



Navajo Nation Environmental Protection Agency  
Surface and Ground Water Protection Department

P. O. Box 339, Window Rock, AZ 86515  
Phone: 928-871-7701 • Fax: 928-871-7996



JONATHAN NEZ  
President

MYRON LIZER  
Vice-President

December 10, 2020  
Kelly E. Allen  
Chief, Regulatory Division  
Albuquerque District  
U.S. Army Corps of Engineers  
4101 Jefferson Plaza, NE  
Albuquerque, NM 87109

**Re: U.S. Army Corps of Engineers' Request for Justification of Denial of Water Quality Certification under § 401 of the CWA for Nationwide Permits**

Dear Mr. Allen:

The Navajo Nation Environmental Protection Agency (NNEPA) sent you a letter dated November 16, 2020 which denied a blanket Clean Water Act (CWA) § 401 water quality certification (401 Certification) for all Nationwide Permits (NWP). The NNEPA stated its reasons for the denial in its letter, which is consistent with previous letters to the U.S. Army Corps of Engineers (Army Corps) regarding prior versions of the NWPs, which also denied 401 Certification for the NWPs.

Denying 401 Certification for all NWPs allows the NNEPA to review and certify each individual discharge taking place under an NWP so that NNEPA can ensure that the discharge will comply with CWA §§ 301, 302, 303, 306, and 307; the Navajo Nation Surface Water Quality Standards of 2015 (NNSWQS 2015); and other applicable Navajo Nation requirements.

In response to the NNEPA's letter denying a blanket 401 Certification for the NWPs, the Army Corps sent an email to NNEPA on December 3, 2020 which stated:

*"This correspondence is a follow-up to my voicemails, and in response to the attached letter from your agency dated November 16, 2020 denying water quality certification for the proposed Nationwide Permits (NWPs). This letter was provided in response to our request letter dated October 15, 2020. We have reviewed your agency's letter and note that it does not address items (ii) and/or (iii) of Section 121.7(e) of the new Clean Water Act Section 401 Rule (the Rule).*

*Section 121.7(e)(2) of the Rule regarding the denial of certification for issuance of a general license or permit requires:*

- (i) *The specific water quality requirements with which discharges that could be authorized by the general license or permit will not comply;*

- (ii) *A statement explaining why discharges that could be authorized by the general license or permit will not comply with the identified water quality requirements; and*
- (iii) *If the denial is due to insufficient information, the denial must describe the types of water quality data or information, if any that would be needed to assure that the range of discharges from potential projects will comply with water quality requirements.*

*Please address the requirements under (ii) and/or (iii) of Section 121.7(e) in conjunction with your denial of water quality certification for the proposed NWP's by December 15, 2020.*

*Also please note that Section 121.9(a)(2) of the Rule states that certification requirement for a license or permit shall be waived upon:*

- (iii) Failure or refusal to satisfy the requirements of Section 121.7(e); or*
- (iv) Failure or refusal to comply with other procedural requirements of Section 401."*

As mentioned above the Army Corps requested that this information be provided by December 15, 2020, less than two weeks from the date of the email. There is additional information which the Army Corps should know in this regard:

1. The NNEPA 401 Water Quality Certification Coordinator position has been vacant since November 2020. The person in this position is the one who normally would reply to the Army Corps' request, and
2. Due to the global Covid-19 pandemic, the Navajo Nation President, Jonathan Nez, through Executive Orders 010-20 and 011-20 (see attached) closed the Navajo Nation Government Offices from November 13 to December 27, 2020. All non-essential staff are on administrative leave during this time. The vacant 401 Water Quality Certification Coordinator position is considered non-essential staff.

Given that the NNEPA 401 Water Quality Certification Coordinator position is vacant and that Navajo Nation Government Offices are closed by Executive Order until December 27, 2020, it is unreasonable for the Corps to request a response by December 15, 2020. Therefore, NNEPA is responding as best as possible, in light of the current situation, to the Army Corps' request.

NNEPA is aware that the U.S. Environmental Protection Agency (USEPA) recently promulgated a new CWA § 401 Rule (Rule). To the best of our knowledge USEPA has provided minimal guidance on how to interpret the Rule to NNEPA or the Army Corps. Parts of the Rule seem illogical. For instance, Section 121.7(e)(2)(i) (which we respond to below) states: "*The specific water quality requirements with which **discharges that could be authorized** by the general license or permit **will not comply.***" How could all possible water quality requirements for a general permit for discharges that "could be authorized" be known? It is possible that a discharge under a general permit under which "discharges could be authorized" complies with every specific water quality requirement of the state or tribe, none of them at all, or something in between. Since the discharge "could be authorized" under the general permit, is it possible that a discharge which is not authorized "will not comply" or "will comply" with the specific water quality requirements? These are questions which need to be resolved by the USEPA.

