

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

AN ACTION

RELATING TO RESOURCES AND DEVELOPMENT; APPROVING THE GRANT  
OF RIGHT-OF-WAY TO THE BUREAU OF INDIAN AFFAIRS FOR  
CONSTRUCTION OF AN ALL-WEATHER ROADWAY, NAVAJO ROUTE 7054  
(1) (2), 2 & 3, PINEDALE LOOP ROAD LOCATED IN PINEDALE  
CHAPTER (MCKINLEY COUNTY, NEW MEXICO)

BE IT ENACTED:

**SECTION ONE. AUTHORITY**

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

**SECTION TWO. FINDINGS**

A. Bureau of Indian Affairs, Navajo Region, Division of Transportation, P.O. Box 1060, Gallup, New Mexico 87305, has submitted a right-of-way (ROW) application for construction of an all-weather roadway for project N7054 (1)(2), 2 & 3 on, over and across Navajo Nation Trust Lands in Pinedale Chapter vicinity (McKinley County, New Mexico). The application request is attached hereto and incorporated herein as **Exhibit A**.

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

C. The General Land Development Department with the Navajo Division of Natural Resources identified grazing permittees on the proposed site. Consent to use the land was obtained and are attached along with the General Land Development Department memorandum dated October 13, 2016. The memorandum is attached hereto as **Exhibit C**.

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

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

F. It is in the best interest of the Navajo Nation to grant the right-of-way to the Bureau of Indian Affairs, Navajo Region, Division of Transportation, for construction of an all-weather roadway for project N7054 (1 ) (2), 2 & 3.

### **SECTION THREE. APPROVAL**

A. The Resources and Development Committee of the Navajo Nation Council hereby approves the Grant of Right-of-Way to Bureau of Indian Affairs, Navajo Region, Division of Transportation, for construction of an all-weather roadway for project N7054 (1 ) (2), 2 & 3 on, over and across Navajo Nation Trust Lands in Pinedale Chapter vicinity (McKinley County, New Mexico). The location is more particularly described on the survey map attached hereto as **Exhibit B.**

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

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

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

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

**CERTIFICATION**

I, hereby certify that the following resolution was duly considered by the Resources and Development Committee of the 23<sup>rd</sup> Navajo Nation Council at a duly called meeting at Navajo Nation Department of Transportation Conference Room, Tse Bonito (Navajo Nation) New Mexico, at which a quorum was present and that same was passed by a vote of 4 in favor, 0 opposed, 1 abstained on this 30th day of May, 2017.

A handwritten signature in dark ink, appearing to read 'B. Bennett', with a long horizontal stroke extending to the right.

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

Motion: Honorable Davis Filfred  
Second: Honorable Jonathan Perry

Document No. 006659Date Issued: 09/02/2016**EXECUTIVE OFFICIAL REVIEW**Title of Document: BIA, ROW for Pinedale Loop N7054 Contact Name: DRAPER, HOWARDProgram/Division: DIVISION OF NATURAL RESOURCESEmail: howarddraper@frontiernet.net Phone Number: 928/871-6447

- ☐ **Business Site Lease**
- |   |       |             | Sufficient               | Insufficient             |
|---|-------|-------------|--------------------------|--------------------------|
| 1. Division:  | _____ | Date: _____ | <input type="checkbox"/> | <input type="checkbox"/> |
| 2. Office of the Controller:  | _____ | Date: _____ | <input type="checkbox"/> | <input type="checkbox"/> |
| (only if Procurement Clearance is not issued within 30 days of the initiation of the E.O. review) |       |             |                          |                          |
| 3. Office of the Attorney General:  | _____ | Date: _____ | <input type="checkbox"/> | <input type="checkbox"/> |

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

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

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

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

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

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

- ☐ **Lease Purchase Agreements**

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

- ☐ **Grant Applications**

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

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

- ☐ **Relinquishment of Navajo Membership**

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



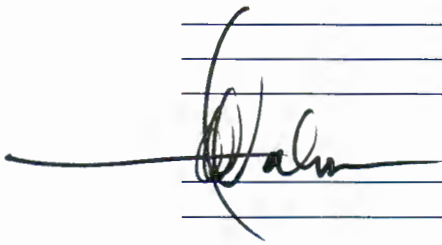
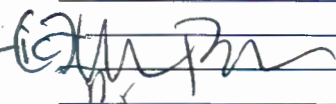
☐ **Land Withdrawal or Relinquishment for Commercial Purposes**

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

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

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

☒ **Rights of Way**

1. NLD		Date: <u>28 Sept. 16</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
2. F&W	_____	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>
3. HPD	_____	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>
4. Minerals	_____	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>
5. NNEPA	_____	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>
6. Office of the Attorney General		Date: <u>4/10/17</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
7. OPVP	_____	Date: <u>4-10-17</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

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

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

☐ **Assignment of Mineral Lease**

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

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

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

☐ **OTHER:**

1.	_____	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>
2.	_____	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>
3.	_____	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>
4.	_____	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>
5.	_____	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>

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

Document Name: 003\_P003\_00006659.zip  
Revision: 1  
Version: 1  
Document Desc: Kayla Bia NLD (Navajo Land Title Data System - Windowrock AZ)  
Document Author: Sufficient  
Document Status: 164 Review Process  
DocumentType: 22-Feb-2017  
Effective Date: Never  
Expires: Never  
Uploaded from: Navajo Land Title Data System (MLTDS) Phase 1: Plan for Quality Management System  
Step 932: 003\_P003\_00006659  
Task 1: Upload and Manage Documents  
Size: 3173 KB  
Date Uploaded: 04-Nov-2016  
Maintained by: Project Management Team

No Document Distribution Locations

Tier 1 Document Voting Results						
User Name (Facility)	Job Title	Department	Vote Cast	Comments	Replies	Vote Date
Eugenia Quintana EPA (Navajo Land Title Data System - Windowrock AZ)	Air and Toxics - Reviewer	Navajo Nation Environmental Protection Agency	Approved	1. No comments.	1.	24-Jan-2017
Frederick Sherman EPA (Navajo Land Title Data System - Windowrock AZ)	Solid Waste - Reviewer	Navajo Nation Environmental Protection Agency	Approved	no comments	No Reply	04-Nov-2016
Glenna Lee EPA (Navajo Land Title Data System - Windowrock AZ)	Pesticides - Reviewer	Navajo Nation Environmental Protection Agency	Approved	no comments	No Reply	19-Jan-2017
Lee Anna Martinez EPA (Navajo Land Title Data System - Windowrock AZ)	Water Quality - Reviewer	Navajo Nation Environmental Protection Agency	Approved	1. The applicant is well aware of the CWA Section 401 Certification that will be needed for N7054, Pinedale Loop. Supporting documents have indicated that and we look forward to working with them when they are ready to apply for the Certification. Thank you.	1.	24-Jan-2017
Pam Kyselica F&W (Navajo Land Title Data System - Windowrock AZ)	Technical Review	Fish and Wildlife	Approved	1. BRCF attached	1.	06-Nov-2016
Pam Naples EPA (Navajo Land Title Data System - Windowrock AZ)	Storage Tanks Program - Reviewer	Navajo Nation Environmental Protection Agency	Approved	no comments	No Reply	28-Dec-2016
Patrick Antonio EPA (Navajo Land Title Data System - Windowrock AZ)	Water Quality - Supervisor	Navajo Nation Environmental Protection Agency	Approved	1. CONDITIONAL: Required coverage under federal Construction General Permit for storm water discharges. A Notice of Intent (NOI) submitted 14 days prior to earth-moving. A Storm Water Pollution Prevention Plan required to be developed prior to NOI submission.	1.	17-Jan-2017
Richard Carlton MIN (Navajo Land Title Data System - Windowrock AZ)	Technical Reviewer	Navajo Nation Minerals Management	Approved	1. This vote is contingent on the uploaded Terms & Conditions document being included with the packet. sip	1.	19-Jan-2017
Robert Allan DNR (Navajo Land Title Data System - Windowrock AZ)	Deputy Director DNR	DNR Administration	Approved	1. Need to attach Navajo Nation Terms and Conditions, Grant Indenture-	1.	07-Nov-2016
Tennille Begay EPA (Navajo Land Title Data System - Windowrock AZ)	Air and Toxics - Reviewer	Navajo Nation Environmental Protection Agency	Approved	1. NNEPA AQCP has 2 monitoring stations; one in Nazlini and one in Shiprock NM. The Crownpoint monitor has been removed.	1.	14-Nov-2016
Yolanda Barney EPA (Navajo Land Title Data System - Windowrock AZ)	Public Water System Supervision Program	Navajo Nation Environmental Protection Agency	Approved	1. Navajo Public Water Systems Supervision Program within the Navajo Nation EPA recommends approval and deems this project sufficient with regard to drinking water infrastructure.	1.	04-Nov-2016

Tier 2 Document Voting Results						
User Name (Facility)	Job Title	Department	Vote Cast	Comments	Replies	Vote Date
Bidtah N. Becker (FBFA)	FBFA Users	FBFA Action Team	Approved	1. BIA has requested that the language found below be inserted into the ROW terms and conditions. DNR Administration and Minerals Department advise against including the language and have not included the language in the terms and conditions. BIA's requested language is: The Right-of-Way easement will include construction of utilities with the N7054(1)(2)2&3 easement corridor. This provision will allow the road right-of-way grant to the Bureau of Indian Affairs, Navajo Region, be used for the purpose that will benefit the Tribal communities, and their socioeconomic development needs. The utility conveyance construction and maintenance must not interfere with the integrity of the road prism, road ditches, road design features and miscellaneous road appurtenances. Any and all utility installations will be approved through the NA DOT permitting process.	1.	09-Feb-2017
Ronnie Ben EPA (Navajo Land Title Data System - Windowrock AZ)	Underground Injection Control - Reviewer	Navajo Nation Environmental Protection Agency	Approved	1. approved on 1-30-17	1.	30-Jan-2017
Steven Prince MIN (Navajo Land Title Data System - Windowrock AZ)	Technical Reviewer	Navajo Nation Minerals Management	Approved	1. Approved by Mr. Akhtar Zaman on 1/25/2017. sip	1.	25-Jan-2017
Tamara Billie HPD (Navajo Land Title Data System - Windowrock AZ)	HPD Reviewer	Historic Preservation Department	Approved	1. Please insert revised CRCP HPD-09-795.	1.	24-Jan-2017
W. Mike Halona (Navajo Land Title Data System - Windowrock AZ)	Manager III Navajo Land Department	NLD Administration	Approved	no comments	No Reply	27-Jan-2017




# THE NAVAJO NATION

RUSSELL BEGAYE PRESIDENT  
JONATHAN NEZ VICE PRESIDENT

## MEMORANDUM

To: Veronica Blackhat, Assistant Attorney General  
Irvine Chee, Tribal Advocate  
NATURAL RESOURCES UNIT  
NAVAJO NATION DEPARTMENT OF JUSTICE

From:   
Elerina Yazzie, Department Manager  
General Land Development Department  
DIVISION OF NATURAL RESOURCES

Date: April 5, 2017

Subject: Tier Two changes in the Navajo Nation System – Electronic 164 Process

As mentioned before Gloria Tom, Department Manager, designated Sam Diswood, Wildlife Manager, to be the approver on the Navajo Nation System for Fish and Wildlife. During this transition these two projects #6659, BIA ROW for Pinedale Loop N7054; and #7212, USPHS ROW Waterline Ext. NA-16-T85 at Cove and Red Valley, Apache County, Arizona were uploaded without Sam Diswood as the approver.

We cannot add voters to projects once uploaded into the system therefore you will not see Sam Diswood or Gloria Tom on the tier II vote. The mentioned projects were reviewed and marked sufficient by Pam Kyselka from Fish and Wildlife in tier I which means the requirements for Fish and Wildlife were met. These projects have been pending since early November and are on funding deadlines. If this does not suffice, please let us know so we can get physical signatures to get these projects moving forward.

If you should have any questions regarding this letter please contact me directly at (928) 871-6447 or at [elerina\\_yazzie@frontier.com](mailto:elerina_yazzie@frontier.com), your assistance is appreciated. Thank you.

xc: Bidtah Becker, Executive Director, Division of Natural Resources  
Everytt Begay, GIS Supervisor, NLD  
W. Mike Halona, Department Director, NLD  
Gloria Tom, Department Manager, Fish and Wildlife  
Sam Diswood, Wildlife Manager, Fish and Wildlife  
GLDD File





# NAVAJO NATION DEPARTMENT OF JUSTICE

## DOCUMENT REVIEW REQUEST FORM

☒ RESUBMITTAL  
(March/April 2017)



DOJ  
04/05/17 952a  
DATE / TIME  
☐ 7 Day Deadline  
DOC #: 006659# 4  
SAS #:  
UNIT: Nru

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

### CLIENT TO COMPLETE

DATE OF REQUEST:	4/5/2017	DIVISION:	NATURAL RESOURCES
CONTACT NAME:	Michelle Hoskie or Stevie Hudson	DEPARTMENT:	GENERAL LAND DEVELOPMENT DEPARTMENT
PHONE NUMBER:	x 6447	E-MAIL:	steviehudson@frontier.com
TITLE OF DOCUMENT: BIA ROW FOR PINEDALE LOOP N7054			

### DOJ SECRETARY TO COMPLETE

DATE/TIME IN UNIT:	4/5/17 10am	REVIEWING ATTORNEY/ADVOCATE:	4/14/17 Irvin Chee
DATE TIME OUT OF UNIT: 4/10/17 10am			

### DOJ ATTORNEY / ADVOCATE COMMENTS

- After reviewing GLDD's memo, dated 4-5-17, the document is now considered legally sufficient.

REVIEWED BY: (Print)	Date	Time	SURNAMED BY: (Print)	Date / Time
Irvin Chee	4-5-17		N Blackhat	4/10/17 9:20am

DOJ Secretary Called: Stevie for Document Pick Up on 4/10/17 at 10:52am By: ah

PICKED UP BY: (Print) DATE / TIME:




# THE NAVAJO NATION

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

## MEMORANDUM

To: Veronica Blackhat, Assistant Attorney General  
Irvine Chee, Tribal Advocate  
NATURAL RESOURCES UNIT  
NAVAJO NATION DEPARTMENT OF JUSTICE

From:   
Elerina Yazzie, Department Manager  
General Land Development Department  
DIVISION OF NATURAL RESOURCES

Date: April 3, 2017

Subject: **Tier Two changes in the Navajo Nation System – Electronic 164 Process**

Gloria Tom, Department Manager, designated Sam Diswood, Wildlife Manager, to be the approver on the Navajo Nation System for Fish and Wildlife.

The Navajo Nation System is experiencing many changes to assist in streamlining the reviewers (tier one) and approvers (tier two) through the electronic 164 process. This change occurred months ago and Gloria is suppose to be removed from the Navajo Nation System as an approver. This is the reason project no. 6659, you will see that Gloria Tom did not vote.

Our office is requesting that NDOJ process all project packets that do not have a TIER II vote because as mentioned before Gloria Tom was removed from the NN System and delegated Sam Diswood to be an approver on behalf of Fish and Wildlife.

If you should have any questions regarding this letter please contact me directly at (928) 871-6447 or at [elerina\\_yazzie@frontier.com](mailto:elerina_yazzie@frontier.com), your assistance is appreciated. Thank you.

xc: Bidtah Becker, Executive Director, Division of Natural Resources  
Everytt Begay, GIS Supervisor, NLD  
W. Mike Halona, Department Director, NLD  
Gloria Tom, Department Manager, Fish and Wildlife  
Sam Diswood, Wildlife Manager, Fish and Wildlife  
GLDD File





# NAVAJO NATION DEPARTMENT OF JUSTICE

## DOCUMENT REVIEW REQUEST FORM

☒ RESUBMITTAL



DOJ	
03/07/17	11:14am
DATE / TIME	
<input type="checkbox"/> 7 Day Deadline	
DOC #:	006659#2
SAS #:	
UNIT:	pm

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

### CLIENT TO COMPLETE

DATE OF REQUEST:	3/7/2017	DIVISION:	NATURAL RESOURCES
CONTACT NAME:	Michelle Hoskie or St		GENERAL LAND DEVELOPMENT DEPARTMENT
PHONE NUMBER:	x 6447		michellehoskie@frontier.com
TITLE OF DOCUMENT:	BIA ROW for Pineda		
	DOJ		
DATE/TIME IN UNIT:	3/7/17 11:50 AM		DVOCATE: Irvin Chce
DATE TIME OUT OF UNIT:			

### DOJ ATTORNEY / ADVOCATE COMMENTS

- Rtd. doc. to GLDD DC. We notice Fish Wildlife & Minerals Staff Review! but no approval by Tier II. Please Explain.

REVIEWED BY: (Print)	Date / Time	SURNAMED BY: (Print)	Date / Time
----------------------	-------------	----------------------	-------------

IRVINE Chce 3-31-17

DOJ Secretary Called: \_\_\_\_\_ for Document Pick Up on \_\_\_\_\_ at \_\_\_\_\_ By: \_\_\_\_\_

PICKED UP BY: (Print) \_\_\_\_\_ DATE / TIME: \_\_\_\_\_



# NAVAJO NATION DEPARTMENT OF JUSTICE

## DOCUMENT REVIEW REQUEST FORM



☐ RESUBMITTAL

DOJ
2/22/17 1138
DATE / TIME
<input type="checkbox"/> 7 Day Deadline
DOC #: 006659
SAS #:
UNIT: NRW

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

### CLIENT TO COMPLETE

DATE OF REQUEST:	2/22/2017	DIVISION:	NATURAL RESOURCES
CONTACT NAME:	Michelle Hoskie or Stevie Hudson	DEPARTMENT:	GENERAL LAND DEVELOPMENT DEPARTMENT
PHONE NUMBER:	x 6447	E-MAIL:	michellehoskie@frontier.com

TITLE OF DOCUMENT: BIA ROW FOR PINEDALE LOOP N7054

### DOJ SECRETARY TO COMPLETE

DATE/TIME IN UNIT: 2/22/17 1:15 pm REVIEWING ATTORNEY/ADVOCATE: Irvin Chee

DATE TIME OUT OF UNIT:

### DOJ ATTORNEY / ADVOCATE COMMENTS

- Rtd. doc. to GLDD Office to attach the right Terms & Conditions the wrong T & C is attached. The right T & C should be

REVIEWED BY: (Print)	Date / Time	SURNAMED BY: (Print)	Date / Time
IMME	3-3-17		

DOJ Secretary Called: for Document Pick Up on at By:

PICKED UP BY: (Print) DATE / TIME:

NNDOJ/DRRF-July 2013

↓ "Form 05/09/02"  
CPA Roads Gen)

- I have attached a copy for you to use. Rtd. doc. to DOJ when the right T & C is attached so I can complete my review.  
thx - ic



# NAVAJO NATION DEPARTMENT OF JUSTICE

## DOCUMENT REVIEW REQUEST FORM

☒ RESUBMITTAL

03/07/17



DOJ
4/3/17 3:16 p.m.
DATE / TIME
<input type="checkbox"/> 7 Day Deadline
DOC #: 006659#3
SAS #:
UNIT: NR4

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

### CLIENT TO COMPLETE

DATE OF REQUEST:	4/3/2017	DIVISION:	NATURAL RESOURCES
CONTACT NAME:	Michelle Hoskie or Stevie Hudson	DEPARTMENT:	GENERAL LAND DEVELOPMENT DEPARTMENT
PHONE NUMBER:	x 6447	E-MAIL:	steviehudson@frontier.com

TITLE OF DOCUMENT: BIA ROW FOR PINEDALE LOOP N7054

### DOJ SECRETARY TO COMPLETE

DATE/TIME IN UNIT: 4/3/17 4pm REVIEWING ATTORNEY/ADVOCATE: Irvin Chee

DATE TIME OUT OF UNIT:

### DOJ ATTORNEY / ADVOCATE COMMENTS

- Rtd. doc. to GLDD Ofc., re: FdWL Approval. Sam Diswood's Approval for FdWL is missing under Tier II Approval. Please Explain.

REVIEWED BY: (Print)	Date / Time	SURNAMED BY: (Print)	Date / Time
Travis Hise	4-4-17		

DOJ Secretary Called: for Document Pick Up on at By:

PICKED UP BY: (Print) DATE / TIME:






# THE NAVAJO NATION

RUSSELL BEGAYE  
JONATHAN NEZ

## MEMORANDUM

To: General Land Development Department Staff  
Division of Natural Resources

From:   
Elerina Yazzie, Department Manager III  
General Land Development Department

Date: December 28, 2016

Subject: GENERAL LAND DEVELOPMENT DEPARTMENT DELEGATION OF AUTHORITY

Please be advised that the personnel listed below will be the delegated in my absence for the General Land Development Department:

1. Marklyn Chee, Environmental Specialist
2. Howard Draper, Programs & Project Specialist

The purpose of the delegated authority serves for these individuals to review, direct and sign administrative documents and supervise staff. Please follow chain of command. Your cooperation is appreciated. If you have any questions please contact me at 928-871-6440, thank you.

### ACKNOWLEDGEMENT:



Marklyn Chee, Environmental Specialist



Howard Draper, Programs & Projects Specialist

xc: Bitah Becker, Division Director  
DNR Chrono/File



# United States Department of the Interior

Bureau of Indian Affairs

Navajo Region

P. O. Box 1060

Gallup, New Mexico 87305

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



AUG 12 2016

Mr. Russell Begaye

President, The Navajo Nation

Attention: Mike Halona, Land Administration Office

Dear Mr. Begaye:

Re: Application for Bureau of Indian Affairs Right-of-Way to Construct and Maintain  
Pinedale Loop Road Project N7054(1)(2)2&3, located in Pinedale, McKinley County,  
New Mexico

The Naa'bik'iyati Committee of the 22<sup>nd</sup> Navajo Nation Council (NNC) has authorized the BIA Navajo Region Division of Transportation (BIA-NRDOT) to improve BIA Route N7054 (Pinedale Loop road) traversing through the Navajo Nation, Indian Allotments and New Mexico State lands.

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

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

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

*The Right-of-Way easement will include construction of utilities with the N7054(1)(2)2&3 easement corridor. This provision will allow the road right-of-way grant to the Bureau of Indian Affairs, Navajo Region, be used for the purpose that will benefit the Tribal communities, and their socioeconomic development needs. The utility*



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

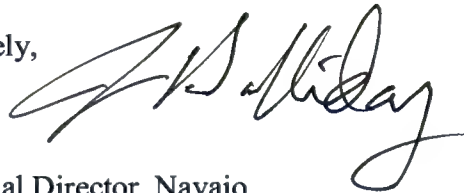
NRDOT submits the enclosed Right-of-Way application and supporting documents for BIA Project N7054(1)(2)2&3, Pinedale Loop Road, crossing Navajo Nation Trust lands. The supporting documents include:

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

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

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

Sincerely,



Acting Regional Director, Navajo

Enclosures

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

# UNITED STATES DEPARTMENT OF THE INTERIOR

## BUREAU OF INDIAN AFFAIRS

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

1. Applicant Name and Address: Bureau of Indian Affairs, Navajo Region, Division of Transportation, P.O. Box 1060, Gallup, New Mexico 87305
2. Tract(s) or parcel(s) affected by the right-of-way: See attached ROW Plat Map.
3. General location (easement description): See attached Legal Description.
4. Purpose: Construction an All-Weather Roadway for project N7054(1)(2)2&3
5. Term (Renewal, if applicable): 75 years term.
6. Identify ownership of permanent improvements associated with the right-of-way and the responsibility for constructing, operating, maintaining, and managing; or removal of permanent improvements under § 169.105:

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

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

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

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

THE APPLICANT FURTHER STIPULATES AND EXPRESSLY AGREES AS FOLLOWS:

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

Applicant Point of Contact Information:

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

DATE:

8/15/16

APPLICANT:

  
(Signature)

Herby Jon Larsen  
(Print Name)

# UNITED STATES DEPARTMENT OF THE INTERIOR

## BUREAU OF INDIAN AFFAIRS

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4. Purpose: Construction an All-Weather Roadway for project N7054(1)(2)2&3
5. Term (Renewal, if applicable): 75 years term.
6. Identify ownership of permanent improvements associated with the right-of-way and the responsibility for constructing, operating, maintaining, and managing; or removal of permanent improvements under §169.105:

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

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

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



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

THE APPLICANT FURTHER STIPULATES AND EXPRESSLY AGREES AS FOLLOWS:

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

Applicant Point of Contact Information:

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

DATE:

8/15/16

APPLICANT:

  
(Signature)

Herby Jon Larsen  
(Print Name)



A hand-drawn map titled "SOUTHERN MAP - BANGOR MICHIGAN". The map depicts a geographical area with several labeled points of interest. At the top left, there's a label "CONCORDIA". Below it, "BANGOR LAKE" is written. To the right of the lake, "SPRINTERS" is marked. Further right, "CALAP" and "REYNOLDS" are indicated. On the far right, "HEAD QUARTERS" and "COLEMAN" are shown. A road or path runs vertically through the center-right of the map. A river or stream flows from the bottom left towards the center. A compass rose at the top indicates North. The map is drawn with simple lines and handwritten-style text.

ROUTE No. N7054(1) PROJECT N7054(1)2224.3 LENGTH 12.18 KILOMETERS

Heidy Larsen, Regional Division of Transportation Manager, Nevada Regional Office, Bureau of Indian Affairs, as the applicant herein for the right-of-way for the construction of Bureau of Indian Affairs Road Project No. N70564102A3, over and across Indian lands. County of JACKSON, certifies that the survey is accurately represented on this map.

to me on this 15th day of April, 2018.  
Notary Public in and for the Kulua Bandz  
County of Wickenburg, New Mexico  
My commission expires 04-01-2027

MAESTRA V. SANCHEZ  
NOTARY

[illegible][illegible]

UNITED STATES  
DEPARTMENT OF THE INTERIOR  
BUREAU OF INDIAN AFFAIRS  
NAVAJO REGIONAL OFFICE • DIVISION OF TRANSPORTATION  
RIGHT OF WAY DISTRICT DRAWING

LOCATION: PINE DALE, NEW MEXICO  
 REVISED BY: NEDDOT FEBRUARY 2010  
 DRAWN BY: NEDDOT 6/24/ MARCH 2018  
 CHECK BY: NEDDOT 1/10/ MARCH 2016  
 LICENSE: NYSOL/LEGAL/ROW 4-11-2016  
 PAGE 1 OF 1 TOTAL PAGES

[illegible]

**LEGEND**

POUND CEMENT AND BALANCE OF MATERIALS (LBS)  
SOLUBLE CEMENT POINT  
FOUR-DIGIT SYSTEM (PICK CODES)  
POUND BULK - SECTION COMES  
POUND BARRED SYSTEM OR TALE COMES  
PROTECTED SECTION COMES - CHALKBOARD  
CHALKBOARD - ALUMINUM  
WATER-CURABLE GROUT - VARIATION SECTION  
SECTION LINE THIS BARRIER  
PROTECTED SECTION LINE  
PROTECTED CHALKBOARD SECTION LINE  
HISTORIC AND SECTION COMES LINE  
HISTORIC BARRIER ROAD SECTION LINE AND

[illegible]

## **RIGHT-OF-WAY DESCRIPTION**

PROJECT N7054(1)(2) 2&3 - PINE DALE LOOP ROAD  
ALL WITHIN THE NAVAJO NATION  
SECTIONS 19, 26, 27, 30, 31, 32, 33, & 34, T16N - R15W, NMPM  
SECTION 25, T16N - R16W, NMPM  
McKINLEY COUNTY, NEW MEXICO

A strip of land with varied widths along the following described centerline and lying within Sections 19, 26, 27, 30, 31, 32, 33, & 34 Township 16 North, Range 15 West, NMPM and Section 25, Township 16 North, Range 16 West, NMPM and more particularly described as follows:

Beginning at Engineer's survey centerline, POINT OF BEGINNING. Station 0+007.312 meters, on BIA Road N7054(1)(2), whence said point having a Geodetic Coordinate (NAD83) of  $N = 35^{\circ}36'36.2476''$   
 $W = 108^{\circ}28'31.1384''$  and New Mexico State Plane Coordinate - West Zone of  $N = 511450.502m$   
 $E = 771837.303m$ , said point having a cadastral tie to northwest quarter corner of Section 19; common to Section 18, Township 16 North, Range 15 West, NMPM and Sections 13 and 24, Township 16 North, Range 16 West, NMPM, bears  $S 89^{\circ}37'49'' W$ , a distance of 102.566 meters, and whence a Geodetic Control tie was made to "PP 2001", bears  $N 81^{\circ}15'05'' W$ , a distance of 647.594 meters.

