RESOLUTION OF THE
RESOURCES AND DEVELOPMENT COMMITTEE
Of the 23rd Navajo Nation Council---First Year 2015

AN ACTION
RELATING TO RESOURCES AND DEVELOPMENT; EXTENDING A TEMPORRY CONSTRUCTON EASEMENT FOR AN ADDITIONAL TWO YEARS TO U.S. BUREAU OF INDIAN AFFAIRS FOR CONSTRUCTION OF THE TSAILE DAM MODIFICAITON PROJECT LOCATED AT AND ADJACENT TO TSAILE LAKE, TSAILE-WHEATFIELDS CHAPTER (APACHE COUNTY, ARIZONA)

BE IT ENACTED:

Section One. Findings

A. Pursuant to 2 N.N.C. §500(A), the Resources and Development Committee is a standing committee of the Navajo Nation Council.

B. Pursuant to 2 N.N.C. §01(B)(2)(a), the Resources and Development of the Navajo Nation Council has the authority to give final approval of all land withdrawals, non-mineral leases, permits, licenses, right-of-ways, surface easements and bonding requirements on Navajo Nation lands and unrestricted (fee) lands. This authority shall include subleases, modifications, assignments, leasehold encumbrances, transfers renewals and terminations.

C. The Resources and Development Committee of the 22nd Navajo Nation Council approved a temporary construction easement for 160.24 acres, more or less, to establish, operate and maintain the Tsaile Dam Modification Project site in the Tsaile Chapter. *See* RDCJN-38-14 and attachments attached as Exhibit A.

D. The temporary construction easement granted is on 160.24 acres, more or less of Navajo Nation trust lands located in Section 10 and 15, Township 33 North, Range 29, East, G&SRMB, Apache County, Arizona.

E. The U.S. Bureau of Indian Affairs (BIA), 301 West Hill Street, Gallup New Mexico, submitted a letter dated March

11, 2015 to clarify a technical correction made from the initial application to extend the temporary construction easement for the Tsaile Dam Modification Project for an additional two (2) years. *See* Letter from BIA attached as Exhibit B; *see also* Original Temporary Construction Easement attached as Exhibit C.

F. The Project Review Section with the Navajo Land Department obtained the necessary consents from the affected land users (i.e., grazing permittee), during the initial approval of the project as set forth in RDCJN-38-14. *See* Exhibit A.

G. The environmental and archaeological studies and clearances were conducted during the initial approval of the project as set forth in RDCJN--38-14. *See* Exhibit A.

SECTION TWO. EXTENDING A TEMPORARY CONSTRUCTON EASEMENT FOR AN ADDITIONAL TWO YEARS TO THE U.S. BUREAU OF INDIAN AFFAIRS FOR CONSTRUCTION OF THE TSAILE DAM MODIFICATION PROJECT.

A. The Resources and Development Committee of the Navajo Nation Council hereby approves the extension of the temporary construction easement for the U.S. Bureau of Indian Affairs Safety of Dams to operate and maintain the Tsaile Dam Modification Project Site on 160.24 acres, more or less, of Navajo Nation Trust Lands in Tsaile, Apache County, Arizona

B. The Resources and Development Committee of the Navajo Nation Council approves the extension of a temporary construction easement subject to but not limited to, the following revised terms and conditions attached as Exhibit D.

C. The Resources and Development Committee hereby authorizes the President of the Navajo Nation to execute any and all documents to implement the intent and purpose of this resolution.

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 Nation Council Chambers, Window Rock, Navajo Nation (Arizona), at which quorum was present and that same was passed by a vote of 4 in favor, 0 opposed, 0 abstained this 23rd day of June, 2015.

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

Motion: Honorable Davis Filfred
Second: Honorable Leonard Tsosie
Vote: 4-0 (Presiding Vice-Chairman Not Voting)

LEGISLATIVE SUMMARY SHEET
Tracking No. 020415

DATE: June 12, 2015

TITLE OF RESOLUTION: PROPOSED STANDING COMMITTEE RESOLUTION; AN ACTION RELATING TO RESOURCES AND DEVELOPMENT; EXTENDING A TEMPORARY CONSTRUCTION EASEMENT FOR AN ADDITIONAL TWO YEARS TO U.S. BUREAU OF INDIAN AFFAIRS FOR CONSTRUCTION OF THE TSAILE DAM MODIFICATION PROJECT LOCATED AT AND ADJACENT TO TSAILE LAKE, TSAILE-WHEATFIELDS CHAPTER (APACHE COUNTY, ARIZONA)

PURPOSE: This resolution, if approved, will approve an extension of a temporary construction easement that was approved in RDCJN-38-14 from one year to a total of three years. The temporary construction easement is granted to the U.S. Bureau of Indian Affairs for construction of the Tsaile Dam Modification Project.

This written summary does not address recommended amendments as may be provided by the standing committee. The Office of Legislative Counsel requests each committee member to review the proposed resolution in detail.

5-DAY BILL HOLD PERIOD: [illegible]
Website Posting Time/Date: 5:17pm 6/16/15
Posting End Date: 6/21/2015
Eligible for Action: 6/22/2015

PROPOSED STANDING COMMITTEE RESOLUTION

23rd NAVAJO NATION COUNCIL -- First Year, 2015

INTRODUCED BY

(Prime Sponsor) (Walter Phelps) ALTON JOE SHEPHERD

TRACKING NO. 0204-15

AN ACTION

RELATING TO RESOURCES AND DEVELOPMENT; EXTENDING A TEMPORARY CONSTRUCTION EASEMENT FOR AN ADDITIONAL TWO YEARS TO U.S. BUREAU OF INDIAN AFFAIRS FOR CONSTRUCTION OF THE TSAILE DAM MODIFICATION PROJECT LOCATED AT AND ADJACENT TO TSAILE LAKE, TSAILE-WHEATFIELDS CHAPTER (APACHE COUNTY, ARIZONA)

BE IT ENACTED:

SECTION ONE. FINDINGS

A. Pursuant to 2 N.N.C. §500(A), the Resources and Development Committee is a standing committee of the Navajo Nation Council.

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

C. The Resources and Development Committee of the 22nd Navajo Nation Council approved a temporary construction easement for 160.24 acres, more or less, to establish, operate and maintain the Tsaile Dam Modification Project site in the Tsaile Chapter. *See* RDCJN-38-14 and attachments attached as Exhibit A.

D. The temporary construction easement granted is on 160.24 acres, more or less, of Navajo Nation trust lands located in Section 10 and 15, Township 33 North, Range 29 East, G&SRMB, Apache County, Arizona.

E. The U.S. Bureau of Indian Affairs (BIA), 301 West Hill Street, Gallup, New Mexico, submitted a letter dated March 11, 2015 to clarify a technical correction made from the initial application to extend the temporary construction easement for the Tsaile Dam Modification Project for an additional two (2) years. *See* Letter from BIA attached as Exhibit B; *see also* Original Temporary Construction Easement attached as Exhibit C.

F. The Project Review Section with the Navajo Land Department obtained the necessary consents from the affected land users (i.e., grazing permittee), during the initial approval of the project as set forth in RDCJN-38-14. *See* Exhibit A.

G. The environmental and archaeological studies and clearances were conducted at during the initial approval of the project as set forth in RDCJN-38-14. *See* Exhibit A.

SECTION TWO. EXTENDING A TEMPORARY CONSTRUCTION EASEMENT FOR AN ADDITIONAL TWO YEARS TO THE U.S. BUREAU OF INDIAN AFFAIRS FOR CONSTRUCTION OF THE TSAILE DAM MODIFICATION PROJECT

A. The Resources and Development Committee of the Navajo Nation Council hereby approves the extension of the temporary construction easement for the U.S. Bureau of Indian Affairs Safety of Dams to operate and maintain the Tsaile Dam Modification Project Site on 160.24 acres, more or less, of Navajo Nation Trust Lands in Tsaile, Apache County, Arizona.

B. The Resources and Development Committee of the Navajo Nation Council approves the extension of a temporary construction easement subject to but not limited to, the following revised terms and conditions attached as Exhibit D.

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

EXHIBIT A

RDCJN-38-14

RESOLUTION OF THE
RESOURCES AND DEVELOPMENT COMMITTEE
OF THE NAVAJO NATION COUNCIL

22ND NAVAJO NATION COUNCIL - FOURTH YEAR, 2014

AN ACTION

RELATING TO RESOURCES AND DEVELOPMENT; APPROVING A TEMPORARY CONSTRUCTION EASEMENT TO U.S. BUREAU OF INDIAN AFFAIRS CONSTRUCTION OF THE TSAILE DAM MODIFICATION PROJECT LOCATED AT AND ADJACENT TO TSAILE LAKE, TSAILE-WHEATFIELDS CHAPTER (APACHE COUNTY, ARIZONA)

BE IT ENACTED:

1. **The Navajo Nation finds the following:**
   A. Pursuant to 2 N.N.C. §500 (C) provides the Resources and Development Committee of the Navajo Council; and

   B. Pursuant to 2 N.N.C. §500 (B)(2)(a) authorizes the Resources and Development Committee of the Navajo Nation Council has the authority to give final approval for all land withdrawals, non-mineral leases, permits, licenses, right-of-ways, surface easement on Navajo Nation lands and unrestricted (fee) land; and

   C. The U.S. Bureau of Indian Affairs (BIA), 301 West Hill Street, Gallup, New Mexico, has submitted a temporary construction easement (TCE) for construction of the Tsaile Dam modification project on, over and across Navajo Nation Trust Lands located at and adjacent to Tsaile Lake, Tsaile-Wheatfields Chapter(Apache County, Arizona), attached hereto and incorporated herein as Exhibit A; and

   D. The proposed temporary construction easement is 160.24 acres, more or less, of Navajo Nation trust lands located in Section 10 and 15, Township 33 North, Range 29 East, G&SRMB, Apache County, Arizona, more particularly described on the survey map attached hereto and incorporated as Exhibit B, out of the 160.24 acres, 95.90 acres are new acreages and the remaining are existing acreage within the dam area; and

   E. The Project Review Section with the Navajo Land Department has obtained the necessary consents from the affected land user (i.e., grazing permittee), attached hereto and incorporated herein as Exhibit C; and

ORIGINAL

F. BIA plans modification improvements to existing Tsaile Dam and requests all rents and fees be waived because the improvements will benefit the Navajo Nation; and

G. The environmental and archaeological studies and clearances were conducted and are attached and incorporated herein as by this reference.

2. The Navajo Nation hereby approves a temporary construction easement to the U.S. Bureau of Indian Affairs-Safety of Dams program for construction of the Tsaile Dam Modification Project on Navajo Nation Trust Lands located in the vicinity of the Tsaile-Wheatfields Chapter (Apache County, Arizona). The location is more particularly described on the map attached hereto as Exhibit B.

3. The Navajo Nation hereby waives consideration for the temporary construction easement because the improvements will benefit the Navajo Nation.

4. The Navajo Nation hereby approves a temporary construction easement to the U.S. Bureau of Indian Affairs-Safety of Dams program for construction of the Tsaile Dam Modification Project subject to, but not limited to the terms and conditions contained in Exhibit D.

5. 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.

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

I hereby certify that the foregoing resolution was duly considered by the Resources and Development Committee of the 22nd Navajo Nation Council at a duly called meeting held at, Navajo Nation Council Chambers, Window Rock, Arizona at which a quorum was present and that the same was passed by a vote of 03 in favor, 00 opposed this 26th day of June, 2014.

Katherine Benally, Chairperson
Resources and Development Committee

Motion: Leonard H. Pete
Second: Roscoe Smith

ORIGINAL

Document No. 001656 Date Issued: 04/02/2014

EXECUTIVE OFFICIAL REVIEW

Title of Document: Temp.Esmt.BIA-Tsaile Dam Mod @ Tsaile,AZ Contact Name: DRAPER, HOWARD

Program/Division: DIVISION OF NATURAL RESOURCES

Email: howarddraper@frontiernet.net Phone Number: 928 8716447

			Sufficient	Insufficient
☐ **Business Site Lease**				
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: (recommendation only)		Date:	☐	☐
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:	☐	☐

Pursuant to 2 N.N.C. § 164 and Executive Order Number 07-2013

☐ **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		Date: 02 May 14	☒	☐
2. F&W		Date: 4/14/14	☐	☐
3. HPD		Date: 4-29-14	☒	☐
4. Minerals		Date: 4/22/14	☐	☐
5. NNEPA		Date: 4/24/14	☒	☐
6. DNR		Date: 5/2/2014	☒	☐
7. DOJ		Date: 04/11/2014	☒	☐
8. OPVP		Date: 04/04/14	☒	☐

☐ **OTHER:**

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

NAVAJO NATION DEPARTMENT OF JUSTICE

☐ RESUBMITTAL

DOCUMENT REVIEW REQUEST FORM

RECEIVED
MAY 22 2014
DEPARTMENT OF JUSTICE
RECEPTIONIST DESK

DOJ
5-22-14 @10:12
DATE / TIME
☐ 7 Day Deadline
DOC #: 001657
SAS #:
UNIT: NRW

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

CLIENT TO COMPLETE

DATE OF REQUEST:	5/22/2014	DIVISION:	Of Natural Resources
CONTACT NAME:	HP Draper or Vera Shirley	DEPARTMENT:	Navajo Land Dept./PRO
PHONE NUMBER:	871-6401, 6490	E-MAIL:	howarddraper@frontiernet.net

See 10 4 Rev. DOC

TITLE OF DOCUMENT: Temporary Easement BIA-Tsaile Dam Mod at Tsaile, AZ.
community park located adj

DOJ SECRETARY TO COMPLETE

DATE/TIME IN UNIT: RECEIVED MAY 22 2014 DEPARTMENT OF JUSTICE NATURAL RESOURCES UNIT @ 1:57pm

REVIEWING ATTORNEY/ADVOCATE: Katy Grove 6/6/14

DATE TIME OUT OF UNIT:

DOJ ATTORNEY/ADVOCATE COMMENTS

Document is legally sufficient.

REVIEWED BY: (*Print*)	Date / Time	SURNAMED BY: (*Print*)	Date / Time
Lynne Allen	6/4/14 4:25pm	Toni Flora	6/4/14 4:35pm
Kathy Grove	6/4/14 4:25pm		

DOJ Secretary Called: Howard Draper for Document Pick Up on 6/4/14 at 4:35 By: [illegible]

PICKED UP BY: (*Print*) DATE / TIME:

NNDOJ/DRRF-July 2013

NAVAJO NATION DEPARTMENT OF JUSTICE
OFFICE OF THE ATTORNEY GENERAL

HARRISON TSOSIE
ATTORNEY GENERAL

DANA L. BOBROFF
DEPUTY ATTORNEY GENERAL

MEMORANDUM

TO: Antoinette Flora, Attorney
Natural Resources Unit
Department of Justice

FROM: Harrison Tsosie, Attorney General
Office of the Attorney General

DATE: May 28, 2014

SUBJECT: **Delegation of NRU Administrative and Surname Authority**

In an effort to provide uninterrupted legal services to the Navajo Nation, Bidtah N. Becker advised me that it would be helpful to have someone administer the Natural Resources Unit (NRU) during her absence. Ms. Becker will not be in the office from June 3-6, 2014.

She expressed confidence in your ability and judgment to administer the Unit on June 3 and 4, 2014. I agree with her. Therefore, I am hereby delegating you the authority to administer the NRU and surname NRU documents during the time Ms. Becker is absent from the office.

If you have any questions on how to handle any particular matter, please feel free to consult with me, the Deputy Attorney General or any of the Assistant Attorney Generals. Thank you.

xc: Dana Bobroff, Deputy Attorney General, Office of the Attorney General
Becker N. Becker, Assistant Attorney General, Natural Resources Unit
Kandis Martine, Acting Assistant Attorney General, Human Services & Government Unit
Paul W. Spruhan, Assistant Attorney General, Labor & Employment Unit
Stanley M. Pollack, Assistant Attorney General, Water Rights Litigation Unit
Rodgerick Begay, Assistant Attorney General, Economic/Community Development Unit
Cynthia Avery, Office Specialist, Office of the Attorney General

NRU\BBECKER\Administrative

P.O. Box 2010 • Window Rock, Navajo Nation (AZ) 86515 • 928-871-6347/6210 • Fax No. 928-871-6177

THE NAVAJO NATION

BEN SHELLY
REX LEE JIM

ENVIRONMENTAL PROTECTION AGENCY
OFFICE OF EXECUTIVE DIRECTOR/ADMINISTRATION
OFFICE OF ENVIRONMENTAL REVIEW
PO BOX 339 WINDOW ROCK ARIZONA 86515 Office: 928/871-7188 Fax: 928/729-4523
Website: www.navajonationepa.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

THROUGH: Stephen B. Etsitty, Executive Director
Navajo Nation Environmental Protection Agency

DATE: May 20, 2014

SUBJECT: 164 EOR 001656 Temporary Construction Easement Tsaile Dam

The Bureau of Indian Affairs, 301 West Hill Street, Gallup, New Mexico, submitted a temporary construction easement (TCE) application for construction of the Tsaile Dam modification project on, over and across Navajo Nation Trust Lands located at Tsaile Lake, Apache County, Arizona. The TCE consists of 160.24 acres, more or less, in Sections 10 and 15, T33N, R29E, G&SRMB, Apache County, Arizona.

The Navajo Nation Environmental Protection Agency (NNEPA) reviewed[1] and recommends *approval* for the proposed action.

1 BIA. Environmental Assessment Tsaile Dam Modification Safety of Dams Rehabilitation Project Apache County Arizona. December 2012.

If there are any questions you may contact Rita Whitehorse-Larsen at 928/871-7188. Thank you.

Cc: NNEPA Water Quality; PWSSP; Air Quality, OPP; Pesticides; RCRP; Storage Tank Program; Superfund; Administration chrono file
Contact Person: Chuck Nixon, 505/863-8310

THE NAVAJO NATION

BEN SHELLY
REX LEE JIM

Navajo Nation Environmental Protection Office - Office of The Executive Director
P.O. Box 339 Window Rock, AZ 86515 • Bldg # 2695 Window Rock Blvd.
Tel: 928. 871.7692 Fax: 928.871.7996

MEMORANDUM:

TO : All Concerned

FROM : Stephen B. Etsitty, Executive Director
Navajo Nation Environmental Protection Agency

DATE : January 2, 2014

SUBJECT : STANDING DELEGATION

This Standing Delegation of Authority shall serve to ensure oversight of Navajo Nation Environmental Protection Agency ("NNEPA") activities when I am on travel or on leave. The following personnel are delegated in order.

1. Eugenia Quintana, Environmental Department Manager, Air & Toxics Department
2. Diane J. Malone, Environmental Department Manager, Waste Regulatory and Compliance Department
3. Ronnie Ben, Environmental Department Manager, Surface and Groundwater Protection Department
4. Lavern Begay, Principal Contract Analyst, Administration Department
5. Patrick Antonio, Principal Hydrologist, Water Quality/NPDES Program

The delegation of authority shall serve to delegate my authority for the oversight and management of all NNEPA departments and programs, including the signing of documents. However, this delegation of authority to sign documents shall <u>not</u> extend to: (1) legislation and regulations; (2) budget transfers without justification or U.S. EPA approval; (3) documents that lack the concurrence of the appropriate NNEPA Department Director or program manager; (4) documents for the delegatee's own department or programs; (5) travel and leave requests for NNEPA Department Directors and (6) any other documents that the delegate feels requires the Executive Director's signature. Finally, this delegation of authority may not be transferred beyond the above-referenced personnel.

Your assistance and cooperation with these delegated personnel will be appreciated. If you have any questions, I can be reached at (928) 871-7692.

ACKNOWLEDGEMENT:

Eugenia Quintana, Environmental Dept. Mgr.
Air & Toxics Department

Diane J. Malone, Environmental Dept. Mgr.
Waste Regulatory and Compliance Department

Ronnie Ben, Environmental Dept. Mgr.
Surface and Groundwater Protection Department

Lavern Begay, Principal Contract Analyst
Administration Department

Patrick Antonio, Principal Hydrologist
Water Quality/NPDES Program

DISTRIBUTION

EXHIBIT
A

United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
NAVAJO REGION
P.O. Box 1060
Gallup, New Mexico 87305

N461/WRSD

MAR 2 7 2014

Mr. Howard Phillip Draper, Jr.
Navajo Land Department, Project Review Section
Navajo Nation Division of Natural Resources
P.O. Box 9000
Window Rock, AZ 86515

Subject: Application for Temporary Construction Easement – Tsaile Dam Modification Project – Bureau of Indian Affairs - Safety of Dams Program - Arizona.

Dear Mr. Draper:

Several dam safety deficiencies have been identified at the Tsaile Dam through the Bureau of Indian Affairs' (BIA) National Safety of Dams (SOD) program. The BIA is in the process of preparing a contract to perform the necessary modifications to correct these deficiencies.

The dam modifications will require a temporary construction easement to provide the necessary land and access for a contractor to perform the work. It is estimated the work will commence as early as April 2014 and completion is scheduled for December of 2014.

By this letter, the BIA is applying for a Temporary Construction Easement for the proposed Tsaile Dam modification project. The Temporary Construction Easement will be required through December 31, 2017, to encompass the duration of construction and cleanup.

Enclosed please find the following documents:

1. Application for Temporary Construction Easement (this letter)
2. Application for Grant of Right-of-Way
3. Location Reference Map (Tsaile, AZ Topographic map)
4. Tsaile Dam Modification, *Cover Sheet, Location Map and List of Drawings*, Drawing G-1
5. Tsaile Dam Modification, *Plan of Borrow Areas and Staging Area*, Drawing G-4. (Includes Legal Description of Temporary Construction Easement).
6. Final Environmental Assessment, Tsaile Dam Modifications, Safety of Dams Project (with FONSI).
7. Cultural Resource Compliance Form, *Approval for the Temporary Construction Easement (TCE) for the Tsaile Dam Rehabilitation Project, Tsaile, Apache County, Arizona*
8. Project Description.
9. Chapter resolution from Tsaile/Wheatfields Chapter supporting the Tsaile Dam Rehabilitation Project

BIA requests the Navajo Nation waive all filing and compensation fees associated with this application as this project is for the sole benefit of the Navajo Nation and its people.

BIA will operate with all due prudence and diligence during entry, construction and exit of the project. Except for those claims which may be recognized under the Federal Tort Claims Act, we also ask that the Navajo Nation waive all claims which may arise by reason of such entry upon Tribal lands.

On site construction management of this project will be provided by Cooper Zietz Engineers, a private engineering firm under contract to BIA.

If you have any questions, please contact Pearl Chamberlin at 505-863-8393.

Sincerely,

Regional Director, Navajo

Enclosures

cc: Fredrick H. White, Executive Director
Navajo Nation
Division of Natural Resources
P.O. Box 9000
Window Rock, AZ 86515

Ray Benally, Director
Navajo Nation
Department of Water Resources
P.O. Drawer 678
Ft. Defiance, AZ 86504

Leonard Becenti, Realty Specialist
Bureau of Indian Affairs
Chinle Agency
Real Estate Services
P.O. Box 7H
Chinle, AZ 86503

UNITED STATES DEPARTMENT OF THE INTERIOR

BUREAU OF INDIAN AFFAIRS

APPLICATION FOR GRANT OF RIGHT-OF-WAY

(Tribal Trust Land)

APPLICANT: US Bureau of Indian Affairs having a residence or principal place of business at 301 West Hill Street, Gallup, NM hereby files an application with the Bureau of Indian Affairs, pursuant to the terms and provisions of the Act of February 5, 1948 (62 Stat. 17; 25 USC §§ 323 — 328), and to the regulations of the Department of the Interior contained in Title 25, Code of Federal Regulations, Part 169, for the grant of right-of-way for the following purposes and reasons:

For construction of the Tsaile Dam Modification Project, Apache County, Arizona.

Across the following described Indian Lands:
A parcel, containing 160.24 acres, more or less, of land lying in Sections 10 and 15, Township 33 North, Range 29 East, Gila River Meridian, Apache County, Arizona. 157.86 acres, more or less, lie within Land Management District 11, Tsaile-Wheatfields-Black Rock Chapter, and 2.38 acres, more or less, lie within Land Management District 10, Chinle Chapter, all on the Navajo Nation.

Said right-of-way is of an irregular shape and 160.24 more or less in acres, and more particularly described and shown on the map, Plan of Borrow Areas and Staging Area / Tsaile Dam Modification, Drawing No. G-4, showing the Temporary Construction Easement parcel) of definite location to be attached and made a part hereof.
The said applicant understands and expressly agrees to the following stipulations:

(a). To construct and maintain the right-of-way in a workmanlike manner.

(b). To pay all damages and compensation determined by the Secretary to be due the landowners and authorized users and occupants of the land due to the survey, granting, construction, and maintenance of the right-of-way.

(c). To identify the landowners and authorized users and occupants against any liability for the life, personal injury, and property damage arising from the construction, maintenance, occupancy or use of the lands by the applicant, his employees, contractors and their employees, or subcontractors and their employees.

(d). To restore the lands as nearly as possible to their original condition upon the completion of construction, to the extend compatible with the purpose for which the right-of-way was granted.