Despite the lack of clarity in the Rule and the insufficient amount of time provided for NNEPA's response, NNEPA is making its best effort to satisfy the Army Corps' request and is providing the following responses to the Army Corps' December 3, 2020 email. This letter supplements NNEPA's

November 16, 2020 letter to the Army Corps which responded to the Army Corps' September 15, 2020, Federal Register notice: Proposal to Reissue and Modify Nationwide Permits; Proposed Rule, 85 Fed. Reg. 57298 (FR Notice).

### **NNEPA Response One**

*Section 121.7(e)(2) of the Rule regarding the denial of certification for issuance of a general license or permit requires:*

- (i) *The specific water quality requirements with which discharges that could be authorized by the general license or permit will not comply*

The specific water quality requirements with which discharges that could be authorized by the general license or permit will not comply include, but are not limited to, the NNSWQS 2015 Sections 102 - 105, 201(A) - (H), 202(A) - (F), 203(A)(1) - (A)(9), 203(B) and (C), 204(9), 204(13), 204(15), 204(16), 205, 206, 207(A) - (I), 208, 210 - 212, and/or 213, and Tables 205.1, 206.1, and/or 207.1, and the Navajo Nation Surface Water Quality Standards Certification Regulations (NN Certification Regulations), including the application and public notice requirements in Sections 302 and 306, respectively.

### **NNEPA Response Two**

- (ii) *A statement explaining why discharges that could be authorized by the general license or permit will not comply with the identified water quality requirements*

First, the NWP's do not provide sufficient information as to all the discharges that may be authorized, and in fact violate the NN Certification Regulations Section 302. As a result, NNEPA cannot provide all the requirements which will not be met for every possible discharge occurring under those NWP's, as discussed above. However, NNEPA is providing the following examples of ways in which such discharges may violate the Navajo Nation's water quality requirements.

*For example*, the Army Corps is proposing to remove the 300 linear foot limit for losses of stream bed and instead rely on a 1/2-acre limit for NWP's 21, 29, 39, 40, 42, 43, 44, 50, 51, and 52. The Corps is proposing an alternative hybrid approach to establishing consistent quantitative limits for losses of stream bed where 1<sup>st</sup> through 6<sup>th</sup> order streams are given a quantitative limit in linear feet as a function of mean stream width in the different order stream segment which presumes to include the 1/2-acre equivalent for losses of stream bed. The proposed 1/2-acre limit corresponds to an estimated 3,470 linear feet of allowable impacts to first order streams averaging seven feet in width, and more than 2,000 linear feet for second order streams. For lakes, wetlands, and streams with connections to lakes and wetlands the Corps proposes a fixed 1/2 acre limit. The Army Corps has not provided sufficient information to demonstrate that removing the 300 linear foot limit for losses of stream bed and instead relying on a 1/2-acre limit and/or using the proposed hybrid approach *will not violate the NNSWQS 2015, including but not limited to:*

- Section 201(A) - Existing designated uses and the level of water quality necessary to protect the existing designated uses shall be maintained and protected.
- Section 203(A)(1) - (A)(9) - All Waters of the Navajo Nation shall be free from pollutants in amounts or combinations that, for any duration: (1) Cause injury to, are toxic to, or otherwise adversely affect human health, public safety, or public welfare, (2) Cause injury to, are toxic to,

or otherwise adversely affect the habitation, growth, or propagation of aquatic life and wildlife, (3) Settle to form bottom deposits, including sediments, precipitates and organic materials that cause injury to, are toxic to, or otherwise adversely affect the habitation, growth, or propagation of aquatic life and wildlife, (4) Cause physical, chemical, or biological conditions that promote the habitation, growth, or propagation of undesirable, non-indigenous species of plant or animal life in the water body (5) 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 a shoreline, on a bank, or on aquatic vegetation (6) Cause objectionable odor in the area of the water body, (7) Cause objectionable taste, odor, color, or turbidity in the water body (8) Cause objectionable taste in edible plant and animal life, including waterfowl that reside in, on, or adjacent to the water body, and (9) Cause the growth of algae or aquatic plants that inhibit or prohibit the habitation, growth, or propagation of other aquatic life or that impair recreational uses. (From Section 104 (KK) - "Pollutant" means fluids, contaminants, toxic wastes, toxic pollutants, dredge spoil, solid waste, substances and chemicals, pesticides, herbicides, fungicides, rodenticides, fertilizers, and other agricultural chemicals, incinerator residue, sewage, garbage, sewage sludge, munitions, petroleum products, oils, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, dirt, and mining, industrial, municipal, and agricultural wastes or any other liquid, solid, gaseous, or hazardous substance.)