### SECTION 19, TOWNSHIP 16 NORTH, RANGE 15 WEST, NMPM, NAVAJO NATION TRUST

THENCE,  $S 02^{\circ}12'10'' W$ , continuing with said centerline N7054(1)(2), a distance of 32.087 meters to PC Station 0+039.399;

THENCE, continuing with said centerline N7054(1)(2) along the arc of a  $1^{\circ}19'59''$  Curve No. 1 to PT Station 0+069.332, having a radius of 1310.000 meters, a central angle of  $01^{\circ}18'33''$  RIGHT, having an arc length of 29.933 meters, a tangent distance of 14.967 meters, a chord distance of 29.932 meters and a chord bearing of  $S 02^{\circ}51'27'' W$ ;

THENCE,  $S 03^{\circ}30'43'' W$ , continuing with said centerline N7054(1)(2), a distance of 286.371 meters to PC Station 0+355.703;

THENCE, continuing with said centerline N7054(1)(2) along the arc of a  $0^{\circ}37'25''$  Curve No. 2 to PT Station 0+652.984, having a radius of 2800.000 meters, a central angle of  $06^{\circ}05'00''$  LEFT, having an arc length of 297.281 meters, a tangent distance of 148.781 meters, a chord distance of 297.142 meters and a chord bearing of  $S 0^{\circ}28'13'' W$ ;



THENCE, S 02°34'16" E, continuing with said centerline N7054(1)(2), a distance of 176.960 meters to PC Station 0+829.944;

THENCE, continuing with said centerline N7054(1)(2) along the arc of a 1°19'59" Curve No. 3 to PT Station 0+952.579, having a radius of 1310.000 meters, a central angle of 05°21'49" RIGHT, having an arc length of 122.635 meters, a tangent distance of 61.363 meters, a chord distance of 122.591 meters and a chord bearing of S 0°06'38" W;

THENCE, S 02°47'33" W, continuing with said centerline N7054(1)(2), a distance of 243.912 meters to PC Station 1+196.491;

THENCE, continuing with said centerline N7054(1)(2) along the arc of a 2°29'41" Curve No. 4 to PT Station 1+299.157, having a radius of 700.000 meters, a central angle of 08°24'12" LEFT, having an arc length of 102.666 meters, a tangent distance of 51.425 meters, a chord distance of 102.574 meters and a chord bearing of S 1°24'33" E;

THENCE, S 05°36'39" E, continuing with said centerline N7054(1)(2), a distance of 40.843 meters to POT Station 1+340.000, whence the left ROW width increases from 23.000 meters to 40.000 meters;

THENCE, S 05°36'39" E, continuing with said centerline N7054(1)(2), a distance of 120.000 meters to POT Station 1+460.000, whence the left ROW width decreases from 40.000 meters to 23.000 meters;

THENCE, S 05°36'39" E, continuing with said centerline N7054(1)(2), a distance of 72.352 meters to PC Station 1+532.352;

THENCE, continuing with said centerline N7054(1)(2) along the arc of a 6°59'08" Curve No. 5A to POC Station 1+636.672, having a radius of 250.000 meters, a central angle of 23°54'31" RIGHT, having an arc length of 104.321 meters, a tangent distance of 52.931 meters, a chord distance of 103.565 meters and a chord bearing of S 06°20'36" W; said point is on the south line of the southwest quarter of Section 19, T16N, R15W, NMPM, whence the southwest corner of said Section 19 (computed) bears S 89°37'49" W, a distance of 114.188 meters, said point is the end of Navajo Nation Trust and continues within said lands;

NW 1/4, SECTION 30, TOWNSHIP 16 NORTH, RANGE 15 WEST, NMPM, (NAVAJO TRIBAL TRUST)

THENCE, continuing with said centerline N7054(1)(2) along the arc of a 6°59'08" Curve No. 5B to PT Station 1+679.270, having a radius of 250.000 meters, a central angle of 09°45'46" RIGHT, having an arc length of

42.598 meters, a tangent distance of 21.350 meters, a chord distance of 42.546 meters and a chord bearing of S 23°10'44" W;

THENCE, S 28°03'37" W, continuing with said centerline N7054(1)(2), a distance of 215.112 meters to POT Station 1+894.382, said point is on the west line of the northwest quarter of Section 30, T16N, R15W, NMPM, McKinley County, whence the northwest corner of said quarter of Section 30, common to Section 19, T16N, R15W, NMPM and Section 24 and 25 T16N, R16W, NMPM bears N 00°56'29" E, a distance of 228.233 meters, said point is the end of Navajo Nation Trust and continues within said lands;

E 1/2, SECTION 25, TOWNSHIP 16 NORTH, RANGE 16 WEST, NMPM, (NAVAJO TRIBAL TRUST)

THENCE, S 28°03'37" W, continuing with said centerline N7054(1)(2), a distance of 130.256 meters to PT Station 2+024.638;

THENCE, continuing with said centerline N7054(1)(2) along the arc of a 08°43'55" Curve No. 6 to PT Station 2+129.506, having a radius of 200.000 meters, a central angle of 30°02'32" LEFT, having an arc length of 104.867 meters, a tangent distance of 53.669 meters, a chord distance of 103.670 meters and a chord bearing of S 13°02'21" W;

THENCE, S 01°58'55" E, continuing with said centerline N7054(1)(2), a distance of 179.171 meters to PC Station 2+308.677;

THENCE, continuing with said centerline N7054(1)(2) along the arc of a 2°41'12" Curve No. 7A to POC Station 2+586.117, having a radius of 650.000 meters, a central angle of 24°27'20" LEFT, having an arc length of 277.440 meters, a tangent distance of 140.865 meters, a chord distance of 275.338 meters and a chord bearing of S 14°12'35" E, said point is on the east line of the southeast quarter of Section 25, T16N, R16W, NMPM, whence the southeast corner of said Section 25, common to Sections 30 and 31, T16N, R15W, NMPM and Section 36, T16N, R16W, NMPM bears S 00°56'29" W, a distance of 650.358 meters, said point is the end of Navajo Nation Trust and the beginning point of Indian Allotment 42519;

SW 1/4, SECTION 30, TOWNSHIP 16 NORTH, RANGE 15 WEST, NMPM (ALLOTMENT No. 42519)

THENCE, continuing with said centerline N7054(1)(2) along the arc of a 2°41'12" Curve No. 7B to PT Station 2+674.882, having a radius of 650.000 meters, a central angle of 07°49'28" LEFT, having an arc length of 88.765 meters, a tangent distance of 44.452 meters, a chord distance of 88.696 meters and a chord bearing of S 30°20'59" E;

THENCE, S 34°15'43" E, continuing with said centerline N7054(1)(2), a distance of 59.353 meters to PC Station 2+734.235;

THENCE, continuing with said centerline N7054(1)(2) along the arc of a 01°59'29" Curve No. 8 to PT Station 2+990.860, having a radius of 877.000 meters, a central angle of 16°45'56" LEFT, having an arc length of 256.625 meters, a tangent distance of 129.236 meters, a chord distance of 255.710 meters and a chord bearing of S 42°38'41" W;

THENCE, S 51°01'40" E, continuing with said centerline N7054(1)(2), a distance of 112.292 meters to PC Station 3+103.152;

THENCE, continuing with said centerline N7054(1)(2) along the arc of a 3°52'51" Curve No. 9 to PT Station 3+267.962, having a radius of 450.000 meters, a central angle of 20°59'03" LEFT, having an arc length of 164.810 meters, a tangent distance of 83.338 meters, a chord distance of 163.890 meters and a chord bearing of S 61°31'11" E;

THENCE, S 72°00'43" E, continuing with said centerline N7054(1)(2), a distance of 209.797 meters to PC Station 3+477.759;

THENCE, continuing with said centerline N7054(1)(2) along the arc of a 04°21'57" Curve No. 10 to PT Station 3+578.528, having a radius of 400.000 meters, a central angle of 14°26'03" LEFT, having an arc length of 100.769 meters, a tangent distance of 50.769 meters, a chord distance of 100.503 meters and a chord bearing of S 79°13'44" E;

THENCE, S 86°26'46" E, continuing with said centerline N7054(1)(2), a distance of 24.688 meters to POT Station 3+603.216, said point is on the center quarter line of the southwest quarter of Section 30, T16N, R15W, NMPM, McKinley County, whence the south quarter corner of said quarter of Section 30 bears (computed) S 00°25'23" W, a distance of 112.367 meters, said point is the end of Indian Allotment No. 42519 and the beginning point of Indian Allotment 42520;

NW 1/4, SECTION 30, TOWNSHIP 16 NORTH, RANGE 15 WEST, NMPM (ALLOTMENT No. 42520

THENCE, S 86°26'46" E, continuing with said centerline N7054(1)(2), a distance of 179.167 meters to PC Station 3+782.383;

THENCE, continuing with said centerline N7054(1)(2) along the arc of a 3°52'51" Curve No. 11 to PT Station 3+943.860, having a radius of 450.000 meters, a central angle of 20°33'36" RIGHT, having an arc length of



161.477 meters, a tangent distance of 81.616 meters, a chord distance of 160.612 meters and a chord bearing of S 76°09'58" E;

THENCE, S 65°53'10" E, continuing with said centerline N7054(1)(2), a distance of 47.194 meters to PC Station 3+991.054;

THENCE, continuing with said centerline N7054(1)(2) along the arc of a 01°35'15" Curve No. 12 to PT Station 4+119.922, having a radius of 1100.000 meters, a central angle of 06°42'44" LEFT, having an arc length of 128.868 meters, a tangent distance of 64.508 meters, a chord distance of 128.794 meters and a chord bearing of S 69°14'32" E;

THENCE, S 72°35'55" E, continuing with said centerline N7054(1)(2), a distance of 13.339 meters to POT Station 4+133.261, said point is on the south line of the southeast quarter of Section 30, T16N, R15W, NMPM, McKinley County, whence the southeast quarter corner of said quarter of Section 30 bears (computed) S 89°19'17" E, a distance of 303.769 meters, said point is the end of Indian Allotment No. 42520 and the beginning point of Navajo Nation Trust Land;

NE 1/4, SECTION 31, TOWNSHIP 16 NORTH, RANGE 15 WEST, NMPM, (NAVAJO TRIBAL TRUST)

THENCE, S 72°35'55" E, continuing with said centerline N7054(1)(2), a distance of 34.287 meters to PC Station 4+167.548;

THENCE, continuing with said centerline N7054(1)(2) along the arc of a 06°59'08" Curve No. 13 to PT Station 4+283.047, having a radius of 250.000 meters, a central angle of 26°28'14" RIGHT, having an arc length of 115.499 meters, a tangent distance of 58.799 meters, a chord distance of 114.475 meters and a chord bearing of S 59°21'48" E;

THENCE, S 46°07'41" E, continuing with said centerline N7054(1)(2), a distance of 64.973 meters to PC Station 4+348.020;

THENCE, continuing with said centerline N7054(1)(2) along the arc of a 06°59'08" Curve No. 14A to POC Station 4+489.735, having a radius of 250.000 meters, a central angle of 32°28'43" LEFT, having an arc length of 141.715 meters, a tangent distance of 72.818 meters, a chord distance of 139.825 meters and a chord bearing of S 62°22'02" E, said point is on the east line of the northeast quarter of Section 31, T16N, R15W, NMPM, whence the northeast corner of said Section 31, bears (computed) N 00°35'45" E, a distance of 174.882 meters, said point is the end of Navajo Nation Trust and the beginning point of New Mexico State Land;

SECTION 32, TOWNSHIP 16 NORTH, RANGE 15 WEST, NMPM, (NEW MEXICO STATE LAND

THENCE, continuing with said centerline N7054(1)(2) along the arc of a 06°59'08" Curve No. 14B to PT Station 4+522.758, having a radius of 250.000 meters, a central angle of 07°34'05" LEFT, having an arc length of 33.022 meters, a tangent distance of 16.535 meters, a chord distance of 32.998 meters and a chord bearing of S 82°23'27" E;

THENCE, S 86°10'29" E, continuing with said centerline N7054(1)(2), a distance of 122.291 meters to PC Station 4+645.049;

THENCE, continuing with said centerline N7054(1)(2) along the arc of a 04°59'23" Curve No. 15 to PT Station 4+793.623, having a radius of 350.000 meters, a central angle of 24°19'19" RIGHT, having an arc length of 148.574 meters, a tangent distance of 75.423 meters, a chord distance of 147.461 meters and a chord bearing of S 74°00'50" E;

THENCE, S 61°51'11" E, continuing with said centerline N7054(1)(2), a distance of 546.962 meters to PC Station 5+340.585;

THENCE, continuing with said centerline N7054(1)(2) along the arc of a 12°56'10" Curve No. 16 to PT Station 5+425.292, having a radius of 135.000 meters, a central angle of 35°57'03" RIGHT, having an arc length of 84.707 meters, a tangent distance of 43.800 meters, a chord distance of 83.324 meters and a chord bearing of S 43°52'39" E;

THENCE, S 25°54'08" E, continuing with said centerline N7054(1)(2), a distance of 247.710 meters to PC Station 5+673.002;

THENCE, continuing with said centerline N7054(1)(2) along the arc of a 12°56'10" Curve No. 17 to PT Station 5+760.881, having a radius of 135.000 meters, a central angle of 37°17'50" LEFT, having an arc length of 87.879 meters, a tangent distance of 45.560 meters, a chord distance of 86.336 meters and a chord bearing of S 44°33'03" E;

THENCE, S 63°11'57" E, continuing with said centerline N7054(1)(2), a distance of 238.230 meters to PC Station 5+999.111;

THENCE, continuing with said centerline N7054(1)(2) along the arc of a 12°56'10" Curve No. 18 to PT Station 6+064.790, having a radius of 135.000 meters, a central angle of 27°52'31" LEFT, having an arc length of 65.679 meters, a tangent distance of 33.503 meters, a chord distance of 65.033 meters and a chord bearing of S 77°08'13" E;

THENCE, N 88°55'32" E, continuing with said centerline N7054(1)(2), a distance of 213.853 meters to PC Station 6+278.643;

THENCE, continuing with said centerline N7054(1)(2) along the arc of a 12°56'10" Curve No. 19A to POC Station 6+411.972, having a radius of 135.000 meters, a central angle of 56°35'11" LEFT, having an arc length of 133.328 meters, a tangent distance of 72.669 meters, a chord distance of 127.976 meters and a chord bearing of S 60°37'57" E, said point is on the east line of Section 32, T16N, R15W, NMPM, whence the southeast corner of said Section 32, bears S 00°05'09" E, a distance of 732.818 meters, said point is the end of New Mexico State Land and the beginning point of Navajo Nation Trust Land;

SECTION 33, TOWNSHIP 16 NORTH, RANGE 15 WEST, NMPM, (NAVAJO NATION TRUST LAND)

THENCE, continuing with said centerline N7054(1)(2) along the arc of a 12°56'10" Curve No. 19B to PT Station 6+414.596, having a radius of 135.000 meters, a central angle of 01°06'50" LEFT, having an arc length of 2.624 meters, a tangent distance of 1.312 meters, a chord distance of 2.624 meters and a chord bearing of N 31°46'56" E;

THENCE, N 31°13'31" E, continuing with said centerline N7054(1)(2), a distance of 128.404 meters to PC Station 6+542.999;

THENCE, continuing with said centerline N7054(1)(2) along the arc of a 05°49'17" Curve No. 20 to PT Station 6+775.507, having a radius of 300.000 meters, a central angle of 44°24'20" RIGHT, having an arc length of 232.507 meters, a tangent distance of 122.445 meters, a chord distance of 226.732 meters and a chord bearing of N 53°25'41" E;

THENCE, N 75°37'52" E, continuing with said centerline N7054(1)(2), a distance of 131.691 meters to PC Station 6+907.198;

THENCE, continuing with said centerline N7054(1)(2) along the arc of a 09°58'45" Curve No. 21 to PT Station 7+030.801, having a radius of 175.000 meters, a central angle of 40°28'05" RIGHT, having an arc length of 123.603 meters, a tangent distance of 64.506 meters, a chord distance of 121.050 meters and a chord bearing of S 84°08'06" E;

THENCE, S 63°54'03" E, continuing with said centerline N7054(1)(2), a distance of 90.310 meters to PC Station 7+121.111;

THENCE, continuing with said centerline N7054(1)(2) along the arc of a  $04^{\circ}21'57''$  Curve No. 22 to PT Station 7+229.447, having a radius of 400.000 meters, a central angle of  $15^{\circ}31'05''$  RIGHT, having an arc length of 108.336 meters, a tangent distance of 54.502 meters, a chord distance of 108.005 meters and a chord bearing of  $S\ 56^{\circ}08'31''\ E$ ;

THENCE,  $S\ 48^{\circ}22'58''\ E$ , continuing with said centerline N7054(1)(2), a distance of 69.204 meters to PC Station 7+298.651;

THENCE, continuing with said centerline N7054(1)(2) along the arc of a  $02^{\circ}54'38''$  Curve No. 23 to PT Station 7+536.553, having a radius of 600.000 meters, a central angle of  $22^{\circ}43'05''$  LEFT, having an arc length of 237.902 meters, a tangent distance of 120.534 meters, a chord distance of 236.347 meters and a chord bearing of  $S\ 59^{\circ}44'31''\ E$ ;

THENCE,  $S\ 71^{\circ}06'03''\ E$ , continuing with said centerline N7054(1)(2), a distance of 200.197 meters to PC Station 7+736.750;

THENCE, continuing with said centerline N7054(1)(2) along the arc of a  $06^{\circ}28'05''$  Curve No. 24 to PT Station 7+953.810, having a radius of 270.000 meters, a central angle of  $46^{\circ}03'41''$  LEFT, having an arc length of 217.059 meters, a tangent distance of 114.779 meters, a chord distance of 211.261 meters and a chord bearing of  $N\ 85^{\circ}52'06''\ E$ ;

THENCE,  $N\ 62^{\circ}50'16''\ E$ , continuing with said centerline N7054(1)(2), a distance of 74.954 meters to PC Station 8+028.763;

THENCE, continuing with said centerline N7054(1)(2) along the arc of a  $06^{\circ}59'08''$  Curve No. 25 to PT Station 8+112.432, having a radius of 250.000 meters, a central angle of  $19^{\circ}10'31''$  RIGHT, having an arc length of 83.668 meters, a tangent distance of 42.229 meters, a chord distance of 83.278 meters and a chord bearing of  $N\ 72^{\circ}25'32''\ E$ ;

THENCE,  $N\ 82^{\circ}00'47''\ E$ , continuing with said centerline N7054(1)(2), a distance of 138.432 meters to POT Station 8+250.864, said point is on the east line of the of Section 33, T16N, R15W, NMPM, McKinley County, whence the southeast quarter corner of said quarter of Section 33 bears (computed)  $S\ 00^{\circ}04'28''\ W$ , a distance of 788.707 meters, said point is the end of Navajo Nation Trust Land and the beginning point of Indian Allotment No. 43327,



SW 1/4, SECTION 34, TOWNSHIP 16 NORTH, RANGE 15 WEST, NMPM, (ALLOTMENT No. 43327)

THENCE, N 82°00'47" E, continuing with said centerline N7054(1)(2), a distance of 106.803 meters to PC Station 8+357.667;

THENCE, continuing with said centerline N7054(1)(2) along the arc of a 01°59'29" Curve No. 26A to POC Station 8+416.417, having a radius of 877.000 meters, a central angle of 03°50'18" RIGHT, having an arc length of 58.750 meters, a tangent distance of 29.386 meters, a chord distance of 58.739 meters and a chord bearing of N 83°55'56" E, said point is on the north line of the southwest quarter of Section 34, T16N, R15W, NMPM, whence the northwest quarter corner of said southwest quarter of Section 34, bears (computed) S 89°45'04" W, a distance of 164.151 meters, said point is the end of Indian Allotment No. 43327 and the beginning point of Indian Allotment No. 42525;

NW 1/4, SECTION 34, TOWNSHIP 16 NORTH, RANGE 15 WEST, NMPM, (ALLOTMENT No. 42525)

THENCE, continuing with said centerline N7054(1)(2) along the arc of a 01°59'29" Curve No. 26B to PT Station 8+429.683, having a radius of 877.000 meters, a central angle of 00°52'00" RIGHT, having an arc length of 13.267 meters, a tangent distance of 6.634 meters, a chord distance of 13.267 meters and a chord bearing of N 86°17'05" E;

THENCE, N 86°43'05" E, continuing with said centerline N7054(1)(2), a distance of 66.277 meters to PC Station 8+495.960;

THENCE, continuing with said centerline N7054(1)(2) along the arc of a 04°21'57" Curve No. 27 to PT Station 8+614.742, having a radius of 400.000 meters, a central angle of 17°00'51" LEFT, having an arc length of 118.782 meters, a tangent distance of 59.831 meters, a chord distance of 118.346 meters and a chord bearing of N 78°12'39" E;

THENCE, N 69°42'14" E, continuing with said centerline N7054(1)(2), a distance of 56.666 meters to PC Station 8+671.408;

THENCE, continuing with said centerline N7054(1)(2) along the arc of a 05°49'17" Curve No. 28 to PT Station 8+827.546, having a radius of 300.000 meters, a central angle of 29°49'12" RIGHT, having an arc length of 156.138 meters, a tangent distance of 79.880 meters, a chord distance of 154.381 meters and a chord bearing of N 84°36'50" E;

THENCE, S 80°28'34" E, continuing with said centerline N7054(1)(2), a distance of 235.378 meters to

POT Station 9+062.924, said point is on the center quarter line of the northwest quarter of Section 34, T16N, R15W, NMPM, whence the northeast quarter corner of said northwest quarter of Section 34, bears (computed) N 00°05'09" W, a distance of 781.456 meters, said point is the end of Indian Allotment No. 42525 and the beginning point of Indian Allotment No. 42526;

NW 1/4, SECTION 34, TOWNSHIP 16 NORTH, RANGE 15 WEST, NMPM, (ALLOTMENT No. 42526)

THENCE, S 80°28'34" E, continuing with said centerline N7054(1)(2), a distance of 107.741 meters to PC Station 9+170.665;

THENCE, continuing with said centerline N7054(1)(2) along the arc of a 12°56'10" Curve No. 29 to PT Station 9+341.934, having a radius of 135.000 meters, a central angle of 72°41'19" LEFT, having an arc length of 171.268 meters, a tangent distance of 99.328 meters, a chord distance of 160.012 meters and a chord bearing of N 63°10'47" E;

THENCE, N 26°50'07" E, continuing with said centerline N7054(1)(2), a distance of 127.063 meters to PC Station 9+468.996;

THENCE, continuing with said centerline N7054(1)(2) along the arc of a 04°21'57" Curve No. 30 to PT Station 9+707.087, having a radius of 400.000 meters, a central angle of 34°06'14" LEFT, having an arc length of 238.091 meters, a tangent distance of 122.689 meters, a chord distance of 234.591 meters and a chord bearing of N 09°47'00" E;

THENCE, N 07°16'07" W, continuing with said centerline N7054(1)(2), a distance of 72.913 meters to POT Station 9+780.000, whence the right ROW width increases from 23.000 meters to 50.000 meters;

THENCE, N 07°16'07" W, continuing with said centerline N7054(1)(2), a distance of 128.609 meters to PC Station 9+908.609;

THENCE, continuing with said centerline N7054(1)(2) along the arc of a 05°49'17" Curve No. 31A to POC Station 9+940.000, having a radius of 300.000 meters, a central angle of 05°59'43" RIGHT, having an arc length of 31.391 meters, a tangent distance of 15.710 meters, a chord distance of 31.377 meters and a chord bearing of N 04°16'15" W, whence the right ROW width decreases from 50.000 meters to 40.000 meters;

THENCE, continuing with said centerline N7054(1)(2) along the arc of a 05°49'17" Curve No. 31B to PT Station 10+020.756, having a radius of 300.000 meters, a central angle of 15°25'24" RIGHT, having an arc length of 80.756 meters, a tangent distance of 40.624 meters, a chord distance of 80.512 meters and a chord bearing of N 06°26'18" E;

THENCE, N 14°09'00" E, continuing with said centerline N7054(1)(2), a distance of 19.244 meters to POT Station 10+040.000, whence the right ROW width decreases from 40.000 meters to 23.000 meters;

THENCE, N 14°09'00" E, continuing with said centerline N7054(1)(2), a distance of 53.044 meters to POT Station 10+093.044, said point is on the north line of the northeast quarter of Section 34, T16N, R15W, NMPM, whence the northeast corner of said northeast quarter of Section 34, bears (computed) S 89°47'44" E, a distance of 457.031 meters, said point is the end of Indian Allotment No. 42526 and the beginning point of Indian Allotment No. 2073;

SE 1/4, SECTION 27, TOWNSHIP 16 NORTH, RANGE 15 WEST, NMPM, (ALLOTMENT No. 2073)

THENCE, N 14°09'00" W, continuing with said centerline N7054(1)(2), a distance of 35.446 meters to PC Station 10+128.490;

THENCE, continuing with said centerline N7054(1)(2) along the arc of a 00°41'55" Curve No. 32 to PT Station 10+240.817, having a radius of 2500.000 meters, a central angle of 02°34'28" LEFT, having an arc length of 112.327 meters, a tangent distance of 56.173 meters, a chord distance of 112.317 meters and a chord bearing of N 12°51'46" E;

THENCE, N 11°34'32" E, continuing with said centerline N7054(1)(2), a distance of 55.391 meters to PC Station 10+296.208;

THENCE, continuing with said centerline N7054(1)(2) along the arc of a 01°09'51" Curve No. 33 to PT Station 10+406.527, having a radius of 1500.000 meters, a central angle of 04°12'50" RIGHT, having an arc length of 110.319 meters, a tangent distance of 55.184 meters, a chord distance of 110.294 meters and a chord bearing of N 13°40'57" E;

THENCE, N 15°47'22" E, continuing with said centerline N7054(1)(2), a distance of 165.115 meters to PC Station 10+571.642;

THENCE, continuing with said centerline N7054(1)(2) along the arc of a 01°09'51" Curve No. 34 to PT Station 10+677.929, having a radius of 135.000 meters, a central angle of 45°06'35" RIGHT, having an arc length of 106.287 meters, a tangent distance of 56.070 meters, a chord distance of 103.563 meters and a chord bearing of N 38°20'40" E;

THENCE, N 60°53'57" E, continuing with said centerline N7054(1)(2), a distance of 307.433 meters to PC Station 10+985.362;



THENCE, continuing with said centerline N7054(1)(2) along the arc of a 08°43'55" Curve No. 35A to POC Station 10+999.898, having a radius of 200.000 meters, a central angle of 04°09'51" RIGHT, having an arc length of 14.536 meters, a tangent distance of 7.271 meters, a chord distance of 14.533 meters and a chord bearing of N 62°58'53" E, said point is on the east line of the southeast quarter of Section 34, T16N, R15W, NMPM, whence the northeast corner of said southeast quarter of Section 34, bears (computed) N 00°22'27" E, a distance of 92.399 meters, said point is the end of Indian Allotment No. 2073 and the beginning point of Indian Allotment No. 42522;

SW 1/4, SECTION 26, TOWNSHIP 16 NORTH, RANGE 15 WEST, NMPM, (ALLOTMENT No. 42522)

THENCE, continuing with said centerline N7054(1)(2) along the arc of a 08°43'55" Curve No. 35B to PT Station 11+082.576, having a radius of 200.000 meters, a central angle of 23°41'08" RIGHT, having an arc length of 82.678 meters, a tangent distance of 41.938 meters, a chord distance of 82.091 meters and a chord bearing of N 76°54'22" E;

THENCE, N 88°44'56" E, continuing with said centerline N7054(1)(2), a distance of 45.931 meters to PC Station 11+128.507;

THENCE, continuing with said centerline N7054(1)(2) along the arc of a 12°56'10" Curve No. 36 to PT Station 11+233.400, having a radius of 135.000 meters, a central angle of 44°31'05" LEFT, having an arc length of 104.893 meters, a tangent distance of 55.255 meters, a chord distance of 102.275 meters and a chord bearing of N 66°29'24" E;

THENCE, N 44°13'51" E, continuing with said centerline N7054(1)(2), a distance of 44.089 meters to POT Station 11+277.489, said point is on the north line of the southwest quarter of Section 26, T16N, R15W, NMPM, whence the northwest corner of said southwest quarter of Section 26, bears (computed) N 89°54'24" W, a distance of 249.812 meters, said point is the end of Indian Allotment No. 42522 and the beginning point of Indian Allotment No. 42527;

NW 1/4, SECTION 26, TOWNSHIP 16 NORTH, RANGE 15 WEST, NMPM, (ALLOTMENT No. 42527)

THENCE, N 44°13'51" E, continuing with said centerline N7054(1)(2), a distance of 361.494 meters to PC Station 11+638.983;

THENCE, continuing with said centerline N7054(1)(2) along the arc of a 03°29'34" Curve No. 37 to PT Station 11+717.515, having a radius of 500.000 meters, a central angle of 08°59'57" RIGHT, having an arc



length of 78.532 meters, a tangent distance of 39.347 meters, a chord distance of 78.451 meters and a chord bearing of N 48°43'49" E;

THENCE, N 53°13'47" E, continuing with said centerline N7054(1)(2), a distance of 68.873 meters to PC Station 11+786.388;

THENCE, continuing with said centerline N7054(1)(2) along the arc of a 00°34'56" Curve No. 38 to PT Station 11+967.029, having a radius of 3000.000 meters, a central angle of 03°27'00" LEFT, having an arc length of 180.641 meters, a tangent distance of 90.348 meters, a chord distance of 180.614 meters and a chord bearing of N 51°30'17" E;

THENCE, N 49°46'47" E, continuing with said centerline N7054(1)(2), a distance of 66.324 meters to POT Station 12+033.353, said point is on the east line of the northwest quarter of Section 26, T16N, R15W, NMPM, whence the northeast corner of said northwest quarter of Section 26, bears (computed) N 00°33'14" E, a distance of 284.406 meters, said point is the end of Indian Allotment No. 42527 and the beginning point of Indian Allotment No. 42528;

NE 1/4, SECTION 26, TOWNSHIP 16 NORTH, RANGE 15 WEST, NMPM, (ALLOTMENT No. 42528)

THENCE, N 49°46'47" E, continuing with said centerline N7054(1)(2), a distance of 36.102 meters to PC Station 12+069.456;

THENCE, continuing with said centerline N7054(1)(2) along the arc of a 12°56'10" Curve No. 39 to PT Station 12+123.241, having a radius of 135.000 meters, a central angle of 22°49'38" LEFT, having an arc length of 53.786 meters, a tangent distance of 27.254 meters, a chord distance of 53.431 meters and a chord bearing of N 38°21'58" E;

THENCE, N 26°57'09" E, continuing with said centerline N7054(1)(2), a distance of 56.589 meters to END OF PROJECT Station 12+179.83, on BIA Road N7054(1)(2), whence said point having a Geodetic Coordinate (NAD83) of N = 35°35'39.3247" W = 108°23'44.9718" and New Mexico State Plane Coordinate - West Zone of N = 509652.185m E = 779029.097m, said point having a cadastral tie to Section 26; common to Sections 23, 24 and 25, Township 16 North, Range 15 West, NMPM, bears N 77°14'02" E, a distance of 740.328 meters, and whence a Geodetic Control tie was made to "PP 2002", bears N 62°38'58" W, a distance of 80.506 meters.

The Project Right of Way width is 23 meters left and right on each side of said centerline survey, except where otherwise indicated. N7054(1)(2)2&3 contains a total length of 12.172 kilometers (7.56 miles) in length, and contains 56.775 hectares (140.29 acres), more or less.

