

From: CHoeft@usbr.gov on behalf of [Hoeft, Cynthia A](#)
To: [Arend, David J](#); [Belin, Letty](#); [Brewer, Patricia F](#); [Bunyak, John](#); [Chandler, Randy N](#); [Eto, Sandra](#); [Frost, Herbert](#); [Gray, Lorri J](#); [Hoeft, Cynthia A](#); [Jensen, Larry](#); [Laverdure, Del](#); [McCoy, Carol](#); [Murillo, David G](#); [Newland, Bryan](#); [Pinto, Sharon](#); [brsmith](#); [Trujillo, Tanya M](#); [williams, pamel](#); [Wilson, Catherine](#); [Yazzie, Harrilene](#); [Acheson, Ann](#); [Belin, Letty](#); [Black, Michael](#); [Blanchard, Mary Josie](#); [Decker, Julie A](#); [Eto, Sandra](#); [Gray, Lorri J](#); [Hoeft, Cynthia A](#); ["Hurlbut, David \(NREL\)"](#); [Jensen, Larry](#); [Kenna, James G](#); [Killsback, Dion K](#); [Klein, Al](#); [LaCounte, Darryl](#); [Laverdure, Del](#); [McCoy, Carol](#); [Morgenweck, Ralph](#); [Murillo, David G](#); [Newland, Bryan](#); [Owens, Glenda H](#); [Silva, Sandra V](#); [Sire, David E](#); [Suazo, Raymond M](#); [Trujillo, Tanya M](#); [Vimont, John](#); [Ellis, Bruce D](#); [Gold, Anamarie](#)
Subject: FW: DEIS for Navajo Mine SMCRA Permit/Four Corners Power Plant Lease and Associated Actions
Date: Monday, October 24, 2011 9:28:26 AM
Attachments: [image001.jpg](#)

To all

Letty Belin wants to ensure you all are aware and have the information about OSM plans to do a DEIS for the new significant permit revision for the Navajo Coal Mine on the Navajo Nation (OSM requires an EIS because of the acreage) and the approval of lease renewals for the Four Corners Power Plant site lease by BIA, plus the BLM RRPP plan and how the COE permits should be handled.

If you want to be included in any of the upcoming planned briefings or would like to have a special briefing please let me know so I can get the information to the proper people and get you included.

Thanks - Cindy Hoeft

(providing staff assistance for Letty Belin on NGS)

202-513-0673 office

702-467-8891 cell

From: Spencer, Stephen

Sent: Monday, October 17, 2011 1:24 PM

To: Taylor, Willie R; Blanchard, Mary Josie; Sire, David E

Subject: DEIS for Navajo Mine SMCRA Permit/Four Corners Power Plant Lease and Associated Actions

It is probably time that I provide a short briefing on this and ask whether you want one in more detail to pass up the chain. We have been working since May to have discussions on how the DEIS for the new significant permit revision for the Navajo Coal Mine on the Navajo Nation (OSM requires an EIS because of the acreage) and the approval of lease renewals for the Four Corners Power Plant site lease by BIA, plus the BLM RRPP plan and the COE permits should be handled.

In working with the DOI bureaus, SOL, Navajo Nation and the Corps of Engineers, we have come to agreement on the following:

- There will be one DEIS prepared that will combine the analyses for all the agency actions since they are all, in fact, connected actions.
- OSM will be the lead agency and also the administrative agency.
- BIA, BLM, Corps of Engineers, and the Navajo Nation will be cooperators. EPA may join as well.

I have been asked to coordinate the group that is beginning work on the Interagency MOU governing the roles and responsibilities. Since this will be a non-delegated EIS, it will require PMB oversight and approvals through OEPC. If you would like a more detailed briefing let me know. The urgency surrounding this effort is that all the permits and plans will need to be in place in time to continue mining beyond July, 2016, when the existing leases and permits expire. Realistically, the BHP Billiton New Mexico Coal Company will need the permits associated with the Navajo Mine by mid-2015 so that they can begin preparation of the mine for coal production in time to meet 2016 agreements for supplying coal to the Four Corners Power Plant. It is estimated that the coal and lease revenues will provide about \$200,000,000/year to the Navajo Nation which is critically important for their economic development, especially since the Desert Rock Energy Project was abandoned. OSM and BIA are currently preparing briefings for their Washington Offices.

Steve

Stephen R. Spencer, PhD
Regional Environmental Officer
Office of Environmental Policy and Compliance
U.S. Department of the Interior
1001 Indian School Road NW, Suite 348
Albuquerque, NM 87104
Phone: (505) 563-3572 Fax: (505) 563-3066 Cell: (505) 249-2462
Stephen_Spencer@ios.doi.gov <mailto:Stephen_Spencer@ios.doi.gov>
Web Site: www.doi.gov/oepc/albuquerque.html <<http://www.doi.gov/oepc/albuquerque.html>>

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From: [Belin, Letty](#)
To: [Hoeft, Cynthia A](#)
Subject: FW: Final Kiernan Letter
Date: Friday, August 05, 2011 7:43:02 AM
Attachments: [30493 Kiernan Final.pdf](#)

Hi Cindy: could you please forward this to the NGS group? Thx.

From: Howarth, Robert
Sent: Friday, August 05, 2011 9:12 AM
To: Hayes, David
Cc: Belin, Letty
Subject: Final Kiernan Letter

Good morning Mr. Hayes. Per Fay's instruction, attached is a PDF of your signed letter to Mr. Kiernan. I will be mailing the letter this morning.

Should I email/fax the letter to anyone?

Rob

Robert Howarth
Deputy Director - Correspondence, Document Production, and FOIA Management
Office of the Executive Secretariat
Department of the Interior
1849 C Street, NW
Washington, DC 20240
202-208-4451 (direct)
202-208-3181
Robert_howarth@ios.doi.gov

From: [Belin, Letty](#)
To: [Hayes, David](#); [Arend, David J](#); [brsmith](#); [Brewer, Patricia F](#); [Bunyak, John](#); [Chandler, Randy N](#); [Eto, Sandra](#); [Frost, Herbert](#); [Gray, Lorri J](#); [Haase, Scott](#); [Hoeft, Cynthia A](#); [Jensen, Larry](#); [Kenna, James G](#); [Laverdure, Del](#); [Newland, Bryan](#); [williams, pamela](#); [Wilson, Catherine](#); [Yazzie, Harrilene](#)
Subject: FW: NPCA letter to Secretary Salazar re Clean Air Issues
Date: Tuesday, July 19, 2011 11:59:54 AM
Attachments: [NPCA letter to Sec. Salazar re Clean Air, July 15 2011.pdf](#)

fyi.

Letty Belin
Counselor to the Deputy Secretary
U.S. Department of the Interior
202-208-6291

From: John_Bunyak@nps.gov [John_Bunyak@nps.gov]
Sent: Monday, July 18, 2011 6:53 PM
To: Belin, Letty
Cc: Frost, Herbert; McCoy, Carol
Subject: Fw: NPCA letter to Secretary Salazar re Clean Air Issues

Letty: in the interested of keeping you informed, attached is a letter from NPCA to Secretary Salazar that raises concerns about how the Department is dealing with NGS, Four Corners, and the NPCA RAVI petitions.
John

----- Forwarded by John Bunyak/DENVER/NPS on 07/18/2011 04:49 PM -----
Carol McCoy/DENVER/NPS

07/18/2011 10:28 AM

To
John Bunyak/DENVER/NPS@NPS, John Vimont/DENVER/NPS@NPS
cc
Subject
Fw: NPCA letter to Secretary Salazar re Clean Air Issues

fyi
----- Forwarded by Carol McCoy/DENVER/NPS on 07/18/2011 10:27 AM -----
Bert Frost/WASO/NPS

07/18/2011 05:35 AM

To
Beth Johnson/WASO/NPS@NPS, George Dickison/FTCOLLINS/NPS, Carol McCoy/DENVER/NPS@NPS
cc
Subject
Fw: NPCA letter to Secretary Salazar re Clean Air Issues

----- Forwarded by Bert Frost/WASO/NPS on 07/18/2011 07:35 AM -----
"Nofield, Stephan J" <Stephan_Nofield@ios.doi.gov>

07/15/2011 12:06 PM

To "Frost, Herbert" <Bert_Frost@nps.gov>
cc
Subject
FW: NPCA letter to Secretary Salazar re Clean Air Issues

Burt
Did not see your name on this email. Stephan

From: Mark Wenzler [<mailto:mwenzler@npca.org>]
Sent: Friday, July 15, 2011 11:54 AM
To: Jacobson, Rachel - Deputy Solicitor; Lyder, Jane; Nofield, Stephan J;
Robbins, Tasha; Fink, Jason M; Padilla, Joan
Cc: Heather Graving
Subject: NPCA letter to Secretary Salazar re Clean Air Issues

Attached please find a letter to Secretary Salazar from the National Parks Conservation Association that is being mailed today. Please let me know if you have any questions.

Thank you,

Mark Wenzler
Vice President, Climate & Air Quality Programs
National Parks Conservation Association
777 6th Street NW, Suite 700
Washington DC 20001
202-454-3335 (office)
202-255-9013 (cell)
mwenzler@npca.org<<mailto:mwenzler@npca.org>>

From: CHoeft@usbr.gov on behalf of [Hoeft, Cynthia A](#)
To: [Acheson, Ann](#); [Belin, Letty](#); [Black, Michael](#); [Blanchard, Mary Josie](#); [Decker, Julie A](#); [Eto, Sandra](#); [Gray, Lorri J](#); [Hoeft, Cynthia A](#); "[Hurlbut, David \(NREL\)](#)"; [Jensen, Larry](#); [Kenna, James G](#); [Killsback, Dion K](#); [Klein, Al](#); [LaCounte, Darryl](#); [Laverdure, Del](#); [McCoy, Carol](#); [Morgenweck, Ralph](#); [Murillo, David G](#); [Newland, Bryan](#); [Owens, Glenda H.](#); [Renee Stone \(DOE\)](#); [Robert Wright \(DOE\)](#); [Scott Haase \(scott.haase@nrel.gov\)](#); [Silva, Sandra V](#); [Sire, David E](#); [Suazo, Raymond M](#); [Trujillo, Tanya M](#); [Vimont, John](#)
Cc: [Allen, Tim](#); [Anderson, Bret A](#); [Arend, David J](#); [Brewer, Patricia F](#); [Chandler, Randy N](#); [Pinto, Sharon](#); [Port, Patricia](#); [Postle, Bob](#); [Stewart, Robert](#); [Wilson, Catherine](#); [Yazzie, Harrilene](#); [Blackmon, Dajuana](#); [Brown, Michelle](#); [Diehl, Barbara](#); [Martin, Matthew](#); [McLeod, Cynthia M](#); [Ontiveros, Lucille R](#); [Owens-Brown, Anna](#); [Williams, Susan K](#)
Subject: NREL NGS Executive Committee Information
Date: Tuesday, November 15, 2011 8:15:07 AM
Attachments: [2011 7-15 Tribal FIP final notice letter with exhibits.pdf](#)
[10-21-11 Exec comm notes-final.pdf](#)

To all:

Please find attached the finalized notes from the 10/21/11 Executive Committee meeting and also the NGS & Four Corners: July 15th Notice of Intent to Sue.

Thanks - Cindy Hoeft
(providing staff assistance for Letty Belin on NGS)
202-513-0673 office
702-467-8891 cell

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ALBUQUERQUE

Memorandum

To: Director/Deputy Director, Office of Environmental Policy and Compliance
From: Regional Environmental Officer - Albuquerque, NM
Subject: Weekly Activity Report – **August 19 – September 8, 2012**

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(b) (5)

CERCLA COORDINATION

(b) (5)

ENVIRONMENTAL ACTIVITIES

(b) (5)

Navajo Pinabete Coal Mine/Four Corners Power Plant Draft Environmental Impact Statement – Have received six of the nine signatures necessary to finalize the Memorandum of Agreement among the cooperators. Participated on the monthly conference call among the cooperators. Scoping meetings held by OSM as the lead agency have now occurred.

UPCOMING MEETINGS AND EVENTS

Regional Interagency Steering Committee (RISC) Meeting, Addison, TX, October 16-17, 2012
Regional Response Team (RRT) 6 Winter Meeting, Dallas, TX, December 2012

Stephen R. Spencer

ASPMB Major Priorities and Projects (07/16/12)

Topic	Office/ Publication Dates	Key Dates/ Current Schedule	Status/ Comments	Notes
Priority Items for Discussion				

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ASPMB Major Priorities and Projects (07/16/12)

Topic	Office/ Publication Dates	Key Dates/ Current Schedule	Status/ Comments	Notes
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ASPMB Major Priorities and Projects (07/16/12)

<p>Navajo Pinabete Mine/Four Corners Power Plant Draft Environmental Impact Statement, Navajo Nation, New Mexico</p>	<p>DAS-PIA AS/PMB Other ASs</p>	<p>Ongoing</p>	<p>OEPC REO-Albuquerque is coordinating the development of a Cooperating Agencies Memorandum of Understanding for this non-delegated EIS. OSM is the lead and BIA, BLM, FWS, Corps of Engineers, EPA, and the Navajo Nation are cooperators. The Hopi Tribe and NPS have also been invited to become cooperators. This will involve a new permit to be issued by OSM which will extend the Navajo Mine to the south, and a renewal of the power plant site lease by BIA. Existing permits/leases expire in July 2016. Connected actions needing approvals by the other cooperators include ESA Section 7 consultations with FWS and right-of-way approvals by BIA. PMB will eventually have to approve the clearance to print the EIS. OSM is preparing the Notice of Intent. The Navajo Nation President has written a letter to the Secretary requesting to meet about the project. The President of the Navajo Nation met with Deputy Secretary Hayes and the Directors of OSM and BIA. NPS has now requested to be a cooperator. The Hopi Tribe has not yet made a decision to be a cooperator but it is likely the will be a cooperator. There are two kick-off meetings in Albuquerque this week (5/22-23). The Notice of Intent to Prpare and EIS is being prepared by OSM as the lead.</p>	
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ASPMB Major Priorities and Projects (07/16/12)

Topic	Office/ Publication Dates	Key Dates/ Current Schedule	Status/ Comments	Notes
Priority Items for Discussion				
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ASPMB Major Priorities and Projects (07/16/12)

Topic	Office/ Publication Dates	Key Dates/ Current Schedule	Status/ Comments	Notes
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ASPMB Major Priorities and Projects (07/16/12)

<p>Navajo Pinabete Mine/Four Corners Power Plant Draft Environmental Impact Statement, Navajo Nation, New Mexico</p>	<p>DAS-PIA AS/PMB Other ASs</p>	<p>Ongoing</p>	<p>OEPC REO-Albuquerque is coordinating the development of a Cooperating Agencies Memorandum of Understanding for this non-delegated EIS. OSM is the lead and BIA, BLM, FWS, Corps of Engineers, EPA, and the Navajo Nation are cooperators. The Hopi Tribe and NPS have also been invited <u>now also agreed</u> to become cooperators. <u>Six of the nine signatures required to finalize the MOU have been received.</u> This will involve a new permit to be issued by OSM which will extend the Navajo Mine to the south, and a renewal of the power plant site lease by BIA. Existing permits/leases expire in July 2016. Connected actions needing approvals by the other cooperators include ESA Section 7 consultations with FWS and right-of-way <u>and lease</u> approvals by BIA. PMB will eventually have to approve the clearance to print the EIS. OSM is preparing <u>issued</u> the Notice of Intent <u>and Scoping Notice and scoping meetings were held in 8 locations in Arizona, Colorado, New Mexico and on the Navajo and Hopi Reservations.</u> The Navajo Nation President has written a letter to the Secretary requesting to meet about the project. The President of the Navajo Nation met with Deputy Secretary Hayes and the Directors of OSM and BIA. <u>As a result, a management team has been established with the OSM Regional Director as lead. The team has not had the first conference call. Monthly calls between the staff of the cooperators have begun and will be held the first Wednesday of every month. NPS has now requested to be a cooperator. The Hopi Tribe has not yet made a decision to be a cooperator but it is likely the will be a cooperator. There are two kick off meetings in Albuquerque this week (5/22-23). The Notice of Intent to Prepare and EIS is being prepared by OSM as the lead.</u></p>	
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UNITED STATES
DEPARTMENT OF THE INTERIOR

September 28, 2012

Memorandum

To: David Hayes, Deputy Secretary
Liz Klein, Associate Deputy Secretary
c/o James Anderson, Special Assistant

From: Rhea Suh, Assistant Secretary-Policy, Management and Budget

Subject: September 28, 2012, Policy and Other Issues

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Assistant Secretary - Policy, Management and Budget
Weekly Office Reports
September 27, 2012

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Assistant Secretary - Policy, Management and Budget
Weekly Office Reports
September 27, 2012

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New: (b) (5)

New: Bureau NEPA Coordinators Meeting - The Bureau NEPA Coordinators met with OEPC's Natural Resources Management Team on Wednesday, 9/26 to discuss draft updates to the Office's Environmental Statement Memoranda series. Some information previously provided in ESM is now available on the Team's website, where it can more readily be updated. Also discussed was EPA's new procedure for electronically filing environmental impact statements.

New: EPA Federal Facilities Remediation and Reuse Office (FFRRO) Quarterly Meeting - The Office of Environmental Policy and Compliance met with the FFRRO staff on Tuesday, Sep 25th, to discuss various remediation topics. These topics include EPA's Federal Facility Evaluation Program website, Information Sharing Webinar, Five Year Workgroup activities, Federal Facility Docket, and Federal Mining Dialogue update.

Update: (b) (5)

Update: Navajo Pinabete Coal Mine/Four Corners Power Plant Draft Environmental Impact Statement (DEIS) - REO Albuquerque has now received six of the nine signatures needed to finalize the Memorandum of Understanding among the cooperators preparing the subject DEIS.

Update: Regional Response Team Decision-making on Dispersants. (b) (5)

Assistant Secretary - Policy, Management and Budget
Weekly Office Reports
September 27, 2012

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Assistant Secretary - Policy, Management and Budget
Weekly Office Reports
September 27, 2012

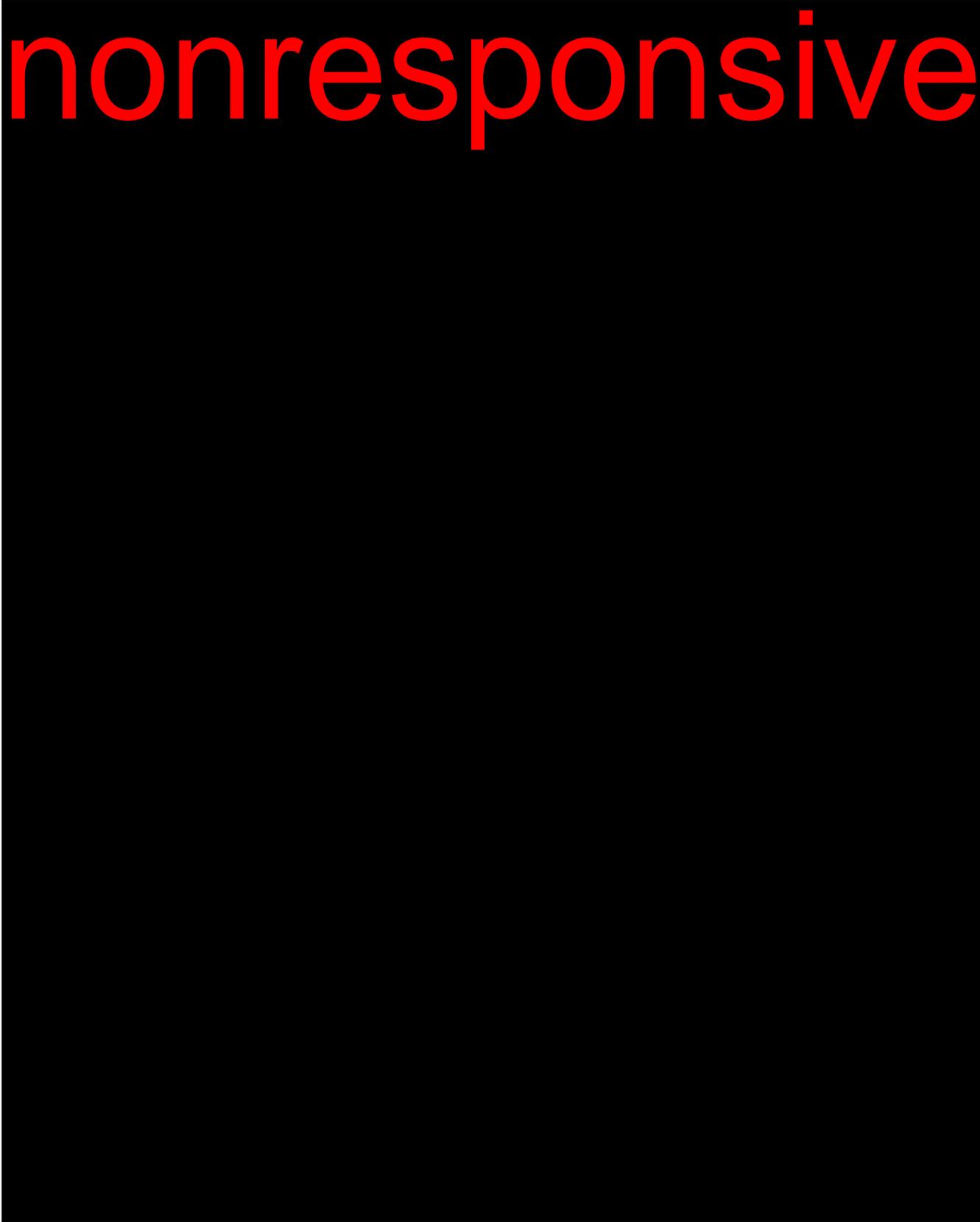
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Weekly Office Reports
September 27, 2012

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Weekly Office Reports
September 27, 2012

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ALBUQUERQUE

Memorandum

To: Director/Deputy Director, Office of Environmental Policy and Compliance
From: Regional Environmental Officer - Albuquerque, NM
Subject: Weekly Activity Report – **September 9-22, 2012**

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ENVIRONMENTAL ACTIVITIES

Navajo Pinabete Coal Mine/Four Corners Power Plant Draft Environmental Impact Statement (DEIS) – Have now received six of the nine signatures needed to finalize the Memorandum of Understanding among the cooperators preparing the subject DEIS.

UPCOMING MEETINGS AND EVENTS

Regional Interagency Steering Committee (RISC) Meeting, Addison, TX, October 16-17, 2012
Regional Response Team (RRT) 6 Winter Meeting, Dallas, TX, December 2012

Stephen R. Spencer

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ALBUQUERQUE

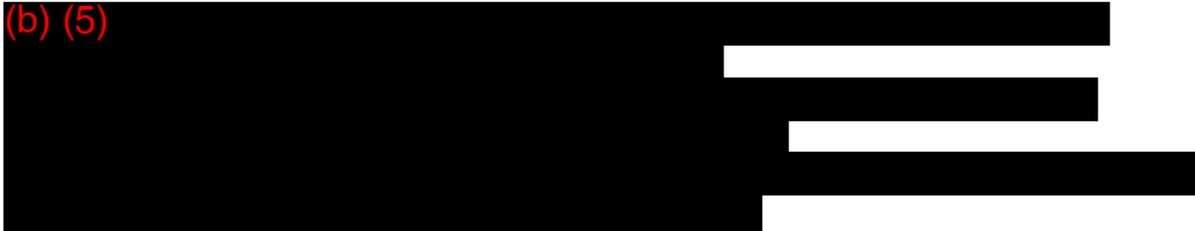
Memorandum

To: Director/Deputy Director, Office of Environmental Policy and Compliance
From: Regional Environmental Officer - Albuquerque, NM
Subject: Weekly Activity Report – November 18 – December 1, 2012

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- Provided coordinated/consolidated Departmental comments on the subject documents.

Navajo Generating Station and Associated Actions Draft EIS, Arizona – At suggestion of REO/Denver, attended meeting between BOR (lead), BIA, OSM and SOL to discuss primarily organizational issues including the Request for Proposal that will be used in soliciting bids from DEIS contractors. This DEIS has similar issues to the Navajo Pinabete Mine/Four Corners Power Plant DEIS but is somewhat behind it in terms of where it is in the process.

UPCOMING MEETINGS AND EVENTS

Regional Response Team (RRT) 6 Winter Meeting, Dallas, TX, December 3-5, 2012

Stephen R. Spencer

9040.2c

ALBUQUERQUE

Memorandum

To: Director/Deputy Director, Office of Environmental Policy and Compliance
From: Regional Environmental Officer - Albuquerque, NM
Subject: Weekly Activity Report – **April 22 – May 5, 2012**

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(b) (5)

Tribal Assistance Coordination Group (TAC-G) Meeting, Albuquerque, New Mexico, May 9-11, 2012 – Received and agreed to a last minute request to prepare and give a presentation on Emergency Support Function #11 – Agriculture and Natural Resources at the subject meeting.