- Section 201(B) - All Waters of the Navajo Nation shall be free of toxic pollutants from other than natural sources in amounts, concentrations, or combinations which affect the propagation of fish or which are toxic to humans, livestock or other animals, fish or other aquatic organisms, wildlife using aquatic environments for habitation or aquatic organisms for food, or which will or can reasonably be expected to bioaccumulate in tissues of fish, shellfish, or other aquatic organisms to levels which will impair the health of aquatic organisms or wildlife or result in unacceptable tastes, odors or health risks to human consumers. Aquatic toxicity may be determined by the "National Whole Effluent Toxicity (WET) Implementation Guidance Under the NPDES Program, Draft, U.S. Environmental Protection Agency, Office of Wastewater Management, (EPA-832-B-04-003) (November 2004)" which is incorporated by reference.
- 204(15) - Require that sufficient instream flows be maintained to support designated uses and meet narrative and numeric water quality standards.
- 204(16) - Require that surface and groundwater withdrawals do not cause degradation of surface or ground water bodies.
- Numeric Targets for Lakes and Reservoirs in Table 205.1 will not be violated.
- Section 207(C) – pH ranges for different designated uses.
- Section 207(E) – Suspended solids standards.
- Section 207(F) – Temperature - The maximum allowable increases in ambient water temperature.
- Section 207(G) – Dissolved Oxygen - Allowable dissolved oxygen ranges.

- Section 207(H) – Turbidity – allowable non storm flow increases in turbidity.

Many streams within the Navajo Nation are narrow; averaging far less than 7 feet in width, meaning that using the proposed 1/2-acre of streambed limit instead of the 300-foot limit could lead to many thousands of linear feet of fill or wetland loss and could disrupt watersheds and cause total loss of streams.

*Another example* is that none of the NWP's provide sufficient information as to how NNSWQS 2015 Section 203(C) will not be violated. Section 203(C) states: "No person shall place animal carcasses, refuse, rubbish, demolition or construction debris, trash, garbage, motor vehicles, motor vehicle parts, batteries, appliances, tires, or other solid waste into Waters of the Navajo Nation or onto their banks." This prohibition would apply to all individuals and companies conducting any work under an NWP and would cover discarding of any trash of any kind, including demolition or construction debris and all other kinds of trash listed above. Detailed construction debris management plans, including volumes, photographic documentation, hauling, manifests, bills of lading from approved landfills and reporting, may be required. These plans would be in addition to possible inventory and disposal plans for normal construction crew-generated trash.

### **NNEPA Response Three**

- (iii) *If the denial is due to insufficient information, the denial must describe the types of water quality data or information, if any, that would be needed to assure that the range of discharges from potential projects will comply with water quality requirements.*

The purpose of the NNSWQS 2015 is found in Section 103(A), which states:

"The purpose of these surface water quality standards is to protect, maintain, and improve the quality of Navajo Nation surface waters for public and private drinking water supplies; to promote the habitation, growth, and propagation of native and other desirable aquatic plant and animal life; to protect existing, and future, domestic, cultural, agricultural, recreational and industrial uses; and to protect any other existing and future beneficial uses of Navajo Nation surface waters. These standards provide the water quality goals for each body of surface water within the Navajo Nation and provide the basis for establishing treatment controls and strategies through regulation. These standards apply to all Waters of the Navajo Nation."

By denying 401 Certification for the Nationwide Permits, NNEPA can continue to ensure that discharges on the Navajo Nation will comply with the NNSWQS 2015 and that the NNEPA can review each discharge to determine whether additional information is required to certify that the activity will not violate the NNSWQS 2015. There is a vast amount of water quality data and other information which might be needed to guarantee compliance with water quality requirements, and in particular with the NNSWQS 2015. One of the purposes of NNEPA denying certification of the NWP's is so the Navajo Nation has the ability on a case-by-case basis to determine what information is required to comply with the NNSWQS 2015 and other applicable regulations. The NNEPA staff are professional and experienced and cannot make case-specific decisions based on insufficient information.

For the reasons discussed in other parts of this letter, it is impossible to know in advance what additional information might be needed without knowing the details of the discharges at issue. For example, the types of water quality data or information required to ensure compliance with the

NNSWQS 2015 and that the NNEPA would request *could be*: geomorphological studies, riparian habitat studies, surface water sampling, water quality studies including monitoring and assessment reporting, flow studies, HEC modeling, toxicity studies, fish tissue studies, and quality assurance plans to name a few.

As another example, with reference to NNEPA Response One, the NNSWQS 2015 Table 207.1 lists the individual numeric standards for the different designated uses for Waters of the Navajo Nation. There are hundreds of applicable standards in this table. Sufficient information required to assure under all circumstances for all discharges under the NWP that not a single applicable standard is violated in this table could require detailed pollution prevention/control plans and subsequent sampling and reporting. As one can imagine this would require a tremendous amount of resources for the regulators and the regulated community.

