

## Sheth, Gary

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**From:** Goldmann, Elizabeth  
**Sent:** Wednesday, May 30, 2018 11:55 AM  
**To:** Sheth, Gary  
**Cc:** Hagler, Tom; Smith, DavidW  
**Subject:** RE: CWA 401 Waiver for APS Four Corners Power Plant NPDES Permit (NN0000019) - #0443

Dear Gary,

USEPA Region IX (EPA) is in receipt of your request dated May 29, 2018 for a Section 401 of the Clean Water Act (CWA) water quality certification or waiver for the Arizona Public Service Company (APS) Four Corners Power Plant National Pollutant Discharge Elimination System Program (NPDES) permit. The NPDES permit authorizes the discharge of treated wastewater from the APS Four Corner Power Plant to No Name Wash. The project is located on Navajo Nation tribal lands in San Juan County approximately 20 miles southwest of Farmington, New Mexico.

EPA waives water quality certification pursuant to Section 401 of the CWA. The waiver is contingent upon the execution of the work as described in the NPDES permit and according to the terms and conditions of the permit administered by the EPA. APS and its contractors must employ all available and practicable best management practices to protect public health and the environment.

If there are substantive changes to the project that would change its standing in terms of NPDES permit authorization, or affect water quality to a degree not disclosed, please notify our office immediately.

If you have any further questions regarding this waiver, please contact me at (415) 972-3398.

Sincerely,

Elizabeth Goldmann  
Physical Scientist  
Wetlands Section  
EPA Region IX  
(415) 972-3398

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**From:** Sheth, Gary  
**Sent:** Tuesday, May 29, 2018 1:48 PM  
**To:** Goldmann, Elizabeth <Goldmann.Elizabeth@epa.gov>  
**Cc:** Hagler, Tom <Hagler.Tom@epa.gov>; Smith, DavidW <Smith.DavidW@epa.gov>  
**Subject:** 401 Cert or Waiver for APS Four Corners Power Plant NPDES Permit (NN0000019)

Hi Elizabeth,

EPA has been working with Arizona Public Service Company to renew the NPDES permit for the Four Corners Power Plant located near Fruitland, New Mexico. The application for the permit renewal was received first in 2005 and an updated/revised application was submitted in 2013. Both are available in the Administrative Record located in the

NPDES permits office. The proposed draft renewed permit and fact sheet is available on EPA's website at: <https://www.epa.gov/npdes-permits/aps-four-corners-power-plant-san-juan-county-nm-nn0000019>.

I am in this email formally requesting that EPA either issue a Clean Water Act Section 401 certification for this permit or, in the alternative, formally waive certification. The Four Corners Power Plant is entirely within the boundaries of the Navajo Nation. Although the Navajo Nation has received recognition for "treatment as a state" ("TAS") for both its water quality standards program and for Clean Water Act Section 401 certifications, EPA explicitly excluded the area leased for the Four Corners Power Plant site from the TAS recognition. See Decision Document: Approval of the Navajo Nation Application for Treatment in the Same Manner as a State for Sections 303(c) and 401 of the Clean Water Act, January 20, 2006, at page 2. See Administrative Record located in the NPDES permits office. Therefore, EPA is the certification authority for purposes of this permit renewal.

As we have discussed, and as is demonstrated in the referenced application, draft permit, and draft fact sheet, we believe that the operation of the Four Corners Power Plant pursuant to the terms of the proposed renewed permit will not result in a discharge to navigable waters that would violate Clean Water Act Sections 301 through 303 or Sections 306 and 307. Accordingly, we believe that either issuing the certification under Clean Water Act Section 401 or waiving that certification is appropriate.

Thanks,

Gary Sheth  
NPDES Permits Section (WTR-2-3)  
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USEPA Region 9  
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