

RESOLUTION OF THE
RESOURCES AND DEVELOPMENT COMMITTEE
23rd Navajo Nation Council --- Third Year, 2017

AN ACTION

RELATING TO RESOURCES AND DEVELOPMENT; AMENDING RDCJY-50-16 BY APPROVING A NEW TEMPORARY CONSTRUCTION EASEMENT FOR TRANSWESTERN PIPELINE COMPANY TO REPLACE AN EXISTING 2 INCH BADLY DETERIORATED STEEL PIPELINE WITH A 4 INCH PE PIPELINE FROM LEUPP TO TSIDI TO'II (BIRDSPRINGS) CHAPTER VICINITY, NAVAJO NATION (COCONINO COUNTY, ARIZONA) TO SERVE THE LIVESTOCK WATER NEEDS AND TO SUSTAIN AND PROMOTE LIVESTOCK ECONOMY

BE IT ENACTED:

SECTION ONE. AUTHORITY

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

SECTION TWO. FINDINGS

- A. The Resources and Development Committee approved RDCJY-50-16 which granted the Transwestern Pipeline Company, Right-of-Way Department, 1300 Main Street, Houston, TX 77002, a temporary construction easement for pipeline maintenance/replacement of an old existing water pipeline in the Tsidi To'ii (Birdsprings) Chapter vicinity on, over and across Navajo Nation Trust Lands, Navajo Nation (Coconino County, Arizona). Resolution RDCJY-50-16 is attached hereto and incorporated herein as Exhibit "3."
- B. The Transwestern Pipeline Company has requested the approval of a new temporary construction easement which will allow for the completion of the project.
- C. The term for the new temporary construction easement will be for one year.

- D. The request to amend RDCJY-50-16 has been reviewed by the Navajo Department of Water Resources; the Division of Natural Resources and the Department of Justice and found "Sufficient" by all. See Exhibit "2."

SECTION THREE. APPROVAL

- A. The Resources and Development Committee of the Navajo Nation Council hereby amends RDCJY-50-16 by changing the temporary construction easement. All other provisions of RDCJY-50-16 will remain the same.
- B. The Resources and Development Committee of the Navajo Nation Council hereby approves the new temporary construction easement subject, but not limited, to the following terms and conditions attached hereto and incorporated herein as Exhibit "1."
- C. 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 23rd Navajo Nation Council at a duly called meeting at Chichiltah Chapter, Chichiltah, Navajo Nation (New Mexico), at which a quorum was present and that same was passed by a vote of 4 in favor, 0 opposed, 1 abstained on this 6th day of September, 2017.



Benjamin Bennett, Vice-Chairperson
Resources and Development Committee
of the 23rd Navajo Nation Council

Motion: Honorable Alton Joe Shepherd
Second: Honorable Leonard Pete



TEMPORARY CONSTRUCTION EASEMENT TERMS AND CONDITIONS

Transwestern Pipeline Company (TWPC)

1. The term of the temporary construction easement (TCE) shall be for one (1) year, beginning on the date the TEC is approved by the Resources and Development Committee of the Navajo Nation Council.
2. Since the TCE is for the construction of livestock waterline replacement, no consideration was assessed.
3. TWPC may develop, use and occupy the TCE for the purpose(s) of contributing to the project to provide livestock water to Birdsprings Community. The TWPC may not develop, use or occupy the TCE for any other purpose, nor allow others to use or occupy the TCE for any other purpose, without the prior written approval of the Navajo Nation.
4. In all activities conducted by TWPC within the Navajo Nation, TWPC shall abide by all laws and regulations of the Navajo Nation, including but not limited to the following:
 - a. 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 archaeological deposits, human remains, or location reportedly associated with Native American religious/traditional beliefs or practices;
 - b. 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
 - c. The Navajo Nation Water Code, 22 N.N.C. § 1101 et seq., TWPC shall apply for and submit all applicable permits and inform to the Navajo Nation Water Resources Department, or its successor.
5. TWPC shall ensure that the air quality of the Navajo Nation is not jeopardized due to violation of applicable laws and regulations during the construction of the project.
6. TWPC shall clear and keep clear the lands within the TCE area to the extent compatible and shall dispose of all vegetation and other materials cut, uprooted or otherwise accumulated during any surface disturbance activities.
7. TWPC shall reclaim all surface lands disturbed during the construction of the pipeline project.
8. TWPC shall at all times during the term of the TCE and at its sole cost and expense, maintain the land subject to the TEC and all improvements located thereon and make all necessary and reasonable repairs.
9. TWPC shall obtain prior written permission to cross existing right-of-way, if any, from the appropriate parties.
10. TWPC shall be responsible for and promptly pay for all the surface damages when they are sustained.

11. TWPC shall indemnify and hold harmless the Navajo Nation and its 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 of the TCE by TWPC.
12. TWPC shall not assign, convey, transfer or sublet, in any manner whatsoever, the TCE or any interest therein, or in or to any of the improvements on the land subject to TCE, without the prior written consent of the Navajo Nation. 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 in the sole discretion of the Navajo Nation.
13. The Navajo Nation may terminate the TCE for violation of any of the terms and conditions stated herein. In addition, the TCE shall be terminable in whole or part by the Navajo Nation for the following cause:
 - a. The use of the land subject to the TEC for any purpose inconsistent with the purpose for which the TEC is granted.
14. At the termination or expiration of this TEC, TWPC shall peaceably and without legal process give up the possession of the premises, in good condition, usual wear and tear accepted
15. Holding over by TWPC after the termination of the TEC shall not constitute a renewal or extension thereof or give TWPC any rights hereunder or in or to the land subject to the TEC or to any improvements located thereon.
16. The Navajo Nation shall have the right, at any reasonable time during the term of the TCE, to enter upon the premises, or any part thereof, to inspect the same and any improvements located thereon.
17. Any action or proceeding brought by TWPC against the Navajo Nation in connection with or arising out of the terms and conditions of the TCE shall be brought only in the Courts of the Navajo Nation, and no such action or proceeding shall be brought by TWPC against the Navajo Nation in any court of any state.
18. Nothing contained herein shall be interpreted as constituting a waiver, express or implied, of the sovereign immunity of the Navajo Nation.
19. 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.
20. 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 TWPC.
21. TWPC hereby expressly accepts, agrees, and acknowledges that the execution and approval of this TCE by the Navajo Nation does not diminish to any extent or in any manner whatsoever, the Navajo Nation's jurisdiction over TEC premises.
22. The Navajo Nation reserves the right to grant rights-of-way within the TCE referenced herein for utilities, provided that such rights-of-way do not unreasonably interfere with TWPC's use of the TCE.

EXECUTIVE OFFICIAL REVIEWTitle of Document: Amending RDCJY-50-16 resolution Contact Name: TARIQ, NAJAM H.Program/Division: DIVISION OF NATURAL RESOURCESEmail: najamtariq@navajo-nsn.gov Phone Number: 928-729-4039, 4031☐ **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: _____	<input type="checkbox"/>	<input type="checkbox"/>
2. Office of the Attorney General:	_____	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>

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

1. NLD	_____	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>
2. F&W	_____	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>
3. HPD	_____	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>
4. Minerals	_____	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>
5. NNEPA	_____	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>
6. DNR	_____	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>
7. DOJ	_____	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>

☐ **Rights of Way**

1. NLD	_____	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>
2. F&W	_____	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>
3. HPD	_____	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>
4. Minerals	_____	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>
5. NNEPA	_____	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>
6. Office of the Attorney General:	_____	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>
7. OPVP	_____	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>

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

1. Minerals	_____	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>
2. OPVP	_____	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>
3. NLD	_____	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>

☐ **Assignment of Mineral Lease**

1. Minerals	_____	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>
2. DNR	_____	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>
3. DOJ	_____	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>

☐ **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: _____	<input type="checkbox"/>	<input type="checkbox"/>
2. F&W	_____	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>
3. HPD	_____	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>
4. Minerals	_____	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>
5. NNEPA	_____	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>
6. DNR	_____	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>
7. DOJ	_____	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>
8. OPVP	_____	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>

☒ **OTHER:**

1. <u>Water Resources</u>	<u>Trisham H. Tarrig</u>	Date: <u>8/17/17</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
2. <u>Natural Resources</u>	<u>Robert C. Allant</u>	Date: <u>8/17/17</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
3. <u>Dept. of Justice</u>	<u>[Signature]</u>	Date: <u>8/17/17</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
4. <u>Office of the President</u>	<u>[Signature]</u>	Date: <u>8-17-17</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
5. _____	_____	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>



NAVAJO NATION DEPARTMENT OF JUSTICE

DOCUMENT REVIEW REQUEST FORM

☐ RESUBMITTAL



DOJ
8/17/17 4:22p
DATE / TIME
<input type="checkbox"/> 7 Day Deadline
DOC #: 00 8584
SAS #:
UNIT: NIN

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

CLIENT TO COMPLETE

DATE OF REQUEST: 8/17/17 ENTITY/DIVISION: DNR
CONTACT NAME: Najam Tariq DEPARTMENT: Waters.
PHONE NUMBER: X4039 E-MAIL:

TITLE OF DOCUMENT: Amendment to RCDJY-50-16

DOJ SECRETARY TO COMPLETE

DATE/TIME IN UNIT: 8.17.17 4:35p REVIEWING ATTORNEY/ADVOCATE: F. Min Chel

DATE/TIME OUT OF UNIT: 8.17.17 @ 4:45p B

DOJ ATTORNEY / ADVOCATE COMMENTS

Document is legally sufficient.

REVIEWED BY: (PRINT) F. Min Chel	DATE / TIME 8/17/17	SURNAMED BY: (PRINT) V. Blackhat	DATE / TIME 8/17/17 4:31pm
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DOJ Secretary Called: for Document Pick Up on at By:

PICKED UP BY: (PRINT) [Signature] DATE / TIME: 8/17/17 4:45pm

COMPLETED




THE NAVAJO NATION

RUSSELL BEGAYE PRESIDENT
JONATHAN NEZ VICE PRESIDENT

December 02, 2016

MEMORANDUM

TO: **ALL Department Managers**
DIVISION OF NATURAL RESOURCES

FROM: 
Bidtah N. Becker, Division Director
Navajo Nation Division of Natural Resources

SUBJECT: **DELEGATION OF AUTHORITY**

Please be advised that in the event that either I, Division Director of the Division of Natural Resources, or Ms. Evangeline Curley-Thomas, Deputy Director, Division of Natural Resources, are not in the office or otherwise unavailable, Mr. Robert O. Allan, Principal Attorney, Division of Natural Resources, shall be delegated authority as the Acting Division Director of the Division of Natural Resources. This is a standing delegation of authority until further notice.

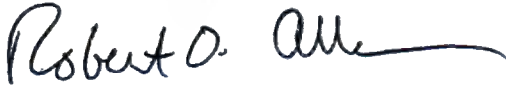
Please cooperate with Mr. Allan in this standing delegation of authority. Should you have any questions, please contact me.

ACKNOWLEDGED:



Evangeline Curley-Thomas, Deputy Director
Division of Natural Resources

ACKNOWLEDGED:



Robert O. Allan, Principal Attorney
Division of Natural Resources

RESOLUTION OF THE
RESOURCES AND DEVELOPMENT COMMITTEE
Of the 23rd Navajo Nation Council---Second Year 2016

AN ACTION RELATING TO RESOURCES AND DEVELOPMENT; APPROVING TEMPORARY CONSTRUCTION EASEMENTS FOR TRANSWESTERN PIPELINE COMPANY TO REPLACE AND EXISTING 2 INCH BADLY DETERIORATED STEEL PIPELINE WITH A 4 INCH PIPELINE FROM LEUPP TO TSIDI TO'II (BIRDSPRINGS) CHAPTER VICINITY, NAVAJO NATION (COCONINO COUNTY, ARIZONA) TO SERVE THE LIVESTOCK WATER NEEDS AND TO SUSTAIN AND PROMOTE LIVESTOCK ECONOMY

BE IT ENTACTED:

SECTION ONE. AUTHORITY

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

SECTION TWO FINDINGS

A. The Transwestern Pipeline Company, Right-of-Way Department, 1300 Main Street, Houston, TX 77002, has submitted a request for a temporary construction easement for pipeline maintenance/replacement of an old existing water pipeline in the Tsidi To'ii (Birdsprings) Chapter vicinity on, over and across Navajo Nation Trust Lands, Navajo Nation (Coconino County, Arizona). The letter from Transwestern Pipeline Company is attached hereto and incorporated herein as Exhibit "A"; and

B. The proposed temporary construction easements consist of 52.61 acres, more or less of Navajo Nation Trust Lands located on the south of the existing right-of-way in Township 22 North, Ranges 13-14 East, G&SRM, Coconino County, Arizona and the location is more particularly described on the survey map attached hereto and incorporated herein as Exhibit "B"; and

C. The Navajo Land Department had obtained the statement from the District 5 Land Board Member stating there are no affected land users (i.e. grazing permittees) attached hereto as Exhibit "C"; and

D. The environmental and archaeological studies and clearances were conducted and are attached hereto and incorporated herein as referenced.

SECTION THREE. APPROVAL

A. The Resources and Development Committee of the Navajo Nation Council hereby approves Temporary Construction Easements to Transwestern Pipeline Company for replacement of the old deteriorated pipeline adjacent to their existing Natural Gas Pipeline on Navajo Nation Trust Lands, Tsidi To'ii (Birdsprings) Chapter vicinity, Navajo Nation (Coconino County, Arizona). The location is more particularly described on the map attached hereto as Exhibit "B".

B. The term of the temporary construction easements shall be for one year effective the date of its approval by the Navajo Nation.

C. The Resources and Development Committee of the Navajo Nation Council hereby approves the temporary construction easements subject, but not limited, to the following terms and conditions attached hereto and incorporated herein as Exhibit "D".

D. 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.

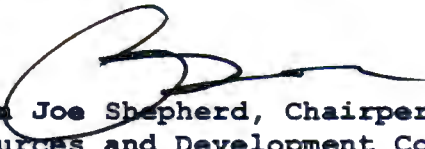
. . . .

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. . . .

CERTIFICATION

I, hereby, certify that the foregoing resolution was duly considered by the Resources and Development Committee of the 23rd Navajo Nation Council at a duly called meeting at Navajo Department of Transportation, (Navajo Nation) Tse Bonito, New Mexico, at which quorum was present and that same was passed by a vote of 4 in favor, 0 opposed, 1 abstained this 26th day of July, 2016.



Alton Joe Shepherd, Chairperson
Resources and Development Committee
Of the 23rd Navajo Nation Council

Motion: Honorable Davis Filfred
Second: Honorable Jonathan Perry

Document No. 005234

Date Issued: 01/07/2016

EXECUTIVE OFFICIAL REVIEW

Title of Document: TWPC- TCE for Waterline in BirdSprings Contact Name: DRAPER, HOWARD

Program/Division: DIVISION OF NATURAL RESOURCES

Email: howarddraper@frontiernet.net Phone Number: 928/871-6447

<input type="checkbox"/> Business Site Lease			Sufficient	Insufficient
1. Division:	_____	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>
2. Office of the Controller:	_____	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>
(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: _____	<input type="checkbox"/>	<input type="checkbox"/>

<input type="checkbox"/> 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: _____	<input type="checkbox"/>	<input type="checkbox"/>
2. Office of the Attorney General:	_____	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>

<input type="checkbox"/> Fund Management Plan, Expenditure Plans, Carry Over Requests, Budget Modifications				
1. Office of Management and Budget:	_____	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>
2. Office of the Controller:	_____	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>
3. Office of the Attorney General:	_____	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>

<input type="checkbox"/> Navajo Housing Authority Request for Release of Funds				
1. NNEPA:	_____	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>
2. Office of the Attorney General:	_____	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>

<input type="checkbox"/> Lease Purchase Agreements				
1. Office of the Controller:	_____	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>
(recommendation only)				
2. Office of the Attorney General:	_____	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>

<input type="checkbox"/> Grant Applications				
1. Office of Management and Budget:	_____	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>
2. Office of the Controller:	_____	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>
3. Office of the Attorney General:	_____	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>

<input type="checkbox"/> 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				
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1. Division:	_____	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>
2. Office of the Attorney General:	_____	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>

<input type="checkbox"/> Relinquishment of Navajo Membership				
1. Land Department:	_____	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>
2. Elections:	_____	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>
3. Office of the Attorney General:	_____	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>

☐ 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: _____ ☐ ☐
2. F&W _____ Date: _____ ☐ ☐
3. HPD _____ Date: _____ ☐ ☐
4. Minerals _____ Date: _____ ☐ ☐
5. NNEPA _____ Date: _____ ☐ ☐
6. Office of the Attorney General: _____ Date: _____ ☐ ☐
7. OPVP _____ Date: _____ ☐ ☐

☐ 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 *X* _____ Date: 3-29-16 ☒ ☐
2. F&W _____ Date: 3/31/16 ☒ ☐
3. HPD _____ Date: 4/8/16 ☒ ☐
4. Minerals _____ Date: 4/28/16 ☒ ☐
5. NNEPA _____ Date: 5-9-2016 ☒ ☐
6. DNR _____ Date: 5/13/16 ☒ ☐
7. DOJ *(ic)* _____ Date: 5/25/16 ☒ ☐
8. OPVP _____ Date: 6-2-16 ☒ ☐

☐ OTHER:

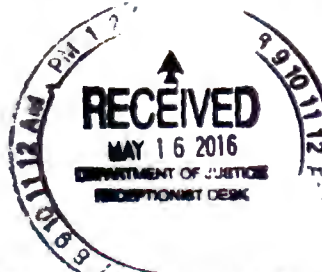
1. _____ Date: _____ ☐ ☐
2. _____ Date: _____ ☐ ☐
3. _____ Date: _____ ☐ ☐
4. _____ Date: _____ ☐ ☐
5. _____ Date: _____ ☐ ☐



NAVAJO NATION DEPARTMENT OF JUSTICE

DOCUMENT REVIEW REQUEST FORM

☐ RESUBMITTAL



DOJ
05/16/16 @ 4:09pm
DATE / TIME
<input type="checkbox"/> 7 Day Deadline
DOC #: 005234
SAS #:
UNIT: NRM

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

CLIENT TO COMPLETE

DATE OF REQUEST: 3/29/2016 May 16, 2016	DIVISION: Natural Resources (DNR)
CONTACT NAME: Howard P Draper, Kayla Bia, Vera Shurley	DEPARTMENT: Navajo Land Dept (NLD) Project Review
PHONE NUMBER: X-6447, 6401,	E-MAIL: howarddraper@frontiernet.net; klbia@frontier.com; verashurley@frontiernet.net
TITLE OF DOCUMENT: Temporary Construction Easement for Transwestern Pipeline Co. to Replace an existing 2 Inch Badly Deteriorated Steel Pipeline with a 4 Inch PE Pipeline from Luepp to Birdsprings, Coconino County, Arizona to service livestock water needs and to sustain	

DOJ SECRETARY TO COMPLETE

DATE/TIME IN UNIT: 05/16/16 4:34pm	REVIEWING ATTORNEY/ADVOCATE: Devin Chis 05/25/16
DATE/TIME OUT OF UNIT: 05/25/16 10:15 am	SP

DOJ ATTORNEY / ADVOCATE COMMENTS

- Document is legally sufficient.

REVIEWED BY: (Print)	Date / Time	SURNAMED BY: (Print)	Date / Time
Iman Ghez	5/18/16	Veronica Blackout	5/25/16 9:21am

DOJ Secretary Called: Vera Shurley for Document Pick Up on 5/25/16 at 9:35am By: SP

PICKED UP BY: (Print)	DATE / TIME:
NNDJ/DRRF-July 2013	



ENERGY TRANSFER PARTNERS
Transwestern Pipeline Company



November 18, 2015

Mr. Howard Draper
Manager, Project Review
The Navajo Nation Land Department
P.O. Box 2249
Window Rock, AZ 86515

**Re: Proposed Waterline for the Benefit of Bird Springs Community
Transwestern Pipeline Company, LLC (TWPC) - Coconino County, AZ**

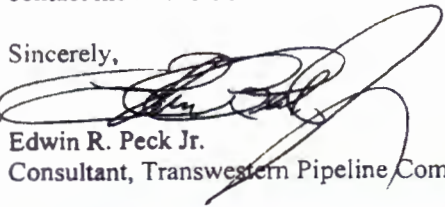
Dear Mr. Draper,

In accordance with numerous discussions; Transwestern Pipeline Company, LLC (TWPC) has been working with the Bird Springs Community and Navajo Nation Water Resources Department to abandon and replace the old existing water line from the existing water wells to assist the Bird Springs Community with a more reliable water supply than what is currently in place.

TWPC and its contractors have now performed the necessary surveys (Civil, Cultural Resources, and Biological Surveys) for the proposed waterline replacement. TWPC is now presenting the maps showing the proposed waterline location parallel and adjacent to TWPC's existing natural gas mainline right of way. Along with the maps, we are also including the Cultural Resource and Biological Reports for the proposed route. This information is being provided for the review and approval of the Navajo Nation in order TWPC and the Nation can proceed with the necessary agreements to construct this waterline for the benefit of the Bird Springs Community.

It is our understanding Project Review will initiate the Navajo Nations internal SAS review process based on the enclosed information provided by TWPC. If there are any questions, or you need additional information, please contact me at 281-367-4452.

