CP-6 Environmental Assessment

SDMS DOCID # 1148208

THE NAVAJO NATION

P. O. BOX 9000 • WINDOW ROCK, ARIZONA 86515 • (520) 871-6000

KELSEY A. BEGAYE
PRESIDENT

TAYLOR McKENZIE, M.D.
VICE PRESIDENT

October 18, 2002

Vernon Maldonado, AML Program Specialist
Office Of Surface Mining Reclamation and Enforcement
Suite 1200
505 Marquette Avenue N.W.
Albuquerque, New Mexico 87102

Dear Mr. Maldonado,

Please refer to the attached documents as supporting National Environmental Policy Act (NEPA) requirements for the following Navajo Abandoned Mine Lands Reclamation Program (NAMLRP) projects: Cameron 6, Bidahochi 1, and Sweetwater 2 AML. The NEPA requirements are part of the Section 401 Permit and 404 Certification process.

If you have any questions, please contact me at the Shiprock AML office, 505-368-1224. Thank you for your assistance.

Sincerely,

Melvin H. Yazzie

Melvin H. Yazzie, Senior Reclamation Specialist
NAMLRP
P.O. Box 3605
Shiprock, NM 87420

Enclosures:

cc: Shiprock AML files w/ attachments
Tuba City AML, attn: Ray Tsingine, Program Manager II w/ attachments
Window Rock AML, attn: Madeline Roanhorse, Department Manager III w/o attachments

THE
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KELSEY A. BEGAYE
PRESIDENT

TAYLOR McKENZIE, M.D.
VICE PRESIDENT

June 21, 2002

Mr. Michael J. Fink, MEP
Landscape Ecologist
U.S. Army Corp of Engineers
Los Angeles District
Water Resources Planning
3636 N. Central Avenue, Suite 740
Phoenix, Arizona 85012-1936

Dear Mr. Fink,

The Navajo Abandoned Mine Lands Reclamation Program (NAMLRP), Navajo Nation Department of Natural Resources, is requesting your review and determination on the requirements of a 404 Army Corp of Engineers Permit. Attached for your review is the application and supporting maps and photos of six (6) NAMLRP projects.

Upon our consultant reviewing the requirements of an environmental assessment (EA), he has recommended that we get a determination on the needs of the Section 404 Permit requirements. Please review the supporting documents for this determination. If the determination is that a Section 404 Permit is required, upon evaluating the supporting documents, also take into consideration the possibility of an exemption under one of the following criteria: temporary mining roads, maintenance and/or repair of a stock pond structure.

The 6 projects involve upcoming reclamation projects being performed by our program, which involves reclamation of abandoned uranium mines under the authority of the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The access roads involve crossing of tributaries and the stock ponds involve the maintenance or repair of these structures. There is expected to be very little to no discharge and impact to the water resources.

If you have any questions, please do not hesitate to contact me directly at the Shiprock AML Program (505) 368-1224.

Sincerely,

Melvin H. Yazzie

Melvin H. Yazzie, Reclamation Specialist III
Shiprock AML Program
P.O. Box 3605
Shiprock, New Mexico 87420

xc: Shiprock AML Project files

THE
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KELSEY A. BEGAYE
PRESIDENT

TAYLOR McKENZIE, M.D.
VICE PRESIDENT

August 30, 2002

Attention: Mr. Jason A. Brush
Environmental Protection Specialist
U.S. Environmental Protection Agency
75 Hawthorne St. (WTR-8)
San Francisco, California 94105-3901

Attn: Mr. Jason A. Brush

The Navajo Abandoned Mine Lands Reclamation Program (NAMLRP), Navajo Nation Department of Natural Resources, is requesting your review and waiver for a 401 Water Quality Certification. Attached for your review is the supporting documents and justification on six (6) NAMLRP projects that are expected to commence in September of 2002. This is a follow-up request to previous letters dated June 28 and July 29, 2002 to the U.S. Environmental Protection Agency.

NAMLRP has been in consultation with the U.S. Army Corp of Engineers on the 404 Permit requirements and has received documentation on the impacts. Of the six (6) projects, five (5) are not under the U.S. Army Corp of Engineers jurisdiction, and the remaining project will be issued a Nationwide Permit three (3) for the maintenance of a dike. Further consultation will be required on NA-0175, subject to the 401 Water Quality Certification. Some clarification on project NA-0751, the source of borrow material will be obtained from within the project boundaries, thus this will be out of the jurisdiction of the U.S. Army Corp for Section 404.

All 6 projects involve upcoming reclamation projects within the State of Arizona being performed by our program, which involves the reclamation of abandoned mines under the authority of the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The projects involve either access roads that will be crossing ephemeral streams or the associated maintenance/repair of a man-made dike. There is expected to be very little to no discharge of overburden material and impacts to the water resources.

If you have any questions or need more information, please do not hesitate to contact me directly at the Shiprock AML Program (505) 368-1224 or e-mail at mhyazzie@osmre.gov.

Sincerely,

Melvin H. Yazzie

Melvin H. Yazzie, Reclamation Specialist III
Shiprock AML Program
P.O. Box 3605
Shiprock, New Mexico 87420

xc: Shiprock AML Project Files

THE
NAVAJO
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KELSEY A. BEGAYE
PRESIDENT

TAYLOR McKENZIE, M.D.
VICE PRESIDENT

July 29, 2002

Attention: Mr. Ron Fowler
Sr. Project Manager
U.S. Army Corp of Engineers
Los Angeles District
Regulatory Branch, Arizona Section
3636 N. Central Avenue, Suite 760
Phoenix, Arizona 85012-1936

Dear Mr. Fowler,

The Navajo Abandoned Mine Lands Reclamation Program (NAMLRP), Navajo Nation Department of Natural Resources, is requesting your review and determination on the requirements of a 404 Army Corp of Engineers Permit. Attached for your further review is the application and supporting maps and photos of three (3) NAMLRP projects (NA0164, NA0175, and NA0751). From our previous consultation, these 3 projects reflect alternative methods.

Please review the supporting documents for the determination on Section 404 Permit requirements, upon evaluating the supporting documents, also take into consideration the possibility of an exemption under one of the following criteria: temporary mining roads, maintenance and/or repair of a stock pond structure.

The 3 projects involve upcoming reclamation projects being performed by our program, which involves reclamation of abandoned uranium mines under the authority of the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The access roads involve crossing of tributaries and the stock ponds involve the maintenance/repair of these structures. There is expected to be very little to no discharge and impact to the water resources.

Thank you for your expedient review of our previous request and assistance. If you have any questions, please do not hesitate to contact me directly at the Shiprock AML Program (505) 368-1224.

Sincerely,

Melvin H. Yazzie

Melvin H. Yazzie, Reclamation Specialist III
Shiprock AML Program
P.O. Box 3605
Shiprock, New Mexico 87420

xc: Shiprock AML Project files

THE NAVAJO NATION
Division of Natural Resources
Navajo Abandoned Mine Lands Reclamation Program (NAMLRP)

Scope of Work for the NAMLRP Projects:

Cameron 6 AML Project - NA0116

This project involves the crossing of an ephemeral stream, the Moenkopi Wash. This access road leads to three (3) NAMLRP projects which are schedule for reclamation work. The 3 NAMLRP projects are over 0.5 miles away from this crossing area. No upgrading or blading of this crossing will be allowed during the construction activities. Personnel vehicles and heavy equipment will utilize this crossing to gain access to the NAMLRP projects. Very little to no impacts via discharging are expected, thus very little water quality degradation is expected. The total impacted access area is expected to be 300 feet long by 30 feet wide, less than 1/4 acre. Total projected time within this area is estimated at 30 calendar days.

*Cameron 6 AML Project - NA-*0164 (Alternative 1)

Due to changes being recommended by the U.S. Army Corp, changes to this project have been initiated. This project will be changed to obtain borrow material from within the impacted project boundary, rather than from a man-made stock pond. Approximately 1,000 cubic yards of clay material will be excavated from within the project boundary, project boundary is currently at 10.3 acres. Since the excavation process will be borrowing material, very little to no discharge of material is expected from this operation. This location is over 1.0 mile away from theLittle Colorado River. Total projected time within this area is estimated at 45 calendar days.

Cameron 6 AML Project - NA0175 (Alternative 1)

Due to changes being recommended by the U.S. Army Corp, changes to this project have been initiated. This project involves the repair/maintenance of a dike. The man-made dike has breached and no longer holds water. The dike will be repaired with upgradient clay material properly compacted. Borrow material will be excavated to rebuild and expand the dike by 10 feet wide. Approximately 8,000 cubic yards of material will be excavated from the upland project boundary, thus the expected impacted area will be less than 2.0 acres. Since this is an excavation process, very little to no discharge of material is expected from this operation. This area is also located within an area of past NAMLRP projects. The associated tributaries lead into the Little Colorado River, which is over 0.5 mile away to the west. Total projected time within this area is estimated at 30 calendar days.

Bidahochi 1 AML Project - NA0751 (Alternative 1)

Due to changes being recommended by the U.S. Army Corp, changes to this project have been initiated. This project involves the excavation of borrow material from within the project boundaries. Approximately 1,500 cubic yards of clay material will be excavated from this area. The current project boundary is at 2.0 acres. Since the excavation process will be borrowing material, very little to no discharge of material is expected from this operation. This location is within a small tributary that eventually leads into the Pueblo Wash, which is over 1.0 mile away to the west. Total projected time within this area is estimated at 20 calendar days.

