

SECTION 8

COMPLIANCE WITH AIR AND WATER QUALITY LAWS AND REGULATIONS

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SECTION 8

COMPLIANCE WITH AIR AND WATER QUALITY LAWS AND REGULATIONS

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SECTION 8

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SECTION 8

COMPLIANCE WITH AIR AND WATER QUALITY LAWS AND REGULATIONS

LIST OF REVISIONS DURING PERMIT TERM

REV.		DATE
NUMBER	REVISION DESCRIPTION	APPROVED

SECTION 8 COMPLIANCE WITH AIR AND WATER QUALITY LAWS AND REGULATIONS

8.1 Effluent Limitations and NPDES Compliance

Navajo Transitional Energy Company (NTEC) complies with the Clean Water Act (CWA) National Pollutant Discharge Elimination System (NPDES) regulations under 40 CFR Part 434 for point source discharges and 40 CFR Part 122 for storm water discharges. NTEC will utilize an individual NPDES permit No. NN0028193, and Multi-Sector General Permit (MSGP) No. AZR051299 from the appropriate agencies. The Navajo Nation Environmental Protection Agency (NNEPA) has obtained primacy for processing applications for certification of compliance with water quality requirements and standards for projects that are subject to federal agency permits or licenses pursuant to Section 401 of the CWA. NTEC will obtain the appropriate 401 certifications as necessary. NTEC utilizes engineered structures and other best management practices (BMPs) to comply with NPDES effluent limitations for point source and storm water discharges. Applicable design criteria and certified drawings for engineered structures and BMPs are found in Part 4 Sediment Control Plan within this permit and in the Stormwater Pollution Prevention Plan (SWPPP). Information identifying storm water discharge locations are maintained onsite at Navajo Mine.

NTEC maintains copies of the current NPDES permit and associated NNEPA 401 certification onsite. Applicable permits, certifications, and plans are available for review by the regulatory authority upon request.

8.2 Wetlands and Protection of Navigable Waters

NTEC requested a determination of Department of the Army permit requirements for Area 4 South and 5 of the No Name Permit. The assigned Action No. is SPA-2025-00297. Based on the information provided, the United States Army Corps of Engineers determined that a Department of the Army permit is not required since the project would not result in the discharge of dredged/fill material into waters of the United States (Appendix 1). Based on the latest definition of WOTUS, there are no waterways within the permit boundary considered WOTUS and therefore no Section 404 individual permit is necessary. There are no wetlands in the permit boundary.

8.3 Spill Prevention, Control, and Countermeasure Plan

NTEC complies with the Clean Water Act, 40 CFR Part 112, Spill Prevention Control and Countermeasure Requirements and other applicable federal, state, and tribal water quality laws and regulations for spill prevention and control of oil and related materials. Bulk fuel, oil, and other lubricants are stored in designated locations within the mine facility. The storage locations are designed with secondary storage to capture and/or prevent any leaks or spills. All storage locations are regularly maintained and inspected. The Spill Prevention, Control, and Countermeasures Plan (SPCC) will be filed onsite in accordance with 40 CFR Part 112 and available for review by the regulatory authority upon request.

8.4 Waste Handling and Disposal

8.4.1 Used Oil Handling

NTEC complies with the Resource Conservation and Recovery Act (RCRA), 40 CFR Part 279, and other applicable federal, state, and tribal regulations regarding handling and disposal of used oil. Used oil is collected on site in approved storage areas with secondary containment then periodically transported offsite to an approved used oil recycling facility. A description of the on-site remediation of soil containing petroleum products from spills can be found in Section 20 Mining Operations. Records of used oil testing and shipments will be maintained onsite in accordance with 40 CFR Part 279 and available for review by the regulatory authority upon request.

8.4.2 Universal Waste Handling

NTEC complies with RCRA, 40 CFR Part 273, and other applicable federal, state, and tribal regulations for handling and disposal of universal wastes. Materials classified as universal waste, fully defined in 40 CFR 273.9, include waste such as batteries, lamps, and mercury-containing equipment. Universal wastes are stored onsite in a manner that prevents releases to the environment for a period of no longer than one year from the date of generation, then transported to an offsite, permitted RCRA facility for recycling, treatment, or disposal. All shipment records or bills of lading are maintained onsite in accordance with 40 CFR Part 273 and available for review by the regulatory authority upon request.

