NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM
PERMIT FACT SHEET
October 2019

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NPDES Permit No.:	NN0020800

I. STATUS OF PERMIT

The U.S. Department of the Interior -- Bureau of Indian Affairs ("BIA") has applied for renewal of its National Pollutant Discharge Elimination System ("NPDES") permit pursuant to U.S. Environmental Protection Agency ("USEPA") regulations set forth in Title 40, U.S. Code of Federal Regulations ("CFR"), Part 122.21. The permit is to authorize the discharge of treated domestic wastewater to Bitsui Wash which flows into San Juan River, a water of the United States. As the Navajo Nation Environmental Protection Agency ("NNEPA") does not have primary regulatory responsibility for administering the NPDES permitting program, USEPA has primary regulatory responsibility for the discharge. USEPA is proposing to renew the NPDES permit incorporating applicable technology-based effluent limitations and Navajo Nation water quality requirements.

The permittee is currently covered under NPDES Permit No. NN0020800, which became effective on October 1, 2014, and expires on September 30, 2019. The BIA applied to the USEPA for reissuance

on July 10, 2019. Pursuant to 40 CFR 122.21, the terms of the existing permit are administratively extended until the issuance of a new permit.

This permittee has been classified as a minor discharger.

II. SIGNIFICANT CHANGES TO PREVIOUS PERMIT

Permit Condition	Previous Permit (2014 – 2019)	Re-issued permit (2019 – 2024)	Reason for change
Sludge report	Hardcopy accepted	Switch to e-reporting	EPA e-reporting Rule
DMR submittal	Hardcopy accepted	Switch to e-reporting	EPA e-reporting Rule
Di[2-ethylhexyl] phthalate monitoring	None	New requirement	Reasonable potential analysis
Total Residual Chlorine limit	None	Required if chlorination is used as a backup for effluent disinfection	Provision of 40 CFR 122.44(d)
Asset Management Program (AMP)	None	New requirement	Provision of 40 CFR 122.41(e)

III. GENERAL DESCRIPTION OF FACILITY

The BIA Nenahnezad Community School wastewater treatment facility ("WWTF") is located in Fruitland, San Juan County, New Mexico, which is in the northern portion of the Navajo Nation. It is adjacent to the school property. The WWTF serves a population of approximately 525, receives only domestic sewage from the school compound and has a design flow of 0.023 million gallons per day ("MGD"). The facility is an extended aeration package plant equipped with ultra-violet ("UV") disinfection. The plant has a bypass capability to a backup four-cell, gravity flow evaporation lagoon system during electrical outages, plant maintenance, and low flow periods. The facility discharges treated wastewater through a 6-inch pipe (Outfall Number 001) into Bitsui Wash, a tributary to San Juan River. This wash is reportedly perennial (sourced by overflow from an irrigation canal and possibly a natural seep). Sludge collected from the package plant is transported off the Navajo Nation for disposal.

Although the BIA is a federal facility and not a publicly-owned treatment works (POTW), EPA will be proposing federal discharge limits similar to those that are applicable to POTWs. Any sampling and monitoring under the proposed permit shall be performed at Outfall No. 001.

On March 30, 2018, NNEPA conducted an NPDES compliance evaluation inspection of the WWTF and noted several deficiencies, including no effluent flow measurements until the BIA acquired a flow meter in June 2017. A detailed summary of the inspection findings is provided in Part VI.B.4 of this fact sheet.

IV. DESCRIPTION OF RECEIVING WATER

Outfall 001 from the facility discharges to perennial Bitsui Wash, a tributary of the San Juan River located within the Navajo Nation.

The Navajo Nation has approved water quality standards in place for discharges to waters located

on the Nation. For Bitsui Wash and San Juan River, the *Navajo Nation Surface Water Quality Standards* ("NNSWQS") established water quality criteria for the beneficial uses as follows: domestic, primary and secondary human contact, ephemeral warm water habitat, and livestock and wildlife watering (Table 205.1 of the NNSWQS.)