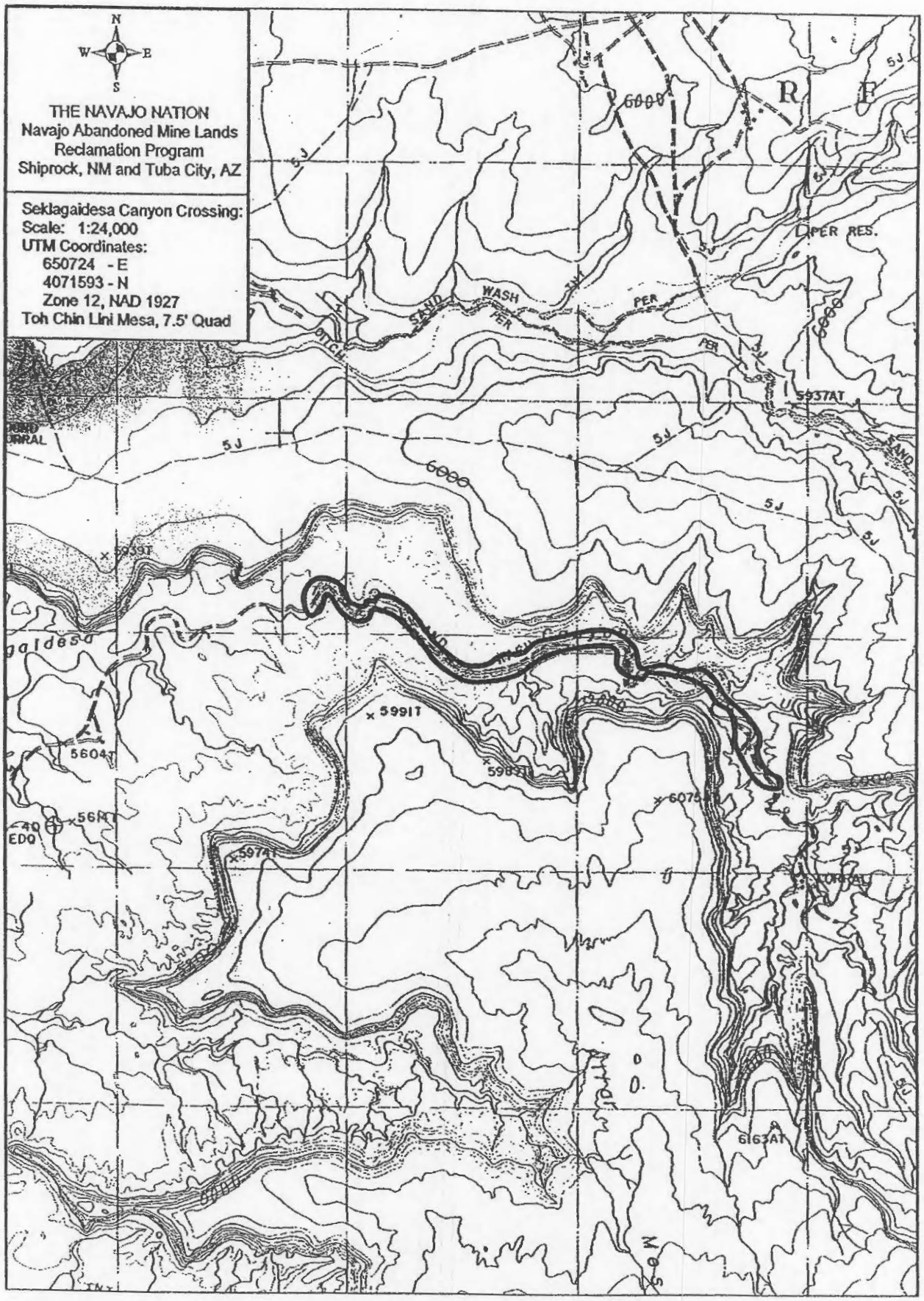
Sweetwater 2 AML Project - NA0504

This project involves the crossing of an ephemeral stream, the Seklagaidesa Canyon. This access road leads to one (1) NAMLRP project. The NAMLRP projects are over 0.5 miles away from this crossing area. No upgrading or blading of this crossing will be allowed during the construction activities. Personnel vehicles and heavy equipment will utilize this crossing to gain access. Very little to no impacts via discharging are expected, thus very little water quality degradation is expected. The total impacted access area is expected to be 6,000 feet long by 10 feet wide, 1.4 acres. Total projected time within this area is estimated at 15 calendar days.

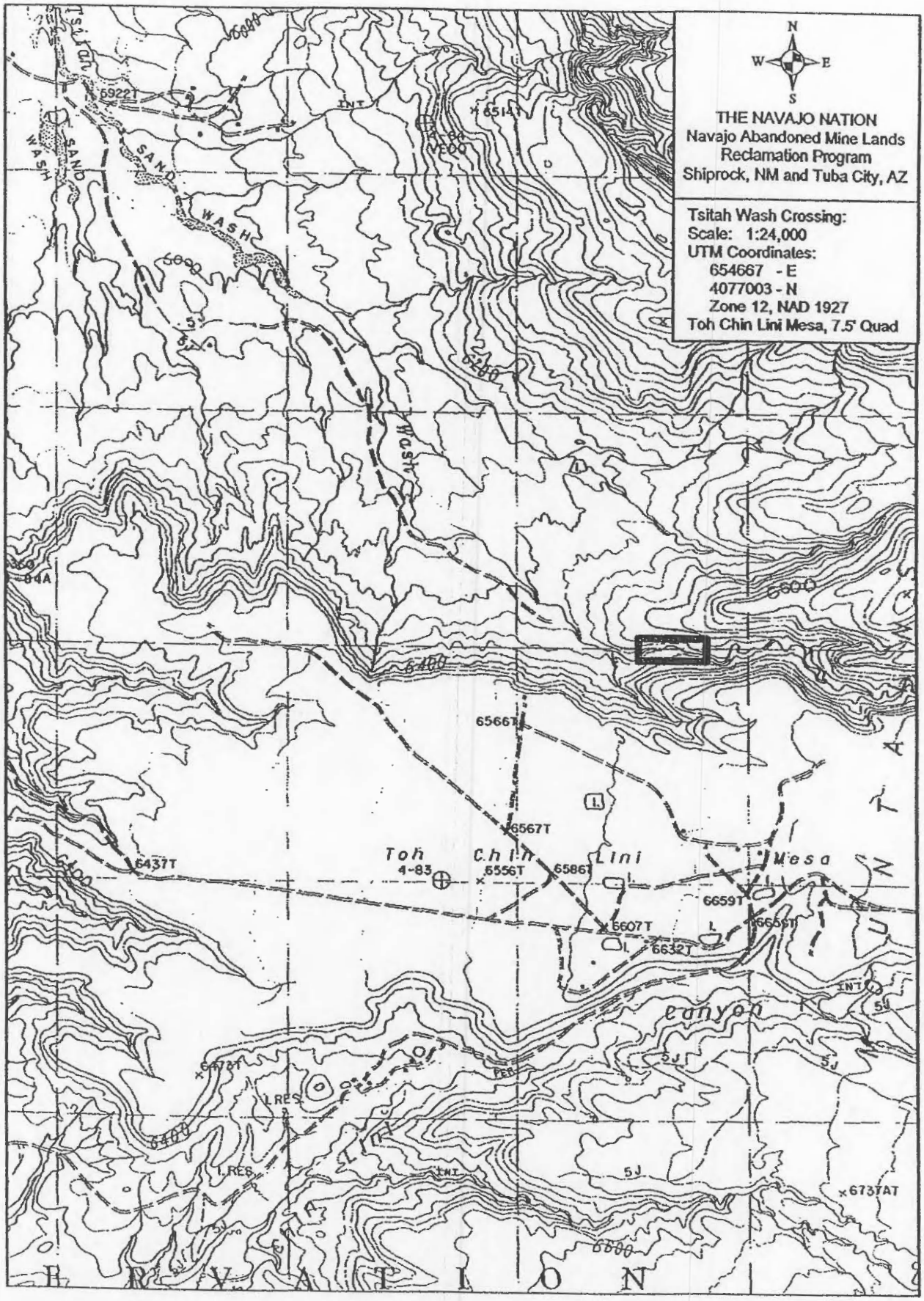
Sweetwater 2 AML Project - NA0518

This project involves an ephemeral stream, the Tsitah Wash. This access road leads to one (1) NAMLRP project. The NAMLRP project is over 0.5 mile away from this stream area. Since this area involves a wetland area, measuring 200 feet long by 30 feet wide (0.1 acre), no upgrading or blading of this area will be allowed during the construction activities. Personnel vehicles will be required to stop at a construction yard located down gradient of this wetland area, approximately 500 feet away. All access to the project site will be via foot. Very little to no impacts via discharging are expected, thus very little water quality degradation is expected. Total projected time within this area is estimated at 10 calendar days.

