UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105-3901

MAR 26 2009

The Honorable Joe Shirley, Jr
President
Navajo Nation
P.O. Box 9000
Window Rock, Arizona 865515

Dear President Shirley:

The Environmental Protection Agency (EPA) has completed a review of the 2007 amendments to the Navajo Nation's water quality standards (NNSWQS) adopted by the Resources Committee of the Navajo Nation Council on May 13, 2008, by Resolution No. RCMY-25-08. On July 30, 2008, these amendments were certified by the Navajo Nation Attorney General attesting that proper rulemaking procedures were followed in the passage of the NNSWQS and that these standards are legally enforceable under Navajo law. On August 22, S. Deb Misra, Director, Surface and Ground Water Protection Department, Navajo Nation Environmental Protection Agency, transmitted these water quality standards materials to EPA for approval. Unfortunately, these materials lost their way, and substitute copies reached my office in early December 2008. I am pleased to inform you that we are approving these standards amendments, in part subject to the results of consultation under section 7(a)(2) of the Endangered Species Act (ESA) with the U.S. Fish and Wildlife Service (FWS). This action is based on the determination that these water quality standards are consistent with the protection of human health and welfare, protection of water quality, and the purposes of the Clean Water Act (CWA).

The Navajo Nation submitted water quality standards (WQS) to EPA on November 22, 1999, as part of its CWA eligibility application. Pursuant to Section 7(a)(2) of the Endangered Species Act (ESA) and 50 CFR Part 402, EPA found that the approval of the standards will be unlikely to adversely affect federally-listed species. This finding covered the waters of the Navajo Nation, which is the largest Indian nation in the United States. (To be consistent with the Navajo Nation's TAS approval, EPA is approving the Navajo Nation WQS to apply specifically to those waters for which the Navajo Nation has received TAS approval.) EPA initiated formal consultation with the U. S. Fish and Wildlife Service (FWS) on August 28, 2000, regarding our anticipated action on the 1999 standards. On December 26, 2001, the FWS transmitted its biological opinion with the determination that an EPA action to approve the standards "is unlikely to jeopardize" the threatened or endangered species identified in the Navajo Nation. On July 14, 2005, and again in December 2008, it was confirmed that no new species have been listed nor critical habitat designated that would alter the conclusions of its 2001 biological

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opinion. Accordingly, the Service's "Not likely to jeopardize listed species" determination remains applicable to EPA's approval of the Navajo Nation WQS.

The 2007 amendments mainly update human health protection of Navajo Nation waters and, therefore, are not subject to further ESA consultation. Updates were made to cadmium criteria based on EPA's revised national CWA 304(a) criteria which improve protection of aquatic and wildlife over the protection provided in the earlier standards and were subject to the 2001 biological opinion.

Pursuant to the August 2002 Memorandum of Agreement Between the Environmental Protection Agency, Fish and Wildlife Service, and National Marine Fisheries Service Regarding Enhanced Coordination Under the Clean Water Act and Endangered Species Act (MOA, EPA-823-R-02-003), EPA is consulting with FWS and NMFS on national CWA 304(a) criteria, including nutrient criteria. The MOA provides that, during the national CWA 304(a) consultations, EPA may approve state and tribal water quality criteria which are identical or more stringent than the existing national CWA 304(a) criteria, pending the results of the consultations, and that such action will be covered by the national consultation. At the same time, we are asking the Navajo Nation to clarify the implementation of these nutrient criteria to assure full protection of the designated uses of their waters. In the interim, we will assume the more stringent end of the adopted ranges will be applied in implementing the nutrient criteria.

The water quality standards regulations at 40 CFR 131.20 require the Navajo Nation to hold public hearings at least once every three years for the purpose of reviewing the water quality standards and, as appropriate, modifying them.

We look forward to working jointly with the Navajo Nation on future reviews of your standards. If you have any questions concerning the current standards approval, please contact Janet Hashimoto of the Standards and TMDL Office at (415) 972-3452, or Phil Woods of her staff at (415) 972-3405. Congratulations, & thank you.