CERCLA COORDINATION

(b) (5)

ENVIRONMENTAL ACTIVITIES

(b) (5)

Navajo Pinabete Coal Mine/Four Corners Power Plant Draft Environmental Impact Statement (DEIS), Navajo Nation, New Mexico – As a result of the National Park Service request to be a cooperating agency for the subject DEIS, made modifications to the draft memorandum of understanding among the cooperators and provided it to the NPS Intermountain Regional Office for comments and inclusion of additional information describing their role(s). Provided comments on the draft Notice of Intent (NOI) to the Office of Surface Mining which is preparing the NOI in the role as the lead agency.

UPCOMING MEETINGS AND EVENTS

Tribal Assistance Coordination – Group (TAC-G) Meeting, Albuquerque, New Mexico, May 9-10, 2012

Four Corners Power Plant & Navajo Mine Energy Project EIS & Section 7 ESA Consultation Meetings, Albuquerque, New Mexico, May 22-23, 2012

Grants Mining District 5-Year Plan Meeting, Albuquerque, New Mexico, June 5, 2012

RRT 6 & RRT 4 Meeting, Atlanta, GA, July 30 – August 3, 2012

Stephen R. Spencer

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ALBUQUERQUE

Memorandum

To: Director/Deputy Director, Office of Environmental Policy and Compliance
From: Regional Environmental Officer - Albuquerque, NM
Subject: Weekly Activity Report – November 4-17, 2012

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(b) (5)

ENVIRONMENTAL ACTIVITIES

(b) (5)

Navajo Pinabete Mine-Four Corners Power Plant Draft Environmental Impact Statement (DEIS), Navajo Nation, New Mexico – Revised BLM contact information that was included in the Cooperators’ Memorandum of Agreement and distributed to agency and tribal contacts. Participated in the monthly call among the cooperators that updated progress on DEIS preparation.

MISCELLANEOUS

Transition Papers – Prepared one transition paper for the Navajo Pinabete Mine-Four Corners Power Plant Draft EIS and offered to prepare another related to Region 6 Area Contingency Plans revisions.

Performance Appraisal Plans (b) (5)

UPCOMING MEETINGS AND EVENTS

Regional Response Team (RRT) 6 Winter Meeting, Dallas, TX, December 3-5, 2012

Stephen R. Spencer

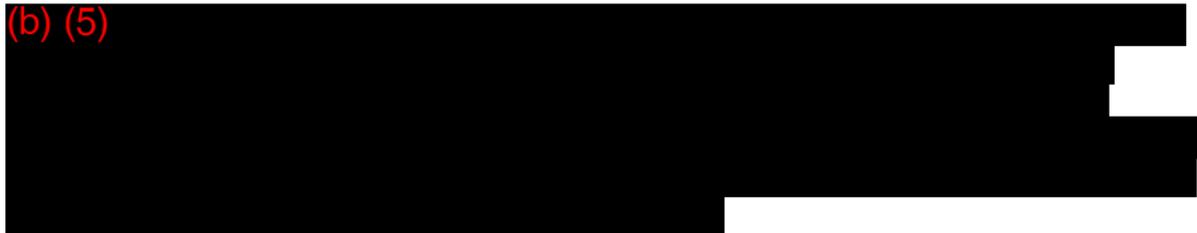
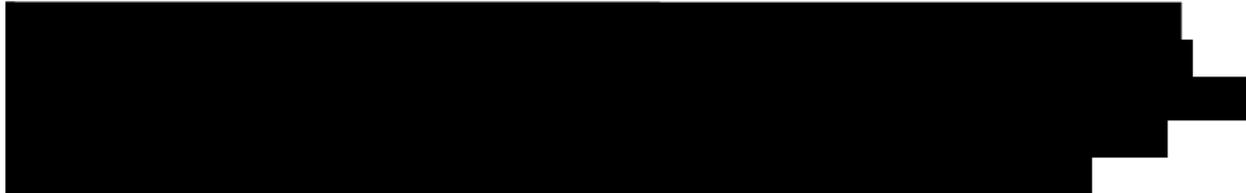
ALBUQUERQUE

Memorandum

To: Director/Deputy Director, Office of Environmental Policy and Compliance
From: Regional Environmental Officer - Albuquerque, NM
Subject: Weekly Activity Report – February 9, 2014 – February 15, 2014

RESPONSE PREPAREDNESS AND MANAGEMENT ACTIVITIES

(b) (5)

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ENVIRONMENTAL ACTIVITIES

Navajo Pinabete Mine/Four Corners Power Plant Draft EIS, Navajo Nation, New Mexico – Participated on a conference call with the Natural Resources Management (NRM) Team Leader and the Office of Surface Mining and their contractors to discuss OEPC comments on the Draft EIS and the procedures for getting the Authorization to Print signed by the Director, OEPC. The cooperating agencies will meet face-to-face or by conference call on February 20, 2014, to discuss how the comments were addressed and any outstanding issues. Will participate on that call to watch for any issues causing controversy that may require OEPC assistance and report to the NRM Team Leader on the results and whether the Director should sign the Authorization to Print. The Notice of Availability is scheduled to be printed on March 28, 2014 and ongoing activities are proceeding with that date in mind. The Record of Decision is still scheduled for

March 2015.

CERCLA COORDINATION

(b) (5)



UPCOMING MEETINGS AND EVENTS

FEMA Region 6 Regional Interagency Steering Committee Meeting, February 26-27, 2014, Denton, Texas.

MEXUS Gulf Joint Response Team Meeting, April 7-8, 2014, South Padre Island, TX

Region 6 Regional Response Team Meeting, May 13-15, 2014, Addison (Dallas), TX

Stephen R. Spencer

Assistant Secretary - Policy, Management and Budget
Weekly Office Reports
August 23, 2012

nonresponsive

Assistant Secretary - Policy, Management and Budget
Weekly Office Reports
August 23, 2012

nonresponsive

Assistant Secretary - Policy, Management and Budget
Weekly Office Reports
August 23, 2012

seeking support from other bureaus in helping to staff the MA as the length of the MA has exhausted their supply of available staff able to deploy to New York. OEPC worked with the Environmental Safeguards Group and the bureaus to identify deploy qualified individuals to New York State to assist with this MA. Staff from both NPS and OSM have been deployed accordingly.

Update: All Hazard Resource Advisor (AH-READ) Training. Work continues on developing DOI's AH-READs training curriculum which is being organized into three separate modules; basic, intermediate, and advanced. When completed, this training will be made available online. The adjudication of comments for the basic module has been completed, with comments received from 19 individuals representing NPS, BLM, BIA, FWS, OSM, USGS, OEM, as well as both NOAA and USDA/EDEN.

Update: Navajo Pinabete Coal Mine/Four Corners Power Plant Draft Environmental Impact Statement, Navajo Nation, New Mexico – REO Albuquerque followed up with cooperators regarding signature of the cooperators' memorandum of understanding. Only two of the nine signatures have been received so far.

Office of Policy Analysis

New: Interagency Arctic Research Policy Committee (IARPC). The IARPC 5-Year Research Plan has undergone final agency review and will soon be released. Policy Analysis participates on the IARPC Staff Group which met on August 20 to establish working groups responsible for implementation of the Plan.

New: Arctic Council. Policy Analysis and the Office of International Affairs are working with bureau Arctic staff to develop possible themes for the U.S. Chairmanship of the Arctic Council (2015-2017) and submit them to the Department of State by September 7, 2012. Policy Analysis is also working with the Canadian, Icelandic, and Norwegian delegations to the Arctic Council EBM Experts Group to prepare draft recommendations to the Foreign Ministers. Policy Analysis submitted a draft agenda for the next Experts Group meeting to be held in Tromsø, Norway, October 3-5.

Update: Analysis of the FWS Conservation Banking Program. Policy Analysis is reviewing the literature and outlining an analytical approach to identifying any impediments to creating habitat conservation banks and developing options for encouraging the expanded use of conservation banking. An analysis of the conservation banking program was requested by FWS.

Update: Departmental Plans on Technology Transfer. The OMB provided comments to Policy Analysis on the departmental plan that was submitted this April in response to the October 28, 2011, Presidential Memorandum on technology transfer. OMB requested a revised plan by the end of this month. Policy Analysis is planning to meet with OMB for further clarification.

Assistant Secretary - Policy, Management and Budget
Weekly Office Reports
August 23, 2012

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Assistant Secretary - Policy, Management and Budget
Weekly Office Reports
August 23, 2012

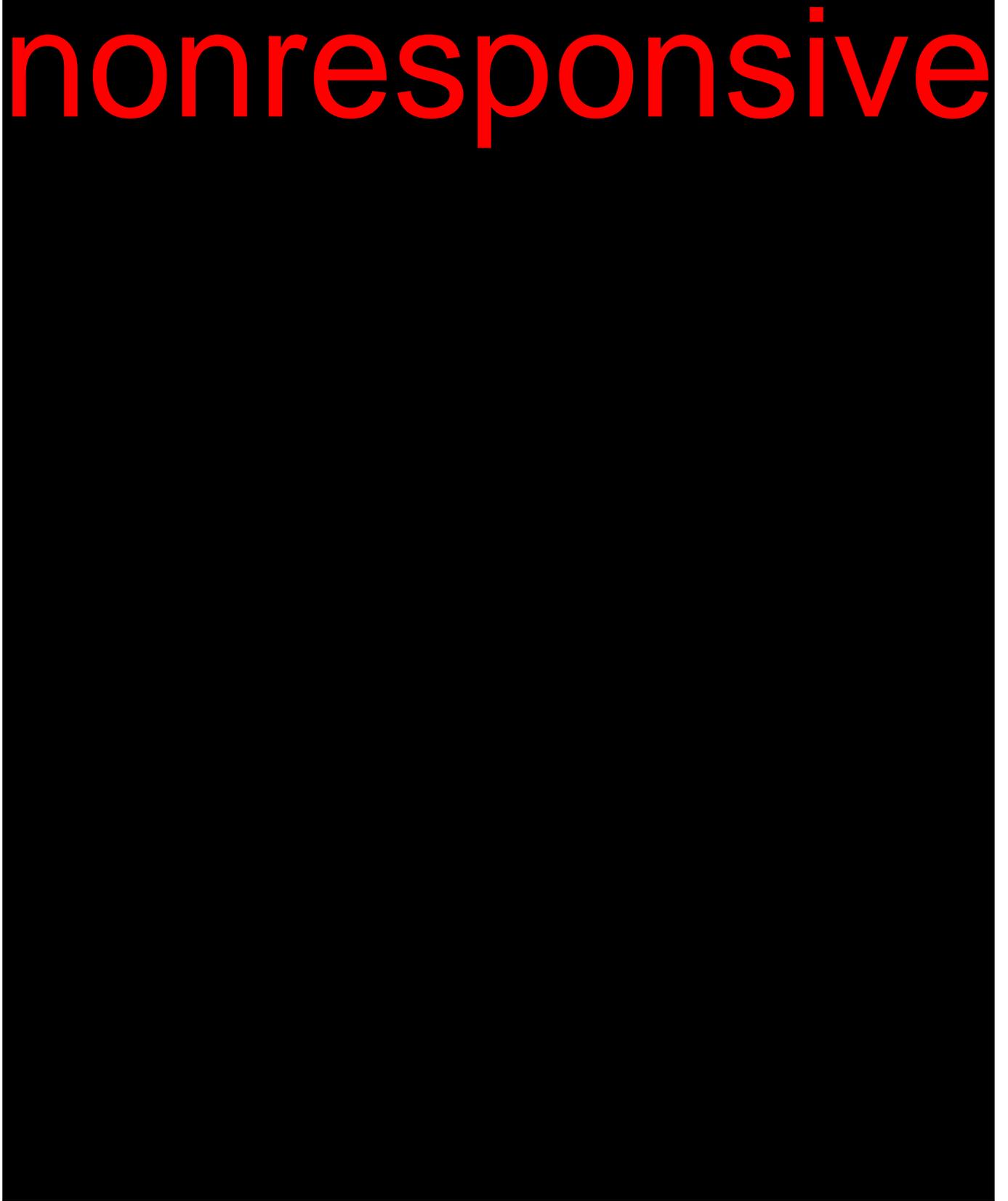
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Assistant Secretary - Policy, Management and Budget
Weekly Office Reports
August 23, 2012

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Assistant Secretary - Policy, Management and Budget
Weekly Office Reports
August 23, 2012

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Assistant Secretary - Policy, Management and Budget
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August 23, 2012

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Assistant Secretary - Policy, Management and Budget
Weekly Office Reports
August 23, 2012

nonresponsive

ASPMB Major Priorities and Projects (11/05/12)

Topic	Office/ Publication Dates	Key Dates/ Current Schedule	Status/ Comments	Notes
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Priority Items for Discussion

nonresponsive

ASPMB Major Priorities and Projects (11/05/12)

Topic	Office/ Publication Dates	Key Dates/ Current Schedule	Status/ Comments	Notes
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ASPMB Major Priorities and Projects (11/05/12)

Topic	Office/ Publication Dates	Key Dates/ Current Schedule	Status/ Comments	Notes
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ASPMB Major Priorities and Projects (11/05/12)

Topic	Office/ Publication Dates	Key Dates/ Current Schedule	Status/ Comments	Notes
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Topic	Office/ Publication Dates	Key Dates/ Current Schedule	Status/ Comments	Notes
nonresponsive				

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Topic	Office/ Publication Dates	Key Dates/ Current Schedule	Status/ Comments	Notes
nonresponsive				

ASPMB Major Priorities and Projects (11/05/12)

Topic	Office/ Publication	Key Dates/ Current Schedule	Status/ Comments	Notes
nonresponsive				

Additional Items of Potential Interest

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ASPMB Major Priorities and Projects (11/05/12)

Topic	Office/ Publication Dates	Key Dates/ Current Schedule	Status/ Comments	Notes
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nonresponsive

ASPMB Major Priorities and Projects (11/05/12)

Topic	Office/ Publication Dates	Key Dates/ Current Schedule	Status/ Comments	Notes
nonresponsive				

ASPMB Major Priorities and Projects (11/05/12)

Topic	Office/ Publication Dates	Key Dates/ Current Schedule	Status/ Comments	Notes
nonresponsive				

ASPMB Major Priorities and Projects (11/05/12)



<p>Navajo Pinabete Mine/Four Corners Power Plant Draft Environmental Impact Statement, Navajo Nation, New Mexico</p>	<p>DAS-PIA AS/PMB Other ASs</p>	<p>Ongoing</p>	<p>OEPC REO-Albuquerque is coordinating the development of a Cooperating Agencies Memorandum of Understanding for this non-delegated EIS. OSM is the lead and BIA, BLM, FWS, Corps of Engineers, EPA, and the Navajo Nation are cooperators. The Hopi Tribe and NPS have also been invited to become cooperators. This will involve a new permit to be issued by OSM which will extend the Navajo Mine to the south, and a renewal of the power plant site lease by BIA. Existing permits/leases expire in July 2016. Connected actions needing approvals by the other cooperators include ESA Section 7 consultations with FWS and right-of-way approvals by BIA. PMB will eventually have to approve the clearance to print the EIS. OSM is preparing the Notice of Intent. The Navajo Nation President has written a letter to the Secretary requesting to meet about the project. The President of the Navajo Nation met with Deputy Secretary Hayes and the Directors of OSM and BIA. NPS has now requested to be a cooperator. The Hopi Tribe has not yet</p>	
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ASPMB Major Priorities and Projects (11/05/12)

			made a decision to be a cooperator but it is likely the will be a cooperator. There were two kick-off meetings in Albuquerque in May. The Notice of Intent to Prepare an EIS is being prepared by OSM as the lead.	
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**OFFICE OF ENVIRONMENTAL POLICY AND COMPLIANCE
FY 2013 OBJECTIVES
OCTOBER 2012**

A. ENVIRONMENTAL POLICY AND SPECIAL PROJECTS

1. Navajo Pinabete Coal Mine Permit/Four Corners Power Plant Lease and Rights-of-Way Draft Environmental Impact Statement (EIS). This will be a non-delegated EIS requiring PMB involvement. Will brief headquarters as the process of preparing the DEIS unfolds. Will assist in issue resolution as necessary. Will participate on monthly conference calls with the EIS team and on the DOI leadership team headed by the OSM Regional Director. **ABQ Priority 1** Supports *Secretary's Priority Performance Goals – Protect America's Landscapes; Protect America's Cultural and Heritage Resources; Provide Recreation and Visitor Experience; Secure America's Energy Resources; Manage Water for the 21st Century; Meet Our Trust, Treaty, and Other Responsibilities to American Indians and Alaska Natives.*

Schedule: NOA for FEIS August 2014

Resources Needed: None at this time

B. ENVIRONMENTAL COMPLIANCE

C. ENVIRONMENTAL REVIEWS

D. ENVIRONMENTAL STEWARDSHIP AND PARTNERSHIP

E. RESOURCE PROTECTION AND RESPONSE

All Hazards Planning, Preparedness, Response and Recovery.

1. (b) (5)
- 

Schedule: Ongoing

Resources Needed: None at this time

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nonresponsive

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ALBUQUERQUE

Memorandum

To: Director/Deputy Director, Office of Environmental Policy and Compliance
From: Regional Environmental Officer - Albuquerque, NM
Subject: Weekly Activity Report – **October 7-13, 2012**

nonresponsive

CERCLA COORDINATION

(b) (5)



ENVIRONMENTAL ACTIVITIES

Navajo Pinabete Mine – Four Corners Power Plant Draft Environmental Impact Statement, Navajo Nation, New Mexico – Received final signatures on the Cooperators' Memorandum of Understanding, a total of nine. Incorporated them into the final document and provided it to the contacts for the cooperators. Sent the associated correspondence and original signatures to OSM for inclusion in the administrative record.

MISCELLANEOUS

FY 2012 Performance Review – Completed review with OEPC Director/Deputy Director.

UPCOMING MEETINGS AND EVENTS

Regional Interagency Steering Committee (RISC) Meeting, Addison, TX, October 16-17, 2012
Regional Response Team (RRT) 6 Winter Meeting, Dallas, TX, December 2012

Stephen R. Spencer

Stephen_Spencer@ios.doi.gov
Web Site: www.doi.gov/oepe/albuquerque.html

 **FINAL Four Corners-Navajo Mine EIS NPS Scoping Comments 11-1-12.doc**
113K



United States Department of the Interior
NATIONAL PARK SERVICE
Intermountain Region
12795 West Alameda Parkway
Lakewood, CO 80228



IN REPLY REFER TO:
IMR-NR,
DEC-12/0075

November 1, 2012

Memorandum

To: Environmental Impact Statement Coordinator, Office of Surface Mining Reclamation and Enforcement, Western Region

From: John Reber, Regional Energy Coordinator, National Park Service

Subject: Four Corners Power Plant and Navajo Mine Energy Project, Notice of Intent to Prepare an Environmental Impact Statement for the BHP Navajo Coal Company (BNCC) Proposed Pinabete Permit Environmental Impact Statement – Scoping Comments

Thank you for the opportunity to provide scoping comments on the Four Corners Power Plant and Navajo Mine Energy Project Environmental Impact Statement (EIS). As a cooperating agency, National Park Service (NPS) has identified several areas of concern within the Memorandum of Understanding (MOU), areas of responsibility and expertise that we offer regarding particular NPS resources. We will address these resources in coordination with the Office of Surface Mining Reclamation and Enforcement (OSM) and other cooperating agencies.

Two areas of concern that NPS is currently working with OSM and the cooperating agencies on are potential impacts to air quality and aquatic resources in NPS units.

The NPS has significant expertise in the area of air quality resources and has reviewed the “Four Corners Power Plant and Navajo Mine Environmental Impact Statement Class I and II Modeling” and “Ozone Modeling Approach for the APS Project”. We are providing specific technical comments to the proponent’s air quality contractor under separate cover. The NPS appreciates the opportunity to review the air quality documents and continue working towards an appropriate analytical methodology to evaluate the potential impacts from the project.

The NPS is concerned about the regional presence of mercury in the environment, particularly where it has the potential to impact aquatic resources, and specifically the potential to impact endangered fish in the San Juan River within the Glen Canyon National Recreation Area. Coal-fired power plants frequently are a source of mercury in the environment; however, we acknowledge that the ultimate completion of all portions of this project may actually reduce mercury emissions. We will actively participate as a member of the Section 7 Working Group

within the EIS project, collaborating to appropriately evaluate the potential impact from the project.

If you need any additional information, please contact John Reber, Energy Coordinator for the NPS Intermountain Region at (303) 969-2418.

cc:

Stephen Spencer, DOI – Office of the Solicitor

Peter Fahmy, DOI – Office of the Solicitor

Patrick Walsh, Chief, Environmental Quality Division, WASO-NRSS

Patrick Malone, Assistant Regional Director for Natural Resources, NPS-IMR

Chris Turk, Regional Environmental Coordinator, NPS-IMR

Cheryl Eckhardt, Environmental Compliance Specialist, NPS-IMR

Michael George, Air Resource Specialist, NPS-IMR

Melissa Trammell, Fishery Biologist, NPS-IMR

Carol McCoy, Chief, Air Resources Division, WASO-NRSS

Dave Steensen, Chief, Geologic Resources Division, WASO-NRSS



United States Department of the Interior
NATIONAL PARK SERVICE
Intermountain Region
12795 West Alameda Parkway
Lakewood, CO 80228



IN REPLY REFER TO:
IMR-NR,
DEC--12/0075

November 1, 2012

Memorandum

To: Environmental Impact Statement Coordinator, Office of Surface Mining Reclamation and Enforcement, Western Region

From: John Reber, Regional Energy Coordinator, National Park Service

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mercury emissions. We will actively participate as a member of the Section 7 Working Group within the EIS project, collaborating to appropriately evaluate the potential impact from the project.

If you need any additional information, please contact John Reber, Energy Coordinator for the NPS Intermountain Region at (303) 969-2418.

cc:

Stephen Spencer, DOI – Office of the Solicitor

Peter Fahmy, DOI – Office of the Solicitor

Patrick Walsh, Chief, Environmental Quality Division, WASO-NRSS

Patrick Malone, Assistant Regional Director for Natural Resources, NPS-IMR

Chris Turk, Regional Environmental Coordinator, NPS-IMR

Cheryl Eckhardt, Environmental Compliance Specialist, NPS-IMR

Michael George, Air Resource Specialist, NPS-IMR

Melissa Trammell, Fishery Biologist, NPS-IMR

Carol McCoy, Chief, Air Resources Division, WASO-NRSS

Dave Steensen, Chief, Geologic Resources Division, WASO-NRSS



United States Department of the Interior



NATIONAL PARK SERVICE
INTERMOUNTAIN REGION
12795 West Alameda Parkway
P.O. Box 25287
Denver, Colorado 80225-0287

IN REPLY REFER TO:
IMR-EQ-L7617

RE: Four Corners Power Plant and Navajo Mine Energy Project Preliminary Draft
Environmental Impact Statement (PDEIS)

Marcelo Calle
EIS Coordinator, The Four Corners & Navajo Mine Energy Project
Office of Surface Mining Reclamation and Enforcement
Program Support Division, Indian Programs Branch
1999 Broadway, Suite 3320
Denver, CO 80202-3050

Dear Mr. Calle

The National Park Service (NPS) appreciates the opportunity to review the Preliminary Draft Environmental Impact Statement for the Four Corners Power Plant and Navajo Mine Energy Project. The NPS submits the following comments on the proposed project.

The NPS supports the No Action Alternative as cultural resources would cease to be impacted by closure of the Navajo Mine. The cultural landscape has been significantly affected by past operations and no satisfactory resolution has been proposed to avoid damages. Specifically, the air quality and environment in the Four Corners area has been significantly affected and would continue to be affected under the other proposed alternatives. Generally, the air quality section of the draft EIS is well-written. We provide the following comments towards improving the PDEIS.

Table 4.1-17 – Please present the visibility monitoring by site rather than compositing them like has been done for the criteria pollutants. Visibility conditions are not homogeneous and understanding how they vary geographically would help in interpreting how emissions from the mine and the power plant might play a role.

Section 4.1.2.5 – Please explain the results of the Four Corners Air Quality Task Force modeling a bit further than “ozone changes were generally limited to less than about 5 ppb.” by noting that ozone is increasingly a regional problem, especially in the Southwest, requiring emission reductions from a variety of sources in the region.

Tables 4.1-32 to 34 – The short paragraph that apparently is talking about these ozone tables is in the Visibility/Regional Haze section. There needs to be considerably more discussion of these tables, for example, what does “Historic Ozone” really mean in comparison to “Baseline Ozone”?

Table 4.1-40 – The standards in this table should be in the units that EPA uses in promulgation, parts per million or parts per billion, where appropriate. These are what the public is familiar with and hence will have a better perspective for interpretation.

Section 4.1.4.1 – In the Mercury Deposition Network section it is suggested with some implied certainty that increases in mercury are chiefly because of transport from Asia. This assertion needs further explanation and supported by appropriate references.

