

RESOLUTION OF THE  
RESOURCES AND DEVELOPMENT COMMITTEE  
Of the 23<sup>rd</sup> Navajo Nation Council -- Third Year, 2017

AN ACTION

RELATING TO RESOURCES AND DEVELOPMENT; APPROVING THE GRANT OF RIGHT-OF-WAY TO THE BUREAU OF INDIAN AFFAIRS FOR CONSTRUCTION OF AN ALL-WEATHER ROADWAY, NAVAJO ROUTE 11, MARIANO LAKE ROAD LOCATED IN MARIANO LAKE AND CROWNPOINT CHAPTERS (MCKINLEY COUNTY, NEW MEXICO)

BE IT ENACTED:

SECTION ONE. AUTHORITY

A. Pursuant to 2 N.N.C. Section §501 (B)(2), The Resources and Development Committee of the Navajo Nation Council has the authority to grant final approval for all land withdrawals, non-mineral leases, permits, licenses, rights-of-way, surface easements and bonding requirements on Navajo Nation lands and unrestricted (fee) land. This authority shall include subleases, modifications, assignments, leasehold encumbrances, transfers, renewals, and terminations.

SECTION TWO. FINDINGS

A. Bureau of Indian Affairs, Navajo Region, Division of Transportation, P.O. Box 1060, Gallup, New Mexico 87305, has submitted a right-of-way (ROW) application for construction of an all-weather roadway for project N11(1)(2) 1,2&4 on, over and across Navajo Nation Trust Lands and allotted lands in Mariano Lake and Crownpoint Chapters vicinities, McKinley County, New Mexico. The application request is attached hereto and incorporated herein as **Exhibit A**.

B. The proposed right-of-way is more particularly described in the maps are attached hereto and incorporated herein as **Exhibit B**.

C. The Project Review Section with the Navajo Land Department identified grazing permittees on the proposed site. Consent to use the land was obtained and are attached along with the Project Review Section memorandum dated November 16, 2016. The November 16, 2016 memorandum also states that a consent was not obtained from an individual whose grazing permit holder's grazing permit was not renewed because he failed to submit a livestock tally count. The November 16, 2016 memorandum is attached hereto as **Exhibit C**.

D. A waiver of consideration is requested. The right-of-way project would serve a public purpose because the project will benefit Navajo residents.

E. The Resources and Development Committee finds a waiver of the bond requirement, 25 C.F.R. § 162 (f) (2), is in the best interest of the Navajo Nation.

F. It is in the best interest of the Navajo Nation to grant the right-of-way to the Bureau of Indian Affairs, Navajo Region, Division of Transportation, for construction of an all-weather roadway for project N11(1)(2)1,2&4.

### **SECTION THREE. APPROVAL**

A. The Resources and Development Committee of the Navajo Nation Council hereby approves the Grant of Right-of-Way to Bureau of Indian Affairs, Navajo Region, Division of Transportation, for construction of an all-weather roadway for project N11(1)(2) 1,2&4 on, over and across Navajo Nation Trust Lands and allotted lands in Mariano Lake and Crownpoint Chapters vicinities, McKinley County, New Mexico. The location is more particularly described on the survey map attached hereto as **Exhibit B**.

B. The Resources and Development Committee of the Navajo Nation Council hereby waives consideration for the right-of-way project because the project will benefit Navajo residents.

C. The Resources and Development Committee of the Navajo Nation Council hereby waives the requirements for a bond, insurance, or alternative form of security as being in the best interest of the Navajo Nation pursuant to 25 C.F.R. § 162 (f) (2).

D. The Resources and Development Committee of the Navajo Nation Council hereby approves the right-of-way subject to, but not limited to, the following terms and conditions incorporated herein and attached as **Exhibit D**.

E. The Resources and Development Committee of the Navajo Nation Council hereby authorizes the President of the Navajo Nation to execute any and all documents necessary to affect the intent and purpose of this resolution.

**CERTIFICATION**

I, hereby, certify that the following resolution was duly considered by the Resources and Development Committee of the 23<sup>rd</sup> Navajo Nation Council at a duly called meeting at NDOT, Tse Bonito, (Navajo Nation) New Mexico, at which quorum was present and that same was passed by a vote of 4 in favor, 0 opposed, 1 abstained this 4<sup>th</sup> day of May, 2017.

A handwritten signature in black ink, appearing to read 'Alton Joe Shepherd', with a long horizontal flourish extending to the right.

**Alton Joe Shepherd, Chairperson  
Resources and Development Committee  
Of the 23<sup>rd</sup> Navajo Nation Council**

**Motion: Honorable Jonathan Perry  
Second: Honorable Leonard Pete**

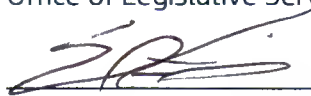


# THE NAVAJO NATION

RUSSELL BEGAYE PRESIDENT  
JONATHAN NEZ VICE PRESIDENT

## Memorandum

To: Shammie Begay, Legislative Advisor  
Office of Legislative Services

From:   
Elerina Yazzie, Department Manager  
General Land Development Department

Date: March 16, 2017

Re: N11 Right-of-Way Bond Waiver Request, per Legislative Request

This memo is per your request regarding the Bureau of Indian Affairs, Navajo Region, Division of Transportation's application for a right-of-way for the construction of an all-weather roadway for project N11 (1) (2) 1, 2&4, Mariano Lake Road on trust lands.

The General Land Development Department (GLDD) understands that because of the implement of the federal regulations relating to rights-of-way, this project has been affected by the bond requirement. We learned that the Resources and Development Committee (RDC) is amending road projects packages individually by legislation. The Office of Legislative Services requested from GLDD, a memorandum stating the need for insertion of the "waiver language." Will your office amend the resolution to reflect these changes?

I awaited to submit this letter to your office until after March 15, 2017, because I understood there was an RDC work session with BIA, NDOT and others to discuss the federal regulation changes and its impacts. The main purpose I waited, is because I understood there would be clarity on what types of projects waivers should be considered. However, my supervisor notified me that this meeting was cancelled due to only two delegates available.

If you have further questions, I can be contacted at (928) 871-7197, thank you.

xc: Resources Committee  
Bidtah Becker, Executive Director, DNR  
File / GLDD





# THE NAVAJO NATION

RUSSELL BEGAYE PRESIDENT  
JOSEPH H. EZ VICE PRESIDENT

January 11, 2017

Sharon Pinto, Regional Director  
Bureau of Indian Affairs  
Navajo Region  
Post Office Box 1060  
Gallup, New Mexico 87301

Dear Ms. Pinto,

The Bureau of Indian Affairs, Navajo Region, Division of Transportation, P.O. Box 1060, Gallup, New Mexico, 87305, has submitted an application for a right-of-way (ROW), attached hereto as EXHIBIT A.

The right-of-way is for the Construction of an All-Weather Roadway for project N11 (1)(2) 1,2&4, Mariano Lake Road located at sections 1, 11, 15, 16, 21, T16N, R14W, NMPM, and sections 14, 15, 29, 31, T17N, R13W, NMPM within McKinley County, New Mexico. The said right-of-way is on Navajo tribal trust land, allotments and revocable trust lands that is approximately 12.12 miles in length, 150' in width, and 251.48 acres, a survey plat showing definite location is attached hereto as EXHIBIT B.

The Navajo Nation's consent is hereby granted to the Bureau of Indian Affairs, Navajo Region, Division of Transportation for tribal trust lands only, subject to, but not limited to the terms and conditions attached hereto as EXHIBIT D.

Please call the Navajo General Land Development Department/Division of Natural Resources, if you have any questions at (928) 871-6447, thank you.

Sincerely,

THE NAVAJO NATION

Russell Begaye, Navajo Nation President

XC: *File/General Land Development Department*

Document No. 006658Date Issued: 09/02/2016**EXECUTIVE OFFICIAL REVIEW**Title of Document: BIA, ROW Mariano Lake Rd N11 Contact Name: DRAPER, HOWARDProgram/Division: DIVISION OF NATURAL RESOURCESEmail: howarddraper@frontiernet.net Phone Number: 928/871-6447☐ **Business Site Lease** Sufficient    Insufficient

- |   |             |   |   |
|---|-------------|---|---|
| 1. Division: _____  | Date: _____ | □ | □ |
| 2. Office of the Controller: _____  | Date: _____ | □ | □ |
| (only if Procurement Clearance is not issued within 30 days of the initiation of the E.O. review) |             |   |   |
| 3. Office of the Attorney General: _____  | Date: _____ | □ | □ |

☐ **Business and Industrial Development Financing, Veteran Loans, (i.e. Loan, Loan Guarantee and Investment) or Delegation of Approving and/or Management Authority of Leasing transactions**

- |  |             |   |   |
|--|-------------|---|---|
| 1. Division: _____                       | Date: _____ | □ | □ |
| 2. Office of the Attorney General: _____ | Date: _____ | □ | □ |

☐ **Fund Management Plan, Expenditure Plans, Carry Over Requests, Budget Modifications**

- |   |             |   |   |
|---|-------------|---|---|
| 1. Office of Management and Budget: _____ | Date: _____ | □ | □ |
| 2. Office of the Controller: _____        | Date: _____ | □ | □ |
| 3. Office of the Attorney General: _____  | Date: _____ | □ | □ |

☐ **Navajo Housing Authority Request for Release of Funds**

- |  |             |   |   |
|--|-------------|---|---|
| 1. NNEPA: _____                          | Date: _____ | □ | □ |
| 2. Office of the Attorney General: _____ | Date: _____ | □ | □ |

☐ **Lease Purchase Agreements**

- |  |             |   |   |
|--|-------------|---|---|
| 1. Office of the Controller: _____       | Date: _____ | □ | □ |
| (recommendation only)                    |             |   |   |
| 2. Office of the Attorney General: _____ | Date: _____ | □ | □ |

☐ **Grant Applications**

- |   |             |   |   |
|---|-------------|---|---|
| 1. Office of Management and Budget: _____ | Date: _____ | □ | □ |
| 2. Office of the Controller: _____        | Date: _____ | □ | □ |
| 3. Office of the Attorney General: _____  | Date: _____ | □ | □ |

☐ **Five Management Plan of the Local Governance Act, Delegation of an Approving Authority from a Standing Committee, Local Ordinances (Local Government Units), or Plans of Operation/Division Policies Requiring Committee Approval**

- |  |             |   |   |
|--|-------------|---|---|
| 1. Division: _____                       | Date: _____ | □ | □ |
| 2. Office of the Attorney General: _____ | Date: _____ | □ | □ |

☐ **Relinquishment of Navajo Membership**

- |  |             |   |   |
|--|-------------|---|---|
| 1. Land Department: _____                | Date: _____ | □ | □ |
| 2. Elections: _____                      | Date: _____ | □ | □ |
| 3. Office of the Attorney General: _____ | Date: _____ | □ | □ |

☐ Land Withdrawal or Relinquishment for Commercial Purposes

Sufficient    Insufficient

1. Division: \_\_\_\_\_ Date: \_\_\_\_\_ ☐ ☐
2. Office of the Attorney General: \_\_\_\_\_ Date: \_\_\_\_\_ ☐ ☐

☐ Land Withdrawals for Non-Commercial Purposes, General Land Leases and Resource Leases

1. NLD \_\_\_\_\_ Date: \_\_\_\_\_ ☐ ☐
2. F&W \_\_\_\_\_ Date: \_\_\_\_\_ ☐ ☐
3. HPD \_\_\_\_\_ Date: \_\_\_\_\_ ☐ ☐
4. Minerals \_\_\_\_\_ Date: \_\_\_\_\_ ☐ ☐
5. NNEPA \_\_\_\_\_ Date: \_\_\_\_\_ ☐ ☐
6. DNR \_\_\_\_\_ Date: \_\_\_\_\_ ☐ ☐
7. DOJ \_\_\_\_\_ Date: \_\_\_\_\_ ☐ ☐

☒ Rights of Way

1. NLD \_\_\_\_\_ Date: 9-27-16 ☒ ☐
2. F&W \_\_\_\_\_ Date: Dec. 5, 2016 ☒ ☐
3. HPD \_\_\_\_\_ Date: 12/13/16 ☒ ☐
4. Minerals \_\_\_\_\_ Date: 12/15/16 ☒ ☐
5. ~~NNEPA~~ § 100 \_\_\_\_\_ Date: 12/20/16 ☒ ☐
6. Office of the Attorney General: \_\_\_\_\_ Date: 12/21/16 ☒ ☐
7. OPVP \_\_\_\_\_ Date: 12-21-16 ☒ ☐

☐ Oil and Gas Prospecting Permits, Drilling and Exploration Permits, Mining Permit, Mining Lease

1. Minerals \_\_\_\_\_ Date: \_\_\_\_\_ ☐ ☐
2. OPVP \_\_\_\_\_ Date: \_\_\_\_\_ ☐ ☐
3. NLD \_\_\_\_\_ Date: \_\_\_\_\_ ☐ ☐

☐ Assignment of Mineral Lease

1. Minerals \_\_\_\_\_ Date: \_\_\_\_\_ ☐ ☐
2. DNR \_\_\_\_\_ Date: \_\_\_\_\_ ☐ ☐
3. DOJ \_\_\_\_\_ Date: \_\_\_\_\_ ☐ ☐

☐ ROW (where there has been no delegation of authority to the Navajo Land Department to grant the Nation's consent to a ROW)

1. NLD \_\_\_\_\_ Date: \_\_\_\_\_ ☐ ☐
2. F&W \_\_\_\_\_ Date: \_\_\_\_\_ ☐ ☐
3. HPD \_\_\_\_\_ Date: \_\_\_\_\_ ☐ ☐
4. Minerals \_\_\_\_\_ Date: \_\_\_\_\_ ☐ ☐
5. NNEPA \_\_\_\_\_ Date: \_\_\_\_\_ ☐ ☐
6. DNR \_\_\_\_\_ Date: \_\_\_\_\_ ☐ ☐
7. DOJ \_\_\_\_\_ Date: \_\_\_\_\_ ☐ ☐
8. OPVP \_\_\_\_\_ Date: \_\_\_\_\_ ☐ ☐

☐ OTHER:

1. \_\_\_\_\_ Date: \_\_\_\_\_ ☐ ☐
2. \_\_\_\_\_ Date: \_\_\_\_\_ ☐ ☐
3. \_\_\_\_\_ Date: \_\_\_\_\_ ☐ ☐
4. \_\_\_\_\_ Date: \_\_\_\_\_ ☐ ☐
5. \_\_\_\_\_ Date: \_\_\_\_\_ ☐ ☐



# NAVAJO NATION DEPARTMENT OF JUSTICE

## DOCUMENT REVIEW REQUEST FORM



DOJ
12/20/16 1:30p
DATE / TIME
<input type="checkbox"/> 7 Day Deadline
DOC #: 006658 #2
SAS #:
UNIT: Nnu

☒ RESUBMITTAL  
(Dec 2016)

\*\*\* FOR NNDOJ USE ONLY - DO NOT CHANGE OR REVISE FORM. VARIATIONS OF THIS FORM WILL NOT BE ACCEPTED. \*\*\*

### CLIENT TO COMPLETE

DATE OF REQUEST: 12/20/16 ENTITY/DIVISION: DNR  
CONTACT NAME: Michelle Hoskie DEPARTMENT: GLD  
PHONE NUMBER: x16447 E-MAIL: michelle.hoskie@frontera.com

TITLE OF DOCUMENT: BIA-ROW Mariano Lake Rd NII

### DOJ SECRETARY TO COMPLETE

DATE/TIME IN UNIT: 12.20.16 2:30pm REVIEWING ATTORNEY/ADVOCATE: Irwin Chee 12.30.6  
DATE/TIME OUT OF UNIT: 12.21.16 @ 2pm RJ

### DOJ ATTORNEY / ADVOCATE COMMENTS

- Document is legally sufficient.

REVIEWED BY: (PRINT)	DATE / TIME	SURNAMED BY: (PRINT)	DATE / TIME
Irwin Chee	12/20/16	Jail SPANAN	12/21/16 9:46 AM
DOJ Secretary Called: Joan Jones		for Document Pick Up on 12.21.16 at 10am By: RJ	
PICKED UP BY: (PRINT)		DATE / TIME:	

# COMPLETED






**NAVAJO NATION DEPARTMENT OF JUSTICE**  
**OFFICE OF THE ATTORNEY GENERAL**

ETHEL B. BRANCH  
ATTORNEY GENERAL

RODGERICK T. BEGAY  
ACTING DEPUTY ATTORNEY GENERAL

MEMORANDUM

TO: ALL CONCERNED

FROM:   
Veronica Blackhat, Assistant Attorney General  
Natural Resources Unit, Department of Justice

DATE: October 4, 2016

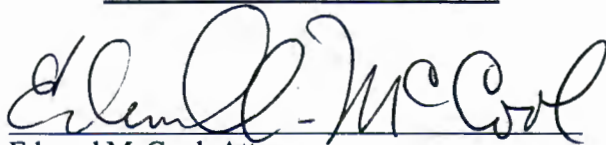
SUBJECT: **STANDING DELEGATION OF AUTHORITY**

Please be advised the personnel listed below, in order of succession, will be delegated, authority to act in the capacity of the Acting Assistant Attorney General, Natural Resources Unit during my absence from the office. Also, please be advised the personnel listed below, in order of succession, will have surname authority, unless indicated otherwise. This delegation will be effective immediately.

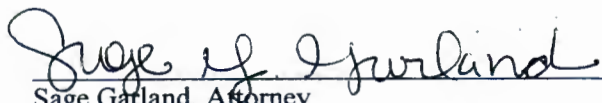
The authorized delegation will include all routine duties of the Assistant Attorney General, Natural Resources Unit. Any matters regarding personnel issues will be held for my review/decision upon my return. This Standing Delegation of Authority supersedes all delegations.

Thank you for your cooperation.

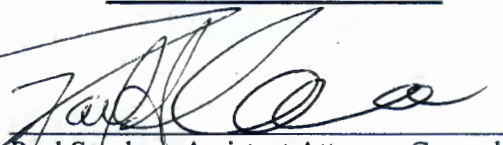
ADMINISTRATIVE REVIEW


  
Edward McCool, Attorney  
Natural Resources Unit, Department of Justice

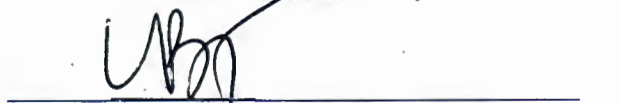
  
April Quinn, Attorney  
Natural Resources Unit, Department of Justice

  
Sage Garland, Attorney  
Natural Resources Unit, Department of Justice

SURNAME AUTHORITY

  
Paul Spruhan, Assistant Attorney General  
Litigation & Employment Unit, DOJ

  
Kandis Martine, Assistant Attorney General  
Human Services/Government Unit, DOJ

  
LaTonia B. Johnson, Acting Asst. Attorney General  
Economic/Community Development Unit, DOJ

Y:\NRU SHARE FOLDER\FORMS\DELEGATION OF AUTHORITY\2016-10-04



**Navajo Land Title Data System (NLTDs)**  
**Navajo Land Title, Navajo Land Title Data System - Windowrock AZ:**  
**Document Information**

Document Information	
<b>Document Name:</b>	BIA ROW for Mariano Lake Road #N11
<b>Revision:</b>	
<b>Version:</b>	1
<b>Document Desc:</b>	
<b>Document Author:</b>	Kayla Bia NLD (Navajo Land Title Data System - Windowrock AZ)
<b>Document Status:</b>	Insufficient
<b>DocumentType:</b>	164 Review Process
<b>Effective Date:</b>	Upon Approval
<b>Expires:</b>	
<b>Uploaded from:</b>	Navajo Land Title Data System (NLTDs) Phase 1: Plan for Quality Management System
	Step 900: 003_M003_00006658
	Task 1: Upload and Manage Documents
<b>Size:</b>	18609 KB
<b>Date Uploaded:</b>	27-Sep-2016
<b>Maintained by:</b>	164 review team

**No Document Distribution Locations**

Tier 1 Document Voting Results						
User Name (Facility)	Job Title	Department	Vote Cast	Comments	Replies	Vote Date
Eugenia Quintana EPA (Navajo Land Title Data System - Windowrock AZ)	Air and Toxics - Reviewer	Navajo Nation Environmental Protection Agency	Approved	1. Sufficient.	1.	29-Sep-2016
Frederick Sherman EPA (Navajo Land Title Data System - Windowrock AZ)	Solid Waste - Reviewer	Navajo Nation Environmental Protection Agency	Approved	no comments	No Reply	14-Oct-2016
Glenna Lee EPA (Navajo Land Title Data System - Windowrock AZ)	Pesticides - Reviewer	Navajo Nation Environmental Protection Agency	Approved	1. No comment.	1.	29-Sep-2016
Lee Anna Martinez (Navajo Land Title Data System - Windowrock AZ)	Water Quality - Reviewer	Navajo Nation Environmental Protection Agency	Approved	1. The applicant is aware they need a 404 and 401 for the project. NNEPA WQ will be awaiting their submittal. Thank you.	1.	04-Oct-2016
Michael Yazzie NFD (Navajo Land Title Data System - Windowrock AZ)	DNR Administrative Support Staff	DNR Administration	Rejected	1. Mr. Calvin Becenti, within the Navajo Forestry Department would be the individual to process this approval process. He conducts clearances for ROWs for BIA, IHS, NTUA.	1.	04-Oct-2016
Pam Kyselka F&W (Navajo Land Title Data System - Windowrock AZ)	Technical Review	Fish and Wildlife	Approved	1. BRCF attached	1.	03-Oct-2016
Pam Maples EPA (Navajo Land Title Data System - Windowrock AZ)	Storage Tanks Program - Reviewer	Navajo Nation Environmental Protection Agency	Approved	no comments	No Reply	14-Oct-2016
Patrick Antonio EPA (Navajo Land Title Data System - Windowrock AZ)	Water Quality - Supervisor	Navajo Nation Environmental Protection Agency	Approved	1. Land surface disturbances of 1.0 acre or more require coverage under the federal Construction General Permit (CGP) for storm water discharges. The project EA indicates 251.48 acres involved and that a Notice of Intent for CGP coverage will occur.	1.	27-Sep-2016
Robert Allan DNR (Navajo Land Title Data System - Windowrock AZ)	Deputy Director DNR	DNR Administration	Approved	no comments	No Reply	28-Sep-2016
Ronnie Ben EPA (Navajo Land Title Data System - Windowrock AZ)	Underground Injection Control - Reviewer	Navajo Nation Environmental Protection Agency	Approved	1. no comments	1.	11-Oct-2016
Steven Prince MIN (Navajo Land Title Data System - Windowrock AZ)	Technical Reviewer	Navajo Nation Minerals Management	Approved	1. Terms and Conditions document is linked herewith.	1.	29-Sep-2016
Tamara Billie HPD (Navajo Land Title Data System - Windowrock AZ)	HPD Reviewer	Historic Preservation Department	Approved	no comments	No Reply	28-Sep-2016
Tennille Begay EPA (Navajo Land Title Data System - Windowrock AZ)	Air and Toxics - Reviewer	Navajo Nation Environmental Protection Agency	Approved	no comments	No Reply	10-Oct-2016
Yolanda Barney EPA (Navajo Land Title Data System - Windowrock AZ)	Public Water System Supervision Program	Navajo Nation Environmental Protection Agency	Approved	no comments	No Reply	14-Oct-2016

Document Actions				
Date	Actions	User	Old Value	New Value
11/17/2016 11:35	Viewed	Kayla Bia NLD		
10/14/2016 18:16	Viewed	Frederick Sherman EPA		
10/14/2016 14:46	Viewed	Pam Maples EPA		
10/14/2016 12:30	User Removed From Approval Process	Kayla Bia NLD		Bidtah N. Becker was removed from the approval request/voting process
10/14/2016 9:53	Viewed	Yolanda Barney EPA		
10/14/2016 9:42	Document Approver Nudged	Kayla Bia NLD		Yolanda Barney EPA was nudged about a pending approval request.
10/14/2016 9:41	Document Approver Nudged	Kayla Bia NLD		Pam Maples EPA was nudged about a pending approval request.
10/14/2016 9:41	User Removed From Approval Process	Kayla Bia NLD		Justina George EPA was removed from the approval request/voting process
10/14/2016 9:41	Document Approver Nudged	Kayla Bia NLD		Frederick Sherman EPA was nudged about a pending approval request.
10/14/2016 9:41	User Removed From Approval Process	Kayla Bia NLD		Darlene Jenkins EPA was removed from the approval request/voting process
10/14/2016 9:41	Document Approver Nudged	Kayla Bia NLD		Bidtah N. Becker was nudged about a pending approval request.
10/13/2016 15:00	Viewed	Glenna Lee EPA		
10/11/2016 17:14	Viewed	Ronnie Ben EPA		
10/11/2016 15:45	Viewed	Darlene Jenkins EPA		
10/10/2016 15:21	Viewed	Tennille Begay EPA		
10/4/2016 16:11	Viewed	Lee Anna Martinez		

10/4/2016 15:44	Viewed	Lee Anna Martinez		
10/4/2016 15:42	Viewed	Lee Anna Martinez		
10/4/2016 11:26	Document Status modified	Michael Yazzie NFD	Pending	Rejected
10/4/2016 11:14	Viewed	Michael Yazzie NFD		
10/3/2016 10:01	Viewed	Pam Kyselka F&W		
9/29/2016 18:33	Viewed	Frederick Sherman EPA		
9/29/2016 18:32	Viewed	Frederick Sherman EPA		
9/29/2016 17:38	Viewed	Yolanda Barney EPA		
9/29/2016 16:32	Viewed	Glenna Lee EPA		
9/29/2016 16:32	Viewed	Glenna Lee EPA		
9/29/2016 12:09	Viewed	Eugenia Quintana EPA		
9/29/2016 12:09	Viewed	Eugenia Quintana EPA		
9/28/2016 17:36	Viewed	Tamara Billie HPD		
9/28/2016 17:35	Viewed	Tamara Billie HPD		
9/28/2016 15:50	Viewed	Yolanda Barney EPA		
9/28/2016 14:24	Viewed	Robert Allan DNR		
9/28/2016 8:33	Viewed	Steven Prince MIN		
9/27/2016 17:03	Viewed	Robert Allan DNR		
9/27/2016 17:03	Viewed	Robert Allan DNR		
9/27/2016 16:43	Viewed	Steven Prince MIN		
9/27/2016 16:39	Viewed	Patrick Antonio EPA		
9/27/2016 15:53	Document Status modified	Kayla Bia NLD	New	Pending
9/27/2016 15:52	Uploaded	Kayla Bia NLD		

## UNITED STATES DEPARTMENT OF THE INTERIOR

## BUREAU OF INDIAN AFFAIRS

RIGHT-OF-WAY APPLICATION MUST IDENTIFY [ §169.102(a) ]:

1. Applicant Name and Address: Bureau of Indian Affairs, Navajo Region, Division of Transportation, P.O. Box 1060, Gallup, New Mexico 87305
2. Tract(s) or parcel(s) affected by the right-of-way: See attached ROW Plat Map.
3. General location (easement description): See attached Legal Description.
4. Purpose: Construction an All-Weather Roadway for project N11(1)(2)1,2&4
5. Term (Renewal, if applicable): 75 years term.
6. Identify ownership of permanent improvements associated with the right-of-way and the responsibility for constructing, operating, maintaining, and managing; or removal of permanent improvements under §169.105:

REQUIRED SUPPORTING DOCUMENTS [ §169.102(b) ]:

NOTE: THE APPLICANT IS THE US GOVERNMENT AND ITEMS No. 3, 4, 6 & 7 DO NOT APPLY.

1. Accurate legal description of the right-of-way, its boundaries, and parcels associated with the right-of way;
2. A map of definite location of the right-of-way; (25 CFR 169.102((b)(2); survey plat signed by professional surveyor or engineer showing the location, size, and extent of the ROW and other related parcels, with respect to each affected parcel of individually owned land, tribal land, or BIA land and with reference to the public surveys under 25 U.S.C. § 176, 43 U.S.C. § 2 AND § 1764, and showing existing facilities adjacent to the proposed project.)
- ~~3. Bond(s), insurance, and/or other security meeting the requirements of §169.103;~~
- ~~4. Record of notice that the right-of-way was provided to all Indian landowners;~~
5. Record of consent that the right-of-way meets the requirements of §169.107, or a statement documenting a request for a right-of-way without consent under §169.107(b);
- ~~6. If applicable, a valuation meeting the requirements of §§ 169.110, 112, 114;~~
- ~~7. With each application, if the applicant is a corporation, limited liability company, partnership, joint venture, or other legal entity, except a tribal entity, information such as organizational documents, certificates, filing records, and resolutions, demonstrating that:~~

- a. The representative has authority to execute the application;
  - b. The right-of-way will be enforceable against the applicant; and
  - c. The legal entity is in good standing and authorized to conduct business in the jurisdiction where the land is located.
8. Current environmental and archaeological reports, surveys, and site assessments, as needed to facilitate compliance with applicable Federal and tribal environmental and land use requirements;
  9. If required, a statement from the appropriate tribal authority that the proposed right-of-way is in conformance with applicable tribal law.

THE APPLICANT FURTHER STIPULATES AND EXPRESSLY AGREES AS FOLLOWS:

To conform and to abide by all applicable requirements with respect to the right-of-way herein applied for. The applicant agrees to conform to and abide by the rules, regulations, and requirements contained in the *Code of Federal Regulations*, Title 25 Indians, Part 169, as amended, and by reference includes such rules, regulations and requirements as a part of this application to the same effect as if the same were herein set out in full.

Applicant Point of Contact Information:

NAME: Herby J. Larsen  
ADDRESS: BIA, NRO Division of Transportation  
P.O. Box 1060  
CITY/STATE: Gallup, New Mexico  
ZIP: 87305  
PHONE: (505) 863-8281  
FAX: (505) 863-8255  
EMAIL: [Herby.Larsen@bia.gov](mailto:Herby.Larsen@bia.gov)

DATE: 8/15/16

APPLICANT:   
(Signature)

Herby Jon Larsen  
(Print Name)



# UNITED STATES DEPARTMENT OF THE INTERIOR

## BUREAU OF INDIAN AFFAIRS

### RIGHT-OF-WAY APPLICATION MUST IDENTIFY [ §169.102(a) ]:

1. Applicant Name and Address: Bureau of Indian Affairs, Navajo Region, Division of Transportation, P.O. Box 1060, Gallup, New Mexico 87305
2. Tract(s) or parcel(s) affected by the right-of-way: See attached ROW Plat Map.
3. General location (easement description): See attached Legal Description.
4. Purpose: Construction an All-Weather Roadway for project N11(1)(2)1,2&4
5. Term (Renewal, if applicable): 75 years term.
6. Identify ownership of permanent improvements associated with the right-of-way and the responsibility for constructing, operating, maintaining, and managing; or removal of permanent improvements under §169.105:

### REQUIRED SUPPORTING DOCUMENTS [ §169.102(b) ]:

NOTE: THE APPLICANT IS THE US GOVERNMENT AND ITEMS No. 3, 4, 6 & 7 DO NOT APPLY.

1. Accurate legal description of the right-of-way, its boundaries, and parcels associated with the right-of way;
2. A map of definite location of the right-of-way; (25 CFR 169.102((b)(2); survey plat signed by professional surveyor or engineer showing the location, size, and extent of the ROW and other related parcels, with respect to each affected parcel of individually owned land, tribal land, or BIA land and with reference to the public surveys under 25 U.S.C. § 176, 43 U.S.C. § 2 AND § 1764, and showing existing facilities adjacent to the proposed project.)
- ~~3. Bond(s), insurance, and/or other security meeting the requirements of §169.103;~~
- ~~4. Record of notice that the right-of-way was provided to all Indian landowners;~~
5. Record of consent that the right-of-way meets the requirements of §169.107, or a statement documenting a request for a right-of-way without consent under §169.107(b);
- ~~6. If applicable, a valuation meeting the requirements of §§ 169.110, 112, 114;~~
- ~~7. With each application, if the applicant is a corporation, limited liability company, partnership, joint venture, or other legal entity, except a tribal entity, information such as organizational documents, certificates, filing records, and resolutions, demonstrating that:~~



- a. The representative has authority to execute the application;
  - b. The right-of-way will be enforceable against the applicant; and
  - c. The legal entity is in good standing and authorized to conduct business in the jurisdiction where the land is located.
8. Current environmental and archaeological reports, surveys, and site assessments, as needed to facilitate compliance with applicable Federal and tribal environmental and land use requirements;
9. If required, a statement from the appropriate tribal authority that the proposed right-of-way is in conformance with applicable tribal law.

THE APPLICANT FURTHER STIPULATES AND EXPRESSLY AGREES AS FOLLOWS:

To conform and to abide by all applicable requirements with respect to the right-of-way herein applied for. The applicant agrees to conform to and abide by the rules, regulations, and requirements contained in the *Code of Federal Regulations*, Title 25 Indians, Part 169, as amended, and by reference includes such rules, regulations and requirements as a part of this application to the same effect as if the same were herein set out in full.

Applicant Point of Contact Information:

NAME: Herby J. Larsen  
ADDRESS: BIA, NRO Division of Transportation  
P.O. Box 1060  
CITY/STATE: Gallup, New Mexico  
ZIP: 87305  
PHONE: (505) 863-8281  
FAX: (505) 863-8255  
EMAIL: [Herby.Larsen@bia.gov](mailto:Herby.Larsen@bia.gov)

DATE: 8/15/16

APPLICANT:   
(Signature)

Herby Jon Larsen  
(Print Name)



# United States Department of the Interior

Bureau of Indian Affairs

Navajo Region

P. O. Box 1060

Gallup, New Mexico 87305



IN REPLY REFER TO  
Division of Transportation  
M/C: 370

AUG 12 2016

Mr. Russell Begaye

President, The Navajo Nation

Attention: Mike Halona, Land Administration Office

Dear Mr. Begay

Re: Application for Bureau of Indian Affairs Right of Way to Construct and Maintain Marino Lake Road Project N11(1)(2)1,2&4, located in Mariano Lake and Crownpoint, McKinley County, New Mexico.

The Naa'bik'iyati Committee of the 22<sup>nd</sup> Navajo Nation Council (NNC) has authorized the BIA Navajo Region Division of Transportation (BIA-NRDOT) to improve BIA Route N11(1)(2)1,2&4 (Mariano Lake Road) traversing through several Navajo Nation Indian Allotments, Public Domain and Private lands.

At the request of community members and the Navajo Nation Resource Development Committee (RDC), this road Project is scheduled for improvements so as to alleviate hardship/difficult traveling conditions during the winter and rainy seasons, especially for the school buses and the elders. This Project crosses through several tracts of Navajo Nation Trust lands, several Indian Allotment lands, one (1) Public Domain and one (1) Private Fee land.

Pursuant to the enclosed Navajo Nation Council Resolution No. CN-67-02 "Approving Interim Standard Terms and Condition for the Granting of Right-of-Way for BIA Road Construction Projects on the Navajo Nation," the Nation is waiving any compensation that is subject to this application. The Terms and Conditions have not been changed under the new Right-of-Way regulations.

In addition, we respectfully request the right-of-way grant of easement include a utility system provision to the following:

*The Right-of-Way easement will include construction of utilities with the N11(1)(2)1,2&4 easement corridor. This provision will allow the road right-of-way grant to the Bureau of Indian Affairs, Navajo Region, be used for the purpose that will benefit the tribal*

16-8953  
Aug 17 2016  
NLD-PROJECT  
REVIEW SECTION  
MAM

*communities, and their socioeconomic development needs. The utility conveyance construction and maintenance must not interfere with the integrity of the road prism, road ditches, road design features and miscellaneous road appurtenances. Any and all utility installations will be approved through the BIA DOT permitting process.*

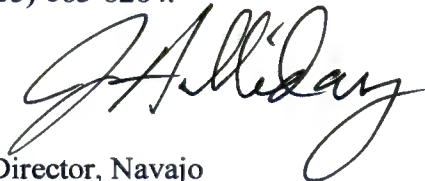
BIA-NRDOT submits the enclosed Right-of-Way application and supporting documents for BIA Project N11(1)(2)1,2&4, Mariano Lake Road crossing Navajo Nation Trust lands. The supporting documents include:

1. One original and a photocopy of the New Title 225, Part 169 Right-of-Way application;
2. One original reproducible right-of-way plat map;
3. Two photocopies of the right-of-way plat map;
4. Two photocopies of the legal description; and
5. One photocopy of the Environmental Assessment (EA) report consisting the Archaeological Clearance report and Finding of No Significant Impact report.
6. One photocopy of the Navajo Nation Council Resolution No. CN-67-02 "Approving Interim Standard Terms and Condition for the Granting of Right-of-Way for BIA Road Construction Projects on the Navajo Nation;
7. One photocopy of a legislative action by the Navajo Nation Recourses Committee Resolution Number RCO-106-09, approving Utility Systems with the Navajo Mountain Road Project N16(6)/N162(1)/N164(1)2&4 Right-of-Way corridor;

BIA-NRDOT requests your office to process this application expeditiously to ensure this Project receives the right-of-way.

Your favorable consideration for this grant is appreciated. If you have any questions or need additional information, please contact Mr. Herby Larsen, Division Manager at (505) 863-8281 or Mr. Harold Riley, Planning and Design Chief, at (505) 863-8284.

Sincerely,



Acting Regional Director, Navajo

Enclosures

cc: Eastern Agency DOT w/out copies  
Eastern Real Estate Services w/ copies









**RIGHT-OF-WAY DESCRIPTION  
BIA ROAD PROJECT N11(1)(2)1,2&4  
MARINO LAKE ROAD, NAVAJO NATION  
MCKINLEY COUNTY, NEW MEXICO**

Beginning at Engineer's survey centerline, a Point of Intersection of B.I.A. Route N11(1)(2)1, 2&4 P.O.T. station 0+002.298m, whence said point equals B.I.A. Route N11(2)2&4 P.O.T. station 658+35.24(ft);

Thence N 08°55'37" E, a distance of 22.850 meters to the True Point of Beginning of Right of Way station 0+022.850m, said point being on the northerly right-of-way line of BIA Project N11(2)2&4, from whence the southeast corner of Section 28, Township 16 North, Range 14 West, NMPM, McKinley County, bears S 86°38'12" E, a distance of 1327.314 meters, and whence a Network Control tie was made to CP No. 3, having Modified (Ground) Coordinate Values of North = 508439.138 meters and East = 785073.285 meters, bears S 81°04'40" E, a distance of 86.447 meters;

SW ¼, SECTION 28, TOWNSHIP 16 NORTH, RANGE 14 WEST, NMPM, (ALLOTMENT 1328)

THENCE N 08°55'37" E, a distance of 86.083 meters to the P.C. station 0+111.231;

THENCE along the arc of a 05°00'00" curve left, having a radius of 349.275 meters, a central angle of 09°51'14", having an arc length of 60.069 meters, with the chord bearing being N 04°00'00" E, and the chord distance being 59.995 meters, to P.T. station 0+171.300 m;

THENCE N 00°55'37" W, a distance of 98.911 meters to P.C. station 0+270.211 m;

THENCE along the arc of a 05°50'00" curve right, having a radius of 299.379 meters, a central angle of 31°44'08", having an arc length of 165.823 meters, with the chord bearing being N 14°56'27" E, and the chord distance being 163.712 meters, to P.T. station 0+436.034 m;

THENCE N 30°48'31" E, a distance of 388.845 meters to the end of Allotment 1328 and the beginning of Allotment 1327 to a point on the quarter-section line at station P.O.T. 0+824.879 m, from whence the west ¼ corner of Section 28, T16N, R14W, NMPM, McKinley County, bears N 89°24'22" W, a distance of 489.241 meters;

NW ¼, SECTION 28, TOWNSHIP 16 NORTH, RANGE 14 WEST, NMPM, (ALLOTMENT 1327)

THENCE continuing N 30°48'31" E, a distance of 118.615 meters to P.C. station 0+943.494 m;

THENCE along the arc of a 08°36'10" curve left, having a radius of 203.000 meters, a central angle of 56°56'30", having an arc length of 201.745 meters, with the chord bearing being N 02°20'16" E, and the chord distance being 193.545 meters, to P.T. station 1+145.239 m;

THENCE N 26°07'59" W, a distance of 91.336 meters to P.C. station 1+236.574 m;

THENCE along the arc of a 08°36'10" curve right, having a radius of 203.000 meters, a central angle of 56°19'49", having an arc length of 199.579 meters, with the chord bearing being N 02°01'56" E, and the chord distance being 191.638 meters, to P.T. station 1+436.154 m;

THENCE N 30°11'50" E, a distance of 59.331 meters to P.C. station 1+495.485 m;

THENCE along the arc of a 08°36'10" curve left, having a radius of 203.000 meters, a central angle of 41°17'05" having an arc length of 146.272 meters, with a chord bearing being N 09°33'18" E, and the chord distance being 143.128 meters, to P.T. station 1+641.757 m;

THENCE N 11°05'14" W, a distance of 46.167 meters to P.O.T. station 1+687.924 at the end of Allotment 1327 and the beginning of Navajo Trust Land, a point being the north line of Section 28, T16N, R14W, NMPM, McKinley County, from whence the northwest corner of Section 28, T16N, R14W, NMPM, McKinley County, bears N 89°09'06" W, a distance of 563.580 meters;

SECTION 21, TOWNSHIP 16 NORTH, RANGE 14 WEST, NMPM, (NAVAJO TRIBAL TRUST)

THENCE continuing N 11°05'14" W, a distance of 119.800 meters to P.C. station 1+807.724 m;

THENCE along the arc of a 06°14'13" curve right, having a radius of 280.000 meters, a central angle of 40°10'56", having an arc length of 196.368 meters, with a chord bearing of N 09°00'14" E, and the chord distance being 192.368 meters, to P.T. station 2+004.091 m;

THENCE N 29°05'42" E, a distance of 495.545 meters to P.C. station 2+499.637 m;

THENCE along the arc of a 03°58'09" curve right, having a radius of 440.000 meters, a central angle of 28°30'32", having an arc length of 218.933 meters, with a chord bearing of N 43°20'58" E, and the chord distance being 216.681 meters, to P.T. station 2+718.569 m;

THENCE N 57°36'14" E, a distance of 490.553 meters to P.C. station 3+209.123 m;

THENCE along the arc of a 02°59'07" curve left, having a radius of 585.000 meters, a central angle of 30°59'04", having an arc length of 316.355 meters, with a chord bearing of N 42°06'42" E, and the chord distance being 312.515 meters, to P.T. station 3+525.478 m;

THENCE N 26°37'10" E, a distance of 35.345 meters to P.O.T. station 3+560.823 m to the end of the Navajo Trust Land and the beginning of Allotment 1365, a point being on the east line of Section 21, T16N, R14W, NMPM, McKinley County, from whence the northeast corner of said Section 21 bears N 00°05'24" E, a distance of 168.955 meters;

NW ¼, SECTION 22, TOWNSHIP 16 NORTH, RANGE 14 WEST, NMPM, (ALLOTMENT 1365)

THENCE continuing N 26°37'10" E, a distance of 189.609 meters to P.O.T. station 3+750.432 m at the end of Allotment 1365 and the beginning of Allotment 1904, a point being on the north line of Section 22, T16N, R14W, NMPM, McKinley County, from whence the northwest corner of said Section 22 bears S 89°37'25" W, a distance of 84.693 meters;

SW ¼, SECTION 15, TOWNSHIP 16 NORTH, RANGE 14 WEST, NMPM, (ALLOTMENT 1904)

THENCE continuing N 26°37'10" E, a distance of 149.568 meters to P.O.T. station 3+900.000 m, whence right-of-way width changes from 23.000 meters left and right to 50.000 meters left and right;

THENCE continuing N 26°37'10" E, a distance of 120.000 meters to P.O.T. station 4+020.000 m, whence right-of-way width changes from 50.000 meters left and right to 23.000 meters left and right;

THENCE continuing N 26°37'10" E, a distance of 95.280 meters to P.C. station 4+115.280 m;

THENCE along the arc of a 01°59'45" curve left, having a radius of 875.000 meters, a central angle of 16°46'59", having an arc length of 256.306 meters, with a chord bearing of N 18°13'41" E, and the chord distance being 255.390 meters, to P.T. station 4+371.585 m;

THENCE N 09°50'11" E, a distance of 237.825 meters, at the end of Allotment 1904 and the beginning of Navajo Tribal Trust lands at station 4+609.410 m, a point on the quarter-section line Section 15, T16N, R14W, NMPM, McKinley County, from whence the west ¼ said Section 15 bears S 89°44'47" W, a distance of 358.778 meters;

N ½, SECTION 15, TOWNSHIP 16 NORTH, RANGE 14 WEST, NMPM, (NAVAJO TRIBAL TRUST)

THENCE N 09°50'11" E, a distance of 236.746 meters to P.C. station 4+846.156 m;

THENCE along the arc of a 01°31'07" curve right, having a radius of 1150.000 meters, a central angle of 31°52'22", having an arc length of 639.730 meters, with a chord bearing of N 25°46'22" E, and the chord distance being 631.513 meters, to P.O.C. station 5+485.886 m at the end of Navajo Tribal Trust Land and the beginning of Allotment 1357, a point being on the north line of Section 15, T16N, R14W, NMPM, McKinley County, from whence the northwest corner of said Section 15 bears S 89°52'14" W, a distance of 663.900 meters;

SW ¼, SECTION 10, TOWNSHIP 16 NORTH, RANGE 14 WEST, NMPM, (ALLOTMENT 1357)

THENCE continuing along the arc of a 01°31'07" curve right, having a radius of 1150.000 meters, a central angle of 06°40'54", having an arc length of 134.114 meters, with a chord bearing of N 45°03'01" E, and the chord distance being 134.038 meters to P.O.C. station 5+620.000 m, whence the right-of-way changes from 23.000 meters left and right to 23.000 meters left and 35.000 meters right;



THENCE continuing along the arc of a  $01^{\circ}31'07''$  curve right, having a radius of 1150.000 meters, a central angle of  $02^{\circ}28'22''$ , having an arc length of 49.628 meters, with a chord bearing of  $N 49^{\circ}37'39'' E$ , and the chord distance being 49.625 meters to P.T. station 5+669.628 m;

THENCE  $N 50^{\circ}51'50'' E$ , a distance of 5.014 meters to P.O.T. station 5+674.642 m at the end of Allotment 1357 and the beginning of Allotment 1358, a point being on the center-quarter section line of Section 10, T16N, R14W, NMPM, McKinley County, from whence the south  $\frac{1}{4}$  of said Section 10 bears  $S 00^{\circ}08'29'' W$ , a distance of 129.698 meters;

SE  $\frac{1}{4}$ , SECTION 10, TOWNSHIP 16 NORTH, RANGE 14 WEST, NMPM, (ALLOTMENT 1358)

THENCE  $N 50^{\circ}51'50'' E$ , a distance of 70.372 meters to P.O.T. station 5+740.000 m, whence the right-of-way changes from 23.000 meters left and right to 23.000 meters left and 30.000 meters right;

THENCE  $N 50^{\circ}51'50'' E$ , a distance of 320.000 meters to P.O.T. station 6+060.000 m, whence the right-of-way changes from 23.000 meters left and 30.000 meters right to 23.000 meters and 35.000 meters right;

THENCE  $N 50^{\circ}51'50'' E$ , a distance of 97.708 meters to P.C. station 6+157.708 m;

THENCE along the arc of a  $03^{\circ}17'42''$  curve right, having a radius of 530.000 meters, a central angle of  $04^{\circ}34'19''$ , having an arc length of 42.292 meters, with a chord bearing of  $N 58^{\circ}08'59'' E$ , and the chord distance being 42.280 meters to P.O.C. station 6+200.000 m, whence the right-of-way changes from 23.000 meters left and 35.000 meters right to 23.000 meters left and right;

THENCE continuing along the arc of a  $03^{\circ}17'42''$  curve right, having a radius of 530.000 meters, a central angle of  $22^{\circ}52'46''$ , having an arc length of 230.141 meters, with a chord bearing of  $N 67^{\circ}52'32'' E$ , and the chord distance being 228.337 meters to P.T. station 6+430.141 m;

THENCE  $N 80^{\circ}18'55'' E$ , a distance of 185.029 meters to P.O.T. station 6+615.169 m at the end of Allotment 1358 and the beginning of the Navajo Tribal Trust Land, a point on the east line of Section 10, T16N, R14W, NMPM, McKinley County, from whence the south east corner of said section bears  $S 00^{\circ}15'40'' W$ , a distance of 575.271 meters;

SECTION 11, TOWNSHIP 16 NORTH, RANGE 14 WEST, NMPM, (NAVAJO TRIBAL TRUST)

THENCE continuing  $N 80^{\circ}18'55'' E$ , a distance of 264.704 meters to P.C. station 6+879.873 m;

THENCE along the arc of a  $04^{\circ}59'23''$  curve left, having a radius of 350.000 meters, a central angle of  $45^{\circ}51'27''$ , having an arc length of 280.127 meters, with a chord bearing of  $N 57^{\circ}23'11'' E$ , and the chord distance being 272.710 meters to P.O.C. station 7+160.000 m, whence the right-of-way changes from 23.000 meters left and right to 35.000 meters left and 23.000 meters right;

THENCE continuing along the arc of a  $04^{\circ}59'23''$  curve left, having a radius of 350.000 meters, a central angle of  $07^{\circ}02'08''$ , having an arc length of 42.978 meters, with a chord bearing of  $N 30^{\circ}56'24'' E$ , and the chord distance being 42.951 meters to P.T. station 7+202.978 m;

THENCE  $N 27^{\circ}25'20'' E$ , a distance of 57.022 meters to P.O.T. station 7+260.000 m, whence the right-of-way changes from 35.000 meters left and 23.000 meters right to 23.000 meters left and right;

THENCE  $N 27^{\circ}25'20'' E$ , a distance of 678.330 meters to P.C. station 7+938.330 m;

THENCE along the arc of a  $03^{\circ}58'09''$  curve right, having a radius of 440.000 meters, a central angle of  $25^{\circ}38'48''$ , having an arc length of 196.951 meters, with a chord bearing of  $N 40^{\circ}14'43'' E$ , and the chord distance being 195.311 meters to P.T. station 8+135.281 m;

THENCE  $N 53^{\circ}04'07'' E$ , a distance of 0.388 meters to P.O.T. station 8+135.669 m at the end of the Navajo Tribal Trust Lands and the beginning of the Private Land deeded to Norman Ashcroft & Mary Jane Ashcroft (Revocable Trust land), a point on the north line of Section 11, T16N, R14W, NMPM, McKinley County, from whence the northeast corner of said section bears  $N 89^{\circ}52'19'' E$ , a distance of 630.629 meters;

SECTION 2, TOWNSHIP 16 NORTH, RANGE 14 WEST, NMPM, NORMAN ASHCROFT AND MARY JANE ASHCROFT (REVOCABLE TRUST)

THENCE continuing  $N 53^{\circ}04'07'' E$ , a distance of 172.837 meters to P.C. station 8+308.506 m;

THENCE along the arc of a  $03^{\circ}58'09''$  curve right, having a radius of 440.000 meters, a central angle of  $21^{\circ}01'46''$ , having an arc length of 161.494 meters, with a chord bearing of  $N 63^{\circ}35'00'' E$ , and the chord distance being 160.589 meters to P.O.C. station 8+470.000 m, whence the right-of-way changes from 23.000 meters left and right to 23.000 meters left and 35.000 meters right;

THENCE continuing along the arc of a  $03^{\circ}58'09''$  curve right, having a radius of 440.000 meters, a central angle of  $04^{\circ}06'51''$ , having an arc length of 31.595 meters, with a chord bearing of  $N 76^{\circ}09'19'' E$ , and the chord distance being 31.595 meters to P.T. station 8+501.595 m, whence the right-of-way changes from 23.000 meters left and 35 meters right to 35.000 meters left and right;

THENCE  $N 78^{\circ}12'44'' E$ , a distance of 168.405 meters to P.O.T. station 8+670.000 m, whence the right-of-way changes from 35.000 meters left and right to 23.000 meters left and right;

THENCE  $N 78^{\circ}12'44'' E$ , a distance of 147.801 meters to P.O.T. station 8+817.801 m at the end of the Norman Ashcroft & Mary Jane Ashcroft (Revocable Trust) lands and the beginning of the Navajo Tribal Trust lands, a point on the east line of Section 1, T16N, R14W, NMPM, McKinley County, from whence the southwest corner of said section bears  $S 01^{\circ}57'53'' E$ , a distance of 246.186 meters;



SECTION 1, TOWNSHIP 16 NORTH, RANGE 14 WEST, NMPM, (NAVAJO TRIBAL TRUST)

THENCE continuing N 78°12'44" E, a distance of 380.172 meters to P.C. station 9+197.974 m;

THENCE along the arc of a 02°59'07" curve left, having a radius of 585.000 meters, a central angle of 23°14'31", having an arc length of 237.306 meters, with a chord bearing of N 66°35'28" E, and the chord distance being 235.682 meters to P.T. station 9+435.279 m;

THENCE N 54°58'13" E, a distance of 361.007 meters to P.C. station 9+796.286 m;

THENCE along the arc of a 01°59'45" curve left, having a radius of 875.000 meters, a central angle of 24°19'59", having an arc length of 371.607 meters, with a chord bearing of N 42°48'13" E, and the chord distance being 368.821 meters to P.T. station 10+167.893 m;

THENCE N 30°38'13" E, a distance of 555.023 meters to P.C. station 10+722.916 m;

THENCE along the arc of a 01°59'45" curve right, having a radius of 875.000 meters, a central angle of 8°44'08", having an arc length of 133.033 meters, with a chord bearing of N 34°59'33" E, and the chord distance being 132.905 meters to P.O.C. station 10+855.949 m at the end of the Navajo Tribal Trust land and the beginning of new Navajo Tribal Trust land, a point on the north line of Section 01, T17N, R14W, NMPM, McKinley County, from whence the northeast corner of said section bears N 89°34'07" E, a distance of 154.709 meters;

SECTION 31, TOWNSHIP 17 NORTH, RANGE 13 WEST, NMPM, (NAVAJO TRIBAL TRUST)

THENCE continuing along the arc of a 01°59'45" curve right, having a radius of 875.000 meters, a central angle of 16°50'11", having an arc length of 257.117 meters, with a chord bearing of N 47°45'59" E, and the chord distance being 256.193 meters to P.T. station 11+113.067 m;

THENCE N 56°11'04" E, a distance of 961.933 meters to P.O.T. station 12+075.000 m, whence the right-of-way changes from 23.000 meters left and right to 50.000 meters left and right;

THENCE N 56°11'04" E, a distance of 196.307 meters to P.C. station 12+271.307 m, whence the right-of-way changes from 50.000 meters left and right to 75.000 meters left and 60.000 meters right;

THENCE along the arc of a 06°14'13" curve left, having a radius of 280.000 meters, a central angle of 22°14'30", having an arc length of 108.693 meters, with a chord bearing of N 45°03'49" E, and the chord distance being 108.012 meters to P.O.C. station 12+380.000 m, whence the right-of-way changes from 75.000 meters left and 60.000 meters right to 75.000 meters left and 50.000 meters right;

THENCE continuing along the arc of a 06°14'13" curve left, having a radius of 280.000 meters, a central angle of 03°13'39", having an arc length of 15.773 meters, with a chord bearing of N 32°19'44" E, and the chord distance being 15.771 meters to P.O.C. station 12+395.773 m at the end of the Navajo Tribal Trust land and the

beginning of the Bureau of Land Management (Public Domain) lands, to a point on the east line of Section 31, T17N, R13W, NMPM, McKinley County, from whence the southeast corner of said section bears S 00°17'37" E, a distance of 895.790 meters;

SECTION 32, TOWNSHIP 17 NORTH, RANGE 14 WEST, NMPM, (UNITED STATES BUREAU OF LAND MANAGEMENT)

THENCE continuing along the arc of a 06°14'13" curve left, having a radius of 280.000 meters, a central angle of 01°45'41", having an arc length of 8.607 meters, with a chord bearing of N 29°50'04" E, and the chord distance being 8.607 meters to P.T station 12+404.380 m;

THENCE N 28°57'14" E, a distance of 95.620 meters to P.O.T. station 12+500.000 m, whence the right-of-way changes from 75.000 meters left and 50.000 meters right to 50.000 meters left and right;

THENCE continuing N 28°57'14" E, a distance of 711.481 meters to P.O.T. station 13+211.481 m at the end of the United States Bureau of Land Management (Public Domain) lands and the beginning of the Navajo Trust lands, a point of the north line of Section 32, T17N, R13W, NMPM, McKinley County, from whence the northwest corner of said section bears N 89°48'52" W, a distance of 398.672 meters;

S 1/2, SECTION 29, TOWNSHIP 17 NORTH, RANGE 13 WEST, NMPM, (NAVAJO TRUST)

THENCE continuing N 28°57'14" E, a distance of 428.519 meters to P.O.T. station 13+640.000 m, whence the right-of-way changes from 50.000 meters left and right to 30.000 meters left and right;

THENCE continuing N 28°57'14" E, a distance of 444.124 meters to P.C. station 14+084.122 m;

THENCE along the arc of a 01°59'45" curve right, having a radius of 875.000 meters, a central angle of 3°35'10", having an arc length of 54.767 meters, with a chord bearing of N 30°44'49" E, and the chord distance being 54.758 meters to P.O.C. station 14+138.891 m at the end of the Navajo Trust land and the beginning of Allotment 930, a point on the center-quarter line of Section 29, T17N, R13W, NMPM, McKinley County, from whence the east ¼ corner of said section bears S89°49'55" E a distance of 760.411m;

NE ¼, SECTION 29, TOWNSHIP 17 NORTH, RANGE 13 WEST, NMPM, (ALLOTMENT 930)

THENCE continuing along the arc of a 01°59'45" curve right, having a radius of 875.000 meters, a central angle of 17°10'10", having an arc length of 262.204 meters, with a chord bearing of N 41°07'29" E, and the chord distance being 261.224 meters to P.T. station 14+401.095 m, whence the right-of-way changes from 30.000 meters left and right to 23.000 meters left and right;

THENCE N 49°42'34" E, a distance of 776.151 meters to P.O.T. station 15+177.246 m at the end of Allotment 930 and the beginning of Allotment 867, a point on the east line of Section 29, T17N, R13W, NMPM, McKinley County, from whence the northeast corner of said section bears N 00°16'49" E, a distance of 107.746 meters.

