

**NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM  
PERMIT FACT SHEET  
March 2026**

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NPDES Permit No.: NN0030345

**I. STATUS OF PERMIT**

Navajo Engineering and Construction Authority (“NECA”) (the “permittee”) applied for the renewal of its National Pollutant Discharge Elimination System (“NPDES”) permit to authorize the discharge of flushing, hydrostatic test water and disinfection water from the Navajo Nation Municipal Pipeline Project (“NNMPP”) in San Juan County, New Mexico. The effluent discharge flows into Hogback Irrigation Canal which is a tributary of San Juan River, a water of the U.S. The permittee applied for a permit renewal on March 6, 2024.

The Navajo Nation is a federally recognized tribe. Because the Navajo Nation EPA (“NNEPA”) does not have primary regulatory responsibility for administering the NPDES permitting program, U.S. EPA Region 9 (“EPA”) prepared the draft NPDES permit renewal and fact sheet pursuant to Section 402 of the Clean Water Act (“CWA”), which requires point source dischargers to control pollutants that are discharged to waters of the United States. The draft permit incorporates both federal standards and applicable tribal water quality requirements.

The permittee is currently covered under NPDES Permit No. NN0030345 which became effective on September 1, 2019, through midnight August 31, 2024. The March 2024 application was deemed complete, and EPA issued an administrative continuance on April 24, 2024. Pursuant to 40 CFR § 122.6, the terms of the existing permit are administratively extended until the issuance of a new permit. This fact sheet is based on information provided by the discharger through its permit application, effluent discharge data, and applicable laws and regulations.

Pursuant to Section 402 of CWA, EPA is proposing issuance of the NPDES permit renewal to the permittee for the discharge of flushing, hydrostatic test water and disinfection water into Hogback Irrigation Canal located on the Navajo Nation, which is a tributary to San Juan River, a water of the United States.

This permittee is classified as a minor discharger.

## II. SIGNIFICANT CHANGES TO PREVIOUS PERMIT

**Table 1. Significant Changes to Previous Permit**

Permit Condition	Previous Permit (2019 – 2024)	Re-issued permit (2026 – 2031)	Reason for change
DMR submittal	Hardcopy accepted for a portion of the permit period	E-reporting (NetDMR) required	EPA e-reporting Rule.
Priority Pollutant Scan	Monitor once in the 5-year permit term	Require monitoring during years 2 and 4 of the permit term.	To collect sufficient data to improve the analysis of reasonable potential.
Best Management Practices (“BMPs”)	None	Incorporate standard BMPs language for small utilities.	Provision of 40 CFR § 122.44(k)(4)
Discharge Notification Requirements	None	30 working days prior to commencement of discharge.	To allow for adequate time for notification and proper monitoring reporting.
Nutrient monitoring	None	Monitor discharge.	Required to ensure discharge is in compliance with narrative NNSWQS.
Narrative Water Quality Based Limitations	Part 1, Section A.4	Revised	Narrative water quality-based limitations are updated to more clearly express them in terms of the restrictions on the permitted discharge.

## III. GENERAL DESCRIPTION OF FACILITY

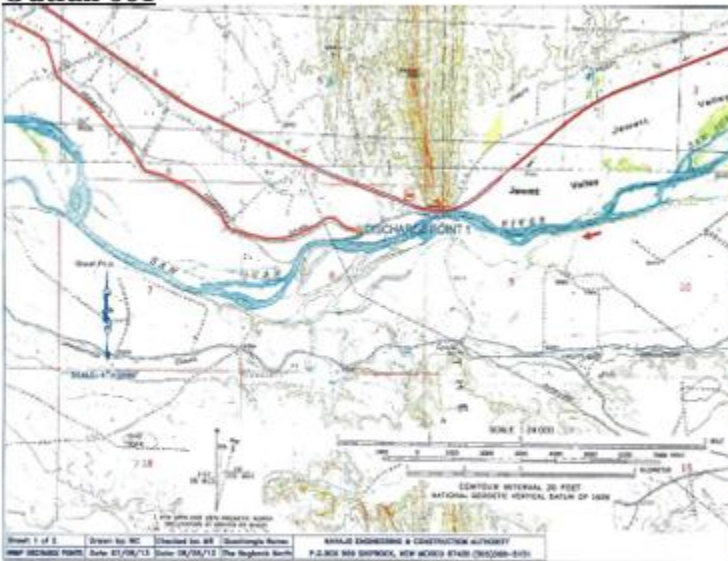
The NNMPP involves the construction and installation of pipelines, pumping stations, and ancillary facilities in order to provide capacity to deliver potable water to the Navajo Nation. The Bureau of Reclamation (“BOR”) designed the NNMPP Schedule 1 – Fruitland Reach, and Schedules 2-6 – Nenahnezad to Shiprock Reaches.

BOR hired NECA to install and construct 29 miles of 24-inch diameter polyvinylchloride pipeline from Farmington, New Mexico to Shiprock, New Mexico. In addition, NECA was hired to perform flushing, hydrostatic testing, and disinfection of the new facilities and parts in the NNMPP, prior to placing them into service. NECA has completed installing the pipeline and is ready to perform the flushing, hydrostatic testing and chlorination of the entire pipeline.