Sincerely,



Edwin R. Peck Jr.
Consultant, Transwestern Pipeline Company, LLC

Enclosures: Maps, Cultural Report, Biological Report

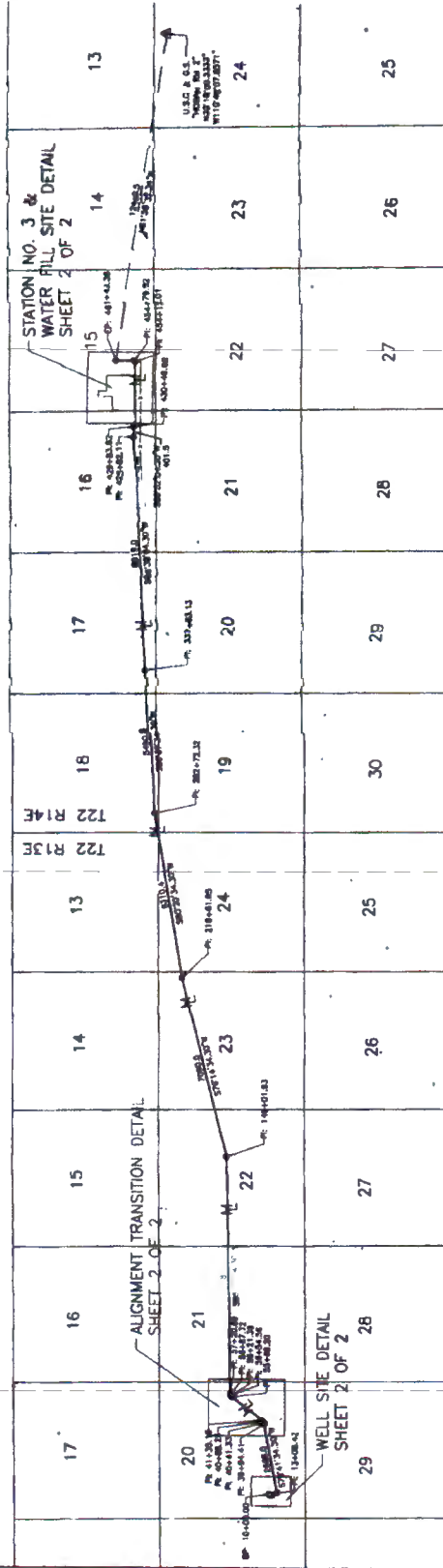
Cc: Najam Tariq - Water Resources Department W/Enclosures
Honorable Walter Phelps - Council Delegate
Roger Westbrook - Senior Manager, Right of Way TWPC

1300 Main Street, Houston, TX 77002

EXHIBIT
B

CONSTRUCTION EASEMENT ALIGNMENT
FOR
REPLACEMENT STOCK WATERLINE

TOWNSHIP 22 NORTH, RANGES 13 AND 14 EAST
GOLD AND SALT RIVER BASELINE AND MERIDIAN



BASIS OF BEARING:
THE COURSE BETWEEN U.S.C. &
G.S. 'HOGAN RM 2' MONUMENT
AND THE EAST END OF THE
MONUMENT LINE (STA 481+49.36),
WHICH IS ALSO THE LOCATION OF
THE EXISTING WATER STATION
MONUMENT LINE IS ASSUMED TO
BE EQUIVALENT TO NEW WATER
LINE, EXCEPT THE CONNECTION TO
THE FILL STATION

Line Tabular: Alignments		
Line #	Length	Direction
13	816.00	N 87° 37' 34.30\"
14	708.00	N 87° 37' 34.30\"
15	430.37	N 87° 37' 34.30\"
16	348.00	N 87° 37' 34.30\"
17	885.00	N 87° 37' 34.30\"
18	847.51	N 87° 37' 34.30\"
19	232.32	N 87° 37' 34.30\"
20	82.81	N 87° 37' 34.30\"
21	848.32	N 87° 37' 34.30\"

Line Tabular: Alignments		
Line #	Length	Direction
22	308.45	S 10° 18' 28.97\"
23	887.00	S 10° 18' 28.97\"
24	48.92	S 10° 18' 28.97\"
25	48.92	S 10° 18' 28.97\"
26	48.92	S 10° 18' 28.97\"
27	1453.04	S 10° 18' 28.97\"
28	33.19	S 10° 18' 28.97\"
29	33.17	S 10° 18' 28.97\"
30	33.17	S 10° 18' 28.97\"
31	11	S 10° 18' 28.97\"

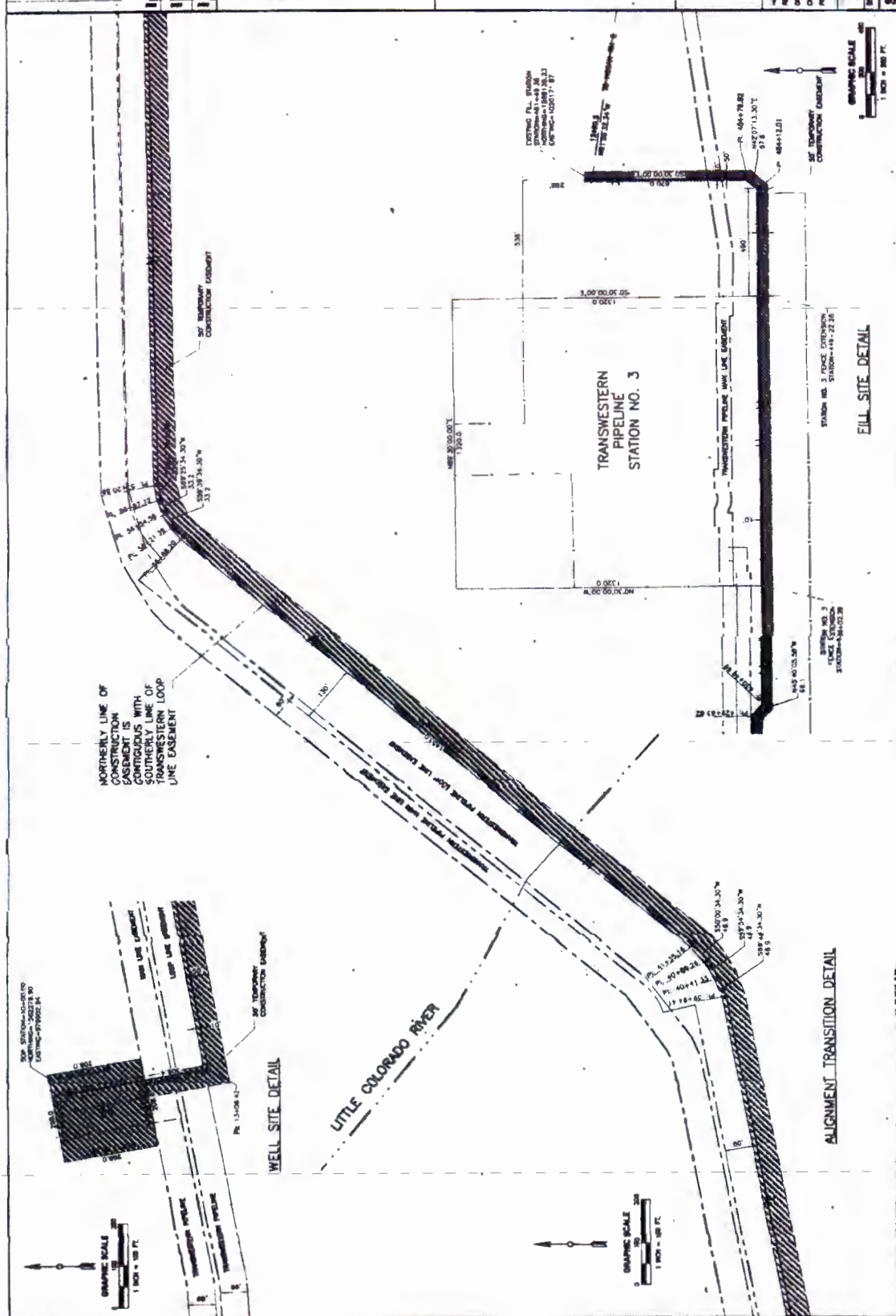


1 inch = 100 feet

LEUPP WATER TRANSMISSION STATION NO. 3
LEUPP, ARIZONA
CONSTRUCTION EASEMENT
FOR WATER LINE

DESIGNED BY: D. BROWN P.E.
CHECKED BY: D. BROWN P.E.
DATE: 10/20/11

SHEET 1 OF 2






THE NAVAJO NATION

RUSSELL BEGAYE **PRESIDENT**
JONATHAN NEZ **VICE PRESIDENT**



MEMORANDUM

TO: Howard P. Draper, Proj. Program Specialist
Project Review Section/NLD
Window Rock, Arizona 86515

FROM: 
Rodger R. Paul/Right-of-Way Agent
Project Review Section/NLD
Chinle, Arizona 86503

DATE: February 04, 2016

SUBJECT: ***FIELD CLEARANCE FOR TEMPORARY CONSTRUCTION EASEMENT
Birdsprings, Coconino County, Arizona***

Transwestern Pipeline Company (TWPC), 1300 Main Street, Houston Texas 77002 has submitted an application requesting for field clearances on the Temporary Construction Easement (TCE) to utilize 50 ft. width of Navajo Tribal Trust Land (NTTL) to construct, replace the old existing water line from the existing water wells to assist the Birdsprings Community with more reliable water supply and stock-water well site (208 ft. x 208 ft.), project located within the vicinity of Birdsprings, Coconino County, Arizona.

Project Review Section/Chinle Navajo Land Department has conducted and completed the field clearance on the above project, met with Mr. Randolph David chapter grazing committee member (Birdsprings Chapter) to identify the affected land user (grazing permittee) affected by the proposed project, upon review of the attached map, according to Mr. David records and knowledge the proposed project will cross on, over and across the Navajo Tribal Trust Land (NTTL). There are (06) six land users (grazing permittee) affected by the proposed project. Project Review Section has contacted the affected land users (grazing permittee) to inform them of and obtain their written consent. The affected land users (Julis Lee, Mary Lou Kelly, Benny Benally, Ruby Benally, Joe L. Riggs, and Pearl Wilson) had no objection and gave their written consent. Attached hereto are land users consent forms signed by the affected land users (grazing permittee) for your information and use. If you have any question(s) please contact me at (928) 674-2315/ (928) 797-1835.

cc: Office File
TWPC/Applicant

FIELD CLEARANCE CHECKLIST

This form covers only damages and compensation to individual land users. It doesn't cover consideration or other fee to the Navajo Nation. (use back if necessary to complete this form).

1. Project Identification:

Application: Transwestern Pipeline Company

Type of Project: Temporary Construction Easement

Purpose: Construct, Operate Maintain a Waterline

Location: Birdsprings, Coconino County, Arizona

Identification number: _____

2. Amount of land affected: _____

3. Land Status: Trust: XX Fee: _____ Other: _____

4. List names of all individuals whose land use rights will be affected by the proposed project.

Name	Census Number	Type of Land Use Right
1. <u>Julis Lee</u>	_____	<u>G/P# 5-1050</u>
2. <u>Mary Lou Kelly</u>	_____	<u>G/P# 5-1118</u>
3. <u>Benny Benally</u>	_____	<u>G/P# 5-0994</u>
4. <u>Joe L. Riggs</u>	_____	<u>G/P# 5-1057</u>
5. <u>Ruby Benally</u>	_____	<u>G/P# 5-0880</u>
6. <u>Peral Wilson</u>	_____	<u>G/P# 5-1243</u>
7. _____	_____	_____
8. _____	_____	_____
9. _____	_____	_____

5. Are all the land users with claims to the affected lands as shown in Branch Land Operation records included in the list in item 4? Yes

6. Have the Grazing Committee or Land Board Member (which ever appropriate) for the affected area confirm land user list in item 4 by signing acknowledgement below. Yes

ACKNOWLEDGEMENT

I acknowledge that due notice was given to the affected community of the proposed project, and according to my records and to the best of my knowledge, the list of the individual in item 4 includes all land users who have land use rights in the affected lands.

02/13/16
Date: _____
Grazing Committee/Land Board Member

5-2
Dist. No.

CONSENT FORM-3

(Waiver of compensation for damages)

**CONSENT TO USE
NAVAJO TRIBAL LANDS**

TO WHOM IT MAY CONCERN

I Pearl Wilson hereby grant consent to the Navajo Tribe and the Bureau of Indian Affairs to permit Transwestern Pipeline Company of 1300 Main Street, Houston, Texas 77002 to use a portion of my land use area for the following purpose(s) for a fifty (50) ft. width of Navajo Tribal Trust Land (NTTL) for Temporary Construction Easement (TCE) to replace the old existing water line from the existing water wells to assist the Birdsprings Community with more reliable water supply, and well site, located within the vicinity of Birdsprings, Coconino County, Arizona 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 diminishment in value of my land use rights as a result of the above-referenced project as proposed.

REMARKS: _____

2/2/16 Pearl Wilson G/P# 5-1243
Date: Land User Signature (Thumb Print) Census No. Permit No.

WITNESS:

2/3/16 [Signature] 5-2
Date Grazing Committee or Land Board Member District No.

Acknowledge 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 FORM-3

(Waiver of compensation for damages)

**CONSENT TO USE
NAVAJO TRIBAL LANDS**

TO WHOM IT MAY CONCERN

I Ruby Benally hereby grant consent to the Navajo Tribe and the Bureau of Indian Affairs to permit Transwestern Pipeline Company of 1300 Main Street, Houston, Texas 77002 to use a portion of my land use area for the following purpose(s) for a fifty (50) ft. width of Navajo Tribal Trust Land (NTTL) for Temporary Construction Easement (TCE) to replace the old existing water line from the existing water wells to assist the Birdsprings Community with more reliable water supply, and well site, located within the vicinity of Birdsprings, Coconino County, Arizona 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 diminishment in value of my land use rights as a result of the above-referenced project as proposed.

REMARKS: _____

2/3/2016 / Ruby Benally / _____ / G/P# 5-0880
Date: Land User Signature (Thumb Print) Census No. Permit No.

WITNESS:

2/3/2016 / [Signature] / 5-2
Date Grazing Committee or Land Board Member District No.

Acknowledge 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 FORM-3

(Waiver of compensation for damages)

**CONSENT TO USE
NAVAJO TRIBAL LANDS**

TO WHOM IT MAY CONCERN

I Joe L. Riggs hereby grant consent to the Navajo Tribe and the Bureau of Indian Affairs to permit Transwestern Pipeline Company of 1300 Main Street, Houston, Texas 77002 to use a portion of my land use area for the following purpose(s) for a fifty (50) ft. width of Navajo Tribal Trust Land (NTTL) for Temporary Construction Easement (TCE) to replace the old existing water line from the existing water wells to assist the Birdsprings Community with more reliable water supply, and well site, located within the vicinity of Birdsprings, Coconino County, Arizona 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 diminishment in value of my land use rights as a result of the above-referenced project as proposed.

REMARKS: _____

2/02/2016 Joe L. Riggs G/P# 5-1057
Date: Land User Signature (Thumb Print) Census No. Permit No.

WITNESS:

02/03/16 [Signature] 5-2
Date Grazing Committee or Land Board Member District No.

Acknowledge 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

(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.

2/2/16 Benny Benally G/P# 5-0994
Date: Land User Signature (Thumb Print) Census No. Permit No.

02/03/16 [Signature] 5-2
Date Grazing Committee or Land Board Member District No.

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

Field Agent Signature

CONSENT FORM-3

(Waiver of compensation for damages)

**CONSENT TO USE
NAVAJO TRIBAL LANDS**

TO WHOM IT MAY CONCERN

I Mary Lo Kelly hereby grant consent to the Navajo Tribe and the Bureau of Indian Affairs to permit Transwestern Pipeline Company of 1300 Main Street, Houston, Texas 77002 to use a portion of my land use area for the following purpose(s) for a fifty (50) ft. width of Navajo Tribal Trust Land (NTTL) for Temporary Construction Easement (TCE) to replace the old existing water line from the existing water wells to assist the Birdsprings Community with more reliable water supply, and well site, located within the vicinity of Birdsprings, Coconino County, Arizona 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 diminishment in value of my land use rights as a result of the above-referenced project as proposed.

REMARKS: _____

2/02/2016 Mary Lo Kelly G/P# 5-1118
Date: Land User Signature (Thumb Print) Census No. Permit No.

WITNESS:

02/02/16 [Signature] 5-2
Date Grazing Committee or Land Board Member District No.

Acknowledge 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 FORM-3

(Waiver of compensation for damages)

**CONSENT TO USE
NAVAJO TRIBAL LANDS**

TO WHOM IT MAY CONCERN

I Julis Lee hereby grant consent to the Navajo Tribe and the Bureau of Indian Affairs to permit Transwestern Pipeline Company of 1300 Main Street, Houston, Texas 77002 to use a portion of my land use area for the following purpose(s) for a fifty (50) ft. width of Navajo Tribal Trust Land (NTTL) for Temporary Construction Easement (TCE) to replace the old existing water line from the existing water wells to assist the Birdsprings Community with more reliable water supply, and well site, located within the vicinity of Birdsprings, Coconino County, Arizona 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 diminishment in value of my land use rights as a result of the above-referenced project as proposed.

REMARKS:

2/3/2014

Date:

Julis Lee

Land User Signature (Thumb Print)

Census No.

G/P# 5-1050

Permit No.

WITNESS:

2/3/2014

Date

[Signature]

Grazing Committee or Land Board Member

5-2

District No.

Acknowledge 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



ENERGY TRANSFER PARTNERS

Transwestern Pipeline Company

November 18, 2015

Mr. Howard Draper
Manager, Project Review
The Navajo Nation Land Department
P.O. Box 2249
Window Rock, AZ 86515

**Re: Proposed Waterline for the Benefit of Bird Springs Community
Transwestern Pipeline Company, LLC (TWPC) - Coconino County, AZ**

Dear Mr. Draper,

In accordance with numerous discussions; Transwestern Pipeline Company, LLC (TWPC) has been working with the Bird Springs Community and Navajo Nation Water Resources Department to abandon and replace the old existing water line from the existing water wells to assist the Bird Springs Community with a more reliable water supply than what is currently in place.

TWPC and its contractors have now performed the necessary surveys (Civil, Cultural Resources, and Biological Surveys) for the proposed waterline replacement. TWPC is now presenting the maps showing the proposed waterline location parallel and adjacent to TWPC's existing natural gas mainline right of way. Along with the maps, we are also including the Cultural Resource and Biological Reports for the proposed route. This information is being provided for the review and approval of the Navajo Nation in order TWPC and the Nation can proceed with the necessary agreements to construct this waterline for the benefit of the Bird Springs Community.

It is our understanding Project Review will initiate the Navajo Nations internal SAS review process based on the enclosed information provided by TWPC. If there are any questions, or you need additional information, please contact me at 281-367-4452.

Sincerely,



Edwin R. Peck Jr.
Consultant, Transwestern Pipeline Company, LLC

Enclosures: Maps, Cultural Report, Biological Report

Cc: Najam Tariq - Water Resources Department W/Enclosures
Honorable Walter Phelps - Council Delegate
Roger Westbrook - Senior Manager, Right of Way TWPC

1300 Main Street, Houston, TX 77002



EXHIBIT "D"

**NAVAJO NATION TEMPORARY CONSTRUCTION EASEMENT
TERMS AND CONDITIONS**

Transwestern Pipeline Company, LLC (Grantee)

1. The term of the temporary construction easement ("TEC") shall be for one (1) years, beginning on the date the TEC is granted by the Secretary of the Interior.
2. Consideration for the TEC is assessed at \$52,279.00 and is contributed to the project to provide water to the Birdsprings/Leupp communities.
3. The Grantee may develop, use and occupy the TEC for the purpose(s) of contributing to the project to provide water to the two communities. The Grantee may not develop, use or occupy the TEC for any other purpose, nor allow others to use or occupy the TEC for any other purpose, without the prior written approval of the Navajo Nation and the Secretary of the Interior. The approval of the Navajo Nation may be granted, granted upon conditions or withheld in the sole discretion of the Navajo Nation. The Grantee may not develop, use or occupy the TEC 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;
 - 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 archaeological 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 TEC.
6. The Grantee shall clear and keep clear the lands within the TEC to the extent compatible with the purpose of the TEC, 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 TEC, as outlined in a restoration and revegetation 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 revegetation plan 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 TEC and at the Grantee's sole cost and expense, maintain the land subject to the TEC and all improvements located thereon and make all necessary and reasonable repairs.
9. The Grantee shall obtain prior written permission to cross existing TECs, 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 the Interior and their respective authorized agents, employees, landusers and occupants, against any liability for loss of life, personal injury and property damages arising from the development, use or occupancy or use of TEC by the Grantee.
12. The Grantee shall not assign, convey, transfer or sublet, in any manner whatsoever, the TEC or any interest therein, or in or to any of the improvements on the land subject to TEC, without the prior written consent of the Navajo Nation and the Secretary of the 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 in the sole discretion of the Navajo Nation.
13. The Navajo Nation may terminate the TEC for violation of any of the terms and conditions stated herein. In addition, the TEC shall be terminable in whole or part by the Navajo Nation for any of the following causes:
 - a. ~~Failure to comply with any term or condition of the grant or of applicable laws or regulations;~~
 - b. A non-use of the TEC for the purpose for which it is granted for a consecutive two year period; and
 - c. The use of the land subject to the TEC for any purpose inconsistent with the purpose for which the TEC is granted.
 - d. An abandonment of the TEC.
14. At the termination of this TEC, 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 audit assessment of the premises at least sixty (60) days prior to delivery of said premises.
15. Holding over by the Grantee after the termination of the TEC shall not constitute a renewal or extension thereof or give the Grantee any rights hereunder or in or to the land subject to the TEC 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 TEC, 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 TEC, 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 TEC, 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 government does not possess full police power (i.e., the power to legislate 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 TEC 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 TEC 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 TEC and all lands burdened by the TEC, including without limitation over all persons, including the public, and all activities conducted or otherwise occurring within the TEC; and the TEC and all lands burdened by the TEC 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 TEC referenced herein for utilities, provided that such rights-of-ways do not unreasonably interfere with the Grantee's use of the TEC.