NW ¼, SECTION 28, TOWNSHIP 17 NORTH, RANGE 13 WEST, NMPM, (ALLOTMENT 867)

THENCE N 49°42'34" E, a distance of 166.563 meters to P.O.T. station 15+343.809 m, at the end of Allotment 867 and the beginning of Allotment 852, a point being on the north line of Section 28, T17N, R13W, NMPM, McKinley County, whence the northwest corner of said Section 28, bears N 89°59'04" W, a distance of 126.523 meters;

SW ¼, SECTION 21, TOWNSHIP 17 NORTH, RANGE 13 WEST, NMPM, (ALLOTMENT 852)

THENCE N 49°42'34" W, a distance of 224.994 meters to P.C. station 15+568.803 m;

THENCE along the arc of a 03°12'16" curve right, having a radius of 545.000 meters, a central angle of 24°18'21", having an arc length of 231.197 meters, with the chord bearing being N 61°51'44" E, and the chord distance being 229.468 meters, to P.O.C. station 15+800.000 m, whence the right-of-way width changes from 23.000 meters left and right to 30.000 meters left and right;

THENCE along the arc of a 03°12'16" curve right, having a radius of 545.000 meters, a central angle of 01°36'27", having an arc length of 15.292 meters, with the chord bearing being N 74°49'08" E, and the chord distance being 15.291 meters, to P.T. station 15+815.292 m;

THENCE N 75°37'22" E, a distance of 104.708 meters to P.O.T. station 15+920.000 m, whence the right-of-way changes from 30.000 meters left and right to 23.000 meters left and right;

THENCE N 75°37'22" E, a distance of 197.893 meters to P.O.T. station 16+1167.893 m at the end of Allotment 852 and the beginning of Allotment 853, a point on the center-quarter line of Section 21, T14N, R13W, NMPM, McKinley county, whence the south ¼ corner to said Section 21, bears S 00°12'29" W, a distance of 333.040 meters;

SE ¼, SECTION 21, TOWNSHIP 17 NORTH, RANGE 13 WEST, NMPM, (ALLOTMENT 853)

THENCE N 75°37'22" E, a distance of 752.502 meters to P.C. station 16+870.395 m;

THENCE along the arc of a 03°12'16" curve left, having a radius of 545.000 meters, a central angle of 8°53'04", having an arc length of 84.510 meters, with the chord bearing being N 71°10'50" E, and the chord distance being 84.426 meters, to a point on the east line of Section 21, T17N, R13W, NMPM, McKinley County, at P.O.C. station 16+954.905 m, at the end of Allotment 853 and the beginning of Allotment 929, whence the southeast corner of Section 21, T17N, R13W, NMPM, McKinley County, bears



S 00°18'11" W. a distance of 547.350 meters;

SW ¼, SECTION 22, TOWNSHIP 17 NORTH, RANGE 13 WEST, NMPM, (ALLOTMENT 929)

THENCE continuing along the arc of a 03°12'16" curve left, having a radius of 545.000 meters, a central angle of 10°41'47", having an arc length of 101.743 meters, with the chord bearing being N 61°23'25" E, and the chord distance being 101.595 meters, to P.T. station 17+056.647 m;

THENCE N 56°02'31" E, a distance of 366.374 meters to P.O.T. station 17+423.021 at the end of Allotment 929 and the beginning of Allotment 876 a point on the quarter-section line of Section 22, T17N, R13W, NMPM, McKinley County, whence the west ¼ corner of said Section 22, bears N 89°36'37" W, a distance of 391.734 meters;

NW ¼, SECTION 22, TOWNSHIP 17 NORTH, RANGE 13 WEST, NMPM, (ALLOTMENT 876)

THENCE N 56°02'31" E, a distance of 498.781 meters to P.O.T. station 17+921.802 m at the end of Allotment 876 and the beginning of Allotment 933, a point on the quarter-section line of Section 22, T17N, R13W, NMPM, McKinley County, whence the north ¼ corner to said Section 22, bears N 00°11'51" E, a distance of 523.698 meters;

NE ¼, SECTION 22, TOWNSHIP 17 NORTH, RANGE 13 WEST, NMPM, (ALLOTMENT 933)

THENCE N 56°02'31" E, a distance of 128.257 meters to P.C. at station 18+050.059 m;

THENCE along the arc of a 01°59'45" curve left, having a radius of 875.000 meters, a central angle of 14°34'40", having an arc length of 222.626 meters, with the chord bearing being N 48°45'11" E, and the chord distance being 222.026 meters, to P.T. station 18+272.684 m;

THENCE N 41°27'52" E, a distance of 404.658 meters, to P.O.T. station 18+677.342 m at the end of Allotment 933 and the beginning of Navajo Trust lands, a point on the north line of Section 22, T17N, R13W, NMPM, McKinley County, whence the northeast corner of said Section 22, bears S 89°44'30" E, a distance of 269.129 meters;

SE ¼, SECTION 15, TOWNSHIP 17 NORTH, RANGE 13 WEST, NMPM, (Navajo Tribal Trust)

THENCE N 41°27'52" E, a distance of 407.010 meters to P.O.T. station 19+084.352 m at the end of Navajo Trust land and the beginning of Navajo Trust land, a point on the east line of Section 15, T17N, R13W, NMPM, McKinley County, whence the southeast corner of said Section 15, bears S 00°04'14" W, a distance of 306.214 meters;



SW ¼, SECTION 14, TOWNSHIP 17 NORTH, RANGE 13 WEST, NMPM, (Navajo Tribal Trust)

THENCE N 41°27'52" E, a distance of 438.060 meters to End of Project B.I.A Route N11(1)(2)1, 2&4, P.O.T. station 19+522.412 m at the end of Navajo Trust land, a point on the southerly right-of-way line of BIA Route N9(6)2&4, whence the W ¼, Section 14, T17N, R13W, NMPM, McKinley County, bears N 58°38'58" W, a distance of 338.926 meters and whence a Network Control tie was made to CP No. 1, having Modified (Ground) Coordinate Values of North = 521743.492 meters and East = 797498.367 meters, bears N 87°20'55" W, a distance of 36.869 meters;

THENCE N 41°27'52" E, a distance of 22.358 meters to Point of Intersection of B.I.A Route N11(1)(2)1, 2&4 P.O.T. station 19+544.770 m, whence said point equals B.I.A Route N9(6)2&4 P.O.T. station 1907+71.45(ft);

The right-of-way width is 23 meters left and right of survey centerline, except where otherwise indicated, a total length of 19.499 kilometers (12.12 miles), and contains 101.774 hectares (251.48 acres) more or less.

**RIGHT-OF-WAY DESCRIPTION  
BIA ROAD PROJECT N11(1)(2)1,2&4  
MARINO LAKE ROAD, NAVAJO NATION  
MCKINLEY COUNTY, NEW MEXICO**

Beginning at Engineer's survey centerline, a Point of Intersection of B.I.A. Route N11(1)(2)1, 2&4 P.O.T. station 0+002.298m, whence said point equals B.I.A. Route N11(2)2&4 P.O.T. station 658+35.24(ft);

Thence N 08°55'37" E, a distance of 22.850 meters to the True Point of Beginning of Right of Way station 0+022.850m, said point being on the northerly right-of-way line of BIA Project N11(2)2&4, from whence the southeast corner of Section 28, Township 16 North, Range 14 West, NMPM, McKinley County, bears S 86°38'12" E, a distance of 1327.314 meters, and whence a Network Control tie was made to CP No. 3, having Modified (Ground) Coordinate Values of North = 508439.138 meters and East = 785073.285 meters, bears S 81°04'40" E, a distance of 86.447 meters;

SW ¼, SECTION 28, TOWNSHIP 16 NORTH, RANGE 14 WEST, NMPM, (ALLOTMENT 1328)

THENCE N 08°55'37" E, a distance of 86.083 meters to the P.C. station 0+111.231;

THENCE along the arc of a 05°00'00" curve left, having a radius of 349.275 meters, a central angle of 09°51'14", having an arc length of 60.069 meters, with the chord bearing being N 04°00'00" E, and the chord distance being 59.995 meters, to P.T. station 0+171.300 m;

THENCE N 00°55'37" W, a distance of 98.911 meters to P.C. station 0+270.211 m;

THENCE along the arc of a 05°50'00" curve right, having a radius of 299.379 meters, a central angle of 31°44'08", having an arc length of 165.823 meters, with the chord bearing being N 14°56'27" E, and the chord distance being 163.712 meters, to P.T. station 0+436.034 m;

THENCE N 30°48'31" E, a distance of 388.845 meters to the end of Allotment 1328 and the beginning of Allotment 1327 to a point on the quarter-section line at station P.O.T. 0+824.879 m, from whence the west ¼ corner of Section 28, T16N, R14W, NMPM, McKinley County, bears N 89°24'22" W, a distance of 489.241 meters;

NW ¼, SECTION 28, TOWNSHIP 16 NORTH, RANGE 14 WEST, NMPM, (ALLOTMENT 1327)

THENCE continuing N 30°48'31" E, a distance of 118.615 meters to P.C. station 0+943.494 m;

THENCE along the arc of a 08°36'10" curve left, having a radius of 203.000 meters, a central angle of 56°56'30", having an arc length of 201.745 meters, with the chord bearing being N 02°20'16" E, and the chord distance being 193.545 meters, to P.T. station 1+145.239 m;

THENCE N 26°07'59" W, a distance of 91.336 meters to P.C. station 1+236.574 m;

THENCE along the arc of a 08°36'10" curve right, having a radius of 203.000 meters, a central angle of 56°19'49", having an arc length of 199.579 meters, with the chord bearing being N 02°01'56" E, and the chord distance being 191.638 meters, to P.T. station 1+436.154 m;

THENCE N 30°11'50" E, a distance of 59.331 meters to P.C. station 1+495.485 m;

THENCE along the arc of a 08°36'10" curve left, having a radius of 203.000 meters, a central angle of 41°17'05" having an arc length of 146.272 meters, with a chord bearing being N 09°33'18" E, and the chord distance being 143.128 meters, to P.T. station 1+641.757 m;

THENCE N 11°05'14" W, a distance of 46.167 meters to P.O.T. station 1+687.924 at the end of Allotment 1327 and the beginning of Navajo Trust Land, a point being the north line of Section 28, T16N, R14W, NMPM, McKinley County, from whence the northwest corner of Section 28, T16N, R14W, NMPM, McKinley County, bears N 89°09'06" W, a distance of 563.580 meters;

SECTION 21, TOWNSHIP 16 NORTH, RANGE 14 WEST, NMPM, (NAVAJO TRIBAL TRUST)

THENCE continuing N 11°05'14" W, a distance of 119.800 meters to P.C. station 1+807.724 m;

THENCE along the arc of a 06°14'13" curve right, having a radius of 280.000 meters, a central angle of 40°10'56", having an arc length of 196.368 meters, with a chord bearing of N 09°00'14" E, and the chord distance being 192.368 meters, to P.T. station 2+004.091 m;

THENCE N 29°05'42" E, a distance of 495.545 meters to P.C. station 2+499.637 m;

THENCE along the arc of a 03°58'09" curve right, having a radius of 440.000 meters, a central angle of 28°30'32", having an arc length of 218.933 meters, with a chord bearing of N 43°20'58" E, and the chord distance being 216.681 meters, to P.T. station 2+718.569 m;

THENCE N 57°36'14" E, a distance of 490.553 meters to P.C. station 3+209.123 m;

THENCE along the arc of a 02°59'07" curve left, having a radius of 585.000 meters, a central angle of 30°59'04", having an arc length of 316.355 meters, with a chord bearing of N 42°06'42" E, and the chord distance being 312.515 meters, to P.T. station 3+525.478 m;

THENCE N 26°37'10" E, a distance of 35.345 meters to P.O.T. station 3+560.823 m to the end of the Navajo Trust Land and the beginning of Allotment 1365, a point being on the east line of Section 21, T16N, R14W, NMPM, McKinley County, from whence the northeast corner of said Section 21 bears N 00°05'24" E, a distance of 168.955 meters;

NW ¼, SECTION 22, TOWNSHIP 16 NORTH, RANGE 14 WEST, NMPM, (ALLOTMENT 1365)

THENCE continuing N 26°37'10" E, a distance of 189.609 meters to P.O.T. station 3+750.432 m at the end of Allotment 1365 and the beginning of Allotment 1904, a point being on the north line of Section 22, T16N, R14W, NMPM, McKinley County, from whence the northwest corner of said Section 22 bears S 89°37'25" W, a distance of 84.693 meters;

SW ¼, SECTION 15, TOWNSHIP 16 NORTH, RANGE 14 WEST, NMPM, (ALLOTMENT 1904)

THENCE continuing N 26°37'10" E, a distance of 149.568 meters to P.O.T. station 3+900.000 m, whence right-of-way width changes from 23.000 meters left and right to 50.000 meters left and right;

THENCE continuing N 26°37'10" E, a distance of 120.000 meters to P.O.T. station 4+020.000 m, whence right-of-way width changes from 50.000 meters left and right to 23.000 meters left and right;

THENCE continuing N 26°37'10" E, a distance of 95.280 meters to P.C. station 4+115.280 m;

THENCE along the arc of a 01°59'45" curve left, having a radius of 875.000 meters, a central angle of 16°46'59", having an arc length of 256.306 meters, with a chord bearing of N 18°13'41" E, and the chord distance being 255.390 meters, to P.T. station 4+371.585 m;

THENCE N 09°50'11" E, a distance of 237.825 meters, at the end of Allotment 1904 and the beginning of Navajo Tribal Trust lands at station 4+609.410 m, a point on the quarter-section line Section 15, T16N, R14W, NMPM, McKinley County, from whence the west ¼ said Section 15 bears S 89°44'47" W, a distance of 358.778 meters;

N ½, SECTION 15, TOWNSHIP 16 NORTH, RANGE 14 WEST, NMPM, (NAVAJO TRIBAL TRUST)

THENCE N 09°50'11" E, a distance of 236.746 meters to P.C. station 4+846.156 m;

THENCE along the arc of a 01°31'07" curve right, having a radius of 1150.000 meters, a central angle of 31°52'22", having an arc length of 639.730 meters, with a chord bearing of N 25°46'22" E, and the chord distance being 631.513 meters, to P.O.C. station 5+485.886 m at the end of Navajo Tribal Trust Land and the beginning of Allotment 1357, a point being on the north line of Section 15, T16N, R14W, NMPM, McKinley County, from whence the northwest corner of said Section 15 bears S 89°52'14" W, a distance of 663.900 meters;

SW ¼, SECTION 10, TOWNSHIP 16 NORTH, RANGE 14 WEST, NMPM, (ALLOTMENT 1357)

THENCE continuing along the arc of a 01°31'07" curve right, having a radius of 1150.000 meters, a central angle of 06°40'54", having an arc length of 134.114 meters, with a chord bearing of N 45°03'01" E, and the chord distance being 134.038 meters to P.O.C. station 5+620.000 m, whence the right-of-way changes from 23.000 meters left and right to 23.000 meters left and 35.000 meters right;



THENCE continuing along the arc of a  $01^{\circ}31'07''$  curve right, having a radius of 1150.000 meters, a central angle of  $02^{\circ}28'22''$ , having an arc length of 49.628 meters, with a chord bearing of  $N 49^{\circ}37'39'' E$ , and the chord distance being 49.625 meters to P.T. station 5+669.628 m;

THENCE  $N 50^{\circ}51'50'' E$ , a distance of 5.014 meters to P.O.T. station 5+674.642 m at the end of Allotment 1357 and the beginning of Allotment 1358, a point being on the center-quarter section line of Section 10, T16N, R14W, NMPM, McKinley County, from whence the south  $\frac{1}{4}$  of said Section 10 bears  $S 00^{\circ}08'29'' W$ , a distance of 129.698 meters;

SE  $\frac{1}{4}$ , SECTION 10, TOWNSHIP 16 NORTH, RANGE 14 WEST, NMPM, (ALLOTMENT 1358)

THENCE  $N 50^{\circ}51'50'' E$ , a distance of 70.372 meters to P.O.T. station 5+740.000 m, whence the right-of-way changes from 23.000 meters left and right to 23.000 meters left and 30.000 meters right;

THENCE  $N 50^{\circ}51'50'' E$ , a distance of 320.000 meters to P.O.T. station 6+060.000 m, whence the right-of-way changes from 23.000 meters left and 30.000 meters right to 23.000 meters and 35.000 meters right;

THENCE  $N 50^{\circ}51'50'' E$ , a distance of 97.708 meters to P.C. station 6+157.708 m;

THENCE along the arc of a  $03^{\circ}17'42''$  curve right, having a radius of 530.000 meters, a central angle of  $04^{\circ}34'19''$ , having an arc length of 42.292 meters, with a chord bearing of  $N 58^{\circ}08'59'' E$ , and the chord distance being 42.280 meters to P.O.C. station 6+200.000 m, whence the right-of-way changes from 23.000 meters left and 35.000 meters right to 23.000 meters left and right;

THENCE continuing along the arc of a  $03^{\circ}17'42''$  curve right, having a radius of 530.000 meters, a central angle of  $22^{\circ}52'46''$ , having an arc length of 230.141 meters, with a chord bearing of  $N 67^{\circ}52'32'' E$ , and the chord distance being 228.337 meters to P.T. station 6+430.141 m;

THENCE  $N 80^{\circ}18'55'' E$ , a distance of 185.029 meters to P.O.T. station 6+615.169 m at the end of Allotment 1358 and the beginning of the Navajo Tribal Trust Land, a point on the east line of Section 10, T16N, R14W, NMPM, McKinley County, from whence the south east corner of said section bears  $S 00^{\circ}15'40'' W$ , a distance of 575.271 meters;

SECTION 11, TOWNSHIP 16 NORTH, RANGE 14 WEST, NMPM, (NAVAJO TRIBAL TRUST)

THENCE continuing  $N 80^{\circ}18'55'' E$ , a distance of 264.704 meters to P.C. station 6+879.873 m;

THENCE along the arc of a  $04^{\circ}59'23''$  curve left, having a radius of 350.000 meters, a central angle of  $45^{\circ}51'27''$ , having an arc length of 280.127 meters, with a chord bearing of  $N 57^{\circ}23'11'' E$ , and the chord distance being 272.710 meters to P.O.C. station 7+160.000 m, whence the right-of-way changes from 23.000 meters left and right to 35.000 meters left and 23.000 meters right;

THENCE continuing along the arc of a  $04^{\circ}59'23''$  curve left, having a radius of 350.000 meters, a central angle of  $07^{\circ}02'08''$ , having an arc length of 42.978 meters, with a chord bearing of  $N 30^{\circ}56'24'' E$ , and the chord distance being 42.951 meters to P.T. station 7+202.978 m;

THENCE  $N 27^{\circ}25'20'' E$ , a distance of 57.022 meters to P.O.T. station 7+260.000 m, whence the right-of-way changes from 35.000 meters left and 23.000 meters right to 23.000 meters left and right;

THENCE  $N 27^{\circ}25'20'' E$ , a distance of 678.330 meters to P.C. station 7+938.330 m;

THENCE along the arc of a  $03^{\circ}58'09''$  curve right, having a radius of 440.000 meters, a central angle of  $25^{\circ}38'48''$ , having an arc length of 196.951 meters, with a chord bearing of  $N 40^{\circ}14'43'' E$ , and the chord distance being 195.311 meters to P.T. station 8+135.281 m;

THENCE  $N 53^{\circ}04'07'' E$ , a distance of 0.388 meters to P.O.T. station 8+135.669 m at the end of the Navajo Tribal Trust Lands and the beginning of the Private Land deeded to Norman Ashcroft & Mary Jane Ashcroft (Revocable Trust land), a point on the north line of Section 11, T16N, R14W, NMPM, McKinley County, from whence the northeast corner of said section bears  $N 89^{\circ}52'19'' E$ , a distance of 630.629 meters;

SECTION 2, TOWNSHIP 16 NORTH, RANGE 14 WEST, NMPM, NORMAN ASHCROFT AND MARY JANE ASHCROFT (REVOCABLE TRUST)

THENCE continuing  $N 53^{\circ}04'07'' E$ , a distance of 172.837 meters to P.C. station 8+308.506 m;

THENCE along the arc of a  $03^{\circ}58'09''$  curve right, having a radius of 440.000 meters, a central angle of  $21^{\circ}01'46''$ , having an arc length of 161.494 meters, with a chord bearing of  $N 63^{\circ}35'00'' E$ , and the chord distance being 160.589 meters to P.O.C. station 8+470.000 m, whence the right-of-way changes from 23.000 meters left and right to 23.000 meters left and 35.000 meters right;

THENCE continuing along the arc of a  $03^{\circ}58'09''$  curve right, having a radius of 440.000 meters, a central angle of  $04^{\circ}06'51''$ , having an arc length of 31.595 meters, with a chord bearing of  $N 76^{\circ}09'19'' E$ , and the chord distance being 31.595 meters to P.T. station 8+501.595 m, whence the right-of-way changes from 23.000 meters left and 35 meters right to 35.000 meters left and right;

THENCE  $N 78^{\circ}12'44'' E$ , a distance of 168.405 meters to P.O.T. station 8+670.000 m, whence the right-of-way changes from 35.000 meters left and right to 23.000 meters left and right;

THENCE  $N 78^{\circ}12'44'' E$ , a distance of 147.801 meters to P.O.T. station 8+817.801 m at the end of the Norman Ashcroft & Mary Jane Ashcroft (Revocable Trust) lands and the beginning of the Navajo Tribal Trust lands, a point on the east line of Section 1, T16N, R14W, NMPM, McKinley County, from whence the southwest corner of said section bears  $S 01^{\circ}57'53'' E$ , a distance of 246.186 meters;

SECTION 1, TOWNSHIP 16 NORTH, RANGE 14 WEST, NMPM, (NAVAJO TRIBAL TRUST)

THENCE continuing N 78°12'44" E, a distance of 380.172 meters to P.C. station 9+197.974 m;

THENCE along the arc of a 02°59'07" curve left, having a radius of 585.000 meters, a central angle of 23°14'31", having an arc length of 237.306 meters, with a chord bearing of N 66°35'28" E, and the chord distance being 235.682 meters to P.T. station 9+435.279 m;

THENCE N 54°58'13" E, a distance of 361.007 meters to P.C. station 9+796.286 m;

THENCE along the arc of a 01°59'45" curve left, having a radius of 875.000 meters, a central angle of 24°19'59", having an arc length of 371.607 meters, with a chord bearing of N 42°48'13" E, and the chord distance being 368.821 meters to P.T. station 10+167.893 m;

THENCE N 30°38'13" E, a distance of 555.023 meters to P.C. station 10+722.916 m;

THENCE along the arc of a 01°59'45" curve right, having a radius of 875.000 meters, a central angle of 8°44'08", having an arc length of 133.033 meters, with a chord bearing of N 34°59'33" E, and the chord distance being 132.905 meters to P.O.C. station 10+855.949 m at the end of the Navajo Tribal Trust land and the beginning of new Navajo Tribal Trust land, a point on the north line of Section 01, T17N, R14W, NMPM, McKinley County, from whence the northeast corner of said section bears N 89°34'07" E, a distance of 154.709 meters;

SECTION 31, TOWNSHIP 17 NORTH, RANGE 13 WEST, NMPM, (NAVAJO TRIBAL TRUST)

THENCE continuing along the arc of a 01°59'45" curve right, having a radius of 875.000 meters, a central angle of 16°50'11", having an arc length of 257.117 meters, with a chord bearing of N 47°45'59" E, and the chord distance being 256.193 meters to P.T. station 11+113.067 m;

THENCE N 56°11'04" E, a distance of 961.933 meters to P.O.T. station 12+075.000 m, whence the right-of-way changes from 23.000 meters left and right to 50.000 meters left and right;

THENCE N 56°11'04" E, a distance of 196.307 meters to P.C. station 12+271.307 m, whence the right-of-way changes from 50.000 meters left and right to 75.000 meters left and 60.000 meters right;

THENCE along the arc of a 06°14'13" curve left, having a radius of 280.000 meters, a central angle of 22°14'30", having an arc length of 108.693 meters, with a chord bearing of N 45°03'49" E, and the chord distance being 108.012 meters to P.O.C. station 12+380.000 m, whence the right-of-way changes from 75.000 meters left and 60.000 meters right to 75.000 meters left and 50.000 meters right;

THENCE continuing along the arc of a 06°14'13" curve left, having a radius of 280.000 meters, a central angle of 03°13'39", having an arc length of 15.773 meters, with a chord bearing of N 32°19'44" E, and the chord distance being 15.771 meters to P.O.C. station 12+395.773 m at the end of the Navajo Tribal Trust land and the



beginning of the Bureau of Land Management (Public Domain) lands, to a point on the east line of Section 31, T17N, R13W, NMPM, McKinley County, from whence the southeast corner of said section bears S 00°17'37" E, a distance of 895.790 meters;

SECTION 32, TOWNSHIP 17 NORTH, RANGE 14 WEST, NMPM, (UNITED STATES BUREAU OF LAND MANAGEMENT)

THENCE continuing along the arc of a 06°14'13" curve left, having a radius of 280.000 meters, a central angle of 01°45'41", having an arc length of 8.607 meters, with a chord bearing of N 29°50'04" E, and the chord distance being 8.607 meters to P.T station 12+404.380 m;

THENCE N 28°57'14" E, a distance of 95.620 meters to P.O.T. station 12+500.000 m, whence the right-of-way changes from 75.000 meters left and 50.000 meters right to 50.000 meters left and right;

THENCE continuing N 28°57'14" E, a distance of 711.481 meters to P.O.T. station 13+211.481 m at the end of the United States Bureau of Land Management (Public Domain) lands and the beginning of the Navajo Trust lands, a point of the north line of Section 32, T17N, R13W, NMPM, McKinley County, from whence the northwest corner of said section bears N 89°48'52" W, a distance of 398.672 meters;

S 1/2, SECTION 29, TOWNSHIP 17 NORTH, RANGE 13 WEST, NMPM, (NAVAJO TRUST)

THENCE continuing N 28°57'14" E, a distance of 428.519 meters to P.O.T. station 13+640.000 m, whence the right-of-way changes from 50.000 meters left and right to 30.000 meters left and right;

THENCE continuing N 28°57'14" E, a distance of 444.124 meters to P.C. station 14+084.122 m;

THENCE along the arc of a 01°59'45" curve right, having a radius of 875.000 meters, a central angle of 3°35'10", having an arc length of 54.767 meters, with a chord bearing of N 30°44'49" E, and the chord distance being 54.758 meters to P.O.C. station 14+138.891 m at the end of the Navajo Trust land and the beginning of Allotment 930, a point on the center-quarter line of Section 29, T17N, R13W, NMPM, McKinley County, from whence the east ¼ corner of said section bears S89°49'55" E a distance of 760.411 m;

NE ¼, SECTION 29, TOWNSHIP 17 NORTH, RANGE 13 WEST, NMPM, (ALLOTMENT 930)

THENCE continuing along the arc of a 01°59'45" curve right, having a radius of 875.000 meters, a central angle of 17°10'10", having an arc length of 262.204 meters, with a chord bearing of N 41°07'29" E, and the chord distance being 261.224 meters to P.T. station 14+401.095 m, whence the right-of-way changes from 30.000 meters left and right to 23.000 meters left and right;



THENCE N 49°42'34" E, a distance of 776.151 meters to P.O.T. station 15+177.246 m at the end of Allotment 930 and the beginning of Allotment 867, a point on the east line of Section 29, T17N, R13W, NMPM, McKinley County, from whence the northeast corner of said section bears N 00°16'49" E, a distance of 107.746 meters.

NW ¼, SECTION 28, TOWNSHIP 17 NORTH, RANGE 13 WEST, NMPM, (ALLOTMENT 867)

THENCE N 49°42'34" E, a distance of 166.563 meters to P.O.T. station 15+343.809 m, at the end of Allotment 867 and the beginning of Allotment 852, a point being on the north line of Section 28, T17N, R13W, NMPM, McKinley County, whence the northwest corner of said Section 28, bears N 89°59'04" W, a distance of 126.523 meters;

SW ¼, SECTION 21, TOWNSHIP 17 NORTH, RANGE 13 WEST, NMPM, (ALLOTMENT 852)

THENCE N 49°42'34" W, a distance of 224.994 meters to P.C. station 15+568.803 m;

THENCE along the arc of a 03°12'16" curve right, having a radius of 545.000 meters, a central angle of 24°18'21", having an arc length of 231.197 meters, with the chord bearing being N 61°51'44" E, and the chord distance being 229.468 meters, to P.O.C. station 15+800.000 m, whence the right-of-way width changes from 23.000 meters left and right to 30.000 meters left and right;

THENCE along the arc of a 03°12'16" curve right, having a radius of 545.000 meters, a central angle of 01°36'27", having an arc length of 15.292 meters, with the chord bearing being N 74°49'08" E, and the chord distance being 15.291 meters, to P.T. station 15+815.292 m;

THENCE N 75°37'22" E, a distance of 104.708 meters to P.O.T. station 15+920.000 m, whence the right-of-way changes from 30.000 meters left and right to 23.000 meters left and right;

THENCE N 75°37'22" E, a distance of 197.893 meters to P.O.T. station 16+1167.893 m at the end of Allotment 852 and the beginning of Allotment 853, a point on the center-quarter line of Section 21, T14N, R13W, NMPM, McKinley county, whence the south ¼ corner to said Section 21, bears S 00°12'29" W, a distance of 333.040 meters;

SE ¼, SECTION 21, TOWNSHIP 17 NORTH, RANGE 13 WEST, NMPM, (ALLOTMENT 853)

THENCE N 75°37'22" E, a distance of 752.502 meters to P.C. station 16+870.395 m;

THENCE along the arc of a 03°12'16" curve left, having a radius of 545.000 meters, a central angle of 8°53'04", having an arc length of 84.510 meters, with the chord bearing being N 71°10'50" E, and the chord distance being 84.426 meters, to a point on the east line of Section 21, T17N, R13W, NMPM, McKinley County, at P.O.C. station 16+954.905 m, at the end of Allotment 853 and the beginning of Allotment 929, whence the southeast corner of Section 21, T17N, R13W, NMPM, McKinley County, bears

S 00°18'11" W. a distance of 547.350 meters;

SW ¼, SECTION 22, TOWNSHIP 17 NORTH, RANGE 13 WEST, NMPM, (ALLOTMENT 929)

THENCE continuing along the arc of a 03°12'16" curve left, having a radius of 545.000 meters, a central angle of 10°41'47", having an arc length of 101.743 meters, with the chord bearing being N 61°23'25" E, and the chord distance being 101.595 meters, to P.T. station 17+056.647 m;

THENCE N 56°02'31" E, a distance of 366.374 meters to P.O.T. station 17+423.021 at the end of Allotment 929 and the beginning of Allotment 876 a point on the quarter-section line of Section 22, T17N, R13W, NMPM, McKinley County, whence the west ¼ corner of said Section 22, bears N 89°36'37" W, a distance of 391.734 meters;

NW ¼, SECTION 22, TOWNSHIP 17 NORTH, RANGE 13 WEST, NMPM, (ALLOTMENT 876)

THENCE N 56°02'31" E, a distance of 498.781 meters to P.O.T. station 17+921.802 m at the end of Allotment 876 and the beginning of Allotment 933, a point on the quarter-section line of Section 22, T17N, R13W, NMPM, McKinley County, whence the north ¼ corner to said Section 22, bears N 00°11'51" E, a distance of 523.698 meters;

NE ¼, SECTION 22, TOWNSHIP 17 NORTH, RANGE 13 WEST, NMPM, (ALLOTMENT 933)

THENCE N 56°02'31" E, a distance of 128.257 meters to P.C. at station 18+050.059 m;

THENCE along the arc of a 01°59'45" curve left, having a radius of 875.000 meters, a central angle of 14°34'40", having an arc length of 222.626 meters, with the chord bearing being N 48°45'11" E, and the chord distance being 222.026 meters, to P.T. station 18+272.684 m;

THENCE N 41°27'52" E, a distance of 404.658 meters, to P.O.T. station 18+677.342 m at the end of Allotment 933 and the beginning of Navajo Trust lands, a point on the north line of Section 22, T17N, R13W, NMPM, McKinley County, whence the northeast corner of said Section 22, bears S 89°44'30" E, a distance of 269.129 meters;

SE ¼, SECTION 15, TOWNSHIP 17 NORTH, RANGE 13 WEST, NMPM, (Navajo Tribal Trust)

THENCE N 41°27'52" E, a distance of 407.010 meters to P.O.T. station 19+084.352 m at the end of Navajo Trust land and the beginning of Navajo Trust land, a point on the east line of Section 15, T17N, R13W, NMPM, McKinley County, whence the southeast corner of said Section 15, bears S 00°04'14" W, a distance of 306.214 meters;

SW ¼, SECTION 14, TOWNSHIP 17 NORTH, RANGE 13 WEST, NMPM, (Navajo Tribal Trust)

THENCE N 41°27'52" E, a distance of 438.060 meters to End of Project B.I.A Route N11(1)(2)1, 2&4, P.O.T. station 19+522.412 m at the end of Navajo Trust land, a point on the southerly right-of-way line of BIA Route N9(6)2&4, whence the W ¼, Section 14, T17N, R13W, NMPM, McKinley County, bears N 58°38'58" W, a distance of 338.926 meters and whence a Network Control tie was made to CP No. 1, having Modified (Ground) Coordinate Values of North = 521743.492 meters and East = 797498.367 meters, bears N 87°20'55" W, a distance of 36.869 meters;

THENCE N 41°27'52" E, a distance of 22.358 meters to Point of Intersection of B.I.A Route N11(1)(2)1, 2&4 P.O.T. station 19+544.770 m, whence said point equals B.I.A Route N9(6)2&4 P.O.T. station 1907+71.45(ft);

The right-of-way width is 23 meters left and right of survey centerline, except where otherwise indicated, a total length of 19.499 kilometers (12.12 miles), and contains 101.774 hectares (251.48 acres) more or less.



# THE NAVAJO NATION

RUSSELL BEGAYE PRESIDENT  
JONATHAN NEZ VICE PRESIDENT

## MEMORANDUM



TO: Howard Draper, Program/Project Specialist  
Project Review Section/ NLD

FROM: Raymond Pine  
Raymond Pine, Appraiser  
Title Section/NLD

DATE: November 16, 2016

SUBJECT: Field clearance report on right-of way easement for Navajo Nation trust land on  
BIA Road Project N11 (1) (2).

This is to inform you that the necessary field clearance has been completed for the BIA Road Project N11 (1) (2) from Mariano Lake to Crownpoint, NM. The location of the road project is more particularly described in All of Section 01, 11, 21 & N½ of Sec. 15, Township 16 North, Range 14 West and SW¼ of Sec. 14, SE¼ of Sec. 15, S½ of Sec. 29 & All of Section 31, Township 17 North, Range 13 West, McKinley County, New Mexico.

During the initial site visit's, I had to explain the intent of the proposed road project right-of-way easement to each affected grazing permittee's and to obtain their consent for the Navajo Nation trust lands. The main emphasis of each individual permittee was to establish proper access to grazing use areas during the construction of a right-of-way fence. The respective Chapter Land Board Members for District 15 and 16 identified the affected grazing permittee's for this road project and also acknowledge all of the attached consent forms for this road project.

All grazing permittee's have consented to proceed with the road project as proposed for the Navajo Nation trust lands. The only consents I did not obtained was from Norman Paton who lives in Cameron, Arizona. Upon checking with the BIA-Natural Resources Office they have indicated the Mr. Paton grazing permit was not renewed because of no attempt was made by this individual to submit a livestock tally count which was also acknowledge by Mr. Edmund Henry, Jr., Land Board Member for Mariano Lake Chapter.

This complete my report for the project.

Attachments



CONSENT 3

(Waiver of compensation for damages)

CONSENT TO USE  
NAVAJO TRIBAL LANDS

TO WHOM IT MAY CONCERN:

I, Louise Thee, hereby grant consent to the Navajo Tribe and the Bureau of Indian Affairs to permit Bureau of Indian Affairs, Post Office Box 1060, Gallup, New Mexico 87305, to use a portion of my land use area for the following purpose Right of way to construct, operate and maintain Mariano Lake Road Project N11(1)(2) across Navajo Trust lands located in Section 21, Section 15, Section 11, Section 01, T16N, R14W, Section 31, Section 31, Section 29, Section 15, Section 14, T17N, R13W, McKinley County, New Mexico, as shown on the map showing the location of the proposed project on the back of this consent form.

I hereby waive any rights I may have to compensation for the diminish-ment in value of my land use rights as a result of the above-referenced project as proposed.

REMARKS:

11/15/16  
Date

Louise Thee  
Land User Signature (or Thumbprint)

9/20/2016  
Tally Count Completed  
(Pending Approval)  
Census No. Permit No.

RU#1619-002

WITNESS:

Allan T. Morez

11-15-16  
Date

James S. [Signature]  
Grazing Committee or Land Board Member

16  
District No.

Acknowledgement of Field Agent

I acknowledge that the contents of this consent form was read~~X~~ or fully explained~~X~~ to the land user in Navajo~~X~~ or English// (check where applicable)

[Signature]

Field Agent Signature

CONSENT 3

(Waiver of compensation for damages)

CONSENT TO USE  
NAVAJO TRIBAL LANDS

TO WHOM IT MAY CONCERN:

I, Sam S. Begay, hereby grant consent to the Navajo Tribe and the Bureau of Indian Affairs to permit Bureau of Indian Affairs, Post Office Box 1060, Gallup, New Mexico 87305, to use a portion of my land use area for the following purpose Right of way to construct, operate and maintain Mariano Lake Road Project N11(1)(2) across Navajo Trust lands located in Section 21, Section 15, Section 11, Section 01, T16N, R14W, Section 31, Section 31, Section 29, Section 15, Section 14, T17N, R13W, McKinley County, New Mexico, as shown on the map showing the location of the proposed project on the back of this consent form.

I hereby waive any rights I may have to compensation for the diminish-ment in value of my land use rights as a result of the above-referenced project as proposed.

REMARKS:

10/27/16 Sam S. Begay E4d619398  
Date Land User Signature (or Thumbprint) Census No. Permit No.  
WITNESS: Refugio Benally Contract No.  
Range Unit #39  
10/27/16 Refugio Benally  
Date Grazing Committee or Land Board Member District No. 16

Acknowledgement of Field Agent

I acknowledge that the contents of this consent form was read// or fully explained// to the land user in Navajo// or English// (check where applicable)

Refugio Benally  
Field Agent Signature

CONSENT 3

(Waiver of compensation for damages)

CONSENT TO USE  
NAVAJO TRIBAL LANDS

TO WHOM IT MAY CONCERN:

I, Rita J. Cowboy, hereby grant consent to the Navajo Tribe and the Bureau of Indian Affairs to permit Bureau of Indian Affairs, Post Office Box 1060, Gallup, New Mexico 87305, to use a portion of my land use area for the following purpose Right of way to construct, operate and maintain Mariano Lake Road Project N11(1)(2) across Navajo Trust lands located in Section 21, Section 15, Section 11, Section 01, T16N, R14W, Section 31, Section 31, Section 29, Section 15, Section 14, T17N, R13W, McKinley County, New Mexico, as shown on the map showing the location of the proposed project on the back of this consent form.

I hereby waive any rights I may have to compensation for the diminish-ment in value of my land use rights as a result of the above-referenced project as proposed.

REMARKS:

11/1/16 Rita J. Cowboy E46161922B  
Date Land User Signature (or Thumbprint) Census No. Permit No.  
RU#22

WITNESS: Bonnie S. Cowboy

11-1-16 [Signature] 16  
Date Grazing Committee or Land Board Member District No.

Acknowledgement of Field Agent

I acknowledge that the contents of this consent form was read ☒ or fully explained ☒ to the land user in Navajo ☒ or English// (check where applicable)

[Signature]  
Field Agent Signature

CONSENT 3

(Waiver of compensation for damages)

CONSENT TO USE  
NAVAJO TRIBAL LANDS

TO WHOM IT MAY CONCERN:

I, Mabel King - Bitsilly, hereby grant consent to the Navajo Tribe and the Bureau of Indian Affairs to permit Bureau of Indian Affairs, Post Office Box 1060, Gallup, New Mexico 87305, to use a portion of my land use area for the following purpose Right of way to construct, operate and maintain Mariano Lake Road Project N11(1)(2) across Navajo Trust lands located in Section 21, Section 15, Section 11, Section 01, T16N, R14W, Section 31, Section 31, Section 29, Section 15, Section 14, T17N, R13W, McKinley County, New Mexico, as shown on the map showing the location of the proposed project on the back of this consent form.

I hereby waive any rights I may have to compensation for the diminish-ment in value of my land use rights as a result of the above-referenced project as proposed.

REMARKS:

11/1/14 Mabel King Bitsilly  
Date Land User Signature (or Thumbprint)

Census No.

E46161923B

Permit No.  
Contract No

Range Unit # 23

WITNESS: \_\_\_\_\_

11/10/16  
Date

Shirley C. Smith  
Grazing Committee or Land Board Member

16  
District No.

Acknowledgement of Field Agent

I acknowledge that the contents of this consent form was read ☒ or fully explained ☒ to the land user in Navajo ☒ or English ☒ (check where applicable)

Regina J. Smith  
Field Agent Signature



CONSENT 3

(Waiver of compensation for damages)

CONSENT TO USE  
NAVAJO TRIBAL LANDS

TO WHOM IT MAY CONCERN:

I, Elsie Billie, hereby grant consent to the Navajo Tribe and the Bureau of Indian Affairs to permit Bureau of Indian Affairs, Post Office Box 1060, Gallup, New Mexico 87305, to use a portion of my land use area for the following purpose Right of way to construct, operate and maintain Mariano Lake Road Project N11(1)(2) across Navajo Trust lands located in Section 21, Section 15, Section 11, Section 01, T16N, R14W, Section 31, Section 31, Section 29, Section 15, Section 14, T17N, R13W, McKinley County, New Mexico, as shown on the map showing the location of the proposed project on the back of this consent form.

I hereby waive any rights I may have to compensation for the diminish-ment in value of my land use rights as a result of the above-referenced project as proposed.

REMARKS:

11-1-2014  
Date

Elsie Billie  
Land User Signature (or Thumbprint)

Census No. E46161943C  
~~Permit No.~~  
~~Contract No.~~  
Range Unit #43

WITNESS: \_\_\_\_\_

11-10-16  
Date

Emmanuel S. [Signature]  
Grazing Committee or Land Board Member

16  
District No.

Acknowledgement of Field Agent

I acknowledge that the contents of this consent form was read ☒ or fully explained ☒ to the land user in Navajo ☒ or English ☒ (check where applicable)

[Signature]  
Field Agent Signature

CONSENT 3

(Waiver of compensation for damages)

CONSENT TO USE  
NAVAJO TRIBAL LANDS

TO WHOM IT MAY CONCERN:

I, Rene A. Thompson, hereby grant consent to the Navajo Tribe and the Bureau of Indian Affairs to permit Bureau of Indian Affairs, Post Office Box 1060, Gallup, New Mexico 87305, to use a portion of my land use area for the following purpose Right of way to construct, operate and maintain Mariano Lake Road Project N11(1)(2) across Navajo Trust lands located in Section 21, Section 15, Section 11, Section 01, T16N, R14W, Section 31, Section 31, Section 29, Section 15, Section 14, T17N, R13W, McKinley County, New Mexico, as shown on the map showing the location of the proposed project on the back of this consent form.

I hereby waive any rights I may have to compensation for the diminish-ment in value of my land use rights as a result of the above-referenced project as proposed.

REMARKS:

11-3-16 Rene A. Thompson E46200250E  
Date Land User Signature (or Thumbprint) Census No. Permit No.  
Contract No.  
Range Unit #50

WITNESS: \_\_\_\_\_

11/15/2016 Mark S. Emery #20  
Date Grazing Committee or Land Board Member District No.

Acknowledgement of Field Agent

I acknowledge that the contents of this consent form was read// or fully explained// to the land user in Navajo// or English// (check where applicable)

Rogers A. Chin  
Field Agent Signature

(Waiver of compensation for damages)

TO WHOM IT MAY CONCERN:

I hereby waive any rights I may have to compensation for the diminishment in value of my land use rights as a result of the above-referenced project as proposed.

11/1/16 Date Frank H. Beyer, Jr. Land User Signature (or Thumbprint)                      Census No. E462007499  
Permit No. Contract No  
Range Unit # 49

WITNESS: \_\_\_\_\_

11/13/2016 Date N. Burt Emmons Grazing Committee or Land Board Member #20 District No.

I acknowledge that the contents of this consent form was read~~X~~ or fully explained~~X~~ to the land user in Navajo~~X~~ or English~~X~~ (check where applicable)

  
Field Agent Signature

CONSENT 3

(Waiver of compensation for damages)

CONSENT TO USE  
NAVAJO TRIBAL LANDS

TO WHOM IT MAY CONCERN:

I, Sandra J. Willie, hereby grant consent to the Navajo Tribe and the Bureau of Indian Affairs to permit Bureau of Indian Affairs, Post Office Box 1060, Gallup, New Mexico 87305, to use a portion of my land use area for the following purpose Right of way to construct, operate and maintain Mariano Lake Road Project N11(1)(2) across Navajo Trust lands located in Section 21, Section 15, Section 11, Section 01, T16N, R14W, Section 31, Section 31, Section 29, Section 15, Section 14, T17N, R13W, McKinley County, New Mexico, as shown on the map showing the location of the proposed project on the back of this consent form.

I hereby waive any rights I may have to compensation for the diminish-ment in value of my land use rights as a result of the above-referenced project as proposed.

REMARKS:

11/03/16  
Date

Sandra J. Willie  
Land User Signature (or Thumbprint)

Census No.

E462002496  
Permit No.  
Contract No  
Range Unit #49

WITNESS: \_\_\_\_\_

11/15/2016  
Date

Theresa E. Smith  
Grazing Committee or Land Board Member

#20  
District No.

Acknowledgement of Field Agent

I acknowledge that the contents of this consent form was read// or fully explained// to the land user in Navajo// or English// (check where applicable)

Rogers J. Smith  
Field Agent Signature



CONSENT 3

(Waiver of compensation for damages)

CONSENT TO USE  
NAVAJO TRIBAL LANDS

TO WHOM IT MAY CONCERN:

I, Frank H Begay, Sr., hereby grant consent to the Navajo Tribe and the Bureau of Indian Affairs to permit Bureau of Indian Affairs, Post Office Box 1060, Gallup, New Mexico 87305, to use a portion of my land use area for the following purpose Right of way to construct, operate and maintain Mariano Lake Road Project N11(1)(2) across Navajo Trust lands located in Section 21, Section 15, Section 11, Section 01, T16N, R14W, Section 31, Section 31, Section 29, Section 15, Section 14, T17N, R13W, McKinley County, New Mexico, as shown on the map showing the location of the proposed project on the back of this consent form.

I hereby waive any rights I may have to compensation for the diminish-ment in value of my land use rights as a result of the above-referenced project as proposed.

REMARKS:

10/31/16 Frank H Begay E46200496  
Date Land User Signature (or Thumbprint) Census No. ~~District No.~~  
Contract No.  
Range Unit #49

WITNESS: Velma H. Begay

11/15/2016 Donna E. Emme #20  
Date Grazing Committee or Land Board Member District No.

Acknowledgement of Field Agent

I acknowledge that the contents of this consent form was read// or fully explained ☒ to the land user in Navajo ☒ or English// (check where applicable)

Raymond J. Jones

Field Agent Signature

CONSENT 3  
(Waiver of compensation for damages)

CONSENT TO USE  
NAVAJO TRIBAL LANDS

TO WHOM IT MAY CONCERN:

I, Calvin W. Murphy, hereby grant consent to the Navajo Tribe and the Bureau of Indian Affairs to permit Bureau of Indian Affairs, Post Office Box 1060, Gallup, New Mexico 87305, to use a portion of my land use area for the following purpose Right of way to construct, operate and maintain Mariano Lake Road Project N11(1)(2) across Navajo Trust lands located in Section 21, Section 15, Section 11, Section 01, T16N, R14W, Section 31, Section 31, Section 29, Section 15, Section 14, T17N, R13W, McKinley County, New Mexico, as shown on the map showing the location of the proposed project on the back of this consent form.

I hereby waive any rights I may have to compensation for the diminish-ment in value of my land use rights as a result of the above-referenced project as proposed.

REMARKS:

11/1/16  
Date

Cal W  
Land User Signature (or Thumbprint)

Census No.

*Recenti  
Grazing Community  
RU#48  
Permit No.  
Contract No  
E46206248H*

WITNESS: \_\_\_\_\_

11/15/2016  
Date

Chasut Em  
Grazing Committee or Land Board Member

# 20  
District No.

Acknowledgement of Field Agent

I acknowledge that the contents of this consent form was read ☒ or fully explained ☒ to the land user in Navajo ☒ or English ☒ (check where applicable)

Ragunah Jim  
Field Agent Signature

*comment: The permittee requests proper access to grazing use area and installment of right-of-way fence also maintain adequate maintenance of right-of-way.*



## EXHIBIT "D"

### NAVAJO NATION RIGHT-OF-WAY TERMS AND CONDITIONS BIA NAVAJO REGION (GRANTEE) (Navajo Route 11 – Mariano Lake Road Project, McKinley County, NM)

1. The term of the right-of-way shall be for seventy-five (75) years, beginning on the date of the right-of-way is granted by the Secretary of Interior.
2. Consideration for the grant of right-of-way is hereby waived, because the project will benefit Navajos living in the area. Consideration for the right-of-way was assessed at \$4,841,362.81 and shall be considered the Navajo Nation's contribution to the project.
3. The Grantee may develop, use, and occupy the right-of-way for the purposes of constructing, operating, and maintaining the all-weather roadway. The right-of-way will include construction of utilities within the easement corridor. Any and all utility installations will be approved through the BIA DOT permitting process. The approval of the Navajo Nation may be granted, granted upon conditions, or withheld at the sole discretion of the Navajo Nation. The Grantee may not develop, use, or occupy the right-of-way for any unlawful purpose.
4. In all activities conducted by the Grantee within the Navajo Nation, the Grantee shall abide by all laws and regulations of the Navajo Nation and of the United States, now in force and effect or as hereafter may come into force and effect, including but not limited to the following:
  - a. Title 25, Code of Federal Regulations, Part 169; subject to the terms of this right-of-way;
  - b. All applicable federal and Navajo Nation antiquities laws and regulations, with the following additional condition: In the event of a discovery, all operations in the immediate vicinity of the discovery must cease and the Navajo Nation Historic Preservation Department must be notified immediately. As used herein, "discovery" means any previously unidentified or incorrectly identified cultural resources, including but not limited to archeological deposits, human remains, or location reportedly associated with Native American religious/traditional beliefs or practices;
  - c. The Navajo Preference in Employment Act, 15 N.N.C. §§ 601 et seq., and the Navajo Nation Business Opportunity Act, 5 N.N.C. §§ 201 et seq.; and
  - d. The Navajo Nation Water Code, 22 N.N.C. §§ 1101 et seq. Grantee shall apply for and submit all applicable permits and information to the Navajo Nation Water Resources Department, or its successor.
5. The Grantee shall ensure that the air quality of the Navajo Nation is not jeopardized due to violation of applicable laws and regulations by its operations pursuant to the right-of-way.

6. The Grantee shall clear and keep clear the lands within the right-of-way to the extent compatible with the purpose of the right-of-way, and shall dispose of all vegetation and other materials cut, uprooted, or otherwise accumulated during any surface disturbance activities.
7. The Grantee shall reclaim all surface lands disturbed related to the right-of-way, as outlined in a restoration and re-vegetation plan, which shall be approved by the Navajo Nation environmental Protection Agency (NNEPA) prior to any surface disturbance. The Grantee shall comply with all provisions of such restoration and re-vegetation plans and shall notify the Director of the NNEPA immediately upon completion of the surface disturbance activities so that a site inspection can be made.
8. The Grantee shall at all times during the term of the right-of-way and at the Grantee's sole cost and expense, maintain the land subject to the right-of-way and all improvements located thereon and make all necessary and reasonable repairs.
9. The Grantee shall obtain prior written permission to cross-existing rights-of-way, if any, from the appropriate parties.
10. The Grantee shall be responsible for and promptly pay all damages when they are sustained.
11. The Grantee shall indemnify and hold harmless the Navajo Nation and the Secretary of Interior and their respective authorized agents, employees, land users, and occupants, against any liability for loss of life, personal injury, and property damages arising from the development, use, or occupancy or use of the right-of-way by the Grantee.
12. The Grantee shall not assign, convey, transfer, or sublet, in any manner whatsoever, the right-of-way or any interest therein, or in or to any of the improvements on the land subject to the right-of-way, without the prior written consent of the Navajo Nation and the Secretary of Interior. Any such attempted assignment, conveyance or transfer without such prior written consent shall be void and of no effect. The consent of the Navajo Nation may be granted, granted upon conditions, or withheld at the sole discretion of the Navajo Nation.
13. The Navajo Nation may terminate the right-of-way for violation of any of the terms and conditions stated herein. In addition, the right-of-way shall be terminable in whole or in part by the Navajo Nation for any of the following causes:
  - a. Failure to comply with any term or condition of the grant or applicable laws or regulations;
  - b. A non-use of the right-of-way for the purpose for which it is granted for a consecutive two-year period;
  - c. The use of the land subject to the right-of-way for any purpose inconsistent with the purpose for which the right-of-way is granted; and
  - d. An abandonment of the right-of-way.



14. At the termination of this right-of-way, the Grantee , shall peaceably and without legal process deliver up the possession of the premises, in good condition, usual wear and tear excepted. Upon the written request of the Navajo Nation, the Grantee shall provide the Navajo Nation, at the Grantee's sole cost and expense, with an environmental site assessment of the premises at least sixty (60) days prior to delivery of the said premises. This provision 12 shall not apply to the United States as Grantee.
15. Holding over by the Grantee after the termination of the right-of-way shall not constitute a renewal or extension there of or give the Grantee any rights hereunder or in or to the land subject to the right-of-way or to any improvements located thereon.
16. The Navajo nation and the Secretary of the Interior shall have the right, at any reasonable time during the term of the right-of-way, to enter upon the premises, or any part thereof, to inspect the same and any improvements located thereon.
17. By acceptance of the grant of right-of-way, the Grantee consents to the full territorial legislative, executive, and judicial jurisdiction of the Navajo Nation, including but not limited to the jurisdiction of the Navajo Nation, including but not limited to the jurisdiction to levy fines and to enter judgments for compensatory and punitive damages and injunctive relief, in connection with all activities conducted by the Grantee within the Navajo Nation or which have a proximate (legal) effect on persons or property within the Navajo Nation.
18. By acceptance of the grant of right-of-way, the Grantee covenants and agrees never to contest or challenge the legislative, executive, or judicial jurisdiction of the Navajo Nation on the basis that such jurisdiction is inconsistent with the status of the Navajo Nation as an Indian nation, or that the Navajo Nation government is not a government of general jurisdiction, or that the Navajo Nation does not possess full police power (i.e.. the power to legislative and regulate for the general health and welfare) over all lands, persons, and activities within its territorial boundaries, or on any other basis not generally applicable to a similar challenge to the jurisdiction of a state government. Nothing contained in this provision shall be construed to negate or impair federal responsibilities with respect to the land subject to the right-of-way or to the Navajo Nation.
19. Any action or proceeding brought by the Grantee against the Navajo Nation in connection with or arising out of the terms and conditions of the right-of-way shall be brought only in the Courts of the Navajo Nation, and no such action or proceeding shall be brought by the Grantee against the Navajo Nation in any court of any state.
20. Nothing contained herein shall be interpreted as constituting a waiver, express or implied, of the sovereign immunity of the Navajo Nation.
21. Except as prohibited by applicable federal law, the law of the Navajo Nation shall govern the construction, performance, and enforcement of the terms and conditions contained herein.
22. The terms and conditions contained herein shall extend to and be binding upon the successors, heirs, assigns, executors, administrators, employees, and agents, including all contractors and

subcontractors, of the Grantee, and the term "Grantee," whenever used herein, shall be deemed to include all such successors, heirs, assigns, executors, administrators, employees, and agents.

23. There is expressly reserved to the Navajo Nation full territorial legislative, executive, and judicial jurisdiction over the right-of-way and all lands burdened by the right-of-way, including without limitation over all persons, including the public, and all activities conducted or otherwise occurring within the right-of-way; and the right-of-way and all lands burdened by the right-of-way shall be and forever remain Navajo Indian Country for purposes of Navajo Nation jurisdiction.
24. The Navajo Nation reserves the right to grant rights-of-way within the right-of-way referenced herein for utilities, provided that such rights-of-way do not unreasonably interfere with the Grantee's use of the right-of-way.
25. The utility conveyance, construction, and maintenance must not interfere with the integrity of the road prism, road ditches, road design features and miscellaneous road appurtenances.
26. Control all access to adjoining properties, and utility crossings or installations, and oversized or overweight vehicles through the permitting process consistent with Title 23, Code of Federal Regulations, Parts 645 and 710.

## memorandum

DATE: NOV 21 2000

REPLY TO  
ATTN OF: Navajo Regional NEPA CoordinatorSUBJECT: FONSI - Rocky Canyon Road, AKA Mariano Pass, Flintstone Pass,  
Project N11(1)2&4 - Between N49 Near Mariano Lake, North to N9  
Near Crownpoint, McKinley County, New Mexico - EA-99-067TO: Area Road Engineer  
Attention: Supervisory Highway Engineer (Planning and Design)

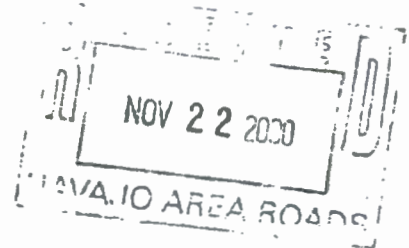
The environmental assessment, EA-99-067, for the proposed rehabilitation (realignment, widening and paving) of Navajo Route 11 between Navajo Route 49 near Mariano Lake, north to Navajo Route 9 near Crownpoint, McKinley County, New Mexico, Project N11(1)2&4, was reviewed in the Navajo Regional Office, Branch of Environmental Services. A Finding of No Significant Impact (FONSI) has been determined for the proposed action which will not have a significant impact on the quality of the natural and human environment. An environmental impact statement for the road project is not required.