As part of the testing and disinfection of the entire pipeline, NECA will be filling the pipeline with potable water provided by the City of Farmington and the Navajo Tribal Utility Authority’s storage tank.

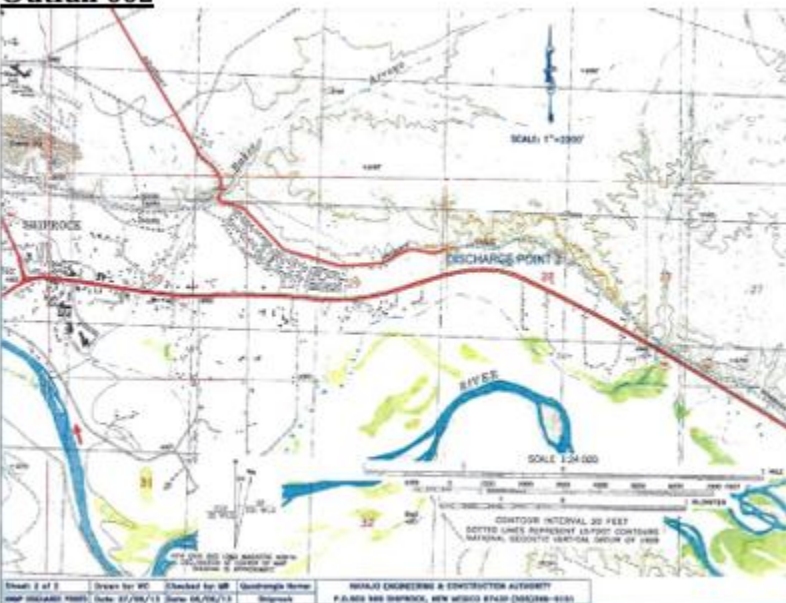
After filling the pipeline, the water will be flushed with approximately 3.5 million gallons of potable water until the water from the pipe is clear. The Discharge Point 1 for the flushing is located at the head gate of the Hogback Irrigation Canal near Jewett Valley (herein designated as “Outfall 001”).

### Outfall 001



Next, hydrostatic testing will be performed on the pipeline in sections which will be followed by disinfection that will utilize approximately 3.8 million gallons of potable water. The Discharge Point 2 for hydrostatic testing and disinfection is located at the Yellowman Lateral of the Hogback Irrigation Canal (herein designated as “Outfall 002”).

### Outfall 002



Flushing and hydrostatic testing may introduce pollutants into the discharge due to flushing of residual pollutants from the new units. Disinfection involves the use of chlorine. Both discharge points are located within the Navajo Nation, as summarized in the table below. The Hogback Irrigation Canal

intake is on the San Juan River in Hogback, New Mexico. The canal is approximately 17 miles long and ultimately spills into the San Juan River northwest of Shiprock, New Mexico.

Outfall	Activity	Flow Rate (GPM)	Total Volume (Gallons)	Receiving Water(s)
001	Fill	1,410	Est. 3.5 million	Hogback Irrigation Canal (Tributary to San Juan River)
	Flush	3,525		
002	Hydrostatic Test	500	Est. 3.8 million	Hogback Irrigation Canal (Tributary to San Juan River)
	Disinfection	500		

NECA states that temporary earth plugs will be constructed at two locations within the canal creating a pond capable of capturing all the necessary water to test and disinfect the pipeline. At both discharge points, cable concrete mats will be placed on the side slopes and the bottom width of the irrigation canal to prevent erosion. At the completion of the disinfection and testing of the pipeline, the temporary earth plugs will be removed, and the irrigation canal will be restored to its original configuration. NECA received approval to utilize the Hogback Irrigation Canal from the Navajo Nation Irrigation Office when not in use. The irrigation canal is not utilized from November until the start of April in any calendar year.

#### IV. DESCRIPTION OF RECEIVING WATER

The discharge of flushing, hydrostatic testing, and disinfection water is to Hogback Irrigation Canal, a non-perennial tributary to San Juan River a water of the United States. The coordinates for discharge Outfall No.001 are: 36° 44'42.10" North, longitude 108° 32'43.00" West, Outfall No.002 are: 36° 47'15.57" North, longitude 108° 38'47.71" West.

#### V. DESCRIPTION OF DISCHARGE

There has been no previous discharge from the NNMPP due to the 2014 landslide that obliterated a section of the new pipeline. Therefore, the permittee has not been able to perform flushing, hydrotesting, or disinfecting the pipeline or characterize the effluent.

##### A. Application Discharge Data

Table 2 shows data related to discharge from Outfall 001 and Outfall 002 based on the permittee's NPDES renewal application. Pollutants believed to be absent or never detected in the effluent are not included.