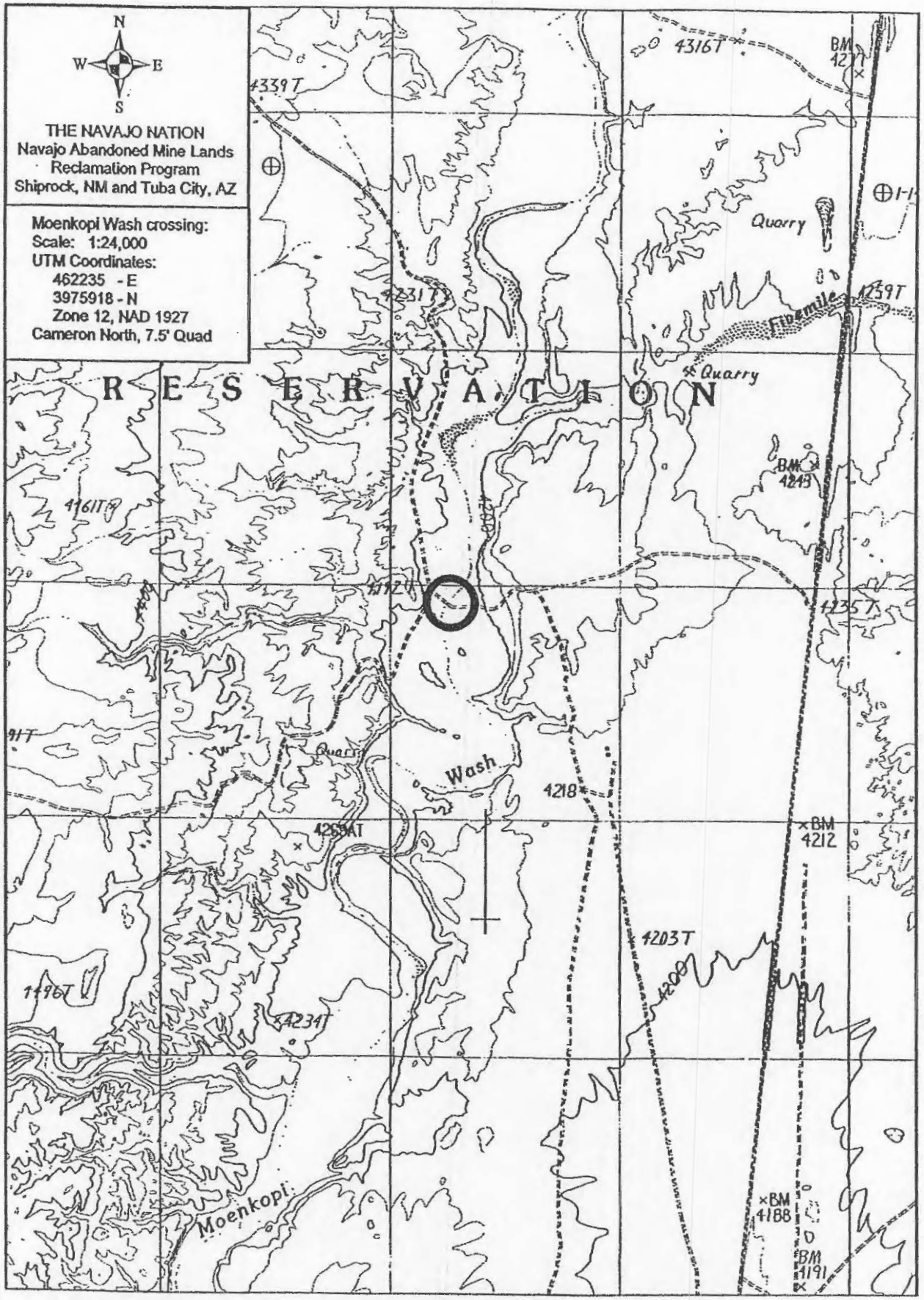
Sweetwater 2 AML Project - NA-0504



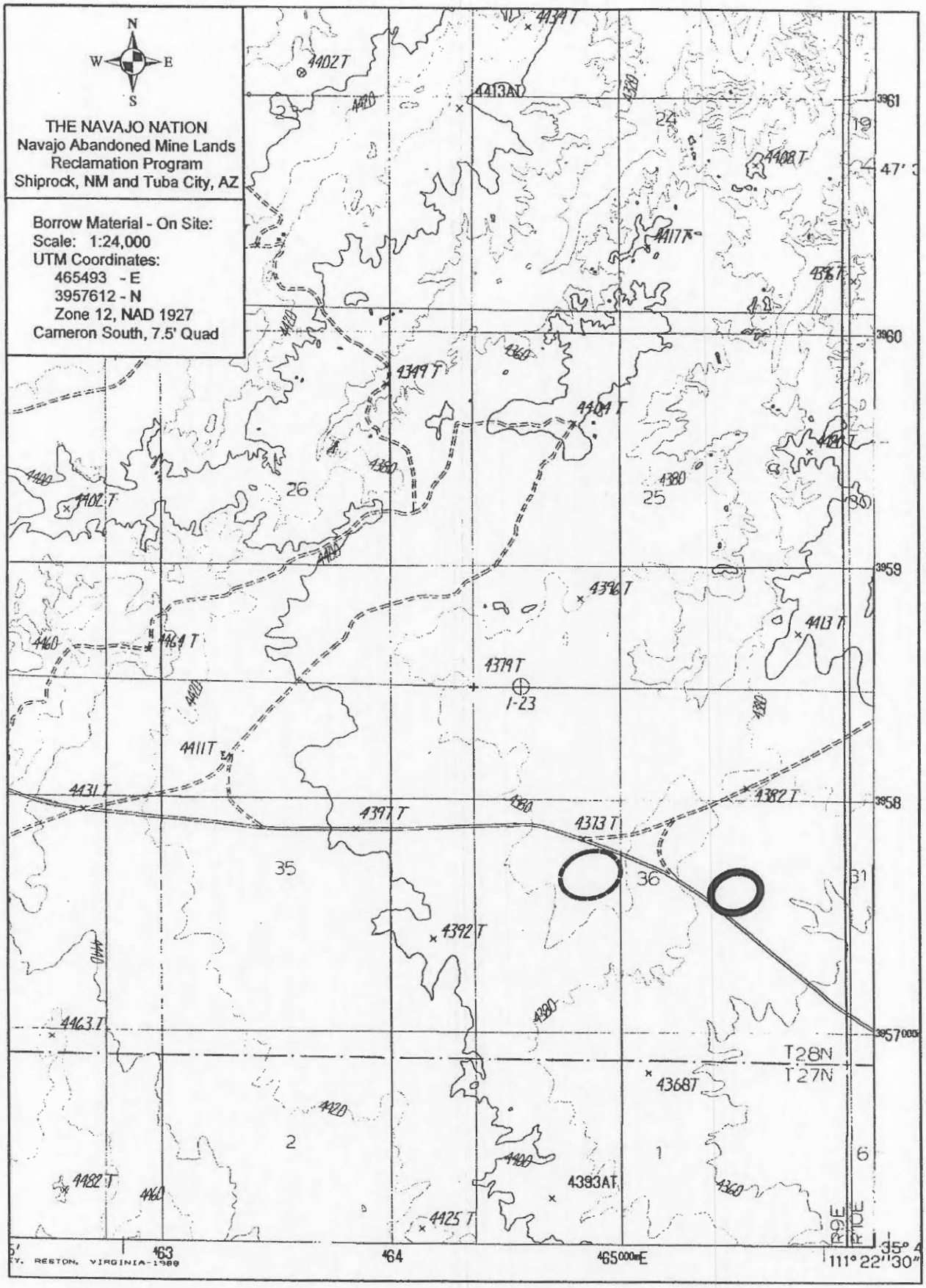
Sweetwater 2 AML Project - NA0518



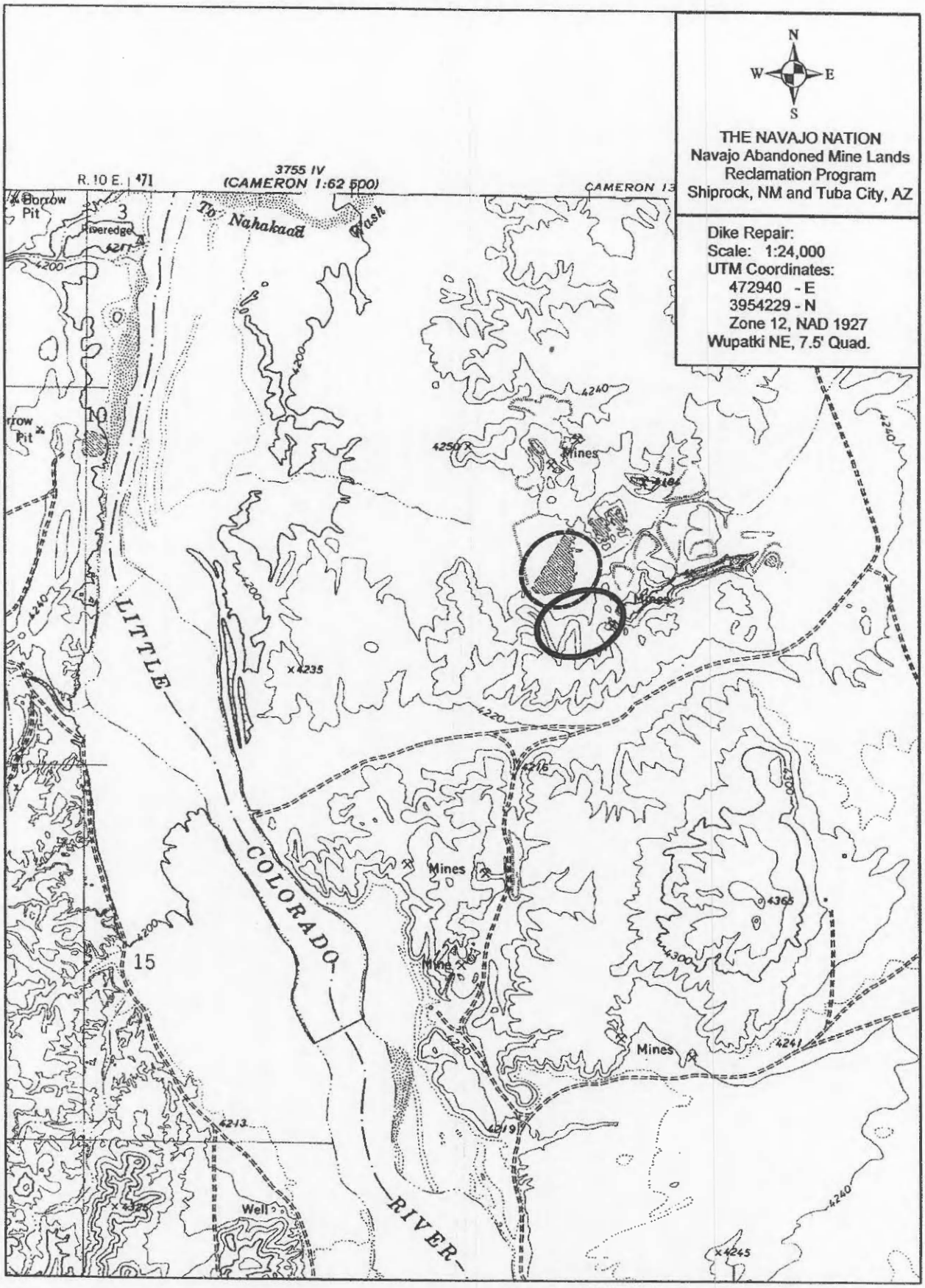
Cameron 6 AML Project - NAC116



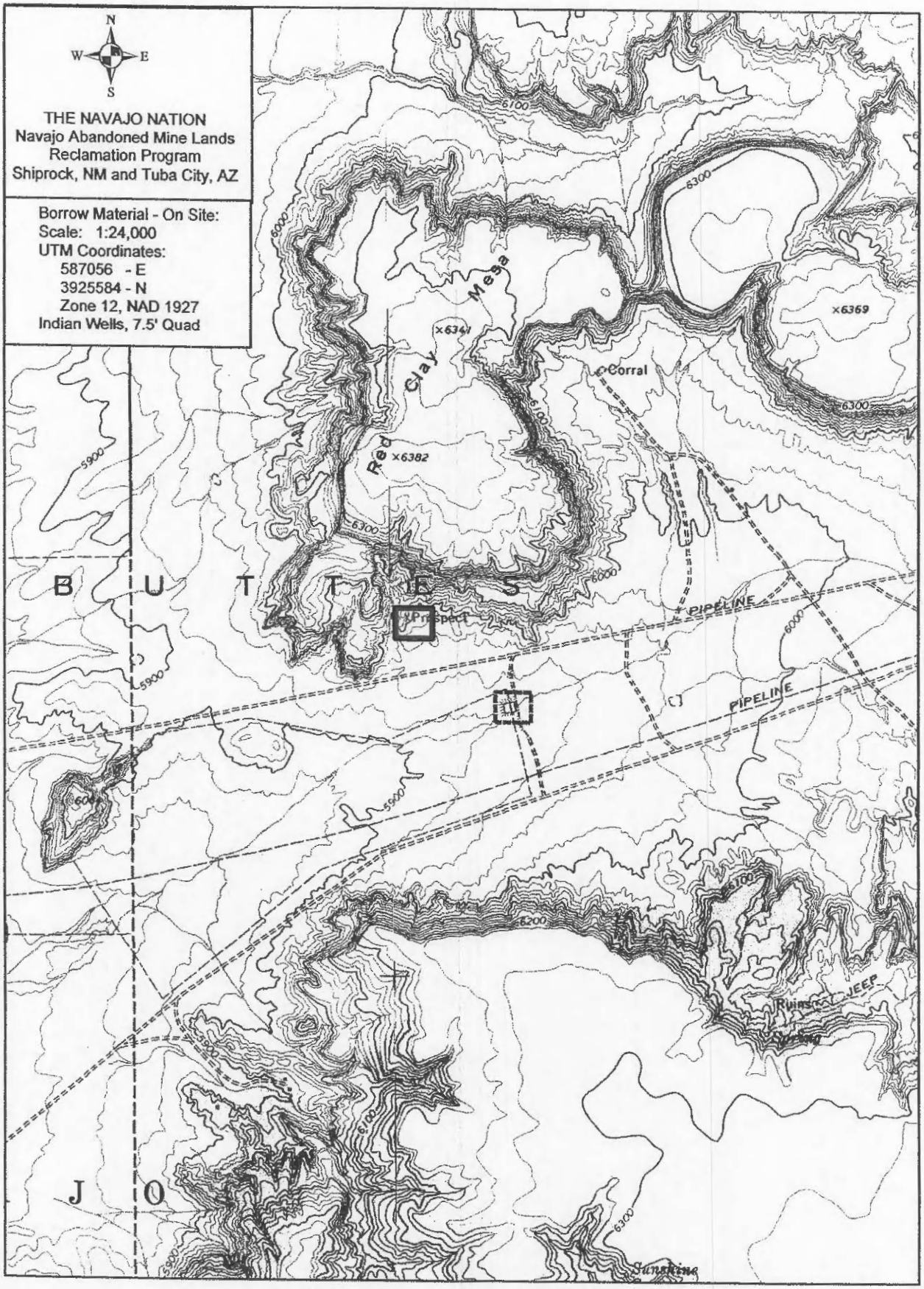
Cameron 6 AML Project - NA0164 (Alternative 1)