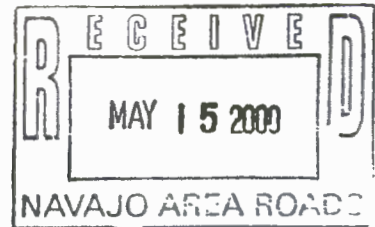
The attached FONSI determination should be appended to the final EA and all other copies prepared for distribution. Submit a file copy of the final EA to the Navajo Regional Office, Branch of Environmental Services.

If you need additional information or have questions about the FONSI determination, you may contact Mr. Leonard Robbins, Navajo Regional NEPA Coordinator, at (505) 863-8286.



Attachment





**Final  
ENVIRONMENTAL ASSESSMENT**

**NAVAJO ROUTE 11**  
Proposed Construction Project N11 (1) 2&4; (EA99-067)  
Between Navajo Route 49 near Mariano Lake, North to Navajo Route 9 near Crownpoint  
McKinley County, New Mexico

**Prepared For**

Bureau of Indian Affairs  
Navajo Area Office  
Branch of Roads  
Gallup, New Mexico

**Submitted By**

U.S. Army Corps of Engineers  
Albuquerque District  
Albuquerque, New Mexico

May 8, 2000



## memorandum

DATE: NOV 21 2000

REPLY TO  
ATTN OF: Navajo Regional NEPA CoordinatorSUBJECT: FONSI - Rocky Canyon Road, AKA Mariano Pass, Flintstone Pass,  
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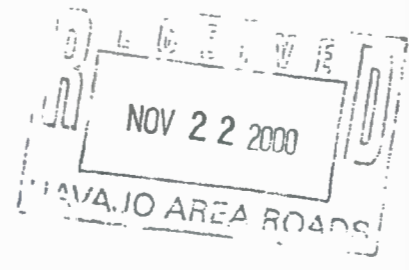
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If you need additional information or have questions about the FONSI determination, you may contact Mr. Leonard Robbins, Navajo Regional NEPA Coordinator, at (505) 863-8286.



Attachment



FINDING OF NO SIGNIFICANT IMPACT  
ROCKY CANYON ROAD, AKA, MARIANO PASS, FLINTSTONE PASS  
ENVIRONMENTAL ASSESSMENT DOCUMENT EA-99-067

LOCATION:

B.O.P: T16N, R14W, N $\frac{1}{2}$ , NW $\frac{1}{4}$ , Sec.33  
UTM Zone 12, 742050 East, 3940550 North  
E.O.P: T17N, R13W, NW $\frac{1}{4}$ , SW $\frac{1}{4}$ , Sec.14,  
UTM Zone 12, 753880 East, 3954420 North

From N49, near Mariano Lake, North to N9 near Crownpoint,  
Mckinley County, New Mexico

The proposed action is the rehabilitation (realignment, widening and paving) of Navajo Route 11, project N11(1)2&4, which will encompass 234.0 acres (94.69 hectares). The project is sponsored by the Bureau of Indian Affairs, Navajo Area Office, Branch of Roads, P.O. Box 1060, Gallup, New Mexico 87305.

The project environmental assessment (EA) was reviewed in the Navajo Regional Office, Branch of Environmental Services. Based on the information contained in the environmental assessment, and the mitigation measures specified in the document, it is determined that the project will not have a significant impact on the natural and human environment. Therefore, in accordance with the National Environmental Policy Act, Section 102 (2) (C), an environmental impact statement will not be required.

The following references, incorporated in the project environmental assessment document, serve as the basis for this decision:

1. Agency and public involvement was solicited, and environmental issues relative to the development of the N11 road construction project were identified. Alternative courses of action and mitigation measures were developed in response to environmental concerns and issues.
2. The EA disclosed the environmental consequences of the proposed action and three potentially viable alternatives including the "no action" alternative.
3. Re-vegetation measures shall be applied to all disturbed land surfaces, and the re-seeding mixture and reclamation of the disturbed areas shall be coordinated with the Navajo Nation Department of Agriculture (EA, Part 4.2.1).
4. Potential impacts to flood plains and wetlands by the proposed project have been evaluated in accordance with Executive Orders 11988 and 11990. A survey by the Army Corps of Engineers on July 11, 1995, found that the Rio Puerco River and

other small arroyos and washes in the area are ephemeral. There are no wetland or riparian areas (EA, Part 4.1.4). The described action will have no effect on flood plains, or other sensitive areas.

5. CWA 401 - In compliance with the Clean Water Act, as amended, the United States Environmental Protection Agency's "Final Action on the Nationwide Permit (NWP) Clean Water Act Section 401 Certification in Indian Country" was consulted. This project will be authorized under Nationwide Permit No. 14, which is one of the Conditional Water Quality Certifications issued by the U.S.E.P.A. on November 21, 1997.

6. CWA 402(p) - In compliance with the Clean Water Act, as amended, Section 402(p), Storm Water Pollution Protection, a notice of intent for storm water discharges associated with construction activities shall be filed with the U.S. Environmental Protection Agency by the Bureau of Indian Affairs, Branch of Roads or its contractor (EA, page 22).

7. CWA 404 - In compliance with the Clean Water Act, as amended, Section 404 Determination was obtained from the U. S. Army Corps of Engineers. This project can be constructed under authority of Nationwide Permit No. 14, Road Crossings. The project authorization number is 1995 00265 (Appendix B).

8. In compliance with the National Historic Preservation Act of 1966, as amended, Section 106 Consultation, and 36 CFR 800.9 (b), a cultural resources assessment, including traditional cultural properties, was performed for the proposed project by the Zuni Cultural Resource Enterprise (ZCRE). A testing plan was also prepared. The Navajo Nation Historic Preservation Department (NNHPD) issued Cultural Resource Compliance Form (CRCF), NNHPD NO. HPD-96-038. The NNHPD determined that the project will have **no adverse effect** on historic properties provided that the BIA ensure compliance with certain conditions (see CRCF in Appendix D).

In the event of a discovery [discovery means any previously unidentified or incorrectly identified cultural resources including, but not limited to, archaeological deposits, human remains, or locations reportedly associated with Native American religious/traditional beliefs or practices] all operations in the immediate vicinity of the discovery must cease, and the Navajo Nation Historic Preservation Department must be notified.

9. In compliance with the Endangered Species Act, informal consultation was held with the Navajo Nation Natural Heritage Program (NNNHP) and the U.S. Fish and Wildlife Service. The Army Corp of Engineers conducted reconnaissance surveys on July 11, 1995, and March 12, 1996. No Federal, State, or Navajo Endangered Species list (NESL) listed, proposed, or candidate

plant or animal species or evidence thereof were observed in the proposed project area. The proposed project will not affect these species. The Navajo Fish and Wildlife Department recommended that surveys of the project area be conducted for the American (and Arctic) Peregrine Falcon, Ferruginous Hawk, Golden Eagle, and Mexican Spotted Owl to verify the presence or absence of these species. The BIA, Branch of Roads, shall coordinate with the U.S. Fish and Wildlife Service, and the Navajo Fish and Wildlife Department regarding surveys, survey protocol, and conservation measures as needed (EA Part 4.2.3).

10. Public health and safety would be enhanced by the proposed action. A modern and safe highway would provide easier and more efficient access to health care facilities and would support police and fire protection and emergency services (EA, Part 4.6).

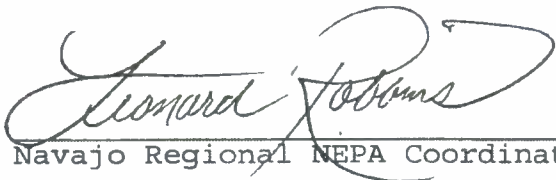
11. In accordance with the Resource Conservation and Recovery Act, Subtitle C, hazardous materials/waste will be mitigated as described in the EA, Part 4.6.

12. In accordance with the Resource Conservation and Recovery Act, Subtitle D, non-hazardous solid waste will be mitigated as described in the EA, Part 4.6.

13. Cumulative effects are considered negligible. Any potential negative impacts can be lessened or alleviated by responsible application of best management practices incorporated into the final design plans. Paving of N11 is an important step toward creating a modern and safe transportation system for the Navajo Nation.

14. In accordance with the President's Executive Order 12898 on Environmental Justice, impacts to minority and low-income populations and communities have been considered by the Regional NEPA Coordinator, as have impacts to Indian Trust Resources.

15. The proposed action, supported by resolutions of the Mariano Lake, Pinedale, and Crownpoint Chapters, Eastern Navajo Agency Roads Committee, and Eastern Navajo Agency Joint Land Board (Appendix A), would improve the economic and social conditions of the affected Indian communities.

  
Navajo Regional NEPA Coordinator

11-21-00  
Date



Final  
ENVIRONMENTAL ASSESSMENT

NAVAJO ROUTE 11

Proposed Construction Project N11 (1-A) (2-B) 1,2&4; (EA99-067)  
Between Navajo Route 49 near Mariano Lake, North to Navajo Route 9 near Crownpoint  
McKinley County, New Mexico

Prepared For

Bureau of Indian Affairs  
Navajo Regional Office  
Division of Transportation  
Gallup, New Mexico

Submitted By

U.S. Army Corps of Engineers  
Albuquerque District  
Albuquerque, New Mexico

May 8, 2000

Updated 04-11-2016

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## 1. DESCRIPTION OF THE PROPOSED ACTION

### 1.1 PROJECT DESCRIPTION

The Bureau of Indian Affairs' (BIA), Navajo Region Office, Division of Transportation is proposing to rehabilitate the existing Navajo Route 11 (N11) dirt roadway, locally known as Rocky Canyon Road (also known as Mariano Pass or as the Flintstone Pass road). The rehabilitation project, identified as N11 (1-A) (2-B) 1, 2 & 4, would include improving the roadway to include grading, drainage, and asphalt paving. The proposed alignment for N11 is 12.18 miles (19.49 kilometers) in length. The majority of the proposed project's right-of-way easement would be as wide as 23 meters (75 feet left and right of the proposed centerline; however, in a canyon area the right-of-way would be 50 meters (164.0 feet left and right of centerline). Rehabilitation would also include alignment improvements consisting of both the flattening of steep vertical curves and the straightening of horizontal curves for improved sight distances, widening the existing roadway surface width to approximately 32.0 feet (9.6 meters), and replacement of existing drainage crossing structures. The N11 roadway crosses the Puerco River where the existing steel pipe culvert would also be replaced with a single span bridge, as determined by drainage analysis. The existing route at this location will be shifted to the west by approximately forty meters. This location was selected due to the meander in the channel and the constraint developed by the geology at the present crossing location. Lands belonging to the Navajo Nation held in trust, Indian Allotment, Fee, Bureau of Land management, New Mexico Department of Energy, Minerals, and Natural Resources will be consulted with to acquire rights of way. The project would encompass a total of about 251.48 acres (101.774 hectares). The route bisects Indian Allotment, Trust, Bureau of Land management, and Private see attached table (appendix H). The project is scheduled to begin construction in the year 2019 with an expected duration of 36 months.

## 1.2 PURPOSE AND NEED

The purpose of the proposed construction is to relinquish hardships imposed upon the local population and communities by the deficiencies of the existing unimproved dirt roadway, improve traffic safety for travelers, and improve the roadway surface in order to facilitate easier access to the area for emergency services, such as fire and police protection. N11 is also used as a school bus route. Existing conditions consist of a dirt roadway surface width of approximately 20 feet (6.1 meters), which becomes impassible during and after inclement weather such as summer thunderstorms and winter snow storms, and includes surface water drainage structures that are inadequate. Traffic safety hazards also exist due to steep vertical grades and tight cornered curves that limit sight distances. Traffic volume measured in 2009 was 426 vehicles per day (vpd) with an estimated volume of 633 vpd by the year 2029.

The proposed construction also would implement the objectives of the Navajo Nation Master Road Plan, developed during the 1980s. Today, the Navajo Nation Master Road Plan is developing a modern, structured, and safe transportation network for the Navajo Nation. In comparison to current U.S. highway standards, the Navajo Nation Master Road Plan is lagging behind the rest of the United States in the number of modern, paved highways per square mile. The transportation bill authorized funds for the development and construction of a unified and interconnected transportation system that promotes the Nations economic development and international commerce while utilizing and planning for future technological advances in transportation methods. The Act provides that “*The National Intermodal Transportation System shall include significant improvements in public transportation necessary to achieve national goals for improved air quality, energy conservation, international competitiveness, and mobility for elderly persons, persons with disabilities, and economically disadvantaged persons in urban and rural areas of the country.*” The rehabilitation of N11 is an important step in creating a modern and safe transportation network for the Navajo Nation. After construction completion, use is

expected to steadily increase and would include cars, light and heavy trucks, farming equipment, and service vehicles.

Guidelines of the American Association of State Highway and Transportation Officials (AASHTO) would classify the N11 route as a "Rural Local Road, Class IV." This designation is based on a functional classification of the character of service that highways provide. A Rural Local Road System primarily provides access to land adjacent to a collector road network and over relatively short distances. Funding for this project would be provided by the Federal Highway Administration.

Community support for the proposed project is expressed by the approved Mariano Lake Chapter House Resolution and certification, as well as noted in the Agency Roads Committee Resolution (Appendix A).

### 1.3 LOCATION

The proposed project is located in McKinley County in northwest New Mexico, beginning about 30 miles (48.2 kilometers) northeast of Gallup (Figures 1, 2, 3, and 4). Rocky Canyon Road, the portion of N11 proposed for rehabilitation, intersects Navajo Route 9 at a point 3 miles (4.8 kilometers) west of Crownpoint and runs southwest for approximately 12.18 miles (19.49 kilometers) to the existing intersection with Navajo Route 49 near Mariano Lake community and about 6.5 miles (10.4 kilometers) east of Pinedale, New Mexico. Route N11 serves as a more direct route between Crownpoint and the Mariano Lake and Pinedale areas, and access to Gallup, being approximately half the distance to Crownpoint than the route using Navajo Route 49 and State Highway 371.

The proposed project would begin at the proposed intersection of N11 with Navajo Route 49 in the North  $\frac{1}{2}$  of the Northwest  $\frac{1}{4}$  of Section 28, Township 16 North, Range 14 West, (Universal Transverse Mercator [UTM] Zone 12, 784726.495 East, 508218.085



North) and proceed in a north and easterly direction along the existing N11 roadway. The alignment then would cross the intermittent Puerco River in the Southwest 1/4 of the Southwest 1/4 of Section 15, Township 16 North, Range 14 West (UTM Zone 12, 743300 East, 3944000 North). The roadway proceeds northeasterly then goes down a small canyon on the north facing mesa, ending at the N11 intersection with Navajo Route 9 in the Northwest 1/4 of the Southwest 1/4 of Section 14, Township 17 North, Range 13 West (UTM Zone 12, New Mexico state plane coordinates,  $x=797216.558$ ,  $y=521533.337$ ).

**Figure 1.** Navajo Route 11, Project N11 (1-A) 1, 2 & 4, General Area Map

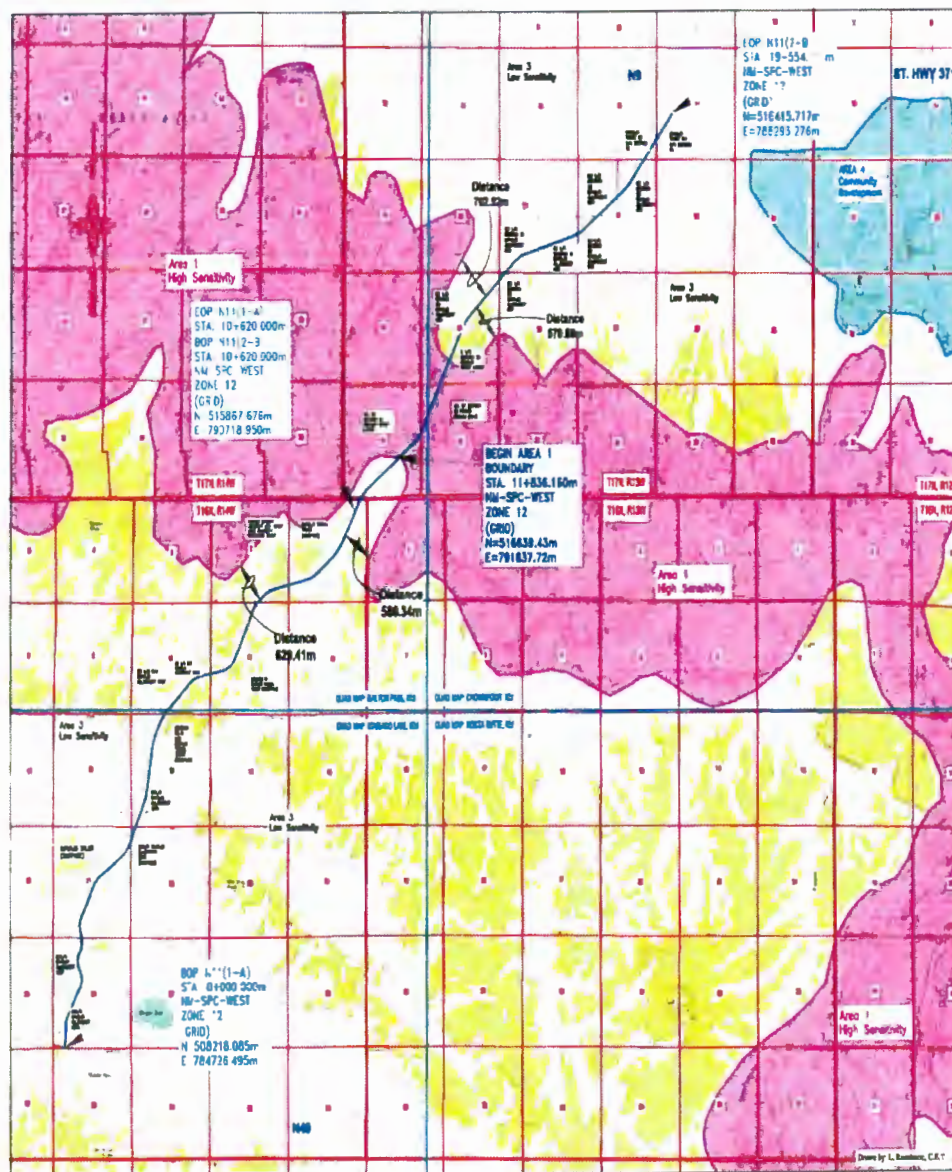


Figure 2. Navajo Route 11, Project Plan Map (southern end); adapted from: USGS 7.5 Minute Quadrangle Map: Mariano Lake, N.Mex. (35108-E3; 1963, Rev.1980).

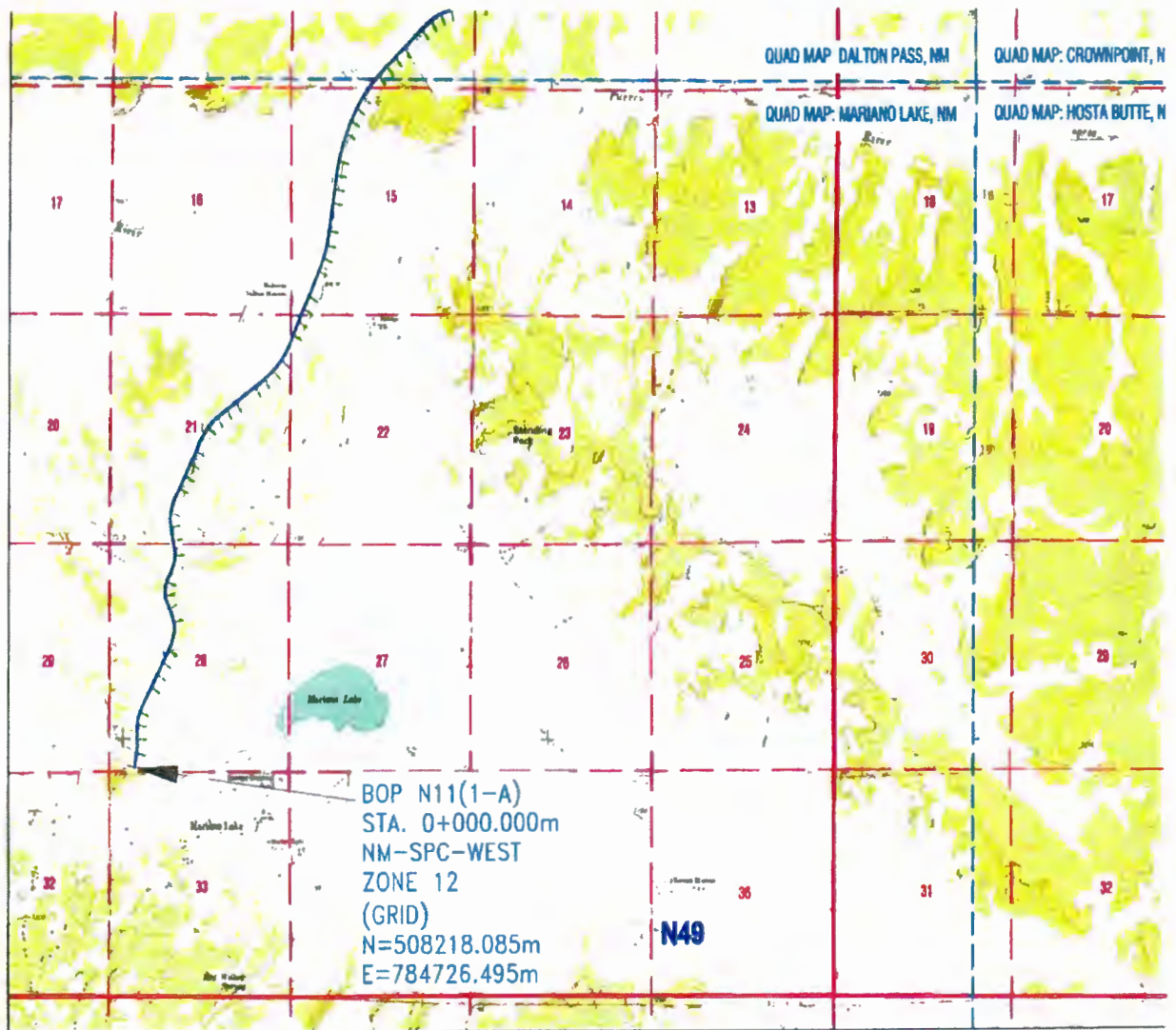




Figure 3. Navajo Route 11, Project Plan Map (central area); adapted from: USGS 7.5 Minute Quadrangle Map: Dalton Pass, N.Mex. (35108-F3; 1963).

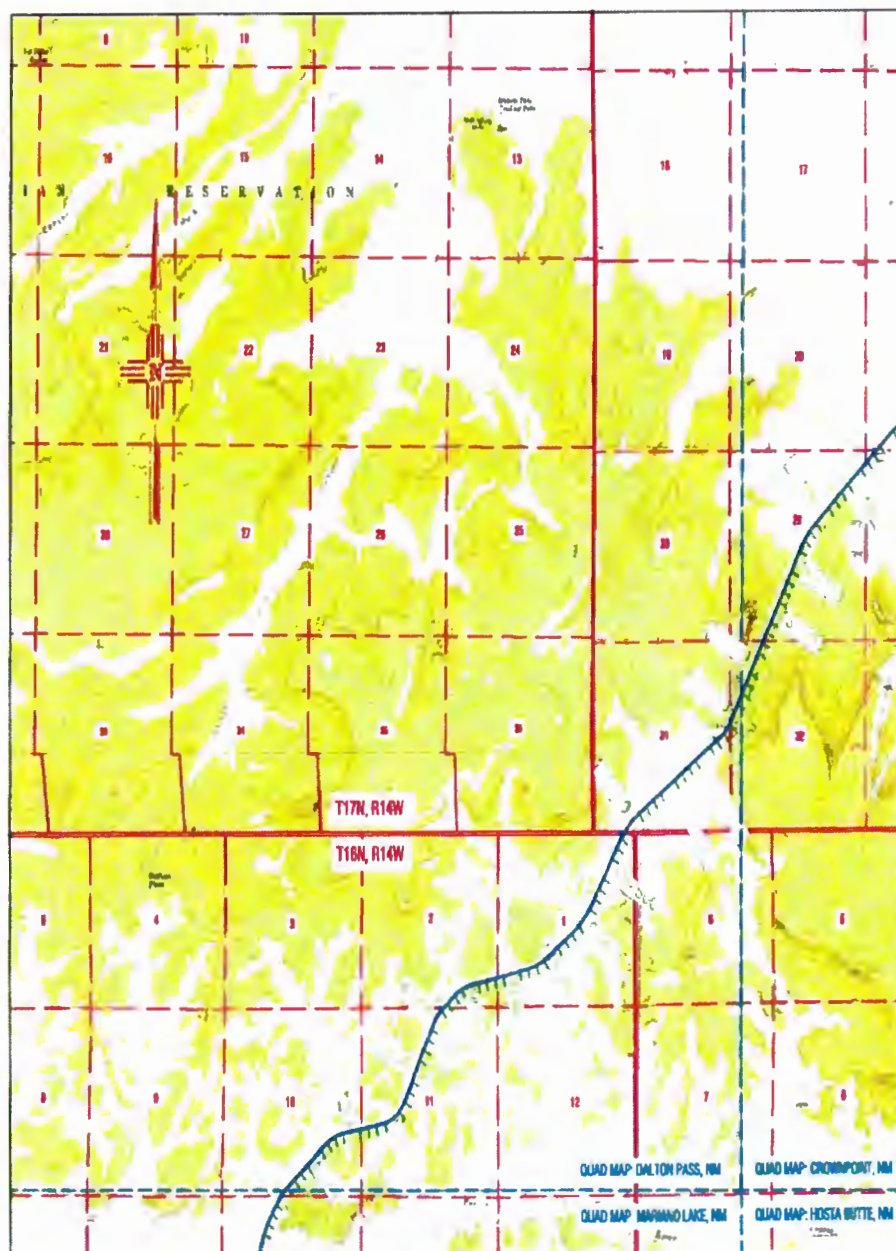
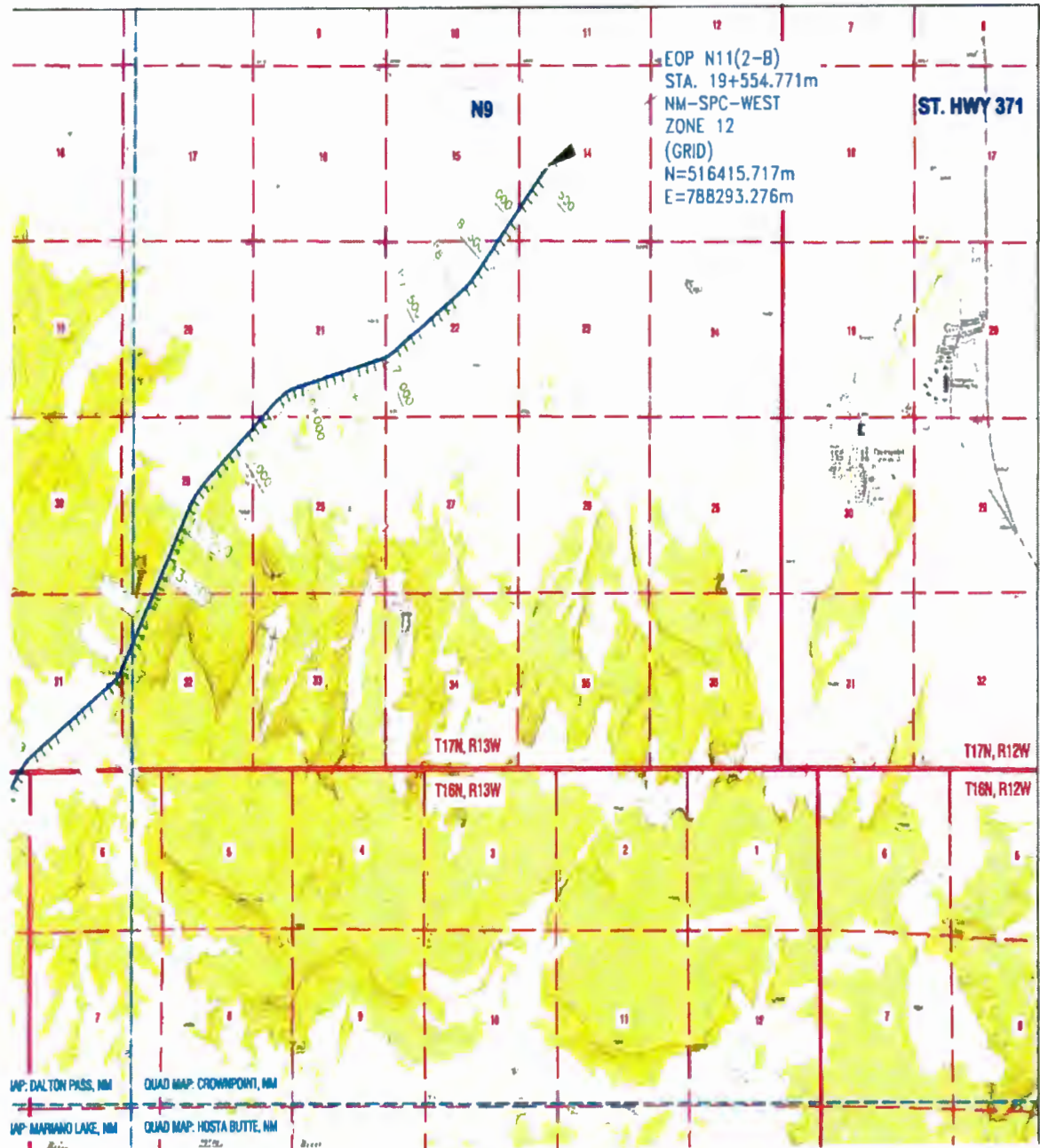
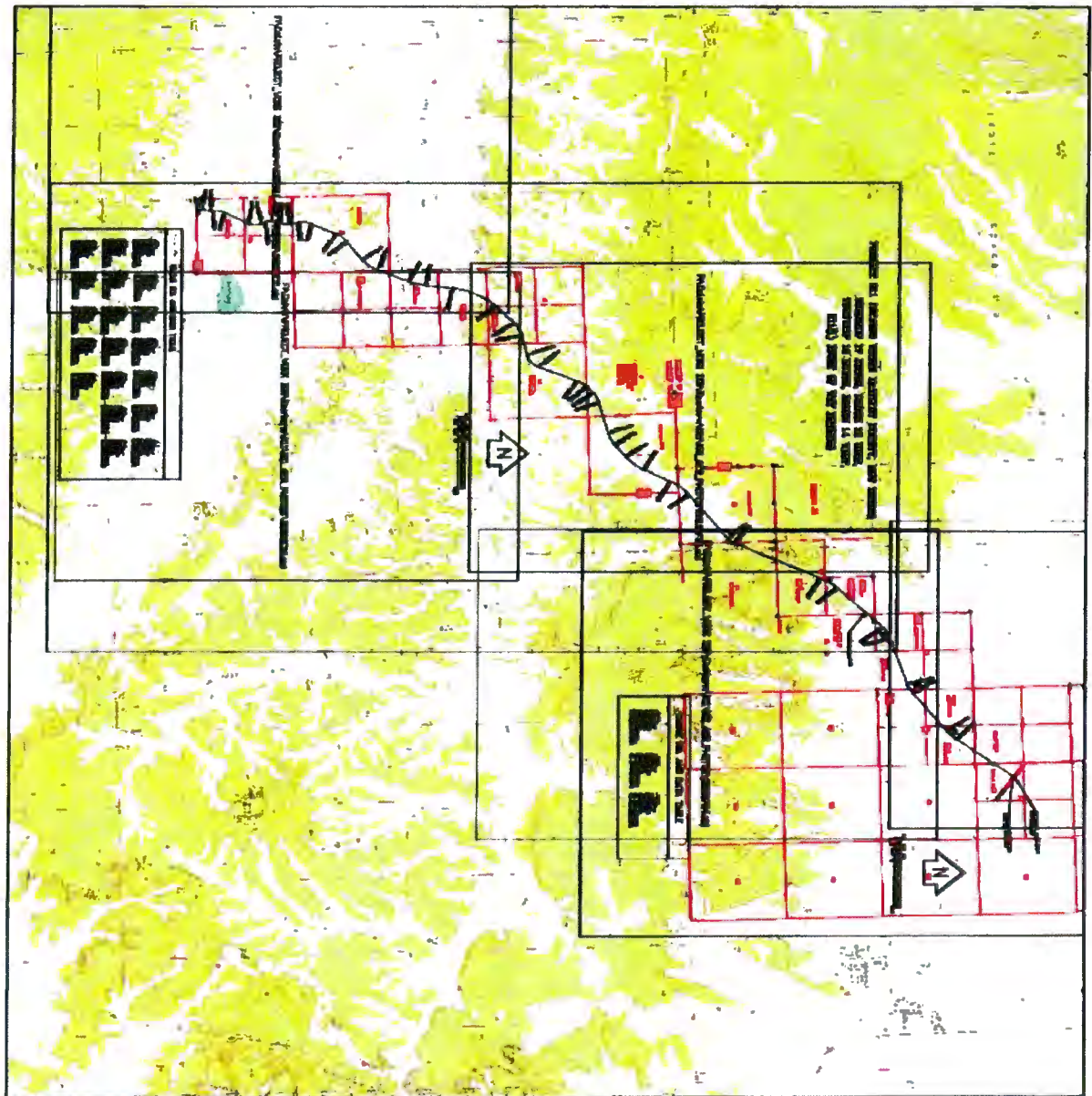




Figure 4. Navajo Route 11, Project Plan Map (northern end); adapted from: USGS 7.5 Minute Quadrangle Map: Crownpoint, N.Mex. (35108-F2; 1963).





## 2. PROPOSED ACTION ALTERNATIVES

All Federal agencies that assist in projects which utilize public funding are mandated by the guidelines of National Environmental Policy Act compliance to evaluate alternative courses of action so that decisions are made in the best interests of the public. In considering the proposed transportation improvements, the Federal Highway Administration finds that reasonable alternatives should consider a balanced approach to safe and efficient transportation; social, economic, and environmental impacts of the proposed construction; Federal and Tribal environmental resource protection goals, to offset impacts by instituting mitigative practices. The proposed action for N11 involves rehabilitation of the existing roadway by utilizing improved, modern methods for highway design and safety. Four alternatives were considered for the proposed N11 (1-A) (2-B) 1, 2 & 4 project:

- 1.) Alternative No. 1: No action, that is, N11 would not be rehabilitated;
- 2.) Alternative No. 2: Rehabilitation involving improved roadway alignment and width but with gravel surfacing (with no asphalt surfacing);
- 3.) Alternative No. 3: Rehabilitation construction including asphalt paving using existing roadway alignments and widths;
- 4.) Alternative No. 4: The Recommended Alternative: Rehabilitation and new construction involving improved roadway alignment, width, grade, drainage, safety features, and asphalt paving.

### 2.1 ALTERNATIVES

#### 2.1.1 Alternative No. 1: No Action

The no action alternative would provide for no work and for no Federal assistance for design or construction beyond this study. Therefore, no roadway rehabilitation would be built to bring the existing roadway up to modern highway design and safety standards.



Nothing would be done to physically alter the existing road. If no action is taken, unsafe road conditions and roadway hazards would not be improved thereby continuing to threaten the safety of the traveling public. Deterioration of the dirt and graveled roadway would continue as well as existing erosion problems along the roadway. Expensive highway maintenance costs for road repairs would continue. Highway maintenance to the existing roadway is having impacts on cultural resources. If no action is taken, the impacts on cultural resources from road maintenance would continue. Existing road deficiencies and unsafe conditions also hamper police and fire protection in the area. The no action alternative does not solve the problems associated with the existing N11 roadway, therefore this alternative is no longer considered.

2.1.2 Alternative No. 2: Rehabilitation involving improved roadway alignment and width but with gravel surfacing (with no asphalt surfacing). Gravel surfacing whether using the present or proposed roadway alignment, is only a temporary solution to improving a roadway surface. This alternative would consist of grading and then applying 2-3 inches (5.1 to 7.6 centimeters) of loose gravel over the road surface. Within one year of gravel surfacing, a asphalt sealer would be applied. Gravel surfacing is only practical for roads with an ADT of between 50 and 250 vpd. Even if the roadway alignment and width were upgraded, the graveled roadway surface would continue to have deterioration problems which are difficult to prevent and expensive to maintain. Therefore this alternative is no longer considered.

2.1.3 Alternative No. 3: Rehabilitation construction including asphalt paving using existing roadway alignments and widths.

Asphalt paving of the roadway surface would enhance driving conditions, especially during inclement weather and storm conditions; however, asphalt paving alone would not improve upon the hazards and problems associated with the existing road deficiencies and unsafe conditions. Rehabilitation utilizing the existing roadway alignment and width would



not improve the roadway to meet the required modern design and safety criteria. Safety problems on the existing N11 roadway would continue including vehicle operator sight problems at hills and curves, narrowness of roadway surface in considering safe passage of on-coming vehicles and low areas where surface water runoff overtops existing roadway surfaces. Current roadway widths would also not safely handle projected traffic volumes. Paving of the existing roadway would reduce maintenance costs, but would give a false feeling of security thereby increasing driving speeds and the potential for severe vehicular accidents. The alternative of using the existing N11 roadway is, therefore, not feasible and is no longer considered.

2.1.4 Alternative No. 4: the RECOMMENDED ALTERNATIVE: Rehabilitation and new construction involving improved roadway alignment, width, grade, drainage, safety features, and asphalt paving.

The proposed alignment for N11 is 12.18 miles (19.49 kilometers) in length. The proposed new construction of N11 would provide for 2 lanes of traffic with a 32-foot-wide roadway surface (shoulder to shoulder; each driving lane will be 3.3 meters wide with two 1.5 meter wide paved shoulders). The right-of-way easement would be 150 feet (75 feet left and right of the proposed centerline; 46.0 meters or 23.0 meters left and right) for the majority of the project; however, the right-of-way would be 200 foot wide (100.0 feet left and right; 60.0 meters or 30.0 meters left and right) for about 2 miles (3.2 kilometers) of the roadway in the canyon area of the north facing mesa near the north end of the project area. The N11 roadway would be designed as an all-weather road with asphalt paving, pavement markings, guardrail, warning signage, and other safety features as needed, such as livestock crossings or cattleguards, and right-of-way fencing. Where cultural resource sites or features are present, such as archaeological sites or Traditional Cultural Properties, changes in the design or mitigation measures would be or have been developed to avoid adverse impacts and, therefore, maintain the integrity of these resources. A new modern, paved highway with guardrail may also deter vandalism to local cultural resources. The

proposed construction would involve: roadway and grade construction that includes grading of approaches to arroyos, washes, and other road features, and sculpturing of slopes and embankments; flattened vertical grades and straightened horizontal alignments to allow for safe sight distances; improved roadway width to allow safe passage of vehicles and accommodate projected traffic volumes safely; and the installation of surface water drainage structures such as erosion/sedimentation control features, corrugated pipe or pipe arch culvert including protective rock rip-rap and/or concrete headwalls. Revegetation of disturbed land surface areas would include mulching and seeding. The constructed road would have posted speed limits and highly visible roadway signage that would meet AASHTO design requirements. The N11 route would meet design criteria for a HS-20-44 load-limit and lane loading model designs allowing up to 3-axle 36-ton vehicles to travel the route. The recommended alternative would provide for a modern, safe, and structured transportation in accordance to the Navajo Master Road Plan.

### 3. EXISTING ENVIRONMENT

#### 3.1 PHYSICAL RESOURCES

##### 3.1.1 Physiography

The project area lies within the Navajo Section of the Colorado Plateau Physiographic Province. The proposed construction zone is bounded to the south and west by the Zuni Uplift, to the east by the Nacimiento Uplift, and to the north by the San Juan Basin and Four Corners Platform. This plateau region has numerous physical and topographic features including broad mesas, numerous deep canyons and steep rocky escarpments, sloping plains, and dry arroyos. Elevations in the area vary from 8,620 feet (2,627 meters) at Hosta Butte on Mesa de

Los Lobos to approximately 6,960 feet (2,121 meters) at Crownpoint. At Mariano Lake, the project begins at an elevation of about 7,160 feet (2,182 meters), and reaches

up to 7,495 feet (2,284 meters) at the crest of the mesa, and then descends the north facing mesa to 6,755 feet (2,059 meters) at the N11/N9 intersection in a plains area west of Crownpoint.

### 3.1.2 Geology and Soils

Area geology is represented by Upper Cretaceous sedimentary rocks of the Mesaverde Group including the Mulatto, or lower tongue, of the Mancos Shale, the Gibson Coal Member and the Dalton Sandstone member of the Crevasse Canyon Formation, and Gallup Sandstone. These sedimentary rocks are thin- to massive-bedded sandstones, siltstones, and claystones, with some alternating, irregularly bedded coal and limestone. Post-Cretaceous regional uplifting resulted in numerous northeast-southwest aligned, normal faults cutting through the sedimentary rocks and displaying moderate vertical displacement. The displacement is observed as the local steep escarpments. There are large coal lease areas about five miles (8.0 kilometers) north and northeast of Crownpoint.

Area soils are characterized as Torriorthents and Rock Land which are arid to semi-arid soil types. These soils form mainly from weathered sandstone and shale parent materials. These soils are medium- to moderately fine-textured, and are often saline and sodic, and therefore support a sparse to fair cover of native vegetation. The surface soils around mesa slopes are generally shallow, and are light-colored fine sandy loams or sandy loam, with small angular fragments of the parent materials. Subsurface soils may be from 4 to 20 inches (10 to 51 centimeters) in depth and consist of pale brown and light brownish-gray fine sandy loam that is underlain by bedrock. In small areas near alluvial fans, flood-plains, and sloping plains, the soils may be deeper and are light yellowish-brown or yellowish-brown silt loam or silty clay loam. These deeper soils may also have fine streaks of lime and gypsum crystals above the underlying shale. Control of runoff and erosion are major problems for these soils.

### 3.1.3 Climate

Climate in the Crownpoint/Mariano Lake area is arid continental. "Winters are relatively cold, summers warm, precipitation is low and days are sunny" with generally light to moderate winds and low humidity. Area temperatures average near 50 to 53 degrees Fahrenheit (°F; 10.0 to 11.6 degrees Celsius [°C]) with 30 to 40 °F (-1.1 to 4.4 °C) daily ranges, and extremes below 0 °F (-17.7 °C) and above 100 °F (37.7 °C) are not uncommon. Precipitation in the region is strongly influenced by changes in altitude and the orographic effects of the physiography. Average annual precipitation is about 12 to 14 inches (30.5 to 35.5 centimeters), primarily coming from brief thundershowers during the summer months. Winter snowfall averages about 24 inches (60.9 centimeters). The average growing season is about 120 days.

#### 3.1.4 Water Resources

Section 404 of the Clean Water Act of 1972 (CWA; 33 U.S.C. 1251 *et seq.*), as amended, provides for the protection of waters of the United States through regulation of excavation or discharge of dredged or fill material. The Corps Regulatory Program (33 CFR Parts 320-330) requires that a Section 404 determination be conducted for all proposed construction that may affect waters of the United States. Small washes and arroyos along the proposed right-of-way and construction area are considered "waters of the United States" as per the terminology and definitions used in CWA and the proposed construction would occur above "headwaters." On July 11, 1995, the Regulatory Branch of the Albuquerque District, U.S. Army Corps of Engineers (Corps) conducted a reconnaissance survey of the project area found that all small drainages along the proposed project route are ephemeral and there were no wetland areas or riparian habitat in or adjacent to the proposed right-of-way (Appendix B). The small depression called Mariano Lake; however, usually has standing water.

#### 3.1.5 Air Quality, Noise, and Visual Quality



The Crownpoint /Mariano Lake area is in the Four Corners Interstate Region, NM Region No. 1, and is in attainment (does not exceed State or Federal Environmental Protection Agency air quality standards) for all criteria pollutants (carbon monoxide, sulfur oxides, nitrogen dioxide, lead, ozone, and particulate matter), as determined by National Ambient Air Quality Standards as established by EPA (NMEDAQB 1997). The northwestern part of New Mexico is considered Class II under the Prevention of Significant Deterioration (PSD) Program as required by the Clean Air Act of 1972 (42 U.S.C. 7401 *et seq*), as amended. PSD Class II areas allow moderate development and the resulting air quality impacts. Air quality in the proposed project area is good. Increasing vehicular traffic on the existing dirt roadway; however, adds to the area's suspended dust particles. PSD Class I areas have pristine air and almost no increase in air contaminant levels are allowed (NMHEDAQB 1988). The San Pedro Parks Wilderness and Mesa Verde National Park, located approximately 75 miles (120.7 kilometers) northeast and about 100 miles (160.9 kilometers) north of the proposed project area, respectively, are both Class I areas.

Background noise levels in the proposed project area are low to moderate; however, steadily increasing traffic on the existing dirt roadway is slowly increasing local noise levels.

Terrain of the project area is characterized by mostly pinyon-juniper habitat with a grassland north of the project area and is not necessarily important from a scenic standpoint although the north face of Mesa de Los Lobos is impressive. The area receives minimal recreation use with the intent of viewing scenery. Foreground and middle-ground views provide some scenery of the existing conifer forest and rock outcrops. Views toward the San Juan Basin to the north can be impressive if not clouded by smog and haze trapped in the basin. Local traffic using the dirt roads adds to the suspended dust particles. High visual quality tends to be lacking for these reasons.

### 3.2 BIOLOGICAL RESOURCES

### 3.2.1 Vegetation Communities

The project area lies within the Great Basin Conifer Woodland biotic community and has a small Grassland component. The Conifer Woodland is cold-adapted and is characterized by the unequal dominance of two conifers, juniper and pinyon. Due to the aridity of the region, these evergreens generally do not exceed large heights (about 39 feet [12 meters]) and are relatively open spaced. The lack of moisture, extreme daily and seasonal temperature ranges, and weak soil conditions tend to limit the productiveness of grasses and shrubs of the understory. Grasses and shrubs in the area include sagebrush, four-wing saltbush, rabbit brush, Indian ricegrass, and various cacti. Weedy invasive species such as Russian thistle (*Salsola kali*), low species diversity, and low-cropped vegetation are highly visible in the project area and caused in part by excessive grazing by livestock (cattle, sheep, goats, and horses). See Appendix C for a complete list of plant species noted during a reconnaissance survey conducted on July 11, 1995. There are no wetlands or riparian vegetation near the proposed N11 alignment.

### 3.2.2 Wildlife

Within the project area small mammals such as squirrels, mice, gophers, rats, rabbits, badgers, and skunks may occur, as well as larger mammals such as pronghorn, foxes, and coyotes. Resident and migratory birds would include Western Meadowlark, Horned Lark, Mourning Dove, Common Raven, Turkey Vulture, Great Horned Owl, Ferruginous Hawk, American Kestrel and various sparrows. There are no perennial waters near the N11 alignment and therefore no fish. Reptiles and amphibians likely to inhabit the area are tiger salamander, western spadefoot, Woodhouse's toad, prairie lizard, short-horned lizard, many-lined skink, wandering garter snake, and prairie rattlesnake.

Bird species observed during reconnaissance surveys conducted on July 11, 1995,

and March 12, 1996, included American Crow, Mountain Bluebird, Turkey Vulture, swallows, and various sparrows (Appendix C). No other wildlife was observed.

### 3.2.3 Special Status Species

While all Federal agencies and numerous other State and Tribal agencies have responsibility for the protection and conservation of animal and plant species in the project area, there are four agencies who have this task as their primary responsibility. The U.S. Fish and Wildlife Service (USFWS), under authority of the Endangered Species Act of 1973 (16 U.S.C. 1531), as amended, has responsibility for Federally listed species. The New Mexico Department of Game and Fish (NMDGF) and the New Mexico Department of Energy, Minerals, and Natural Resources (NMEMNRD) have responsibility for wildlife and plant species, respectively, within the State, and the Navajo Nation Fish and Wildlife Department (NNFWD) has responsibility for Navajo Nation lands (RCF-014-91). Each agency maintains a list of animal and/or plant species which have been classified, or are candidates for classification as protected, based on present status and potential threat to future survival or recruitment. Informal coordination with these agencies has been conducted (USFWS Cons. #2-22-95-I-549 and #2-22-94-I-476), and prior to conducting fieldwork, the above mentioned lists of animal and plant species were reviewed along with information on available habitat, habitat preferences, and known ranges. Each agency provided a general list of special status species for McKinley County that potentially could occur on or adjacent to the proposed project area (Appendix C). See Table 1 for a description of status for each agency. Endangered or Threatened species which could occur near the project area are discussed below and listed in Table 1.

U.S. Army Corps of Engineers' (Corps) personnel conducted a reconnaissance survey of the proposed construction area for special status species on July 11, 1995, and on March 12, 1996, Corps and Navajo Nation personnel reviewed the project area for potential Mexican Spotted Owl habitat (Appendix C). No Federal, State, or Navajo

Endangered Species List (NESL) listed, proposed, or candidate plant or animal species or evidence thereof was observed in the proposed project area during either survey. White-wash; however, was observed on the north-facing sandstone cliffs of Mesa de Los Lobos indicating that raptors (of unknown species and status) utilize the area.

The USFWS listed one Threatened and four Species of Concern plant species with the potential to occur in McKinley County and the NESL listed one Group 3 and three Group 4 plant species for the area (Appendix C). During surveys, no listed plant species or suitable habitat was found in or adjacent to the proposed construction area.

The USFWS identified 6 bat species that are all listed as Federal Species of Concern. These species include: fringed myotis (*Myotis thysanodes*); long-eared myotis (*Myotis evotis*); long-legged myotis (*Myotis volans*); occult little brown bat (*Myotis lucifugus occultus*); small-footed myotis (*Myotis ciliolabrum*); and spotted bat (*Euderma maculatum*). None of these bat species are currently listed on the NESL; however, the spotted bat is a New Mexico Threatened species. Potential habitat areas for these taxa include steep hillsides and cliffs that provide rock crevices and shelters such as caves for roosting. In many instances these rocky locations have nearby streams, rivers, or other perennial water bodies. These bat species tend to occur in remote areas; however, some may also utilize hollow trees, tree bark or trees with dense foliage, or human buildings and structures such as barns as other roosting sites, especially during migration. A few of these species may hibernate locally through the winter, but most migrate to areas further south. Most New Mexican bats eat insects and small invertebrates. All of these bat species potentially occur in McKinley County and may occur in the project area.

There are a number of other species listed by USFWS, NMDGF and/or by the NESL for McKinley County that would most likely not occur in or near the project area. In New Mexico, the Bald Eagle is normally found near major waterways and larger lakes where adequate food supplies may be found. The Southwestern Willow Flycatcher usually



inhabits dense shrub stands near perennial streams or other water sources. There is no flowing streams or designated Critical Habitat for Southwestern Willow Flycatcher in the vicinity of the project area. The Black Tern is usually found near large bodies of water and riverine areas that have sand bars or beaches. The White-faced Ibis is a rare to uncommon statewide migrant and are only known to breed in the New Mexican eastern plains, and generally are found in shoreline and marsh habitats near open water, but may also frequent flooded fields for feeding. There are no perennial water resources in the proposed construction area to support fish species and most likely, the northern leopard frog does not occur in the immediate vicinity of the construction area. The Mountain Plover is a lowland, grasslands species that breeds in dry, open shortgrass prairie. The black-footed ferret, a Federally Endangered and a NESL Group 2 species, is considered to be extirpated in New Mexico by the New Mexico Department of Game and Fish. This species is known primarily to inhabit prairie dog towns and there are only a few past records for New Mexico that indicate prior habitation areas were found in the lowlands of the central part of the state. There were no prairie dog towns identified during field surveys. The Western Burrowing Owl, a Federal Species of Concern (and was removed from the NESL in 1997) is also known to prefer open grasslands and to utilize prairie dog burrows for nesting. Habitat also includes bank walls of incised streams and arroyos. During field surveys, no prairie dog towns were identified in the vicinity of the proposed project and no Western Burrowing Owl or evidence thereof was observed. Due to the lack of potential, suitable, or preferred habitat or seasonality for the above species, and the limited nature of the proposed action, there would be no effect on these species by the proposed construction project.

Pronghorn (*Antilocapra americana americana*) is a NESL Group 3 species that has the potential to occur in McKinley County and in habitat similar to that of the project area.

Pronghorn are chiefly browsers, feeding on shrubs and forbs, and are very mobile, traveling considerable distances during certain seasons of the year. Pronghorn, if in the vicinity, would most likely prefer the plains area north of the project area. No Pronghorn

or evidence thereof was observed during surveys.

The American Peregrine Falcon (*Falco peregrinus anatum*) is a State Threatened and a NESL Group 3 species. The Peregrine Falcon was a Federally Endangered species; however, the USFWS recently made the determination that the Peregrine is no longer endangered with extinction and the Final Rule to Remove the American Peregrine Falcon from the Federal List of Endangered and Threatened Wildlife was published and effective on August 25, 1999 (Federal Register, Final Rule, August 25, 1999). The Peregrine's preferred breeding habitat is in isolated wooded areas with cliffs that create "gulfs" of air in which the Peregrine may forage. There is potential habitat on the cliffs in the project area; however, the preferred wooded/forested habitat is lacking in the vicinity of the project area.

The Arctic Peregrine Falcon (*Falco peregrinus tundrius*), is a State Threatened and a NESL Group 3 species due to its very similar appearance to the American Peregrine Falcon. This subspecies is a rare migrant in New Mexico. This subspecies was also removed from the Federal List.

The Ferruginous Hawk (*Buteo regalis*), a Federal Species of Concern and a NESL Group 3 species, may be seen seasonally throughout a large portion of the western United States. This hawk is fairly common and is a permanent resident of the High Plains and Basin and Range provinces. The species migrates and winters in most of New Mexico. It is shy and retiring, preferring undisturbed areas for breeding and nesting.

The Golden Eagle (*Aquila chrysaetos*), a NESL Group 3 species, is a permanent resident of the western United States and can be found throughout a large part of North America at different times of the year. The Golden Eagle has been persecuted for many years but population levels have remained fairly stable, although local declines may occur due to habitat modification and from shooting and poisoning. Habitat in the project area

may be suitable for Golden Eagle.

The Loggerhead Shrike (*Lanius ludovicianus*), a Federal Species of Concern, is a year-round resident of New Mexico. They prefer semi-open areas with lookout posts from which they prey on insects and small lizards.

The Mexican Spotted Owl (*Strix occidentalis lucida*) is a Federally Threatened and NESL Group 3 species. The Mexican Spotted Owl has been recorded in all National Forests in New Mexico at elevations ranging from 3,700 to 10,000 feet (1,128 to 3,048 meters). This species inhabits mature montane forest and woodlands with high closure, multilayered canopy, high tree density, in association with wooded, steep canyons and cliffs. The preferred forest vegetation tends to be mixed conifer, although piñon-juniper woodlands may be utilized. On June 6, 1995, the U.S. Fish and Wildlife Service (USFWS) designated Critical Habitat for the Mexican Spotted Owl; however, in April, 1997, the USFWS withdrew the Critical Habitat designation. While there is no preferred forest habitat (and no withdrawn Critical Habitat) in the project area, there is potential habitat in a micro-habitat area of mixed conifer in a small canyon along the north face of Mesa de los Lobos. This area, although very small, could provide habitat for raptor species. Mexican Spotted Owl is not known to occur in the project area.

Northern Goshawk (*Accipiter gentilis*), a Federal Species of Concern and NESL Group 4 species, are resident of the northern Mogollon and Sacramento Highlands and have a stable population. They are fairly common to the coniferous and deciduous forests in the western United States. It is shy and retiring, preferring mountainous regions, and they utilize moderate to highly canopied, mature coniferous forests, nesting in those forested areas with a high density of large trees. The species migrates and winters throughout the entire state. Northern Goshawk may occur in the project area although the pinyon-juniper woodland of the area is not a preferred forest habitat.

Table 1: Special Status Species with the Potential to Occur in the Vicinity of the Proposed Project Area.

Common Name	Scientific Name	Federal (USFWS) status <sup>a</sup>	NESL status <sup>b</sup>	State of New Mexico status <sup>c</sup>
<b>Animals</b>				
Pronghorn	<i>Antilocapra americana</i> <i>americana</i>	---	Gp 3	---
Fringed myotis	<i>Myotis thysanodes</i>	SC	---	---
Long-eared myotis	<i>Myotis evotis</i>	SC	---	---
Long-legged myotis	<i>Myotis volans</i>	SC	---	---
Occult little brown bat	<i>Myotis lucifugus occultus</i>	SC	---	---
Small-footed myotis	<i>Myotis ciliolabrum</i>	SC	---	---
Spotted bat	<i>Euderma maculatum</i>	SC	---	T
American peregrine	<i>Falco peregrinus anatum</i>	---	Gp 3	T
falcon	<i>Falco peregrinus tundrius</i>	---	Gp 3	T (S/A)
Arctic peregrine falcon	<i>Buteo regalis</i>	SC	Gp 3	---
Ferruginous hawk	<i>Aquila chrysaetos</i>	---	Gp 3	---
Golden eagle	<i>Lanius ludovicianus</i>	SC	---	---
Loggerhead shrike	<i>Strix occidentalis lucida</i>	T	Gp 3	---
Mexican spotted owl	<i>Accipiter gentilis</i>	SC	Gp 4	---
Northern goshawk				



<sup>a</sup> Endangered Species Act (ESA) (as prepared by U.S. Fish and Wildlife Service) status:

Only Endangered and Threatened species are protected by the ESA.

E = Endangered: any species that is in danger of extinction throughout all or a significant portion of its range.

T = Threatened: any species that is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.

C = Candidate: taxa for which the Service has on file sufficient information on biological vulnerability and threat(s) to support proposals to list them as endangered or threatened species.

SC = Species of Concern: taxa for which information now in the possession of the Service indicates that proposing to list as endangered or threatened is possibly appropriate, but for which sufficient data on biological vulnerability and threat are not currently available to support proposed rules.

CH = Critical Habitat, as established by the agency.

P = Proposed for listing in the identified category listed above.

S/A = Similarity of Appearance.

<sup>b</sup> Navajo Endangered Species List (NESL) status: Only Groups 2 and 3 are protected by Tribal Code (17 Navajo Tribal Code Section 507).