**Table 2. Application Discharge Data**

Pollutant Parameter	Units	Discharge Data		Number of Samples
		Max Daily Discharge	Average Daily Discharge	
Discharge Flow (Outfall 001)	GPM	3525	n/a	Continuous
Discharge Flow (Outfall 002)	GPM	500	n/a	Continuous
pH	S.U.	6.5 to 9.0		Per Discharge
Total Suspended Solids (TSS)	mg/L	30.0	10.0	Per Discharge

Pollutant Parameter	Units	Discharge Data		Number of Samples
		Max Daily Discharge	Average Daily Discharge	
Oil and Grease	mg/L	10.0	5.0	Per Discharge
Total Residual Chlorine	µg/L	11.0	n/a	Per Discharge

## VI. DETERMINATION OF NUMERICAL EFFLUENT LIMITATIONS

EPA developed effluent limitations and monitoring requirements in the permit based on an evaluation of the technology used to treat the pollutant (e.g., “technology-based effluent limits,”) and the water quality standards applicable to the downstream receiving water (e.g., “water quality-based effluent limits”). EPA has established the most stringent of applicable technology-based or water quality-based effluent limitations in the permit, as described below.

### A. **Applicable Technology-Based Effluent Limitations**

Technology-based treatment requirements may be imposed on a case-by-case basis under Section 402(a)(1) of the CWA, to the extent that EPA-promulgated effluent limitations are inapplicable (i.e., the regulation allows the permit writer to consider the appropriate technology for the category or class of point sources and any unique factors relating to the discharger) (40 CFR § 125.3(c)(2)).

There are no Effluent Limitations Guidelines (“ELGs”) for potable water system discharges from flushing, hydrostatic testing or disinfection of newly constructed pipelines. In such circumstances, where ELGs have not been developed, USEPA relies on best professional judgement (“BPJ”) pursuant to Section 402(a)(1) of the CWA, to establish technology-based effluent limits on a case-by-case basis. Using this approach and using information of the contaminants present in the intake water (potable water discharges), USEPA proposes the following provisions and effluent limitations for flow, oil and grease, total suspended solids (“TSS”), total residual chlorine (“TRC”), pH and turbidity, as they are typical pollutants of concern in a pipeline flushing, hydrostatic testing and disinfection. These requirements are consistent with those in the previous permit.

Where technology-based effluent limitations are not sufficiently stringent to meet water quality standards and/or do not exist, CWA regulations allow USEPA to develop water quality-based effluent limitations.

#### **Flow Volume and Duration**

A requirement for monitoring discharge volume is included 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 authorized volume and duration will be proposed for each discharged outfall. The total volume of flushing water discharge must not exceed 3.5 million gallons at Outfall 001, with the flow rate not exceeding 3,525 gallons per minute (“GPM”). The total combined volume of hydrostatic testing and disinfection discharges must not exceed 3.8 million gallons at Outfall 002, with the discharge flow rate not exceeding 500 GPM. In addition, the duration of each discharge shall not exceed 14 days.

### B. **Water Quality-Based Effluent Limitations**

Water quality-based effluent limitations (“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, U.S. EPA, March 1991) and the *U.S. EPA NPDES Permit Writers' Manual* (Office of Water, U.S. EPA, September 2010). These factors include:

1. Applicable standards, designated uses and impairments of receiving water
2. Dilution in the receiving water
3. Type of industry
4. History of compliance problems and toxic impacts
5. Existing data on toxic pollutants for a Reasonable Potential Analysis

#### **1. Applicable Standards, Designated Uses and Impairments of Receiving Water**

In order to protect the designated uses of surface waters, the Navajo Nation has developed [Navajo Nation Surface Water Quality Standards](#) (“NNSWQS”) for different stream segments, depending on the level of protection required. EPA approved the 1999 NNSWQS on March 23, 2006. The NNSWQS were later revised in 2007 and approved by EPA on March 26, 2009. EPA partially approved the [2015 NNSWQS revisions](#) on October 5, 2020, effective March 17, 2021. The approved 2015 NNSWQS will be used on a BPJ basis to analyze the need for and develop WQBELs. The requirements contained in the proposed permit are necessary to prevent violations of applicable water quality standards.

The following beneficial uses are designated for the unnamed, ephemeral, tributaries to the San Juan River, as listed in Table 206.1 (page 32) of the NNSWQS:

- **ScHC** - Secondary Human Contact
- **AgWS** – Agriculture Water Supply
- **FC**- Fish Consumption
- **A&W** - Aquatic & Wildlife
- **LW** - Livestock Watering

The following water quality criteria from the 2015 NNSWQS are applied as effluent limitations:

**pH:** 6.5-9.0 (2015 NNSWQS **ScHC** beneficial use)

The waterbodies potentially affected by discharge from this facility are not listed as impaired according to CWA Section 303(d) List of Water Quality Limited Segments. Therefore, no TMDLs are applicable to permittee’s discharge.

## **2. Dilution in the Receiving Water**

Discharge from Outfall No. 001 and Outfall No. 002 is to the Hogback Irrigation Canal, which will have no flow from November to April each 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 pipeline flushing, hydrostatic testing, and disinfection include pH, solids, TRC and oil and grease. Chlorine is of concern when used for disinfection, therefore dechlorination is necessary to minimize impact to WQBELs.

## **4. Compliance History**

Not applicable as there has not been a discharge under the previous permit.

## **5. Existing Data on Toxic Pollutants for a Reasonable Potential Analysis**

No existing data is available on toxic pollutants.