8.4.3 Hazardous Waste Handling

NTEC complies with RCRA, 40 CFR Parts 260-299, and other applicable federal, state, and tribal laws and regulations for handling and disposal of hazardous waste. Materials classified as hazardous waste by the U.S. Environmental Protection Agency (EPA) are accumulated, managed, and disposed of following the applicable U.S. and Navajo Nation EPA, Department of Transportation (DOT), and Office of Safety and Hazard Administration regulations. Hazardous wastes are accumulated in designated temporary or satellite accumulation areas then shipped offsite by a RCRA-permitted transportation, storage and disposal facility for recycling, treatment, or disposal. Hazardous waste manifests and other hazardous waste management records are maintained onsite in compliance with 40 CFR Part 262 and are available for review by the regulatory authority upon request.

8.4.4 Polychlorinated Biphenyls Handling

NTEC does not currently utilize polychlorinated biphenyls (PCBs) for mining activities or mining-related mobile equipment. Should the case arise when use of PCBs is necessary or PCBs are found in old transformers, NTEC will comply with the Toxic Substances Control Act, 40 CFR Part 761, and other applicable federal, state, and tribal regulations for handling and disposal of PCBs.

8.4.5 Solid Waste Disposal Act Compliance

NTEC will comply with the Solid Waste Disposal Act, 40 CFR Parts 257 and 258, and other applicable federal, state, and tribal laws and regulations for handling and disposal non-hazardous solid wastes. Municipal trash and other non-hazardous solid wastes from mine operations will be accumulated in dumpsters located around the site and transported to a permitted landfill by an approved contractor.

Incidental coal spillage materials are regularly cleaned up around the mine and coal plant, then placed in the mine pit. Material will be placed along the bottom of a pit adjacent to the wedge or spoil side. Coal not meeting contract specifications is disposed of in the pit.

8.5 Clean Air Act Compliance

NTEC complies with all applicable requirements of the federal Clean Air Act (CCA) and the Navajo Nation Air Pollution Prevention and Control Act.

Emissions are minimized by various control measures, as described in Part 5 (Reclamation Plan) and Part 6 (Environmental Protection, Probable Hydrologic Consequences, and Monitoring). Control measures include, but are not limited to, periodic watering of frequently traveled roads, revegetation as soon after regrading as possible, and efficient topsoil storage procedures to minimize wind erosion. In all mining activities, mine personnel will make an effort to minimize fugitive dust emissions and ensure that total suspended particulate standards are not violated by NTEC. The Air Quality Monitoring Plan can be found in Part 6 (Environmental Protection, Probable Hydrologic Consequences, and Monitoring), Section 42 (Monitoring, Maintenance, Inspections and Examinations).

Appendix 8.A

US Army Corps of Engineers Jurisdictional Determination



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, ALBUQUERQUE DISTRICT
4101 JEFFERSON PLAZA, NE
ALBUQUERQUE, NM 87109

CESPA-RD

08/13/2025

MEMORANDUM FOR RECORD

SUBJECT: US Army Corps of Engineers (Corps) Approved Jurisdictional Determination in accordance with the "Revised Definition of 'Waters of the United States'"; (88 FR 3004 (January 18, 2023) as amended by the "Revised Definition of 'Waters of the United States'; Conforming" (8 September 2023),¹ SPA-2025-297

BACKGROUND. An Approved Jurisdictional Determination (AJD) is a Corps document stating the presence or absence of waters of the United States on a parcel or a written statement and map identifying the limits of waters of the United States on a parcel. AJDs are clearly designated appealable actions and will include a basis of JD with the document.² AJDs are case-specific and are typically made in response to a request. AJDs are valid for a period of five years unless new information warrants revision of the determination before the expiration date or a District Engineer has identified, after public notice and comment, that specific geographic areas with rapidly changing environmental conditions merit re-verification on a more frequent basis.³

On January 18, 2023, the Environmental Protection Agency (EPA) and the Department of the Army ("the agencies") published the "Revised Definition of 'Waters of the United States,'" 88 FR 3004 (January 18, 2023) ("2023 Rule"). On September 8, 2023, the agencies published the "Revised Definition of 'Waters of the United States'; Conforming", which amended the 2023 Rule to conform to the 2023 Supreme Court decision in *Sackett v. EPA*, 598 U.S., 143 S. Ct. 1322 (2023) ("*Sackett*").