Sue E. Masica
Regional Director,
Intermountain Region

cc:

Tammy Whittington, Associate Regional Director, Resource Stewardship and Science,
Intermountain Region, NPS

Melissa Trenchik, Chief, Environmental Quality, Intermountain Region, NPS

Michael George, Environmental Protection Specialist, Natural Resource Stewardship &
Science, NPS

Aron Adams, Chief of Cultural Resources, Aztec Ruins National Monument, NPS

David Hurd, Environmental Protection Specialist, Intermountain Region, NPS



United States Department of the Interior



NATIONAL PARK SERVICE
INTERMOUNTAIN REGION
12795 West Alameda Parkway
P.O. Box 25287
Denver, Colorado 80225-0287

IN REPLY REFER TO:
IMR-EQ-L7617

RE: Four Corners Power Plant and Navajo Mine Energy Project Preliminary Draft
Environmental Impact Statement (PDEIS)

Marcelo Calle
EIS Coordinator, The Four Corners & Navajo Mine Energy Project
Office of Surface Mining Reclamation and Enforcement
Program Support Division, Indian Programs Branch
1999 Broadway, Suite 3320
Denver, CO 80202-3050

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Sue E. Masica
Regional Director,
Intermountain Region

cc:

Tammy Whittington, Associate Regional Director, Resource Stewardship and Science,
Intermountain Region, NPS

Melissa Trenchik, Chief, Environmental Quality, Intermountain Region, NPS

Michael George, Environmental Protection Specialist, Natural Resource Stewardship &
Science, NPS

Aron Adams, Chief of Cultural Resources, Aztec Ruins National Monument, NPS

David Hurd, Environmental Protection Specialist, Intermountain Region, NPS

From: Crystal_Salas@nps.gov
To: [Spencer, Stephen](#)
Cc: [Whittington, Tamara](#); [Joss, Laura](#); [Malone, Patrick](#); [Turk, Chris](#); [Reber, John](#); [George, Michael](#); [McCoy, Carol](#); [Steensen, Dave](#); [Jim Von Haden](#); [Eckhardt, Cheryl](#); IMRextrev@nps.gov
Subject: Navajo Pinabete Mine/Four Corners Power Plant - SIGNED
Date: Wednesday, August 22, 2012 8:53:55 AM
Attachments: [Navajo Pinabete Mine.Four Corners Power Plant Transmittal Memo Signed 8.21.12.pdf](#)
[Navajo Pinabete Mine.Four Corners Power Plant MOU Signed 8.21.12.pdf](#)

Hi Stephen,

Attached is the signed transmittal memo and MOU for the Navajo Pinabete Mine/Four Corners Power Plant.

I will send the originals via mail to your address.

If you have any questions and/or concerns, please let me know.

Thank you!

(See attached file: Navajo Pinabete Mine.Four Corners Power Plant Transmittal Memo Signed_8.21.12.pdf)(See attached file: Navajo Pinabete Mine.Four Corners Power Plant MOU_Signed 8.21.12.pdf)

Crystal Salas
Environmental Protection Assistant
NPS - Intermountain Regional Office
12795 W. Alameda Pkwy.
Denver, Colorado 80225-0287
Tel: 303.987.6705
Fax: 303.969.2717
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12795 W. Alameda Parkway
Lakewood, CO 80228

303 969-2418 PHONE FAX 303 969-2717

303 885-8769 Mobile

john_reber@nps.gov

From: [Spencer, Stephen](#)
To: [Reber, John](#)
Subject: Re: Four Corners & Navajo Mine Energy Project EIS NPS Regional Task Force Participant
Date: Tuesday, July 03, 2012 9:17:23 PM

Thanks John.

Stephen R. Spencer, PhD
Regional Environmental Officer
U.S. Department of the Interior
Office of Environmental Policy and Compliance
1001 Indian School RD NW, Suite 348
Albuquerque, NM 87104
Phone: (505) 563-3572
Fax: (505) 563-3066
Cell: (505) 249-2462

----- Original Message -----

From: John_Reber@nps.gov [mailto:John_Reber@nps.gov]
Sent: Tuesday, July 03, 2012 04:58 PM
To: Calle, Marcelo; Williamson, Rick L.
Cc: Spencer, Stephen; Eckhardt, Cheryl; Salas, Crystal; Malone, Patrick; Whittington, Tamara; Wessels, John; Michele M. Klossowsky; Turk, Chris; George, Michael; McCoy, Carol
Subject: Four Corners & Navajo Mine Energy Project EIS NPS
Regional Task Force Participant

Marcelo and Rick

We look forward to participating as a Cooperating Agency for the Four Corners & Navajo Mine Energy Project EIS

NPS is designating John Wessels, Regional Director for the NPS Intermountain Region as the NPS Regional Task Force member.

John Reber, Physical Resources Program Lead and Regional Energy Coordinator will be our technical expertise contact. We believe that such assistance will be primarily air quality related and involve NPS Natural Resources Stewardship and Science air quality staff.

Cheryl Eckhardt, Environmental Compliance Specialist will be our NEPA compliance lead for the project.

Please address all correspondence to John Wessels and copy John Reber and Cheryl Eckhardt in all correspondence regarding the Regional Task Force or any subcommittees formed to assist in this EIS.

We understand that there may be an initial Task Force meeting on July 11th.

Please be sure to provide information to us in time for NPS to make plans for attendance personally or possibly by conference call.

John Wessels, Regional Director, john_wessels@nps.gov 303 969-2501

John Reber, Physical Resources Program Lead, john_reber@nps.gov, 303 969-2418

From: Williamson, Rick L.
To: Reber, John
Cc: Spencer, Stephen; Eckhardt, Cheryl; Crystal Salas; Malone, Patrick; Whittington, Tamara; Wessels, John; Michele M. Klossowsky; Turk, Chris; George, Michael; McCoy, Carol; Calle, Marcelo
Subject: RE: Four Corners & Navajo Mine Energy Project EIS NPS Regional Task Force Participant
Date: Friday, July 06, 2012 11:24:22 AM

John, thanks for NPS's email confirmation of contacts for the EIS, including the designated Regional Task Force member (John Wessels). I will pass along Mr. Wessels name to OSM's Regional Director Al Klein, whom will be contacting John in the near future.

Thanks again,
Rick

-----Original Message-----

From: John_Reber@nps.gov [mailto:John_Reber@nps.gov]
Sent: Tuesday, July 03, 2012 4:58 PM
To: Calle, Marcelo; Williamson, Rick L.
Cc: Spencer, Stephen; Eckhardt, Cheryl; Salas, Crystal; Malone, Patrick; Whittington, Tamara; Wessels, John; Michele M. Klossowsky; Turk, Chris; George, Michael; McCoy, Carol
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John Wessels, Regional Director, john_wessels@nps.gov 303 969-2501

John Reber, Physical Resources Program Lead, john_reber@nps.gov, 303 969-2418

Cheryl Eckhardt, Environmental Compliance Specialist,

Phone: (505) 563-3572 Fax: (505) 563-3066 Cell: (505) 249-2462
Stephen_Spencer@ios.doi.gov
Web Site: www.doi.gov/oepec/albuquerque.html

From: [Stewart, Robert F.](#)
To: [Spencer, Stephen](#)
Cc: [Sire, David E](#)
Subject: FW: Fish toxicity study
Date: Wednesday, November 07, 2012 2:33:38 PM

Steve –

Note references to FCPP.

From: Eto, Sandra
Sent: Wednesday, November 07, 2012 1:47 PM
To: Yazzie, Harrilene; Williamson, Rick L.
Cc: Stewart, Robert F.; Port, Patricia; Black, Kevin; Pinto, Sharon
Subject: RE: Fish toxicity study

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If you have questions regarding the study or the meeting, you can either call Chuck Paradzick at SRP or give your questions to me and I'll ask Chuck.

Sorry I can't answer any more of your questions, or any better... Sandy

From: Yazzie, Harrilene
Sent: Wednesday, November 07, 2012 1:32 PM
To: Eto, Sandra; Williamson, Rick L.
Cc: Stewart, Robert F.; Port, Patricia; Black, Kevin; Pinto, Sharon
Subject: RE: Fish toxicity study

Sandy,

I have a few questions:

- 1.) What kind of modeling do they intend to complete? Are there any specific answers that the model can answer for section 7? Do we know what the section 7 questions are regarding operations and inputs in the model?
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Thank you – Harrilene

From: Eto, Sandra
Sent: Wednesday, November 07, 2012 1:23 PM
To: Williamson, Rick L.; Yazzie, Harrilene
Cc: Stewart, Robert F.; Port, Patricia; Black, Kevin
Subject: Fish toxicity study

Hi Rick and Harrilene—I wanted to let you know that SRP requested a meeting with us to discuss data they need from Reclamation on the operation of the upper Colorado River as inputs to their model. At least a couple of our Upper Colorado Region folks will be attending (since they have those data). We are going to meet on 12/10 at 9:00 a.m. here in Phoenix with SRP and EPRI. Chuck said they will be giving us the same presentation they gave for the FCPP project in August. I think Chuck indicated he didn't think much has changed since then. You are both more than welcome to attend the meeting, either in person or by phone (you, too, Bob and Pat). There will be others that are joining by phone as well.

I just wanted to put it on your radar screen in case you are interested. Thanks.

From: [Stewart, Robert F.](#)
To: [Spencer, Stephen](#)
Cc: [Sire, David E](#)
Subject: FW: Fish toxicity study
Date: Thursday, November 08, 2012 7:43:53 AM

FYI

From: Eto, Sandra
Sent: Wednesday, November 07, 2012 7:08 PM
To: Pinto, Sharon; Yazzie, Harrilene; Williamson, Rick L.; McGregor, Amy L.
Cc: Stewart, Robert F.; Port, Patricia; Black, Kevin; Palumbo, David M; Chandler, Randy N; Smith, Alexander (PXAO)
Subject: RE: Fish toxicity study

(sorry I keep leaving you off, Amy...)

Sharon/Harrilene—I appreciate your concern. I should have been more precise in my explanation. EPRI is conducting this study in support of the FCPP project; as I understand, the study is anticipated to be used for the NGS Section 7 consultation as well. The presentation will be the same one made to the FCPP ESA sub-team in August. I believe the ESA sub-team has a representative from FWS, who is aware of what OSM and its contractor are doing in support of the section 7 effort, including this study. I don't know whether or not BIA has a member on that sub-team.

SRP called because EPRI is at a point where they need to start collecting data which will be used as inputs into the model for this study, on the water operations, flows, diversions, etc. of the upper Colorado River. SRP called me to say EPRI was going to be in Phoenix, and he wanted to set up a meeting with the appropriate Reclamation staff in order to establish what inputs are needed for the model and who EPRI should get them from. Because the information that EPRI is seeking will likely need to come from Reclamation's Upper Colorado Region (UCR; the UCR staff in Salt Lake City are responsible for operating the dams in the Upper Basin), I went ahead and asked that the appropriate UCR staff come to this meeting. This exchange needs to occur whether or not the study is used for the NGS-KMC Section 7 biological assessment, because the inputs are needed to complete the study for the FCPP biological assessment regardless of any decision regarding its use for the NGS-KMC project section 7 biological assessment. I have no idea whether SRP or EPRI is supposed to contact OSM prior to requesting data from any source for the FCPP project.

As long as EPRI was going to be in town, SRP thought it would be a good opportunity to provide the Reclamation staff with some background about the EPRI study. This will allow our NGS fish expert (from UCR) a chance to find out what is being studied through this effort so he can start figuring out if/how it addresses our needs. We will not be discussing the NGS-KMC ESA effort per se; we are merely trying to get a better understanding of what the ESA issues are for the FCPP project, and what is being done for the FCPP ESA. This is because the NGS-KMC project affects the same area being studied for FCPP's ESA with regard to native fish in the Colorado River.

The FWS office which is responsible for addressing impacts to native fish on the FCPP project is the

same office (FWS Region 2) that will be responsible for addressing impacts to native fish on the NGS-KMC Project and, as indicated above, that FWS office is already up to speed on this study. Plus, our intention in attending this meeting is merely to help educate ourselves about the native fish-related issues and other studies being conducted for ESA purposes, because both projects affect the same airshed and fish populations. There is no intent to engage in any meaningful discussions regarding NGS-KMC ESA compliance. We would just like to “get up to speed” on what’s going on with the FCPP ESA work. We thought EPRI’s visit to Phoenix and desire to obtain information from Reclamation regarding upper basin water operations for its FCPP-related study provided a good opportunity to do this.

Once a Contractor for the NGS-KMC EIS is on-board, his/her fisheries biologist will need to get up to speed on the progress of this study (as well as everything related to the FCPP ESA effort regarding native fish). I would guess after the Contractor is in place, we will contact both FWS offices (Arizona Ecological Services as well as Region 2 staff), establish the NGS-KMC ESA sub-team, and formally “initiate” work associated with our biological assessment. I assume our Contractor and ESA sub-team will meet at some point shortly after the Contractor is hired and EPRI will be asked to give another presentation. The NGS-KMC EIS contractor will be responsible for preparing an initial biological assessment for use by Reclamation in its Section 7 consultation, but I believe he/she will be guided by Reclamation’s biologist and the ESA sub-team.

I think it is extremely helpful for our biologists to get a better idea regarding the scope and objectives of this ongoing study, so we can independently assess whether or not we believe this information is useful and appropriate for use in preparing the biological assessment for our project, and whether we believe some changes should be made to the scope regarding the NGS-KMC aspects of the study. We need this information about the EPRI study in order to talk intelligently with the FWS office. As long as the EPRI folks are in town and available, I believe it is a good use of time and resources to meet with them.

I invited the OSM and BIA staff in case they wanted a refresher on the EPRI study, or if they missed the August presentation.

I’d be happy to discuss this further with you and/or Harrilene if you have more questions or if I misunderstood your questions. I’d like to bring Alex Smith into the discussion, however, because he is the lead biologist for the project at this time plus he knows ESA much better than me.

Please don’t hesitate to give either me or Alex (623-773-6250) a call if you have any concerns. Thanks.

Sandy

Sandra Eto

Environmental Resource Management Division
Phoenix Area Office, Reclamation
6150 W. Thunderbird Road
Glendale, AZ 85306-4001
623-773-6254 (office)

623-773-6486 (fax)

seto@usbr.gov

From: Pinto, Sharon
Sent: Wednesday, November 07, 2012 3:31 PM
To: Eto, Sandra; Yazzie, Harrilene; Williamson, Rick L.
Cc: Stewart, Robert F.; Port, Patricia; Black, Kevin; Palumbo, David M
Subject: RE: Fish toxicity study

Sandy,

Are we still working toward bring on consultants for NGS to conduct the Section 7? Or, did we agree that the Section 7 will be handled by BOR/SRP?

If the Section 7 consultants are hired for NGS; will EPRI be requested to provide this same type of presentation again?

Please advise,

Sharon Pinto, Regional Director
Navajo Region, BIA
301 West Hill
Gallup, New Mexico 87301
505.863.8221

From: Eto, Sandra
Sent: Wednesday, November 07, 2012 1:47 PM
To: Yazzie, Harrilene; Williamson, Rick L.
Cc: Stewart, Robert F.; Port, Patricia; Black, Kevin; Pinto, Sharon
Subject: RE: Fish toxicity study

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From: [Stewart, Robert F.](#)
To: [Sire, David E](#); [Spencer, Stephen](#)
Subject: FW: NGS-KMC NEPA Development/Process Meeting
Date: Friday, November 09, 2012 11:05:01 AM

Dave – FYI

Steve – I don't know if you might have any interest in sitting in. I've repeatedly told folks that this project needs to be done consistently (or at least not inconsistently) with the way FCPP/N-P Mine is being handled. I know OSM (and probably BIA) share this concern and expect that they would speak up if necessary.

From: Palumbo, David M
Sent: Friday, November 09, 2012 10:47 AM
To: Chandler, Randy N; Black, Kevin; Eto, Sandra; Smith, Alexander (PXA0); Thayer, Ruth M; Verburg, Katherine; Smith, Rodney; Pinto, Sharon; Yazzie, Harrilene; Hall, Robert; Lupo, Frank R; Williamson, Rick L.; Kleven, Art; Stewart, Robert F.; Port, Patricia
Subject: NGS-KMC NEPA Development/Process Meeting

Hi All:

I would like to suggest that we get together for a one-day face-to-face meeting in Albuquerque to work out a few items related to the NGS-KMC NEPA process.

While we would transmit a draft agenda including the discussion topics and an objective statement well in advance of the meeting, I would propose the following partial list of potential agenda items for your consideration.

- Project Proponent Involvement
- Request for Proposal Evaluation Factors
- Request for Proposal Evaluation Process
- Peer Review
- Memorandum of Understanding Next Steps and Sequencing
- NEPA Schedule
- Task Force Reporting
- Communication Protocols

Also, please feel free to suggest topics for the draft agenda as well.

With respect to a day, I would like to propose either Wednesday, November 28th or Thursday, November 29th (With respect to a time, I was thinking of 10:00 am to 4:00 pm (MST) with lunch brought in.).

Of these two days, would you indicate a preference, and also if both of them are not good for you.

Any and all feedback is more than welcome.

Please feel free to contact me or Kevin Black at any time. Kevin's contact information is as follows:

Kevin Black
Project Manager
623-773-6207 (o)
623-734-7970 (c)
KBlack@usbr.gov

Finally, please feel free to forward this meeting information to anyone in your organizations who you feel should participate.

Thanks,

David
702-622-4064 (c)



ESA Environmental Baseline of Hg in Colorado pikeminnow

April 3, 2012

U.S. Fish and Wildlife Service

New Mexico Ecological Services Field Office

2105 Osuna Road NE

Albuquerque, NM 87113

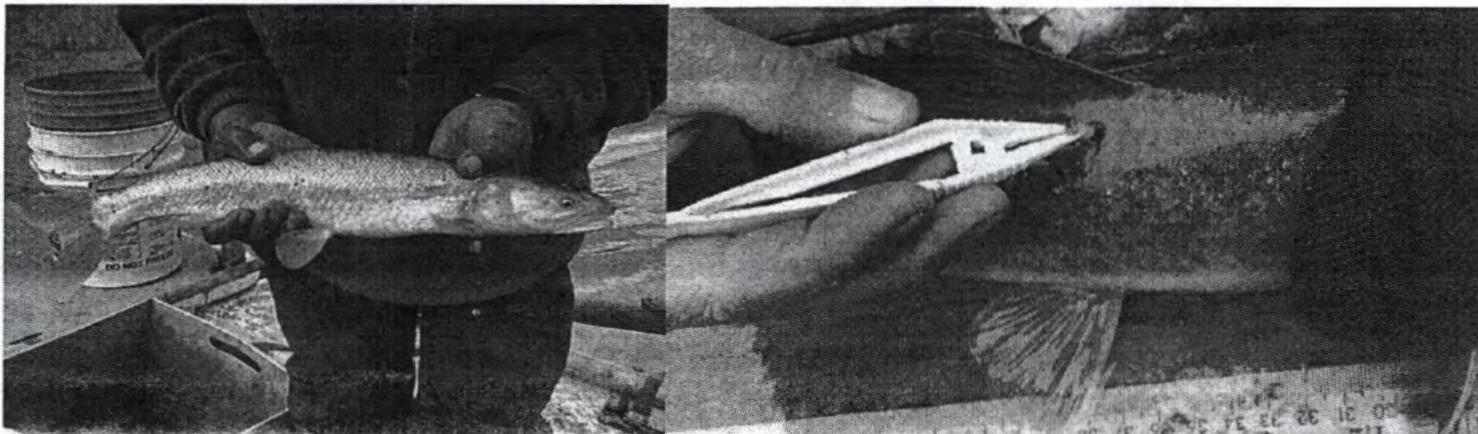


ESA : Effects of the Action

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 - The Environmental Baseline includes all past and present activities and any reasonably certain cumulative effects in Action Area.

Survey of Hg in CO pikeminnow

- During 2007-2010, USFWS sampled Colorado pikeminnow muscle plug tissue and analyzed for total mercury content.
- Our report “Field assessment of mercury exposure to Colorado pikeminnow within designated critical habitat” will be made available in late summer 2012.



DEPARTMENT OF THE INTERIOR
U.S. FISH AND WILDLIFE SERVICE
BUREAU

ENVIRONMENTAL CONTAMINANTS PROGRAM
OFFICE OF RESEARCH AND MONITORING

Field assessment of mercury exposure to Colorado pikeminnow
within designated critical habitat
Project ID: 004-004-0000-0000-0000

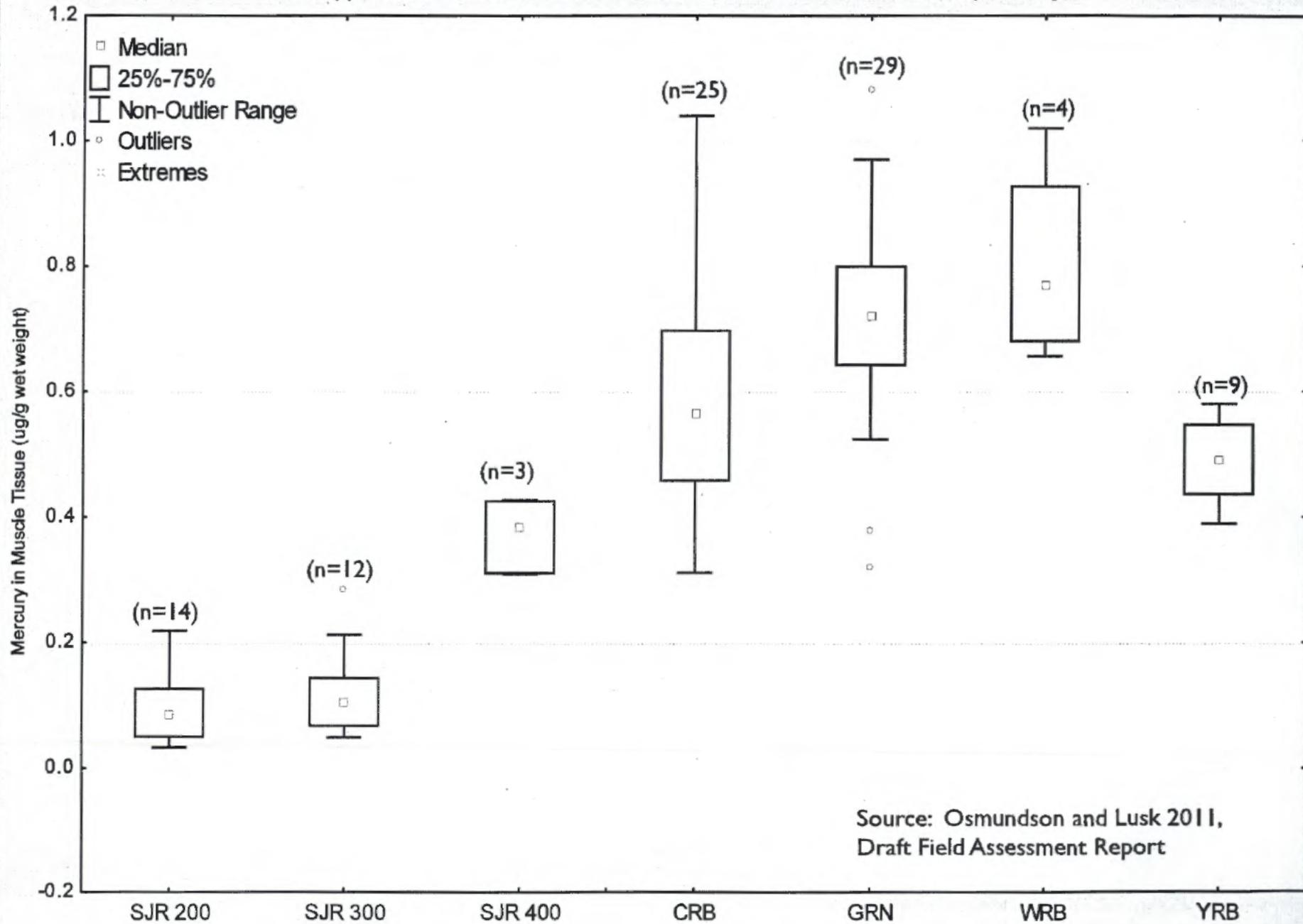
by
Neil Cassiano
Environmental Contaminants Specialist
Bureau of Land Management

and
Neil D. Tall
Senior Biologist, Contaminant Biology
New Mexico Biological Services Unit
2100 Coors Road SE
Albuquerque, New Mexico 87102

May 11, 2012
Copyright © 2012 U.S. Fish and Wildlife Service

BoxPlot of Mercury (ug/g ww) in Colorado Pikeminnow muscle by Watershed and the San Juan River by Size Class

[Watershed: SJR 200-San Juan River 200mm; SJR 300-San Juan River 300mm; SJR 400-San Juan River 400mm; CRB-Upper Colorado River, GRN-Gren River, WRB-White River, YRB-Yampa River]