(e). To clear and keep clear the lands within the right-of-way to extend compatible with the purpose of the right-of-way; and dispose of all vegetative and other material cut, uprooted or otherwise accumulated during the construction and maintenance of the project.

(f). To take soil and resources conservation projection measures, including weed control, on the land covered by the right-of-way.

(g). To do everything reasonable within its power to prevent and suppress fires on or near the lands to be occupied under the right-of-way.

(h). To build and repair such roads, fences and trails as may be destroyed or injured by the construction work and to build and maintain necessary and suitable crossings for all roads and trails that intersect the works constructed, maintained or operated under the right-of-way. That upon revocation or termination of the right-of-way, the applicant shall, so far as in reasonably possible, restore the land to its original condition.

(j). To at all times keep the Secretary informed of its address, and in case of corporations, of the address of its principle place of business and of the names and addresses of its principle officers.

(k). That the applicant will not interfere with the use of the lands by or under the authority of the landowners for any purpose not inconsistent with the primary purpose for which the right-of-way is granted.

IN WITNESS WHEREOF, _____ has caused this instrument to be executed this _____ day of _____ 20_____.

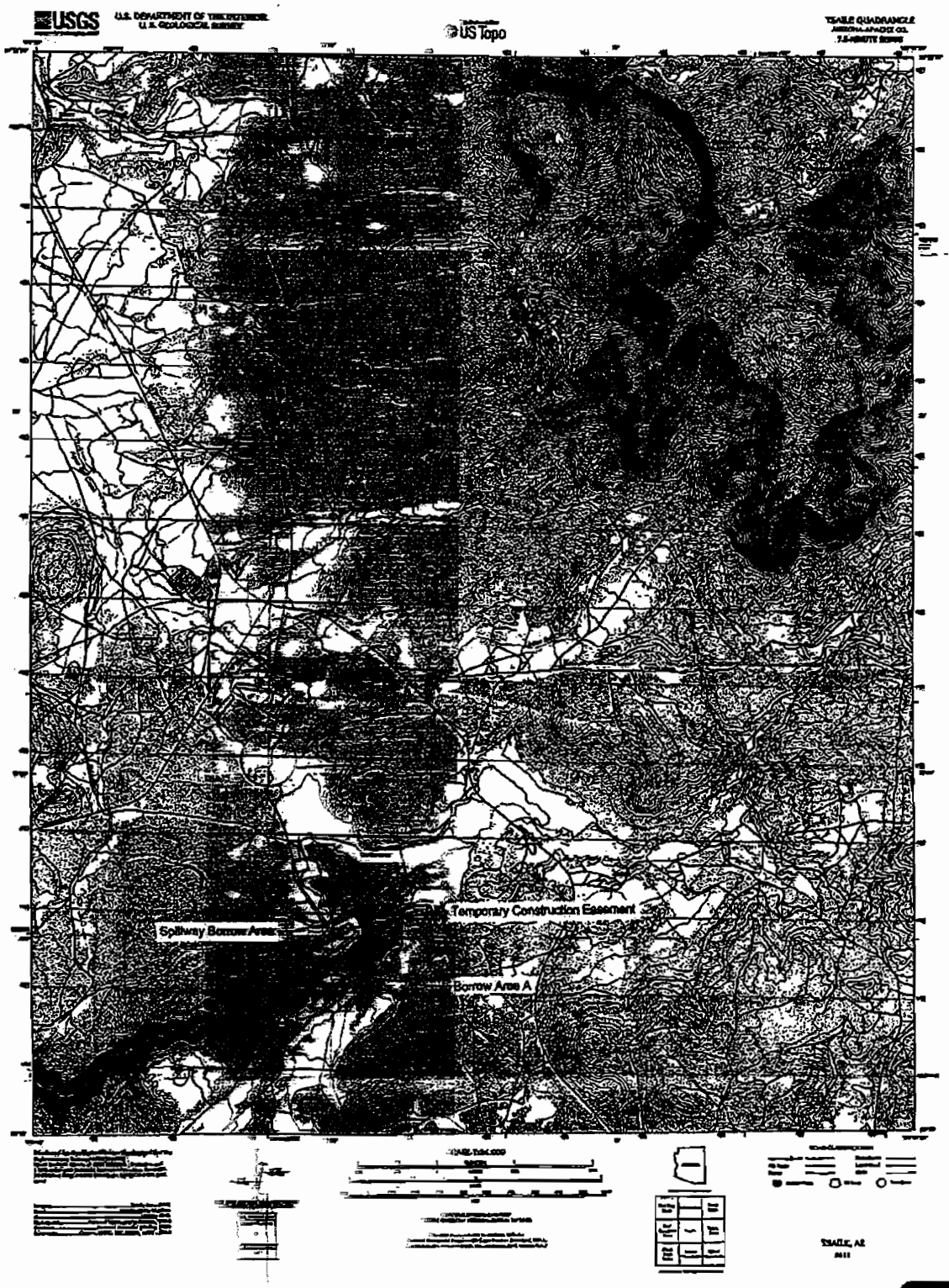
_____	_____
WITNESS	APPLICANT
_____	Regional Director
Engineer _____	
WITNESS	

U.S. Bureau of Indian Affairs, Navajo Regional Office
301 West Hill Street, Gallup, NM 87305

REQUIRED SUPPORTING DOCUMENTS:

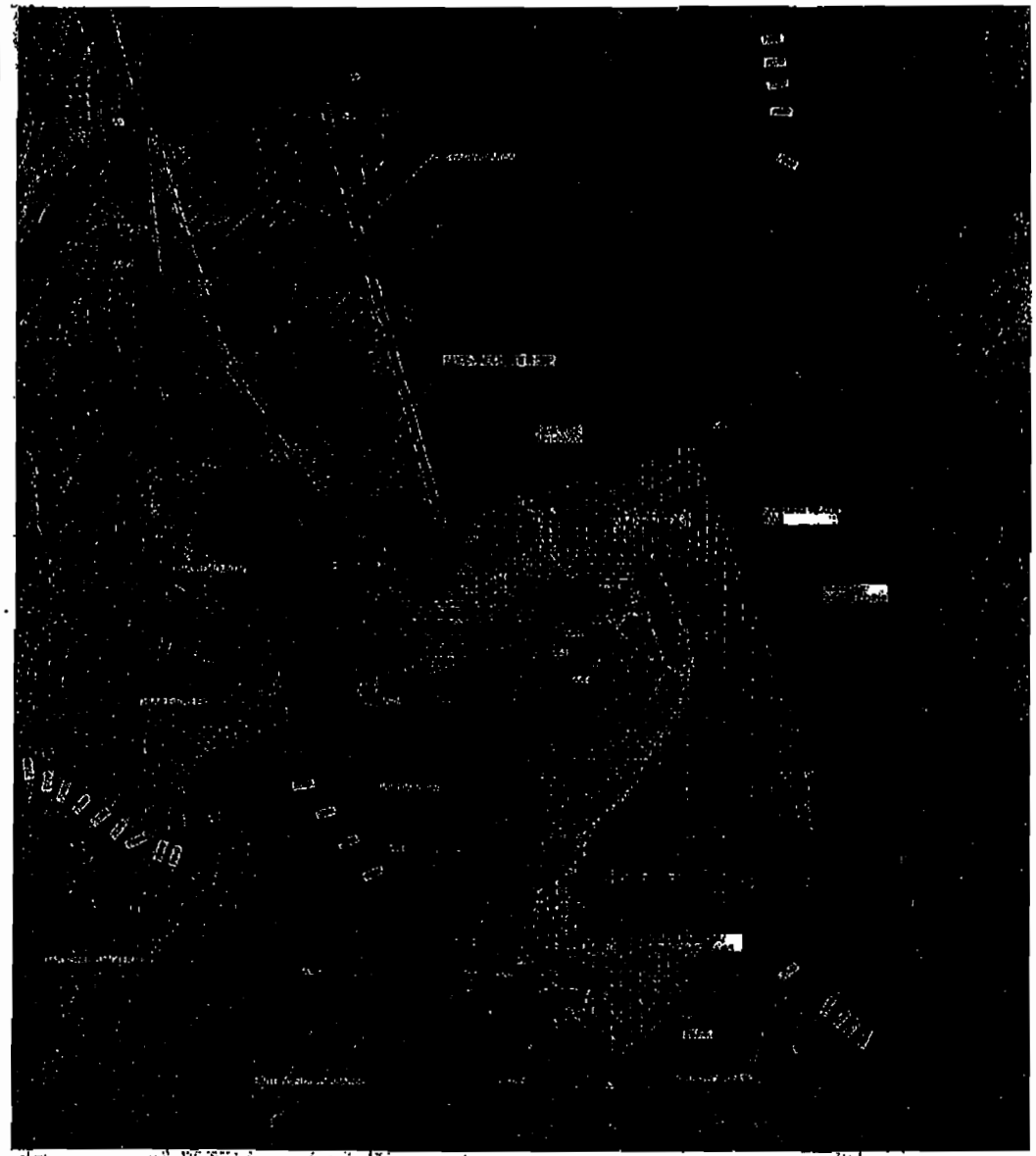
1. ( ) Written consent of landowner (BIA form 5 - 104b and/or Tribal Resolution, 25 CFR §§ 169.3)
2. ( ) Map of definite location (2 original mylars & 2 copies, 25 CFR § 169.6 - 169.11)
3. ( ) Other:

( ) Archaeological Clearance (Cultural Resource Compliance Form)
( ) NEPA Compliance (FONSI)
( ) Permission to cross Existing Right-of-Way



Tsaile Dam Modification Project
Temporary Construction Easement and Borrow Pit Boundaries

EXHIBIT 8



TEMPORARY CONSTRUCTION EASEMENT		
POINT #	NORTHING	EASTING
A-1	[illegible]	[illegible]
A-2	[illegible]	[illegible]
A-3	[illegible]	[illegible]
A-4	[illegible]	[illegible]
A-5	[illegible]	[illegible]
A-6	[illegible]	[illegible]
A-7	[illegible]	[illegible]
A-8	[illegible]	[illegible]
A-9	NOT USED	
A-10	[illegible]	[illegible]
A-11	[illegible]	[illegible]
A-12	[illegible]	[illegible]
A-13	[illegible]	[illegible]
A-14	[illegible]	[illegible]
A-15	[illegible]	[illegible]
A-16	[illegible]	[illegible]
A-17	[illegible]	[illegible]
A-18	[illegible]	[illegible]
A-19	[illegible]	[illegible]
A-20	[illegible]	[illegible]
A-21	[illegible]	[illegible]
A-22	[illegible]	[illegible]

STAGING AREA		
POINT #	NORTHING	EASTING
B-1	[illegible]	[illegible]
B-2	[illegible]	[illegible]
B-3	[illegible]	[illegible]
B-4	[illegible]	[illegible]
B-5	[illegible]	[illegible]

SPILLWAY RIPRAP BORROW AREA		
POINT #	NORTHING	EASTING
C-1	[illegible]	[illegible]
C-2	[illegible]	[illegible]
C-3	[illegible]	[illegible]
C-4	[illegible]	[illegible]

BORROW AREA A1		
POINT #	NORTHING	EASTING
D-1	[illegible]	[illegible]
D-2	[illegible]	[illegible]
D-3	[illegible]	[illegible]
D-4	[illegible]	[illegible]
D-5	[illegible]	[illegible]
D-6	[illegible]	[illegible]
D-7	[illegible]	[illegible]
D-8	[illegible]	[illegible]
D-9	[illegible]	[illegible]
D-10	[illegible]	[illegible]
D-11	[illegible]	[illegible]
D-12	[illegible]	[illegible]
D-13	[illegible]	[illegible]

BORROW AREA A2		
POINT #	NORTHING	EASTING
E-1	[illegible]	[illegible]
E-2	[illegible]	[illegible]
E-3	[illegible]	[illegible]
E-4	[illegible]	[illegible]
E-5	[illegible]	[illegible]
E-6	[illegible]	[illegible]

SUPPLEMENTAL BORROW AREA A3		
POINT #	NORTHING	EASTING
D-9	[illegible]	[illegible]
D-10	[illegible]	[illegible]
D-11	[illegible]	[illegible]
D-12	[illegible]	[illegible]
D-13	[illegible]	[illegible]
E-0	[illegible]	[illegible]
E-1	[illegible]	[illegible]
E-2	[illegible]	[illegible]
E-3	[illegible]	[illegible]

Description	Area, acres
Temporary Construction Easement	160.24
Staging Area	48.46
Borrow Area A1	8.56
Spillway Borrow Area	2.00
Area in Cache Chapter (below canyon rim)	2.36
Area in Tallie Wheatfields Rock Chapter	157.86
Area within Tallie Cave (below rim/Dewy creek)	58.67
Area within Canyon De Chelly Boundary	151.45

NOTES:

1. MINIMUM 25' BUFFER BETWEEN BORROW AREAS AND STAGING AREA, AND LIMIT OF DISTURBANCE.
2. BORROW MATERIAL FOR NEW DAM EMBANKMENT TO BE OBTAINED FIRST FROM BORROW AREAS A1 AND A2 BEFORE A3 IS USED.
3. SPILLWAY RIPRAP BORROW AREA TO BE MINED FROM EAST TO WEST AND AT A DEPTH NO GREATER THAN 3 FEET.
4. DO NOT DISTURB FENCE ALONG PRIVATE ROAD. ALL BORROW AREA EXCAVATION TO REMAIN NORTH OF EXISTING FENCE.
5. SURVEY NOTES
   ALL TOPOGRAPHY, COORDINATES, AND ELEVATIONS SHOWN ARE IN GRID ARIZONA STATE PLANE COORDINATE SYSTEM, ARIZONA EAST ZONE, U.S. SURVEY FEET, NAD 83 HORIZONTAL DATUM AND NAVD 88 VERTICAL DATUM. THE TOPOGRAPHY WAS GENERATED BY USBR FROM AERIAL SURVEY DATED NOVEMBER 2004.

LEGEND

- EXISTING INDEX CONTOURS (10')
- EXISTING INTERMEDIATE CONTOURS (2')
- LIMIT OF DISTURBANCE
- STAGING AREA
- BORROW AREA A1
- BORROW AREA A2
- SUPPLEMENTAL BORROW AREA A3
- SPILLWAY RIPRAP BORROW AREA

Cooper Zlotz Engineers, Inc.

FILE/INFILL/DIRT

DATE	03-14-04					
PROJECT NO.	10002	1				
DRAWN BY	R. RUSCALLEAU	1	TUA/WIN REGIONAL GROUP	CLBP	04-14-04	JP
CHECKED BY	C. LARSON	1				
FILENAME	Borrow Area Plan.dwg	NO.	DESCRIPTION			

PLAN OF BORROW AREAS AND STAGING AREA

TEMPORARY MIGRATION
BUREAU OF RECLAMATION
WINNS REGIONAL SAFETY OF DAMS PROGRAM - ARIZONA

SHEET 4 OF 18

G-4

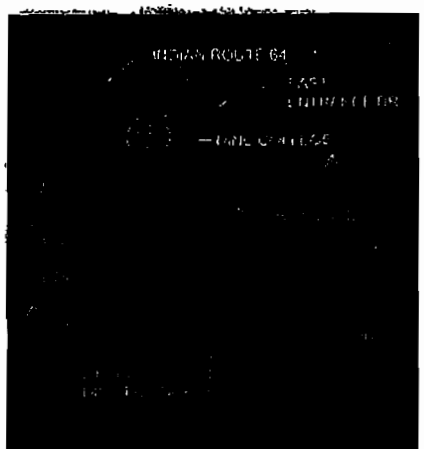
TSAILE DAM MODIFICATION
BUREAU OF INDIAN AFFAIRS
NAVAJO REGIONAL SAFETY OF DAMS PROGRAM
ARIZONA

STATE OF ARIZONA

NOT TO SCALE

LIST OF DRAWINGS

SHEET NUMBER	SHEET TITLE
G-1	COVER SHEET, LOCATION MAP AND LIST OF DRAWINGS
G-2	GENERAL ABBREVIATIONS AND LEGEND
G-3	GENERAL CONSTRUCTION NOTES
G-4	PLAN OF BORROW AREAS AND STAGING AREA
G-5	HYDRAULIC INFORMATION
C-1	PLAN OF EXISTING CONDITIONS AND DEMOLITION
C-2	PLAN OF RECENT EXPLORATIONS
C-3	SUBSURFACE PROFILES
C-4	REHABILITATION PROFILES
C-5	OVERALL PLAN OF MODIFICATIONS
C-6	[illegible] PLAN AND SECTION
C-7	[illegible] SECTION AND MOUNTING DETAIL
C-8	[illegible] DETAILS
C-9	[illegible]
C-10	[illegible] SECTION
C-11	[illegible]
C-12	[illegible] PLAN AND PROFILE
C-13	[illegible]
C-14	[illegible]
C-15	[illegible] INSTRUMENTATION PLAN
C-16	TOE DRAIN DETAILS
C-17	TOE DRAIN DETAILS
C-18	TOE DRAIN DETAILS
C-19	CMP DETAILS
C-20	GEOTECHNICAL INSTRUMENTATION DETAILS
C-21	BIA ROAD 8073 SITE PLAN
C-22	BIA ROAD 8073 PLAN AND PROFILE
C-23	BIA ROAD 8073 PLAN AND PROFILE
C-24	BIA ROAD 8073 PLAN AND PROFILE WITH CULVERT CROSSING
C-25	BIA ROAD 8073 CULVERT CROSSING DETAILS
C-26	BIA ROAD 8073 SPILLWAY CROSSING DETAILS
C-27	BIA ROAD 8073 CHANNEL CROSSING DETAILS
C-28	LZ ACCESS ROAD PLAN AND PROFILE
C-29	TEMPORARY ROAD SITE PLAN
C-30	TEMPORARY ROAD PLAN AND PROFILE
C-31	TEMPORARY ROAD PLAN AND PROFILE
C-32	TEMPORARY ROAD PLAN AND PROFILE AND ROAD SECTIONS
C-33	OUTLET WORKS PLAN AND PROFILE
C-34	TEMPORARY CONSTRUCTION BARRICADE AND PERMANENT SIGNAGE
C-35	BIA ROAD 8073 CHANNEL DETAILS
C-36	EROSION AND SEDIMENT CONTROL NOTES
S-1	STRUCTURAL NOTES
S-2	STANDARD STRUCTURAL DETAILS
S-3	STANDARD STRUCTURAL DETAILS
S-4	STANDARD STRUCTURAL DETAILS
S-5	STANDARD STRUCTURAL DETAILS
S-6	OUTLET WORKS PLAN AND ELEVATION
S-7	INTAKE TOWER PLANS
S-8	CONTROL ROOM PLANS & DETAILS
S-9	INTAKE TOWER SECTIONS
S-10	CONTROL ROOM SECTIONS & ELEVATIONS
S-11	OUTLET DISSIPATION STRUCTURE
S-12	DETAILS
S-13	DETAILS
S-14	DETAILS
S-15	DETAILS



PROJECT LOCATION

NOT TO SCALE

APPROVED:

PEARL CHAUBORUN, P.E. - BIA - NRO — DATE

JACK RYERS, P.E. - BIA - CHIEF ROD — DATE

DEBORA MILLER, P.E., PhD - HTR — DATE

TARA SCHUYLER, P.E. - HTR — DATE

Cooper Zeis Engineers, Inc.

KLEINFELDER

NO.	DATE	BY	DWN.

DATE: [illegible]
PROJECT NO.: [illegible]
DRAWN BY: [illegible]
DESIGNED BY: [illegible]
PROJECT NO.: [illegible]

COVER SHEET, LOCATION MAP AND LIST OF DRAWINGS

TSAILE DAM MODIFICATION
BUREAU OF INDIAN AFFAIRS
NAVAJO REGIONAL SAFETY OF DAMS PROGRAM - ARIZONA

G-1

EXHIBIT
C

DR. JOE SHIRLEY, JR. | LY
President | Vice President

MEMORANDUM

NLD PROJECT REVIEW SECTION

TO: Howard P. Draper, Prog. & Project Specialist
Project Review Section/NLD

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

DATE: April 04, 2014

SUBJECT: ***FIELD INVESTIGATION FOR TSAILE DAM***
Tsaile, Apache County, Arizona

The Bureau of Indian Affairs (BIA) Safety of Dams of 301 West Hill Street, Gallup, New Mexico 87305 has submitted a Temporary Construction Easement (TCE) requesting to utilize 160.24, acres, more or less of Navajo Tribal Trust Land (NTTL) for the Modification of the Tsaile Dam Project. The proposed site is located within of Sections 10 & 15, Township 33 North, Range 29 East, Gila & Salt River Meridian, Tsaile, Apache County, Arizona

The Project Review Section/Chinle Land Department has conducted the field investigation on the above project, met with the affected chapters (Tsaile/Wheatfields & Chinle Chapters) grazing committee members (Thomas P. Litson & Eugene Tso) to identify the affected land users (grazing permittee) affected by the proposed project, upon review of the attached survey map and according to Mr. Litson records and knowledge there are two (02) land users (grazing permittee) affected by the proposed project. Mr. Tso stated that he doesn't have any land user affected by the proposed project. PRS has contacted the affected land users (Lorraine Johnson Sorrell & Fred R. Benallie) to inform them of and to obtain their written consent for the proposed project. The affected land users were already aware of the project, they had no objection and gave their written consent. Land Users Consent Forms # 03 attached for your information and use.

Should you have any question please contact me at Chinle Land Department (928) 674-2315 or (928) 797-1835

cc: Office File

Project Review Section/Chinle Navajo Land Department
Post Office Box 2179 / Chinle, AZ 86503 / Telephone (928) 674-2315 / Fax: (928)674-2059

CONSENT FORM-3
(Waiver of compensation for damages)

CONSENT TO USE
NAVAJO TRIBAL LANDS

TO WHOM IT MAY CONCERN

I Fred R. Benallie hereby grant consent to the Navajo Tribe and the Bureau of Indian Affairs to permit ***Bureau of Indian Affairs (BIA)/ Safety of Dams*** of ***301 West Hill Street, Gallup, New Mexico 87305*** to use a portion of my land use area for the following purpose(s) ***for a Temporary Construction Easement (TCE) to utilize 160.24 acres, more or less of Navajo Tribal Trust Land (NTTL) for Tsaile Dam Modification Project, located within Sections 10 & 15, Township 33 North, Range 29 East, Gila & Salt River Meridian, Tsaile, Apache 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: _____

4/3/14	X Fred R Benally	41426	11-9435
Date:	Land User Signature (Thumb Print)	Census No.	Permit No.

WITNESS:

4/3/14	Thomas P. Etsitty	11
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

Field Agent Signature

CONSENT FORM-3
(Waiver of compensation for damages)

CONSENT TO USE
NAVAJO TRIBAL LANDS

TO WHOM IT MAY CONCERN

I Lorraine Johnson Sorrell hereby grant consent to the Navajo Tribe and the Bureau of Indian Affairs to permit ***Bureau of Indian Affairs (BIA)/ Safety of Dams*** of ***301 West Hill Street, Gallup, New Mexico 87305*** to use a portion of my land use area for the following purpose(s) ***for a Temporary Construction Easement (TCE) to utilize 160.24 acres, more or less of Navajo Tribal Trust Land (NTTL) for Tsaile Dam Modification Project, located within Sections 10 & 15, Township 33 North, Range 29 East, Gila & Salt River Meridian, Tsaile, Apache 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: _____

4/3/14 — Lorraine Johnson Sorrell — 55867 — G/P# 11-382

Date: — Land User Signature (Thumb Print) — Census No. — Permit No.

WITNESS:

4/3/14 — Thomas P. [illegible] — 11

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

Field Agent Signature

EXHIBIT D

NAVAJO NATION TEMPORARY CONSTRUCTION EASEMENT TERMS AND CONDITIONS

Bureau of Indian Affairs (BIA) **(GRANTEE)**

1. The term of the temporary construction easement (TCE) shall be for one (1) years, beginning on the date the TCE is granted by the Secretary of Interior.

2. Consideration for the TCE is assessed at $ 63,294.00 and shall be paid in full to the Controller of the Navajo Nation, in lawful money of the United States, and a copy of the receipt for such payment provided to the Navajo Nation Minerals Department, or its successor, within 10 days of approval of and consent to the grant of the TCE by the Secretary of Interior.

3. The Grantee may develop, use and occupy the TCE for the purpose(s) of establishing, operating and maintaining a staging area. The Grantee 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 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 TCE 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 TCE.

6. The Grantee shall clear and keep clear the lands within the TCE to the extent compatible with the purpose of the TCE, 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 TCE, 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 TCE and at the Grantee's sole cost and expense, maintain the land subject to the TCE and all improvements located thereon and make all necessary and reasonable repairs.

9. The Grantee shall obtain prior written permission to cross existing TCEs, 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 TCE by the Grantee.

12. The Grantee 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 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 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 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 TCE for the purpose for which it is granted for a consecutive two year period; and

    c. The use of the land subject to the TCE for any purpose inconsistent with the purpose for which the TCE is granted.

    d. An abandonment of the TCE.