Cameron 6 AML Project - NA0175 (Alternative 1)



Bidahochi 1 AML Project - NA0751 (Alternative 1)



DEPARTMENT OF THE ARMY
LOS ANGELES DISTRICT, CORPS OF ENGINEERS
ARIZONA-NEVADA AREA OFFICE
3636 NORTH CENTRAL AVENUE, SUITE 760
PHOENIX, ARIZONA 85012-1936

REPLY TO
Office of the Chief
Regulatory Branch

October 7, 2002

Melvin H. Yazzie
The Navajo Nation
Shiprock AML Program
P.O. Box 3605
Shiprock, New Mexico 87420

File Number: 2002-01154-RWF

Dear Mr. Yazzie:

This is in reply to your June 21, 2002 letter concerning your proposal to repair and reinforce an existing levee in the unnamed wash at (T27N, R10E), the Navajo Nation, Coconino County, Arizona.

The Corps of Engineers has determined, under Section 404 of the Clean Water Act (33 U.S.C. 1344), that your proposed activity complies with the terms of Nationwide Permit No. 3, "Maintenance." You must comply with all terms and applicable conditions (regional, general, and 401 conditions) described in Enclosure 1 and complete the compliance statement (Enclosure 2).

Furthermore, you must comply with the following **Special Condition(s)**:

a. The permittee shall obtain the materials necessary to accomplish the project from an acceptable upland location.

b. The permittee shall ensure that the natural course of the waters of the United States impacted by the project activities are restored to pre-project contours or gradients and conditions to the maximum extent possible upon completion of the project activities.

c. No debris, soil, silt, sand, rubbish, cement or concrete washings thereof, oil or petroleum products or washings thereof, shall be allowed to enter into or placed where it may be washed by rainfall or runoff into the waterway. When project operations are completed, any and all excess construction materials, debris, and or other associated excess project materials shall be removed to an appropriate off-site location outside of any jurisdictional areas. At no time shall this material be sidecast into the creek.

d. Staging, storage, fueling, and maintenance of equipment and materials shall be located outside of the Corps' jurisdiction.

This letter of verification is valid for a period not to exceed two years unless the nationwide

permits are modified, reissued, or revoked before that time. It is incumbent upon you to remain informed of changes to the nationwide permits.

A nationwide permit does not grant any property rights or exclusive privileges. Also, it does not authorize any injury to the property or rights of others or authorize interference with any existing or proposed Federal project. Furthermore, it does not obviate the need to obtain other Federal, state, or local authorizations required by law.

Thank you for participating in our regulatory program. If you have questions, please contact Ron Fowler at (602) 640-5385 x 226.

Sincerely,

Ron Fowler
for Cindy Lester
Chief, Arizona Section
Regulatory Branch

Enclosures

Copy Furnished:
(w/o enclosure)

Tom Morris
The Navajo Nation
Department of EPA
Water Quality Section
P.O. Box 339
Window Rock, Arizona 86511

NATIONWIDE PERMIT NUMBER 3

"MAINTENANCE"

US Army Corps of Engineers
Los Angeles District

Pursuant to Section 404 of the Clean Water Act (33 U.S.C. 1344) the U.S. Army Corps of Engineers published the "Final Notice of Issuance of Nationwide Permits" in the Federal Register (67 FR 2020) on January 15, 2002, and Corrections on February 13, 2002 (67 FR 6692) and February 25, 2002 (67 FR 8579). This Nationwide Permit is effective from March 18, 2002 to March 18, 2007 unless modified, reissued or revoked before that time. It is incumbent upon the permittee to remain informed of changes to the nationwide permits.

3. **Maintenance:** Activities related to: (i) 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 which are necessary to make repair, rehabilitation, or replacement are permitted, provided the adverse environmental effects resulting from such repair, rehabilitation, or replacement are minimal. Currently serviceable means useable as is or with some maintenance, but not so degraded as to essentially require reconstruction. 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.

(ii) Discharges of dredged or fill material, including excavation, into all waters of the US to remove 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, provided the permittee notifies the District Engineer in accordance with General Condition 13. 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. The placement of rip rap must be the minimum necessary to protect the structure or to ensure the safety of the structure. All excavated materials must be deposited and retained in an upland area unless otherwise specifically approved by the District Engineer under separate authorization. Any bank stabilization measures not directly associated with the structure will require a separate authorization from the District Engineer.

(iii) Discharges of dredged or fill material, including excavation, into all waters of the US for activities associated with the restoration of upland areas damaged by a storm, flood, or other discrete event, including the construction, placement, or installation of upland protection structures and minor dredging to remove obstructions in a water of the US. (Uplands lost as a result of a storm, flood, or other discrete event can be replaced without a Section 404 permit provided the uplands are restored to their original pre-event location. This NWP is for the activities in waters of the US associated with the replacement of the uplands.) The permittee must notify the District Engineer, in accordance with General Condition 13, within 12-months of the date of the damage and the work must commence, or be under contract to commence, within two years of the date of the damage. The permittee should provide evidence, such as a recent topographic survey or photographs, to justify the extent of the proposed restoration. The restoration of the damaged areas cannot exceed the contours, or ordinary high water mark, that existed before the damage. The District Engineer retains the right to determine the extent of the pre-existing conditions and the extent of any restoration work authorized by this permit. Minor dredging to remove obstructions from the adjacent waterbody is limited to 50 cubic yards below the plane of the ordinary high water mark, and is limited to the amount necessary to restore the pre-existing bottom contours of the waterbody. The dredging may not be done primarily to obtain fill for any restoration activities. The discharge of dredged or fill material and all related work needed to restore the upland must be part of a single and complete project. This permit cannot be used in conjunction with NWP 18 or NWP 19 to restore damaged upland areas. This permit cannot be used to reclaim historic lands lost, over an extended period, to normal erosion processes.

This permit does not authorize maintenance dredging for the primary purpose of navigation and beach restoration. This permit does not authorize new stream channelization or stream relocation projects. Any work authorized by this permit must not cause more than minimal degradation of water quality, more than minimal changes to the flow characteristics of the stream, or increase flooding (See General Conditions 9 and 21). (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 Section 404(f) exemption for maintenance.

401 Certification

Tribal waters	Certified - Fort Apache Reservation Individual Certification required. (All other Reservations)
Unique waters	Individual Certification required.
Other waters	Conditional Certification.

401 Conditions

1. The Permittee shall provide a copy of these State CWA 401 Conditions and permit specific conditions to all appropriate contractors and subcontractors. The applicant shall also post a copy of these conditions in a water resistant location at the construction site where it may be seen by the workers. If there are any substantive changes in the proposed project that may affect water quality, the applicant shall notify ADEQ. Failure to do so may result in the revocation of this Certification.
2. The Permittee is responsible for obtaining all other permits, certifications and licenses that may be required by federal, state or local authorities. Activities which may require other approvals include: construction activities disturbing greater than five acres of land [NPDES Stormwater Permit], use of reclaimed wastewater for dust control or irrigation [Reclaimed Water Permit], or dewatering of construction sites to a surface waterbody [NPDES Process Wastewater Permit].
3. Erosion control and/or bank protection features (e.g., silt fences, straw bales, rip-rap, or mulching) shall be used, where appropriate, to minimize channel or bank erosion and soil loss. These features shall be maintained, as necessary, during pre-construction and construction periods. Denuded areas shall be revegetated as soon as possible with native plants and seed.
4. Earthen fill placed in locations subject to scour shall contain not more than ten percent (10%) of particles finer than 0.25 mm diameter (passing a No. 60 sieve, on a dry weight basis).
5. Upon completion of construction, the work area shall be restored to maintain the stability of upstream and downstream segments of waters of the U.S. (WUS) with respect to erosion and sedimentation.
6. The Permittee is responsible for ensuring construction material and/or fill, placed within the ordinary high water mark (OHWM), is free from substances (including fines that may be associated with rip-rap material) that can cause or contribute to pollution of a surface water.
7. Debris (such as soil, silt, sand, rubbish, cement, asphalt, oil or petroleum products, organic materials, tires or batteries) derived from construction activities shall not be deposited at any site where it may be washed into W.U.S and shall be properly disposed of after completion of the work.
8. The Permittee shall have a spill containment plan to ensure that pollutants are contained, removed and properly disposed of. In addition, equipment maintenance shall be preformed at an upland site away from W.U.S.
9. Runoff and seepage from roadways, embankments, golf courses and other alterations of the natural environment into W.U.S. shall not cause a violation of Water Quality Standards.
10. Construction materials, including concrete, asphalt, and piping, shall consist of materials that do not leach pollutants into surface waters for compliance with General Condition 18 (Suitable Material). Activities shall be conducted and monitored to ensure that pollution from concrete formation and equipment washing does not drain into the washes.
11. At completion, all construction residues, equipment and non-native materials shall be removed from and properly disposed of outside the 100-year floodplain.
12. Stockpiles of construction materials shall be stored outside of jurisdictional water.
13. No discharge of process water, material processing residues, wastewater or other residual material is authorized within jurisdictional waters.
14. Flows shall be diverted around work operations or the work shall be performed during low water conditions when the area is naturally dewatered. When there is water flow within the construction area, construction activity shall cease and construction equipment relocated outside the watercourse.

Tribal waters: all waters of the United States occurring on tribal lands.