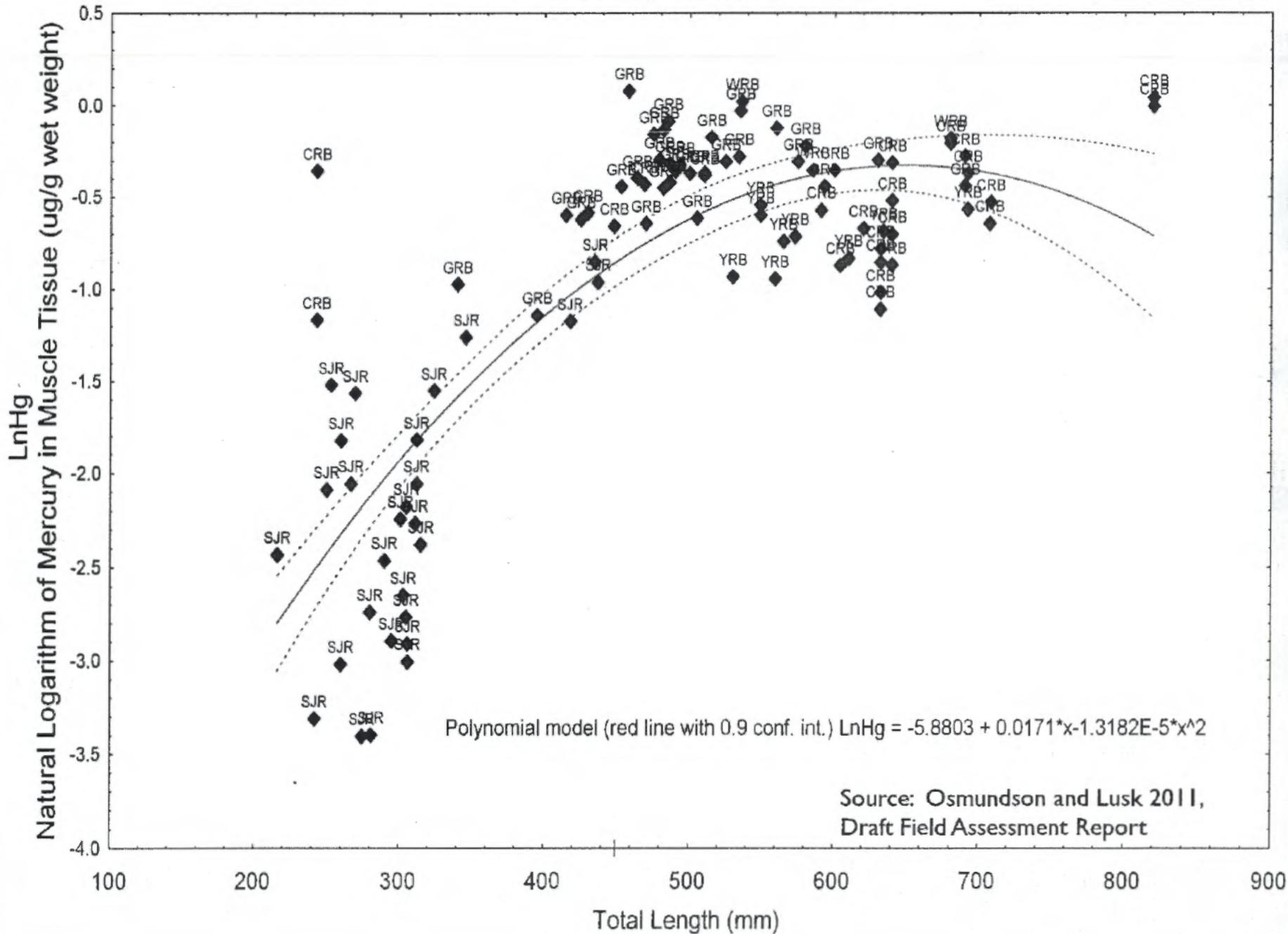


Scatterplot of the natural logarithm of mercury in muscle tissue (ug/g wet weight) and total length (mm)

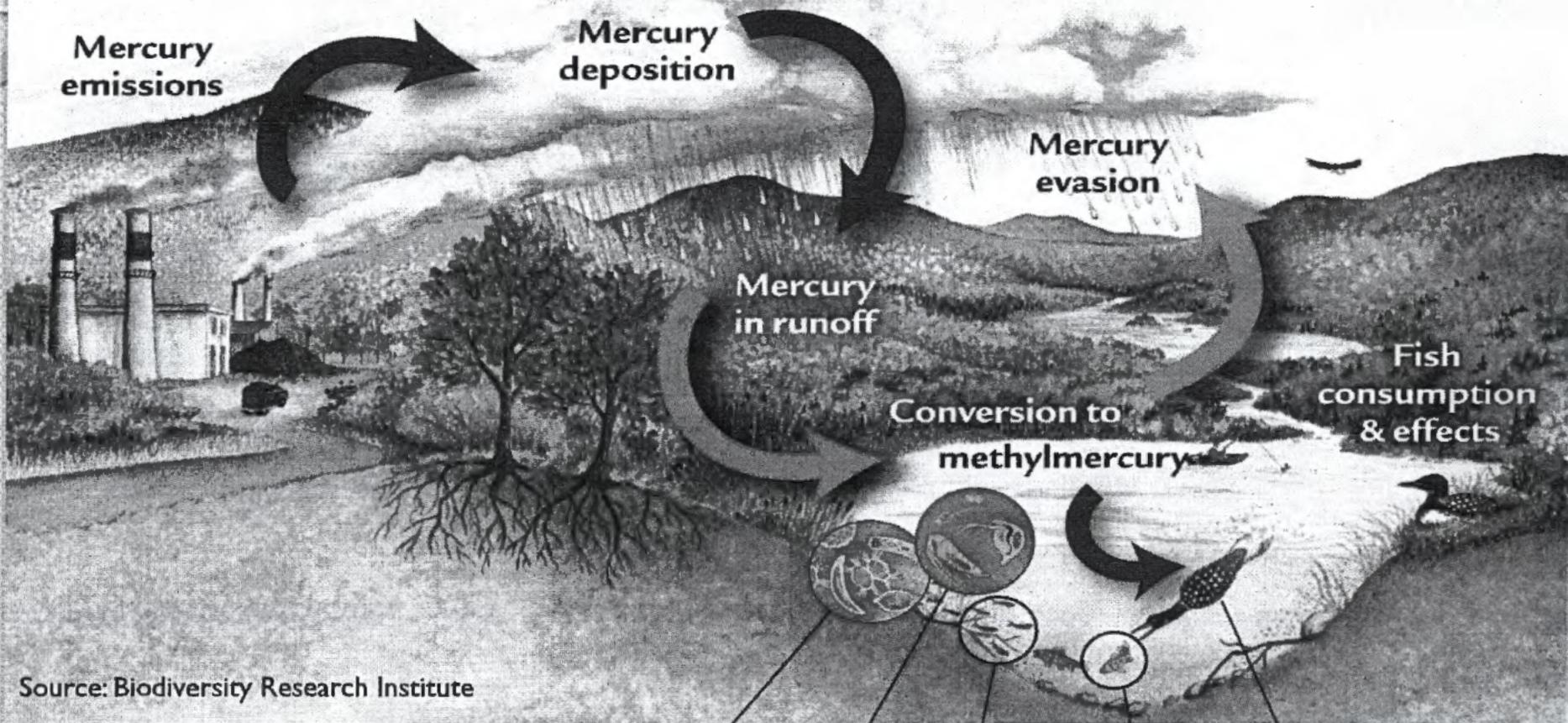
Pikeminnow tissues collected from the Colorado (CRB), Green (GRB), San Juan (SJR), White (WRB), and Yampa (YRB) River Basins.

$$\text{Linear Model: } \text{LnHg (muscle)} = -3.2054 + 0.0046 * \text{Total Length}$$

$$r = 0.7447, p = 0.0000$$

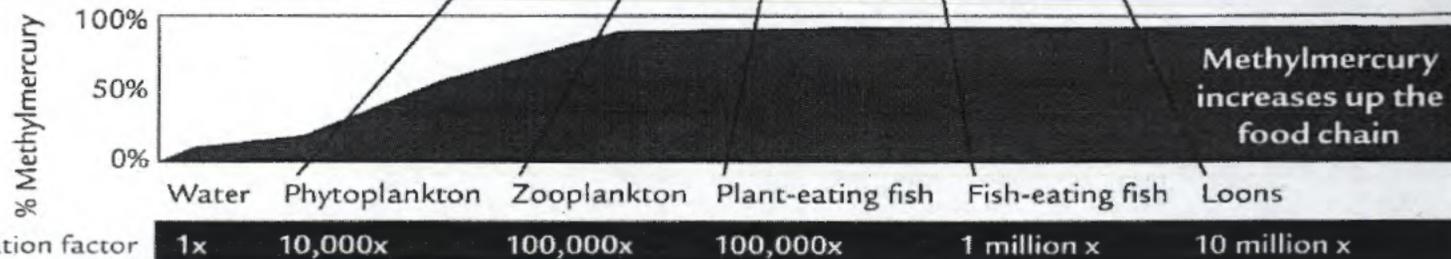


Mercury in the Environment



Source: Biodiversity Research Institute

Bioaccumulation of methylmercury in fish & wildlife



Mercury in the Colorado River

Hg

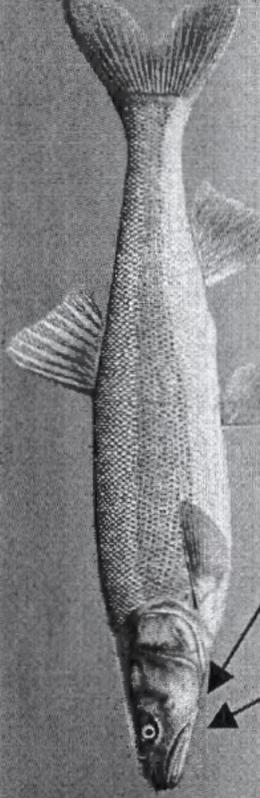
Predator Fish: Colorado Pikeminnow

Aquatic invertebrates

Periphyton & Vegetation

Prey Fish (example):
flannelmouth sucker

Benthos



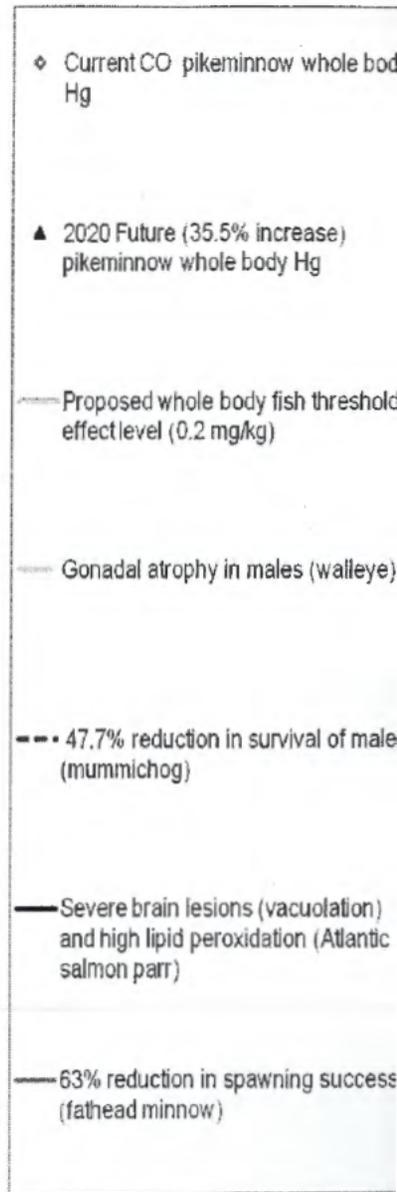
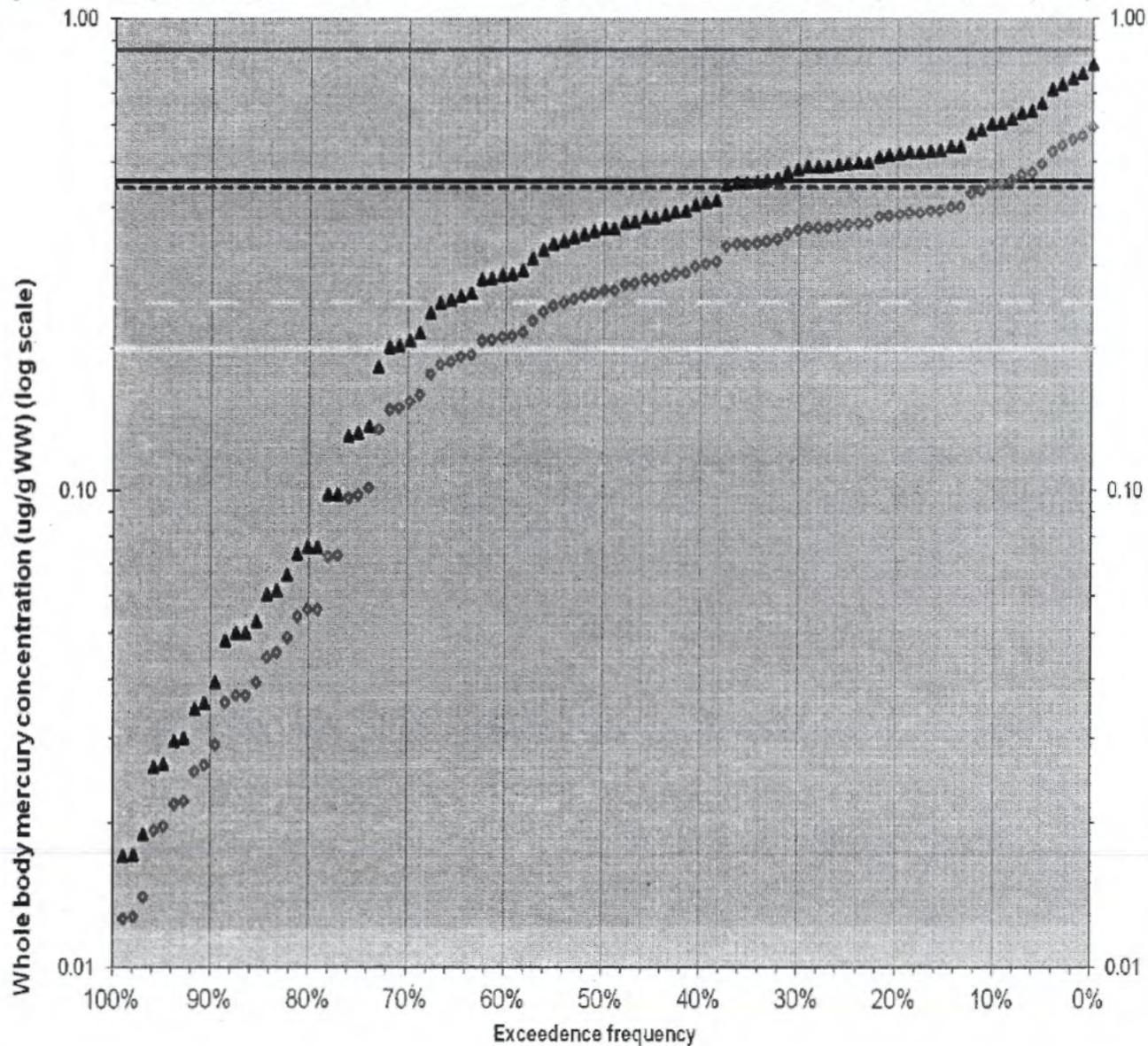
Effects of Mercury in Fish

- **Potent Neurotoxin**
 - Affects central nervous system (reacts w/ brain enzymes, then lesions)
 - Affects hypothalamus and pituitary, affects gonadotropin-secreting cells
 - Altered behaviors: Reduced predator avoidance, reproductive timing fail
 - Reduced ability to feed (emaciation/growth effects)
- **Endocrine disruptor**
 - Suppressed reproductive hormones in male and female fish
 - Reduce gonad size and function, reduced gamete production,
 - Altered ovarian morphology, delayed oocyte development
 - Reduced reproductive success
 - Transfer of dietary Hg of the maternal adult during oogenesis and into developing embryo
- **Fish have inability to grow new brain cells or significantly reduce brain Hg**

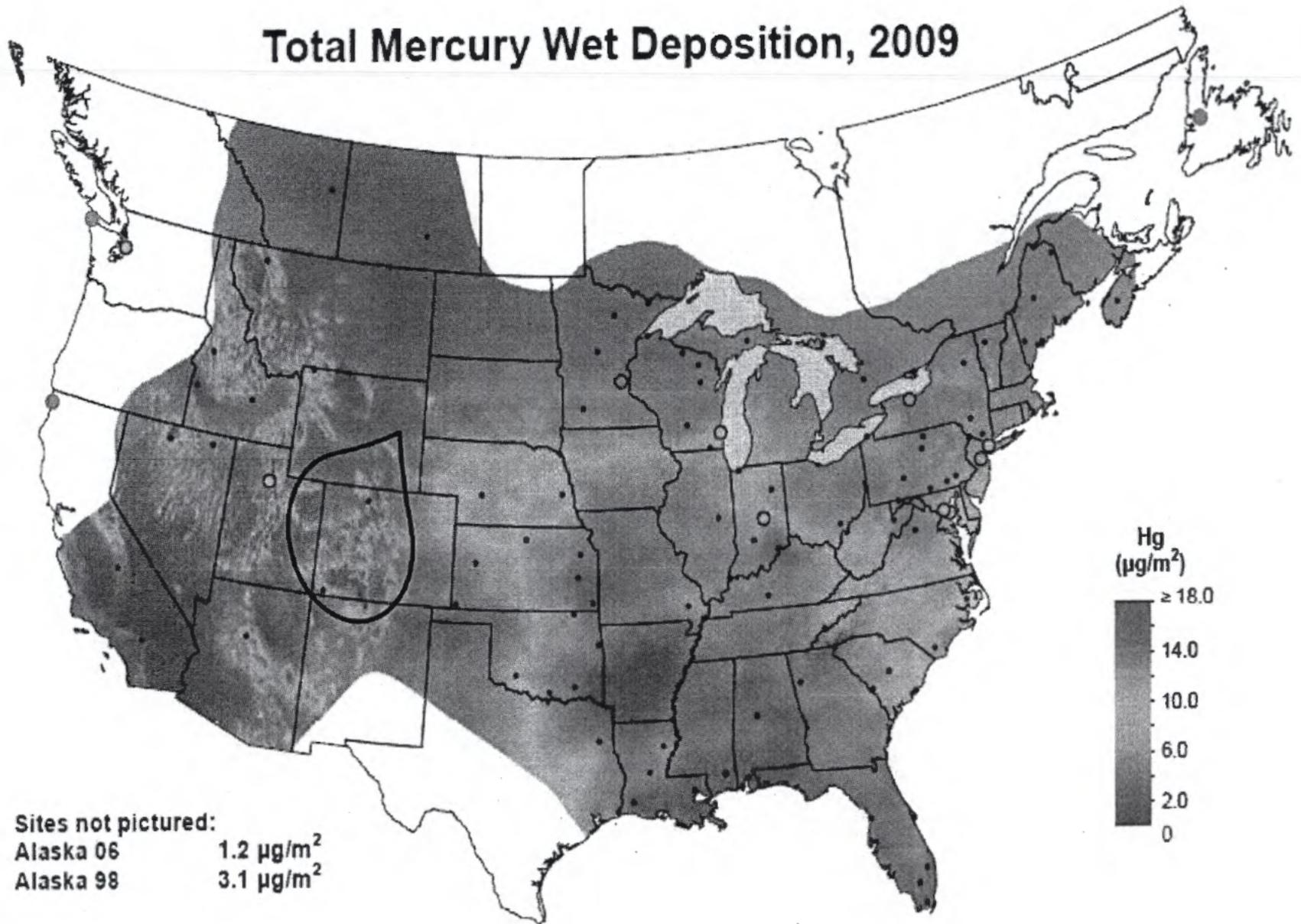
- Beckvar (2005) - survival, growth, reproduction, behavior at 0.2ug/g in whole fish
- Yeardeley (1998) - Hg>0.1 mg/kg WW likely harmful to mammals that eat fish
- USEPA (2000) - Hg>0.3 mg/kg WW likely harmful to certain people that eat fish

CO Pikeminnow Hg & Fish Studies

Current and possible future (35.5% increase by 2020) whole-body mercury concentrations in Colorado Pikeminnow along with some reproductive, behavioral, and lethal effects concentrations for fish described by Beckvar et al. (2005).

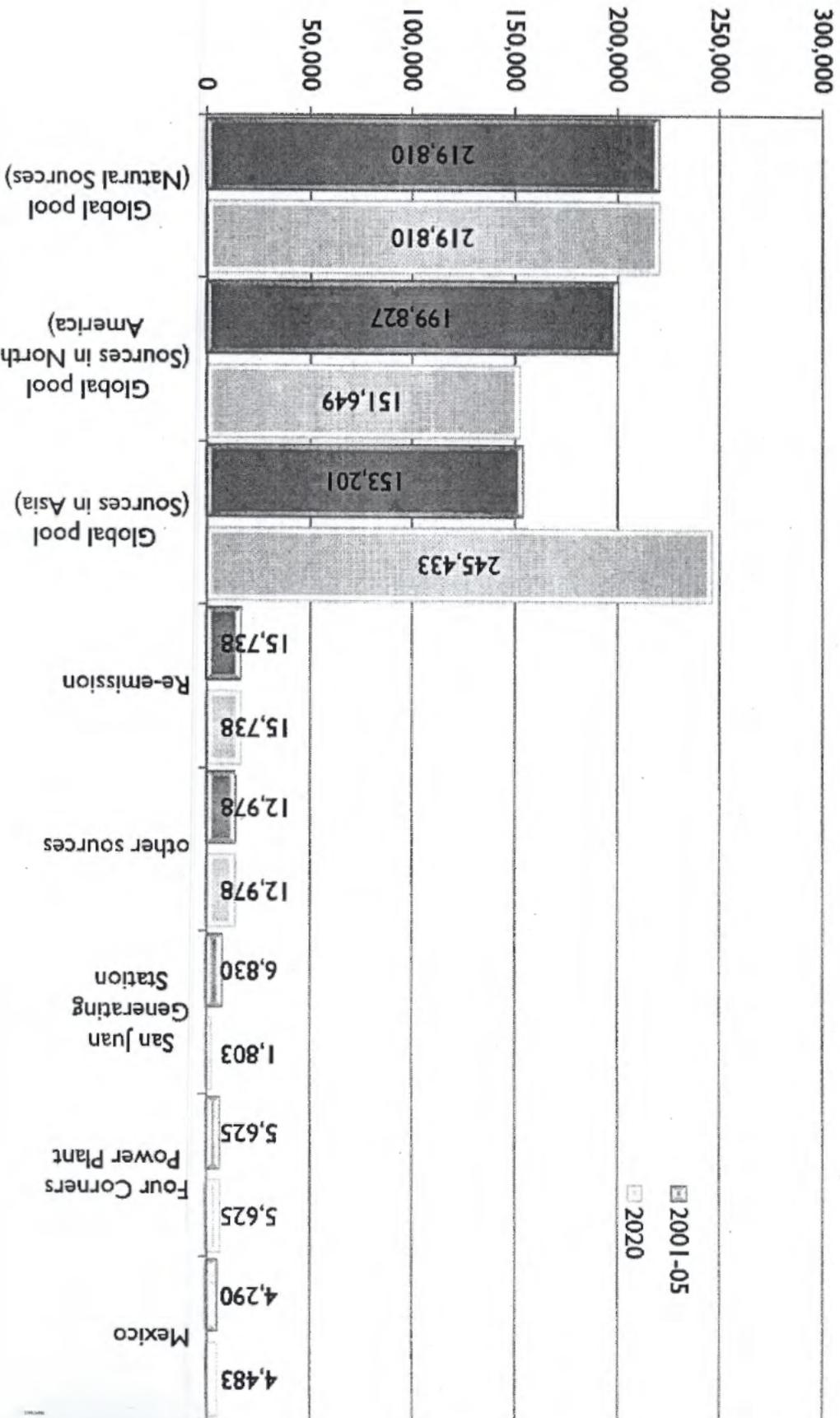


Total Mercury Wet Deposition, 2009



Environmental Baseline Uncertainty

San Juan River Basin Mercury Deposition Annual Total (in 2001-05) was 712 kg (~1600 lbs) - USEPA 2005
 San Juan River Basin Mercury Deposition Annual Total in 2020 is expected 957 kg (~35% increase)—based on UNEP 2008





Summary Environmental Baseline

- CO pikeminnow are top predators
- CO pikeminnow have excess Hg
- Excess Hg associated with adverse effects
- Excess Hg in CO pikeminnow likely increases their extinction risk
- Environmental Baseline Hg Uncertainty
- Effects of a federal action authorizing Hg is added to the Environmental Baseline.



Data and Management Needs

- **Best Available Scientific Data Needs:**
 - Quantify CP sensitivity & Hg effect levels (Se?)
 - Fate and transport studies, emission, deposition, bioaccumulation models
 - Reduce uncertainty future cumulative effects
- **Management Needs**
 - Other issues(Se?), other species (plants?)
 - Hg offsets as part of the proposed action
 - Options to reducing bioaccumulation in species and critical habitat
 - Recovery Programs support
 - Monitoring, reporting, adaptive management plan

Proposed Agenda
Post-2016 Permitting for Four Corners Power Plant and Navajo Mine
Section 7 Consultation
April 3, 2012
USFWS Ecological Field Services Office

1. Welcome and Introductions
2. Overview of FCPP-Navajo Mine Project
3. Approvals necessary for Post-2016 FCPP operations
4. Approvals necessary for Post-2016 BNCC Navajo Mine operations
6. Timeline and status of approvals and agency leads
7. Section 7 consultation

- Agency leads and project proponents
- Designation of project proponents as participants in section 7 process
- Timeline for section 7 consultation
- Pre-consultation coordination
- Anticipated issues in section 7 consultation
- Information necessary for Biological Assessment

8. Next Steps

Final re on cooperatives' mov

ingited - a consultation framework agreement.