RIGHT OF WAY TABLE								
N7054(1)(2)			LENGTH		WIDTH			
STATION	-	STATION	METERS	FEET	LEFT	RIGHT	Hectares	ACRES
0+007.312	-	1+340.000	1332.688	4372.34	23m (75.46ft)	23m (75.46ft)	6.126	15.14
1+340.000	-	1+460.000	120.000	393.70	40m (131.23ft)	23m (75.46ft)	0.0752	1.186
1+460.000	-	9+780.000	8320.000	27296.59	23m (75.46ft)	23m (75.46ft)	38.268	94.56
9+780.000	-	9+940.000	160.000	524.93	23m (75.46ft)	50m (164.04ft)	1.164	1.55
9+940.000	-	10+040.000	100.000	328.08	23m (75.46ft)	40m (131.23ft)	0.626	1.55
10+040.000	-	12+179.830	2139.830	7020.44	23m (75.46ft)	40m (75.46ft)	9.839	24.31
					TOTALS:		56.775	140.29

NOTE: ALL AREA QUANTITIES ARE COMPUTED FROM PERIMETER OF ROW CORRIDOR

PROJECT 2&3 - PINE DALE LOOP ROAD  
 WITHIN THE NAVAJO NATION  
 T16N - R15W  
 4 SECTIONS 19, 26, 27, 30, 31, 32, 33, & 34  
 R16W, NMPM, SECTION 25  
 LEY COUNTY, NEW MEXICO

U. S. DEPARTMENT OF THE INTERIOR  
 BUREAU OF INDIAN AFFAIRS  
 NAVAJO INDIAN RESERVATION  
 RIGHT-OF-WAY PLAT MAP

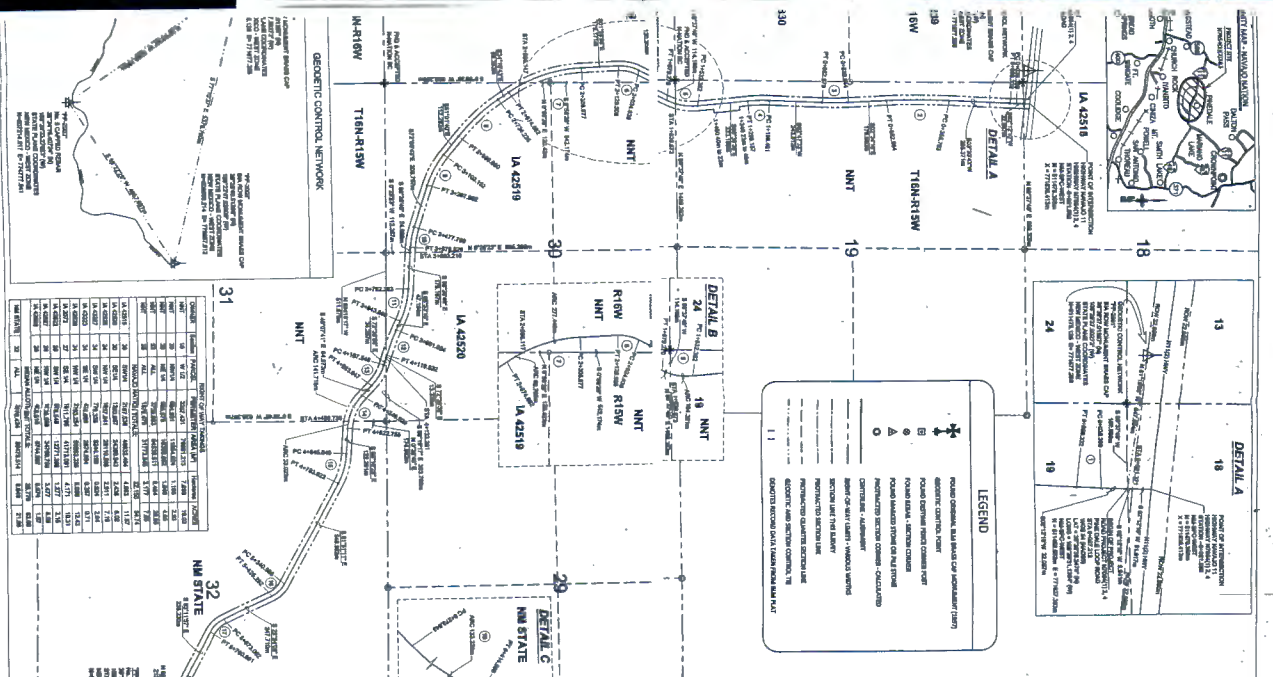
ROUTE NO. 19600, PROJECT INTERSECTION, LENGTH 12.18 KILOMETERS  
 STATE OF NEW MEXICO  
 COUNTY OF LEITCHFIELD

By: *[Signature]*  
 Regional Director of Transportation Manager  
 Bureau of Indian Affairs, as the representative for the right-of-way for the construction of  
 County of Leitchfield, Utah, Leitchfield Co.  
 My commission expires: 06/01/2017

Plans and specifications to be on file with the Secretary of the Interior, Bureau of Indian Affairs, as the representative for the right-of-way for the construction of  
 County of Leitchfield, Utah, Leitchfield Co.  
 My commission expires: 06/01/2017

SECTION	LENGTH	WIDTH	AREA	PERMITS	REMARKS
SECTION 19	1.218	1.218	1.482	1.218	1.218
SECTION 26	1.218	1.218	1.482	1.218	1.218
SECTION 27	1.218	1.218	1.482	1.218	1.218
SECTION 30	1.218	1.218	1.482	1.218	1.218
SECTION 31	1.218	1.218	1.482	1.218	1.218
SECTION 32	1.218	1.218	1.482	1.218	1.218
SECTION 33	1.218	1.218	1.482	1.218	1.218
SECTION 34	1.218	1.218	1.482	1.218	1.218

SECTION	LENGTH	WIDTH	AREA	PERMITS	REMARKS
SECTION 19	1.218	1.218	1.482	1.218	1.218
SECTION 26	1.218	1.218	1.482	1.218	1.218
SECTION 27	1.218	1.218	1.482	1.218	1.218
SECTION 30	1.218	1.218	1.482	1.218	1.218
SECTION 31	1.218	1.218	1.482	1.218	1.218
SECTION 32	1.218	1.218	1.482	1.218	1.218
SECTION 33	1.218	1.218	1.482	1.218	1.218
SECTION 34	1.218	1.218	1.482	1.218	1.218



**UNITED STATES**  
 DEPARTMENT OF THE INTERIOR  
 BUREAU OF INDIAN AFFAIRS  
 NAVAJO INDIAN RESERVATION  
 RIGHT-OF-WAY PLAT MAP

LOCATION: PINE DALE LOOP ROAD  
 DRAWN BY: [Name]  
 DATE: [Date]

1. The project is located within the Navajo Indian Reservation, which is situated within the boundaries of the Navajo Nation. The project is located within the boundaries of the Navajo Nation, which is situated within the boundaries of the Navajo Nation.

2. The project is located within the Navajo Indian Reservation, which is situated within the boundaries of the Navajo Nation. The project is located within the boundaries of the Navajo Nation, which is situated within the boundaries of the Navajo Nation.

3. The project is located within the Navajo Indian Reservation, which is situated within the boundaries of the Navajo Nation. The project is located within the boundaries of the Navajo Nation, which is situated within the boundaries of the Navajo Nation.

4. The project is located within the Navajo Indian Reservation, which is situated within the boundaries of the Navajo Nation. The project is located within the boundaries of the Navajo Nation, which is situated within the boundaries of the Navajo Nation.

5. The project is located within the Navajo Indian Reservation, which is situated within the boundaries of the Navajo Nation. The project is located within the boundaries of the Navajo Nation, which is situated within the boundaries of the Navajo Nation.

6. The project is located within the Navajo Indian Reservation, which is situated within the boundaries of the Navajo Nation. The project is located within the boundaries of the Navajo Nation, which is situated within the boundaries of the Navajo Nation.

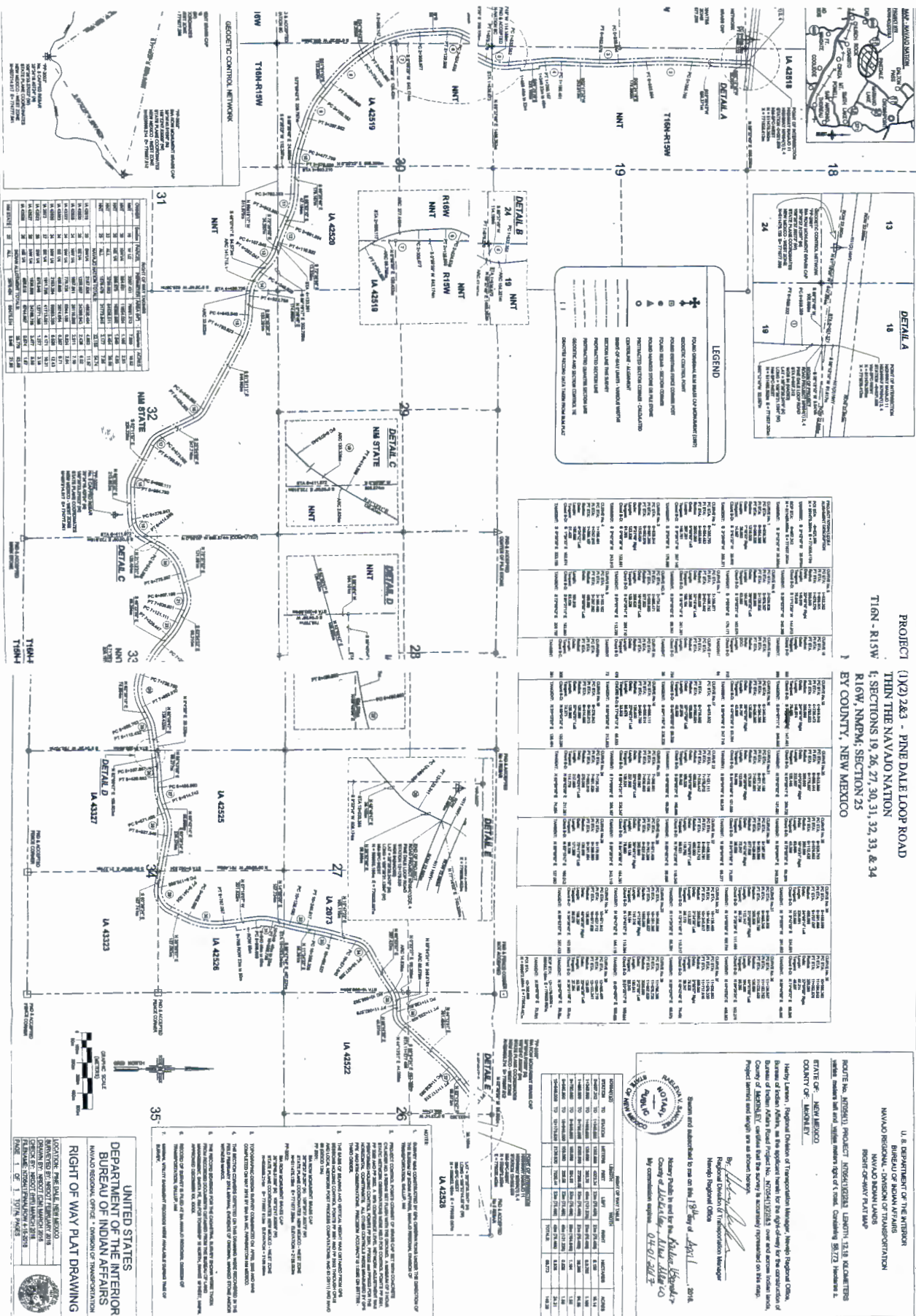
7. The project is located within the Navajo Indian Reservation, which is situated within the boundaries of the Navajo Nation. The project is located within the boundaries of the Navajo Nation, which is situated within the boundaries of the Navajo Nation.

8. The project is located within the Navajo Indian Reservation, which is situated within the boundaries of the Navajo Nation. The project is located within the boundaries of the Navajo Nation, which is situated within the boundaries of the Navajo Nation.

9. The project is located within the Navajo Indian Reservation, which is situated within the boundaries of the Navajo Nation. The project is located within the boundaries of the Navajo Nation, which is situated within the boundaries of the Navajo Nation.

10. The project is located within the Navajo Indian Reservation, which is situated within the boundaries of the Navajo Nation. The project is located within the boundaries of the Navajo Nation, which is situated within the boundaries of the Navajo Nation.







THE NAVAJO NATION  
**Navajo Land Department**

P.O. Box # 2249 · Window Rock, Arizona 86515 · (928) 871-6401 · FAX: (928) 871-7039



MEMORANDUM

TO : Elerina Yazzie, Supervisor  
Project Review Section, NLD

FROM : Esther Kee  
Esther Kee, R/W Agent  
Project Review Section, NLD

DATE : October 13, 2016

SUBJECT: BIA Roads Pinedale 7054 Road Project

Bureau of Indian Affairs, Division of Transportation of Post Office Box 1060, Gallup, New Mexico 87305, submitted an application for right of way to construct, operate and maintain Pinedale 7054 Road Project N7054(1)(2) across Navajo Trust lands near the vicinity of Pinedale Chapter.

The right of way will consist of 54.74 acres, located in the N/2 of Section 19, NW/4 Section 30, NE/4 Section 31, T16N, R15W, Section 25, T17N, R16W, McKinley County, New Mexico.

The proposed project is located within District 16, Pinedale Range Unit 13, permitted to Vera Becenti and Lorraine L. White and Pinedale Range Unit 19, permitted to Arnold C. Begay, Victor Lewis, Clifford Mariano, for grazing. I informed the affected grazing permittees on the proposed request and they had no objection. I obtained all the affected permittees consent along with the concurrence of the District 16 Land Board member, Wilbur Murphy.

Field clearance completed, landusers consent, map and supporting documents are all attached for your information and reference.

cc: Project file

CONSENT 3  
(Waiver of compensation for damages)

CONSENT TO USE  
NAVAJO TRIBAL LANDS

TO WHOM IT MAY CONCERN:

I, Arnold C. Begay, hereby grant consent to the Navajo Tribe and the Bureau of Indian Affairs to permit Bureau of Indian Affairs, Post Office Box 1060, Gallup, New Mexico 87305, to use a portion of my land use area for the following purpose Right of way to construct, operate and maintain Pinedale Loop Road Project N7054(1)(2) across Navajo Trust lands located in W/2 Section 19, NW/4 Section 30, NE/4 Section 31, Section 33, T16N, R15W, Section 25, T17N, R16W, McKinley County, New Mexico, as shown on the map showing the location of the proposed project on the back of this consent form.

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

REMARKS:

10/13/16 Arnold C. Begay Pinedale RU-19  
Date Land User Signature (or Thumbprint) Census No. Permit No.

WITNESS:

10-13-16 William Murphy 16  
Date Grazing Committee or Land Board Member District No.

Acknowledgement of Field Agent

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

E. Stuberke  
Field Agent Signature



CONSENT 3

(Waiver of compensation for damages)

CONSENT TO USE  
NAVAJO TRIBAL LANDS

TO WHOM IT MAY CONCERN:

I, Victor Lewis, hereby grant consent to the Navajo Tribe and the Bureau of Indian Affairs to permit Bureau of Indian Affairs, Post Office Box 1060, Gallup, New Mexico 87305, to use a portion of my land use area for the following purpose Right of way to construct, operate and maintain Pinedale Loop Road Project N7054(1)(2) across Navajo Trust lands located in W/2 Section 19, NW/4 Section 30, NE/4 Section 31, Section 33, T16N, R15W, Section 25, T17N, R16W, McKinley County, New Mexico, as shown on the map showing the location of the proposed project on the back of this consent form.

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

REMARKS:

10/13/16  
Date

Victor Lewis  
Land User Signature (or Thumbprint)

Pinedale RU.19  
Census No. Permit No.

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

10-13-16  
Date

Adrian Angley  
Grazing Committee or Land Board Member

16  
District No.

Acknowledgement of Field Agent

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

E. P. Kee  
Field Agent Signature

CONSENT 3  
(Waiver of compensation for damages)

CONSENT TO USE  
NAVAJO TRIBAL LANDS

TO WHOM IT MAY CONCERN:

I, Lorraine L. White, hereby grant consent to the Navajo Tribe and the Bureau of Indian Affairs to permit Bureau of Indian Affairs, Post Office Box 1060, Gallup, New Mexico 87305, to use a portion of my land use area for the following purpose Right of way to construct, operate and maintain Pinedale Loop Road Project N7054(1)(2) across Navajo Trust lands located in W/2 Section 19, NW/4 Section 30, NE/4 Section 31, Section 33, T16N, R15W, Section 25, T17N, R16W, McKinley County, New Mexico, as shown on the map showing the location of the proposed project on the back of this consent form.

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

REMARKS:

10/12/16 Lorraine L. White Pinedale 124.13  
Date Land User Signature (or Thumbprint) Census No. Permit No.

WITNESS:

10-13-16 William Murphy 16  
Date Grazing Committee or Land Board Member District No.

Acknowledgement of Field Agent

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

E. J. K. K.  
Field Agent Signature

CONSENT 3  
(Waiver of compensation for damages)

CONSENT TO USE  
NAVAJO TRIBAL LANDS

TO WHOM IT MAY CONCERN:

I, Vera Becenti, hereby grant consent to the Navajo Tribe and the Bureau of Indian Affairs to permit **Bureau of Indian Affairs, Post Office Box 1060, Gallup, New Mexico 87305**, to use a portion of my land use area for the following purpose **Right of way to construct, operate and maintain Pinedale Loop Road Project N7054(1)(2) across Navajo Trust lands located in W/2 Section 19, NW/4 Section 30, NE/4 Section 31, Section 33, T16N, R15W, Section 25, T17N, R16W, McKinley County, New Mexico**, as shown on the map showing the location of the proposed project on the back of this consent form.

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

REMARKS:

10/12/16      *Vera Becenti*                                Pinedale RU-19  
Date      Land User Signature (or Thumbprint)      Census No.      Permit No.

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

10-13-16      *William Murphy*      16  
Date      Grazing Committee or Land Board Member      District No.

Acknowledgement of Field Agent

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

*E. P. H. Kew*  
Field Agent Signature



CONSENT 3  
(Waiver of compensation for damages)

CONSENT TO USE  
NAVAJO TRIBAL LANDS

TO WHOM IT MAY CONCERN:

I, Clifford Mariano, hereby grant consent to the Navajo Tribe and the Bureau of Indian Affairs to permit Bureau of Indian Affairs, Post Office Box 1060, Gallup, New Mexico 87305, to use a portion of my land use area for the following purpose Right of way to construct, operate and maintain Pinedale Loop Road Project N7054(1)(2) across Navajo Trust lands located in W/2 Section 19, NW/4 Section 30, NE/4 Section 31, Section 33, T16N, R15W, Section 25, T17N, R16W, McKinley County, New Mexico, as shown on the map showing the location of the proposed project on the back of this consent form.

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

REMARKS:

3:10PM  
10-12-2016  
Date

Clifford Mariano  
Land User Signature (or Thumbprint)

Pinedale  
R4-19  
Census No. Permit No.

WITNESS:

10-13-16  
Date

William Murphy  
Grazing Committee or Land Board Member

16  
District No.

Acknowledgement of Field Agent

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

E. Parker  
Field Agent Signature



**TERMS AND CONDITIONS**

Right-of-Way for BIA

Project No. N7054

Pinedale Loop Road

- a. The term of the right-of-way shall be 75 years.
- b. Consideration for the grant of the right-of-way is hereby waived, because the project will benefit Navajos living in the area.
- c. 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 may be hereafter in force and effect, including but not limited to the following:
  - i. Title 25, Code of Federal Regulations, Parts 162 and 169;
  - ii. All applicable Federal and Tribal antiquities laws and regulations, with the following additional condition: In the event of a discovery must cease and the Navajo Nation Historic Preservation Department must be notified immediately. As used herein, "discovery" means any previously unidentified or incorrectly identified cultural resources, including but not limited to archeological deposits, human remains, or location reportedly associated with Native American religious/traditional beliefs or practices; and
  - iii. 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.;
- d. The Grantee shall clear and keep clear the lands within the right-of-way to the extent compatible with the purpose of the right-of-way, and shall dispose of all vegetation and other materials cut, uprooted, or otherwise accumulated during construction and maintenance of the project.
- e. The Grantee shall at all times during the term of the right-of-way and at the Grantee's sole cost and expense, maintain the land and all improvements thereon and make all necessary and reasonable repairs.
- f. The Grantee shall obtain permission to cross-existing rights-of-way from the appropriate parties before construction the proposed project.
- g. The Grantee shall be responsible for and promptly pay all damages when they are sustained.
- h. The Grantee shall not assign, convey or transfer, in any manner whatsoever, the right-of-way or any interest therein, or in or to any of the improvements on the

land, without the prior written consent of the Navajo Nation and the Secretary. 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.

- i. Holding over by the Grantee after the termination of the right-of-way shall not constitute a renewal or extension thereof or give the Grantee any rights hereunder or in or to the land or to any improvements located thereon.
- j. The Navajo Nation and the Secretary shall have the right, at any reasonable time during the term of the right-of-way, to enter upon the premises, or any part thereof, to inspect the same and any buildings and other improvements erected or placed thereon.
- k. Nothing contained herein shall be construed to affect or be deemed a waiver of the sovereign immunity from suit of the Navajo Nation.
- l. The terms and conditions contained herein shall extend to and be binding upon the successors, heirs, assigns, executors, 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.
- m. Grantee shall retain as much of the natural vegetation within the right-of-way as possible.
- n. Grantee shall re-vegetate all disturbed areas.
- o. There is expressly reserved to the Navajo Nation full territorial legislative, executive and judicial jurisdiction over the rights-of-way and all lands burdened by the right-of-way, including without limitation over all persons, including the traveling public, and all activities conducted or otherwise occurring within the right-of-way, and specifically including, but not limited to, jurisdiction to enforce speed limits and compliance with traffic control devices, jurisdiction to enforce Navajo Nation laws applicable to the operation of motor vehicles and jurisdiction to adjudicate disputes arising from motor vehicle accidents or other conduct, or activities occurring within the right-of-way, and the right-of-way and all lands burdened by the right-of-way shall be and forever remain Navajo Indian Country for purposes of Navajo Nation jurisdiction consistent with federal law.



# N7054(1)(2) RIGHT OF WAY TAKINGS

OWNER	Section	PARCEL	PERIMETER	AREA (m/2)	Hectares	ACRES
NNT	19	W 1/2	3387.431	76991.213	7.699	19.02
NNT	30	NW1/4	664.831	11854.024	1.185	2.93
NNT	31	NE 1/4	908.975	16398.852	1.640	4.05
NNT	33	ALL	3799.683	84536.511	8.454	20.89
NNT	25	ALL	1579.479	31773.845	3.177	7.85
NAVAJO NATION TOTALS:					22.155	54.74
IA 42519	30	SW1/4	2187.536	46832.494	4.683	11.57
IA 42520	30	SE1/4	1250.687	24380.943	2.438	6.02
IA 42525	34	NW 1/4	1667.841	29110.588	2.911	7.19
IA 43327	34	SW 1/4	770.338	8244.156	0.824	2.04
IA 43323	34	SE 1/4	426.689	2874.954	0.287	0.71
IA 42526	34	NE 1/4	2193.254	50283.326	5.028	12.43
IA 2073	27	SE 1/4	1911.795	41713.091	4.171	10.31
IA 42522	26	SW 1/4	670.546	12771.368	1.277	3.16
IA 42527	26	NW 1/4	1636.568	34769.756	3.477	8.59
IA 42528	26	NE 1/4	400.515	6744.067	0.674	1.67
INDIAN ALLOTMENT TOTALS:					25.770	63.69
NM STATE	32	ALL	3978.424	88475.514	8.848	21.86

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**ENVIRONMENTAL ASSESSMENT**  
**Of The**  
**Proposed Road Improvement of**  
**7.6 miles of Navajo Route 7054**  
**Pinedale, McKinley County, New Mexico**

**Prepared for:**  
**Pinedale Chapter**  
**P.O. Box 3**  
**Church Rock, NM 87311**

**Prepared by:**  
**Environmental Section**  
**Navajo Division of Transportation**  
**P.O. Box 4620**  
**Window Rock, AZ 86515**  
**Contact: (928) 871-7989**

**Prepared in accordance with**  
**National Environmental Policy Act of 1969, as Amended**  
**DOI DM Part 516 and 30 BIAM, Supplement I**

**August 2011**

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## **1.0 Purpose of and Need for Action**

### **1.1 Summary of Proposed Action**

The Navajo Regional Agency, Eastern Navajo Agency, Branch of Roads purposes to undertake the road improvement of the existing 7.6 miles of Navajo Route 7054 within Pinedale Chapter, McKinley County, New Mexico. Proposed road improvement would consist of: cutting, filling, grading, drainage improvements and application of asphalt millings. Road Construction activities will be initiated in accordance with applicable road construction specifications. The project area is defined at approximately 150 feet on either side of the existing centerline of the roadway and a total of 276.36 acres (111.9 ha.) will be affected.

### **1.2 Purpose and Need for Action**

The purpose for this undertaking is to improve the traffic operations and safety features of the dirt road. The existing condition of the road becomes unsafe and hazardous for public and private transporters during inclement weathers, especially during winter and rainy periods.

### **1.3 Location**

Pinedale is located with McKinley County of New Mexico, approximately 22 miles to the north east of Gallup. The proposed road project beings at approximately 1.4 miles south west of the Pinedale Chapter House off of BIA Route 11. Navajo Route 7054 begins at the beginning of point (BOP) within NW ¼ NW ¼ Sec 19 T16N R15W runs south 1.7 miles to NW ¼ SW ¼ Sec 30 T16N R15W runs east 3.6 miles to SW ¼ NE ¼ Sec 34 T16N R15W runs north 1.7 miles to End of Point (EOP) NW ¼ NE ¼ Sec 26 T16N R15W all on Pinedale, NM 1963 Quadrangle.

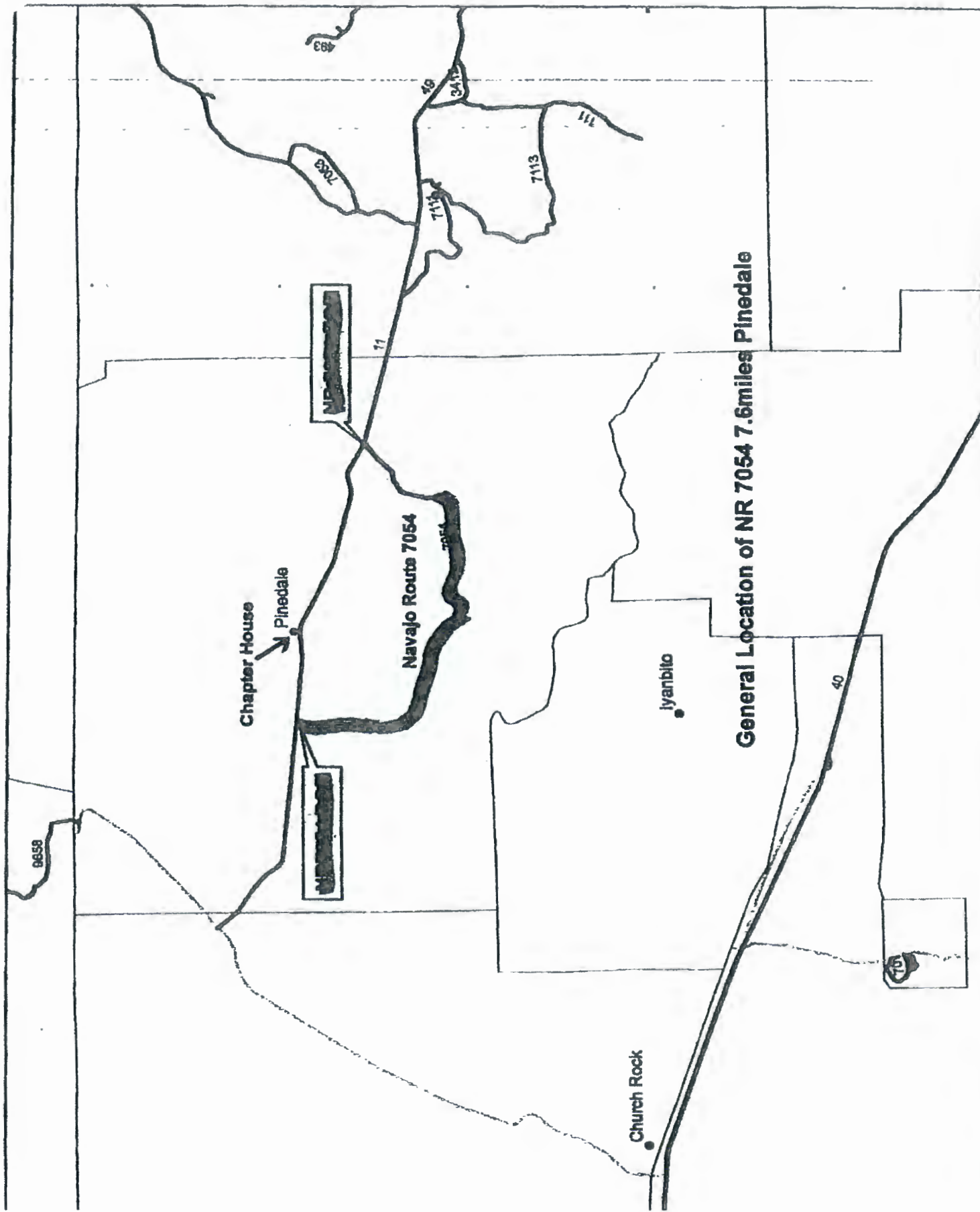
Figures 1 and 2 shows the proposed road improvement of Navajo Route 7054. Table 1 provides northing and easting UTM coordinates for Navajo Route 7054.]

### **1.4 Regulatory Requirements and Coordination**

This EA reflects compliance with regulations, policies and guidelines of the Navajo Nation and the Navajo Nation Historic Preservation Department (NNHPD). It also conforms to the requirements of the following federal statutes and their associated regulations:

- 1.4.a. Cultural Resources:** National Historic Preservation Act of 1996, as amended
- 1.4.b. Transportation:** Department of Transportation Act of 1996: T21 Act of 1998
- 1.4.c. Biological Concerns:** Endangered Species Act of 1973 as amended
- 1.4.d. Water Quality:** Clean Water Act of 1973 and amendments of 1972
- 1.4.e. Air Quality:** Clean Water Act of 1990
- 1.4.f. Miscellaneous:** Intergovernmental Coordination Act of 1968  
Federal Land Policy and Management Act of 1976  
National Environmental Policy Act of 1969







1999



**Table 1: Universal Traverse Mercator Coordinates**

Points	Location	Northing	Easting	USGS Map
A (BOP)	NW ¼ NW ¼ Sec 19 T16N R15W	3943444	728744	Pinedale, NM 1963
B	SW ¼ SW ¼ Sec 19 T16N R15W	3942067	728741	Pinedale, NM 1963
C	NW ¼ NW ¼ Sec 30 T16N R15W	3941773	728762	Pinedale, NM 1963
D	NE ¼ NE ¼ Sec 25 T16N R15W	3941430	728603	Pinedale, NM 1963
E	NE ¼ SE ¼ Sec 25 T16N R15W	3940957	728659	Pinedale, NM 1963
F	NW ¼ SW ¼ Sec 30 T16N R15W	3940662	728882	Pinedale, NM 1963
G	SE ¼ SW ¼ Sec 30 T16N R15W	3940486	729131	Pinedale, NM 1963
H	NW ¼ NW ¼ Sec 32 T16N R15W	3940090	730609	Pinedale, NM 1963
I	SW ¼ NE ¼ Sec 32 T16N R15W	3939804	731156	Pinedale, NM 1963
J	NW ¼ SE ¼ Sec 32 T16N R15W	3939509	731336	Pinedale, NM 1963
K	NE ¼ SE ¼ Sec 32 T16N R15W	3939424	731911	Pinedale, NM 1963
L	SW ¼ NW ¼ Sec 33 T16N R15W	3939681	732113	Pinedale, NM 1963
M	SE ¼ NW ¼ Sec 33 T16N R15W	3939751	732423	Pinedale, NM 1963
N	NE ¼ SE ¼ Sec 33 T16N R15W	3939412	733160	Pinedale, NM 1963
O	SW ¼ NE ¼ Sec 34 T16N R15W	3939601	734555	Pinedale, NM 1963
P	SE ¼ NE ¼ Sec 34 T16N R15W	3939971	734743	Pinedale, NM 1963
Q	NW ¼ NE ¼ Sec 32 T16N R15W	3940241	734662	Pinedale, NM 1963
R	NE ¼ SE ¼ Sec 27 T16N R15W	3940971	734828	Pinedale, NM 1963
S	NW ¼ SW ¼ Sec 26 T16N R15W	3941173	735312	Pinedale, NM 1963
T (EOP)	NW ¼ NE ¼ Sec 26 T16N R15W	3941871	735992	Pinedale, NM 1963

## 2.0 Alternative Including the Proposed Action

### 2.1 Alternative A

Alternative A is no action. New construction would occur within the project limits in this alternative. The No Action alternative would include minor roadway improvements and routine maintenance activities. Without major improvement of the existing roadway the level of service would not improve. The subject Navajo Route 7054 road would continue to lack adequate shoulders for proper drainage and deplorable conditions during snow and rainy conditions. This alternative effect of past human actions to biological, land, cultural and socioeconomic resources

### 2.2 Alternative B

Alternative B, the preferred alternative would align and construct two travel lanes in each direction, 150 foot right-of-way on each side of the centerline, improve shoulders and placement of asphalt millings. To deter soil erosion, the decision makers decided on two actions; (1) establish erosion control methods before, during and after construction and (2) reseed disturbed areas. Alternative B will provide better accessibility for school buses and residents who want to get onto or off the existing dirt road. Because the alternative offered minimal disturbance to biological, land, cultural and socioeconomic resources. Alternative B became the preferred alternative.