Unique Water: a surface water that has been classified as an outstanding state resource water by the Director of ADEQ under R18-11-112(E). Please note that unique water designations are subject to change by rule. Current rules should be consulted at the time of application for an NWP. The following are classified as unique waters on non-tribal lands:

a. The West Fork of the Little Colorado River, above Government Springs;
b. Oak Creek, including the West Fork of Oak Creek (and all tributaries to Oak Creek);
c. Peeples Canyon Creek, tributary to Santa Maria River;
d. Burro Creek, above its confluence with Boulder Creek;
e. Francis Creek, Mohave and Yavapai counties;
f. Bonita Creek, tributary to the upper Gila River;
g. Cienega Creek, from I-10 bridge to Del Lago Dam, Pima County;
h. Aravaipa Creek, from confluence of Stowe Gulch to the downstream boundary of the Aravaipa Canyon Wilderness Area;
i.Cave Creek and South Fork of Cave Creek [Chiricahua Mountains], from headwaters to the Coronado National Forest boundary; and
j.Buehman Canyon Creek, from headwaters [Lat. 32'24'55.5"N, Long. 110039'43.5"W] to approximately 9.8 miles downstream [Lat. 32'24'31.5'N, Long. 110'32'08"W].

Other waters: all waters of the United States on non-tribal lands for which 401 Certification has not been specifically denied.

Nationwide Permit Regional Conditions

Of the nine regional conditions effective within the Los Angeles District of the Corps of Engineers, only three apply to projects within Arizona (2, 3, and 4). The remaining conditions apply to specific geographic areas, specific resources (vernal pools) or specific species (steelhead) in California.

The following regional conditions must be followed in order for any authorization by an NWP to be valid in the State of Arizona:

2. For the State of Arizona and the Mojave and Sonoran (Colorado) desert regions of California in Los Angeles District (generally north and east of the San Gabriel, San Bernardino, San Jacinto, and Santa Rosa mountain ranges, and south of Little Lake, Inyo County), no nationwide permit, except Nationwide Permits 1 (Aids to Navigation), 2 (Structures in Artificial Canals), 3 (Maintenance), 4 (Fish and Wildlife Harvesting, Enhancement, and Attraction Devices and Activities), 5 (Scientific Measurement Devices), 6 (Survey Activities), 9 (Structures in Fleeting and Anchorage Areas), 10 (Mooring Buoys), 11 (Temporary Recreational Structures), 20 (Oil Spill Cleanup), 22 (Removal of Vessels), 27 (Stream and Wetland Restoration Activities), 30 (Moist Soil Management for Wildlife), 31 (Maintenance of Existing Flood Control Projects), 32 (Completed Enforcement Actions), 35 (Maintenance Dredging of Existing Basins), 37 (Emergency Watershed Protection and Rehabilitation), and 38 (Cleanup of Hazardous and Toxic Waste), or other nationwide or regional general permits that specifically authorize maintenance of previously authorized structures or fill, can be used to authorize the discharge of dredged or fill material into a jurisdictional special aquatic site as defined at 40 CFR Part 230.40-45 (sanctuaries and refuges, wetlands, mudflats, vegetated shallows, coral reefs, and riffle-and-pool complexes).

3. For all projects proposed for authorization by nationwide or regional general permits where prior notification to the District Engineer is required, applicants must provide color photographs or color photocopies of the project area taken from representative points documented on a site map. Pre-project photographs and the site map would be provided with the permit application. Photographs should represent conditions typical or indicative of the resources before impacts.

4. Notification pursuant to general condition 13 shall be required for projects in all special aquatic sites as defined at 40 CFR Part 230.40-45 (sanctuaries and refuges, wetlands, mudflats, vegetated shallows, coral reefs, and riffle-and-pool complexes), and in all perennial watercourses or waterbodies in the State of Arizona and the Mojave and Sonoran (Colorado) desert regions of California in Los Angeles District (generally north and east of the San Gabriel, San Bernardino, San Jacinto, and Santa Rosa mountain ranges, and south of Little Lake, Inyo County), excluding the Colorado River from Davis Dam downstream to the north end of Topock and downstream of Imperial Dam.

Nationwide Permit General Conditions

The following General Conditions must be followed in order for any authorization by an NWP to be valid:

1. Navigation. No activity may cause more than a minimal adverse effect on navigation.
2. Proper Maintenance. Any structure or fill authorized shall be properly maintained, including maintenance to ensure public safety.
3. 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.
4. 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.
5. Equipment. Heavy equipment working in wetlands must be placed on mats, or other measures must be taken to minimize soil disturbance.
6. 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 or tribe in its Section 401 Water Quality Certification and Coastal Zone Management Act consistency determination.
7. 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 in the area (e.g., National Park Service, U.S. Forest Service, Bureau of Land Management, U.S. Fish and Wildlife Service).
8. 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.
9. Water Quality. (a) In certain states and tribal lands an individual 401 Water Quality Certification must be obtained or waived (See 33 CFR 330.4(c)).
(b) For NWPs 12, 14, 17, 18, 32, 39, 40, 42, 43, and 44, where the state or tribal 401 certification (either generically or individually) does not require or approve water quality management measures, the permittee must provide water quality management measures that will ensure that the authorized work does not result in more than minimal degradation of water quality (or the Corps determines that compliance with state or local standards, where applicable, will ensure no more than minimal adverse effect on water quality). An important component of water quality management includes stormwater management that minimizes degradation of the downstream aquatic system, including water quality (refer to General Condition 21 for stormwater management requirements). Another important component of water quality management is the establishment and maintenance of vegetated buffers next to open waters, including streams (refer to General Condition 19 for vegetated buffer requirements for the NWPs).
This condition is only applicable to projects that have the potential to affect water quality. While appropriate measures must be taken, in most cases it is not necessary to conduct detailed studies to identify such measures or to require monitoring.
10. Coastal Zone Management. In certain states, an individual state coastal zone management consistency concurrence must be obtained or waived (see 33 CFR 330.4(d)).
11. 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. 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 is located in the 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 may affect Federally-listed endangered or threatened species or designated critical habitat, the 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. 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.
(b) 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 USFWS 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 USFWS and NMFS or their world wide web pages at http://www.fws.gov/r9endspp/endspp.html and http://www.nfms.gov/prot_res/overview/es.html respectively.
12. Historic Properties. No activity which may affect historic properties listed, or eligible for listing, in the National Register of Historic Places is authorized, until the District Engineer has complied with the provisions of 33 CFR Part 325, Appendix C. The prospective permittee must notify the District Engineer if the authorized activity may affect any historic properties listed, determined to be eligible, or which the prospective permittee has reason to believe may be eligible for listing on the National Register of Historic Places, and shall not begin the activity until notified by the District Engineer that the requirements of the National Historic Preservation Act have been satisfied and that the activity is authorized. Information on the location and existence of historic resources can be obtained from the State Historic Preservation Office and the National Register of Historic Places (see 33 CFR 330.4(g)). For activities that may affect historic properties listed in, or eligible for listing in, the National Register of Historic Places, the notification must state which historic property may be affected by the proposed work or include a vicinity map indicating the location of the historic property.
13. Notification.
(a) Timing; where required by the terms of the NWP, the prospective permittee must notify the District Engineer with a preconstruction notification (PCN) as early as possible. The District Engineer must determine if the notification is complete within 30 days of the date of

receipt and can 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 notification 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 notified in writing by the District or Division Engineer that an Individual Permit is required; or

(3) Unless 45 days have passed from the District Engineer's receipt of the complete notification and the prospective permittee has not received written notice from the District or Division Engineer. 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 Notification: The notification 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) Brief 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. 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 result in a quicker decision.);

(4) For NWPs 7, 12, 14, 18, 21, 34, 38, 39, 40, 41, 42, and 43, the PCN must also include a delineation of affected special aquatic sites, including wetlands, vegetated shallows (e.g., submerged aquatic vegetation, seagrass beds), and riffle and pool complexes (see paragraph 13(f));

(5) For NWP 7 (Outfall Structures and Maintenance), the PCN must include information regarding the original design capacities and configurations of those areas of the facility where maintenance dredging or excavation is proposed;

(6) For NWP 14 (Linear Transportation Projects), The PCN must include a compensatory mitigation proposal to offset permanent losses of waters of the US and a statement describing how temporary losses of waters of the US will be minimized to the maximum extent practicable;

(7) For NWP 21 (Surface Coal Mining Activities), the PCN must include an Office of Surface Mining (OSM) or state-approved mitigation plan, if applicable. To be authorized by this NWP, the District Engineer must determine that the activity complies with the terms and conditions of the NWP and that the adverse environmental effects are minimal both individually and cumulatively and must notify the project sponsor of this determination in writing;

(8) For NWP 27 (Stream and Wetland Restoration Activities), the PCN must include documentation of the prior condition of the site that will be reverted by the permittee;

(9) For NWP 29 (Single-Family Housing), the PCN must also include:

(i) Any past use of this NWP by the Individual Permittee and/or the permittee's spouse;

(ii) A statement that the single-family housing activity is for a personal residence of the permittee;

(iii) A description of the entire parcel, including its size, and a delineation of wetlands. For the purpose of this NWP, parcels of land measuring ¼-acre or less will not require a formal on-site delineation. However, the applicant shall provide an indication of where the wetlands are and the amount of wetlands that exists on the property. For parcels greater than ¼-acre in size, formal wetland delineation must be prepared in accordance with the current method required by the Corps. (See paragraph 13(f));

(iv) A written description of all land (including, if available, legal descriptions) owned by the prospective permittee and/or the prospective permittee's spouse, within a one mile radius of the parcel, in any form of ownership (including any land owned as a partner, corporation, joint tenant, co-tenant, or as a tenant-by-the-entirety) and any land on which a purchase and sale agreement or other contract for sale or purchase has been executed;

(10) For NWP 31 (Maintenance of Existing Flood Control Facilities), the prospective permittee must either notify the District Engineer with a PCN prior to each maintenance activity or submit a five year (or less) maintenance plan. In addition, the PCN must include all of the following:

(i) Sufficient baseline information identifying the approved channel depths and configurations and existing facilities. Minor deviations are authorized, provided the approved flood control protection or drainage is not increased;

(ii) A delineation of any affected special aquatic sites, including wetlands; and,

(iii) Location of the dredged material disposal site;

(11) For NWP 33 (Temporary Construction, Access, and Dewatering), the PCN must also include a restoration plan of reasonable measures to avoid and minimize adverse effects to aquatic resources;

(12) For NWPs 39, 43 and 44, the PCN must also include a written statement to the District Engineer explaining how avoidance and minimization for losses of waters of the US were achieved on the project site;

(13) For NWP 39 and NWP 42, the PCN must include a compensatory mitigation proposal to offset losses of waters of the US or justification explaining why compensatory mitigation should not be required. For discharges that cause the loss of greater than 300 linear feet of an intermittent stream bed, to be authorized, the District Engineer must determine that the activity complies with the other terms and conditions of the NWP, determine adverse environmental effects are minimal both individually and cumulatively, and waive the limitation on stream impacts in writing before the permittee may proceed;

