

**ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.**

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In Re:)	
)	
Four Corners Power Plant)	NPDES Appeal No. 19-06
NPDES Renewal Permit: NN0000019)	
Arizona Public Service Company (Permittee))	
)	
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**ARIZONA PUBLIC SERVICE COMPANY'S RESPONSE TO
PETITION FOR REVIEW**

ATTACHMENT 17

Goodhart
1/21/05



NAVAJO NATION ENVIRONMENTAL PROTECTION AGENCY
OFFICE OF THE EXECUTIVE DIRECTOR
P.O. Box 339, Window Rock, Navajo Nation, (AZ) 86515
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Joe Shirley, Jr.
PRESIDENT

OCT 31 2005

Frank Dayish, Jr.
VICE-PRESIDENT

Wayne Nastri, Regional Administrator
U.S. Environmental Protection Agency, Region 9
75 Hawthorne Street
San Francisco, CA 94105

Re: **Clarification Regarding the Navajo Nation's Application for Eligibility to Establish Water Quality Standards under the Clean Water Act**

Wayne
Mr. Nastri:

DATE	11/28/05
ACTION (✓)	COPIED (✓)
RA	RA
DRA	DRA
AIR	AIR
OCGR	OCGR
ORC	ORC
OSPEI	OSPEI
PMD	PMD
# FUND	# FUND
WASTE	WASTE
WATER	WATER
X-MEDIA	X-MEDIA

On August 7, 2001, the Navajo Nation submitted its application for eligibility under § 518(e) of the Clean Water Act ("CWA"), 33 U.S.C. § 1377(e), to establish water quality standards under CWA § 303, 33 U.S.C. § 1313, and administer a certification program under CWA § 401, 33 U.S.C. § 1341.¹ The application included a jurisdictional statement, dated March 16, 2001, which subsequently was revised on October 5, 2001 due to the intervening Supreme Court decision in *Nevada v. Hicks*, 533 U.S. 353 (2001).² I understand that you have received comments from Arizona Public Service Company ("APS") concerning the Navajo Nation's jurisdiction over the Four Corners Power Plant, which is located within the boundaries of the formal Navajo Indian Reservation and which APS operates. This letter is intended to clarify the scope of the Navajo Nation's application as it pertains to the Four Corners Power Plant.

In our jurisdictional statement, the Navajo Nation claimed jurisdiction for CWA purposes over all waters within the boundaries of the formal Reservation (as well as within the satellite Reservations and tribal trust lands outside the formal Reservation boundaries). The Navajo Nation noted that there was a dispute over its jurisdiction to regulate the Four Corners Power Plant and the Navajo Generating Station (both located within the boundaries of the formal Reservation), but stated that establishing water quality standards for Reservation water bodies did not constitute regulation of the plants, so that there was no need to address the issue in the context of approving water quality standards.³ APS agreed in its

¹ The August 7, 2001 application replaced an earlier application submitted in 2000.

² The jurisdictional statement also was supplemented by letters to you dated January 9, 2003 and January 21, 2003.


³ See jurisdictional statement at 18, n. 18.

comments filed on October 18, 2005 that "EPA need not decide the question of the Nation's authority to regulate the [Four Corners Power] Plant in the present proceeding."⁴

The jurisdictional dispute regarding the plants is based on language in the leases and rights-of-way for the plants. It has been brought to the Navajo Nation's attention that there is a water body - a man-made cooling lake called Morgan Lake - that is listed in the Navajo water quality standards and is within the boundaries of the lease area for the Four Corners Power Plant. (There also is a small segment of the spillway, No Name Arroyo, within the lease area, but this is not a listed water body in the water quality standards.) There are no listed water bodies within the lease area of the Navajo Generating Station.⁵

The Navajo Nation does not concede its jurisdiction over Morgan Lake or, for that matter, its jurisdiction to regulate the plants. Because of the dispute as to jurisdiction, however, which the Navajo Nation and the owners and operators of the plants hope to avoid litigating, the Navajo Nation requests EPA to refrain from making a finding as to the Nation's eligibility to set water quality standards for Morgan Lake. Instead, the parties intend to negotiate a voluntary compliance agreement to resolve the dispute. Once that agreement is finalized, the Navajo Nation may request EPA to make a finding as to Morgan Lake, depending on the outcome of the negotiations, but in the meantime the Navajo Nation requests EPA to refrain from any such finding.

Very truly yours,



Stephen B. Etsitty
Director, Navajo Nation EPA

cc: Kristin Gullatt, EPA Region 9
Wendell Smith, EPA Region 9
David Coursen, EPA OGC
Jo Ann Asami, EPA ORC - Region 9
Ann Nutt, EPA ORC - Region 9
S. Deb Misra, Navajo Nation EPA
Patrick Antonio, Navajo Nation EPA
Anthony Aguirre, Navajo Nation DOJ
Jill Elise Grant, Nordhaus Law Firm

⁴ Letter from Thomas Sayre Llewellyn to Wendell Smith, dated October 18, 2005, at 2.

⁵ The Navajo Generating Station recycles its water. It does not have an individual NPDES permit, but has a storm water discharge permit for industrial activities; the limits for this permit are based on industrial categorical effluent limits, not specific water quality standards.