Group 2 = those species or subspecies which are in danger of being eliminated from all or a significant portion of their range on the Navajo Nation.

Group 3 = those species or subspecies which are likely to become endangered within the foreseeable future, throughout all or a significant portion of their range on the Navajo Nation.

Group 4 = any species or subspecies for which the NNFWD does not currently have sufficient information to support their being listed in Groups 2 or 3, but has reason to consider them. The NNFWD is actively seeking information on these species to determine if they warrant inclusion in a different group or removal from the NESL; these species have no legal protection under the Navajo Tribal Code.

<sup>c</sup> State of New Mexico status:

NM FAUNA

E = Endangered animal species whose prospects of survival or recruitment within the state are in jeopardy.

T = Threatened animal species whose prospects of survival or recruitment within the state are likely to become jeopardized in the foreseeable future.

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### 3.3 CULTURAL RESOURCES AND TRADITIONAL CULTURAL PROPERTIES

All cultural resources work for the N11 project is being conducted by BIA in consultation with the Navajo Nation Historic Preservation Department under a *Programmatic Agreement* (1994) as noted below in Section 4.3. Other concerned agencies consulted during cultural resources work include the New Mexico State Historic Preservation Officer, the National Park Service (Chaco Culture National Historical Park), and the Bureau of Land Management. The proposed project is located about 25 miles (40 kilometers) southwest of Chaco Culture National Historic Park. There are also Chaco Culture communities, outlying sites, and road segments known to occur in the immediate vicinity of the project area and these resources are close enough to the proposed roadway alignment to be of concern.

BIA contracted the Navajo Nation under a P.L. 93-638 which in turn subcontracted with Zuni Cultural Resource Enterprise's Zuni Archaeology Program (ZAP), a cultural resource management contract firm, for archaeological and ethnographic surveys, testing, and data recovery along the proposed project alignment. An archaeological inventory and testing has been conducted and a number of cultural resources were found along the proposed N11 right-of-way. Survey results and Recommendations of Eligibility (significance) to the National Register of Historic Places for these sites will be provided in the project's cultural resource report. The compliance document for the N11 project was

completed on February 12, 1997 (Appendix D; to be provided by BIA as part of the permanent project record).

### 3.4 SOCIO-ECONOMIC CONDITIONS

The 1990 census indicates that the total population of Crownpoint Chapter was 2,468 and that of Mariano Lake was 720. At that time, the 1997 population estimates were expected to increase approximately 2 to 5 percent. The Native American population in the United States is considered to be minority and the Navajo Nation is a low income population. In general, the project area, the region, and the Navajo Nation suffers extensively from high unemployment. The primary local employers are in public services including education, health services and government such as the Navajo Nation and the Bureau of Indian Affairs. Other area employment includes local retail businesses, convenience and service establishments, trading posts, and mining. Some income is obtained in the tourist and trade industries mainly involving Native American arts and crafts.

The project's alignment is located in the area known as the "checker-board" area. This area has Federal, State, private, and Navajo Nation Trust lands that have several status types including individual Navajo family lands called allotment lands. The existing N11 roadway bisects some parcels of Navajo Trust lands. Minor realignment changes that are necessary to meet modern highway design and traffic safety standards would require the acquisition of additional right-of-way lands. Local land owners including persons with Navajo Trust lands have expressed concerns over the loss of portions of their allotment lands through right-of-way acquisition for the project.

### 3.5 LAND-USE

The land in the proposed project area is rural and current use centers around small

families raising and grazing livestock (cattle, sheep, goats, and horses). Land-use also includes public lands set aside for the protection of cultural resources, residential housing, and mining. There are large coal lease areas about five miles north and northeast of Crownpoint. Recreational use of the proposed project area may include hiking, horseback riding, and nature appreciation. Navajo Nation lands near the proposed construction area are within the Crownpoint and Mariano Lake Chapters of BIA's Eastern Navajo Agency and are included in the Navajo Nation's Land Management Districts No. 15 and No. 16, respectively. There is no Prime Farmland in the project area. There are also no known solid waste or hazardous waste sites in or adjacent to the proposed construction easement.

Public facilities in the area include Chapter Houses; local pre-school, middle school and high school education facilities as well as the Crownpoint Institute of Technology; and several churches. Local health care facilities are located in Pinedale while Crownpoint and Gallup also have critical care hospital services. The Crownpoint District of the Navajo Police provides tribal law enforcement for the local Chapters within the proposed construction area. Fire protection equipment would also come from Crownpoint. Area communications include regional television stations, various AM/FM radio stations, and newspapers while Crownpoint also has cable television service. Public and pay telephone services are available and the United Parcel Service provides service to the project area. The BIA Eastern Agency office is also located in Crownpoint. Navajo Transportation System service is available at Crownpoint as is the closest airport services. Recreation facilities include local libraries, outdoor basketball courts, baseball fields, tennis courts, and rodeo grounds. The area's fairgrounds are located in Crownpoint. Local communities also have several civic organizations and committees.

### 3.6 OTHER VALUES

As noted above, the existing N11 road is inadequate and unsafe making access to and from goods, services, education, jobs, and health care difficult especially during



inclement weather. Providing for public health and safety on the Navajo Nation are a primary concern.

#### 4. ENVIRONMENTAL CONSEQUENCES OF THE PROPOSED ACTION

##### 4.1 PHYSICAL RESOURCES

###### 4.1.1 Physiography

The no action alternative and none of the construction alternatives would have any effect on the area's physiography.

###### 4.1.2 Geology and Soils

The recommended plan would have no known foreseeable effects upon existing or potential geologic resources of the area and would provide a benefit by preventing soil erosion in the project area. The recommended plan would rehabilitate the existing alignment and install or replace inadequate surface water drainage crossing structures. This work would also provide for erosion and sedimentation control features to prevent soil erosion and would include re-vegetation measures such as mulching and re-seeding of all disturbed areas. An initial small increase in soil erosion would occur until re-contoured highway slopes stabilize, assisted by re-vegetation measures.

The other construction alternatives would also have negligible effects; however, would not be as beneficial as the recommended plan.. The no action alternative would have no effect on geological resources and no effect on existing conditions of the construction area; in other words, soil erosion along the existing roadway would continue.

The projects' proposed right-of-way alignment and width changes would require

approval from the Navajo Nation as do any permits for sand and gravel borrow materials used in road construction, if these materials are obtained from Navajo Nation lands. If so, the BIA or its contractor would obtain sand and gravel permits from the Navajo Nation prior to using these resources. The BIA or its contractor would notify the Navajo Nation of the location of borrow sources when these areas have been identified so that potential impacts to biological and cultural resources can be determined and avoided. The BIA would provide an environmental assessment and archaeological clearance for these borrow areas with their application for sand and gravel permits, in addition to using erosion, sedimentation, and storm water discharge controls as outlined in the National Pollutant Discharge Elimination System (NPDES) guidance as noted in the following section on water resources.

Sand and gravel materials, if obtained from other than Navajo Nation lands, would come from an existing, approved quarry that must also meet environmental, archaeological, and NPDES storm water discharge requirements or from a commercial quarry source. During construction, staging areas would be located within the existing and/or proposed roadway right-of-way. The BIA Branch of Roads would utilize best management practices to reduce impacts to the land surface.

#### 4.1.3 Climate

The no action alternative, the recommended plan nor any of the construction alternatives would have any effect on the local or regional climate.

#### 4.1.4 Water Resources

As noted in Section 3.1.4 Water Resources above, a Corps reconnaissance survey of the project area found that the Puerco River and other small arroyos and washes in the area are ephemeral. There were no wetland areas or riparian vegetation adjacent to the

vicinity of the proposed construction area other than Mariano Lake which is located about 1 mile (1.6 kilometers) east of the proposed alignment and intersection of N11 with Navajo Route 49 near the community of Mariano Lake.

In the proposed action, the placement of dredged and fill material associated with surface water drainage structures would require Section 404, Clean Water Act (CWA), authorization including any special permit conditions and, if necessary, required notification procedures. The Section 404 permit application would be submitted by the BIA or their contractor (Appendix B).

Section 401 of the CWA, as amended, requires that an applicant for a Section 404 permit also obtain water quality certification for the proposed action prior to initiating the proposed construction. For projects located on Navajo Nation lands, certification is obtained through the Navajo Nation Environmental Protection Agency (EPA), in Window Rock, AZ (Appendix B). The water quality certification application would be submitted by the BIA or their contractor.

Section 402 of the CWA, as amended, regulates point source discharges of pollutants into waters of the United States and specifies that storm water discharges associated with construction activity be conducted under National Pollutant Discharge Elimination System guidance (NPDES). Storm water discharge associated with "construction activity" includes discharges from construction activities (clearing, grading, and excavation) that result in disturbance to one or more acres (0.404 hectares or more) of land. The NPDES guidance would apply to this project because the construction zone is more than five acres. Project construction would comply with the general conditions of NPDES, a Notice of Intent would be filed with EPA by BIA or their contractor, and a Storm Water Pollution Prevention Plan for the project would be developed by the BIA or their Contractor (Appendix B).

All general and special conditions of the Section 404 CWA authorization would be addressed in the design plans and specifications for the proposed project. Water Quality Certification, Storm Water Pollution Prevention Plan, and Section 404 CWA authorization would be a part of the permanent record for this project (Appendix B). The Corps' Regulatory Branch and other agencies consulted recommend minimization of effects by the use of best management practices during any construction activities in water courses.

Since the proposed project is in the "checker-board area," lands adjacent to or crossed by the project's alignment may be Navajo Nation lands of unknown status. Therefore, consultation and coordination with the Navajo Nation would be conducted. For water quality, Sections 1102 and 3101 of the *State of New Mexico Standards for Interstate and Intrastate Streams* (20 NMAC 6.2) and Navajo Nation water quality standards, approved by the Navajo Department of Natural Resources on November 12, 1999, would apply to the proposed project.

The Navajo Nation Water Code (Title 22, Navajo Tribal Code, Chapter 7) of the Water Resources Management Department states... "It is unlawful for any person within the territorial jurisdiction of the Navajo Nation, as defined in 7 N.T.C. 254, to impound, divert, withdraw, otherwise make any use of, or take any action of whatever kind affecting the use of water within the territorial jurisdiction of the Navajo Nation unless the applicable provisions of this Code and regulations and determinations hereunder have been complied with. No right to use water, from whatever source, shall be recognized, except water-use rights obtained under and subject to this Code."

Water for construction purposes would be obtained from a pre-approved, local community sewer lagoon and/or nearby available sources. However, if the source is the Navajo Nation, the contractor would obtain a water use permit from the Navajo Nation Department of Water Resources Management prior to the start of any construction. In order to allow proper review, the permit application for water-use would be filed with the



Navajo Nation at least 30 days before water use is scheduled to begin (Keshaw Mallick, Hydrologist I, Navajo Nation Department of Water Resources Management, 1995, pers. comm.). The permit application would provide information on the type of water use, the location of the water source or point of diversion, the point of water use, the rate, and the anticipated quantity of water required for the proposed construction. Any excavation or construction in waters of the United States that might be used temporarily to obtain water must also be authorized under Sections 404 and 401 of the CWA and covered by the Storm Water Pollution Prevention Plan.

The proposed construction activities would replace inadequate and/or install new surface water drainage structures and would include erosion/sedimentation control features (Appendix B). Design plans and specifications would utilize energy dissipaters such as rip-rap and culvert outlet stilling basins when constructing drainage structures to reduce overland surface flow velocities. Drainage structures would include culverts of the flat bottomed, corrugated pipe arch type, but exact type/style would be dependent on design elements such as total drainage area above the structure. Drainage studies would be conducted as a part of project planning and design and would adequately pass any anticipated high flows as per conditions of the Section 404 authorization so that existing surface water drainage patterns would not be altered. Should stream flows be present during construction, the appropriate actions and regulations would be followed. All disturbed areas and shaped slopes, including staging areas, would be mulched and re-seeded to assist in stabilization of soils to minimize erosion. Re-vegetated areas would be fenced to protect from livestock and would be monitored to assure reestablishment. Initially, surface water runoff from storms could cause slight erosion until disturbed areas become stabilized. Detour roads may be used during construction to provide access along the existing route and detour roads must also meet standards and specifications.

Foreseeable effects to water resources of the construction area from the recommended plan are considered negligible. By adhering to the above-mentioned

measures, no adverse or significant effect or modification of surface water drainage patterns, wetlands, riparian areas, or underground water resources would result from the recommended plan. For the no action and existing alignment(s) alternatives, impacts would include safety hazards caused by restricted sight distances and surface water runoff during storms that in some places overtops existing roadway surfaces due to inadequate surface water drainage structures. The no action and the new alignment with gravel surface alternatives also have continued erosion problems created by maintenance grading of the roadway and surface water drainage sedimentation from the roadway surface, edges, and borrow ditches.

The BIA and their contractor would be responsible for meeting the general and any special conditions of permits and would use best management practices and avoidance by design to prevent effects to water resources during and after construction to reduce soil and water erosion. Inspections by the BIA and/or the Navajo Division of Water Resources would be conducted to monitor and inspect contractor work and contractor's compliance with the plans and specifications regarding the CWA permits, water quality certification, and best management plans and practices. By adhering to the above-mentioned elements by the BIA and their contractor, no adverse or significant effect or modification of surface water drainage patterns, wetlands, riparian areas, or underground water resources would result from the proposed construction activities.

#### 4.1.5 Air Quality, Noise, and Visual Quality

The project area is "in attainment" for air quality and the Class I San Pedro Parks Wilderness and Mesa Verde National Park would not be affected by the proposed project or any of the alternatives. All construction alternatives including the recommended plan would result in a temporary but negligible increase in suspended dust particles from construction activities and emissions associated with vehicles and the asphalt mixing process. Dust particles and emissions would be minimal and would not result in any

permanent or significant short- or long-term detrimental effects on air quality. Equipment with water sprinklers would be used during construction to minimize dust. Properly installed emission control devices would be used on all equipment and vehicles during project construction. Since portions of the proposed alignment cross Navajo Nation lands, compliance with the Clean Air Act would require BIA consultation with the Navajo Air Quality Control Program. In the long term, the roadway paving alternatives would improve air quality by reducing dust created by vehicle traffic. In the no action and gravel surfaced roadway alternatives, the area would continue to experience air pollution created by vehicular traffic operating over the gravel-surfaced roadway.

Background noise levels in the proposed project area are low to moderate. During construction, noise may temporarily increase in the vicinity of vehicles and equipment. In any of the construction alternatives, noise levels would increase locally in the project area; however, this increase would be minor and temporary, ending when construction is complete. Therefore, negligible effects are foreseen as a result of project implementation for any of the construction alternatives. The no action alternative would have no effect on existing conditions other than that caused by the increasing volume of traffic and the noise created by that traffic on the existing gravel roadway surface.

The no action and graveled surface alternatives would add to continued impairment of visual quality. There would be temporary but negligible effects to the scenic quality of the project area by the recommended plan and the other paved surface construction alternative. Foreseeable effects of the proposed action could have beneficial effects to the local area. A designed, aesthetically pleasing roadway through the area with asphalt paving would eliminate dust from vehicular traffic and enhance landscape views. The proposed roadway itself would help to eliminate some of the randomness of the existing local roads and all disturbed areas would be re-contoured and re-vegetated.

#### 4.2 BIOLOGICAL RESOURCES

There are no foreseeable effects from the no action alternative other than those insignificant effects resulting from the existing human presence, roadways, and traffic of the project area. The foreseeable effects of the recommended plan and other construction alternatives of the proposed action on biological resources of the proposed construction area would be minor, of short duration, and temporary in nature, and would result in minimal disturbance to vegetation, wildlife, and special status species as noted below. Wildlife and special status species that may occur in or near the proposed construction area generally have adapted to the existing human presence and would already be tolerant of existing human presence, vehicle traffic, and noise. The proposed project would have no significant effect on wildlife, vegetation, or Federal, State and NESL special status species.

#### 4.2.1 Vegetation Communities

The no action alternative would have no effect on the vegetation of the project area other than continuing erosion as described previously. All of the construction alternatives would provide erosion control features in the project design; however, the improved alignment of the recommended plan and the gravel surfaced roadway alternative would disturb a total of approximately 25 acres (about 10.1 hectares) of previously undisturbed land. The paved surface construction alternative utilizing the existing alignment would disturb less land; however, would not provide for a modern and safe highway design. Project design calls for re-vegetation of all disturbed land surfaces, and the re-seeding mixture and reclamation of all disturbed areas on Navajo Nation lands would be coordinated by BIA with Range Conservation Officer of the Navajo Nation Department of Agriculture. Preparing the proposed right-of-way for construction may require the removal of some trees. Removal of trees on Navajo Nation lands would require consultation with the Navajo Nation Forestry Department and possibly a tree cutting permit. By providing a modern highway and easier access through the area, the recommended plan may increase



illegal tree cutting in the area.

#### 4.2.2 Wildlife

Wildlife species in or near the proposed construction area generally have adapted to and would be somewhat tolerant of the existing human presence. The foreseeable effects of the no action alternative on wildlife would be negligible. The foreseeable effects of the recommended plan and other construction alternatives on wildlife would also be negligible.

The proposed ground disturbance would not be significant and re-vegetation measures would be applied to all disturbed areas. Construction of the recommended plan utilizing a modern highway design and asphalt paved surface would likely increase the use of the route, added new traffic to the route, and increase traffic speeds. These changes may cause an increase in wildlife fatalities on the roadway; however, traffic volume is already increasing on the N11 route and signage for appropriate speed limits is included in the project design. By providing a modern highway and easier access through the area, illegal hunting and poaching of wildlife may also increase.

Right-of-way fencing would be constructed so that it would not restrict the movement of larger animals, and therefore would be constructed to provide for wildlife passage under, through, or over the fencing. To provide fence passage, recommended design would place the bottom wire at least 16 inches (41 centimeters) above the ground with the top wire 36 inches (91 centimeters) or lower. The preferred use of smooth wire for the top and bottom fence wires would prevent injuries to wildlife. After construction is completed, monitoring of the highway should be conducted to determine if there are areas where wildlife mortality has increased; and if so, investigations should determine the cause and remedial action taken to prevent mortality. Remedial action may include modification of the fence such as replacement of the top wire with plastic pipe or wooden beam which has proven successful on other projects.

#### 4.2.3 Special Status Species

No Federal, State, or Navajo Endangered Species List (NESL) listed, proposed, or candidate plant or animal species or evidence thereof were observed in the proposed project area during surveys conducted on July 11, 1995, and March 12, 1996. Special Status Species that may occur in or near the proposed construction area generally have adapted to and would be somewhat tolerant of the existing human presence. There are no foreseeable effects from the no action alternative other than those insignificant effects resulting from the existing human presence and existing conditions of the project area. The recommended plan and other construction alternatives of the proposed project would have no effect on Federal, State, and NESL Special Status Species as noted below.

No special status plant species or evidence thereof were observed during surveys, therefore, the proposed action would have no effect of listed plant species.

All of the bat species noted in Table 1 potentially occur in McKinley County and may occur in the project area. Roosting and feeding habitat would not be altered by the proposed action. Due to non-disturbance of roosting or feeding habitat and the limited nature of the proposed action, there would be no effect on these species or their habitat by the proposed construction.

There are a number of special status species that may occur in McKinley County for which the proposed project would have no effect due to the limited scope of the proposed action and the lack of potential, suitable, or preferred habitat or seasonality of the species. These species include Bald Eagle, Southwestern Willow Flycatcher and its designated Critical Habitat, Black Tern, White-faced Ibis, Mountain Plover, black-footed ferret, Western Burrowing Owl, northern leopard frog, and the Zuni bluehead sucker.

Pronghorn potentially occur in McKinley County and in habitat similar to that near the project area. Construction of a modern paved road would create easier access to the area that may cause an increase in pronghorn highway fatalities and a slight increase in

illegal hunting and poaching opportunity; however, NNFWD (Kathleen McCoy, Wildlife Biologist, NNFWD, 1996, pers. comm.) do not consider these potential impacts to be significant. Of greater concern to NNFWD is the possible restriction of the pronghorns' seasonal movements. If right-of-way fencing is deemed necessary, NNFWD and USFWS recommend fencing as noted above to facilitate pronghorn movements and passage under the fencing. Due to the limited nature of the proposed project and since pronghorn mobility would not be extensively restricted, the proposed action would have no effect on pronghorn.

The Loggerhead Shrike is a year-round resident of New Mexico and is adaptable and very mobile. Due to the limited disturbance, the proposed project would most likely have no effect on the Loggerhead Shrike.

Northern Goshawk are fairly common to mountainous regions in the southwestern part of the state and migrate and winter throughout the entire state. They prefer a high density of large trees in canopied, mature coniferous forests. The project area does not provide preferred habitat for the Northern Goshawk; however, they may migrate through the area. Due to the limited disturbance, the proposed project would most likely have no effect on the Northern Goshawk.

Navajo Fish and Wildlife Department has recommended that surveys of the proposed project area be conducted for American (and Arctic) Peregrine Falcon, Ferruginous Hawk, Golden Eagle, and Mexican Spotted Owl to verify the presence or absence of these species (see Table 1 and Appendix C). The surveys (see survey area map, Appendix C) would determine the occurrence, abundance, and breeding status for these species and would be conducted as per accepted survey protocol; usually in the spring of the year (one/two years for Mexican Spotted Owl) immediately prior to construction. While, as noted below, there would most likely be no effect to these species by the proposed project, BIA agrees to coordinate with U.S. Fish and Wildlife Service, New



Mexico Department of Game and Fish, and/or Navajo Fish and Wildlife Department regarding the need for surveys and/or, if found to be present, conservation measures such as conducting construction activities outside of the breeding/nesting seasons on sections of the road where the species would be impacted. The surveys would also document all incidental sightings of other species.

The cliffs along the north facing Mesa de los Lobos offer potential, although not preferred, habitat for American Peregrine Falcon. The preferred wooded/forested habitat is lacking in the immediate vicinity of the project area. Due to the existing human presence in the area, the increasing traffic on the existing N11 road, and the limited disturbance of this proposed project, there would most likely be no effect to the American Peregrine Falcon by the proposed project.

The Arctic Peregrine Falcon, a subspecies, is a rare migrant in New Mexico. Due to the limited disturbance of the proposed project, there would most likely be no effect to this subspecies by the proposed action.

The Ferruginous Hawk is fairly common the western United States and prefers undisturbed areas. Due to the existing human presence in the area, the increasing traffic on the existing N11 road, and the limited disturbance of the proposed project, there would most likely be no effect to this hawk by the proposed action.

The Golden Eagle is a permanent resident of the western United States. The project area offers potential habitat for Golden Eagle; however, the existing human presence and increasing traffic along N11 may deter the Eagle's use of the project area. Due to the limited disturbance of the proposed project, there would most likely be no effect to the Golden Eagle by the proposed action.

The Mexican Spotted Owl has been recorded in all the National Forests in New

Mexico. Although this species inhabits and prefers mature montane forests of mixed conifer in association with wooded, steep canyons and cliffs, piñon-juniper woodlands may be utilized. While there is no preferred forest habitat in the project area, there is a micro habitat area of mixed conifer in a small canyon along the north face of Mesa de Los Lobos that provides potential habitat. Mexican Spotted Owl is not known to occur in the area.

#### 4.3 CULTURAL RESOURCES AND TRADITIONAL CULTURAL PROPERTIES

According to the stipulations contained in the *Programmatic Agreement* (1994), the BIA, in coordination with Navajo Nation Historic Preservation Department (NNHPD), would ensure that the provisions concerning identification of cultural resources and determination of their historical significance would be implemented according to National Register criteria as outlined in Title 36 of the Code of Federal Regulations, Part 60 (36 CFR Part 60), and Sections 101 and 106 of the National Historic Preservation Act of 1966 (16 U.S.C. 470), as amended. The *Programmatic Agreement* (1994) addresses the Section 106 consultation process for BIA road construction projects on the Navajo Nation and gives the NNHPD the authority to assure compliance under Section 106 of the National Historic Preservation Act. NNHPD also notifies and consults with the National Park Service, Chaco Culture National Historical Park, concerning possible related sites or features such as outliers or road alignments as per Public Law 96-550 (96th Congress 1980) which created the Chaco Culture National Historical Park (U.S. Department of the Interior, National Park Service Southwest Regional Office 1985).

The foreseeable effects of the proposed action on cultural resources and/or traditional cultural properties of the proposed construction area are "may effect." Several cultural resources sites that have Archaic, Basketmaker, Anasazi, and Historic components are located immediately adjacent to the existing road alignment and would be impacted by construction efforts to rehabilitate and make alignment changes that provide for a modern and safe highway design. However, through coordination and mitigation, there would be

“no effect,” by the BIA following an approved treatment plan as prescribed by NNHPD for all eligible sites and/or traditional cultural properties found within or immediately adjacent the proposed highway right-of-way. Prior to and during road construction, the eligible sites and/or traditional cultural properties would be avoided, to the extent possible. At some sites, an approved treatment plan would include design changes or modifications to the existing or proposed roadway alignment that would be beneficial and avoid impacts. If mitigation of cultural resources is necessary, data recovery would be required and may occur simultaneously with the proposed construction; however, all data recovery for any particular site would occur before construction was allowed to proceed in that area. Foreseeable effects for the other construction alternatives are similar to those of the proposed action. The no action alternative would have no effect of existing conditions. The Chaco Culture National Historic Park would not be affected by any of the alternatives or by the proposed action.

Should previously undiscovered cultural resources be found or unearthed during construction, work would be stopped in the immediate vicinity of the find, a determination of significance made, and a mitigation plan would be formulated as determined by NNHPD in consultation as noted above. Some sites may be temporarily fenced for protection of the site during construction, and monitoring of construction activities in the vicinity of sensitive cultural resources by a qualified archaeologist would be conducted as necessary.

#### 4.4 SOCIO-ECONOMIC CONDITIONS

There are no significant foreseeable effects of the proposed action on the socio-economic resources of the project area. Any economic benefits of the proposed project would primarily go to contractors and their employees who are generally located in larger populated centers. The project would have little or no economic impact on the local population including minorities and persons with low incomes living in the area although some local people may be hired by project contractors for construction.

The proposed project would also have little or no effect on local community or economic development within the area. Significant population movement into or from the project area is not anticipated. The proposed project would provide some significant benefits. Community and economic success of a population within the area is dependent upon the condition of its roadways and access to goods and services within and outside of the area. The proposed project would provide a dependable all-weather roadway surface for N11 while reducing transportation costs and maintenance to vehicles. Therefore, there would be less costly, easier, and more efficient access to and from goods, services, education, and jobs. The proposed project would not detrimentally affect minority or low-income populations and would also afford these people the above transportation and highway safety benefits. For many residents and travelers, N11 also provides for a more direct route to State Highway 371 and the northern portions of New Mexico. The other construction alternatives are similar but would be less desirable than the recommended plan. The no action alternative is least desirable because it would foster sporadic community and economic development, and maintenance and repair expenses for buses, vehicles, and use of existing dirt roadway surfaces would continue.

The proposed construction would implement the objectives of the Navajo Nation Master Road Plan, developed during the 1980s. Today, this master plan is developing a modern, structured, and safe transportation network for the Navajo Nation. In comparison to current U.S. highway standards, the Navajo Nation Master Road Plan is lagging behind the rest of the United States in the number of modern, paved highways per square mile. The rehabilitation of N11 is an important step in creating a modern and safe transportation network for the Navajo Nation. During construction, traffic may experience delays due to construction; however, these delays would be minimized by utilizing one-lane closures with flag-persons or signals to regulate traffic. After construction completion, use of the N11 route is expected to steadily increase and would include cars, light and heavy trucks, various equipment, and service vehicles.



The proposed acquisition of additional properties, a portion of which would be Indian Trust lands of unknown status, to enlarge the existing right-of-way would provide the area necessary to construct the roadway alignment to modern design and safety standards. Some landowners would lose private property to right-of-way acquisition. When compared to the benefits of the project, the proposed right-of-way acquisition is considered to have a negligible effect.

#### 4.5 LAND-USE

The proposed action would not result in any significant alteration of existing or approved land-use. The foreseeable effects of the proposed action on land-use practices of the construction area would be beneficial. Construction of the proposed project would prevent further erosion and degradation of the surface water drainage including the Puerco River and would significantly slow erosion rates. The construction of the proposed project would not create hazardous or toxic wastes and solid waste materials would be properly disposed of at commercial or pre-approved waste disposal sites. The recommended plan would also provide easier and safer access for landowners to lands on either side of the proposed right-of-way. There may also be some minimal effect on traditional grazing practices such as inconvenience to land-users if land parcels are divided by the proposed right-of-way. If right-of-way fencing is deemed necessary, the fencing would be constructed in such a way as to allow wildlife such as pronghorn to move easily under it as noted above. Therefore, fencing included in these construction alternatives would have negligible effects upon wildlife species that may be utilized by the local population. Fencing of the small right-of-way would also provide protection for new plant growth from re-vegetation measures applied to disturbed areas. The other construction alternatives would be similar to the recommended plan but would have less benefit. The no action alternative would have no effect on land-use other than the existing erosion conditions and poor access especially during extreme weather conditions such as thunder storms and

snow storms that cause the existing N11 road to become muddy and at times impassible.

#### 4.6 OTHER VALUES

By providing a modern and safe highway, construction of the project would also provide easier and more efficient access to health care facilities and thereby would promote the use of those health facilities. A dependable all-weather road system also supports police and fire protection and emergency services.

#### 4.7 CUMULATIVE IMPACTS

In consideration of the past, present, and future (foreseeable, reasonable actions), the cumulative impacts of the proposed project would be negligible on the resources of the construction area. There are no completed or planned Federally-funded or non-Federal projects in the immediate vicinity of the proposed project. Improved roadways provide easier access, greater safety for the motoring public, and encourage planned economic and community development within the Mariano Lake and Crownpoint areas. The proposed project would not create significant cumulative environmental impacts.

### 5. CONCLUSIONS

The economic well-being of the Navajo Nation is closely tied to the overall condition of its road network. A modern road network must be combined with comprehensive and long-term community planning in order to effectively meet the current and future needs of the Navajo Nation. Economic and community development on the Navajo Nation is severely handicapped by the lack of modern roads and there is an enormous backlog of road construction projects and maintenance expenses for substandard roadways. Effective transportation planning, integrated with the economic development and community planning,

is essential to overcome this backlog and create a safe and modern transportation network on the Navajo Nation.

The BIA under its authority would implement best management practices during construction. Specific measures to provide environmental and cultural resource protection during construction would be written into contract plans and specifications at the time of detailed design, and would be reiterated during the preconstruction conference held prior to the start of construction. Measures concerning the environment would provide for control of noise, air and water pollution, erosion, and aesthetic degradation, as well as protection of vegetation and fish and wildlife resources including special status species. These control measures are specified in accordance with all Federal, State, Tribal, and local regulations. Therefore, the proposed construction project would have negligible impacts on the resources of the construction area.

## 6. CONSULTATION AND COORDINATION

This environmental assessment (EA) was prepared for the Bureau of Indian Affairs, Navajo Area Office, Branch of Roads, Gallup, New Mexico, by the U.S. Army Corps of Engineers, Albuquerque District, Albuquerque, New Mexico, in accordance with Memorandum of Agreement Number AG2N0000992, dated May 5, 1992, as amended, and in compliance with all applicable Federal statutes, regulations, and executive orders, including:

American Indian Religious Freedom Act of 1978 (42 U.S.C. 1996)

Archaeological Resources Protection Act of 1979 (16 U.S.C. 470)

Clean Air Act of 1972, as amended (42 U.S.C. 7401 *et seq*)

Clean Water Act of 1972, as amended (33 U.S.C. 1251 *et seq*)

Endangered Species Act of 1973, as amended (16 USC 1531)

National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq*)

National Historic Preservation Act of 1966, as amended (16 U.S.C. 470)

Native American Graves Protection and Repatriation Act of 1990 (25 U.S.C. 3001 *et seq*)

This EA also reflects compliance with all applicable State of New Mexico, Navajo Nation (NN), and BIA regulations, statutes, and policies including:

30 BIAM Supplement 1

NN Water Code, 7 N.T.C. 254

NN Solid Waste Code, RCO-171-90

NN Pesticide Code Regulation, CJY46-86

NN Fish and Wildlife Department policies

protecting endangered species, Title 17, N.T.C. 507

NN Highway Public Safety Department policies

NN Cultural Resources Protection Act, CMY-19-88

NN policy to protect Traditional Cultural Properties

NN policy and procedures concerning the Protection of Cemeteries, Gravesites,  
and Human Remains, ACMA-39-86

A scoping letter dated September 14, 1995, was sent to interested parties, local representatives, Tribal and Federal agencies, who expressed or may of had an interest in the proposed project. A project description and map of the proposed construction project and area were provided and comments were solicited; however, project planning was then held-up due to other priorities.

On July 28, 1998, new scoping letters and project information were again mailed. Agencies and concerned entities consulted formally or informally in preparation of this EA include:

U.S. Department of Interior

Fish and Wildlife Service



New Mexico Ecological Services State Office  
National Park Service  
Chaco Culture National Historical Park  
Bureau of Land Management  
Farmington Field Office

Bureau of Indian Affairs  
Navajo Area Office  
Roads Planning and Design Section  
Environmental Quality Services  
Eastern Agency  
Branch of Roads

U.S. Environmental Protection Agency

Region 6

Region 9

State of New Mexico

Department of Energy, Minerals and Natural Resources

Forestry and Resources Conservation Division

Department of Game and Fish

Environment Department

Water and Waste Management Division

Environmental Impact Review

Department of Highways and Transportation

Navajo Nation

President Kelsey Begaye

Fish and Wildlife Department

Historic Preservation Department

Chaco Protection Sites Program

Environmental Protection Administration  
Department of Water Resources Management  
Land Administration  
Navajo Tribal Utility Authority  
Grazing Management Office  
Division of Natural Resources  
Mariano Lake Chapter  
Pinedale Chapter  
Crownpoint Chapter  
Pueblo of Zuni  
Governor Donald S. Eriacho  
Heritage and Historic Preservation Office

The Preliminary Draft Environmental Assessment for the proposed Navajo Route 11, Project N11 (1A&2B) 1, 2 & 4, was sent to the Navajo Region Division of Transportation formerly BIA, Navajo Area Office, Branch of Roads, for their review on May 11, 1999. The Draft Environmental Assessment was mailed out for public review on December 27-29, 1999.

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Programmatic Agreement

1994 *A Programmatic Agreement among the Navajo Nation, the Bureau of Indian Affairs-Navajo Area Office, the Advisory Council on Historic Preservation, the Arizona State Historic Preservation Officer, the New Mexico State Historic Preservation Officer, and the Utah State Historic Preservation Officer for Cultural*



**Resource Management Projects Conducted under the Auspices of the Navajo Nation Historic Preservation Department, Roads Planning Section within the Boundaries of the Navajo Nation.**

Silver, Caswell (Compiler)

**1950**Geologic Map of the San Juan Basin. In **Guidebook of the San Juan Basin: New Mexico and Colorado**. New Mexico Geological Society. First Field Conference. New Mexico Bureau of Mines and Mineral Resources. Socorro.

Stebbins, Robert C.

**1985**A Field Guide to Western Reptiles and Amphibians. 2nd Ed. The Peterson Field Guide Series, No. 16. Houghton-Mifflin Co. Boston.

U.S. Department of the Interior, National Park Service

**1985**General Management Plan/Development Concept Plan, Chaco Culture National Historical Park, New Mexico. Santa Fe.

## 8. APPENDICES

### Appendix A: Community Support Documentation

Chapter House(s) Resolution/Certification  
Agency Roads Committee Resolution/Certification  
Letter(s) of Support

### Appendix B: Water Resources of the Construction Area

Section 404 Determination/Survey Reports  
Section 404 Permit and Conditions  
Section 401 Water Quality Certification  
Section 402 NPDES/Storm Water Pollution Prevention Plan  
Erosion/Sedimentation Control Features (BIA Figure C)

\*\*When these documents become available they will be  
attached as part of the permanent Project record by BIA\*

### Appendix C: Biological Resources of the Construction Area

Corps Reconnaissance Survey Reports  
U.S. Fish and Wildlife Service  
Navajo Fish and Wildlife Department  
Survey Area Map for Raptor Species

### Appendix D: Documentation of Cultural Resources and Traditional Cultural Properties

of the Construction Area

Compliance Form(s)/Coordination Documentation

**Appendix E: Scoping Letters**

**Appendix F: Submittal Letters for Public Review of the Draft EA**

**Appendix G: Comments to the Draft EA and Responses**

**Appendix H: Table of rights of way**

## Appendix A

### Community Support Documentation

Chapter House(s) Resolution/Certification

Agency Roads Committee Resolution/Certification

Letter(s) of Support



H/W: ☒ Yes ☐ No Jurisdiction Area: Open Water 100 s.f. Wetland      ac/s.f.

Isolated: ☐ Yes ☒ No Special Aquatic Site: ☐ Yes ☒ No Type                     

Authorized by: ☒ Nationwide Permit ☐ Notification Required ☐ Regional Permit             
☐ 3 - Maintenance ☐ 18 - Minor Discharges ☐ Exemption             
☐ 7 - Outfall Structures ☐ 23 - Categorical Exclusions ☐ No Permit Required             
☐ 12 - Utility Lines ☒ 26 - Headwaters/Isolated Waters ☐ Individual Permit Needed             
☐ 13 - Bank Stabilization ☐ 33 - Temporary Construction             
☐ 14 - Road Crossing ☐ 36 - Boat Ramps ☐ Other N/W           

Enclosures

☒ Map



☐ Area/Project Sketch (Signature)

☐ Photographs of Worksite July 12, 1995

☐ Wetland Determination Data Forms (Date)

AREA/PROJECT SKETCH - Show prominent features, flow direction, OHWM, fills, dimensions, volumes, material types, vegetation types/locations, wetland boundaries, borrow areas, etc.

Copies Furnished: ☐ El Paso Reg Ofc ☐ So Colo Reg Ofc ☐ Reg Br ☐ Other



YOUNG J. TOM  
COUNCILMAN

*YJ*

# THE MARIANO LAKE CHAPTER

POST OFFICE BOX 520  
GALLUP, NEW MEXICO 87305  
(505) 786-5835

March 22, 1995

## RESOLUTION OF THE MARIANO LAKE CHAPTER

HENRY TOM  
PRESIDENT

THOMAS BEGAY  
VICE PRESIDENT

DELORES TAPABA  
SECRETARY / TREASURER

RAQUEL WARNER  
CHAPTER MANAGER  
MLC-03-95-00

### RESOLUTION OF THE MARIANO LAKE CHAPTER, REQUESTING THE BIA ROADS, EASTERN NAVAJO AGENCY TO PAVE THE FLINTSTONE PASS, FROM MARIANO LAKE TO WEST OF CROWNPOINT.

#### WHEREAS;

1. The Mariano Lake Chapter is a certified Chapter of the Navajo Nation Government and operates under a Plan of Operation for the Navajo Nation Chapters as approved by the Advisory Committee of the Navajo Nation Council Resolution Number ASC-115-80; and

2. The Mariano Lake Chapter, recognize that this road is a public road and utilize by the tribe, state, county and other passerbys and government intitities, also the BIA, public, pre-school and other private school utilize this road as a bus route, and

3. When pave the road will be of beneficial to the local community, during emergency situations, and during in clement weather and medical attention will be much faster; and

4. The Mariano Lake Chapter and community fully supports the paving of the Flintstone Road as soon as possible; and

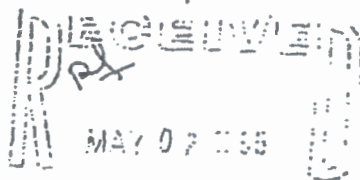
5. The Mariano Lake Community, has long awaited for this project to become about.

#### NOW THEREFORE BE IT RESOLVED THAT:

The Mariano Lake chapter, fully supports this paving of Flintstone Pass for the benefit of it's local consitutents.

#### C E R T I F I C A T I O N

WE HEREBY CERTIFY THAT THE FOREGOING RESOLUTION was duly considered and moved for adoption by Henry Tom, Seconded by Thomas Begay fully discussed and adopted by a vote of 25 in favor and 00 opposing and 00 abstentions at a regular called meeting of the Mariano Lake Chapter, this 12 day of March, 1995.



APR 05 1995

EASTERN NAVAJO AGENCY  
7001 E. EDUS, ROPS

COMMUNITY SERVICE PROG.  
EASTERN NAVAJO AGENCY

*Henry Tom*  
Mr. Henry Tom, President

*Delores Tapaha*  
Ms. Delores Tapaha, Secretary/  
Treasurer

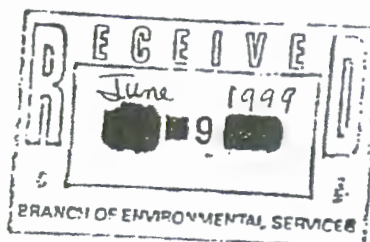
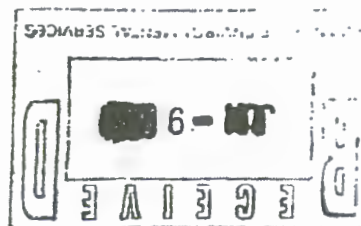
*Thomas Bepay*  
Mr. Thomas Bepay, Vice-President

*Young J. Tom*  
Mr. Young J. Tom, Council Delegate

RECEIVED

APR 05 1995

COMMUNITY SERVICE PROG.  
EASTERN NAVAJO AGENCY



OPTIONAL FORM 99 (7-90)

FAX TRANSMITTAL

# of pages: 02

To: <i>Loretta Tsoie</i>	From: <i>C21 Murphy</i>
City/Agency: <i>Environ Serv.</i>	Phone #: <i>786-6002</i>
Fax #: <i>863-8245</i>	Fax #: <i>786-6111</i>

NEW 7540-01 317-7249 5-93-101 GENERAL SERVICES ADMINISTRATION



**THE  
PINEDALE  
CHAPTER**

P.O. Box 3 • Church Rock, New Mexico 87311 • Phone: 1-(505)-786-2208 Fax: 1-(505)-786-2211

January 15, 2000

Rec'd 1-18-2000  
ODE

U. S. Army Corps of Engineers  
Albuquerque District  
Attn: CESP-ET-PE- (Mr. G. Everhart)  
4101 Jefferson Plaza NE  
Albuquerque, New Mexico 87109-3435

The Pine Dale Chapter submits this letter of support for the proposed action regarding the rehabilitation a portion of the existing Navajo Route 11 - (N.11) dirt road, known as Mariano Lake or as the Flint Stone Pass Road.

Currently, the route is needed for all vehicles travel on daily basis, and for pass through short cuts for vehicular travelers from northeast New Mexico going to Gallup or to Window Rock for all activities.

The Road Rehabilitation Activities will certainly be accepted and welcome to this community that will provided shorts route, quicker the travel to Eastern Navajo Agency Tribal Offices and Bureau of Indian Affairs Programs and shopping conveniences.

Please accept this letter of support. Thank You

Sincerely,

Raphael Martin, President  
Pine Dale Chapter  
P.O. Box 03  
Church Rock, New Mexico 87311

Rec'd 3-6-2000  
CDE

ENARC 2-24-00-03

## RESOLUTION OF THE EASTERN NAVAJO AGENCY ROADS COMMITTEE

REQUESTING AND SUPPORTING THAT ROUTE N 11, ROCKY CANYON ROAD, BE KEPT ON SCHEDULE FOR CONSTRUCTION IN THE YEAR 2003.

## WHEREAS:

1. The Eastern Navajo Agency Roads Committee was established by appropriate Resolution of said Council to study the needs, wants, and desires of the Navajo people concerning road related projects for construction and maintenance; and
2. In accordance with 23 U.S.C. and 25 C.F.R., part 170, The Bureau of Indian Affairs, Navajo Nation, and the Tribal Roads Committee contract authorizes the Agency Roads Committee to make recommendations concerning the roads program, high priority construction projects, maintenance projects, joint venture and construction projects and road inventory; and
3. Seeing that the Archeological investigations will all be completed this summer and the Environmental Assessment is being finalized, and
4. That this project N 11, N9 to Marianno Lake, known as Marianno Lake Pass, Dalton Pass, and Flinstone Pass has been on the Agency priority list since the early 1980's and is still a high priority project for the community.

## NOW THEREFORE BE IT RESOLVED THAT:

The Navajo Nation Transportation and Community Development Committee, the Navajo Nation Department of Transportation and the Navajo Regional Roads do all that is necessary to keep Route N11 on the Navajo Nation construction priority schedule for FY 2003.

## CERTIFICATION

We hereby certify that the foregoing resolution was duly discussed by the Eastern Navajo Agency Road Committee at a duly called meeting, with a quorum present, the same was passed with 5 in favor, 0 opposed, 0 abstain, this 24<sup>th</sup> day of February, 2000 at the Branch of Roads in Crownpoint, New Mexico.

  
Harry Hubbard, Chairman  
Roads Committee, ENA

  
Agency Road Engineer, ENA

OPTIONAL FORM 99 (7-00)

## FAX TRANSMITTAL

# of pages = 01

To	Greg Everhart	From	Calvin Naypay
Capl./Agency	Army Corps	Phone #	786-6002
Fax #	347-5199	Fax #	786-6111



ENALB-01-00  
January 31, 2000

*Rec'd 2-15-2000*  
*CDE*

RESOLUTION OF THE  
EASTERN NAVAJO AGENCY JOINT LAND BOARD

SUBJECT: Eastern Navajo Joint Land Board Respectfully *DIRECTS* the Bureau of Indian Affairs, Navajo Regional Roads, Eastern Roads, and the Navajo Nation Transportation and Community Development Committee to (1) include right-of-way fencing on all projects and (2) move up projects that have archaeological clearances.

WHEREAS:

1. The District Land Boards were created by the Navajo Nation Advisory Committee Resolution No. ACS-144-59 (September 23, 1959) and have an established Plan of Operations (Navajo Nation Advisory Committee Resolution AACAU-103-84; August 23, 1984). The Land Board are authorized to administer land and grazing matters in the Eastern Navajo Agency ( Navajo Nation Tribal Resolution CD-59-64); and
2. The Eastern Navajo Joint Land Board is duly elected representative body of the Navajo Nation with decision-making authority concerning the use and management of lands and resources on the Eastern Navajo; and
3. The Board recognizes the safety to both Livestock and Human if right-of-way fencing is constructed with all current and future road improvements; and
4. The Board further recommends that all current and new road construction have right-of-way fencing with necessary components associated with fencing and turnouts.
5. The Board further request Road Project N46, Pueblo Pintado to Counselor to be reschedule from FY 2007 to FY 2004. The Board recognizes the lengthiness of all cultural studies and undertakings. The Board recognizes that all Cultural undertakings for this project have been completed and this project is a high candidate for construction.

NOW, THEREFORE, BE IT RESOLVED THAT:

1. The Eastern Navajo Joint Land Board *DIRECTS* the Bureau of Indian Affairs, Navajo Regional Roads, Eastern Roads, and the Navajo Nation Transportation and Community

Development Committee to include Right-of-Way Fencing with necessary components associated with fencing and turnouts for all current and future projects on the Navajo Nation 12 Year Road Construction Schedule; and

2. The Eastern Navajo Joint Land Board further requests the above entities to reschedule Road Project N46, Pueblo Pintado to Counselor from FY 2007 to FY 2004 and to move up projects that have archaeological clearances; and
3. The Eastern Navajo Joint Land Board requests the above entities to adhere to these statements made and to acknowledge that this resolution will remain in effect throughout the life span of the Federally Funded Roads Program.

#### CERTIFICATION

I HEREBY CERTIFY THAT THE FOREGOING RESOLUTION was considered and moved for adoption by Joe Harrison and seconded by Bobby Delgarito and was thoroughly discussed and adopted by the vote of 12 in favor and 0 opposed at the monthly meeting of the Eastern Navajo Agency Joint Land Board at Crownpoint, New Mexico and this 31<sup>st</sup> date of January, 2000.

A handwritten signature in cursive script, reading "Bobby Thompson", followed by a horizontal line.

Bobby Thompson  
Eastern Navajo Agency Joint Land Board Chairman

JOHN PERRY, JR.  
Council Delegate  
MITCHELL W. CAPITAN  
President  
JAMISON DEVORE  
Vice-President  
LAURETTA ARVISO  
Secretary / Treasurer  
LINCOLN PERRY, SR.  
Land Board Member  
ARLENE ARVISO, B.S.W.  
Community Services Coordinator  
TILDA A. HARRISON  
Clark Typist I

## CROWNPOINT CHAPTER

P.O. Box 336 • Crownpoint, New Mexico 87315

Phone (505) 786-2130

Fax (505) 786-2136

Community Land Use  
Planning Committee

STEVEN BEGAY  
President  
WILLIAM MURPHY  
Vice-President  
CECILIA J. NEZ  
Secretary  
MAE BILLIE  
Member  
LEO MARTIN  
Member

RESOLUTION OF CROWNPOINT CHAPTER  
CPC-00-03-753

Rec'd 4-17-2000  
ODE

SUBJECT: RESOLUTION TO SUPPORT THE PROPOSED PAVING AND CONSTRUCTION  
OF NAVAJO ROUTE N11(I&2), ROCKY ROAD PASS, BETWEEN NAVAJO  
ROUTE N9 AND NAVAJO ROUTE N11 TO MARIANO LAKE JUNCTION

## WHEREAS:

1. Pursuant to N.T.C. Sections 4001 and 4028(a) the Crownpoint Chapter is established and certified by the Navajo Nation Council to review and promote all matters that affect the local community and to make appropriate recommendations to the Navajo Nation, Federal, State, County, local agencies, and private agencies for consideration or approval; and
2. In accordance with 23 U.S.C. and 25 C.F.R., part 170, the Bureau of Indian Affairs, Navajo Nation, and the Tribal Roads Committee contract authorizes the Agency Roads Committee to make recommendations concerning the roads program, high priority construction projects, maintenance projects, joint venture and construction projects and road inventory; and
3. Seeing that the Archeological investigations will all be completed this summer and the Environmental Assessment is being finalized; and
4. The Crownpoint Chapter is aware that some of its constituents reside along Navajo Route N11 and roads become impassable during inclement weather; and
5. The Crownpoint Chapter is aware that this project, known as Mariano Lake Pass or Flint Stone Pass has been on the Agency priority list since the early 1980 and is still a high priority project for the community.

## NOW, THEREFORE, BE IT RESOLVED THAT:

The Crownpoint Chapter hereby requests the Navajo Nation Council Transportation and Community Development, the Navajo Nation Department of Transportation, the Navajo Regional Roads, the Eastern Navajo Agency Roads Committee, Navajo Area Roads Department, and Eastern Agency Branch of Roads do all that is necessary to construct and/or pave said Route N11.

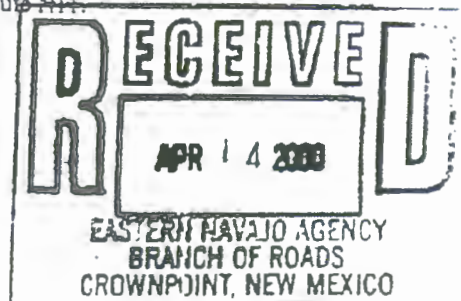
OPTIONAL FORM 00 (7-90)

## FAX TRANSMITTAL

# of pages 02

To	GREEN EVERHART	From	CAL MURPHY
Cocx / Agency	ACOE	Phone #	786-6002
Fax #	505-342-3668	Fax #	786-6111

GENERAL SERVICES ADMINISTRATION

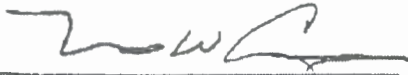


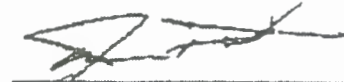
## CERTIFICATION

WE HEREBY CERTIFY that the foregoing resolution was considered by the Crownpoint Chapter at a duly called meeting at Crownpoint, Navajo Nation, New Mexico, at which a quorum was present and that same was passed by a unanimous vote of 42 on this 23<sup>rd</sup> day of March 2000.

Motion: Leo Begay

Second: Christine Perry

  
\_\_\_\_\_  
Mitchell W. Capitan, President

  
\_\_\_\_\_  
Jamison DeVore, Vice-President

  
\_\_\_\_\_  
Laurretta Arviso, Secretary/Treasurer

ABSENT  
\_\_\_\_\_  
John Perry Jr., Council Delegate



## Appendix B

### Water Resources of the Construction Area

#### Section 404 Determination/Survey Reports

#### Section 404 Permit and Conditions

#### Section 401 Water Quality Certification

#### Section 402 NPDES/Storm Water Pollution Prevention Plan

**\*\* When these documents become available they will be**

**Attached as part of the permanent Project record by BIA\*\***

#### Erosion/Sedimentation Control Features (BIA Figure C)

#### Best Management Practices (BMP's) ✓



## **Project N11(1A&2B)1,2&4**

### **Best Management Practices**

#### **Navajo Regional Division of Transportation**

In order to avoid, reduce, or mitigate potentially adverse impacts during the construction of this project, the Navajo Regional Division of Transportation Contractor will incorporate the following best management practices (to the fullest extent).

1. Construct the project in accordance with the Manual for Standard Specifications for Construction of roads on Federal Highway Projects (FP-03), and in compliance with all applicable Navajo Tribal and Federal laws, codes, safety regulations, and executive orders.
2. The BIA Contractor will avoid any increase in sedimentation of bodies of water on or near the project by preparing and implementing a Storm Water Pollution Prevention Plan (SWPPP). The Contractor will implement the SWPPP prior to any ground-disturbing activities. Adjustments in the SWPPP, during construction, shall be coordinated with the AOTR to insure compliance with the Clean Water Act.
3. The BIA Contractor shall stockpile the existing topsoil for uses in re-vegetation of borrow pits and roadway slopes, where feasible in accordance with the FP-03 and contract specifications.
4. The cut and fill volumes will be balanced as much as possible to avoid the use of borrow sources and all slopes shall be rounded to blend into the existing terrain. All disturbed ground on the project will be disked, seeded, mulched, and re-vegetated as described in section 625 of the supplemental specifications.
5. The following BMPs will be followed for all structural improvements, including any pipelines, storage tanks, and troughs:
  - Any existing water pipelines shall be protected in-place unless otherwise stated in the design plans. All existing trash shall be removed from project site, and no trash will be allowed on BNSF property.
  - All equipment brought in from off the site will be power washed before entering the site to avoid the possible introduction and invasion of noxious and invasive weeds. All construction debris, falsework, forms, and equipment would be removed from project site at the end of each day unless specifically authorized in writing by BNSF.
  - Ground disturbance from the heavy equipment would be re-seeded with a certified weed free seed mix. The seed would be suitable to area and match existing native species.
  - If an archeological site is encountered, construction must cease in the area, and the AOTR and BIA Regional DOT office must be notified immediately.
  - If at any time, populations of noxious weeds are encountered, construction must cease and measures must be taken to clear the right of way. The problem area would be sprayed with the appropriate herbicide. By law, the target weed must be listed on the label of the herbicide being

applied, and the rate applied must be in accordance with the manufacturer's recommendations in accordance with section 109.02(m) of the supplemental specifications for this project.

6. Construction hours will be between 6:00 am and 8:00 pm, Monday through Saturday, (weather permitting). In high wildlife use areas, an alternate construction schedule may be used in consultation with the Navajo Fish and Wildlife Department and/or U.S. Fish and Wildlife Service.

7. The Contractor's camp and equipment storage area will be kept clean and free of oils, waste materials, and other litter at all times, to prevent such materials from entering bodies of water. All trash will be disposed of in accordance with EPA regulations and all camp sites and equipment storage areas will be restored to their natural condition at project completion (in accordance with permit requirements). Acquiring of permits shall be closely coordinated with the BIA Project Engineer.

8. The Contractor will inspect daily all construction equipment for leaks and notify the BIA Project Engineer on the removal of leaking equipment from the project site until the leaking equipment is repaired and spills cleaned up to the satisfaction of the Project Manager and Environmental Quality Office. Equipment will be washed down in a designated area to prevent transport of mud, noxious weeds, and other debris from leaving the project limits when transporting equipment off the project site. Such debris will be collected and hauled off to a disposal site by the Contractor. The Contractor must have a spill prevention plan in place to contain spills, mitigate the spills, and remove all the pollutants off the project to an approved waste repository.

9. Noxious weed control Standard Operating Procedures for work on New Lands will be as follows:

- Ensure equipment involved in land disturbing actions, be clean of noxious weed seeds or propagative parts prior to entry on site. When working in areas with noxious weeds equipment should be cleaned prior to moving off site.
- Survey and inventory proposed work areas for noxious weeds; take reasonable measures to avoid spread of noxious weeds found (ie - cleaning equipment with pressure washers, stockpiling overburden material for later treatment, avoiding driving through weed patches). Consult with the BIA regional DOT office on any known species of noxious weeds in the project area before construction begins.
- Use only certified weed free erosion control and re-vegetation materials (eg. mulch, seed, natural fiber mats).
- If fill dirt or gravel will be required, the source needs to be noxious weed free to the fullest extent possible.
- The site should be monitored for the life of the project for the presence of noxious weeds (includes maintenance & construction activities). If weeds are found the AOTR will be notified and the

CESPA-OD-R (CESPA-EC-R 29 NOV 1999) (1105) 1st End RAHMAN/3678  
SUBJECT: Request Reevaluation of Section 404 Jurisdictional  
Determination for the Proposed Reconstruction of Navajo Route 11,  
McKinley County, New Mexico.