(14) For NWP 40 (Agricultural Activities), the PCN must include a compensatory mitigation proposal to offset losses of waters of the US. This NWP does not authorize the relocation of greater than 300 linear-feet of existing serviceable drainage ditches constructed in non-tidal streams unless, for drainage ditches constructed in intermittent non-tidal streams, the District Engineer waives this criterion in writing, and the District Engineer has determined that the project complies with all terms and conditions of this NWP, and that any adverse impacts of the project on the aquatic environment are minimal, both individually and cumulatively;

(15) For NWP 43 (Stormwater Management Facilities), the PCN must include, for the construction of new stormwater management facilities, a maintenance plan (in accordance with state and local requirements, if applicable) and a compensatory mitigation proposal to offset losses of waters of the US. For discharges that cause the loss of greater than 300 linear feet of an intermittent stream bed, to be authorized, the District Engineer must determine that the activity complies with the other terms and conditions of the NWP, determine adverse environmental effects are minimal both individually and cumulatively, and waive the limitation on stream impacts in writing before the permittee may proceed;

(16) For NWP 44 (Mining Activities), the PCN must include a description of all waters of the US adversely affected by the project, a description of measures taken to minimize adverse effects to waters of the US, a description of measures taken to comply with the criteria of the NWP, and a reclamation plan (for all aggregate mining activities in isolated waters and non-tidal wetlands adjacent to headwaters and any hard rock/mineral mining activities);

(17) For activities that may adversely affect Federally-listed endangered or threatened species, the PCN must include the name(s) of those endangered or threatened species that may be affected by the proposed work or utilize the designated critical habitat that may be affected by the proposed work; and

(18) For activities that may affect historic properties listed in, or eligible for listing in, the National Register of Historic Places, 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.

(c) Form of Notification: The standard Individual Permit application form (Form ENG 4345) may be used as the notification but must clearly indicate that it is a PCN and must include all of the information required in (b) (1)-(18) of General Condition 13. A letter containing the requisite information may also be used.

(d) 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. The prospective permittee may submit a proposed mitigation plan with the PCN to expedite the process. 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. 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 is required to submit a compensatory mitigation proposal with the PCN, the proposal may be either conceptual or detailed. 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 days of receiving a complete PCN and determine whether the conceptual or specific 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 proposal 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 proposal that would reduce the adverse effects on the aquatic environment to the minimal level. When conceptual mitigation is included, or a mitigation plan is required under item (2) above, no work in waters of the US will occur until the District Engineer has approved a specific mitigation plan.

(e) Agency Coordination: 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.

For activities requiring notification to the District Engineer that result in the loss of greater than ½-acre of waters of the US, the District Engineer will provide immediately (e.g., via facsimile transmission, overnight mail, or other expeditious manner) a copy to the appropriate Federal or state offices (USFWS, state natural resource or water quality agency, EPA, State Historic Preservation Officer (SHPO), 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 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 notification that the resource agencies' concerns were considered. As required by Section 305(b)(4)(B) of the Magnuson-Stevens Fishery Conservation and Management Act, the District Engineer will provide a response to NMFS within 30 days of receipt of any Essential Fish Habitat conservation recommendations. Applicants are encouraged to provide the Corps multiple copies of notifications to expedite agency notification.

(f) Wetland Delineations: Wetland delineations must be prepared in accordance with the current method required by the Corps (For NWP 29 see paragraph (b)(9)(iii) for parcels less than ¼-acre in size). The permittee may ask the Corps to delineate the special aquatic site. There may be some delay if the Corps does the delineation. Furthermore, the 45-day period will not start until the wetland delineation has been completed and submitted to the Corps, where appropriate.

14. Compliance Certification. Every permittee who has received NWP verification from the Corps will submit a signed certification regarding the completed work and any required mitigation. The certification will be forwarded by the Corps with the authorization letter and will include: (a) A statement that the authorized work was done in accordance with the Corps 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.

15. 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 US authorized by the NWPs does not exceed the acreage limit of the NWP with the highest specified acreage limit (e.g. 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 US for the total project cannot exceed 1/3-acre).

16. Water Supply Intakes. No activity, including structures and work in navigable waters of the US or discharges of dredged or fill material, may occur in the proximity of a public water supply intake except where the activity is for repair of the public water supply intake structures or adjacent bank stabilization.

17. Shellfish Beds. No activity, including structures and work in navigable waters of the US or discharges of dredged or fill material, may occur in areas of concentrated shellfish populations, unless the activity is directly related to a shellfish harvesting activity authorized by NWP 4.

18. Suitable Material. No activity, including structures and work in navigable waters of the US or discharges of dredged or fill material, may consist of unsuitable material (e.g., trash, debris, car bodies, asphalt, etc.) and material used for construction or discharged must be free from toxic pollutants in toxic amounts (see Section 307 of the CWA).

19. Mitigation. The District Engineer will consider the factors discussed below when determining the acceptability of appropriate and practicable mitigation necessary to offset adverse effects on the aquatic environment that are more than minimal.

(a) The project must be designed and constructed to avoid and minimize adverse effects to waters of the US 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 impacts requiring a PCN, 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. Consistent with National policy, the District Engineer will establish a preference for restoration of wetlands as compensatory mitigation, with preservation used only in exceptional circumstances.

(d) Compensatory mitigation (i.e., replacement or substitution of aquatic resources for those impacted) will not be used to increase the acreage losses allowed by the acreage limits of some of the NWPs. For example, ¼-acre of wetlands cannot be created to change a ¾-acre loss of wetlands to a ½-acre loss associated with NWP 39 verification. However, ½-acre of created wetlands can be used to reduce the impacts of a ½-acre loss of wetlands to the minimum impact level in order to meet the minimal impact requirement associated with NWPs.

(e) To be practicable, the mitigation must be available and capable of being done considering costs, existing technology, and logistics in light of the overall project purposes. Examples of mitigation that may be appropriate and practicable include, but are not limited to: reducing the size of the project; establishing and maintaining wetland or upland vegetated buffers to protect open waters such as streams; and replacing losses of aquatic resource functions and values by creating, restoring, enhancing, or preserving similar functions and values, preferably in the same watershed.

(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., easements, deed restrictions) of vegetated buffers to open waters. In many cases, vegetated buffers will be the only compensatory mitigation required. Vegetated buffers should consist of native species. The width of the vegetated buffers required will address documented water quality or aquatic habitat loss concerns. Normally, the vegetated buffer will be 25 to 50 feet wide on each side of the stream, but the District Engineers may require slightly wider vegetated buffers to address documented water quality or habitat loss concerns. Where both wetlands and open waters exist on the project site, the Corps will determine the appropriate compensatory mitigation (e.g., stream buffers or wetlands compensation) based on what is best for the aquatic environment on a watershed basis. In cases where vegetated buffers 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 impacts.

(g) Compensatory mitigation proposals submitted with the "notification" may be either conceptual or detailed. If conceptual plans are approved under the verification, then the Corps will condition the verification to require detailed plans be submitted and approved by the Corps prior to construction of the authorized activity in waters of the US.

(h) Permittees may propose the use of mitigation banks, in-lieu fee arrangements or separate activity-specific compensatory mitigation. In all cases that require compensatory mitigation, the mitigation provisions will specify the party responsible for accomplishing and/or complying with the mitigation plan.

20. Spawning Areas. Activities, including structures and work in navigable waters of the US or discharges of dredged or fill material, in spawning areas during spawning seasons must be avoided to the maximum extent practicable. Activities that result in the physical destruction (e.g., excavate, fill, or smother downstream by substantial turbidity) of an important spawning area are not authorized.

21. Management of Water Flows. To the maximum extent practicable, the activity must be designed to maintain preconstruction downstream flow conditions (e.g., location, capacity, and flow rates). Furthermore, the activity must not permanently restrict or impede the passage of normal or expected high flows (unless the primary purpose of the fill is to impound waters) and the structure or discharge of dredged or fill material must withstand expected high flows. The activity must, to the maximum extent practicable, provide for retaining excess flows from the site, provide for maintaining surface flow rates from the site similar to preconstruction conditions, and provide for not increasing water flows from the project site, relocating water, or redirecting water flow beyond preconstruction conditions. Stream channelizing will be reduced to the minimal amount necessary, and the activity must, to the maximum extent practicable, reduce adverse effects such as flooding or erosion downstream and upstream of the project site, unless the activity is part of a larger system designed to manage water flows. In most cases, it will not be a requirement to conduct detailed studies and monitoring of water flow.

This condition is only applicable to projects that have the potential to affect waterflows. While appropriate measures must be taken, it is not necessary to conduct detailed studies to identify such measures or require monitoring to ensure their effectiveness. Normally, the Corps will defer to state and local authorities regarding management of water flow.

22. Adverse Effects From Impoundments. If the activity creates an impoundment of water, adverse effects to the aquatic system due to the acceleration of the passage of water, and/or the restricting its flow shall be minimized to the maximum extent practicable. This includes structures and work in navigable waters of the US, or discharges of dredged or fill material.

23. Waterfowl Breeding Areas. Activities, including structures and work in navigable waters of the US or discharges of dredged or fill material, into breeding areas for migratory waterfowl must be avoided to the maximum extent practicable.

24. Removal of Temporary Fills. Any temporary fills must be removed in their entirety and the affected areas returned to their preexisting elevation.

25. Designated Critical Resource Waters. Critical resource waters include, NOAA-designated marine sanctuaries, National Estuarine Research Reserves, National Wild and Scenic Rivers, critical habitat for Federally listed threatened and endangered species, coral reefs, 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) Except as noted below, discharges of dredged or fill material into waters of the US are not authorized by NWPs 7, 12, 14, 16, 17, 21, 29, 31, 35, 39, 40, 42, 43, and 44 for any activity within, or directly affecting, critical resource waters, including wetlands adjacent to such waters. Discharges of dredged or fill materials into waters of the US may be authorized by the above NWPs in National Wild and Scenic Rivers if the activity complies with General Condition 7. Further, such discharges may be authorized in designated critical habitat for Federally listed threatened or endangered species if the activity complies with General Condition 11 and the USFWS or the NMFS has concurred in a determination of compliance with this condition.

(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 13, 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.

26. Fills Within 100-Year Floodplains. For purposes of this General Condition, 100-year floodplains will be identified through the existing Federal Emergency Management Agency's (FEMA) Flood Insurance Rate Maps or FEMA-approved local floodplain maps.

(a) Discharges in Floodplain; Below Headwaters. Discharges of dredged or fill material into waters of the US within the mapped 100-year floodplain, below headwaters (i.e. five cfs), resulting in permanent above-grade fills, are not authorized by NWPs 39, 40, 42, 43, and 44.

