

**RESPONSE TO COMMENTS**  
**General Permit for Low Threat Discharges on the Navajo Nation**  
**NPDES Permit No. NNG990001**

EPA received comments from the United States Fish and Wildlife Service Arizona Ecological Services Office on EPA's draft NPDES General Permit for Low Threat Discharges on the Navajo Nation (LTGP). EPA has summarized the comments and responded to comments below.

**COMMENT 1:** The first recommendation is to include the steps outlined in EPA's MSGP Biological Evaluation (2014) to determine the extent of the action area in Attachment C of the draft permit. These steps provide instructions to use the Service's online mapping tool, IPaC (the Information, Planning, and Consultation System, <http://ecos.fws.gov/ipac>). The IPaC tool generates a report, which includes a species list for the action area as well as the local office's contact information. The applicant can contact our office anytime during this process if she has questions or wants more specifics on how her project may affect listed species. This report also provides the permittee with documentation for their criteria selection.

The Service encourages the use of the term "action area" rather than receiving water, outfall, or discharge location because it encompasses more than a single point on a map. It includes all areas to be affected directly or indirectly by the Federal action, not merely the immediate area or the footprint of the facility. For example, any disturbances associated with vehicle access or construction, operation, and maintenance of best management practices, are part of the action area:

**RESPONSE 1:** Language in Criterion C: of Attachment C: Endangered Species Act Requirements in the final permit has been amended to use the term "action area" instead of receiving water, outfall, or discharge location. Additionally, a footnote has been added about using the Service's online mapping tool, IPaC along with the web link for this online tool.

**COMMENT 2:** The second recommendation is to contact the Navajo Natural Heritage Program. The Navajo Natural Heritage Program often has more information on listed species than we do given the sensitivity of locations of listed species. The Service encourages inclusion of contact information for the Navajo Heritage Program at [https://www.nndfw.org/nnhp/nnhp\\_home.htm](https://www.nndfw.org/nnhp/nnhp_home.htm), <https://www.nndfw.org/personnel.htm>, as well as the procedure for requesting data on endangered species on the Navajo Nation (<https://www.nndfw.org/nnhp/drs2012.pdf>) in the permit application.

**RESPONSE 2:** A footnote has been added about contacting the Navajo Natural Heritage Program to Criterion C: of Attachment C: of the final permit.

**COMMENT 3:** The third recommendation is to contact the Service as soon as possible if the low threat discharge may affect a listed species or critical habitat in the action area. Generally, applicants are authorized to discharge within 14-30 days after submitting a NOI. Although the draft permit includes a mechanism to exceed these timeframes if the EPA requests more information or needs to verify eligibility requirements, the Service does not want to hold up a permit if the discharge may affect a listed species or critical habitat. If EPA and the Service proceed on a case-by-case basis for informal consultations, the Service typically processes concurrences in 30 days.

Also, it is the Service's understanding that if an applicant's discharge is likely to adversely affect listed species or critical habitat, the applicant would not qualify under this general permit. In this case, EPA would work with the applicant to obtain an individual permit, which would be subject to formal consultation with FWS.

**RESPONSE: 3:** EPA noted this comment and will contact the Service as soon as possible if the applicant indicates in its NOI that the proposed discharge may affect a listed species or critical habitat in the action area.

EPA received comments from the New Mexico Environment Department on EPA draft NPDES General Permit for Low Threat Discharges on the Navajo Nation (LTGP). EPA has summarized the comments and responded to comments below.

**COMMENT 4:** The draft permit in section for Coverage Under This General Permit, B. Limitations on Coverage, 5. Page 5 of 21 states:

“Discharges to waters near tribal boundaries. The LTGP does not authorize the discharge of pollutants to receiving waters at a location less than one hundred (100) yards upstream from a Tribal, State, or International boundary.”

The State is concerned that this distance is not sufficient to prevent un-monitored discharges from crossing the boundary into downstream waters and suggests this setback be increased to 500 yards.

**RESPONSE 4:** EPA agrees with the commenter and language in the LTGP Part I. Section 1. B .5. has been amended to increase the setback required to 500 yards instead of 100 yards.

**COMMENT 5:** The draft permit in section II. Requirements for Coverage., 1. Notice of Intent., Content of the Notice of Intent., 2. General Discharge Information states:

“e. A statement as to whether the discharge location is on State Lands or other areas for which EPA does not have permitting authority and whether the discharge will reach waters of a state”

The State requests that for any discharge that has the potential [to] cross the boundary between Navajo Nation and the State of New Mexico, that notice also be provided to the state at:

Program Manager  
Surface Water Quality Bureau  
New Mexico Environment Department  
Box 5469  
1190 Saint Francis Drive  
Santa Fe, NM 87502-5469

**RESPONSE 5:** EPA amended the language in the LTGP Part II. 1. A. 2. e. to require the applicant/permittee to provide notice to any state into which discharge is likely to reach waters of a state. The particular address to send the notice in case of New Mexico was provided in an added footnote.

**COMMENT 6:** The draft permit does not include reference to the Colorado River Salinity Review Forum policies. The state suggests that the final permit be reviewed and amended as necessary to include any requirements the Forum may have for discharges into the Colorado River Basin and tributaries thereof. Information may be found at the following website:  
<http://www.coloradoriversalinity.org/>

**RESPONSE 6:** EPA amended the language in the LTGP Part II. 1. A. 2. h. to include a requirement that the applicant provide a statement that its discharge meets any requirements of the Colorado River Salinity Review Forum policies.