### 2.3 Alternative C

Alternative C encompasses creating a new route; however, the objective was to utilize the same route to minimize environmental/archaeological disturbance. Therefore, this alternative quickly became unfeasible.

### **3.0 Affected Environment**

#### **3.1 Land Resources**

##### **3.1.a. Topography**

The project area begins approximately 1.4 miles south west of Pinedale Chapter. There are several ephemeral drainages trending the south into the Puerco River. South of the route is Fallen Timber Ridge. The area is mostly scattered with pinon, juniper woodland and brush covered terrain. Vegetation includes narrow leaf yucca, big sage brush, blue grama, broom snakeweed, Indian ricegrass, four-wing salt brush and galleta with a 0-6% slope. Elevation range of the subject Navajo Route 7054 road is from 7000 feet above mean sea level.

##### **3.1.b. Soils**

Six soil associations are found within the road project area. The six general soil associations are indicted as follows:

- 1) Sparank-San Mateo-Zia Association consists of very deep, well drained, very slowly permeable clay loam, fine mixed loam and coarse soil. These soils are on alluvial fans, stream terraces, swales and flood plains.
- 2) Zia-Sandy Loam Association consists of very deep, well-drained and somewhat excessively drained, moderately rapidly permeable soil of fine sandy loam used for range.
- 3) Toldoh-Vessilla-Rock Outcrop Association consists of shallow, very shallow well drained soil of clayey, loamy. Soil found on narrow ridges, hills and mesas of bedrock controlled landscapes.
- 4) Flugle-Fragua Complex Association consist of very deep well drained fine and coarse loamy soils. These soils are found on summits of mesas, dip slopes of cuestras, fan remnants of valley sides, hills and foot slopes.
- 5) Celavar-Atarque Complex Association consist of moderately deep, shallow fine-loamy soil. These soils are found on mesas, hills, cuestras used for range.
- 6) Buckle-Fine Sandy Loam Association consist of very deep, well drained soils of fine texture. The soils are found on dip slopes of cuestras, fan terraces and remnants on valley sides.

These soils are not listed as hybrid soils in AD-A-176734, Corps of Engineers Wetlands Delineation Manual, January of 1987.

##### **3.1.c. Geological Setting & Mineral Resource**

Beyond the escarpment to the north and rising prominently above it is the northwest - trending Fallen Timber Ridge. Near the west side of the quadrangle lie the peaks of Midget and Mesa Butte, the latter of which has the highest altitude in the area at 8,030 feet above mean sea level. The prominences are capped by buff-colored resistant beds of the Dakota Sandstone of late cretaceous age, containing some interbedded coal.



### **3.2 Water Resources**

Section 404 of the Clean Water Act of 1972 (CWA; 33 USC 1251 et seq.) as amended, provides for the protection of waters of the U.S. through regulation of excavation or dischargers of dredged or fill material. The Corps Regulatory Program (33 CFR Parts 320-330) requires that a Section 404 determination be conducted for all proposed construction that may affect waters of the U.S. small washes and arroyos along the proposed right-of-way and construction area are considered "waters of the U.S." as per the terminology and definitions used in CWA and the proposed construction would occur above "headwaters". Appropriate agency or contractor will conduct a reconnaissance survey of the project area to assess the drainages and they are ephemeral along the proposed project route. As a reminder if the proposed upgrade includes replacement of old culverts, throughout the road, Sections 401 and 404 of CWA will need to be addressed before construction begins.

#### **3.2.a. Surface Water**

Surface Water in the project area falls within the Puerco River, for which is south of the road project area.

#### **3.2.b. Ground Water**

There were no wells, just two windmills that were observed within the road project area. Pinedale Chapter has water well on the north section of the community near the Chapter House.

### **3.3 Air Resources**

#### **3.3.a. Quality & Visibility**

Current effects on air quality and visibility in the general vicinity of the proposed project area are from vehicle use of dirt roads, blowing soil from overgrazed rangeland, combustible fuel pollutants from vehicles using the Navajo Route 7054 road.

Navajo Nation Air Quality Programs of the Navajo EPA having jurisdiction for the purpose of air protection on the Navajo Nation evaluates ambient air quality is gauged by comparing air quality to the National Ambient Air Quality Standards (NAAQS). The Navajo Nation Air Quality Program has an ambient air-monitoring site located in Crownpoint, New Mexico that is the closest one.

#### **3.3.b. Climate**

The climate of Pinedale, New Mexico can be classified as and semi-arid were relatively cold, summer warm precipitations is low and days are sunny with generally light to moderate winds and low humidity. Average temperatures from maximum 90 degrees Fahrenheit to minimum 54 degrees Fahrenheit. Average area precipitation is between 0.05 in to 0.07 in ([www.wrcc.dri.edu](http://www.wrcc.dri.edu)).

### **3.4 Biotic Resources**

#### **3.4.a. Description of Ecosystem & Biological Communities**

Physical, biotic and hydrosphere environment of the area shows that habitat at or near the project area is vegetated with various grasses, pinon trees, juniper trees and brushes. The vegetation is dense along Navajo Route 7054 road right-of-way. Due to continuing road uses and maintenance activities, the habitat is becoming more of annual weed barrens with a predominance of Russian thistle and snakeweed with other annual weeds.

The project area is in an area dominated by desert shrub and grassland plants. Threaten and/or Endangered Species are not known to occur on or near the road project area.

#### **3.4.b. Wildlife**

##### **1. Terrestrial**

Common wildlife species within the road project area include ravens, crows, house sparrows, song/junco birds, cottontail rabbits, jack rabbits, rattle snakes and coyotes. Most of the habitat along Navajo Route 7054 road is being disrupted by traffic and human activities.

##### **2. Riparian/Aquatic**

There are no riparian or aquatic habitats for species dependent on such habitat.

##### **3. Threatened & Endangered Species**

On February 28, 2011, Natural Heritage Program of the Navajo Nation Fish & Wildlife Department provided information on species of concerns, which reported that wildlife "has no record of species of concern occurring on or near the project site". However, species of concern with potential to occur on or near the quadrangle (Pinedale, NM) containing the project boundaries including the following:

- 1) Golden Eagle (*Aquila chrysaetos*) NESL group 3, MBTA, EPA
- 2) Ferruginous Hawk (*Buteo regalis*) NESL group 3, MBTA
- 3) Peregrine Falcon (*Falco peregrinus*) NESL group 4, MBTA
- 4) Black-footed Ferret (*Mustela nigripes*) NESL group 2, ESA endangered
- 5) Mexican Spotted Owl (*Strix occidentalis lucida*) NESL group 3, ESA threatened, MBTA
- 6) Acoma Fleabane (*Erigeron acomanus*) NESL group 3
- 7) Rhizome Fleabane (*Erigeron fleabane*) NESL group 2, ESA threatened
- 8) Sivinski's Fleabane (*Erigeron sivinskii*) NESL group 4

Consultation and biological evaluation were conducted pursuant to Endangered Species Act (USESA), Migratory Bird Act (MBTA), Bald Eagle Act (BEA) and Navajo Endangered Species List (NESL). See list of Threatened & Endangered Species (Appendix A ) and Biological Evaluation Report (Appendix B ).

### **3.4.c. Vegetation**

#### **1. Terrestrial**

Plant communities within the project area are not rare or unique. Most of the project area has been subjected to intense grazing pressure. Vegetation immediately adjacent to the existing right-of-way has been disturbed and is dominated by disclaim species. The unavoidable impact of the project will include the 300 foot right-of-way. Damage of vegetation adjacent to the proposed road improvements will be prevented by clearly and properly marking the right-of-way. Type of vegetation in the area includes narrow leaf yucca, big sage brush, blue grama, broom snakeweed, Indian ricegrass, four-wing salt brush and galleta.

#### **2. Riparian/Aquatic**

There are no riparian or aquatic habitats for species dependent on such habitat.

#### **3. Threatened & Endangered Species**

The Natural Heritage Program reported – sensitive plant species known to occur on or near the project area. No plant species are known to occur on or near the project area.

#### **3.4.d. Agriculture**

There are no prime or unique farmlands within the road project area. Grazing of sheep, cattle and horses is a common use of land by local residents.

### **3.5 Cultural Resources**

#### **3.5.a. Traditional Cultural Properties, Historic, Religious Properties**

Three (03) Traditional Cultural Properties (TCP) were identified in the vicinity of the road project area. The TCP's is located within the proposed road projects right-of-way that will need to be flagged and monitored.

#### **3.5.b. Archaeological Resources**

During August 2008 through April 2010, Navajo Division of Transportation – Archaeology Section conducted and completed Cultural Resource Survey and Inventory of the 7.6 miles of Navajo Route 7054. There are twelve (12) prehistoric/historic sites, two (02) in-use sites, fourteen (14) isolated occurrences and three (03) traditional cultural properties (Cultural Resources Compliance Document in Appendix D ).

### **3.6 Socioeconomic Conditions**

#### **3.6.a. Employment & Income**

The Native American population in the United States is considered to be minority and the Navajo Nation is a low-income population. In general the road project area, the region and the Navajo Nation suffer extensively from high unemployment. The primary local employers are in public services including education, health services and government such as the Navajo Nation and the Bureau of Indian Affairs. Other areas of employment are in Window Rock, Gallup, and Zuni. Other source of income is silversmithing, arts & crafts, and employment in other communities or off-reservation work. A large number of elderly folks on subsistence income from New Mexico State, Federal and/or the Navajo Nation Government.



### **3.6.b. Demographic & Trends**

The 2000 census showed 3,840 people living within the Pinedale Chapter. The 1990 census reported 1,110 people. Although the population estimates are expected to increase in Pinedale Chapter actually increased over the decade.

### **3.6.c. Lifestyles, Cultural Values, Attitudes, Expectations**

The community of Pinedale Chapter attends United Methodist Church, New Life United Methodist Church and Pinedale Assembly of God. Some attend Traditional Ceremonies and Native American Churches.

### **3.6.d. Community Infrastructure**

The Pinedale Chapter government is represented by elected officials, consisting of a President, Vice President, Secretary/Treasurer and Grazing Officer. A Council Delegate is elected every four years and serves on the Navajo Nation Council in Window Rock, Arizona.

Pinedale Chapter has the following infrastructure: (1) Navajo Tribal Utility Authority provides electricity, water and maintains community water supply and sewer system; (2) School buses provide transportation for area students and private are the major means of transportation; (3) Citizens communication provides telephone service. Radio Station programs are received from Window Rock and Gallup. Newspapers consist of Gallup Independent, Navajo Times, Albuquerque Journal, U.S. Today and Gallup Herald; and (4) Public and private homes are scattered throughout the community.

Community facilities consist of (a) Chapter House, (b) Navajo Head Start Facility, and (4) Senior Citizen Center.

## **3.7 Environmental Justice**

In February 1994, President Clinton issued an Executive Order 12898, Federal Actions to Address Environmental Justice in minority and low-income populations. This law places a renewed emphasis on existing laws and regulations calling for fair and equitable treatment of all people and communities, regardless of demographic or economic composition. Table 2, below shows that the median household income is lower in overall for the State of New Mexico compared to Pinedale community.

**Table 2: Statistic for Pinedale Chapter, McKinley County & New Mexico**

Type of Income/Population	Pinedale Chapter	McKinley County	State of New Mexico
American Indian and Alaskan Native Persons	3,840	55,892	173,483
Median Household Income	14,964	25,005	34,133
Persons Below Poverty	43.3%	36.1%	18.4%
Unemployment Rate	12.9%	9.2%	4.4%

Source: 2000 U.S. Census Bureau - McKinley County and New Mexico, 2000 Census Bureau and Navajo Nation Division of Community Development.

Majority of the people in Pinedale are Native Americans specifically Navajos. This road project will not negatively affect the members of the community.



### **3.7.a. Indian Trust Resources**

Indian Trust Assets are legal interests in assets held in trust by U.S. Government for Indian Tribes or individual Indians. Therefore, Indian Trust Assets of the Navajo Nation that might be affected by this road project include land and mineral rights.

## **3.8 Environmental Module**

### **3.8.a. Resource Conservation & Recovery Act Subtitle C**

No known hazardous waste site exists on or near Navajo Route 7054 (see consultation document in Appendix I).

### **3.8.b. Resource Conservation & Recovery Act Subtitle D**

No known solid waste landfill exists within or near the Navajo Route 7054. Pinedale chapter contracts the collection and disposal of solid waste.

### **3.8.c. Resource Conservation & Recovery Act Subtitle I**

There are no known underground storage tanks (abandoned or existing) within or immediately adjacent to Navajo Route 7054.

### **3.8.d. Comprehensive Environmental Response Compensation & Liability Act Sites**

No known comprehensive environmental response compensation & liability sites exist within or near the right-of-way area (see consultation document in Appendix I).

### **3.8.e. Toxic Substance Control Act Sites**

No known toxic substances control sites exist within or near Navajo Route 7054 (see consultation document in Appendix I).

## **3.9 Resource/Land Use Patterns**

### **3.9.a. Hunting, Fishing, Gathering**

Pinedale area is not listed as hunting and fishing designation by Navajo Fish & Wildlife Department and the New Mexico Game and Fish Department. Gathering of medicinal herbs are done in protected areas and none has been reported on or near Navajo Route 7054.

### **3.9.b. Timber Harvesting**

Navajo Route 7054 is suitable for timber harvesting. Local residents use the timber for home heating and firewood harvesting in the area.

### **3.9.c. Mining**

No mining of any sort occurs on or near Navajo Route 7054 project area.

### **3.9.d. Outdoor Recreation**

Pinedale is an isolated community with organized outdoor recreations facilities or activities that include: basketball court and baseball field.

### **3.9.e. Transportation Use Networks**

Navajo Route 7054 is an all weather dirt road that serves the Pinedale community/residents. The road connects the community to BIA route 11 that leads the community to Gallup, New Mexico. Navajo Route 7054 is a secondary, unimproved dirt road that is not maintained.

### **3.9.f. Land Use Plans**

The Pinedale Chapter does not have a formal comprehensive land use plan enacted by the Navajo Nation Council; however, the Chapter is responsible for implementing land use policies and regulations subject to approval by the Navajo Nation Council and/or its Standing Committees.

## **3.10 Other Values**

### **3.10.a. Wilderness**

There are no designated wilderness areas on the Navajo Reservation.

### **3.10.b. Sound & Noise**

The Noise Control Act of 1972 regulates noise; defined as unwanted or unwelcome sound. Community's response to noise is generally not based on a single event but on a series of events over the day. The following factors, Noise level of individual events, number of events per day and time of day at which events occur affect the subjective assessment of daily noise environment. Level of noise depends on traffic volumes, speed of traffic, mix of vehicles and acoustic characteristics of site and distance of sensitive receptors from the road way. The proposed road project is sensitive receptors are residential and users. Pinedale is an isolated community with the lack of an industrial park and airport.

### **3.10.c. Public Health & Safety**

The community of Pinedale visit Gallup Indian Medical Center, Rehoboth McKinley Christian Hospital and Crownpoint Indian Medical Facility.

### **3.10.d. Visual Setting**

Area is scenic beautiful, various physiographic features in the area may be considered unique, although they may be considered typical of the scenic McKinley County. The beauty and aesthetic qualities make the area unique and of great human interest. Some of these visual resources may be observed from the road.

### **3.10.e. Non-user Values**

No non user values

## **4.0 Environmental Consequences of the Proposed Area**

### **4.1. Land Resources/Physical Impacts and Mitigation**

Culvert replacement/placement could cause an increased bank erosion and sedimentation in waters of the United States. A potential indirect negative impact is such that culverts tend to cause a depression at a runoff point, establishing a pond, sump, or scouring. To mitigate for those negative impacts it is recommended:

**4.1.a.** Before culvert construction, to separate scope of excavation from water ways with physical barriers and encroachments.

**4.1.b.** During culvert construction, to not dispose of material, waste, waste water, contaminated water and all pollutants into drainage areas.

**4.1.c.** After construction, install permanent control measures from drainage.

Clean Water Act Guidelines, Nationwide Permit 14 and 401 Certification for construction near drainage areas or drainage crossing can be found in Appendix E. If terms and conditions change, the contractor(s) are required to notify the proper agency.

Noise impact consists of operation of heavy equipment within the right-of-way. The right-of-way distance from in-use structures is less than 150 feet. To mitigate for noise, we recommend heavy equipment operate from 8AM through 5PM during the weekdays and confined to the boundaries of the project area, since more residents tend to relax and stay at home during evenings and weekends.

#### **4.2 Water Resources Impacts and Mitigation**

A Storm Water Pollution Prevention Plan (SWPPP) shall be prepared and incorporate temporary control measures during construction, permanent control measures when the project is completed, and good housekeeping practices for the control and prevention of release of water pollutants. The SWPPP would be developed as part of the general NPDES permit. The Bureau of Indian Affairs Road Department would determine that during the design as to who will prepare the SWPPP.

The proposed improvement would not block or impound drainages within or adjacent to the project area. Drainages paralleling the existing road alignment would be diverted to accommodate the roadways embankment. Coordination with Corps of Engineers is necessary to ascertain if the proposed improvement would fall within the scope of the nationwide permit of Section 404 of the Clean Water Act. Apparently, the road improvement and placements of culverts within the washes would in all likelihood, require a Nationwide Permit 14 "Road Crossing". Individual 401 Quality Certification would require from the U.S. Environmental Protection Agency and Tribal 401 conditions would also have to be met. The terms and conditions for the nationwide permit would be followed (see Appendix E).

#### **4.3 Air Resources Impacts and Mitigation**

The proposed road improvement (NR7054) would have no permanent adverse effect on the air quality in the surrounding area after construction. The main causes of carbon monoxide are vehicle operation and idling. Some deterioration of air quality can be expected during construction, due to the operation of construction equipment combined with a slower traffic speeds that are associated with construction zone. However, this would be a localized condition that would be discontinued when the project is completed. Dust generated from construction activities. However, would be controlled and minimized. The directives of the Navajo Division of Transportation would be observed and comply with all air pollution ordinances, regulations, executive orders, etc. This project is considered from conformity regulations because it is located in an area that meets Federal and Tribal air quality standards.



#### **4.4 Biological Impacts**

Preliminary construction activities include clearing and grubbing of vegetation, which will occur and impact about 276.36 acres of the Navajo Trust Land, State Land and Indian Allotment Land. Clearing and grubbing may produce potential negative effects or expected ground such as an increase soil erosion and fugitive dust. To minimize potential adverse, impacts, contractors will be required to employ the following mitigation measures.

4.4.a. Prior to clearing and grubbing, implement temporary erosion control measures along the right-of-way of the road project.

4.4.b. Water down the excavated or impacted area during construction activities. All water uses including sewer and lagoon water on the Navajo Nation is monitored and permitted by the Navajo Nation Water Resources. It is the contractor's responsibility to acquire a permit for water uses.

4.4.c. After construction, permanent erosion control measures and re-seeding should be employed (see recommended reclamation plan in Appendix F). The Navajo Division of Transportation conducted a Biological Evaluation for Threatened & Endangered Species (Appendix B). The project is not expected to affect any federally listed species of significantly impact any tribal listed species or any other species of concern.

Navajo Fish and Wildlife Department reported eight (08) species of concern with "potential" to occur on the 7.5 minute Pinedale, NM quadrangle. However, species of concern with potential to occur on Pinedale, NM quadrangle were evaluated and determined that the proposed action is not likely to jeopardize the continued existence of any federally listed or proposed Threatened and Endangered Species, nor destroy or adversely modify designated or proposed critical habitat (see Threatened and/or Endangered Species List in Appendix A and Biological Evaluation in Appendix B).

#### **4.5 Cultural Resources Impacts and Mitigation**

During August 2008 through April 2010, Navajo Division of Transportation -- Archaeology Section conducted and completed Cultural Resources Survey and Inventory of the 7.6 miles of Navajo Route 7054. A total of thirty one (31) cultural entities were identified in or immediately adjacent to the project right-of-way. These include twelve (12) prehistoric/historic sites, two (2) in-use sites and fourteen (14) isolated occurrences. Three (03) traditional cultural properties were also located within the road project.

If conditions and management is necessary, the contractor shall contact the Navajo Division of Transportation and Navajo Nation Historic Preservation Department to arrange for an archaeologist to identify the location of eligible sites requiring avoidance and mitigation measures prior to ground-disturbing activities and where necessary, further avoidance, testing, and data recovery may be conducted by the archaeologist (Cultural Resources Form in Appendix D).

In the event of a "discovery" mean 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, all operations in the immediate vicinity of the discovery must cease and the Navajo Nation Historic Preservation Department must be notified.



#### **4.6 Socioeconomic Conditions Impacts and Mitigation**

Impacts on socioeconomic resources are primarily related to change in land use, population, employment, relocation, divisive and/or displacement and community response to activities. The only foreseeable change as a result of this proposed action is increased improvement to Navajo Route 7054 within the Pinedale Chapter. Several families live within the vicinity of the road project that would not require any relocation or displacement.

#### **4.7 Environmental Module**

During road construction activities trash that is produced needs to be hauled to a permitted landfill. It is incumbent upon the contractors to inspect construction equipment for leaks and spills. To prevent contamination of the environment; all oils, fuels, lubricants and hydraulic fluids require a sealed storage container and/or facilities, which meet USEPA regulations. For further information regarding hazardous materials refer to the Navajo Nation Hazards Waste Management Plan 1996.

The Navajo Nation Hazardous Waste Management Plan 1996 contains guidelines for avoidance, identification, assessment and remediation of hazardous waste. The plan also describes responsibilities and procedures for identifying handling transporting, storing and disposing of hazardous waste during construction activities.

#### **4.8 Cumulative Impacts**

Cumulative impacts occur when effect of action add to or interact with other effects in a particular place and within a particular time (USEPA, 1999).

In consideration of the past, present and future (foreseeable, reasonable, actions), the cumulative impacts of the proposed road project would be negligible on the resources of the Improvement area. Improved roadway will provide easier access, greater safety for children's school buses for the motoring public and encourage planned socioeconomic development activities within the community. The proposed road improvement project would not create significant cumulative environment impacts.

#### **5.0 List of Prepares**

Jovonna Frank, Environmental Specialist  
Compliance Department  
Navajo Division of Transportation  
P.O. Box 4620  
Window Rock, AZ 86515

**6.0 Agency/Entity/Consultation & Coordination**

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Window Rock, AZ

**Sonja Detsol, Wildlife Technician**  
Natural Heritage Program  
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**Lenora Etsitty, Archaeologist**  
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Navajo Division of Transportation  
Window Rock, AZ

## **7.0 Bibliography**

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## **Appendix A**

### **List of Threatened / Endangered Species List**





Sonja Dersot, Wildlife Tech.  
Natural Heritage Program  
Department of Fish and Wildlife

3

xc: file/chrono



THE  
NAVAJO  
NATION

Ben Shelly,  
PRESIDENT  
Rex Lee Jim  
VICE PRESIDENT

Dept of Fish & Wildlife • P.O. Box 1480 • Window Rock, AZ 86515 • (928) 871-6451 • Fax (928) 871-7069

28 February 2011

File#11NDOT07

Jovonna Frank, Env. Technician  
Compliance Department  
Navajo Division of Transportation  
P.O. Box 4620  
Window Rock, AZ 86515

SUBJECT: N7054 PROPOSED 7.6 MILES ROAD IMPROVEMENT  
LOCATED IN PINEDALE CHAPTER, NM

Ma. Frank:

The following information on species of concern<sup>1</sup> is provided in response to your 14 February 2011 request concerning the subject project, which consists of the 7.6 miles of proposed road improvement on the existing N7054. The project is located within Pinedale Chapter, NM.

Although the Navajo Fish and Wildlife Department (NFWD) has no record of species of concern occurring on or near the project site(s) at this time, the potential for certain species of concern to occur needs to be evaluated.

Species of concern with potential to occur on the 7.5-minute *Pinedale, NM* quadrangle(s) containing the project boundaries include the following. Potential is based primarily on quadrangle-wide coarse habitat characteristics and species range information. Your project biologist should determine habitat suitability at the project site(s).

1. *Aquila chrysaetos* (Golden Eagle); NESL group 3; MBTA; EPA.
2. *Buteo regalis* (Ferruginous Hawk); NESL group 3; MBTA.
3. *Falco peregrinus* (Peregrine Falcon); NESL group 4; MBTA.
4. *Mustela nigripes* (Black-footed Ferret); NESL group 2; ESA endangered.
5. *Strix occidentalis lucida* (Mexican Spotted Owl); NESL group 3; ESA threatened; MBTA.
6. *Erigeron acomanus* (Acoma Fleabane); NESL group 3.
7. *Erigeron rhizomatus* (Rhizome Fleabane); NESL group 2; ESA threatened.
8. *Erigeron sivilskii* (Sivilski's Fleabane); NESL group 4.

<sup>1</sup>"Species of concern" include protected, candidate, and other rare or otherwise sensitive species, including certain native species and species of economic or cultural significance. For each species, the following tribal and federal statuses are indicated: Navajo Endangered Species List (NESL), federal Endangered Species Act (ESA), Migratory Bird Treaty Act (MBTA), and Eagle Protection Act (EPA). No legal protection is afforded species with only ESA candidate or NESL group 4 status; please be aware of these species during surveys and inform the NFWD of observations. Documentation that these species are more numerous or widespread than currently known, and addressing these species in project planning and management is important for conservation and may contribute to ensuring they will not be uplisted in the future. Species without ESA or NESL legal protection (e.g., NESL group 4 species) are only included in responses on a regular basis and may not be included in this response. Please refer to the NESL for a list of group 4 species; contact me if you need a copy.

9. - Lesquerella navajensis (Navajo Bladderpod); NESL group 4.

AREA 1: HIGHLY SENSITIVE WILDLIFE RESOURCES

AREA 3: LOW SENSITIVITY WILDLIFE RESOURCES

Potential for the black-footed ferret should be evaluated if prairie-dog towns of sufficient size (per NFWD guidelines) occur in the project area.

Potential for Puccinellia parishii should be evaluated if wetland conditions exists that contain white alkaline crusts.

Biological surveys need to be conducted during the appropriate season to ensure they are complete and accurate please refer to NN Species Accounts.<sup>4</sup> Further questions pertaining to surveys should be referred to Species Account. Surveyors on the Navajo Nation must be permitted by the Director, NFWD. Contact Jeff Cole at (928) 871-7068 for permitting procedures. Questions pertaining to surveys should be directed to the NFWD Zoologist (Chad Smith) for animals at 871-7070 and Botanist (Andrea Hazelton) for plants at (928) 523-3221. Questions regarding biological evaluations should be directed to Pamela Kyselka (Acting Environmental Reviewer) at 871-7065.

Potential impacts to wetlands should also be evaluated. The U.S. Fish & Wildlife Service's National Wetlands Inventory (NWI) maps should be examined to determine whether areas classified as wetlands are located close enough to the project site(s) to be impacted. In cases where the maps are inconclusive (e.g., due to their small scale), field surveys must be completed. For field surveys, wetlands identification and delineation methodology contained in the 'Corps of Engineers Wetlands Delineation Manual' (Technical Report Y-87-1) should be used. When wetlands are present, potential impacts must be addressed in an environmental assessment and the Army Corps of Engineers, Phoenix office, must be contacted. NWI maps are available for examination at the NFWD's Natural Heritage Program (NHP) office, or may be purchased through the U.S. Geological Survey (order forms are available through the NHP). The NHP has complete coverage of the Navajo Nation, excluding Utah, at 1:100,000 scale; and coverage at 1:24,000 scale in the southwestern portion of the Navajo Nation.

The information in this report was identified by the NFWD's biologists and computerized database, and is based on data available at the time of this response. If project planning takes more than two (02) years from the date of this response, verification of the information provided herein is strongly recommended. It should not be regarded as the final statement on the occurrence of any species, nor should it substitute for on-site surveys. Also, because the NFWD's information is continually updated, any given information response is only wholly appropriate for its respective request.

For a list of sensitive species on the Navajo Nation in addition to the species listed on the Navajo Endangered Species List (NESL) please refer to our website at [www.nndfw.org](http://www.nndfw.org).

An invoice for this information is attached.

If you have any questions I may be reached at (928) 871-6472.

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<sup>4</sup> Available free of charge on our website at <http://nndfw.navajofishandwildlife.org/>



## **Appendix B**

### **Biological Evaluation Report**

**Biological Evaluation Report**

**Proposed Road Maintenance of Navajo Route 7054  
Pinedale, McKinley County, New Mexico**

**Prepared for:  
Pinedale Chapter  
P.O. Box 3  
Churchrock, NM 87311**

**Prepared by:  
Environmental Section  
Navajo Division of Transportation  
P.O. Box 4620  
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**Prepared on:  
July 2011**

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#### ATTACHMENTS

Attachments A

Attachments B (Natural Heritage Program Correspondence)

#### LIST OF MAPS

Map of Navajo Route 7054, Pinedale, McKinley County, New Mexico

## I. Introduction

Between February 2011 thru 2011, a Biological Evaluation was completed for Navajo Route 7059, Pinedale Chapter, McKinley County, New Mexico. The evaluation was conducted to ensure listed Threatened/Endangered Species and its habitat were properly located and later avoided and mitigated in order to lessen construction impacts.

### A. Location

Navajo Route 7054 begins 1.4 miles north east of Pinedale Chapter at Point of Beginning (BOP) within NW ¼ NW ¼ Sec 19 T16N R15W runs for about 7.6 miles to the End of Project (EOP) on NW ¼ NE ¼ Sec 26 T16N R15W on U.S.G.S. Map: Pinedale, NM 1963.

TABLE 1: Universal Transverse Mercator Coordinates for Navajo Route 7054

Points	Location	Northing	Easting	U.S.G.S. Map
A (BOP)	NW ¼ NW ¼ Sec 19 T16N R15W	3943444	728744	Pinedale, NM 1963
B	SW ¼ SW ¼ Sec 19 T16N R15W	3943067	728741	Pinedale, NM 1963
C	NW ¼ NW ¼ Sec 30 T16N R15W	3941773	728762	Pinedale, NM 1963
D	NE ¼ NE ¼ Sec 25 T16N R15W	3941430	728603	Pinedale, NM 1963
E	NE ¼ SE ¼ Sec 25 T16N R15W	3940957	728659	Pinedale, NM 1963
F	NW ¼ SW ¼ Sec 30 T16N R15W	3940662	728882	Pinedale, NM 1963
G	SE ¼ SW ¼ Sec 30 T16N R15W	3940486	729131	Pinedale, NM 1963
H	NW ¼ NW ¼ Sec 32 T16N R15W	3940090	730609	Pinedale, NM 1963
I	SW ¼ NE ¼ Sec 32 T16N R15W	3939804	731156	Pinedale, NM 1963
J	NW ¼ SE ¼ Sec 32 T16N R15W	3939509	731336	Pinedale, NM 1963
K	NE ¼ SE ¼ Sec 32 T16N R15W	3939424	731911	Pinedale, NM 1963
L	SW ¼ NW ¼ Sec 33 T16N R15W	3939681	732113	Pinedale, NM 1963
M	SE ¼ NW ¼ Sec 33 T16N R15W	3939751	732423	Pinedale, NM 1963
N	NE ¼ SE ¼ Sec 33 T16N R15W	3939412	733160	Pinedale, NM 1963
O	SW ¼ NE ¼ Sec 34 T16N R15W	3939601	734555	Pinedale, NM 1963
P	SE ¼ NE ¼ Sec 34 T16N R15W	3939971	734743	Pinedale, NM 1963
Q	NW ¼ NE ¼ Sec 32 T16N R15W	3940241	734662	Pinedale, NM 1963
R	NE ¼ SE ¼ Sec 27 T16N R15W	3940971	734828	Pinedale, NM 1963
S	NW ¼ SW ¼ Sec 26 T16N R15W	3941173	735312	Pinedale, NM 1963
T (EOP)	NW ¼ NE ¼ Sec 26 T16N R15W	3941871	735992	Pinedale, NM 1963

### B. Project Description

Proposed road maintenance of Navajo Route 7054 road activity will consist of cutting, filling, grading and application of asphalt millings.