LUEPP WATER LINE REPLACEMENT
RIGHT-OF-WAY AND TEMPORARY CONSTRUCTION EASEMENT SUMMARY

DESCRIPTION	COUNTY	TOWNSHIP	RANGE	SECTION	QUARTER	LENGTH	RIGHT-OF-WAY		TEMP CONST. EASEMENT		TOTAL ROW+TCE
					SECTION	(FT)	WIDTH (FT)	ACREAGE	WIDTH	ACREAGE	ACREAGE
WELL SITE	COCONINO	22N	13E	20	SW 1/4	NA	NA	1.0	NA	NA	1.0
WATER LINE	COCONINO	22N	13E	13, 20-24	NA	45149.4	20	20.7	50	52.0	72.7
			14E	15-18							
					TOTALS	45149.4	20	21.7	50	52.0	73.7

Amec Foster Wheeler
Project: 15-517-00057



**DEPARTMENT OF THE ARMY
LOS ANGELES DISTRICT, U.S. ARMY CORPS OF ENGINEERS
3636 N CENTRAL AVENUE, SUITE 900
PHOENIX, ARIZONA 85012-1939**

March 24, 2016

Matthew Stork
Transwestern Pipeline Co. LLC
8501 Jefferson St. NE
Albuquerque, NM 87113

DEPARTMENT OF THE ARMY NATIONWIDE PERMIT VERIFICATION

Dear Mr. Stork:

I am responding to your request (SPL-2015-806-AP) for a Department of the Army permit regarding Transwestern Pipeline Co. LLC's proposed waterline replacement project. This proposed project begins southeast of Leupp, paralleling Route 15 for approximately 8.5 miles, within Navajo Nation in portions of Sections 13, 20-24, T22N, R13E and Sections 15-18, T22N, R14E, Coconino County, Arizona.

Because this project would result in a discharge of dredged and/or fill material into waters of the United States a Department of the Army permit is required pursuant to Section 404 of the Clean Water Act (33 USC 1344; 33 CFR parts 323 and 330).

I have determined construction of your proposed project, if constructed as described in your application, would comply with Nationwide Permit (NWP) No. 12 "Utility Line Activities". Specifically, as described in your Clean Water Act Section 404 permit application, you are authorized to:

Replace the existing 2.5-inch diameter waterline with a 4-inch diameter waterline. The aforementioned activities are specifically described and shown in Transwestern Pipeline's 404 application information dated October 30, 2015.

For this NWP verification letter to be valid, you must comply with all of the terms and conditions in Enclosure 1. Furthermore, you must comply with the non-discretionary Special Conditions listed below:

1. The permittee shall comply with the provisions outlined in the December 14, 2015 Clean Water Act Individual Section 401 Certification from the Navajo Nation Environmental Protection Agency.

2. The permittee shall comply with the provisions outlined in the January 12, 2016 letter from the Navajo Nation Historic Preservation Department.

3. The permittee shall comply with the provisions outlined in the March 4, 2016 letter from the Navajo Nation Department of Fish and Wildlife.

This verification is valid through March 18, 2017. If on March 18, 2017 you have commenced or are under contract to commence the permitted activity you will have an additional twelve (12) months to complete the activity under the present NWP terms and conditions. However, if I discover noncompliance or unauthorized activities associated with the permitted activity I may request the use of discretionary authority in accordance with procedures in 33 CFR § 330.4(e) and 33 CFR § 330.5(c) or (d) to modify, suspend, or revoke this specific verification at an earlier date. Additionally, at the national level the Chief of Engineers, any time prior to March 18, 2017, may chose to modify, suspend, or revoke the nationwide use of a NWP after following procedures set forth in 33 CFR § 330.5. It is incumbent upon you to comply with all of the terms and conditions of this NWP verification and to remain informed of any change to the NWPs.

A NWP does not grant any property rights or exclusive privileges. Additionally, it does not authorize any injury to the property, rights of others, nor does it authorize interference with any existing or proposed Federal project. Furthermore, it does not obviate the need to obtain other Federal, state, or local authorizations required by law.

Thank you for participating in the regulatory program. If you have any questions, contact Ann Palaruan at 602-230-6955 or via e-mail at Cynthia.A.Palaruan@usace.army.mil.

Please help me to evaluate and improve the regulatory experience for others by completing the customer survey form at http://corpsmapu.usace.army.mil/cm_apex/f?p=regulatory_survey.

Sincerely,



Sallie Diebolt
Chief, Arizona Branch
Regulatory Division

Digitally signed by
DIEBOLT.SARAH.D.1231388229
DN: c=US, o=U.S. Government, ou=DOD, ou=PIO,
ou=USA, cn=DIEBOLT.SARAH.D.1231388229
Date: 2016.03.24 15:42:05 -0700

Enclosures

NATIONWIDE PERMIT NUMBER 12

UTILITY LINE ACTIVITIES



**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 2)
 D. Nationwide Permit Regional Conditions (page 7) E. 401 Water Quality Certifications (page 8)

B. Nationwide Permit Terms

12. Utility Line Activities. Activities required for the construction, maintenance, repair, and removal of utility lines and associated facilities in waters of the United States, provided the activity does not result in the loss of greater than 1/2-acre of waters of the United States for each single and complete project.

Utility lines: This NWP authorizes the construction, maintenance, or repair of utility lines, including outfall and intake structures, and the associated excavation, backfill, or bedding for the utility lines, in all waters of the United States, provided there is no change in pre-construction contours. A "utility line" is defined as any pipe or pipeline for the transportation of any gaseous, liquid, liquescent, or slurry substance, for any purpose, and any cable, line, or wire for the transmission for any purpose of electrical energy, telephone, and telegraph messages, and radio and television communication. The term "utility line" does not include activities that drain a water of the United States, such as drainage tile or french drains, but it does apply to pipes conveying drainage from another area.

Material resulting from trench excavation may be temporarily sidecast into waters of the United States for no more than three months, provided the material is not placed in such a manner that it is dispersed by currents or other forces. The district engineer may extend the period of temporary side casting for no more than a total of 180 days, where appropriate. In wetlands, the top 6 to 12 inches of the trench should normally be backfilled with topsoil from the trench. The trench cannot be constructed or backfilled in such a manner as to drain waters of the United States (e.g., backfilling with extensive gravel layers, creating a french drain effect). Any exposed slopes and stream banks must be stabilized immediately upon completion of the utility line crossing of each waterbody.

Utility line substations: This NWP authorizes the construction, maintenance, or expansion of substation facilities associated with a power line or utility line in non-tidal waters of the United States, provided the activity, in combination with all other activities included in one single and complete project, does not result in the loss of greater than 1/2-acre of waters of the United States. This NWP does not authorize discharges into non-tidal wetlands adjacent to tidal waters of the United States to construct, maintain, or expand substation facilities.

Foundations for overhead utility line towers, poles, and anchors: This NWP authorizes the construction or maintenance of foundations for overhead utility line towers, poles, and anchors in all waters of the United States, provided the foundations are the minimum size necessary and separate footings for each tower leg (rather than a larger single pad) are used where feasible.

Access roads: This NWP authorizes the construction of access roads for the construction and maintenance of utility lines, including overhead power lines and utility line substations, in non-tidal waters of the United States, provided the activity, in combination with all other activities included in one single and complete project, does not cause the loss of greater than 1/2-acre of non-tidal waters of the United States. This NWP does not authorize discharges into non-tidal wetlands adjacent to tidal waters for access roads. Access roads must be the minimum width necessary (see Note 2, below). Access roads must be constructed so that the length of the road minimizes any adverse effects on waters

of the United States and must be as near as possible to pre-construction contours and elevations (e.g., at grade corduroy roads or geotextile/gravel roads). Access roads constructed above pre-construction contours and elevations in waters of the United States must be properly bridged or culverted to maintain surface flows.

This NWP may authorize utility lines in or affecting navigable waters of the United States even if there is no associated discharge of dredged or fill material (See 33 CFR Part 322). Overhead utility lines constructed over section 10 waters and utility lines that are routed in or under section 10 waters without a discharge of dredged or fill material require a section 10 permit.

This NWP also authorizes temporary structures, fills, and work necessary to conduct the utility line activity. 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.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity if any of the following criteria are met: (1) the activity involves mechanized land clearing in a forested wetland for the utility line right-of-way; (2) a section 10 permit is required; (3) the utility line in waters of the United States, excluding overhead lines, exceeds 500 feet; (4) the utility line is placed within a jurisdictional area (i.e., water of the United States), and it runs parallel to or along a stream bed that is within that jurisdictional area; (5) discharges that result in the loss of greater than 1/10-acre of waters of the United States; (6) permanent access roads are constructed above grade in waters of the United States for a distance of more than 500 feet; or (7) permanent access roads are constructed in waters of the United States with impervious materials. (See general condition 31.) (Sections 10 and 404)

Note 1: Where the proposed utility line is constructed or installed in navigable waters of the United States (i.e., section 10 waters) within the coastal United States, the Great Lakes, and United States territories, copies of the pre-construction notification and NWP verification will be sent by the Corps to the National Oceanic and Atmospheric Administration (NOAA), National Ocean Service (NOS), for charting the utility line to protect navigation.

Note 2: Access roads used for both construction and maintenance may be authorized, provided they meet the terms and conditions of this NWP. Access roads used solely for construction of the utility line must be removed upon completion of the work, in accordance with the requirements for temporary fills.

Note 3: Pipes or pipelines used to transport gaseous, liquid, liquescent, or slurry substances over navigable waters of the United States are considered to be bridges, not utility lines, and may require a permit from the U.S. Coast Guard pursuant to Section 9 of the Rivers and Harbors Act of 1899. However, any discharges of dredged or fill material into waters of the United States associated with such pipelines will require a section 404 permit (see NWP 15).

Note 4: For overhead utility lines authorized by this NWP, a copy of the PCN and NWP verification will be provided to the Department of Defense Siting Clearinghouse, which will evaluate potential effects on military activities.

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 NWPs, or who is currently relying on an existing or prior permit authorization under one or more NWPs, 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 NWPs 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 NWPs. (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 NWPs 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 NWPs 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 Act (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 NWPs 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 NWPs 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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Lionel Puhuesva
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Hopi Tribe
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Lee Anna Silversmith
Water Quality Program
Navajo Nation Environmental Protection Agency
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Alex Cabillo
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Telephone: 928-769-2254
Fax: 928-769-2309
E-mail: 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

F. Document Availability

Reissuance of Nationwide Permits, 77 FR 10184-10290

Special Public Notice for Regional Conditions

EPA 401 WQC for NWPs

White Mountain Apache Tribe 401 WQC for NWPs

Hopi Tribe 401 WQC for NWPs

Havasupai Tribe 401 WQC for NWPs

Navajo Nation 401 WQC for NWPs

ADEQ 401 WQC for NWPs

<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.

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Contact Corps project manager for copy of document.

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

NWP	303(d) impaired waters ¹ & Tributaries to 303(d)-impaired waters ²	OAW ³ & Tributaries to OAW	Lakes ⁴	Other Waters ⁵	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.

¹ 303(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.

² 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.

³ 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.

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

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

- 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 uncultivated 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 Fleet 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 ½ 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 - [Reserved]					
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.¹

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.² 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 an 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

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

² 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*³; in Nevada NDOT has guidance in their *NDOT Water Quality Manuals*⁴; and in Arizona, ADOT has guidance in their *Erosion and Pollution Control Manual*⁵.

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 species⁶. 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 jurisdiction⁷.

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).⁸

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

⁴ http://www.nevadadot.com/About_NDOT/NDOT_Divisions/Engineering/Hydraulics/Water_Quality_BMP_Manuals.aspx

⁵ http://www.azdot.gov/inroads/ADOT/OES/Water_Quality/Stormwater/Manuals.asp

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

⁷ Ordinary high water mark in non-tidal and the mean higher high water line in tidal waters

⁸ 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 programmatically certified.

NWP-02 Structures in Artificial Canals - Subject to the GCs above, this NWP is hereby programmatically certified.

NWP-03 Maintenance - Subject to the GCs above, and the following permit-specific conditions, this NWP is hereby programmatically 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 Fleeting 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.



**LOS ANGELES DISTRICT
U.S. ARMY CORPS OF ENGINEERS**

**CERTIFICATE OF COMPLIANCE WITH
DEPARTMENT OF THE ARMY NATIONWIDE PERMIT**

Permit Number: *SPL-2015-806-AP*

Name of Permittee: Matthew Stork/Transwestern Pipeline Co. LLC

Date of Issuance: March 24, 2016

Upon completion of the activity authorized by this permit and the mitigation required by this permit, sign this certificate, and return it by **ONE** of the following methods;

1) Email a digital scan of the signed certificate to Cynthia.A.Palaruan@usace.army.mil
OR

2) Mail the signed certificate to
U.S. Army Corps of Engineers
ATTN: Regulatory Division SPL-2015-806-AP
3636 N Central Avenue, Suite 900
Phoenix, AZ 85012-1939

I hereby certify that the authorized work and any required compensatory mitigation has been completed in accordance with the NWP authorization, including all general, regional, or activity-specific conditions. Furthermore, if credits from a mitigation bank or in-lieu fee program were used to satisfy compensatory mitigation requirements I have attached the documentation required by 33 CFR 332.3(l)(3) to confirm that the appropriate number and resource type of credits have been secured.

Signature of Permittee

Date

**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.: Transwestern Pipeline Waterline Reconstruction

DESCRIPTION: NNDWR proposes the construction of a new 8.5-mile non-potable water supply pipeline that runs parallel and outside of an existing pipeline easement. The project requires 4 staging areas along the pipeline. The total area of impact from trenching would be approximately 2.0 acres.

LOCATION: T22N, R13E, Sec. 13, 20-24; and T22N, R14E, Sec. 15-18, Leupp, Coconino County, Arizona

REPRESENTATIVE: Roy Robinson, PE, AMEC Foster Wheeler

ACTION AGENCY: Navajo Nation Department of Water Resources & Transwester Pipeline Company

B.R. REPORT TITLE / DATE / PREPARER: BE-Transwestern Pipeline Waterline Reconstruction/NOV 2015/Marron & Associates

SIGNIFICANT BIOLOGICAL RESOURCES FOUND: Area 3.

POTENTIAL IMPACTS

NESL SPECIES POTENTIALLY IMPACTED: [1] *Athene cunicularia* (Burrowing Owl) G4, MBTA.

FEDERALLY-LISTED SPECIES AFFECTED: NA

OTHER SIGNIFICANT IMPACTS TO BIOLOGICAL RESOURCES: NA

AVOIDANCE / MITIGATION MEASURES: [1] Pursuant to the Migratory Bird Treaty Act (U.S. Code Title 16, Chapter 7, 703-712), migratory birds not listed under the NESL or ESA are prohibited from take by federal law.

Waterline construction and land clearing activities will avoid the Migratory Bird breeding season of 15 MAR - 31 AUG or surveys will precede ground-disturbing activities. If the breeding season cannot be avoided, surveys for active nests will be conducted. The survey will include a 50 m (165 ft.) buffer outside the edge of disturbance. Removal or disturbance of nesting habitat (i.e. trees & shrubs) will not be allowed within 50 meters of an active nest during incubation to fledging; [2] Avoid leaving the trench open during non-working hours and overnight to prevent injury to large ungulates and other mammals. The trench will be sloped to allow smaller species of wildlife to exit the trench safely.

CONDITIONS OF COMPLIANCE*: NA

FORM PREPARED BY / DATE: Pamela A. Kyselka/04 MAR 2016

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

3/4/16

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



THE NAVAJO NATION

RUSSELL BEGAYE **PRESIDENT**
JONATHAN NEZ **VICE PRESIDENT**



ENVIRONMENTAL PROTECTION AGENCY

OFFICE OF EXECUTIVE DIRECTOR/ADMINISTRATION

OFFICE OF ENVIRONMENTAL REVIEW

PO BOX 339 WINDOW ROCK ARIZONA 86515 Office: 928/871 7188 Fax: 928/871-7996

Website: www.navajonationnepa.org

M E M O R A N D U M

TO: Howard Draper, Program & Project Specialist
Project Review Office
Navajo Land Department
Division of Natural Resources

FROM:

Rita Whitehorse-Larsen, Senior Environmental Specialist
Office of Environmental Review
Office of the Executive Director/Administration
NNEPA

DATE: May 9, 2016

SUBJECT: 164 EOR 005234 TWPC – TCE for Waterline in Birdsprings, Arizona

The Transwestern Pipeline Company, Right-of-Way Department, 1300 Main Street, Houston, Texas, 77002, submitted a temporary construction easement (TCE) application for pipeline maintenance/replacement of an old existing water pipeline in the Birdsprings Chapter vicinity, on, over and across Navajo Nation Trust Lands, Coconino County, Arizona. The proposed TCE consist of 52.61 acres.

The Navajo Nation Environmental Protection Agency (NNEPA) reviewed and recommends **conditional approval** for the proposed project as stated in EOR 005234 pursuant the Title 4, NNC Chapter 9 Navajo Nation Environmental Policy Act, Subchapter 1, §904.

1. Navajo Nation Clean Water Act (CWA):

- a. §Section 401- The 401 Water Quality Certification is attached. The stipulations as addressed on the 401 WQ Certification shall be adhered to for this proposed action.
- b. §Section 402 – The 402 permit is required if there is a discharge of storm water resulting from the discharge of a reportable quantity of oil and gas or there is a violation of a water quality standard. Best Management Practices should be included to prevent excessive sediment.

164 EOR 005234 Transwestern Pipeline Company Waterline repairs Birdsprings AZ

Page 1 of 3

5/9/2016

2. Navajo Nation Safe Drinking Water Act:

- a. The NNEPA Public Water Systems Supervision Program (PWSSP) reviewed this document and recommends the following:
 1. This system is required to collect monthly bacteriological quality samples, lead and copper, nitrate/nitrite, inorganics, pesticides/synthetic organic chemicals and volatile organic chemicals on a scheduled basis.
 2. Transwestern Pipeline Company needs to request submit a complete construction permit BEFORE COMMENCING construction activities.
The application form can be downloaded at www.navajopublicwater.org.

3. Navajo Nation Air Pollution Prevention and Control Act:

- a. The USEPA Region 9 delegated its responsibilities to NNEPA Air Quality Control Program – Operating Permit Program (OPP) to regulate Title V Sources including coal fired power plant, coal mine, natural gas compression station, crude oil & gas production facility and gas fractionating facility. Some concerns may include Title V permits, greenhouse gas regulations, regional haze rule, tribal minor sources and tribal new source review (NSR) [Excerpt from NNEPA AQCP OPP brochure].
- b. The NNEPA Air Quality collects meteorological weather data, monitor air quality levels of particulate matter, sulfur dioxide, nitrous oxides and ozone, determines and recommends for air quality control and enforcement using air quality index, develops air quality legislation for regulatory rulemaking and updates and maintains an emissions inventory for the Navajo Nation.
- c. Before any construction commences, a Navajo Nation Air Quality Control Program Activity Application must be submitted for the proposed pipeline repair project. The application will be emailed to Mr. Ed Peck to ensure it's completion and returned to NNEPA Air Quality Operating Permit Program.

4. Navajo Nation Pesticide Act:

- a. Before applying any chemicals, contact the NNEPA Pesticide Program at 928/871-7815/7810/7892 to attain a pesticide use permit (PUP) to ensure the product is in compliance and appropriately applied by a certified and licensed applicator. The PUP must be approved by the Water Quality Navajo Pollution Discharge Elimination Program – Pesticide, PWSSP, Air Quality and Navajo Fish and Wildlife.
- b. Pesticide staff will also may need to be onsite to monitor during pesticide/herbicide application.

5. Navajo Nation Solid Waste Act:

- a. Solid waste generated from the construction and operation activities will be collected and transported by contractor to a designated trash bins to minimize significant impacts to human and wildlife resources.
- b. If a sub-contractor will be hired to transport waste, ensure the contractors are certified and licensed with the Navajo Nation Business Regulatory Office.
- c. The contractor must submit a copy of the landfill receipt/ticket to guarantee the construction waste has been properly disposed.
- d. Do not allow public to take construction and operation waste. Cumulatively NNEPA receives complaints and reports on illegal trash dumpings on rural areas and in the waters of the US and Navajo Nation.
- e. All illegal waste currently on the proposed site is the responsibility of the land user.

6. Navajo Nation Comprehensive Environmental Response, Compensation and Liability Act (NNEPCLA)

- a. Approved by the Navajo Nation Council, CF-07-08, February 26, 2008, the NN CERCLA classified and included petroleum (including crude oil or any fraction thereof, natural gas, natural gas liquids, liquefied natural gas or synthetic gas usable for fuel (or mixtures of natural gas and synthetic gas)) as hazardous material unlike the US CERCLA or the Superfund Law.
 - b. The NNCERCLA mandates operators to report petroleum release ≥ 25 gallons at the site and/or during transport immediately to the Navajo Nation Department of Emergency Management within the Navajo Nation Division of Public Safety.
 - c. In the event of a hazardous material spill, releases would be contained and disposed of in accordance with federal and tribal regulations, the project representative shall contact NNEPA Waste Regulatory and Compliance Department, Superfund Office, at 928/871-6859 or NNEPA OER at 928/871-7188 to report hazardous waste spills as defined according to the NN CERCLA.
 - d. If production fluids (gasoline, diesel and propane) will be stored on the project site, preventative and precautionary measures will need to be taken to avoid risks and impacts to the Navajo Nation environmental resources.
- 7. Navajo Nation Storage Tank Act:**
- a. No underground (UST) and/or aboveground storage tank (AST) greater than 100 gallons will not be installed on the proposed pipeline repair project.
 - b. If any UST and/or AST is proposed, this right-of-way must be modified to include the change. The proposed designs must be submitted for NNEPA Storage Tank Program for review until the final design is approve.

If there are any questions you may contact Rita Whitehorse-Larsen at 928-871-7188 or email rwhitehorseL@navajo-nsn.gov. Thank you.