REGULATORY BRANCH 15 DEC 1999

FOR CHIEF ENVIRONMENTAL BRANCH

1. Your project authorization number remains 1995 00265.
2. The Corps of Engineers has published Nationwide Permits pursuant to Section 404 of the Clean Water Act (33 CFR 330). Nationwide Permit No. 14 authorizes discharges of dredged or fill materials into waters of the United States for road crossings. A summary of Nationwide Permit No. 14 and a brochure describing the Corps regulatory program are enclosed for your information.
3. The road crossings can be constructed under authority of the nationwide permit up to the acreage maximum. The permittee must insure compliance with all conditions of the permit, including submittal of the enclosed Compliance Certification required by General Condition No. 14.
4. Any discharges of dredged or fill material into wetlands requires notification to this office (see General Condition 13 of the nationwide permit). Notification is also required if you combine this nationwide permit with another nationwide permit No. 12 through 40. You cannot combine this nationwide permit with No. 18 or 26 for the purpose of increasing the footprint of the road crossing.
5. EPA Region IX issued a conditional water quality certification for minor road crossings on 21 November 1997. Copies of the nationwide permit and the Water Quality Certification are enclosed. Please note any special conditions in the certification.
6. General Condition No. 11 requires that no activity is authorized under any Nationwide Permit which is likely to jeopardize the continued existence of a listed or proposed threatened or endangered species, as identified under the Federal Endangered Species Act, or which is likely to destroy or adversely modify the critical habitat of such species. We have determined that your proposed work, as described, will have no affect on any listed or proposed endangered or threatened species or its critical habitat.
7. This verification will be valid for 2 years unless the nationwide permit is modified, reissued or revoked. The verification will remain valid if, during that time, the nationwide permit is reissued without modification or the activity complies with any subsequent modification of the

nationwide permit authorization. If the nationwide permit authorization expires, is suspended, revoked, or modified such that the activity would no longer comply with the terms and conditions of the nationwide permit, the provisions of 33 CFR 330.6(b) will apply.

8. Enclosed is a Compliance Certification form. Upon completion of the project, please sign and date the form and return it to this office. To help us improve our service, please complete and return the attached Customer Service Survey.

9. If you have any questions regarding these regulations, please feel free to write or call me at (505) 342-3283.

Encl

A handwritten signature in dark ink, appearing to read "Andrew J. Rosenau", with a long horizontal flourish extending to the right.

ANDREW J. ROSENAU  
Chief, Regulatory Branch



# NATIONWIDE PERMIT NUMBER 14

## LINEAR TRANSPORTATION PROJECTS



**US Army Corps of Engineers  
Los Angeles District  
Regulatory Division/Arizona Branch**

### A. General Information

This document is an aid to understanding the terms and conditions of your nationwide permit (NWP) by bringing together information issued separately in; (1) the Federal Register (77 FR 10184-10290)\*, (2) the Special Public Notice for NWP "Reissuance of the Nationwide Permits and Issuance of Final Regional Conditions for the Los Angeles District"\*, and (3) the Clean Water Act Section 401 water quality certification decisions (401 WQCs)\* issued by the White Mountain Apache Tribe, Hopi Tribe, Hualapai Tribe, Navajo Nation, U.S. Environmental Protection Agency, and Arizona Department of Environmental Quality. Please note that website addresses enclosed herein may have been changed and updated since publication of the original document.

- 1) Pursuant to Section 404 of the Clean Water Act (33 U.S.C. 1344) and/or Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 401 et seq) the U.S. Army Corps of Engineers (Corps) published the "Reissuance of Nationwide Permits" in the Federal Register (77 FR 10184-10290) on February 21, 2012. These NWPs are in effect from March 19, 2012 through March 18, 2017 unless modified, reissued, or revoked before that time. It is incumbent upon the permittee to remain informed of changes to the NWPs.
- 2) The Los Angeles District of the Corps issued a Special Public Notice (March 15, 2012) announcing final regional conditions for NWPs to ensure protection of high value waters within the State of Arizona.
- 3) The Los Angeles District of the Corps requested and obtained for the entire State of Arizona the 401 WQC decision for all NWPs on all tribal lands from the White Mountain Apache Tribe, Hopi Tribe, Hualapai Tribe, Navajo Nation, and U.S. Environmental Protection Agency and on all non-tribal lands from the Arizona Department of Environmental Quality.

A description of all NWPs and 401 WQCs can be found in the "Nationwide Permits for Arizona" Special Public Notice.\*

\*Note: For online availability see section "F. Document Availability" of this enclosure.

**Key Sections:**      B. Nationwide Permit Terms (page 1)      C. Nationwide Permit General Conditions (page 1)  
                                 D. Nationwide Permit Regional Conditions (page 6)      E. 401 Water Quality Certifications (page 7)

### B. Nationwide Permit Terms

**14. Linear Transportation Projects.** Activities required for the construction, expansion, modification, or improvement of linear transportation projects (e.g., roads, highways, railways, trails, airport runways, and taxiways) in waters of the United States. For linear transportation projects in non-tidal waters, the discharge cannot cause the loss of greater than 1/2-acre of waters of the United States. For linear transportation projects in tidal waters, the discharge cannot cause the loss of greater than 1/3-acre of waters of the United States. Any stream channel modification, including bank stabilization, is limited to the minimum necessary to construct or protect the linear transportation project; such modifications must be in the immediate vicinity of the project.

This NWP also authorizes temporary structures, fills, and work necessary to construct the linear transportation project. Appropriate measures must be taken to maintain normal downstream flows and minimize flooding to the maximum extent practicable, when temporary structures, work, and discharges, including cofferdams, are necessary for construction activities, access fills, or dewatering of construction sites. Temporary fills must consist of materials, and be placed in a manner, that will not be eroded by expected high flows. Temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations. The areas affected by temporary fills must be revegetated, as appropriate.

This NWP cannot be used to authorize non-linear features commonly associated with transportation projects, such as vehicle maintenance or storage buildings, parking lots, train stations, or aircraft hangars.

**Notification:** The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity if: (1) the loss of waters of the United States exceeds 1/10-acre; or (2) there is a discharge in a special aquatic site, including wetlands. (See general condition 31.) (Sections 10 and 404)

**Note:** Some discharges for the construction of farm roads or forest roads, or temporary roads for moving mining equipment, may qualify for an exemption under Section 404(f) of the Clean Water Act (see 33 CFR 323.4).

### C. Nationwide Permit General Conditions

**Note:** To qualify for NWP authorization, the prospective permittee must comply with the following general conditions, as applicable, in addition to any regional or case-specific conditions imposed by the division engineer or district engineer. Prospective permittees should contact the appropriate Corps district office to determine if regional conditions have been imposed on an NWP. Prospective permittees should also contact the appropriate Corps district office to determine the status of Clean Water Act Section 401 water quality certification and/or Coastal Zone Management Act consistency for an NWP. Every person who may wish to obtain permit authorization under one or



more NWP's, or who is currently relying on an existing or prior permit authorization under one or more NWP's, has been and is on notice that all of the provisions of 33 CFR §§ 330.1 through 330.6 apply to every NWP authorization. Note especially 33 CFR § 330.5 relating to the modification, suspension, or revocation of any NWP authorization.

**1. Navigation.** (a) No activity may cause more than a minimal adverse effect on navigation. (b) Any safety lights and signals prescribed by the U.S. Coast Guard, through regulations or otherwise, must be installed and maintained at the permittee's expense on authorized facilities in navigable waters of the United States. (c) The permittee understands and agrees that, if future operations by the United States require the removal, relocation, or other alteration, of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the Corps of Engineers, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.

**2. Aquatic Life Movements.** No activity may substantially disrupt the necessary life cycle movements of those species of aquatic life indigenous to the waterbody, including those species that normally migrate through the area, unless the activity's primary purpose is to impound water. All permanent and temporary crossings of waterbodies shall be suitably culverted, bridged, or otherwise designed and constructed to maintain low flows to sustain the movement of those aquatic species.

**3. Spawning Areas.** Activities in spawning areas during spawning seasons must be avoided to the maximum extent practicable. Activities that result in the physical destruction (e.g., through excavation, fill, or downstream smothering by substantial turbidity) of an important spawning area are not authorized.

**4. Migratory Bird Breeding Areas.** Activities in waters of the United States that serve as breeding areas for migratory birds must be avoided to the maximum extent practicable.

**5. Shellfish Beds.** No activity may occur in areas of concentrated shellfish populations, unless the activity is directly related to a shellfish harvesting activity authorized by NWP's 4 and 48, or is a shellfish seeding or habitat restoration activity authorized by NWP 27.

**6. Suitable Material.** No activity may use unsuitable material (e.g., trash, debris, car bodies, asphalt, etc.). Material used for construction or discharged must be free from toxic pollutants in toxic amounts (see Section 307 of the Clean Water Act).

**7. Water Supply Intakes.** No activity may occur in the proximity of a public water supply intake, except where the activity is for the repair or improvement of public water supply intake structures or adjacent bank stabilization.

**8. Adverse Effects from Impoundments.** If the activity creates an impoundment of water, adverse effects to the aquatic system due to accelerating the passage of water, and/or restricting its flow must be minimized to the maximum extent practicable.

**9. Management of Water Flows.** To the maximum extent practicable, the pre-construction course, condition, capacity, and location of open waters must be maintained for each activity, including stream channelization and storm water management activities, except as provided below. The activity must be constructed to withstand expected high flows. The activity must not restrict or impede the passage of normal or high flows, unless the primary purpose of the activity is to impound water or manage high flows. The activity may alter the pre-construction course, condition, capacity, and location of open waters if it benefits the aquatic environment (e.g., stream restoration or relocation activities).

**10. Fills Within 100-Year Floodplains.** The activity must comply with applicable FEMA-approved state or local floodplain management requirements.

**11. Equipment.** Heavy equipment working in wetlands or mudflats must be placed on mats, or other measures must be taken to minimize soil disturbance.

**12. Soil Erosion and Sediment Controls.** Appropriate soil erosion and sediment controls must be used and maintained in effective operating condition during construction, and all exposed soil and other fills, as well as any work below the ordinary high water mark or high tide line, must be permanently stabilized at the earliest practicable date. Permittees are encouraged to perform work within waters of the United States during periods of low-flow or no-flow.

**13. Removal of Temporary Fills.** Temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations. The affected areas must be revegetated, as appropriate.

**14. Proper Maintenance.** Any authorized structure or fill shall be properly maintained, including maintenance to ensure public safety and compliance with applicable NWP general conditions, as well as any activity-specific conditions added by the district engineer to an NWP authorization.

**15. Single and Complete Project.** The activity must be a single and complete project. The same NWP cannot be used more than once for the same single and complete project.

**16. Wild and Scenic Rivers.** No activity may occur in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a "study river" for possible inclusion in the system while the river is in an official study status, unless the appropriate Federal agency with direct management responsibility for such river, has determined in writing that the proposed activity will not adversely affect the Wild and Scenic River designation or study status. Information on Wild and Scenic Rivers may be obtained from the appropriate Federal land management agency responsible for the designated Wild and Scenic River or study river (e.g., National Park Service, U.S. Forest Service, Bureau of Land Management, U.S. Fish and Wildlife Service).

**17. Tribal Rights.** No activity or its operation may impair reserved tribal rights, including, but not limited to, reserved water rights and treaty fishing and hunting rights.

**18. Endangered Species.** (a) No activity is authorized under any NWP which is likely to directly or indirectly jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation, as identified under the Federal Endangered Species Act (ESA), or which will directly or indirectly destroy or adversely modify the critical habitat of such species. No activity is authorized under any NWP which "may affect" a listed species or critical habitat, unless Section 7 consultation addressing the effects of the proposed activity has been completed. (b) Federal agencies should follow their own procedures for complying with the requirements of the ESA. Federal permittees must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements. The district engineer will review the documentation and determine whether it is sufficient to address ESA compliance for the NWP activity, or whether additional ESA consultation is necessary. (c) Non-federal permittees must submit a pre-construction notification to the district engineer if any listed species or designated critical habitat might be affected or is in the vicinity of the project, or if the project is located in designated critical habitat, and shall not begin work on the activity until notified by the district engineer that the requirements of

the ESA have been satisfied and that the activity is authorized. For activities that might affect Federally-listed endangered or threatened species or designated critical habitat, the pre-construction notification must include the name(s) of the endangered or threatened species that might be affected by the proposed work or that utilize the designated critical habitat that might be affected by the proposed work. The district engineer will determine whether the proposed activity "may affect" or will have "no effect" to listed species and designated critical habitat and will notify the non-Federal applicant of the Corps' determination within 45 days of receipt of a complete pre-construction notification. In cases where the non-Federal applicant has identified listed species or critical habitat that might be affected or is in the vicinity of the project, and has so notified the Corps, the applicant shall not begin work until the Corps has provided notification the proposed activities will have "no effect" on listed species or critical habitat, or until Section 7 consultation has been completed. If the non-Federal applicant has not heard back from the Corps within 45 days, the applicant must still wait for notification from the Corps. (d) As a result of formal or informal consultation with the FWS or NMFS the district engineer may add species-specific regional endangered species conditions to the NWP. (e) Authorization of an activity by a NWP does not authorize the "take" of a threatened or endangered species as defined under the ESA. In the absence of separate authorization (e.g., an ESA Section 10 Permit, a Biological Opinion with "incidental take" provisions, etc.) from the U.S. FWS or the NMFS, The Endangered Species Act prohibits any person subject to the jurisdiction of the United States to take a listed species, where "take" means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. The word "harm" in the definition of "take" means an act which actually kills or injures wildlife. Such an act may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding or sheltering. (f) Information on the location of threatened and endangered species and their critical habitat can be obtained directly from the offices of the U.S. FWS and NMFS or their world wide web pages at <http://www.fws.gov/> or <http://www.fws.gov/ipac> and <http://www.noaa.gov/fisheries.html> respectively.

(Note: Arizona endangered species information is available at <http://www.fws.gov/southwest/es/arizona/Threatened.htm#CountyList>)

**19. Migratory Birds and Bald and Golden Eagles.** The permittee is responsible for obtaining any "take" permits required under the U.S. Fish and Wildlife Service's regulations governing compliance with the Migratory Bird Treaty Act or the Bald and Golden Eagle Protection Act. The permittee should contact the appropriate local office of the U.S. Fish and Wildlife Service to determine if such "take" permits are required for a particular activity.

**20. Historic Properties.** (a) In cases where the district engineer determines that the activity may affect properties listed, or eligible for listing, in the National Register of Historic Places, the activity is not authorized, until the requirements of Section 106 of the National Historic Preservation Act (NHPA) have been satisfied. (b) Federal permittees should follow their own procedures for complying with the requirements of Section 106 of the National Historic Preservation Act. Federal permittees must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements. The district engineer will review the documentation and determine whether it is sufficient to address section 106 compliance for the NWP activity, or whether additional section 106 consultation is necessary. (c) Non-federal permittees must submit a pre-construction notification to the district engineer if the authorized activity may have the potential to cause effects to any historic properties listed on, determined to be eligible for listing on, or potentially eligible for listing on the National Register of Historic Places, including previously unidentified properties. For such activities, the pre-construction notification must state which historic properties may be affected by the proposed work or include a vicinity map indicating the location of the historic properties or the potential for the presence of historic properties. Assistance regarding information on the location of or potential for the presence of historic resources can be sought from the State Historic Preservation Officer or Tribal Historic Preservation Officer, as appropriate, and the National Register of Historic Places (see 33 CFR 330.4(g)). When reviewing pre-construction notifications, district engineers will comply with the current procedures for addressing the requirements of Section 106 of the National Historic Preservation Act. The district engineer shall make a reasonable and good faith effort to carry out appropriate identification efforts, which may include background research, consultation, oral history interviews, sample field investigation, and field survey. Based on the information submitted and these efforts, the district engineer shall determine whether the proposed activity has the potential to cause an effect on the historic properties. Where the non-Federal applicant has identified historic properties on which the activity may have the potential to cause effects and so notified the Corps, the non-Federal applicant shall not begin the activity until notified by the district engineer either that the activity has no potential to cause effects or that consultation under Section 106 of the NHPA has been completed. (d) The district engineer will notify the prospective permittee within 45 days of receipt of a complete pre-construction notification whether NHPA Section 106 consultation is required. Section 106 consultation is not required when the Corps determines that the activity does not have the potential to cause effects on historic properties (see 36 CFR §800.3(a)). If NHPA section 106 consultation is required and will occur, the district engineer will notify the non-Federal applicant that he or she cannot begin work until Section 106 consultation is completed. If the non-Federal applicant has not heard back from the Corps within 45 days, the applicant must still wait for notification from the Corps. (e) Prospective permittees should be aware that section 110k of the NHPA (16 U.S.C. 470h-2(k)) prevents the Corps from granting a permit or other assistance to an applicant who, with intent to avoid the requirements of Section 106 of the NHPA, has intentionally significantly adversely affected a historic property to which the permit would relate, or having legal power to prevent it, allowed such significant adverse effect to occur, unless the Corps, after consultation with the Advisory Council on Historic Preservation (ACHP), determines that circumstances justify granting such assistance despite the adverse effect created or permitted by the applicant. If circumstances justify granting the assistance, the Corps is required to notify the ACHP and provide documentation specifying the circumstances, the degree of damage to the integrity of any historic properties affected, and proposed mitigation. This documentation must include any views obtained from the applicant, SHPO/THPO, appropriate Indian tribes if the undertaking occurs on or affects historic properties on tribal lands or affects properties of interest to those tribes, and other parties known to have a legitimate interest in the impacts to the permitted activity on historic properties.

**21. Discovery of Previously Unknown Remains and Artifacts.** If you discover any previously unknown historic, cultural or archeological remains and artifacts while accomplishing the activity authorized by this permit, you must immediately notify the district engineer of what you have found, and to the maximum extent practicable, avoid construction activities that may affect the remains and artifacts until the required coordination has been completed. The district engineer will initiate the Federal, Tribal and state coordination required to determine if the items or remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.

**22. Designated Critical Resource Waters.** Critical resource waters include, NOAA-managed marine sanctuaries and marine monuments, and National Estuarine Research Reserves. The district engineer may designate, after notice and opportunity for public comment, additional waters officially designated by a state as having particular environmental or ecological significance, such as outstanding



national resource waters or state natural heritage sites. The district engineer may also designate additional critical resource waters after notice and opportunity for public comment.

(a) Discharges of dredged or fill material into waters of the United States are not authorized by NWP 7, 12, 14, 16, 17, 21, 29, 31, 35, 39, 40, 42, 43, 44, 49, 50, 51, and 52 for any activity within, or directly affecting, critical resource waters, including wetlands adjacent to such waters.

(b) For NWP 3, 8, 10, 13, 15, 18, 19, 22, 23, 25, 27, 28, 30, 33, 34, 36, 37, and 38, notification is required in accordance with general condition 31, for any activity proposed in the designated critical resource waters including wetlands adjacent to those waters. The district engineer may authorize activities under these NWPs only after it is determined that the impacts to the critical resource waters will be no more than minimal.

**23. Mitigation.** The district engineer will consider the following factors when determining appropriate and practicable mitigation necessary to ensure that adverse effects on the aquatic environment are minimal: (a) The activity must be designed and constructed to avoid and minimize adverse effects, both temporary and permanent, to waters of the United States to the maximum extent practicable at the project site (i.e., on site).

(b) Mitigation in all its forms (avoiding, minimizing, rectifying, reducing, or compensating for resource losses) will be required to the extent necessary to ensure that the adverse effects to the aquatic environment are minimal. (c) Compensatory mitigation at a minimum one-for-one ratio will be required for all wetland losses that exceed 1/10-acre and require pre-construction notification, unless the district engineer determines in writing that either some other form of mitigation would be more environmentally appropriate or the adverse effects of the proposed activity are minimal, and provides a project-specific waiver of this requirement. For wetland losses of 1/10-acre or less that require pre-construction notification, the district engineer may determine on a case-by-case basis that compensatory mitigation is required to ensure that the activity results in minimal adverse effects on the aquatic environment. Compensatory mitigation projects provided to offset losses of aquatic resources must comply with the applicable provisions of 33 CFR part 332. (1) The prospective permittee is responsible for proposing an appropriate compensatory mitigation option if compensatory mitigation is necessary to ensure that the activity results in minimal adverse effects on the aquatic environment. (2) Since the likelihood of success is greater and the impacts to potentially valuable uplands are reduced, wetland restoration should be the first compensatory mitigation option considered. (3) If permittee-responsible mitigation is the proposed option, the prospective permittee is responsible for submitting a mitigation plan. A conceptual or detailed mitigation plan may be used by the district engineer to make the decision on the NWP verification request, but a final mitigation plan that addresses the applicable requirements of 33 CFR 332.4(c)(2) – (14) must be approved by the district engineer before the permittee begins work in waters of the United States, unless the district engineer determines that prior approval of the final mitigation plan is not practicable or not necessary to ensure timely completion of the required compensatory mitigation (see 33 CFR 332.3(k)(3)). (4) If mitigation bank or in-lieu fee program credits are the proposed option, the mitigation plan only needs to address the baseline conditions at the impact site and the number of credits to be provided. (5) Compensatory mitigation requirements (e.g., resource type and amount to be provided as compensatory mitigation, site protection, ecological performance standards, monitoring requirements) may be addressed through conditions added to the NWP authorization, instead of components of a compensatory mitigation plan. (d) For losses of streams or other open waters that require pre-construction notification, the district engineer may require compensatory mitigation, such as stream rehabilitation, enhancement, or preservation, to ensure that the activity results in minimal adverse effects on the aquatic environment. (e) Compensatory mitigation will not be used to increase the acreage losses allowed by the acreage limits of the NWPs. For example, if an NWP has an acreage limit of 1/2-acre, it cannot be used to authorize any project resulting in the loss of greater than 1/2-acre of waters of the United States, even if compensatory mitigation is provided that replaces or restores some of the lost waters. However, compensatory mitigation can and should be used, as necessary, to ensure that a project already meeting the established acreage limits also satisfies the minimal impact requirement associated with the NWPs. (f) Compensatory mitigation plans for projects in or near streams or other open waters will normally include a requirement for the restoration or establishment, maintenance, and legal protection (e.g., conservation easements) of riparian areas next to open waters. In some cases, riparian areas may be the only compensatory mitigation required. Riparian areas should consist of native species. The width of the required riparian area will address documented water quality or aquatic habitat loss concerns. Normally, the riparian area will be 25 to 50 feet wide on each side of the stream, but the district engineer may require slightly wider riparian areas to address documented water quality or habitat loss concerns. If it is not possible to establish a riparian area on both sides of a stream, or if the waterbody is a lake or coastal waters, then restoring or establishing a riparian area along a single bank or shoreline may be sufficient. Where both wetlands and open waters exist on the project site, the district engineer will determine the appropriate compensatory mitigation (e.g., riparian areas and/or wetlands compensation) based on what is best for the aquatic environment on a watershed basis. In cases where riparian areas are determined to be the most appropriate form of compensatory mitigation, the district engineer may waive or reduce the requirement to provide wetland compensatory mitigation for wetland losses. (g) Permittees may propose the use of mitigation banks, in-lieu fee programs, or separate permittee-responsible mitigation. For activities resulting in the loss of marine or estuarine resources, permittee-responsible compensatory mitigation may be environmentally preferable if there are no mitigation banks or in-lieu fee programs in the area that have marine or estuarine credits available for sale or transfer to the permittee. For permittee-responsible mitigation, the special conditions of the NWP verification must clearly indicate the party or parties responsible for the implementation and performance of the compensatory mitigation project, and, if required, its long-term management. (h) Where certain functions and services of waters of the United States are permanently adversely affected, such as the conversion of a forested or scrub-shrub wetland to a herbaceous wetland in a permanently maintained utility line right-of-way, mitigation may be required to reduce the adverse effects of the project to the minimal level.

**24. Safety of Impoundment Structures.** To ensure that all impoundment structures are safely designed, the district engineer may require non-Federal applicants to demonstrate that the structures comply with established state dam safety criteria or have been designed by qualified persons. The district engineer may also require documentation that the design has been independently reviewed by similarly qualified persons, and appropriate modifications made to ensure safety.

**25. Water Quality.** Where States and authorized Tribes, or EPA where applicable, have not previously certified compliance of an NWP with CWA Section 401, individual 401 Water Quality Certification must be obtained or waived (see 33 CFR 330.4(c)). The district engineer or State or Tribe may require additional water quality management measures to ensure that the authorized activity does not result in more than minimal degradation of water quality.

**26. Coastal Zone Management.** In coastal states where an NWP has not previously received a state coastal zone management consistency concurrence, an individual state coastal zone management consistency concurrence must be obtained, or a presumption of

concurrence must occur (see 33 CFR 330.4(d)). The district engineer or a State may require additional measures to ensure that the authorized activity is consistent with state coastal zone management requirements.

**27. Regional and Case-By-Case Conditions.** The activity must comply with any regional conditions that may have been added by the Division Engineer (see 33 CFR 330.4(e)) and with any case specific conditions added by the Corps or by the state, Indian Tribe, or U.S. EPA in its section 401 Water Quality Certification, or by the state in its Coastal Zone Management Act consistency determination.

**28. Use of Multiple Nationwide Permits.** The use of more than one NWP for a single and complete project is prohibited, except when the acreage loss of waters of the United States authorized by the NWPs does not exceed the acreage limit of the NWP with the highest specified acreage limit. For example, if a road crossing over tidal waters is constructed under NWP 14, with associated bank stabilization authorized by NWP 13, the maximum acreage loss of waters of the United States for the total project cannot exceed 1/3-acre.

**29. Transfer of Nationwide Permit Verifications.** If the permittee sells the property associated with a nationwide permit verification, the permittee may transfer the nationwide permit verification to the new owner by submitting a letter to the appropriate Corps district office to validate the transfer. A copy of the nationwide permit verification must be attached to the letter, and the letter must contain the following statement and signature:

"When the structures or work authorized by this nationwide permit are still in existence at the time the property is transferred, the terms and conditions of this nationwide permit, including any special conditions, will continue to be binding on the new owner(s) of the property. To validate the transfer of this nationwide permit and the associated liabilities associated with compliance with its terms and conditions, have the transferee sign and date below."

\_\_\_\_\_  
(Transferee)

\_\_\_\_\_  
(Date)

**30. Compliance Certification.** Each permittee who receives an NWP verification letter from the Corps must provide a signed certification documenting completion of the authorized activity and any required compensatory mitigation. The success of any required permittee-responsible mitigation, including the achievement of ecological performance standards, will be addressed separately by the district engineer. The Corps will provide the permittee the certification document with the NWP verification letter. The certification document will include:

(a) A statement that the authorized work was done in accordance with the NWP authorization, including any general, regional, or activity-specific conditions; (b) A statement that the implementation of any required compensatory mitigation was completed in accordance with the permit conditions. If credits from a mitigation bank or in-lieu fee program are used to satisfy the compensatory mitigation requirements, the certification must include the documentation required by 33 CFR 332.3(l)(3) to confirm that the permittee secured the appropriate number and resource type of credits; and (c) The signature of the permittee certifying the completion of the work and mitigation.

**31. Pre-Construction Notification.** (a) Timing. Where required by the terms of the NWP, the prospective permittee must notify the district engineer by submitting a pre-construction notification (PCN) as early as possible. The district engineer must determine if the PCN is complete within 30 calendar days of the date of receipt and, if the PCN is determined to be incomplete, notify the prospective permittee within that 30 day period to request the additional information necessary to make the PCN complete. The request must specify the information needed to make the PCN complete. As a general rule, district engineers will request additional information necessary to make the PCN complete only once. However, if the prospective permittee does not provide all of the requested information, then the district engineer will notify the prospective permittee that the PCN is still incomplete and the PCN review process will not commence until all of the requested information has been received by the district engineer. The prospective permittee shall not begin the activity until either: (1) He or she is notified in writing by the district engineer that the activity may proceed under the NWP with any special conditions imposed by the district or division engineer; or (2) 45 calendar days have passed from the district engineer's receipt of the complete PCN and the prospective permittee has not received written notice from the district or division engineer. However, if the permittee was required to notify the Corps pursuant to general condition 18 that listed species or critical habitat might be affected or in the vicinity of the project, or to notify the Corps pursuant to general condition 20 that the activity may have the potential to cause effects to historic properties, the permittee cannot begin the activity until receiving written notification from the Corps that there is "no effect" on listed species or "no potential to cause effects" on historic properties, or that any consultation required under Section 7 of the Endangered Species Act (see 33 CFR 330.4(f)) and/or Section 106 of the National Historic Preservation (see 33 CFR 330.4(g)) has been completed. Also, work cannot begin under NWPs 21, 49, or 50 until the permittee has received written approval from the Corps. If the proposed activity requires a written waiver to exceed specified limits of an NWP, the permittee may not begin the activity until the district engineer issues the waiver. If the district or division engineer notifies the permittee in writing that an individual permit is required within 45 calendar days of receipt of a complete PCN, the permittee cannot begin the activity until an individual permit has been obtained. Subsequently, the permittee's right to proceed under the NWP may be modified, suspended, or revoked only in accordance with the procedure set forth in 33 CFR 330.5(d)(2). (b) Contents of Pre-Construction Notification: The PCN must be in writing and include the following information: (1) Name, address and telephone numbers of the prospective permittee; (2) Location of the proposed project; (3) A description of the proposed project; the project's purpose; direct and indirect adverse environmental effects the project would cause, including the anticipated amount of loss of water of the United States expected to result from the NWP activity, in acres, linear feet, or other appropriate unit of measure; any other NWP(s), regional general permit(s), or individual permit(s) used or intended to be used to authorize any part of the proposed project or any related activity. The description should be sufficiently detailed to allow the district engineer to determine that the adverse effects of the project will be minimal and to determine the need for compensatory mitigation. Sketches should be provided when necessary to show that the activity complies with the terms of the NWP. (Sketches usually clarify the project and when provided results in a quicker decision. Sketches should contain sufficient detail to provide an illustrative description of the proposed activity (e.g., a conceptual plan), but do not need to be detailed engineering plans); (4) The PCN must include a delineation of wetlands, other special aquatic sites, and other waters, such as lakes and ponds, and perennial, intermittent, and ephemeral streams, on the project site. Wetland delineations must be prepared in accordance with the current method required by the Corps. The permittee may ask the Corps to delineate the special aquatic sites and other waters on the project site, but there may be a delay if the Corps does the delineation, especially if the project site is large or contains many waters of the United States. Furthermore, the 45 day period will not start until the delineation has been submitted to or completed by the Corps, as appropriate; (5) If the proposed activity will result in the loss of greater than 1/10-acre of wetlands and a PCN is required, the prospective permittee must submit a statement describing how the mitigation requirement will be satisfied, or explaining why the adverse effects are minimal and why



compensatory mitigation should not be required. As an alternative, the prospective permittee may submit a conceptual or detailed mitigation plan. (6) If any listed species or designated critical habitat might be affected or is in the vicinity of the project, or if the project is located in designated critical habitat, for non-Federal applicants the PCN must include the name(s) of those endangered or threatened species that might be affected by the proposed work or utilize the designated critical habitat that may be affected by the proposed work. Federal applicants must provide documentation demonstrating compliance with the Endangered Species Act; and (7) For an activity that may affect a historic property listed on, determined to be eligible for listing on, or potentially eligible for listing on, the National Register of Historic Places, for non-Federal applicants the PCN must state which historic property may be affected by the proposed work or include a vicinity map indicating the location of the historic property. Federal applicants must provide documentation demonstrating compliance with Section 106 of the National Historic Preservation Act (c) Form of Pre-Construction Notification: The standard individual permit application form (Form ENG 4345) may be used, but the completed application form must clearly indicate that it is a PCN and must include all of the information required in paragraphs (b)(1) through (7) of this general condition. A letter containing the required information may also be used. (d) Agency Coordination: (1) The district engineer will consider any comments from Federal and state agencies concerning the proposed activity's compliance with the terms and conditions of the NWP and the need for mitigation to reduce the project's adverse environmental effects to a minimal level. (2) For all NWP activities that require pre-construction notification and result in the loss of greater than 1/2-acre of waters of the United States, for NWP 21, 29, 39, 40, 42, 43, 44, 50, 51, and 52 activities that require pre-construction notification and will result in the loss of greater than 300 linear feet of stream bed, and for all NWP 48 activities that require pre-construction notification, the district engineer will immediately provide (e.g., via e-mail, facsimile transmission, overnight mail, or other expeditious manner) a copy of the complete PCN to the appropriate Federal or state offices (U.S. FWS, state natural resource or water quality agency, EPA, State Historic Preservation Officer (SHPO) or Tribal Historic Preservation Office (THPO), and, if appropriate, the NMFS). With the exception of NWP 37, these agencies will have 10 calendar days from the date the material is transmitted to telephone or fax the district engineer notice that they intend to provide substantive, site-specific comments. The comments must explain why the agency believes the adverse effects will be more than minimal. If so contacted by an agency, the district engineer will wait an additional 15 calendar days before making a decision on the pre-construction notification. The district engineer will fully consider agency comments received within the specified time frame concerning the proposed activity's compliance with the terms and conditions of the NWPs, including the need for mitigation to ensure the net adverse environmental effects to the aquatic environment of the proposed activity are minimal. The district engineer will provide no response to the resource agency, except as provided below. The district engineer will indicate in the administrative record associated with each pre-construction notification that the resource agencies' concerns were considered. For NWP 37, the emergency watershed protection and rehabilitation activity may proceed immediately in cases where there is an unacceptable hazard to life or a significant loss of property or economic hardship will occur. The district engineer will consider any comments received to decide whether the NWP 37 authorization should be modified, suspended, or revoked in accordance with the procedures at 33 CFR 330.5. (3) In cases of where the prospective permittee is not a Federal agency, the district engineer will provide a response to NMFS within 30 calendar days of receipt of any Essential Fish Habitat conservation recommendations, as required by Section 305(b)(4)(B) of the Magnuson-Stevens Fishery Conservation and Management Act. (4) Applicants are encouraged to provide the Corps with either electronic files or multiple copies of pre-construction notifications to expedite agency coordination.

#### **D. Nationwide Permit Regional Conditions**

Of the ten regional conditions effective within the Los Angeles District of the Corps, six apply to projects within Arizona (1-4, 9 and 10). The remaining four regional conditions apply to specific geographic areas, resources, or species not located in Arizona.

The following regional conditions must be complied with for any authorization by a NWP to be valid in the State of Arizona:

**Regional Condition 1:** For all activities in waters of the U.S. that are suitable habitat for federally listed fish species, the permittee shall design all road crossings to ensure that the passage and/or spawning of fish is not hindered. In these areas, the permittee shall employ bridge designs that span the stream or river, including pier- or pile-supported spans, or designs that use a bottomless arch culvert with a natural stream bed, unless determined to be impracticable by the Corps.

**Regional Condition 2:** Nationwide Permits (NWP) 3, 7, 12-15, 17-19, 21, 23, 25, 29, 35, 36, or 39-46, 48-52 cannot be used to authorize structures, work, and/or the discharge of dredged or fill material that would result in the "loss" of wetlands, mudflats, vegetated shallows or riffle and pool complexes as defined at 40 CFR Part 230.40-45. The definition of "loss" for this regional condition is the same as the definition of "loss of waters of the United States" used for the Nationwide Permit Program. Furthermore, this regional condition applies only within the State of Arizona and within the Mojave and Sonoran (Colorado) desert regions of California. The desert regions in California are limited to four USGS Hydrologic Unit Code (HUC) accounting units (Lower Colorado -150301, Northern Mojave-180902, Southern Mojave-181001, and Salton Sea-181002).

**Regional Condition 3:** When a pre-construction notification (PCN) is required, the appropriate U.S. Army Corps of Engineers (Corps) District shall be notified in accordance with General Condition 31 using either the South Pacific Division PCN Checklist or a signed application form (ENG Form 4345) with an attachment providing information on compliance with all of the General and Regional Conditions. The PCN Checklist and application form are available at: <http://www.spl.usace.army.mil/Missions/Regulatory.aspx>. In addition, the PCN shall include: A written statement describing how the activity has been designed to avoid and minimize adverse effects, both temporary and permanent, to waters of the United States; drawings, including plan and cross-section views, clearly depicting the location, size and dimensions of the proposed activity as well as the location of delineated waters of the U.S. on the site. The drawings shall contain a title block, legend and scale, amount (in cubic yards) and area (in acres) of fill in Corps jurisdiction, including both permanent and temporary fills/structures. The ordinary high water mark or, if tidal waters, the mean high water mark and high tide line, should be shown (in feet), based on National Geodetic Vertical Datum (NGVD) or other appropriate referenced elevation. All drawings for projects located within the boundaries of the Los Angeles District shall comply with the most current version of the Map and Drawing Standards for the Los Angeles District Regulatory Division (available on the Los Angeles District Regulatory Division website at: <http://www.spl.usace.army.mil/Missions/Regulatory.aspx>); and numbered and dated pre-project color photographs showing a representative sample of waters proposed to be impacted on the project site, and all waters proposed to be avoided on and immediately adjacent to the project site. The compass angle and position of each photograph shall be documented on the plan-view drawing required in subpart b of this regional condition.



**Regional Condition 4:** Submission of a PCN pursuant to General Condition 31 and Regional Condition 3 shall be required for all regulated activities in the following locations: a) All perennial waterbodies and special aquatic sites within the State of Arizona and within the Mojave and Sonoran (Colorado) desert regions of California, excluding the Colorado River in Arizona from Davis Dam to River Mile 261 (northern boundary of the Fort Mojave Indian Tribe Reservation). The desert region in California is limited to four USGS HUC accounting units (Lower Colorado -150301, Northern Mojave-180902, Southern Mojave-181001, and Salton Sea-181002). b) All areas designated as Essential Fish Habitat (EFH) by the Pacific Fishery Management Council (i.e., all tidally influenced areas - Federal Register dated March 12, 2007 (72 FR 11092)), in which case the PCN shall include an EFH assessment and extent of proposed impacts to EFH. Examples of EFH habitat assessments can be found at: <http://www.swr.noaa.gov/efh.htm>. c) All watersheds in the Santa Monica Mountains in Los Angeles and Ventura counties bounded by Calleguas Creek on the west, by Highway 101 on the north and east, and by Sunset Boulevard and Pacific Ocean on the south. d) The Santa Clara River watershed in Los Angeles and Ventura counties, including but not limited to Aliso Canyon, Agua Dulce Canyon, Sand Canyon, Bouquet Canyon, Mint Canyon, South Fork of the Santa Clara River, San Francisquito Canyon, Castaic Creek, Piru Creek, Sespe Creek and the main-stem of the Santa Clara River.

**Regional Condition 9:** Any requests to waive the 300 linear foot limitation for intermittent and ephemeral streams for NWP 29, 39, 40 and 42, 43, 44, 51 and 52 or to waive the 500 linear foot limitation along the bank for NWP 13, must include the following: a) A narrative description of the stream. This should include known information on: volume and duration of flow; the approximate length, width, and depth of the waterbody and characters observed associated with an Ordinary High Water Mark (e.g. bed and bank, wrack line, or scour marks); a description of the adjacent vegetation community and a statement regarding the wetland status of the associated vegetation community (i.e. wetland, non-wetland); surrounding land use; water quality; issues related to cumulative impacts in the watershed, and; any other relevant information. b) An analysis of the proposed impacts to the waterbody in accordance with General Condition 31 and Regional Condition 3; c) Measures taken to avoid and minimize losses, including other methods of constructing the proposed project; and d) A compensatory mitigation plan describing how the unavoidable losses are proposed to be compensated, in accordance with 33 CFR Part 332.

**Regional Condition 10:** The permittee shall complete the construction of any compensatory mitigation required by special condition(s) of the NWP verification before or concurrent with commencement of construction of the authorized activity, except when specifically determined to be impracticable by the Corps. When mitigation involves use of a mitigation bank or in-lieu fee program, the permittee shall submit proof of payment to the Corps prior to commencement of construction of the authorized activity.

#### **E. 401 Water Quality Certification (401 WQC)**

A 401 WQC is mandatory for any activity that requires a Clean Water Act Section 404 permit. A 401 WQC is required prior to discharging any dredged or fill material into a water of the United States. Only one of the following 401 WQCs listed below will apply to your project. The geographical location of your project will determine which 401 WQC is applicable. The 401 WQCs issued for this NWP will remain in effect through March 18, 2017.

On all "Non-Tribal Lands", lands that are not part of federally recognized Indian Reservation, the Arizona Department of Environmental Quality (ADEQ) is the agency responsible for issuing the 401 WQC.

On all "Tribal Lands", lands that are part of a federally recognized Indian Reservation, the U.S. Environmental Protection Agency (EPA) is responsible for issuing the 401 WQC except where EPA has delegated the 401 WQC authority to the White Mountain Apache Tribe (Fort Apache Indian Reservation), Hopi Tribe (Hopi Indian Reservation), Hualapai Tribe (Hualapai Indian Reservation), or Navajo Nation (Navajo Indian Reservation).

If "Individual Certification" is required you must apply for, receive, and comply with the 401 WQC issued by ADEQ, EPA, or the appropriate Tribe.

##### **Non-tribal Lands - 401 WQCs**

The 401 WQCs issued by ADEQ are summarized in Table 1. For projects that can be conditionally certified the project must comply with all of the applicable ADEQ 401 General Conditions that follow Table 1.

##### **Tribal Lands - 401 WQCs**

Fort Apache Indian Reservation (White Mountain Apache Tribe):	Individual Certification required for all projects.*
Hopi Indian Reservation (Hopi Tribe):	Individual Certification required for all projects.*
Hualapai Indian Reservation (Hualapai Tribe):	Individual Certification required for all projects.*
Navajo Indian Reservation (Navajo Nation):	Individual Certification required for all projects.*
All other Indian Reservations (EPA):	401 WQCs issued by EPA are summarized in Table 2. EPA's General and Permit-Specific Conditions follow Table 2.*

\*Note: For online availability see section "F. Document Availability" of this enclosure.

#### 401 WQC Contact Information

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Hopi Tribe  
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Tara Chief  
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E-mail: [acabillo@hotmail.com](mailto:acabillo@hotmail.com)

Robert Scalamera  
Surface Water Section, 401 Certifications  
Arizona Department of Environmental Quality  
110 West Washington Street (Mailstop 5415A-1)  
Phoenix, Arizona 85007  
Telephone: 602-771-4502  
Fax: Not available  
E-mail: [rs3@azdeq.gov](mailto:rs3@azdeq.gov)

#### F. Document Availability

Reissuance of Nationwide Permits, 77 FR 10184-10290  
Special Public Notice for Regional Conditions  
EPA 401 WQC for NWP's  
White Mountain Apache Tribe 401 WQC for NWP's  
Hopi Tribe 401 WQC for NWP's  
Havasupai Tribe 401 WQC for NWP's  
Navajo Nation 401 WQC for NWP's  
ADEQ 401 WQC for NWP's

<http://www.gpo.gov/fdsys/pkg/FR-2012-02-21/pdf/2012-3687.pdf>

Contact Corps project manager for copy of document.  
Contact Corps project manager for copy of document.  
Contact Corps project manager for copy of document.  
Contact Corps project manager for copy of document.  
Contact Corps project manager for copy of document.  
Contact Corps project manager for copy of document.  
Contact Corps project manager for copy of document.

**Table 1 - ADEQ 401 WQCs for all Non-Tribal Lands**

NWP	303(d) impaired waters <sup>1</sup> & Tributaries to 303(d)-impaired waters <sup>2</sup>	OAW <sup>3</sup> & Tributaries to OAW	Lakes <sup>4</sup>	Other Waters <sup>5</sup>	Comments
1 - Aids to Navigation	-	-	-	-	N/A
2 - Structures in Artificial Canals	-	-	-	-	N/A
3 - Maintenance	I	I	I	C	
4 - Fish and Wildlife Harvesting, Enhancement, and Attraction Devices and Activities	I	I	I	C	
5 - Scientific Measurement Devices	I	I	I	C	
6 - Survey Activities	I	I	I	C	
7 - Outfall Structures and Associated Intake Structures	I	I	I	C	
8 - Oil and Gas Structures on the Outer Continental Shelf	-	-	-	-	N/A
9 - Structures in Fleeting and Anchorage Areas	-	-	-	-	N/A
10 - Mooring Buoys	-	-	-	-	N/A
11 - Temporary Recreational Structures	-	-	-	-	N/A
12 - Utility Line Activities	I	I	I	C	
13 - Bank Stabilization	I	I	I	C	
14 - Linear Transportation Projects	I	I	I	C	
15 - U.S. Coast Guard Approved Bridges	I	I	I	C	
16 - Return Water From Upland Contained Disposal Areas	I	I	I	C	
17 - Hydropower Projects	I	I	I	C	
18 - Minor Discharges	I	I	I	C	
19 - Minor Dredging	I	I	I	C	
20 - Response Operations for Oil and Hazardous Substances	I	I	I	T	If work begins within 14 days of event.
21 - Surface Coal Mining Activities	I	I	I	I	
22 - Removal of Vessels	I	I	I	C	
23 - Approved Categorical Exclusion	I	I	I	C	
24 - Indian Tribe or State Administered Section 404 Programs	-	-	-	-	N/A
25 - Structural Discharges	I	I	I	C	
26 - [Reserved]	-	-	-	-	
27 - Aquatic Habitat Restoration, Establishment, and Enhancement Activities	I	I	I	I	
28 - Modifications of Existing Marinas	-	-	-	-	N/A
29 - Residential Developments	I	I	I	C	
30 - Moist Soil Management for Wildlife	I	I	I	C	
31 - Maintenance of Existing Flood Control Facilities	I	I	I	C	
32 - Completed Enforcement Actions	I	I	I	C	
33 - Temporary Construction, Access, and Dewatering	I	I	I	C	
34 - Cranberry Production Activities	I	I	I	I	
35 - Maintenance Dredging of Existing Basins	I	I	I	C	
36 - Boat Ramps	I	I	I	C	
37 - Emergency Watershed Protection and Rehabilitation	I	I	I	T	If work begins within 30 days of event.
38 - Cleanup of Hazardous and Toxic Waste	I	I	I	T	If work begins within 2 days of discovery.
39 - Commercial and Institutional Developments	I	I	I	C	
40 - Agricultural Activities	I	I	I	C	
41 - Reshaping Existing Drainage Ditches	I	I	I	C	
42 - Recreational Facilities	I	I	I	C	
43 - Stormwater Management Facilities	I	I	I	C	
44 - Mining Activities	I	I	I	I	
45 - Repair of Uplands Damaged by Discrete Events	I	I	I	T	If work begins within 14 days of event.
46 - Discharges in Ditches	I	I	I	C	
47 - [Reserved]	-	-	-	-	Reserved
48 - Commercial Shellfish Aquaculture Activities	I	I	I	C	
49 - Coal Remining Activities	I	I	I	I	
50 - Underground Coal Mining Activities	I	I	I	I	
51 - Land-Based Renewable Energy Generation Facilities	I	I	I	C	
52 - Water-Based Renewable Energy Generation Pilot Projects	I	I	I	C	

C = Conditionally certified in Other waters, all applicable CWA 401 General Conditions listed on following pages apply.

T = Conditionally certified only if work begins within designated time of event, otherwise individual 401 certification required.

I = Individual certification required. N/A = Not Available/Not Applicable.

<sup>1</sup> 303(d)-listed Impaired Waters list available at <http://www.azdeq.gov/index.html>. For projects on an impaired surface water, if the project is within 1600 meters (or 1 mile) upstream and/or 800 meters (½ mile) downstream of an impaired surface water.

<sup>2</sup> Tributaries to 303(d)-impaired waters. For projects on a tributary to an impaired surface water, or if the tributary mouth is to an impaired surface water and the project is within 1600 meters (or 1 mile) of its mouth.

<sup>3</sup> Outstanding Arizona Waters (OAW) are the surface waters of exceptional quality listed at <http://www.azdeq.gov/index.html>. For projects on a designated Outstanding Arizona Water OAW, if the project is within 1600 meters (or 1 mile) upstream and/or 800 meters (½ mile) downstream of a designated OAW. Also, Tributaries to Outstanding Arizona Waters: For projects on a tributary to a designated Outstanding Arizona Water, or if the tributary mouth is to an impaired surface water and the project is within 1600 meters (or 1 mile) of its mouth.

<sup>4</sup> Lakes are lakes and reservoirs listed at <http://www.azdeq.gov/index.html>

<sup>5</sup> Other Waters are all WUS that are not otherwise designated as a 303(d) Impaired, OAW, or a lake.



**ADEQ 401 General Conditions applicable to Other Waters of the United States (WUS) on all Non-Tribal Lands**

- 1) Any discharge occurring as a result of activities certified for the subject project shall not cause an exceedence of any Water Quality Standard (WQS). Applicability of this condition is as defined in A.A.C. R18-11-102.
- 2) This certification does not authorize the discharge of wastewater, process residues or other waste to any WUS.
- 3) Work shall be conducted and monitored to ensure that pollution from the activities certified herein does not cause an exceedence of Arizona WQS in any WUS.
- 4) Activities herein certified shall be performed during periods of low flow (baseflow or less) in any WUS, or no flow in the case of ephemeral and intermittent WUS. No work shall be done, nor shall any equipment or vehicles enter any WUS while flow is present, unless all applicable conditions in this certification are met.
- 5) The effectiveness of all pollution control measures, including erosion and sedimentation, shall be reevaluated after each flow event and repaired/modified as needed.
- 6) Applicant must minimize clearing, grubbing, scraping or otherwise limit exposure of erodible surface to the minimum necessary for each construction phase or location.
- 7) If activities certified herein are likely to cause or contribute to an exceedence of WQS, or create an impediment to the passage of fish or other aquatic life - operations shall cease until the problem is resolved or until control measures have been undertaken.
- 8) Erosion control, sediment control and/or bank protection measures shall be installed before construction and pre-operation activities, and shall be maintained during construction and post-construction periods to minimize channel or bank erosion, soil loss and sedimentation. Control measures shall not be constructed of uncemented or unconfined imported soil, or other materials easily transported by flow.
- 9) For portions of the project utilizing potable water or groundwater for irrigation or dust control, direct runoff of such water shall be limited to the extent practicable and shall not cause downstream erosion or flooding.
- 10) The applicant is responsible for ensuring construction material and/or fill (other than native fill or that necessary to support revegetation) placed in any WUS, shall not include materials that can cause or contribute to pollution of the WUS. Examples of prohibited fill include pollutant-contaminated soil and materials defined as pollutants or hazardous in Arizona Revised Statutes (A.R.S.) § 49-201. Fill used to support vegetation rooting or growth shall be protected from erosion.
- 11) Any washing of fill material must occur outside of any WUS prior to placement and the rinseate from such washing shall be settled, filtered or otherwise treated to prevent migration of pollutants (including sediment) or from causing erosion to any WUS. Other than replacement of native fill or material used to support vegetation rooting or growth, fill placed in locations subject to scour must resist washout whether such resistance is derived via particle size limits, presence of a binder, vegetation, or other armoring.
- 12) Any dredged material or waste material is to be placed and retained in areas outside any WUS. Runoff from this material/area is to be settled, filtered or otherwise treated to prevent migration of pollutants (including sediment) to any WUS.
- 13) Acceptable construction materials that will or may contact water in any WUS are: untreated logs and lumber, crushed stone, crushed clean concrete (recycled concrete), native fill, precast, sprayed or cast-in-place concrete (including soil cement and unmodified grouts), steel (including galvanized), plastic and aluminum. Use of other materials may be allowed, but require application for an individual 401 certification.
- 14) Upon completion of construction the applicant shall ensure no adverse change, due to the subject project, has occurred in the stability with respect to stream hydraulics, erosion and sedimentation, of any WUS including upstream and downstream from the project. If such change has occurred, the applicant shall take steps to restore the pre-project stability of any impacted segments.
- 15) Except where the activities certified herein are intended to permanently alter any WUS, all disturbed areas shall be restored and (re)vegetated as soon as physically practicable. Vegetation shall be maintained on unarmored banks and slopes to stabilize soil and prevent erosion.
- 16) If retention/detention basins are included in the project, applicant will complete the grading necessary to direct runoff towards retention/detention basins no later than immediately following initial land clearing or rough grading. Retention/detention basins shall be sized to accept storm runoff and capture sediment prior to it entering or moving downstream in any WUS. Detention basins will provide detention by controlling outflow and shall cause no significant change to the hydraulic conditions of the upstream or downstream WUS outside of the project boundaries. The basins shall be maintained; e.g., have sediment removed, as required to maintain their function.
- 17) Unless specifically permitted to do so when flow is present in any WUS within the project area, the applicant and any contractor will not alter the flow by any means except to prevent erosion or pollution of any WUS.
- 18) Silt laden or turbid water resulting from activities certified herein shall be settled, filtered or otherwise treated to ensure no violation of Arizona WQS in any WUS.
- 19) When flow in any WUS in the work area is sufficient to erode, carry or deposit material, activities certified herein shall cease until: The flow decreases below the point where sediment movement ceases, or control measures have been undertaken; e.g., equipment and materials easily transported by flow are protected with non-erodible barriers or moved outside the flow area.
- 20) The applicant will erect any barriers, covers, shields and other protective devices as necessary to prevent any construction materials, equipment or contaminants/pollutants from falling, being thrown or otherwise entering any WUS.
- 21) The applicant must designate area(s) for equipment staging and storage located entirely outside of any WUS. In addition, the applicant must designate areas, located entirely outside of any WUS, for fuel, oil and other petroleum product storage and for solid waste containment. All precautions shall be taken to avoid the release of wastes, fuel or other pollutants to any WUS. Any equipment maintenance, washing or fueling that cannot be done offsite will be performed in the designated area with the following exception: equipment too large or unwieldy to be readily moved; e.g., large cranes, may be fueled and serviced in the WUS (but outside of standing or flowing water) as long as material specifically manufactured and sold as spill containment is in place during fueling/servicing. All equipment shall be inspected for leaks, all leaks shall be repaired and all repaired equipment will be cleaned to remove any fuel or other fluid residue prior to use within (including crossing) any WUS. The applicant shall have a spill containment plan onsite to ensure that pollutants are prevented from entering any WUS. Any pollutant generated by activities certified herein shall be properly disposed of in accordance with applicable regulations. A spill response kit will be maintained in this (these) area(s) to mitigate any spills. The kit will include material specifically manufactured and sold as spill adsorbent/absorbent and spill containment. The applicant will ensure that whenever there is activity on the site, that there are personnel on site trained in the proper response to spills and the use of spill response equipment.
- 22) Permanent and temporary pipes and culverted crossings shall be adequately sized to handle expected flow and properly set with end section, splash pads, or headwalls that dissipate water energy to control erosion.

- 23) All temporary structures, within any WUS, constructed of imported materials and all permanent structures within any WUS, including but not limited to, access roadways; culverted and unculverted crossings; staging areas; material stockpiles; berms, dikes and pads, shall be constructed so as to accommodate overtopping and must resist washout of the feature by streamflow.
- 24) Any temporary crossing, other than fords on native material, shall be constructed in such a manner so as to provide armoring of the stream channel. Materials used to provide this armoring shall not include anything easily transportable by flow. Examples of acceptable materials include steel plates, wooden planks, pre-cast concrete planks or blocks; examples of unacceptable materials include clay, silt, sand and gravel finer than cobble (roughly fist-sized). The armoring must, via mass, anchoring systems or a combination of the two, resist washout. Any ford shall be designed, and maintained as necessary, to carry the proposed traffic without causing erosion or sedimentation of the stream channel while dry or during a flow event equal to or less than the crossing's design event; i.e., the flow event which closes the ford to traffic. No unarmored ford shall be subject to heavy-truck or equipment traffic after a flow event until the stream bed is dry enough to support the traffic without disturbing streambed material to a greater extent than in dry conditions. Light vehicles (less than 14,000 pounds gross weight) are not restricted by this condition. Applicant will take measures necessary to prevent approaches to any WUS crossing from causing erosion or contributing sediment to any WUS.
- 25) Temporary structures constructed of imported materials are to be removed no later than upon completion of the permitted activity.
- 26) Temporary structures constructed of native materials, if they provide an obstacle to flow or can contribute to or cause sedimentation or erosion, are to be removed no later than upon completion of the permitted activity.
- 27) Upon completion of the activities certified herein (except as noted in condition 28 -concrete curing), areas within any WUS shall be promptly cleared of all forms, piling, construction residues, equipment, debris or other obstructions.
- 28) If fully, partially or occasionally submerged structures are constructed of cast-in-place concrete instead of pre-cast concrete, applicant will take steps; e.g., sheet piling or temporary dams, to prevent contact between water (instream and runoff) and the concrete until it cures and until any curing agents have evaporated or otherwise cease to be available; i.e., are no longer a pollutant threat. Where practicable, construction work will be during extreme low water conditions or at a time and season with the highest probability of ensuring work is done in "the dry".
- 29) Any permanent WUS crossings other than fords, shall not be equipped with gutters, drains, scuppers or other conveyances that allow untreated runoff (due to events equal to or lesser in magnitude than the design event for the crossing structure) to directly enter a WUS if such runoff can be directed to a local stormwater drainage, containment and/or treatment system.
- 30) Applicant will clear debris as needed from culverts, ditches, dips and other drainage structures in any WUS to prevent clogging or conditions that may lead to washout.