USEPA initially approved the 1999 NNSWQS in March 2006. They were revised in 2007 and approved by USEPA on March 26, 2009. The 2007 NNSWQS were subsequently revised in 2015 and 2017 and are pending approval by USEPA. The approved 1999 Navajo Nation water quality standards, the 2007 revisions and the 2017 *draft* revisions will be used on a best professional judgment ("BPJ") basis for purposes of developing water quality-based effluent limitations. The requirements contained in the proposed permit are necessary to prevent violations of applicable water quality standards.

V. DESCRIPTION OF THE DISCHARGE

Discharge from Outfall 001 flows to perennial Bitsui Wash which may have no natural flow during certain times of the year. The wash is sourced by overflow from an irrigation canal and possibly has a natural seep. Therefore, no dilution of the effluent has been considered in the development of water quality based effluent limits applicable to the discharge.

Application Discharge Data

As part of the application for permit renewal, the permittee provided data from an analysis of the facility's treated wastewater discharge, shown in Table 1.

Table 1. Application Discharge Data.

Effluent Parameter	Units	Discharge Data[(1)]	
		Maximum Daily Discharge	Average Daily Discharge
Flow	MGD	0.00153	0.00149
pH	standard units	6.5 to 9.98	
Ammonia total (as N)	mg/L	11.1	11.1
Ammonia Impact Ratio (AIR)	--	2.35	2.35
Biochemical Oxygen Demand, 5-day (BOD_5)	mg/L	8.8	8.8
Total Suspended Solids (TSS)	mg/L	10.5	10.5
E. coli	CFU/100 mL	2,419.60	2,419.60
Cyanide	µg/L	0.01	0.01
Copper, total recoverable	µg/L	0.01	0.01
Di[2-ethylhexyl] phthalate (DEHP)	µg/L	2.2	2.2
Nickel, total recoverable	µg/L	1.01	1.01
Selenium, total recoverable	µg/L	0.01	0.01
Total Dissolved Solids (TDS)	mg/L	608	608
Total Suspended Solids (TSS)	mg/L	177	177
Toluene	µg/L	9.7	9.7
Zinc, total recoverable	µg/L	0.04	0.04

[(1)] Based on permittee's NPDES renewal application and/or supplemental data including priority pollutant scan and DMRs.

VI. DETERMINATION OF NUMERICAL EFFLUENT LIMITATIONS

The Clean Water Act requires point source dischargers to control the amount of pollutants that are discharged to waters of the United States. The control of pollutants is established through effluent limitations and other requirements in NPDES permits. When determining effluent limitations, EPA must consider limitations based on the technology used to treat the pollutant(s) (i.e., technology-based effluent limits) and limitations that are protective of water quality standards (i.e., water quality-based effluent limits).

A. Applicable Federal Technology-Based Effluent Limitations

Technology-based effluent limitations require minimum levels of treatment based on currently available treatment technologies. Section 301 of the CWA established a required performance level, referred to as "secondary treatment," that all POTWs were required to meet by July 1, 1977. Although BIA is a federal facility and not a POTW, EPA will be proposing discharge limits similar to those that are applicable to POTWs. Federal secondary treatment effluent standards for POTWs are contained in Section 301(b)(1)(B) of the CWA. Implementing regulations for Section 301(b)(1)(B) are found at 40 CFR Part 133. The CWA requires POTWs to meet performance-based requirements based on available wastewater treatment technology. These technology-based effluent limits apply to all municipal wastewater treatment plants and identify the minimum level of effluent quality attainable by secondary treatment in terms of Five-Day Biochemical Oxygen Demand ("BOD_5"), and Total Suspended Solids ("TSS"). The requirements contained in the draft permit are necessary to prevent violations of applicable treatment standards

Typical pollutants of concern in untreated and treated domestic wastewater include ammonia, nitrate, oxygen demand, pathogens, temperature, pH, oil and grease, and solids. Therefore, EPA proposes the following provisions and effluent discharge limitations for flow, BOD_5, TSS, TDS, *E. coli*, and ammonia to be taken concurrent with temperature and pH measurements. A scan of priority pollutants is also proposed. The facility uses ultra-violet disinfection system so chlorine is not a concern. Samples taken in compliance with the effluent monitoring requirements shall be taken at a point representative of the discharge by prior to entry into the receiving water.