(b) Discharges in Floodway; Above Headwaters. Discharges of dredged or fill material into waters of the US within the FEMA or locally mapped floodway, resulting in permanent above-grade fills, are not authorized by NWPs 39, 40, 42, and 44.

(c) The permittee must comply with any applicable FEMA-approved state or local floodplain management requirements.

27. Construction Period. For activities that have not been verified by the Corps and the project was commenced or under contract to commence by the expiration date of the NWP (or modification or revocation date), the work must be completed within 12-months after such date (including any modification that affects the project). For activities that have been verified and the project was commenced or under contract to commence within the verification period, the work must be completed by the date determined by the Corps. For projects that have been verified by the Corps, an extension of a Corps approved completion date may requested. This request must be submitted at least one month before the previously approved completion date.

Section 10 Condition (Colorado River only). The permitee 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.

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. NWPs do not authorize any injury to the property or rights of others.
5. NWPs do not authorize interference with any existing or proposed Federal project.

Definitions

Best Management Practices (BMPs): BMPs are policies, practices, procedures, or structures implemented to mitigate the adverse environmental effects on surface water quality resulting from development. BMPs are categorized as structural or non-structural. A BMP policy may affect the limits on a development.

Compensatory Mitigation: For purposes of Section 10/404, compensatory mitigation is the restoration, creation, enhancement, or in exceptional circumstances, preservation of wetlands and/or other aquatic resources for the purpose of compensating for unavoidable adverse impacts which remain after all appropriate and practicable avoidance and minimization has been achieved.

Creation: The establishment of a wetland or other aquatic resource where one did not formerly exist.

Enhancement: Activities conducted in existing wetlands or other aquatic resources that increase one or more aquatic functions.

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.

Farm Tract: A unit of contiguous land under one ownership that is operated as a farm or part of a farm.

Flood Fringe: That portion of the 100-year floodplain outside of the floodway (often referred to as "floodway fringe").

Floodway: The area regulated by Federal, state, or local requirements to provide for the discharge of the base flood so the cumulative increase in water surface elevation is no more than a designated amount (not to exceed one foot as set by the National Flood Insurance Program) within the 100-year floodplain.

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 US: Waters of the US that include the filled area and other waters that are permanently adversely affected by flooding, excavation, or drainage because of the regulated activity. Permanent adverse effects include permanent above-grade, at-grade, or below-grade

fills 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 US is the threshold measurement of the impact to existing 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 values. The loss of stream bed includes the linear feet of stream bed that is filled or excavated. Impacts to ephemeral streams are not included in the linear foot measurement of loss of stream bed for the purpose of determining compliance with the linear foot limits of NWPs 39, 40, 42, and 43. Waters of the US temporarily filled, flooded, excavated, or drained, but restored to preconstruction contours and elevations after construction, are not included in the measurement of loss of waters of the US.

Non-tidal Wetland: A non-tidal wetland is a wetland (i.e., a water of the US) 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: An area that, during a year with normal patterns of precipitation, has standing or flowing water for sufficient duration to establish an ordinary high water mark. 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. The term "open water" includes rivers, streams, lakes, and ponds. For the purposes of the NWPs, this term does not include ephemeral waters.

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.

Permanent Above-grade Fill: A discharge of dredged or fill material into waters of the US, including wetlands, that results in a substantial increase in ground elevation and permanently converts part or all of the waterbody to dry land. Structural fills authorized by NWPs 3, 25, 36, etc. are not included.

Preservation: The protection of ecologically important wetlands or other aquatic resources in perpetuity through the implementation of appropriate legal and physical mechanisms. Preservation may include protection of upland areas adjacent to wetlands as necessary to ensure protection and/or enhancement of the overall aquatic ecosystem.

Restoration: Re-establishment of wetland and/or other aquatic resource characteristics and function(s) at a site where they have ceased to exist, or exist in a substantially degraded state.

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 course 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.

Single and Complete Project: The term "single and complete project" is defined at 33 CFR 330.2(i) as the total project proposed or accomplished by one owner/developer or partnership or other association of owners/developers (see definition of independent utility). For linear projects, the "single and complete project" (i.e., a single and complete crossing) will apply to each crossing of a separate water of the US (i.e., a single waterbody) at that location. An exception is 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.

Stormwater Management: Stormwater management is the mechanism for controlling stormwater runoff for the purposes of reducing downstream erosion, water quality degradation, and flooding and mitigating the adverse effects of changes in land use on the aquatic environment.

Stormwater Management Facilities: Stormwater management facilities are those facilities, including but not limited to, stormwater retention and detention ponds and BMPs, which retain water for a period of time to control runoff and/or improve the quality (i.e., by reducing the concentration of nutrients, sediments, hazardous substances and other pollutants) of stormwater runoff.

Stream Bed: The substrate of the stream channel between the ordinary high water marks. The substrate may be bedrock or inorganic particles that range in size from clay to boulders. Wetlands contiguous to the stream bed, but outside of the ordinary high water marks, are not considered part of the stream bed.

Stream Channelization: The manipulation of a stream channel to increase the rate of water flow through the stream channel. Manipulation may include deepening, widening, straightening, armoring, or other activities that change the stream cross-section or other aspects of stream channel geometry to increase the rate of water flow through the stream channel. A channelized stream remains a water of the US, despite the modifications to increase the rate of water flow.

Tidal Wetland: A tidal wetland is a wetland (i.e., water of the US) that is inundated by tidal waters. The definitions of a wetland and tidal waters can be found at 33 CFR 328.3(b) and 33 CFR 328.3(f), respectively. Tidal waters rise and fall in a predictable and measurable rhythm or cycle due to the gravitational pulls of the moon and sun. Tidal waters end where the rise and fall of the water surface can no longer be practically measured in a predictable rhythm due to masking by other waters, wind, or other effects. Tidal wetlands are located channelward of the high tide line (i.e., spring high tide line) and are inundated by tidal waters two times per lunar month, during spring high tides.

Vegetated Buffer: A vegetated upland or wetland area next to rivers, streams, lakes, or other open waters which separates the open water from developed areas, including agricultural land. Vegetated buffers provide a variety of aquatic habitat functions and values (e.g., aquatic habitat for fish and other aquatic organisms, moderation of water temperature changes, and detritus for aquatic food webs) and help improve or maintain local water quality. A vegetated buffer can be established by maintaining an existing vegetated area or planting native trees, shrubs, and herbaceous plants on land next to open-waters. Mowed lawns are not considered vegetated buffers because they provide little or no aquatic habitat functions and values. The establishment and maintenance of vegetated buffers is a method of compensatory mitigation that can be used in conjunction with the restoration, creation, enhancement, or preservation of aquatic habitats to ensure that activities authorized by NWPs result in minimal adverse effects to the aquatic environment. (See General Condition 19.)

Vegetated Shallows: Vegetated shallows are special aquatic sites under the 404(b)(1) Guidelines. They are areas that are permanently inundated and under normal circumstances have rooted aquatic vegetation, such as seagrasses in marine and estuarine systems and a variety of vascular rooted plants in freshwater systems.

Waterbody: A waterbody is any area that in a normal year has water flowing or standing above ground to the extent that evidence of an ordinary high water mark is established. Wetlands contiguous to the waterbody are considered part of the waterbody.

LOS ANGELES DISTRICT
U.S. ARMY CORPS OF ENGINEERS

CERTIFICATION OF COMPLIANCE WITH DEPARTMENT OF THE ARMY NATIONWIDE PERMIT

Permit Number: 2002-01154-RWF

Date of Issuance: October 7, 2002

Name of Permittee:

Melvin H. Yazzie
The Navajo Nation
Shiprock AML Program
P.O. Box 3605
Shiprock, New Mexico 87420

Upon completion of the activity authorized by this permit, sign this certification and return it with an original signature to the following address:

U.S. Army Corps of Engineers
ATTENTION: Regulatory Branch (2002-01154-RWF)
3636 North Central Avenue Suite 760
Phoenix, Arizona 85012-1936

Please note that your permitted activity is subject to a compliance inspection by a Corps of Engineers' representative. If you fail to comply with this Nationwide permit you may be subject to permit suspension, modification, or revocation.

I hereby certify that the work authorized by the above referenced Nationwide permit has been completed in accordance with the terms and conditions of said permit.

_____ _____

Signature of Permittee Date

Enclosure 2

DEPARTMENT OF THE ARMY
LOS ANGELES DISTRICT, CORPS OF ENGINEERS
ARIZONA-NEVADA AREA OFFICE
3636 NORTH CENTRAL AVENUE, SUITE 760
PHOENIX, ARIZONA 85012-1936

REPLY TO

July 9, 2002

Office of the Chief
Regulatory Branch

Melvin H. Yazzie
The Navajo Nation
Shiprock AML Program
P.O. Box 3605
Shiprock, New Mexico 87420

File Number: 2002-01158-RWF

Dear Mr. Yazzie:

Reference is made to the application dated June 21, 2002 accompanying your letter of the same date in which you inquired as to whether or not a Section 404 permit is required from the U.S. Army Corps of Engineers to access the Sweetwater 2 AML project site (NA0504) by utilizing the existing unimproved road crossing of the unnamed wash in Seklagaidesa Canyon at (T39N, R28E), on the Navajo Nation, Apache County, Arizona. According to the information contained in your application, there will be no grading, road improvements or othert activities that may result in a discharge of dredged and/ or fill material into the unnamed wash in Seklagaidesa Canyon, necessary to access the Sweetwater 2 AML (NA0504) project site. Additionally, we understand that there will not be any activities performed in conjunction with the actual mine remediation activitiies that may result in a discharge of dredged or fill material into any water of the United States.

Based on the information furnished in your application and letter we have determined that, although your proposed project area does include jurisdictional waters, your proposed project does not discharge dredged or fill material into a water of the United States or an adjacent wetland. Therefore, the project is not subject to our jurisdiction under Section 404 of the Clean Water Act, and no Section 404 permit is required from our office.

The receipt of your application and letter is appreciated. If you have questions, please contact Ron Fowler at (602) 640-5385 x 226.

Sincerely,

Cindy Lester

Cindy Lester
Chief, Arizona Section
Regulatory Branch

DEPARTMENT OF THE ARMY
LOS ANGELES DISTRICT, CORPS OF ENGINEERS
ARIZONA-NEVADA AREA OFFICE
3636 NORTH CENTRAL AVENUE, SUITE 760
PHOENIX, ARIZONA 85012-1936

REPLY TO

Office of the Chief
Regulatory Branch

July 9, 2002

Melvin H. Yazzie
The Navajo Nation
Shiprock AML Program
P.O. Box 3605
Shiprock, New Mexico 87420

File Number: 2002-01157-RWF

Dear Mr. Yazzie:

Reference is made to the application dated June 19, 2002 accompanying your June 21, 2002 letter which you inquired as to whether or not a Section 404 permit is required from the U.S. Army Corps of Engineers to access the Sweetwater 2 AML project site (NA0518) by utilizing the existing unimproved road crossing of Tsitah Wash at (T40N, R29E), the Navajo Nation, Apache County, Arizona. According to the information contained in your application, there will be no grading, road improvements or other activities that may result in a discharge of dredged and/ or fill material into Tsitah Wash necessary to access the Sweetwater 2 AML (NA0518) project site. Additionally, we understand that there will not be any activities performed in conjunction with the actual mine remediation activitiies that may result in a discharge of dredged or fill material into any water of the United States.