## II. Description of Environment

### A. Topography

The proposed road maintenance for Navajo Route 7054 is located south of Fallen Timber Ridge, north of Midget Mesa and Mesa Butte. There are several ephemeral drainages trending from the south into the Puerco River. Elevation range for Navajo Route 7054 is from 7000 feet to 7100 feet above mean sea level.

#### **B. Geologic Parent Material**

Beyond the escarpment to the north and rising prominently above it, is the northwest-trending Fallen Timber Ridge. Near the west side of the quadrangle lie the peaks of Midget Mesa and Mesa Butte, the latter of which has the highest altitude in the area at 8,030 feet above mean sea level. The prominences are capped by buff-colored resistant beds of the Dakota Sandstone of late cretaceous age, containing some interbedded coal.

#### **C. Soil Type**

Six soil associations are found within the project site:

1. Sparank-San Mateo-Zia Association, consists of very deep, well drained, very slowly permeable clay loam, fine mixed loam, and coarse soil. These soils are on alluvial fans, stream terraces, swales and flood plains.
2. Zia-Sandy Loam Association consists of very deep, well-drained and somewhat excessively drained, moderately rapidly permeable soil of fine sandy loam used for range.
3. Toldohn-Vezilla-Rock Outcrop Association consists of shallow, very shallow, well drained soil of clayey, loamy. Soils found on narrow ridges, hills, and mesas of bedrock controlled landscapes.
4. Flugle-Fragua Complex Association, consist of very, deep, well drained fine and coarse loamy soils. These soils are found on summits of mesas, dip slopes of cuestas, fan remnants of valley sides, hills and foot slopes.
5. Celavar-Atarque Complex Association, consist of moderately deep, shallow fine-loamy soil. These soils are found on mesas, hills, cuestas used for range.
6. Buckle-Fine Sandy Loam Association, consist of very deep, well drained soils of fine texture. The soil are found on dip slopes of cuestas, fan terraces and remnants on valley sides.

#### **D. Habitat Type**

Existence of vegetation within the road project area include Big Sagebrush, Blue Grama, Broom Snakeweed, Narrow Leaf Yucca, Indian Ricegrass, Fourwing-Salt Brush and Galleta. The area is slightly hilly consisting of brush covered terrain and scattered woodland of Juniper and Pinon.

### **III. Species Biology and Status**

On February 28, 2011, Natural Heritage Program, Navajo Fish & Wildlife Department gave Navajo Division of Transportation a list of "species with potential occurrence" within or near the project site Navajo Route 7054 located within Pinedale Chapter, McKinley County, New Mexico that would be of concern. The Navajo Fish & Wildlife has a total of eight (08) listed Species of concern with potential occurrence are: 1) Golden Eagle (*Aquila Chrysaetos*), 2) Ferruginous Hawk (*Buteo Regalis*), 3) Peregrine Falcon (*Falco Peregrinus*), 4) Black-footed Ferret (*Mustela Nigripes*), 5) Mexican Spotted Owl (*Strix Occidentalis Lucida*), 6) Acoma Fleabane (*Erigeron Acomanus*), 7) Rhizome Fleabane (*Erigeron Rhizomatus*), and 8) Sivinski's Fleabane (*Erigeron Sivinskii*).

#### **1. Golden Eagle NESL Group 3 MBTA EPA**

Brown with variable golden wash over back of head and neck. This raptor prefers high cliffs, such as buttes, mesas and volcanic plugs surrounded by open grassland with minimal human disturbances.



**2. Ferruginous Hawk NESL group 3 MBTA**

Rust back and shoulders; paler head, white tail washed with pale rust. Wings are long, broad and pointed. The ferruginous hawk inhabits dry open country. This bird prefers open plains, prairies or badlands where they feed on small mammals. Preferring to nest on buttes and mesas where they have a view of the surrounding grassland.

**3. Peregrine Falcon NESL group 4 MBTA**

Crown and nape black; black wedge extends below eye, forming a distinctive helmet. Peregrines inhabit open wetlands near cliffs. The most common habitat for this bird is the presence of tall cliffs. Cliffs serve as perching and nesting sites, and unobstructed view of the surrounding area. Peregrine feed primarily on small to medium sized birds, such as songbirds, shore birds and ducks.

**4. Black-footed Ferret NESL group 2 ESA endangered**

Head to body is 15-18 inches long. This mammal maybe recognized by its yellowish brown to buffy body black forehead, black tipped tail and black feet. These mammals are usually found in the vicinity of prairie dog towns where they use burrows for shelter and prairie dogs for food. Ferrets are nocturnal and usually conduct most of their activities in the evenings and early morning hours.

**5. Mexican Spotted Owl NESL group 3 ESA threatened MBTA**

A medium size owl with dark eyes around head without ear tufts and white spots on a brown body. The habitat in mountains containing high canopy cover, high stand density and multistoried canopy resulting from an uneven aged stand.

**6. Acoma Fleabane NESL group 3**

Taprooted perennial, mat-forming, 10-70cm in diameter, leaves mostly basal, blades oblanceolate to narrowly obovate or spatulate; ray flowers white, disk corollas yellowish. Habitat sandy slopes beneath sandstone cliffs of the entrada sandstone formation in pinon juniper woodland communities.

**7. Rhizome Fleabane NESL group 2 ESA threatened**

Herbaceous perennial with creeping rhizomes, stems 2.5-4.5 cm tall, leaves alternate, oblong, ca. 1 cm long; flower head solitary, 13-16 cm wide; typically only found on fine textured clay hillsides of mid to high elevation between ca. 700 and 8300 feet. It is known from clays derived from the Chinle formation in the zuni and chuska mountains and to similar clays of the Baca formation in the detail and sawtooth ranges in New Mexico.

**8. Shvinsk's Fleabane NESL group 4**

Perennial herb from a thick taproot with numerous caudex branches; stems erect, unbranched, green, 5-8cm tall; leaves green, arising in basal clusters, linear, 9-34mm long, 0.5-0.8mm wide; Habitat in steep, barren, shale slopes of the Chinle Formation, in pinon-juniper woodland and Great Basin Desert Scrub Communities.



#### **IV. Survey Method**

**A. Review data provided by the Natural Heritage Program and information pertinent to the species listed above.**

**B. Conducted preliminary field inspection to ensure the exact location of the project.**

**C. Navajo Nation Fish & Wildlife noted that potential impacts to wetlands should be evaluated.**

**D. Since the survey was conducted in the period from February 2011 through July 2011, attentions were paid to the basis of habitat suitability for these species of concern. Each of the following species is covered by the new buffer zone.**

##### **1. Golden Eagle**

The road project is located in Fallen Timber Ridge that is surrounded with Pinon and Juniper trees which is habitable for the golden eagle. No species or nests were observed while the biological survey was being conducted.

##### **2. Ferruginous Hawk**

The road project is located in Fallen Timber Ridge that is surrounded with Pinon and Juniper trees which is habitable for the ferruginous hawk. No species or nests were observed while the biological survey was being conducted.

##### **3. Peregrine Falcon**

The road project area is located in Fallen Timber Ridge that is surrounded with Pinon and Juniper trees, which is habitable for the peregrine falcon. No species or nests were found during the biological survey.

##### **4. Black-footed Ferret**

No prairie dogs or towns were located near or within the road project area while the biological survey was being conducted.

##### **5. Mexican Spotted Owl**

The road project is located in Fallen Timber Ridge that is surrounded with Pinon and Juniper trees which is habitable to the Mexican spotted owl. No species and nests were observed during the months the biological survey was being conducted.

##### **6. Acoma Fleabane**

The road project area is surrounded with Pinon and Juniper trees that are habitable for the acoma fleabane. No species was observed during the months the biological survey was being conducted.

##### **7. Rhizome Fleabane**

The road project area is surrounded with Pinon and Juniper trees on Fallen Timber Ridge that is habitable to the plant species. No species was observed during the months the biological survey was being conducted.

##### **8. Shrivens's Fleabane**

The road project area is surrounded with Pinon and Juniper trees on Fallen Timber Ridge that is habitable to the plant species. No species was observed during the months the biological survey was being conducted.

**V. Survey Results**

**A. Survey Dates**

Biological survey from February 2011 through July 2011 and Monday through Friday. Fallen Timber Ridge is the main surrounding of the road project area and Mesa Butte and Midget Mesa is approximately 1.8 miles south west of the road project area.

**B. Species Observed**

Species observed include crows, song / junco birds, ravens and sparrows.

**VI. Impacts Analysis**

**A. Extent of Project**

The total length of the road project is 7.6 miles within an area of the 300 feet right-of-way of 276.36 acres.

**B. Impacts on Threatened & Endangered Species**

The road project will have no impact to any Threatened and/or Endangered Species. The area should be re-assessed before road improvements begin.

**VII. Avoidance and Mitigation**

The road project will have no impact to any Threatened and/or Endangered Species. No avoidance and mitigation to give at this time.

**VIII. Conclusion**

During the months the biological survey was being conducted habitats were identified but no species were found within or near the road project area. The road project area has heavy human disturbances, which becomes impassable for the local residents to conducted business.

**IX. Personnel**

Jovonna Frank, Environmental Specialist  
Compliance Department  
Navajo Division of Transportation  
P.O. Box 4620  
Window Rock, AZ 86515

**X. Consultation and Coordination**  
**Geraldine Jones, Environmental Specialist**  
**Compliance Department**  
**Navajo Division of Transportation**  
**P.O. Box 4620**  
**Window Rock, AZ 86515**

**Sonja Detsol, Wildlife Technician**  
**Natural Heritage Program**  
**Department of Fish & Wildlife**  
**P.O. Box 1480**  
**Window Rock, AZ 86515**

**Lenora Etsitty, Archaeologist**  
**Compliance Department**  
**Navajo Division of Transportation**  
**P.O. Box 4620**  
**Window Rock, AZ 86515**

**XI. Bibliography**

Clark, T.W., T.M. Campbell, M.H. Schroeder and L. Richardson. 1984. Handbook of Methods for Locating Black-footed Ferret. Wyoming Bureau of Land Management, Wildlife Technical Bulletin No. 1. 39 pages.

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**ATTACHMENT A**

**Map of NR 7054 Pinedale**

## **Appendix C**

### **Biological Resource Compliance Document**

**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 Act. This form does not preclude or replace consultation with the U.S. Fish and Wildlife Service if a Federally-listed species is affected.

**PROJECT NAME & NO.:** Navajo Route 7054 Road Improvement Project

**DESCRIPTION:** The Navajo Division of Transportation (NDOT) proposes to upgrade 7.6 miles of NR7054. The upgrade consists of cutting, filling, grading, and application of asphalt millings.

**LOCATION:** BOP 728744E 3943444N, BOP 735992E 3941871N, Pinodale Chapter, McKinley Co., New Mexico

**REPRESENTATIVE:** Jovonna Frank, Environmental Specialist, NDOT

**ACTION AGENCY:** Navajo Division of Transportation

**B.R. REPORT TITLE / DATE / PREPARER:** BE for NR7054/JUL 2011/Jovonna Frank, NDOT

**SIGNIFICANT BIOLOGICAL RESOURCES FOUND:** Area 1 & 3.

**POTENTIAL IMPACTS**

**NESL SPECIES POTENTIALLY IMPACTED:** NA

**FEDERALLY-LISTED SPECIES AFFECTED:** NA

**OTHER SIGNIFICANT IMPACTS TO BIOLOGICAL RESOURCES:** NA

**AVOIDANCE / MITIGATION MEASURES:** NA

**CONDITIONS OF COMPLIANCE\*:** NA

**FORM PREPARED BY / DATE:** Pamela A. Kyselka/03 AUG 2011

**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)

*[Signature]* *8/3/11*  
 Gloria M. Tom, Director, Navajo Nation Department of Fish and Wildlife

**\*I understand and accept the conditions of compliance, and acknowledge that lack of signature may be grounds for the Department not recommending the above described project for approval to the Tribal Decision-maker.**

**Representative's signature**

**Date**

2011 AUG 9 AM 11:23  
 NAVAJO DIVISION  
 OF TRANSPORTATION  
 ADMINISTRATION

## **Appendix D**

### **Cultural Resource Compliance Document**



# CULTURAL RESOURCES COMPLIANCE FORM

THE NAVAJO NATION  
HISTORIC PRESERVATION DEPARTMENT  
PO BOX 4950  
WINDOW ROCK, ARIZONA 86515

*File  
Doc/231*

ROUTING: COPIES TO

NM

SHPO

REAL PROPERTY MGT/330

XX

Navajo DOT

NNHPD NO. **HPD-09-795**

OTHER PROJECT NO.

Navajo DOT 07-21

PROJECT TITLE: A Cultural Resource Inventory for the Proposed Improvements of ca 7.6 Miles of Navajo Route 7054 Loop near Pinedale, McKinley County, New Mexico

LEAD AGENCY: BIA/NR

SPONSOR: Pinedale Chapter, PO Box 3, Church Rock, New Mexico 87311

PROJECT DESCRIPTION: The proposed undertaking will involve the improvement of 7.6-miles (40,128-ft) of N7054 Loop. Proposed activities include grading, backfilling within the right-of-way, installation of drainage culverts, and/or paving or chip-sealing of the road surface. The area of effect is 138.2-acres. Ground disturbance will be intensive and extensive with the use of heavy equipment.

LAND STATUS: Tribal Trust

CHAPTER: Pinedale

LOCATION: T.16N, R.15W - Sec. 19, 30, 25, 32, 33, 34, 26 & 27; Pinedale Quadrangle, McKinley County, New Mexico NMPM

PROJECT ARCHAEOLOGIST: Lenora M. Etsitty

NAVAJO ANTIQUITIES PERMIT NO.: NTC

DATE INSPECTED: August 09-12, 20 & 21 & May 20-22, 2008

DATE OF REPORT: April 19, 2010

TOTAL ACREAGE INSPECTED: 276.3-ac

METHOD OF INVESTIGATION: Class III pedestrian inventory with transects spaced 15 m apart.

LIST OF CULTURAL RESOURCES FOUND:

- (5) Previously Recorded Sites (NM-Q-28-83, NM-Q-28-84, NM-Q-28-62, NM-Q-28-61, NM-Q-28-27);
- (7) New Sites (NM-Q-28-185, NM-Q-28-186, NM-Q-28-187, NM-Q-28-188, NM-Q-28-189, NM-Q-28-190, NM-Q-28-191)
- (14) Isolated Occurrences (IO)
- (3) Traditional Cultural Properties (TCP)
- (2) In-Use Sites (IUS)
- (1) Burial

LIST OF ELIGIBLE PROPERTIES:

- (12) Sites (NM-Q-28-83, NM-Q-28-84, NM-Q-28-61, NM-Q-28-62, NM-Q-28-27, NM-Q-28-185, NM-Q-28-186, NM-Q-28-187, NM-Q-28-188, NM-Q-28-189, NM-Q-28-190, NM-Q-28-191)

LIST OF NON-ELIGIBLE PROPERTIES:

- (3) TCP; (14) IO; (2) IUS; (1) Burial

LIST OF ARCHAEOLOGICAL RESOURCES:

- (11) Sites (NM-Q-28-83, NM-Q-28-84, NM-Q-28-62, NM-Q-28-27, NM-Q-28-185, NM-Q-28-186, NM-Q-28-187, NM-Q-28-188, NM-Q-28-189, NM-Q-28-190, NM-Q-28-191)

EFFECT/CONDITIONS OF COMPLIANCE: The proposed undertaking as planned will have a No Adverse Effect on historic properties identified provided that the following conditions are met:

**Sites NM-Q-28-27** is located on the existing N7054 road & within the right-of-way.

1. It has been determined that the existing road *cannot* be realigned because of the wash located on the left side of the site & the huge concentration of artifacts & subsurface materials located on the right side of the road.
2. It is recommended that the entire site within the right-of-way be covered with geo-textile to protect the site from further damage.
3. The site will then be covered with sterile fill.
4. The site shall be temporarily fenced & an archaeologist shall monitor all ground disturbing activities within 50-ft of the site boundary.
5. A brief letter/report documenting the result of the monitoring will be submitted to NNHPD Compliance Section, within 30 days of the monitoring.
6. Markers will be placed along road to ensure future maintenance activities do not damage site.
7. If these plans are not feasible, a nature extent testing & if necessary a data recovery plan will be implemented in consultation with the Navajo Nation Historic Preservation Department for the site within the right-of-way. The plans must be consistent with Navajo Nation Policies & Procedures & be approved by NNHPD.

**Site NM-Q-28-191** shall be avoided. The southwestern portion of the site abuts the existing N7054 road.

1. Site boundary will be flagged by a qualified archaeologist prior to ground disturbing activities.
2. All construction activities will be confined to the existing right-of-way avoiding the site.
3. The site shall be temporarily fenced & an archaeologist shall monitor all ground disturbing activities within 50-ft of the site boundary.
4. A brief letter/report documenting the result of the monitoring will be submitted to NNHPD Compliance Section, within 30 days of the monitoring.
5. Markers will be placed along road to ensure future maintenance activities do not damage sites.
6. All future maintenance activities shall avoid the sites by a minimum of 50-ft from the site boundary.

**TCP's:**

1. TCP's will be flagged by a qualified archaeologist prior to ground disturbing activities.
2. TCP's will be avoided by all construction activities by a minimum of 50-ft from the TCP boundaries.

**Burial**

1. Burial will be flagged by a qualified archaeologist prior to ground disturbing activities.
2. Burial will be avoided by all construction activities by a minimum of 50-ft.

*Prior to any disturbance of any borrow area, material source area, staging area, outside of the area documented, Navajo DOT/BIA shall ensure that the area evaluated for cultural resources might be affected by this undertaking. The evaluation shall take place in consultation with the Navajo Nation Historic Preservation Department.*

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.

FORM PREPARED BY: Tamara Billie  
FINALIZED: May 24, 2010

Notification to

Proceed Recommended:

Yes ☒ No ☐

Conditions:

Yes ☒ No ☐

Navajo Region Approval:

Yes ☒ No ☐

*SP 6/16/10*

*[Signature]*  
Dan S. Downer, Navajo Nation  
Historic Preservation Officer

*6-4-10*  
Date

*[Signature]*  
Regional Director

**JUN 18 2010**

Date



**COPY** @ 12/21/16

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

## CULTURAL RESOURCES COMPLIANCE FORM

### ROUTE COPIES TO:

☒ Navajo DOT

NNHPD NO.: **HPD-09-795 - REVISED**

OTHER PROJECT NO.: **Navajo DOT 07-21**

PROJECT TITLE: A Cultural Resource Inventory for the Proposed Improvements of ca 7.6 Miles of Navajo Route 7054 Loop near Pinedale, McKinley County, New Mexico

LEAD AGENCY: BIA/NR

SPONSOR: Pinedale Chapter, PO Box 3, Church Rock, New Mexico 87311

PROJECT DESCRIPTION: The proposed undertaking will involve the improvement of 7.6-miles (40,128-ft) of N7054 Loop. Proposed activities include grading, backfilling within the right-of-way, installation of drainage culverts, and/or paving or chip-sealing of the road surface. The area of effect is 138.2-acres. Ground disturbance will be intensive and extensive with the use of heavy equipment.

LAND STATUS: Tribal Trust, *Indian Allotment & State of New Mexico*

CHAPTER: Pinedale

LOCATION: *T.16N, R.15W - Sec. 19, 30, 31, 32, 33, 34, 26 & 27; T.16N, R.16W - Sec. 25*; Pinedale Quadrangle, McKinley County, New Mexico NMPM

PROJECT ARCHAEOLOGIST: Lenora M. Etsitty

NAVAJO ANTIQUITIES PERMIT NO.: NTC

DATE INSPECTED: August 09-12, 20 & 21 & May 20-22, 2008

DATE OF REPORT: April 19, 2010

TOTAL ACREAGE INSPECTED: 276.3-ac

METHOD OF INVESTIGATION: Class III pedestrian inventory with transects spaced 15 m apart.

LIST OF CULTURAL RESOURCES FOUND: (5) **Previously Recorded Sites** (NM-Q-28-83, NM-Q-28-84, NM-Q-28-62, NM-Q-28-61, NM-Q-28-27);  
(7) **New Sites** (NM-Q-28-185, NM-Q-28-186, NM-Q-28-187, NM-Q-28-188, NM-Q-28-189, NM-Q-28-190, NM-Q-28-191)  
(14) **Isolated Occurrences (IO)**  
(3) **Traditional Cultural Properties (TCP)**  
(2) **In-Use Sites (IUS)**  
(1) **Burial**

LIST OF ELIGIBLE PROPERTIES: (12) **Sites** (NM-Q-28-83, NM-Q-28-84, NM-Q-28-61, NM-Q-28-62, NM-Q-28-27, NM-Q-28-185, NM-Q-28-186, NM-Q-28-187, NM-Q-28-188, NM-Q-28-189, NM-Q-28-190, NM-Q-28-191)

LIST OF NON-ELIGIBLE PROPERTIES: (3) **TCPs**  
(14) **IO**  
(2) **IUS**  
(1) **Burial**

LIST OF ARCHAEOLOGICAL RESOURCES: (11) **Sites** (NM-Q-28-83, NM-Q-28-84, NM-Q-28-62, NM-Q-28-27, NM-Q-28-185, NM-Q-28-186, NM-Q-28-187, NM-Q-28-188, NM-Q-28-189, NM-Q-28-190, NM-Q-28-191)



**EFFECT/CONDITIONS OF COMPLIANCE:** The proposed undertaking as planned will have a *No Adverse Effect* on historic properties identified provided that the following conditions are met:

**Sites NM-Q-28-185, NM-Q-28-83, NM-Q-28-84, NM-Q-28-61, NM-Q-28-190** shall be avoided. The site boundaries fall within the existing ROW & survey corridors.

1. Site boundaries will be flagged by a qualified archaeologist prior to ground disturbing activities.
2. All construction activities will be confined to the existing road footprint & rights-of-way avoiding the site boundaries.
3. The sites shall be temporarily fenced & an archaeologist shall monitor all ground disturbing activities within 50-ft of the site boundaries.
4. A brief letter/report documenting the result of the monitoring will be submitted to NNHPD Compliance Section, within 30 days of the monitoring.
5. Markers will be placed along road to ensure future maintenance activities do not damage sites.
6. All future maintenance activities shall avoid the sites by a minimum of 50-ft from the site boundary.

**Site NM-Q-28-186** shall be avoided. Northern portion of the site boundary abuts the existing N7054 road.

1. Site boundary will be flagged & temporarily fence under the direction of a qualified archaeologist prior to ground disturbing activities.
2. Site will be avoided by rerouting the road centerline about 5 meters to the north from the site boundary.
3. A qualified archaeologist shall monitor all ground disturbing activities within 50-ft of the site boundary.

**Site NM-Q-28-187** shall be avoided. Features 1 & 2 of the site are located within the survey corridor.

1. Site boundary will be flagged by a qualified archaeologist prior to ground disturbing activities.
2. All construction activities will be confined to the existing road footprint & right-of-way avoiding the site.
3. The site shall be temporarily fenced & an archaeologist shall monitor all ground disturbing activities within 50-ft of the site boundary.
4. A brief letter/report documenting the result of the monitoring will be submitted to NNHPD Compliance Section, within 30 days of the monitoring.
5. Markers will be placed along road to ensure future maintenance activities do not damage site.
6. All future maintenance activities shall avoid the site by a minimum of 50-ft from the site boundary.

**Site NM-Q-28-188** shall be avoided. Northwestern portion of the site boundary borders the existing N7054 road.

1. Site boundary will be flagged by a qualified archaeologist prior to ground disturbing activities.
2. All construction activities will be confined to the existing right-of-way avoiding the site.
3. The site shall be temporarily fenced & an archaeologist shall monitor all ground disturbing activities within 50-ft of the site boundary.
4. A brief letter/report documenting the result of the monitoring will be submitted to NNHPD Compliance Section, within 30 days of the monitoring.
5. Markers will be placed along road to ensure future maintenance activities do not damage sites.
6. All future maintenance activities shall avoid the sites by a minimum of 50-ft from the site boundary.



**Site NM-Q-28-189** shall be avoided. Northern portion of the site boundary abuts the existing N7054 road.

1. Site boundary will be flagged by a qualified archaeologist prior to ground disturbing activities.
2. All construction activities will be confined to the existing right-of-way avoiding the site.
3. The site shall be temporarily fenced & an archaeologist shall monitor all ground disturbing activities within 50-ft of the site boundary.
4. A brief letter/report documenting the result of the monitoring will be submitted to NNHPD Compliance Section, within 30 days of the monitoring.
5. Markers will be placed along road to ensure future maintenance activities do not damage site.
6. All future maintenance activities shall avoid the site by a minimum of 50-ft from the site boundary.

**Site NM-Q-28-62** is located on the existing N7054 road & within the right-of-way.

1. Site boundary will be flagged by a qualified archaeologist prior to ground disturbing activities.
2. It is recommended that the entire site within the right-of-way be covered with geo-textile to protect the site from further damage.
3. The site will then be capped with sterile fill that will be hauled in from a different location.
4. The site shall be temporarily fenced & an archaeologist shall monitor all ground disturbing activities within 50-ft of the site boundary.
5. A brief letter/report documenting the result of the monitoring will be submitted to NNHPD Compliance Section, within 30 days of the monitoring.
6. Markers will be placed along road to ensure future maintenance activities do not damage site.
5. If these plans are not feasible, a nature extent testing & if necessary a data recovery plan will be implemented in consultation with the Navajo Nation Historic Preservation Department for the site within the right-of-way. The plans must be consistent with Navajo Nation Policies & Procedures & be approved by NNHPD.

**Site NM-Q-28-27** is located on the existing N7054 road & within the right-of-way.

1. It has been determined that the existing road *cannot* be realigned because of the wash located on the left side of the site & the huge concentration of artifacts & subsurface materials located on the right side of the road.
2. It is recommended that the entire site within the right-of-way be covered with geo-textile to protect the site from further damage.
3. The site will then be covered with sterile fill.
4. The site shall be temporarily fenced & an archaeologist shall monitor all ground disturbing activities within 50-ft of the site boundary.
5. A brief letter/report documenting the result of the monitoring will be submitted to NNHPD Compliance Section, within 30 days of the monitoring.
6. Markers will be placed along road to ensure future maintenance activities do not damage site.
7. If these plans are not feasible, a nature extent testing & if necessary a data recovery plan will be implemented in consultation with the Navajo Nation Historic Preservation Department for the site within the right-of-way. The plans must be consistent with Navajo Nation Policies & Procedures & be approved by NNHPD.

**Site NM-Q-28-191** is shall be avoided. The southwestern portion of the site abuts the existing N7054 road.

1. Site boundary will be flagged by a qualified archaeologist prior to ground disturbing activities.
2. All construction activities will be confined to the existing right-of-way avoiding the site.
3. The site shall be temporarily fenced & an archaeologist shall monitor all ground disturbing activities within 50-ft of the site boundary.
4. A brief letter/report documenting the result of the monitoring will be submitted to NNHPD

Compliance Section, within 30 days of the monitoring.

5. Markers will be placed along road to ensure future maintenance activities do not damage sites.

6. All future maintenance activities shall avoid the sites by a minimum of 50-ft from the site boundary.

**TCP's:**

1. TCP's will be flagged by a qualified archaeologist prior to ground disturbing activities.

2. TCP's will be avoided by all construction activities by a minimum of 50-ft from the TCP boundaries.

**Burial**

1. Burial will be flagged by a qualified archaeologist prior to ground disturbing activities.

2. Burial will be avoided by all construction activities by a minimum of 50-ft.

***Prior to any disturbance of any borrow area, material source area, staging area, outside of the area documented, Navajo DOT/BIA shall ensure that the area evaluated for cultural resources might be affected by this undertaking. The evaluation shall take place in consultation with the Navajo Nation Historic Preservation Department.***

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.

FORM PREPARED BY: Tamara Billie

FINALIZED: November 21, 2016 - Revised

Notification to Proceed  
Recommended  
Conditions:

☒ Yes ☐ No

☒ Yes ☐ No



The Navajo Nation  
Historic Preservation Office

Date

11/28/16

Navajo Region Approval

☒ Yes ☐ No



BIA - Navajo Regional  
Office

Date

**ATTACHMENT B**

**Natural Heritage Program Correspondence**





Figure 2: Specific Location of Points (A-T) along N7854 Road. Map is U.S.G.S. 7.5' Quadrangle of "Pinedale, NM 1963".



## **Appendix E**

### **Clean Water Act Permit Information**

# NATIONWIDE PERMIT NUMBER 14

## LINEAR TRANSPORTATION PROJECTS



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

### A. General Information

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

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

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

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

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

### B. Nationwide Permit Terms

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

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

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

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

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

### C. Nationwide Permit General Conditions

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

#### 401 WQC Contact Information

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Lionel Puhuyesva  
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Hopi Tribe  
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Fax: 928-734-3609  
E-mail: [lpuhuyesva@hopi.nsn.us](mailto:lpuhuyesva@hopi.nsn.us)

Tara Chief  
Water Quality Officer  
White Mountain Apache Tribe  
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Alex Cabillo  
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Hualapai Dept. of Natural Resources  
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Robert Scalamera  
Surface Water Section, 401 Certifications  
Arizona Department of Environmental Quality  
110 West Washington Street (Mailstop 5415A-1)  
Phoenix, Arizona 85007  
Telephone: 602-771-4502  
Fax: Not available  
E-mail: [rs3@azdeq.gov](mailto:rs3@azdeq.gov)

#### F. Document Availability

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

<http://www.gpo.gov/fdsys/pkg/FR-2012-02-21/pdf/2012-3687.pdf>  
Contact Corps project manager for copy of document.  
Contact Corps project manager for copy of document.  
Contact Corps project manager for copy of document.  
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Contact Corps project manager for copy of document.  
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**Table 1 - ADEQ 401 WQCs for all Non-Tribal Lands**

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

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

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

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

<sup>1</sup> 303(d)-listed Impaired Waters list available at <http://www.azdeq.gov/index.html>. For projects on an impaired surface water, if the project is within 1600 meters (or 1 mile) upstream and/or 800 meters (1/2 mile) downstream of an impaired surface water.

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

<sup>3</sup> Outstanding Arizona Waters (OAW) are the surface waters of exceptional quality listed at <http://www.azdeq.gov/index.html>. For projects on a designated Outstanding Arizona Water OAW, if the project is within 1600 meters (or 1 mile) upstream and/or 800 meters (1/2 mile) downstream of a designated OAW. Also, Tributaries to Outstanding Arizona Waters: For projects on a tributary to a designated Outstanding Arizona Water, or if the tributary mouth is to an impaired surface water and the project is within 1600 meters (or 1 mile) of its mouth.