## **C. Rationale for Numeric Effluent Limits and Monitoring**

EPA evaluated pollutants expected to be present in the effluent and selected the most stringent of applicable technology-based effluent limits or water quality-based effluent limitations. Where effluent concentrations of toxic parameters are unknown or are not reasonably expected to be discharged in concentration that have the reasonable potential to cause or contribute to water quality standards, EPA has established monitoring requirements in the permit. This data will be evaluated and the permit re-opened to incorporate effluent limitations if necessary. Effluent limits are explained below.

To ensure that receiving waters are not impacted by the discharge, EPA is requiring the permittee to conduct additional monitoring to provide additional data that will better characterize the quantity and quality of the effluent. The permittee is required to monitor for 126 priority pollutants (including heavy metals) and nutrients. This monitoring data may be used to develop numeric limits, if necessary to protect receiving waters. Based on EPA's evaluation of the monitoring data, the permit may be re-opened to incorporate numeric or other effluent limits.

### ***Flow:***

No limits have been established for flow, but flow rates must be monitored and reported. Continuous monitoring is required for flow when discharging at Outfall 001 and Outfall 002.

### ***Oil and Grease (O&G):***

Consistent with the previous permit, the proposed permit requires monitoring and limitation for O&G. New pipes used for drinking water are often coated with oil and other O&G components. Therefore, during the flushing and hydrostatic testing, there is reasonable potential for O&G levels in the effluent to cause or contribute to an excursion above the WQS. The NNWQS has the narrative requirement that "All surface waters 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 the shoreline, on a bank, or on aquatic vegetation". Therefore, the proposed permit establishes a daily maximum limit of 10 mg/l and a monthly average of 5 mg/l, which are commonly used as a numeric translation for the narrative O&G requirements in other permits in the Navajo Nation.

**Total Suspended Solids (TSS):**

Consistent with the previous permit, the proposed permit requires monitoring and limitation for TSS. Dirt and solids may find their way inside the pipeline during their installation underground. Therefore, during the flushing, hydrostatic testing and disinfection of the pipeline, there is reasonable potential for suspended solids levels in the effluent to cause or contribute to an excursion above the WQS. The NNWQS established standards for suspended solids as 80 mg/L to 25 mg/L to protect the beneficial uses of A&W (warm water) and A&W (cold water), respectively. *“Standards are expressed as a median value determined from a minimum of four samples collected at least seven days apart”* (see section 206 of 2007 NNSWQS and Section 207 of 2017 draft versions). This permit, however, limits the total discharge time to 14 days or less, which is not long enough to allow for adequate sample collection for WQS purposes. Therefore, a daily maximum limit of 30 mg/l and a monthly average limit of 10 mg/l have been established which are commonly used as a numeric limit of POTW permits in the Navajo Nation to meet surface water quality standards, as well as for protection of the beneficial uses of the receiving waters.

EPA retains the more stringent effluent limits for TSS, which are based on the technical capability of the secondary treatment process as defined by 40 CFR § 133.105(a) and (b). Mass limits are also required for TSS under 40 CFR § 122.45(f). Monitoring is required per discharge.

**Total Residual Chlorine (TRC):**

Consistent with the previous permit, the proposed permit requires monitoring and limitation for TRC. The use of potable water for flushing, hydrostatic testing and pipeline disinfection purposes indicates that there is a reasonable potential for TRC levels in the effluent to cause or contribute to an excursion above the WQS. Additionally, the NNSWQS states: *“All Waters of the Navajo Nation shall be free from pollutants in amounts or combinations that, for any duration: Cause injury to, or toxic to, or otherwise adversely affect habitation, growth or propagation of aquatic life and wildlife.”* Therefore, a TRC daily maximum limit of 11 µg/l has been established in the proposed permit to protect the beneficial uses of the receiving waters (See particularly aquatic & wildlife habitat and livestock watering Table 206.1 and Section 206 of 2007 NNSWQS and 2017 *draft* revisions).

**pH:**

The use of potable water for flushing, hydrostatic testing and chlorination could be contaminated with any substance found in a newly constructed pipeline. Therefore, there is a reasonable potential for pH levels in the effluent to cause or contribute to an excursion above the WQS. To ensure adequate protection of beneficial uses of the receiving water, a minimum pH limit of 6.5 and a maximum limit of 9.0 S.U. are established in 2015 NNSWQS Section 207.C. The permit limit is carried over from the previous permit, and the monitoring frequency is once per discharge.

**Turbidity:**

The use of potable water for flushing and hydrostatic testing indicates that there is a reasonable potential for turbidity levels in the effluent to cause or contribute to an excursion above the WQS. To ensure adequate protection of beneficial uses of the receiving water, a daily maximum limit of 50 Nephelometric Turbidity Units (“NTU”) is established based on BPJ and taking into account that the effluent is the only water likely to be present in receiving waters. 50 NTU is considered a benchmark for background turbidity level.

**Nutrient Monitoring:**

The NNWQS states: *“All Waters of the Navajo Nation shall be free from pollutants in amounts or combinations that, for any duration: Cause the growth of algae or aquatic plants that inhibit or*

prohibit the habitation, growth, or propagation or other aquatic life or that impair recreational uses.” Therefore, the permit contains monitoring for total phosphorus and total nitrogen. EPA will evaluate the data and may re-open the permit to incorporate effluent limitations if necessary.

