



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IX

**75 Hawthorne Street
San Francisco, CA 94105-3901**

JUL 06 2015

Mr. Brian Gambrel, Project Manager
Fisher Sand and Gravel
30A Frontage Road East
Placitas, New Mexico 87043

RE: Fisher Sand and Gravel Request for Coverage under a General Permit

Dear Mr. Brian Gambrel:

The U.S. Environmental Protection Agency, Region 9 (EPA) has conducted an initial review of your Request for Coverage under the Stone Quarrying, Crushing and Screening General Permit for Fisher Sand and Gravel's (FSG) construction of a new stone quarrying, crushing, and screening facility (Facility) on the Grey Mesa Gravel Pit (Grey Mesa) located in San Juan County, New Mexico on the Navajo Nation Indian Reservation. FSG is proposing to build a stone quarrying, crushing, and screening facility upon an abandoned gravel pit, which will entail construction of new equipment and upgrading an existing access road at Grey Mesa Pit.

FSG's general permit application was submitted pursuant to the Tribal New Source Review regulations at 40 CFR 49.156. The EPA received your request on June 8, 2015 and reviewed the submitted information. We have determined that your Request for Coverage is incomplete at this time because some aspects of the application are deficient.

As part of the 45-day completeness review outlined in 40 CFR 49.156(e)(4) EPA has 30 days to review your Request for Coverage for completeness and request additional information in writing. FGS has 15 days to respond to our request for information. Your application is considered incomplete until the information is received and evaluated and the EPA has determined that your request contains all the information needed to qualify under this general permit. If your response to our request is delayed beyond 15 days then the 90-day permit issuance period for EPA to act is extended by the additional days it takes to address the deficiencies in the Request for Coverage.

We look forward to continuing to work with you on this application. If you have any questions, please contact Larry Maurin, of my staff, at (415) 942-3943 or Maurin.Lawrence@epa.gov.

Sincerely,

A handwritten signature in blue ink, appearing to read "Gerardo C. Rios".

Gerardo C. Rios
Chief, Permits Office
Air Division

Enclosure

cc: Dr. Donald Benn, Executive Director, Navajo Nation Environmental Protection Agency

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EPA Completeness Review
Fisher Sand and Gravel General Permit Application
June XX, 2015

1. Under Section 7(a)(2) of the Endangered Species Act (ESA), the EPA must ensure that any action authorized, funded, or carried out by the EPA is not likely to jeopardize the continued existence of any federally listed endangered species or threatened species or result in the destruction or adverse modification of such species' designated critical habitat. If the EPA's action (*i.e.*, permit issuance) may affect a federally listed species or designated critical habitat, Section 7(a)(2) of the ESA and relevant implementing regulations at 50 CFR Part 402 require consultation between the EPA (or another designated Federal lead agency) and the United States Fish and Wildlife Service (FWS). The permit application for the Fisher Sand and Gravel facility is subject to ESA requirements.

FSG selected criterion D in its Request for Coverage to satisfy the ESA requirements. The supporting documentation includes a 2009 Biological Assessment (BA) with a 2010 Memorandum concluding a Finding of No Significant Impact (FONSI) from the Bureau of Indian Affairs' (BIA) NEPA Coordinator. Additionally, the ESA documentation includes an updated biological evaluation performed in May of 2015 to address new species that have been added since the 2009 BA. Finally, the application includes a 2009 letter from the Navajo Nation Department of Fish & Wildlife office providing information on the sensitive species with a potential to occur near the project site. However, to satisfy the ESA obligations under Criterion D consultation between another Federal Agency and the Service(s)¹ must have been conducted. The BA and letters contain much useful information but it does not contain written concurrence or information regarding determinations made directly by the Services as to whether the BA is consistent with the ESA requirements or whether the Services concur that the project is not likely to adversely affect any listed species or their designated critical habitat in accordance with section 7 of the ESA. As such, EPA has initiated consultation with the FWS and must receive their concurrence prior to issuance of our determination on your Request for Coverage. EPA will rely on the information provided by FSG in consulting with the FWS. However, additional information may be requested as part of that process to address the FWS's concerns.

2. Section 106 of the National Historic Preservation Act (NHPA) requires the EPA – prior to the approval of the expenditure of any funds on, or prior to the issuance of any license for, an undertaking – to take into account the effects of its undertakings on historic properties and afford the Advisory Council on Historic Preservation (Council) a reasonable opportunity to comment with regard to such undertakings. Under the Council's implementing regulations at 36 CFR Part 800, Section 106 consultation is required for all undertakings that have the potential to affect historic properties. Section 106 consultations assess whether historic properties exist within an undertaking's area of potential effect and, if so, whether the undertaking will adversely affect such properties. The term "historic properties" means prehistoric or historic districts, sites, buildings, structures, or objects included in, or eligible for inclusion in, the National Register of Historic Places maintained by the Department of the

¹ U.S. Fish and Wildlife Service (FWS) and/or the National Marine Fisheries Service (NMFS) together, the "Services"

Interior. Historic properties include properties of traditional religious and cultural importance to an Indian Tribe.

Consultation is generally with relevant state and tribal historic preservation authorities in the first instance, with opportunities for direct Council involvement in certain circumstances. We note that Section 3.1 of the Environmental Assessment includes information on cultural or historic values and identifies three previously recorded sites along the access road.

Additionally, Appendix 5 of the application includes the first page of an archeological inventory report. The report also discusses three sites of historical or cultural value and references a continuation sheet for more information on the sites, including the evaluation of their significance. This continuation sheet is not included as part of appendix 5 or included in the application. Please provide a copy of the entire report so that we may share all the documentation with the Navajo Nation Historic Preservation Department in order to determine the accuracy of the assessment and the recommended mitigation steps.