This Memorandum for Record (MFR) constitutes the basis of jurisdiction for a Corps AJD as defined in 33 CFR §331.2. For the purposes of this AJD, we have relied on Section 10 of the Rivers and Harbors Act of 1899 (RHA),⁴ the 2023 Rule as amended, as well as other applicable guidance, relevant case law, and longstanding practice in evaluating jurisdiction.

1. SUMMARY OF CONCLUSIONS.

¹ While the Revised Definition of "Waters of the United States"; Conforming had no effect on some categories of waters covered under the CWA, and no effect on any waters covered under RHA, all categories are included in this Memorandum for Record for efficiency.

² 33 CFR 331.2.

³ Regulatory Guidance Letter 05-02.

⁴ USACE has authority under both Section 9 and Section 10 of the Rivers and Harbors Act of 1899 but for convenience, in this MFR, jurisdiction under RHA will be referred to as Section 10.

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- a. Provide a list of each individual feature within the review area and the jurisdictional status of each one (i.e., identify whether each feature is/is not a water of the United States and/or a navigable water of the United States).

Feature Name	Feature Type	WOTUS Status
Pinabete Arroyo	Ephemeral arroyo/stream	Not a WOTUS
No Name Arroyo	Ephemeral arroyo/stream	Not a WOTUS
Ephemeral Pond 1	Pond	Not a WOTUS
Ephemeral Pond 2	Pond	Not a WOTUS
Ephemeral Pond 3	Pond	Not a WOTUS
Ephemeral Pond 4	Pond	Not a WOTUS
Ephemeral Pond 5	Pond	Not a WOTUS

2. REFERENCES.

- a. "Revised Definition of 'Waters of the United States,'" 88 FR 3004 (January 18, 2023) ("2023 Rule")
- b. "Revised Definition of 'Waters of the United States'; Conforming" 88 FR 61964 (September 8, 2023)
- c. *Sackett v. EPA*, 598 U.S. 651, 143 S. Ct. 1322 (2023)

3. REVIEW AREA. The review area encompasses approximately 13,006 acres of the Navajo Mine lease area, located on the Navajo Nation in San Juan County, New

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Mexico. The survey area includes portions of multiple sections within Townships 25 and 26 North, Ranges 15 and 16 West, New Mexico Principal Meridian. The landscape is characteristic of Great Basin desert-scrub habitat, a cold desert ecosystem dominated by shrubs with a sparse understory of grasses and forbs, interspersed with extensive areas of bare, alkaline soils. Soils throughout the area are non-hydric, and land cover is largely undeveloped desert terrain.

4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), THE TERRITORIAL SEAS, OR INTERSTATE WATER TO WHICH THE AQUATIC RESOURCE IS CONNECTED None of the identified aquatic features are connected to a Traditional Navigable Water (TNW).
5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, THE TERRITORIAL SEAS, OR INTERSTATE WATER. None of the identified aquatic features have a flow path to a Traditional Navigable Water (TNW), territorial sea, or interstate water.
6. SECTION 10 JURISDICTIONAL WATERS⁵: Describe aquatic resources or other features within the review area determined to be jurisdictional in accordance with Section 10 of the Rivers and Harbors Act of 1899. Include the size of each aquatic resource or other feature within the review area and how it was determined to be jurisdictional in accordance with Section 10.⁶ N/A
7. SECTION 404 JURISDICTIONAL WATERS: Describe the aquatic resources within the review area that were found to meet the definition of waters of the United States in accordance with the 2023 Rule as amended, consistent with the Supreme Court's decision in *Sackett*. List each aquatic resource separately, by name, consistent with the naming convention used in section 1, above. Include a rationale for each aquatic resource, supporting that the aquatic resource meets the relevant category of "waters of the United States" in the 2023 Rule as amended. The rationale should also include a written description of, or reference to a map in the administrative record that shows, the lateral limits of jurisdiction for each aquatic resource, including how that limit was determined, and incorporate relevant references used.