**Priority Pollutant Scan:**

The requirement for a priority pollutant scan is retained from the previous permit. Monitoring is scheduled for the second and fourth year of the permit term.

**D. Anti-Backsliding**

CWA § 402(o) and § 303(d)(4) and 40 CFR § 122.44(l)(1) prohibit the renewal or reissuance of an NPDES permit that contains effluent limits and permit conditions less stringent than those established in the previous permit, except as provided in the statute and regulation. The proposed permit is a renewal and does not allow backsliding.

**E. Antidegradation Policy**

EPA’s antidegradation policy under CWA § 303(d)(4) and 40 CFR § 131.12, and the 2015 NNSWQS require that existing water uses and the level of water quality necessary to protect the existing uses be maintained. Permit limits are equal or more stringent than those in the previous permit; accordingly, the discharge is not expected to adversely affect receiving waterbodies or result in any degradation of water quality. The receiving water is not listed as an impaired waterbody under CWA § 303(d)(4) and 40 CFR § 131.12.

The proposed permit is not expected to adversely affect receiving water bodies or result in any degradation of water quality.

**VII. NARRATIVE WATER QUALITY-BASED EFFLUENT LIMITS**

The approved 2015 NNSWQS revisions contain narrative water quality standards for pollutants applicable to the receiving water. Thus, the permit incorporates applicable narrative water quality-based limits for the discharge in Part 1, Section A.4.

## **VIII. MONITORING AND REPORTING REQUIREMENTS**

The permit requires the permittee to conduct monitoring for all pollutants or parameters in Table 1, at the minimum frequency specified. All monitoring data shall be reported on monthly Discharge Monitoring Reports (“DMRs”) monthly, as specified in the permit, using the electronic reporting tools (NetDMR) provided by EPA Region 9. 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 28<sup>th</sup> each year.

### **A. Priority Pollutant Scan**

A Priority Pollutant scan shall be conducted during years two and four of the permit term to ensure that the discharge does not contain toxic pollutants in concentrations that may cause violation of water quality standards. Attachment G provides a complete list of Priority Pollutants, including identifying the volatile compounds that should be collected via grab sample procedures. The permittee shall perform all effluent sampling and analyses for the priority pollutants scan in accordance with the methods described in the most recent edition of 40 CFR § 136, unless otherwise specified in the permit or by EPA. A complete list of Priority Pollutants is provided at 40 CFR § 131.36.

## **IX. SPECIAL CONDITIONS**

### **A. Outfall Erosion Protection**

In order to prevent erosion and scouring of the channel or canal due to high volume discharge, the permittee must establish erosion protection and/or energy dissipation at the outfall location. The permittee must develop a plan that describes preventive measures or BMPs that specifically apply to the 2 outfall locations. This may include BMPs such as rip rap, perforated pipe, construction of a splash pool, diffuser, or other means that will slow down the velocity of the discharge and maintain a stable channel. The permittee will construct temporary earth plugs at the outfall locations within the canal creating a pond capable of capturing all the water necessary to test and disinfect the pipeline. At both discharge points, the permittee will place cable concrete mats placed on the side slopes and the bottom width of the irrigation canal to prevent erosion. At the completion of the disinfection and testing of the pipeline, the temporary earth plugs must be removed, and the irrigation canal must be restored to its original configuration.

### **B. Outfall Monitoring Inspection**

Due to concerns that the volume of discharge may cause problems in the wash, such as flooding or erosion, the Permittee must establish a monitoring procedure to evaluate the effects of the discharge on the wash. The monitoring procedure must consist of daily visual monitoring at the discharge points. If significant erosion or potential flooding is observed, the permittee must notify USEPA and NNEPA within 24 hours. If it is determined that a problem exists, a solution to the erosion problem may involve reducing the allowable volume or flow rate of discharge.

### **C. Development and Implementation of Best Management Practices**

The permittee shall develop and implement BMPs for pollution prevention. Pursuant to 40 CFR § 122.44(k)(4), EPA may impose BMPs “reasonably necessary...to carry out the purposes of the Act.” The pollution prevention requirements or BMPs in the permit operate as technology-based limitations on effluent discharges that reflect the application of Best Available Technology and Best Control Technology.

Thus, the permit requires that the permittee develop (or update) and implement a Pollution Prevention Plan with appropriate pollution prevention measures or BMPs designed to prevent pollutants from entering the receiving water while performing normal processing operations at the facility.

The permittee shall develop and implement BMPs that are necessary for outfall erosion control protection and/or energy dissipation at the Outfall(s) locations to prevent erosion and scouring of the channel during periods of high-volume discharge.

**X. OTHER CONSIDERATIONS UNDER FEDERAL LAW**

**A. Impact of Threatened and Endangered Species**

Section 7 of the Endangered Species Act of 1973 (16 U.S.C. § 1536) requires federal agencies to ensure that any action authorized, funded, or carried out by the federal agency does not jeopardize the continued existence of a listed or candidate species, or result in the destruction or adverse modification of its habitat.