1. BOD_5:

Under the proposed permit, the discharge shall not exceed a weekly average of 45 mg/l and monthly average of 30 mg/l BOD_5, and shall achieve no less than a monthly average rate of 85% removal. These limits are required under 40 CFR Section 133.102(a). The limits are designated as 30-day and 7-day averages since the facility operates a POTW, and it would be impracticable to do otherwise [40 CFR 122.45(d)].

Under 40 CFR Section 122.45 (f), mass limits are required for BOD_5. Based upon the 0.023 MGD flow, the mass limits for BOD_5 are based on the following calculations:

Monthly average

$$\frac{0.023\ MG}{day} \times \frac{30\ mg}{l} \times \frac{8.345\ lb/MG}{mg/l} \times \frac{0.45\ kg}{lb} = 2.6\ kg\ per\ day$$

Weekly average

$$\frac{0.023\ MG}{day} \times \frac{45\ mg}{l} \times \frac{8.345\ lb/MG}{mg/l} \times \frac{0.45\ kg}{lb} = 3.9\ kg\ per\ day$$

The daily maximum will also be monitored and reported. The monitoring frequency is once per month, consistent with the previous permit.

2. TSS:

Under the proposed permit, the discharge shall not exceed a weekly average of 45 mg/l and monthly average of 30 mg/l TSS, and shall achieve no less than a monthly average rate of 85% removal. These limitations are consistent with 40 CFR Section 133.102(b). Mass limit requirements in accordance with 40 CFR 122.45(f) have also been set in the proposed permit. Mass loading shall not exceed a 7-day average of 3.9 kg/day and a 30-day average of 2.6 kg/day. The monitoring frequency is once per month, consistent with the previous permit.

3. Priority Pollutant Scan:

The proposed permit establishes a monitoring requirement for the full list of priority pollutants as listed in the Code of Federal Regulations (CFR) at 40 CFR Part 423, Appendix A. No limit is set at this time. Should the results reveal levels below EPA's National Water Quality Criteria for priority pollutants, monitoring will no longer be required of the permittee.

B. Water Quality Based Effluent Limitations ("WQBELs")

A requirement for monitoring discharge volume is proposed in the proposed permit to ensure that the discharge will not cause severe erosion at any discharge location(s). In accordance with the requirements set forth at 40 CFR Parts 122.45(e), specific discharge flow rate will be authorized for the outfall.

Water quality-based effluent limitations, or WQBELs, are required in NPDES permits when the permitting authority determines that a discharge causes, has the reasonable potential to cause, or contributes to an excursion above any water quality standard. (40 CFR 122.44(d)(1)).

When determining whether an effluent discharge causes, has the reasonable potential to cause, or contributes to an excursion above narrative or numeric criteria, the permitting authority shall use procedures which account for existing controls on point and non-point sources of pollution, the variability of the pollutant or pollutant parameter in the effluent, the sensitivity of the species to toxicity testing (when evaluating whole effluent toxicity) and where appropriate, the dilution of the effluent in the receiving water [40 CFR 122.44 (d)(1)(ii)].

EPA evaluated the reasonable potential to discharge toxic pollutants according to guidance provided in the *Technical Support Document for Water Quality-Based Toxics Control* (TSD) (Office of Water Enforcement and Permits, U.S. EPA, March 1991) and the *U.S. EPA NPDES Permit Writers Manual* (Office of Water, U.S. EPA, December 1996). These factors include:

1. Applicable standards, designated uses and impairments of receiving water

The 2007 and *draft* 2017 NNSWQS established water quality criteria for the following beneficial uses (perennial Bitsui Wash, a tributary of the San Juan River) are defined by the Navajo Nation's Surface Water Quality Standards as domestic water supply, primary human contact, secondary human contact, agricultural water supply, fish consumption, aquatic and wildlife habitat, and livestock watering (Table 204.1, pg. 20).