Cc: Transwestern Pipeline Company, Right-of-Way Department, 1300 Main Street, Houston, Texas, 77002
NNEPA Water Quality; Air Quality – OPP; RCRP; Administration chrono file
Contact person: Edwin R. Peck, Jr., Consultant, Transwestern Pipeline Company, LLC, 281-367-4452



**RESOLUTION OF TSIDI TO'II CHAPTER
WESTERN NAVAJO AGENCY**

Resolution No: TT-05-007-15

**REQUESTING THE TRANSWESTERN PIPELINE COMPANY TO START
CONSTRUCTION ON THE WATERLINE, REPLACING THE OLD WATERLINE WITH
A NEW WATERLINE THAT PROVIDES WATER TO THE TSIDI TO'II (BIRDSPRINGS)
AND SURROUNDING COMMUNITIES.**

WHEREAS:

1. Pursuant to 26 N.N.C., Section 3 (A) The Tsidi To'ii Chapter is duly recognized certified chapter of the Navajo Nation Government, as listed at 11 N.N.C. part 1, section 10, and
2. Pursuant to 26 N.N.C., Section 1 (B) Tsidi To'ii Chapter is vested with the authority to review all matters affecting the community to make appropriate Correction when necessary and make recommendation to the Navajo Nation and other local agencies for appropriate actions, and
3. Tsidi To'ii Chapter is delegated the authority and responsibilities to plan the implement community based projects with will be publicly and economically beneficial to the community residents, and
4. Tsidi To'ii and surrounding communities utilize water from the Transwestern Watering Point also the extended water line to the North side to get water for their livestock, and
5. Tsidi To'ii community have a severe drought in the summer, the lack of water causes hardship for the community, and
6. By Transwestern Pipeline Company starting the construction to replace the existing badly deteriorated 2" steel waterline to a 3" or 4" waterline to meet the current water demand, and
7. Transwestern Pipeline Company would need a 50' construction easement to install the waterline, and work space to perform pipeline bores at the river crossing and highway locations.

Birdsprings Chapter * Post Office Box K * Winslow, Arizona 86047
☎ (928) 686-3266 * FAX (928) 686-3269



NOW THEREFORE BE IT RESOLVED THAT:

1. With the community approval that Transwestern Pipeline Company start Construction on replacing the existing badly deteriorated 2" steel waterline to a 3" or 4" waterline to meet the current water demand.
2. Transwestern Pipeline Company would need a 50' construction easement to install the waterline, and work space to perform pipeline bores at the river crossing and highway locations.
3. The community awareness of the trench in the crossing area like the road.

CERTIFICATION

We, hereby, certify that the foregoing resolution was duly considered and moved for Approval by Thomas Walker, Jr. and Seconded by John Slawtka at a duly call Chapter Meeting of the Tsidi Toi Community Chapter at which a quorum was present and that the same was passed by Vote of 27 in favor, 0 Opposed, and 4 Abstained on this 17th day of May, 2015.

Rosie Larson
Rosie Larson, Chapter President

Isabella Walker
Isabella Walker, Chapter Vice President

Verna Yazzie
Verna Yazzie, Chapter Secretary/Treasurer

Randolph David
Randolph David, Grazing Officer

Walter Phelps
Walter Phelps, Council Delegate



ENERGY TRANSFER PARTNERS
Transwestern Pipeline Company

3/13/16



TO: HOWARD & TARIQ

FROM: ED PECK

SUBJ: PROPOSE WATERLINE - BIRD SPRINGS

HOWARD/TARIQ

THIS NOTICE WENT TO TWPC & HAD MY NAME ON IT PAGE 2. SINCE I'M NOT AN EMPLOYEE, IT WANDERED AROUND IN TWPC FOR SOME TIME.

TRYING TO FIND OUT WHAT THE TRIBE NEEDS FROM TWPC TO KEEP THIS GOING. I HAVE ENCLOSED SOME DOCUMENTS YOU PROBABLY DON'T HAVE NOW.

- ① WATERLINE & WELL TRANSFER AGMT (DRAFT)
- ② SERVICE LINE AGMT (DRAFT)

* THESE ARE FOR REVIEW BY THE TRIBE & PROPOSED FOR USE BY TWPC/NAVAJO NATION.

* THERE IS ALSO A CULTURAL COMPLIANCE FORM FROM NNHPD.

* COPY OF EXISTING TWPC RESOLUTION/AGREEMENT FOR ALL PIPELINES/INCLUDING EXISTING WATERLINE TO BE APPROVED.

* ALSO, COPY OF BIRD SPRINGS CAMPION RESOLUTION.

** PLEASE LET ME KNOW WHAT TWPC NEED TO PROVIDE TO KEEP PROJECT MOVING.

THANKS



THE NAVAJO NATION

Navajo Land Department

P.O. Box # 2249 Window Rock, Arizona 86515 (928) 871-6101 FAX (928) 871-7039

January 7, 2016

Dear Applicant: (NV Water Resources Dept-NNWRB)

Your land use application received for consideration by the Navajo Nation and the Bureau of Indian Affairs (BIA) cannot be reviewed or assigned for proper field clearance nor have it packaged and routed for Administrative Section 164 Review Process per the 2003 & 2011 Amendments to Title II, Navajo Nation Code, Section 164 (2 N.T.C. §164) because of the following reasons:



LACK OF DOCUMENT(s) for a Temporary Construction Easement (TCE) of 2 acres for ? to construct, operate and maintain a replacement waterline on, over and across Navajo Nation Trust Lands to serve the Birdsprings community located adjacent to the existing Transwestern Pipeline in Coconino County, Arizona.

THE FOLLOWING DOCUMENTS ARE NEEDED:

- ☐ A copy of the current board, committee, or chapter resolution
- ☒ A copy of the tract boundary survey and/or centerline survey with legal description
- ☐ A copy of the archaeological survey, ethnographic studies, and clearance reports
- ☐ A copy of the environmental assessment report and clearance report.
- ☒ Other supporting documents: (see page two)

Please submit these documents as soon as possible to insure the timely processing of your application for the Navajo Nation's review and consideration. The final decision of approval for any land use is at the discretion of the Resources and Development Committee of the Navajo Nation Council and BIA.

If you have any questions, please contact our office at (928) 871-6447, 6695 or 6401.

Sincerely,

Howard P. Draper, Program/Project Specialist
Project Review Section
Navajo Land Department, DNR

THE FOLLOWING DOCUMENTS ARE NEEDED: *(continued from page one)*

- ___ Letter from BIA requesting for _____ *(ie TWPC?, RCH?, both?, etc.)*
- ___ document form-permit *(in triplicate)* signed or TCB.
- ___ non-refundable Filing, Processing and Field Clearance Fee of \$500.00 payable to the Navajo Nation. *(unless granted waiver via approved chapter resolution).*
- 3 other supporting documentation *(ie previously approved document copies of: Navajo Nation consent or President signature, Standing Committee Resolution, BIA approval, etc.)*
 - i.e. • copies of previously approved TWPC documents with map showing boundaries

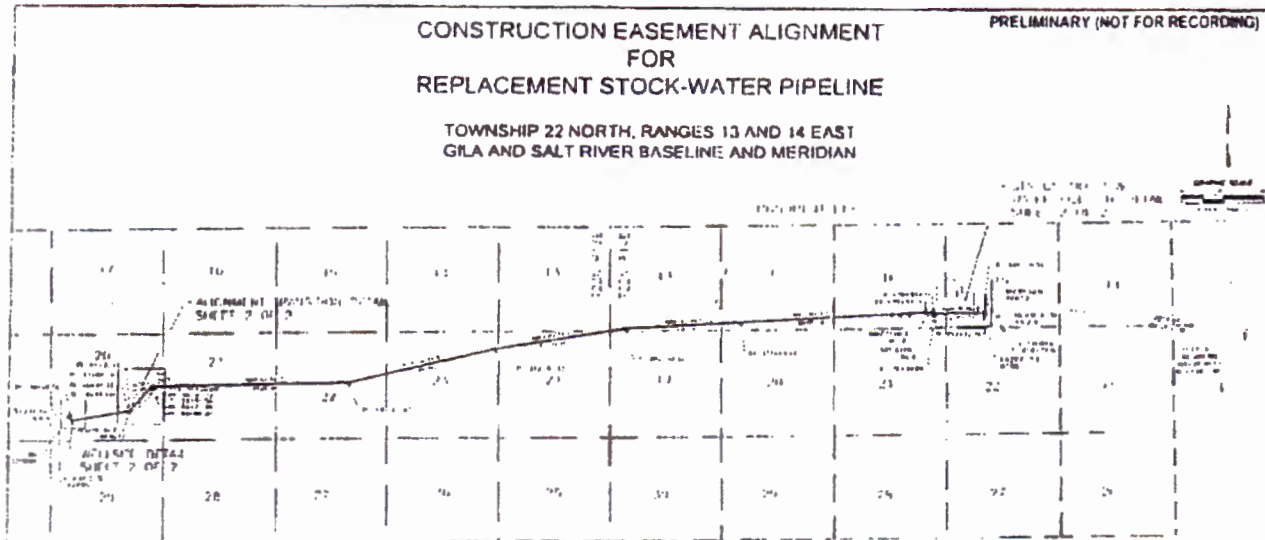
ATTACHMENTS

Xc project file
Birdsprings Chapter
Shawn R. [redacted] Consultant
Transwestern Pipeline Company, LLC

CONSTRUCTION EASEMENT ALIGNMENT FOR REPLACEMENT STOCK-WATER PIPELINE

PRELIMINARY (NOT FOR RECORDING)

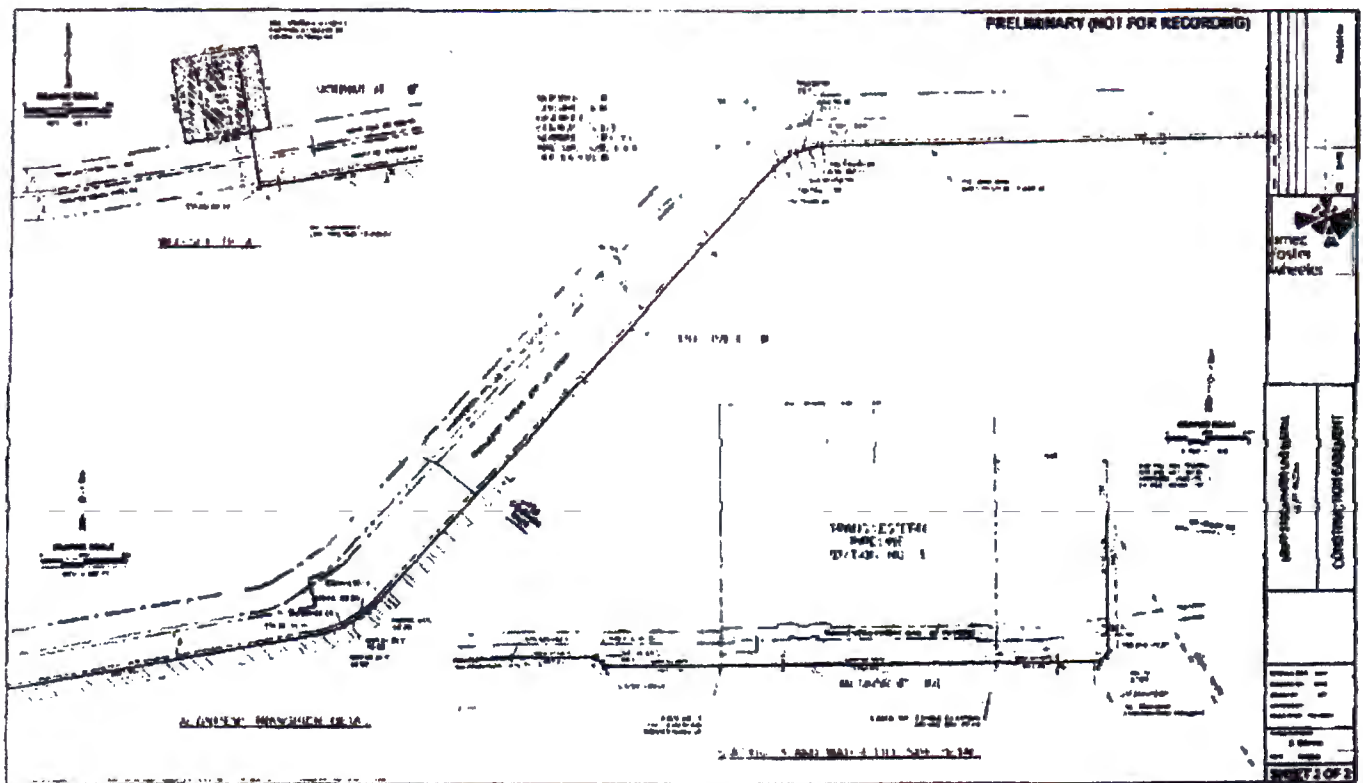
TOWNSHIP 22 NORTH, RANGES 13 AND 14 EAST
GILA AND SALT RIVER BASELINE AND MERIDIAN



NOTE: SEE SHEET 1
FOR THE REMAINING PORTION OF THE ALIGNMENT.

- LEGEND**
- 1. THE ALIGNMENT LINE IS SHOWN AS A DASHED LINE. IT IS NOT TO BE CONSIDERED A BOUNDARY OR A RIGHT-OF-WAY LINE. IT IS ONLY A PRELIMINARY ALIGNMENT.
 - 2. THE ALIGNMENT LINE IS TO BE CONSIDERED A PRELIMINARY ALIGNMENT. IT IS NOT TO BE CONSIDERED A BOUNDARY OR A RIGHT-OF-WAY LINE. IT IS ONLY A PRELIMINARY ALIGNMENT.
 - 3. THE ALIGNMENT LINE IS TO BE CONSIDERED A PRELIMINARY ALIGNMENT. IT IS NOT TO BE CONSIDERED A BOUNDARY OR A RIGHT-OF-WAY LINE. IT IS ONLY A PRELIMINARY ALIGNMENT.
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 - 7. THE ALIGNMENT LINE IS TO BE CONSIDERED A PRELIMINARY ALIGNMENT. IT IS NOT TO BE CONSIDERED A BOUNDARY OR A RIGHT-OF-WAY LINE. IT IS ONLY A PRELIMINARY ALIGNMENT.
 - 8. THE ALIGNMENT LINE IS TO BE CONSIDERED A PRELIMINARY ALIGNMENT. IT IS NOT TO BE CONSIDERED A BOUNDARY OR A RIGHT-OF-WAY LINE. IT IS ONLY A PRELIMINARY ALIGNMENT.
 - 9. THE ALIGNMENT LINE IS TO BE CONSIDERED A PRELIMINARY ALIGNMENT. IT IS NOT TO BE CONSIDERED A BOUNDARY OR A RIGHT-OF-WAY LINE. IT IS ONLY A PRELIMINARY ALIGNMENT.
 - 10. THE ALIGNMENT LINE IS TO BE CONSIDERED A PRELIMINARY ALIGNMENT. IT IS NOT TO BE CONSIDERED A BOUNDARY OR A RIGHT-OF-WAY LINE. IT IS ONLY A PRELIMINARY ALIGNMENT.

SHEET 1 OF 2	
CONSTRUCTION EASEMENT	REPLACEMENT STOCK-WATER PIPELINE
TOWNSHIP 22 NORTH, RANGES 13 AND 14 EAST GILA AND SALT RIVER BASELINE AND MERIDIAN	
DATE: 10/1/10	
DRAWN BY: [Name]	
CHECKED BY: [Name]	
APPROVED BY: [Name]	



RESOLUTION OF THE RESOURCES COMMITTEE
OF THE NAVAJO NATION COUNCIL

21st NAVAJO NATION COUNCIL - First Year, 2007

AN ACTION

RELATING TO NATURAL RESOURCES; APPROVING THE GRANTING OF AN EXTENSION OF THE TERM OF EXISTING RIGHTS-OF-WAY TO TRANSWESTERN PIPELINE COMPANY, LLC FOR NATURAL GAS PIPELINES AND RADIO TOWER SITES, LAND LEASES FOR COMPRESSOR STATION SITES AND RELATED FACILITIES INCLUDING WATERLINES, WATER WELL SITES, ELECTRICAL POWER LINES, CATHODIC PROTECTION UNITS AND ACCESS ROADS; APPROVING A NEW RIGHT-OF-WAY TO CONSTRUCT, OPERATE AND MAINTAIN UP TO 15 MILES OF 36-INCH DIAMETER NATURAL GAS LOOP LINE AND THE OPTION TO ACQUIRE UP TO 136 MILES OF ADDITIONAL RIGHTS-OF-WAY TO CONSTRUCT, OPERATE AND MAINTAIN A 30-INCH DIAMETER AND/OR 36-INCH DIAMETER NATURAL GAS LOOP PIPELINES AND UP TO 20 ACRES FOR TWO ADDITIONAL COMPRESSOR STATION SITES SITUATED UPON RIGHTS-OF-WAY AND/OR LOCATED ON NAVAJO NATION FEE LANDS

BE IT ENACTED:

1. The Navajo Nation hereby approves the granting of an extension of the term of existing rights-of-way to Transwestern Pipeline Company, LLC for natural gas pipelines and radio tower sites, land leases for compressor station sites and related facilities including waterlines, water well sites, electrical power lines, cathodic protection units and access roads, attached hereto as Exhibits "A" through "E".

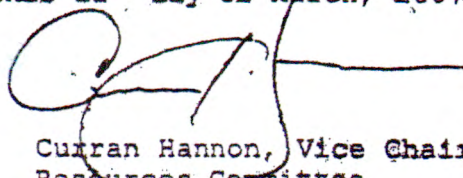
2. The Navajo Nation hereby approves the granting of the extension of the term of existing rights-of-way to Transwestern Pipeline Company, LLC for natural gas pipelines and radio tower sites, land leases for compressor station sites and related facilities including waterlines, water well sites, electrical power lines, cathodic protection units and access roads; and further approves the granting of a new right-of-way to construct, operate and maintain up to 15 miles of 36-inch diameter natural gas loop line and the option to acquire up to 136 miles of additional rights-of-way to construct, operate and maintain a 30-inch diameter and/or 36-inch diameter natural gas loop

pipelines and up to 20 acres for two additional compressor station sites situated upon rights-of-way and/or located on Navajo Nation fee lands, subject to, but not limited to, the terms and conditions contained in Exhibit "A".

3. 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 Sanostee Chapter, Navajo Nation (New Mexico), at which a quorum was present and that same was passed by a vote of 7 in favor, 0 opposed and 0 abstained, this 22nd day of March, 2007.



Cuiran Hannon, Vice Chairperson
Resources Committee

Motion: Harry Williams, Sr.
Second: Harriett K. Becenti

CONFIDENTIAL

EXHIBIT "A"

AGREEMENT BETWEEN THE NAVAJO NATION AND TRANSWESTERN PIPELINE COMPANY, LLC FOR THE EXTENSION OF RIGHTS-OF-WAY FOR NATURAL GAS PIPELINES, COMMUNICATIONS AND RADIO TOWER SITES, LEASES FOR COMPRESSOR STATION SITES AND RELATED FACILITIES, INCLUDING WATER LINES, WATERWELL SITES, ELECTRICAL POWERLINES, CATHODIC PROTECTION UNITS, AND ACCESS ROADS; APPROVING A NEW RIGHT-OF-WAY TO CONSTRUCT, OPERATE AND MAINTAIN 15 MILES, MORE OR LESS, OF 36-INCH DIAMETER PIPELINE; AND OPTION(S) TO ACQUIRE UP TO 136 MILES OF ADDITIONAL RIGHTS-OF-WAY FOR A 30-INCH AND/OR 36-INCH DIAMETER LOOP PIPELINES AND TO ACQUIRE TWO TEN-ACRE SITES FOR ADDITIONAL COMPRESSOR STATIONS

This agreement (Agreement) is made and entered into by and between the Navajo Nation, a federally recognized Indian Tribe, and TRANSWESTERN PIPELINE COMPANY, LLC, whose addresses are listed as follows:

The Navajo Nation
Post Office Box 9000
Window Rock, Navajo Nation (Arizona) 86515
(Referred to as the "Nation")

AND,

TRANSWESTERN PIPELINE COMPANY, LLC
Land and Right of Way Department
5444 Westheimer Road
Houston, Texas 77056
(Referred to as "TWPC")

RECITALS

WHEREAS

A. The Resources Committee is a Standing Committee of the Navajo Nation Council and is empowered to approve rights-of-way (ROW) and non-mineral leases on the Nation.

B. The Resources Committee by Resolution RCMY-76-01, dated May 10, 2001, approved an Extension Agreement which renewed certain TWPC existing ROW and related facilities up to November 18, 2009. The Resources Committee resolution and the extension agreement are attached as Exhibits B and B-1, respectively. All ROW and related facilities extended up to November 18, 2009 are shown on attached Exhibits C-1, C-2, C-3, C-4, C-6 and C-7. The Resources Committee, by resolution RCO-55-04 dated October 14, 2004, approved an amendment (Exhibit C-5) to resolution RCMY-76-01 for granting additional ROW to TWPC.

C. TWPC has two land leases shown on Exhibits C-8 and C-9 for compressor stations sites, including related facilities. The two leases also expire on November 18, 2009. The acreage for compressor station site at Leupp, AZ is reduced to 32.328 acres and that at Klagetoh, AZ is reduced

to 58,818 acres. The acreages include compressor station sites, power lines, water lines, water well sites, and access roads.