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

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



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

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

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

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

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

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

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

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

\*\* Impacts limits are modified by EPA

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



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

**General Conditions**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### **Specific Nationwide Permits**

**NWP-01 Aids to Navigation** - Subject to the General Conditions (GCs) above, this NWP is hereby programmaticallly certified.

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

**NWP-03 Maintenance** - Subject to the GCs above, and the following permit-specific conditions, this NWP is hereby programmaticallly certified.

"Currently serviceable structures" which may be maintained under this permit do not include undersized culverts or structures that cause or exacerbate channel incision, bank destabilization, and/or prevent fish and wildlife passage due to inadequate design or construction standards. Certification of this permit is granted only if the existing structure proposed to be maintained demonstrably preserves (via design, flow modeling or other information in the PCN) the natural functions of the affected aquatic resource when the structure is fully operational. Otherwise, an alternative permit should be utilized as appropriate (e.g., NWP 13 Bank Stabilization). Where existing bank stabilization structures are to be maintained, bioengineered methods shall be utilized to the extent practicable in lieu of "rip-rap" or other hardscape engineered materials. This permit shall not authorize the enlargement of, or increase in, the footprint of a structure within waters of the U.S., unless that enlargement consists of the replacement of existing artificial channel armoring materials (e.g., rip-rap, soil cement, etc.) with low-impact bioengineered natural channel design structures (e.g., log revetments, geotextile rolls/mats, root wads, brush mattresses, willow wattling, etc.)



**NWP-04 Fish and Wildlife Harvesting, Enhancement, and Attraction Devices and Activities**

Subject to the GCs above, this NWP is hereby programmatically certified.

**NWP-05 Scientific Measurement Devices** - Subject to the GCs above, this NWP is hereby programmatically certified.

**NWP-06 Survey Activities** - Subject to the GCs above, this NWP is hereby programmatically certified.

**NWP-07 Outfall Structures and Associated Intake Structures** - Subject to the GCs above, this NWP is hereby programmatically certified.

**NWP-08 Oil and Gas Structures on the Outer Continental Shelf** - Subject to the GCs above, this NWP is hereby programmatically certified.

**NWP-09 Structures in Fleeting and Anchorage Areas** - Subject to the GCs above, this NWP is hereby programmatically certified.

**NWP-10 Mooring Buoys** - Subject to the GCs above, this NWP is hereby programmatically certified.

**NWP-11 Temporary Recreational Structures** - Subject to the GCs above, this NWP is hereby programmatically certified.

**NWP-12 Utility Line Activities** - Subject to the GCs above, and the following permit-specific conditions, this NWP is hereby programmatically certified. Impacts under this permit are limited to the greater of 1/2 acre or 300 linear feet of waters of the U.S., including intermittent and ephemeral streams. Only the 300 linear foot limit may be waived by EPA upon approval, consistent with General Condition 02. *Waivers*. Under this certification, NWP 12 can only be used once for a single and complete project having independent utility. When NWP 12 is proposed for multiple locations a written determination will be provided describing independent utility of each impact location for approval by EPA, consistent with General Condition 01. *Notification*. Permittees are required to ensure that the construction of utility lines does not result in the draining of any water of the U.S., including wetlands. This may be accomplished through the use of clay blocks, bentonite, or other suitable material (as approved by EPA) to seal the trench. For utility line trenches, during construction, the permittee shall remove and stockpile, separately, the top 6 - 12 inches of topsoil. Following installation of the utility line(s), the permittee shall replace the stockpiled topsoil on top and seed the area with native vegetation.

**NWP-13 Bank Stabilization** - Subject to the GCs above, and the following permit-specific conditions, this NWP is hereby programmatically certified. Unless approved by EPA, consistent with General Condition 02. *Waivers*, impacts under this permit are limited to the greater of 1/2 acre or 300 linear feet of waters of the U.S., including intermittent and ephemeral streams. All bank stabilization activities under this permit shall involve either the sole use of native vegetation or other bioengineered design techniques (e.g. willow plantings, root wads, large woody debris, etc.) or a combination of hard-armoring (e.g. rock) and native vegetation or bioengineered design techniques, unless specifically determined to be impracticable by the EPA.

**NWP-14 Linear Transportation Projects** - Subject to the GCs above, and the following permit-specific conditions, this NWP is hereby programmatically certified. Impacts under this permit are limited to the greater of 1/2 acre or 300 linear feet of non-tidal waters of the U.S., including intermittent and ephemeral streams, and 1/3 acre or 300 linear feet of tidal waters of the U.S. NWP 14 can only be used once for a single and complete project having independent utility. When NWP 14 is proposed for multiple locations a written determination will be provided describing independent utility of each impact location for approval by EPA, consistent with General Condition 01. *Notification*. All bank stabilization activities under this permit shall involve either the sole use of native vegetation or other bioengineered design techniques (e.g. willow plantings, root wads, large woody debris, etc.) or a combination of hard-armoring (e.g. rock) and native vegetation or bioengineered design techniques, unless specifically determined to be impracticable by the EPA.

**NWP-15 U.S. Coast Guard Approved Bridges** - Subject to the GCs above, this NWP is hereby programmatically certified.

**NWP-16 Return Water from Upland Contained Disposal Areas** - Subject to the GCs above, this NWP is hereby programmatically certified.

**NWP-17 Hydropower Projects** - Subject to the GCs above, this NWP is hereby programmatically certified.

**NWP-18 Minor Discharges** - Subject to the GCs above, this NWP is hereby programmatically certified.

**NWP-19 Minor Dredging** - Subject to the GCs above, this NWP is hereby programmatically certified.

**NWP-20 Response Operations for Oil and Hazardous Substances** - Subject to the GCs above, this NWP is hereby programmatically certified.

**NWP-21 Surface Coal Mining Activities** - Subject to the GCs above, and the following permit-specific conditions, this NWP is hereby programmatically certified. Before an applicant may use this permit, EPA must approve a compensatory mitigation plan sufficient to ensure impacts to aquatic resource functions are minimal.

**NWP-22 Removal of Vessels** - Subject to the GCs above, this NWP is hereby programmatically certified.

**NWP-23 Approved Categorical Exclusions** - Subject to the GCs above, this NWP is hereby programmatically certified.

**NWP-24 Indian Tribe or State Administered Section 404 Programs** - Subject to the GCs above, this NWP is hereby programmatically certified.

**NWP-25 Structural Discharges** - Subject to the GCs above, this NWP is hereby programmatically certified.

**NWP-26 [Reserved]**

This NWP is no longer in use. No certification is necessary.

**NWP-27 Aquatic Habitat Restoration, Establishment, and Enhancement Activities** - Subject to the GCs above, and the following permit-specific condition, this NWP is hereby programmatically certified. Upon review of a PCN or MPCN, consistent with General Condition 01. *Notification*, EPA will approve or deny on a case-by-case basis whether the proposed project will result in a net increase in aquatic resource functions and services, consistent with the NWP. An individual certification may be required in the event EPA denies approval of a waiver for this NWP.

**NWP-28 Modifications of Existing Marinas** - Subject to the GCs above, this NWP is hereby programmatically certified.

**NWP-29 Residential Developments** - Subject to the GCs above, and the following permit-specific conditions, this NWP is hereby programmatically certified. Unless approved by EPA, consistent with General Condition 02. *Waivers*, impacts under this permit are limited to 1/4 acre of impacts to non-tidal waters of the U.S. for single family houses, and the greater of 1/2 acre or 300 linear feet of impact to waters of the U.S. for multi-unit residential developments. Under this certification, this permit will not be used to approve residential developments and their attendant features within the 100-year floodplain. The 100-year floodplain is determined based on hydrologic conditions at the time of the NWP application. Recreational facilities such as playgrounds, playing fields, and golf courses are not authorized under this certification. These projects are separate and distinct from residential developments, are not required to be included in a residential development project for it to be practicable, and their construction within waters is normally avoidable.

**NWP-30 Moist Soil Management for Wildlife** - Subject to the GCs above, this NWP is hereby programmatically certified.

**NWP-31 Maintenance of Existing Flood Control Facilities** - Subject to the GCs above, and the following permit-specific conditions, this NWP is hereby programmatically certified. Upon review of a PCN, consistent with General Condition 01. *Notification*, EPA will approve or deny on a case-by-case basis whether the proposed project will result in minimal impacts to waters of the U.S. for projects that include removal of levee vegetation.

**NWP-32 Completed Enforcement Actions** - Subject to the GCs above, this NWP is hereby programmatically certified.

**NWP-33 Temporary Construction, Access, and Dewatering** - Subject to the GCs above, this NWP is hereby programmatically certified.

**NWP-34 Cranberry Production Activities** - Subject to the GCs above, this NWP is hereby programmatically certified.

**NWP-35 Maintenance Dredging of Existing Basins** - Subject to the GCs above, this NWP is hereby programmatically certified.



**NWP-36 Boat Ramps** - Subject to the GCs above, and the following permit-specific conditions, this NWP is hereby programmatically certified. Unless approved by EPA, consistent with General Condition 02. *Waivers*, impacts under this permit are limited to 50 cubic yards of fill and ramps that are 20 feet wide or less.

**NWP-37 Emergency Watershed Protection and Rehabilitation** - Subject to the GCs above, this NWP is hereby programmatically certified.

**NWP-38 Cleanup of Hazardous and Toxic Waste** - Subject to the GCs above, this NWP is hereby programmatically certified.

**NWP-39 Commercial and Institutional Developments** - Subject to the GCs above, and the following permit-specific conditions, this NWP is hereby programmatically certified. Under this certification, this permit will not be used to approve commercial and institutional developments and their attendant features within the 100-year floodplain. The 100-year floodplain is determined based on hydrologic conditions at the time of the NWP application. Recreational facilities such as playgrounds, playing fields, and golf courses are not authorized under this certification. These projects are separate and distinct from commercial and institutional development, are not required to be included in such developments to be practicable, and their construction within waters is normally avoidable.

**NWP-40 Agricultural Activities** - Subject to the GCs above, and the following permit-specific conditions, this NWP is hereby programmatically certified. Construction of farm ponds under this certification is limited to those that do not qualify for the Clean Water Act section 404(f)(1)(C) exemption because of the recapture provision at section 404(f)(2). Under this certification, no discharges are authorized which would impact hydrological connectivity between jurisdictional waters to such an extent as to convert waters of the U.S. to uplands, or otherwise isolate waters and eliminate federal regulatory jurisdiction. Unless approved by EPA, consistent with General Condition 02. *Waivers*, impacts under this permit are limited to the greater of 1/2 acre or 300 linear feet of impacts to non-tidal waters of the U.S., including intermittent and ephemeral streams.

**NWP-41 Reshaping Existing Drainage Ditches** - Subject to the GCs above, and the following permit-specific conditions, this NWP is hereby programmatically certified. Unless approved by EPA, consistent with General Condition 02. *Waivers*, impacts under this permit are limited to the greater of 1/2 acre or 300 linear feet of impacts to non-tidal waters of the U.S., including intermittent and ephemeral streams. All sidescast materials from excavation must be stored and/or disposed of within non-jurisdictional uplands under this certification. A statement must be included in the notification as to how the applicant's activities will improve water quality. Under this certification, no discharges are authorized which would impact hydrological connectivity between jurisdictional waters to such an extent as to convert waters of the U.S. to uplands, or otherwise isolate waters to eliminate federal regulatory jurisdiction.

**NWP-42 Recreational Facilities** - Subject to the GCs above, this NWP is hereby programmatically certified.

**NWP-43 Stormwater Management Facilities** - Use of this NWP is not covered by this programmatic certification, and prospective users on tribal lands must seek individual project certification from EPA in all cases. NWP authorization of constructing stormwater facilities within waters of the U.S. discourages applicants from using practicable construction options that locate stormwater retention and detention facilities "off line" from streams. For example, retention facilities are often built as sediment (or debris) basins within a stream. This practice includes constructing a dam in the stream, excavating out a basin, and regular sediment removal to maintain the structure. These facilities cause considerable and unnecessary damages to stream functions as retention facilities can be located "off line" by constructing a high flow diversion channel above the ordinary high water mark. If applicants can continue to use the traditional, more damaging practices that are sanctioned by this NWP, there is no incentive for these management practices to improve. We do not believe NWP-43 for new facilities complies with the CWA Section 404(b)(1) Guidelines. CWA section 401 certification for this NWP is denied without prejudice. Applicants for projects on tribal lands must apply to EPA for individual certification if this NWP is proposed to be used. Applicants can apply for an individual certification by providing the same content required in a MPCN described in General Condition 01. *Notification*, of this certification.

**NWP-44 Mining Activities** - Subject to the GCs above, and the following permit-specific conditions, this NWP is hereby programmatically certified. Applicants must ensure that mining activities (e.g., aggregate mining) approved by this NWP will not cause upstream head cutting or downstream incision. Notification to EPA shall include a narrative description and design drawing, when applicable, of any measure that will be implemented to comply with the condition. When used for in-stream aggregate mining activities, compensatory mitigation is likely to be required due to extensive indirect impacts and temporal losses typical of this type of impact.

**NWP-45 Repair of Uplands Damaged by Discrete Events** - Subject to the GCs above, and the following permit-specific conditions, this NWP is hereby programmatically certified.

Unless approved by EPA, consistent with General Condition 02. *Waivers*, impacts under this permit are limited to the greater of 1/2 acre or 300 linear feet of impacts to non-tidal waters of the U.S., including intermittent and ephemeral streams.

**NWP-46 Discharges in Ditches**

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

Unless approved by EPA, consistent with General Condition 02. *Waivers*, impacts under this permit are limited to the greater of 1/2 acre or 300 linear feet of impacts to non-tidal waters of the U.S., including intermittent and ephemeral streams.

**NWP-47 [Reserved]** - This NWP is no longer in use. No certification is necessary.

**NWP-48 Commercial Shellfish Aquaculture Activities** - Subject to the GCs above, and the following permit-specific conditions, this NWP is hereby programmatically certified. Under this certification, impacts to submerged aquatic vegetation are prohibited, consistent with NWP 19. *Minor Dredging*, and NWP 36. *Boat Ramps*.

**NWP-49 Coal Remining Activities** - Subject to the GCs above, and the following permit-specific conditions, this NWP is hereby programmatically certified. Unless approved by EPA, consistent with General Condition 02. *Waivers*, impacts under this permit are limited to the greater of 1/2 acre or 300 linear feet of impacts to non-tidal waters of the U.S., including intermittent and ephemeral streams. Applicants must provide information in the PCN illustrating that activities authorized under NWP-49 will result in a net increase in aquatic resource functions.

**NWP-50 Underground Coal Mining Activities** - Subject to the GCs above, this NWP is hereby programmatically certified.

**NWP-51 Land-Based Renewable Energy Generation Facilities** - Subject to the GCs above, this NWP is hereby programmatically certified.

**NWP-52 Water-Based Renewable Energy Generation Pilot Projects** - Subject to the GCs above, this NWP is hereby programmatically certified.



**US Army Corps  
of Engineers.**  
Albuquerque District

# Nationwide Permit Summary

## NATIONWIDE PERMIT 3

### Maintenance

Effective Date: March 19, 2007

Expiration Date: March 18, 2012

(NWP Final Notice, 72 FR 11181, para. 3)

**Maintenance.** (a) The repair, rehabilitation, or replacement of any previously authorized, currently serviceable, structure, or fill, or of any currently serviceable structure or fill authorized by 33 CFR 330.3, provided that the structure or fill is not to be put to uses differing from those uses specified or contemplated for it in the original permit or the most recently authorized modification. Minor deviations in the structure's configuration or filled area, including those due to changes in materials, construction techniques, or current construction codes or safety standards that are necessary to make the repair, rehabilitation, or replacement are authorized. This NWP authorizes the repair, rehabilitation, or replacement of those structures or fills destroyed or damaged by storms, floods, fire or other discrete events, provided the repair, rehabilitation, or replacement is commenced, or is under contract to commence, within two years of the date of their destruction or damage. In cases of catastrophic events, such as hurricanes or tornadoes, this two-year limit may be waived by the district engineer, provided the permittee can demonstrate funding, contract, or other similar delays.

(b) This NWP also authorizes the removal of accumulated sediments and debris in the vicinity of and within existing structures (e.g., bridges, culverted road crossings, water intake structures, etc.) and the placement of new or additional riprap to protect the structure. The removal of sediment is limited to the minimum necessary to restore the waterway in the immediate vicinity of the structure to the approximate dimensions that existed when the structure was built, but cannot extend further than 200 feet in any direction from the structure. This 200 foot limit does not apply to maintenance dredging to remove accumulated sediments blocking or restricting outfall and intake structures or to maintenance dredging to remove accumulated sediments from canals associated with outfall and intake structures. All dredged or excavated materials must be deposited and retained in an upland area unless otherwise specifically approved by the district engineer under separate authorization. The placement of riprap must be the minimum necessary to protect the structure or to ensure the safety of the structure. Any bank stabilization measures not directly associated with the structure will require a separate authorization from the district engineer.

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

(d) This NWP does not authorize maintenance dredging for the primary purpose of navigation or beach restoration. This NWP does not authorize new stream channelization or stream relocation projects.

**Notification:** For activities authorized by paragraph (b) of this NWP, the permittee must submit a pre-construction notification to the district engineer prior to commencing the activity (see general condition 27). Where maintenance dredging is proposed, the pre-construction notification must include information regarding the original design capacities and configurations of the outfalls, intakes, small impoundments, and canals. (Sections 10 and 404)

**Note:** This NWP authorizes the repair, rehabilitation, or replacement of any previously authorized structure or fill that does not qualify for the Clean Water Act Section 404(f) exemption for maintenance.



## NATIONWIDE PERMIT GENERAL CONDITIONS

**General Conditions:** The following general conditions must be followed in order for any authorization by a NWP to be valid:

1. **Navigation.** (a) No activity may cause more than a minimal adverse effect on navigation.  
(b) Any safety lights and signals prescribed by the U.S. Coast Guard, through regulations or otherwise, must be installed and maintained at the permittee's expense on authorized facilities in navigable waters of the United States.  
(c) The permittee understands and agrees that, if future operations by the United States require the removal, relocation, or other alteration, of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the Corps of Engineers, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.
2. **Aquatic Life Movements.** No activity may substantially disrupt the necessary life cycle movements of those species of aquatic life indigenous to the waterbody, including those species that normally migrate through the area, unless the activity's primary purpose is to impound water. Culverts placed in streams must be installed to maintain low flow conditions.
3. **Spawning Areas.** Activities in spawning areas during spawning seasons must be avoided to the maximum extent practicable. Activities that result in the physical destruction (e.g., through excavation, fill, or downstream smothering by substantial turbidity) of an important spawning area are not authorized.
4. **Migratory Bird Breeding Areas.** Activities in waters of the United States that serve as breeding areas for migratory birds must be avoided to the maximum extent practicable.
5. **Shellfish Beds.** No activity may occur in areas of concentrated shellfish populations, unless the activity is directly related to a shellfish harvesting activity authorized by NWPs 4 and 48.
6. **Suitable Material.** No activity may use unsuitable material (e.g., trash, debris, car bodies, asphalt, etc.). Material used for construction or discharged must be free from toxic pollutants in toxic amounts (see Section 307 of the Clean Water Act).
7. **Water Supply Intakes.** No activity may occur in the proximity of a public water supply intake, except where the activity is for the repair or improvement of public water supply intake structures or adjacent bank stabilization.
8. **Adverse Effects From Impoundments.** If the activity creates an impoundment of water, adverse effects to the aquatic system due to accelerating the passage of water, and/or restricting its flow must be minimized to the maximum extent practicable.
9. **Management of Water Flows.** To the maximum extent practicable, the pre-construction course, condition, capacity, and location of open waters must be maintained for each activity, including stream channelization and storm water management activities, except as provided below. The activity must be constructed to withstand expected high flows. The activity must not restrict or impede the passage of normal or high flows, unless the primary purpose of the activity is to impound water or manage high flows. The activity may alter the pre-construction course, condition, capacity, and location of open waters if it benefits the aquatic environment (e.g., stream restoration or relocation activities).
10. **Fills Within 100-Year Floodplains.** The activity must comply with applicable FEMA-approved state or local floodplain management requirements.



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

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

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

14. **Proper Maintenance.** Any authorized structure or fill shall be properly maintained, including maintenance to ensure public safety.

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

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

17. **Endangered Species.** (a) No activity is authorized under any NWP which is likely to jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation, as identified under the Federal Endangered Species Act (ESA), or which will destroy or adversely modify the critical habitat of such species. No activity is authorized under any NWP which "may affect" a listed species or critical habitat, unless Section 7 consultation addressing the effects of the proposed activity has been completed.

(b) Federal agencies should follow their own procedures for complying with the requirements of the ESA. Federal permittees must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements.

(c) Non-federal permittees shall notify the district engineer if any listed species or designated critical habitat might be affected or is in the vicinity of the project, or if the project is located in designated critical habitat, and shall not begin work on the activity until notified by the district engineer that the requirements of the ESA have been satisfied and that the activity is authorized. For activities that might affect Federally-listed endangered or threatened species or designated critical habitat, the pre-construction notification must include the name(s) of the endangered or threatened species that may be affected by the proposed work or that utilize the designated critical habitat that may be affected by the proposed work. The district engineer will determine whether the proposed activity "may affect" or will have "no effect" to listed species and designated critical habitat and will notify the non-Federal applicant of the Corps' determination within 45 days of receipt of a complete pre-construction notification. In cases where the non-Federal applicant has identified listed species or critical habitat that might be affected or is in the vicinity of the project, and has so notified the Corps, the applicant shall not begin work until the Corps has provided notification the proposed activities will have "no effect" on listed species or critical habitat, or until Section 7 consultation has been completed.

(d) As a result of formal or informal consultation with the FWS or NMFS the district engineer may add species-specific regional endangered species conditions to the NWPs.

(e) Authorization of an activity by a NWP does not authorize the "take" of a threatened or endangered species as defined under the ESA. In the absence of separate authorization (e.g., an ESA Section 10 Permit, a Biological Opinion with "incidental take" provisions, etc.) from the U.S. FWS or the NMFS, both lethal and non-lethal "takes" of protected species are in violation of the ESA. Information on the location of threatened and endangered species and their critical habitat can be obtained directly from the offices of the U.S. FWS and NMFS or their worldwide Web pages at <http://www.fws.gov> and <http://www.nmfs.gov> respectively.



18. **Historic Properties.** (a) In cases where the district engineer determines that the activity may affect properties listed, or eligible for listing, in the National Register of Historic Places, the activity is not authorized, until the requirements of Section 106 of the National Historic Preservation Act (NHPA) have been satisfied.

(b) Federal permittees should follow their own procedures for complying with the requirements of Section 106 of the National Historic Preservation Act. Federal permittees must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements.

(c) Non-federal permittees must submit a pre-construction notification to the district engineer if the authorized activity may have the potential to cause effects to any historic properties listed, determined to be eligible for listing on, or potentially eligible for listing on the National Register of Historic Places, including previously unidentified properties. For such activities, the pre-construction notification must state which historic properties may be affected by the proposed work or include a vicinity map indicating the location of the historic properties or the potential for the presence of historic properties. Assistance regarding information on the location of or potential for the presence of historic resources can be sought from the State Historic Preservation Officer or Tribal Historic Preservation Officer, as appropriate, and the National Register of Historic Places (see 33 CFR 330.4(g)). The district engineer shall make a reasonable and good faith effort to carry out appropriate identification efforts, which may include background research, consultation, oral history interviews, sample field investigation, and field survey. Based on the information submitted and these efforts, the district engineer shall determine whether the proposed activity has the potential to cause an effect on the historic properties. Where the non-Federal applicant has identified historic properties which the activity may have the potential to cause effects and so notified the Corps, the non-Federal applicant shall not begin the activity until notified by the district engineer either that the activity has no potential to cause effects or that consultation under Section 106 of the NHPA has been completed.

(d) The district engineer will notify the prospective permittee within 45 days of receipt of a complete pre-construction notification whether NHPA Section 106 consultation is required. Section 106 consultation is not required when the Corps determines that the activity does not have the potential to cause effects on historic properties (see 36 CFR 800.3(a)). If NHPA section 106 consultation is required and will occur, the district engineer will notify the non-Federal applicant that he or she cannot begin work until Section 106 consultation is completed.

(e) Prospective permittees should be aware that section 110k of the NHPA (16 U.S.C. 470h-2(k)) prevents the Corps from granting a permit or other assistance to an applicant who, with intent to avoid the requirements of Section 106 of the NHPA, has intentionally significantly adversely affected a historic property to which the permit would relate, or having legal power to prevent it, allowed such significant adverse effect to occur, unless the Corps, after consultation with the Advisory Council on Historic Preservation (ACHP), determines that circumstances justify granting such assistance despite the adverse effect created or permitted by the applicant. If circumstances justify granting the assistance, the Corps is required to notify the ACHP and provide documentation specifying the circumstances, explaining the degree of damage to the integrity of any historic properties affected, and proposed mitigation. This documentation must include any views obtained from the applicant, SHPO/THPO, appropriate Indian tribes if the undertaking occurs on or affects historic properties on tribal lands or affects properties of interest to those tribes, and other parties known to have a legitimate interest in the impacts to the permitted activity on historic properties.

19. **Designated Critical Resource Waters.** Critical resource waters include, NOAA-designated marine sanctuaries, National Estuarine Research Reserves, state natural heritage sites, and outstanding national resource waters or other waters officially designated by a state as having particular environmental or ecological significance and identified by the district engineer after notice and opportunity for public comment. The district engineer may also designate additional critical resource waters after notice and opportunity for comment.

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

(b) For NWP's 3, 8, 10, 13, 15, 18, 19, 22, 23, 26, 27, 28, 30, 33, 34, 36, 37, and 38, notification is required in accordance with general condition 27, for any activity proposed in the designated critical resource waters including wetlands adjacent to those waters. The district engineer may authorize activities under these NWP's only after it is determined that the impacts to the critical resource waters will be no more than minimal.



**20. Mitigation.** The district engineer will consider the following factors when determining appropriate and practicable mitigation necessary to ensure that adverse effects on the aquatic environment are minimal: —

(a) The activity must be designed and constructed to avoid and minimize adverse effects, both temporary and permanent, to waters of the United States to the maximum extent practicable at the project site (i.e., on site).

(b) Mitigation in all its forms (avoiding, minimizing, rectifying, reducing, or compensating) will be required to the extent necessary to ensure that the adverse effects to the aquatic environment are minimal.

(c) Compensatory mitigation at a minimum one-for-one ratio will be required for all wetland losses that exceed 1/10 acre and require pre-construction notification, unless the district engineer determines in writing that some other form of mitigation would be more environmentally appropriate and provides a project-specific waiver of this requirement. For wetland losses of 1/10 acre or less that require pre-construction notification, the district engineer may determine on a case-by-case basis that compensatory mitigation is required to ensure that the activity results in minimal adverse effects on the aquatic environment. Since the likelihood of success is greater and the impacts to potentially valuable uplands are reduced, wetland restoration should be the first compensatory mitigation option considered.

(d) For losses of streams or other open waters that require pre-construction notification, the district engineer may require compensatory mitigation, such as stream restoration, to ensure that the activity results in minimal adverse effects on the aquatic environment.

(e) Compensatory mitigation will not be used to increase the acreage losses allowed by the acreage limits of the NWPs. For example, if an NWP has an acreage limit of 1/2 acre, it cannot be used to authorize any project resulting in the loss of greater than 1/2 acre of waters of the United States, even if compensatory mitigation is provided that replaces or restores some of the lost waters. However, compensatory mitigation can and should be used, as necessary, to ensure that a project already meeting the established acreage limits also satisfies the minimal impact requirement associated with the NWPs.

(f) Compensatory mitigation plans for projects in or near streams or other open waters will normally include a requirement for the establishment, maintenance, and legal protection (e.g., conservation easements) of riparian areas next to open waters. In some cases, riparian areas may be the only compensatory mitigation required. Riparian areas should consist of native species. The width of the required riparian area will address documented water quality or aquatic habitat loss concerns. Normally, the riparian area will be 25 to 50 feet wide on each side of the stream, but the district engineer may require slightly wider riparian areas to address documented water quality or habitat loss concerns. Where both wetlands and open waters exist on the project site, the district engineer will determine the appropriate compensatory mitigation (e.g., riparian areas and/or wetlands compensation) based on what is best for the aquatic environment on a watershed basis. In cases where riparian areas are determined to be the most appropriate form of compensatory mitigation, the district engineer may waive or reduce the requirement to provide wetland compensatory mitigation for wetland losses.

(g) Permittees may propose the use of mitigation banks, in-lieu fee arrangements or separate activity-specific compensatory mitigation. In all cases, the mitigation provisions will specify the party responsible for accomplishing and/or complying with the mitigation plan.

(h) Where certain functions and services of waters of the United States are permanently adversely affected, such as the conversion of a forested or scrub-shrub wetland to a herbaceous wetland in a permanently maintained utility line right-of-way, mitigation may be required to reduce the adverse effects of the project to the minimal level.

**21. Water Quality.** Where States and authorized Tribes, or EPA where applicable, have not previously certified compliance of an NWP with CWA

Section 401, individual 401 Water Quality Certification must be obtained or waived (see 33 CFR 330.4(c)). The district engineer or State or Tribe may require additional water quality management measures to ensure that the authorized activity does not result in more than minimal degradation of water quality.

**22. Coastal Zone Management.** In coastal states where an NWP has not previously received a state coastal zone management consistency concurrence, an individual state coastal zone management consistency concurrence must be obtained, or a presumption of concurrence must occur (see 33 CFR 330.4(d)). The district engineer or a State may require additional measures to ensure that the authorized activity is consistent with state coastal zone management requirements.



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

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

**25. Transfer of Nationwide Permit Verifications.** If the permittee sells the property associated with the nationwide permit verification, the permittee may transfer the nationwide permit verification to the new owner by submitting a letter to the appropriate Corps district office to validate the transfer. A copy of the nationwide permit verification must be attached to the letter, and the letter must contain the following statement and signature: "When the structures or work authorized by this nationwide permit are still in existence at the time the property is transferred, the terms and conditions of this nationwide permit, including any special conditions, will continue to be binding on the new owner(s) of the property. To validate the transfer of this nationwide permit, and the associated liabilities associated with compliance with its terms and conditions, have the transferee sign and date below."

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(Transferee)

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(Date)

**26. Compliance Certification.** Each permittee who received the NWP verification from the Corps must submit a signed certification regarding the completed work and any required mitigation. The certification form must be forwarded by the Corps with the NWP verification letter and will include:

- (a) A statement that the authorized work was done in accordance with the NWP authorization, including any general or specific conditions;
- (b) A statement that any required mitigation was completed in accordance with the permit conditions; and
- (c) The signature of the permittee certifying the completion of the work and mitigation.