2. Dilution in the receiving water

Discharge from Outfall 001 flows Bitsui Wash, a tributary of the San Juan River, which may have no natural flow during certain times of the year. Therefore, no dilution of the effluent has been considered in the development of water quality based effluent limits applicable to the discharge.

3. Type of industry

Typical pollutants of concern in untreated and treated domestic wastewater include ammonia, nitrate, oxygen demand, pathogens, temperature, pH, oil and grease, and solids. Chlorine may also be of concern due to treatment plant operations but UV is used for effluent disinfection so chlorine in no longer a concern.

4. History of compliance problems and toxic impacts

NNEPA conducted an NPDES compliance evaluation inspection on March 30, 2018, and made the following observations: (1) No copy of the NPDES permit was found on-site; (2) No effluent flow measurements were conducted until June 2017 when BIA acquired a flow meter; (3) No influent measurements were taken place, a school teacher signs off on the Discharge Monitoring Reports ("DMRs") since the current school principal has declined to do so; (4) No reporting of ammonia and temperature values were reported on the DMRs; and, (5) BIA was reminded to undertake Priority Pollutant Scanning one year prior to permit expiration.

A review of the Discharge Monitoring Reports (DMRs) from October 2014 to June 2019 found numerous incidents of late reports and no DMRs have been received since March 2019. In addition, there were an *e. coli* exceedance in April 2016, and three (3) exceedances of total Ammonia and Ammonia Impact Ratio in December 2014, March 2015 and March 2016.

5. Existing data on toxic pollutants

The permittee did not provide expanded effluent testing data for the facility's treated wastewater discharge as part of the application for permit renewal. The current permit requires a priority toxic pollutant scan be conducted during Year 5 of the permit cycle; however, the permittee did not perform or submit one in 2019. The results of the 2014 pollutant scan indicated presence of ammonia

as N, *E. coli*, TDS, copper, cyanide, Di[2-ethylhexyl] phthalate ("DEHP"), nickel, selenium, toluene and zinc.

For pollutants with effluent data available, EPA conducted a reasonable potential analysis based on statistical procedures outlined in EPA's *Technical Support Document for Water Quality-Based Toxics Control* herein after referred to as EPA's TSD (EPA 1991). These statistical procedures calculate the projected maximum effluent concentration based on monitoring data to account for effluent variability and a limited data set. EPA estimated the projected maximum effluent concentrations, assuming a coefficient of variation of 0.6 and the 95% confidence interval of the 99th percentile, based on an assumed lognormal distribution of daily effluent values (Sections 3.3.2 and 5.5.2 of EPA's TSD). EPA calculated the projected maximum effluent concentration for each pollutant using the following equation:

Projected maximum concentration = Ce × *reasonable potential multiplier factor*.

Where, "Ce" is the reported maximum effluent value and the multiplier factor is obtained from Table 3-1 of the TSD. The projected maximum effluent concentration is compared directly to the applicable water quality criterion to determine the reasonable potential for effluent concentration to exceed the receiving water criterion.

Effluent Parameter[(1)]	**Units**	**Observed Value**	***n***	**RP Multiplier[(2)]**	**Projected Max Effluent Concentration**	**Most Stringent Water Quality Criterion[(3)]**	**Statistical Reasonable Potential?**
Ammonia, as N	mg/L	2.35	>20	2.3	5.41	1.3 to 1.7 (temp and pH dependent)	**Y**
E. coli	CFU/100 mL	2,419.60	>20	2.3	5,565.1	126	**Y**
pH	S.U.	6.5 to 9.98	>20	--	--	6.5 to 9	**Y**
Copper - total	µg/L	0.01	4	4.7	0.05	500	N
Cyanide - total	µg/L	0.01	4	4.7	0.05	5.2	N
Di[2-ethylhexyl] phthalate (DEHP)	µg/L	2.2	4	4.7	10.34	0.32[(4)]	**Y**
Nickel - total	µg/L	1.01	4	4.7	4.75	85.51	N
Selenium - total	µg/L	0.01	4	4.7	0.05	2	N
Toluene	µg/L	9.7	4	4.7	45.6	57	N
TDS[(5)]	mg/L	608	>20	2.3	1,398.4	-- [(5)]	**Y**
Zinc - total	µg/L	0.04	4	4.7	0.19	194.4	N

(1) For purposes of RP analysis, parameters measured as Non-Detect are considered to be zeroes. Only parameters with Maximum Observed Concentration >0 are included in this analysis.