⁵ 33 CFR 329.9(a) A waterbody which was navigable in its natural or improved state, or which was susceptible of reasonable improvement (as discussed in § 329.8(b) of this part) retains its character as "navigable in law" even though it is not presently used for commerce or is presently incapable of such use because of changed conditions or the presence of obstructions.

⁶ This MFR is not to be used to make a report of findings to support a determination that the water is a navigable water of the United States. The district must follow the procedures outlined in 33 CFR part 329.14 to make a determination that water is a navigable water of the United States subject to Section 10 of the RHA.

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Include the size of each aquatic resource in acres or linear feet and attach and reference related figures as needed.

- a. Traditional Navigable Waters (TNWs) (a)(1)(i): N/A
- b. The Territorial Seas (a)(1)(ii): N/A
- c. Interstate Waters (a)(1)(iii) N/A
- d. Impoundments (a)(2): N/A
- e. Tributaries (a)(3): N/A
- f. Adjacent Wetlands (a)(4): N/A
- g. Additional Waters (a)(5): N/A

8. NON-JURISDICTIONAL AQUATIC RESOURCES AND FEATURES

- a. Describe aquatic resources and other features within the review area identified in the 2023 Rule as amended as not “waters of the United States” even where they otherwise meet the terms of paragraphs (a)(2) through (5). Include the type of excluded aquatic resource or feature, the size of the aquatic resource or feature within the review area and describe how it was determined to meet one of the exclusions listed in 33 CFR 328.3(b).⁷ N/A
- b. Describe aquatic resources and features within the review area that were determined to be non-jurisdictional because they do not meet one or more categories of waters of the United States under the 2023 Rule as amended (e.g., tributaries that are non-relatively permanent waters; non-tidal wetlands that do not have a continuous surface connection to a jurisdictional water).

All aquatic resources were determined to be non-jurisdictional under the 2023 Rule, as amended. This determination is based on the fact that the identified features do not meet any categories of Waters of the United States (WOTUS). The ephemeral drainages, including Pinabete Arroyo and No Name Arroyo, were assessed in the field using the Streamflow Duration Assessment Method (SDAM) for the Arid West. Based on the SDAM results, these arroyos were classified

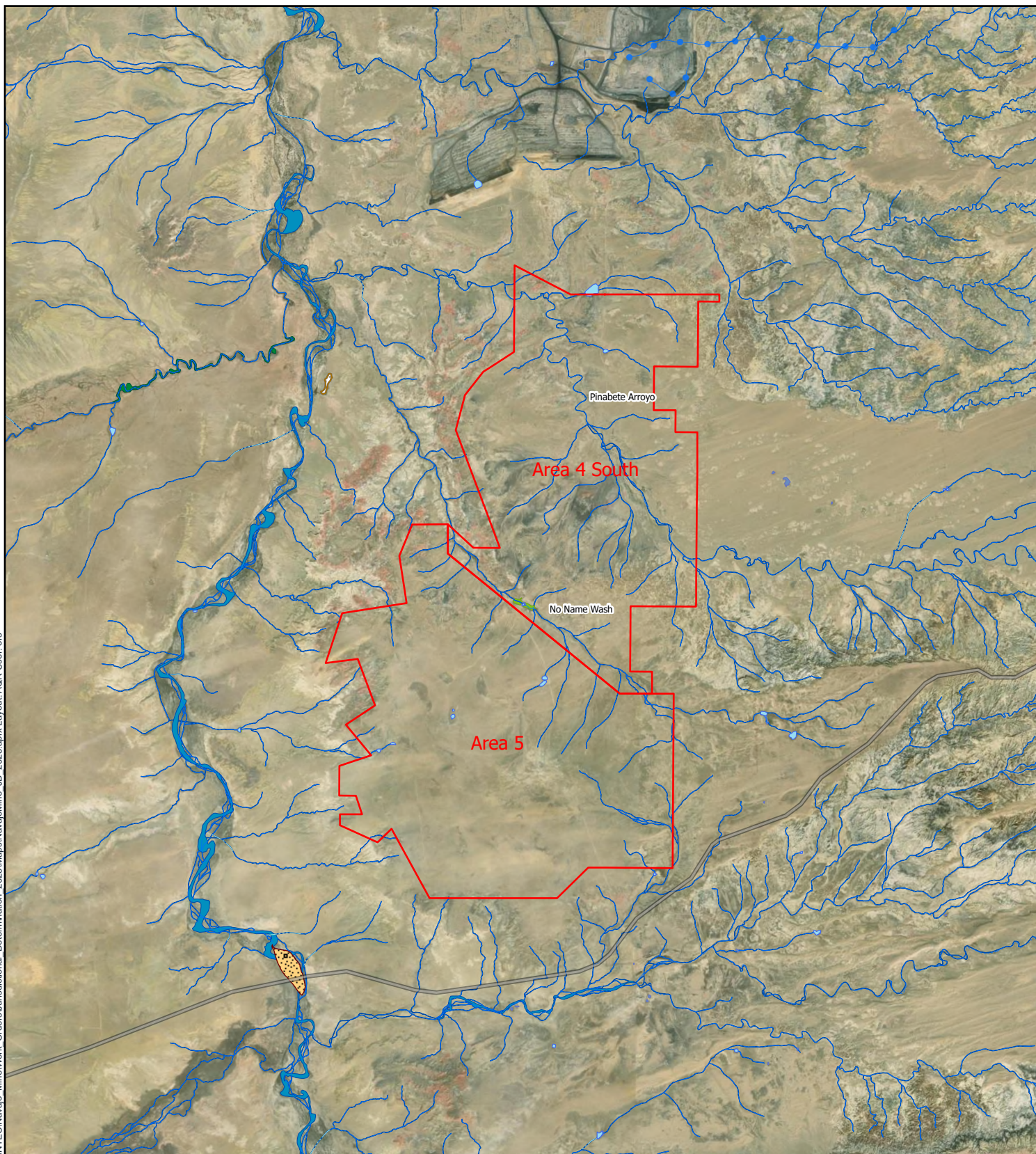
⁷ 88 FR 3004 (January 18, 2023)