14. At the termination of this TCE, 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 TCE shall not constitute a renewal or extension thereof or give the Grantee any rights hereunder or in or to the land subject to the TCE 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 TCE, 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 TCE, 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 TCE, 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 TCE 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 TCE 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 TCE and all lands burdened by the TCE, including without limitation over all persons, including the public, and all activities conducted or otherwise occurring within the TCE; and the TCE and all lands burdened by the TCE shall be and forever remain Navajo Indian Country for purposes of Navajo Nation jurisdiction.

EXHIBIT D

NAVAJO NATION TEMPORARY CONSTRUCTION EASEMENT TERMS AND CONDITIONS

Bureau of Indian Affairs (GRANTEE)

1. The term of the temporary construction easement (TCE) shall be for One (1) years, beginning on the date the TCE is granted by the Secretary of Interior.

2. Consideration for the TCE is assessed at $ 63,294.00 and shall be paid in full to the Controller of the Navajo Nation, in lawful money of the United States, and a copy of the receipt for such payment provided to the Navajo Nation Minerals Department, or its successor, within 10 days of approval of and consent to the grant of the TCE by the ~~Navajo Nation~~. Secretary of the Interior

~~Consideration for the grant of the TCE is hereby waived.~~
~~[ ] NO [ ] YES~~

~~If consideration has been waived, then the Navajo Nation contributes the amount listed above to the project because the project serves a public purpose and will benefit Navajo residents.~~

3. The Grantee may develop, use and occupy the TCE for the purpose(s) of establishing, operating and maintaining a staging area. The Grantee 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 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 TCE 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 TCE.

6. The Grantee shall clear and keep clear the lands within the TCE to the extent compatible with the purpose of the TCE, 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 TCE, 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 TCE and at the Grantee's sole cost and expense, maintain the land subject to the TCE and all improvements located thereon and make all necessary and reasonable repairs.

9. The Grantee shall obtain prior written permission to cross existing TCEs, 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 TCE by the Grantee.

12. The Grantee 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 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 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 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 TCE for the purpose for which it is granted for a consecutive two year period; and

    c. The use of the land subject to the TCE for any purpose inconsistent with the purpose for which the TCE is granted.

    d. An abandonment of the TCE.

14. At the termination of this TCE, 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 TCE shall not constitute a renewal or extension thereof or give the Grantee any rights hereunder or in or to the land subject to the TCE 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 TCE, 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 TCE, 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 TCE, 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 TCE 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 TCE 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 TCE and all lands burdened by the TCE, including without limitation over all persons, including the public, and all activities conducted or otherwise occurring within the TCE; and the TCE and all lands burdened by the TCE shall be and forever remain Navajo Indian Country for purposes of Navajo Nation jurisdiction.

FORM 06/28/01
(General)

FYI: 6/28/01 Form New Form
dated 3/12/14
For TCE for Trust lands.

EXHIBIT "D"

NAVAJO NATION TEMPORARY CONSTRUCTION EASEMENT TERMS AND CONDITIONS;

Bureau of Indian Affairs **(GRANTEE)**

1. The term of the temporary construction easement shall be for one (1) year, beginning on the date the temporary construction easement (TCE) is granted by the Secretary of Interior.

2. Consideration to the Navajo Nation for the grant of the temporary construction easement shall be $ $63,294.00 and shall be paid in full to the Controller of the Navajo Nation, in lawful money of the United States, and a copy of the receipt for such payment provided to the Navajo Nation Minerals Department, or its successor, within 10 days of approval of and consent to the grant of the temporary construction easement by the ~~Navajo Nation.~~ Secretary of the Interior

~~Consideration for the grant of the temporary construction easement is hereby waived.~~
[ ] NO [ ] YES

~~Consideration for the temporary construction easement is assessed at $_____. The Navajo Nation contributes this amount to the project because the project will benefit Navajo residents.~~

3. The Grantee may develop, use and occupy the temporary construction easement for the purpose(s) of establishing, operating and maintaining a staging area. The Grantee may not develop, use or occupy the temporary construction easement 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 temporary construction easement 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 Preference Law, 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 temporary construction easement.

6. The Grantee shall clear and keep clear the lands within the temporary construction easement to the extent compatible with the purpose of the temporary construction easement, 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 temporary construction easement, 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 temporary construction easement and at the Grantee's sole cost and expense, maintain the land subject to the temporary construction easement and all improvements located thereon and make all necessary and reasonable repairs.

9. The Grantee shall obtain prior written permission to cross existing right-of-way, if any, from the appropriate parties.

10. The Grantee shall be responsible for and promptly pay all damages when they are sustained.

11. The Grantee shall indemnify and hold harmless the Navajo Nation and the Secretary of 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 temporary construction easement by the Grantee.

12. The Grantee shall not assign, convey or transfer, in any manner whatsoever, the temporary construction easement or any interest therein, or in or to any of the improvements on the land subject to the temporary construction easement, 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 temporary construction easement for violation of any of the terms and conditions stated herein. In addition, the temporary construction easement shall be terminable in whole or part by the Navajo Nation for any of the following causes:

    a. Failure to comply with any terms and conditions of the grant or of applicable laws or regulations;
    b. A non-use of the temporary construction easement for the purpose for which it is granted for a consecutive two year period; and
    c. The use of the land subject to the temporary construction easement for any purpose inconsistent with the purpose for which the temporary construction easement is granted.

14. At the termination of this temporary construction easement, 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 deliver of said premises.

15. Holding over by the Grantee after the termination of the temporary construction easement shall not constitute a renewal or extension thereof or give the Grantee any rights hereunder or in or to the land subject to the temporary construction easement or to any improvements located thereon.

16. The Navajo Nation and the Secretary shall have the right, at any reasonable time during the term of the temporary construction easement, to enter upon the premises, or any part thereof, to inspect the same and any improvements located therein.

17. By acceptance of the grant of temporary construction easement, 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 temporary construction easement, 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 right-of-way or to the Navajo Nation.

19. Any action or proceeding brought by the Grantee against the Navajo Nation in connection with or arising out of the terms and conditions of the temporary construction easement 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 temporary construction easement and all lands burdened by the temporary construction easement, including without limitation over all persons, including the public, and all activities conducted or otherwise occurring within the temporary construction easement; and the temporary construction easement and all lands burdened by the temporary construction easement shall be and forever remain Navajo Indian Country for purposes of Navajo Nation jurisdiction.

United States Department of the Interior
Navajo Region
P.O. Box 1060
Gallup, NM 87305

TAKE PRIDE IN AMERICA

MC:620/Division of Environmental, Cultural, & Safety Management

MEMORANDUM MAR 1 2 2014

To: Charles Nixon Safety of Dams Hydraulic Engineer

From: Harrilene Yazzie, Regional NEPA Coordinator

Through: George Padilla, Supervisory Physical Scientist

Subject: Finding of No Significant Impact – Tsaile Dam Modification, Safety of Dams Rehabilitation Project, Apache County, Arizona EA-11-085

The Division of Environmental, Cultural, and Safety Management reviewed the environmental assessment, *Tsaile Dam Modification, Safety of Dams Rehabilitation Project*. The 51-foot high dam is located on Navajo Tribal Trust lands in Tsaile, Arizona at the entrance to Canyon Del Muerto within the Canyon de Chelly Nation Monument. The proposed project entails modification of the existing dam to correct dam safety deficiencies that pose an unacceptable risk to people and resources downstream of the dam in Canyon de Chelly and the community of Chinle, Arizona. The BIA is the lead federal agency pursuant to NEPA. The Navajo Nation Department of Water Resources (NNDWR), National Park Service (NPS), and the U.S. Fish and Wildlife Service are cooperating agencies for the preparation of this document.

Based upon review of the environmental assessment, a Finding of No Significant Impact has been determined for the proposed actions which will not have a significant impact on the quality of the natural human environment. Therefore, an environmental impact statement for the proposed project is not required.

Should you have any questions, please contact Ms. Harrilene Yazzie, Regional NEPA Coordinator, at (505) 863-8287.

cc: N101
Subject (H:\HY 2005 EA\EA-11-085 Tsaile, New Mexico - Tsaile Dam Rehabilitation Project FONSI.doc)

In addition to the bluehead sucker, the proposed project would follow an adaptive management protocol to manage actual and potential/non-project related impacts to the bald eagles (*Haliaeetus leucocephalus)* breeding area in the project area vicinity of the proposed project. The adaptive management protocol would occur in a phased approach, and protection measures would increase depending on the monitored potential threat to the eagles. The adaptive management protocol would address the two primary potential causes for interference with the eagles, direct disturbance and a loss of a food source.

The Bureau of Indian Affairs (BIA) has prepared this Environmental Assessment (EA) to analyze potential effects to physical, biological, and cultural resources that may result from Safety of Dams (SOD) repairs to Tsaile Dam on the Navajo Nation in Apache County, Arizona. The EA was prepared in accordance with the National Environmental Policy Act (NEPA), the Council on Environmental Quality Regulations (40 CFR 1500-1508), and the BIA NEPA handbook (59 IAM 3-H). BIA is the lead Federal agency pursuant to NEPA. The Navajo Nation Department of Water Resources (NNDWR), National Park Service (NPS), and U.S. Fish and Wildlife Service (USFWS) are cooperating agencies for the preparation of this document.

The Environmental Assessment (EA) was prepared by the Bureau of Reclamation, Phoenix Office, consultant for this project. Based on the information contained in the EA, it is determined that the Proposed Action will not have a significant impact on the natural or human environment. Therefore, in accordance with the National Environmental Policy Act (NEPA) and 102 (2) (c), an Environmental Impact Statement (EIS) will not be prepared.

The following references serve as basis for this decision and are incorporated in the EA document.

1. A scoping notice soliciting public comment on the proposed project was distributed to potentially interested individuals, organizations, and agencies on March 25, 2011. News releases regarding the proposal were also sent to 10 regional and state-wide news media outlets including the *Navajo Times* and *Arizona Republic*. Scoping comments were received from three people. The following environmental issues were considered in the planning process and contributed to the development of strategies to mitigate the impacts of construction:

    - potential effects to biological resources, including resident bald eagles
    - potential effects to flow in Tsaile Creek downstream of the dam
    - potential effects to cultural resources in Canyon Del Muerto
    - potential effects to downstream water users and canyon residents

2. Alternative course of action and mitigation measures have been developed in response to environmental concerns and issues. The EA discloses the environmental consequences of the proposed "preferred" action and a "no action" alternative (EA, page 8).

3. Water Resources: The new outlet works would have a maximum discharge capacity of approximately 120 cfs, which would meet SOD reservoir evacuation criteria. Routine operational discharges for the propose of adjusting levels or meeting downstream irrigation demand would be in the range of 5 to 20 cfs. The project would not affect drainage patterns in the area (EA, page 17).

4. Land Use: Following construction, pre-2004 reservoir levels would be restored. This would improve conditions for water-based recreation, water storage, and potential future irrigation releases (EA, page 19).

conditions that support the sport fishery by removing undesirable species of nonnative fishes and restoring a full pool.

12. Hazardous Material, Solid Waste, and Environmental Contamination: Use, storage, and disposal of hazardous materials and solid waste associated with construction have the potential to adversely affect the environment if these materials are improperly managed. In general, most potential impacts are associated with the release of these materials to the environment. Direct impacts of such releases would include contamination of soil, water, and vegetation, which could result in indirect impacts to wildlife, aquatic life, and humans.

13. Indian Trust Assets: Ground disturbances resulting from construction and contractor use would affect approximately 27.1 acres of land at the dam, spillway, staging area, and borrow areas Access to tribal land within active work areas would be controlled during construction to protect public safety and welfare.

14. Environmental Justice and Socioeconomic Considerations: Under the Proposed Action, there would be a minor, short-term economic benefit for local businesses that result from construction workers' expenditures on lodging and food. Most of the non-resident work force would likely commute from lodging venues in Chinle. In addition, there may be temporary construction-related employment opportunities for local residents.

15. Transportation: The proposed project would result in temporary closure of a 0.6-mile segment of BIA Road 8077 at Tsaile Dam. During construction, traffic would be diverted to a detour constructed along the north side of the spillway and upstream embankment of the dam. This detour would include a 25-foot wide driving surface designed to accommodate both construction traffic and public traffic at restricted speeds. Between the dam and Navajo Route 64, BIA Road 8077 would be used for construction haulage to avoid primary travel routes leading into the Dine College campus and residential areas north of the college.

CONCLUSION

The proposed action is the preferred alternative. It does not constitute a major federal action, which normally requires preparation of an environmental impact statement (EIS). The Proposed Action will not have a noticeable effect on the human environment. There are no unmitigated adverse impacts on public health, public safety, threatened and endangered species, and sites eligible for listing in the National Register of Historic Places, known ethnographic resources, or other unique characteristics of the region. No highly uncertain or controversial impacts, major cumulative impacts, unique or unknown risks, or elements of precedence were identified. Implementation of the action will not violate any tribal, federal, state, or local environmental laws.

Based on the foregoing, it has been determined that an EIS is not required for this project and thus will not be prepared.

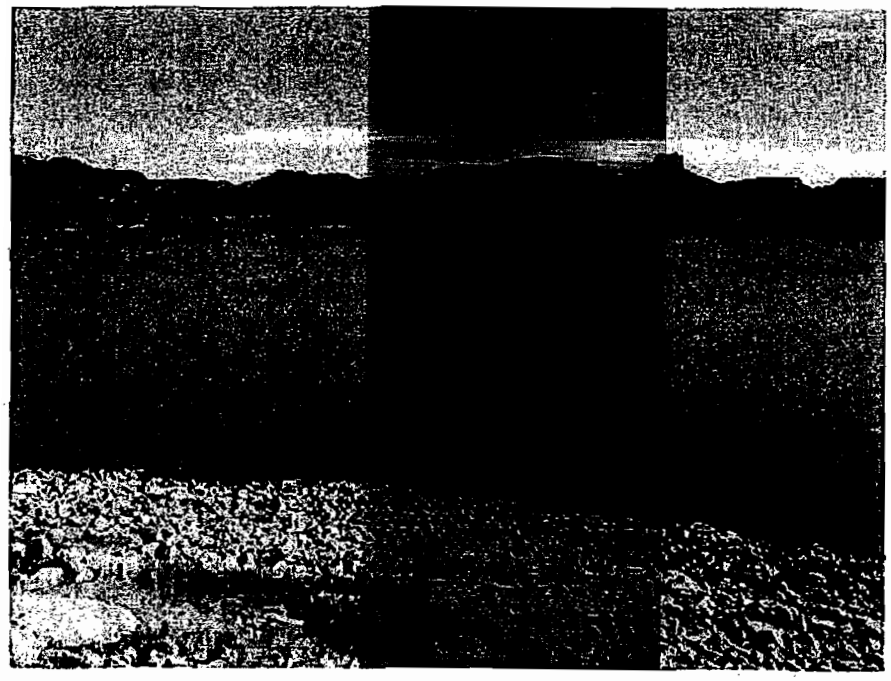
Regional NEPA Coordinator

3/12/2014
Date

Environmental Assessment

TSAILE DAM MODIFICATION

Safety of Dams Rehabilitation Project
Apache County, Arizona



U.S. Department of the Interior
Bureau of Indian Affairs
Navajo Regional Office
Gallup, New Mexico

December 2012

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CHAPTER 1 - PURPOSE AND NEED

1.1 INTRODUCTION

The Bureau of Indian Affairs (BIA) has prepared this Environmental Assessment (EA) to analyze potential effects to physical, biological, and cultural resources that may result from Safety of Dams (SOD) repairs to Tsaile Dam on the Navajo Nation in Apache County, Arizona. The EA was prepared in accordance with the National Environmental Policy Act (NEPA), the Council on Environmental Quality Regulations (40 CFR 1500-1508), and the BIA NEPA handbook (59 IAM 3-H). BIA is the lead Federal agency pursuant to NEPA. The Navajo Nation Department of Water Resources (NNDWR), National Park Service (NPS), and U.S. Fish and Wildlife Service (USFWS) are cooperating agencies for the preparation of this document.

1.2 BACKGROUND

The NNDWR and BIA propose to rehabilitate Tsaile Dam to correct verified SOD deficiencies that potentially threaten public safety. Tsaile Dam is situated inside the northeastern "indefinite" boundary of Canyon de Chelly National Monument along the western edge of the Chuska Mountains. Construction of the dam was completed in 1964 by the Navajo Nation to provide opportunities for water storage, recreation, and irrigation. In 1982 and 1983, the dam and spillway were modified to address seepage concerns related to the development of sinkholes on the downstream face of the embankment and inability of the spillway to pass the probable maximum flood.

Tsaile Dam has an "L" shaped embankment with a crest length of 1,950 feet and crest elevation (El.) of 7,041.0 feet.[1] Similar in many respects to other major dams on the Navajo Nation, Tsaile Dam consists of a riprap-armored earthen embankment, gated outlet works, and uncontrolled spillway. The outlet works consist of a 24-inch-diameter, asphalt-coated, corrugated metal pipe (CMP) with a concrete intake box located near the bottom of the reservoir at El. 6,992.3 feet. A 24-inch-diameter slide gate is located in the intake structure and is operated by a hydraulic hand pump placed inside a concrete vault on the upstream face of the dam. Maximum computed discharge capacity of the outlet works is 41 cubic feet per second (cfs) when the reservoir is at the spillway crest elevation of 7,033.1 feet.

The spillway is an uncontrolled 200-foot-long concrete ogee weir structure located adjacent to the right (north) abutment of the dam. A bedrock-bottomed approach channel connects the main body of the lake to the spillway. Discharges from the spillway re-enter Tsaile Creek a short distance downstream of the dam.

Tsaile Dam is operated by the NNDWR SOD Program. Because of safety concerns, a restriction was imposed in 2004 to keep the reservoir at or below El. 7,026.7 feet, or 6.4 feet below the normal reservoir water level. Due to the deteriorated condition of the CMP, the use of outlet works was suspended and its function replaced by two siphons that were installed in 1999 and 2000. These siphons regulate lake levels, maintain the existing drawdown, and provide reservoir evacuation capability.

[1] Elevations are based on NAVD 88

- *Inadequate access to the dam during spillway discharges.* The main access route (BIA Road 8077) to the dam passes through the spillway. This route cannot be used when the spillway is active. Other access routes exist but are on unimproved dirt roads that are often impassible during storm events.

1.4 PROJECT LOCATION

Tsaile Dam is located in the Tsaile/Wheatfields Chapter of the Navajo Nation near the community of Tsaile, Arizona (Figure 1). The outlet works is at UTM 12 S 661360 E, 4015860 N (NAD 83) (lat: 36.274217, long: -109.203494). The project area includes the dam, outlet works, spillway, a contractor use area north of the spillway, and two borrow areas along the south side of the reservoir (Figure 2).

1.5 PUBLIC INVOLVEMENT

The Council on Environmental Quality (CEQ) defines scoping as "... an early and open process for determining the scope of issues to be addressed and for identifying significant issues related to a proposed action (40 CFR 1501.7)." Scoping is an important underpinning of the NEPA process that encourages public input and helps focus the environmental impact analysis on relevant issues. Distribution of scoping information typically heralds the beginning of the public component of the NEPA process.

A scoping notice soliciting public comment on the proposed project was distributed to potentially interested individuals, organizations, and agencies on March 25, 2011. News releases regarding the proposal were also sent to 10 regional and state-wide news media outlets including the *Navajo Times* and *Arizona Republic*. Scoping comments were received from three people.

Public meetings were held at the Tsaile/Wheatfields Chapter House on May 17, 2011, and August 22, 2012. The meetings were attended by staff from the BIA, the NNDWR SOD Program, Reclamation, the NPS, and representatives and residents from the Tsaile/Wheatfields and Chinle chapters.

Several issues were identified from discussions among cooperating agency staff and the public. The following environmental issues were considered in the planning process and contributed to the development of strategies to mitigate the impacts of construction:

- Potential effects to biological resources, including resident bald eagles;
- Potential effects to flow in Tsaile Creek downstream of the dam;
- Potential effects to cultural resources in Canyon del Muerto; and
- Potential effects to downstream water users and canyon residents.

Draft EA. A draft EA was distributed to potentially affected or interested individuals and agencies for public review during a formal comment period from August 12, 2011 to September 14, 2011. The draft EA considered two action alternatives: (1) Alternative A (identified as the Preferred Action), which included sliplining the existing outlet works CMP, installing a new intake structure and a Type IV impact basin, and constructing a pedestrian bridge across the spillway; and (2) Alternative B, which included excavating the middle portion of the dam, removing and replacing the outlet works, installing a Type IV impact basin, and constructing a pedestrian bridge across the spillway. Both alternatives

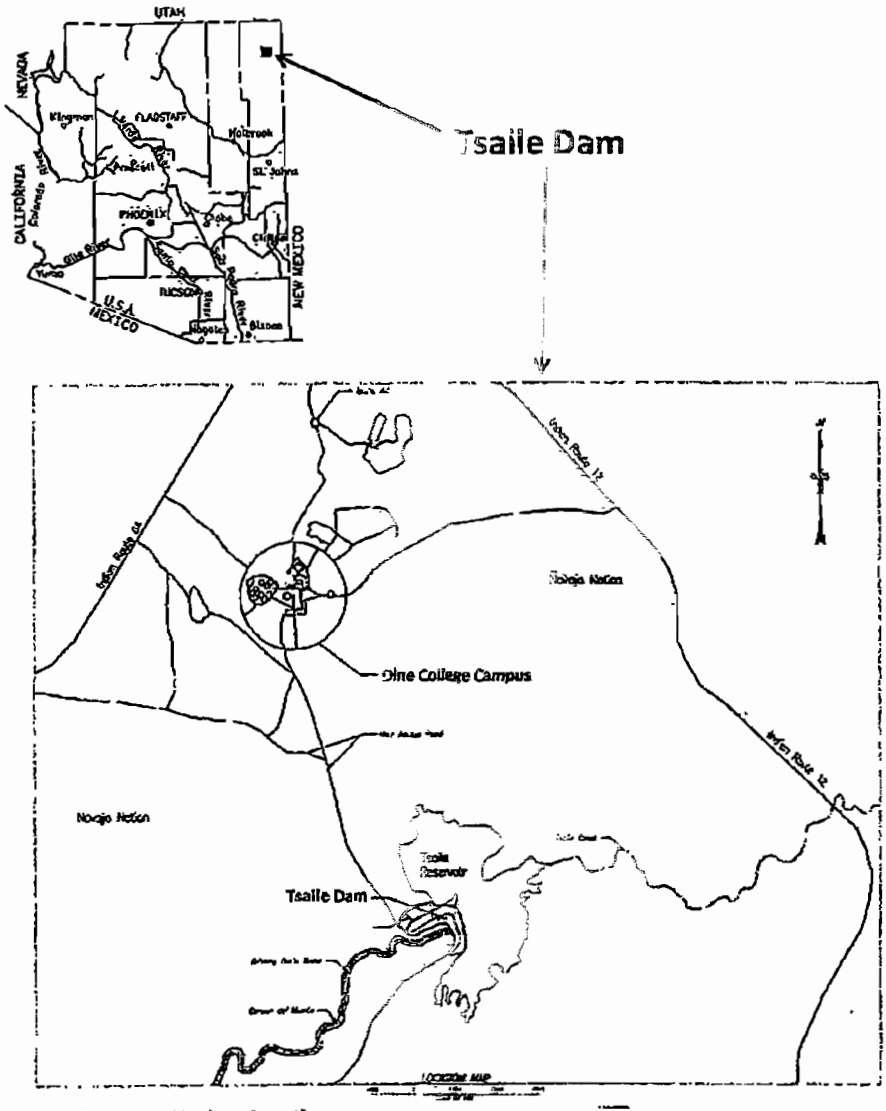

Figure 1. Project location map.

CHAPTER 2 - DESCRIPTION OF ALTERNATIVES

The EA analyzes one design alternative that satisfies the purpose and need for corrective action. No action is also considered. The proposed engineering design represents the culmination of an analytical process which identified safety issues (Reclamation 2005) and formulated recommendations for correcting the verified SOD deficiencies (Kleinfelder 2012a). Documentation of the design process and corresponding engineering decisions are located in the project file at BIA's SOD Program, Navajo Regional Office.

2.1 ALTERNATIVE A - NO ACTION

Section 102(2)(E) of NEPA requires that no action must be considered as an alternative in an environmental review whenever there are unresolved conflicts about the proposed action with respect to alternative uses of available resources. A description of "no action" is also customarily used in an EA to provide the baseline for comparison of environmental effects of the action alternatives against conditions that are representative of the status quo. As considered in this EA, if no action is taken, the repairs described in the Proposed Action would not be implemented and the status quo condition would persist. Without suitable corrective action, existing safety deficiencies will continue to be a concern for the foreseeable future. More restrictive operating requirements, such as additional drawdown of the reservoir, are possible if internal erosion of the embankment persists.

2.2 ALTERNATIVE B – PROPOSED ACTION

The following action is proposed to correct verified safety deficiencies and restore full operation of the outlet works and water storage capability of Tsaile Dam. Implementation of the Proposed Action would require approximately 12 months. Construction would commence in April 2014 and conclude by April 2015.

