

THE NAVAJO NATION



JONATHAN NEZ | PRESIDENT MYRON LIZER | VICE PRESIDENT

April 12, 2019

Andrew Wheeler
Administrator
Environmental Protection Agency
EPA Docket Center, Office of Water Docket, Mail Code 28221T
1200 Pennsylvania Avenue, NW
Washington D.C. 20460

R.D. James
Assistant Secretary of the Army for Civil Works
Army Corps of Engineers
441 G St NW
Washington, DC 20314

Submitted at <http://www.regulations.gov>

RE: Navajo Nation Request for Government-to-Government Consultation on Docket ID No. EPA-HQ-OW-2017-0203, Proposed Definition of "Waters of the United States"

Dear Administrator Wheeler and Assistant Secretary James,

On behalf of the Navajo Nation (Nation), I write to request proper government-to-government consultation with respect to the proposed rule redefining "Waters of the United States" under the Clean Water Act (CWA). The Navajo Nation is the largest land-based Indian tribe in the United States with our reservation spanning over 27,000 square-miles across three states (Arizona, New Mexico, and Utah) with over 350,000 enrolled members and about 170,000 members living on the Navajo Nation. Water is a precious resource, particularly in the southwest where water is scarce, so we must protect the quality and availability of water to the Navajo Nation and surrounding communities.

The Navajo Nation's water resources are critical to maintaining cultural and ceremonial teachings and values, preservation of wildlife and the environment, and tribal members' subsistence. We are committed to protecting Mother Earth and Father Sky, and it is imperative that we, as a Nation, maintain harmony and balance with all living beings. Securing and preserving clean water for everyone is a part of our commitment and responsibility to the ecosystem. Water is fundamental to our way of life and our beliefs and practices must be understood and discussed to ensure its protection for our children and future generations.

NAVAJO NATION OFFICE OF THE PRESIDENT AND VICE PRESIDENT

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Pursuant to Section 401 of the CWA, the Navajo Nation has developed an active water management program to implement the CWA and assist the U.S. Environmental Protection Agency (USEPA) with Section 402 of CWA, National Pollutant Discharge Elimination System, among other activities. We continue to support and develop our water protection programs, and have frequently provided input to EPA in the past on actions affecting water quality. We are now requesting that USEPA and the U.S. Army Corps of Engineers (USACE) (jointly, the Agencies) halt work on this rushed rulemaking process and consult with us on how the proposed redefinition of “Waters of the United States” will impact the Navajo Nation.

We request government-to-government consultation with the Agencies at the highest levels to discuss, in person, Navajo Nation’s concerns regarding the proposed rule.

Because the Navajo Nation has approximately 39,184 intermittent and ephemeral streams and only 1420 perennial streams, roughly 90 percent of the Navajo Nation’s waterways would be affected by the proposed rule, causing substantial impacts to tribal lands, waters, and our way of life. Therefore, the Navajo Nation has a direct and immediate interest in the proposed rulemaking. If the new rule were to go into effect, all of the Navajo Nation’s approximately 39,184 intermittent and ephemeral waterbodies would fall outside the definition of “Waters of the U.S.,” causing irreparable harm to the land our Navajo people occupy. Moreover, the Navajo Nation would not have the capacity or ability to continue to regulate such waters and we fear, our lands would fall to ruin.

Tribal consultation is mandated by Executive Order 13175 in these circumstances. *See* Exec. Order No. 13175, at § 5, 65 Fed. Reg. 67249 (Nov. 9, 2000) (“no agency shall promulgate any regulation that has tribal implications” unless it has “consulted with tribal officials early in the process of developing the proposed regulation.”). USEPA has acknowledged this government-wide mandate in its policy implementing Executive Order 13175, explaining that USEPA’s responsibility “is to consult on a government-to-government basis with federally recognized tribal governments when EPA actions and decisions may affect tribal interests.”¹ Similarly, USACE has affirmed its responsibility to consult, stating plainly that “[r]equests for consultation by a Tribe to USACE will be honored.”² We request that the Agencies fulfill these commitments prior to taking any further action on the proposed rule.

Finally, we join many other tribal, state, nonprofit, and citizens’ groups requesting that the

¹ *EPA Policy on Consultation and Coordination with Indian Tribes*, U.S. Environmental Protection Agency (May 4, 2011), <https://www.epa.gov/sites/production/files/2013-08/documents/cons-and-coord-with-indian-tribes-policy.pdf>, at 1.

² *U.S. Army Corps of Engineers Tribal Consultation Policy and Related Documents*, U.S. Army Corps of Engineers (October 4, 2012), https://www.spk.usace.army.mil/Portals/12/documents/tribal_program/USACE%20Native%20American%20Policy%20brochure%202013.pdf, at 4.

Agencies extend the public comment period on the proposed rule. The implications of this redefinition of a fundamental Clean Water Act principle are complex. A 60-day comment period is completely inadequate and does not allow for sufficient analysis and comment development. We note that the 2015 "Waters of the United States" rulemaking process included over 270 days of public comment availability. That process, completed just four years ago, set the appropriate timing standard for true public engagement, and the Agencies should be consistent with that timeline here as well. Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read "Jonathan Nez". The signature is stylized and written in a cursive-like font.

Jonathan Nez, President
THE NAVAJO NATION