D. The Nation and TWPC have entered into this Agreement for the extension of term of TWPC's existing ROW, communication and radio tower sites, related facilities (water lines, water well sites, cathodic protection units, electrical power lines and access roads) and the land leases for the two compressor station sites for a term ending on November 18, 2029. The Agreement also provide TWPC with 15 miles, more or less, of new ROW to construct, operate and maintain a 36-inch diameter natural gas loop line and the option to acquire up to 136 miles of additional ROW and up to 20 acres of additional acreages for new compressor station site(s) for the construction, operation and maintenance of 30-inch and/or 36-inch diameter natural gas loop pipelines. The new ROW and the option ROW term will also terminate on November 18, 2029. The ROW and the compressor stations sites leases being reserved are shown on Exhibits C-1, C-2, C-3, C-4, C-5, C-6 and C-7, C-8 and C-9. The 15 miles, more or less, of new ROW are attached as Exhibit D and the additional ROW, including the acreages for compressor station site(s) to be acquired under the option are shown on Exhibit E.

E. The Nation and TWPC desire that the Secretary extend the term of TWPC's existing ROW, communication and radio tower sites related facilities and the two land leases for compressor station sites, that the Secretary grant TWPC 15 miles, more or less, of new ROW and the option to acquire additional ROW, including the compressor station site(s) pursuant to the terms and conditions of this Agreement. The Nation believes that it will receive good and adequate consideration from TWPC for use of the Nation's land for the term of the ROW.

NOW THEREFORE, in consideration of the terms, conditions and covenants contained herein, the Parties hereby mutually agree as follows:

OPERATIVE PROVISIONS

1. DEFINITIONS

"*Navajo Nation Trust Lands*" means those lands held in trust by the United States for the benefit of the Navajo Nation pursuant to treaty, executive order, federal laws and/or federal regulations. Under Bureau of Indian Affairs regulations, grants of ROW across Trust Lands require consent of the Nation prior to the issuance of an ROW by the Bureau of Indian Affairs.

"*Navajo Nation Fee Land (Fee Land)*" means those lands owned by the Navajo Nation and not held in trust by the United States. Grants of ROW on Fee Lands are not subject to the approval of the Secretary or his/her authorized representatives. The Nation can grant ROW and easements across Fee Lands

"*Navajo Indian Country*" means all lands within the exterior boundaries of the Navajo Nation.

"*Secretary*" means the Secretary of the United States Department of the Interior or her/his duly authorized designee, representative, or successor.

"ROW Grant on Trust Lands" means the formal extension of the term by the Secretary of existing ROW, revocable use permit and leases on trust lands to TWPC as the Grantee, for the premises described in Exhibit C-1, C-2, C-3, C-4, C-5, C-6, C-7, C-8, C-9, the grant of new ROW described in Exhibit "D" and the option ROW described in Exhibit "E" when the option is exercised.

"ROW" means the particular ROW described in this Agreement and Exhibits C-1, C-2, C-3, C-4, C-5, C-6, C-7, C-8, C-9, D and the option ROW (Exhibit "E") which are attached hereto. ROW, with respect to this agreement, means either singular or plural of those ROW described in the previously mentioned exhibits.

"Option ROW" means one or more options to acquire up to 136 miles of ROW for the construction, operation and maintenance of 30-inch and/or 36-inch diameter natural gas loop pipelines ROW, and up to 20 acres for two (2) compressor station sites at 10 acres each, to be acquired in the future by TWPC and shown on Exhibit E. TWPC shall exercise this option within five (5) years effective the date this Agreement is approved by the Nation.

"ROW Premises" mean any and all Navajo Nation Trust Lands to which both this Agreement and the Application pertain, and upon which the ROW shall be located, or which the ROW shall burden or occupy upon final issuance of the extension of ROW Grant by the Secretary, the Grant of new and option ROW by the Secretary, and ROW located on Fee Lands approved by the Nation.

"Assign" or "Assignment" means the act of transferring, subleasing, selling, or otherwise conveying any type of legal property of interest, whether or not for any consideration, and includes a partial or total sale, buyout, takeover, merger, or any other kind of transfer of all or a portion of the shares of stock of TWPC.

"Affiliate" means with respect to a party hereto, any entity, including but not limited to a corporation, company, partnership, LLC/LLP or joint venture that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with such party. For purposes of this definition, the term "control" (including "controlled by" and "under common control with") shall mean the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of an entity, whether through the ownership of voting securities, regardless of percentage by written contract, or otherwise.

"Anniversary Date": November 18 of each year and shall be known as the anniversary date of this Agreement.

"Effective Date": The Effective Date in this Agreement is the dated it is approved by the Resources Committee of the Navajo Nation Council.

2. COVENANT TO CONSENT AND APPROVAL

The Nation agrees and covenants to contemporaneously consent to an "Extension of Grant of Easement for Rights of Way", "Grant of New Right-of-Way and option Right-of-Way" to enter upon, cross over, develop, use, and occupy the ROW Premises, as reasonably

necessary for the limited purposes described in paragraph 5. It is understood and agreed that the Nation's consent provided for in this Agreement applies only to Nation Trust lands as defined in paragraph 1 herein, and does not apply to any lands held in trust by the United States for the benefit of individual members of the Nation. Further, pursuant to this Agreement, the Nation hereby approves the extension and the grant of those ROW located on its Fee Lands.

3. NATURE OF ROW INTEREST

By execution of this Agreement, and by acceptance of the Extension of ROW Grant and New ROW grants, TWPC shall obtain rights to Navajo Nation Trust Lands in the nature of an easement only, i.e., a right to pass over, occupy and reasonably use and occupy the ROW Premises for the particular purposes described herein. Such easement shall be a limited term usufructuary interest consistent with all general property rights flowing from beneficial ownership of Navajo Nation Trust Lands, with no subsurface rights to any minerals or other natural resources located on or within the ROW Premises. This agreement and/or the Extension of the ROW Grant, under no circumstances or rule of law, shall be interpreted as granting a fee simple interest or creating any greater property right possessed by TWPC other than the limited easement described in Exhibit C-1, C-2, C-3, C-4, C-5, C-6, C-7, C-8, C-9, D and E.

4. LIMITED USE

The use of the ROW Premises shall be strictly limited to the transportation of natural gas and to the operation, repair, and maintenance, of natural gas pipelines, water line, water wells, electrical power lines, compressors, and related facilities as described in Exhibits C-1, C-2, C-3, C-4, C-5, C-6, C-7, C-8, C-9, D and E. Any other use of the ROW Premises, including but not limited to the transportation via pipeline of any product or material other than natural gas, shall require the express written consent of the Nation, and may require additional consideration. The consent of the Nation may be given, given upon conditions, or denied at the sole discretion of the Nation.

5. NEW ROW AND THE OPTION TO ACQUIRE ADDITIONAL ROW

TWPC shall submit complete ROW applications for the 15 miles, more or less of new ROW and the option ROW, if the option(s) is exercised. The ROW applications shall be governed by this Agreement and shall be processed for approval by the Nation in accordance with the terms set forth in the Resources Committee resolution approving this Agreement. The final grant of easement will be issued by the Secretary or his/her authorized representative for ROW located on the Trust land. Approval by the Nation of this Agreement constitutes the grant by the Nation of the ROW on its Fee land.

6. NAVAJO NATION RIGHTS TO ROW PREMISES

A. Inspection

Nation up to November 18, 2019. After this lump sum payment is made, there will be no additional payment due to the Nation pursuant to Section 8 B(i), and (ii)

- (ii) If TWPC terminates this Agreement after November 18, 2019 or if the ROW Grant is terminated or cancelled by the Secretary due to reasons stipulated in Section 15 after November 18, 2019, TWPC shall make a lump sum payment to the Nation which shall be the value of adjusted annual payments described in Section 8 B(i) and (ii) multiplied by the remaining number of annual payments due to the Nation up to November 18, 2029.

F. EXISTING FINANCIAL OBLIGATIONS

TWPC's financial obligations to the Nation pursuant to the terms of the Extension Agreement (Exhibit B-1) approved by Resources Committee Resolution RCMY-76-01, dated May 10, 2001 shall continue as stipulated in Exhibit B-1.

9. OWNERSHIP OF FACILITIES

A. Ownership

Notwithstanding the termination of this Agreement pursuant to paragraph 15 herein, all pipelines, equipment, compressor stations, or other structures and related facilities, real and personal property, and any other improvements located or installed upon the ROW Premises, shall remain the property and responsibility of TWPC for so long as the ROW Grant on Navajo Nation Trust Lands remains in effect, and shall remain the property and legal responsibility of TWPC.

10. MAINTENANCE, RECLAMATION AND SAFETY

TWPC shall maintain all of its pipelines at a depth consistent with the minimum required depth provided for by applicable federal laws and regulations and to place surface markings and signs over its pipelines as provided for by applicable federal laws and regulations.

A. Land Clearance

The ROW Premises and all lands burdened thereby shall be kept clear to the extent compatible with the purpose(s) of the ROW Grant, and all vegetation and any other materials cut, uprooted, or otherwise accumulated during TWPC's activities under this Agreement shall be promptly disposed of in a safe manner, or used in an environmentally compatible manner, according to applicable Navajo Nation and/or federal laws and regulations.

B. Property and Improvements

TWPC agrees, at all times during the term of this Agreement, at TWPC's sole expense, to maintain the ROW Premises and any pipelines, compressor station, related facilities or structures, and equipment or improvements of any kind situated thereon, in a

safe and workmanlike manner, and to make all necessary and reasonable repairs as soon as reasonably possible to ensure the safety of such improvements, the ROW Premise and all lands burdened thereby and the surrounding area.

C. Roads and Trails

TWPC agrees to reconstruct or repair any roads, fences and trails as may be destroyed or damaged by TWPC's activities under this Agreement of the ROW Grant, for so long as the ROW Grant remains in effect.

D. Erosion

TWPC agrees that where soil deterioration or erosion is caused by its activities under this Agreement or the ROW Grant, it will promptly take all necessary action as shall be required by applicable federal or Navajo Nation laws or regulations to correct, repair, and mitigate hazards of such deterioration and/or erosion.

11. INDEMNIFICATION

TWPC shall indemnify and hold harmless the Nation and the Secretary of the 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 TWPC's use or occupancy of the ROW.

12. SURFACE AND OTHER DAMAGES

TWPC shall be responsible for and shall promptly pay all surface damages to appropriate land users, occupants, lessees, or permittees, in the event TWPC's activities pursuant to this Agreement result in the disturbance of any lands or surface interests. In the event that the amount of actual damages cannot be agreed upon by TWPC, the amount of damages shall be determined according to 16 N.N.C. § 1401 D.

13. ASSIGNMENT RESTRICTED

A. Consent Required

Except as provided in paragraph 13B, TWPC shall not Assign any rights or interest in this Agreement, the ROW Grant, or any rights to any of the real property improvements affixed on or to the ROW premises as of the date of execution or expiration of this Agreement or of the ROW Grant, without the prior written consent of the Nation. Any such attempted Assignment without such prior written consent shall be void and of no effect. The consent of the Nation may be granted, granted upon conditions, or withheld at its sole discretion.

B. Affiliates

Notwithstanding paragraph 13A, the Nation covenants to give its future consent and approval for any Assignment to an Affiliate of TWPC, and such Assignment shall not require payment of any additional consideration, provided that TWPC notify the Nation of any Assignment(s) to its Affiliate(s) no later than thirty (30) days prior to the effective date of such Assignment(s). Before granting its consent and approval, the Nation reserves its right to conduct reasonable inquiry to confirm the relationship between TWPC and its Affiliate(s), and TWPC, hereby agrees to cooperate with such inquiry by providing to the Nation all necessary documents and other reasonably required information.

C. Other Entities

Assignments to any entities other than an Affiliate of TWPC shall require the separate written consent and approval of the Nation, which shall not be unreasonably withheld. TWPC shall be responsible for any administrative and/or processing fees.

14. NO ENCUMBERANCE

TWPC shall not pledge, mortgage, or otherwise encumber the ROW, the ROW Grant, this Agreement, or any interest therein, including any of its personal property situated within the ROW whether or not affixed to the ROW Premises, in order to secure loans or otherwise finance its business and operations or those of its subsidiaries, affiliates, or other related persons or entities.

15. TERMINATION

A. Decision by TWPC.

TWPC may terminate this Agreement and all land leases and ROW subject to this Agreement by providing 180 days written notice to the Navajo Nation and the Secretary and upon making the payment stipulated in Section 8E (i) or 8E (ii), whichever is applicable.

B. Decision by the Navajo Nation.

Pursuant to 2 N.N.C. § 695, the Resources Committee of the Navajo Nation Council may, by duly adopted resolution, issue a preliminary non-binding decision to terminate this Agreement for any material violation(s) of, or noncompliance with, any of the terms, conditions, and covenants provided for herein. Within ten (10) days of such decision by the Resources Committee, the Executive Director of the Navajo Nation Division of Natural Resources shall notify TWPC of the preliminary decision.

C. Opportunity to Cure

TWPC shall have ninety (90) days following the date of its receipt of notification of preliminary termination to cure or otherwise resolve the alleged violation(s) or

noncompliance. If within this 90-day period, the alleged violation(s) or noncompliance is not cured or otherwise resolved, the Executive Director of the Navajo Nation Division of Natural Resources may thereafter issue a formal "Notice of Termination" to TWPC indicating the effective date of the termination. The "Notice of Termination" shall constitute final termination of this Agreement and shall be appealed according to the provisions of 1 N.N.C. § 554G.

D. Petition for Cancellation of the ROW Grant

Upon termination of this Agreement pursuant to paragraph 15B, the Nation may, in its discretion, immediately petition the Secretary for cancellation or revocation of the ROW Grant issued by the Secretary.

E. Judicial Action

At any time following termination pursuant to this paragraph 15; and notwithstanding such termination, the Nation may commence action(s) in the appropriate administrative or judicial tribunal(s) against TWPC for any act or omission that allegedly constitutes a material breach of any of the terms, conditions, or covenants contained in this Agreement. Further, said action(s) may be commenced notwithstanding any rights under the ROW Grant that TWPC may retain after such termination. Except as expressly prohibited by applicable federal law, monetary damages, injunctive relief, and/or specific performance of the terms, conditions, or covenants contained in this Agreement shall be the remedies available in such action.

16. PROCEDURE UPON TERMINATION

A. Delivery of ROW

Upon expiration of this Agreement, or termination of the ROW by TWPC or upon cancellation or revocation of the ROW Grant by the Secretary, TWPC shall have ninety (90) days to peaceably and without legal process deliver the possession of the ROW Premises, in good condition, usual wear and tear expected. The delivery by TWPC of the ROW Premises shall include delivery of any pipelines, pump station and related facilities as described in Exhibits "C-1 through C-9 and Exhibits "D" and "E" that are affixed to the real property within the ROW Premises. Upon the written request of the Nation, TWPC shall provide the Nation, at TWPC's sole cost and expense, with an environmental audit assessment of the ROW Premises at least thirty (30) days prior to delivery of the ROW Premises. If delivery cannot be performed on or before such 90-day period, the Parties shall commence good faith negotiations for compensation, fees, or damages to be paid the Nation for prospective periods of occupation, use, or burden of the ROW Premises.

In case the Nation decides not to take over the pipelines and facilities at the expiration or termination of the ROW, TWPC shall abandon and reclaim the land encompassed in the ROW in accordance with Federal and Nation policies and procedures, rules, and regulations. The abandonment and reclamation operation shall be coordinated with Navajo Nation Environmental Protection Agency.

B. Holding Over

Holding over by TWPC after the expiration of the ROW, or after cancellation or revocation of the ROW Grant by the Secretary shall not constitute a renewal or extension thereof, or give TWPC any rights in or to the ROW Premises. Holding over after termination of this Agreement pursuant to paragraph 16 shall not give TWPC any rights via this Agreement in or to the ROW Premises.

17. AGREEMENT TO ABIDE BY LAWS

In all activities concerning the subject matter of this Agreement, the ROW, and/or the ROW Grant, that are conducted or caused to occur by TWPC within the ROW Premises and/or within the Navajo Indian Country, TWPC shall abide by all applicable laws and regulations of the Navajo Nation and of the United States, now in force and effect or as may come into force and effect, including but not limited to the following:

- (a) 25 C.F.R. § 169 *et seq.*;
- (b) Applicable antiquities laws and regulations, with the following additional condition: in the event of a discovery, all activities and operations in the immediate vicinity of the discovery must cease and the Navajo Nation Historic Preservation Department must be immediately notified. As used in this paragraph, "discovery" means any previously unidentified or incorrectly identified cultural resources, including but not limited to archeological deposits, human remains, or any location reportedly associated with Native American religious and/or 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.*;
- (d) The Navajo Nation Water Code, 22 N.N.C. §§ 1101 *et seq.*;
- (e) The Navajo Nation Business and Procurement Act, 12 N.N.C. §§ 1501 *et seq.*;
- (f) All applicable Navajo Nation taxes, 24 N.N.C. §§ 101 *et seq.*, and accompanying regulations.

18. AUTHORITY OF NAVAJO NATION NOT IMPAIRED

The Parties hereby expressly accept, agree, and acknowledge that the execution and approval of this Agreement by the Nation does not diminish to any extent or in any manner whatsoever, the Nation's jurisdiction over the ROW Premises; the power and authority of the Nation to tax the ROW Premises or any real or personal property, or tangible or intangible property, within or situated upon the ROW Premises, or any transaction or activity occurring on the ROW Premises, or the Nation's authority to apply and enforce laws and regulations of general and particular application within the ROW Premises and Navajo Indian Country, as if there were no ROW Grant, provided only that the retention and/or exercise of such powers and authority shall not prevent the use and occupation of the ROW Premises as provided in the ROW Grant.

Further, the Parties hereby expressly accept, agree, and acknowledge that TWPC, by execution of this Agreement and acceptance of the ROW Grant, enters into and express consensual relationship with the Nation. In the event that either the Navajo Nation's Business Activity Tax or the Navajo Nation's Possessor Interest Tax is rendered partially or wholly unlawful by a federal court of competent jurisdiction or by any federal act, statute, ruling, or Executive Order, TWPC nevertheless hereby expressly agrees and consents to the assessment and payment of these taxes pursuant to the Navajo Uniform Tax Administration Statute and accompanying regulations, as well as to any subsequent adjustments or amendments to these taxes, as if they were lawful, so long as such adjustments or amendments are similar to adjustments or amendments that a state government would make to its comparable taxes and so long as such taxes or adjustments or amendments to such taxes are the same as those applicable to similarly situated pipelines located outside of Navajo Indian Country. However, if the Nation enacts any taxes other than the Business Activity Tax or the Possessory Interest Tax, TWPC retains the right to challenge such taxes on the same grounds that TWPC could raise against a substantially similar challenge against a state of the United States.

19. LAWS GOVERNING AGREEMENT

Laws and regulations governing this Agreement and the ROW Grant shall be Nation laws and regulations to the extent said laws and regulations are not inconsistent with applicable federal laws and regulations, as such the appropriate judicial or administrative tribunals of the Nation determine inconsistency.

20. FORUM SELECTION

TWPC shall have the right, in connection with or arising out of any of the provisions of this Agreement, to bring an action against the Nation, provided that the forum for such action shall be limited in the first instance to the administrative and/or judicial bodies of the Nation, and when the proceeding in such forums are exhausted, then, in the U.S. District Court and appropriate federal appellate courts. TWPC shall have no right to bring an action against the Nation in any other forum.

21. LIMITED CHALLENGES

By execution of this Agreement, TWPC covenants and agrees, for the duration of this Agreement and the ROW Grant, not to contest or challenge the legislative, executive or judicial jurisdiction of the Nation on the basis that such jurisdiction is inconsistent with the status of the Nation as an Indian nation or Indian tribal government, or that the Navajo Nation government is not a government of general jurisdiction, or that the Navajo Nation government does not possess full police power (i.e., the power to legislate and regulate for the general health and welfare) over all lands, persons and activities within its territorial boundaries, or on any other basis that would not be available to TWPC in a similar challenge to the jurisdiction of any state government of the United States.

22. SOVEREIGN IMMUNITY

Nothing contained in this Agreement shall be construed to affect or be deemed a waiver of the sovereign immunity from suit of the Nation except in actions brought pursuant to the Navajo Nation Sovereign Immunity Act.

23. FEDERAL RESPONSIBILITIES

Nothing contained in this Agreement shall be construed to negate or impair federal responsibilities with respect to the ROW Premises, any Navajo Nation Trust Lands burdened thereby, or to the Nation itself.

24. AGENTS/SUCCESSORS

The terms, conditions, and covenants contained in this Agreement shall extend to and be binding upon the successors, heirs, assigns, executors, administrators, employees and agents, including all contractors and subcontractors, of TWPC, and the term "TWPC" whenever used herein shall be deemed to include all such successors, heirs, assigns, executors, administrators, employees, agents, contractors, and subcontractors.

25. NOTICES AND DEMANDS

Except as otherwise provided, any notices, demands, requests or other communications to or upon either Party or the Secretary as provided in this Agreement, or given or made in connection with it (referred to as "notices") shall be in writing and addresses as follows;

To or upon the Navajo Nation:

President
The Navajo Nation
Office of the President/Vice President
Post Office Box 9000
Window Rock, Navajo Nation (Arizona) 86515
Facsimile: 1-928-871-4025

And

Attorney General
The Navajo Nation
Navajo Nation Department of Justice
Post Office Box 2010
Window Rock, Navajo Nation (Arizona) 86515
Facsimile: 1-928-871-6177

Or

TRANSWESTERN PIPELINE COMPANY, LLC
Land and Right of Way Department
5444 Westheimer Road
Houston, TX 77056

26. FORCE MAJEURE

If as a result of force majeure, either Party is wholly or partially unable to satisfy or perform its obligations under this Agreement or the ROW Grant, the Party claiming force majeure shall notify the other as soon as reasonably possible following the force majeure event, giving reasonable detail regarding the circumstances of the event and the anticipated effect on the Party's ability to perform. As soon as reasonably possible thereafter, and to the extent reasonably possible, the Party claiming force majeure shall attempt to rectify or mitigate the conditions or causes of the force majeure event. If the Party claiming force majeure cannot, in good faith, substantially perform its obligations under this Agreement or the ROW Grant even after taking rectifying and/or mitigating measures, such Party shall notify the other of its inability to perform, and the Parties shall, as soon as reasonably possible, commence good faith negotiations for a modification of this Agreement and the ROW Grant in order to place the Parties in a substantially same or similar legal and/or economic position which existed prior to the force majeure occurrence.