Sincerely,

Alexis Strauss 26 March 2009
Alexis Strauss
Director, Water Division

cc: S. Deb Misra, P. E., Director, Surface & Ground Water Protection Department, NN EPA
Patrick Antonio, NN EPA Water Quality/NNPDES Program
Eric Rich, Senior Hydrologist, NN EPA NPDES/Water Quality Program
Steven Spangle, U.S. Fish and Wildlife Service, Arizona
Caroline Whitehead/Trish Rider, (EPA Headquarters, Mail Code 4301)

NPDES permits office. The proposed draft renewed permit and fact sheet is available on EPA's website at: https://www.epa.gov/npdes-permits/aps-four-corners-power-plant-san-juan-county-nm-nn0000019.

I am in this email formally requesting that EPA either issue a Clean Water Act Section 401 certification for this permit or, in the alternative, formally waive certification. The Four Corners Power Plant is entirely within the boundaries of the Navajo Nation. Although the Navajo Nation has received recognition for "treatment as a state" ("TAS") for both its water quality standards program and for Clean Water Act Section 401 certifications, EPA explicitly excluded the area leased for the Four Corners Power Plant site from the TAS recognition. *See* Decision Document: Approval of the Navajo Nation Application for Treatment in the Same Manner as a State for Sections 303(c) and 401 of the Clean Water Act, January 20, 2006, at page 2. See Administrative Record located in the NPDES permits office. Therefore, EPA is the certification authority for purposes of this permit renewal.

As we have discussed, and as is demonstrated in the referenced application, draft permit, and draft fact sheet, we believe that the operation of the Four Corners Power Plant pursuant to the terms of the proposed renewed permit will not result in a discharge to navigable waters that would violate Clean Water Act Sections 301 through 303 or Sections 306 and 307. Accordingly, we believe that either issuing the certification under Clean Water Act Section 401 or waiving that certification is appropriate.

Thanks,

Gary Sheth
NPDES Permits Section (WTR-2-3)
Water Division
USEPA Region 9
75 Hawthorne Street
San Francisco, CA 94105
Tel: 415.972.3516
Fax: 415.947.3549

Sheth, Gary

From: Goldmann, Elizabeth
Sent: Wednesday, May 30, 2018 11:55 AM
To: Sheth, Gary
Cc: Hagler, Tom; Smith, DavidW
Subject: RE: CWA 401 Waiver for APS Four Corners Power Plant NPDES Permit (NN0000019) - # 0443

Dear Gary,

USEPA Region IX (EPA) is in receipt of your request dated May 29, 2018 for a Section 401 of the Clean Water Act (CWA) water quality certification or waiver for the Arizona Public Service Company (APS) Four Corners Power Plant National Pollutant Discharge Elimination System Program (NPDES) permit. The NPDES permit authorizes the discharge of treated wastewater from the APS Four Corner Power Plant to No Name Wash. The project is located on Navajo Nation tribal lands in San Juan County approximately 20 miles southwest of Farmington, New Mexico.

EPA waives water quality certification pursuant to Section 401 of the CWA. The waiver is contingent upon the execution of the work as described in the NPDES permit and according to the terms and conditions of the permit administered by the EPA. APS and its contractors must employ all available and practicable best management practices to protect public health and the environment.

If there are substantive changes to the project that would change its standing in terms of NPDES permit authorization, or affect water quality to a degree not disclosed, please notify our office immediately.

If you have any further questions regarding this waiver, please contact me at (415) 972-3398.

Sincerely,

Elizabeth Goldmann
Physical Scientist
Wetlands Section
EPA Region IX
(415) 972-3398

From: Sheth, Gary
Sent: Tuesday, May 29, 2018 1:48 PM
To: Goldmann, Elizabeth <Goldmann.Elizabeth@epa.gov>
Cc: Hagler, Tom <Hagler.Tom@epa.gov>; Smith, DavidW <Smith.DavidW@epa.gov>
Subject: 401 Cert or Waiver for APS Four Corners Power Plant NPDES Permit (NN0000019)

Hi Elizabeth,

EPA has been working with Arizona Public Service Company to renew the NPDES permit for the Four Corners Power Plant located near Fruitland, New Mexico. The application for the permit renewal was received first in 2005 and an updated/revised application was submitted in 2013. Both are available in the Administrative Record located in the