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as ephemeral, meaning they flow only in direct response to precipitation events and do not have relatively permanent flow. The five ephemeral ponds similarly lack perennial or relatively permanent water and are disconnected from downstream jurisdictional waters. Because none of the drainages or ponds convey water to a Traditional Navigable Water, territorial sea, or interstate water, and no wetlands were present, all aquatic features are considered non-relatively permanent and non-jurisdictional under the Clean Water Act.

9. DATA SOURCES. List sources of data/information used in making determination. Include titles and dates of sources used and ensure that information referenced is available in the administrative record.
 - a. Delineation Memorandum, dated August 5, 2025, prepared by Barr Engineering Company
 - b. SDAM Worksheets, Various Dates in 2025, Prepared by Barr Engineering Company
10. OTHER SUPPORTING INFORMATION. N/A
11. NOTE: The structure and format of this MFR were developed in coordination with the EPA and Department of the Army. The MFR's structure and format may be subject to future modification or may be rescinded as needed to implement additional guidance from the agencies; however, the approved jurisdictional determination described herein is a final agency action.



- Project Area
- National Hydrography Dataset
- Lake/Pond
- Playa
- Wash
- River/Stream: Perennial
- River/Stream: Intermittent

- Connector
- Pipeline
- National Wetlands Inventory (NWI)
- Freshwater Emergent Wetland
- Freshwater Forested/Shrub Wetland
- Freshwater Pond
- Riverine

0 2
Miles



Navajo Mine
Area 4 South and 5
Navajo Transitional Energy Company

Aquatic Resources





DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS ALBUQUERQUE DISTRICT
4101 JEFFERSON PLAZA, NE
ALBUQUERQUE, NM
87109

August 18, 2025

Regulatory Division

SUBJECT: No Permit Required – (SPA-2025-00297)

Navajo Transitional Energy Company Attn: Josh Johns
4801 North Butler Suite 12000 Suite 12000
Farmington, NM 87401
joshjohns@navenergy.com

Dear Mr./Ms. Johns:

We are responding to your request for a determination of Department of the Army permit requirements for the proposed Navajo Mine Area 4 South and 5 located at approximately latitude 36.4283820469114, longitude -108.518981495993, in San Juan County, New Mexico. The work, as described in your letter, will consist of Surface coal mining and ancillary activities. We have assigned Action No. SPA-2025-00297 to this project. Please reference this number in all future correspondence concerning the project.