Dam Embankment Modification. Approximately 1,150 linear feet of the dam embankment would be removed and replaced with a zoned fill as shown in Appendix A. The existing embankment would be removed down to bedrock to correct potential foundation liquefaction and seepage. Material from the embankment excavation would be stockpiled, processed with additional borrow material, and reused for construction of the new embankment. Riprap would also be removed, stockpiled, and reused.
The bulk of the new embankment generally would be constructed within the footprint of the existing dam; however, the crest and downstream toe would shift approximately 90-100 feet downstream (Appendix A). Features of the new embankment include a 20-foot wide crest at El. 7,041, a 5-foot deep key trench, a low-permeability central clay core, clay to sandy clay upstream and downstream embankment shells, and a new filter and drain system with a downstream toe drain. Configuration of the downstream embankment would be similar in design to the action alternatives previously considered in the draft EA. Reconfiguration of the embankment with the proposed alignment would facilitate the following construction management practices:

- Utilize a 6-foot-high section (crest El. 7,016 feet) of the existing upstream embankment as a cofferdam to protect the work area. This would obviate the need to construct a cofferdam in the reservoir as was proposed in the draft EA.

logistical requirements identified during the mobilization phase of construction. The staging area would accommodate a field office, trailers, carpenter and metal fabrication shops, material and equipment storage, employee parking, sanitary facilities, and a small concrete batch plant if needed. Power would be provided by portable generators. Potable water would be transported to the site.

Dewatering. The proposed project would require evacuation of water from Tsaile Reservoir. Active pumping would be utilized with the existing siphons and outlet works to gradually drain the reservoir to El. 7,010 feet, which is the approximated surface elevation of the lakebed sediment. Drawdown would begin in January 2014 and continue until construction begins in April 2014.

2.3 ALTERNATIVES ELIMINATED FROM FURTHER CONSIDERATION

Several design alternatives were considered and eliminated because of anticipated higher cost or technical inferiority. Major alternatives considered and eliminated include:

- Remove Tsaile Dam. This was not considered to be a viable alternative because it would not meet the underlying need of the Navajo Nation for water storage on Tsaile Creek.
- Rebuild Tsaile Dam downstream of the existing structure. This alternative was rejected because it would be more expensive and have greater environmental impact with no technological advantage.
- Slipline the existing 24-inch diameter corrugated metal outlet works pipe with a grouted, a high-density polyethylene 20-inch diameter. Although this alternative was initially identified as the preferred action in draft EA, it was subsequently rejected because of technical issues involving the stabilization of eroded cavities within the embankment along the exterior of the existing outlet works CMP. In addition, this alternative severely limited the discharge capacity of the outlet works and thereby failed to satisfy reservoir evacuation criteria.

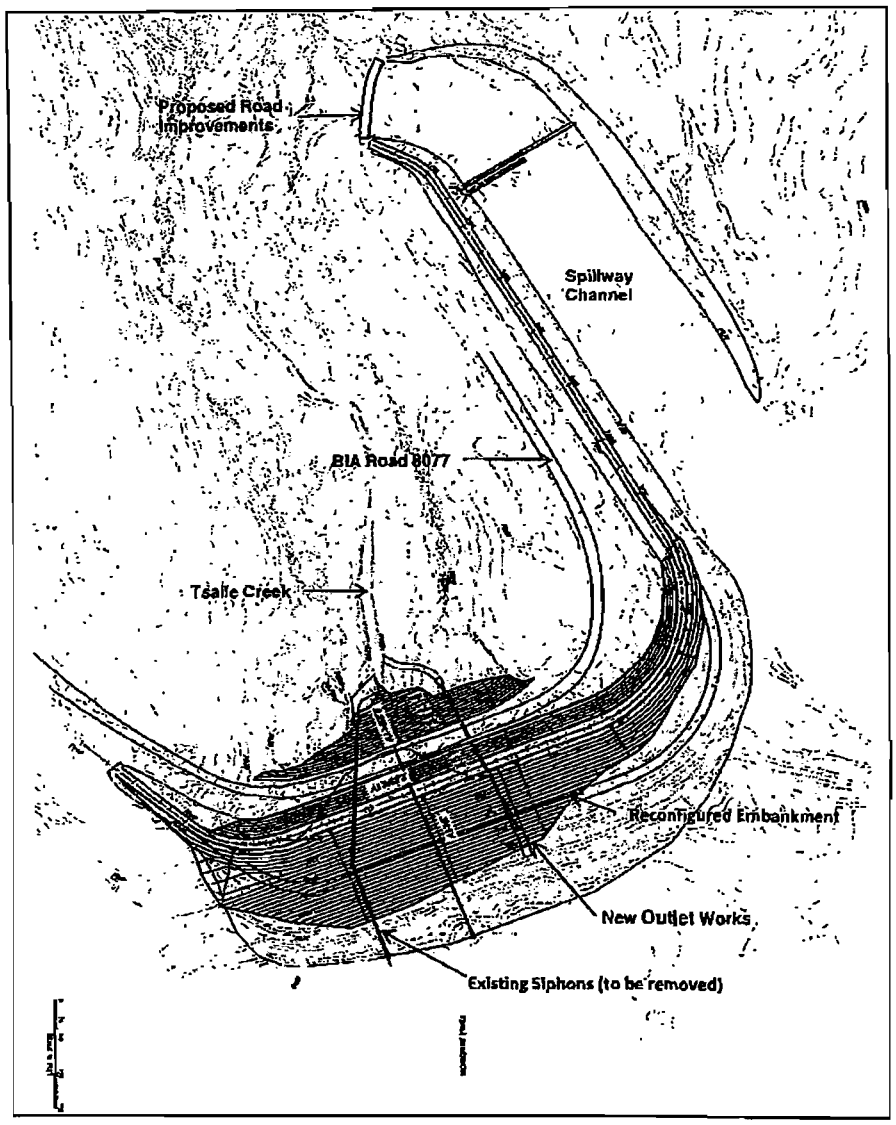

Figure 4. Proposed embankment configuration and outlet works.

Prior to 2000, operational releases from Tsaile Dam were made through the 24-inch diameter outlet works pipe. Due to significant deterioration of this pipe, routine use of the outlet works was suspended and its function replaced by two temporary siphons (12 and 16 inch diameter) that were installed in 1999 and 2000. These siphons have a combined discharge capacity of approximately 22 cfs (Figure 5). Portable pumps are sometimes used to supplement the siphons when inflows from snowmelt or storms raise the water surface above the restricted maximum operating elevation of 7,023 feet. Discharge volumes up to 114 cfs have been achieved through the combined use of pumps and siphons. Despite the current drawdown, significant inflows from high-level floods are still capable of filling the reservoir and spilling over the spillway (Figure 6), requiring the concerted use of siphons and pumps to lower the water surface to the restricted level.

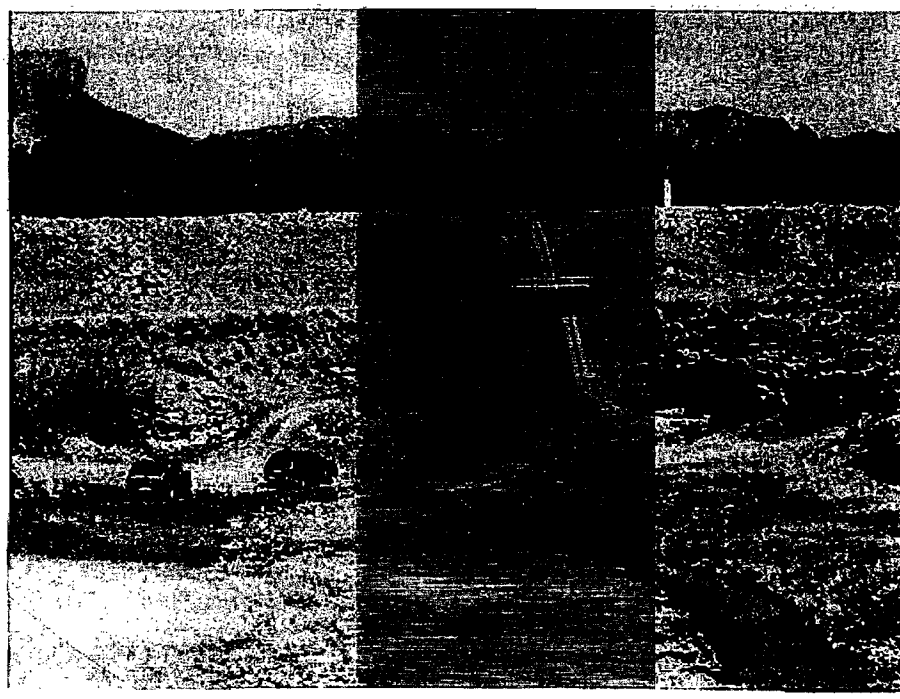

Figure 5. View of siphons on downstream embankment of Tsaile Dam. Siphons were discharging 22 cfs (April 2005).

the lower 24-mile reach of Tsaile Creek, which includes most of the Canyon del Muerto main stem, is intermittent.

3.1.2 Environmental Consequences

Alternative A - No Action

Under the No Action alternative, there would be no direct effect to water resources because no project would be implemented. Releases from the reservoir would continue to be made through the existing siphons. Active pumping would supplement the siphons to maintain the restricted water level when needed. In the long term, any additional drawdown of the reservoir would increase the surface-to-depth ratio (shallowness), increase the average water temperature, encourage aquatic plant production, and thereby induce conditions that are more eutrophic.

Alternative B - Proposed Action

Under the Proposed Action, active pumping would be utilized in concert with the existing siphons and the outlet works to drain the lake. More than 50 percent of the lake's hydraulic height down to El 7,015 feet could be drained with the siphons. The remaining pool to the lakebed elevation of 7,010 would be evacuated using pumps and the CMP outlet pipe, assuming the intake structure is not too deeply buried in sediment and the slide gate is operational. Use of the outlet works to evacuate a portion of the lower pool would provide cost savings to the project. No safety risk to the public or damage to the outlet works is anticipated as long as non-pressurized flow is released. The maximum non-pressurized discharge rate for the outlet works would be recalculated as head pressures decrease in response to decreasing water levels.

The reservoir would be gradually dewatered beginning in January 2014. Maximum discharge during dewatering would not exceed 22 cfs. Excavation of the embankment would begin once the reservoir is sufficiently drained. During construction, a pumping capability up to 22 cfs would be utilized to convey stream flow to Tsaile Creek downstream of the work area. If the CMP outlet pipe and gate are serviceable, pumping would be supplemented with gravity flow through the outlet works. Inflows in excess of 22 cfs would be temporarily stored behind the cofferdam and gradually pumped into the creek. These dewatering releases would provide relatively continuous stream flow that would contribute to recharge of shallow alluvial aquifer in Canyon del Muerto. Based on empirical evidence, discharges of less than 22 cfs from Tsaile Dam are not likely to affect channel stability or contribute to bank erosion in the canyon. If problematic conditions develop at particular flow rate, flows would be decreased until desirable conditions are achieved. In the event that flooding threatens to overtop the cofferdam, additional pumping capacity may be employed to protect the work area from inundation. The NPS and canyon residents would be notified prior to any increase in flows above 22 cfs. Once the reservoir is drained, stream flow would be pumped or diverted through CMP to Tsaile Creek downstream of the work area.

The U.S. Army Corps of Engineers (USACE) regulates the discharge of fill material to waters of the United States, pursuant to Section 404 of the Clean Water Act (CWA), and issues permits for actions proposed within such waters. Jurisdictional, non-tidal waters of the United States regulated by the

3.2 LAND USE

3.2.1 Affected Environment

Tsaile Reservoir is a popular recreational venue accessible from unpaved local roads that intersect Navajo Routes 12 and 64. Visitor use data compiled by eagle nest watch personnel in 2007 suggest that anglers (66.5 percent of visits), picnickers (10.5 percent of visits), and campers (7.8 percent of visits) are the primary user groups (Stephens and Rainbolt 2007). Recreation at the lake is administered by the Navajo Nation Department of Fish and Wildlife (NNDFW). There are no developed recreational facilities. Camping is allowed by permit along the shore. The reservoir is managed by NNDFW primarily as a nonnative sport fishery for trout and catfish. Public use of the reservoir occurs mostly in late spring to early fall. Winter freezing precludes most use during the coldest months of the year, although some ice fishing does occur.

The area encompassing Tsaile Reservoir consists of a patchwork of rangeland and pinyon-juniper/ponderosa pine forest. Land uses within this area include livestock (sheep and cattle) grazing and water-based recreation. Timber management areas are restricted to the upper watershed in the Chuska Mountains. A few agricultural fields of limited acreage are present along Tsaile Creek upstream of Navajo Route 12. Historically, Navajo farmers in the Tsaile area have planted corn, melons, squash, and beans, with the addition of alfalfa in the 20th century.

Tsaile Dam and about a third of the reservoir are situated in the "indefinite" boundary of Canyon de Chelly National Monument. In 2010, the NPS issued 21,973 permits to people (park visitors, guides, and some residents) entering the canyons of the national monument. An unimproved park road with several low-water crossings of Tsaile Creek affords vehicular access to tour groups and residents entering the lower 15 miles of Canyon del Muerto. More than 12,000 vehicle-based tours were conducted in the national monument in 2010. These tours enhance the visitor experience by providing direct exposure to the cultural and natural resources of the canyon.

Navajo homes and farms are scattered along the canyon floors of the national monument. Approximately 50 Navajo families reside in the monument's canyons on a seasonal basis (NPS 2005). Agricultural fields in Canyon del Muerto produce corn, squash, melons, alfalfa, and various fruits. These fields include both irrigated and dryland pastures, croplands, orchards, and fenced rangelands. Although farming is not as prevalent as it once was, this activity still occurs in parts of the canyon more than 8.5 miles downstream of Tsaile Dam. As late as 1997, approximately 44 of 486 cleared acres in the main Canyon del Muerto were irrigated with water supplied from 2 diversions (Pine Trail and Twin Trail Diversions) on Tsaile Creek (NRCS 2000)[3]. Approximately 72 percent of the cleared acres appeared to be historically dry land (NRCS 2000). The present-day acreage under cultivation within the monument has decreased to an estimated range between 150-200 acres. The NPS is attempting to

[3] In 1997, only two of eight diversions on Tsaile Creek were operating. In most years these diversions must be rebuilt or repaired prior to the beginning of the irrigation season.

Tsaile Dam is located at the head of Canyon del Muerto on the Defiance Plateau. The Defiance Plateau is formed from a sinuous monoclinal uplift which extends from Fort Defiance northward along the western slope of the Chuska Mountains. Nearly level or gently folded sedimentary rocks, incised by canyons, characterize the Defiance Plateau (NRCS 2000). Foundation bedrock at the dam site consists of upper Triassic period Chinle Formation course grey to light brown sandstone with minor amounts of shale and mudstone (Reclamation 2002).

Upland soils encompassing the project area are coarse textured, shallow to very shallow (4 to 20 inches), well-drained, and formed in residuum from sedimentary and igneous parent material. Unconsolidated alluvial deposits overlie bedrock within the floodplain, terraces, and fans of Tsaile Creek. Soils in the proposed borrow areas are predominately deposited in an alluvial setting, with lesser amounts of soil derived from weathered rock. The surficial alluvial deposits consist of clay with lesser amounts of sand, and gravel. Lakebed sediments (silt and clay) overlie the alluvium in the reservoir. In Canyon del Muerto, soils on the floodplain adjacent to Tsaile Creek consist of stratified sands with layers of fine and medium gravel over sandy clay, gravelly clay or silty clay.
Rangeland conditions vary throughout the Tsaile Creek watershed. Livestock grazing within the riparian zone and on upland slopes has reduced vegetative cover and accelerated storm runoff and sediment transport into Tsaile Reservoir and increased land erosion in Canyon del Muerto. The ecological condition of the riparian zone and the surrounding upland areas, accessible to livestock, ranges from poor to fair (NRCS 2000).

Land erosion patterns in Canyon del Muerto have been influenced by various natural and anthropogenic events in the watershed including runoff from the canyon rims, high-level stream flow including flooding from side canyons and releases from Tsaile Dam, agriculture, logging, the invasion of nonnative plants such as tamarisk and Russian olive, and the presence of roads and trails (NRCS 2000). Rapid heavy flows of water from side canyons and the upper watershed, continual shifting of water courses within the canyon, and severe bank cutting and down cutting of the stream bed have contributed to erosion of lands in the canyon (NPS 2005). Invasive plant infestations have seriously altered stream processes creating unnatural rates of channel incision and land erosion (NPS 2005). The NPS has implemented several programs in the monument's canyons to control land and stream bank erosion, including bank armoring and removal of tamarisk and Russian olive.

3.3.2 Environmental Consequences

Alternative A - No Action

Under the No Action alternative, there would be no direct effect to soils because no project would be implemented. Existing soil erosion and sedimentation trends in the project area would likely persist into the foreseeable future. Removal of non-native vegetation from drainages in the national monument is expected to have a long-term beneficial impact on fluvial processes in Canyon del Muerto.

Alternative B - Proposed Action

Construction (excavation, placement of fill, grading, material hauling, and installation of facilities) and staging would affect areas shown in Figure 2. The use of heavy equipment and materials during construction would result in temporary soil disturbances and compaction in the construction area. Soils

(*Rhus trilobata*). Other important shrubs include cliffrose (*Cowania mexicana*), Apache plume (*Fallugia paradoxa*), and fourwing saltbush (*Atriplex canescens*) (Brown 1994). Within the project area, the Great Basin Conifer Woodland generally occurs to the north and west of the reservoir.

Great Basin Desert Scrub. The Great Basin Desertscrub is the most northerly of the four North America deserts. Major plant dominants in this cold-adapted community include big sagebrush (*Artemisia tridentata*), blackbrush (*Coleogyne ramosissima*), and shadscale (*Atriplex confertifolia*). Species diversity is characteristically low in all major communities of this biome, with typically a dominant shrub occurring to the virtual exclusion of other woody species. Great Basin Desertscrub has evolved a distinct fauna. However, large ungulates are generally poorly represented. Pronghorn may occasionally use habitat coming over from adjacent grasslands. Reptiles are not as well represented in the Great Basin Desertscrub as in warmer biomes because of the desert's long, cold winters. Within the project area, Great Basin Desertscrub vegetation is generally limited to a large tract of land immediately north of the reservoir and isolated patches around the margin of the reservoir.

In addition to these major vegetative communities there is a 0.3-acre Juncus-dominated wetland approximately 160 feet downstream of the toe of the dam near the right abutment. Stands of Juncus and other vegetation in this wetland have been closely cropped to the ground by frequent grazing. The wetland vegetation relies on water from a small seep originating out of the base of a rock ledge. This seep is likely in part fed by water forced through the rock from the reservoir.

Riparian vegetation has not had the opportunity to develop adjacent to reservoir primarily due to the fluctuating water level. While recreation plays a role in limiting some non-riparian vegetation in the area, it is likely not the limiting factor preventing riparian vegetation colonization at the margins of the reservoir. Fluctuating water levels and wave action have created a scour ring around the reservoir that is mostly devoid of perennial vegetation.

3.4.2 Environmental Consequences - Vegetation

Alternative A - No Action

Existing habitat conditions and biological communities would persist into the foreseeable future unless SOD concerns require additional lowering of reservoir levels. Vegetative communities would continue to be affected by grazing, off-highway vehicle use, and recreational activities. Substantial additional, long-term drawdown of the reservoir due to embankment instability potentially would reduce flows to the seep below the dam and diminish wetland conditions.

Alternative B - Proposed Action

Impacts to vegetation would be primarily limited to areas where clearing and grubbing would result from construction. These areas are likely to include staging, stockpiling, borrow areas, and the area in the immediate vicinity of the dam. It is not anticipated that appreciable vegetation disturbance would be required for haul roads because construction traffic would generally use the existing road network or travel on the dewatered section of the reservoir bed.

(*Spermophilus variegatus grammurus*), Botta's pocket gopher (*Thomomys bottae*), northern pocket gopher (*Thomomys talpoides fossor*), deer mouse (*Peromyscus maniculatus*), pinyon mouse (*Peromyscus truei truei*), white-throated wood rat (*Neotoma albigula laplataensis*), North American porcupine (*Erethizon dorsatum couesi*), mule deer (*Odocoileus hemionus hemionus*), and badger (*Taxidea taxus*).

Gunnison's prairie dogs (*Cynomys gunnisoni*) occur in the project area. One small colony (<0.20 acre; 0.08 hectare) occurs at and below the full pool line of the reservoir. Although no prairie dogs were seen during a site visit it is assumed that this area has prairie dog activity because of the presence of burrows and other evidence. Based on documented Gunnison's prairie dog densities it is anticipated that this colony consists of less than 6 individual prairie dogs[4].

Reptiles and Amphibians. No known reptile/amphibian surveys have been conducted in the immediate vicinity of Tsaile Reservoir. During two site visits, terrestrial gartersnake (*Thamnophis elegans*) were found in the wetland below the dam. Surveys in the greater Canyon de Chelly National Monument area have documented common sagebrush lizard (*Sceloporus graciosus*) and plateau striped whiptail (*Aspidoscelis velox*). Amphibians documented in the national monument area include: tiger salamander (*Ambystoma tigrinum*), red-spotted toad (*Bufo punctatus*), and Woodhouse toad (*Bufo woodhousii*), canyon treefrog (*Hyla arenicolor*), and at least one species of spadefoot toad (*Spea* sp.).

3.4.4 Environmental Consequences - Wildlife

Alternative A - No Action

Under the No Action alternative, there would be no direct to wildlife because no project would be implemented. Existing habitat conditions and biological communities would persist into the foreseeable future unless SOD concerns require additional lowering of reservoir levels. Substantial additional drawdown of the reservoir due to embankment instability could result in continued decline of aquatic and shore habitat for wildlife. Additional drawdown of the reservoir would also reduce the available water for wildlife. This would reduce the shoreline and serve to concentrate the existing human recreation and wildlife uses of the reservoir resulting in increased interactions among wildlife, and between humans and wildlife.

The small existing prairie dog colony may occasionally become partially inundated if the reservoir exceeds its reduced operating level as the result of high inflows from Tsaile Creek. If future SOD concerns require additional lowering of the reservoir pool, this would in turn lessen the potential for inundation of the colony to the extent that the siphons and pumps are capable of handling these high inflows.

Alternative B - Proposed Action

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[4] Gunnison's prairie dog colony density reported in the literature varies from low of 1 prairie dog per acre to a high of 28 per acre (Lupis et al. 2007). Based on the size of the Tsaile colony (<0.20 acres) this colony could support between 0.2 prairie dogs and 5.6 prairie dogs.

2008). These 2007 surveys documented how Tsaile Creek below the dam is dominated by fathead minnow (325 captured) and by virile crayfish (*Orconectes virilis*) (15 captured), while the most prevalent native fish (bluehead sucker) only had 5 captured (Trammel 2008).

3.4.6 Environmental Consequences - Fish

Alternative A - No Action

Existing habitat conditions and biological communities would persist into the foreseeable future unless SOD concerns require additional lowering of reservoir levels. Substantial additional drawdown of the reservoir due to embankment instability could result in continued decline of aquatic habitat. In lieu of the proposed project, the NNDFW would rehabilitate the Tsaile fishery by removing goldfish and sunfish as discussed under cumulative impacts.

Alternative B - Proposed Action

It is anticipated that following dewatering, the reservoir would either be nearly dry or have a minimal pool that has significant potential to freeze solid during the winter. As a result of this drying or freezing, the existing lentic habitat would be substantially reduced or eliminated during construction. Tsaile Creek above the reservoir is perennial and flows at 2-3 cfs during low-flow periods. Because Tsaile Creek above Tsaile Reservoir is perennial, the outlet works CMP and/or pumps maintaining the drawdown during construction are also anticipated to maintain perennial flow in portions of Tsaile Creek below the dam. In the event that the drawn-down pool freezes, inflows to Tsaile Reservoir would continue to be pumped over the dam thereby maintaining flow in Tsaile Creek immediately below the dam.

Connected with this project, NNDFW proposes to translocate a portion of the sport fish (trout and catfish) from Tsaile Reservoir to a small unnamed lake approximately ½ mile to the east-northeast of the reservoir. In addition to this unnamed lake, sport fish may be opportunistically translocated to other water bodies in the greater Tsaile area as conditions allow. NNDFW may also adjust the take limit on the Tsaile fishery as the reservoir is being drawn down to prevent a large-scale fish kill.

At the completion of the project, during reservoir refilling, at least 0.2 cfs would be released through the outlet works to sustain a base flow in Tsaile Creek below the dam. Higher level flows would be periodically released to afford wetting of the stream channel further downstream. Once the reservoir is filled, seepage from the toe drain system would be sufficient to support base flow in the creek. After refilling, the NNDFW proposes to restock the reservoir with trout and catfish.

The impact on the fishery would persist for approximately 5 months during dewatering, 12 months during construction, and one spring during refilling. For fishery resource, there would be two summers before the reservoir appreciably refills and would be restocked.