In sum, anyone requesting to perform NWP activities on the Navajo Nation must first obtain a project-specific Section 401 Certification from the NNEPA before proceeding under a Nationwide Permit. NNEPA Water Quality Program staff will be available to work with your office regarding this matter.

We appreciate the hard work and cooperation of the Army Corps staff who worked on the "Regional Conditions Applicable to All Nationwide Permits within the Navajo Nation" and all the Army Corps staff we have worked with over the years in the Arizona, New Mexico, and Utah portions of the Navajo Nation. NNEPA suggests that we schedule a meeting to discuss this letter after the Navajo Nation government offices have reopened and NNEPA staff return to work. Once again we have had a great relationship with the Army Corps staff in protecting Waters of the United States and Waters of the Navajo Nation and look forward to continuing this cooperation in the years to come.

If you have any questions, please contact Patrick Antonio, Program Manager/Principal Hydrologist, with the NNEPA Water Quality/NPDES Program at (928) 871-7185.

Sincerely,



Ronnie Ben, Acting Executive Director  
Navajo Nation Environmental Protection Agency

Copy furnished:

USEPA, Region IX – Thomas Torres, Director, Water Division, 75 Hawthorne Street, San Francisco, CA 94105.

NNEPA/WQP & NPDES Programs, Post Office Box 339, Window Rock, AZ 86515

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Navajo Nation Environmental Protection Agency  
Surface and Ground Water Protection Department

P. O. Box 339, Window Rock, AZ 86515  
Phone: 928-871-7701 • Fax: 928-871-7996



JONATHAN NEZ  
President

MYRON LIZER  
Vice-President

November 16, 2020

Kelly E. Allen  
Chief, Regulatory Division  
Albuquerque District  
U.S. Army Corps of Engineers  
4101 Jefferson Plaza, NE  
Albuquerque, NM 87109

**Re: U.S. Army Corps of Engineers request for water quality certification under § 401 of the CWA**

Dear Kelly E. Allen:

The Navajo Nation Environmental Protection Agency (NNEPA) thanks the U.S. Army Corps of Engineers (Corps) for its October 15, 2020, letter, which states: "The Albuquerque, Los Angeles, and Sacramento Districts (Districts) request water quality certification under Section 401 of the Clean Water Act for the proposed issuance of those NWP's that may result in a discharge in waters of the United States in the Navajo Nation." The letter further states: "The Districts hereby request that the certifying authority review and take action on this Section 401 water quality certification request within the applicable reasonable period of time of 60 days from the date of receipt of this request." For procedural purposes, NNEPA will consider October 15, 2020, as the date of the Corps' request; sixty days from this date is December 14, 2020.

The United States Environmental Protection Agency (USEPA), Region IX, approved the Navajo Nation's eligibility for treatment as a state (TAS) on January 20, 2006, under the Clean Water Act (CWA) sections 303 and 401. Accordingly, NNEPA has assumed authority for all lands within (1) the formal Reservation, including the former Bennett Freeze area and excluding lands leased to the power plants, (2) the three satellite reservations of Alamo, Tohajiilee, and Ramah, and (3) all tribal trust lands in the Eastern Navajo Agency. On October 5, 2020, USEPA approved the Navajo Nation Surface Water Quality Standards of 2015 (NNSWQS 2015).

The Navajo Nation has reviewed the Corps' September 15, 2020, Federal Register notice: *Proposed to Reissue and Modify Nationwide Permits; Proposed Rule* (FR Notice). The purpose of this letter is to notify the Corps that the Navajo Nation does not waive water quality certification for any of the Nationwide Permits and therefore will require that the Navajo Nation certify each individual permit. Accordingly, each individual applicant will need to apply for a § 401 permit from NNEPA's Surface and Ground Water Protection Department's Water Quality Program (WQP). By reviewing and certifying each individual permit request, the Navajo Nation ensures that individuals that apply for a Nationwide Permit will comply with § 301, § 302, § 303, § 306, and § 307 of the CWA, the NNSWQS 2015, and other applicable Navajo Nation requirements. These certifications will provide reasonable assurance that the permitted activities will be conducted in a manner that will not violate NNSWQS 2015 or any provisions of the CWA. Therefore, we respectfully DENY water quality certification for ALL Nationwide Permits.

Anyone requesting to perform such activities must first obtain a project-specific Section 401 water quality certification from the NNEPA WQP before proceeding under a Nationwide Permit. NNEPA WQP staff will be available to work with your office regarding this matter.

If you have any questions, please contact Patrick Antonio, Program Manager/Principal Hydrologist, with the NNEPA Water Quality/NPDES Program at (928) 871-7185.