BNCC & APS will write letter to OSM indicating they will be playing

← submitted to BIA

Lease Amendment #3 (thru 2011)

Decrease relative to 2012
NOx 86%

Hg 61%
Part 43%
CO₂ 30%
SO₂ 24%

Mine Application submitted to OSM last week

R2P2 will be submitted to BLM soon

Draft EIS and Draft BA about the same time.

2100 Megawatts → 1540 Megawatts

Ask NPS about being a Cooperating Agency
Ask OSM who will handle the consultation work for this.

ESA Environmental Baseline of Hg in Colorado pikeminnow

April 3, 2012
 U.S. Fish and Wildlife Service
 New Mexico Ecological Services Field Office
 2105 Osuna Road NE
 Albuquerque, NM 87113

ESA : Effects of the Action

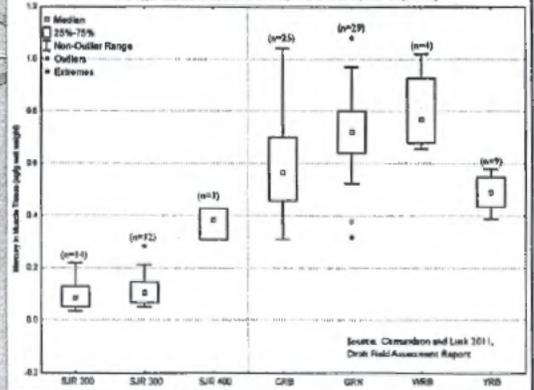
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Survey of Hg in CO pikeminnow

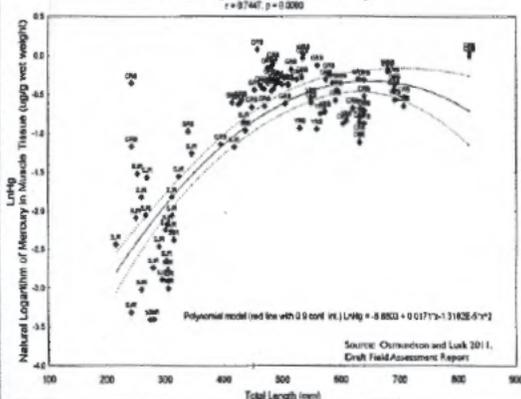
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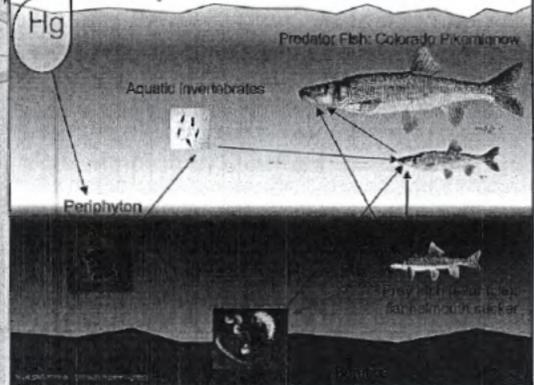
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Scatterplot of the natural logarithm of mercury in muscle tissue (ug/g wet weight) and total length (mm)
 Pike minnow tissues collected from the Colorado (CRB), Great (GRB), San Juan (SJR), White (WRB), and Tampa (YRB) River Basins.
 Linear Model: $\ln(\text{Mercury}) = -0.2264 + 0.0046 \cdot \text{Total Length}$
 $r = 0.7467$; $p = 0.0000$



Mercury in the Colorado River





Martinez, Shirley <shirley_martinez@ios.doi.gov>

Fwd: OSM-BLM Coordination Conference Call

1 message

Spencer, Stephen <stephen_spencer@ios.doi.gov>
To: Shirley Martinez <Shirley_Martinez@ios.doi.gov>

Thu, Apr 11, 2013 at 10:05 AM

Please print these attachments for my file. They are only 2-3 pages each so do one-sided. Except for the one spreadsheet, they are graphics so they are big files

----- Forwarded message -----

From: **Calle, Marcelo** <mcalles@osmre.gov>

Date: Thu, Apr 11, 2013 at 9:16 AM

Subject: OSM-BLM Coordination Conference Call

To: Powell King <pkings@blm.gov>, Shannon Hoefeler <shoefele@blm.gov>, Marcella Martinez <mmartinez@blm.gov>, Joseph Galluzzi <jgalluzzi@blm.gov>

Cc: Dan Tormey <daniel.tormey@cardno.com>, Joe Lockerd <joe.lockerd@cardnotec.com>, Amanda Nisula <anisula@blm.gov>, Scott Hall <shall@blm.gov>, Foster Kirby <FKirby@osmre.gov>, Kimberly.Demuth@cardno.com, Rick Williamson <RLWilliamson@osmre.gov>, Stephen Spencer <Stephen_Spencer@ios.doi.gov>

Afternoon,

Thank you all again for participation on yesterdays call. I wanted to follow up with some action items defined in the meeting.

Shannon - Could you please discuss with the appropriate BLM contact the question Powell King raised regarding the BLM's participation as described in the current MOU. Specifically, the current MOU does not describe the BLM's action related to the ROW renewal. Does the BLM wish to amend the current MOU to include the BLM ROW renewal action? I looked at notes from a previous meeting and Jim Copeland was mentioned as a contact.

Powell - If the PNM 345 kV TL ROW from Arizona Public Service (APS) Four Corners Power Plant (FCPP) to the West Mesa Switchyard (FW TL ROW) is not fully administered by the BLM FFO, could you please forward me the contact information for the appropriate BLM person at the Rio Puerco - Albuquerque Field Office to discuss the Project including Section 106 related to the this line.

In response to the question brought up by Dan Tormey (Cardno) during the call regarding the applicable expiration date of the BLM FW TL ROW.

Early during our analysis of actions to be considered within the scope of the EIS analysis and other consultation e.g. Section 7 ESA & Section 106 NHPA; there was a question regarding the expiration date for ROW renewals associated with BLM administered portions of the PNM 345 kV TL extending from the Arizona Public Service (APS) Four Corners Power Plant (FCPP) to the Rio Puerco Switchyard and then on to the West Mesa Switchyard. OSM had originally considered including the action from FCPP to Rio Puerco substation but later concluded the action should be extended to the West Mesa Switchyard. (see attached connected action documents)

The confusion over the applicable ROW renewal date arose upon review of information provided by the BLM FFO (see attached BLM Row spreadsheet) indicating there is a ROW administered by the BLM described as the **Rio Puerco Line** (expiration date 2018) and another ROW administered by the BLM described as the **APS Plant to West Mesa Switch** (expiration 2016). Through coordination with the BLM and PNM it was concluded that the

applicable line for consideration as a connected action within the EIS was the *APS Plant to West Mesa Switch* (expiration 2016). Please let OSM know if this conclusion is not correct.

Regards,

—

Marcelo Calle

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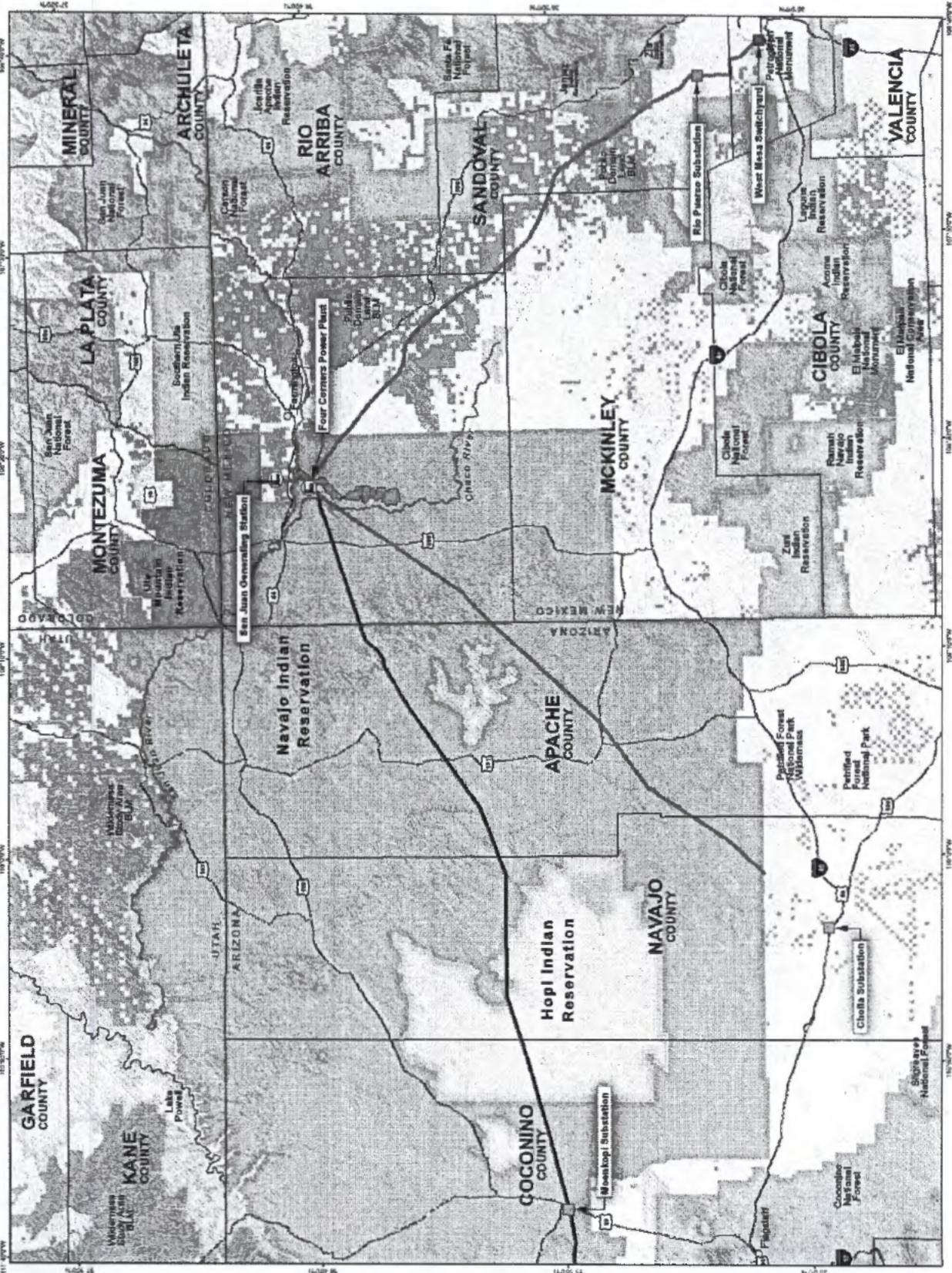
4 attachments

-  **Connected_Actions_Analysis_04092013 v3.pdf**
2606K
-  **Connected_Actions_inclusion of West Mesa 12172012.pdf**
247K
-  **FourCorners_Figure4_9_2_JurisdictionalBoundaries.pdf**
3104K
-  **BLM PNM Lines.xlsx**
16K

**Four Corners Power Plant
and Navajo Mine Energy Project**

AFFECTED ENVIRONMENT

Figure 4.9-2
Jurisdictional Boundaries Crossed
by the Subject Transmission Lines



- PROJECT FACILITIES**
- Power Plant
 - Substation
 - Switchyard

- PROJECT BOUNDARIES**
- Navajo Mine Lease Area
 - Pinabete Permit Boundary
 - County Boundaries

- TRANSMISSION LINES**
- 345KV
 - 500KV

- FEDERAL LANDS**
- Bureau of Indian Affairs
 - Bureau of Land Management
 - Bureau of Reclamation
 - Forest Service
 - National Park Service

Scale in Miles: 0, 10, 20, 40

Cardno

Memorandum

Date: December 17, 2012

To: Rick Williamson, Marcelo Calle
OSM

From: Daniel Tormey, Ph.D., P.G.

RE: **Inclusion of Rio Puerco Line as Connected Action**

In analyzing which of the transmission lines emanating from Four Corners Power Plant (FCPP) to include as connected actions, we had decided to include the Public Service New Mexico (PNM) transmission line that extends from the San Juan Switchyard to the Rio Puerco switchyard. The reasoning was as follows:

“The Four Corners to Rio Puerco line includes two BIA approvals. One is within the Navajo Nation boundary and expires in June 2018. The second ROW is a former BLM ROW conveyed to the Navajo in 1994 that covers approximately 7 non-contiguous miles, and expires on May 17, 2016. The proponents exclude this line because both of the expiration dates are after the completion of this NEPA process. The segment of the transmission line from Four Corners to Rio Puerco would continue to primarily use power from the continued operation of Four Corners, and may be reasonably and conservatively analyzed as connected actions similar to those of the El Dorado and the Cholla transmission lines. In addition, the BLM ROW expiration date of May 17, 2016 is before the December 2016 expiration date of the El Dorado transmission line, which the proponents included as a connected action. Based on these two factors, we believe that the Four Corners to Rio Puerco line should be treated as a connected action.”

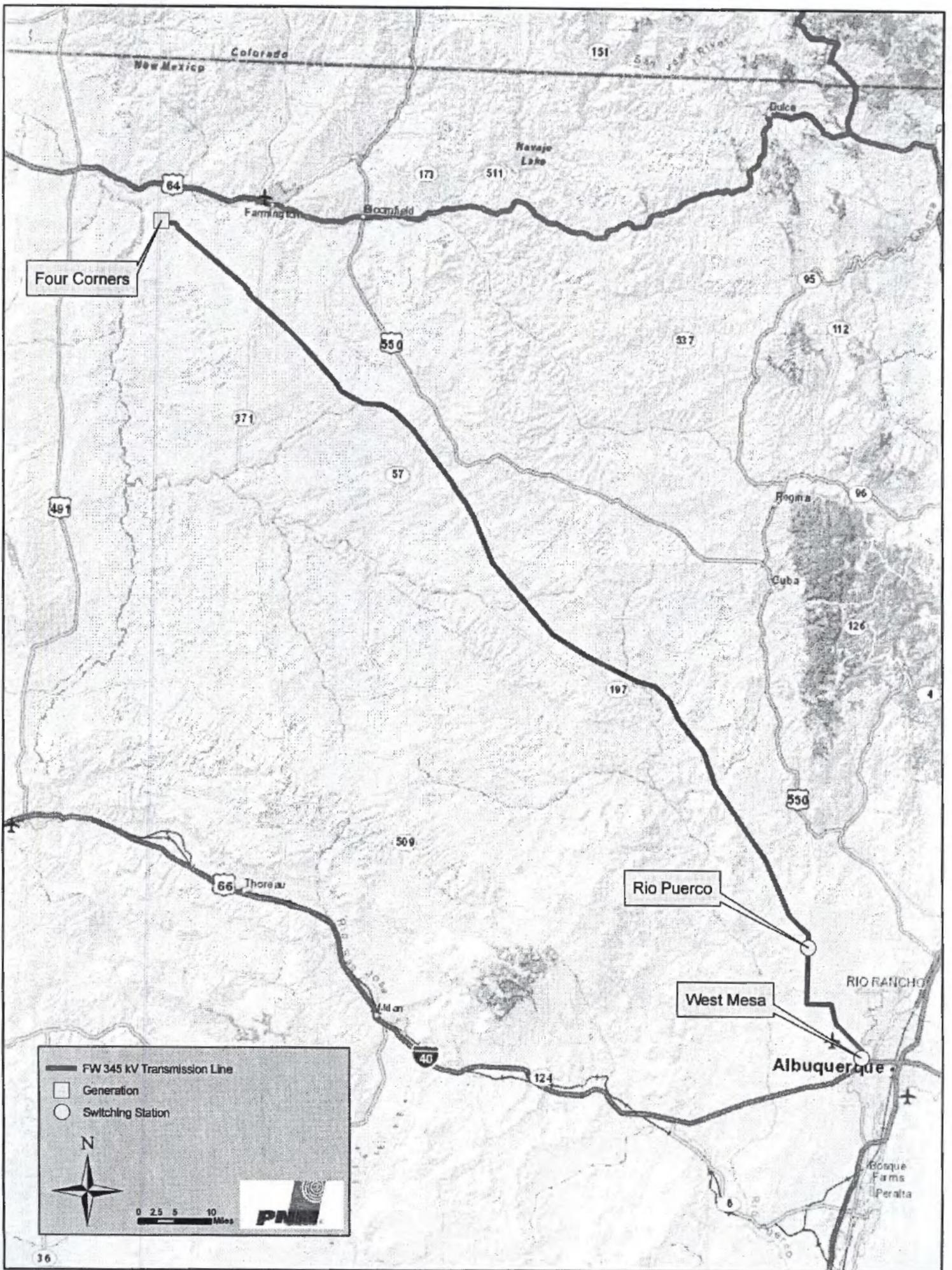
Our analysis had assumed, based on the information provided to support the decision, that the Rio Puerco Switchyard provided interconnection to the rest of the electrical grid serving the southwest, and therefore only the segment from Four Corners to Rio Puerco would carry power solely or substantially derived

from the FCPP. Upon enquiry with the US Bureau of Land Management (BLM) for cultural resource or biological surveys, we determined that the BLM only considered the transmission line from FCPP to the West Mesa Switchyard, and did not have information regarding the Rio Puerco Switchyard (see attached map). In resolving this discrepancy, we learned from PNM that the Rio Puerco Switchyard had been constructed, and that some supporting infrastructure to allow an intertie to other portions of the grid had been placed on the pad for the switchyard. However, the intertie has not been made, and responses from PNM have indicated that the intertie is not planned for 2013, or for any specific time in the future. According to PNM, the intertie would be made when economic conditions support it.

Based upon information provided by PNM, the right of way between Rio Puerco and West Mesa is perpetual, and includes private lands, state lands, and national park service lands. No federal actions are required prior to 2016 on this segment.

Upon consideration of this information, I recommend that the segment from FCPP to the West Mesa Switchyard be included as a connected action, and that the Connected Actions memorandum be amended accordingly. My reasoning is as follows. The connected actions are being defined on a functional basis: that is, those transmission segments that carry solely or substantially power produced at the FCPP and as such primarily depend on this power for their utility. The interconnection to the southwestern power grid at Rio Puerco does not now exist, and although most of the infrastructure is in place to support the connection, it has not been made and it is not scheduled at any definite time in the future. As such, the functional segment carrying FCPP-produced power runs to the West Mesa Switchyard before the grid intertie is encountered. This decision also corresponds to PNM's internal designation of this segment as the F-W line (Four Corners to West Mesa). PNM has not yet recognized Rio Puerco in their nomenclature.

The implication for the EIS is that PNM's cultural resource and biological survey information will need to include this additional portion of the F-W segment. Much of the segment is on National Park, and as such there may be more existing information to draw from than for the portion of the segment from FCPP to Rio Puerco.



Four Corners

Rio Puerco

West Mesa

Albuquerque

— FW 345 kV Transmission Line
 □ Generation
 ○ Switching Station

N
 0 2.5 5 10 Miles

Memorandum

Date: April 9, 2013

To: Rick Williamson, Marcelo Calle
OSM

From: Daniel Tormey, Ph.D., P.G.

RE: Connected Actions to Four Corners Power Plant and Navajo Mine
Energy Project

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Objectives and Summary of Findings

The Four Corners Power Plant (FCPP or Four Corners) operates within a transmission grid that serves much of the Southwestern United States. Energy generated at FCPP is primarily delivered by the APS and PNM transmission lines in the FCPP switchyard. In addition, some of the leases and Right of Way (ROW) agreements for the transmission lines expire before or near the expected date of a Record of Decision (ROD) for this action (2015). Therefore, in scoping the analysis under NEPA, the Office of Surface Mining (OSM) must determine what parts of the transmission line components to include as a connected action. The transmission lines in the attached figure and table, provided by the project proponents, were reviewed to determine whether they should be considered as connected actions to the proposed Four Corners Power Plant and Navajo Mine Energy Project. Two memoranda provided by the proponents relevant to this question are attached to this memorandum. Additional information was also provided by APS and PNM on August 29, 2012, and February 4, 2013, that was taken into consideration.

The purpose of this memorandum is to use the information provided by the proponents, and relevant federal guidance, to allow OSM to determine which transmission line

components to include as a connected action, and which to analyze at the cumulative level. We provide a factual basis for this decision and, based on the information that we have available to us at this time, we also make recommendations.

In summary, we substantially agree with the findings of the proponents regarding the transmission lines that would be addressed at the project level as a connected action, and the transmission lines that would be addressed at a cumulative impact level. However, the Four Corners to West Mesa Switchyard line (identified as the 345 kV "FW Line" in the information provided by the proponents) has a BLM Right of Way (ROW) agreement that expires in May 2016. A late-2016 expiration date was a rationale to include the El Dorado transmission line as part of the proposed action and a connected action by the proponents. Therefore, inclusion of the Four Corners to West Mesa Switchyard line as a connected action would be consistent with the rationale for including the El Dorado line. Therefore, we recommend including the Four Corners to West Mesa Switchyard Line as a connected action and analyzing it at the project level in the EIS.

The proponents include a 6.03 mile segment of the PNM Four Corners to San Juan Switchyard transmission line as a connected action, but exclude the remaining 4.07 miles from the boundary of the Navajo Nation to San Juan because much of it is on private land and a 0.7 mile ROW agreement with BLM does not expire until January 2023. However, the functional unit under consideration is from PNM Four Corners to San Juan Switchyard, and there has been no NEPA analysis performed recently on this subsection of the functional unit. Accordingly, we see little reason to not consider the 4.0 mile segment between the reservation boundary and the nearest substation (San Juan Switchyard) as a connected action. Thus, based on the information we have reviewed, we therefore recommend considering the entire Four Corners to San Juan Switchyard transmission line as a connected action, including the non-federal portions.

The remainder of this memorandum provides the definition of a connected action. It also provides guidance from another Department of the Interior bureau on connected actions, along with Federal Energy Regulatory Commission (FERC) guidance on determining whether to include non-jurisdictional facilities in an EIS. The BLM and FERC guidance is offered as context to this memorandum, rather than strict

rules to be followed in our review. In our experience, the four-part test used by FERC is helpful to inform a decision rather than something to be strictly applied.

Background: Connected Actions and Non-Jurisdictional Facilities

According to Section 1508.25(a)¹ of the Council on Environmental Quality's (CEQ) guidelines, actions are connected if they:

- Automatically trigger other actions that may require environmental impact statements;
- Cannot or will not proceed unless other actions are taken previously or simultaneously; or
- Are interdependent parts of a larger action and depend on the larger action for their justification.

Connected actions are closely related, and therefore, their environmental consequences are to be analyzed in the same EIS as the proposed action and alternatives. Projects which have "independent utility" are not "connected actions." *Utahns v. U.S. Dep't of Transp.*, 305 F.3d 1152, 1183 (10th Cir. 2002). The crux of the independent utility determination is "whether each of two projects would have taken place with or without the other" *Wilderness Workshop v. U.S. Bureau of Land Mgmt.*, 531 F.3d 1220, 1229 (10th Cir. 2008).

Although OSM does not have independent guidance on analysis of connected actions, the US Bureau of Land Management (a Department of the Interior bureau and cooperating agency) has implementing guidelines that address connected actions in greater detail, as follows:

*Connected actions are limited to actions that are currently proposed (ripe for decision).
Actions that are not yet proposed are not connected actions, but may need to be analyzed
in cumulative effects analysis if they are reasonably foreseeable.*

If the connected action is an action proposed by another Federal agency, you may include both actions as aspects of a broader proposal analyzed in a single NEPA document, as described above. Evaluate whether a single NEPA document would improve the quality of analysis and efficiency of the NEPA process, and provide a stronger basis for decision-making. Also consider the timing of the other agency action and the capabilities of the other agency to act as a cooperating agency or joint lead agency.

A non-Federal action may be a connected action with a BLM proposed action. The consideration of a non-Federal connected action is limited in your NEPA analysis, because the NEPA process is focused on agency decision making (40 CFR 1500.1(c), 40 CFR 1508.18, 40 CFR 1508.23). Therefore, you are not required to include a non-Federal connected action together with a BLM proposed action as aspects of a broader proposal, analyzed in a single NEPA document. Proposals are limited to Federal actions (40 CFR 1508.23). You would not have to develop or present the purpose and need for the non-Federal action, and you are not required to consider alternatives available to the non-Federal party for its action. If there are effects on BLM managed resources, it may be useful to develop and suggest alternatives or mitigation for those non-Federal connected actions. If you do not include the connected action with the proposed action as aspects of a broader proposal analyzed in a single NEPA document, you must, at a minimum, demonstrate that you have considered the connected action in the NEPA document for the proposed action (40 CFR 1508.25) (i.e., describe the connected action and its relationship to the proposed action, including the extent to which the connected action and its effects can be prevented or modified by BLM decision-making on the proposed action). In this case, a separate NEPA document would need to be prepared for the connected action. It may be useful to incorporate by reference portions of the NEPA document completed for the connected action, if available, into the NEPA document for the proposed action.