(2) RP multiplier is based on 95% probability using (n) and a coefficient of variation (CV) of 0.6. Because of data variability and of small sample sizes (i.e. n = 4), EPA used a CV of 0.6 for all parameters.

(3) The most stringent water quality criteria are based on the most stringent of NNSWQS for the protection of domestic water supply, primary human contact, secondary human contact, agricultural water supply, fish consumption, aquatic and wildlife habitat, and livestock watering designated uses.

(4) NNSWQS for protection of domestic water supply for Bis(2-ethylhexyl)phthalate, another name for the compound. DEHP is the most common member of the class of phthalates, which are used as plasticizers.

(5) There is no numerical standard for TDS; however, NNSWQS adopts the plan of implementation contained in the "2014 Review, Water Quality Standards for Salinity, Colorado River System," to preserve the basin-wide approach to salinity control developed by the Colorado River Basin Salinity Control Forum (October 2014).

C. Rationale for Numeric Effluent Limits and Monitoring

Pursuant to the narrative surface water quality standards (Section 202 of the 2007 NNSWQS and Section 3 of the 2017 *draft* revisions), the discharge shall be free from pollutants in amounts or combinations that cause solids, oil, grease, foam, scum, or any other form of objectionable floating debris on the surface of the water body; may cause a film or iridescent appearance on the surface of the water body; or that may cause a deposit on a shoreline, on a bank, or on aquatic vegetation.

1. *E. coli*:

Presence of pathogens in untreated and treated domestic wastewater indicates that there is a reasonable potential for *E. coli* bacteria levels in the effluent to cause or contribute to an excursion above the WQS. In the proposed permit, the monthly geometric mean of *E. coli* bacteria shall not exceed 126/100 ml as a monthly average and 235/100 ml as a single sample maximum. These limits are based on the NNSWQS for domestic water supply and primary human contact (p. 14). The monitoring frequency is once per month.

2. TDS:

Presence of solids in untreated and treated domestic wastewater indicates that there is a reasonable potential for TDS levels in the effluent to cause or contribute to an excursion above the WQS. The regulations at 40 CFR 122.44(i) allow requirements for monitoring as determined to be necessary. The monitoring frequency is once per month, consistent with the previous permit.

3. Total Ammonia (as N) and Ammonia Impact Ratio ("AIR"):

Presence of ammonia in untreated and treated domestic wastewater indicates that there is a reasonable potential for levels in the effluent to cause or contribute to an excursion above the WQS. In accordance with the NNSWQS for protection of aquatic and wildlife habitat, the proposed permit contains effluent limitations for total ammonia. The ammonia limits are temperature and pH dependent and are listed in Tables 207.20 and 207.21 of the *draft* 2017 NNSWQS revisions. The monitoring frequency is once per quarter, consistent with the previous permit. Measurements for ammonia are required to be taken concurrently with temperature and pH measurements.

4. pH:

Untreated and treated domestic wastewater could be contaminated with substance that affects the pH. Therefore, there is a reasonable potential for pH levels in the effluent to cause or contribute to an excursion above the WQS. In order to ensure adequate protection of beneficial uses of the receiving water, a maximum pH limit of 9.0 and a minimum limit of 6.5 S.U. are established in Section 206.C of 2007 NNSWQS and Section 207 of the *draft* 2017 NNSWQS revisions. The monitoring frequency is once per month, consistent with the previous permit.