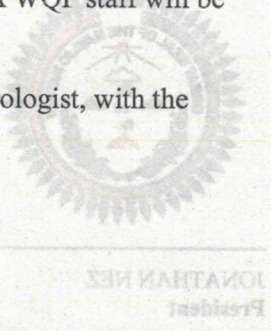
Sincerely,

*naile*

Ronnie Ben, Department Director  
Navajo Nation Environmental Protection Agency  
Surface and Ground Water Protection Department

Copy furnished:

- USEPA, Region IX – Thomas Torres, Director, Water Division, 75 Hawthorne Street, San Francisco, CA 94105.
- NNEPA/WQP & NPDES Programs, Post Office Box 339, Window Rock, AZ 86515 .
- file



The Navajo Nation Environmental Protection Agency (NNEPA) thanks the U.S. Army Corps of Engineers (Corps) for its October 12, 2020, letter, which states: "The Albuquerque, Los Angeles, and Sacramento Districts (Districts) request water quality certification under Section 401 of the Clean Water Act for the proposed issuance of those NWP's that may result in a discharge in waters of the United States in the Navajo Nation." The letter further states: "The Districts hereby request that the certifying authority review and take action on this Section 401 water quality certification request within the applicable reasonable period of time of 90 days from the date of receipt of this request." For procedural purposes, NNEPA will consider October 12, 2020, as the date of the Corps' request; sixty days from this date is December 14, 2020.

The United States Environmental Protection Agency (USEPA), Region IX, approved the Navajo Nation's eligibility for treatment as a state (TAS) on January 20, 2006, under the Clean Water Act (CWA) sections 303 and 401. Accordingly, NNEPA has assumed authority for all lands within (1) the former Reservations, including the former Bostwick Forest area and excluding lands leased to the power plants, (2) the three satellite reservations of Alamo, Tobiatic, and Kanjan, and (3) all tribal trust lands in the Eastern Navajo Agency. On October 2, 2020, USEPA approved the Navajo Nation Surface Water Quality Standards of 2012 (NSWQS 2012).

The Navajo Nation has reviewed the Corps' September 12, 2020, Federal Register notice, Proposed to Reissue and Modify Nationwide Permits; Proposed Rule (R Notice). The purpose of this letter is to notify the Corps that the Navajo Nation does not waive water quality certification for any of the Nationwide Permits and therefore will require that the Navajo Nation certify each individual permit. Accordingly, each individual applicant will need to apply for a § 401 permit from NNEPA's Surface and Ground Water Protection Department's Water Quality Program (WQP). By reviewing and certifying each individual permit request, the Navajo Nation ensures that individuals that apply for a Nationwide Permit will comply with § 301, § 302, § 303, § 306, and § 307 of the CWA, the NSWQS 2012, and other applicable Navajo Nation requirements. These certifications will provide reasonable assurance that the permitted activities will be conducted in a manner that will not violate NSWQS 2012 or any provisions of the CWA. Therefore, we respectfully DENY water quality certification for ALL Nationwide Permits.



**ATTACHMENTS –  
Navajo Nation President Jonathan Nez  
Executive Orders 010-20 and 011-20**



**EXECUTIVE ORDER NO. 010-20**

**EXECUTIVE ORDER  
RELATED TO THE DECLARATION OF A STATE OF EMERGENCY  
DUE TO THE COVID-19 VIRUS ON THE NAVAJO NATION;  
AND DUE TO THE RISE IN COVID-19 CASES  
CLOSING THE NAVAJO NATION GOVERNMENT OFFICES  
AND RELATED ENTITIES**

**NAVAJO NATION OFFICE OF THE PRESIDENT AND VICE PRESIDENT  
NOVEMBER 13, 2020**

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**WHEREAS:**

1. The President of the Navajo Nation serves as the Chief Executive Officer for the Executive Branch of the Navajo Nation government with full authority to conduct, supervise, and coordinate personnel and program matters. 2.N.N.C. §1005 (A);
2. The President shall have the power to issue an executive order for the purpose of interpreting, implementing or giving administrative effect to statutes of the Navajo Nation in the manner set forth in such statutes. 2.N.N.C. §1005 (C)(14);
3. With the concurrence of the President of the Navajo Nation, the Emergency Management Commission shall have the power to declare a state of emergency affecting the Navajo Nation and to obtain, coordinate and oversee assistance, whether in the form of goods, services, equipment, motor vehicles, or personnel, from all Divisions, Departments and Enterprises of the Navajo Nation for use in addressing the requirements of the People in any declared emergency. 2 N.N.C. § 884(B)(1)(3);
4. The Emergency Management Commission declared an emergency due to the confirmation of the coronavirus disease (COVID-19) in regional areas surrounding the Navajo Nation. 2 N.N.C. § 884(B)(1), *See* Emergency Management Commission resolutions CEM 20-03-11;
5. The Navajo Department of Health, Navajo Epidemiology Center, along with federal partners, provide data on COVID-19 impact on the Navajo Nation which indicates a rise in positive cases in areas surrounding the Navajo Nation with hospitals and health care systems drastically impacted; these factors threaten the Navajo People's health

and well-being and have the potential to overwhelm the Navajo Nation health care system;