**Table 2 - EPA 401 WQC for Tribal Lands (All Indian Reservations except Fort Apache, Hopi, Hualapai and Navajo Indian Reservations)**

NWP	Conditional Certification		Notification	Impact Limits	Notes
	General Conditions	Specific Conditions			
1 - Aids to Navigation	X		MPCN	None	
2 - Structures in Artificial Canals	X		MPCN	None	
3 - Maintenance	X	X	PCN or MPCN	Generally no increase in fill footprint	1,2
4 - Fish and Wildlife Harvesting, Enhancement, and Attraction Devices and Activities	X		MPCN	None	
5 - Scientific Measurement Devices	X		MPCN	25 cyds	
6 - Survey Activities	X		MPCN	25 cyds	
7 - Outfall Structures and Associated Intake Structures	X		PCN	None	
8 - Oil and Gas Structures on the Outer Continental Shelf	X		PCN	None	
9 - Structures in Fleeting and Anchorage Areas	X		MPCN	None	
10 - Mooring Buoys	X		MPCN	None	
11 - Temporary Recreational Structures	X		MPCN	None	
12 - Utility Line Activities	X	X	PCN or MPCN	**½ acre or 300'	3,4
13 - Bank Stabilization	X	X	PCN or MPCN	**½ acre or 300'	5
14 - Linear Transportation Projects	X	X	PCN or MPCN	**½ acre or 300' nontidal, ½ acre or 300' tidal	3
15 - U.S. Coast Guard Approved Bridges	X		MPCN	None	
16 - Return Water From Upland Contained Disposal Areas	X		MPCN	None	
17 - Hydropower Projects	X		PCN	None	
18 - Minor Discharges	X		PCN or MPCN	1/10 acre or 25 cyds	
19 - Minor Dredging	X		MPCN	25 cyds	
20 - Response Operations for Oil and Hazardous Substances	X		MPCN	None	
21 - Surface Coal Mining Activities	X	X	PCN	½ acre or 300'	6
22 - Removal of Vessels	X		PCN or MPCN	None	
23 - Approved Categorical Exclusion	X		PCN or MPCN	None	
24 - Indian Tribe or State Administered Section 404 Programs	X		MPCN	None	
25 - Structural Discharges	X		MPCN	None	
26 - [Reserved]					
27 - Aquatic Habitat Restoration, Establishment, and Enhancement Activities	X	X	PCN or MPCN	None	7
28 - Modifications of Existing Marinas	X		MPCN	None	
29 - Residential Developments	X	X	PCN or MPCN	**¼ acres for single house, ½ acres or 300' for multi-unit	8, 9
30 - Moist Soil Management for Wildlife	X		MPCN	None	
31 - Maintenance of Existing Flood Control Facilities	X	X	PCN	None	10
32 - Completed Enforcement Actions	X		MPCN	5 acres non-tidal or 1 acre tidal	
33 - Temporary Construction, Access, and Dewatering	X		PCN	None	
34 - Cranberry Production Activities	X		PCN	10 acres	
35 - Maintenance Dredging of Existing Basins	X		MPCN	Lesser of previously authorized or controlling depths	
36 - Boat Ramps	X		PCN or MPCN	50 cyds, 20'-wide ramp	8
37 - Emergency Watershed Protection and Rehabilitation	X		PCN or MPCN	None	
38 - Cleanup of Hazardous and Toxic Waste	X		PCN	None	
39 - Commercial and Institutional Developments	X	X	PCN or MPCN	½ acre or 300' non-tidal	8
40 - Agricultural Activities	X	X	PCN or MPCN	½ acre or 300' non-tidal	8
41 - Reshaping Existing Drainage Ditches	X	X	PCN or MPCN	**½ acre or 300' non-tidal	8
42 - Recreational Facilities	X	X	PCN	½ acre or 300' non-tidal	
43 - Stormwater Management Facilities	Individual Certification Required		MPCN	Not Applicable	
44 - Mining Activities	X	X	PCN or MPCN	½ acre or 300' non-tidal	8
45 - Repair of Uplands Damaged by Discrete Events	X	X	PCN or MPCN	**½ acre or 300'	8
46 - Discharges in Ditches	X	X	PCN or MPCN	**½ acre or 300' non-tidal	8
47 - [Reserved]					
48 - Commercial Shellfish Aquaculture Activities	X	X	PCN or MPCN	**Impacts of submerged aquatic veg. prohibited	
49 - Coal Remining Activities	X	X	PCN or MPCN	**½ acre or 300' non-tidal	8
50 - Underground Coal Mining Activities	X	X	PCN or MPCN	½ acre or 300' non-tidal	8
51 - Land-Based Renewable Energy Generation Facilities	X	X	PCN or MPCN	½ acre or 300' non-tidal	8
52 - Water-Based Renewable Energy Generation Pilot Projects	X	X	PCN or MPCN	½ acre or 300'	

X=Conditional Certification requires compliance with General and Specific Conditions on following pages.

MPCN=Modified Pre-Construction (MPCN) must be submitted to EPA even though Corps notification is not required.

PCN=Pre-Construction Notification (PCN) submitted to Corps must also be submitted to EPA.

\*\* Impacts limits are modified by EPA

- Notes:
1. No undersized structures
  2. Bioengineering used whenever practicable
  3. Only once per single and complete project with independent utility
  4. Waiver approval required from EPA for 300"
  5. Waiver approval required from EPA
  6. EPA approves mitigation plan first
  7. Approval required from EPA
  8. Waiver approval required from EPA
  9. No recreational impacts authorized
  10. Approval for levee vegetation removal required from EPA



**EPA 401 WQC General and Specific Nationwide Permit Conditions for Tribal Lands**  
(All Indian Reservations except Fort Apache, Hopi, Hualapai and Navajo Indian Reservations)  
**General Conditions**

Projects that are unable to comply with the general conditions of this programmatic certification are denied certification without prejudice and the applicant must apply to EPA for an individual certification. Applicants can apply for an individual certification by providing the same content required in a MPCN described in General Condition 01. *Notification*, of this programmatic certification, but EPA may request additional project information for individual certifications after receiving notification materials. When an individual certification is required, EPA will strive to issue, deny, or waive certification within sixty days of receipt of complete project information, but our review shall not exceed one year, the statutory limit beyond which certification is considered waived.<sup>1</sup>

**01. Notification** - To improve the government's ability to demonstrate whether the NWP program has minimal adverse impacts to the aquatic environment, individually and cumulatively, all NWP-authorized projects proceeding on tribal lands within Region 9 shall submit a form of notification to EPA Region 9 as described below.<sup>2</sup> Notification is required in order to be eligible for any NWP under this certification.

Projects seeking authorization under this certification will fall under one of the following two notification categories

**Pre-Construction Notification (PCN):**

The Corps already requires a PCN, subject to criteria in the Corps' General Condition 31, because the project proposes use of a NWP that requires a PCN automatically or for specific activities authorized by the NWP. Applicants must simply forward a second copy of the PCN already required by the Corps to EPA Region 9 for notification. If a PCN is already required by the Corps and a waiver of impact limits is proposed beyond what is approved under this certification, applicants must include written determinations specified in General Condition 02. *Waivers* for EPA approval.

**Modified Pre-Construction Notification (MPCN):**

a) The Corps does not require a PCN for any activities authorized under the NWP proposed for use, or for impacts below limits identified in the NWP for a PCN. Applicants must forward a MPCN to EPA Region 9 for notification, subject to the criteria below. If a waiver of impact limits is proposed beyond what is approved under this certification, applicants must include written determinations specified in General Condition 02.

*Waivers* for EPA approval. 1) **Timing**. Applicants shall submit a MPCN to EPA Region 9 as early as possible, and in advance of any authorization letter from the Corps allowing the applicant to proceed under a given NWP. When an EPA approval is required by condition of this certification, EPA will act within sixty days of receiving a complete MPCN. 2) **Content**. MPCNs must be in writing (electronic mail submittal is acceptable) and include the following information: a) Name, address and telephone numbers of the applicant and any agents or representatives. If available, the electronic mail address and fax numbers for these persons; b) Location of the proposed project; c) A description of the proposed project and impacts including i) the project's purpose; ii) direct and indirect adverse environmental effects the project would cause, including the proposed acreages and linear feet (for streams) of waters impacted, avoided, and where applicable, created or otherwise mitigated; iii) any other NWP(s), regional general permit(s), or individual permit(s) used or intended to be used to authorize any part of the proposed project or any related activity. The description should be sufficiently detailed to determine compliance with NWP and EPA 401 conditions and to determine whether compensatory mitigation may be necessary. Maps, drawings and/or photographs of the project area and aquatic resources are not mandatory, but usually help to clarify the project and allow for quicker review. At minimum, a narrative description of any special aquatic sites and other waters of the United States on the project site must be included; b) Consistent with General Condition 02. *Waivers*, a written demonstration that any proposed impact limit waiver that may be allowable under this certification will result in minimal impacts to aquatic resource functions; c) Consistent with General Condition 03. *Avoidance, Minimization, and Mitigation*, a written statement documenting measures taken to avoid and minimize temporary and permanent impacts to waters of the U.S.; d) Consistent with General Condition 04. *Prohibition on the Multiple Use of One NWP for a Single Project*, for proposed utility or transportation projects where the same NWP is proposed at multiple locations, a written determination will be provided describing independent utility of each impact location and how the project will not contribute to more than minimal direct, indirect and cumulative impacts to waters of the U.S., either at the impact site or to upstream, downstream, or adjacent aquatic resources. e) The name(s) of any species listed as endangered or threatened under the Endangered Species Act which may be adversely affected by the proposed work, either directly or by impacting designated critical habitat; f) Identification of any cultural or historic properties listed in, or eligible for listing in, the National Register of Historic Places that may be adversely affected by the proposed work. Written notification should be mailed to USEPA Region 9, WTR-8, 75 Hawthorne Street, San Francisco, CA 94105.

**02. Waivers** - For certain NWPs, Corps District Engineers may waive impact thresholds for intermittent and ephemeral drainages by making a written determination that the discharge will result in minimal adverse effects. To ensure that these waters, commonly found on tribal lands in the arid southwest, receive an adequate level of protection, and to prevent the NWP Program from having more than minimal adverse impacts to the aquatic environment, all proposed impact limit waivers are denied under this certification unless EPA approves a written determination that the waiver will not exceed minimal impacts to aquatic resource functions. For some NWPs where the Corps does not include an impact limit, EPA has added an impact limit as a permit-specific condition. Some of these NWPs also include a condition that a waiver may be provided when EPA approves a written determination that the waiver will not exceed minimal impacts to aquatic resource functions. Impacts to special aquatic sites are not permitted under this certification unless EPA approves a written determination that impacts to aquatic resource functions will be minimal. "Special aquatic sites" include sanctuaries and refuges, wetlands, mud flats, vegetated shallows, coral reefs and riffle pool complexes. When EPA approval is required for a waiver, EPA will act within sixty days of receiving a complete PCN or MPCN.

**03. Avoidance, Minimization, and Mitigation** - To protect water quality and beneficial uses of U.S. waters on tribal lands, all projects using NWPs must avoid discharges to the maximum extent practicable, and utilize the best available and practicable means of minimizing the adverse impact of discharges that cannot be avoided. A written statement documenting measures taken to avoid and minimize temporary and permanent impacts to waters of the U.S. will be provided to EPA and the Corps with each PCN or MPCN. To the extent practicable, temporary impact sites will be returned to pre-construction contours and substrate. Where applicable, banks shall be reseeded or replanted with native vegetation. EPA shall make a written determination, within sixty days of receipt of a complete PCN or MPCN, whether compensatory mitigation measures are required to ensure the activity will have only minimal adverse effects, but no such determination is required for a project to begin work if otherwise in compliance with the NWP, this programmatic certification, and any applicable tribal or local authorities' requirements. Nevertheless, should compensatory mitigation be determined necessary by EPA, the mitigation becomes a condition of water quality certification and thus a condition of the Corps' permit. Failure to address an EPA mitigation requirement would therefore place a permittee out of compliance with their NWP and potentially subject to a range of

<sup>1</sup> Clean Water Act Section 401 Certification (a): <http://water.epa.gov/lawsregs/guidance/wetlands/sec401.cfm>

<sup>2</sup> NOTE: this requirement does not modify or eliminate existing Corps requirements regarding PCNs for projects proceeding on tribal lands (or elsewhere).



Corps and EPA enforcement actions. The need for post-project performance and/or mitigation monitoring and reporting (if applicable) will be determined by EPA on a case-by-case basis.

**04. Prohibition on the Multiple Use of One NWP for a Single Project** - Permittees may not use the same NWP multiple times (more than once) for one single and complete project at locations that do not have independent utility; to do so circumvents acreage limitations of the NWPs and may result in more than minimal adverse impacts to water quality and other ecosystem services. For example, under this certification, linear transportation projects on tribal lands must sum the impacts of each proposed crossing of individual waters of the U.S. and use that total to determine eligibility for NWP 14 (Linear Transportation Projects). If the acreage or linear foot impacts exceed the limits of the applicable NWP (or combination of applicable different NWPs), minimal adverse impacts to water quality may be exceeded and the project is not eligible for 401 certification under this programmatic action. Under these circumstances, projects must seek individual certification from EPA, and EPA may grant, grant with conditions, waive, or deny 401 certification of the project under the NWP. In the event of a denial, the NWP would not be available to the project proponent and therefore applicants may need to apply to the Corps for authorization under a different General Permit, Letter of Permission, or Individual Permit as appropriate and determined by the Corps. EPA would review these other proposed permit actions for case-by-case certification. Note that, on a case-by-case basis, EPA may waive this General Condition and allow the use of multiple NWPs if the applicant so appeals, and demonstrates in their PCN or MPCN that authorization under the NWP will result in minimal and/or completely mitigated impacts to the aquatic environment, individually and cumulatively.

**05. Use of Appropriate Fill Material** - To the extent practicable, local, native materials should be used as fill material. (e.g., soil, sand, or rock from the site or near the site; clean building materials or clean imported earthen fill). Inappropriate and unauthorized fill materials include, but are not limited to: tires, junked or abandoned vehicles, appliances, or other equipment; garbage; debris; oil drums or other chemically contaminated vessels; artificial turf; non-native vegetation; etc. If an applicant has any doubts or questions about the suitability of a proposed fill material, they should consult with the Corps and/or EPA prior to discharging into waters of the U.S. Such consultation may be via phone, or written letter, fax or electronic mail.

**06. Dewatered Conditions** - Discharges below the ordinary high water mark or within jurisdictional wetlands are not approved under this certification unless the discharge site is naturally dewatered (e.g., seasonally dry), or dewatering has been authorized by the Corps, thereby avoiding direct discharge of pollutants into the water column. If the site is artificially dewatered, permittees shall, to the extent practicable, avoid dewatering techniques that require additional temporary or permanent discharges of fill material within jurisdictional waters (e.g., coffer dams).

**07. Fills Within Floodplains** - Projects requiring NWP authorization for discharges of fill material within 100-year floodplains shall include in their PCN or MPCN a statement of compliance with Executive Order 11988 (Floodplain Management). However, discharges within the FEMA-mapped 100-year floodplain associated with residential and commercial development are not certified for use under the NWP program on tribal lands. The 100-year floodplain is based on hydrologic conditions prior to permit issuance.

**08. Best Management Practices** - Except as specified in the application, no debris, silt, sand, cement, concrete, oil or petroleum, organic material, or other construction related materials or wastes shall be allowed to enter into or be stored where it may be washed by rainfall or runoff into waters of the U.S. Silt fences, straw wattles, and other techniques shall be employed as appropriate to protect waters of the U.S. from sedimentation and other pollutants. Water used in dust suppression shall not contain contaminants that could violate surface water or aquifer standards. Permittees and their contractors shall take necessary steps to minimize channel and bank erosion within waters of the United States during and after construction. A copy of the permit conditions shall be provided to all contractors and subcontractors, and will be posted visibly at project construction sites.

**09. Transportation Projects** - Permittees shall implement State transportation agencies' guidelines for construction sites to protect water quality and aquatic habitat. In California, CALTRANS has guidance in the *CALTRANS Stormwater Quality Manuals and Handbooks*<sup>3</sup>; in Nevada, NDOT has guidance in their *NDOT Water Quality Manuals*<sup>4</sup>; and in Arizona, ADOT has guidance in their *Erosion and Pollution Control Manual*<sup>5</sup>.

**10. Inspections** - The permittee shall allow EPA representatives to inspect the authorized activity and any mitigation areas at any time deemed necessary to determine compliance with the terms and conditions of the NWP verification.

**11. Buffers** - Unless specifically determined to be impracticable by the Corps and EPA, for NWPs 29, 39, 40, and 42, the permittee shall establish and maintain upland buffers in perpetuity between upland structures constructed as part of the project approved by the NWP and all preserved open waters, streams and wetlands, including created, restored, enhanced or preserved waters of the U.S. Buffers should be vegetated whenever practicable. Plantings in buffers should be dominated by native species, and not include any federal or state listed invasive or noxious weed species<sup>6</sup>. Except in unusual circumstances, as determined by the Corps and EPA, buffers shall be at least 50 feet in width from the lateral limits of the Corp's jurisdiction<sup>7</sup>.

**12. Protected Lands** - The permittee shall record the NWP verification with the Registrar of Deeds or other appropriate official charged with the responsibility for maintaining records of title of interest in real property for areas designated to be preserved as part of compensatory mitigation for authorized impacts, including any associated covenants or restrictions.

**13. Impaired Water Bodies** - If a proposed activity would result in dredge or fill in water bodies listed as impaired under Section 303(d) of the CWA, the PCN or MPCN must include specific measures that will be used to avoid exacerbating the impairment(s).<sup>8</sup>

<sup>3</sup> <http://www.dot.ca.gov/hq/construc/stormwater/manuals.htm>

<sup>4</sup> [http://www.nevadadot.com/About\\_NDOT/NDOT\\_Divisions/Engineering/Hydraulics/Water\\_Quality/BMP\\_Manuals.aspx](http://www.nevadadot.com/About_NDOT/NDOT_Divisions/Engineering/Hydraulics/Water_Quality/BMP_Manuals.aspx)

<sup>5</sup> [http://www.azdot.gov/inside\\_azdot/OES/Water\\_Quality/Stormwater/Manuals.asp](http://www.azdot.gov/inside_azdot/OES/Water_Quality/Stormwater/Manuals.asp)

<sup>6</sup> <http://plants.usda.gov/java/noxiousDriver>

<sup>7</sup> Ordinary high water mark in non-tidal and the mean higher high water line in tidal waters

<sup>8</sup> EPA Region 9 lists of impaired water bodies: <http://www.epa.gov/region9/water/tmdl/303d.html>

#### **Specific Nationwide Permits**

**NWP-01 Aids to Navigation** - Subject to the General Conditions (GCs) above, this NWP is hereby programmaticly certified.

**NWP-02 Structures in Artificial Canals** - Subject to the GCs above, this NWP is hereby programmaticly certified.

**NWP-03 Maintenance** - Subject to the GCs above, and the following permit-specific conditions, this NWP is hereby programmaticly certified.

"Currently serviceable structures" which may be maintained under this permit do not include undersized culverts or structures that cause or exacerbate channel incision, bank destabilization, and/or prevent fish and wildlife passage due to inadequate design or construction standards. Certification of this permit is granted only if the existing structure proposed to be maintained demonstrably preserves (via design, flow modeling or other information in the PCN) the natural functions of the affected aquatic resource when the structure is fully operational. Otherwise, an alternative permit should be utilized as appropriate (e.g., NWP 13 Bank Stabilization). Where existing bank stabilization structures are to be maintained, bioengineered methods shall be utilized to the extent practicable in lieu of "rip-rap" or other hardscape engineered materials. This permit shall not authorize the enlargement of, or increase in, the footprint of a structure within waters of the U.S., unless that enlargement consists of the replacement of existing artificial channel armoring materials (e.g., rip-rap, soil cement, etc.) with low-impact bioengineered natural channel design structures (e.g., log revetments, geotextile rolls/mats, root wads, brush mattresses, willow wattling, etc.)



**NWP-04 Fish and Wildlife Harvesting, Enhancement, and Attraction Devices and Activities**

Subject to the GCs above, this NWP is hereby programmatically certified.

**NWP-05 Scientific Measurement Devices** - Subject to the GCs above, this NWP is hereby programmatically certified.

**NWP-06 Survey Activities** - Subject to the GCs above, this NWP is hereby programmatically certified.

**NWP-07 Outfall Structures and Associated Intake Structures** - Subject to the GCs above, this NWP is hereby programmatically certified.

**NWP-08 Oil and Gas Structures on the Outer Continental Shelf** - Subject to the GCs above, this NWP is hereby programmatically certified.

**NWP-09 Structures in Fleet and Anchorage Areas** - Subject to the GCs above, this NWP is hereby programmatically certified.

**NWP-10 Mooring Buoys** - Subject to the GCs above, this NWP is hereby programmatically certified.

**NWP-11 Temporary Recreational Structures** - Subject to the GCs above, this NWP is hereby programmatically certified.

**NWP-12 Utility Line Activities** - Subject to the GCs above, and the following permit-specific conditions, this NWP is hereby programmatically certified. Impacts under this permit are limited to the greater of 1/2 acre or 300 linear feet of waters of the U.S., including intermittent and ephemeral streams. Only the 300 linear foot limit may be waived by EPA upon approval, consistent with General Condition 02. *Waivers*. Under this certification, NWP 12 can only be used once for a single and complete project having independent utility. When NWP 12 is proposed for multiple locations a written determination will be provided describing independent utility of each impact location for approval by EPA, consistent with General Condition 01. *Notification*. Permittees are required to ensure that the construction of utility lines does not result in the draining of any water of the U.S., including wetlands. This may be accomplished through the use of clay blocks, bentonite, or other suitable material (as approved by EPA) to seal the trench. For utility line trenches, during construction, the permittee shall remove and stockpile, separately, the top 6 – 12 inches of topsoil. Following installation of the utility line(s), the permittee shall replace the stockpiled topsoil on top and seed the area with native vegetation.

**NWP-13 Bank Stabilization** - Subject to the GCs above, and the following permit-specific conditions, this NWP is hereby programmatically certified. Unless approved by EPA, consistent with General Condition 02. *Waivers*, impacts under this permit are limited to the greater of 1/2 acre or 300 linear feet of waters of the U.S., including intermittent and ephemeral streams. All bank stabilization activities under this permit shall involve either the sole use of native vegetation or other bioengineered design techniques (e.g. willow plantings, root wads, large woody debris, etc.) or a combination of hard-armoring (e.g. rock) and native vegetation or bioengineered design techniques, unless specifically determined to be impracticable by the EPA.

**NWP-14 Linear Transportation Projects** - Subject to the GCs above, and the following permit-specific conditions, this NWP is hereby programmatically certified. Impacts under this permit are limited to the greater of 1/2 acre or 300 linear feet of non-tidal waters of the U.S., including intermittent and ephemeral streams, and 1/3 acre or 300 linear feet of tidal waters of the U.S. NWP 14 can only be used once for a single and complete project having independent utility. When NWP 14 is proposed for multiple locations a written determination will be provided describing independent utility of each impact location for approval by EPA, consistent with General Condition 01. *Notification*. All bank stabilization activities under this permit shall involve either the sole use of native vegetation or other bioengineered design techniques (e.g. willow plantings, root wads, large woody debris, etc.) or a combination of hard-armoring (e.g. rock) and native vegetation or bioengineered design techniques, unless specifically determined to be impracticable by the EPA.

**NWP-15 U.S. Coast Guard Approved Bridges** - Subject to the GCs above, this NWP is hereby programmatically certified.

**NWP-16 Return Water from Upland Contained Disposal Areas** - Subject to the GCs above, this NWP is hereby programmatically certified.

**NWP-17 Hydropower Projects** - Subject to the GCs above, this NWP is hereby programmatically certified.

**NWP-18 Minor Discharges** - Subject to the GCs above, this NWP is hereby programmatically certified.

**NWP-19 Minor Dredging** - Subject to the GCs above, this NWP is hereby programmatically certified.

**NWP-20 Response Operations for Oil and Hazardous Substances** - Subject to the GCs above, this NWP is hereby programmatically certified.

**NWP-21 Surface Coal Mining Activities** - Subject to the GCs above, and the following permit-specific conditions, this NWP is hereby programmatically certified. Before an applicant may use this permit, EPA must approve a compensatory mitigation plan sufficient to ensure impacts to aquatic resource functions are minimal.

**NWP-22 Removal of Vessels** - Subject to the GCs above, this NWP is hereby programmatically certified.

**NWP-23 Approved Categorical Exclusions** - Subject to the GCs above, this NWP is hereby programmatically certified.

**NWP-24 Indian Tribe or State Administered Section 404 Programs** - Subject to the GCs above, this NWP is hereby programmatically certified.

**NWP-25 Structural Discharges** - Subject to the GCs above, this NWP is hereby programmatically certified.

**NWP-26 [Reserved]**

This NWP is no longer in use. No certification is necessary.

**NWP-27 Aquatic Habitat Restoration, Establishment, and Enhancement Activities** - Subject to the GCs above, and the following permit-specific condition, this NWP is hereby programmatically certified. Upon review of a PCN or MPCN, consistent with General Condition 01. *Notification*, EPA will approve or deny on a case-by-case basis whether the proposed project will result in a net increase in aquatic resource functions and services, consistent with the NWP. An individual certification may be required in the event EPA denies approval of a waiver for this NWP.

**NWP-28 Modifications of Existing Marinas** - Subject to the GCs above, this NWP is hereby programmatically certified.

**NWP-29 Residential Developments** - Subject to the GCs above, and the following permit-specific conditions, this NWP is hereby programmatically certified. Unless approved by EPA, consistent with General Condition 02. *Waivers*, impacts under this permit are limited to 1/4 acre of impacts to non-tidal waters of the U.S. for single family houses, and the greater of 1/2 acre or 300 linear feet of impact to waters of the U.S. for multi-unit residential developments. Under this certification, this permit will not be used to approve residential developments and their attendant features within the 100-year floodplain. The 100-year floodplain is determined based on hydrologic conditions at the time of the NWP application. Recreational facilities such as playgrounds, playing fields, and golf courses are not authorized under this certification. These projects are separate and distinct from residential developments, are not required to be included in a residential development project for it to be practicable, and their construction within waters is normally avoidable.

**NWP-30 Moist Soil Management for Wildlife** - Subject to the GCs above, this NWP is hereby programmatically certified.

**NWP-31 Maintenance of Existing Flood Control Facilities** - Subject to the GCs above, and the following permit-specific conditions, this NWP is hereby programmatically certified. Upon review of a PCN, consistent with General Condition 01. *Notification*, EPA will approve or deny on a case-by-case basis whether the proposed project will result in minimal impacts to waters of the U.S. for projects that include removal of levee vegetation.

**NWP-32 Completed Enforcement Actions** - Subject to the GCs above, this NWP is hereby programmatically certified.

**NWP-33 Temporary Construction, Access, and Dewatering** - Subject to the GCs above, this NWP is hereby programmatically certified.

**NWP-34 Cranberry Production Activities** - Subject to the GCs above, this NWP is hereby programmatically certified.

**NWP-35 Maintenance Dredging of Existing Basins** - Subject to the GCs above, this NWP is hereby programmatically certified.



**NWP-36 Boat Ramps** - Subject to the GCs above, and the following permit-specific conditions, this NWP is hereby programmatically certified. Unless approved by EPA, consistent with General Condition 02. *Waivers*, impacts under this permit are limited to 50 cubic yards of fill and ramps that are 20 feet wide or less.

**NWP-37 Emergency Watershed Protection and Rehabilitation** - Subject to the GCs above, this NWP is hereby programmatically certified.

**NWP-38 Cleanup of Hazardous and Toxic Waste** - Subject to the GCs above, this NWP is hereby programmatically certified.

**NWP-39 Commercial and Institutional Developments** - Subject to the GCs above, and the following permit-specific conditions, this NWP is hereby programmatically certified. Under this certification, this permit will not be used to approve commercial and institutional developments and their attendant features within the 100-year floodplain. The 100-year floodplain is determined based on hydrologic conditions at the time of the NWP application. Recreational facilities such as playgrounds, playing fields, and golf courses are not authorized under this certification. These projects are separate and distinct from commercial and institutional development, are not required to be included in such developments to be practicable, and their construction within waters is normally avoidable.

**NWP-40 Agricultural Activities** - Subject to the GCs above, and the following permit-specific conditions, this NWP is hereby programmatically certified. Construction of farm ponds under this certification is limited to those that do not qualify for the Clean Water Act section 404(f)(1)(C) exemption because of the recapture provision at section 404(f)(2). Under this certification, no discharges are authorized which would impact hydrological connectivity between jurisdictional waters to such an extent as to convert waters of the U.S. to uplands, or otherwise isolate waters and eliminate federal regulatory jurisdiction. Unless approved by EPA, consistent with General Condition 02. *Waivers*, impacts under this permit are limited to the greater of 1/2 acre or 300 linear feet of impacts to non-tidal waters of the U.S., including intermittent and ephemeral streams.

**NWP-41 Reshaping Existing Drainage Ditches** - Subject to the GCs above, and the following permit-specific conditions, this NWP is hereby programmatically certified. Unless approved by EPA, consistent with General Condition 02. *Waivers*, impacts under this permit are limited to the greater of 1/2 acre or 300 linear feet of impacts to non-tidal waters of the U.S., including intermittent and ephemeral streams. All sidecast materials from excavation must be stored and/or disposed of within non-jurisdictional uplands under this certification. A statement must be included in the notification as to how the applicant's activities will improve water quality. Under this certification, no discharges are authorized which would impact hydrological connectivity between jurisdictional waters to such an extent as to convert waters of the U.S. to uplands, or otherwise isolate waters to eliminate federal regulatory jurisdiction.

**NWP-42 Recreational Facilities** - Subject to the GCs above, this NWP is hereby programmatically certified.

**NWP-43 Stormwater Management Facilities** - Use of this NWP is not covered by this programmatic certification, and prospective users on tribal lands must seek individual project certification from EPA in all cases. NWP authorization of constructing stormwater facilities within waters of the U.S. discourages applicants from using practicable construction options that locate stormwater retention and detention facilities "off line" from streams. For example, retention facilities are often built as sediment (or debris) basins within a stream. This practice includes constructing a dam in the stream, excavating out a basin, and regular sediment removal to maintain the structure. These facilities cause considerable and unnecessary damages to stream functions as retention facilities can be located "off line" by constructing a high flow diversion channel above the ordinary high water mark. If applicants can continue to use the traditional, more damaging practices that are sanctioned by this NWP, there is no incentive for these management practices to improve. We do not believe NWP-43 for new facilities complies with the CWA Section 404(b)(1) Guidelines. CWA section 401 certification for this NWP is denied without prejudice. Applicants for projects on tribal lands must apply to EPA for individual certification if this NWP is proposed to be used. Applicants can apply for an individual certification by providing the same content required in a MPCN described in General Condition 01. *Notification*, of this certification.

**NWP-44 Mining Activities** - Subject to the GCs above, and the following permit-specific conditions, this NWP is hereby programmatically certified. Applicants must ensure that mining activities (e.g., aggregate mining) approved by this NWP will not cause upstream head cutting or downstream incision. Notification to EPA shall include a narrative description and design drawing, when applicable, of any measure that will be implemented to comply with the condition. When used for in-stream aggregate mining activities, compensatory mitigation is likely to be required due to extensive indirect impacts and temporal losses typical of this type of impact.

**NWP-45 Repair of Uplands Damaged by Discrete Events** - Subject to the GCs above, and the following permit-specific conditions, this NWP is hereby programmatically certified.

Unless approved by EPA, consistent with General Condition 02. *Waivers*, impacts under this permit are limited to the greater of 1/2 acre or 300 linear feet of impacts to non-tidal waters of the U.S., including intermittent and ephemeral streams.

**NWP-46 Discharges in Ditches**

Subject to the GCs above, and the following permit-specific conditions, this NWP is hereby programmatically certified.

Unless approved by EPA, consistent with General Condition 02. *Waivers*, impacts under this permit are limited to the greater of 1/2 acre or 300 linear feet of impacts to non-tidal waters of the U.S., including intermittent and ephemeral streams.

**NWP-47 [Reserved]** - This NWP is no longer in use. No certification is necessary.

**NWP-48 Commercial Shellfish Aquaculture Activities** - Subject to the GCs above, and the following permit-specific conditions, this NWP is hereby programmatically certified. Under this certification, impacts to submerged aquatic vegetation are prohibited, consistent with NWP 19. *Minor Dredging*, and NWP 36. *Boat Ramps*.

**NWP-49 Coal Remining Activities** - Subject to the GCs above, and the following permit-specific conditions, this NWP is hereby programmatically certified. Unless approved by EPA, consistent with General Condition 02. *Waivers*, impacts under this permit are limited to the greater of 1/2 acre or 300 linear feet of impacts to non-tidal waters of the U.S., including intermittent and ephemeral streams. Applicants must provide information in the PCN illustrating that activities authorized under NWP-49 will result in a net increase in aquatic resource functions.

**NWP-50 Underground Coal Mining Activities** - Subject to the GCs above, this NWP is hereby programmatically certified.

**NWP-51 Land-Based Renewable Energy Generation Facilities** - Subject to the GCs above, this NWP is hereby programmatically certified.

**NWP-52 Water-Based Renewable Energy Generation Pilot Projects** - Subject to the GCs above, this NWP is hereby programmatically certified.



## UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

## REGION IX

75 Hawthorne Street

- San Francisco, CA 94105-3901

November 21, 1997

Mr. Wade Eakle  
U.S. Army Corps of Engineers  
South Pacific Division  
ATTENTION: CESPD-ET-CR  
333 Market Street, Room 923  
San Francisco, California 94105-2195

Re: U.S. Environmental Protection Agency Region IX (EPA) Final Water Quality Certification  
of the U.S. Army Corps of Engineers (Corps) Nationwide Permit (NWP) Program for  
Projects in Indian Country

As you know, Section 401 of the Clean Water Act requires water quality certification for any activity that may result in a discharge to waters of the United States and that requires a Federal permit or license. Any applicant for a Clean Water Act Section 404 permit in Indian Country must obtain water quality certification from EPA or from a tribe that has received approval as the certifying authority. (Only two tribes, the Hoopa Valley Tribe in California and the Fort Apache Tribe in Arizona, have such authority in EPA's Region IX.) In order to certify a NWP, EPA must find that the activities permitted under it will comply with, among other things, water quality standards over the term of the permit.

EPA notified the Corps on February 10, 1997 that we were initially denying 401 water quality certification on all the new NWPs in Indian country. This letter presents our final action on the certification of the Nationwide Permits in Indian country (attached).

Please contact me if you have any questions regarding this decision.

Sincerely,

A handwritten signature in dark ink, appearing to read "Nancy Woo", is written over the typed name.

Nancy Woo, Chief  
Wetlands Regulatory Office

cc: Interested Indian Tribes  
Attachment

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## EPA Region IX

Final Action on December 13, 1996 Nationwide Permit Clean Water Act  
Section 401 Certification in Indian Country

Based on EPA's review of the activities proposed for Nationwide permitting, we have placed each Nationwide permit in one of three categories: 1) Conditional Certification - for those activities that we have deemed to pose little threat to water resources, 2) Denial of Certification - for those activities that, based on our experience, have the potential to pose a threat to water resources, and 3) Reservation of Certification - for the Nationwide permit that has been held in "reserved" status

## 1) Conditional Certification

The Nationwide permits which we are conditionally certifying are permits: 1 (Aids to Navigation), 2 (Structures in Artificial Canals), 3 (Maintenance), 4 (Fish and Wildlife Harvesting, Enhancement, and Attraction Devices and Activities), 5 (Scientific Measurement Devices), 6 (Survey Activities), 7 (Outfall Structures), 8 (Oil and Gas Structures), 9 (Structures in Fleeting and Anchorage Areas), 10 (Mooring Buoys), 11 (Temporary Recreational Structures), 12 (Utility Line Discharges), 13 (Bank Stabilization), 14 (Road Crossings), 15 (U.S. Coast Guard Approved Bridges), 17 (Hydropower Projects), 19 (Minor Dredging), 20 (Oil Spill Cleanup), 22 (Removal of Vessels), 23 (Approved Categorical Exclusions), 24 (State Administered Section 404 Programs), 25 (Structural Discharges), 27 (Wetland and Riparian Restoration and Creation Activities), 28 (Modifications of Existing Marinas), 30 (Moist Soil management for Wildlife), 32 (Completed Enforcement Actions), 34 (Cranberry Production Activities), 35 (Maintenance Dredging of Existing Basins), 36 (Boat Ramps), 38 (Cleanup of Hazardous and Toxic Waste), and 40 (Farm Buildings).

The specific water quality conditions that must be met by all parties who carry out activities under these certified Nationwide permits are:

- 1) No disposal of construction material, demolition wastes, wastewater, contaminated well water, or any other pollutant is authorized by this certification.
- 2) Construction materials placed within the 100-year flood plain must be free of substances that can cause or contribute to the pollution of waters of the United States. The applicant shall take necessary steps to ensure that contaminated materials are not used for fill within the 100-year flood plain.
- 3) Pollution from the operation, repair, maintenance, and storage of equipment shall be removed from and properly disposed outside the 100-year floodplain. Spills shall be cleaned up and properly disposed of outside the 100-year floodplain. Substances such as fuel, lubricants, solvents, and other hazardous materials should not be stored within this area if they cannot be removed within 12 hours notice of impending flood.
- 4) Water used in dust suppression should not contain contaminants that could violate surface water or aquifer standards.

EPA's action does not apply to activities on the Hoopa Valley Reservation (CA) or the Fort Apache Indian Reservation (AZ), since these tribes are approved certifying authorities for Section 401.



- 5) The applicant shall take necessary steps to minimize channel and bank erosion within waters of the United States during and after construction.
- 6) Runoff from disturbed soils, improvements, and other alterations of the natural environment must not result in a violation of water quality standards.
- 7) No material shall be placed in a way that adversely affects riparian vegetation.
- 8) Work in streams supporting anadromous fish shall occur only when these species are not present.
- 9) A copy of this certification shall be provided to all contractors and subcontractors.
- 10) If there are any substantive changes in the proposed project that may affect water quality, the applicant shall notify EPA. Failure to do so will result in revocation of this certification.
- 11) When water is present, the contractor shall implement all necessary measures to prevent the discharge of any substance into the water created by, arising from, or consequential to construction or demolition activity.

#### 2) Denial of Certification

The Nationwide permits for which we are denying certification are permits 16 (Return Water from Upland Contained Disposal Areas), 18 (Minor Discharges), 21 (Surface Coal Mining Activities), 26 (Headwaters and Isolated Waters Discharges), 29 (Single-Family Housing), 31 (Maintenance of Existing Flood Control Projects), 33 (Temporary Construction, Access and Dewatering), and 37 (Emergency Watershed Protection and Rehabilitation). Applicants for these Nationwide permits in Indian country must also request 401 certification from EPA.

#### 3) Reservation of Certification

EPA has not issued final certification for Nationwide 39 because it is not currently proposed by the Corps. EPA reserves the right to issue, condition, or deny Section 401 certification in Indian Country for this permit if it is assigned in the future.



Certification of Compliance  
with Department of the Army Nationwide Permit

Action Number: 1995 00265

Name of Permittee: U.S. Army Corps of Engineers

Nationwide Permit: No. 14, Road Crossings

Upon completion of the activity authorized by this permit and any mitigation required by the permit, sign this certification and return it to the following address:

District Engineer  
Albuquerque District, Corps of Engineers  
ATTN: Regulatory Branch  
4101 Jefferson Plaza, NE  
Albuquerque, New Mexico 87109-3435

Please note that your permitted activity is subject to a compliance inspection by an Army Corps of Engineers representative. If you fail to comply with this permit you are subject to permit suspension, modification, or revocation.

Please enclose photographs showing the completed project (if available).

I hereby certify that the work authorized by the above referenced permit has been completed in accordance with the terms and conditions of the said permit, and required mitigation was completed in accordance with the permit conditions.

Date Work Started \_\_\_\_\_

Date Work Completed \_\_\_\_\_

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of Permittee



## UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IX

75 Hawthorne Street

San Francisco, CA 94105-3901

November 21, 1997

Mr. Wade Eakle  
U.S. Army Corps of Engineers  
South Pacific Division  
ATTENTION: CESPD-ET-CR  
333 Market Street, Room 923  
San Francisco, California 94105-2195

Re: U.S. Environmental Protection Agency Region IX (EPA) Final Water Quality Certification  
of the U.S. Army Corps of Engineers (Corps) Nationwide Permit (NWP) Program for  
Projects in Indian Country

As you know, Section 401 of the Clean Water Act requires water quality certification for any activity that may result in a discharge to waters of the United States and that requires a Federal permit or license. Any applicant for a Clean Water Act Section 404 permit in Indian Country must obtain water quality certification from EPA or from a tribe that has received approval as the certifying authority. (Only two tribes, the Hoopa Valley Tribe in California and the Fort Apache Tribe in Arizona, have such authority in EPA's Region IX.) In order to certify a NWP, EPA must find that the activities permitted under it will comply with, among other things, water quality standards over the term of the permit.

EPA notified the Corps on February 10, 1997 that we were initially denying 401 water quality certification on all the new NWPs in Indian country. This letter presents our final action on the certification of the Nationwide Permits in Indian country (attached).

Please contact me if you have any questions regarding this decision.

Sincerely,

A handwritten signature in dark ink, appearing to read "Nancy Woo", is written over the typed name.

Nancy Woo, Chief  
Wetlands Regulatory Office

cc: Interested Indian Tribes  
Attachment

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## EPA Region IX

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- 4) Water used in dust suppression should not contain contaminants that could violate surface water or aquifer standards.

EPA's action does not apply to activities on the Hoopa Valley Reservation (CA) or the Fort Apache Indian Reservation (AZ), since these tribes are approved certifying authorities for Section 401.

- 5) The applicant shall take necessary steps to minimize channel and bank erosion within waters of the United States during and after construction.
- 6) Runoff from disturbed soils, improvements, and other alterations of the natural environment must not result in a violation of water quality standards.
- 7) No material shall be placed in a way that adversely affects riparian vegetation.
- 8) Work in streams supporting anadromous fish shall occur only when these species are not present.
- 9) A copy of this certification shall be provided to all contractors and subcontractors.
- 10) If there are any substantive changes in the proposed project that may affect water quality, the applicant shall notify EPA. Failure to do so will result in revocation of this certification.
- 11) When water is present, the contractor shall implement all necessary measures to prevent the discharge of any substance into the water created by, arising from, or consequential to construction or demolition activity.

#### 2) Denial of Certification

The Nationwide permits for which we are denying certification are permits 16 (Return Water from Upland Contained Disposal Areas), 18 (Minor Discharges), 21 (Surface Coal Mining Activities), 26 (Headwaters and Isolated Waters Discharges), 29 (Single-Family Housing), 31 (Maintenance of Existing Flood Control Projects), 33 (Temporary Construction, Access and Dewatering), and 37 (Emergency Watershed Protection and Rehabilitation). Applicants for these Nationwide permits in Indian country must also request 401 certification from EPA.

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**Certification of Compliance  
with Department of the Army Nationwide Permit**

Action Number: 1995 00265

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Upon completion of the activity authorized by this permit and any mitigation required by the permit, sign this certification and return it to the following address:

District Engineer  
Albuquerque District, Corps of Engineers  
ATTN: Regulatory Branch  
4101 Jefferson Plaza, NE  
Albuquerque, New Mexico 87109-3435

Please note that your permitted activity is subject to a compliance inspection by an Army Corps of Engineers representative. If you fail to comply with this permit you are subject to permit suspension, modification, or revocation.

Please enclose photographs showing the completed project (if available).

I hereby certify that the work authorized by the above referenced permit has been completed in accordance with the terms and conditions of the said permit, and required mitigation was completed in accordance with the permit conditions.

Date Work Started \_\_\_\_\_

Date Work Completed \_\_\_\_\_

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of Permittee

November 29, 1999

MEMORANDUM FOR Chief, Regulatory Branch

SUBJECT: Request reevaluation of Section 404 Jurisdictional Determination for the Proposed Reconstruction of Navajo Route 11, McKinley County, New Mexico.

REFERENCE: Authorization No. NM-95-00265.

1. Environmental Branch (EC-R) requests a reevaluation of the Section 404 Jurisdictional Determination for the proposed Navajo Route 11 (N11[1]2&4) project. Project planning has been held-up for over a year. The proposed project was originally authorized under Nationwide Permit No. 26. Because of the time elapsed between initiation of planning and the current date and because of the pending expiration of the Nationwide Permit No. 26, a reevaluation is necessary. The proposed project is scheduled to start construction in the summer of the year 2002. GDE

2. EC-R is preparing to distribute the draft Environmental Assessment (EA) for public review and a copy is attached for your review. The preliminary draft has been reviewed by and comments received from the BIA, Navajo Area Office's Branch of Roads and Environmental Quality Services.

3. Informal consultation was conducted over a year ago for the preparation of the Draft EA. New endangered and protected species lists have been reviewed. There are Navajo concerns for the protection of potential Golden Eagle and Peregrine Falcon habitat in the project area. Conservation measures for these species would include conducting Peregrine Falcon and Golden Eagle presence/absence surveys and reporting.

4. Cultural resource clearance has been given for the project.

5. With available documentation, indications are that this project would have no effect on biological, natural, or cultural resources including vegetation communities, wildlife, and other endangered and special status species, or on air or water quality. There would also be no effect on land use or on social or economic considerations.

6. If you have any questions or need further information please contact Gregory Everhart at 505-342-3352 or myself at 505-342-3351.

*Mark C. Harberg*

MARK C. HARBERG  
Chief, Environmental Branch

Enclosure

DEPARTMENT OF THE ARMY  
ALBUQUERQUE DISTRICT, CORPS OF ENGINEERS

## TRIP REPORT - REGULATORY BRANCH

☒ Field Jurisdiction Determination    ☐ On Site Meeting    Use Investigator's Report  
☐ Environmental Site Review    ☐ Speech/Presentation    for alleged violations

Date/Time of Visit 1:30 July 11, 1995    Date Meeting/Visit Request Received June 26, 1995Evaluator CLARKE    Project: BIA N11 MARJANO LAKE. NM

## 1. Location:

Waterway: Unnamed

Town: Crownpoint    County: McKinley    State: New Mexico

Sec: 21, 29    Twp: 17N    Rge: 13W

## Directions to site:

From Crownpoint take N9 west about 3.6 mile and then go southwest on N11. The project begins at N9 and runs south to N49 west of Marjano Lake.

2. People Present:	Representing:	Address/Phone No.:
Greg Everhart	Environment Sec COE	766-2713
Phil Clayton	" "	766-3225
Louis Clarke	Regulatory Branch COE	766-2776

Information Provided ☐ Brochure    ☐ NWP \_\_\_\_\_ ☐ NWP \_\_\_\_\_☐ Exemption \_\_\_\_\_ ☐ RP \_\_\_\_\_ ☐ Maps \_\_\_\_\_☐ Applications    ☐ Applicant's Guide    ☐ WQ Cert App/Info    ☐ Alternatives; Mods

## 3. Topics Discussed/Presented:

We discussed NW26 and the conditions required to use this existing permit.

## 4. Proposed Work (type/description):

BIA proposes to pave the existing road from N9 to N46 east of Dalton Pass.

## 5. Habitat/Wildlife/Fishery Description:

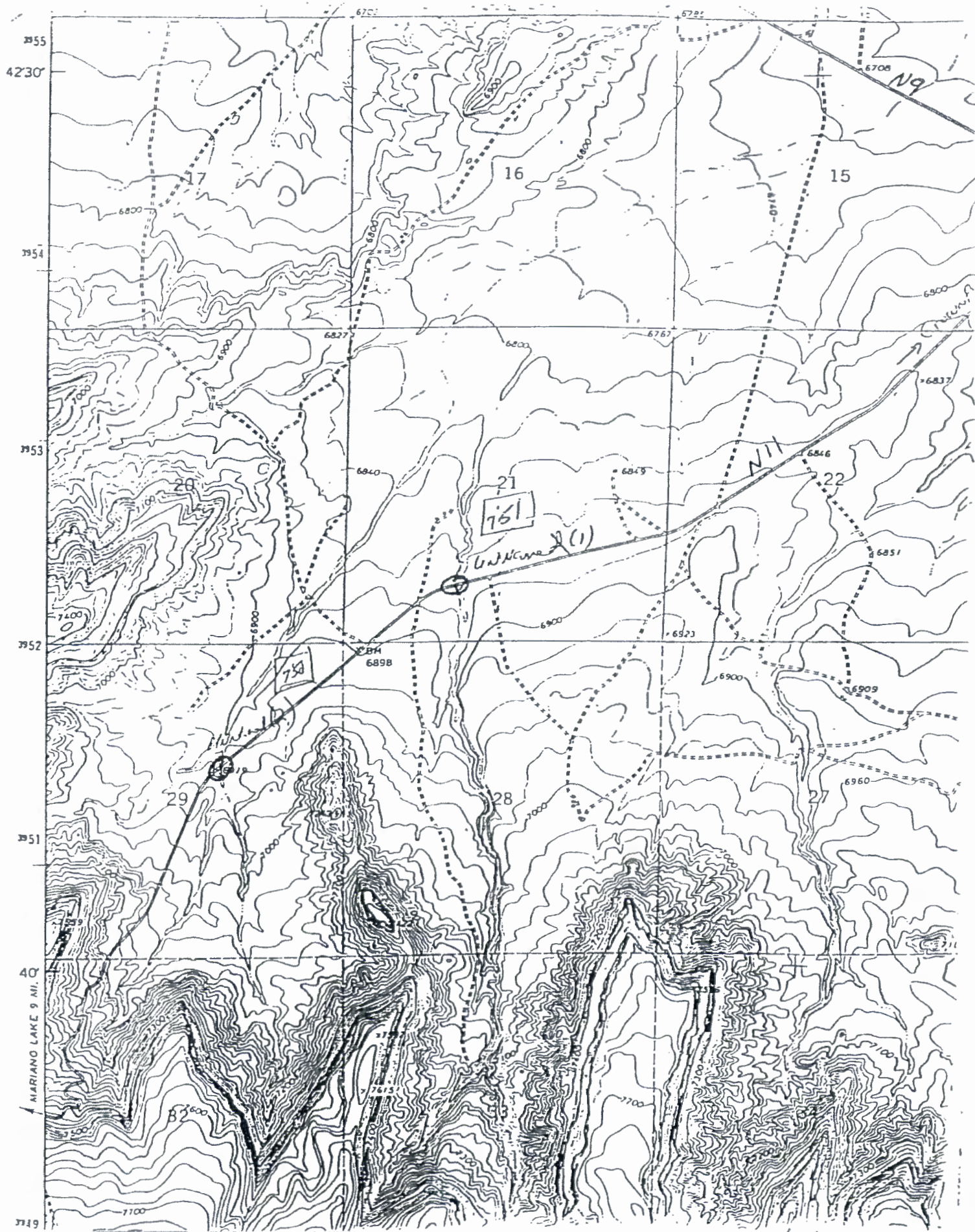
There are two crossings of unnamed arroyos north of Dalton Pass that flow into Indian Creek. The project also crosses the Rio Puerco south of Dalton Pass. The Rio Puerco is intermittent at this location. No wetlands were observed along this stretch of road.

## 6. Potential Effects of Proposed Project and Environment Affected:

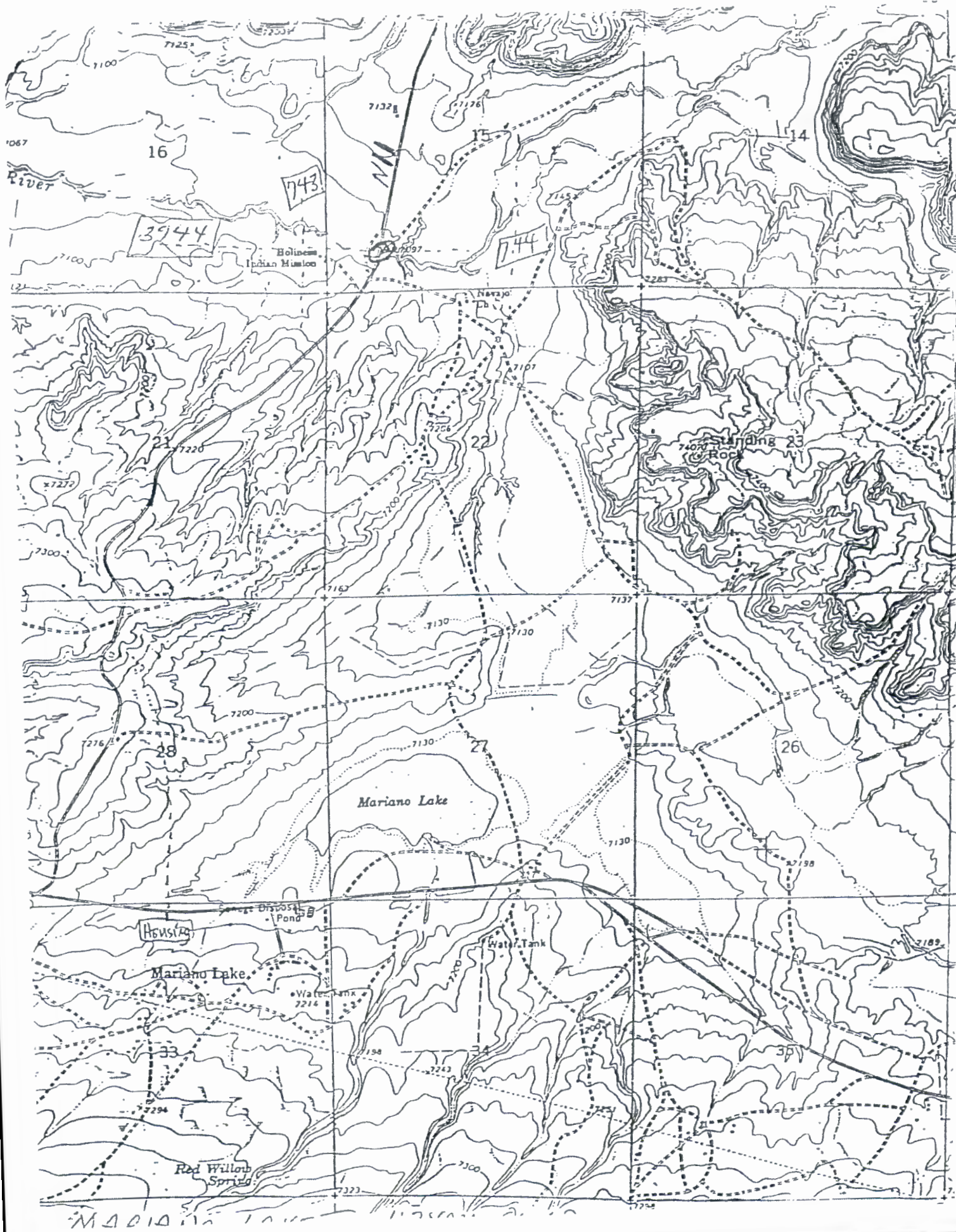
The proposed impacts are considered minor.

7. Determinations:    ☒ Sec. 404    ☐ Sec. 10

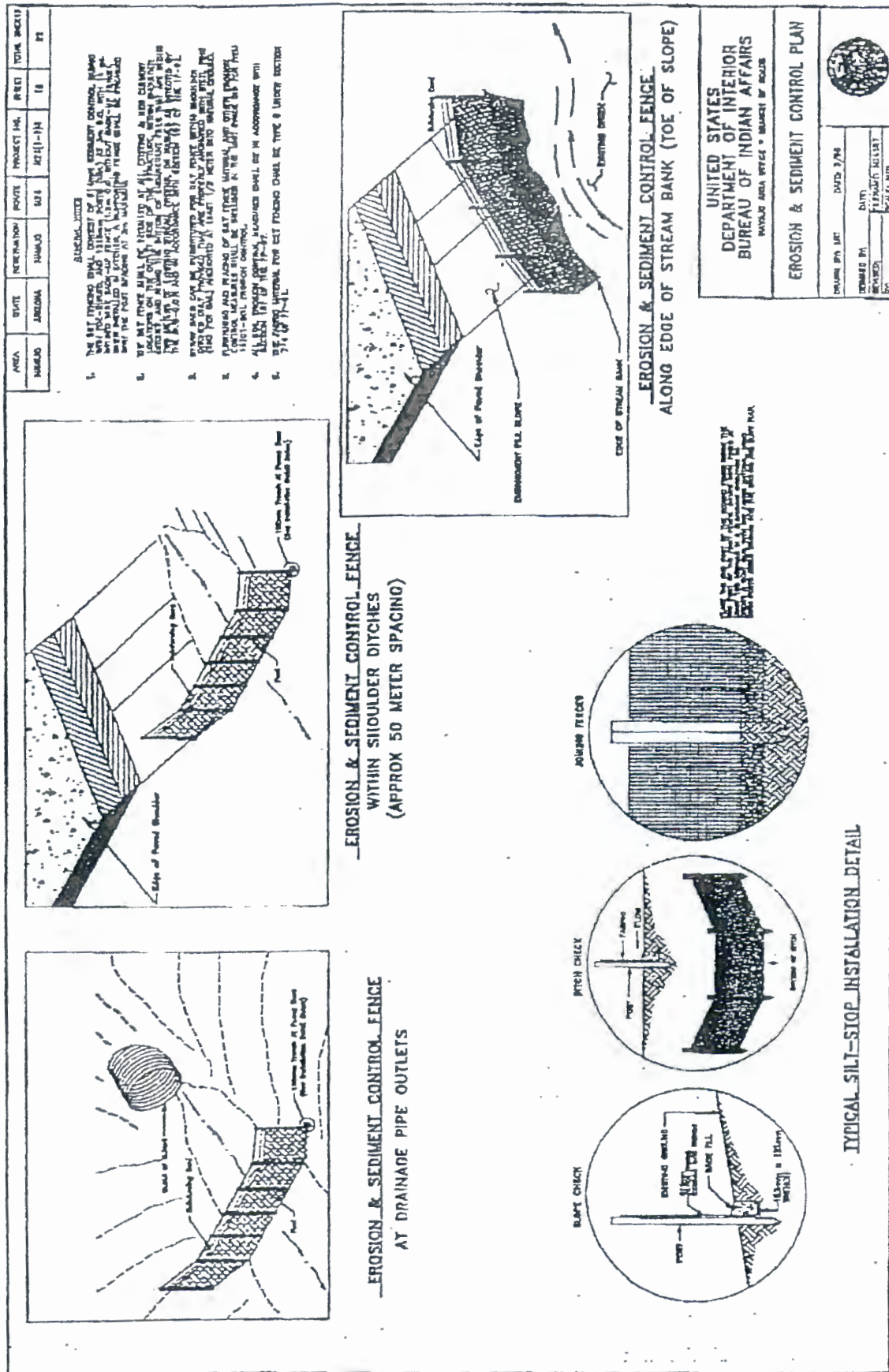








# FIGURE (C)





AOTR will determine the best method for the control of the particular weed species in consultation with the Regional DOT office.

Reclamation and re-vegetation of the work site will use species specified by the specifications. All seed should be certified weed free. The area will be monitored to determine the success of the re-vegetation, and re-vegetation may have to be continued until successful.

Any need for noxious weeds treatment shall be in accordance with section 109.02(m) of the FP-2003.

10. All oils, fuels, lubricants, and hydraulic fluids will be kept in sealed storage containers and or facilities that meet EPA regulations for preventing contamination of the environment. Again a spill prevention plan must be in place.

11. Damage to trees and shrubs outside of the construction limits will be replaced by the Contractor at his expense as directed by the BIA Project Engineer.

12. Parking and staging areas will be limited to the construction limits. Existing roads will be used for detours, storage of equipment, and the hauling of materials and water to the fullest extent possible. The Contractor shall cooperatively work with adjacent land users in the construction and maintenance of the detour road and relocation of structures. Storage areas within the construction limits will utilize existing disturbed areas and be kept as small as possible as authorized in writing by the land owner.

13. The installation of drainage structures will be undertaken in such fashion so as to minimize soil erosion and to provide for a minimum of 610 mm of cover over the pipe as measured from the roadway shoulder.