The term "force majeure" as used herein means strikes, walkouts, or other industrial disturbances, acts of public enemy, wars, blockages, public riots, lightening, fires, storms, adverse weather, extended periods of cold weather, floods, explosions, breakage or accident to machinery, lines, pipes or materials, inability to obtain an ROW, inability to obtain materials, or other causes, whether enumerated or otherwise which are not reasonably within the control of the Party affected thereby.

27. SEVERABILITY

If any provision of this Agreement is determined by a final and unappealable judgment from a judicial or administrative tribunal of competent jurisdiction to be invalid, illegal, or incapable of being enforced under any rule of law, all other conditions and provision of this Agreement shall remain in full force and effect so long as the economic or legal substance of the activities which are the subject of this Agreement are not affected in a materially adverse manner with respect to either of the Parties. If either party is materially and adversely affected, both Parties shall, within sixty (60) days after the final judgment has been issued, commence good faith negotiations to amend this Agreement so as to place such affected Party in the same or substantially similar position prior to such determination of invalidity, illegality, or unenforceability.

28. ENTIRE AGREEMENT/AMENDMENT

This Agreement has been reached as a result of an arms' length negotiation between the Parties. It supersedes all prior oral negotiations, agreements, or representations between the Parties, is intended as a complete and exclusive statement of the negotiated agreement between the Parties with respect to the subject matter contained herein. Further, it shall not be amended or altered in any manner except by written agreement validly executed by both parties. This Agreement supersedes all existing agreements for ROW and compressor station sites between the Nation and TWPC, excluding the financial obligation that TWPC has to the Nation, which will continue until November 18, 2009 pursuant to an Extension Agreement dated May 10, 2001.

29. WAVIER

No term, condition, or covenant contained in this Agreement may be waived or released in any manner by either Party without the express intention to do so contained in a written document validly executed by the waiving Party.

30. TAPS

Upon receipt of a written request for service from the authorized representative of the Nation, including the Navajo Tribal Utility Authority ("NTUA") and upon execution of an applicable service agreement, TWPC will prepare, file and support any required application with FERC requesting any necessary authorizations to transport and deliver, on a firm basis, such amounts of natural gas as the authorized representative shall contract to transport, for such periods of up to, but not exceeding, the term of the right-of-way grant contemplated herein, as the parties may agree and subject to FERC-approved tariffs and general regulations. For the above purposes, TWPC shall install and maintain the necessary taps and metering facilities, at its sole cost and expense, at mutual agreeable points on TWPC's main line or laterals within the Nation's land in New Mexico and Arizona. With regard to all service rendered to NTUA by TWPC, it shall execute an Operational Balancing Agreement with NTUA consistent with TWPC's Operational Balancing Agreement form contained in its FERC tariff.

31. HEADINGS

The headings contained in this Agreement are for ease of reference only and shall not affect in any way the meaning, construction, or interpretation of this Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the most recent dated indicated below.

THE NAVAJO NATION

By: 
Joe Shirley, Jr., President

Date: APR 03 2007

TRANSWESTERN PIPELINE COMPANY, LLC

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JC By: 
Jim Holotik, President

Date: 3/16/07



THE NAVAJO NATION
HISTORIC PRESERVATION DEPARTMENT
PO Box 4950, Window Rock, Arizona 86515
TEL: (928) 871-7198 FAX: (928) 871-7886

CULTURAL RESOURCES COMPLIANCE FORM

ROUTE COPIES TO:	NNHPD NO.: HPD-15-835
<input checked="" type="checkbox"/> MAR	OTHER PROJECT NO.: MAR 15007.01B

PROJECT TITLE: A Cultural Resource Survey for the Construction of a New Waterline, Birdsprings and Leupp Chapters, Navajo Nation Trust Lands, Coconino County, Arizona

LEAD AGENCY: BIA/NR

SPONSOR: AMEC Foster Wheeler, 8519 Jefferson St. NE., Albuquerque, New Mexico 87113

PROJECT DESCRIPTION: The proposed undertaking will involve the construction of a new 8.5-mile waterline with a 30-ft wide right-of-way. The old water pipeline will be abandoned in place and new pipeline will be installed 40-ft south & parallel to an existing natural gas transmission line. Four equipment staging areas have been identified for use along the pipeline's alignment. The area of effect is 99.28-acres. Ground disturbing activities will be intensive and extensive with the use of heavy equipment.

LAND STATUS:	Navajo Tribal Trust
CHAPTER:	Birdsprings & Leupp
LOCATION:	Project is located on Old Leupp & East of Old Leupp Quadrangle, Coconino County, Arizona G&SRPM
T. 22 N., R. 13 E. Sec. 13, 20-24	
T. 22 N., R. 14 E. Sec. 15-18	

PROJECT ARCHAEOLOGIST:	Toni R. Groar & R. Stanley Kerr
NAVAJO ANTIQUITIES PERMIT NO.:	B15378
DATE INSPECTED:	09/09/15 - 09/10/15
DATE OF REPORT:	11/2015
TOTAL ACREAGE INSPECTED:	99.28 - ac.
METHOD OF INVESTIGATION:	Class III pedestrian inventory with transects spaced 15 m apart.

LIST OF CULTURAL RESOURCES FOUND:	(7) Sites (AZ-O-48-65; AZ-O-48-66; AZ-O-48-67; AZ-O-48-68; AZ-O-48-69; AZ-O-48-70; AZ-O-48-71) (1) In-Use Site (IUS) (30) Isolated Occurrences (IO)
LIST OF ELIGIBLE PROPERTIES:	(3) Sites (AZ-O-48-65; AZ-O-48-70; AZ-O-48-71)
LIST OF NON-ELIGIBLE PROPERTIES:	(4) Sites (AZ-O-48-66; AZ-O-48-67; AZ-O-48-68; AZ-O-48-69) (1) IUS (30) Isolated Occurrences (IO)
LIST OF ARCHAEOLOGICAL RESOURCES:	(3) Sites (AZ-O-48-65; AZ-O-48-70; AZ-O-48-71)

EFFECT/CONDITIONS OF COMPLIANCE: No Historic Properties affected with the following conditions:

Site AZ-O-48-65:

1. Site boundary will be flagged by a qualified archaeologist prior to ground disturbing activities.
2. Waterline will be relocated to the south avoiding the site by a minimum of 50-ft.

Sites AZ-O-48-70; AZ-O-48-71:

1. Sites will be flagged by a qualified archaeologist prior to ground disturbing activities.
2. A qualified archaeologist will monitor sites within 50-ft of site boundaries.
3. A monitoring report will be submitted to NNHPD within 30-days of monitoring activities.

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 (928) 871-7198.

FORM PREPARED BY: Tamara Billie

FINALIZED: January 8, 2016

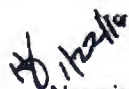
Notification to Proceed
Recommended
Conditions:

☒ Yes ☐ No

☒ Yes ☐ No


The Navajo Nation
Historic Preservation Office

1/12/14
Date



Navajo Region Approval

☒ Yes ☐ No


Acting BIA - Navajo Regional Office

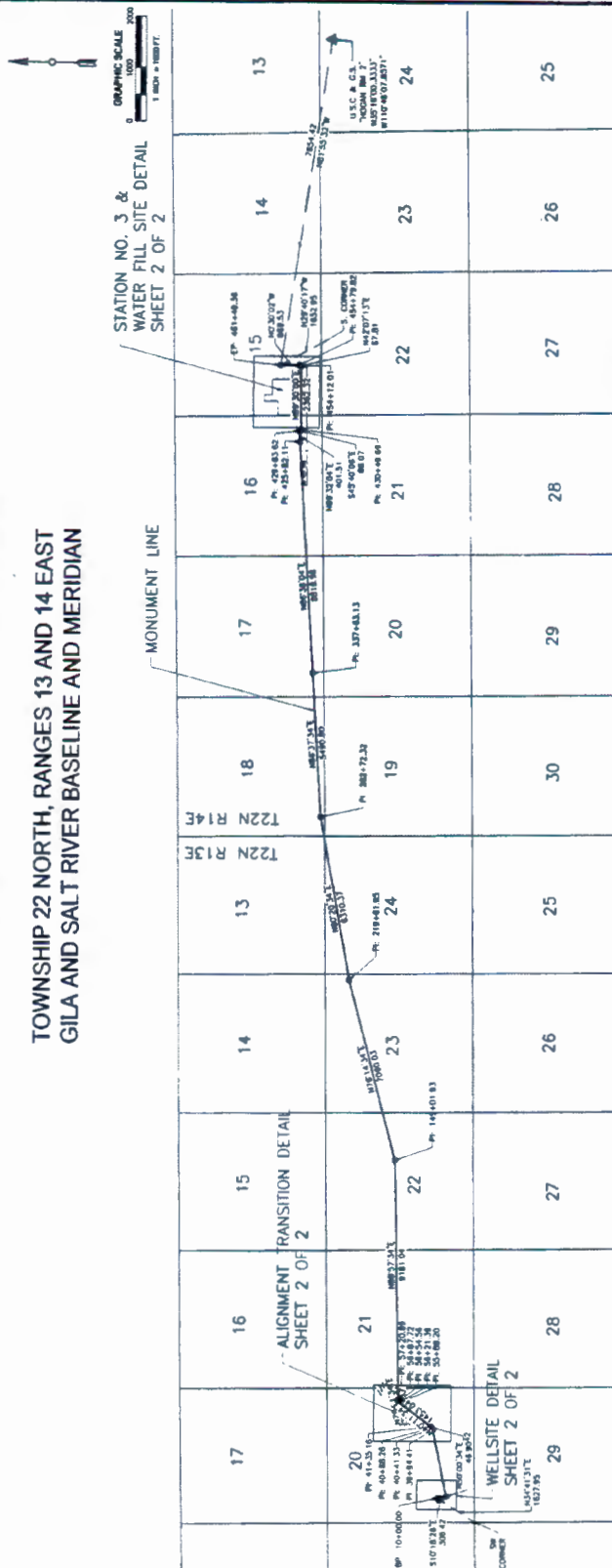
1-26-16
Date

CONSTRUCTION EASEMENT ALIGNMENT
FOR
REPLACEMENT STOCK-WATER PIPELINE

TOWNSHIP 22 NORTH, RANGES 13 AND 14 EAST
GILA AND SALT RIVER BASELINE AND MERIDIAN

PRELIMINARY (NOT FOR RECORDING)

PRELIMINARY (NOT FOR RECORDING)



RECORD DATE: _____ RECORD NO.: _____ DRAWN BY: _____ CHECKED BY: _____ PROJECT NO.: _____ SCALE: _____ SHEET 1 OF 2		LEUP STOCK-WATER LINE INSTALL LEEUP, ARIZONA		CONSTRUCTION EASEMENT	
NO. _____ DATE _____ REVISION _____		 amec foster wheeler			

CONSTRUCTION EASEMENT
STOCK-WATER TRANSMISSION LINE

Leupp, Arizona

Township 22 North, Ranges 13 & 14 East, Gila & Salt River Base & Meridian

An Easement for stock-water transmission line purposes, 50 feet wide, lying 10 feet left (predominantly north) and 40 right (predominantly south) of the following described Monument Line.

The Monument Line begins at Station 10+00.00 which is the east water well within an existing 208 feet by 208 feet (1.0 acre) square Well site. The east well is offset 35 feet and 54 feet from the northerly and easterly lines of the Well site respectively. The well and Well site are located in Southwest 1/4, Section 20 of Township 22 North, Range 13 East of the Gila and Salt River Meridian, as platted by the Bureau of Land Management on November 17, 2008 (0987-3). Said Station 10+00.00 bears N 34° 41' 31" E, 1627.95 feet from the Southwest corner of said Section 20. The east well and Well site are laid-out on a map in the Transwestern Pipeline Company files titled "PROPOSED WATER WELL SITE, AIRSTAIR, & STATION No. 3 SITE," hereafter referred to as "Map." The Map is dated February 23, 1960 and drawn by G.B. Stafford.

Commencing from said Station 10+00.00, thence proceeding S 10° 48' 26" E, on a course that is parallel to the easterly and westerly lines of the Well site, 308.42' to Station 13+06.42. Station 13+06.42 is 10 feet south of the southerly line of an existing right-of-way for a 30 inch natural gas pipeline, known as the "Loop Line" and said course is perpendicular to the right-of-way's southerly line. A description of the Loop Line right-of-way is written in the Transwestern Pipeline Company files, titled "RIGHTS OF WAY, DESCRIPTION 30" LOOP LINE, NO. 3, NAVAJO INDIAN LANDS" and labeled Exhibit B-2 with a "Received" date of April 5, 1985.

The Monument Line between Station 10+00.00 and Station 13+06.42 crosses the Well site and two existing Transwestern Pipeline Company natural gas pipeline right-of-ways, the Main Line right-of-way and the aforementioned Loop Line right of way, in that order. Record of the Main Line right-of-way is not available. This Easement overlays the existing Well site, the Main Line right-of-way, and the Loop Line right-of-way and includes areas that are not included therein.

The Monument Line then proceeds from Station 13+06.42 on a general course east to Station 429+83.62. Between Station 13+06.42 and Station 429+83.62 the north line of this Stock Water Transmission Line easement is contiguous with the south line of the Loop Line right-of-way. Said general east course is more particularly described as follows.

Thence from Station 13+06.42, N 79° 41' 34" E to Station 39+94.41;

Thence N 69° 48' 34" E to Station 40+41.33;

Thence N 59° 54' 34" E to Station 40+88.26;

Thence N 50° 00' 34" E to Station 41+35.16;

Thence N 40° 11' 34" E to Station 55+88.20;

Thence N 49° 53' 34" E to Station 56+21.39;

Thence N 59° 39' 34" E to Station 56+54.56;

Thence N 69° 25' 34" E to Station 56+87.72;

Thence N 79° 11' 34" E to Station 57+20.89;

Thence N 88° 57' 34" E to Station 149+01.93;

Thence N 76° 14' 34" E to Station 219+61.95;

Thence N 80° 20' 34" E to Station 282+72.32;

Thence N 86° 37' 34" E to Station 337+63.13;

Thence N 86° 38' 04" E to Station 425+82.11;

Thence N 89° 32' 04" E to Station 429+83.62;

Thence S 45° 40' 06" E to Station 430+49.69;

Thence N 89° 30' 00" E to Station 436+02.28. The N 89° 30' 00" E course is parallel to and 10 feet south of the southerly line of the existing 1320 feet by 1320 feet square Transwestern Pipeline Station No. 3 site. Station 436+02.28 is the intersection of the extension of Station No. 3's westerly line and the Monument Line. The Station No. 3 site is located in Southwest 1/4, Section 15 of Township 22 North, Range 14 East of the Gila and Salt River Meridian, as platted by the Bureau of Land Management April 12, 2011 (0987-4). The Station No. 3 site is laid-out on the Map.

Thence continuing N 89° 30' 00" E to Station 449+22.28. Station 436+02.28 is the intersection of the extension of Station No. 3's easterly line and the Monument Line.

Thence continuing N 89° 30' 00" E to Station 454+12.01;

Thence N 42° 07' 13" E to Station 454+79.82;

Thence N 00° 30' 02" W to Station 461+49.36 which is the end of the Monument Line and easement. The N 00° 30' 02" E course is parallel to and 538 feet east of the easterly line of said Station No. 3 site. Station 461+49.36 bears N 29° 40' 17" W, 1652.95 feet from the South Corner of said Section 15 and N 81° 55' 32" W, 12,490.50 feet from the United States Coast and Geodetic Survey monument "Hogan Rm 2."

This description is prepared from information shown on a plat titled "CONSTRUCTION EASEMENT ALIGNMENT FOR REPLACEMENT STOCK-WATER LINE" prepared by Amec Foster Wheeler and dated December 23, 2015.

LAND PARCEL
STOCK-WATER WELLSITE
Leupp, Arizona

A land parcel to contain two water wells and ancillary equipment, referred to herein as the Wellsite. The Wellsite is located in Southwest 1/4, Section 20, Township 22 North, Range 13 East of the Gila and Salt River Meridian, as platted by the Bureau of Land Management on November 17, 2008 (0987-3). The Wellsite and its water wells are existing and laid-out on a map in the Transwestern Pipeline Company files titled "PROPOSED WATER WELL SITE, AIRSTRIP, & STATION No. 3 SITE," hereafter referred to as "Map." The Map is dated February 23, 1960 and drawn by G.B. Stafford. The Wellsite is more particularly described as follows.

Commencing at the east well, which bears N 34° 41' 31" E, 1627.95 feet from the Southwest Corner of said Section 20, thence N 43° 18' 26" E, 64.35 feet to the northeast corner of said Wellsite and the true Point of Beginning.

Thence from the Point of Beginning S 10° 16' 00" E, 208 feet to a point on the north line of a 30-inch natural gas pipeline right-of-way, known as the "Main Line." Record survey of the Main Line right-of-way is not available.

Thence along said north right-of-way line S 79° 44' 00" W, 208 feet;

Thence N 10° 16' 00" W, 208 feet;

Thence N 79° 44' 00" E back to the Point of Beginning.

Said Wellsite contains 1.0 ~~acres~~.

This description is prepared from information shown on a plat titled "CONSTRUCTION EASEMENT ALIGNMENT FOR REPLACEMENT STOCK-WATER LINE" prepared by Amec Foster Wheeler and dated December 23, 2015.

Biological Resources Survey Report

Transwestern Pipeline Waterline Reconstruction

Navajo Nation, Cococino County, Arizona

November 2015



INTRODUCTION

Transwestern Pipeline Company, on behalf of the Navajo Nation Water Resources Division (NNWRD), proposes to construct a new 8.5 mile non-potable water supply pipeline along a route parallel to and outside of an existing water pipeline easement. The proposed project area is located near Leupp Arizona, and abandon it to the ownership of the Navajo Nation. The project area appears on the *Old Leupp and East of Old Leupp, Arizona* U.S. Geological Survey 7.5-minute quadrangle maps (Figure 1). Under the proposed activity, the existing steel water supply pipeline would be abandoned in place. A new 4-inch PVC/HDPE pipeline would be installed 40-feet south and parallel to the southern-most existing 30-inch natural gas transmission line. The new water line would be installed via trenching to a minimum 3-foot depth to the top of the pipe for most of its length. The typical trench width would be 24 inches. Directional drilling would occur at two locations (from west to east): Arizona Highway 99, and the Little Colorado River. Trenching is proposed to install pipe across Corn Creek Wash. Project trenching would impact approximately 2.0 acres of soils. The proposed construction would occur during the timeframe of November 2015 to February 2016.

Four equipment staging areas have been identified for use along the pipeline alignment. One occurs at the eastern project terminus, another at the western project terminus and the third and fourth occur in uplands adjacent to the Little Colorado River (Figure 1). The staging areas at project termini are co-located with existing fenced gas compressor and well house locations that are scraped and provide no native vegetative cover. The areas adjacent to the Little Colorado River would occur on the bank east and west of the pipeline crossing.

In 1960 Transwestern Pipeline Company installed a pair of water wells, a pipeline, and a storage tank to provide potable water to the Leupp Compressor Station (Station No. 3) and its staff housing unit, outside Leupp, Arizona. The water well site is located approximately eight miles west of the station. The 2.5-inch steel water pipeline is positioned between two 30-inch natural gas transmission lines. As part of the water system development, some stock water was delivered to surrounding residents. Currently, the Leupp Station does not require resident staff and water from the wells. The wells are working but solids have constricted the existing pipes. As a result, Transwestern Pipeline Company has agreed to construct the new pipeline on behalf of the NNWRD.

The elevation of the project area ranges from approximately 4,687 to 4,763 feet above mean sea level. Soil mapping units present within the areas are Navajo-Jocity complex, 1 to 3 percent slopes; Jocity-Joraibi Navajo-Riverwash complex, 0 to 2 percent slopes; Claysprings-Huerfano-Tuba complex, 2 to 15 percent slopes; and Jocity-Joraibi-Navajo-Riverwash complex, 0 to 2 percent slopes (US Department of Agriculture 2015).

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Leupp, Arizona receives approximately 6.5 inches of precipitation annually, mostly occurring from July through October. Average maximum temperatures reach approximately 72 degrees Fahrenheit (°F). Average minimum low temperatures are about 35°F (Western Regional Climate Center, 2005 Data).

BIOLOGICAL SURVEY

Marron and Associates (Marron) conducted a biological survey of the project area during September 1 and 2, 2015. The purpose of the survey was to identify potential for impacts to Navajo Nation or US Fish and Wildlife Service (USFWS) listed species or their habitats as well as other protected or sensitive natural resources that may occur in the project area. Examples of such other natural resource issues include rare plants, migratory bird nests, wetlands, and waterways.

Vegetation

The project area occurs on the Colorado Plateau. According to Browne, Lowe, and Passe (1979) this area supports a Great Basin Desert Scrub community. However, characteristics of the Shadscale community and Grassland community components are also present.

The eastern portion of the project area is dominated by alkali sacaton (*Sporobolus airoides*), four-wing saltbush (*Atriplex canescens*), shadscale (*Atriplex confertifolia*), Russian thistle (*Salsola tragus*), and localized concentrations of greasewood (*Sarcobatus vermiculatus*). Grasses comprise a high percentage of vegetative cover within this area (particularly dropseeds and galleta).

Habitats in the floodplain and adjacent lowlands along Polacca Wash are dominated by greasewood, salt cedar (*Tamarix* sp.), alkali sacaton, and annuals such as common sunflower (*Helianthus annuus*), and cocklebur (*Xanthium strumarium*). The area adjacent to the Little Colorado River is dominated by a coyote willow (*Salix exigua*) riparian vegetation zone that varies from 10 to 20 feet wide. Most of them are less than 8 feet high.