6. An Executive Order shall have the force of law upon the recipient. 2 N.N.C. § 1005(C)(14).

**THEREFORE:**

I, Jonathan Nez, President of the Navajo Nation and I, Myron Lizer, Vice President of the Navajo Nation, by the authority vested in us, hereby issue the following order:

1. We are rescinding Executive Order No. 009-20, *Executive Order Related to Navajo Nation State of Emergency Due to the Coronavirus; Resuming Services to the Navajo Nation Government Offices and Related Entities*.
2. The public health state of emergency, due to rise of COVID-19 cases in and surrounding the Navajo Nation, is in place beginning November 16, 2020 to December 6, 2020.
3. The Navajo Nation shall continue to follow the orders set in the Declaration of a State of Emergency by the Emergency Management Commission, CEM 20-03-11, and Public Health Emergency Orders No. 2020-29 and No. 2020-30 ([see www.ndoh.navajo-nsn.gov/COVID-19](http://www.ndoh.navajo-nsn.gov/COVID-19)), as such:
  - a. The Navajo Nation Health Command Operations Center shall continue to be staffed throughout the emergency condition with support from the Navajo Department of Health and the Unified Command Group that includes the Navajo Department of Health, Navajo Area Indian Health Service, Bureau of Indian Affairs – Navajo Region, and the Tribal Health Organizations; and,
  - b. The Navajo Department of Emergency Management Emergency Operation Center and the Unified Command Group shall continue to support the Navajo Health Command Operations Center; and,
  - c. All Navajo Nation Branches, Divisions, Departments, programs, offices, non-governance certified Chapters, Enterprises, and Navajo casinos shall comply with and adhere to directives, instructions, and/or policies coming from the Navajo Health Command Operations Center as related to addressing COVID-19.
4. The COVID-19 virus is on a rapid rise on the Navajo Nation and surrounding States at an alarming rate. The actions of the Navajo Nation - wearing masks in public, shelter-in-place orders, lockdowns, restricting gatherings and closure of government offices and Navajo enterprises – did have an effect on the spread of COVID-19 but surrounding States show a rise in positive COVID cases that affect the Navajo People’s health and well-being, as such:

- a. All Navajo Nation government offices and enterprises shall close to minimize the spread of the coronavirus disease. This closure shall be from **November 16, 2020** to **December 6, 2020**; however, Essential Employees, as determined by respective Division Directors or enterprise management, shall report to their respective worksites. Division Directors are directed to maintain a minimal, essential work site staff during this time.

*Essential Employees* are employees that are necessary to maintain basic, direct government or enterprise services either working in their office or telecommuting or directly working on CARES fund projects. Division Directors and enterprise management shall arrange daily work schedules for Essential Employees that ensure a safe work environment and shall supply necessary office equipment for telecommuting employees.

Essential Employees shall include those employees from, but not limited to, Navajo Public Safety, Navajo Fire Department, Navajo Emergency Medical Services, Department of Emergency Management, Navajo Division of Finance, Navajo Division of Social Services, Navajo Division of Community Development, Office of Management and Budget, Navajo Department of Justice, Navajo Department of Health, Navajo Division of General Services, Navajo Division of Transportation, Navajo Division of Economic Development, Navajo Nation Washington Office, Navajo Enterprises, Employees assigned to CARES Act expenditures, and those determined by the Branch Chiefs; and,

- b. All Non-Essential Navajo Nation government employees, as determined by the Division Director, affected by this Executive Order shall be granted Administrative Leave for the duration of the closure and are ordered to refrain from events, gatherings, or other areas where they may contract COVID-19, and to observe and follow all Public Health Emergency Orders, including curfews, stay-at-home, shelter-in-place, and lockdown orders; and,
  - c. Due to the rise in COVID-19 on and surrounding the Navajo Nation, the Navajo Nation offices shall restrict and cancel all off-reservation travel, directing all Navajo Nation employees to return from current off-reservation travel; additionally, all Navajo Nation employees shall restrict travel between offices located within the Navajo Nation.
  - d. The closure of Navajo Nation government offices may be extended beyond **December 6, 2020** on the recommendation of the Navajo Health Command Operations Center, the Navajo Department of Emergency Management Operation Center, and the Navajo Epidemiology Center.
5. All Navajo Nation Divisions, Departments, Programs, Offices, non-governance certified Chapters, Enterprises, and Navajo casinos shall follow the direction of the Public Health Emergency Orders requiring all Navajo citizens to limit their movement which means staying at home and leaving for Essential Activities only; and comply


with the curfew hours by staying home between the hours of 9:00 P.M. and 5:00 A.M. MDT and complying with weekend or other curfew hours.