14. Structural replacements will be performed during periods of low- or no-flow periods to minimize water quality impacts. The Contractor shall install Lined waste pits for concrete or asphalt on the project in a level ground at least 100 feet away from any drainage and outside the construction limits. If these pits are to be located on private property, the Contractor must get permission in writing from the land owner. No dumping of waste concrete will be allowed on the project site except in the lined pits which will immediately be removed from the project once the concrete or asphalt work is finished. Any and all excess concrete and asphalt materials will be disposed of (off site) in accordance to EPA regulations and the FP-2003.

15. The Contractor will acquire water-use and aggregate material permits through the BIA and land owners, and follow all requirements of such permits, including royalties and environmental protection.

16. The Navajo Regional Division of Transportation and construction Contractor will acquire and comply with the following regulations regarding the Federal Clean Water Act:

a) Section 401 & 404 permitting

b) Water Quality (Section 402) Certification

c) National Pollution Discharge Elimination System (NPDES) permit and the Storm Water Pollution Prevention Plan

Notice to Proceed with work that may impact the waters of the US or Navajo Nation will be NOT issued until the 401, 402, 404 and other project permits are in place and the requirements are reviewed and discussed with the contractor.

17. Comply with all mitigation requirements concerning archaeological sites on or near the project site as defined in the compliance documents.



## Section 157. - SOIL EROSION CONTROL

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157.01

### Description.

This paragraph is superseded with the following:

This work consists of developing a **Storm Water Pollution Prevention Plan (SWPPP)**, implementing and maintaining this plan to control erosion, pollution, sediment, and runoff during the construction of the project, use of borrow pit, haul roads, construction yards, and aggregate/soil stockpiles.

157.03

### General.

The second paragraph is superseded with the following:

The storm water pollution, erosion, sediment, and runoff control details in the contract plans reflect special measures to be considered in the SWPPP for the project. The Contractor shall prepare and submit to the NRDOT Manager a SWPPP in compliance with all 401, 402, and NPDES permit applicable requirements (in full details, hand sketches not allowed) and reflecting the requirements in the contract plans and specifications in such detail that the plan will adequately address the potential for erosion of soil and other pollutants into the waters of the USA, on the entire project, due to each phase of the Contractor's grading and drainage operations. The SWPPP must be prepared by a **qualified registered professional engineer or a qualified storm water pollution prevention specialist** with the current certificates and registration incorporated into the SWPPP. The SWPPP shall show measures to control erosion, runoff, sediment, and pollutants and shall further address the following:

1. Measures to be taken at the toe of fill slopes (i.e. silt fencing, straw bales, etc.) that have the potential of eroding into the waters of the USA. This includes all slopes steeper than 1:3. However, this does not preclude the use of erosion control measures taken on slopes flatter than 1:3 depending upon the soil type and it's erosive potential.
2. Measures to be taken in cut sections to preserve the back slopes and shoulder ditches from eroding into the waters of the USA. This includes placement of silt fencing spaced every 200 feet (60 meters) maximum (or as shown on the approved SWPPP) in the cut ditches. Place straw bales along the upper ridge lines of the cut slopes or use of wattles to redirect runoff away from cut slopes. **The use of straw bales in cut ditches is not permitted.** See also subsection 157.04(H).
3. Measures to be taken to protect all live streams, lakes, ponds, creeks, and wetlands from sediment infiltration in accordance with the contract plans and 401, 402/404 permit and other environmental requirements.
4. Details of sediment control structures (facilities) and locations where runoff is temporarily being diverted from its natural course;
  - A. Structures utilizing compacted earth material shall be composed of material free of roots, woody vegetation, excessive rocks, and other objectionable materials. The construction shall be in accordance with section 157.06(b).
  - B. The slopes of any settling basin shall be 1:3 or flatter. All settling basins shall have safety fence (1.2 meters in height snow fence or equivalent) enclosing them.
  - C. Measures for maintaining all sediment control facilities at all times of the day and night.
5. Measures for diversion dikes to be constructed at the end of each day's operation, as necessary, around all drop inlets to divert runoff into existing sediment basins (traps) or into outfall chutes.
6. Measures to install permanent erosion and sediment controls as soon as practical when sections of final grading and drainage work are complete.

7. Other erosion and pollution control measures and permits required due to the nature of the contractor's construction sequencing and procedures including temporary turf establishment, temporary mulching, type of erosion control materials to be used, and installation procedures for such things as (but not limited to) :

- A) protection of soil and aggregate stockpiles.
- B) protection of temporary cut and fill slopes
- C) protection for detour roads.
- D) temporary watering ponds.
- E) protection of top soils.
- F) protection of waters from pollutants

8. A **Construction Sequencing Plan (CSP)** that addresses each phase and location of the grubbing, grading, and drainage work to take place over the course of the contract.

The erosion and pollution control measures installed shall remain in place and be continuously maintained until the permanent measures (i.e. seeding and mulching of slopes, outlet protections, channel lining, etc) are completed. The Contractor can remove any SWPPP features at their discretion once all the permanent erosion control features are in place and accepted for those completed areas of the project as long as the adjustments are still in compliance with the 401 and 404 permit terms and conditions. Failure to properly maintain the SWPPP may result in a violation of the Clean Water Act with possible fines levied by the ACOE & NNEPA/AZ or NM-EPA. The Contractor shall have 5 working days from given notice of non-compliance to correct the problems. Failure to bring the work under this section into compliance within 5 working days of non-compliance notice will be cause for the Government to deduct the prorated share of progress payments for this work from the bid item in the contract for each day the work is in non-compliance until compliance is met including any all fines levied against the government.

If field conditions change as a result of the Contractor's construction operation which causes the SWPPP to be ineffective, then the Contractor shall revise the SWPPP and resubmit for review and approval. No work within the areas of deficiencies, identified by the QC inspector's and COR, shall be allowed until the revised SWPPP is approved and implemented.

Any deviations to the approved SWPPP shall be requested in writing at least 14 calendar days before implementation for review and approval. Minor adjustments in the approved SWPPP are allowed to meet actual field conditions. Any major deviation from the approved SWPPP will result in a notice of violation of the Clean Water Act where fines may be levied by the ACOE and NNEPA.

If the COR finds that the SWPPP is not providing sufficient erosion control protection, the Contractor shall be required to stop all work in the area and revise his SWPPP to address the problems immediately and when the revised SWPPP is approved, immediately implement the changes. Such changes and revisions of the SWPPP is at the entire cost of the Contractor.

Allow 30 calendar days for review and approval of the initial SWPPP in accordance with Subsection 104.03.

**157.04**

**Controls and Limitations on Work.**

The first paragraph is superseded with the following:

Before grubbing and grading work begin, the contractor shall construct all pollution, erosion, and sediment control measures around the area to be worked on including any perimeter erosion and sediment control measures. This shall include the construction of sediment traps, filter barriers, diversion dikes, silt fencing, and settling structures as required by the approved SWPPP.

Paragraph three is superseded with the following:

Construct erosion control and sediment control measures as follows:

- A) Construct temporary erosion controls in incremental stages as construction proceeds in accordance with the **Construction Sequencing Plan (CSP)** and section 157.04, paragraph (2).
- B) Construct temporary slope drains, diversion channels, and earth berms to protect disturbed areas and slopes as reflected in the approved erosion control plan.
- C) Apply permanent turf establishment (i.e. seeding & mulching) in accordance with section 625 on sections of completed slopes and other disturbed areas within 10 days of final grading.
- D) Construct temporary outlet protection on all new and existing culverts and other drainage structures in accordance with the details shown in the contract plans and the approved SWPPP.
- E) Construct permanent erosion controls (as shown in the contract plans and specifications) including waterway linings, slope treatments, gabions, riprap, and permanent sediment traps within 20 days of completion of the roadbed and/or drainage structures.
- F) Apply permanent turf establishment and landscaping to finished slopes and ditches according to section 624 through 629 as required.
- G) Construct and maintain erosion controls on and around all soil and aggregate stockpiles within the project limits to prevent soil loss into the waters of the USA.
- H) During each day's grading operations, shape and roughen all embankment slopes to minimize and control erosion from storm runoff as follows:
  - 1. For cut and fill slopes run a bulldozer or other approved track equipment up and down the slope to create grouser tracks parallel to the roadway leaving small, approximately 2 inch (51mm) in depth valleys in which water can be trapped (see design drawings for further details). This work is an incidental obligation of the contractor under item 15701-0000.
  - 2. Place straw mulch under bid item 15708-1000 (as required) to cover all completed slopes (and other disturbed areas) that cannot be track walked under (1) above. Crimp the mulch by running a crimping tiller up and down the slope or use a polymer tacifier if crimping is not possible. This method of slope protection shall also be used when permanent seeding, under bid item 62510-

1000, cannot be completed within 10 days of final grading. Placing of straw mulch, tacifier, and crimping shall be an incidental obligation of the Contractor under item 15708-1000. The mulch shall be applied at a rate of 4016lbs/Ac (4500kg/ha). Apply tacifier at a rate of between 40-60lbs/Ac (44-67kg/ha) or as recommended by the manufacturer.

157.12

**Inspection and Reporting.**

The first paragraph is superseded with the following:

The qualified Erosion Control Representative (ECR) assigned by the Contractor in writing, responsible for implementation of the SWPPP shall inspect, and report on all erosion control features and facilities at least once every week, within 24 hours after more than 3/8" (10mm) of rain event in a 24-hour period, and as required by the approved SWPPP and/or US EPA permitting requirements. The Contractor Erosion Control Specialist responsible for the preparation of the SWPPP shall perform monthly inspections with the COR and ECR of the project and provide a report of his findings to the COR within 3 days after the inspection.

157.13

**Maintenance and Cleanup.** The third paragraph is superseded with the following:

Remove and dispose of all remaining temporary erosion control measures (SWPPP) two weeks prior to final inspection and clean up all debris. Remove and dispose of erosion control measures according to subsection 203.05.

157.15

**Measurement.**

Add the following:

It is estimated that approximately **300 feet (100meters)** of silt fence, and **100 feet (30meters)** of straw bales and/or wattles or sand bags will be required for the project. However, this does not preclude the Contractor from using any or all of the other measures shown in the design plan details and/or other measures required in the Contractor's SWPPP as a result of the construction sequencing. All those measures required by the approved Contractor's SWPPP shall be included in the unit price bid for Temporary Erosion Control.

Temporary straw mulching shall be measured by the hectare (ha) in place. Any secondary applications or touch ups as directed by the COR shall not be measured for payment but shall be incidental obligations under this item of work.

157.16

**Payments.**

Add the following:

When the bid schedule does not contain a bid item for this work, it shall be considered incidental obligations of the contractor under other bid items of work where no additional payment shall be made.

When soil erosion control is bid by the Lump Sum, payment shall be made as follows:

(A) 25 percent of the Lump Sum, not to exceed 0.5% of the original contract amount shall be paid after all required erosion control measures sufficient to begin construction as determined by the AOTR are in place.

(B) Payment for the remaining portion of the Lump Sum shall be prorated based on the total work completed, provided the additional and necessary erosion control measures are constructed, maintained, and accepted.



Payment will be made under:

Pay Item	Pay Unit
15708-0000 Temporary Erosion Control.....	Lump Sum
15708-1000 Temporary Straw	
Mulching.....	Acre (Ac)

rev:09/01/14

## Appendix C

### Biological Resources of the Construction Area

Corps Reconnaissance Survey Reports

U.S. Fish and Wildlife Service

Navajo Fish and Wildlife Department

Survey Area Map for Raptor Species



## United States Department of the Interior

### FISH AND WILDLIFE SERVICE

New Mexico Ecological Services Field Office  
2105 Osuna NE  
Albuquerque, New Mexico 87113  
Phone: (505) 346-2525 Fax: (505) 346-2542

November 23, 1998

Cons. #2-22-95-I-549

U.S. Army Corps of Engineers  
Albuquerque District  
Attention: CESP-ET-PE (Mr. Greg Everhart)  
4101 Jefferson Plaza NE  
Albuquerque, New Mexico 87109-3435

Re: Navajo Route 11 reconstruction project, McKinley County, New Mexico

Dear Mr. Everhart:

This is in response to your July 28, 1998, letter requesting comments and threatened and endangered species information regarding the proposed reconstruction of Navajo Route 11, located in McKinley County, New Mexico. The project calls for paving and alignment improvements to a portion of the existing Navajo Route 11. The project will require acquiring a 150 foot right-of-way, grading, drainage, flattening the steep vertical curves of the roadway, straitening the roadway for improving sight distances, widening the surface to 28 feet, paving, and bridge replacement. The project is scheduled to begin construction in 2001, with an expected duration of 18 months.

The Corps of Engineers (Corps) had initiated the scoping process for this project in 1995, however, the project was delayed due to other construction priorities. In a phone conversation between Steve Silcox of this office and Mr. Greg Everhart, an extension of time for response was granted pending an on site field trip. Personnel from the Corps of Engineers (Corps) and the U.S. Fish and Wildlife Service (Service) conducted a field trip on November 12, 1998.

Although a site-specific list is unavailable, we have enclosed our list of endangered, threatened, candidate species, and species of special concern that may be found in the project area. If appropriate, authorization from the U.S. Fish and Wildlife Service (Service) for the "take" of endangered or threatened species should be obtained prior to initiating the proposed project in order to avoid potential violations of the Endangered Species Act of 1973, as amended (Act). It is the responsibility of the Federal action agency and/or project proponent to determine whether the proposed action "may affect" or result in take of any listed or proposed species. We recommend that an adequate species specific survey be conducted during the appropriate flowering/breeding season and within suitable habitat to address project-related impacts on these species. Although candidates are not protected under the Act, the Service is

required to monitor their status. If any candidates or species of special concern decline precipitously, they could be listed as endangered or threatened species. Therefore, actions which may contribute to the decline of these species should be avoided.

Regarding fish and wildlife resources, the final Environmental Assessment (EA) should assess fully the impacts of the proposal and its alternatives on species populations and their habitats, with an emphasis on wetlands, waters of the United States, and native wildlife and plants. The EA should clearly state the purpose and need for the project, and should include a thorough description of the development areas that are part of the proposal. A map accurately depicting proposed project features in relation to natural features in the project area also should be included. Wetlands, riparian vegetation, and the listed species' sensitive habitats on or near the site should be protected. If adverse impacts cannot be avoided, we would appreciate discussing your project in more detail.

To avoid detrimental impacts and protect fish and wildlife resources, we recommend that your project plans include the following:

1. Employ silt curtains, cofferdams, dikes, straw bales or other suitable erosion control measures to prevent sediment-laden runoff from entering any watercourse. For backfills, use only uncontaminated earth or alluvium suitable for re-vegetation with indigenous plant species.
2. Contain any poured concrete in forms and/or behind cofferdams to prevent discharge into any watercourse. Contain and treat or remove for off-site disposal any wastewater from concrete batching, vehicle wash-down, and aggregate processing.
3. Scarify compacted soils, replace top soils and revegetate disturbed sites with a mixture of indigenous grasses, forbs, and shrubs to stabilize soils and prevent accelerated erosion. Measures should be developed and implemented to prevent erosion of upland areas, with first preference given to vegetation establishment as a control technique. Revegetate any disturbed areas not required for permanent structures, access routes or other rights-of-way with native vegetation.
4. Use existing maintenance yards to store and service construction equipment. Use existing roads, clearings and rights-of-way for access to construction and borrow sites.
5. If disturbance takes place in or near any watercourse or normal flow channel, place no erodible fill materials below ordinary high water. Water quality should be a concern during and after construction over water courses and intermittent drainages. During construction, water quality should be frequently monitored to ensure compliance with State water quality standards. Precautions should be established to prevent toxic materials from entering the water. After construction, the elevation of the stream bed should be a continuum of the natural grade found above and



below the bridge or drainage structure area. This should prevent excessive hydraulic changes in the water course that could result in bank erosion.

6. Highways and their associated structures can often affect wildlife by preventing easy and safe passage across the roadway. Improperly constructed right-a-way fences can prevent movement of larger animals. The fences should be constructed to allow wildlife passage, under, through or over. To allow passage, the bottom wire should be at least 16 inches above the ground with the top wire 36 inches or lower. A smooth bottom and top wire will also reduce injuries to wildlife. If certain areas are frequently used for migration, passage structures under the highway should be considered. Modification of the top wire with plastic pipes or a wooden beam has also been successful. If wildlife are frequently found dead along highways, then investigations should determine the cause and remedial action taken to prevent mortality.

We suggest you contact the New Mexico Department of Game and Fish and the New Mexico Energy, Minerals and Natural Resources Department for information concerning fish, wildlife, and plants of State concern. Also, you should contact the Navajo Nation Fish and Wildlife Department for information concerning fish, wildlife, and plants of Tribal concern.

For future communication on this project, please refer to consultation #2-22-94-1-476. If we can be of further assistance, please contact Steve Silcox of my staff at (505) 346-2525, extension 143.

Sincerely,



Jennifer Fowler-Propst  
Field Supervisor

Enclosure

cc: (w/o enc)

Navajo Nation Fish and Wildlife Department, Window Rock, Arizona  
Director, New Mexico Department of Game and Fish, Santa Fe, New Mexico  
Chief, New Mexico Environment Department, Surface Water Quality Bureau, Santa Fe,  
New Mexico

NEW MEXICO COUNTY LIST  
ENDANGERED, THREATENED, AND CANDIDATE SPECIES  
AND SPECIES OF CONCERN  
November 23, 1998

McKinley

Black-footed ferret, Mustela nigripes, E  
Fringed myotis, Myotis thysanodes, SC  
Long-eared myotis, Myotis evotis, SC  
Long-legged myotis, Myotis volans, SC  
Occult little brown bat, Myotis lucifugus occultus, SC  
Small-footed myotis, Myotis ciliolabrum, SC  
Spotted bat, Euderma maculatum, SC  
American peregrine falcon, Falco peregrinus anatum, E  
Arctic peregrine falcon, Falco peregrinus tundrius, E (S/A)  
Bald eagle, Haliaeetus leucocephalus, T  
Black tern, Chlidonias niger, SC  
Ferruginous hawk, Buteo regalis, SC  
Loggerhead shrike, Lanius ludovicianus, SC  
Mexican spotted owl, Strix occidentalis lucida, T  
Northern goshawk, Accipiter gentilis, SC  
Southwestern willow flycatcher, Empidonax traillii extimus, E  
Western burrowing owl, Athene cunicularia hypugaea, SC  
White-faced ibis, Plegadis chihi, SC  
Zuni bluehead sucker, Catostomus discobolus yarrowi, SC  
Acoma fleabane, Erigeron acomanus, SC  
Goodding's onion, Allium gooddingii, SC  
Parish's alkali grass, Puccinellia parishii, SC  
Sivinski's fleabane, Erigeron sivinskii, SC  
Zuni (= rhizome) fleabane, Erigeron rhizomatus,

Index

E	=	Endangered
PE	=	Proposed Endangered
PE w/CH	=	Proposed Endangered with critical habitat
T	=	Threatened
PT	=	Proposed Threatened
PT w/CH	=	Proposed Threatened with critical habitat
PCH	=	Proposed critical habitat
C	=	Candidate Species (taxa for which the Service has sufficient information to propose that they be added to list of endangered and threatened species, but the listing action has been precluded by other higher priority listing activities).
SC	=	Species of Concern (taxa for which further biological research and field study are needed to resolve their conservation status)
S/A	=	Similarity of Appearance
*	=	Introduced population
XN	=	Nonessential experimental



THE  
NAVAJO  
NATION

FISH AND WILDLIFE DEPARTMENT, P.O. BOX 1480, WINDOW ROCK, AZ 86515, 520-871-6452

MILTON BLUEHOUSE  
PRESIDENT

26 August 1998

Greg Everhart  
U.S. Army Engineer District, Albuquerque  
Attention: CESPA-ET-PE  
4101 Jefferson Plaza, Northeast  
Albuquerque, NM 87109

SUBJECT: N11 RECONSTRUCTION FROM N9 TO N49 (CROWNPOINT TO MARIANO LAKE)

Mr. Everhart;

The following information on species of concern<sup>1</sup> is provided in response to your 28 July 1998 request concerning the subject project, which consists of paving and alignment improvements to approximately 12.22 miles of N11 between Crownpoint and Mariano Lake, NM.

Species of concern known to occur within one mile of the project site include:

1. Aquila chrysaetos (Golden Eagle); NESL group 3; MBTA; EPA. It is recommended that a survey for active nests be conducted within up to one mile of each side of the road prior to construction to determine impacts, or that construction take place outside the breeding season. For more information contact David Mikesic, NFWF Zoologist, at (520) 871-7638.
2. Waterfowl and shorebird species. Known from Mariano Lake.

Additional species of concern with potential to occur on the 7.5-minute quadrangles (Crownpoint, Dalton Pass, and Mariano Lake) containing the project boundaries include the following. Potential is based primarily on quadrangle-wide coarse habitat characteristics and species range information. Your project biologist should determine habitat suitability at the project site.

3. Aletes macdougalli (MacDougal's aletes). Historic record (1977) known from side canyon of Dalton Pass Canyon.
4. Erigeron acomanus (Acoma fleabane); NESL group 3.
5. Erigeron rhizomatus (rhizome fleabane); NESL group 4; ESA threatened.
6. Erigeron sivinski (Sivinski's fleabane); NESL group 4.
7. Antilocapra americana americana (pronghorn); NESL group 3.
8. Buteo regalis (Ferruginous Hawk); NESL group 3; MBTA.
9. Charadrius montanus (Mountain Plover); NESL group 4; ESA candidate; MBTA.

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<sup>1</sup>Species of concern include protected, candidate, and other rare or otherwise sensitive species, including certain native species and species of economic or cultural significance. For each species, the following tribal and federal statuses are indicated: Navajo Endangered Species List (NESL), federal Endangered Species Act (ESA), Migratory Bird Treaty Act (MBTA), and Eagle Protection Act (EPA). No legal protection is afforded species with only ESA candidate or NESL group 4 status; please be aware of these species during surveys and inform the Navajo Fish and Wildlife Department (NFWF) of observations. Documentation that these species are more numerous or widespread than currently known, and addressing these species in project planning and management is important for conservation and may contribute to ensuring they will not be uplisted in the future. Species without ESA or NESL legal protection (e.g., NESL group 4 species) are only included in responses on an irregular basis and may not be included in this response. Please refer to the NESL for a list of group 4 species; contact me if you need a copy.



10. Empidonax traillii extimus (Southwestern Willow Flycatcher); NESL group 2; ESA endangered; MBTA.
11. Falco peregrinus (Peregrine Falcon); NESL group 3; ESA endangered; MBTA.
12. Mustela nigripes (black-footed ferret); NESL group 2; ESA endangered. Potential should be evaluated if prairie-dog towns of sufficient size (per NFWD guidelines) occur in the project area.
13. Odocoileus hemionus (mule deer). This species is of cultural and economic significance.
14. Rana pipiens (northern leopard frog); NESL group 3.
15. Strix occidentalis lucida (Mexican Spotted Owl); NESL group 3; ESA threatened; MBTA.

Biological surveys should be conducted during the appropriate season. Surveyors on the Navajo Nation must be permitted by the Director, NFWD. Contact Jeff Cole at (520) 871-7068 for permitting procedures. Questions pertaining to surveys should be directed to the NFWD Zoologist (David Mikesic) for animals at 871-7638, and Botanist (Daniela Roth) for plants at 871-7639.

Potential impacts to wetlands should also be evaluated. The U.S. Fish & Wildlife Service's National Wetlands Inventory maps should be examined to determine whether areas classified as wetlands are located close enough to the project site to be impacted. In cases where the maps are inconclusive (e.g., due to their small scale), field surveys must be completed. For field surveys, wetlands identification and delineation methodology contained in the "Corps of Engineers Wetlands Delineation Manual" (Technical Report Y-87-1) should be used. When wetlands are present, potential impacts must be addressed in an environmental assessment in compliance with the Clean Water Act.

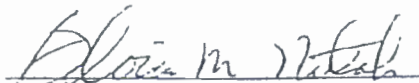
The information in this report was identified by the NFWD's biologists and computerized database, and is based on current data. It should not be regarded as the final statement on the occurrence of any species, nor should it substitute for on-site surveys. Also, because the NFWD's information is continually updated, any given information response is only wholly appropriate for its respective request.

If you have any questions I may be reached at (520) 871-7603.



Annette Nystedt, Data Manager  
Natural Heritage Program  
Navajo Fish and Wildlife Department

#### CONCURRENCE



Gloria Notah, Director  
Navajo Fish and Wildlife Department

xc: file/chrono

Gerri J. Harrison, Legal Counsel, Office of the President

16 March 1996

MEMORANDUM FOR RECORD

SUBJECT: Navajo Route 11, Potential Mexican Spotted Owl Habitat Survey/Trip Report,  
southwest of Crownpoint, McKinley County, New Mexico

1. On March 12, 1996, an reconnaissance survey was conducted for potential Mexican Spotted Owl habitat along the existing N11 route, at a point on the north slope of Mesa de los Lobos approximately 5 miles southwest of Crownpoint, McKinley County, New Mexico.

2. Field Trip Attendees.

Representing the U.S. Army Corps of Engineers (Corps), Albuquerque District was:  
Mr. Gregory D. Everhart                      Environmental Section                      (505) 342-3352

Representing the Navajo Nation Biological Survey Services Program was:  
Mr. Rick Winslow                      (520) 871-7064

3. This survey was conducted to determine if there is potential Mexican Spotted Owl habitat on the north slope of Mesa de los Lobos within one mile of the existing Navajo Route 11 roadway where proposed rehabilitation construction is being planned. Prior to conducting fieldwork, animal and plant species lists from the U.S. Fish and Wildlife Service, New Mexico Department of Game and Fish, New Mexico Department of Energy, Minerals, and Natural Resources, and the Navajo Nation Fish and Wildlife Department were reviewed along with information on available habitat, habitat preferences, and known ranges. Mexican Spotted Owl is not known to occur in the immediate area. No Federal, State, or Navajo listed, proposed, or candidate plant or animal species were observed in the proposed project area during this survey. However, whitewash and nests along the cliff face in the vicinity provided evidence that raptor species utilize the area.

4. March 12, 1997, was a clear, cool, mild day. The area surveyed is located about 5 to 6 miles southwest of Crownpoint, New Mexico. The majority of the area is pinyon-juniper habitat with an expanse of grassland to the north of the survey area. Wildlife observed during the reconnaissance survey included a Common Raven (*Corvus corax*), Bluebirds (? Western or Mountain- *Sialia mexicana* or *Sialia currucoides*), and some unidentified Swallows were noted flying near a highway bridge south of Crownpoint. No mammals, amphibians, or reptiles were observed. There are no wetlands or perennial streams in the immediate vicinity and therefore, no fish.

At a point near the top of the Mesa de los Lobos crest, Mr. Winslow and I hiked to a micro habitat area of mixed conifer located about 1/4 mile east of the N11 roadway. This area, although very small, could provide habitat for raptor species. Discussions lead to the agreement that habitat in the proposed project area could support raptor species such as Golden Eagle, Sharp-shinned Hawk, Cooper's Hawk, Northern Goshawk, Peregrine Falcon, and Mexican Spotted Owl. It was also agreed that surveys for listed T & E raptor species should be conducted during the planning phase of the proposed project, immediately before the commencement of construction as per survey protocol.

gde

21 July 1995

## MEMORANDUM FOR RECORD

SUBJECT: Initial Trip Report for N11

1. On 11 July 1995, an initial reconnaissance trip was conducted for BIA/ Navajo Roads Project N11, which runs from a location beginning approximately three miles west of Crownpoint, and proceeding southwest for approximately 12.2 miles, to a point about one west of Mariano Lake, all in New Mexico.

2. Representing the Corps of Engineers (COE) were:

Mr. Gregory D. Everhart	Environmental Section	(505) 766-2713
Mr. Phil Clayton	Environmental Section	(505) 766-3225
Mr. Lewis Clarke	Regulatory Branch	(505) 766-5501

3. About 2 1/2 miles south of the intersection of Navajo Route 9/11, is a dry wash located approximately at UTM Zone 12, 750908 E, 3952262 N. Approximately one mile further is another dry wash at about UTM Zone 12, 749793 E 3951376 N. Both of these dry washes flow to the north, off of the large mesa which lies south and southwest of Crownpoint. Both of the washes are also considered as Headwaters by COE Regulatory Branch.

From about Station 399 to about Station 427, is portion of the road that goes up the north side of the mesa. This portion of the road is steep and currently has several tight curves.

Note: I was very surprised at the amount of traffic on the road, which seemed like a lot, while we were there. Traffic counters had been installed at several locations along N11.

At Station 190, there is a place along the roadway where an arroyo approaches very close to the side of the roadway. I would recommend that guard railing be installed for several hundred yards along this hazardous location.

Approximately 2 1/2 miles north of Mariano Lake, the N11 roadway crosses the Puerco River, which is more like a large, steep walled arroyo (with a large corrugated steel culvert) at this location of about UTM Zone 12, 743234 E, 3943955 N. COE Regulatory Branch indicates that the Puerco River is intermittent at this location.

The existing N11/N49 junction is located about one mile west of the community of Mariano Lake, and is just east of a small hill top which blocks the view of oncoming traffic in on both sides of the

small hill, creating a traffic hazard area. The proposed intersection is located about 1/2 mile further east of the existing intersection. The proposed intersection location (for N11 going to the north) is very near the entry roadway, going to the south, leading to a housing unit complex. This location allows for good visual distance from both directions.

COE biologist Phil Clayton indicated that there were no plant species of concern in the area of the N11 project. There were no wetlands observed along the existing roadway or in the area near the proposed (about one mile) roadway realignment which leads to the new intersection location near Mariano Lake. The day of our survey, the weather was clear and hot, about 100°F. We therefore did not see much wildlife. We did see bluebirds, crows and turkey buzzards. Most of the project area is a scattered pinyon/juniper woodland with sagebrush, fourwing saltbush, and grasses. No Federally listed, proposed, or candidate species, or Navajo Endangered species list flora or fauna were observed in the N11 project area.

gde



July 20, 1995

To: Greg Everhart, Biologist, ED-PE

From: Philip Clayton, Biologist, ED-PE

Subject: Plant Surveys for BIA Road Projects: Ojo Encino N474(3)  
and Mariano Lake N11

A plant survey was conducted for Navajo Route N474 on 7/11/95. This project occurs in the southwestern corner of Sandoval County, New Mexico, near the corner of the Jicarilla Apache Reservation. Forty five species were observed during the course of my survey.

Asteraceae - aster family

- 1) *Artemisia dracunculoides* - false tarragon
- 2) *A. tridentata* - big sagebrush
- 3) *Carduus nutans* - muskthistle
- 4) *Chrysothamnus nauseosus* - rabbitbrush
- 5) *Erigeron* spp. - fleabane aster
- 6) *Franeria* spp. - bursage
- 7) *Gutierrezia microcephala* - broom snakeweed
- 8) *Tragopogon* spp. - salsify
- 9) *Verbesina encelioides* - cowpen daisy
- 10) *Xanthium strumarium* var. *canadense* - cocklebur

Brassicaceae - mustard family

- 1) unknown mustard with perfoliate leaves

Cactaceae - cactus family

- 1) *Coryphantha vivipara* - beehive cactus
- 2) *Echinocereus triglochidiatus* var. *gonacanthus* - claretcup
- 3) *Opuntia erinacea* - Utah prickly pear
- 4) *O. whipplei* - Whipple cholla

Capparidaceae - caper family

- 1) *Cleome serrulata* - Rocky Mountain bee plant

Chenopodiaceae - goosefoot family

- 1) *Atriplex canescens* - fourwing saltbush
- 2) *Kochia scoparia* - summer cypress
- 3) *Salsola kali* var. *tenuifolia* - Russian thistle

Convolvulaceae - morninglory family

- 1) *Convolvulus arvensis* - bindweed

Cupressaceae - cypress family

- 1) *Juniperus monosperma* - oneseed juniper

Euphorbiaceae - spurge family

- 1) *Euphorbia prostrata* - prostrate spurge

Fabaceae - pea family

- 1) *Astragalus mollissimus* - wooly locoweed
- 2) *Petalostemum candidum* var. *candidum* - white prairie clover

Lamiaceae - mint family

- 1) *Marrubium vulgare* - horehound

Liliaceae - lily family

- 1) *Calochortus flexuosus* - wavyleaf mariposa
- 2) *Yucca glauca* - soapweed yucca

Malvaceae - mallow family

- 1) *Sphaeralcea* spp. - globemallow

Nyctaginaceae - four o'clock family

- 1) *Mirabilis multiflora* - desert four o'clock
- 2) *Tripterocalyx cyclopterus* - no common name

Pinaceae - pine family

- 1) *Pinus edulis* - pinyon

Poaceae - grass family

- 1) *Aristida* spp. - threeawn
- 2) *Bouteloua gracilis* - blue grama
- 3) *Bromus* spp. - brome grass
- 4) *Hilaria jamesii* - galleta
- 5) *Oryzopsis hymenoides* - indian ricegrass
- 6) *Sitanion hystrix* - squirreltail
- 7) *Sporobolus crytandrus* - sand dropseed
- 8) *Sporobolus airoides* - alkali sacaton
- 9) *Stipa* spp. - needlegrass

Polygonaceae - smartweed family

- 1) *Polygonum* spp. - an unknown, prostrate smartweed

Scrophulariaceae - figwort family

- 1) *Castilleja chromosa* - paintbrush
- 2) *Cordylanthus* spp. - birdbeak
- 3) *Penstemon* spp. - beardtongue

Solanaceae - nightshade family

- 1) *Solanum rostratum* - buffalobur

**Results:** No Federally listed, proposed, or candidate species, or Navajo Endangered Species List plants were observed within the N474 project area.

**Comments:** Aridity, high temperatures, and low annual precipitation, restrict plant growth within the project area. The dominant plant community is a Great Basin desert grassland with a minor mixed conifer component. Severe overgrazing has occurred within the area during the past and is evident by weedy, invasive species such as Russian thistle (tumbleweed), cocklebur, cowpen daisy, summer cypress, and brome grass. Erosion by wind and water are evident along the existing N474 roadway. Soils within the project area are sandy to a sandy loam.

**Animals observed during the course of my survey:** Western burrowing owl and Gunnison's white tailed prairie dog were observed at UTM coordinates 28269.0 E and 3987599 N, zone 13, and within 100 foot of the existing roadway.

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A plant survey was conducted for Navajo Route N11 on 7/11/95. This project occurs west of Crownpoint in McKinley County, New Mexico. Eighteen species were observed during the course of my survey.

Anacardiaceae - sumac family

- 1) *Rhus trilobata* - skunkbush sumac

Asteraceae - aster family

- 1) *Artemisia tridentata* - big sagebrush
- 2) *Chrysanthamnus nauseosus* - rabbitbrush
- 3) *Gutierrezia microcephala* - broom snakeweed

Capparidaceae - caper family

- 1) *Cleome serrulata* - Rocky Mountain bee plant

Chenopodiaceae - goosefoot family

- 1) *Atriplex canescens* - fourwing saltbush
- 2) *Kochia scoparia* - summer cypress
- 3) *Salsola kali* var. *tenuisecta* - Russian thistle
- 4) *Sarcobatus vermiculatus* - greasewood

Cupressaceae - cypress family

- 1) *Juniperus monosperma* - oneseed juniper

Fagaceae - beech family

- 1) *Quercus* spp. - oak

Liliaceae - lily family

- 1) *Yucca baccata* - banana yucca

Nyctaginaceae - four o'clock family

- 1) *Mirabilis multiflora* - desert four o'clock

Pinaceae - pine family

- 1) *Pinus edulis* - pinyon

Poaceae - grass family

- 1) *Bromus* spp. - brome
- 2) *Oryzopsis hymenoides* - indian ricegrass

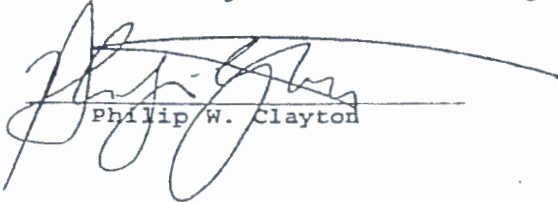
Rosaceae - rose family

- 1) *Cercocarpus montanus* - mountain mahogany
- 2) *Fallugia paradoxa* - apache plume

Results: No Navajo Endangered Species List plants and no Federally listed, proposed, or candidate species were observed within the N11 project area.

STATEMENT OF BONA FIDES

I certify that these surveys were conducted on July 11, 1995, and that the information provided in these reports is accurate and true.

  
Philip W. Clayton

  
Date

## Survey Area Map for Mexican Spotted Owl and Diurnal Raptors

### Location of Survey Area.

The area requiring surveys is located southwest of the community of Crownpoint, McKinley County, New Mexico, in the northwest portion of the state. The survey area includes all suitable habitat for the Mexican Spotted Owl, American and Arctic Peregrine Falcon, Ferruginous Hawk, and Golden Eagle that is located within one mile on either side of the N11 roadway (see attached map). The starting point of the survey area is located where the N11 roadway crosses into the northwest corner of Section 28 and the northeast corner of Section 29, Township 17 North, Range 13 West, as mapped on the USGS Crownpoint 7.5 Minute Quadrangle Map. To reach this point from Crownpoint, travel approximately 2.5 miles northwest of Crownpoint on Navajo Route 9 to the intersection with N11; turn south (left) onto N11, proceed southwest for approximately 3.0 miles. The survey area continues along the N11 route in Section 29, the northwest portion of Section 32, and through the east-central portion of Section 31. The survey area encompasses portions of Sections 20, 28, 29, 30, 31, 32, and 33 of T. 17 N., R. 13 W. and small portions of Sections 5 and 6, T. 16 N., R. 13 W. The survey end point is located on the N11 roadway near the center of Section 31, on the USGS Dalton Pass 7.5 Minute Quadrangle Map.



DALTON PASS, N. MEX.

N3537.5-W10815.7.5

1963

AMS 4355 III NE-SERIES V881

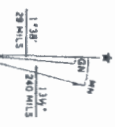
CROWNPOINT, N. MEX.

N3537.5-W10807.5/7.5

1963

AMS 4355 II NW-SERIES V881

UTM GRID AND 1963 MAGNETIC NORTH DECLINATION AT CENTER OF SHEET



QUADRANGLE LOCATION



SURVEY AREA MAP  
FOR MEXICAN SPOTTED OWL AND DIURNAL RAPTORS

Survey Area →

To Mariano Lake

To Crownpoint



## Survey Area Map for Mexican Spotted Owl and Diurnal Raptors

### Location of Survey Area.

The area requiring surveys is located southwest of the community of Crownpoint, McKinley County, New Mexico, in the northwest portion of the state. The survey area includes all suitable habitats for the Mexican Spotted Owl, American and Arctic Peregrine Falcon, Ferruginous Hawk, and Golden Eagle that is located within one mile on either side of the N11 roadway (see attached map). The starting point of the survey area is located where the N11 roadway crosses into the northwest corner of Section 28 and the northeast corner of Section 29, Township 17 North, Range 13 West, as mapped on the USGS Crownpoint 7.5 Minute Quadrangle Map. To reach this point from Crownpoint, travel approximately 2.5 miles northwest of Crownpoint on Navajo Route 9 to the intersection with N11; turn south (left) onto N11, proceed southwest for approximately 3.0 miles. The survey area continues along the N11 route in Section 29, the northwest portion of Section 32, and through the east-central portion of Section 31. The survey area encompasses portions of Sections 20, 28, 29, 30, 31, 32, and 33 of T. 17 N., R. 13 W. and small portions of Sections 5 and 6, T. 16 N., R. 13 W. The survey end point is located on the N11 roadway near the center of Section 31, on the USGS Dalton Pass 7.5 Minute Quadrangle Map.

RECEIVED

MAR 30 2016

NNDFW Review No. 16BIA01dot

Navajo Region  
Division of Transportation

BIOLOGICAL RESOURCES COMPLIANCE FORM  
NAVAJO NATION DEPARTMENT OF FISH AND WILDLIFE  
P.O. BOX 1480, WINDOW ROCK, ARIZONA 86515-1480

It is the Department's opinion the project described below, with applicable conditions, is in compliance with Tribal and Federal laws protecting biological resources including the Navajo Endangered Species and Environmental Policy Codes, U.S. Endangered Species, Migratory Bird Treaty, Eagle Protection and National Environmental Policy Acts. This form does not preclude or replace consultation with the U.S. Fish and Wildlife Service if a Federally-listed species is affected.

PROJECT NAME & NO.: Navajo Route 11 or N 11(1A)(1B) 1, 2&4

DESCRIPTION: NRDOT is acquiring ROW on segments of NR11 that pass through Indian Allotment in order to rehabilitate the existing N11 dirt roadway. The road is 12.14 miles in length and the ROW width would be 150 ft. (75 ft. left and right of the centerline). Rehabilitation would include asphalt paving, pavement markings, guardrails, signage, livestock crossings or cattle guards, and ROW fencing. Construction would not occur until federal & tribal T&E species consultation is completed.

LOCATION: Navajo Route 11, Mariano Lake & Crownpoint Chapters, McKinley County, New Mexico

REPRESENTATIVE: Lucero, Raymond, BIA, NRDOT

ACTION AGENCY: Bureau of Indian Affairs, Navajo Regional Office Division of Transportation (NRDOT)

B.R. REPORT TITLE / DATE / PREPARER: Request for review and concurrence/09 MAR 2016/Raymond Lucero

SIGNIFICANT BIOLOGICAL RESOURCES FOUND: Area 1 & 3.

POTENTIAL IMPACTS

NESL SPECIES POTENTIALLY IMPACTED: NA

FEDERALLY-LISTED SPECIES AFFECTED: NA

OTHER SIGNIFICANT IMPACTS TO BIOLOGICAL RESOURCES: NA

AVOIDANCE / MITIGATION MEASURES: NA

CONDITIONS OF COMPLIANCE\*: NA

FORM PREPARED BY / DATE: Pamela A. Kyselka/24 MAR 2015

COPIES TO: (add categories as necessary)

☐ \_\_\_\_\_ ☐ \_\_\_\_\_

2 NTC § 164 Recommendation:

Signature

Date

☒ Approval

☐ Conditional Approval (with memo)

☐ Disapproval (with memo)

☐ Categorical Exclusion (with request letter)

☐ None (with memo)

*Gloria M. Tom*

3/25/16

Gloria M. Tom, Director, Navajo Nation Department of Fish and Wildlife

\*I understand and accept the conditions of compliance, and acknowledge that lack of signature may be grounds for the Department not recommending the above described project for approval to the Tribal Decision-maker.

Representative's signature

Date



## Appendix D

Documentation of Cultural Resources and Traditional Cultural Properties  
of the Construction Area

Compliance Form(s)/Coordination Documentation



NAVAJO NATION

Division of Natural Resources

Historic Preservation Department—Roads Planning Program

P.O. Box 6028

Shiprock, New Mexico 87420-6028

KELSEY A. BEGAYE  
PRESIDENT

May 5, 1999

TAYLOR MCKENZIE, M  
VICE PRESIDENT

Gregory Everhart  
Army Corps of Engineers  
4101 Jefferson Plaza, NE  
Albuquerque, New Mexico 87109

ATTN: Environmental Resource Branch

Dear Mr. Everhart;

Please find attached a copy of NNHPD's Cultural Resources Compliance Form on the Navajo Route 11 A (1) project near Crownpoint, New Mexico. The form was completed before Phase II testing was carried out by Zuni Cultural Resource Enterprise (ZCRE). Since then, ZCRE has completed field work (August, 1997) and has submitted a report for review (April, 1998). A final copy of that report is due at the end of May. The next phase of work will involve full data recovery (Phase III). We hope to have the BIA-BOR fund this project by the end of August so that field work can be completed by construction year 2000. Jim Kendrick at ZCRE can provide you with a copy of the assessment report without the confidential appendices we talked about.

If you have any questions or need further assistance please call me at (505) 368-1061.

Sincerely,

Peter J. Kakos, Archaeologist and Contract Administrator  
Navajo Nation Historic Preservation Department  
P.O. Box 6028  
Shiprock, New Mexico 87420-6028

PJK/pk: S99-119  
Attachment: compliance form  
xc: N11 contract file  
SR chrono



# THE NAVAJO NATION

ALBERT A. HALE  
PRESIDENT

NAVAJO NATION HISTORIC PRESERVATION DEPARTMENT  
ROADS PLANNING PROGRAM  
214 East Nizhoni Blvd.  
Gallup, New Mexico 87301

THOMAS E. ATCITTY  
VICE PRESIDENT

March 20, 1997

ATTENTION: Signatories to the Navajo Nation Historic Preservation Department-Roads Planning Program  
Programmatic Agreement

RE: NNHPD 96-038: "A Cultural Resource Inventory and Testing Plan for the Proposed Improvement of Navajo Route N11(A)1, Mariano Lake to Route 9, McKinley County, New Mexico," (Zimmerman and Abbot 1996).

Pursuant to Stipulation 3(f) and 5 of "A Programmatic Agreement among the Navajo Nation, The Bureau of Indian Affairs-Navajo Area Office, the Advisory Council on Historic Preservation, the Arizona State Historic Preservation Officer, the New Mexico State Historic Preservation Officer, and the Utah State Historic Preservation Officer for Cultural Resource Management Projects Conducted Under the Auspices of the Navajo Nation Historic Preservation Department, Roads Planning Section within the Boundaries of the Navajo Nation," the enclosed report and Cultural Resource Compliance Form (CRCF) are provided for your review.

If we do not receive comments from you within 30 days, we will assume you have no objection to this determination. Should you have any questions, please contact Peter J. Kakos, Archaeologist III, or Reid Nelson, Program Manager, at (505) 863-9349.

Sincerely,

Reid Nelson, Program Manager  
Navajo Nation Historic Preservation Department-Roads Planning Program

JN/pk 97-031  
ac: Claudia Nissley, ACHP  
Lynne Sebastian, NM-SHPO  
Wilfred Frazier, BIA-BOR-NAO  
Leigh Kuwanwisiwma, Hopi Tribe  
Joseph Dishta, Pueblo of Zuni  
Ron Shutiva, Governor, Pueblo of Acoma  
Roland Johnson, Governor, Pueblo of Laguna  
Gabriel Galvan, Governor, Pueblo of Zia  
Peter Noyes, Program Manager, NNHPD-CRCS  
BLM  
InterAgency Management Group

CULTURAL RESOURCES COMPLIANCE FORM  
HISTORIC PRESERVATION DEPARTMENT  
PO BOX 4950  
WINDOW ROCK, ARIZONA 86515

ROUTING: COPIES TO

NNHPD NO. HPD-96-038New Mexico

SHPO

OTHER PROJECT NO.

X

ACHP

ZCRE-023-94X

REAL PROPERTY MGT/330

ZCRE Report No.485X

BIA-NAO-BOR (Attn: Burt Lesser)

X

John Lovejoy, BIA-BOR, Eastern Agency

X

HPD-Roads Planning, Shiprock Field Office

X

Pueblo of Acoma, Governor's Office

X

Pueblo of Zia, Governor's Office

X

Pueblo of Zuni, Heritage and Historic Preservation Office

X

Pueblo of Laguna

X

The Hopi Tribe, Cultural Preservation Office

X

InterAgency Management Group

X

Bureau of Land Management

PROJECT TITLE: (a.) A Cultural Resource Inventory and Testing Plan for the Proposed Improvement of Navajo Route N11(A)1, Mariano Lake to Route 9, McKinley County, New Mexico (Zimmerman and Abbott 1996).

LEAD AGENCY: Bureau of Indian Affairs, Navajo Area Office

SPONSOR: Wilfred Frazier, Bureau of Indian Affairs, Navajo Area Office, Branch of Roads

PROJECT DESCRIPTION: The undertaking will include the realignment, construction and paving of Navajo Route N11(A)1. This undertaking will involve construction along approximately 12.21 miles (19.66 km) of N11(A)1, with a right-of-way width of 150 feet (45.72m). The road construction project of N11 begins near its intersection with Route 49 from Mariano Lake at BOP Station No. 0+75.20 to Route 9 at EOP Station No. 645+48.11. During the course of the proposed undertaking extensive ground disturbance is anticipated with the use of heavy equipment.

LAND STATUS: Navajo Tribal Trust, Allotment, BLM, Private.

CHAPTER: Mariano Lake and Crownpoint

## LOCATION:

B.O.P. NE 1/4 Section 33, Township 16 North, Range 14 West

E.O.P. SW 1/4 Section 14, Township 17 North, Range 13 West

PROJECT ARCHAEOLOGIST (S): (a.) Alicia Abbott, Jason Weekooty, Davis Nieto;

PROJECT ETHNOGRAPHER (S): (a.) David Zimmerman, Carmelita Topaha.

NAVAJO ANTIQUITIES PERMIT NO.: B9544-B5; BLM Permit No. 51-2920-94N

DATE INSPECTED: (a.) 22 May to June 8, 1995 and 19 June to 4 July 1995.

DATE OF REPORT: (a.) February 1996

TOTAL ACREAGE INSPECTED: (a.) 222.01 acres (89.92 ha.)

## METHOD OF INVESTIGATION:

Archaeology: Class III pedestrian inventory with transects spaced no more than 15 meters apart.

Ethnography: Interviews with local residents, knowledgeable individuals, and



CULTURAL RESOURCE COMPLIANCE FORM  
HPD-96-038 PAGE 2

chapter officials.

LIST OF CULTURAL RESOURCES FOUND:  
Twenty-three (23) sites.  
One (1) in-use property.  
One (1) historic burial.  
Eighteen (18) isolated occurrences.

## LIST OF ELIGIBLE PROPERTIES:

NM-Q-27-13 (LA 110304)  
NM-Q-27-14 (LA 110306)  
NM-Q-27-15 (LA 110307)  
NM-Q-22-45 (LA 110308)  
NM-Q-22-46 (LA 110309)  
NM-Q-22-47 (LA 110310)  
NM-Q-22-48 (LA 110311)  
NM-Q-22-49 (LA 110312)  
NM-Q-22-50 (LA 110313)  
NM-Q-22-51 (LA 110314)  
NM-Q-22-52 (LA 110315)  
NM-Q-22-53 (LA 110316)  
NM-Q-22-54 (LA 110317)  
NM-Q-23-55 (LA 110318)  
NM-Q-23-56 (LA 110319)  
NM-Q-23-57 (LA 110320)  
NM-Q-23-58 (LA 110322)  
NM-Q-23-59 (LA 110323)  
NM-Q-23-60 (LA 38698)  
NM-Q-23-61 (LA 110324)  
NM-Q-23-62 (LA 110325)  
NM-Q-23-63 (LA 110326)  
NM-Q-23-64 (LA 110327)

LIST OF NON-ELIGIBLE PROPERTIES:  
N11-B-1 (Historic Burial)  
ZCRE-N11-IUP-1 (In-Use Property)  
Eighteen (18) Isolated Occurrences

## LIST OF ARCHAEOLOGICAL RESOURCES:

NM-Q-27-13 (LA 110304)  
NM-Q-27-15 (LA 110307)  
NM-Q-22-45 (LA 110308)  
NM-Q-22-48 (LA 110311)  
NM-Q-22-49 (LA 110312)  
NM-Q-22-50 (LA 110313)  
NM-Q-22-51 (LA 110314)  
NM-Q-22-52 (LA 110315)  
NM-Q-22-53 (LA 110316)  
NM-Q-22-54 (LA 110317)  
NM-Q-23-55 (LA 110318)  
NM-Q-23-56 (LA 110319)  
NM-Q-23-58 (LA 110322)  
NM-Q-23-59 (LA 110323)  
NM-Q-23-60 (LA 38698)  
NM-Q-23-62 (LA 110325)  
NM-Q-23-63 (LA 110326)  
NM-Q-23-64 (LA 110327)

EFFECT/CONDITIONS OF COMPLIANCE: Pursuant to Stipulation 3 of A Programmatic Agreement Among the Navajo Nation, the Bureau of Indian Affairs-Navajo Area Office, the Advisory Council on Historic Preservation, the Arizona State Historic

CULTURAL RESOURCE COMPLIANCE FORM  
HPD-96-038 PAGE 3

*Preservation Officer, the New Mexico State Historic Preservation Officer, and the Utah State Historic Preservation Officer for Cultural Resource Management Projects Conducted Under the Auspices of the Navajo Nation Historic Preservation Department, Roads Planning Section, Within the Boundaries of the Navajo Nation, the Navajo Nation has determined that the project will have no adverse effect on historic properties provided that the BIA insure compliance with the following conditions:*

The proposed testing plan contained in Zimmerman and Abbott (1996) shall be implemented at sites: NM-Q-27-13, NM-Q-27-15, NM-Q-22-45, NM-Q-22-51, NM-Q-22-52, NM-Q-22-53, NM-Q-22-54, NM-Q-23-55, NM-Q-23-56, NM-Q-23-58, NM-Q-23-59, NM-Q-23-60, NM-Q-23-62, NM-Q-23-63, NM-Q-23-64.

The right-of-way near Station 106+00 shall be restricted to a maximum width of 65 feet (19.82 m) from the centerline within 50 feet (15.24 m) of Site NM-Q-27-14. Furthermore, a fence shall be erected along the southeast portion of this restricted right-of-way prior to construction activities. The fence shall be tapered from a distance of 75 feet (22.87 m) from the centerline, and beginning 100 feet (30.49 m) north and south of the site. A qualified archaeologist shall monitor the placement and removal (if applicable) of the fence.

The right-of-way near Station 238+00 shall be fenced 75 feet (22.87 m) from the centerline within 50 feet (15.24 m) of Site NM-Q-22-46. The fence shall be erected prior to construction activities. A qualified archaeologist shall monitor the placement and removal (if applicable) of the fence.

The right-of-way near Station 248+50 shall be fenced 75 feet (22.87 m) from the centerline within 50 feet (15.24 m) of Site NM-Q-22-47. The fence shall be erected prior to construction activities. A qualified archaeologist shall monitor the placement and removal (if applicable) of the fence.

Site NM-Q-22-48 shall be avoided by realigning the N11 right-of-way 10 m to the west of station 266+00.

Sites NM-Q-22-49 and NM-Q-22-50 shall be avoided by realigning the N11 right-of-way with a new surveyed reroute east of the existing N11 road.

A qualified archaeologist shall monitor construction activities that occur within 50 feet (15.24 m) of Site NM-Q-23-61, which is located near Station 521+00.

The proposed testing plan contained in Zimmerman and Abbott (1996) shall be implemented at site NM-Q-23-57. Furthermore, the right-of-way near station 449+00 shall be restricted to a maximum width of 65 feet (19.82 m) from the centerline within 50 feet of Feature 1, a collapsed hogan. In addition a fence shall be erected along the southeast portion of this restricted ROW prior to construction activities. The fence shall be tapered from a distance of 75 feet (22.87 m) from the centerline, and beginning 100 feet (34.9 m) north and south of Feature 1. A qualified archaeologist shall monitor the placement and removal (if applicable) of the fence.

BIA shall be responsible for adherence to these conditions of compliance. A report documenting the result of monitoring activity shall be submitted to NNHPD within 100 days of the completion of monitoring activities on the project.

Prior to any ground disturbing activity associated with implementation, construction, or maintenance of this undertaking the BIA shall insure that any newly identified disturbance areas (staging areas, borrow pits, access roads, logistical spaces, etcetera) are inventoried for cultural resources and all adverse effects to cultural resources are considered before the disturbance begins. The demonstrated existence of prior consultation pursuant to §106 of the National Historic Preservation Act resulting in a determination of "no

properties," or "No Effect," will be accepted as meeting the terms of this stipulation unless there are discoveries as indicated below.

In the event of a discovery ["discovery" means any previously unidentified or incorrectly identified cultural resources including but not limited to archaeological deposits, human remains, or locations reportedly associated with Native American religious/traditional beliefs or practices], all operations in the immediate vicinity of the discovery must cease and the Navajo Nation Historic Preservation Department must be notified at 520-871-7132.

FORM PREPARED BY: Peter J. Hakos  
FINALIZED: February 24, 1997

Notification to Proceed

Recommended: Yes ☒ No ☐

Conditions: Yes ☒ No ☐

  
Alan A. Dwyer

Navajo Nation Historic Preservation Officer

2/24/97  
Date

Agency Approval: Yes ☒ No ☐

  
Area Director

2-19-97  
Date

## Appendix F

### Submittal Letters for Public Review of the Draft EA





Revised to  
edition of

DEPARTMENT OF THE ARMY  
ALBUQUERQUE DISTRICT, CORPS OF ENGINEERS  
4101 Jefferson Plaza, NE  
Albuquerque, New Mexico 87109-3435  
Fax (505) 342-3189  
December 27, 1999

Engineering and Construction Division  
Environmental Resources Branch

Mr. Gedi Cibas  
Environmental Impact Review Coordinator  
New Mexico Environment Department  
Harrold Runnels Building  
1190 St. Francis Drive  
Santa Fe, New Mexico 87502

FILE COPY

Dear Mr. Cibas:

The U.S. Army Corps of Engineers (Corps), Albuquerque District, has prepared the draft Environmental Assessment (EA), that documents the proposed rehabilitation of Navajo Route 11 (N11), for the Bureau of Indian Affairs, Navajo Area Office, Branch of Roads in accordance with Memorandum of Agreement No. AG2N0000992 dated 5 May 1992, as amended. The proposed project, identified as Project N11(1)2&4, occurs in McKinley County, New Mexico. Please review the enclosed draft EA and provide written comments to:

Mr. Greg Everhart  
U.S. Army Engineer District, Albuquerque  
Attn: CESPAC-EC-R  
4101 Jefferson Plaza, NE  
Albuquerque, NM 87109-3435

Written comments should be submitted no later than January 24, 2000, so that we may make revisions, if necessary, and complete the final Environmental Assessment. If we do not receive comments by this date we will assume you have none. Copies of the draft EA may be requested from Mr. Everhart at 505-342-3352.

If you have any questions or need additional information please contact me at 505-342-3351.