5. Di[2-ethylhexyl] phthalate:

Based on the reasonable potential analysis, EPA has determined that the discharge has a reasonable potential to cause or contribute to an exceedance of applicable water quality standards for Di[2-

ethylhexyl] phthalate (DEHP). DEHP is the most common member of the class of phthalates, which are used as plasticizers. It is the diester of phthalic acid and the branched-chain 2-ethylhexanol. This colorless viscous liquid is soluble in oil, but not in water.

Due to limited data and a lack of information regarding the source of this pollutant as there are no industrial sources, the permit includes additional monitoring and a reopener to include a limit if the monitoring indicates continued reasonable potential.

D. Anti-Degradation

USEPA's antidegradation policy at 40 CFR Section 131.12 and the NNSWQS require that existing water uses and level of water quality necessary to protect the existing uses be maintained. As described in this fact sheet, the permit establishes effluent limits and monitoring requirements to ensure that all applicable water quality standards are met. The permit does not include a mixing zone; therefore, these limits will apply at the end of the pipe without consideration of dilution in the receiving water. Therefore, due to the low levels of toxic pollutants present in the effluent, the high level of treatment being obtained, and water quality-based effluent limitations, it is not expected that the discharge will adversely affect receiving water bodies.

E. Anti-Backsliding

Section 402(o) of the CWA prohibits the renewal or reissuance of an NPDES permit that contains effluent limits less stringent than those established in the previous permit, except as provided in the statute. No limits in the proposed permit renewal have been removed nor made less stringent than the previous permit.

VII. NARRATIVE WATER QUALITY-BASED EFFLUENT LIMITS

All applicable narrative limitations in Section 203 of the NNSWQS are included in the proposed permit.

VIII. MONITORING AND REPORTING REQUIREMENTS

The proposed permit requires the permittee to conduct monitoring for all pollutants or parameters where effluent limits have been established, at the minimum frequency specified. The permit also requires reporting of discharge data obtained during the previous three months to be summarized on monthly DMR forms and reported quarterly. If no discharge occurs during the reporting period, the permittee must specify "No discharge" on the DMRs and submit them on an annual basis, due on January 28th of each year.

IX. SEWAGE SLUDGE REQUIREMENTS

The proposed permit requires a report to USEPA and NNEPA within 90 days of permit issuance with an estimate of the quantity of sewage sludge currently on site, and a projection of when sewage sludge will next be removed. Ninety (90) days prior to removing sewage sludge for use or disposal, the

permittee is required to submit a plan describing the quantity of sewage sludge to be removed, mechanisms for removing, and a proposed sampling plan for pollutants regulated under the use or disposal option being selected. Upon approval of this plan by USEPA and NNEPA, the permittee will have the sewage sludge removed as described. The permit also requires compliance with all applicable requirements of Section 405(d) of the CWA, and 40 CFR Sections 258 (for sewage sludge sent to a municipal landfill) and 503 (for sewage sludge placed in a sludge-only surface disposal site, land applied as fertilizer, used in land reclamation, or incinerated.

X. OTHER CONSIDERATIONS UNDER FEDERAL LAW

A. Consideration of Environmental Justice

USEPA conducted a screening level evaluation of the potential impact of the discharge from the proposed NNMPP pipeline flushing, hydrotesting and disinfection and other permitted facilities within the immediate area on local residents through use of USEPA's EJSCREEN tool. Specifically, USEPA used EJSCREEN to identify facilities near the discharge that could pose risk to local residents through discharge of environmental contaminants. USEPA has also evaluated whether demographic characteristics of the population living in the vicinity of the discharge indicate that the local population might be particularly susceptible to such environmental risks. The results show that, at the time of this analysis conducted on June 25, 2019, the area in which the discharge is located was above the 91st percentile nationally for ozone. The EJSCREEN analysis of demographic characteristics of the community living near the facility indicates the local population may be at relatively higher risk if exposed to environmental contaminants than the general population. Demographic characteristics that showed potentially sensitive scores were a high proportion of minority and low-income population and population with less than high school education.

