



REPLY TO  
ATTENTION OF

**DEPARTMENT OF THE ARMY**  
**SOUTH PACIFIC DIVISION, CORPS OF ENGINEERS**  
1455 MARKET STREET, SUITE 2070  
SAN FRANCISCO, CA 94103-1399

CESPA-RD (1200A)

26 June 2013

MEMORANDUM FOR

Commander, Albuquerque District (CESPA-DE), 4101 Jefferson Plaza NE, Albuquerque, NM  
87109-3435

Commander, Los Angeles District (CESPL-DE), Post Office Box 532711, Los Angeles, CA  
90053-2325

Commander, Sacramento District (CESPK-DE), 1325 J Street, Sacramento, CA 95814-2922

SUBJECT: Designation of Albuquerque District as the Lead District for Regulatory Program  
Coordination for the Navajo Nation

1. References:

a. Memorandum , CESPK-RD, 13 March 2013 Designation of Sacramento District as Lead District for Regulatory Actions in Arizona Occurring North of the Colorado River, in the Virgin River Watershed, and the Lake Mead National Recreation Area (LMNRA).

b. Memorandum, CECW-CO, 22 Nov 2004 Lead District Initiative.

2. Purpose:

a. This memorandum designates Albuquerque District as the lead district for coordination of regulatory program issues within the boundaries of the Navajo Nation (NN). The goal of this designation is to bring consistency to the regulatory program within the NN and to simplify the NN's administration of its delegated Section 401 authority.

3. Background:

a. The NN extends into the states of Utah, Arizona, and New Mexico, covering over 27,000 square miles, which is larger than 10 of the 50 states in America and is the largest designated land base of any Native American tribe. The NN has over 300,000 enrolled members.

b. Regulatory program administration within the NN is executed by three Corps Districts: Los Angeles District within Arizona boundaries, Albuquerque District within New Mexico, and Sacramento District within Utah. As of January 2013, 483 Clean Water Act Section 404

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regulatory permits and permit verifications have been issued for projects within Navajo Nation boundaries, broken down as follows: 231 by SPL, 241 by SPA, and 11 by SPK.

c. In 1995 the NN passed legislation making the Navajo Nation Environmental Protection Agency (NNEPA) a separate regulatory branch of the NN government. NNEPA is charged with protecting the human health, welfare, and the environment of the NN. In 2006 the U.S. Environmental Protection Agency (EPA) delegated Clean Water Act Section 401 certification authority to NNEPA. This delegation gives NNEPA the authority to determine if projects under USACE 404 permit review are compatible with NN water quality standards.

d. On 1 February 2013 SPA hosted a meeting between NNEPA, Navajo Nation Department of Roads and the Division of Roads from the Indian Affairs' Gallup office. CESPL-RG-A, CESPk-RD and EPA Region 9 participated by phone. The purpose of the meeting was to clarify when 404/401 authorization was required for road projects. At that meeting NNEPA asked for better coordination between USACE districts working with the NN. SPL and SPA initiated informal discussion on that request after the meeting. SPA was informally selected as a potential lead district due to established relationships with NNEPA and proximity to Window Rock (165 miles/2.5 hrs from Albuquerque v. 330 miles/5 hrs from Phoenix) and Gallup (140 miles from Albuquerque), which is where the Indian Affairs office responsible for the NN is located. As noted in 3.b. above, workload is evenly divided between SPA and SPL.

e. On 15 March 2013 NN President Ben Shelly, his wife, and several representatives of NN executive agencies met with LTC Antoinette Gant and SPA staff in Albuquerque to discuss program coordination and opportunities for collaborative efforts. During this meeting President Shelly said inconsistency issues made it difficult for NNEPA to work with three USACE regulatory programs within NN boundaries. He cited consistency problems with enforcement cases, coordination of 401 certification, nationwide permit regional conditions, emergency actions, and jurisdictional determinations as examples. SPA informed President Shelly, a lead district determination for the NN would improve consistency and provide a point of contact to resolve any inconsistency issues that arise.

f. In 2004 CECW-OR issued a memorandum to Commanders requiring establishment of lead districts within states that worked with multiple district regulatory programs. The primary reason given for establishing lead districts was to simplify the state's administration of their 401 program. This rationale applies to the SPD districts that work with the NN.

#### 4. Proposed Plan of Action:

a. Designate SPA the lead district for working with the NN. This designation requires SPA to work with SPL and SPK to achieve consistency in program implementation, development of guidance specific to working with the NN, and development of regulatory tools such as regional general permits for NN. The SPD Regulatory Program Manager will be informed of and invited to participate in these tasks as necessary.

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b. SPA will designate a primary contact for regulatory issues for the NN.

c. Lead district designation only applies to management of regulatory program consistency issues within NN boundaries. Each district will continue to be responsible for regulatory program execution within its area of responsibility (AOR).

d. Disagreement between the districts over policy or other issues will typically be resolved by reaching consensus at either the field office or district level. If the districts cannot reach consensus, SPA will request involvement of the SPD Regulatory Program Manager, who will determine the course to be followed by all districts.

e. This designation does not affect the realignment of AORs between SPK and SPL for areas described in the 13 March 2013 memorandum referenced at 1.a. above.

f. This designation does not apply to other USACE program areas, e.g., execution of civil works authorities or assistance programs. Each district's regulatory program would continue to be the point of contact for other USACE activities within their AOR.

g. Each district will ensure the other districts receive public notices for proposed individual permits.

5. Lead District Roles and Responsibilities:

a. SPA will be the NN point of contact for general questions regarding the regulatory program. SPA will coordinate responses with SPL and SPK before providing them to NN.

b. Coordinate with SPL and SPK as needed when informed by NNEPA or other NN office that inconsistencies exist in 404 program administration.

c. Coordinate periodic meetings/conference calls involving all three districts and NNEPA, other interested NN offices, and EPA Region 9 to discuss implementation of the 404 program. These meetings will be used for updates on staffing, program changes, consistency concerns, and other areas of mutual interest.

d. Coordinate cross-training or tech transfer opportunities to facilitate a common understanding of the administrative or technical underpinnings of each entity's program. For example, identification of the ordinary high water mark in ephemeral channels or a review of the NN's water quality standards.

e. Consolidate the three existing sets of nationwide permit (NWP) regional conditions into a single set. This consolidation will occur out of cycle since the current NWPs are in effect

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through March 2017. After consolidation is achieved, lead the development of a single set of regional conditions for the NN when NWP's are issued/re-issued.

f. Coordinate water quality certification for new/re-issued NWP's with NNEPA.

g. Determine if existing Regional General Permits (RGP) available on the NN overlap and, in consultation with NN and the other districts, determine if merging permits or other actions are advisable to simplify their use. Ensure that future RGP development is coordinated between districts.

h. Explore possibilities for electronic data exchanges and development of GIS tools that facilitate increased transparency and data sharing.

*for Andrew B. Adams* COL, EN  
C. DAVID TURNER *Dpty Com*  
COL, EN  
Commanding