Based on the information furnished in your application and letter (referenced above), we have determined that, although your proposed project area does include jurisdictional waters, your proposed project does not discharge dredged or fill material into a water of the United States or an adjacent wetland. Therefore, the project is not subject to our jurisdiction under Section 404 of the Clean Water Act, and no Section 404 permit is required from our office.

The receipt of your application and letter is appreciated. If you have questions, please contact Ron Fowler at (602) 640-5385 x 226.

Sincerely,

Cindy Lester

Cindy Lester
Chief, Arizona Section
Regulatory Branch

DEPARTMENT OF THE ARMY
LOS ANGELES DISTRICT, CORPS OF ENGINEERS
ARIZONA-NEVADA AREA OFFICE
3636 NORTH CENTRAL AVENUE, SUITE 760
PHOENIX, ARIZONA 85012-1936

REPLY TO

August 5, 2002

Office of the Chief
Regulatory Branch

Melvin H. Yazzie
The Navajo Nation
Shiprock AML Program
P.O. Box 3605
Shiprock, New Mexico 87420

File Number: 2002-01155-RWF

Dear Mr. Yazzie:

Reference is made to your application dated June 21, 2002 and subsequent letter dated July 29, 2002 in which you inquired as to whether or not a Section 404 permit is required from the U.S. Army Corps of Engineers to discharge only incidental fallback of dredged material during the course of obtaining approximately 1,500 cubic yards of borrow material from in and near the unnamed wash at (T24N, R22E), on the Navajo Nation, Navajo County, Arizona. The borrow material will be used to perform remediation activities at the Bidahochi 1 AML abandon uranium mine site (NA0751).

We understand from your application and letter (referenced above) that the proposed project will involve the excavation of material within the Clean Water Act jurisdictional boundaries, placing the excavated materials into dump trucks and disposing of this material immediately at the upland oriented Bidahochi 1 AML abandoned uranium mine site. We understand that you have no intentions of stockpiling, road construction, or performing any other activity constituting a discharge of dredged or fill material into waters of the United States while obtaining the required borrow material and accomplishing the remediation activities at the abandoned unanium mine.

The Corps believes that the activities outlined in your letter are no longer subject to regulation by the Corps as a result of the recent decision by the U.S. Court of Appeals for the District of Columbia Circuit. While agreeing with your basic determinations that there will be no discharges into the Corps' jurisdictional area, we are compelled to reaffirm your understanding of "incidental fallback" of dredged material within waters of the United States. The term "incidental fallback" of dredged material as it applies to Section 404 (Clean Water Act) means **only** the incidental soil movement from excavation, such as the soil that is disturbed when dirt is shoveled, or the back-spill that comes off a bucket and falls into the same place from which it was removed. The term "incidental fallback" of dredged material **does not** include soil movements away from the original site, sidecasting which involves placement of soil alongside a ditch, and sloppy disposal practices involving significant discharges into waters of the United States.

DEPARTMENT OF THE ARMY
LOS ANGELES DISTRICT, CORPS OF ENGINEERS
ARIZONA-NEVADA AREA OFFICE
3636 NORTH CENTRAL AVENUE, SUITE 760
PHOENIX, ARIZONA 85012-1936

REPLY TO

August 2, 2002

Office of the Chief
Regulatory Branch

Melvin H. Yazzie
The Navajo Nation
Shiprock AML Program
P.O. Box 3605
Shiprock, New Mexico 87420

(NA-0164)

File Number: 2002-01163-RWF

Dear Mr. Yazzie:

Reference is made to your application of June 21, 2002 and letter of clarification dated July 29, 2002 inquiring whether or not a Section 404 permit is required from the U.S. Army Corps of Engineers to excavate approximately 1,000 of material from an upland location, and subsequently utilizing this material to perform remediation activities at the Cameron 6 AML abandoned uranium mine site at (Section 36, T28N, R9E), on the Navajo Nation, Coconino County, Arizona.

Based on the information furnished in your application and letter (referenced above), we have determined that your proposed project is not subject to our jurisdiction under Section 404 of the Clean Water Act. Since there are no waters of the United States within the aforementioned proposed project area, no Section 404 permit is required from our office.

The receipt of your application and letter is appreciated. If you have questions, please contact Ron Fowler at (602) 640-5385 x 226.

Sincerely,

Cindy Lester

Cindy Lester
Chief, Arizona Section
Regulatory Branch

DEPARTMENT OF THE ARMY
LOS ANGELES DISTRICT, CORPS OF ENGINEERS
ARIZONA-NEVADA AREA OFFICE
3636 NORTH CENTRAL AVENUE, SUITE 760
PHOENIX, ARIZONA 85012-1936

REPLY TO

August 1, 2002

Office of the Chief
Regulatory Branch

Melvin H. Yazzie
The Navajo Nation
Shiprock AML Program
P.O. Box 3605
Shiprock, New Mexico 87420

File Number: 2002-01154-RWF

(NA-0175)

Dear Mr. Yazzie:

The Corps of Engineers has reviewed your application, dated June 19, 2002 and subsequent project revisions provided under cover letter dated July 29, 2002, and have determined that your proposal to discharge dredged and/or fill material in the unnamed wash for the purpose of repairing and reinforcing the damaged levee at (T27N, R10E), on the Navajo Nation, Coconino County, Arizona complies with the terms of Nationwide Permit 3 " Maintenance."

To comply with Nationwide Permit General Condition 9 (Water Quality), your proposed activity must be reviewed by the U. S. Environmental Protection Agency to determine if it complies with water quality standards. All individual permits and all nationwide permits authorizations require Section 401(a)(1) water quality certification. The Corps of Engineers cannot issue the required nationwide permit authorization until the U. S. Environmental Protection Agency completes its review process and determines that the proposed activity will not result in a violation of water quality standards.

The water quality review process usually requires information beyond that required by the Corps of Engineers. Therefore, to expedite the processing of your water quality certification, it would be to your advantage to contact the Wetlands Regulatory Office of the U.S. Environmental Protection Agency at (415) 972-3483 or by writing:

U. S. Environmental Protection Agency
Wetlands Regulatory Office (WTR-8)
ATTN: Jason A. Brush
75 Hawthorne Street
San Francisco, California 94105

Thank you for your compliance with our regulatory program. If you have questions, please contact Ron Fowler at (602) 640-5385 x 226.

Sincerely,

Cindy Lester

Cindy Lester
Chief, Arizona Section
Regulatory Branch

DEPARTMENT OF THE ARMY
LOS ANGELES DISTRICT, CORPS OF ENGINEERS
ARIZONA-NEVADA AREA OFFICE
3636 NORTH CENTRAL AVENUE, SUITE 760
PHOENIX, ARIZONA 85012-1936

REPLY TO

August 27, 2002

Office of the Chief
Regulatory Branch

Melvin H. Yazzie
The Navajo Nation
Shiprock AML Program
P.O. Box 3605
Shiprock, New Mexico 87420

File Number: 2002-01155-RWF

Dear Mr. Yazzie:

Reference is made to your letter of August 9, 2002 amending your project plans outlined in your letter of July 29, 2002. Your July 29, 2002 letter advised the Corps of Engineers that you intend to use an existing stock pond as an borrow source for obtaining materials to be utilized in reclaiming the Bidahochi 1 abandoned uranium mine site (NA0751). You informed the Corps that the material will be obtained in a manner that will result in only the discharge of "incidental fallback" of dredged material into the Clean Water Act jurisdictional area of the stock pond. We responded to your July 29, 2002 letter by letter dated August 5, 2002 stating that the Corps does not regulate the discharge of "incidental fallback" of dredged material into waters of the United States.

We now understand from your August 9, 2002 letter that an upland oriented borrow source will be utilized to obtain the necessary materials for accomplishing the abandoned uranium mine remediation activities and that there will be no discharges of dredged or fill materials into any Clean Water Act jurisdictional areas.

Based on the new information furnished in your August 9, 2002 letter (referenced above), we have determined that your proposed project is not subject to our jurisdiction under Section 404 of the Clean Water Act. Since there are no waters of the United States within the aforementioned proposed project area, no Section 404 permit is required from our office.

Thank you for your compliance and support of our regulatory program. If you have questions, please contact Ron Fowler at (602) 640-5385 x 226.

Sincerely,

Cindy Lester

Cindy Lester
Chief, Arizona Section
Regulatory Branch

DEPARTMENT OF THE ARMY
LOS ANGELES DISTRICT, CORPS OF ENGINEERS
ARIZONA-NEVADA AREA OFFICE
3636 NORTH CENTRAL AVENUE, SUITE 760
PHOENIX, ARIZONA 85012-1936

REPLY TO

Office of the Chief
Regulatory Branch

July 9, 2002

Melvin H. Yazzie
The Navajo Nation
Shiprock AML Program
P.O. Box 3605
Shiprock, New Mexico 87420

File Number: 2002-01153-RWF

Dear Mr. Yazzie:

Reference is made to your application dated June 19, 2002 accompanying your letter of June 21, 2002 in which you inquired as to whether or not a Section 404 permit is required from the U.S. Army Corps of Engineers to access the Cameron 6 AML project site (NA0116) by utilizing the existing unimproved road crossing of the Moenkopi Wash at (T30N, R9E), on the Navajo Nation, Coconino County, Arizona. According to the information contained in your application, there will be no grading, improvements, or other activities that may result in a discharge of dredged and/ or fill material into Moenkopi Wash necessary in order to access the Cameron 6 AML (NA0116) project site. Additionally, we understand that there will be no discharges of dredged and/ or fill material into any water of the United States performed in conjunction with the actual site remediation activities at the Cameron 6 AML (NA0116) project site.

Based on the information furnished in your application and letter (referenced above), we have determined that, although your proposed project area does include jurisdictional waters, your proposed project does not discharge dredged or fill material into a water of the United States or an adjacent wetland. Therefore, the project is not subject to our jurisdiction under Section 404 of the Clean Water Act, and no Section 404 permit is required from our office.

The receipt of your application and letter is appreciated. If you have questions, please contact Ron Fowler at (602) 640-5385 x 226.

Sincerely,

Cindy Lester

Cindy Lester
Chief, Arizona Section
Regulatory Branch