USEPA also considered the characteristics of pipeline flushing, hydrotesting and disinfection operation and discharges, and whether those discharges pose exposure risks that the NPDES permit needs to further address. USEPA found no evidence to indicate the NNMPP discharge poses a significant risk to local residents. USEPA concludes that the facility is unlikely to contribute to any EJ issues. Furthermore, USEPA believes that by implementing and requiring compliance with the provisions of the Clean Water Act, which are designed to ensure full protection of human health, the permit is sufficient to ensure the NNMPP discharge will not cause or contribute to human health risk in the vicinity of the discharge outfalls.

B. Threatened and Endangered Species and Critical Habitat

1. Background

Section 7 of the Endangered Species Act ("ESA") of 1973 requires Federal agencies such as EPA to ensure, in consultation with the U.S. Fish and Wildlife Service ("FWS"), that any actions authorized, funded or carried out by the Agency are not likely to jeopardize the continued existence of any Federally-listed endangered or threatened species or adversely modify or destroy critical habitat of such species.

Since the issuance of NPDES permits by EPA is a Federal action, consideration of a permitted discharge and its effect on any listed species is appropriate. The proposed NPDES permit

authorizes the discharge of treated domestic wastewater to Bitsui Wash, a tributary to San Juan River.

EPA sent a request to the Navajo Nation's Department of Fish & Wildlife -- Natural Heritage Program ("NNHP") for species information on July 25, 2019. The FWS has deferred all of its survey and information collection in the Navajo Nation to the NNHP. EPA received a habitat analysis from Mr. Dexter Prall of the NNHP on September 10, 2019.

The NNHP has identified two federally-listed endangered (E) species that are known to occur, or may potentially occur, within 3 miles of the facility boundary, as follows:

Names (common and scientific)	Status
Southwestern willow flycatcher *(Empidonax traillii extimus)*	E
Razorback sucker (*Xyrauchen texanus*)	E

The NNHP also provided ten (10) potential species from its Navajo endangered species list based on project proximity to respective suitable habitat on the 7.5-minute quadrangle(s) of Fruitland, NM as follows:

Names (common and scientific)
Golden Eagle *(Aquila chrysaetos)*
San Juan Milkweed *(Asclepias sanjuanensis)*
Mountain Plover *(Charadrius montanus)*
Mottled sculpin *(Cottus bairdi)*
Peregrine Falcon (*Falco peregrinus*)
Roundtail chub (*Gila robusta*)
Bald Eagle *(Haliaeetus leucocephalus)*
Northern Leopard Frog *(Rana pipiens)*
Sora *(Porzana carolina)*
Colorado Pikeminnow *(Ptchocheilus lucius)*

2. EPA's Finding:

This permit authorizes the discharge of treated wastewater in conformance with the federal secondary treatment regulations and the Navajo Nation Surface Water Quality Standards. These standards are applied in the permit both as numeric and narrative limits. The standards are designed to protect aquatic species, including threatened and endangered species, and any discharge in compliance with these standards should not adversely impact any threatened and endangered species.

EPA believes effluent released in compliance with this permit will have no effect on any federally-listed threatened or endangered species or its critical habitat that may be present in the vicinity of the discharge. The treatment facility has been in existence for some time, and no new construction or modifications had been made to it due to the proposed NPDES permit. Therefore, no requirements specific to the protection of endangered species are proposed in the permit. EPA may decide that changes to the permit may be warranted based on receipt of new information. A re-opener clause has been included should new information become available to indicate that the requirements of the permit need

to be changed.

C. Impact to Coastal Zones

The Coastal Zone Management Act ("CZMA") requires that federal activities and licenses, including federally permitted activities, must be consistent with an approved state Coastal Management Plan (CZMA Sections 307(c)(1) through (3)). Section 307(c) of the CZMA and implementing regulations at 40 CFR Part 930 prohibit EPA from issuing a permit for an activity affecting land or water use in the coastal zone until the applicant certifies that the proposed activity complies with the State (or Territory) Coastal Zone Management program, and the State (or Territory) or its designated agency concurs with the certification.

The proposed permit does not affect land or water use in the coastal zone, thus CZMA does not apply to this federally issued permit.