Cumulative Effect

The NNDFW proposes to rehabilitate the Tsaile fishery with or without implementation of the Proposed Action. Under the Proposed Action, rehabilitation of the Tsaile fishery would be necessitated by

Species	Federal Status[2]	Navajo Nation Status[3]
Mule deer *(Odocoileus hemionus)*		Cultural, Economic
American band-tailed pigeon *(Patagioenas fasciata)*		4
Northern leopard frog *(Rana pipiens)*		2
Tree swallow *(Tachycineta bicolor)*		4
Black bear *(Ursus americanus)*		Cultural, Economic
Gooding's onion (Allium goddingii)	Candidate	3
Utah bladder-fern *(Cystopteris utahensis)*		4
Rhizome fleabane *(Erigeron rhizomatus)*	Threatened	2
Navajo bladderpod *(Lesquerella navajoensis)*		4
Navajo Sedge *(Carex specuicola)*	Threatened	3

1 Source: NNDFW 2011, Mikesic 2008, and USFWS county list at: http://www.fws.gov/southwest/es/arizona/Documents/CountyLists/Apache.pdf.

2 Federal Protection: Threatened = Threatened under the Endangered Species Act; Endangered = Endangered under the Endangered Species Act; Candidate = Candidate species listed under the Endangered Species Act; BEGPA= Bald and Golden Eagle Protections Act.

3 Navajo Protection: Navajo Nation Endangered Species List, September 2008 (refers to status on Navajo Nation): 1 = no longer occur on the Navajo Nation; 2 = Endangered – a species or subspecies whose prospects of survival are in jeopardy; 3 = Endangered - a species or subspecies whose prospects of survival or recruitment are likely to be in jeopardy in the foreseeable future; 4 = insufficient information on status of species or subspecies for listing as endangered; Economic = This species is of economic importance to the Navajo Nation; Cultural = This species is of cultural importance to Navajo Nation; EPA = covered by the Navajo Nation Eagle Protection Act.

American dipper. American dippers inhabit forested areas (spruce-fir, pine, and aspen) along fast flowing mountain streams at elevations 5,000 to 13,000 feet. Dippers usually forage in streams gleaning insects from bottom substrates. Territories are linear and reflect the nature of streamside habitat. American dipper nesting has been recorded in habitat adjacent to Wheatfields Creek and is likely also found on Tsaile Creek upstream of the project area on the slopes of the Chuska Mountains. Tsaile Creek in the project area does not provide habitat for the dipper because of the high disturbance, lack of forested areas along the stream near the reservoir, slow moving water, and a silty substrate without larger cobbles that American dippers require.

Sora. Sora prefer wetland habitat with shallow water and emergent vegetation including sedges and cattails. Sora typically nest in areas of wetlands with shallow to intermediate depth water and emergent vegetation. Sora breed throughout North America south to Arizona and New Mexico. Records of sora from the Navajo Nation include the Chuska Mountains, Morgan Lake and Tuba City. Within the project limits, there is no emergent vegetation suitable for use by the sora. Downstream of the project area in Tsaile Creek there is a small patch of emergent vegetation which is about 650 feet outside the construction footprint for the dam. There is a low potential of sora using this emergent vegetation due to its small size and isolation from other areas of emergent vegetation.

Three-toed woodpecker. Three-toed woodpeckers prefer spruce, fir, aspen, or mixed conifer forests above 8,000 feet with a significant numbers of snags. The only records from the Navajo Nation are from the Chuska Mountains with potential habitat also occurring on Black Mesa and Navajo Mountain (Mikesic 2008). At an elevation of approximately 7,000 feet the project area is below the known elevational range of the three-toed woodpecker on the Navajo Nation. Additionally, there are no mixed conifer forests in the construction footprint. Structurally suitable habitat in the form of ponderosa pine

the Navajo Nation (Mikesic 2008). Clark's grebes have not been documented on Tsaile Reservoir; however, the open water provides potential foraging habitat.

Northern saw-whet owl. Northern saw-whet owls generally prefer coniferous forests. The Arizona Breeding Bird Atlas documented northern saw-wet owls in Arizona primarily using mixed-conifer forests comprised of Douglas and white fir, ponderosa pine, Gambel's oak, and quaking aspen (Wise-Gervais 2005). Areas with a ponderosa pine overstory and a Gambel's oak understory are preferred to pure ponderosa pine stands (Wise-Gervais 2005). On the Navajo Nation, northern saw-wet owls have been documented in the Chuska Mountains, on Black Mesa, and on Defiance Plateau (Wise-Gervais 2005).

Bluehead sucker. This native fish typically occupies lotic habitats featuring moderate to fast flowing water above a rubble-rock substrate. The bluehead sucker has been recorded in Tsaile and Wheatfields creeks.

Yellow-billed cuckoo. The yellow-billed cuckoo's western U.S. "distinct population segment" was listed as a candidate species on July 25, 2001 (66 FR 38611). Western yellow-billed cuckoos breed in dense willow and cottonwood stands in river floodplains. On the Navajo Nation, this species is only known from several sections of the San Juan River. Potential for breeding may also occur along the Little Colorado and Colorado Rivers, within Canyon de Chelly National Monument, Chinle Valley, and other canyons or streams with appropriate habitat (Mikesic 2008). Tsaile Reservoir and the project area lack suitable cuckoo habitat.

Blue grouse. Blue grouse inhabit all major mountain ranges of the western United States and Canada, including New Mexico and Arizona. In Arizona, blue grouse is confined to suitable habitat above 8,500 feet. On the Navajo Nation, blue grouse has been recorded only in the Chuska Mountains. Structural vegetation diversity is a major determinant of habitat suitability for blue grouse. The species nests primarily in mixed conifer forests, especially those dominated by Douglas fir with varying amounts of aspen and possibly ponderosa pine. Winter habitat is almost exclusively montane conifer forests composed of fir or spruce and occasionally pinyon pine (Mikesic 2008). Although blue grouse are known for the Chuska Mountains, Tsaile Reservoir at approximately El. 7,000 feet is significantly below the species' elevational range in Arizona; therefore, blue grouse are not anticipated to occur in the project area.

Yellow warbler. Yellow warblers are riparian obligate breeders that generally nest in lower elevations, although they have been occasionally documented nesting above 7,000 feet (Wise-Gervais 2005). On the Navajo Nation the yellow warbler has not been documented breeding but potential habitat exists in Canyon de Chelly National Monument, along the San Juan River, and other areas (Mikesic 2008). Migration habitats include mainly semi-open scrub or shrublands and second-growth forests, often associated with wetlands. The project area lacks stands of potentially suitable riparian vegetation therefore yellow warbler are not anticipated to occur in the project area.

Southwestern willow flycatcher. The southwestern willow flycatcher was listed as endangered on February 27, 1995 (60 FR 10694), with critical habitat proposed on November 12, 2004 (69 FR 60705). This neotropical migratory species breeds in the southwestern United States from approximately early May to late August and migrates to Mexico, Central America, and possibly northern South America during the nonbreeding season (Sogge et al. 1997). The historical range of the southwestern willow

or dead, or any part, nest, or egg thereof." The Act defines "take" as "pursue, shoot, shoot at, poison, wound, kill, capture, trap, collect, molest or disturb." "Disturb" is further defined by regulation as: "to agitate or bother a bald or golden eagle to a degree that causes, or is likely to cause, based on the best scientific information available, 1) injury to an eagle, 2) a decrease in its productivity, by substantially interfering with normal breeding, feeding, or sheltering behavior, or 3) nest abandonment, by substantially interfering with normal breeding, feeding, or sheltering behavior."

During certain breeding stages (incubation, young nestlings, and nestlings near fledging), human activity near a bald eagle nest can cause abandonment and/or failure (Anthony et al. 1994, Grubb and King 1991, Grubb et al. 2002, in Driscoll et al. 2006). Recreation affects bald eagle foraging as well. Breeding adults need foraging areas without constant human activity to capture prey successfully.

Bald eagle nesting near Tsaile Reservoir was discovered during the 2006 breeding season (Table 3). From 2006 through 2009 the pair successfully used the same nest (Nest 1). In 2010, the pair built and used a second nest (Nest 2) 770 meters farther from the reservoir within a stand of ponderosa pines. After the eagles arrived during the 2011 breeding season they initially investigated both nests prior to renesting in Nest 2.

Both nests are in areas that are appreciably higher in elevation than the project area. Nest 1 is partially visible from portions of construction footprint and is about 680 meters away from the nearest edge of the construction footprint. The current Nest 2 is farther from the construction footprint at 1.43-kilometers and is not visible. During the 2007 breeding season a pair of nest watchers was stationed in the area observing Nest 1. The nest watchers observed the first signs of incubation on February 22, hatch was on April 1, and the fledge date was after May 6 (Stephens and Rainbolt 2007).

Table 3. Tsaile bald eagle nest summary.

Year	Nest Number	Status	Total Fledged
2006	1	Successful	2
2007	1	Successful	2
2008	1	Successful	2
2009	1	Successful	2
2010	2	Successful	2
2011	2	Successful	2
2012	2	Successful	2

Tsaile Lake is typically frozen and not functioning as a food source from early December to late February or early March. During 2007, nest watchers observed the reservoir beginning to thaw in early March and it was fully thawed by March 16 (Stephens and Rainbolt 2007). On March 6-11, nest watchers noted other nonresident bald eagles using the reservoir. These additional eagles were not observed prior to March 6 or after March 11; however, migratory eagles are known to use Tsaile Reservoir along with other lakes in the greater Tsaile area with regularity.
The bald eagle pair is known to use fish in Tsaile Reservoir and Gunnison's prairie dog colonies as their primary food source. Additional documented sources of food include Wheatfields Reservoir, Canyon del Muerto, road kill, and prey brought from other undocumented areas.

Black-footed ferret. The distribution and life history of the black-footed ferret is closely associated with large prairie dog communities (>80-hectares). Historically, there are only two known specimens of black-footed ferrets from Arizona, and the general impression is that this species was not common or abundant (Hoffmeister 1986). Currently, the Arizona Game and Fish Department (AGFD) and the USFWS have attempted to introduce experimental populations of black-footed ferrets into the wild near Seligman, Arizona (~220 miles west of Tsaile). Natural populations of black-footed ferret probably became extirpated in Arizona about 1938. No critical habitat has been designated for this species in Arizona. The absence of sufficient sized prairie dog towns for the black-footed ferret in the action area precludes the possible occurrence of black-footed ferrets.

American band-tailed pigeon. Band-tailed pigeons are primarily summer residents of Arizona; however, during years where food resources are ample a few tend to remain in southeastern Arizona. Band-tailed pigeons prefer moister mixed conifer forests including those dominated by Douglas fir, white fir, and ponderosa pine. Of these forest types fewer reports occurred in pure ponderosa pine forests (Martin 2005). On the Navajo Nation band-tailed pigeons are known from the Chuska Mountains (Mikesic 2008). The nearest suitable habitat is about 500 meters away; however, this is monotypic ponderosa pine which is not the preferred habitat of mixed conifer and would likely only be used on a transitory basis.

Northern leopard frog. The northern leopard frog was listed on the Navajo Endangered Species List in 1997 as a result of negative surveys at historic sites in the Chuska Mountains. Geographically widespread declines or local extirpation of leopard frog populations have been noted in New Mexico and Arizona over the last several decades. Predation and competition by nonnative species (primarily crayfish, bullfrogs, and fishes), pollution, and random fluctuations in small populations are a few of numerous potential causes of these declines. Throughout its range, the northern leopard frog is found in permanent water bodies that support aquatic vegetation, including irrigation ditches, streams, rivers, ponds, lakes, wetlands, and wet meadows. On the Navajo Nation, the historic range included the Chuska Mountains; Little Colorado, Colorado and San Juan Rivers; Navajo and Chinle Creeks; and areas near Tuba City, Cameron, Thoreau, and Newcomb. Most of these populations are now extirpated (Mikesic 2008). Northern leopard frogs are not known from within Canyon de Chelly National Monument (NPS 2005). Recent repeated surveys have not documented leopard frogs in Tsaile Creek or the reservoir (Chad Smith, NNDFW, pers. comm.).

Tree swallow. Tree swallows were traditionally considered a winter and migratory species in Arizona. In recent years tree swallows have begun to expand their breeding range further into Arizona (Corman 2005). Tree swallows typically nest near water at 6,100 and 9,400 feet in mixed conifer forests and montane conifer dominated drainages (Corman 2005). On the Navajo Nation, tree swallows are known from the Chuska Mountains (Mikesic 2008).

Gooding's onion. This species occurs within mixed conifer and spruce-fir forests in moist, shady canyon bottoms and north-facing slopes at elevations ranging from 6,400 to 11,250 feet; often along streams. Soils which support Gooding's onion are basaltic or rhyolithic with the upper horizon composed of loamy alluvium with a high organic content. In the Chuska Mountains, this species is also found in oak thickets interspersed with aspen, dogwood, and Douglas fir. Distribution on the Navajo Nation consists of the Chuska Mountains and Canyon de Chelly National Monument. Potential distribution includes the Chuska Mountains and Defiance Plateau on sites with suitable ecological and edaphic conditions (Mikesic 2008). There are no mixed conifer and spruce-fir forests in moist, shady

resources in the reservoir and would impact special status species that utilize the reservoir as a resource. Temporary and permanent construction impacts from ground disturbance would not occur.

Alternative B - Proposed Action

Sora. The project area does not support suitable habitat for the sora. Within the project limits there is no emergent vegetation suitable for use by the sora. Downstream of the project area in Tsaile Creek there is a small patch of emergent vegetation that is more than 600 feet outside the construction footprint for the dam. This patch would not be impacted by construction and would be protected in place. No adverse impacts to sora are anticipated.

Mexican spotted owl. The project area does not contain suitable roosting or nesting habitat for the Mexican spotted owl. This species has not been recorded in the project area, although stands of pinyon-juniper habitat and ponderosa pine in adjacent areas potentially could be used by winter transients for foraging. Loss of approximately 0.8 acres of pinyon-juniper would not be expected to affect winter foraging due to the abundance of similar habitat in surrounding areas. The nearest known Mexican spotted owls are approximately 3 miles downstream. No effect to the Mexican spotted owl is anticipated.

Western seep fritillary. The area downstream of Tsaile Dam has the potential for marginally suitable western seep fritillary habitat to exist. Within the project area, however, the damp margins of Tsaile Creek are highly disturbed and devoid of suitable host plants. According to NPS (2005), habitat for the western seep fritillary does not exist in the Canyon de Chelly National Monument. Additionally, the construction footprint only includes disturbance in the area immediately below the dam. No adverse impacts to the western seep fritillary are anticipated because of the negligible amount of disturbance to marginally suitable habitat and low potential for western seep fritillary use.

Golden Eagle. No golden eagle nests occur adjacent to Tsaile Reservoir. Golden eagles nesting in Canyon de Chelly would primarily forage in the more expansive open area adjacent to the lower and deeper canyon because of its closer proximity to suitable nesting habitat. The abundance of foraging habitat closer to known nests would preclude any impact from the minor temporary loss of foraging habitat or from any temporary construction related disturbance. No adverse impacts to the golden eagle are anticipated. Furthermore, the project would not result in direct take of an eagle; or would not result in disturbance of an eagle to the extent that it would agitate or bother to a degree that causes, or is likely to cause, injury, a decrease in productivity, or nest abandonment in violation of the Bald and Golden Eagle Protection Act.

Clark's grebe. Clark's grebes have not been documented on Tsaile Reservoir; however, the open water provides potential foraging habitat. Due to a lack of submerged or emergent vegetation bordering Tsaile Reservoir there is no suitable nesting habitat. The project has a potential to temporarily impact Clark's grebes by reducing the potential foraging habitat through drawdown of the reservoir and through noise associated with construction. Since there is no recorded use of Tsaile Reservoir by Clark's grebe it is anticipated that these potential impacts would be nonexistent to negligible.

Northern saw-whet owl. Northern saw-whet owls have not been documented at Tsaile Reservoir and no habitat exists within the construction footprint. Potential habitat in the form of ponderosa pine forest

The Guidelines set minimum distances of construction to the nest depending on the type of activity, the occurrence of other similar activities in the area, and the visibility of the activity from the nest. Minimum distances range from a high of 660 feet (Category B activities with no similar activities within 1 mile of the nest, where the activity would be visible from the nest) to a low of 330 feet (Category A activities with similar activities within 1 mile of nest, where the activity would not be visible from the nest).

The edge of the Tsaile construction footprint would be 4,700 feet from the active nest (Nest 2) and 2,220 feet from the alternate nest (Nest 1). Consequently, the project would provide at minimum over three times the maximum buffer specified in the Guidelines even if the eagles return to Nest 1.

In 2008, the Navajo Nation enacted the Navajo Nation Golden and Bald Eagle Nest Protection Regulations (Regulations). These Regulations are similar in style to the USFWS National Bald Eagle Management Guidelines, but are more restrictive while still offering flexibility of modification on a case-by-case basis by the NNDFW. The Regulations define level of activities as brief, light, heavy, or loud. Brief activities are activities that persist for up to 1 hour per day and involve only personnel and passenger or maintenance vehicles. Light activities are activities that persist for up to 1 day in the same general area and involve up to 5 vehicles (including 3 construction vehicles) and 10 personnel. Heavy activities are activities that exceed light activities and include actions such as road construction. Loud activities exceed the normal base-level of construction noise and include activities that would not occur on the proposed project during the breeding season such as blasting or rock crushers.
The Regulations set minimum distances between February 1 and July 15 for each type of activity. Light activities are permissible at a distance greater than 800 meters from the nest. Heavy activities are permissible at a distance greater than 1 kilometer from the nest. Loud activities are permissible at a distance greater than 1.2 kilometers from the nest.

The edge of the construction footprint would be 1.43 kilometers from the active nest (Nest 2), or 0.43 kilometers beyond the restrictive buffer established under the Regulations for heavy activities. Vegetation consisting of ponderosa pine occupies approximately 59 percent (0.85 kilometers) of this distance. This vegetation would attenuate sound emitted by construction equipment and provide a visual barrier. Consequently, no impact from construction noise or activity is anticipated if the eagles continue to use Nest 2.

Approximately 0.68 kilometers separate Nest 1 from edge of the construction area (borrow area). Construction activities within 1 kilometer of Nest 1 would consist entirely of standard borrow area activities involving the use of bulldozers, excavators, or scrapers. If the eagles return to Nest 1, it is possible that construction may have little direct effect due to the habituation of the eagles to human activities at the reservoir, which include recreation and mechanized farming. Additionally, the distance from Nest 1 to the edge of construction (2,220 feet; 0.68 kilometer) is over three times the 660-foot maximum buffer specified in the Guidelines, but would be within the 1 kilometer specified by the Regulations. Although construction related activities may be of a similar nature to the existing farm tractor use, which is more proximate to the nest, it is possible that the Tsaile eagles will have a different level of tolerance for these activities. In the event that the eagles return to Nest 1, construction activities would be sequenced to avoid areas within the 1-kilometer buffer between February 1 and July 15.
If blasting is required for the project it would only be conducted outside the nesting season of February 1 and July 15, unless NNDFW and USFWS, in advance, determine that the proposed blasting could occur without impact to the eagles.

and the availability of numerous perches at these resources, it is likely that the eagles would adapt to these new food sources.

It is anticipated that other existing food resources (prairie dogs, etc.) in conjunction with the fish stocking efforts would at least in part offset the temporary reduction of foraging resources at Tsaile Reservoir during the three breeding seasons it is drawn down or partially drawn down for construction and refilling. It is also anticipated that there would be additional benefits associated with the fish stocking. Among these additional benefits are multiple new food sources that have significantly less human recreational disturbance and have more abundant hunting perches at their margins.
Periodic site visits to Tsaile Reservoir would be conducted prior to the eagles nesting each year in order to monitor the date of arrival, their status, the use of food resources, and to document any potential construction related impacts. Corrective action would be taken in consultation with NNDFW and USFWS if these visits document construction related impacts.

If the eagles return to nesting in Nest 1, then construction within 1 kilometer of Nest 1 would cease until the nest fledges, fails, or if NNDFW and USFWS determine that this buffer is no longer needed. In effect this would result in temporarily cessation of operations at the borrow area. Other construction activities would be outside the buffer and would not be affected. It is assumed that if this buffer around Nest 1 is established other non-construction related activities including farming and recreation would continue within this buffer as these are not within control of the project.

Nest watchers trained and staffed by NNDFW, or at NNDFW discretion nest watchers trained and staffed by AGFD, would monitor the Tsaile pair each nesting season during drawdown, construction, and refilling. The nest watchers would arrive onsite at a date to be set each year by NNDFW and USFWS based on past and anticipated site conditions.

Nest watchers would monitor the bald eagles for actual and potential impacts associated with the project and for other potential impacts not associated with construction including those associated with recreation, agriculture, or fishing line entanglement. If the nest watchers document impacts to the eagles, corrective action would be taken in consultation with NNDFW and USFWS. At the discretion of NNDFW, this corrective action may also involve assistance by AGFD. Nest watchers as part of their normal activities would be able to educate recreational users about bald eagles thereby helping over the long term to reduce public impacts to the eagles.

Part of the nest watchers activities would include monitoring of the eagles to determine if they are encountering problems as a result of lack of food resources. Nest watchers are able to determine by behavior if problems are being caused by a lack of food resources, providing sufficient time to allow for supplemental feeding if needed (Kenneth Jacobson, AGFD, pers. comm.). Nestwatchers would compare behavior with typical behavior of southwest bald eagles and with the previously documented behavior of the Tsaile pair. During incubation the nestwatchers would look for extended periods between nest exchanges or the total amount of time that the nest is left unattended. Both of these are signs that the adults are spending extended periods foraging for food. During nestling stage, the nestwatchers would look for nest absences, extended time between feedings, and reduced prey deliveries. These are standard techniques that are regularly used by nestwatchers to document lack of food resources. Most recently, in 2011 these techniques documented the Ladders breeding area suffering from a lack of food which

would be no discernable agitation on the part of the eagle. This indicates that an act such as reducing available food resources on its own would not necessarily qualify as "take" under the Bald and Golden Eagle Protection Act.

A failed nesting attempt with eggs or nestling that occurs as directly caused by the project reducing the total number of available food resources would likely constitute "take" under the Bald and Golden Protection Act. Despite implementation of the nestwatchers, the stocking program, the supplemental feeding program, and the other mitigation measures it is still a possibility that the eagles will not behave in manner documented by supplemental feeding studies and accept the supplemental food. In the unlikely event that these eagles do not accept supplemental feeding it is possible they may suffer failed nesting in one or more years. While this outcome may be a small possibility it is not considered "likely to occur" as specified by the Bald and Golden Eagle Protection Act (50 CFR § 22.26 (e)(1)).

Based on compliance with the USFWS Guidelines and Navajo Nation Regulations regarding eagle disturbance; the tolerance of the Tsaile pair; and the aforementioned adaptive management program including supplemental feeding, it is not reasonably anticipated that the project would result in direct take of an eagle, or would result in disturbance of an eagle to the extent that it would agitate or bother to a degree that causes, or is likely to cause, injury, a decrease in productivity, or nest abandonment in violation of the Bald and Golden Eagle Protection Act.

It is believed that the adaptive management program, by providing nestwatchers, would further protect the eagles from non-construction related impacts that they normally would not be protected from. Despite these measures, the project intends to provide further assurances that the project will comply with the United States Code and its implementing regulations by applying for a Bald and Golden Protection Act Permit. The project also intends on applying for any authorization required by the Navajo Nation.

American band-tailed pigeon. The construction footprint does not contain suitable habitat for the band-tailed pigeon. The nearest suitable habitat is about 1,600 feet away; however, this is monotypic ponderosa pine which is not the preferred habitat of mixed conifer. Substantial stands of more suitable mixed conifer exist outside the project area at higher elevations in the Chuska Mountains. No impact to the American band-tailed pigeon is anticipated.

Northern leopard frog. Tsaile Reservoir lacks the habitat heterogeneity that is necessary to sustain viable leopard frog populations. Fluctuating water levels have created expansive banks that are devoid of cover. The absence of shallow water with emergent vegetation – a key element for leopard frog breeding – combined with abundant predatory trout, catfish, and crayfish precludes the possible occurrence of this species in the reservoir. Tsaile Creek downstream of Tsaile Dam does have vegetated margins, but it is dominated by nonnative fish and crayfish likely precluding anything more than transient leopard frog populations as repeated surveys have not documented leopard frogs. Additionally, flows in Tsaile Creek below the dam during construction would remain perennial. After construction, seepage from the toe drain system would be sufficient to support continuous base flow in the creek. No impact to the northern leopard frog is anticipated.

Tree swallow. The construction footprint does not contain suitable nesting habitat for tree swallows. The nearest suitable nesting habitat consists of a stand of ponderosa pine approximately 500 meters away;

resources in the area include petroglyph and pictograph sites, agricultural sites, resource procurement and processing sites, and a variety of habitation sites, located in caves and overhangs in walls of the canyons and in the canyon bottoms and on the mesa tops, and include small single- and multiple-room masonry surface structures and larger masonry pueblos. Historic Navajo and structures and features are also found in the canyons and along the mesas tops. Several areas within the monument are traditionally important to the Navajo.