Sincerely,

SIGNED

Mark C. Harberg,  
Chief, Environmental Resources Branch

Enclosure



Reply to  
Addressee of

DEPARTMENT OF THE ARMY  
ALBUQUERQUE DISTRICT, CORPS OF ENGINEERS  
4101 Jefferson Plaza, NE  
Albuquerque, New Mexico 87109-3435  
Fax (505) 342-3199  
December 27, 1999

Engineering and Construction Division  
Environmental Resources Branch

Mr. Steve Reed  
Environmental Section  
New Mexico Department of Highways  
and Transportation  
P.O. Box 1149, Room 213  
Santa Fe, New Mexico 87504

Dear Mr. Reed:

The U.S. Army Corps of Engineers (Corps), Albuquerque District, has prepared the draft Environmental Assessment (EA), that documents the proposed rehabilitation of Navajo Route 11 (N11), for the Bureau of Indian Affairs, Navajo Area Office, Branch of Roads in accordance with Memorandum of Agreement No. AG2N0000992 dated 5 May 1992, as amended. The proposed project, identified as Project N11(1)2&4, occurs in McKinley County, New Mexico. Please review the enclosed draft EA and provide written comments to:

Mr. Greg Everhart  
U.S. Army Engineer District, Albuquerque  
Attn: CESP-EC-R  
4101 Jefferson Plaza, NE  
Albuquerque, NM 87109-3435

Written comments should be submitted no later than January 24, 2000, so that we may make revisions, if necessary, and complete the final Environmental Assessment. If we do not receive comments by this date we will assume you have none. Copies of the draft EA may be requested from Mr. Everhart at 505-342-3352.

If you have any questions or need additional information please contact me at 505-342-3351.

Sincerely,

SIGNE

Mark C. Harberg,  
Chief, Environmental Resources Branch

Enclosure



Reply to  
Attention of

DEPARTMENT OF THE ARMY  
ALBUQUERQUE DISTRICT, CORPS OF ENGINEERS  
4101 Jefferson Plaza, NE  
Albuquerque, New Mexico 87109-3435  
Fax (505) 342-3199

December 27, 1999

Engineering and Construction Division  
Environmental Resources Branch

FILE COPY

Mr. C.T. Wilson, Superintendent  
Chaco Culture National Historical Park  
P.O. Box 220  
Nageezi, New Mexico 87037

Dear Mr. Wilson:

The U.S. Army Corps of Engineers (Corps), Albuquerque District, has prepared the draft Environmental Assessment (EA), that documents the proposed rehabilitation of Navajo Route 11 (N11), for the Bureau of Indian Affairs, Navajo Area Office, Branch of Roads in accordance with Memorandum of Agreement No. AG2N0000992 dated 5 May 1992, as amended. The proposed project, identified as Project N11(1)2&4, occurs in McKinley County, New Mexico. Please review the enclosed draft EA and provide written comments to:

Mr. Greg Everhart  
U.S. Army Engineer District, Albuquerque  
Attn: CESPAC-EC-R  
4101 Jefferson Plaza, NE  
Albuquerque, NM 87109-3435

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If you have any questions or need additional information please contact me at 505-342-3351.

Sincerely,

SIGNED

Mark C. Harberg,  
Chief, Environmental Resources Branch

Enclosure



Reply to  
Attention of

DEPARTMENT OF THE ARMY  
ALBUQUERQUE DISTRICT, CORPS OF ENGINEERS  
4101 Jefferson Plaza, NE  
Albuquerque, New Mexico 87109-3435  
Fax (505) 342-3199

December 27, 1999

FILE COPY

Engineering and Construction Division  
Environmental Resources Branch

Mr. Ed Kelley, Director  
Water and Waste Management Division  
New Mexico Environment Department  
Harold Runnels Building  
1190 St. Francis Drive

Dear Mr. Kelley:

The U.S. Army Corps of Engineers (Corps), Albuquerque District, has prepared the draft Environmental Assessment (EA), that documents the proposed rehabilitation of Navajo Route 11 (N11), for the Bureau of Indian Affairs, Navajo Area Office, Branch of Roads in accordance with Memorandum of Agreement No. AG2N0000992 dated 5 May 1992, as amended. The proposed project, identified as Project N11(1)2&4, occurs in McKinley County, New Mexico. Please review the enclosed draft EA and provide written comments to:

Mr. Greg Everhart  
U.S. Army Engineer District, Albuquerque  
Attn: CSPA-EC-R  
4101 Jefferson Plaza, NE  
Albuquerque, NM 87109-3435

Written comments should be submitted **no later than January 24, 2000**, so that we may make revisions, if necessary, and complete the final Environmental Assessment. If we do not receive comments by this date we will assume you have none. Copies of the draft EA may be requested from Mr. Everhart at 505-342-3352.

If you have any questions or need additional information please contact me at 505-342-3351.

Sincerely,

**SIGNED**

Mark C. Harberg,  
Chief, Environmental Resources Branch

Enclosure





DEPARTMENT OF THE ARMY  
ALBUQUERQUE DISTRICT, CORPS OF ENGINEERS  
4101 Jefferson Plaza, NE  
Albuquerque, New Mexico 87109-3435  
Fax (505) 342-3199

December 27, 1999

FILE 160177

Engineering and Construction Division  
Environmental Resources Branch

Mr. Andrew V. Sandoval, Chief  
New Mexico Department of Game and Fish  
Villagra Building  
P.O. Box 25112  
Santa Fe, New Mexico 87504

Dear Mr. Sandoval:

The U.S. Army Corps of Engineers (Corps), Albuquerque District, has prepared the draft Environmental Assessment (EA), that documents the proposed rehabilitation of Navajo Route 11 (N11), for the Bureau of Indian Affairs, Navajo Area Office, Branch of Roads in accordance with Memorandum of Agreement No. AG2N0000992 dated 5 May 1992, as amended. The proposed project, identified as Project N11(1)2&4, occurs in McKinley County, New Mexico. Please review the enclosed draft EA and provide written comments to:

Mr. Greg Everhart  
U.S. Army Engineer District, Albuquerque  
Attn: CESPA-EC-R  
4101 Jefferson Plaza, NE  
Albuquerque, NM 87109-3435

Written comments should be submitted **no later than January 24, 2000**, so that we may make revisions, if necessary, and complete the final Environmental Assessment. If we do not receive comments by this date we will assume you have none. Copies of the draft EA may be requested from Mr. Everhart at 505-342-3352.

If you have any questions or need additional information please contact me at 505-342-3351.

Sincerely,

**SIGNED**

Mark C. Harberg,  
Chief, Environmental Resources Branch

Enclosure



Reply to  
Attention of

DEPARTMENT OF THE ARMY  
ALBUQUERQUE DISTRICT, CORPS OF ENGINEERS  
4101 Jefferson Plaza, NE  
Albuquerque, New Mexico 87109-3435  
Fax (505) 342-3199

December 27, 1999

Engineering and Construction Division  
Environmental Resources Branch

FILE COPY

Mr. Bob Sivinski  
New Mexico Department of Energy  
Minerals, and Natural Resources  
Forestry and Resources Conservation Division  
P.O. Box 1948  
Santa Fe, New Mexico 87505

Dear Mr. Sivinski:

The U.S. Army Corps of Engineers (Corps), Albuquerque District, has prepared the draft Environmental Assessment (EA), that documents the proposed rehabilitation of Navajo Route 11 (N11), for the Bureau of Indian Affairs, Navajo Area Office, Branch of Roads in accordance with Memorandum of Agreement No. AG2N0000992 dated 5 May 1992, as amended. The proposed project, identified as Project N11(1)2&4, occurs in McKinley County, New Mexico. Please review the enclosed draft EA and provide written comments to:

Mr. Greg Everhart  
U.S. Army Engineer District, Albuquerque  
Attn: CESPA-EC-R  
4101 Jefferson Plaza, NE  
Albuquerque, NM 87109-3435

Written comments should be submitted no later than January 24, 2000, so that we may make revisions, if necessary, and complete the final Environmental Assessment. If we do not receive comments by this date we will assume you have none. Copies of the draft EA may be requested from Mr. Everhart at 505-342-3352.

If you have any questions or need additional information please contact me at 505-342-3351.

Sincerely,

Mark C. Harberg.  
Chief, Environmental Resources Branch

Enclosure



Reply to  
Attention of

Engineering and Construction Division  
Environmental Resources Branch

DEPARTMENT OF THE ARMY  
ALBUQUERQUE DISTRICT, CORPS OF ENGINEERS  
4101 Jefferson Plaza, NE  
Albuquerque, New Mexico 87109-3435  
Fax (505) 342-3199

12-27 EDE

U.S. ARMY

Mr. John Lovejoy  
Agency Road Engineer  
Bureau of Indian Affairs  
Eastern Agency, Branch of Roads  
P.O. Box 328  
Crownpoint, New Mexico 87313

Dear Mr. Lovejoy:

The U.S. Army Corps of Engineers (Corps), Albuquerque District, has prepared the draft Environmental Assessment (EA), that documents the proposed rehabilitation of Navajo Route 11 (N11), for the Bureau of Indian Affairs, Navajo Area Office, Branch of Roads in accordance with Memorandum of Agreement No. AG2N0000992 dated 5 May 1992, as amended. The proposed project, identified as Project N11(1)2&4, occurs in McKinley County, New Mexico. Please review the enclosed draft EA and provide written comments to:

Mr. Greg Everhart  
U.S. Army Engineer District, Albuquerque  
Attn: CESPA-EC-R  
4101 Jefferson Plaza, NE  
Albuquerque, NM 87109-3435

Written comments should be submitted **no later than January 24, 2000**, so that we may make revisions, if necessary, and complete the final Environmental Assessment. If we do not receive comments by this date we will assume you have none. Copies of the draft EA may be requested from Mr. Everhart at 505-342-3352.

If you have any questions or need additional information please contact me at 505-342-3351.

Sincerely,

**SIGNED**

Mark C. Harberg,  
Chief, Environmental Resources Branch

Enclosure



Reply to  
Attention of

DEPARTMENT OF THE ARMY  
ALBUQUERQUE DISTRICT, CORPS OF ENGINEERS  
4101 Jefferson Plaza, NE  
Albuquerque, New Mexico 87109-3435  
Fax (505) 342-3199

December 22, 1999

216DE

FILE COPY

Engineering and Construction Division  
Environmental Resources Branch

Mr. Albert Lee  
Bureau of Indian Affairs  
Navajo Area Office, Branch of Roads  
Roads Planning and Design Section  
P.O. Box 1060  
Gallup, New Mexico 87305

Dear Mr. Lee:

The U.S. Army Corps of Engineers (Corps), Albuquerque District, has prepared the draft Environmental Assessment (EA), that documents the proposed rehabilitation of Navajo Route 11 (N11), for the Bureau of Indian Affairs, Navajo Area Office, Branch of Roads in accordance with Memorandum of Agreement No. AG2N0000992 dated 5 May 1992, as amended. The proposed project, identified as Project N11(1)2&4, occurs in McKinley County, New Mexico. Please review the enclosed draft EA and provide written comments to:

Mr. Greg Everhart  
U.S. Army Engineer District, Albuquerque  
Attn: CESP-EC-R  
4101 Jefferson Plaza, NE  
Albuquerque, NM 87109-3435

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If you have any questions or need additional information please contact me at 505-342-3351.

Sincerely,

SIGNED

Mark C. Harberg,  
Chief, Environmental Resources Branch

Enclosure





Reply to  
Attention of

DEPARTMENT OF THE ARMY  
ALBUQUERQUE DISTRICT, CORPS OF ENGINEERS  
4101 Jefferson Plaza, NE  
Albuquerque, New Mexico 87109-3435  
Fax (505) 342-3199

December 22, 1999

276de

FILE COPY

Engineering and Construction Division  
Environmental Resources Branch

Mr. Gary Morrison, Planning Engineer  
Bureau of Indian Affairs  
Navajo Area Office, Branch of Roads  
Roads Planning and Design Section  
P.O. Box 1060  
Gallup, New Mexico 87305

Dear Mr. Morrison:

The U.S. Army Corps of Engineers (Corps), Albuquerque District, has prepared the draft Environmental Assessment (EA), that documents the proposed rehabilitation of Navajo Route 11 (N11), for the Bureau of Indian Affairs, Navajo Area Office, Branch of Roads in accordance with Memorandum of Agreement No. AG2N0000992 dated 5 May 1992, as amended. The proposed project, identified as Project N11(1)2&4, occurs in McKinley County, New Mexico. Please review the enclosed draft EA and provide written comments to:

Mr. Greg Everhart  
U.S. Army Engineer District, Albuquerque  
Attn: CESPA-EC-R  
4101 Jefferson Plaza, NE  
Albuquerque, NM 87109-3435

Written comments should be submitted no later than January 24, 2000, so that we may make revisions, if necessary, and complete the final Environmental Assessment. If we do not receive comments by this date we will assume you have none. Copies of the draft EA may be requested from Mr. Everhart at 505-342-3352.

If you have any questions or need additional information please contact me at 505-342-3351.

Sincerely,

SIGNED

Mark C. Harberg,  
Chief, Environmental Resources Branch

Enclosure



Reply to  
Attention of

DEPARTMENT OF THE ARMY  
ALBUQUERQUE DISTRICT, CORPS OF ENGINEERS  
4101 Jefferson Plaza, NE  
Albuquerque, New Mexico 87109-3435  
Fax (505) 342-3199

December 27, 1999

FILE COPY

Engineering and Construction Division  
Environmental Resources Branch

Mr. Leonard Robbins  
Area Environmental Quality Officer  
Bureau of Indian Affairs  
Branch of Environmental Quality Services  
P.O. Box 1060  
Gallup, New Mexico 87305

Dear Mr. Robbins:

The U.S. Army Corps of Engineers (Corps), Albuquerque District, has prepared the draft Environmental Assessment (EA), that documents the proposed rehabilitation of Navajo Route 11 (N11), for the Bureau of Indian Affairs, Navajo Area Office, Branch of Roads in accordance with Memorandum of Agreement No. AG2N0000992 dated 5 May 1992, as amended. The proposed project, identified as Project N11(1)2&4, occurs in McKinley County, New Mexico. Please review the enclosed draft EA and provide written comments to:

Mr. Greg Everhart  
U.S. Army Engineer District, Albuquerque  
Attn: CESPA-EC-R  
4101 Jefferson Plaza, NE  
Albuquerque, NM 87109-3435

Written comments should be submitted **no later than January 24, 2000**, so that we may make revisions, if necessary, and complete the final Environmental Assessment. If we do not receive comments by this date we will assume you have none. Copies of the draft EA may be requested from Mr. Everhart at 505-342-3352.

If you have any questions or need additional information please contact me at 505-342-3351.

Sincerely,

SIGNER

Mark C. Harberg,  
Chief, Environmental Resources Branch

Enclosure



Reply to  
Attention of

DEPARTMENT OF THE ARMY  
ALBUQUERQUE DISTRICT, CORPS OF ENGINEERS  
4101 Jefferson Plaza, NE  
Albuquerque, New Mexico 87109-3435  
Fax (505) 342-3199

FILE COPY

December 27, 1999

Engineering and Construction Division  
Environmental Resources Branch

President  
Crownpoint Chapter  
P.O. Box 336  
Crownpoint, New Mexico

Dear Sir or Madam:

The U.S. Army Corps of Engineers (Corps), Albuquerque District, has prepared the draft Environmental Assessment (EA), that documents the proposed rehabilitation of Navajo Route 11 (N11), for the Bureau of Indian Affairs, Navajo Area Office, Branch of Roads in accordance with Memorandum of Agreement No. AG2N0000992 dated 5 May 1992, as amended. The proposed project, identified as Project N11(1)2&4, occurs in McKinley County, New Mexico. Please review the enclosed draft EA and provide written comments to:

Mr. Greg Everhart  
U.S. Army Engineer District, Albuquerque  
Attn: CESPAC-EC-R  
4101 Jefferson Plaza, NE  
Albuquerque, NM 87109-3435

Written comments should be submitted no later than January 24, 2000, so that we may make revisions, if necessary, and complete the final Environmental Assessment. If we do not receive comments by this date we will assume you have none. Copies of the draft EA may be requested from Mr. Everhart at 505-342-3352.

If you have any questions or need additional information please contact me at 505-342-3351.

Sincerely,

SIGNED

Mark C. Harberg.  
Chief, Environmental Resources Branch

Enclosure



Reply to  
Attention of

DEPARTMENT OF THE ARMY  
ALBUQUERQUE DISTRICT, CORPS OF ENGINEERS  
4101 Jefferson Plaza, NE  
Albuquerque, New Mexico 87109-3435  
Fax (505) 342-3199

December 27, 1999

DEC 28 1999

Engineering and Construction Division  
Environmental Resources Branch

President  
Pinedale Chapter  
P.O. Box 3  
Church Rock, New Mexico 87311

Dear Sir or Madam:

The U.S. Army Corps of Engineers (Corps), Albuquerque District, has prepared the draft Environmental Assessment (EA), that documents the proposed rehabilitation of Navajo Route 11 (N11), for the Bureau of Indian Affairs, Navajo Area Office, Branch of Roads in accordance with Memorandum of Agreement No. AG2N0000992 dated 5 May 1992, as amended. The proposed project, identified as Project N11(1)2&4, occurs in McKinley County, New Mexico. Please review the enclosed draft EA and provide written comments to:

Mr. Greg Everhart  
U.S. Army Engineer District, Albuquerque  
Attn: CESP-EC-R  
4101 Jefferson Plaza, NE  
Albuquerque, NM 87109-3435

Written comments should be submitted **no later than January 24, 2000**, so that we may make revisions, if necessary, and complete the final Environmental Assessment. If we do not receive comments by this date we will assume you have none. Copies of the draft EA may be requested from Mr. Everhart at 505-342-3352.

If you have any questions or need additional information please contact me at 505-342-3351.

Sincerely,

**SIGNED**

Mark C. Harberg,  
Chief, Environmental Resources Branch

Enclosure





Reply to  
Attention of

DEPARTMENT OF THE ARMY  
ALBUQUERQUE DISTRICT, CORPS OF ENGINEERS  
4101 Jefferson Plaza, NE  
Albuquerque, New Mexico 87109-3435  
Fax (505) 342-3199

F. /user/ECRAM/Greg)  
11 Dec 99 . do

Everhart  
Harberg

December 27, 1999

Engineering and Construction Division  
Environmental Resources Branch

President  
Mariano Lake Chapter  
P.O. Box 520  
Gallup, New Mexico 87300

Dear Sir or Madam:

The U.S. Army Corps of Engineers (Corps), Albuquerque District, has prepared the draft Environmental Assessment (EA), that documents the proposed rehabilitation of Navajo Route 11 (N11), for the Bureau of Indian Affairs, Navajo Area Office, Branch of Roads in accordance with Memorandum of Agreement No. AG2N0000992 dated 5 May 1992, as amended. The proposed project, identified as Project N11(1)2&4, occurs in McKinley County, New Mexico. Please review the enclosed draft EA and provide written comments to:

Mr. Greg Everhart  
U.S. Army Engineer District, Albuquerque  
Attn: CESPA-EC-R  
4101 Jefferson Plaza, NE  
Albuquerque, NM 87109-3435

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If you have any questions or need additional information please contact me at 505-342-3351.

Sincerely,

SIGNED  
SIGNED

Mark C. Harberg  
Chief, Environmental Resources Branch

Enclosure



Reply to  
Attention of

DEPARTMENT OF THE ARMY  
ALBUQUERQUE DISTRICT, CORPS OF ENGINEERS  
4101 Jefferson Plaza, NE  
Albuquerque, New Mexico 87109-3435  
Fax (505) 342-3199

Everhart  
Harberg *ml*

December 27, 1999

Engineering and Construction Division  
Environmental Resources Branch

FILED

Mr. Brian Hanson  
Acting State Supervisor  
New Mexico Ecological Services State Office  
U.S. Fish and Wildlife Service  
2105 Osuna, Northeast  
Albuquerque, New Mexico 87113

Dear Mr. Hanson:

The U.S. Army Corps of Engineers (Corps), Albuquerque District, has prepared the draft Environmental Assessment (EA), that documents the proposed rehabilitation of Navajo Route 11 (N11), for the Bureau of Indian Affairs, Navajo Area Office, Branch of Roads in accordance with Memorandum of Agreement No. AG2N0000992 dated 5 May 1992, as amended. The proposed project, identified as Project N11(1)2&4, occurs in McKinley County, New Mexico. Please reference your Consultation # 2-22-95-I-549. Please review the enclosed N11 draft EA and provide written comments to:

Mr. Greg Everhart  
U.S. Army Engineer District, Albuquerque  
Attn: CESPA-EC-R  
4101 Jefferson Plaza, NE  
Albuquerque, NM 87109-3435

Written comments should be submitted no later than January 24, 2000, so that we may make revisions, if necessary, and complete the final Environmental Assessment. If we do not receive comments by this date we will assume you have none. Copies of the draft EA may be requested from Mr. Everhart at 505-342-3352.

If you have any questions or need additional information please contact me at 505-342-3351.

Sincerely,

**SIGNED**

Mark C. Harberg.  
Chief, Environmental Resources Branch

Enclosure

cf wencolsure:

Mr. Joseph Dishta  
Heritage and Historic Preservation Officer  
Pueblo of Zuni  
Heritage and Historic Preservation Office  
P.O. Box 339  
Zuni, New Mexico 86327



Reply to  
Attention of

DEPARTMENT OF THE ARMY  
ALBUQUERQUE DISTRICT, CORPS OF ENGINEERS  
4101 Jefferson Plaza, NE  
Albuquerque, New Mexico 87109-3435  
Fax (505) 342-3199

Everhart  
Harberg  
Gamel  
~~Rickenbacker~~  
DDE *[initials]*  
DE *[initials]*

DEC 29 1999

Engineering and Construction Division  
Environmental Resources Branch

Honorable Malcolm Bowekaty  
Pueblo of Zuni  
P.O. Box 339  
Zuni, New Mexico 87327

Dear Governor Bowekaty:

The U.S. Army Corps of Engineers (Corps), Albuquerque District, has prepared the draft Environmental Assessment (EA), that documents the proposed rehabilitation of Navajo Route 11 (N11), for the Bureau of Indian Affairs, Navajo Area Office, Branch of Roads in accordance with Memorandum of Agreement No. AG2N0000992 dated 5 May 1992, as amended. The proposed project, identified as Project N11(1)2&4, occurs in McKinley County, New Mexico. Please review the enclosed N11 draft EA and provide written comments to:

Mr. Greg Everhart  
U.S. Army Engineer District, Albuquerque  
Attn: CESP-EC-R  
4101 Jefferson Plaza, NE  
Albuquerque, NM 87109-3435

Written comments should be submitted no later than January 24, 2000, so that we may make revisions, if necessary, and complete the final Environmental Assessment. If we do not receive comments by this date we will assume you have none. Copies of the draft EA may be requested from Mr. Everhart at 505-342-3352.

If you have any questions or need additional information please contact Mr. Mark C. Harberg in Environmental Resources Branch at 505-342-3351.

Sincerely,

*[Signature]*

Thomas N. Fallin  
Lieutenant Colonel, EN  
District Engineer

cf w/enclosure:



President  
Crownpoint Chapter  
P.O. Box 336  
Crownpoint, New Mexico 87315

cf w/enclosure:

Mr. Larry Benallie, Sr.  
Director  
Navajo Nation Fish  
and Wildlife Department  
P.O. Box 1480  
Window Rock, Arizona 86515

Alan S. Downer, Ph.D.  
Director  
Navajo Nation Historic  
Preservation Department  
P.O. Box 4950  
Window Rock, Arizona 86515

Mr. John Stein  
Program Manager  
Navajo Nation Chaco Protection  
Sites Program  
P.O. Box 2469  
Window Rock, Arizona 86515

Director  
Navajo Nation Environmental  
Protection Administration  
P.O. Box 339  
Window Rock, Arizona 86515

Director  
Navajo Nation Department  
of Water Resources Management  
P.O. Drawer 678  
Fort Defiance, Arizona 86504

President  
Mariano Lake Chapter  
P.O. Box 520  
Gallup, New Mexico 87301

President  
Pinedale Chapter  
P.O. Box 3  
Church Rock, New Mexico 87311



Reply to  
Attention of

DEPARTMENT OF THE ARMY  
ALBUQUERQUE DISTRICT, CORPS OF ENGINEERS  
4101 Jefferson Plaza, NE  
Albuquerque, New Mexico 87109-3435  
Fax (505) 342-3199

DEC 7 1999

Engineering and Construction Division  
Environmental Resources Branch

Everhart GDE  
Harberg M  
Gamel J  
Rickenberg  
DDE Lu  
DE GF

President Kelsey Begaye  
Navajo Nation  
P.O. Box 9000  
Window Rock, Arizona 86515

Dear President Begaye:

The U.S. Army Corps of Engineers (Corps), Albuquerque District, has prepared the draft Environmental Assessment (EA), that documents the proposed rehabilitation of Navajo Route 11 (N11), for the Bureau of Indian Affairs, Navajo Area Office, Branch of Roads in accordance with Memorandum of Agreement No. AG2N0000992 dated 5 May 1992, as amended. The proposed project, identified as Project N11(1)2&4, occurs in McKinley County, New Mexico. Please review the enclosed N11 draft EA and provide written comments to:

Mr. Greg Everhart  
U.S. Army Engineer District, Albuquerque  
Attn: CESP-EC-R  
4101 Jefferson Plaza, NE  
Albuquerque, NM 87109-3435

Written comments should be submitted no later than January 24, 2000, so that we may make revisions, if necessary, and complete the final Environmental Assessment. If we do not receive comments by this date we will assume you have none. Copies of the draft EA may be requested from Mr. Everhart at 505-342-3352.

If you have any questions or need additional information please contact Mr. Mark C. Harberg in Environmental Resources Branch at 505-342-3351.

Sincerely,

SIGNED

Thomas N. Fallin  
Lieutenant Colonel, EN  
District Engineer

Local Entities

President  
Mariano Lake Chapter  
P.O. Box 520  
Gallup, New Mexico 87301

President  
Pinedale Chapter  
P.O. Box 3  
Church Rock, New Mexico 87311

President  
Crownpoint Chapter  
P.O. Box 336  
Crownpoint, New Mexico 87313



Alan S. Downer, Ph.D.  
Director  
Navajo Nation Historic  
Preservation Department  
P.O. Box 4950  
Window Rock, Arizona 86515

Mr. John Stein  
Program Manager  
Navajo Nation Chaco Protection  
Sites Program  
P.O. Box 2469  
Window Rock, Arizona 86515

Director  
Navajo Nation Environmental  
Protection Administration  
P.O. Box 339  
Window Rock, Arizona 86515

Director  
Navajo Nation Department  
of Water Resources Management  
P.O. Drawer 678  
Fort Defiance, Arizona 86504

Governor Malcolm Bowekaty  
Pueblo of Zuni  
P.O. Box 339  
Zuni, New Mexico 87327

cf w/enclosures:

Mr. Joseph Dishita  
Heritage and Historic Preservation Officer  
Pueblo of Zuni  
Heritage and Historic Preservation Office  
P.O. Box 339  
Zuni, New Mexico 87327

Mr. Andrew V. Sandoval, Chief  
New Mexico Department of Game and Fish  
Villagra Building  
P.O. Box 25112  
Santa Fe, New Mexico 87504

Mr. Ed Kelley, Director  
Water and Waste Management Division  
New Mexico Environment Department  
Harrold Runnels Building  
1190 St. Francis Drive, P.O. Box 26110  
Santa Fe, New Mexico 87502

Mr. Gedi Cibas  
Environmental Impact Review Coordinator  
New Mexico Environment Department  
Harrold Runnels Building  
1190 St. Francis Drive  
Santa Fe, New Mexico 87502

Mr. Steve Reed  
Environmental Section  
New Mexico Department of Highways  
and Transportation  
P.O. Box 1149, Rm. 213  
Santa Fe, New Mexico 87504

Tribal Agencies

President Kelsey Begaye  
Navajo Nation  
P.O. Box 9000  
Window Rock, Arizona 86515

cf w/enclosures:

Mr. Larry Benallie, Sr  
Director  
Navajo Nation Fish  
and Wildlife Department  
P.O. Box 1480  
Window Rock, Arizona 86515

Mr. Calvin Murphy  
Right-of-Way Agent  
Bureau of Indian Affairs  
Eastern Agency  
P.O. Box 328  
Crownpoint, New Mexico 87313

Mr. Brian Hanson  
Acting State Supervisor  
U.S. Fish and Wildlife Service  
New Mexico Ecological Services Field Office  
2105 Osuna, Northeast  
Albuquerque, New Mexico 87113

Mr. C. T. Wilson, Superintendent  
Chaco Culture National Historical Park  
P.O. Box 220  
Nageezi, New Mexico 87037

Bureau of Land Management  
Farmington Field Office  
1235 La Plata Highway  
Farmington, New Mexico 87401-8731

U.S. Environmental Protection Agency  
Region 6  
Attn: Mr. Rob Lawrence  
Office of Planning and Coordination (6EN-XP)  
1445 Ross Avenue  
Dallas, Texas 75202-2733

U.S. Environmental Protection Agency  
Region 9 (WTR-5)  
75 Hawthorn St.  
San Francisco, California 94105

State Agencies

Mr. Bob Sivinski  
New Mexico Department of Energy,  
Minerals, and Natural Resources  
Forestry and Resources  
Conservation Division  
P.O. Box 1948  
Santa Fe, New Mexico 87505

## N11 Draft EA Mailing List

### Federal Agencies

Mr. Harold Riley  
Chief, Roads Planning and Design  
Bureau of Indian Affairs  
Navajo Area Office, Branch of Roads  
P.O. Box 1060  
Gallup, New Mexico 87305

Mr. Leonard Robbins  
Area Environmental Quality Officer  
Bureau of Indian Affairs  
Navajo Area Office  
Branch of Environmental Quality Services  
P.O. Box 1060  
Gallup, New Mexico 87305

Mr. Gary Morrison  
Planning Engineer  
Bureau of Indian Affairs  
Navajo Area Office, Branch of Roads  
Roads Planning and Design Section  
P.O. Box 1060  
Gallup, New Mexico 87305

Mr. Albert Lee  
Bureau of Indian Affairs  
Navajo Area Office, Branch of Roads  
Roads Planning and Design Section  
P.O. Box 1060  
Gallup, New Mexico 87305

Mr. John Lovejoy  
Agency Road Engineer  
Bureau of Indian Affairs  
Eastern Agency, Branch of Roads  
P.O. Box 328  
Crownpoint, New Mexico 87313



receive comments by this date we will assume you have none. Copies of the draft EA may be requested from Mr. Everhart at 505-342-3352.

If you have any questions or need additional information please contact me at 505-342-3351.

Sincerely,

**SIGNED**

Mark C. Harberg,  
Chief, Environmental Resources Branch

Enclosure



Reply to  
Attention of

DEPARTMENT OF THE ARMY  
ALBUQUERQUE DISTRICT, CORPS OF ENGINEERS  
4101 Jefferson Plaza, NE  
Albuquerque, New Mexico 87109-3435  
Fax (505) 342-3199

Everhart  
Harberg *mh*

December 27, 1999

Engineering and Construction Division  
Environmental Resources Branch

FILE COPY

Mr. Harold Riley  
Chief, Roads Planning and Design  
Bureau of Indian Affairs  
Navajo Area Office, Branch of Roads  
P.O. Box 1060  
Gallup, New Mexico 87305

Dear Mr. Riley:

Enclosed is the "Draft" Environmental Assessment (EA) for the proposed rehabilitation of Navajo Route 11 (N11) identified as Project N11(1)2&4. The draft EA was completed in accordance with Memorandum of Agreement No. AG2N0000992 dated 5 May 1992, as amended. We have revised the preliminary draft EA in accordance with comments made by BIA. Per our June 20, 1995 meeting, the Corps is sending copies of the draft EA and soliciting comments from those who have a direct interest in the project and entities who responded to scoping letters (see attached list). Each addressee may distribute copies of the draft EA as they deem necessary. Please review the draft EA and provide written comments to:

Mr. Greg Everhart  
U.S. Army Engineer District, Albuquerque  
Attn: CESPA-EC-R  
4101 Jefferson Plaza, NE  
Albuquerque, NM 87109-3435

Written comments should be submitted no later than January 24, 2000, so that we may make revisions, if necessary, and complete the final Environmental Assessment. If we do not

Project Description

The proposed project calls for paving and alignment improvements to a portion of the existing Navajo Route 11 (N11). This portion, locally known as the Flintstone Pass road, intersects Navajo Route 9, 3 miles west of Crownpoint and runs southwest approximately 12.22 miles to the intersection with Navajo Route 11/49. This intersection is about 1 mile west of Mariano Lake and about 7 miles east of Pinedale. This portion of N11 serves as a more direct route between Crownpoint and Mariano Lake and Pinedale, being approximately half the distance to Crownpoint than the route using Navajo Route 49 and State Highway 57. The proposed project area is located in northwest New Mexico, beginning about 30 miles northeast of Gallup.

The purpose of the proposed construction is to relinquish hardships imposed upon the local population and communities by the unimproved dirt roadway, and improve the roadway surface in order to facilitate easier access to the area for emergency services, such as fire and police protection. N11 is also used as a school bus route. Current traffic volume (1995) is 349 vehicles per day (vpd) with an estimated volume of 426 vpd by the year 2015.

Existing conditions consist of a dirt roadway surface width of approximately 20 feet, which becomes impassible during and after summer thunderstorms and winter snow storms, and includes surface water drainage structures that are inadequate. The proposed N11 roadway construction will include a major drainage crossing being either multiple steel pipe culverts, concrete box structure, or single span bridge, as determined by a drainage analysis, crossing the Puerco River. Traffic safety hazards also exist due to steep vertical grades and tight cornered curves that limit sight distances.

The proposed improvements consist of acquiring a 150 foot right-of-way (75 feet left and right of the centerline), grading, drainage, both the flattening of steep vertical curves and the straightening of horizontal curves for improved sight distances, widening the roadway surface width to 28 feet, asphalt paving, and existing bridge replacement. The project is scheduled to begin construction in FY 98 with an expected duration of 18 months.

Additional Data

County and State: McKinley County, NM

Nearest P.O. and Zip Code: Crownpoint, NM 87313

7.5' Quadrangle Maps: Dalton Pass, Crownpoint, and Mariano Lake, NM

Surface Water Drainage: Colorado River Basin

North of Mesa de los Lobos: Chaco River to San Juan River

South of Mesa de los Lobos: Puerco River to Little Colorado River

Proximity to Water Resources: N11 crosses the Puerco River approximately 2.5 miles north of the N11/49 junction near the community of Mariano Lake.

General Habitat: Great Basin Grassland and Great Basin Conifer Woodland

President  
Pinedale Chapter  
P.O. Box 3  
Church Rock, New Mexico 87311

President  
Crownpoint Chapter  
P.O. Box 336  
Crownpoint, New Mexico 87313

Director  
Navajo Community College  
P.O. Box 57  
Crownpoint, New Mexico 87313

Vice-President  
Crownpoint Institute of Technology  
P.O. Box 849  
Crownpoint, New Mexico 87313

Principal  
Crownpoint-McKinley County Elementary School  
P.O. Box 709  
Crownpoint, New Mexico 87313

Principal  
Crownpoint-McKinley County High School  
P.O. Box 700  
Crownpoint, New Mexico 87313

Principal  
Mariano Lake Community School  
Bureau of Indian Affairs  
P.O. Box 498  
Crownpoint, New Mexico 87313

Principal  
Crownpoint Boarding School  
Bureau of Indian Affairs  
P.O. Box 178  
Crownpoint, New Mexico 87313



Director  
Navajo Nation Agriculture Department  
P.O. Box 9000  
Window Rock, Arizona 86515

Director  
Navajo Nation Division of Economic Development  
P.O. Box 663  
Window Rock, Arizona 86515

Program Manager  
Navajo Nation Grazing Management Office  
P.O. Box 9000  
Window Rock, Arizona 86515

Director  
Navajo Nation Department of Transportation  
P.O. Box 2640  
Window Rock, Arizona 86515

Natural Resources Planner  
Navajo Nation Division of Natural Resources  
P.O. Box 9000  
Window Rock, Arizona 86515

Director  
Navajo Nation Forestry Department  
P.O. Box 230  
Fort Defiance, Arizona 86504

Director  
Navajo Nation Land Administration  
P.O. Box 9000  
Window Rock, Arizona 86515

Program Director  
Navajo Nation Department of Highway Safety  
P.O. Drawer J  
Window Rock, Arizona 86515

Director  
Resource Enforcement Agency  
P.O. Box 9000  
Window Rock, Arizona 86515

President  
Mariano Lake Chapter  
P.O. Box 520  
Gallup, New Mexico 87301

Navajo Area Natural Resource Manager  
Bureau of Indian Affairs  
P.O. Box 1060  
Gallup, New Mexico 87301

State Supervisor  
U.S. Department of the Interior  
Fish and Wildlife Service  
New Mexico Ecological Services State Office  
2105 Osuna, NE  
Albuquerque, New Mexico 87113

Superintendent  
Chaco Culture National Historical Park  
National Park Service  
Star Route 4, P.O. Box 6500  
Bloomfield, NM 87413

Director  
Navajo Nation Historic Preservation Department  
214 E. Nizhoni Blvd.  
Gallup, New Mexico 87301

Director  
Navajo Nation Minerals Department  
P.O. Box 1910  
Window Rock, Arizona 86515

Director  
Navajo Nation Environmental Protection Administration  
P.O. Box 339  
Window Rock, Arizona 86515

Director  
Navajo Nation Fish and Wildlife Department  
P.O. Box 1400  
Window Rock, Arizona 86515

Director  
Navajo Nation Department of Water Resources Management  
P.O. Drawer 140  
Fort Defiance, Arizona 86504

Director  
Navajo Tribal Utility Authority  
P.O. Box 170  
Fort Defiance, Arizona 86504

Same Letter Sent To:

Mr. Harold Riley  
Assistant Area Road Engineer  
Branch of Roads  
Bureau of Indian Affairs  
P.O. Box 1060  
Gallup, New Mexico 87301

Mr. Leonard Robbins  
Environmental Quality Officer  
Branch of Environmental Quality Services  
Bureau of Indian Affairs  
P.O. Box 1060  
Gallup, New Mexico 87301

Mr. Burt Lesser  
Branch of Roads, Planning and Design Section  
Bureau of Indian Affairs  
P.O. Box 1060  
Gallup, New Mexico 87301

Mr. Albert Lee  
Branch of Roads, Planning and Design Section  
Bureau of Indian Affairs  
P.O. Box 1060  
Gallup, New Mexico 87301

Area Road Engineer  
Eastern Agency, Branch of Roads  
Bureau of Indian Affairs  
P.O. Box 328  
Crownpoint, New Mexico 87313

Area Reality Officer  
Branch of Real Property Management  
Bureau of Indian Affairs  
P.O. Box 1060  
Gallup, New Mexico 87301

Area Director  
Indian Programs  
Bureau of Indian Affairs  
P.O. Box 1060  
Gallup, New Mexico 87301

Navajo Area Forester  
Bureau of Indian Affairs  
P.O. Box 1060  
Gallup, New Mexico 87301

RETURN TO PLANNING BRANCH

Everhart/bjc/2713  
F:/USER/EDPEALL/GREG/11A11.5  
Environmental Sec *GDE*

September 14, 1995

Engineering and Planning Division  
Planning Branch

Dear Sir or Madam:

The U.S. Army Corps of Engineers, Albuquerque District, under contract with the Bureau of Indian Affairs, Navajo Area Office Branch of Roads, is preparing an Environmental Assessment (EA) for the reconstruction of Navajo Route 11, which occurs in McKinley County, New Mexico (see enclosed map). The Corps is seeking early input to determine the level of analysis appropriate for this project. Therefore, please use this opportunity to identify any potential issues or areas of concern to you or your agency. All comments should be submitted no later than October 16, 1995.

A project description and map of the project area and purpose are enclosed for your information. Alternatives could involve no action, no road widening, no realignment, gravel surfacing, and/or the proposed action. Please submit your comments directly to:

Mr. Greg Everhart  
U.S. Army Engineer District, Albuquerque  
Attn: CESWA-ED-PE  
P.O. Box 1580  
Albuquerque, New Mexico 87103

If you have any questions or require additional information, please contact Mr. Everhart at (505) 766-2713.

Sincerely,

Mark C. Harberg  
Chief, Environmental Section

Enclosures



RETURN TO PLANNING BRANCH

Everhart/bjc/2713  
F:/USER/EDPEALL/GREG/  
11all.scl  
Environmental Sec  
MN.

September 14, 1995

Engineering and Planning Division  
Planning Branch

Director  
Navajo Nation Fish  
and Wildlife Department  
P.O. Box 1400  
Window Rock, Arizona 86515

Dear Director:

The U.S. Army Corps of Engineers, Albuquerque District, in cooperation with the Bureau of Indian Affairs, Navajo Area Office Branch of Roads, is preparing an Environmental Assessment (EA) for Navajo Route 11, located in McKinley County, New Mexico (see enclosed map). The Corps is seeking your early input to determine the scope and level of analysis appropriate for this project. Therefore, please use this opportunity to identify any potential issues of concern to your agency. Written comments, a Navajo Endangered Species List (NESL) for the proposed project area, supporting information, data, and/or references, should be provided no later than October 16, 1995.

A project description and purpose and map of the project area are enclosed for your information. Alternatives could involve no action, no road widening, no realignment, gravel surfacing, and/or the proposed action. Please mail comments directly to:

Mr. Greg Everhart  
U.S. Army Engineer District, Albuquerque  
Attention: CESWA-ED-PE  
P.O. Box 1580  
Albuquerque, New Mexico 87103

If you have any questions or require additional information, please contact Mr. Everhart at (505)-766-2713.

Sincerely,

Mark C. Harberg  
Chief, Environmental Section

Enclosures

RETURN TO PLANNING BRANCH

Everhart/bjc/2713  
F:/USER/EDPEALL/GREG/11ALL.S  
Environmental *md.* *GDE*

September 14, 1995

Engineering and Planning Division  
Planning Branch

State Supervisor  
U.S. Department of the Interior  
Fish and Wildlife Service  
New Mexico Ecological Services  
State Office  
2105 Osuna, Northeast  
Albuquerque, New Mexico 87113

Dear State Supervisor:

The U.S. Army Corps of Engineers, Albuquerque District, in cooperation with the Bureau of Indian Affairs, Navajo Area Office Branch of Roads, is preparing an Environmental Assessment (EA) for Navajo Route 11, located in McKinley County, New Mexico (see enclosed map). The Corps is seeking your early input to determine the scope and level of analysis appropriate for this project. Therefore, please use this opportunity to identify any potential issues of concern to your agency. Written comments, a Threatened and Endangered Species List for the proposed project area, supporting information, data, and/or references, should be provided no later than October 16, 1995.

A project description and purpose and map of the project area are enclosed for your information. Alternatives could involve no action, no road widening, no realignment, gravel surfacing, and/or the proposed action. Please mail comments directly to:

Mr. Greg Everhart  
U.S. Army Engineer District, Albuquerque  
Attention: CESWA-ED-PE  
P.O. Box 1580  
Albuquerque, New Mexico 87103

If you have any questions or require additional information, please contact Mr. Everhart at (505)-766-2713.

Sincerely,

Mark C. Harberg  
Chief, Environmental Section

Enclosures

July 28, 1998

Engineering and Technical  
Services Division  
Planning and Environment  
Branch

Dear Sir or Madam:

The U.S. Army Corps of Engineers (Corps), Albuquerque District, under contract with the Bureau of Indian Affairs, Navajo Area Office, Branch of Roads, is preparing an environmental assessment for the reconstruction of Navajo Route 11, located in McKinley County, New Mexico. Planning for this project, originally initiated in September 1995, has been delayed due to other construction priorities. The Corps is seeking early input for consideration during planning and design of the project. Therefore, please use this opportunity to identify any potential issues or areas of concern to you or your agency. All comments should be submitted no later than August 28, 1998.

A project description, project purpose, and map of the project area are enclosed for your information. Alternatives for the proposed action could involve no action, alternatives with varying degrees of road grading, widening, realignment, and drainage features, gravel surfacing, and/or asphalt paving. Please submit your comments directly to:

Mr. Greg Everhart  
U.S. Army Engineer District, Albuquerque  
Attention: CESP-ET-PE  
4101 Jefferson Plaza, Northeast  
Albuquerque, New Mexico 87109

If you have any questions or require additional information, please contact Mr. Everhart at (505) 342-3352.

Sincerely,

Mark C. Harberg  
Chief, Environmental Section

Enclosures

July 28, 1998

Engineering and Technical  
Services Division  
Planning and Environment  
Branch

Andrew V. Sandoval, Chief  
Conservation Services Division  
New Mexico Department of  
Game and Fish  
P.O. Box 25112  
Santa Fe, New Mexico 87504

Dear Mr. Sandoval:

The U.S. Army Corps of Engineers (Corps), Albuquerque District, under contract with the Bureau of Indian Affairs, Navajo Area Office, Branch of Roads, is preparing an environmental assessment for the reconstruction of Navajo Route 11, located in McKinley County, New Mexico. Planning for this project, originally initiated in September 1995, has been delayed due to other construction priorities. The Corps is seeking early input for consideration during planning and design of the project. Therefore, please use this opportunity to identify any potential issues or areas of concern to you or your agency. Written comments, a Threatened and Endangered Species List, supporting information, data, and/or references should be submitted no later than August 28, 1998.

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Mr. Greg Everhart  
U.S. Army Engineer District, Albuquerque  
Attention: CESP-ET-PE  
4101 Jefferson Plaza, Northeast  
Albuquerque, New Mexico 87109

If you have any questions or require additional information, please contact Mr. Everhart at (505) 342-3352.

Sincerely,

Mark C. Harberg  
Chief, Environmental Section

Enclosure



-2-

If you have any questions or require additional information,  
please contact Mr. Everhart at (505) 342-3352.

Sincerely,

Mark C. Harberg  
Chief, Environmental Section

Enclosure

Everhart/bjc/3352 *ETPE*  
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ETPE (M. Harberg) *mw*  
ETP (J. White)  
ET (B. Meehan)  
DDE  
DE

*28 bjc*  
July 24, 1998

Engineering and Technical  
Services Division  
Planning and Environment  
Branch

Mr. Bob Sivinski  
New Mexico Department of Energy,  
Minerals, and Natural Resources  
Forestry and Resources  
Conservation Division  
P.O. Box 1948  
Santa Fe, New Mexico 87505

Dear Mr. Sivinski:

The U.S. Army Corps of Engineers (Corps), Albuquerque District, under contract with the Bureau of Indian Affairs, Navajo Area Office, Branch of Roads, is preparing an environmental assessment for the reconstruction of Navajo Route 11, located in McKinley County, New Mexico. Planning for this project, originally initiated in September 1995, has been delayed due to other construction priorities. The Corps is seeking early input for consideration during planning and design of the project. Therefore, please use this opportunity to identify any potential issues or areas of concern to you or your agency. Written comments, a Threatened and Endangered Species List, supporting information, data, and/or references should be submitted no later than August 24, 1998.

*28 bjc*  
A project description, project purpose, and map of the project area are enclosed for your information. Alternatives for the proposed action could involve no action, alternatives with varying degrees of road grading, widening, realignment, and drainage features, gravel surfacing, and/or asphalt paving. Please submit your comments directly to:

Mr. Greg Everhart  
U.S. Army Engineer District, Albuquerque  
Attention: CESP-ET-PE  
4101 Jefferson Plaza, Northeast  
Albuquerque, New Mexico 87109

FOR ENVIRONMENTAL SECTION FI

Everhart/bjc/3352 C:DE  
/user/etpeall/111trjp.gde

ETPE (M. Harberg) *my*

~~ETP (J. White)~~

~~ET (B. Meehan)~~

BDE

DE

*28 ijc*  
July 24, 1998

Engineering and Technical  
Services Division  
Planning and Environment  
Branch

Ms. Jennifer Fowler-Propst  
State Supervisor  
U.S. Fish and Wildlife Service  
NM Ecological Services Field Office  
2105 Osuna, Northeast  
Albuquerque, New Mexico 87113

Dear Ms. Fowler-Propst:

The U.S. Army Corps of Engineers (Corps), Albuquerque District, under contract with the Bureau of Indian Affairs, Navajo Area Office, Branch of Roads, is preparing an environmental assessment for the reconstruction of Navajo Route 11, located in McKinley County, New Mexico. Planning for this project, originally initiated in September 1995, has been delayed due to other construction priorities (reference Cons. #2-22-95-I-549). The Corps is seeking early input for consideration during planning and design of the project. Therefore, please use this opportunity to identify any potential issues or areas of concern to you or your agency. Written comments, a Threatened and Endangered Species List for the proposed project area, supporting information, data, and/or references should be submitted no later than August 24, 1998.

*28 ijc*  
A project description, project purpose, and map of the project area are enclosed for your information. Alternatives for the proposed action could involve no action, alternatives with varying degrees of road grading, widening, realignment, and drainage features, gravel surfacing, and/or asphalt paving. Please submit your comments directly to:

Mr. Greg Everhart  
U.S. Army Engineer District, Albuquerque  
Attention: CESP-ET-PE  
4101 Jefferson Plaza, Northeast  
Albuquerque, New Mexico 87109

If you have any questions or require additional information, please contact Mr. Everhart at (505) 342-3352.

Sincerely,

Mark C. Harberg  
Chief, Environmental Section

Enclosures

RESOLUTION OF THE  
NAVAJO NATION COUNCIL

Approving Interim Standard Terms and Condition for the  
Granting of Right-of-Way for BIA Road Construction Projects on  
the Navajo Nation

WHEREAS:

1. Pursuant to 2 N.N.C. §102 (A), the Navajo Nation Council is the governing body of the Navajo Nation; and
2. Pursuant to 2 N.N.C. §102 (C), the Navajo Nation Council shall supervise all powers delegated; and
3. Pursuant to 2 N.N.C. §423 (E), the Transportation and Community Development Committee is empowered to represent the Navajo Nation in all roads and transportation matters and developing and approving priority lists for roads and transportation projects; and
4. Pursuant to 2 N.N.C. §695 (B)(2), the Resources Committee of the Navajo Nation Council has been delegated authority to give final approval of rights-of-way over Navajo lands in accordance with applicable federal and Navajo Nation laws; and
5. Based on the federal law, the Transportation Equity Act for the 21<sup>st</sup> Century (TEA-21) authorized funding for Federal Aid Highways, Highway Safety Programs, Transit, and Federal Lands Programs including the Indian Reservation Roads Program; and
6. TEA-21 authorized funding for the Indian Reservation Roads Program by increasing the annual allocation of \$225,000,000 for Fiscal Year 1998 and \$275,000,000 for each fiscal year of 1999 and 2003; and
7. Based on annual allocations to Indian Tribes, the Navajo Nation receives its share of funding from the IRR Program. The Nation is now receiving an approximate amount of \$85 Million annually and are used for construction of roads including securing the necessary clearances and acquisition of rights-of way; and



8. On April 23, 2002, the Transportation and Community Development Committee of the Navajo Nation Council was apprised that certain road projects, totaling an approximate amount of \$24.37 million, were experiencing delays due to unresolved right-of-way issues:

- N-21(2)2 & 4, Kaibeto to Red Lake
- N-32(2)2 & 4, Navajo to Mexican Springs
- N-27(2-1/N-2-1)(1-2)2 & 4, Nazlini to Chinle
- N-203 (1)1,2,3 Switchback Bridge Project at Kinlichee
- N-55(2)2 & 4, Alamo to I-40
- N-35(6)2 & 4, U.S. 191 Rock Point to Sweetwater;

and in subsequent years, additional delays and potential loss of federal funds may occur if the right-of-way issue is not resolved by the two (2) standing committees; and

9. The Navajo Nation President Kelsey A. Begaye has taken the position that no IRR construction funds will be returned to the Federal Highway Administration and that the Navajo Nation must fully utilize the annual allocated IRR funds to improve badly needed roads; and

10. The Right-of-Way Clearance Program under the Navajo Land Department has encountered difficulties in ascertaining the right-of-way due to the "Terms and Conditions" to be used for all new road right-of-way packages. The Department of Justice has recommended that the Terms and Conditions be revised to prevent the potential loss of jurisdiction over said right of-way; and

11. To prevent the potential loss of federal highway funds allocated for the Navajo Nation, the Department of Justice has recommended the adoption of interim Terms and Conditions until all the affected parties can work together on new and updated terms and conditions for BIA Road Projects; and

12. In order to secure the needed federal highway funds, the BIA is requesting that the right-of-way be granted for a term of 75 years. On May 5, 2002, the Navajo Department of Justice, Project Review Office, and the Bureau of Indian Affairs/Branch of Roads discussed in a teleconference with the Bureau Solicitor, the language for the Interim Terms and Conditions that would specifically address BIA road projects. The agreed upon Interim Terms and Conditions are attached hereto and incorporated herein by this reference as Exhibit "A"; and

13. On May 15, 2002, the Transportation and Community Development Committee of the Navajo Nation Council met with the Resources Committee of the Navajo Nation Council in a joint meeting and discussed the status of road projects and the "Terms and Conditions" for the right-of-way. Such Interim Terms and Conditions were made available; and

14. On May 21, 2002, by Resolution TCDCMY-31-02, attached and marked herein as Exhibit "B", the Transportation and Community Development Committee of the Navajo Nation Council recommended the "Terms and Conditions" for the right-of-way for road projects; and

15. On July 25, 2002, by Resolution RCJY-108-02, attached and marked herein as Exhibit "C", the Resources Committee of the Navajo Nation Council recommended the "Terms and Conditions" for the right-of-way for road projects.

NOW THEREFORE BE IT RESOLVED THAT:

1. The Navajo Nation Council hereby approves the Interim Right-of-Way Terms and Conditions for Road Projects, attached hereto as Exhibit "A".

2. The Navajo Nation Council directs that the Interim Standard Terms and Conditions shall be used for all subsequent Right of-Way for BIA Road Projects until all affected parties can work together on developing a new and updated Terms and Conditions for BIA road projects.

CERTIFICATION

I hereby certify that the foregoing resolution was duly considered by the Navajo Nation Council at a duly called meeting in Window Rock, Navajo Nation (Arizona) at which a quorum was present and that the same was passed by a vote of 66 in favor, 0 opposed and 0 abstained, this 1<sup>st</sup> day of November 2002.

*Edward T. Begay*

Edward T. Begay, Speaker  
Navajo Nation Council

Nov 5, 2002

Date

Motion: Larry Noble  
Second: Joe Dayzie



DR. JOE SHIRLEY, JR.  
President

BEN SHELLEY  
Vice President

Mr. Omar Bradley, Regional Director  
Bureau of Indian Affairs  
Navajo Region  
Post Office Box 1060  
Gallup, New Mexico 87305

RE: Right-of-Way for Bureau of Indian Affairs (BIA), Division of Transportation

Dear Mr. Bradley:

On October 16, 2009, the Resources Committee of the Navajo Nation Council approved the Right-of-Way package for the Bureau of Indian Affairs (BIA), Division of Transportation:

Resolution Number RCO-106-09, entitled "Approving the Granting of a Right-of-Way to the Bureau of Indian Affairs, Division of Transportation, for Construction, Operation and Maintenance of BIA Road Project No. N16(6)/162(1)/N164(1)2&4, Navajo Mountain Road Project and to Include the Utility Systems within Navajo Mountain Chapter, Navajo Nation"

Approval of this Right-of-Way is given subject to the terms and conditions stipulated in the resolution approved by the Resources Committee and exhibits attached to such resolution.

Your prompt approval of this right-of-way is appreciated.

Sincerely,

THE NAVAJO NATION

  
Joe Shirley, Jr.  
President

ENCLOSURES

RECEIVED

NOV - 6 '09

Navajo Region  
Division of Transportation



RESOLUTION  
OF THE RESOURCES COMMITTEE  
OF THE NAVAJO NATION COUNCIL

21<sup>st</sup> NAVAJO NATION COUNCIL - Third Year, 2009

AN ACTION

RELATING TO RESOURCES; APPROVING THE GRANTING OF A RIGHT-OF-WAY TO THE BUREAU OF INDIAN AFFAIRS, DIVISION OF TRANSPORTATION, FOR CONSTRUCTION, OPERATION AND MAINTENANCE OF BIA ROAD PROJECT NO. N16(6)/N162(1)/N164(1)2&4, NAVAJO MOUNTAIN ROAD PROJECT AND TO INCLUDE THE UTILITY SYSTEMS WITHIN NAVAJO MOUNTAIN CHAPTER, NAVAJO NATION

BE IT ENACTED:

1. The Navajo Nation hereby approves the granting of a right-of-way to the Bureau of Indian Affairs, Division of Transportation, to construct, operate and maintain BIA Road Project No. N16(6)/N162(1)/N164(1)2&4, Navajo Mountain Road Project and to include the utility systems within Un-Sectioned 1, Township 41 North, Range 14 East, Gila and Salt River Meridian, Coconino County, Arizona, and protracted Sections 10, 11, 14, 15, 22, 23, 27, 28, and 34, Township 43 South, Range 10 East, Salt Lake Meridian, San Juan County, Utah, Navajo Mountain Chapter, Navajo Nation, more particularly described in Exhibits "A" and "B".

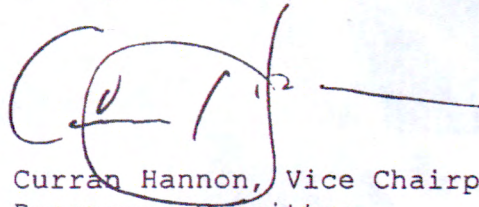
2. The Navajo Nation hereby approves the granting of a right-of-way to the Bureau of Indian Affairs, Division of Transportation, subject to, but not limited to, the terms and conditions contained in Exhibit "D".

3. The Navajo Nation hereby waives consideration because the Bureau of Indian Affairs Road Project N16(6)/N162(1)/N164(1)2&4, Navajo Mountain Road Project and utility systems will benefit Navajo residents.

4. The Navajo Nation hereby authorizes the President of the Navajo Nation to execute any and all documents necessary to effectuate the intent and purpose of this resolution.

## CERTIFICATION

I hereby certify that the foregoing resolution was duly considered by the Resources Committee of the Navajo Nation Council at a duly called meeting at Tuba City, Navajo Nation (Arizona), at which a quorum was present and that same was passed by a vote of 7 in favor and 0 opposed, this 16<sup>th</sup> day of October, 2009.

A handwritten signature in dark ink, appearing to read 'Curran Hannon', is written over a circular stamp. The stamp contains some illegible text and a horizontal line. A horizontal line extends from the right side of the signature.

Curran Hannon, Vice Chairperson  
Resources Committee

Motion: Harry Williams, Sr.

Second: Harry H. Clark