D. Impact to Essential Fish Habitat

The 1996 amendments to the Magnuson-Stevens Fishery Management and Conservation Act ("MSA") set forth new mandates for the National Marine Fisheries Service, regional fishery management councils and other federal agencies to identify and protect important marine and anadromous fish species and habitat. The MSA requires federal agencies to make a determination on Federal actions that may adversely impact Essential Fish Habitat ("EFH").

The proposed permit contains technology-based effluent limits and numerical and narrative water quality-based effluent limits as necessary for the protection of applicable aquatic life uses. The proposed permit does not directly discharge to areas of essential fish habitat. Therefore, USEPA has determined that the proposed permit will not adversely affect essential fish habitat.

E. Impact to National Historic Properties

Section 106 of the National Historic Preservation Act ("NHPA") requires federal agencies to consider the effect of their undertakings on historic properties that are either listed on, or eligible for listing on, the National Register of Historic Places. Pursuant to activity authorized by this NPDES permit, no new construction or disturbance of land is anticipated. Therefore, pursuant to the NHPA and 36 CFR § 800.3(a)(1), USEPA is making a determination that issuing this proposed NPDES permit does not have the potential to affect any historic properties or cultural properties. As a result, Section 106 does not require USEPA to undertake additional consulting on this permit issuance.

XI. STANDARD CONDITIONS

A. Reopener Provision

In accordance with 40 CFR § 122 and § 124, this proposed permit may be modified by USEPA to include effluent limits, monitoring, or other conditions to implement new regulations, including USEPA-approved Tribal water quality standards; or to address new information indicating the presence of effluent toxicity or the reasonable potential for the discharge to cause or contribute to exceedances of water quality standards.

B. Standard Provisions

The proposed permit requires the permittee to comply with USEPA Region 9's *Standard Federal NPDES Permit Conditions* found at Attachment A.

XII. ADMINISTRATIVE INFORMATION

A. Public Notice (40 CFR § 124.10)

The public notice is the vehicle for informing all interested parties and members of the general public of the contents of a draft NPDES permit or other significant action with respect to an NPDES permit or application.

B. Public Comment Period (40 CFR § 124.10)

Notice of the draft permit will be placed on USEPA Region 9 website at https://www.epa.gov/aboutepa/public-notices-meetings-and-events-pacific-southwest on September 12, 2019, with a minimum of 30 days provided for interested parties to respond in writing to USEPA. After the closing of the public comment period, USEPA is required to respond to all significant comments at the time a final permit decision is reached or at the same time a final permit is actually issued.

C. Public Hearing (40 CFR § 124.12(c))

A public hearing may be requested in writing by any interested party. The request should state the nature of the issues proposed to be raised during the hearing. A public hearing will be held if USEPA determines there is a significant amount of interest expressed during the 30-day public comment period or when it is necessary to clarify the issues involved in the permit decision. The public comment period ended on October 12, 2019, and no comments were received.

D. Water Quality Certification Requirements (40 CFR § 124.53 and § 124.54)

As the Navajo Nation has approved water quality standards, USEPA is requesting certification from NNEPA that the proposed permit will meet all applicable water quality standards. USEPA is forwarding the draft permit and fact sheet to NNEPA and requesting certification under Section 401 of the Clean Water Act. Such certification shall be in writing and include the conditions necessary to assure compliance with referenced applicable provisions of Sections 208(e), 301, 302, 303, 306, and 307 of the CWA and appropriate requirements of Tribal law.

XIII. CONTACT INFORMATION

Comments, submittals, and additional information relating to this proposal may be directed to Linh Tran, NPDES Permits Office at:

Phone: (415) 972-3511
Email: Tran.Linh@epa.gov

Or Mail:

Linh Tran
EPA Region 9
75 Hawthorne Street (WTR 2-3)
San Francisco, California 94105

XIV. REFERENCES

EPA. 1991. *Technical Support Document for Water Quality-based Toxics Control*. Office of Water, EPA. EPA/505/2-90-001.

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