In addition, the FERC regulates some federal energy actions and has guidance relevant to, but not controlling, this evaluation. The FERC applies a four-part test, which they adapted from the U.S. Army

Corps of Engineers, to determine whether to include non-jurisdictional facilities in an EIS (approximately equivalent to the connected actions defined in the CEQ guidelines), as follows:

“Non-jurisdictional Facilities

Under NEPA, the FERC may need to consider the environmental impact of related non-jurisdictional facilities that would be constructed upstream or downstream of the jurisdictional facilities for the purpose of delivering, receiving, or using the proposed gas volumes. Integrally-related non-jurisdictional facilities could include major power facilities, such as cogeneration plants, as well as less significant facilities, such as lateral pipeline connections built by local distribution companies.

The extent of the Commission’s analyses of non-jurisdictional facilities depends on the Commission’s determination of its and other federal agencies’ control and responsibility over these facilities. To assist in these determinations, the Commission has adapted the U.S. Army Corps of Engineers (COE) practice and has identified four factors to be considered in determining whether there is sufficient Federal control and responsibility over a project as a whole to warrant environmental analysis of portions of the project outside of its direct sphere of influence.

These factors include:

- 1. Whether or not the regulated activity comprises “merely a link” in a corridor type project (e.g., a transportation or utility transmission project).*
- 2. Whether there are aspects of the non-jurisdictional facility in the immediate vicinity of the regulated activity which uniquely determine the location and configuration of the regulated activity.*
- 3. The extent to which the entire project will be within the Commission’s jurisdiction.*
- 4. The extent of cumulative federal control and responsibility.*

To assist the Commission in determining whether to expand the scope of the Commission's analysis to include the non-jurisdictional facilities, provide the following information regarding the identified non-jurisdictional facilities including auxiliary facilities and facilities built by other companies:

- A brief description of each facility, including as appropriate: ownership, land requirements, gas consumption, megawatt size, construction status, and an update of the latest status of federal, state, and local permits/approvals;
- The length and diameter of any interconnecting pipeline to be constructed; and
- Current 1:24,000/1:25,000 scale topographic maps showing the location of the facilities.

In addition, the applicant should apply the above four factor test and indicate its conclusions on a factor-by-factor basis as to whether the non-jurisdictional facilities should be included in the environmental analysis. If the applicant concludes that they should be included, then it should provide:

- Evidence that the appropriate State Historic Preservation Officer (SHPO) or duly authorized Tribal Historic Preservation Officer (THPO) has been contacted regarding whether properties eligible for listing on the National Register of Historic Places (NRHP) would be affected, or on the need to perform cultural resources surveys to support such a determination;
- Evidence of consultation with the FWS (and National Marine Fisheries Service (NMFS), if appropriate) regarding potential impacts of the proposed facility on federally-listed threatened and endangered species; and
- For facilities within a designated coastal management zone, a consistency determination or evidence that the owner has requested consistency determination from the state's coastal zone management program.

Evidence that adequate comment or consultation has taken place should be in the form of a letter from the responsible state agency. The applicant should be prepared to provide

this information if the staff takes the position that the facilities must be included. Pre-filing conferences with staff would reduce the potential for different conclusions from application of the test."

Analysis of the Transmission Lines

The project proponents have included the following transmission lines as connected actions to the project:

1. **APS Four Corners to El Dorado, with the connected action stopping at the boundary of the Navajo Nation, (after Moenkopi Substation):** Navajo and Hopi ROWs expire December 28, 2016 and March 22, 2017. Including portions off tribal lands, the first ROW agreement (BLM) expires June 14, 2016. This line is currently used to transmit Southern California Edison's (SCE) share of FCPP power to the SCE service territory in Southern California. With SCE's divestiture of their share of Four Corners, APS states in the attached communication that APS will not use the transmission line west of Moenkopi to deliver power from Four Corners in the future because APS will use the power instead within the APS service territory. As such, the Moenkopi to El Dorado segment of the transmission line has independent utility from the rest of the El Dorado line. The line from Four Corners switchyard to Moenkopi switchyard will be used to deliver power from FCPP into the APS service territory, and the transmittal of power from FCPP to the APS service territory cannot proceed unless the Four Corners Power Plant continues operation and therefore, the Four Corners to Moenkopi segment appears to meet the conservative definition of a connected action. In addition, the ROW expiration of December 2016 is close to the expected ROD for this action, so it is reasonable to include this transmission line segment as a connected action.

As already stated, we would not include the small additional portion from Moenkopi to the Navajo Nation boundary as a connected action, because APS states this portion would not likely be used in the future to wheel FCPP power. However, APS has requested that OSM treat this 14 mile portion of the transmission line from the Moenkopi Switchyard to the reservation boundary as a "similar action" under CEQ regulations because an application has been filed by APS to renew it and there is both common timing and geography supporting its inclusion in the EIS analysis consistent with the NEPA regulations. We have no objection to this request.

2. **APS Four Corners to Cholla, with the connected action stopping at the boundary of the Navajo Nation (prior to Cholla Substation):** The Navajo ROW for this transmission line expired May 26, 2011. The BLM ROW expired March 12, 2011 and was reissued on July 18, 2012, for a term until March 12, 2041. According to the attached communication from APS, this line has independent utility purposes, other than delivering energy from Four Corners. However, a significant portion of FCPP power is wheeled by APS over the Cholla line, and this use of the line cannot proceed unless Four Corners continues operation. Therefore, the Four Corners to Cholla line up to the Cholla substation may be reasonably analyzed as a connected action. In addition, it has an expired Navajo ROW and so it is reasonable and conservative to include this as a connected action. We initially recommended considering the entire line from Four Corners to the Cholla substation as the connected action, and not end the connected action at the Navajo Nation boundary as proposed. However, APS has indicated that BLM reissued the ROW on July 18, 2012. This action was the only Federal action off the Navajo Nation boundary, and the renewal is valid until 2041, when the BLM lease renewal expires. Because the Federal action has already been taken and been subject to NEPA we now recommend that the Four Corners to Cholla segment only be considered a connected action from the FCPP switchyard to the boundary with the Navajo Nation.
3. **A 6.03 mile segment of the PNM Four Corners to San Juan Switchyard, stopping at the boundary of the Navajo Nation (4.07 miles before San Juan Generating Station):** The Navajo ROW for the 6.03 mile segment expires August 31, 2015. Of the remaining 4.07 miles off the reservation, 0.7 is covered by a BLM ROW agreement that expires January 12, 2023. PNM states in the attached communication that this line is used to carry Four Corners electricity to its customers, as well as other uses independent of the power plant. The delivery of energy on this line from Four Corners cannot continue unless the power plant continues operation and therefore, operation of this 6.03 mile segment of the transmission line conservatively meets the definitions of a connected action. The Navajo ROW will expire in August 2015, near or before the time of the ROD for this action, and so it is reasonable to include this as a connected action. PNM did not include the 4.07 miles from the boundary of the Navajo Nation to San Juan Switchyard as a connected action because much of it does not require a lease or right of way agreement, and the

0.7 mile BLM ROW agreement expires in January 2023, well after the ROD for this action. However, our analysis of connected actions considers the transmission line segment from FCPP to the San Juan Switchyard as a functional unit, and in the materials we have been provided, we do not find a reason for excluding a subsection of the continuous functional unit from our definition of a connected action. For example, a substation and intertie with other lines would be a reason to consider a smaller functional segment. The position of the line is uniquely determined by the location of Four Corners, and it is substantially under federal control. We therefore recommend considering the entire transmission line segment from Four Corners to the San Juan Switchyard as a connected action.

Consideration of other Segments

A separate transmission line that extends from the San Juan Switchyard to the Rio Puerco switchyard shares a ROW corridor with the Four Corners to San Juan line for a distance of approximately 9 miles. Approximately half of the shared transmission corridor is on Navajo Nation land under a ROW that expires in 2015. The great majority of this line is located outside of any other transmission line corridors associated with Four Corners. Significantly, the line does not interconnect to the Four Corners switchyard in any respect and is therefore not considered a connected action to the FCPP and Navajo Mine Energy Project.

For the two APS lines, the proponents also give weight to whether or not the transmission line is on tribal lands. With the information available at this time, we do not view this as a definitive test for inclusion or exclusion as a connected action, except insofar as a tribal ROW is due to expire before or near the time of the ROD for this action.

Of the remaining transmission lines considered, the PacifiCorp line and the Western Area Power Administration (WAPA) line have independent utility, and do not primarily carry Four Corners Power Plant energy. The PacifiCorp line also has a perpetual easement across the Navajo Nation, as does the WAPA line. Therefore, they do not appear to meet the definition of a connected action. We concur with the proponent's findings that these transmission line segments be analyzed at the cumulative impact level.

The Four Corners to Ambrosia line is primarily used to carry power from Four Corners, however it does also carry power from other generation sources. This segment would qualify, conservatively, as a connected action as it would continue to primarily use power from continued operation of Four Corners and requires its own federal actions for ROW renewals. However, the applications for the BIA and BLM grant of ROW renewals were submitted to each agency on April 5, 2012 and May 14, 2012, respectively predating any NEPA process related to the subject action. In compliance with NEPA, the BIA approved a Categorical Exclusion for the ROW renewal on April 23, 2012. PNM is working with BLM to complete its processing of this off-reservation application. Depending upon the status of the BLM's processing of the off-reservation application, we tentatively concur with the proponent's findings that this transmission line segment not be considered a connected action. Rather, this transmission line will tentatively be analyzed at the cumulative impact level.

The Four Corners to West Mesa Switchyard line includes two BIA approvals. One is within the Navajo Nation boundary and expires in June 2018. The second ROW is a former BLM ROW conveyed to the Navajo in 1994 that covers approximately 7 non-contiguous miles, and expires on May 17, 2016. The proponents exclude this line because both of the expiration dates are after the completion of this NEPA process. The segment of the transmission line from Four Corners to West Mesa Switchyard would continue to primarily use power from the continued operation of Four Corners, and may be reasonably and conservatively analyzed as connected actions similar to those of the El Dorado and the Cholla transmission lines. In addition, the BLM ROW expiration date of May 17, 2016 is before the December 2016 expiration date of the El Dorado transmission line, which the proponents included as a connected action. Based on these two factors, we believe that the Four Corners to West Mesa Switchyard line should be treated as a connected action.

Four Corners Power Plant Transmission Line Analysis						
	kV	On Reservation	Off Reservation	Expiration	Total	Percentage
EI Dorado						
(Proposed/Connected Action On Reservation; Cumulative Effect Off Reservation*)						
	500 kV	193 miles (including 32 miles on Hopi)		March 22, 2017 (Navajo)/December 28, 2016 (Hopi)	367 miles (FCPP to Colorado River)	26% on non-Navajo Federal Land
			37.3 miles-Hualapai	September 20, 2016		
			33 miles-BLM	June 14, 2016		
			7 miles-NPS	October 2, 2017		
			19.1 miles-Forest Service	February 17, 2017		
			Army Corps (Colorado R.)	Without term		
			Private			
*APS does not intend to seek ROW extensions off reservation until mid-2016, which is after completion of this NEPA process.						
Cholla (2 lines)						
(Proposed/Connected Action On Reservation; Cumulative Effect Off Reservation*)						
	345 kV	179 miles **		May 26, 2011	177 miles each (lines themselves-ROWs slightly different*)	1.1% on non-Navajo Federal land
			4 miles-BLM (2 miles each)	March 12, 2011		
			37 miles-Private			
*The ROW extension off reservation is expected shortly due to the 2011 expiration date. **On Navajo lands, the Cholla lines run parallel in one 315' ROW corridor for 85.73 miles, then separate into two 195' corridors (one is 41.68 miles and the other is 41.08 miles), then converge again into a single 315' corridor for 10.74 miles before leaving Navajo lands.						
PNM San Juan (FC 345 kV)						
(Proposed/Connected Action)						
	345 kV	4.07 miles		August 31, 2015	12 miles	6% on non-Navajo Federal land
			0.7 miles-BLM	January 12, 2023		
			6.03miles-Private			
*PNM does not intend to seek a ROW extension off reservation until closer to the expiration of its BLM ROW in 2023.						
PNM Rio Puerco (FW 345 kV)						
Connected Action						
	345 kV	14.5 miles*		June 7, 2018	135 miles	43% on non-Navajo Federal land
			58 miles-BLM (not contiguous)	May 17, 2016		
			27 miles-State and Private**			
*There are technically two BIA approvals. One ROW (known as the "original" ROW), with a June 2018 expiration date, covers approximately 43.4 miles of non-contiguous allotment and trust lands, including 14.5 miles within the Navajo reservation boundary, and 23 miles of allotted lands and 5.9 miles of Navajo trust lands outside of the reservation boundary; the second ROW was a former BLM ROW conveyed to the Navajo in 1994 and covers approximately 7 non-contiguous miles (May 17, 2016 expiration). PNM does not intend to seek ROW extensions either on or off reservation until either 2018, or early 2016, respectively, which is after the completion of this NEPA process. **One section of land that was originally private has been purchased by the Zia Pueblo. However, the Zia Pueblo purchased the property subject to the perpetual easement, so there will be no federal action associated with this parcel.						
PNM Pillar (AF-BP-BI 230 kV)						
(Cumulative Effect Only*)						
	230 kV	~ 51.1 miles*		April 10, 2012*	~102 miles**	7% on non-Navajo Federal land
			7 miles-BLM	May 18, 2012		
			~29 miles-State/Private/Other			
*BIA approved the CatEx for this renewal of the Four Corner - Ambrosia transmission line (AF-BP-BI 230 kV) on April 23, 2012 crossing approximately 66 miles of non-contiguous tribal trust and Indian trust allotments, including approximately 51.14 miles within the Navajo reservation boundary, and approximately 7.9 miles of allotted lands and approximately 7 miles of Navajo trust lands outside of the reservation boundary, and the ROW renewals from BIA for both trust and allotted lands are forthcoming. **AF 230 kV extends approximately 20.9 miles from the FCPP to Pillar station (all on Navajo lands) where it connects to a radial feed serving various irrigation projects along a 230 kV transmission line, and then a grid-interconnection point with a 115 kV transmission line to Farmington and other grid connections. The line then extends an additional approximately 82 miles where it connects to the grid via the Ambrosia station.						
PacifiCorp						
(No Agency Action; Cumulative Effect)						
	345 kV	30,618 miles*		Perpetual		
			No other Federal ROWs south of the Huntington Substation expire prior to 2020.			
*This consists of four separate pieces in Utah totaling 2,598 miles and one continuous piece in New Mexico being 28,020 miles.						
WAPA (Four Corners-Shiprock*)						
(No Agency Action; Cumulative Effect)						
	345 kV	5.05 mile ROW (230 kV) Easement (345 kV) Navajo Tribal Utility Authority		Perpetual	8.07	16% on non-Navajo Federal land
			1.27 miles- BLM	June 24, 2019		
				Perpetual		
*There are only two lines that extend from the Shiprock Substation across Navajo Reservation lands: the Kayenta-Shiprock 230-kV transmission line and the Lost Canyon-Shiprock 230-kV transmission line. However, both of these lines are on perpetual ROWs, so no federal approvals are necessary.						

Proportional Use of APS Transmission Line Capacity

APS owns the 500kV El Dorado transmission line as well as the two 345kV Cholla transmission lines. Power can flow in either direction on these lines depending on demand and generation availability. Use of the APS transmission lines is based on several factors, including APS's need to serve its customers (also known as "system load") and long-term contractual agreements with other companies and utilities. Under federal law, transmission owners are required to provide open, non-discriminatory access on their transmission system to transmission customers (known as "open access").

Other utilities contract with APS for the right to use various percentages of transmission capacity as shown below. In order to purchase transmission from APS (or any other entity), the purchaser must be a valid customer with APS by having submitted the required documentation addressed in APS's FERC-approved Open Access Transmission Tariff (OATT) and must be registered with APS as a customer in OASIS (Open Access Same-time Information System). Through OASIS, APS will offer available transmission for all posted paths on which APS has rights. The purchaser must submit a Transmission Service Request (TSR) for the requested path through APS. The APS system will check the TSR to ensure the requested transmission is still available and will approve it after it has passed a number of checks.

Once the TSR is approved, the purchaser may use it and other TSRs purchased from other grid control areas to create a delivery path from the energy generation location to the energy delivery location. The purchaser must make similar arrangements with all the other control areas in their delivery path, just like they did with APS.

500kV line: Four Corners to Moenkopi and Moenkopi to El Dorado

Southern California Edison (SCE) - 100%. SCE currently uses these rights to bring its portion of power from the Four Corners Generating Station to the California Independent System Operator (CAISO) control area. They also use these rights to bring purchased energy from outside their area into the CAISO control area. For APS, this is known as "wheeling" power over the transmission line. The energy enters the APS control area at the Four Corners location, goes to the Moenkopi location and exits the APS control area at the El Dorado location. APS has provided a conduit to allow the energy to flow to SCE's desired location. SCE can also supply energy to another party by delivering energy from the CASIO control area to the El Dorado location and allowing it to be picked up at the Moenkopi location using the APS control area again as the conduit to get it there.

If SCE has not used the entire capacity on the line (in either direction), then CAISO, as the scheduling entity, can allow the excess to be purchased and used by other interested parties to supply or take energy from the CAISO control area.

APS has entered into an agreement to purchase SCE ownership in Units 4 and 5 of the Four Corners Power Plant. Once this transaction is approved by the regulatory agencies, and closed and APS regains the rights on the 500kV line in 2012 from SCE, it currently plans to use part of

the capacity to deliver the newly acquired Four Corners generation to its system load in the Phoenix area south of the Moenkopi substation. Thus, APS will not use the transmission line west of Moenkopi to transmit Four Corners power to serve its load. All the capacity west of Moenkopi will be made available to others via the OASIS, as will remaining capacity on the Four Corners to Moenkopi line. If APS wishes to supply generation to El Dorado, it would need to purchase transmission capacity on the line through OASIS just as any other customer. This means that even though APS owns the line, it has no privileged transmission rights on the line west of Moenkopi. At this time we do not know if and when capacity will be available.

Cholla 345kV

Four Corners to Cholla

Arizona Public Service Company - 86%. APS uses these rights to deliver its Four Corners Generating Station energy to its customers. These rights are also used to bring energy generated outside the APS control area into the APS control area to serve its system load. APS has the ability to allow interested parties to purchase unused transmission to "wheel" through the APS control area to allow delivery to another control area, such as SRP, PNM, TEP, WALC and others, consistent with APS's FERC-approved Open Access Transmission Tariff.

Tucson Electric - 9%. TEP uses these rights to deliver its Four Corners Generating Station energy or other purchased energy to its system load.

Public Service Company of New Mexico - 5%. PNM uses these rights to deliver its Four Corners Generating Station energy or other purchased energy to its system load located around the Cholla area.

Cholla to Four Corners

PacifiCorp - 29%. PAC uses this transmission to deliver its Cholla Generating Station energy (located in the APS control area) home to their control area north of the Four Corners location.

Public Service Company of New Mexico - 10%. PNM uses these rights to deliver its Palo Verde Generating Station energy or other purchased energy to its system load located east of Four Corners in New Mexico.

Available - 61%. APS has the ability to allow interested parties to purchase unused transmission to "wheel" through the APS control area to allow delivery to other control areas, consistent with APS's FERC-approved Open Access Transmission Tariff.

As noted above, because a utility has contracted with APS for capacity does not mean that APS is necessarily the source of the power transmitted. A utility may have the right to use 29% of a line's capacity, for example, but it may actually purchase and wheel power from a distant generation source on the grid, sometimes as far away as the Pacific Northwest. Analysis and accounting of detail at this level is highly complicated because it can change on an hour by hour basis.

PNM Transmission Lines Out Of Four Corners Switchyard

June 18, 2012

Public Service Company of New Mexico (PNM) operates and owns the following transmission lines out of the Four Corners Power Plant switchyard.

- Four Corners-West Mesa 345 kV (FW Line)
- Four Corners- Pillar (AF Line) to Gallegos and Ambrosia 230 kV

In addition, PNM operates the Four Corners-San Juan (FC Line) 345 kV line with equal ownership rights being shared between Tucson Electric Power Company (TEP) and PNM. PNM has ownership rights, with, Tri-State Generation and Transmission Association, Inc., Public Service Company of Colorado, and Western Area Power Administration (WAPA) in the Four Corners-Shiprock 345 kV line operated by WAPA.

Power can flow in either direction on these lines depending on demand and generation availability. Any rights to transact in and out of the Four Corners switchyard on these lines are governed by existing bi-lateral transmission service agreements, network service agreements, and point-to-point transmission service agreements.

PNM uses these lines to deliver its Four Corners Power Plant and purchased energy to its customers (also known as "system load"). These lines are also used to bring energy generated outside the PNM control area, such as from the Palo Verde Generating Station, into the PNM control area to serve its system load.

In addition to serving PNM's system load, PNM currently uses these lines to deliver Network Customers¹ energy within PNM's control area and to deliver energy into and out of the Four Corners Power Plant for point-to-point transmission service agreements and bi-lateral transmission service agreements. Prior to the Open Access Transmission Tariff transmissions service², PNM had a few bi-lateral transmission service agreements, dating back to the 1970s and existing interconnection/participation agreements, dating back to the 1960s..

¹ A Network Customer is an entity receiving transmission service pursuant to the terms of the PNM Network Integration Transmission Service as defined in the PNM Open Access Transmission Tariff ("OATT").

² FERC issued Orders 888 and 889, these Orders required all jurisdictional transmission owners to begin providing open access transmission services under common rules on July 1, 1996.

Four Corners

Power Plant and Navajo Mine Energy Project

SECTION 106

Project Location

PROJECT FACILITIES

- Four Corners Power Plant
- Generating Station
- Substation
- Switchyard

PROJECT BOUNDARIES

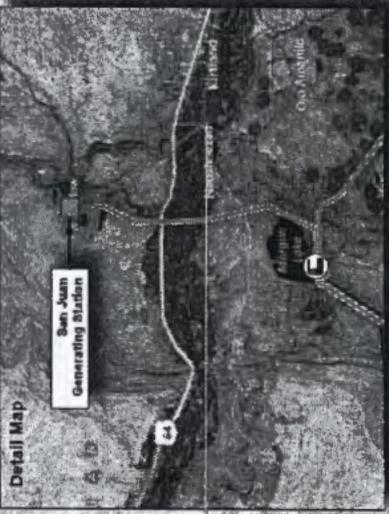
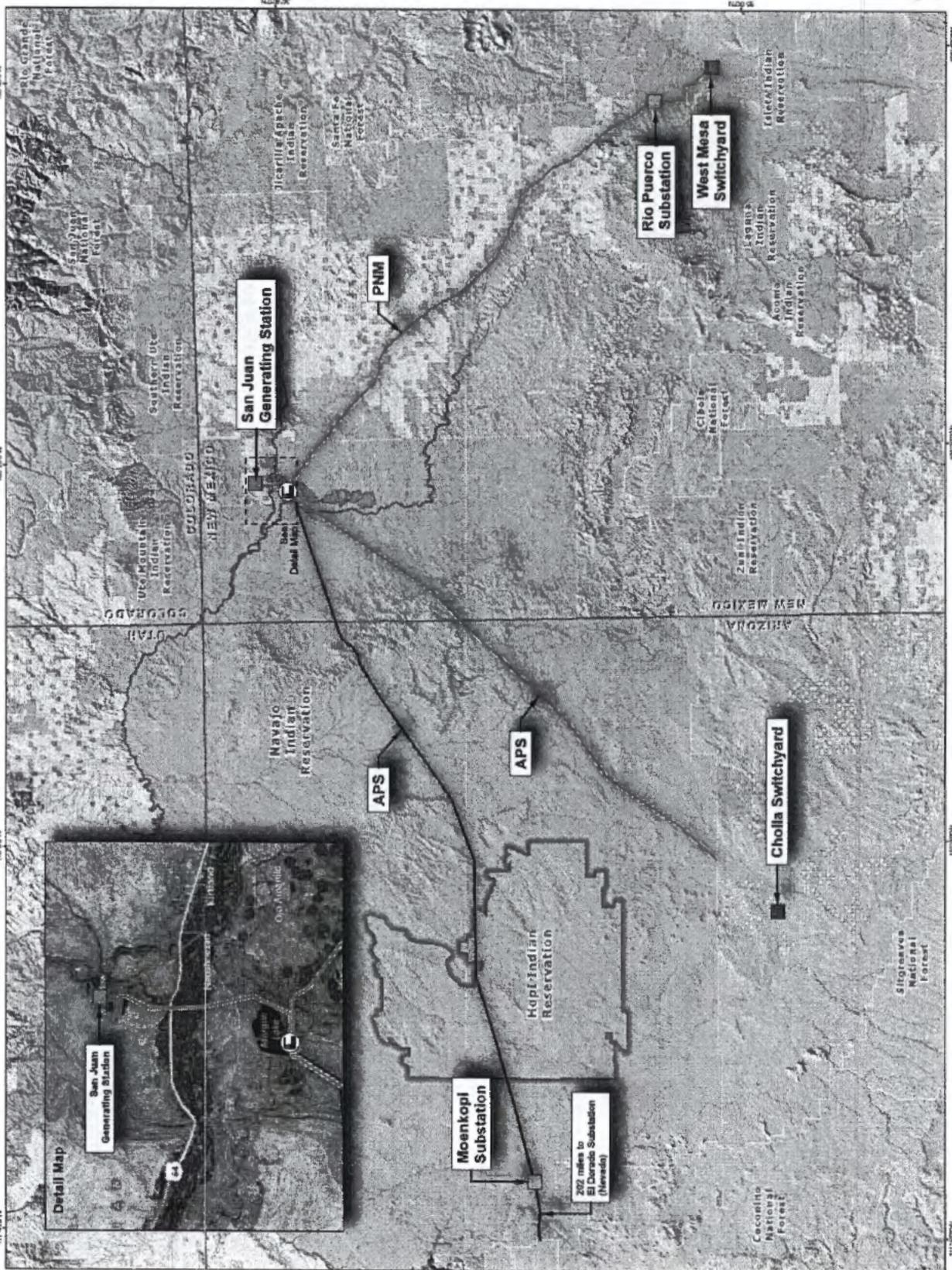
- Phabala Mine Permit Boundary
- Navajo Mine Lease Areas