Based on the information provided, we have determined that a Department of the Army permit is not required since the project would not result in the discharge of dredged/fill material into waters of the United States. However, it is incumbent upon you to remain informed of any changes in the U.S. Army Corps of Engineers (Corps) Regulatory Program regulations and policy as they relate to your project. If your plans change such that waters of the U.S. could be impacted by the proposed project, please contact our office for a reevaluation of permit requirements.

We have determined that all features described in your delineation report are not waters of the United States because they do not have a relatively permanent flow.

We are enclosing a copy of the Approved Jurisdictional Determination Form for your review area (Enclosure 2). A copy of this JD is also available at <http://www.spa.usace.army.mil/reg/JD>. This approved JD is valid for 5 years from the date of this letter unless new information warrants revision of the determination before the expiration date. If you intend to conduct work that could result in a discharge of dredged or fill material into waters of the United States, please contact this office for a determination of Department of the Army permit requirement.

The delineation included herein has been conducted to identify the location and extent of the aquatic resources for purposes of the Clean Water Act for the particular site identified in this request. This delineation may not be valid for the Wetland Conservation Provisions of the Food Security Act of 1985, as amended. If you or your tenant are USDA program participants, or anticipate participation in USDA programs, you should discuss the applicability of an NRCS Certified Wetland Determination with the local USDA service center, prior to starting work.

You may accept or appeal this approved JD or provide new information in accordance with the attached Notification of Administration Appeal Options and Process and Request for Appeal (Enclosure 3). If you elect to appeal this approved JD, you must complete Section II of the form and return it to the Army Engineer Division, South Pacific, CESPDPDS-O, Attn: Travis Morse, Administrative Appeal Review Officer, by email at w.travis.morse@usace.army.mil within 60 days of the date of this notice. Failure to notify the Corps within 60 days of the date of this notice means that you accept the approved JD in its entirety and waive all rights to appeal the approved JD.

Please refer to identification number SPA-2025-00297 in any correspondence concerning this project. If you have any questions, please contact me by email at Justin.C.Riggs@usace.army.mil, or telephone at (505)-967-0416.

Sincerely,

Justin Riggs
Regulatory Project Manager for
Southern New Mexico and West Texas

Enclosures

Table 8.1-1 Other Permits and Licenses

Issuing Authority Name	Type of Permit	Approval/ Notification Date	Permit/ Identification Number
U.S. Environmental Protection Agency, Region IX	402 National Pollution Discharge Elimination System (NPDES)	June 1, 2025	NN0028193
	NPDES Storm Water Multi-Sector General Permit	March 1, 2021	AZR051299
Navajo Nation Dept. of Water Resources	License to Use Specified Water in Operations	July 18, 2022	WUP#22-0190 to WUP#22-223
Navajo Nation Environmental Protection Agency	401 Water Quality Certification (NPDES permit)	March 14, 2025	2023-0105SR
	401 Water Quality Certification (Section 404 IP)	May 15, 2015	2012-0029SR
United States Army Corps of Engineers	404 Individual Permit for Dredge and Fill Activities	July 27, 2015	SPA-2012-00253-ABQ
Office of the State Engineer State of New Mexico	Permit to Appropriate Surface Waters	Oct 10, 1958	Permit 2838
United States of America Department of Transportation Pipeline and Hazardous Materials Safety Administration	Hazardous Materials Certificate of Registration	June 30, 2020	081518550033AB
U.S. Environmental Protection Agency, Region IX,	Notification of Hazardous Waste Activity (RCRA)	February 9, 2017	NND0429937525
U.S Fish and Wildlife Service Migratory Bird Office	Migratory Bird Special Purpose Utility Permit	4/1/2025	MB09048B
Federal Communication Commission	Radio Licenses	10/6/2031 (exp. date)	WQYT290, WQYT291, WQYT292, WQYT293, WQYT294, WQYT295- (FRN: 0026071290).
Bureau of Reclamation Colorado River Storage Project	Colorado River Storage Project	April 11, 1968	14-06-400-5138
US. Department of Justice, Bureau of Alcohol, Tobacco, Firearms and Explosives	20 – Manufacturer of Explosives	January 16, 2017	5NM-045-20-6C-00357
Dept. of Labor Mine Safety and Health Administration (MSHA)	MSHA Mine ID	January 25, 2017	29-00097