNEPA has assumed authority for all lands within (1) the formal Reservation, including the former Bennett Freeze area and excluding lands leased to the power plants, (2) the three satellite reservations of Alamo, Tohajiilee, and Ramah, and (3) all tribal trust lands in the Eastern Navajo Agency. On October 5, 2020, USEPA approved the Navajo Nation Surface Water Quality Standards of 2015 (NNSWQS 2015).

The Navajo Nation has reviewed the Corps' September 15, 2020, Federal Register notice: *Proposed to Reissue and Modify Nationwide Permits; Proposed Rule* (FR Notice). The purpose of this letter is to notify the Corps that the Navajo Nation does not waive water quality certification for any of the Nationwide Permits and therefore will require that the Navajo Nation certify each individual permit. Accordingly, each individual applicant will need to apply for a § 401 permit from NNEPA's Surface and Ground Water Protection Department's Water Quality Program (WQP). By reviewing and certifying each individual permit request, the Navajo Nation ensures that individuals that apply for a Nationwide Permit will comply with § 301, § 302, § 303, § 306, and § 307 of the CWA, the NNSWQS 2015, and other applicable Navajo Nation requirements. These certifications will provide reasonable assurance that the permitted activities will be conducted in a manner that will not violate NNSWQS 2015 or any provisions of the CWA. Therefore, we respectfully DENY water quality certification for ALL Nationwide Permits.

Anyone requesting to perform such activities must first obtain a project-specific Section 401 water quality certification from the NNEPA WQP before proceeding under a Nationwide Permit. NNEPA WQP staff will be available to work with your office regarding this matter.

If you have any questions, please contact Patrick Antonio, Program Manager/Principal Hydrologist, with the NNEPA Water Quality/NPDES Program at (928) 871-7185.

Sincerely,

hail

Ronnie Ben, Department Director
Navajo Nation Environmental Protection Agency
Surface and Ground Water Protection Department

Copy furnished:

USEPA, Region IX – Thomas Torres, Director, Water Division, 75 Hawthorne Street, San Francisco, CA 94105.
NNEPA/WQP & NPDES Programs, Post Office Box 339, Window Rock, AZ 86515

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