TRANSMISSION LINES

- 345KV
- 500KV

FEDERAL MANAGING GROUP

- Forest Service
- Bureau of Land Management
- Fish and Wildlife Service
- National Park Service
- Bureau of Indian Affairs
- Bureau of Reclamation



PNM Transmission Lines

Serial Number	Case Disp	Actn Date	Casetype	Case Acres	Authority	Exp date	Route	Proof Filed	Remarks	width
NMNM-0088498	AUTHORIZED	3/25/1960	285001	52.11	Act of 1901	3/25/2010	115 kV West Mesa to Ambrosia Lake Line Cibola NF Lands		USFS Jurisdiction case file closed without action	N/A
NMNM-003742	AUTHORIZED	5/15/1968	285002	833.392	Act of 1911	5/18/2018	345 kV Rio Puerco Line	8/26/1976	Rio Puerco Field Office Jurisdiction	100
NMNM-016715	AUTHORIZED	1/12/1973	285002	17.96	Act of 1911	1/12/2023	345 kV San Juan Tap- San Juan Plant to PNM line near Morgan Lake	2/12/1976		200
NMNM-018684	AUTHORIZED	10/16/1973	285002	0.92	Act of 1911	10/16/2023	12.47 kV underground line near paved road to San Juan Plant	7/23/1979		10
NMNM-020432	AUTHORIZED	2/11/1975	285002	469.67	Act of 1911	2/11/2025	345 kV San Juan to Ojo	9/6/1977		100
NMNM-0076968	AUTHORIZED	6/22/1960	285002	8.55	Act of 1911	6/22/2010	115 kV Ambrosia Lake to Gallup	8/18/1965		50
NMNM-0080301	AUTHORIZED	2/5/1960	285002	1.394	Act of 1911	2/5/2010	115 kV Church Rock to Gallup	5/17/1965	Renewal Application filed 3/12/10 now NMNM 128875	50
NMNM-0253913	AUTHORIZED	5/18/1962	285002	56	Act of 1911	5/18/2012	230/345 kV APS Plant to Ambrosia Lake	7/30/1963	Renewal Application filed 5/14/2012 now NMNM 128881	100
NMNM-0359167	AUTHORIZED	12/5/1963	285002	6.06	Act of 1911	12/5/2013	115 kV Pitburg/Midway coal mine to Window Rock Sub	11/21/1963		50
NMNM-0559354	AUTHORIZED	5/17/1966	285002	698.62	Act of 1911	5/17/2016	345 kV APS Plant to West Mesa Switch	5/4/1967		100
NMNM-031792	AUTHORIZED	9/5/1978	285003	32.61	FLPMA	12/31/2037	345 kV San Juan Plant to San Juan Switch	9/28/1982		100 - 125
NMNM-091395	AUTHORIZED	12/3/1993	285003	1.65	FLPMA	12/3/2023	12.47 kV San Juan Pump Station Distribution rebuild	2/15/1994	Should replace NMNM 18684	25
NMNM-0061646	AUTHORIZED	4/22/1959	285003	1.21	FLPMA	12/31/2038	13.8 kV Ambrosia Lake Distribution line	7/7/1964		20

PNM Transmission Lines

NMNM-0107880	AUTHORIZED	3/23/2011	285003	3.11	FLPMA	12/31/2039	115 kv	Ambrosia Lake to Gallup	11/30/1965		50
NMNM--029485	AUTHORIZED	12/31/1976	285011	15.89	Var Stat	1/1/9999	unknown	Acquired through Land Exchange with NMSLO		need to incorporate into parent case file	100
NMNM--029491	AUTHORIZED	12/30/1976	285002	13.07	Act of 1911	1/1/9999	unknown	Acquired through Land Exchange with NMSLO		need to incorporate into parent case file	100

March 6, 2013 - Conference Call

Mike Puchacz - March 1 AM met with OSM and BRCC

Sole will not have right-hand comment regarding permit

but examining impact of sale on NEPT so it can be addressed

in the O&R. OSM will do their own analysis.

draft

Sept. 11 document to operators for ~~next~~ 32 business days

Early January 2014 for public review

public meetings: February 2014

NOA in early January 2014

February 6, 2013 Cooperators' Call

(b) (5)

MOU completed - purchase by NN - value of mine, due diligence etc.
 @SM working more details

Preliminary Draft timeline - review of certain portions

Project description

Proposed Action Purpose & Need Alternatives - may need to wait because it influences

the proposed action & purpose & need

Timeline/Action schedule not sufficient? Look at schedule

EISA Section 7

Population Viability Analysis being approved so they

are incorporated into discussion. Ecological Risk Assessment
 (technical means assessing mortality)
 technical work ongoing to ensure a good product.

Electric Power Research Institute

EPRM - environmental degradation - take out transport - on

expanded Columbia site narrow (metal deposition)

on track (ready in June for review than the

two will be integrated)

Section 106 consultation - coordination meeting in Farmington Jan 9 2013

- letter to go to 106 contract regarding consultation

on next meeting Area of potential Effect as

requesting input. APE has been changed regarding

transmission lines operated by PNM. New documents if

should be expanded to include the work near Sutherland in APE, should be

no additional impacts to Pecos/NM as a result.

2/19/13 2:07:28
28899 623.20
1287,584.48

1/16/2013 Call Navygo Min/FCPP DEIS

(b) (5)

Legal analysis of the transaction due end of work.

Preliminary draft end of work will be for internal O&A review.

Out to contractor in ^{September} ~~July~~ 2013. (will use preliminary info for ESA work)

Web link to project web site set in

www.wcc.oregon.gov/contracting/contractors/FCPP Navygo Min

Biological Risk Assessment preliminary draft in April 2013 (BPAI work with CalA P&M ^{June 2013})

BA prep to begin summer 2013 for delivery in March 2014.

might be upgraded? what does that mean?

PNM Power Line ~~through~~ through Reynolds NM? What is the Area of Potential Effect

(how far out how wide will not be cut when will Section 106 consultation really start? in terms of processes)

RSD permit will be required. Relevant to Section 7 consultation?

NPDES permit required. Public notice - new source - will go out so it

will be part of the DEIS.

Statement

Action Item: Coordination of Purpose and Need or Alternative Analysis (Release that draft early)



United States Department of the Interior

OFFICE OF SURFACE MINING
Reclamation and Enforcement
Western Region Office
1999 Broadway, Suite 3320
Denver, CO 80202-3050



U.S. Dept. of the Interior
RECEIVED

July 27, 2012

JUL 30 2012

Dear Sir or Madam:

Regional Environmental Office
Albuquerque, New Mexico

SUBJECT: PREPARATION OF ENVIRONMENTAL IMPACT STATEMENT (EIS)
FOR THE FOUR CORNERS POWER PLANT AND NAVAJO MINE
ENERGY PROJECT

This letter is to inform you that the Office of Surface Mining Reclamation and Enforcement (OSM), Western Region, Denver, Colo., is preparing an Environmental Impact Statement (EIS) to evaluate potential environmental impacts from continued operation of the Four Corners Power Plant, rights-of-way renewals for associated transmission lines, renewal of the Navajo Mine Permit in 2014, and a proposed new mine permit area within the existing Navajo Mine Lease area.

In accordance with the National Environmental Policy Act of 1969, OSM and cooperating agencies will evaluate the environmental impacts associated with the following proposed actions:

- **Power Plant Lease Amendment** - Arizona Public Service recently executed a lease amendment with the Navajo Nation to extend the term of the lease for the Four Corners Power Plant to 2041. Environmental impacts from this lease amendment will be analyzed.
- **Energy Transmission Lines** - Transmission lines directly connected to the power plant and owned by Arizona Public Service and Public Service Company of New Mexico require rights-of-way renewals. Environmental impacts from the renewal of rights-of-way permits will be analyzed.



- **Navajo Mine 2014 Permit Renewal** - OSM expects BHP Navajo Coal Company to submit a renewal application in 2014 for its existing Navajo Mine Surface Mining Control and Reclamation Act (SMCRA) Permit No. NM0003F. The EIS will therefore also analyze impacts of the 2014 renewal application action.
- **New Coal Mine Area** - BHP Navajo Coal Company is proposing to develop a new mine area, referred to as the Pinabete Mine Permit area, within its existing Navajo Mine Lease to supply coal to the power plant for up to 25 years, beginning July 2016. Environmental impacts from the proposed mine area will be analyzed.

The purpose of the proposed actions is to facilitate ongoing operations at the Four Corners Power Plant and on BHP Navajo Coal Company's Navajo Mine Lease to provide long-term, reliable, continuous and uninterrupted base load electrical power to customers in the southwestern United States using a reliable and readily available fuel source. The proposed actions would comply with tribal trust responsibilities to support economic opportunities on Navajo Nation and Hopi tribal trust lands and to help provide for economic development of the Navajo Nation and Hopi Tribe through lease and right-of-way revenues, royalties, tribal taxes and jobs. The EIS will address the direct, indirect, and cumulative impacts of these connected and other actions at the Four Corners Power Plant, the proposed Pinabete Mine Permit area, and the existing Navajo Mine Permit area, including any other connected federal actions relating to operations on the Navajo Mine Lease and at the Four Corners Power Plant.

Environmental issues to be addressed in the EIS include, but are not limited to, the following resource areas: threatened and endangered species, air quality and climate change, surface and ground water quality, environmental justice, cultural and historic resources, biological resources, visual resources, public health, socioeconomics, and noise and vibration.

Cooperating agencies for the development of the EIS include the Bureau of Indian Affairs, Navajo Nation, Hopi Tribe, Bureau



of Land Management, U.S. Environmental Protection Agency, U.S. Fish and Wildlife Service, U.S. Army Corps of Engineers, and National Park Service.

Compliance with the National Environmental Policy Act, National Historic Preservation Act, and Endangered Species Act obligations will be accompanied by compliance with other applicable requirements of, without limitation, the Indian Business Site Leasing Act, the General Right-of-Way Act of 1948, the Surface Mining Control and Reclamation Act, the Clean Water Act, the Clean Air Act, the Native American Graves Protection and Repatriation Act, and Executive Orders relating to Environmental Justice, Sacred Sites, and Tribal Consultation, and related laws and regulations.

The public is encouraged to submit written comments through Sept. 17, 2012. OSM is holding nine open house scoping meetings to support an early and open public involvement process for determining the scope of issues to be addressed in the EIS. Open house scoping meetings will inform the public of the proposed actions and give community members an opportunity to submit comments. Input from the public will be used to help identify environmental issues to be analyzed in the EIS and will help OSM make a well-informed decision on the proposed actions. This scoping will also satisfy the public involvement and noticing requirement for Section 106 of the National Historic Preservation Act.

Members of the public may arrive at any time during each open house scoping meeting. Project team members will be available to provide information and answer questions about the proposed actions. Navajo and Hopi interpreters will be present at the open house scoping meetings on the Navajo and Hopi Reservations noted below. The open house scoping meeting schedule is as follows:

Hotevilla, AZ: - Hopi interpreters available
Thursday, Aug. 9, 3 to 7 p.m.
Hotevilla Village (Hotevilla Youth and Elderly Center),
Auditorium
1 Main St., Hotevilla, AZ 86030



Cortez, CO:

Friday, Aug. 10, 5 to 9 p.m.

Montezuma-Cortez High School, The Commons Area
206 W. Seventh St., Cortez, CO 81321

Burnham, NM: - Navajo interpreters available

Saturday, Aug. 11, 9 a.m. to 1 p.m.

Tiis Tsoh Sikaad (Burnham) Chapter House, Large Meeting Room
12 miles east of U.S. 491 on Navajo Route 5, and half-mile
south on Navajo Route 5080

Nenahnezad, NM: - Navajo interpreters available

Monday, Aug. 13, 5 to 9 p.m.

Nenahnezad Chapter House, Multipurpose Hall
County Road 6675, Navajo Route 365, Fruitland, NM 87416

Farmington, NM:

Tuesday, Aug. 14, 5 to 9 p.m.

Farmington Civic Center, Exhibition Hall 2
200 W. Arrington St., Farmington, NM 87401

Shiprock, NM: - Navajo interpreters available

Wednesday, Aug. 15, 5 to 9 p.m.

Shiprock High School, Commons
Highway 64 W, Shiprock, NM 87420

Durango, CO:

Thursday, Aug. 16, 4 to 8 p.m.

Durango Public Library, Program Room 1
1900 E. Third Ave., Durango, CO 81301

Window Rock, AZ: - Navajo interpreters available

Friday, Aug. 17, 5 to 9 p.m.

Navajo Nation Museum, Resource Room
Highway 264, Postal Loop Road, Window Rock, AZ 86515

Albuquerque, NM:

Saturday, Aug. 18, 11 a.m. to 3 p.m.

Indian Pueblo Cultural Center, Silver and Turquoise Room
2401 12th St. NW, Albuquerque, NM 87104

Regardless of whether you are able to participate in the open house scoping meetings, you may send written comments via postal mail, hand delivery or courier to:

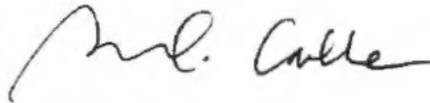


Mr. Marcelo Calle
OSM Western Region
1999 Broadway, Suite 3320
Denver, CO 80202-3050

You may also email your written comments to **FCPPNavajoEnergyEIS@osmre.gov**. All comments must be postmarked or received by the end of the comment period on **Sept. 17, 2012**, to be considered in the development of the Draft EIS.

For more information, please visit the project website at <http://www.wrcc.osmre.gov/FCPPEIS.shtm> or call Marcelo Calle, OSM EIS Coordinator, at 303-293-5035.

Sincerely,

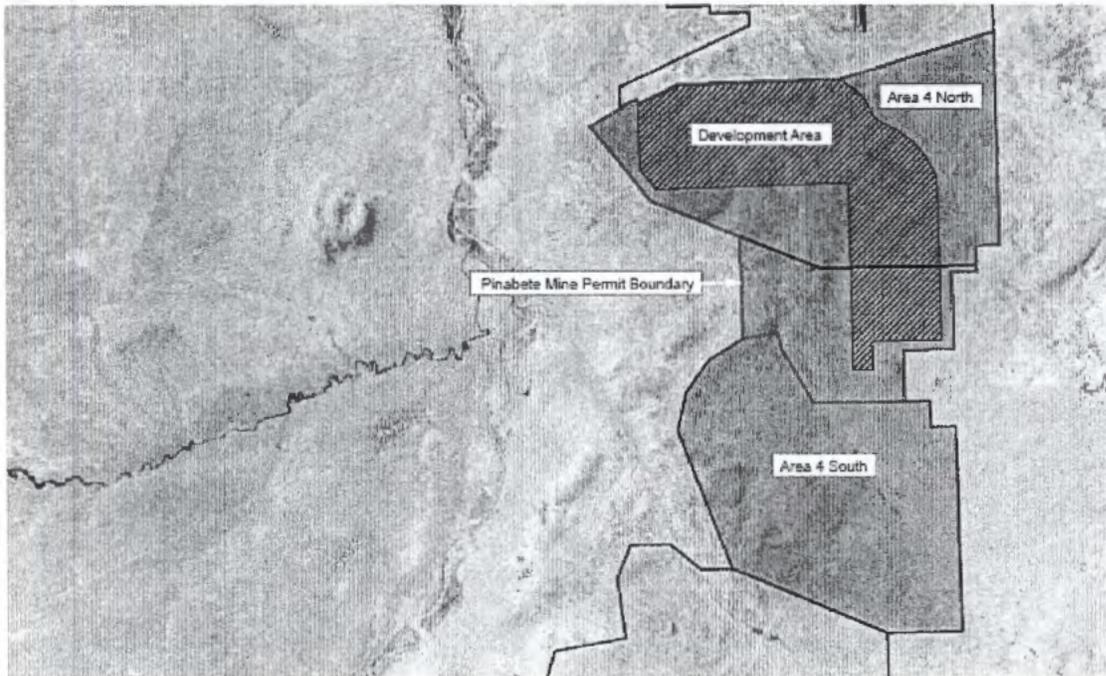
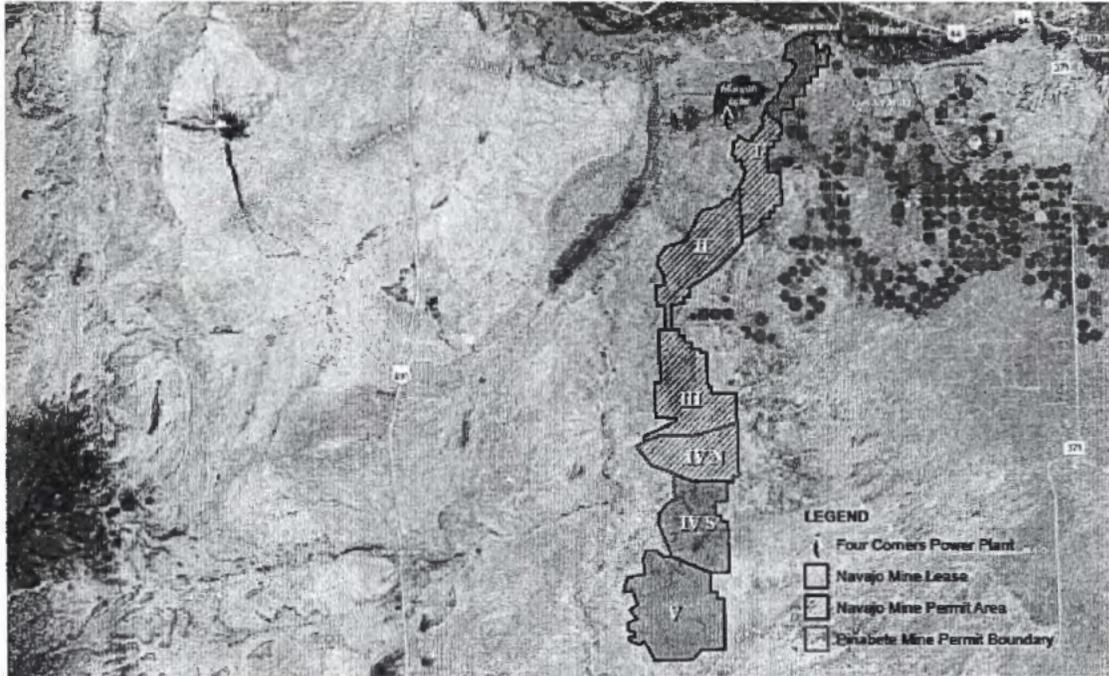


Marcelo Calle
EIS Coordinator

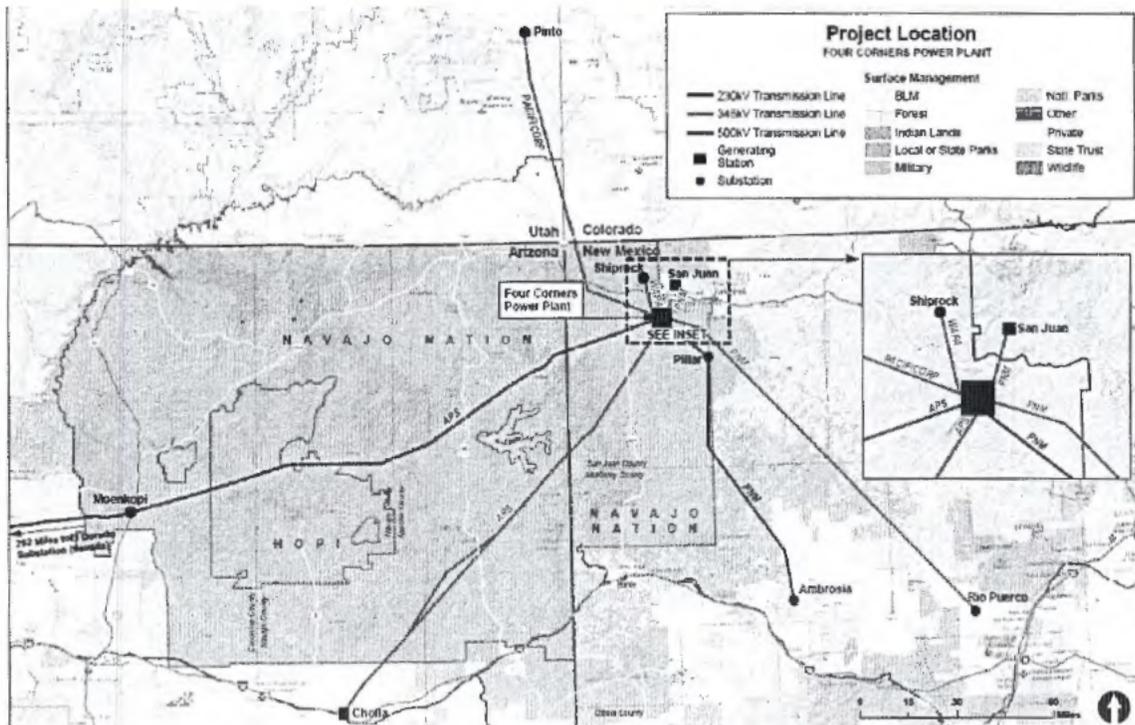
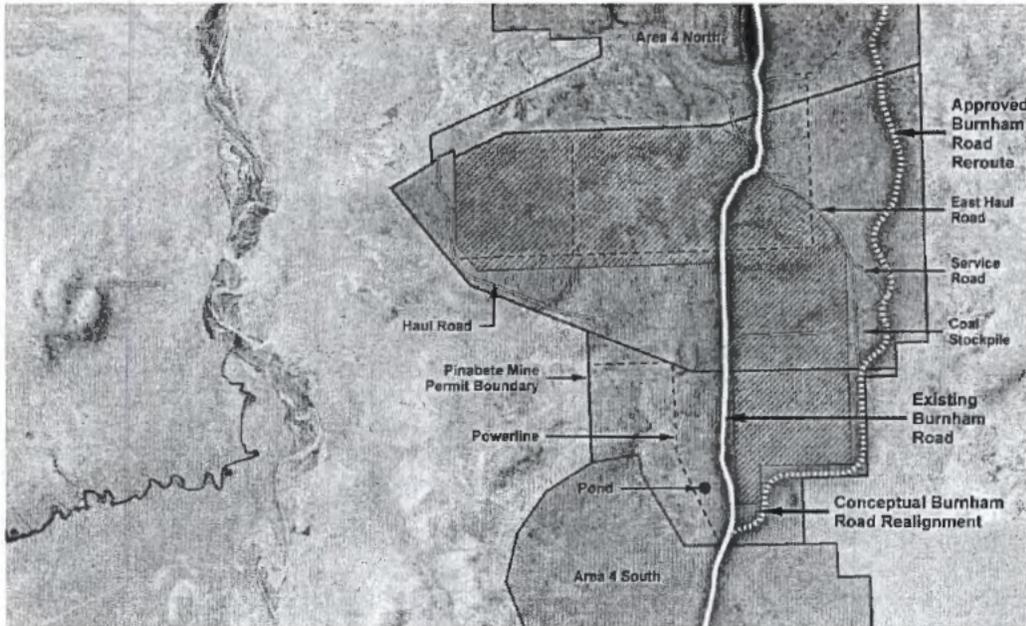
Enclosure: Four Corners Power Plant and Navajo Mine Energy
Project Area Maps (two pages)



Enclosure: Four Corners Power Plant and Navajo Mine Energy Project Area Maps



Enclosure (continued): Four Corners Power Plant and Navajo Mine Energy Project Area Maps



martinez, shirley

From: Spencer, Stephen
Sent: Monday, May 14, 2012 1:31 PM
To: martinez, shirley
Subject: FW: Draft_NOI_Deliberative_Process_working_5-9-12_adoptedAD.docx
Attachments: Draft_NOI_Deliberative_Process_working_5-9-12_adoptedAD.docx

Please print out the attachment and remind me to add the information about the PNM rights-of-way to the cooperators' MOU.

Stephen R. Spencer, PhD
Regional Environmental Officer
Office of Environmental Policy and Compliance
U.S. Department of the Interior
1001 Indian School Road NW, Suite 348
Albuquerque, NM 87104
Phone: (505) 563-3572 Fax: (505) 563-3066 Cell: (505) 249-2462
Stephen_Spencer@ios.doi.gov
Web Site: www.doi.gov/oepec/albuquerque.html



From: Calle, Marcelo
Sent: Monday, May 14, 2012 1:16 PM
To: Spencer, Stephen
Cc: Williamson, Rick L.
Subject: Draft_NOI_Deliberative_Process_working_5-9-12_adoptedAD.docx

Stephen,

Here is the draft NOI with the revised project language regarding the Public Service of New Mexico (PNM). Please add the additional project information to the Agency MOU. Any questions let me know.