The western end of the project area is occupied by a shrub community dominated principally by shadscale.

The project area is overall approximately 25 to 35 percent vegetated. Construction of the proposed pipeline would temporarily impact approximately 2.0 acres of partially vegetated soils. Four staging areas have been identified within the surveyed corridor (Figure 1). Two occur at bladed compression and well facilities and one occurs within the survey corridor along the Little Colorado River. It is recommended that open disturbed soils be re-vegetated with native weed-free seed to replace lost habitat and reduce erosion.

Wetlands and Waterways

The alignment crosses three named waterways: Corn Creek Wash, Polacca Wash, and the Little Colorado River. The Project proponent proposes to install pipe via boring beneath the Little Colorado River and trench through Corn Creek Wash and Polacca Wash. The US Army Corps of Engineers and the Navajo Nation Environmental Protection Agency are being contacted to determine whether impacts to the washes would be regulated under the Clean Water Act.



Preliminary wetland determinations were conducted within potential wetland areas at Polacca Wash and along the Little Colorado River. No wetlands were identified within the alignment in Polacca Wash or within other proposed trenching portions of the alignment. Wetlands were identified along the banks of Little Colorado River, but under current design they would be avoided by boring.

Wildlife

The following species or their sign were observed within the project area: American crow (*Corvus brachyrhynchos*), Say's phoebe (*Sayornis saya*), common raven (*Corvus corax*), Cassin's kingbird (*Tyrannus vociferans*), curve-billed thrasher (*Taxostoma curvirostre*), turkey vulture (*Cathartes aura*), black-headed grosbeak (*Pheucticus melanocephalus*), red-tailed hawk (*Buteo jamaicensis*), northern harrier (*Circus cyaneus*), Cooper's hawk (*Accipiter cooperii*), jackrabbit (*Lepus californicus*), desert cottontail (*Sylvilagus audubonii*), mule deer (*Odocoileus hemionus*), ground squirrel (*Sciuridae*), beaver (*Castor canadensis*), lesser earless lizard (*Holbrookia maculata*), and southwestern fence lizard (*Sceloporus cowlesi*).

Project activities are expected to impact approximately 2.0 acres of partially vegetated soils. This could result in the temporary displacement of small animals (reptiles and mammals) that may currently occupy the area. Measures recommended to reduce the potential for impacts to wildlife include replanting any open disturbed areas with certified weed-free native vegetation and filling trenches concurrently to reduce trapping of reptiles and small mammals.

Listed or Otherwise Protected Species

The Navajo Nation Heritage Program (NNHP) was contacted for species occurrence data pertaining to the project area. The NNHP determined that the project area is classified as an Area 2 and Area 3 location; a moderately sensitive to less sensitive area (see data request, Appendix A).

The US Fish and Wildlife Service (USFWS) list of species for the county was obtained. No USFWS designated or proposed critical habitats occur within or immediately adjacent to the project area.

Listed species for the area are addressed below:

The NNHP Data Request list for the project area considers 10 Navajo Endangered Species List listed species:

Known Species

AQCH = *Aquila chrysaetos* / Golden Eagle - NESL G3

Potential Species

AMPE = *Amsonia peeblesii* / Peebles' Blue-star - NESL G4

AQCH = *Aquila chrysaetos* / Golden Eagle - NESL G3

ATCU = *Athene cunicularia* / Burrowing Owl - NESL G4 15

BURE = *Buteo regalis* / Ferruginous Hawk - NESL G3

CHMO = *Charadrius montanus* / Mountain Plover - NESL G4 1

COAM = *Coccyzus americanus* / Yellow-billed Cuckoo - NESL G2 FC

DEPE = *Dendroica petechia* / Yellow Warbler - NESL G4

EMTREX = *Empidonax traillii extimus* / Southwestern Willow Flycatcher - NESL G2 FE

LIP1 = *Lithobates pipiens* / Northern Leopard Frog - NESL G2

SAPAER = *Salvia pachyphylla* ssp. *eremopictus* / Arizona Rose Sage - NESL G4



The USFWS list for the project area considers six listed species:

California condor (*Gymnogyps californianus*)-Endangered

Southwestern willow flycatcher-Endangered

Yellow-billed cuckoo -Threatened

Roundtail chub (*Gila Robusta*): Lower Colorado River Basin - Candidate

Black-footed ferret (*Mustela nigripes*) – Experimental non-essential

Northern Mexican garter snake (*Thamnophis eques megalaps*) – Proposed threatened

No forest habitat is present in the project vicinity. No woodland, grassland, aquatic, cliff, wetland or riparian habitats would be impacted.

Aquatic/Riparian Species

Several aquatic and riparian species are listed for the area. Under current design, the Little Colorado River and its associated riparian zone would be avoided via boring under the river channel from 50 feet east and west of the channel bank.

The project proposes to bore beneath the channel and a 50-foot wide corridor to either side to avoid bankside wetlands and riparian vegetation. Additionally, the project would be constructed during the late fall and winter months when reptiles and amphibians are inactive. The bore is expected to be deep enough to avoid impacting individuals that may be aestivating within the area. In addition, the construction contractor will be required to use silt fencing or straw bales along the river to prevent stormwater quality impacts and accidental introduction of soils or construction fluids into waters. The proposed staging area near the river would be located more than 200 feet from the river bank. As a result, no effect/impact to the following aquatic species is expected: roundtail chub, northern Mexican garter snake, and northern leopard frog.

The following listed birds may migrate through the area: southwestern willow flycatcher and yellow-billed cuckoo. However, the riparian vegetation along the banks of the river is not sufficient in area or structure to provide suitable nesting habitat for these species. The proposed project is scheduled to occur outside of the migration and nesting seasons, and the installation of pipe via boring would result avoiding any impact to the potential migration habitat present. As a result, the project is expected to result in no effect to either species.

Potential suitable nesting habitat for the yellow warbler occurs within willow thickets present along the Little Colorado River. No nests were present during surveys. Under current design, the proposed boring would prevent the loss of this potential nesting habitat. The proposed staging area near the river would be located more than 200 feet from the river bank. Additionally, the project is currently scheduled to occur during the winter months outside of the nesting season for this species.

Raptors

While raptors likely hunt within the vicinity of the project area, cliffs that provide potential suitable nesting habitat are located 2.0 miles or more from the project area. No juniper trees or other potential nest sites were present. A few power poles occur nearby but no nests were present. Therefore, no effect/impact to listed species of raptors such as California condor, ferruginous hawk, and golden eagle would be expected. None of these species were observed during surveys.



Grassland/shrubland Species

Peebles' Blue-star occupies grasslands, shrub and scrub communities in Arizona. The eastern and central portions of the project area consist of clay soils and do not provide suitable habitat. However, the western end of the project area from approximately the Little Colorado River to the existing well shed appears to provide potential suitable habitat for this species. It was too late in the season for to observe *Amsonia* in flower. However, the plants are conspicuous and the leaves generally turn yellow toward the fall. The western portion of the project area was carefully surveyed to identify presence or absence of this species, and no *Amsonia* were present.

Burrowing Owl nests in burrows, often those abandoned by small mammals, in grassland, scrub and savanna habitats. Western burrowing owl is a Navajo Nation Group 4 species, and is protected under the Migratory Bird Treaty Act. The NHP NESL description for this species indicates that arrival to breeding area begins in about early March and migration wintering areas ends about mid-November. An avoidance zone of 0.25 mile within a breeding area is enforced during the timeframe from March 1 to August 15.

Some habitat within the eastern portion of the project area was structurally suitable for burrowing owls. However, no burrows suitable for owl use were present in the project area and no owls were observed. The project is not expected to impact this species if constructed prior to the onset of the 2016 nesting season. This species could migrate into the area during future nesting seasons.

Mountain Plover is a grassland and prairie nesting species that prefers open areas. It winters in shortgrass grasslands in the southwest US and northern Mexico. Although there were some grasses and grassland components sporadically present in the project area, it occurs within some variation of a shrub community. No grassland or prairie habitat is present. The project area does not provide suitable nesting or wintering habitat for mountain plover.

Black-footed ferret occurs in plains, grassland, and scrub habitats that support its main food source, prairie dogs. No prairie dog towns or burrows were present within the project area. Therefore, no suitable habitat is present for this species.

Arizona Rose Sage is somewhat of a substrate endemic in that it normally occurs in shrublands or Pinyon Juniper Woodland on basalt or Chinle Formation soils. There are some Chinle outcrops depicted on the geology map for the eastern portion of the project area, but these areas are overlain with recent quaternary alluvium, so provides little suitable habitat. This plant was not observed. It is a late season flowering plant (July through October), and would have been visible if present. This species is not present within the project limits.

Migratory Birds

Occupied nests, eggs and parts of migratory bird species are protected under the Migratory Bird Treaty Act. No bird nests or burrows suitable for nesting burrowing owls were present at during the survey. However, nests may be constructed during subsequent nesting seasons (March 15 – September 15). If construction would require clearing trees or shrubs during the general nesting season for the area, preconstruction surveys to determine whether protected birds and nests are present at the sites would be recommended.



Non-Endangered Raptors

Two Cooper's hawks, a red-tailed hawk, and a northern harrier were observed flying over the project area. However, no nests were present within the area. Raptors likely hunt within the vicinity but would not be impacted by the proposed project.

CONCLUSIONS

The project would permanently impact approximately 2.0 acres of previously disturbed habitat. Marron recommends the following measures to reduce possible impacts to wildlife and vegetation:

- 1) ~~Require the construction contractor to use silt fencing or straw bales along the river and other waters to prevent stormwater quality impacts and accidental introduction of soils or construction fluids into area waters.~~
- 2) ~~Require the contractor to construct between November 2015 and March 1 2016. If this is not feasible, and if project construction requires clearing juniper trees or large shrubs during the migratory bird nesting season (March 15 – September 15), complete a preconstruction nest survey to determine whether occupied migratory bird nests are present within the project area. If present, obtain a permit from the NNHP and USFWS.~~
- 3) Fill trenches concurrently to avoid trapping small mammals.
- 4) ~~Re-vegetate open disturbed soils with native weed-free seed approved by the NNHP to replace lost vegetated habitat and reduce erosion/sedimentation.~~

Due to the location, scope, and proposed construction timing of the pipe installation, it is expected that the action would result in no effect to USFWS and NNHP listed species.



Photos



Photo A – Proposed alignment within the eastern project segment



Photo B – Representative habitat within the Polacca Wash Floodplain



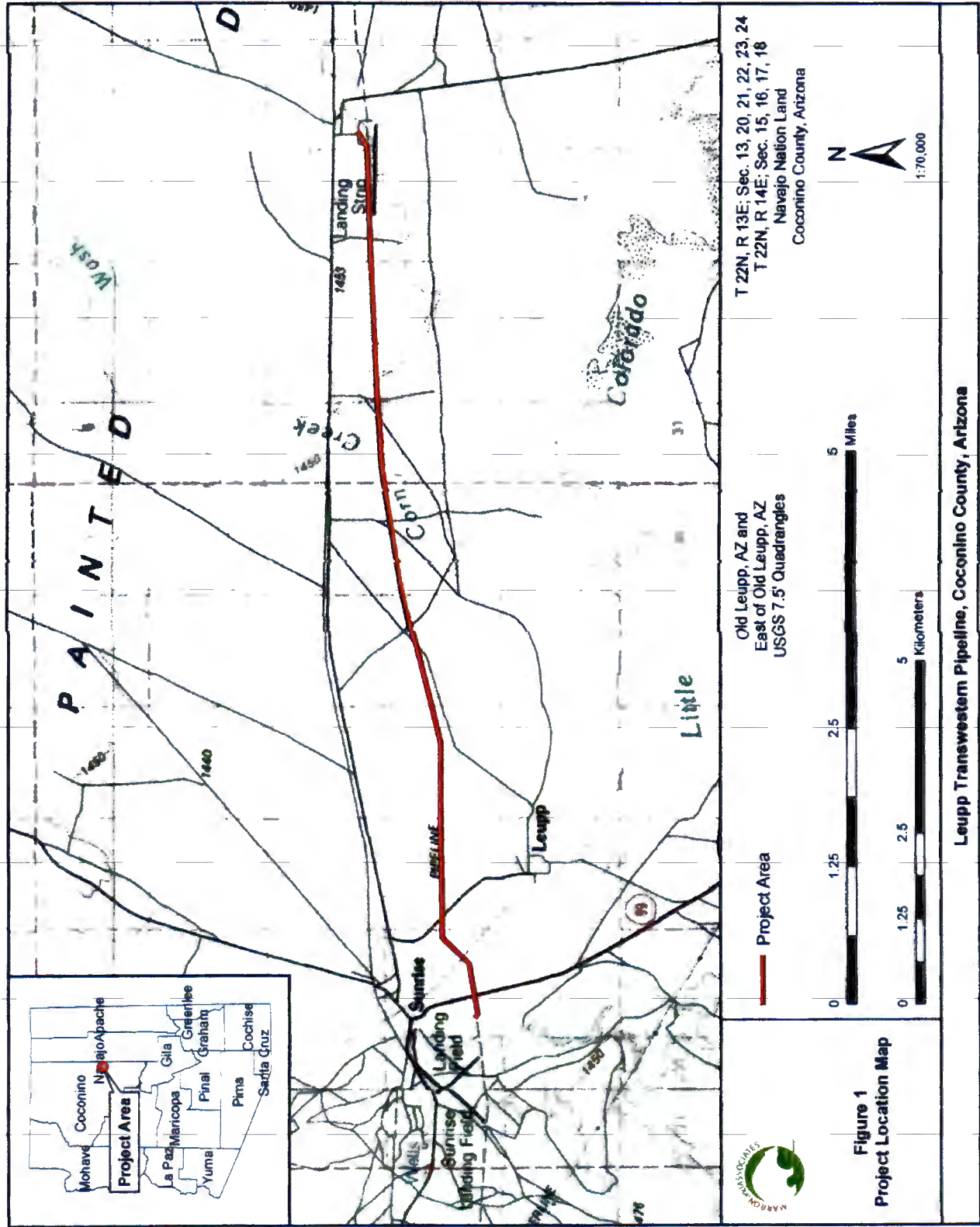


Photo C – Representative habitat along the Little Colorado River



Photo D – Proposed alignment near western project terminus





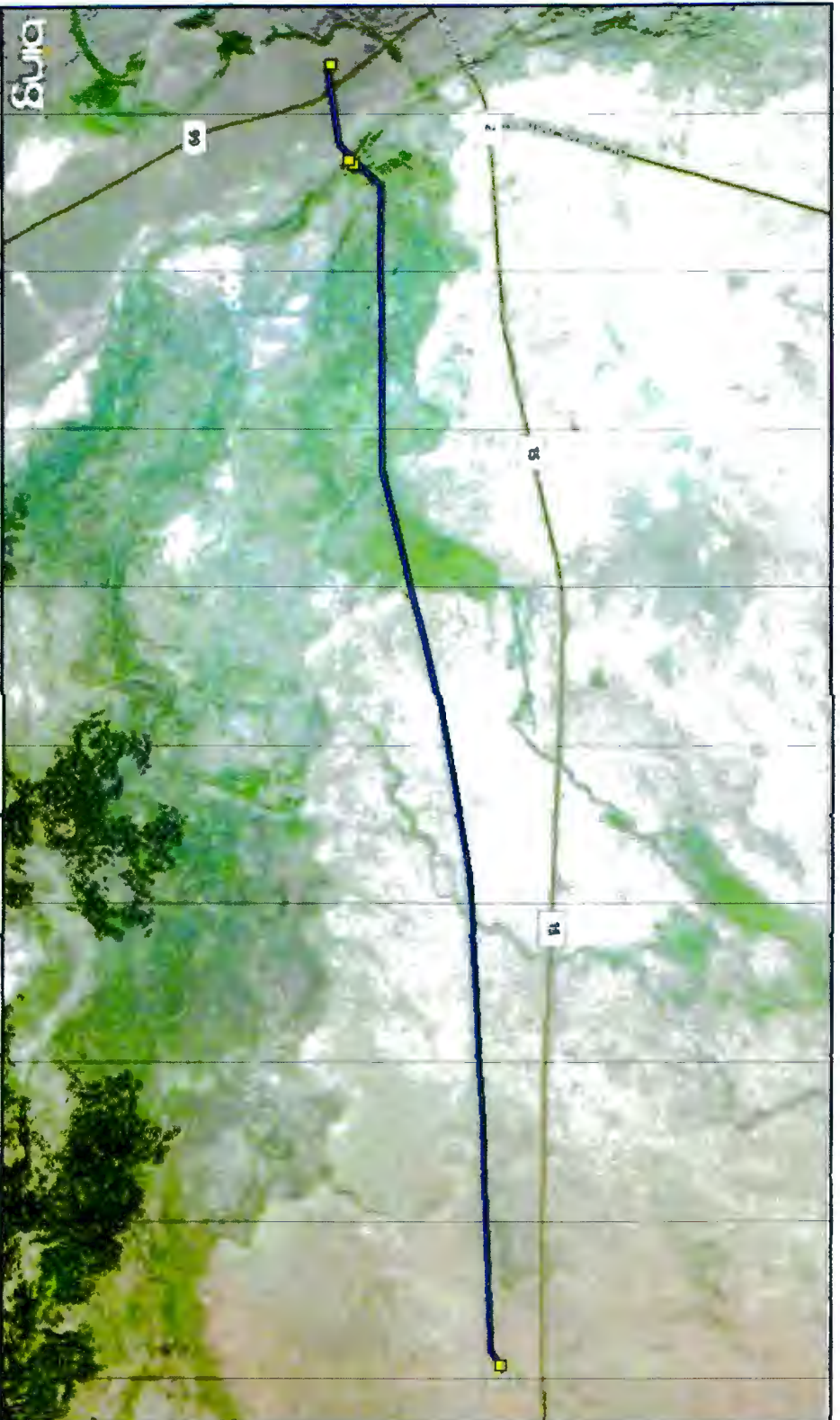


Figure 2a
Staging Areas

— Project Area
 ■ Staging Areas
 Land Ownership
 Navajo Nation

Old Leupp, AZ
 USGS 7.5' Quadrangle

T 22N, R 13E, Sec. 20, 21, 22, 23, 24
 Navajo Nation Land
 Coconino County, Arizona



1:55,000

Leupp Water Transmission, Coconino County, Arizona



Figure 2b
Close up of
Little Colorado River
Resources



Wetland



Edge of Habitat

Land Ownership

Navajo Nation

Old Leupp, AZ
USGS 7.5' Quadrangle

T 22N, R 13E; Sec. 20, 21, 22, 23, 24
Navajo Nation Land
Coconino County, Arizona



1:1,000

Leupp Water Transmission, Coconino County, Arizona

References

Brown, D.E., C.H. Lowe and C.P. Pase. 1979. A digitized classification system for the biotic communities of North America, with community (series) and association examples for the Southwest. *Journal of the Arizona-Nevada Academy of Science* 14, Suppl. 1: 1-16.

Nature Conservancy, 2006. Biotic Communities of the Southwest GIS Layer. http://azconservation.org/downloads/biotic_communities_of_the_southwest_gis_data

Navajo Nation Division of Natural Resources Department of Fish and Wildlife. 2008. Navajo Nation Endangered Species List.

Navajo Nation Heritage Program. 2008. Navajo Nation Endangered Species Accounts. Version 3.08.

New Mexico Native Plant Protection Advisory Committee. 2004. *New Mexico Rare Plants*. Website: <http://nmrareplants.unm.edu>.

U.S. Fish and Wildlife Service. 2015. Information, Planning, and Conservation System. Official species list. <https://ecos.fws.gov/ipac/>.

U.S. Department of Agriculture (USDA), Natural Resources Conservation Services (NRCS). Web Soil Survey (2015), USDA NRCS: <http://websoilsurvey.nrcs.usda.gov>.

Western Regional Climate Center. 2015. Western U.S. Historical Summaries (Individual Stations). Western Regional Climate Center, Reno, Nevada. Web site: www.wrcc.dri.edu/CLIMATEDATA.html.

15007.01



Appendix A

Project Area Species Information



United States Department of the Interior



FISH AND WILDLIFE SERVICE
Arizona Ecological Services Field Office
2321 WEST ROYAL PALM ROAD, SUITE 103
PHOENIX, AZ 85021
PHONE: (602)242-0210 FAX: (602)242-2513
URL: www.fws.gov/southwest/es/arizona/;
www.fws.gov/southwest/es/EndangeredSpecies_Main.html

Consultation Code: 02EAAZ00-2015-SLI-0807

September 25, 2015

Event Code: 02EAAZ00-2015-E-01059

Project Name: Leupp Water Transmission

Subject: List of threatened and endangered species that may occur in your proposed project location, and/or may be affected by your proposed project

To Whom It May Concern:

The Fish and Wildlife Service (Service) is providing this list under section 7(c) of the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*). The list you have generated identifies threatened, endangered, proposed, and candidate species, and designated and proposed critical habitat, that *may* occur within one or more delineated United States Geological Survey 7.5 minute quadrangles with which your project polygon intersects. Each quadrangle covers, at minimum, 49 square miles. Please refer to the species information links found at http://www.fws.gov/southwest/es/arizona/Docs_Species.htm or <http://www.fws.gov/southwest/es/arizona/Documents/MiscDocs/AZSpeciesReference.pdf> for a quick reference, to determine if suitable habitat for the species on your list occurs in your project area.