In compliance with the ESA, and as detailed below, EPA has examined the potential effects of the action and has determined that the action will have no effect on the federally listed as identified below. EPA has also determined that the action will not affect any critical habitat pursuant to the ESA.

**Action Area**

The “Action Area” is defined by the “effects of the Action.” The Action Area includes all areas likely to be affected directly or indirectly by the Federal action and not merely the immediate area involved in the action. To identify the areas that will be affected by the action, EPA has considered all consequences to listed species or critical habitat that are caused by the proposed action. A consequence is caused by the proposed action if it would not occur but for the proposed action and it is reasonably certain to occur.

The Action Area includes areas in the vicinity of the Hogback Irrigation Canal which is a tributary of the San Juan River, a water of the U.S. The coordinates for the discharge Outfall No.001 are: 36° 44’42.10” North, longitude 108° 32’43.00” West, and Outfall No.002 are: 36° 47’15.57” North, longitude 108° 38’47.71” West.

**Potentially Affected Species**

On January 5, 2026, EPA obtained from the USFWS Information, Planning and Conservation System (IPAC) database, a list of current federally listed threatened (T) and endangered (E) species that are known to occur, or may potentially occur, within the action area.

The official species list provided pursuant to Section 7 of the ESA fulfills the requirement for Federal agencies to “request of the Secretary of the Interior information whether any species which is listed or proposed to be listed may be present in the area of the proposed action.”

To determine whether the proposed project would affect any threatened, or proposed threatened, or endangered species, EPA reviewed a list of 7 species generated using the USFWS IPAC system within Navajo Nation. Table 3. Lists the threatened, proposed threatened, and endangered species.

Table 3. Federally Listed Threatened and Endangered Species

Names (common and	Status <sup>(1)</sup>	Critical	Outfall(s)	Determination
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scientific)		Habitat		
Southwestern Willow Flycatcher ( <i>Empidonax traillii extimus</i> )	E	No <sup>(2)</sup>	001	No effect
Yellow-billed Cuckoo ( <i>Coccyzus americanus</i> )	T	No <sup>(2)</sup>	001 and 002	No effect
Mesa Verde Cactus ( <i>Sclerocactus mesae-verdae</i> )	T	No <sup>(2)</sup>	001 and 002	No effect
Colorado Pikeminnow ( <i>Ptychocheilus lucius</i> )	E	No <sup>(2)</sup>	001 and 002	No effect
Razorback Sucker ( <i>Xyrauchen texanus</i> )	E	No <sup>(2)</sup>	001 and 002	No effect
Monarch Butterfly ( <i>Danaus plexippus</i> )	PT	No <sup>(2)</sup>	001 and 002	No effect
Suckley's Cuckoo Bumble Bee ( <i>Bombus suckleyi</i> )	PE	No <sup>(2)</sup>	001 and 002	No effect

(1) E= Endangered, T= Threatened

(2) These species have designated critical habitat outside of the Action Area.

#### Analysis of Potential Impacts to Threatened and Endangered Species:

All federally listed threatened, endangered, and proposed threatened species identified in the IPAC were analyzed using available literature sources, including articles about species prevalence, distribution, status, and potential threats to determine if they were indeed likely to be found within the Action area.

#### Birds

##### Southwestern Willow Flycatcher (*Empidonax traillii extimus*)

The Southwestern Willow Flycatcher is a federally endangered bird that breeds in dense riparian vegetation near surface water or saturated soils in the American Southwest which may be found in the action area. There is no critical habitat for the Southwestern Willow Flycatcher within the action area.

The Southwestern Willow Flycatcher feeds primarily on insects in the riparian area including bees, wasps, flies, mosquitoes, gnats, midges, cicadas, aphids, grasshoppers, etc. They also use riparian areas for nesting, breeding, and during migration. During migration smaller riparian areas with sparser vegetation may also be used.

The primary reason for the decline of the species is the loss and degradation of dense, native riparian habitats, water impoundment, water diversion, groundwater pumping, stream bank stabilization, riparian vegetation control, livestock grazing, off-road vehicle use, increased fires, urban development, and competition with invasive species such as brown-headed cowbirds (*Mototrus ater*).

Given that any authorized discharge from the pipeline flushing, hydrostatic testing, and disinfection is likely to be of relatively clean water of limited volume and duration and is required to meet limits included in the permit to protect all beneficial uses, including aquatic and wildlife uses, EPA determined that this action will not affect the Southwestern Willow Flycatcher.

### Yellow-billed Cuckoo (*Coccyzus americanus*)

The Yellow-billed Cuckoo is a federally threatened bird that was once commonly found from Lake Washington in Seattle to the San Pedro River in southern Arizona and may be found in the action area. There is no critical habitat for the Yellow-billed Cuckoo within the action area.

The Yellow-billed Cuckoo breeds in deciduous and riparian woodlands and winters in mature tropical forests in the Caribbean, and Central and South America. The species forages in dense shrubs and trees and may also catch insects in flight. It mainly eats insects, including cicadas and tent caterpillars, but also some small lizards, eggs of other birds, and berries.