Historic stream bank erosion caused by various natural and anthropogenic events has threatened archaeological sites, burials, and agricultural fields along the floor of Canyon del Muerto and other canyons in the national monument. As early as the 1930s, efforts to control stream bank erosion have been successfully implemented near several key archaeological sites (NPS 2005). However, land erosion continues to threaten many cultural resource sites.

Between 2003 and 2010, Reclamation completed four Class III (intensive) cultural resource surveys encompassing approximately 90 acres at Tsaile Dam and areas north and south of Tsaile Reservoir. The Class III surveys included the construction impact areas shown on Figure 2. Site maps and records at the Navajo Nation Historic Preservation Department (NNHPD) were checked prior to the surveys. No cultural resources were recorded in the area of potential effect, and a NNHPD official indicated that Traditional Cultural Properties were not a concern in the project area. No significant cultural resources and only a couple of isolated lithic flakes were identified by the four surveys.

3.5.2 Environmental Consequences

Alternative A - No Action

Under the No Action alternative, there would be no direct effect to cultural resources since no project would be constructed or implemented. Erosion from a variety of sources would continue to threaten significant cultural resources in Canyon del Muerto.

Alternative B - Proposed Action

Under the Proposed Action, there would be no direct impact to significant cultural resources. The NNHPD concurred with Reclamation's no effect determination for activities associated with construction. No areas of traditional cultural importance or areas of specific tribal concern have been identified in the area of potential effect.

Water releases from Tsaile Dam during dewatering operations would be monitored and adaptively controlled to ensure that they do not contribute to stream bank erosion or other changes in channel morphology that have the potential to adversely affect cultural resources in Canyon del Muerto.

Following construction, BIA and NNDWR would work collaboratively with NPS staff to ensure that routine operational releases from Tsaile Dam do not adversely affect cultural resources in Canyon del Muerto.

Cumulative Effects

There would no cumulative effect to cultural resources.

3.6.2 Environmental Consequences

Alternative A - No Action

Under the No Action alternative, there would be no direct effect to air quality because no project would be implemented. No changes in land use are expected in the project area that would contribute to long-term changes in air quality.

Alternative B - Proposed Action

During construction, sources of air pollution include increased air-borne particulate matter from ground disturbances and tailpipe emissions from equipment. Tailpipe emissions would persist only during equipment operation. Primary sources of fugitive dust would include earth moving associated with construction of the stability berm, and fill material extraction and stockpiling. Increases in road dust would also be generated by construction traffic using unpaved haul roads. Soils that are destabilized by ground-disturbing activities would likely become a passive source of wind-blown dust until stabilization efforts can be implemented. No long-term adverse impact to air quality would result.

The operation of construction equipment would generate minor amounts of engine combustion products such as nitrogen and nitrous oxides, CO_2, carbon dioxide, and reactive organic gases. These emissions would not produce measurable changes in ambient concentrations of regulated pollutants or result in a change in attainment status for the air quality region. Direct emission of CO_2-equivalent GHGs from the proposed project would be substantially below the level considered by CEQ to be relevant in a NEPA evaluation.

Cumulative Effects

Particulate and gaseous exhaust emissions (including GHGs) from the proposed project would be cumulative to pollutants emitted from other natural and anthropogenic events into the atmosphere. The small quantities of pollutants released during construction would have a negligible, short-term cumulative effect on local air quality or global processes that lead to climate change. There would be no direct, indirect, or cumulative effect on Class I airsheds or nonattainment areas.

3.7 HAZARDOUS MATERIAL, SOLID WASTE, AND ENVIRONMENTAL CONTAMINATION

3.7.1 Affected Environment

Use, storage, and disposal of hazardous materials and solid waste associated with construction have the potential to adversely affect the environment if these materials are improperly managed. In general, most potential impacts are associated with the release of these materials to the environment. Direct impacts of such releases would include contamination of soil, water, and vegetation, which could result in indirect impacts to wildlife, aquatic life, and humans.

No sites contaminated with hazardous solid wastes are known to occur within or near the project area (http://www.epa.gov/enviro). The occurrence of illegal residential dumps and landfills may occur within the watershed; however, no dumps/landfills have been documented in close proximity to the project. Residential waste from Navajo homes primarily consists of paper, glass, plastics, ashes, food wastes,

All hazardous substances used during implementation of the proposed project would be stored and handled in accordance with Federal and tribal regulations. Any spills or leaks of hazardous material would require immediate corrective action and cleanup to minimize the impact on sensitive resources. Spills would be reported immediately to the appropriate tribal and Federal agencies.

If on-site storage of lubricants and fuels occurs during construction, these materials would be placed in temporary, clearly marked, above-ground containers which would be provided with secondary containment. Storage of fuels by the contractor would comply with the Navajo Nation Underground and Aboveground Tank Act. Construction equipment would be maintained and inspected regularly. Any soil contaminated by fuel or oil would be removed and transported to an approved disposal site. Hazardous materials and other hazardous substances that are used in construction would be disposed of in accordance with applicable laws and regulations. Excess or unused quantities of hazardous materials would be removed upon project completion. Although hazardous waste[11] generation is not anticipated, any such wastes produced during construction would be properly containerized, labeled, and transported to an approved hazardous waste disposal facility. All nonhazardous waste materials including construction refuse, garbage, sanitary waste, and concrete would be removed from the work area and transported to an approved disposal facility.

Sampling of general water quality parameters by the NNEPA has not identified conditions that threaten human health or aquatic life in Tsaile Reservoir. The presence of high methylmercury concentrations in water or fish is not anticipated based on environmental characteristics of the reservoir (i.e., no extensive wetlands and the presence of a relatively cold and deep water column) relative to water bodies in the region that have been shown to have high methylmercury levels. In addition, sampling of lakes in contiguous watersheds has not detected levels of methylmercury that pose a risk to human health.

Cumulative Effects

Appropriate hazardous material management and waste disposal would obviate any cumulative effect on the environment.

3.8 INDIAN TRUST ASSETS

3.8.1 Affected Environment

Indian trust assets are legal interests in property held in trust by the United States through the Department of the Interior for federally recognized Indian tribes or individual tribal members. Examples of things that may be trust assets are lands, mineral rights, hunting, fishing, or traditional gathering rights and water rights. The United States, including all of its bureaus and agencies, has a fiduciary responsibility to protect and maintain rights reserved by or granted to Indian tribes or individual tribal members by treaties, statutes, and Executive Orders. This trust responsibility requires that all Federal agencies, including Reclamation, ensure their actions protect trust assets. Secretarial Order 3175 (incorporated into the Departmental Manual at 512 DM 2) requires that the potential impacts of DOI bureau actions on Indian trust assets, and tribal health and safety, must be addressed in planning and

[11] Hazardous waste is defined in 40 CFR 261.

Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," was issued by the President of the United States on February 11, 1994. This order established requirements to address Environmental Justice concerns within the context of agency operations. As part of the NEPA process, agencies are required to identify and address disproportionately high and adverse human health or environmental effects on minority or low-income communities. Federal agencies are directed to ensure that Federal programs or activities do not result, either directly or indirectly, in discrimination on the basis of race, color, or national origin. The order also requires that "the responsibilities set forth shall apply equally to Native American programs."

Data obtained by the U.S. Census Bureau from the 2005-2009 American Community Survey (ACS) indicate that minority populations comprised primarily of American Indians represent a majority of the total population in the project area and Apache County (Table 4). The American Indian populations in Census Tract (CT) 9441 (96.5 percent), CT 9442 (95.0 percent), and Apache County (74.9 percent) were significantly higher than the percentage for the State of Arizona (4.6 percent). For the purpose of this EA, the American Indian residents of the Tsaile (CT 9441) and Chinle/Canyon del Muerto (CT 9442) areas constitute the only protected populations in the project area.

Table 4. Income and poverty statistics.

Socioeconomic Attribute	CT 9441 (Tsaile Area)	CT 9442 (Chinle/Canyon del Muerto Area)	Apache County	Arizona
Population	4,940	7,156	68,318	6,204,965
American Indian	96.5%	95.0%	74.9%	4.6%
Median Household Income	$23,198	$20,132	$28,387	$50,296
Per Capita Income	$7,453	$10,167	$11,614	$25,203
Persons Below Poverty	47.7%	50.4%	36.8%	14.7%
Families Below Poverty	51.4%	35.5%	28.5%	10.5%

Source. U.S. Census Bureau, 2005-2009 American Community Survey.

Data from the ACS indicate that per capita and median household incomes were substantially lower, and poverty levels were substantially higher, in the two census tracts than the State of Arizona. In the Chinle/Canyon del Muerto area, a slight majority of individuals (50.4 percent) live below the poverty level. These data are indicative of the economic challenges facing Navajo residents of the Tsaile and Chinle areas.

3.9.2 Environmental Consequences

<u>Alternative A - No Action</u>

Under the No Action alternative, there would be no direct effect to low-income or minority populations because no project would be implemented. Any additional loss of reservoir storage due to enhanced

BIA maintained highways and unpaved roads carry the bulk of regional and local traffic in the project area. Navajo Route 64 and 12 link local roads in the Tsaile area with Chinle, Window Rock, and I-10. BIA Road 8077, which crosses Tsaile Dam, is the only maintained road that serves residences along the south rim of Canyon del Muerto. This road is also a school bus route for the Chinle Unified School District Number 24.

BIA Road 8077 presently crosses the downstream portion of the spillway channel. There are no culverts in the channel; consequently, use of Road 8077 to access Tsaile Dam or residential areas south of the dam is precluded when substantial flows are present in the spillway.

The lower 18-mile segment of Canyon del Muerto is served by a single primitive road that begins near the national monument's visitor center and terminates approximately 8.5 miles downstream of Tsaile Dam. This meandering road traverses the bed of Tsaile Creek multiple times and provides the only vehicular access into the canyon for concessionaire-lead tours and residents. It also provides the only land-based route for delivery of emergency medical services. Vehicular access is precluded when high-level stream flows inundate low-water road crossings. Prolonged high-level flows can also seriously damage the crossings, necessitating repairs by the NPS.

3.10.2 Environmental Consequences

Alternative A - No Action

Under the No Action alternative, there would be no indirect effect on transportation because no project would be constructed or implemented. Existing transportation patterns would persist in the project area and Canyon del Muerto.

Alternative B - Proposed Action

The proposed project would result in temporary closure of a 0.6-mile segment of BIA Road 8077 at Tsaile Dam. During construction, traffic would be diverted to a detour constructed along the north side of the spillway and upstream embankment of the dam. This detour would include a 25-foot wide driving surface designed to accommodate both construction traffic and public traffic at restricted speeds. Between the dam and Navajo Route 64, BIA Road 8077 would be used for construction haulage to avoid primary travel routes leading into the Dine College campus and residential areas north of the college (Figure 7).

Dewatering releases during construction would be monitored to ensure vehicular access into Canyon del Muerto is not impeded and low-water crossings are not damaged. If access is hampered at a particular flow rate, flows would be decreased until desirable conditions are achieved.

The segment of BIA Road 8077 that crosses Tsaile Dam would be permanently relocated along a new alignment on the downstream embankment. This new road segment would be designed in accordance with BIA road standards for road width, curve radii, super elevation, surfacing, and drainage. Proposed roadway improvements in the spillway include excavation of rock to lower the channel invert at the road crossing and installation of concrete box culverts designed to pass a spillway discharge equivalent

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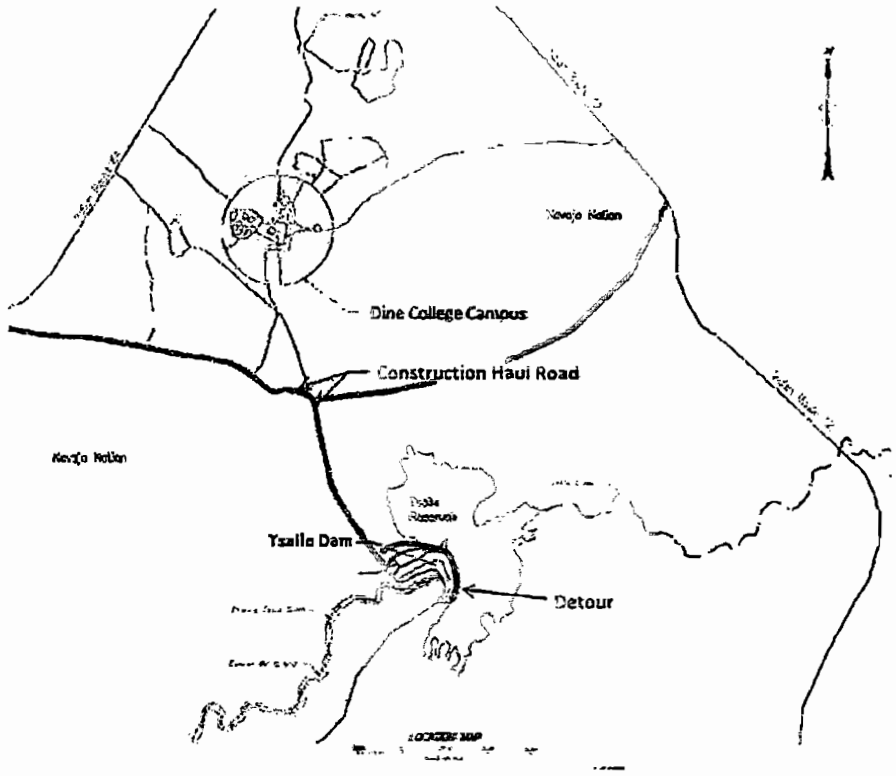

Figure 7. Construction detour and haul routes.

CHAPTER 5 - AGENCIES AND PERSONS CONSULTED

Reclamation submitted information on the proposed project to the following entities during development of the EA. The names of individuals are retained in the administrative record.

List of Agencies and Persons Contacted

Chinle Unified School District No. 24, Transportation Department
Dine College
Hopi Cultural Preservation Office
Navajo RC&D
Navajo Nation Environmental Protection Agency
Navajo Nation Parks and Recreation Department
Navajo Nation Department of Fish and Wildlife
Navajo Nation Historic Preservation Department
Navajo Nation Land Department
Navajo Nation Chinle Chapter
Navajo Nation Many Farms Chapter
Navajo Nation Tsaile/Wheatfields Chapter
U.S. Army Corps of Engineers

Cooperating Agencies

Navajo Nation Department of Water Resources
National Park Service
U.S. Fish and Wildlife Service

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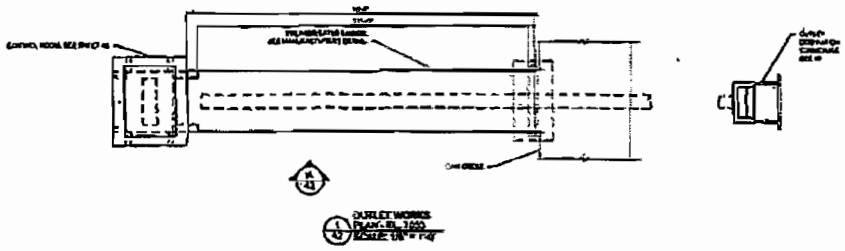
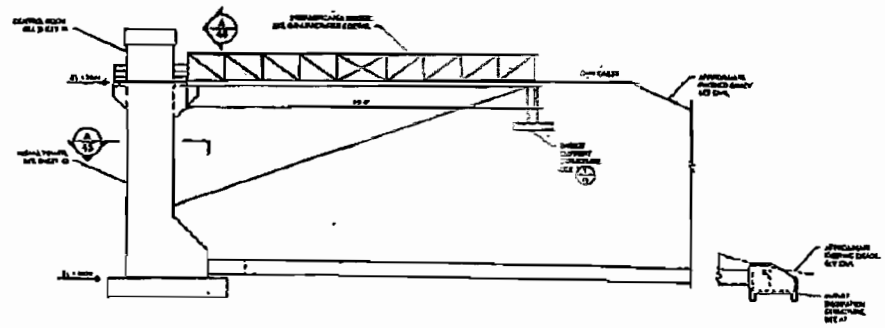
Wise-Gervais, C. 2005. Yellow-warbler. In. Corman, T. E. and C. Wise-Gervais (Eds.). Arizona Breeding Bird Atlas. University of New Mexico Press, Albuquerque, New Mexico. pp. 468-469.

APPENDIX B

Intake Tower





APPENDIX D
Public Comment on the Draft EA and BIA's Response

impact to the water quality of the Tsaile Creek

8. The use of Rotenone pesticide must meet the requirements as set with the NNEPA Pesticide Program. The NNEPA Pesticide Program staff can be reached at 928/871-7815/7810.
9. If there is a need to store fuel on site, the aboveground storage tank is subject to meet the Nation's Aboveground/Underground storage Act and regulations. The NNEPA UST Program staff can be reached at 928/871-7995/7763.
10. Pursuant the Navajo Nation Comprehensive Environmental Response, Compensation and Liability Act approved by the Navajo Nation Council, CF-07-08, February 26, 2008, the NN CERCLA includes 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) unlike the US CERCLA or the Superfund Law and mandates petroleum owner, operator and generator 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.
11. 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, OBR at 928/871-7188 to report hazardous waste spills as defined according to the NN CERCLA.
12. If heavy equipment fuels (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.
13. Construction hours will need to be implemented due to the close vicinity to the housing and school development. The hours are Summer: 7 AM – 7 PM; Winter: 8 AM – 4:30 PM.
14. Will the proposed action include in improving existing access roads for the Tsaile Dam and for the construction activities? The access roads must also acquire the 101 permit.
15. The safety of road traffic is strongly recommended due to the close vicinity of the Tsaile community.
16. The mitigation measures must be implemented in the Best Management Plan, the Mining/Reclamation Plan and also trained to the contractors at the pre-construction meeting(s).
17. The draft EA did not discuss if the sediment under the surface of the water will be dredged. There is a concern of sediment contamination existing due to upstream land use.
18. The draft EA will need to discuss the geotechnical and soil sampling data of the Tsaile Lake.
19. There could also be upstream landfills and/or open illegal waste dump areas near the Tsaile Lake that will need to be addressed in the draft EA.
20. A request was suggested to seek a potential snake habitat in the Tsaile area. The name of the snake is unknown but it could be a endangered or habitat impact.

If there are any questions, you may contact me at 928/871-7188. Thank you.

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.: Tsaile Dam Modification - TCE Two Year Extension

DESCRIPTION: The BIA SOD requests a 2-year extension of the 160.24-acre TCE for the completion of the Tsaile Dam Modification project. Construction is expected to be completed by DEC 2015.

LOCATION: Section 10 & 15, T33N, R29E, G&SRBM, Tsaile, Apache County, Arizona

REPRESENTATIVE: Pearl Chamberlin, Acting Division Chief, Engineering and Technical Support Division and Chuck Nixon, Hydraulic Engineer, Safety of Dams Engineering & Technical Support Division, Bureau of Indian Affairs-Navajo Region.

ACTION AGENCY: Bureau of Indian Affairs, Navajo Region

B.R. REPORT TITLE / DATE / PREPARER: EA-Tsaile Dam Modification/DEC 2012/USDOI BIA NRO

SIGNIFICANT BIOLOGICAL RESOURCES FOUND: Areas 1, 3, & 6. The project is within a Raptor Sensitive Area (RSA). HALE EO within 1,450 ft. of TCE boundary. BIA SOD will contact the USFWS to determine whether the 2-year extension may result in non-purposeful take of Bald Eagles with eggs or nestlings. The NNDFW will hire a biological monitor for nest activity in 2015. Monitoring of the nest will begin on 11 MAY 2015.

POTENTIAL IMPACTS

NESL SPECIES POTENTIALLY IMPACTED: [1] Haliaeetus leucocephalus (Bald Eagle), G2, GBENPR, BGEPA, MBTA.

FEDERALLY-LISTED SPECIES AFFECTED: NA

OTHER SIGNIFICANT IMPACTS TO BIOLOGICAL RESOURCES: NA

AVOIDANCE / MITIGATION MEASURES: [1] FONSI states that an adaptive management protocol would be followed to manage impacts to the Bald Eagle.

CONDITIONS OF COMPLIANCE*: NA

FORM PREPARED BY / DATE: Pamela A. Kyselka/11 APR 2014; amended on 05 MAY 2015

COPIES TO: (add categories as necessary)

☐ _____ ☐ _____

2 NTC § 164 Recommendation:	Signature	Date
☒Approval ☐Conditional Approval (with memo) ☐Disapproval (with memo) ☐Categorical Exclusion (with request letter) ☐None (with memo)	Gloria M. Tom, Director, Navajo Nation Department of Fish and Wildlife	5/5/15

*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

NNDFW Review No. EOR001656

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.: Tsaile Dam Modification TCE

DESCRIPTION: Proposed temporary construction easement (TCE) consisting of 160.24± acres to correct dam safety deficiencies. Total disturbance for the proposed project would be 4.18 acres.

LOCATION: Tsaile Lake, Apache County, Arizona

REPRESENTATIVE: Howard Draper, Project Review Section, Navajo Land Department

ACTION AGENCY: Bureau of Indian Affairs, Navajo Region

B.R. REPORT TITLE / DATE / PREPARER: EA-Tsaile Dam Modification/DEC 2012/USDOI BIA NRO

SIGNIFICANT BIOLOGICAL RESOURCES FOUND: Areas 1, 3, & 6. The project is within a Raptor Sensitive Area (RSA). HALE EO within 1,450 ft. of TCE boundary.

POTENTIAL IMPACTS

NESL SPECIES POTENTIALLY IMPACTED: [1] Haliaeetus leucocephalus (Bald Eagle), G2, GBENPR, BGEPA, MBTA.

FEDERALLY-LISTED SPECIES AFFECTED: NA

OTHER SIGNIFICANT IMPACTS TO BIOLOGICAL RESOURCES: NA

AVOIDANCE / MITIGATION MEASURES: [1] FONSI states that an adaptive management protocol would be followed to manage impacts to the Bald Eagle.

CONDITIONS OF COMPLIANCE*: NA

FORM PREPARED BY / DATE: Pamela A. Kyselka/11 APR 2014

COPIES TO: (add categories as necessary)

☐ _____ ☐ _____

2 NTC § 164 Recommendation:	Signature	Date
☒Approval	David Mikesic	4/14/14
☐Conditional Approval (with memo)		
☐Disapproval (with memo)	Gloria M. Tom, Director, Navajo Nation Department of Fish and Wildlife	
☐Categorical Exclusion (with request letter)		
☐None (with memo)		

*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
HISTORIC PRESERVATION DEPARTMENT
PO Box 4950, Window Rock, Arizona 86515 Tel (928) 871-7148 Fax (928) 871-7886

CULTURAL RESOURCE INVENTORY DETERMINATION FORM

FEB 19 2013

SPONSOR: Pearl Chamberlin	NNHPD NO: HPD-13-026
ADDRESS: BIA Navajo Region Safety of Dams	PROJECT NO.: None
PO Box 1060, Gallup, New Mexico 87305	UNDERTAKING: Tsaile Dam Rehabilitation Project

REPORT TITLE: *Approval for the Temporary Construction Easement (TCE) for the Tsaile Dam Rehabilitation Project, Tsaile, Apache County, Arizona*

NAVAJO NATION HISTORIC PRESERVATION DEPARTMENT RECOMMENDATIONS:

A Cultural Resources Compliance Form (CRCF) is not included in this "archaeological approval" due to the nature of sensitive cultural resources documented. This in no way affects any authority of the NNHPD-Cultural Resource Compliance Section to issue an "archaeological approval" for this undertaking. A cultural resource inventory survey is not required for the reason(s) indicated below:

○	The proposed project is located within an area that has been previously inventoried for cultural resources and documented in the NNHPD report listed above. The previous archaeological inventory found that "No Historic Properties will be Affected" within the area of this undertaking. Archaeological approval is hereby granted for the undertaking within the area noted in attachment(s).
●	Previous ground disturbance within the last fifty (50) years has modified the surface so extensively that the likelihood of finding any cultural properties is negligible (e.g., within a flood plain).
	Attachment A (Request from BIA)
	Attachment B (Plan map/Aerial view)
	BIA was proposing to rehabilitate the existing Tsaile Dam when a Traditional Cultural Property (TCP) was verbally identified.
	In the vicinity of the project area, the TCP was a broken pot that was returned to nature after it had cracked/broke during
	an Enemy Way ceremony several years ago. After a site visit and a meeting with BIA Safety of Dams, Navajo Nation Safety of
	Dams and NNHPD, we all agreed that "avoidance" of the TCP will be best measure. All construction will be restricted to
	the TCE; an orange temporary fence will be erected across the canyon downstream of the dam avoid the TCP by a minimum of
	of 50-ft.
○	Undertaking will not require any surface disturbing activities (e.g. aerial spraying, hand application of chemicals, travel on existing roads, etc).
○	Other:

Reviewed by: Tamara Billie, Senior Archaeologist	DATE: January 22, 2013
NOTIFICATION TO PROCEED RECOMMENDED:	YES ☑ NO ☐
Navajo Nation Historic Preservation Department	DATE: 1-22-13
NAVAJO REGIONAL APPROVAL:	YES ☒ NO ☐
Acting Regional Director, Bureau of Indian Affairs	DATE: 2/7/13

TLM 2.6.13

DISCOVERY CLAUSE

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 928.871.7148.