The purpose of the Act is to provide a means whereby threatened and endangered species and the habitats upon which they depend may be conserved. Under sections 7(a)(1) and 7(a)(2) of the Act and its implementing regulations (50 CFR 402 *et seq.*), Federal agencies are required to utilize their authorities to carry out programs for the conservation of Federal trust resources and to determine whether projects may affect federally listed species and/or designated critical habitat. A Biological Assessment is required for construction projects (or other undertakings having similar physical impacts) that are major Federal actions significantly affecting the quality of the human environment as defined in the National Environmental Policy Act (42 U.S.C. 4332(2)(c)). For projects other than major construction activities, the Service suggests that a biological evaluation similar to a Biological Assessment be prepared to determine whether the project may affect listed or proposed species and/or designated or proposed critical habitat. Recommended contents of a Biological Assessment are described at 50 CFR 402.12.

If the Federal action agency determines that listed species or critical habitat *may be affected* by a federally funded, permitted or authorized activity, the agency must consult with us pursuant to 50 CFR 402. Note that a "may affect" determination includes effects that may not be adverse and that may be beneficial, insignificant, or discountable. An effect exists even if only one individual or habitat segment may be affected. The effects analysis should include the entire action area, which often extends well outside the project boundary or "footprint" (e.g., downstream). If the Federal action agency determines that the action may jeopardize a *proposed* species or adversely modify *proposed* critical habitat, the agency must enter into a section 7 conference. The agency may choose to confer with us on an action that may affect proposed species or critical habitat.

Candidate species are those for which there is sufficient information to support a proposal for listing. Although candidate species have no legal protection under the Act, we recommend that they be considered in the planning process in the event they become proposed or listed prior to project completion. More information on the regulations (50 CFR 402) and procedures for section 7 consultation, including the role of permit or license applicants, can be found in our Endangered Species Consultation Handbook at:
<http://www.fws.gov/endangered/esa-library/pdf/TOC-GLOS.PDF>.

In addition to species listed under the Act, we advise you to consider species protected under the Migratory Bird Treaty Act (MBTA) (16 U.S.C. 703-712) and the Bald and Golden Eagle Protection Act (BGEPA) (16 U.S.C. 668 *et seq.*). Both laws prohibit the take of covered species. The list of MBTA-protected birds is in 50 CFR 10.13 (for an alphabetical list see <http://www.fws.gov/migratorybirds/RegulationsPolicies/mbta/MBTANDX.HTML>). The Service's Division of Migratory Birds is the lead for consultations under these laws (Southwest Regional Office phone number: 505/248-7882). For more information regarding the MBTA, BGEPA, and permitting processes, please visit the following web site:
<http://www.fws.gov/migratorybirds/mbpermits.html>. Guidance for minimizing impacts to migratory birds for projects including communications towers (e.g. cellular, digital television, radio, and emergency broadcast) can be found at:
<http://www.fws.gov/southwest/es/arizona/CellTower.htm>

Although bald eagles (*Haliaeetus leucocephalus*) are no longer listed under the Act, they are protected under both the BGEPA and the MBTA. If a bald eagle nest occurs in or near the proposed project area, our office should be contacted. An evaluation must be performed to determine whether the project is likely to disturb nesting bald eagles (see <http://www.fws.gov/southeast/es/baldeagle/>) and the Division of Migratory Birds consulted if necessary. The National Bald Eagle Management Guidelines provide recommendations to minimize potential project impacts to bald eagles (see <http://www.fws.gov/midwest/eagle/pdf/NationalBaldEagleManagementGuidelines.pdf>).

Activities that involve streams and/or wetlands are regulated by the U.S. Army Corps of Engineers (Corps). We recommend that you contact the Corps to determine their interest in proposed projects in these areas. For activities within a National Wildlife Refuge, we recommend that you contact refuge staff for specific information about refuge resources.

If your action is on Indian land or has implications for off-reservation tribal interests, we encourage you to contact the tribe(s) and the Bureau of Indian Affairs (BIA) to discuss potential

tribal concerns, and to invite any affected tribe and the BIA to participate in the section 7 consultation. In keeping with our tribal trust responsibility, we will notify tribes that may be affected by proposed actions when section 7 consultation is initiated. For more information, please contact our tribal coordinator, John Nystedt, at (928) 556-2160 or John_Nystedt@fws.gov.

The State of Arizona protects some species not protected by Federal law. We recommend you contact the Arizona Game and Fish Department (AGFD) for animals and Arizona Department of Agriculture for plants to determine if species protected by or of concern to the State may occur in your action area. The AGFD has an Environmental Review On-Line Tool that can be accessed at <http://www.azgfd.gov/hgis/>. We also recommend that you coordinate with the AGFD regarding your project.

For additional communications regarding this project, please refer to the consultation Tracking Number in the header of this letter. We appreciate your concern for threatened and endangered species. If we may be of further assistance, please contact Brenda Smith at 928/556-2157 for projects in Northern Arizona, our general Phoenix number (602/242-0210) for central Arizona, or Jean Calhoun at 520/670-6150 (x223) for projects in southern Arizona.

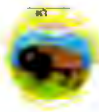
Sincerely,

/s/

Steven L. Spangle

Field Supervisor

Attachment



United States Department of Interior
Fish and Wildlife Service

Project name: Leupp Water Transmission

Official Species List

Provided by:

Arizona Ecological Services Field Office
2321 WEST ROYAL PALM ROAD, SUITE 103
PHOENIX, AZ 85021

(602) 242-0210

<http://www.fws.gov/southwest/es/arizona/>

http://www.fws.gov/southwest/es/EndangeredSpecies_Main.html

Consultation Code: 02EAAZ00-2015-SLI-0807

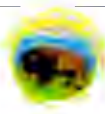
Event Code: 02EAAZ00-2015-E-01059

Project Type: WATER SUPPLY / DELIVERY

Project Name: Leupp Water Transmission

Project Description: install new water line

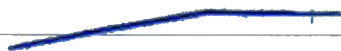
Please Note: The FWS office may have modified the Project Name and/or Project Description, so it may be different from what was submitted in your previous request. If the Consultation Code matches, the FWS considers this to be the same project. Contact the office in the 'Provided by' section of your previous Official Species list if you have any questions or concerns.



United States Department of Interior
Fish and Wildlife Service

Project name: Leupp Water Transmission

Project Location Map:



Leupp

Project Coordinates: MULTIPOLYGON (((-110.9605644040322 35.30461406668449, -
110.9275793360642 35.30937906810864, -110.88054411877904 35.30853856394089, -
110.88044784831698 35.30849665689754, -110.88040940757494 35.30839895064645, -
110.8804513146183 35.308302680184376, -110.8805490208694 35.308264239442344, -
110.92757314601356 35.30910454539711, -110.9605191399931 35.30434345025031, -
110.99416276881935 35.29845974125909, -110.99426524426372 35.2984826101343, -
110.99432153460859 35.29857124195266, -110.99429866573337 35.298673717397016, -
110.99421003391502 35.29873000774189, -110.9605644040322 35.30461406668449)))

Project Counties: Coconino, AZ



United States Department of Interior
Fish and Wildlife Service

Project name: Leupp Water Transmission

Endangered Species Act Species List

There are a total of 6 threatened, endangered, or candidate species on your species list. Species on this list should be considered in an effects analysis for your project and could include species that exist in another geographic area. For example, certain fish may appear on the species list because a project could affect downstream species. Critical habitats listed under the **Has Critical Habitat** column may or may not lie within your project area. See the **Critical habitats within your project area** section further below for critical habitat that lies within your project. Please contact the designated FWS office if you have questions.

Birds	Status	Has Critical Habitat	Condition(s)
California condor (<i>Gymnogyps californianus</i>) Population: Entire, except where listed as an experimental population	Endangered	Final designated	
Southwestern Willow flycatcher (<i>Empidonax traillii eximius</i>) Population: Entire	Endangered	Final designated	
Yellow-Billed Cuckoo (<i>Coccyzus americanus</i>) Population: Western U.S. DPS	Threatened	Proposed	
Fishes			
Roundtail chub (<i>Gila robusta</i>) Population: Lower Colorado River Basin DPS	Candidate		
Mammals			
Black-Footed ferret (<i>Mustela nigripes</i>) Population: U.S.A. (specific portions of AZ, CO, MT, SD, UT, and WY)	Experimental Population, Non-Essential		



United States Department of Interior
Fish and Wildlife Service

Project name: Leupp Water Transmission

Reptiles			
Northern Mexican gartersnake (<i>Thamnophis eques megalops</i>)	Threatened	Proposed	



United States Department of Interior
Fish and Wildlife Service

Project name: Leupp Water Transmission

Critical habitats that lie within your project area

There are no critical habitats within your project area.

RECEIVED

AUG 03 2015

Marron and Associates



NNHP

Navajo Natural Heritage Program

PO Box 1480
Window Rock, AZ
86515

P 928.871.6472
F 928.871.7603

<http://nnhp.nndfw.org>

15m&a02

30-July-2015

Heather Parmeter - Project Manager / Biologist
Marron and Associates
7511 Fourth Street NW
Albuquerque, NM 87107

SUBJECT: Transwestern Pipeline - Leupp, Arizona

Heather Parmeter,

NNHP has performed an analysis of your project in comparison to known biological resources of the Navajo Nation and has included the findings in this letter. The letter is composed of seven parts. The sections as they appear in the letter are:

1. **Known Species** – a list of all species within relative proximity to the project
2. **Potential Species** – a list of potential species based on project proximity to respective suitable habitat
3. **Quadrangles** – an exhaustive list of quads containing the project
4. **Project Summary** – a categorized list of biological resources within relative proximity to the project grouped by individual project site(s) or quads
5. **Conditional Criteria Notes** – additional details concerning various species, habitat, etc.
6. **Personnel Contacts** – a list of employee contacts
7. **Resources** – identifies sources for further information

Known Species lists "species of concern" known to occur within proximity to the project area. Planning for avoidance of these species is expected. If no species are displayed then based upon the records of the Navajo Nation Department of Fish and Wildlife (NNDFW) there are no "species of concern" within proximity to the project. Refer to the Navajo Endangered Species List (NESL) Species Accounts for recommended avoidance measures, biology, and distribution of NESL species on the Navajo Nation (http://nnhp.nndfw.org/sp_account.htm).

Potential Species lists species that are potentially within proximity to the project area and need to be evaluated for presence/absence. If no species are found within the Known or Potential Species lists, the project is not expected to affect any federally listed species, nor significantly impact any tribally listed species or other species of concern. Potential for species has been determined primarily on habitat characteristics and species range information. A thorough habitat analysis, and if necessary, species specific surveys, are required to determine the potential for each species.

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 legally protected species, the following tribal and federal statutes are indicated: 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, NESL group 4 status, and species listed on the Sensitive Species List. Please be aware of

these species during surveys and inform the NNDFW of observations. Reported observations of these species and documenting them in project planning and management is important for conservation and may contribute to ensuring they will not be up listed in the future.

In any and all correspondence with NNDFW or NNHP concerning this project please cite the Data Request Code associated with this document. It can be found in this report on the top right corner of the every page. Additionally please cite this code in any biological evaluation documents returned to our office.

1. Known Species (NESL=Navejo Endangered Species List, FE=Federally Endangered, FT=Federally Threatened, FC=Federal Candidate)

Species

AQCH = *Aquila chrysaetos* / Golden Eagle NESL G3

2. Potential Species

Species

AMPE = *Amsonia peeblesii* / Peebles' Blue-star NESL G4

AQCH = *Aquila chrysaetos* / Golden Eagle NESL G3

ATCU = *Athene cunicularia* / Burrowing Owl NESL G4

BURE = *Buteo regalis* / Ferruginous Hawk NESL G3

CHMO = *Charadrius montanus* / Mountain Plover NESL G4

COAM = *Coccyzus americanus* / Yellow-billed Cuckoo NESL G2 FC

DEPE = *Dendroica petechia* / Yellow Warbler NESL G4

EMTREX = *Empidonax traillii eximius* / Southwestern Willow Flycatcher NESL G2 FE

LIP1 = *Lithobates pipiens* / Northern Leopard Frog NESL G2

SAPAER = *Salvia pachyphylla* ssp *eremopictus* / Arizona Rose Sage NESL G4

3. Quadrangles (7.5 Minute)

Quadrangles

East of Old Leupp (35110-C7) / AZ

Old Leupp (35110-C8) / AZ

4. Project Summary (EO1 Mile/EO 3 Miles=elements occurring within 1 & 3 miles, MSO=mexican spotted owl PACs, POTS=potential species, RCP=Biological Areas)

SITE	EO1MI	EO3MI	QUAD	MSO	POTS	AREAS
Transwestern Pipeline	None	AQCH	Old Leupp (35110-C8) / AZ	None	LIP1, EMTREX, DEPE, COAM, CHMO, ATCU, AQCH, SAPAER, AMPE	Area 2, Area 3
Transwestern Pipeline	None	None	East of Old Leupp (35110-C7) / AZ	None	EMTREX, CHMO, BURE, ATCU, AQCH, SAPAER, AMPE	Area 3

5. Conditional Criteria Notes (Recent revisions made please read thoroughly. For certain species, and/or circumstances, please read and comply)

- A. **Biological Resource Land Use Clearance Policies and Procedures (RCP)** - The purpose of the RCP is to assist the Navajo Nation government and chapters ensure compliance with federal and Navajo laws which protect wildlife resources including plants, and their habitat resulting in an expedited land use clearance process. After years of research and study, the NNDFW has identified and mapped wildlife habitat and sensitive areas that cover the entire Navajo Nation. The following is a brief summary of six (6) wildlife areas:
- 1. **Highly Sensitive Area** - recommended no development with few exceptions.
 - 2. **Moderately Sensitive Area** - moderate restrictions on development to avoid sensitive species/habitats
 - 3. **Less Sensitive Area** - fewest restrictions on development
 - 4. **Community Development Area** - areas in and around towns with few or no restrictions on development
 - 5. **Biological Preserve** - no development unless compatible with the purpose of this area.
 - 6. **Recreation Area** - no development unless compatible with the purpose of this area.
- None** - outside the boundaries of the Navajo Nation
- This is not intended to be a full description of the RCP please refer to the our website for additional information at <http://www.nndfw.org/clup.htm>.
- B. **Raptors** - If raptors are known to occur within 1 mile of project location: Contact Chad Smith at 871-7070 regarding your evaluation of potential impacts and mitigation.
- o **Golden and Bald Eagles** - If Golden or Bald Eagle are known to occur within 1 mile of the project, decision makers need to ensure that they are not in violation of the Golden and Bald Eagle Nest Protection Regulations found at http://nnhp.nndfw.org/docs_reps/gben.pdf.
 - o **Ferruginous Hawks** - Refer to "Navajo Nation Department of Fish and Wildlife's Ferruginous Hawk Management Guidelines for Nest Protection" http://nnhp.nndfw.org/docs_reps.htm for relevant information on avoiding impacts to Ferruginous Hawks within 1 mile of project location.
 - o **Mexican Spotted Owl** - Please refer to the Navajo Nation Mexican Spotted Owl Management Plan http://nnhp.nndfw.org/docs_reps.htm for relevant information on proper project planning near/within spotted owl protected activity centers and habitat.
- C. **Surveys** - Biological surveys need to be conducted during the appropriate season to ensure they are complete and accurate please refer to NN Species Accounts http://nnhp.nndfw.org/sp_account.htm. Surveyors on the Navajo Nation must be permitted by the Director, NNDFW. Contact Jeff Cole at (928) 871-7068 for permitting procedures. Questions pertaining to surveys should be directed to the NNDFW Zoologist (Chad Smith) for animals at 871-7070, and Botanist (Andrea Hazelton) for plants at (928)523-3221. Questions regarding biological evaluation should be directed to Jeff Cole at 871-7068.
- D. **Oil/Gas Lease Sales** - Any settling or evaporation pits that could hold contaminants should be lined and covered. Covering pits, with a net or other material, will deter waterfowl and other migratory bird use. Lining pits will protect ground water quality.
- E. **Power line Projects** - These projects need to ensure that they do not violate the regulations set forth in the Navajo Nation Raptor Electrocution Prevention Regulations found at http://nnhp.nndfw.org/docs_reps/repr.pdf.

- F. **Guy Wires** – Does the project design include guy wires for structural support? If so, and if bird species may occur in relatively high concentrations in the project area, then guy wires should be equipped with highly visual markers to reduce the potential mortality due to bird-guy wire collisions. Examples of visual markers include aviation balls and bird flight diverters. Birds can be expected to occur in relatively high concentrations along migration routes (e.g., rivers, ridges or other distinctive linear topographic features) or where important habitat for breeding, feeding, roosting, etc. occurs. The U.S. Fish and Wildlife Service recommends marking guy wires with at least one marker per 100 meters of wire.
- G. **San Juan River** – On 21 March 1994 (Federal Register, Vol. 59, No. 54), the U.S. Fish and Wildlife Service designated portions of the San Juan River (SJR) as critical habitat for *Ptychocheilus lucius* (Colorado pikeminnow) and *Xyrauchen texanus* (Razorback sucker). Colorado pikeminnow critical habitat includes the SJR and its 100-year floodplain from the State Route 371 Bridge in T29N, R13W, sec. 17 (New Mexico Meridian) to Neskahal Canyon in the San Juan arm of Lake Powell in T41S, R11E, sec. 26 (Salt Lake Meridian) up to the full pool elevation. Razorback sucker critical habitat includes the SJR and its 100-year floodplain from the Hogback Diversion in T29N, R16W, sec. 9 (New Mexico Meridian) to the full pool elevation at the mouth of Neskahal Canyon on the San Juan arm of Lake Powell in T41S, R11E, sec. 26 (Salt Lake Meridian). All actions carried out, funded or authorized by a federal agency which may alter the constituent elements of critical habitat must undergo section 7 consultation under the Endangered Species Act of 1973, as amended. Constituent elements are those physical and biological attributes essential to a species conservation and include, but are not limited to, water, physical habitat, and biological environment as required for each particular life stage of a species.
- H. **Little Colorado River** – On 21 March 1994 (Federal Register, Vol. 59, No. 54) the U.S. Fish and Wildlife Service designated Critical Habitat along portions of the Colorado and Little Colorado Rivers (LCR) for Gila cypha (humpback chub). Within or adjacent to the Navajo Nation this critical habitat includes the LCR and its 100-year floodplain from river mile 8 in T32N R6E, sec. 12 (Salt and Gila River Meridian) to its confluence with the Colorado River in T32N R5E sec. 1 (S&GRM) and the Colorado River and 100-year floodplain from Nautuloid Canyon (River Mile 34) T36N R5E sec. 35 (S&GRM) to its confluence with the LCR. All actions carried out, funded or authorized by a federal agency which may alter the constituent elements of Critical Habitat must undergo section 7 consultation under the Endangered Species Act of 1973, as amended. Constituent elements are those physical and biological attributes essential to a species conservation and include, but are not limited to, water, physical habitat, and biological environment as required for each particular life stage of a species.
- I. **Wetlands** – In Arizona and New Mexico, potential impacts to wetlands should also be evaluated. The U.S. Fish & Wildlife Service's National Wetlands Inventory (NWI) maps should be examined to determine whether areas classified as wetlands are located close enough to the project site(s) 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 and the Army Corps of Engineers, Phoenix office, must be contacted. NWI maps are available for examination at the Navajo Natural Heritage Program (NNHP) office, or may be purchased through the U.S. Geological Survey (order forms are available through the NNHP). The NNHP has complete coverage of the Navajo Nation, excluding Utah, at 1:100,000 scale; and coverage at 1:24,000 scale in the southwestern portion of the Navajo Nation. In Utah, the U.S. Fish & Wildlife Service's National Wetlands Inventory maps are not yet available for the Utah portion of the Navajo Nation, therefore, field surveys should be completed to determine whether wetlands are located close enough to the project site(s) to be impacted. 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 and the Army Corps of Engineers, Phoenix office, must be contacted. For more information contact the Navajo Environmental Protection Agency's Water Quality Program.

- J. **Life Length of Data Request** – The information in this report was identified by the NNHP and NNDFW's biologists and computerized database, and is based on data available at the time of this response. If project planning takes more than two (02) years from the date of this response, verification of the information provided herein is necessary. 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 NNDFW information is continually updated, any given information response is only wholly appropriate for its respective request.
- K. **Ground Water Pumping** – Projects involving the ground water pumping for mining operations, agricultural projects or commercial wells (including municipal wells) will have to provide an analysis on the effects to surface water and address potential impacts on all aquatic and/or wetlands species listed below. NESL Species potentially impacted by ground water pumping: *Carex specuicola* (Navajo Sedge), *Cirsium rydbergii* (Rydberg's Thistle), *Primula specuicola* (Cave Primrose), *Platanthera zothecina* (Alcove Bog Orchid), *Puccinellia parishii* (Parish Alkali Grass), *Zigadenus vaginatus* (Alcove Death Camas), *Perityle specuicola* (Alcove Rock Daisy), *Symphotrichum welshii* (Welsh's American-aster), *Coccyzus americanus* (Yellow-billed Cuckoo), *Empidonax traillii eximius* (Southwestern Willow Flycatcher), *Rana pipiens* (Northern Leopard Frog), *Gila cypha* (Humpback Chub), *Gila robusta* (Roundtail Chub), *Ptychocheilus lucius* (Colorado Pikeminnow), *Xyrauchen texanus* (Razorback Sucker), *Cinclus mexicanus* (American Dipper), *Speyeria nokomis* (Western Seep Fritillary), *Aechmophorus clarkia* (Clark's Grebe), *Ceryle alcyon* (Belted Kingfisher), *Dendroica petechia* (Yellow Warbler), *Porzana carolina* (Sora), *Catostomus discobolus* (Bluehead Sucker), *Cottus bairdi* (Mottled Sculpin), *Oxyloma kanabense* (Kanab Ambernail)

6. Personnel Contacts

Wildlife Manager

Sam Diawood

928.871.7062

sdiawood@nndfw.org

Zoologist

Chad Smith

928.871.7070

csmith@nndfw.org

Botanist

Vacant

Biological Reviewer

Pamela Kyselka

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GIS Supervisor

Dexter D Prall

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Wildlife Tech

Sonja Detsol

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