6. The Navajo Nation Board of Education previously declared an emergency affecting all schools on the Navajo Nation due to the spread of the coronavirus and recommended, among other measures, the closure of all schools and educational facilities on the Navajo Nation to protect our children, their parents, and care givers, NNBEMA-608-2020. At this crucial time it is necessary that:
  - a. Public Law 100-297 grant schools, Public Law 93-638 contract schools, and Bureau of Education operated schools be closed from November 16, 2020 to December 6, 2020; and,
  - b. Public schools, including state public schools, grant schools, private schools, higher education institutions, early childhood programs, including CCDF, Head Start, FACE programs, and all after school programs located on the Navajo Nation be closed from November 16, 2020 to December 6, 2020; and,
  - c. Off reservation residential halls and dormitories for Navajo students operating under the authority of the Navajo Nation will follow the process and procedure for this host school district; and,
  - d. The Navajo Board of Education is urged to immediately decide on the closing of the schools and educational facilities beyond December 6, 2020.

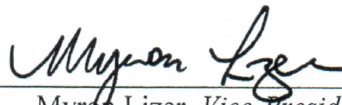
The Navajo Nation Divisions, Departments, Programs, Offices, non-governance certified Chapters, Enterprises, and Navajo casinos are responsible for implementing and ensuring compliance with this order.

The provisions of this order shall be implemented consistent with the laws of the Navajo Nation and in a manner that advances the highest welfare of the People.

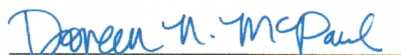
EXECUTED this 13<sup>th</sup> day of November 2020



Jonathan Nez, *President*  
THE NAVAJO NATION



Myron Lizer, *Vice-President*  
THE NAVAJO NATION

ATTEST:   
Doreen N. McPaul, *Attorney General*  
Navajo Nation Department of Justice



**EXECUTIVE ORDER NO. 011-20**

**EXTENDING THE  
EXECUTIVE ORDER  
RELATED TO THE DECLARATION OF A STATE OF EMERGENCY  
DUE TO THE CORONAVIRUS ON THE NAVAJO NATION;  
AND  
DUE TO THE RISE IN COVID-19 CASES  
LIMITING SERVICES OF THE NAVAJO NATION GOVERNMENT  
AND RELATED ENTITIES,  
EFFECTIVE DECEMBER 7, 2020 TO DECEMBER 27, 2020**

**NAVAJO NATION OFFICE OF THE PRESIDENT AND VICE PRESIDENT  
DECEMBER 3, 2020**

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**WHEREAS:**

1. The President of the Navajo Nation serves as the Chief Executive Officer for the Executive Branch of the Navajo Nation government with full authority to conduct, supervise, and coordinate personnel and program matters. 2.N.N.C. §1005 (A);
2. The President shall have the power to issue an executive order for the purpose of interpreting, implementing or giving administrative effect to statutes of the Navajo Nation in the manner set forth in such statutes. 2.N.N.C. §1005 (C)(14);
3. With the concurrence of the President of the Navajo Nation, the Emergency Management Commission shall have the power to declare a state of emergency affecting the Navajo Nation and to obtain, coordinate and oversee assistance, whether in the form of goods, services, equipment, motor vehicles, or personnel, from all Divisions, Departments and Enterprises of the Navajo Nation for use in addressing the requirements of the People in any declared emergency. 2 N.N.C. § 884(B)(1)(3);
4. The Emergency Management Commission declared an emergency due to the confirmation of the coronavirus disease (COVID-19) in regional areas surrounding the Navajo Nation. 2 N.N.C. § 884(B)(1), *See* Emergency Management Commission resolutions CEM 20-03-11;
5. The Navajo Department of Health, Navajo Epidemiology Center, along with federal partners, provide data on COVID-19 impact on the Navajo Nation which indicates a

rise in positive cases in areas surrounding the Navajo Nation with hospitals and health care systems drastically impacted; these factors threaten the Navajo People's health and well-being and have the potential to overwhelm the Navajo Nation health care system;

6. An Executive Order shall have the force of law upon the recipient. 2 N.N.C. § 1005(C)(14).

**THEREFORE:**

I, Jonathan Nez, President of the Navajo Nation and I, Myron Lizer, Vice President of the Navajo Nation, by the authority vested in us, hereby issue the following order:

1. The public health state of emergency, due to rise of COVID-19 cases in and surrounding the Navajo Nation that creates a tremendous strain on our health care system, is extended beginning December 7, 2020 to December 27, 2020;
2. The Navajo Nation shall continue to follow the orders set in the Declaration of a State of Emergency by the Emergency Management Commission, CEM 20-03-11, and Public Health Emergency Order No. 2020-31 (*see* [www.ndoh.navajo-nsn.gov/COVID-19](http://www.ndoh.navajo-nsn.gov/COVID-19)), and as such:
  - a. The Navajo Nation Health Command Operations Center shall continue to be staffed throughout the emergency condition with support from the Navajo Department of Health and the Unified Command Group that includes the Navajo Department of Health, Navajo Area Indian Health Service, Bureau of Indian Affairs – Navajo Region, and the Tribal Health Organizations; and,
  - b. The Navajo Department of Emergency Management Emergency Operation Center and the Unified Command Group shall continue to support the Navajo Health Command Operations Center; and,
  - c. All Navajo Nation Branches, Divisions, Departments, programs, offices, non-governance certified Chapters, Enterprises, and Navajo casinos shall comply with and adhere to directives, instructions, and/or policies coming from the Navajo Health Command Operations Center as related to addressing COVID-19;
3. The coronavirus continues its rapid rise on the Navajo Nation and surrounding States at an alarming rate. The actions of the Navajo Nation – masks required in public, shelter-in-place orders, lockdowns, restricting gatherings and closure of government offices and Navajo enterprises – did have an effect on the spread of COVID-19. But the Navajo Nation and surrounding States now show a rise in positive COVID cases that affect the Navajo People's health and well-being, and as such:
  - a. All Navajo Nation government offices and enterprises shall continue limited services to the Navajo citizens and business partners with efforts to minimize the spread of the coronavirus disease. The limited services shall be from **December 7**,

**2020 to December 27, 2020.** Employees who are necessary to continue the government's limited services, as determined by respective Division Directors or enterprise management, shall be required to work, either at their respective worksites or through telecommuting, as appropriate. Division Directors are directed to maintain a minimal, necessary work site staff during this time. All Division Directors and Essential (Necessary) Employees shall remain on or within close proximity to the Navajo Nation.

*Essential (Necessary) Employees* are employees who are needed to maintain basic, direct government services either working in their office or telecommuting or directly working on CARES fund projects. Essential (Necessary) Employees also includes enterprise employees needed to maintain facilities in working order, to provide basic services to the public, or outdoor work related to the enterprises' purpose. Division Directors and enterprise management shall arrange daily work schedules for Essential (Necessary) Employees that ensure a safe work environment and shall arrange work schedules and reporting requirements for telecommuting employees.

Essential (Necessary) Employees shall include those employees from, but not limited to, Navajo Public Safety, Navajo Fire Department, Navajo Emergency Medical Services, Department of Emergency Management, Navajo Division of Finance, Navajo Division of Social Services, Navajo Division of Community Development, Office of Management and Budget, Navajo Department of Justice, Navajo Department of Health, Navajo Division of General Services, Navajo Division of Transportation, Navajo Division of Economic Development, Navajo Nation Washington Office, Navajo Enterprises, Employees assigned to CARES Act expenditures, and those determined by the Branch Chiefs; and,

- b. All Non-Essential Navajo Nation government employees, as determined by the Division Directors, affected by this Executive Order shall be granted Administrative Leave for the duration of the closure and are ordered to refrain from events, gatherings, or other areas where they may contract COVID-19, and to observe and follow all Public Health Emergency Orders, including curfews, stay-at-home, shelter-in-place, and lockdown orders; and,
- c. Due to the rise in COVID-19 cases on and surrounding the Navajo Nation, the Navajo Nation no off-reservation travel directive continues. Additionally, all Navajo Nation employees shall limit travel to their respective offices located within the Navajo Nation.
- d. The closure of Navajo Nation government offices may be extended beyond **December 27, 2020** on the recommendation of the Navajo Health Command Operations Center, the Navajo Department of Emergency Management Operation Center, and the Navajo Epidemiology Center;

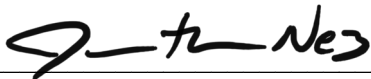


4. All Navajo Nation Divisions, Departments, Programs, Offices, non-governance certified Chapters, Enterprises, and Navajo casinos shall follow the direction of the Public Health Emergency Orders requiring all Navajo citizens to remain on the Navajo Nation and limit their movement which means staying at home and leaving for Essential Activities only; and comply with the curfew hours by staying home and complying with weekend or other curfew hours.

The Navajo Nation Divisions, Departments, Programs, Offices, non-governance certified Chapters, Enterprises, and Navajo casinos are responsible for implementing and ensuring compliance with this order.

The provisions of this order shall be implemented consistent with the laws of the Navajo Nation and in a manner that advances the highest welfare of the People.

EXECUTED this 3<sup>rd</sup> day of December 2020



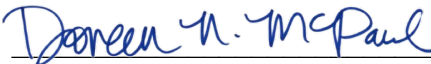
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Jonathan Nez, *President*  
THE NAVAJO NATION



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Myron Lizer, *Vice-President*  
THE NAVAJO NATION

ATTEST:   
Doreen N. McPaul, *Attorney General*  
Navajo Nation Department of Justice