United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
Navajo Region
P. O. Box 1060
Gallup, New Mexico 87305

TAKE PRIDE IN AMERICA

N461/WRSD

JAN 18 2013

RECEIVED
JAN 18 RECD
H.P.D.
CRCS

Tamara Billie
Cultural Resources Compliance Section
Navajo Nation Historic Preservation Department
P.O. Box 4950
Window Rock, Arizona 86515

Subject: Tsaile Dam Rehabilitation Project – Unverified Cultural Sensitive Site

Thank you for working with the BIA Safety of Dams program in defining the next steps for the unverified cultural site downstream of the Tsaile Dam. Per our discussion in our meeting on Wednesday, January 16, 2013, the best way to move forward on the unverified cultural site is to avoid the area.

Enclosed is a map that shows a plan-view of the Temporary Construction Easement for the Tsaile Dam Rehabilitation Project Site. The construction will be restricted only to this area and contractors will be instructed to stay within this area. There will be no disturbance beyond this Temporary Construction Easement. To further define this area, an orange fence can be erected across the canyon downstream of the dam. Note that the small triangle around the potential cultural site to avoid any disturbance at that location.

In addition, an archeological Survey may not be required since this area has been disturbed when the dam facility was constructed in 1964, and other rehabilitation project was done in 1982 and 1983.

If you should have any questions, please call me at (505)863-8393.

Sincerely,

Pearl Chamberlin
BIA Navajo Region Safety of Dams

cc: Ray Benally, NN Water Resource
Brenda Hatathlie, NN Safety of Dams

Bureau of Indian Affairs

Navajo Region Safety of Dams

Tsaile Dam Modification Project

Project Description:

Tsaile Dam is located near Tsaile, AZ, a 51 foot high dam that impounds the flow from Tsaile Creek, and sits at the entrance to Canyon Del Muerto within the Canyon de Chelly National Monument. The Tsaile Dam Modification is being undertaken to correct dam safety deficiencies that pose an unacceptable risk to people and resources downstream of the dam in Canyon de Chelly and Chinle, AZ.

Catastrophic failure of Tsaile Dam, with the water level at the embankment crest, would threaten Navajo residents and tourists throughout the entire length of Canyon del Muerto within Canyon de Chelly National Monument. Flooding would also affect low-lying areas near Chinle. The NPS estimates there are approximately 80 Navajo families that reside in the monument's canyons on a seasonal basis. In addition, as many as 3,400 tourists may enter the canyons in some months. Rapid evacuation of canyon residents and tourists during a catastrophic failure of Tsaile Dam would be nearly impossible.

The embankment will be removed, the dam foundation will be excavated to bedrock, a new embankment will be built with a center line 90-100 feet downstream, and a new outlet works will be built in the right abutment. To facilitate construction, the upstream toe of the old dam will be used as the foundation for a cofferdam to control Tsaile Creek flows and protect the work site. A temporary road will reroute traffic on Indian Road 8077 from a berm on the old dam to the cofferdam until the road is rebuilt as part of the new dam.

Currently, the Tsaile Dam has been operated with restricted water elevation in the reservoir, which impacts downstream users. With BIA Tsaile Dam Rehabilitation project completion, the reservoir will be refilled without restriction to benefit the Navajo Nation and local community. Downstream users will be able to depend on the supply of water from the reservoir.

Tsaile/Wheatfields Chapter
Post Office Box 667
Tsaile, Arizona 86556
Phone: (928) 724-2220 Fax: (928) 724-2223

Tsehile Todziah Tsezhini

Zane R. James, President
Charles R. Chee, Grazing Committee

David Kelelay, Vice President

Maggie R.S. Begay, Secretary/Treasurer
Nelson Begaye, Council Delegate

TWFY13-130

**RESOLUTION OF THE
TSAILE/WHEATFIELDS CHAPTER #038**

SUPPORTING THE TSAILE DAM REHABILITATION AND RESPECTFULLY REQUESTING THE BUREAU OF INDIAN AFFIARS SAFETY OF DAMS TO EXPEDITE THE DAM REHABILITATION PROJECT SO THAT LOCAL FARMERS ECONOMIC LIVELIHOOD CAN BE RESTORED.

WHEREAS;

1. Pursuant to Navajo Nation Council Resolution No. CJ-20-55, dated December 2, 1955, the Tsaile/Wheatfields Chapter is vested with authority and charged with the responsibility to promote, protect and preserve the interest and general welfare, including the health and safety of its community people; and
2. The Indian Self-Determination Act (P.L. 93-638) of the U. S. Congress and Local Governance Initiatives entities and support us, Navajo Indians, in initiating plans making decisions, recommendation, request, etc., according to our actual needs and desires; and
3. The Tsaile/Wheatfields Chapter supports the Tsaile Dam Rehabilitation; as a result, Bureau of Indian Affairs Safety of Dams has put the rehabilitation project on priority for funding and contract; and
4. The Tsaile/Wheatfields Chapter has an established Farm Board to oversee farming activities and ensure optimum utilization and to protect the rights and interests of all farm land within Tsaile and Wheatfields Community; and
5. The Tsaile/Wheatfields Farm Board approves the Tsaile Dam Rehabilitation and is in good standing with the Chapter; and
6. The local farmer's livelihood in the Canyon De Chelly is at a standstill with no irrigation system and the annual crops that is use to thrive during the growing seasons.

NOW THEREFORE BE IT RESOLVED THAT:

1. The Tsaile/Wheatfields Chapter hereby approves the supporting of the Tsaile Dam rehabilitation project and respectfully requesting the Bureau of Indian Affairs Safety of Dams to expedite the Dam Rehabilitation Project so that local farmer's economic livelihood can be restored.

CERTIFICATION

I, hereby certify the foregoing resolution was duly considered by the Tsaile/Wheatfields Chapter at a duly called meeting at Wheatfields, Arizona at which a quorum was present and the same was passed by a vote of 27 in favor, 00 opposed, and 11 abstained on this 23rd day of December, 2012.

Motion by: Dorothea Litson Second by: Joann Kinsel

Zane James, President

PROPOSED RESOLUTION OF
THE RESOURCES and DEVELOPMENT COMMITTEE OF THE
NAVAJO NATION COUNCIL

Approving a Temporary Construction Easement for US Bureau of Indian Affairs for construction of the Tsaile Dam Modification project located at and adjacent to Tsaile lake, Apache County, Arizona.

WHEREAS:

1. Pursuant to 2 N.N.C. §§ 500, the Resources and Development Committee is hereby established as a standing committee of the Navajo Nation Council; and

2. Pursuant to 2 N.C.C. § 500 B 2(a), the Resources and Development Committee grants final approval for all land withdrawals, non-mineral leases, permits, licenses, rights of way, surface easements and bonding requirements on Navajo Nation lands and unrestricted (fee) land. This authority shall include subleases, modifications, assignments, leasehold encumbrances, transfers, renewals, and terminations; and

3. The US Bureau of Indian Affairs (BIA), 301 West Hill Street, Gallup, New Mexico, has submitted a temporary construction easement (TCE) for construction of the Tsaile Dam modification project on, over and across Navajo Nation Trust Lands located at and adjacent to Tsaile Lake, Apache County, Arizona attached hereto and incorporated herein as Exhibit "A"; and

4. The proposed temporary construction easement (TCE) consists of 160.24 acres, more or less, of Navajo Nation Trust Lands located in Sections 10 and 15, Township 33 North, Range 29 East, G&SRMB, Apache County, Arizona and the location is more particularly described on the survey map attached hereto and incorporated herein as Exhibit "B" out of the 160.24 acres, 95.90 acres are new acreages and the remaining are existing acreage within the dam area; and

5. The Project Review Section with the Navajo Land Department has obtained the necessary consents from the affected land user (i.e. grazing permittee) and is attached hereto and made a part hereof as Exhibit "C"; and

6. BIA plans modification improvements to the existing Tsaile Dam and requests all rents and fees be waived since the improvements will benefit the tribe; and

7. The environmental and archaeological studies have been completed and are attached hereto and incorporated herein by this reference.

NOW, THEREFORE, BE IT RESOLVED THAT:

1. The Resources and Development Committee of the Navajo Nation Council hereby approves a Temporary Construction Easement to US Bureau of Indian Affairs – Safety of Dams Program for construction of the Tsaile Dam Modification Project on Navajo Nation Trust Lands in the Tsaile-Wheatfields Chapter vicinity, Apache County, Arizona. The location is more particularly described on the map attached hereto as Exhibit "B."

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

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

CERTIFICATION:

I hereby certify that the foregoing resolution was duly considered by the Resources and Development Committee of the Navajo Nation Council at a duly called meeting at Window Rock, Navajo Nation (Arizona), at which a quorum was present and that the same was passed by a vote of ___ in favor, ___ opposed, and ___ abstained, this ___ day of _____, 2014.

Presiding Chairperson
Resources and Development Committee

MOTION BY:
SECONDED BY:

PROPOSED RESOLUTION OF
THE RESOURCES and DEVELOPMENT COMMITTEE OF THE
NAVAJO NATION COUNCIL

Approving a Temporary Construction Easement for US Bureau of Indian Affairs for construction of the Tsaile Dam Modification project located at and adjacent to Tsaile lake, Apache County, Arizona.

WHEREAS:

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2. Pursuant to 2 N.C.C. § 500 B 2(a), the Resources and Development Committee grants final approval for all land withdrawals, non-mineral leases, permits, licenses, rights of way, surface easements and bonding requirements on Navajo Nation lands and unrestricted (fee) land. This authority shall include subleases, modifications, assignments, leasehold encumbrances, transfers, renewals, and terminations; and

3. The US Bureau of Indian Affairs (BIA), 301 West Hill Street, Gallup, New Mexico, has submitted a temporary construction easement (TCE) ~~a.k.a. right of way application~~ for construction of the Tsaile Dam modification project on, over and across Navajo Nation Trust Lands located at and adjacent to Tsaile Lake, Apache County, Arizona attached hereto and incorporated herein as Exhibit "A"; and

4. The proposed temporary construction easement (TCE) consists of 160.24 acres, more or less, of Navajo Nation Trust Lands located in Sections 10 and 15, Township 33 North, Range 29 East, G&SRMB, Apache County, Arizona and the location is more particularly described on the survey map attached hereto and incorporated herein as Exhibit "B"; out of the 160.24 acres, 93.90 acres are new acreage and the remaining are existing acreage within the dam area, and

5. The Project Review Section with the Navajo Land Department has obtained the necessary consents from the affected land user (i.e. grazing permittee) and is attached hereto and made a part hereof as Exhibit "C"; and

6. BIA plans modification improvements to the existing Tsaile Dam and requests all rents and fees be waived since the improvements will benefit the tribe; and

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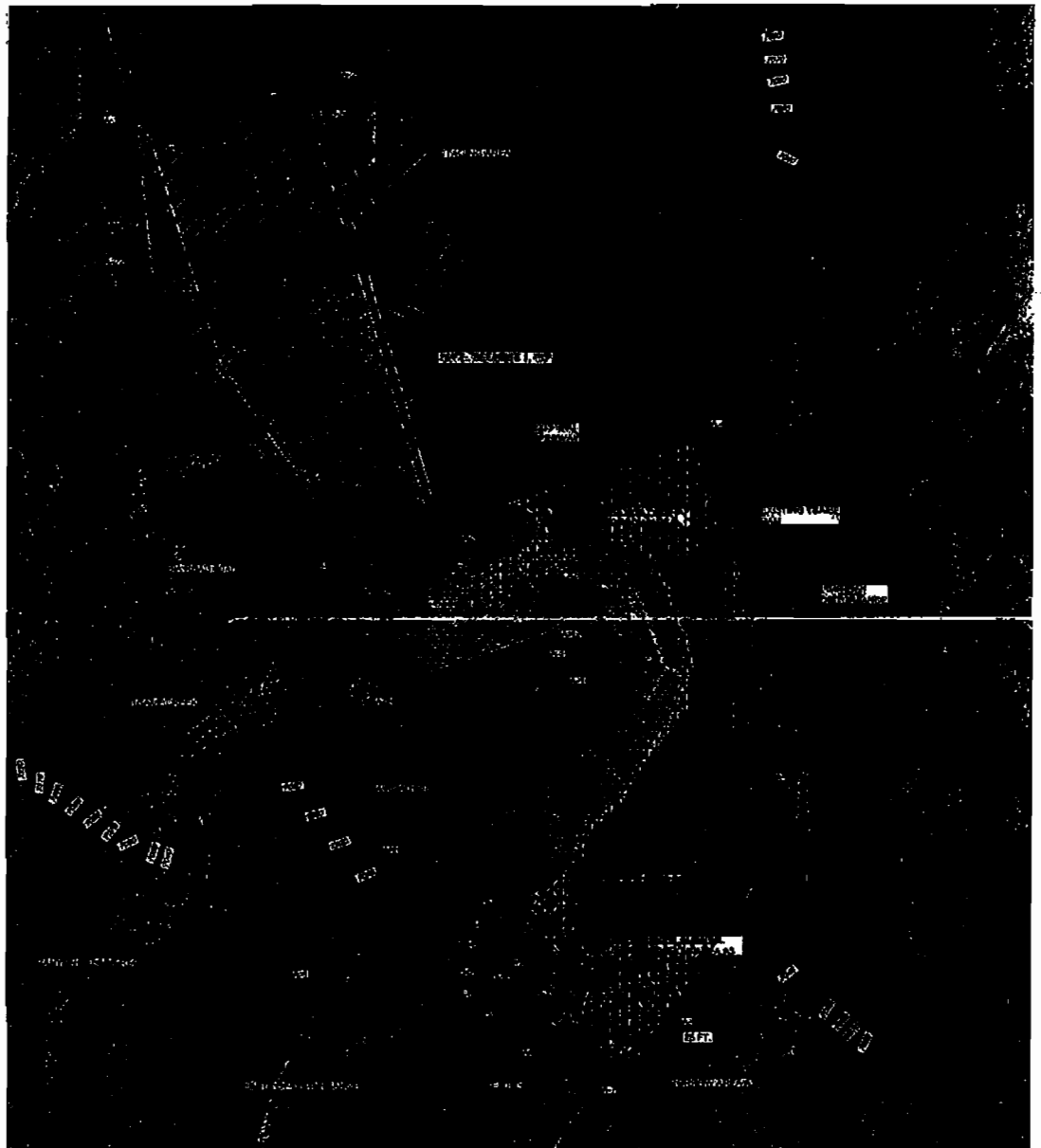
CERTIFICATION:

I hereby certify that the foregoing resolution was duly considered by the Resources and Development Committee of the Navajo Nation Council at a duly called meeting at Window Rock, Navajo Nation (Arizona), at which a quorum was present and that the same was passed by a vote of ___ in favor, ___ opposed, and ___ abstained, this ____ day of _____, 2014.

Presiding Chairperson
Resources and Development Committee

MOTION BY:
SECONDED BY:



TEMPORARY CONSTRUCTION EASEMENT		
POINT #	NORTHING	EASTING
A-1	[illegible]	[illegible]
A-2	[illegible]	[illegible]
A-3	[illegible]	[illegible]
A-4	[illegible]	[illegible]
A-5	[illegible]	[illegible]
A-6	[illegible]	[illegible]
A-7	[illegible]	[illegible]
A-8	[illegible]	[illegible]
A-9	NOT USED	
A-10	[illegible]	[illegible]
A-11	[illegible]	[illegible]
A-12	[illegible]	[illegible]
A-13	[illegible]	[illegible]
A-14	[illegible]	[illegible]
A-15	[illegible]	[illegible]
A-16	[illegible]	[illegible]
A-17	[illegible]	[illegible]
A-18	[illegible]	[illegible]
A-19	[illegible]	[illegible]
A-20	[illegible]	[illegible]
A-21	[illegible]	[illegible]
A-22	[illegible]	[illegible]

STAGING AREA		
POINT #	NORTHING	EASTING
B-1	[illegible]	[illegible]
B-2	[illegible]	[illegible]
B-3	[illegible]	[illegible]
B-4	[illegible]	[illegible]
B-5	[illegible]	[illegible]

SPILLWAY RIPRAP BORROW AREA		
POINT #	NORTHING	EASTING
C-1	[illegible]	[illegible]
C-2	[illegible]	[illegible]
C-3	[illegible]	[illegible]
C-4	[illegible]	[illegible]

BORROW AREA A1		
POINT #	NORTHING	EASTING
D-1	[illegible]	[illegible]
D-2	[illegible]	[illegible]
D-3	[illegible]	[illegible]
D-4	[illegible]	[illegible]
D-5	[illegible]	[illegible]
D-6	[illegible]	[illegible]
D-7	[illegible]	[illegible]
D-8	[illegible]	[illegible]
D-9	[illegible]	[illegible]
D-10	[illegible]	[illegible]
D-11	[illegible]	[illegible]
D-12	[illegible]	[illegible]
D-13	[illegible]	[illegible]

BORROW AREA A2		
POINT #	NORTHING	EASTING
E-1	[illegible]	[illegible]
E-2	[illegible]	[illegible]
E-3	[illegible]	[illegible]
E-4	[illegible]	[illegible]
E-5	[illegible]	[illegible]
E-6	[illegible]	[illegible]

SUPPLEMENTAL BORROW AREA A3		
POINT #	NORTHING	EASTING
D-9	[illegible]	[illegible]
D-10	[illegible]	[illegible]
D-11	[illegible]	[illegible]
D-12	[illegible]	[illegible]
D-13	[illegible]	[illegible]
E-2	[illegible]	[illegible]
E-1	[illegible]	[illegible]
E-6	[illegible]	[illegible]
E-5	[illegible]	[illegible]

Description	Area, acres
Temporary Construction Easement	160.74
Staging Area	43.45
Borrow Area	8.56
Spillway Borrow Area	2.00
Area in Clarile Chapter (below canyon rim)	2.58
Area in Tsaile-Wheatfields-Black Rock Chapter	157.86
Area within Tsaile Lake (below spillway crest)	58.67
Area within Canyon De Chelly Boundary	133.45

N

0 300 600

NOTES:

1. MINIMUM 25' BUFFER BETWEEN BORROW AREAS AND STAGING AREA, AND LIMIT OF DISTURBANCE.
2. BORROW MATERIAL FOR NEW DAM EMBANKMENT TO BE OBTAINED FIRST FROM BORROW AREAS A1 AND A2 BEFORE A3 IS USED.
3. SPILLWAY RIPRAP BORROW AREA TO BE MINED FROM EAST TO WEST AND AT A DEPTH NO GREATER THAN 3 FEET.
4. DO NOT DISTURB FENCE ALONG PRIVATE ROAD. ALL BORROW AREA EXCAVATION TO REMAIN NORTH OF EXISTING FENCE.
5. SURVEY NOTES
   ALL TOPOGRAPHY, COORDINATES, AND ELEVATIONS SHOWN ARE IN OLD ARIZONA STATE PLANE COORDINATE SYSTEM, ARIZONA EAST ZONE, U.S. SURVEY FEET, NAD 83 HORIZONTAL DATUM AND NAVD 88 VERTICAL DATUM. THE TOPOGRAPHY WAS GENERATED BY USBR FROM AERIAL SURVEY DATED NOVEMBER 2006.

LEGEND

- EXISTING INDEX CONTOURS (10')
- EXISTING INTERMEDIATE CONTOURS (2')
- LIMIT OF DISTURBANCE
- STAGING AREA
- BORROW AREA A1
- BORROW AREA A2
- SUPPLEMENTAL BORROW AREA A3
- SPILLWAY RIPRAP BORROW AREA

Cooper Zbez Engineers, Inc.

NO.	DESCRIPTION	BY	DATE
2	TEMPO AREA REALIGNMENT	CD/AF	09-15-2014
1	REVISE TOE	CD/AF	10/8/07

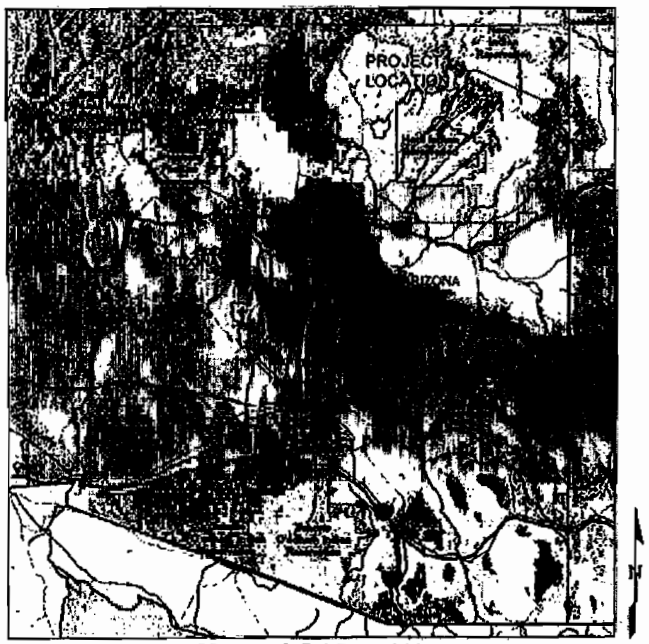
PLAN OF BORROW AREAS AND STAGING AREA

TSAILE DAM MODIFICATION
BUREAU OF INDIAN AFFAIRS
NAVAJO REGIONAL SAFETY OF DAMS PROGRAM - ARIZONA

SHEET 2 OF 16

G-4

TSAILE DAM MODIFICATION
BUREAU OF INDIAN AFFAIRS
NAVAJO REGIONAL SAFETY OF DAMS PROGRAM
ARIZONA

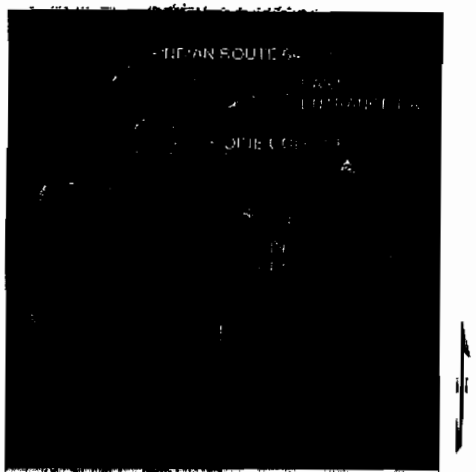


STATE OF ARIZONA

NOT TO SCALE

LIST OF DRAWINGS

SHEET NUMBER	SHEET TITLE
G-1	COVER SHEET, LOCATION MAP AND LIST OF DRAWINGS
G-2	GENERAL ABBREVIATIONS AND LEGEND
G-3	GENERAL CONSTRUCTION NOTES
G-4	PLAN OF BORROW AREAS AND STAGING AREA
G-5	HYDRAULIC INFORMATION
C-1	PLAN OF EXISTING CONDITIONS AND DEMOLITION
C-2	PLAN OF RECENT EXPLORATIONS
C-3	SUBSURFACE PROFILES
C-4	SUBSURFACE PROFILES
C-5	GENERAL PLAN OF MODIFICATIONS
C-6	FOUNDATION EXCAVATION PLAN AND GROUTING
C-7	EXCAVATION SECTION AND GROUTING DETAIL
C-8	EXCAVATION SECTIONS AND DETAILS
C-9	EMBANKMENT PROFILE
C-10	EMBANKMENT MAXIMUM SECTION
C-11	[illegible]
C-12	OUTLET WORKS CHANNEL PLAN AND PROFILE
C-13	TOE DRAIN PLAN
C-14	TOE DRAIN PROFILES
C-15	GEOTECHNICAL INSTRUMENTATION PLAN
C-16	TOE DRAIN DETAILS
C-17	TOE DRAIN DETAILS
C-18	TOE DRAIN DETAILS
C-19	[illegible] DETAILS
C-20	GEOTECHNICAL INSTRUMENTATION DETAILS
C-21	BIA ROAD 8077 SITE PLAN
C-22	BIA ROAD 8077 PLAN AND PROFILE
C-23	BIA ROAD 8077 PLAN AND PROFILE
C-24	BIA ROAD 8077 PLAN AND PROFILE WITH CULVERT CROSSING
C-25	BIA ROAD 8077 CULVERT CROSSING DETAILS
C-26	BIA ROAD 8077 SPILLWAY CROSSING DETAILS
C-27	BIA ROAD 8077 CHANNEL CROSSING DETAILS
C-28	10' ACCESS ROAD PLAN AND PROFILE
C-29	TEMPORARY ROAD SITE PLAN
C-30	TEMPORARY ROAD PLAN AND PROFILE
C-31	TEMPORARY ROAD PLAN AND PROFILE
C-32	TEMPORARY ROAD PLAN AND PROFILE AND ROAD SECTIONS
C-33	OUTLET WORKS PLAN AND PROFILE
C-34	TEMPORARY CONSTRUCTION SIGNAGE AND PERMANENT SIGNAGE
C-35	BIA ROAD 8077 (MARDRAS) DETAILS
C-36	EROSION AND SEDIMENT CONTROL NOTES
S-1	STRUCTURAL NOTES
S-2	STANDARD STRUCTURAL DETAILS
S-3	STANDARD STRUCTURAL DETAILS
S-4	STANDARD STRUCTURAL DETAILS
S-5	STANDARD STRUCTURAL DETAILS
S-6	OUTLET WORKS PLAN AND ELEVATION
S-7	INTAKE TOWER PLANS
S-8	CONTROL ROOM PLANS & DETAILS
S-9	INTAKE TOWER SECTIONS
S-10	CONTROL ROOM SECTIONS & ELEVATIONS
S-11	OUTLET DISSIPATION STRUCTURE
S-12	DETAILS
S-13	DETAILS
S-14	DETAILS
S-15	DETAILS



PROJECT LOCATION

NOT TO SCALE

APPROVED:

PEARL CHAMBERLIN, P.E. - BIA - NRO — DATE

JACK EVERS, P.E. - BIA - CHIEF SOD — DATE

DEBORA MILLER, P.E., PhD - ITR — DATE

TARA SCHUTTER, P.E. - ITR — DATE

Cooper Ziers Engineers, Inc.