The primary reason for the decline of the Yellow-billed Cuckoo is loss of gallery riparian forests to dams, livestock grazing, water withdrawal, urban development, as well as mining activities.

Given that any authorized discharge is likely to be of relatively clean water of limited volume and or duration and is required to meet limits included in the permit to protect all beneficial uses, including aquatic and wildlife uses, EPA concludes that the authorized discharge will have no effect on the Yellow-billed Cuckoo.

## **Fish**

### Colorado Pikeminnow (*Ptychocheilus lucius*)

The Colorado Pikeminnow is a federally endangered fish endemic to warm-water large rivers of the Colorado River basin and is the largest minnow native to North America which may be found within the action area. Populations in the Colorado and Green rivers are remnants of wild populations. The species has also been reintroduced into the San Juan River through restocking of hatchery fish. The Colorado Pikeminnow young up to 5 centimeters eat water fleas, and tiny aquatic crustaceans and midge, and lake fly larvae. Larger individuals move on to eat insects, and then they begin to eat other fish at around 10 centimeters long gradually eating almost exclusively fish by the time they are 30 centimeters.

The major cause of the decline of Colorado Pikeminnow are damming of rivers altering the movement of the fish making freshwater migrations to their natal areas. Another major cause of decline is introduction of non-native species, both as sources of competition and predation.

Given that any authorized discharge is likely to be of relatively clean water of limited volume and or duration and is required to meet limits included in the permit to protect all beneficial uses, including aquatic and wildlife uses, this action will not affect the Colorado Pikeminnow. No critical habitat for the Colorado Pikeminnow was found within the action area.

### Razorback Sucker (*Xyrauchen texanus*)

The Razorback Sucker is a federally endangered fish native only to the warm water portions of the Colorado River basin of the southwestern United States and may be found within the action area.

Razorback Suckers are found throughout the basin in both lake and riverine habitats, but most commonly in backwaters, floodplains, flatwater river sections, and reservoirs. They are a long-lived species with individuals living for 40+ years and growing to over 3.5 feet in length.

The major factor in the decline of the Razorback sucker is reduced flows due to dam constructions in the basin, altered temperature regimes, and disconnected floodplains from the mainstem rivers. Altered environments provided opportunities for non-native fish to flourish. Non-native predators eat early life stages of the Razorback Sucker, preventing successful reproduction in the river systems. Conservation efforts and reestablishment of populations that are spawning, surviving and showing signs of reproductive success, have caused the species to be proposed for reclassification.

Given that any authorized discharge is likely to be of relatively clean water of limited volume and or duration and is required to meet limits included in the permit to protect all beneficial uses, including aquatic and wildlife uses, this action will not affect the Razorback Sucker. No critical habitat for the Razorback Sucker was found within the action area.

### **Flowering Plants**

#### Mesa Verde Cactus (*Sclerocactus mesae-verdae*)

The Mesa Verde Cactus is a federally threatened flowering plant that is known to occur in southwestern Colorado and northwestern New Mexico, which includes the action area.

The Mesa Verde Cactus usually grows on the tops or slopes of sparsely vegetated areas known as badlands. Badlands have soils that are highly alkaline, gypsum-rich, and prone to swelling upon exposure to water. These habitats are at 1980 to 1600 m (5250 to 6500 ft) in elevation.

The primary reason for the decline of the species is plant collectors but is also threatened by destruction or modification of its habitat, by off-road vehicles, coal mining, oil and gas exploration and production, commercial and residential expansion, livestock trampling, and the construction of powerlines.

Given that the action areas are unlike habitat for the Mesa Verde Cactus due to the absence of specific environmental conditions such as moisture levels, soil composition and topography, EPA determined that this action will not affect the Mesa Verde Cactus. No critical habitat for the Mesa Verde Cactus was found within the action area.

### **Insects**

#### Monarch Butterfly (*Danaus plexippus*)

The Monarch Butterfly is a federally proposed threatened insect that is originally native to North America but now is dispersed to other parts of the world.

Monarch butterflies require milkweed plants for both laying eggs on and as a primarily food source for caterpillars. Additionally, a wide variety of blooming nectar resources (flowers) are needed for adults throughout the breeding season, migration, and overwintering. Monarchs living west of the Rocky Mountains in North America, primarily overwinter in California at sites along the Pacific Coast, roosting in eucalyptus, Monterey pines, and Monterey cypress trees.

Given that any authorized discharge is likely to be of relatively clean water of limited volume and or duration and is required to meet limits included in the permit to protect all beneficial uses, EPA

has determined that this action will not jeopardize the existence of the Monarch Butterfly or its habitat. No critical habitat for the Monarch Butterfly was found within the action area.

#### Suckley's Cuckoo Bumble Bee (*Bombus suckleyi*)

The Suckley's Cuckoo Bumble Bee is a federally proposed endangered insect that is critically imperiled in New Mexico, which includes the action area. The Suckley's Cuckoo Bumble Bee is a generalist pollinator and represents a rare group of obligate, parasitic bumble bees. It is a social parasite because it invades the nests of the host bumble bees and relies on host species workers to provision its larvae.

Bumble bees require above and below ground micro-sites for overwintering and nesting, including logs, stumps, and abandoned rodent and ground-nesting bird nests.