**27. Pre-Construction Notification.** (a) **Timing.** Where required by the terms of the NWP, the prospective permittee must notify the district engineer by submitting a pre-construction notification (PCN) as early as possible. The district engineer must determine if the PCN is complete within 30 calendar days of the date of receipt and, as a general rule, will request additional information necessary to make the PCN complete only once. However, if the prospective permittee does not provide all of the requested information, then the district engineer will notify the prospective permittee that the PCN is still incomplete and the PCN review process will not commence until all of the requested information has been received by the district engineer. The prospective permittee shall not begin the activity:

- (1) Until notified in writing by the district engineer that the activity may proceed under the NWP with any special conditions imposed by the district or division engineer; or
- (2) If 45 calendar days have passed from the district engineer's receipt of the complete PCN and the prospective permittee has not received written notice from the district or division engineer. However, if the permittee was required to notify the Corps pursuant to general condition 17 that listed species or critical habitat might be affected or in the vicinity of the project, or to notify the Corps pursuant to general condition 18 that the activity may have the potential to cause effects to historic properties, the permittee cannot begin the activity until receiving written notification from the Corps that is "no effect" on listed species or "no potential to cause effects" on historic properties, or that any consultation required under Section 7 of the Endangered Species Act (see 33 CFR 330.4(f)) and/or Section 106 of the National Historic Preservation (see 33 CFR 330.4(g)) is completed. Also, work cannot begin under NWPs 21, 49, or 50 until the permittee has received written approval from the Corps. If the proposed activity requires a written waiver to exceed specified limits of an NWP, the



permittee cannot begin the activity until the district engineer issues the waiver. If the district or division engineer notifies the permittee in writing that an individual permit is required within 45 calendar days of receipt of a complete PCN, the permittee cannot begin the activity until an individual permit has been obtained. Subsequently, the permittee's right to proceed under the NWP may be modified, suspended, or revoked only in accordance with the procedure set forth in 33 CFR 330.5(d)(2).

(b) Contents of Pre-Construction Notification: The PCN must be in writing and include the following information:

- (1) Name, address and telephone numbers of the prospective permittee;
- (2) Location of the proposed project;
- (3) A description of the proposed project; the project's purpose; direct and indirect adverse environmental effects the project would cause; any other NWP(s), regional general permit(s), or individual permit(s) used or intended to be used to authorize any part of the proposed project or any related activity. The description should be sufficiently detailed to allow the district engineer to determine that the adverse effects of the project will be minimal and to determine the need for compensatory mitigation. Sketches should be provided when necessary to show that the activity complies with the terms of the NWP. (Sketches usually clarify the project and when provided results in a quicker decision.);
- (4) The PCN must include a delineation of special aquatic sites and other waters of the United States on the project site. Wetland delineations must be prepared in accordance with the current method required by the Corps. The permittee may ask the Corps to delineate the special aquatic sites and other waters of the United States, but there may be a delay if the Corps does the delineation, especially if the project site is large or contains many waters of the United States. Furthermore, the 45 day period will not start until the delineation has been submitted to or completed by the Corps, where appropriate;
- (5) If the proposed activity will result in the loss of greater than 1/10 acre of wetlands and a PCN is required, the prospective permittee must submit a statement describing how the mitigation requirement will be satisfied. As an alternative, the prospective permittee may submit a conceptual or detailed mitigation plan.
- (6) If any listed species or designated critical habitat might be affected or is in the vicinity of the project, or if the project is located in designated critical habitat, for non-Federal applicants the PCN must include the name(s) of those endangered or threatened species that might be affected by the proposed work or utilize the designated critical habitat that may be affected by the proposed work. Federal applicants must provide documentation demonstrating compliance with the Endangered Species Act; and
- (7) For an activity that may affect a historic property listed on, determined to be eligible for listing on, or potentially eligible for listing on, the National Register of Historic Places, for non-Federal applicants the PCN must state which historic property may be affected by the proposed work or include a vicinity map indicating the location of the historic property. Federal applicants must provide documentation demonstrating compliance with Section 106 of the National Historic Preservation Act.

(c) Form of Pre-Construction Notification: The standard individual permit application form (Form ENG 4345) may be used, but the completed application form must clearly indicate that it is a PCN and must include all of the information required in paragraphs (b)(1) through (7) of this general condition. A letter containing the required information may also be used.

(d) Agency Coordination: (1) The district engineer will consider any comments from Federal and state agencies concerning the proposed activity's compliance with the terms and conditions of the NWPs and the need for mitigation to reduce the project's adverse environmental effects to a minimal level.

(2) For all NWP 48 activities requiring pre-construction notification and for other NWP activities requiring pre-construction notification to the district engineer that result in the loss of greater than 1/2-acre of waters of the United States, the district engineer will immediately provide (e.g., via facsimile transmission, overnight mail, or other expeditious manner) a copy of the PCN to the appropriate Federal or state offices (U.S. FWS, state natural resource or water quality agency, EPA, State Historic Preservation Officer (SHPO) or Tribal Historic Preservation Office (THPO), and, if appropriate, the NMFS). With the exception of NWP 37, these agencies will then have 10 calendar days from the date the material is transmitted to telephone or fax the district engineer notice that they intend to provide substantive, site-specific comments. If so contacted by an agency, the district engineer will wait an additional 15 calendar days before making a decision on the pre-construction notification. The district engineer will fully consider agency comments received within the specified time frame, but will provide no response to the resource agency, except as provided below. The district engineer will indicate in the administrative record associated with each pre-construction notification that the resource agencies' concerns were considered. For NWP 37, the emergency watershed protection and rehabilitation activity may proceed immediately in cases where there is an unacceptable hazard to life or a significant loss of property or economic



hardship will occur. The district engineer will consider any comments received to decide whether the NWP 37 authorization should be modified, suspended, or revoked in accordance with the procedures at 33 CFR 330.5.

(3) In cases of where the prospective permittee is not a Federal agency, the district engineer will provide a response to NMFS within 30 calendar days of receipt of any Essential Fish Habitat conservation recommendations, as required by Section 305(b)(4)(B) of the Magnuson-Stevens Fishery Conservation and Management Act.

(4) Applicants are encouraged to provide the Corps multiple copies of pre-construction notifications to expedite agency coordination.

(5) For NWP 48 activities that require reporting, the district engineer will provide a copy of each report within 10 calendar days of receipt to the appropriate regional office of the NMFS.

(e) **District Engineer's Decision:** In reviewing the PCN for the proposed activity, the district engineer will determine whether the activity authorized by the NWP will result in more than minimal individual or cumulative adverse environmental effects or may be contrary to the public interest. If the proposed activity requires a PCN and will result in a loss of greater than 1/10 acre of wetlands, the prospective permittee should submit a mitigation proposal with the PCN. Applicants may also propose compensatory mitigation for projects with smaller impacts. The district engineer will consider any proposed compensatory mitigation the applicant has included in the proposal in determining whether the net adverse environmental effects to the aquatic environment of the proposed work are minimal. The compensatory mitigation proposal may be either conceptual or detailed. If the district engineer determines that the activity complies with the terms and conditions of the NWP and that the adverse effects on the aquatic environment are minimal, after considering mitigation, the district engineer will notify the permittee and include any conditions the district engineer deems necessary. The district engineer must approve any compensatory mitigation proposal before the permittee commences work. If the prospective permittee elects to submit a compensatory mitigation plan with the PCN, the district engineer will expeditiously review the proposed compensatory mitigation plan. The district engineer must review the plan within 45 calendar days of receiving a complete PCN and determine whether the proposed mitigation would ensure no more than minimal adverse effects on the aquatic environment. If the net adverse effects of the project on the aquatic environment (after consideration of the compensatory mitigation proposal) are determined by the district engineer to be minimal, the district engineer will provide a timely written response to the applicant. The response will state that the project can proceed under the terms and conditions of the NWP. If the district engineer determines that the adverse effects of the proposed work are more than minimal, then the district engineer will notify the applicant either:

- (1) That the project does not qualify for authorization under the NWP and instruct the applicant on the procedures to seek authorization under an individual permit;
- (2) That the project is authorized under the NWP subject to the applicant's submission of a mitigation plan that would reduce the adverse effects on the aquatic environment to the minimal level; or
- (3) That the project is authorized under the NWP with specific modifications or conditions. Where the district engineer determines that mitigation is required to ensure no more than minimal adverse effects occur to the aquatic environment, the activity will be authorized within the 45-day PCN period. The authorization will include the necessary conceptual or specific mitigation or a requirement that the applicant submit a mitigation plan that would reduce the adverse effects on the aquatic environment to the minimal level. When mitigation is required, no work in waters of the United States may occur until the district engineer has approved a specific mitigation plan.

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

#### **D. Further Information**

1. District Engineers have authority to determine if an activity complies with the terms and conditions of an NWP.
2. NWPs do not obviate the need to obtain other federal, state, or local permits, approvals, or authorizations required by law.
3. NWPs do not grant any property rights or exclusive privileges.



4. NWP's do not authorize any injury to the property or rights of others.

5. NWP's do not authorize interference with any existing or proposed Federal project.

#### E. Definitions

**Best management practices (BMP's):** Policies, practices, procedures, or structures implemented to mitigate the adverse environmental effects on surface water quality resulting from development. BMP's are categorized as structural or non-structural.

**Compensatory mitigation:** The restoration, establishment (creation), enhancement, or preservation of aquatic resources for the purpose of compensating for unavoidable adverse impacts which remain after all appropriate and practicable avoidance and minimization has been achieved.

**Currently serviceable:** Useable as is or with some maintenance, but not so degraded as to essentially require reconstruction.

**Discharge:** The term "discharge" means any discharge of dredged or fill material and any activity that causes or results in such a discharge.

**Enhancement:** The manipulation of the physical, chemical, or biological characteristics of an aquatic resource to heighten, intensify, or improve a specific aquatic resource function(s). Enhancement results in the gain of selected aquatic resource function(s), but may also lead to a decline in other aquatic resource function(s). Enhancement does not result in a gain in aquatic resource area.

**Ephemeral stream:** An ephemeral stream has flowing water only during, and for a short duration after, precipitation events in a typical year. Ephemeral stream beds are located above the water table year-round. Groundwater is not a source of water for the stream. Runoff from rainfall is the primary source of water for stream flow.

**Establishment (creation):** The manipulation of the physical, chemical, or biological characteristics present to develop an aquatic resource that did not previously exist at an upland site. Establishment results in a gain in aquatic resource area.

**Historic Property:** Any prehistoric or historic district, site (including archaeological site), building, structure, or other object included in, or eligible for inclusion in, the National Register of Historic Places maintained by the Secretary of the Interior. This term includes artifacts, records, and remains that are related to and located within such properties. The term includes properties of traditional religious and cultural importance to an Indian tribe or Native Hawaiian organization and that meet the National Register criteria (36 CFR Part 60).

**Independent utility:** A test to determine what constitutes a single and complete project in the Corps regulatory program. A project is considered to have independent utility if it would be constructed absent the construction of other projects in the project area. Portions of a multi-phase project that depend upon other phases of the project do not have independent utility. Phases of a project that would be constructed even if the other phases were not built can be considered as separate single and complete projects with independent utility.

**Intermittent stream:** An intermittent stream has flowing water during certain times of the year, when groundwater provides water for stream flow. During dry periods, intermittent streams may not have flowing water. Runoff from rainfall is a supplemental source of water for stream flow.

**Loss of waters of the United States:** Waters of the United States that are permanently adversely affected by filling, flooding, excavation, or drainage because of the regulated activity. Permanent adverse effects include permanent discharges of dredged or fill material that change an aquatic area to dry land, increase the bottom elevation of a waterbody, or change the use of a waterbody. The acreage of loss of waters of the United States is a threshold measurement of the impact to jurisdictional waters for determining whether a project may qualify for an NWP; it is not a net threshold that is calculated after considering compensatory mitigation that may be used to offset losses of aquatic functions and services. The loss of stream bed includes the linear feet of stream bed that is filled or excavated.

Waters of the United States temporarily filled, flooded, excavated, or drained, but restored to pre-construction contours and elevations after construction, are not included in the measurement of loss of waters of the United States. Impacts resulting from activities eligible for exemptions under Section 404(f) of the Clean Water Act are not considered when calculating the loss of waters of the United States.

**Non-tidal wetland:** A non-tidal wetland is a wetland that is not subject to the ebb and flow of tidal waters. The definition of a wetland can be found at 33 CFR 328.3(b). Non-tidal wetlands contiguous to tidal waters are located landward of the high tide line (i.e., spring high tide line).

**Open water:** For purposes of the NWP's, an open-water is any area that in a year with normal patterns



of precipitation has water flowing or standing above ground to the extent that an ordinary high water mark can be determined. Aquatic vegetation within the area of standing or flowing water is either non-emergent, sparse, or absent. Vegetated shallows are considered to be open waters. Examples of "open waters" include rivers, streams, lakes, and ponds.

**Ordinary High Water Mark:** An ordinary high water mark is a line on the shore established by the fluctuations of water and indicated by physical characteristics, or by other appropriate means that consider the characteristics of the surrounding areas (see 33 CFR 328.3(e)).

**Perennial stream:** A perennial stream has flowing water year-round during a typical year. The water table is located above the stream bed for most of the year. Groundwater is the primary source of water for stream flow. Runoff from rainfall is a supplemental source of water for stream flow.

**Practicable:** Available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes.

**Pre-construction notification:** A request submitted by the project proponent to the Corps for confirmation that a particular activity is authorized by nationwide permit. The request may be a permit application, letter, or similar document that includes information about the proposed work and its anticipated environmental effects. Pre-construction notification may be required by the terms and conditions of a nationwide permit, or by regional conditions. A pre-construction notification may be voluntarily submitted in cases where pre-construction notification is not required and the project proponent wants confirmation that the activity is authorized by nationwide permit.

**Preservation:** The removal of a threat to, or preventing the decline of, aquatic resources by an action in or near those aquatic resources. This term includes activities commonly associated with the protection and maintenance of aquatic resources through the implementation of appropriate legal and physical mechanisms. Preservation does not result in a gain of aquatic resource area or functions.

**Re-establishment:** The manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural/historic functions to a former aquatic resource. Re-establishment results in rebuilding a former aquatic resource and results in a gain in aquatic resource area.

**Rehabilitation:** The manipulation of the physical, chemical, or biological characteristics of a site with the goal of repairing natural/historic functions to a degraded aquatic resource. Rehabilitation results in a gain in aquatic resource function, but does not result in a gain in aquatic resource area.

**Restoration:** The manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural/historic functions to a former or degraded aquatic resource. For the purpose of tracking net gains in aquatic resource area, restoration is divided into two categories: Re-establishment and rehabilitation.

**Riffle and pool complex:** Riffle and pool complexes are special aquatic sites under the 404(b)(1) Guidelines. Riffle and pool complexes sometimes characterize steep gradient sections of streams. Such stream sections are recognizable by their hydraulic characteristics. The rapid movement of water over a coarse substrate in riffles results in a rough flow, a turbulent surface, and high dissolved oxygen levels in the water. Pools are deeper areas associated with riffles. A slower stream velocity, a streaming flow, a smooth surface, and a finer substrate characterize pools.

**Riparian areas:** Riparian areas are lands adjacent to streams, lakes, and estuarine-marine shorelines. Riparian areas are transitional between terrestrial and aquatic ecosystems, through which surface and subsurface hydrology connects waterbodies with their adjacent uplands. Riparian areas provide a variety of ecological functions and services and help improve or maintain local water quality. (See general condition 20.)

**Shellfish seeding:** The placement of shellfish seed and/or suitable substrate to increase shellfish production. Shellfish seed consists of immature individual shellfish or individual shellfish attached to shells or shell fragments (i.e., spat on shell). Suitable substrate may consist of shellfish shells, shell fragments, or other appropriate materials placed into waters for shellfish habitat.

**Single and complete project:** The term "single and complete project" is defined at 33 CFR 330.2(f) as the total project proposed or accomplished by one owner/developer or partnership or other association of owners/developers. A single and complete project must have independent utility (see definition). For linear projects, a "single and complete project" is all crossings of a single water of the United States (i.e., a single waterbody) at a specific location. For linear projects crossing a single waterbody several times at separate and distant locations, each crossing is considered a single and complete project. However, individual channels in a braided stream or river, or individual arms of a large, irregularly shaped wetland or lake, etc., are not separate waterbodies, and crossings of such features cannot be considered separately.

**Stormwater management:** Stormwater management is the mechanism for controlling stormwater



THE  
NAVAJO  
NATION

Ben Shelly,  
PRESIDENT  
Rex Lee Jim  
VICE PRESIDENT

Dept of Fish & Wildlife • P.O. Box 1480 • Window Rock, AZ 86515 • (928) 871-6451 • Fax (928) 871-7069

28 February 2011

File#11NDOT07

Jovonna Frank, Env. Technician  
Compliance Department  
Navajo Division of Transportation  
P.O. Box 4620  
Window Rock, AZ 86515

SUBJECT: N7054 PROPOSED 7.6 MILES ROAD IMPROVEMENT  
LOCATED IN PINEDALE CHAPTER, NM

Ma. Frank:

The following information on species of concern<sup>1</sup> is provided in response to your 14 February 2011 request concerning the subject project, which consists of the 7.6 miles of proposed road improvement on the existing N7054. The project is located within Pinedale Chapter, NM.

Although the Navajo Fish and Wildlife Department (NFWD) has no record of species of concern occurring on or near the project site(s) at this time, the potential for certain species of concern to occur needs to be evaluated.

Species of concern with potential to occur on the 7.5-minute *Pinedale, NM* quadrangle(s) containing the project boundaries include the following. Potential is based primarily on quadrangle-wide coarse habitat characteristics and species range information. Your project biologist should determine habitat suitability at the project site(s).

1. *Aquila chrysaetos* (Golden Eagle); NESL group 3; MBTA; EPA.
2. *Buteo regalis* (Ferruginous Hawk); NESL group 3; MBTA.
3. *Falco peregrinus* (Peregrine Falcon); NESL group 4; MBTA.
4. *Mustela nigripes* (Black-footed Ferret); NESL group 2; ESA endangered.
5. *Strix occidentalis lucida* (Mexican Spotted Owl); NESL group 3; ESA threatened; MBTA.
6. *Erigeron acomanus* (Acoma Fleabane); NESL group 3.
7. *Erigeron rhizomatus* (Rhizome Fleabane); NESL group 2; ESA threatened.
8. *Erigeron sylvinskii* (Sivinski's Fleabane); NESL group 4.

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<sup>1</sup>"Species of concern" include protected, candidate, and other rare or otherwise sensitive species, including certain native species and species of economic or cultural significance. For each species, the following tribal and federal statuses are indicated: Navajo Endangered Species List (NESL), federal Endangered Species Act (ESA), Migratory Bird Treaty Act (MBTA), and Eagle Protection Act (EPA). No legal protection is afforded species with only ESA candidate or NESL group 4 status; please be aware of these species during surveys and inform the NFWD of observations. Documentation that these species are more numerous or widespread than currently known, and addressing these species in project planning and management is important for conservation and may contribute to ensuring they will not be uplisted in the future. Species without ESA or NESL legal protection (e.g., NESL group 4 species) are only included in responses on a regular basis and may not be included in this response. Please refer to the NESL for a list of group 4 species; contact me if you need a copy.



9. Lesquerella navajocensis (Navajo Bladderpod); NESL group 4.

AREA 1: HIGHLY SENSITIVE WILDLIFE RESOURCES

AREA 3: LOW SENSITIVITY WILDLIFE RESOURCES

Potential for the black-footed ferret should be evaluated if prairie-dog towns of sufficient size (per NFWD guidelines) occur in the project area.

Potential for Puccinellia parishii should be evaluated if wetland conditions exists that contain white alkaline crusts.

Biological surveys need to be conducted during the appropriate season to ensure they are complete and accurate please refer to NN Species Accounts.<sup>4</sup> Further questions pertaining to surveys should be referred to Species Account. Surveyors on the Navajo Nation must be permitted by the Director, NFWD. Contact Jeff Cole at (928) 871-7068 for permitting procedures. Questions pertaining to surveys should be directed to the NFWD Zoologist (Chad Smith) for animals at 871-7070 and Botanist (Andrea Hazelton) for plants at (928) 523-3221. Questions regarding biological evaluations should be directed to Pamela Kyselka (Acting Environmental Reviewer) at 871-7065.

Potential impacts to wetlands should also be evaluated. The U.S. Fish & Wildlife Service's National Wetlands Inventory (NWI) maps should be examined to determine whether areas classified as wetlands are located close enough to the project site(s) to be impacted. In cases where the maps are inconclusive (e.g., due to their small scale), field surveys must be completed. For field surveys, wetlands identification and delineation methodology contained in the 'Corps of Engineers Wetlands Delineation Manual' (Technical Report Y-87-1) should be used. When wetlands are present, potential impacts must be addressed in an environmental assessment and the Army Corps of Engineers, Phoenix office, must be contacted. NWI maps are available for examination at the NFWD's Natural Heritage Program (NHP) office, or may be purchased through the U.S. Geological Survey (order forms are available through the NHP). The NHP has complete coverage of the Navajo Nation, excluding Utah, at 1:100,000 scale; and coverage at 1:24,000 scale in the southwestern portion of the Navajo Nation.


The information in this report was identified by the NFWD's biologists and computerized database, and is based on data available at the time of this response. If project planning takes more than two (02) years from the date of this response, verification of the information provided herein is strongly recommended. It should not be regarded as the final statement on the occurrence of any species, nor should it substitute for on-site surveys. Also, because the NFWD's information is continually updated, any given information response is only wholly appropriate for its respective request.

For a list of sensitive species on the Navajo Nation in addition to the species listed on the Navajo Endangered Species List (NESL) please refer to our website at [www.nndfw.org](http://www.nndfw.org).

An invoice for this information is attached.

If you have any questions I may be reached at (928) 871-6472.

<sup>4</sup> Available free of charge on our website at <http://nnhp.navajofishandwildlife.org/>



Sonja Dersoi, Wildlife Tech.  
Natural Heritage Program  
Department of Fish and Wildlife

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xc: file/chrono

**Appendix F**

**Reclamation Plan**



Prepared by: Judy R. Willetto, Range Conservationist  
Navajo Department of Agriculture  
P.O. Box 4809  
Window Rock, Arizona 86515  
Telephone: (928) 871-7076  
Telefax: (928) 871-6679  
September 01, 1998

Reference: Reclamation of Right of Ways, Equipment/ Supply Yards, Access Roads, Sand & Gravel Pits.

Developed for: Navajo Department of Transportation

Purpose: To stabilize soil utilizing plant materials and/or grade stabilizers of rock, wood, and other materials. To reduce the damage of wind and water erosion thus stabilizing construction area. Beneficial project longevity.

#### PRE-CONSTRUCTION

Prior to construction and excavation, all topsoil will be removed and stockpiled and will be used for reclamation. The top 4-6 inches of soil (topsoil) will be scarped off the surface of the ground. It will be stockpiled out of the way of construction. It may be hauled to an area immediately adjacent from the construction site or will be bermed at the edge of the construction site, creating a boundary. Under no circumstances will topsoil be used as filled material in the construction process. It will be safeguarded and only be used as filled reclamation at the completion of construction. Stockpiled topsoil will be stabilized if construction will last longer than one year. Use seed mixture developed for the Navajo Nation.

#### TOPOGRAPHIC REGIONS AND SEED MIXTURES

There are three major land resource areas located on the Navajo Nation, Northern Desert, Pinon/Juniper Woodland and Ponderosa Pine Woodlands. The following will provide brief description of existing vegetation and soils;

##### MLRA Sites – Pinon Juniper Woodland and Ponderosa Pine Woodland

##### Description of vegetational cover in area:

Trees and Shrubs – Ponderosa Pine, Pinon, Juniper, Sagebrush, Rabbitbrush  
Grasses – Blue Grama, Indian Ricegrass, Western Wheatgrass

Soils – Loam, Clay Loams, Clays

Table A – Seed Mixture to use for P/J and Ponderosa Pine Woodland

SPECIES	CULTIVAR	LBS> PLS/ACRE
Western Wheatgrass	Ariba	3.0
Crested Wheatgrass	Hycrest	3.0
Pubescent Wheatgrass	Luna	3.0
Indian Ricegrass	Paloma	2.0
Blanketflower	Red, Yellow	0.5
Red Mexican Hat	Red w/ Yellow Tips	0.5
TOZTAL PLS/ACRE		12.0

### SEEDING RATES

Seeding is recommended from June 15 to August 30. This period is prior to the Navajo Nation monsoon season and would be beneficial to seed germination and growth. A dormant seeding can be completed from November 1 to December 15 if you are unable to seed from June to August. The seed will lay dormant under winter moisture and germinate in the spring. Deviation from these dates may hinder proper germination and growth.

#### MRLA Sites - Northern Desert

Description of vegetational cover in area:

Trees and Shrubs - Greasewood, Fourwing Saltbrush  
Grassess - Alkali Sacaton, Indian Ricegrass, Galleta

Soils - Loam, Sands, Sandy Loams

Table B - Seed Mixture to use for northern Desert

SPECIES	CULTIVAR	LBS> PLS/ACRE
Alkali Sacaton	Native	2.0
Galleta	Viva	2.0
Indian Ricegrass	Paloma	2.0
Western Wheatgrass	Ariba	3.0
Crested Wheatgrass	Ephrain	3.0
Scarlet Globemallow		0.5
TOZTAL PLS/ACRE		12.5

### SEEDING DATES

Since this is considered to be a desert type area, it is recommend to complete a dormant seeding from November 1 to December 15. This is when this area gets most of it's moisture. The seed will lay dormant under winter moisture and germinate in the spring. Seeding from June 15 to August 20 is optional.

### SEEDBED PREPERATION

Topsoil will be replaced. Seedbed will clean and form, disk a maximum of two times, creating ideal soil conditions for seed adherence. Dirt clods will be broken down. Reseeding will be completed on the contour.

### METHOD OF SEEDING

All seeding will be completed mechanically using a tractor and range drill or grain drill (same thing, different terminology). Broadcast seeding will only be used to seed steep slopes, which the tractor and drill cannot complete. Table A will be planted in furrows, Table B can be planted in furrows or in small pits or indentions which create a micro-atmosphere under desert conditions which hold water and protect plants from wind damage and water erosion.

### FERTILIZER

Fertilizer will be used if no topsoil has been salvaged for reclamation purposes. We recommended using high in phosphorus and potassium, which will promote root development and initial growth of the plants.

## **MULCH**

Mulching is optional. If mulch is to be used, use one ton per acre. If there is no right of way fence, it is recommended not to mulch as it would attract livestock and wildlife grazing near the road, creating hazardous driving conditions. If there is a fence, again it is optional. If using mulch, mulch must be free of noxious weeds and noxious weed seed.

**Right of ways** - Fenced right of ways reduces hazardous conditions human life, domestic animals and wildlife. All right of ways will be fenced.

**Equipment and supply yards** - topsoil will be bermed no higher than 3 feet around yard, delineating a boundary. Fence will be placed with the berm outside of the fence. This will safeguard from damage of fill use of toxic spills. After project completion, fence will be taken down, soil will be disked, stockpile topsoil will be smooth over the impacted and seeded. Seed across slope, seed on contour.

**Sand and Gravel Pits** - topsoil will be salvaged for reclamation purposes. Prior to excavation scrape all topsoil and stockpile. When filling excavated sites, if using adjacent areas for fill material, scrape topsoil and save. After scarping adjacent site within your designated area start removing materials for fill, smooth area to match the topography. Replace topsoil over smooth area then, seed with prescribed seed mixture.

**Access Roads** - Access roads will be closed to traffic, roads will be deep plowed, disked and seeded with prescribed seed mixture. Water bars, boulders, etc. will be used to detour traffic from damaging reclaimed area.

**Erosion Control** - measures will be taken to stabilized slopes and gullies.



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## **Appendix G**

### **Best Management Practices**

**Project N7054 (1) (2)2&3**

**Best Management Practices**

**Navajo Regional Division of Transportation**

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

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

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

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

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

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

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

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



AOTR will determine the best method for the control of the particular weed species in consultation with the Regional DOT office.

Reclamation and re-vegetation of the work site will use species specified by the specifications. All seed should be certified weed free. The area will be monitored to determine the success of the re-vegetation, and re-vegetation may have to be continued until successful.

Any need for noxious weeds treatment shall be in accordance with section 109.02(m) of the FP-2003.

10. All oils, fuels, lubricants, and hydraulic fluids will be kept in sealed storage containers and or facilities that meet EPA regulations for preventing contamination of the environment. Again a spill prevention plan must be in place.

11. Damage to trees and shrubs outside of the construction limits will be replaced by the Contractor at his expense as directed by the BIA Project Engineer.

12. Parking and staging areas will be limited to the construction limits. Existing roads will be used for detours, storage of equipment, and the hauling of materials and water to the fullest extent possible. The Contractor shall cooperatively work with adjacent land users in the construction and maintenance of the detour road and relocation of structures. Storage areas within the construction limits will utilize existing disturbed areas and be kept as small as possible as authorized in writing by the land owner.

13. The installation of drainage structures will be undertaken in such fashion so as to minimize soil erosion and to provide for a minimum of 610 mm of cover over the pipe as measured from the roadway shoulder.

14. Structural replacements will be performed during periods of low- or no-flow periods to minimize water quality impacts. The Contractor shall install Lined waste pits for concrete or asphalt on the project in a level ground at least 100 feet away from any drainage and outside the construction limits. If these pits are to be located on private property, the Contractor must get permission in writing from the land owner. No dumping of waste concrete will be allowed on the project site except in the lined pits which will immediately be removed from the project once the concrete or asphalt work is finished. Any and all excess concrete and asphalt materials will be disposed of (off site) in accordance to EPA regulations and the FP-2003.

15. The Contractor will acquire water-use and aggregate material permits through the BIA and land owners, and follow all requirements of such permits, including royalties and environmental protection.

16. The Navajo Regional Division of Transportation and construction Contractor will acquire and comply with the following regulations regarding the Federal Clean Water Act:

a) Section 401 & 404 permitting

b) Water Quality (Section 402) Certification

c) National Pollution Discharge Elimination System (NPDES) permit and the Storm Water Pollution Prevention Plan

Notice to Proceed with work that may impact the waters of the US or Navajo Nation will be NOT issued until the 401, 402, 404 and other project permits are in place and the requirements are reviewed and discussed with the contractor.

17. Comply with all mitigation requirements concerning archaeological sites on or near the project site as defined in the compliance documents.

## **Appendix H**

### **Consultation Concerning Wetlands**





# THE NAVAJO NATION

Navajo Nation Environmental Protection Agency/Water Quality & NPDES Program  
P.O. Box 339 Window Rock, Arizona 86515 • (928) 871-7690 Tel • (928) 871-7996 Fax

JOE SHIRLEY, JR.  
PRESIDENT

BEN SHELLY  
VICE PRESIDENT

October 15, 2007

Received  
OCT 2007

NOOT  
Admin  
W/R

Geraldine Jones, Senior Environmental Specialist  
Navajo Department of Transportation-Environmental Section  
Post Office Box 4620  
Window Rock, Arizona 86515

RE: **Water Quality Consultation for Road Improvements to 7.62 miles of N7054, 2<sup>nd</sup> Canyon Road In Pinedale, New Mexico.**

Dear Ms. Jones:

After reviewing documents submitted for water quality/wetland consultation on N7054, 7.62 miles of 2<sup>nd</sup> Canyon Road in Pinedale, New Mexico for proposed road improvements, it has been determined that no wetlands exist, however, there are numerous unnamed waterways within the road right of way. As a reminder if the proposed upgrade includes replacement of old culverts, including placement of new culverts, throughout the entire length of the road, Sections 401 and 404 of the Clean Water Act will need to be addressed before any construction is to begin. A §401 permit application may be obtained from Navajo EPA Water Quality Program.

Please be aware of the Storm Water Construction General Permit required for construction activities that result in land disturbances of equal to or greater than one acre. Please contact Ronnie Ben at 928-871-7186 for additional information.