KLEINFELDER

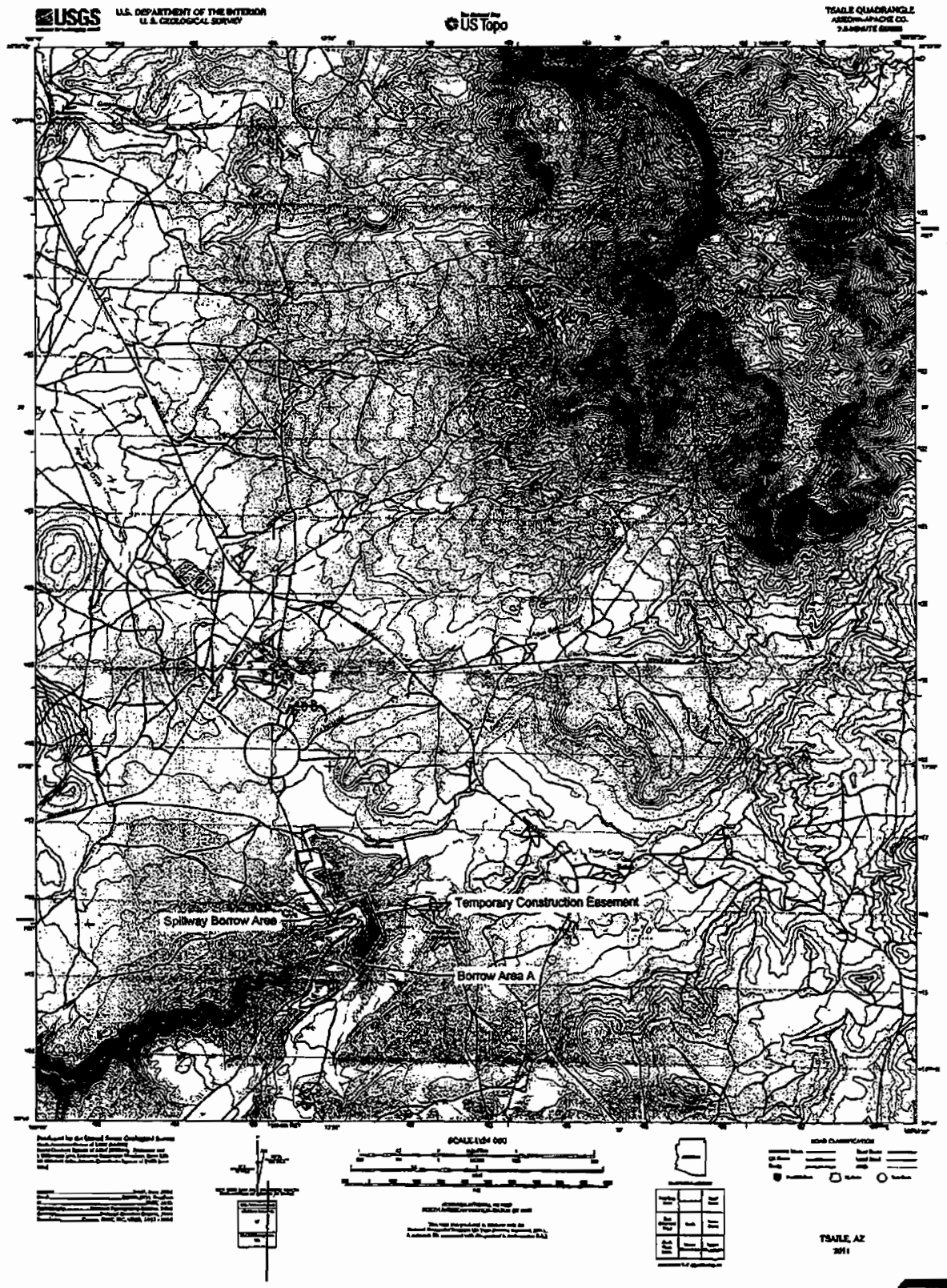
DATE			
PROJECT NO			
DRAWN BY			
CHECKED BY			
FILE NO.			

NO.	DESCRIPTION	BY	DATE
1	ASSESSMENT NO. 1	CZ / KLF	1-7-2014
2	TechnicalMemorandum	CZ / KLF	11-13-2014

COVER SHEET, LOCATION MAP AND LIST OF DRAWINGS

TSAILE DAM MODIFICATION
BUREAU OF INDIAN AFFAIRS
NAVAJO REGIONAL SAFETY OF DAMS PROGRAM - ARIZONA

SHEET G-1



Tsaile Dam Modification Project
Temporary Construction Easement and Borrow Pit Boundaries

EXHIBIT 8

UNITED STATES DEPARTMENT OF THE INTERIOR

BUREAU OF INDIAN AFFAIRS

APPLICATION FOR GRANT OF RIGHT-OF-WAY

(Tribal Trust Land)

APPLICANT: US Bureau of Indian Affairs having a residence or principal place of business at 301 West Hill Street, Gallup, NM hereby files an application with the Bureau of Indian Affairs, pursuant to the terms and provisions of the Act of February 5, 1948 (62 Stat. 17; 25 USC §§ 323 — 328), and to the regulations of the Department of the Interior contained in Title 25, Code of Federal Regulations, Part 169, for the grant of right-of-way for the following purposes and reasons:

For construction of the Tsaile Dam Modification Project, Apache County, Arizona.

Across the following described Indian Lands:
A parcel, containing 160.24 acres, more or less, of land lying in Sections 10 and 15, Township 33 North, Range 29 East, Gila River Meridian, Apache County, Arizona. 157.86 acres, more or less, lie within Land Management District 11, Tsaile-Wheatfields-Black Rock Chapter, and 2.38 acres, more or less, lie within Land Management District 10, Chinle Chapter, all on the Navajo Nation.

Said right-of-way is of an irregular shape and 160.24 more or less in acres, and more particularly described and shown on the map, Plan of Borrow Areas and Staging Area / Tsaile Dam Modification, Drawing No. G-4, showing the Temporary Construction Easement parcel) of definite location to be attached and made a part hereof.
The said applicant understands and expressly agrees to the following stipulations:

(a). To construct and maintain the right-of-way in a workmanlike manner.

(b). To pay all damages and compensation determined by the Secretary to be due the landowners and authorized users and occupants of the land due to the survey, granting, construction, and maintenance of the right-of-way.

(c). To identify the landowners and authorized users and occupants against any liability for the life, personal injury, and property damage arising from the construction, maintenance, occupancy or use of the lands by the applicant, his employees, contractors and their employees, or subcontractors and their employees.

(d). To restore the lands as nearly as possible to their original condition upon the completion of construction, to the extend compatible with the purpose for which the right-of-way was granted.

(e). To clear and keep clear the lands within the right-of-way to extend compatible with the purpose of the right-of-way; and dispose of all vegetative and other material cut, uprooted or otherwise accumulated during the construction and maintenance of the project.

(f). To take soil and resources conservation projection measures, including weed control, on the land covered by the right-of-way.

(g). To do everything reasonable within its power to prevent and suppress fires on or near the lands to be occupied under the right-of-way.

(h). To build and repair such roads, fences and trails as may be destroyed or injured by the construction work and to build and maintain necessary and suitable crossings for all roads and trails that intersect the works constructed, maintained or operated under the right-of-way. That upon revocation or termination of the right-of-way, the applicant shall, so far as in reasonably possible, restore the land to its original condition.

(j). To at all times keep the Secretary informed of its address, and in case of corporations, of the address of its principle place of business and of the names and addresses of its principle officers.

(k). That the applicant will not interfere with the use of the lands by or under the authority of the landowners for any purpose not inconsistent with the primary purpose for which the right-of-way is granted.

IN WITNESS WHEREOF, _____has caused this instrument to be executed this_____ day of _____20_____.

_____ _____

WITNESS APPLICANT

_____ Regional Director

Engineer_____

WITNESS

U.S. Bureau of Indian Affairs, Navajo Regional Office
301 West Hill Street, Gallup, NM 87305

REQUIRED SUPPORTING DOCUMENTS:

1. ( ) Written consent of landowner (BIA form 5 - 104b and/or Tribal Resolution, 25 CFR §§ 169.3)
2. ( ) Map of definite location (2 original mylars & 2 copies, 25 CFR § 169.6 - 169.11)
3. ( ) Other:
   - ( ) Archaeological Clearance (Cultural Resource Compliance Form)
   - ( ) NEPA Compliance (FONSI)
   - ( ) Permission to cross Existing Right-of-Way

EXHIBIT
8

United States Department of the Interior

TAKE PRIDE IN AMERICA

BUREAU OF INDIAN AFFAIRS
NAVAJO REGION
P.O. Box 1060
Gallup, New Mexico 87305

MAR 1 1 2015

RECEIVED
MAR 1 8 2015
Navajo Land Dept.
Window Rock

Mr. Howard Phillip Draper, Jr.
Navajo Land Department, Project Review Section
Navajo Nation Division of Natural Resources
P.O. Box 9000
Window Rock, AZ 86515

Subject: Application for Extension of Temporary Construction Easement (TCE) – Tsaile Dam Modification Project – Bureau of Indian Affairs - Safety of Dams (SOD) Program - Arizona.

Dear Mr. Draper:

This is a request to amend Navajo Nation Council Resource & Development Committee Resolution RDCJN-38-14 to change the term in Exhibit D of the TCE for the Tsaile Dam Modification project from one year to three years. The TCE that was originally submitted by BIA to your office requested an end date of December 31, 2017. However, per your telephone discussion with BIA SOD staff, it is uncertain how or why the term was changed to only one year at your office to reflect an expiration of August 13, 2015. Unfortunately, construction at Tsaile Dam cannot be completed in time to meet that date.

A three year term is necessary to ensure sufficient time to complete construction and site cleanup, and conduct operational testing of the rebuilt dam and do any follow-up remediation that may be needed.

BIA will operate with all due prudence and diligence during entry, construction and exit of the project
If you have any questions, please contact Pearl Chamberlin at 505-863-8393.

Sincerely,

Acting Regional Director, Navajo

Enclosures

cc: Moroni Benally, Executive Director, Navajo Nation, Division of Natural Resources
Ray Benally, Director, Navajo Nation, Department of Water Resources
Mary Lujan, Realty Specialist, Shiprock Agency

EXHIBIT C

EXHIBIT D

NAVAJO NATION TEMPORARY CONSTRUCTION EASEMENT TERMS AND CONDITIONS

Bureau of Indian Affairs (GRANTEE)

1. The term of the temporary construction easement (TCE) shall be for One (1) year, beginning on the date the TCE is granted by the Secretary of Interior.

2. Consideration for the TCE is assessed at $63,294.00 and shall be paid in full to the Controller of the Navajo Nation, in lawful money of the United States, and a copy of the receipt for such payment provided to the Navajo Nation Minerals Department, or its successor, within N/A days of approval of and consent to the grant of the TCE by the Secretary of Interior.

   Consideration for the grant of the TCE is hereby waived.
   [ ] NO [X] YES

   If consideration has been waived, then the Navajo Nation contributes the amount listed above to the project because the project serves a public purpose and will benefit Navajo residents.

3. The Grantee may develop, use and occupy the TCE for the purpose(s) of establishing, operating and maintaining a staging area. The Grantee 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 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 TCE 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 TCE.

6. The Grantee shall clear and keep clear the lands within the TCE to the extent compatible with the purpose of the TCE, 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 TCE, 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 TCE and at the Grantee's sole cost and expense, maintain the land subject to the TCE and all improvements located thereon and make all necessary and reasonable repairs.

9. The Grantee shall obtain prior written permission to cross existing TCEs, 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 TCE by the Grantee.

12. The Grantee 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 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 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 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 TCE for the purpose for which it is granted for a consecutive two year period; and

    c. The use of the land subject to the TCE for any purpose inconsistent with the purpose for which the TCE is granted.

    d. An abandonment of the TCE.

14. At the termination of this TCE, 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 TCE shall not constitute a renewal or extension thereof or give the Grantee any rights hereunder or in or to the land subject to the TCE 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 TCE, 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 TCE, 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 TCE, 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 TCE 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 TCE 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 TCE and all lands burdened by the TCE, including without limitation over all persons, including the public, and all activities conducted or otherwise occurring within the TCE; and the TCE and all lands burdened by the TCE shall be and forever remain Navajo Indian Country for purposes of Navajo Nation jurisdiction.

EXHIBIT
D

EXHIBIT "C"

NAVAJO NATION TEMPORARY CONSTRUCTION EASEMENT TERMS AND CONDITIONS

BUREAU OF INDIAN AFFAIRS (GRANTEE)

1. The term of the temporary construction easement shall be for three (3) years, beginning on the date the temporary construction easement is granted by the Secretary of the Interior.

2. Consideration for the temporary construction easement is assessed at $_____ and shall be paid in full to the Controller of the Navajo Nation, in lawful money of the United States, and a copy of the receipt for such payment provided to the Navajo Nation Minerals Department, or its successor, within ____ days of approval of and consent to the grant of the temporary construction easement by the Navajo Nation.

   Consideration for the grant of the temporary construction easement is hereby waived.
   [ ] NO [ ] YES

   Consideration for the temporary construction easement is assessed at $189,882.00 for the three (3) years term. The Navajo Nation contributes this amount to the project because the project for the benefit of the Navajo Nation.

3. The Grantee may develop, use and occupy the temporary construction easement for the purpose(s) of establishing, operating and maintaining a staging area The Grantee may not develop, use or occupy the temporary construction easement for any other purpose, nor allow others to use or occupy the temporary construction easement 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 temporary construction easement 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 TCE.

6. The Grantee shall clear and keep clear the lands within the temporary construction easement to the extent compatible with the purpose of the TCE, 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 TCE, 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 temporary construction easement and at the Grantee's sole cost and expense, maintain the land subject to the temporary construction easement and all improvements located thereon and make all necessary and reasonable repairs.

9. The Grantee shall obtain prior written permission to cross existing TCEs, 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 temporary construction easement by the Grantee.

12. The Grantee shall not assign, convey, transfer or sublet, in any manner whatsoever, the temporary construction easement 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 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 temporary construction easement for violation of any of the terms and conditions stated herein. In addition, the temporary construction easement 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 temporary construction easement for the purpose for which it is granted for a consecutive two year period; and

    c. The use of the land subject to the temporary construction easement for any purpose inconsistent with the purpose for which the temporary construction easement is granted.

14. At the termination of this TCE, 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 temporary construction easement shall not constitute a renewal or extension thereof or give the Grantee any rights hereunder or in or to the land subject to the temporary construction easement 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 TCE, 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 TCE, 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 TCE, 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 temporary construction easement 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 temporary construction easement 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 temporary construction easement and all lands burdened by the TCE, including without limitation over all persons, including the public, and all activities conducted or otherwise occurring within the TCE; and the temporary construction easement and all lands burdened by the temporary construction easement shall be and forever remain Navajo Indian Country for purposes of Navajo Nation jurisdiction.

Document No. 003733 Date Issued: 04/06/2015

EXECUTIVE OFFICIAL REVIEW

Title of Document: Temp.Esmt.BIA-TsaileDamMod@Tsaile,AZ+2yr Contact Name: DRAPER, HOWARD

Program/Division: DIVISION OF NATURAL RESOURCES

Email: howarddraper@frontiernet.net Phone Number:

			Sufficient	Insufficient
☐ **Business Site Lease**				
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: (recommendation only)		Date:	☐	☐
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:	☐	☐

Pursuant to 2 N.N.C. § 164 and Executive Order Number 07-2013

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

☒ **OTHER:** technical correction from one (1) year to three (3) years

1. NLD		Date: 09 April 15	☒	☐
2. Minerals		Date: 4/13/15	☒	☐
3. NNEPA		Date: 4-14-2015	☒	☐
4. Off Att. General - (iC)		Date: 5-20-15	☑	☐
5. OPVP		Date: 5-27-15	☑	☐
6. NNFW		5/5/15	☒	

NAVAJO NATION DEPARTMENT OF JUSTICE

☐ RESUBMITTAL

DOCUMENT REVIEW REQUEST FORM

RECEIVED MAY - 5 2015 DEPARTMENT OF JUSTICE RECEPTIONIST DESK

DOJ
05/05/15 4:43
DATE / TIME
☐ 7 Day Deadline
DOC #: 003733
SAS #:
UNIT: NRU

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

CLIENT TO COMPLETE

DATE OF REQUEST:	4/8/2015	DIVISION:	Natural Resources (DNR)
CONTACT NAME:	Howard P Draper or Vera Shurley	DEPARTMENT:	Navajo Land Dept (NLD)
PHONE NUMBER:	X-6447, 6401, 6490	E-MAIL:	howarddraper@frontiernet.net or verashurley@frontiernet.net

TITLE OF DOCUMENT: *Extending a Temporary Construction Easement for Bureau of Indian Affairs Safety of Dams Program to Operate and Maintain Tsaile Dam Modification Project Site for an additional two (2) years at Tsaile, Apache County, AZ*

DOJ SECRETARY TO COMPLETE

DATE/TIME RECEIVED: 5/5/15 4:43 REVIEWING ATTORNEY/ADVOCATE: Irvin Chee 5/14/15

RECEIVED MAY - 5 2015 DEPARTMENT OF JUSTICE NATURAL RESOURCES UNIT

DATE TIME OUT OF UNIT:

DOJ ATTORNEY / ADVOCATE COMMENTS

– Document is legally sufficient.

REVIEWED BY: (*Print*)	Date / Time	SURNAMED BY: (*Print*)	Date / Time
Irvin Chee	5/13/15	Ton. Flora	5/13/15 2:20pm

DOJ Secretary Called: Howard Draper for Document Pick Up on 5/20/15 at 10:05am By: Hand-carried

PICKED UP BY: (*Print*) Howard P. Draper DATE / TIME: 5/20/15

NNDOJ/DRRF-July 2013

COMPLETED

NAVAJO NATION DEPARTMENT OF JUSTICE
OFFICE OF THE ATTORNEY GENERAL

ETHEL BILLIE BRANCH
Acting ATTORNEY GENERAL

MEMORANDUM

TO: Antoinette Flora, Attorney
Natural Resources Unit
Department of Justice

FROM: Ethel Branch, Attorney General
Office of the Attorney General

DATE: May 18, 2015

SUBJECT: **Delegation of NRU Acting Assistant Attorney General**

Bidtah Becker, former AAG of the Natural Resources Unit, resigned effective 5/18/2015. In an effort to provide uninterrupted legal services to the Navajo Nation, I am hereby delegating you to serve as Acting Assistant Attorney General of the Natural Resources Unit until further notice. You shall have the authority to administer the NRU, handle administrative matters, and surname NRU documents.

If you have any questions on how to handle any particular matter, please feel free to consult with me or any of the Assistant Attorney Generals. Thank you.

xc: Paul W. Spruhan, Assistant Attorney General, Labor & Employment Unit
Stanley M. Pollack, Assistant Attorney General, Water Rights Litigation Unit
Kandis Martine, Assistant Attorney General, Human Services & Government Unit
Rodgerick Begay, Assistant Attorney General, Economic/Community Development Unit
Cynthia Avery, Office Specialist, Office of the Attorney General

P.O. Box 2010 • Window Rock, AZ 86515 • (928)871-6345 • FAX No. (928)871-6177

THE NAVAJO NATION

BEN SHELLY PRESIDENT
REX LEE JIM 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.navajonationepa.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: April 14, 2015

SUBJECT: **164 EOR 003733 Temporary Construction Easement Tsaile Dam Two (2) Year Extension**

The Bureau of Indian Affairs, 301 West Hill Street, Gallup, New Mexico, submitted a letter dated March 11, 2015 to clarify a technical correction made from the initial application to extend the temporary construction easement for the Tsaile Dam Modification Project for an additional two (2) years at Tsaile, Apache County, Arizona. NNEPA recommends a ***conditional approval*** for the proposed request.

The date(s) on any permit(s) issued from NNEPA department(s)/program(s) is subject to be modified accordingly on the 2-year extension.

If there are any questions you may contact Rita Whitehorse-Larsen at 928/871-7188. Thank you.

Cc: NNEPA Water Quality; PWSSP; Air Quality - OPP; Administration chrono file
Contact Person: Chuck Nixon, 505/863-8310

Office of Legislative Counsel
Telephone: (928) 871-7166
Fax # (928) 871-7576

Honorable LoRenzo Bates
Speaker
23rd Navajo Nation Council

MEMORANDUM

TO: Honorable Walter Phelps
Navajo Nation Council

FROM: Erika Friedlander, Staff Attorney
Office of Legislative Counsel

DATE: June 12, 2015

SUBJECT: AN ACTION RELATING TO RESOURCES AND DEVELOPMENT; EXTENDING A TEMPORARY CONSTRUCTION EASEMENT FOR AN ADDITIONAL TWO YEARS TO U.S. BUREAU OF INDIAN AFFAIRS FOR CONSTRUCTION OF THE TSAILE DAM MODIFICATION PROJECT LOCATED AT AND ADJACENT TO TSAILE LAKE, TSAILE-WHEATFIELDS CHAPTER (APACHE COUNTY, ARIZONA)

Pursuant to your request, attached is the above-referenced proposed resolution and associated legislative summary sheet. Based on existing law and review of the documents submitted, the resolution as drafted is legally sufficient. However, as with all legislation, it is subject to review by the courts in the event of a challenge.

Please review the proposed resolution to ensure it is drafted to your satisfaction. If this proposed resolution is acceptable to you, please sign it where it indicates "Prime Sponsor", and submit it to the Office of Legislative Services for the assignment of a tracking number and referral to the Speaker.

If the proposed resolution is unacceptable to you, or if you have further questions, please contact me at the Office of Legislative Counsel and advise me of changes you would like made to the proposed resolution. You may contact me at (928) 871-7166. Thank you.

OLC No. 15-444-1

THE NAVAJO NATION
LEGISLATIVE BRANCH
INTERNET PUBLIC REVIEW PUBLICATION

LEGISLATION NO: _0204-15_____ SPONSOR: Walter Phelps

TITLE: An Action Relating To Resources And Development; Extending A Temporary Construction Easement For An Additional Two Years to U.S. Bureau Of Indian Affairs For Construction Of the Tsaile Dam Modification Project Located At And Adjacent To Tsaile Lake, Tsaile-Wheatfields Chapter (Apache County, Arizona)

***Date posted*: June 16, 2015 at 5:17pm**

Digital comments may be e-mailed to comments@navajo-nsn.gov

Written comments may be mailed to:

Executive Director
Office of Legislative Services
P.O. Box 3390
Window Rock, AZ 86515
(928) 871-7590

Comments may be made in the form of chapter resolutions, letters, position papers, etc. Please include your name, position title, address for written comments; a valid e-mail address is required. Anonymous comments will not be included in the Legislation packet.

Please note: This digital copy is being provided for the benefit of the Navajo Nation chapters and public use. Any political use is prohibited. All written comments received become the property of the Navajo Nation and will be forwarded to the assigned Navajo Nation Council standing committee(s) and/or the Navajo Nation Council for review. Any tampering with public records are punishable by Navajo Nation law pursuant to 17 N.N.C. *§374 et. seq.*

THE NAVAJO NATION
LEGISLATIVE BRANCH
INTERNET PUBLIC REVIEW SUMMARY

LEGISLATION NO.: 0204-15

SPONSOR: Honorable Walter Phelps

TITLE: Relating To Resources And Development; Extending A Temporary Construction Easement For An Additional Two Years to U.S. Bureau Of Indian Affairs For Construction Of the Tsaile Dam Modification Project Located At And Adjacent To Tsaile Lake, Tsaile-Wheatfields Chapter (Apache County, Arizona).

Posted: June 16, 2015 at 5:17pm

5 DAY Comment Period Ended: June 21, 2015

Digital Comments received: ***No comments were received.***

Latanya Begay
Policy Analyst
Office of Legislative Services

6/22/15 9:31am
Date/Time