The primary threat to the Suckley's Cuckoo Bumble Bee is the steep decline of the host bumble bee species. The major threats to the hosts are the escape of pathogen-infected bumble bees from managed colonies in commercial greenhouses, pesticide use, (particularly neonicotinoids), and climate change. The species are therefore entirely dependent in host bumble bee colonies, making host colony availability a critical habitat need for the species survival and overall viability.

The proposed discharge will not impact the floral resources or habitat of the host bumble bee colonies. Therefore, EPA has determined that its action will not jeopardize the continued existence of the Suckley's Cuckoo Bumble Bee.

#### **USEPA's Findings:**

This permit authorizes the discharge of pipeline flushing, hydrostatic testing and disinfection water 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.

USEPA believes that effluent discharge released in compliance with this permit will have no effect on any federally listed threatened or endangered species that may be present in the vicinity of the discharge. There is no designated critical habitat for the listed species within the action area. Additionally, the earthen plugs constructed at two locations within the canal will create temporary ponding, and the ponded water is likely to be either used for irrigation or evaporated. Thus, there is likely to be minimal effluent discharge reaching the San Juan River itself. Therefore, no requirements specific to the protection of endangered species are proposed in the permit. If, in the future, EPA obtains information or is provided information that indicates that there could be adverse impacts to federally listed species, EPA will contact the appropriate agency or agencies and initiate consultation, to ensure that such impacts are minimized or mitigated. In addition, re-opener clauses have been included should new information become available to indicate that the requirements of the permit need to be changed.

#### **B. 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 §307(c)(1) through (3)). CZMA §307(c) and implementing regulations at 40 CFR §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.

This permit does not affect land or water use in the coastal zone.

### **C. 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 determine whether Federal actions may adversely impact Essential Fish Habitat (“EFH”).

The 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 permit does not directly discharge to areas of essential fish habitat. Accordingly, EPA determined that the permit will not adversely affect EFH.

### **D. Impact to National Historic Properties**

The National Historic Preservation Act (“NHPA”) Section 106 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 the NHPA and 36 CFR § 800.3(a)(1), EPA has determined that issuing this NPDES permit does not have the potential to affect any historic properties or cultural properties. As a result, Section 106 does not require EPA to undertake additional consulting on this permit issuance.

### **E. Water Quality Certification Requirements (40 CFR § 124.53 and § 124.54)**

EPA can only issue the permit after the certifying Tribe has granted certification under 40 CFR § 124.55 or waived its right to certify. For this permit, the permittee is required to seek water quality certification (including paying applicable fees) that this permit will meet applicable water quality standards obtained water quality certification from the Navajo Nation EPA that this Permit will meet applicable water quality standards. Certification under section 401 of the CWA must be in writing and include 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 Navajo Nation law. EPA cannot issue the permit until the NNEPA has granted certification under 40 CFR § 124.53 or waived its right to certify. NNEPA issued certification under CWA section 401 on **[DATE]**.

## **XI. STANDARD CONDITIONS**

### **A. Reopener Provision**

In accordance with 40 CFR Parts 122 and 124, this permit may be modified by EPA to include effluent limits, monitoring, or other conditions to implement new regulations, including EPA-approved 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; or new permit conditions for species pursuant to ESA requirements.

### **B. Clean Water Act Section 402(k)**

The permittee is authorized to discharge from the identified facility at the outfall location(s) specified in the permit, in accordance with the effluent limits, monitoring requirements, and other conditions set forth in the permit. This permit authorizes the discharge of only those pollutants resulting from facility processes, waste streams, and operations that have been clearly identified in the permit application process. Any discharges not expressly authorized in the Permit cannot become authorized or shielded from liability under CWA section 402(k) by disclosure to EPA, State, or local authorities after issuance of the Permit via any means, including during an inspection.

Any wastestream or pollutant loading greater than or different than the proposed discharge (the "proposed discharge" is based on the chemical-specific data and the facility's design flow as described in the permit application, or any other supplemental information provided to EPA during the permitting process) is not authorized by this Permit

EPA notes that such other discharges or increases may be allowable, but Permittee must first submit a request to EPA to authorize such other discharge or increase. request. This request will allow EPA to conduct an updated reasonable potential analysis to reassess whether a WQBEL is needed for the newly proposed discharge. Permit modification or reissuance may be required before the discharge would be authorized.

### **C. Standard Provisions**

The permit requires the permittee to comply with EPA Region 9 Standard Federal NPDES Permit Conditions.

## **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 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 and fact sheet was posted on the EPA website from [DATES] for a minimum of 30 days to allow interested parties to respond in writing to EPA. No comments were received. After the closing of the public comment period, EPA 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 issued. No comments were received during both comment periods.

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

A public hearing may be requested in writing by any interested party during the public comment period. A public hearing will be held if EPA 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.

## **XIII. CONTACT INFORMATION**

Comments and additional information relating to this proposal may be directed to:

Melanie Alvarez

(415) 972-3577  
U.S. EPA Region 9  
[Alvarez.Melanie@epa.gov](mailto:Alvarez.Melanie@epa.gov)

#### XIV. REFERENCES

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