Thank you for contacting our office. I may be reached at 928-871-7700 should you have any questions.

Sincerely,

Wilma J. Becenti, Senior Environmental Specialist  
Water Quality Program  
NNEPA/Surface and Ground Water Protection Department

xc: Ronnie Ben, Senior Environmental Specialist, NNEPA/WQ & NNDPES Programs  
file

## **Appendix J**

### **Consultation Concerning Floodplains**



THE NAVAJO NATION  
DEPARTMENT OF WATER RESOURCES  
WATER MANAGEMENT BRANCH

POST OFFICE DRAWER 678 FORT DEFIANCE, ARIZONA 86504

PHONE (928) 729-4004 FAX (928) 729-4126

JOE SHIRLEY, JR.  
PRESIDENT

BEN SHELLY  
VICE

PRESIDENT

October 15, 2007

Navajo Department of Transportation.  
Attn: Geraldine Jones, Environmental Specialist  
PO Box 4620  
Window Rock, AZ 86515  
Tele (928) 871-6498  
Fax (928) 871-7987



Dear Ms. Jones,

This letter is in response to your request for floodplain information for the existing road N7064 (2<sup>nd</sup> Canyon Road) located within Pinedale, New Mexico. After researching the floodplain document resources here in The Water Management Branch Library, no studies have been found in the general area.

We cannot advise on current/proposed building locations or specifications. We may only provide existing floodplain information – noting its limitations. It must be understood that the party fulfilling their regulatory obligations assumes responsibility for all determinations and resulting actions based on the information we supply. Should you require more detailed information; most civil engineering firms in this area can delineate a 100-year floodplain. The cost for such delineations is variable, depending on the level of detail required.

If you have any further questions regarding this information, feel free to contact our office.

Sincerely,

Jolene Tallsalt-Robertson, Senior Hydrologist  
Floodplain Section

xc: WMB Flood Request file





## **Appendix K**

### **Finding of No Significant Impact Statement**



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




MC:620/Branch of Environmental Quality Act Review & Compliance

**MEMORANDUM**

APR 19 2016

**To:** Division of Transportation, Navajo  
Attn: Harold Riley

**From:** Harrilene Yazzie, Supervisory Environmental Protection Specialist  
Branch of Environmental Quality Act Compliance & Review 

**Subject:** Finding of No New Significant Impact – Route Reconstruction of 7.6 miles of Navajo Route 7054, Pinedale, McKinley County, New Mexico **EA-16-12789**

The Branch of Environmental Quality Act Review and Compliance reviewed the environmental assessment, *Amendment of EA-11-091 of the Proposed Route Reconstruction of 7.6 Miles of Navajo Route 7054, Pinedale, McKinley County, New Mexico*, prepared by the Navajo Division of Transportation (NDOT). NDOT proposes to seek a right-of-way to: improve the roadway grades; roadway typical; upgrade draining crossings structures, including erosion control features; and a treated gravel surface with a future double chip seal or asphaltic concrete surface based on the future traffic volumes and community need. The Bureau of Indian Affairs' Navajo Regional Office, Division of Transportation and Eastern Navajo Agency Division of Transportation, along with the assistance from the Navajo Division of Transportation, are proposing to reconstruct existing Navajo Route 7054, a dirt roadway, locally known as the Pinedale Loop Road (also known as First and Second Canyon Road).

In accordance with Section 102(2)(c) of the National Environmental Policy Act (NEPA) of 1969, as amended, and the Council of Environmental Quality's Regulations for Implementing the Procedural Provisions of NEPA (40 Code of Federal Regulations (CFR) Parts 1500-1508), the Bureau of Indian Affairs, Navajo Region finds that the Proposed Action is not a major federal action that will significantly impact the quality of the human environment. Therefore, an Environmental Impact Statement is not required for implementing the Proposed Action. This Finding of No Significant Impact (FONSI) is supported by the attached Environmental Assessment (EA) and supporting appendices and documents.

Should you have any questions, please contact Ms. Harrilene Yazzie, Supervisory Environmental Protection Specialist, at (505) 863-8287.

cc: Chrono

N101

Subject (H:\HY 2005 EA\EA-16-12789 Pinedale NM Navajo Route 7054 Pinedale Loop  
FONSI.docx)



**FINDING OF NO SIGNIFICANT IMPACT  
ENVIRONMENTAL ASSESSMENT, EA-16-12789  
PROPOSED ROAD IMPROVEMENT FOR NAVAJO ROUTE 7054  
(A.K.A. PINEDALE LOOP ROAD & FIRST AND SECOND CANYON ROAD)**

**NAVAJO REGION – DIVISION OF TRANSPORTATION  
PINEDALE, MCKINLEY COUNTY, NEW MEXICO**

**Location: Pinedale, NM, Quadrangle, USGS 7.5-Minute Series Map  
BOP: UTM Zone 12, N3943444, E728744  
EOP: UTM Zone 12, N3941871, E735992**

**Pinedale Chapter, McKinley County, New Mexico**

The Bureau of Indian Affairs' (BIA) Navajo Regional Office, Division of Transportation and the Eastern Navajo Agency Division of Transportation with assistance from the Navajo Nation Division of Transportation proposes to seek rights-of-way to improve the existing road. The Proposed Action include: improving the roadway grades, roadway typical, upgrade drainage crossing structures including erosion control features, and a treated gravel surface with a future double chip seal or asphaltic concrete surface based on future traffic volumes and community needs. The existing 2016 traffic volumes are 575 vehicles per day (vpd) with a 20-year design to address the needs of an estimated 854 vpd for the year 2036.

<b>PROPOSED RIGHTS-OF-WAY</b>						
<b>Owner</b>	<b>Section</b>	<b>Parcel</b>	<b>Perimeter</b>	<b>Area (M<sup>2</sup>)</b>	<b>Hectares</b>	<b>Acres</b>
<b>Navajo Tribal Trust</b>	19	W ½	3387.431	76991.213	7.699	19.02
	30	NW ¼	664.831	11854.024	1.185	2.93
	36	NE ¼	908.975	16398.852	1.640	4.05
	33	All	3799.683	84536.511	8.454	20.89
	25	All	1579.479	31773.845	3.177	7.85
<b>Total</b>					<b>22.155</b>	<b>54.74</b>
Indian Allotment 42519	30	SW ¼	2187.536	46862.494	4.683	11.57
Indian Allotment 42520	30	SE ¼	1250.687	24380.943	2.438	6.02
Indian Allotment 42525	34	NW ¼	1667.841	29110.588	2.911	7.19
Indian Allotment 43327	34	SW ¼	770.338	8244.156	0.824	2.04
Indian Allotment 43323	34	SE ¼	426.689	2874.954	0.287	0.71
Indian Allotment 42526	34	NW ¼	2193.254	50283.326	5.028	12.43
Indian Allotment 2073	27	SE ¼	1911.795	41713.091	4.171	10.31
Indian Allotment 42522	26	SW ¼	670.546	12771.368	1.277	3.16
Indian Allotment 42527	26	NW ¼	1636.568	34769.756	3.477	8.59
Indian Allotment 42528	26	NE ¼	400.515	6744.067	.674	1.67
<b>IA Total</b>					<b>25.770</b>	<b>63.69</b>
<b>New Mexico State</b>	32	All	3978.424	88175.514	<b>8.848</b>	<b>21.86</b>

This EA is subject to amendments as actions that are not currently defined (e.g., borrow locations and water permits) are defined. When there is more definitive information NRDOT will reassess determinations and, if necessary, provide changes to Proposed Action and re-evaluate direct, indirect, and cumulative effects to impacted resources.

In accordance with Section 102(2)(c) of the National Environmental Policy Act (NEPA) of 1969, as amended, and the Council of Environmental Quality's Regulations for Implementing the Procedural Provisions of NEPA (40 Code of Federal Regulations (CFR) Parts 1500-1508), the Bureau of Indian Affairs, Navajo Region finds that the Proposed Action is not a major federal action that will significantly impact the quality of the human environment. Therefore, an Environmental Impact Statement is not required for implementing the Proposed Action. This Finding of No Significant Impact (FONSI) is supported by the attached environmental assessment and supporting appendices and documents.

The following issues that were addressed in the EA have been taken into consideration in BIA's deliberation whether a Finding of No New Significant Impact is appropriate, or an environmental impact statement should be prepared.

1. Beneficial and adverse environmental impacts. The EA demonstrates that there will be no significant adverse or beneficial impacts on the quality of the human environment including vegetation, wildlife, geology, water, archaeological, air quality, topography, threatened and endangered species, resource use patterns, socioeconomics, and other values. Impacts to physical and biological resources will be localized and relatively minor.
2. Public health and safety. Public health will not be affected by the project. There will be no disproportionately high and adverse human health effects on populations defined in Executive Order 12898 (Environmental Justice) or the general public. Controlled access to active work areas and appropriate hazardous material management and waste disposal associated with construction will minimize any potential risks to public health, safety, and the environment.
3. Unique characteristics of the geographic area. The project area is not unique within its geographical setting and is similar to many other areas of tribal land in the region. There are no prime farmlands, wild and scenic rivers, wilderness areas, refuges, park lands, unique ecological areas, or other unique or rare characteristics of the land and aquatic environs that will be significantly affected.
4. Degree to which the effects on the quality of the human environment are likely to be highly controversial. There are no known scientific controversies over the effects of the proposed project on the human environment.
5. Degree to which the effects are highly uncertain or involve unique or unknown risks. There are no known effects on the human environment that are highly uncertain or involve unique or unknown risks. The proposed activity will be in adherence to common road construction standards. Due to soil erosion air borne dust will be controlled by water the construction site to limit fugitive dust.
6. Degree to which this action will establish a precedent for future action with significant effects. This project does not set a precedent for similar projects that may be implemented by the BIA or other agencies.

7. Relationship to other actions with cumulatively significant impacts. There are no known incremental effects of the action that become significant when added to other past, present, or reasonably foreseeable future actions that have affected, or will affect, the project area.
8. Degree to which the action may affect districts, sites, objects, or structures listed on, or eligible for, the National Register of Historic Places, or may cause loss of significant cultural resources. The Navajo Nation Historic Preservation Department (NNHPD) issued a Cultural Resources Compliance Form (NNHPD No. HPD-09-795) dated June 18, 2010, with conditions. All conditions shall be met.

In the event of a discovery of a previously unidentified or incorrectly identified cultural resource(s), all operations in the immediate vicinity of the discovery must cease, and the NNHPD must be notified.

9. Degree to which the action may affect threatened, endangered, or sensitive species or their habitat. Navajo Nation Department of Fish and Wildlife (NNDFW) issued a Biological Resources Compliance Form (NNDFW Review No. 11NDOT07) without any Avoidance/Mitigation Measures. The Proposed Action occurs in Area 1 – High Sensitivity and Area 3 – Low Sensitivity.
10. Whether the action violates Federal or local laws or requirements imposed for the protection of the environment. The proposed project will not violate any Federal or tribal environmental laws or requirements.
11. Indian Trust Assets. The Proposed Action includes the use of current landscape to construct road and no borrow pits are proposed. All water used for the site will require a permit from the Navajo Nation Water Resources Department.

## 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).

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

4/19/2016  
Date





# United States Department of the Interior

Bureau of Indian Affairs  
Navajo Region  
P. O. Box 1060  
Gallup, New Mexico 87305

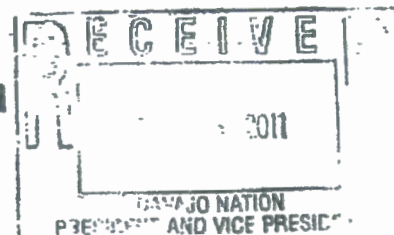


MC: 620 Division of Environmental, Cultural & Safety Management.

Mr. Ben Shelly

SEP 01 2011

President, the Navajo Nation



Attention: Jovonna Frank, Environmental Technician, Navajo Department of Transportation

Dear President Shelly:

The Environmental Assessment (EA), EA-11-091 for the proposed Improvements of 7.6 Miles of Navajo Route 7054 (N7054), in the Pinedale Chapter, McKinley County, New Mexico, has been reviewed in the Division of Environmental, Cultural and Safety Management, Navajo Regional Office. The project will affect approximately 276.36 acres (111.9 hectares) of Navajo Tribal Trust land. A Finding of No Significant Impact (FONSI) has been determined for the proposed action. It will not have a significant impact on the quality of the natural and human environment. An environmental impact statement for the road improvement project is not required.

If you have questions, you may contact Ms. Harriene J. Yazzie, Regional NEPA Coordinator, at (505) 863-8287.

Sincerely,

Acting Regional Director, Navajo

Enclosure

cc: Eastern Navajo Agency, Branch of Roads, P.O. Box 328, Crownpoint, New Mexico 87313  
Jovonna Frank, Navajo Department of Transportation, Navajo Nation, P.O. Box 4620, Window Rock, AZ 86515  
N370: Attn: Ray Lucero, Navajo Regional Office, Division of Transportation

4. ~~Potential impacts to flood plains and wetlands by the proposed project have been~~ evaluated in accordance with Executive Orders 11988 and 11990 respectively. The Navajo Nation Department of Water Resources (NNDWR), Water Management Branch was consulted regarding floodplains. No floodplain studies have been conducted in the general area. The operator is responsible for floodplain determinations and resulting actions (EA-Appendix J-October 15, 2009, Letter from NNDWR, Floodplain Section). It was determined that no wetlands exist (EA-Appendix H-October 15, 2007, Consultation Letter from the Navajo Nation Environmental Protection Agency (NNEPA), Water Quality/NNPDES Program).

5. Agriculture – there are no prime or unique farmlands in the project area (EA, Part 3.4.d.).

6. Water Resources – The Rio Puerco is south of the road project area (EA, Part 3.2.a.). There are numerous unnamed waterways within the road right-of-way (EA-Appendix H-October 15, 2007, Consultation Letter from the Navajo Nation Environmental Protection Agency (NNEPA), Water Quality/NNPDES Program). There are no wells within the road project area (EA, Part 3.2.b.).

7. CWA Compliance – the NNEPA, Water Quality Program was consulted regarding the proposed improvements. If the proposed upgrade includes replacement of old culverts, or placement of new culverts, Sections 401 and 404 of the Clean Water Act must be addressed before construction begins. A 401 permit application may be obtained from the Navajo EPA Water Quality Program. Also, be aware of the Storm Water Construction General Permit required for construction activities that result in land disturbances of equal or greater than one acre (EA-Appendix H-October 15, 2007, Consultation Letter from the Navajo Nation Environmental Protection Agency (NNEPA), Water Quality/NNPDES Program).

8. In compliance with the National Historic Preservation Act of 1966, as amended, Section 106 consultation, and 36 CFR 800.9 (b), an archaeological survey was conducted on the project site by the Navajo Nation Department of Transportation (Navajo DOT). The Navajo Nation Historic Preservation Department (NNHPD) issued Cultural Resources Compliance Form (CRCF), NNHPD No.HPD-09-795 indicating "No Adverse Effect on historic properties" provided that conditions cited in the CRCF are followed (EA-Appendix D - CRCF).

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

9. RCRA, Subtitle C, Hazardous Waste – there are no known hazardous waste sites on or near the proposed project area (EA, Part 3.8.a.). The NNEPA, Superfund Program provided a letter stating that it is not aware of any sites having toxic materials in the area (EA, Appendix I, August 10, 2011 Letter). The operator shall comply with the Navajo Nation Hazardous Waste Management Plan-1996 which outlines responsibilities and procedures for identifying, handling, transporting, storing and disposing of hazardous waste during construction activities (EA, Part 4.3.).

10. RCRA, Subtitle D, Non-Hazardous Solid Waste – there are no known solid waste landfills within or near the project area. Pinedale Chapter contracts the collection and disposal of solid waste (EA, Part 3.8.b.). Trash generated during road construction activities shall be disposed at permitted landfills (EA, Part 4.7.).



**FINDING OF NO SIGNIFICANT IMPACT  
ENVIRONMENTAL ASSESSMENT, EA-11-091  
IMPROVEMENTS TO 7.6 MILES OF NAVAJO ROUTE 7054 (N7054) IN THE  
PINEDALE CHAPTER, MCKINLEY COUNTY, NEW MEXICO  
PINEDALE CHAPTER AND BIA, EASTERN NAVAJO AGENCY, BRANCH OF  
ROADS**

**Location: Pinedale, NM, Quadrangle, USGS 7.5-Minute Series Map  
BOP: UTM Zone 12, N3943444, E728744  
EOP: UTM Zone 12, N3941871, E735992**

**Pinedale Chapter, McKinley County, New Mexico**

The proposed action is approval of a right-of-way (ROW) grant by the Bureau of Indian Affairs (BIA) for improvements to 7.6 miles of Navajo Route 7054 (N7054) in the Pinedale Chapter, McKinley County, New Mexico. Proposed improvements will consist of cutting, filling/backfilling and grading; drainage improvements; and application of asphalt millings. The roadway to be improved is 7.6 miles long and 300 feet wide encompassing approximately 276.36 acres (111.9 hectares) of Navajo Tribal Trust land. The project is sponsored by the Pinedale Chapter, P.O. Box 3, Church Rock, New Mexico 87311 and the BIA, Eastern Navajo Agency, Branch of Roads, P.O. Box 328, Crownpoint, New Mexico 87313.

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

The following references, incorporated in the environmental assessment, serve as the bases for this decision:

1. Agency and public involvement was solicited, and environmental issues relative to the proposed project were identified. Alternative courses of action and mitigation measures were developed in response to environmental concerns and issues.
2. The EA disclosed the environmental consequences of the proposed action and two potentially viable alternatives including the "no action" alternative.
3. In compliance with the Endangered Species Act, informal consultation was held with the Navajo Nation Department of Fish and Wildlife (NNDFW), Natural Heritage Program (NHP). Although the NNDFW has no record of species of concern occurring on or near the project sites at this time, it provided a list of species of concern with potential to occur on the *Pinedale, NM, USGS, 7.5-Minute Quadrangle* containing the project boundaries (EA-Appendix A-February 28, 2011, Letter from NNDFW). Biological surveys of the proposed project were conducted during the period from February to July 2011. Habitats were identified, but no listed species were found within or near the road project area. The proposed project area has heavy human disturbance (EA, Appendix B-Biological Evaluation Report). The NNDFW issued Biological Resources Compliance Form (BRCF), NNDFW Review No. 11NDOT07 recommending approval of the proposed project (EA-Appendix C-BRCF).



11. RCRA, Subtitle I-Underground Storage Tanks - there are no known underground storage tanks, abandoned or existing, within or immediately adjacent to Navajo Route 7054 (EA, Part 3.8.c.).

12. Air Resources - some deterioration of air quality can be expected during construction, due to the operation of construction equipment combined with traffic in the construction zones, however this would be a localized condition that would discontinue when the project is completed. Dust generated from construction activities will be controlled and minimized. Compliance with air pollution ordinances, regulations, executive orders, etc. shall occur (EA, Part 4.3.). All water use including sewer and lagoon water on the Navajo Nation is monitored and permitted by the Navajo Nation Water Resources. The operator shall acquire a permit for water use.

13. Noise - noise impacts from the proposed project will be from heavy equipment operations. To mitigate the noise impacts, heavy equipment shall operate during weekdays during daylight hours and shall be confined to the project area (EA, Part 4.1.c.).

14. Noxious Weeds - noxious weeds may become established in disturbed areas within the proposed project area. The operator shall control and eradicate noxious/non-native weeds within the proposed project area during the life of the project. The operator may consult with the Navajo Nation Department of Agriculture regarding management and control of noxious weeds. The NNEPA, Pesticide Enforcement and Development Program may be contacted regarding pesticide/herbicide applicators.

15. Cumulative and secondary effects on soil, water, air, noise, vegetation, cultural resources, and wildlife resources (species and habitat) were considered, and the proposed mitigation measures were found to be acceptable. The contractor shall reclaim all disturbed areas within the right-of-way according to recommendations provided by the Navajo Nation Department of Agriculture (EA-Appendix F- Reclamation Plan).

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

The proposed action will result in an improved, safe, school bus route and public road, especially during inclement weather.

  
Regional NEPA Coordinator

9/1/2011  
Date

## **Appendix I**

### **Consultation Concerning Toxic/Hazardous/CELIS Sites**

# THE NAVAJO NATION



BEN SHELLY PRESIDENT  
REX LEE JIM VICE PRESIDENT

2011 AUG 11 AM 8 53

## Environmental Protection Agency Superfund Program

P.O. Box 2946 Window Rock, AZ 86515 • Hwy 264/43 Crest Rd. Safford, AZ 86526

Tel: 928.871.6859 Fax: 928.871.7333

NAVAJO DIVISION  
OF TRANSPORTATION  
ADMINISTRATION

### M-E-M-O-R-A-N-D-U-M

TO: Jovonna Frank, Environmental Technician  
NN Division of Transportation

THRU: Freida S. White, Program Supervisor *[Signature]*  
NNEPA/Waste Regulatory Compliance Dept./Superfund Program

FR: *[Signature]*  
Eugene Esplain, Health Physicist  
NNEPA/WRC Dept./Superfund Program

DATE: August 10, 2011

SUBJECT: Consult on Navajo Route 7054 in Pinedale Chapter

This is in response to your 8/09/110 memorandum requesting information on your environmental assessment on the improvement of the 7.6-mile Navajo Route 7054. The project is within Pinedale Chapter of the Navajo Nation and McKinley County, New Mexico. The project's legal description is Sections 19, 30, 25, 32, 33, 34, 27, and 26 of Township 16 North and Range 15 West.

As a program of the Navajo Nation Environmental Protection Agency, Navajo Superfund Program (NSP) assesses releases or threatened releases of hazardous substances that may endanger public health or the environment. NSP does not have 1) a site on the U.S. Environmental Protection Agency's (EPA) National Priorities List, or 2) a site on the EPA's Comprehensive Environmental Response, Compensation and Liability Information System database, within the project area.

In addition, within 2,000 feet of the project site, NSP is not aware of any landfill that is purported to have toxic materials, including radioactive material. If you have further questions or comments, please feel free to contact me at (928) 871-6859.

xc: NSP file





**DR. JOE SHIRLEY, JR.**  
President

**BEN SHELLY**  
Vice President

Mr. Omar Bradley, Regional Director  
Bureau of Indian Affairs  
Navajo Region  
Post Office Box 1060  
Gallup, New Mexico 87305

RE: Right-of-Way for Bureau of Indian Affairs (BIA), Division of Transportation

Dear Mr. Bradley:

On October 16, 2009, the Resources Committee of the Navajo Nation Council approved the Right-of-Way package for the Bureau of Indian Affairs (BIA), Division of Transportation:

Resolution Number RCO-106-09, entitled "Approving the Granting of a Right-of-Way to the Bureau of Indian Affairs, Division of Transportation, for Construction, Operation and Maintenance of BIA Road Project No. N16(6)/162(1)/N164(1)2&4, Navajo Mountain Road Project and to Include the Utility Systems within Navajo Mountain Chapter, Navajo Nation"

Approval of this Right-of-Way is given subject to the terms and conditions stipulated in the resolution approved by the Resources Committee and exhibits attached to such resolution.

Your prompt approval of this right-of-way is appreciated.

Sincerely,

THE NAVAJO NATION

  
Joe Shirley, Jr.  
President

ENCLOSURES

RECEIVED

NOV - 6 2009

Navajo Region  
Division of Transportation

RESOLUTION OF THE  
NAVAJO NATION COUNCIL

Approving Interim Standard Terms and Condition for the  
Granting of Right-of-Way for BIA Road Construction Projects on  
the Navajo Nation

WHEREAS:

1. Pursuant to 2 N.N.C. §102 (A), the Navajo Nation Council is the governing body of the Navajo Nation; and
2. Pursuant to 2 N.N.C. §102 (C), the Navajo Nation Council shall supervise all powers delegated; and
3. Pursuant to 2 N.N.C. §423 (E), the Transportation and Community Development Committee is empowered to represent the Navajo Nation in all roads and transportation matters and developing and approving priority lists for roads and transportation projects; and
4. Pursuant to 2 N.N.C. §695 (B)(2), the Resources Committee of the Navajo Nation Council has been delegated authority to give final approval of rights-of-way over Navajo lands in accordance with applicable federal and Navajo Nation laws; and
5. Based on the federal law, the Transportation Equity Act for the 21<sup>st</sup> Century (TEA-21) authorized funding for Federal Aid Highways, Highway Safety Programs, Transit, and Federal Lands Programs including the Indian Reservation Roads Program; and
6. TEA-21 authorized funding for the Indian Reservation Roads Program by increasing the annual allocation of \$225,000,000 for Fiscal Year 1998 and \$275,000,000 for each fiscal year of 1999 and 2003; and
7. Based on annual allocations to Indian Tribes, the Navajo Nation receives its share of funding from the IRR Program. The Nation is now receiving an approximate amount of \$5 million annually and are used for construction of roads including securing the necessary clearances and acquisition of rights-of way; and

8. On April 23, 2002, the Transportation and Community Development Committee of the Navajo Nation Council was apprised that certain road projects, totaling an approximate amount of \$24.37 million, were experiencing delays due to unresolved right-of-way issues:

- N-21(2)2 & 4, Kaibeto to Red Lake
- N-32(2)2 & 4, Navajo to Mexican Springs
- N-27(2-1/N-2-1)(1-2)2 & 4, Nazlini to Chinle
- N-203 (1)1,2,3 Switchback Bridge Project at Kinlichee
- N-55(2)2 & 4, Alamo to I-40
- N-35(6)2 & 4, U.S. 191 Rock Point to Sweetwater;

and in subsequent years, additional delays and potential loss of federal funds may occur if the right-of-way issue is not resolved by the two (2) standing committees; and

9. The Navajo Nation President Kelsey A. Begaye has taken the position that no IRR construction funds will be returned to the Federal Highway Administration and that the Navajo Nation must fully utilize the annual allocated IRR funds to improve badly needed roads; and

10. The Right-of-Way Clearance Program under the Navajo Land Department has encountered difficulties in ascertaining the right-of-way due to the "Terms and Conditions" to be used for all new road right-of-way packages. The Department of Justice has recommended that the Terms and Conditions be revised to prevent the potential loss of jurisdiction over said right of-way; and

11. To prevent the potential loss of federal highway funds allocated for the Navajo Nation, the Department of Justice has recommended the adoption of interim Terms and Conditions until all the affected parties can work together on new and updated terms and conditions for BIA Road Projects;



12. In order to secure the needed federal highway funds, the BIA is requesting that the right-of-way be granted for a term of 75 years. On May 5, 2002, the Navajo Department of Justice, Project Review Office, and the Bureau of Indian Affairs/Branch of Roads discussed in a teleconference with the Bureau Solicitor, the language for the Interim Terms and Conditions that would specifically address BIA road projects. The agreed upon Interim Terms and Conditions are attached hereto and incorporated herein by this reference as Exhibit "A"; and

13. On May 15, 2002, the Transportation and Community Development Committee of the Navajo Nation Council met with the Resources Committee of the Navajo Nation Council in a joint meeting and discussed the status of road projects and the "Terms and Conditions" for the right-of-way. Such Interim Terms and Conditions were made available; and

14. On May 21, 2002, by Resolution TCDCMY-31-02, attached and marked herein as Exhibit "B", the Transportation and Community Development Committee of the Navajo Nation Council recommended the "Terms and Conditions" for the right-of-way for road projects; and

15. On July 25, 2002, by Resolution RCJY-108-02, attached and marked herein as Exhibit "C", the Resources Committee of the Navajo Nation Council recommended the "Terms and Conditions" for the right-of-way for road projects.

NOW THEREFORE BE IT RESOLVED THAT:

1. The Navajo Nation Council hereby approves the Interim Right-of-Way Terms and Conditions for Road Projects, attached hereto as Exhibit "A".

2. The Navajo Nation Council directs that the Interim Standard Terms and Conditions shall be used for all subsequent Right-of-Way for BIA Road Projects until all affected parties can work together on developing a new and updated Terms and Conditions for BIA road projects.

## CERTIFICATION

I hereby certify that the foregoing resolution was duly considered by the Navajo Nation Council at a duly called meeting in Window Rock, Navajo Nation (Arizona) at which a quorum was present and that the same was passed by a vote of 66 in favor, 0 opposed and 0 abstained, this 1<sup>st</sup> day of November 2002.



Edward T. Begay, Speaker  
Navajo Nation Council

Nov 5, 2002

Date

Motion: Larry Noble  
Second: Joe Dayzie

RESOLUTION  
OF THE RESOURCES COMMITTEE  
OF THE NAVAJO NATION COUNCIL

21<sup>st</sup> NAVAJO NATION COUNCIL - Third Year, 2009

AN ACTION

RELATING TO RESOURCES; APPROVING THE GRANTING OF A RIGHT-OF-WAY TO THE BUREAU OF INDIAN AFFAIRS, DIVISION OF TRANSPORTATION, FOR CONSTRUCTION, OPERATION AND MAINTENANCE OF BIA ROAD PROJECT NO. N16(6)/N162(1)/N164(1)2&4, NAVAJO MOUNTAIN ROAD PROJECT AND TO INCLUDE THE UTILITY SYSTEMS WITHIN NAVAJO MOUNTAIN CHAPTER, NAVAJO NATION

BE IT ENACTED:

1. The Navajo Nation hereby approves the granting of a right-of-way to the Bureau of Indian Affairs, Division of Transportation, to construct, operate and maintain BIA Road Project No. N16(6)/N162(1)/N164(1)2&4, Navajo Mountain Road Project and to include the utility systems within Un-Sectioned 1, Township 41 North, Range 14 East, Gila and Salt River Meridian, Coconino County, Arizona, and protracted Sections 10, 11, 14, 15, 22, 23, 27, 28, and 34, Township 43 South, Range 10 East, Salt Lake Meridian, San Juan County, Utah, Navajo Mountain Chapter, Navajo Nation, more particularly described in Exhibits "A" and "B".

2. The Navajo Nation hereby approves the granting of a right-of-way to the Bureau of Indian Affairs, Division of Transportation, subject to, but not limited to, the terms and conditions contained in Exhibit "D".

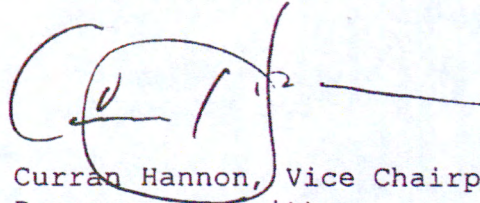
3. The Navajo Nation hereby waives consideration because the Bureau of Indian Affairs Road Project N16(6)/N162(1)/N164(1)2&4, Navajo Mountain Road Project and utility systems will benefit Navajo residents.

4. The Navajo Nation hereby authorizes the President of the Navajo Nation to execute any and all documents necessary to effectuate the intent and purpose of this resolution.



**CERTIFICATION**

I hereby certify that the foregoing resolution was duly considered by the Resources Committee of the Navajo Nation Council at a duly called meeting at Tuba City, Navajo Nation (Arizona), at which a quorum was present and that same was passed by a vote of 7 in favor and 0 opposed, this 16<sup>th</sup> day of October, 2009.

A handwritten signature in dark ink, consisting of a large, stylized 'C' followed by a horizontal line and a vertical stroke, with a small '2' written to the right of the vertical stroke.

Curran Hannon, Vice Chairperson  
Resources Committee

Motion: Harry Williams, Sr.  
Second: Harry H. Clark