Marcelo Calle
EIS Coordinator, The Four Corners & Navajo Mine Energy Project
Office of Surface Mining Reclamation and Enforcement
Program Support Division, Indian Programs Branch
1999 Broadway, Suite 3320
Denver, CO 80202-3050

mcalle@osmre.gov
(303) 293-5035 Office
(303) 293-5032 Fax

From: Spencer, Stephen
Sent: Wednesday, May 02, 2012 11:48 AM
To: Williamson, Rick L.
Subject: RE: Draft Notice of Intent (NOI) - The Four Corners & Navajo Mine Energy Project EIS
Attachments: Draft_NOI_Deliberative_Process OSM srs comments 5-2-2012.docx

I inserted a few pretty minor suggestions/comments in the attached. Good progress being made. Thanks.

Steve

Stephen R. Spencer, PhD
Regional Environmental Officer
Office of Environmental Policy and Compliance
U.S. Department of the Interior
1001 Indian School Road NW, Suite 348
Albuquerque, NM 87104
Phone: (505) 563-3572 Fax: (505) 563-3066 Cell: (505) 249-2462
Stephen_Spencer@ios.doi.gov
Web Site: www.doi.gov/oepec/albuquerque.html



From: Williamson, Rick L.
Sent: Thursday, April 26, 2012 2:07 PM
To: Whitmore, Sharon; Campbell, David; Hoefeler, Shannon D; John Stucker; Musslewhite, Brent; Applegate, Kent KC; Richard.Grimes@aps.com; Neal.Brown@aps.com; Spencer, Stephen; Norman Honie, Jr; Vitulano.Karen@epamail.epa.gov; Cummings, Deanna L SPA; Eckhardt, Cheryl; Heuslein, Amy; Honanie, Wendell; Reber, John; Nida_Shaheen@nps.gov; Lupo, Frank R
Cc: Calle, Marcelo; Yellowman, Mychal; Dan Tormey (daniel.tormey@cardno.com); Bartz, Kate L.; Yazzie, Harilene
Subject: Draft Notice of Intent (NOI) - The Four Corners & Navajo Mine Energy Project EIS

All;

Attached please find a copy of the draft NOI that OSM and BIA have prepared for the above indicated EIS. Please review this draft and provide any comments/suggestions you may have back to me by no later than COB May 4.

Thanks much,
Rick

Rick Williamson
Manager, Indian Program Branch (Permitting - Indian Lands)
Western Region, Program Support Division
Office of Surface Mining Reclamation & Enforcement (OSM)
1999 Broadway, Suite 3320
Denver, CO 80202
Phone: 303-293-5047
Fax: 303-293-5032

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

The Four Corners Power Plant and Navajo Mine Energy Project

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Notice of Intent to Prepare an Environmental Impact Statement (EIS) for the BHP Navajo Coal Company (BNCC) Proposed Pinabete Permit located on the Navajo Reservation in San Juan County, New Mexico, and for the Arizona Public Service Company (APS) Proposed Four Corners Power Plant (FCPP) lease amendment and associated rights-of-way renewals, on the Navajo and Hopi Reservations in San Juan County, New Mexico and Navajo, Coconino and Apache Counties in Arizona. These proposals are referred to collectively as the "Project."

SUMMARY: Pursuant to the National Environmental Policy Act of 1969, as amended (NEPA), the Office of Surface Mining Reclamation and Enforcement (OSM), Western Region (WR), Denver, Colorado, intends to prepare an EIS for the Project. The Project purpose is to facilitate ongoing operations at the FCPP, and on BNCC's Navajo Mine Lease to provide for long-term, reliable, continuous, and uninterrupted base load electrical power to customers in the southwestern U.S. using a reliable and readily available fuel source while complying with tribal trust responsibilities to support economic opportunities on Navajo Nation and Hopi tribal trust lands and to help provide for economic development of the Navajo Nation and Hopi Tribe through lease revenue, royalties, and jobs. The EIS will address the direct, indirect, and cumulative impacts of these connected and other actions at both the FCPP and the proposed Pinabete Permit area, including any other connected federal actions relating to operations on the Navajo Mine Lease and at FCPP.

The Navajo Nation, Bureau of Indian Affairs (BIA), Bureau of Land Management (BLM), U.S. Environmental Protection Agency (USEPA); U.S. Fish and Wildlife Service (USFWS), National Park Service (NPS); and U.S. Army Corps of Engineers (USACE) will cooperate with OSM in the preparation of the EIS.

Comment [SR51]: Hopi Tribe??

OSM solicits public comments on the scope of the EIS and significant issues that should be addressed in the EIS. Interested persons may view information about the proposed Project on our website at <http://www.wrcc.osmre.gov/> [TBD]; the website contains information related to: the comment period during which persons may submit comments; the locations, dates, and times of public scoping meetings; and the procedures that OSM will follow at the scoping meetings.

OSM will conduct compliance with Section 106 of the National Historic Preservation Act (16 U.S.C. § 470f) as provided for in 36 CFR § 800.2(d)(3) concurrently with the NEPA process, including the public involvement requirements. Native American tribal consultations will be conducted in accordance with Department of Interior policy, and tribal concerns will be given due consideration, including impacts on Indian trust assets. Federal, tribal, state, and local agencies, along with other stakeholders that may be interested in or affected by OSM's decision on this project, are invited to participate in the scoping process and, if eligible, may request or be requested by OSM to participate as a cooperating agency.

As part of its consideration of impacts of the proposed Project on threatened and endangered species, OSM will conduct formal consultation with the USFWS pursuant to Section 7 of the Endangered Species Act (ESA) and its implementing regulations. Formal consultation

Deliberative Process Material

will consider direct and indirect impacts from the proposed Project, including FCPP, continuing operation and maintenance of existing transmission lines and ancillary facilities, and all mining and related operations within the Navajo Mine Lease.

Compliance with NEPA and ESA obligations will be accompanied by compliance with other applicable requirements of, without limitation, the Indian Business Site Leasing Act, 25 U.S.C. § 415, the General Right-of-Way-Act of 1948, 25 U.S.C §§ 323-328, the Surface Mining Control and Reclamation Act (SMCRA), the Clean Water Act, the Clean Air Act, the National Historic Preservation Act, the Native American Graves Protection and Repatriation Act, and Executive Orders relating to Environmental Justice, Sacred Sites, and Tribal Consultation, and related laws and regulations.

DATES: This notice initiates the public scoping process. To ensure consideration in the draft EIS, we must receive your electronic or written comments by [DATES TBD]. The OSM will host public scoping meetings in the following locations:

- Window Rock, Arizona [DATE and TIME TBD]
- Kykotsmovi, Arizona on [DATE and TIME TBD]
- Burnham Chapter House, Burnham, New Mexico on [DATE and TIME TBD]
- Nenahnezad Chapter House, Nenahnezad, New Mexico on [DATE and TIME TBD]
- Farmington, New Mexico on [DATE and TIME TBD]
- Shiprock, New Mexico on [DATE and TIME TBD]
- Cortez, Colorado on [DATE and TIME TBD]
- Durango, Colorado on [DATE and TIME TBD]
- Albuquerque, New Mexico??? [DATE and TIME TBD]

Times, dates, and specific locations for these meetings will be announced through the OSM Western Region Web site [http://www.wrcc.osmre.gov/\[TBD\]](http://www.wrcc.osmre.gov/[TBD]), press releases, local newspapers, and other media, at least 15 days prior to each event. At the scoping meetings, the public is invited to submit comments and resource information, and identify issues or concerns to be considered in the NEPA compliance process. To be included in the Draft EIS, all comments must be received prior to the close of the scoping period or 15 days after the last public meeting, whichever is later. We will provide additional opportunities for public participation upon publication of the Draft and Final EIS.

ADDRESSES: Oral comments will be recorded during the public scoping meetings. In addition, comments may be submitted in writing or by e-mail. At the top of your letter or in the subject line of your e-mail message, please indicate that the comments are "Four Corners-Pinabete EIS Comments."

- E-mail comments should be sent to: [TBD]@osmre.gov.
- Written comments sent by first class or priority U.S. Postal Service must be postmarked by [DATE AND TIME TBD], and should be mailed to: Marcelo Calle, OSM Western Region, 1999 Broadway, Suite 3320, Denver, Colorado 80202-3050

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- Comments delivered by U.S. Postal Service Express Mail or by courier service must be postmarked by [DATE AND TIME TBD], and should be sent to: Marcelo Calle, OSM Western Region, 1999 Broadway, Suite 3320, Denver, Colorado 80202-3050

FOR FURTHER INFORMATION CONTACT: For further Information about the Project and/or to have your name added to the mailing list, contact: Marcelo Calle, OSM Project Manager, at 303-293-5035. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-(800) 877-8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION:

- I. Background on the Four Corners Power Plant
- II. Proposal for the Pinabete Mine Permit
- III. Alternatives Considered
- IV. Public Comment Procedures

I. Background on the Four Corners Power Plant

The FCPP, located on the New Mexico portion of the Navajo Reservation, is a coal-fired electric generating station, which currently includes five units generating approximately 2,100 megawatts, and provides power to more than 500,000 customers. Nearly 80 percent of the employees at the plant are Native American. APS operates the FCPP, and recently executed a lease amendment (Lease Amendment No.3) with the Navajo Nation to extend the term of the lease for the FCPP an additional 25 years, to 2041. As the operator of the FCPP, APS requests specifically:

- Approval from BIA of Lease Amendment No.3 for the FCPP site, which has been signed by the Navajo Nation after Navajo Nation Council approval, pursuant to 25 U.S.C. § 415.
- Issuance by BIA of renewed rights-of-way for existing facilities, pursuant to 25 U.S.C. § 323, for the FCPP and its switchyard and ancillary facilities (totaling approximately 3,595 acres), a 500 kilovolt (kV) transmission line and two 345 kV transmission lines (totaling approximately 372 miles), and ancillary transmission line facilities (including the Moenkopi Switchyard, an associated 12 kV line, and access road; collectively the "Existing Facilities"). The Existing Facilities are located on the Navajo Reservation, and the 500 kV transmission line crosses both Navajo and Hopi tribal lands. The Existing Facilities are already in place and will continue to be maintained and operated as part of the proposed action. No upgrades to these transmission lines are planned as part of the proposed Project.

The desired future operation of the FCPP site involves removing Units 1, 2, and 3 from service on or before 2014, installing pollution control upgrades on Units 4 and 5, and continued operation of the independent switch yard and transmission lines. This scenario would substantially reduce coal consumption and air emissions, and lower the power output of the plant

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to approximately 1,500 megawatts. The ash disposal area would expand in future years within the current FCPP lease boundary. There is no proposed change to the exterior boundary of the FCPP site, the switch yard, or any of the transmission lines and ancillary facilities as part of the proposed actions.

II. Application for the Pinabete Mine Permit

Concurrent with the proposed FCPP lease amendment approval and renewed rights-of-way grant actions, BNCC proposes to develop a new approximately 5,600-acre permit area, called the Pinabete Permit. Currently proposed mining operations would occur on an approximately 3,100-acre portion of the new mine permit area, which is within its existing Navajo Mine Lease area. The new permit area would supply low-sulfur coal to the FCPP at a rate of approximately 5.8 million tons per year. Located entirely on trust lands within the Navajo Reservation and adjacent to the FCPP, development of the Pinabete Permit area and associated coal reserves would use surface mining methods and, based on current projected customer needs, would supply coal to FCPP for up to 25 years beginning in 2016. The proposed new permit area would include previously permitted (Federal SMCRA Permit NM0003F) but undeveloped coal reserves within Area IV North of the Navajo Mine Lease, and unpermitted and undeveloped coal reserves in a portion of Area IV South of the existing Navajo Mine Lease. Full implementation of the proposed Pinabete Permit is expected to require specific federal actions, including:

- Approval from OSM of the new SMCRA permit.
- Approval from the BLM of a revised Mine Plan developed for the proposed maximum economic recovery of coal reserves.
- Approval of a Section 404 Individual Permit from the USACE for the impacts to waters of the United States from proposed mining activities.
- Approval of a Section 402 National Pollutant Discharge Elimination System (NPDES) permit or permit revision from the EPA.
- Approval by the BIA of a proposed realignment for approximately 2.8 miles of BIA 3005/Navajo Road N-5082 (Burnham Road) in Area IV South to avoid proposed mining areas.
- Approval or grant of other associated facilities, permits, or rights-of-way for access and haul roads, power supply for operations, and related facilities.
- Consultation with the US FWS under Section 7 of the ESA.
- Consultation with the State Historic Preservation Officer/Tribal Historic Preservation Officer under Section 106 of the National Historic Preservation Act (16 U.S.C. § 470f) as provided for in 36 CFR § 800.2(d)(3)

Comment [SR52]: Is this actually the RRPP?

In addition, in due course and consistent with applicable OSM regulations, BNCC plans to submit its 2014 renewal application for its existing Navajo Mine SMCRA Permit No. NM00003F. The EIS will address alternatives and direct, indirect, and cumulative impacts of the 2014 renewal application action. The activities supported by the proposed federal actions are located within lands of the Navajo and Hopi Reservations in New Mexico and Arizona. The proposed actions, and any other connected actions, will be considered in a single EIS.

III. Alternatives and Related Impacts Considered

Alternatives to the Project that may be considered include: (a) the proposed actions described; (b) a no action alternative, which would result in the expiration of the FCPP lease and associated rights-of-way, but would not result in the expiration of BNCC's Navajo Mine Lease; and (c) any environmentally preferable alternatives that may be identified in accordance with 40 C.F.R. Part 1500 and 43 C.F.R. Part 46 (2011). The range of reasonable alternatives to be considered will be determined based in part on comments received during the scoping process.

The purpose of the public scoping process is to determine relevant issues that could influence the scope of the environmental analysis, including alternatives, and guide the process for developing the EIS and related compliance efforts. At present, OSM has identified the following preliminary issues and potential impacts:

- Threatened and endangered species, including the Razorback sucker (*Xyrauchen texanus*), Colorado pikeminnow (*Ptychocheilus Lucius*), and Southwestern Willow Flycatcher (*Empidonax traillii extimus*);
- Air quality and climate change;
- Surface and ground water quality;
- Environmental Justice considerations;
- Cultural and historic resources;
- Biological resources;
- Visual resources;
- Public Health;
- Socioeconomics; and
- Noise and vibration.

Comment [SR53]: Ask FWS if there are others? I seem to remember from Desert Rock discussions a cactus being in the area?

IV. Public Comment Procedures

In accordance with the Council on Environmental Quality's regulations for implementing NEPA, 40 CFR Parts 1500 through 1508, OSM solicits public comments on the scope of the EIS and significant issues that it should address in the EIS.

Written comments, including email comments, should be sent to OSM at the addresses given in the **ADDRESSES** section of this notice. Comments should be specific and pertain only to the issues relating to the proposals. OSM will include all comments in the administrative record.

If you would like to be placed on the mailing list to receive future information, please contact the person listed in the section, **FOR FURTHER INFORMATION CONTACT**, above.

Availability of Comments

OSM will make comments, including names and addresses of respondents, available for public review during normal business hours. Comments submitted anonymously will be accepted and considered; however, those who submit anonymous comments may not have standing to appeal the subsequent decision. If individual respondents request confidentiality, OSM will honor their requests to the extent allowable

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by law. Individual respondents who wish to withhold their name or address (except for the city or town) from public review must state this prominently at the beginning of their comments. All submissions from organizations or businesses and from individuals identifying themselves as representatives or officials of organizations or businesses will be available for public review in their entirety.

Scoping Meetings

The scoping meetings will have both formal and informal components. There will be an open house session in which the public may view informative posters regarding the proposed Project and ask questions of Project staff, as well as a formal portion in which a presentation regarding the action will be given. There will also be opportunities for the public to share their comments regarding the proposal either in writing, dictated to a court reporter, or orally.

If you wish to speak at a scoping meeting, you will be asked to sign a "request to give oral comment" card when you arrive at the meeting. Persons will provide their oral comments in the order in which they sign-in. If you are in the audience and have not signed up to speak, you will be allowed to speak after those who have signed up have had the opportunity to speak. For persons who do not wish to speak, OSM also will accept written comments at the meeting.

A transcriber will be present at the meetings to record comments. To assist the transcriber and ensure an accurate record, OSM requests that each speaker provide a written copy of his or her comments, if possible. OSM will end the meeting after everyone who wishes to speak has been heard. If a large number of people wish to speak at a meeting, OSM may limit the length of time each person has to speak in order to give everyone an opportunity to speak.

Hopi and Navajo interpreters will be present at meetings on the Hopi and Navajo Reservations. If you are disabled or need special accommodations to attend one of the meetings, contact the person under **FOR FURTHER INFORMATION CONTACT** at least one week before the meeting.

~~martinez, shirley~~

From: Spencer, Stephen
Sent: Thursday, April 26, 2012 3:46 PM
To: martinez, shirley
Subject: FW: The Four Corners & Navajo Mine Energy Project - EIS & Sec. 7 ESA Consultation - Kick-Off Meeting and Technical Meeting

For calendar. I will definitely go to the first day and maybe the second day.

Stephen R. Spencer, Ph.D.
Regional Environmental Officer
U.S. Department of the Interior
Office of Environmental Policy and Compliance
1001 Indian School Road NW, Suite 348
Albuquerque, NM 87104
Phone: (505) 563-3572, Fax: (505) 563-3066, Cell (24/7): (505) 249-2462
www.doi.gov/oepec/albuquerque.html

From: Williamson, Rick L.
Sent: Thursday, April 26, 2012 1:34 PM
To: Whitmore, Sharon; Campbell, David; Pinto, Sharon; Yazzie, Harrilene; Hoefeler, Shannon D; John Stucker; Musslewhite, Brent; Applegate, Kent KC; Richard.Grimes@aps.com; Neal.Brown@aps.com; Spencer, Stephen; Lusk, Joel; Norman Honie, Jr; Vitulano.Karen@epamail.epa.gov; Cummings, Deanna L SPA; Eckhardt, Cheryl; Heuslein, Amy; Honanie, Wendell; Murphy, Wally; Dan Tormey (daniel.tormey@cardno.com); Bartz, Kate L.; Jallo, Carlos F.; Akhtar Zaman; Reber, John; Nida.Shaheen@nps.gov; Craig Kling
Cc: Calle, Marcelo; Yellowman, Mychal; Postle, Bob
Subject: The Four Corners & Navajo Mine Energy Project - EIS & Sec. 7 ESA Consultation - Kick-Off Meeting and Technical Meeting

All;

As you are generally aware, there will be a need to prepare an EIS in support of decisions to be made in association with BHP Navajo Coal Company's (BNCC's) recently submitted Navajo Mine Pinabete Permit Application and Arizona Power Service's (APS's) pending site and transmission line lease renewals for the Four Corners Power Plant. OSM has been designated as the lead agency for developing the pending EIS, with very close coordination with the BIA anticipated. It is currently understood that the following entities are to be the cooperating agencies for the EIS: BIA, US/ACOE, BLM, USFWS, NPS, US/EPA, the Navajo Nation, and perhaps at a later date, the Hopi Tribe. As many of you are aware, with the assistance from the Regional Office, Environmental Policy & Compliance, a draft MOU for the Cooperating Agencies has been developed and circulated among your various offices; and is nearing completion. In addition, an MOU between the project proponents (BNCC & APS) and OSM & BIA, has been finalized and is nearing signature for each participant. Further, a consultant (Cardno Entrix) has been selected by OSM to assist us in the preparation of the EIS, with the contract between the project proponents and the selected consulting firm being understood to be signed this week.

To initiate the preparation of the EIS, OSM is requesting your attendance at a kick-off meeting in **Albuquerque** next month to give us all an opportunity to meet, to obtain a brief overview of the project and the actions proposed, and to begin a discussion of the path forward. We are scheduling a full day for this meeting; first half of the day to include the project proponents; 2nd half of the day to be limited to the cooperating agencies. The EIS consultant will be expected to attend the all day session. The USFWS has graciously agreed to allow use of their large conference room for this meeting. The date requested for the **EIS kick-off meeting is Tuesday May 22**, commencing at 9:00 am. For those of you that cannot attend in person a conference phone will be available. Please indicate to me whether you will be able to attend this meeting in person or be available to join by conference phone.

As many of you are aware, an April 3rd pre-meeting was held at the FWS's Albuquerque office to briefly discuss issues that may have a bearing on the Section 7 ESA process for this project. At this meeting it was decided that there would be value in holding a technical meeting in the near future among a smaller group of agency and company personnel to discuss in greater detail the data gaps that currently exist as related to the pending Section 7 process; and how those data gaps might be filled. For the sake

of efficiency, I am anticipating that we can hold this second meeting (**Sec 7 technical meeting**) the day following our EIS kick-off meeting, i.e. on **Wednesday May 23** in the same FWS conference room. This meeting would start at 8:30 am and may last through the day (for those attending please be prepared for this). Since the technical meeting will have a very specific purpose I would request that attendance be limited to those agency and company personnel that will be focused on resolutions associated with this particular technical issue.

We will be providing Agendas to you for the above indicated two meetings in the near future. Should you have any specific issues you would like for OSM to add to the Agenda, please forward them to me and/or Marcelo Calle (OSM EIS Coordinator) in advance.

Best regards,
RW

Rick Williamson
Manager, Indian Program Branch (Permitting - Indian Lands)
Western Region, Program Support Division
Office of Surface Mining Reclamation & Enforcement (OSM)
1999 Broadway, Suite 3320
Denver, CO 80202
Phone: 303-293-5047
Fax: 303-293-5032

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4310-05-P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Notice of intent to prepare and Environmental Impact Statement for the Four Corners

~~Power Plant and Navajo Mine Energy Project~~

Comment [MC1]: This was deleted to be consistent with title of project in Draft Cooperating Agency MOU.

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Notice of Intent to Prepare an Environmental Impact Statement.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM), Western Region (WR), Denver, Colorado, intends to prepare an Environmental Impact Statement (EIS).

The EIS will analyze the impacts for the BHP Navajo Coal Company (BNCC) Proposed Pinabete Permit and the Navajo Mine Permit Renewal located on the Navajo Reservation in San Juan County, New Mexico. The EIS will also analyze the impacts for the Arizona Public Service Company (APS) Proposed Four Corners Power Plant (FCPP) lease amendment and associated rights-of-way renewals, on the Navajo and Hopi Reservations in San Juan County, New Mexico and Navajo, Coconino and Apache Counties in Arizona; and the Public Service Company of New Mexico (PNM) associated rights-of-way renewal on the Navajo Reservation in San Juan, Sandoval, and McKinley Counties in New Mexico, Arizona. These proposals are referred to collectively as the "Project." OSM is requesting public comments on the scope of the EIS and significant issues that should be addressed in the EIS.

DATES: This notice initiates the public scoping process. To ensure consideration in developing the draft EIS, we must receive your electronic or written comments by the close of the scoping period on [Insert date 60 days after the date of publication in the FEDERAL REGISTER].

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We will host public scoping meetings where you may submit written and oral comments.

The public scoping meeting will be held at the following locations:

- ~~Kykotsmovi Farmington, Arizona New Mexico on Friday Thursday, July August 27, 2012 from 5:00 p.m. to 9:00 p.m. at the Hopi Veteran's Memorial Center Farmington Civic Center.~~
- ~~Cortez, Colorado on Wednesday Friday, August 10, 2012 from 5:00 p.m. to 9:00 p.m. at the [TBD].~~
- ~~Burnham, New Mexico on Saturday, July August 28, 2012 from 8:00 a.m. to 12:00 p.m. at the Burnham Chapter House.~~
- ~~Nenahnezad, New Mexico on Saturday Monday, August July 28, 2012 from 5:00 p.m. to 9:00 p.m. at the Nenahnezad Chapter House.~~
- ~~Kykotsmovi Farmington, New Mexico Arizona on Thursday Tuesday, August 14, 2012 from 5:00 p.m. to 9:00 p.m. at the Farmington Civic Center Hopi Veteran's Memorial Center.~~
- ~~Shiprock, New Mexico on Monday Wednesday, August July 30, 2012 from 5:00 p.m. to 9:00 p.m. at the [Shiprock Chapter House TBD].~~
- ~~Durango, Colorado on Tuesday Thursday, August July 31, 2012 from 5:00 p.m. to 9:00 p.m. at the [TBD].~~
- ~~Cortez, Colorado on Wednesday, August 1, 2012 from 5:00 p.m. to 9:00 p.m. at the [TBD].~~
- ~~Kykotsmovi, Arizona on Thursday, August 2, 2012 from 4:30 p.m. to 9:00 p.m. at the Hopi Veteran's Memorial Center.~~
- ~~Window Rock, New Mexico Arizona on Friday, August 3, 2012 from 5:00 p.m. to~~

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9:00 p.m. at the Navajo Nation Museum.

- Albuquerque, New Mexico on ~~Monday~~ Saturday, August 4~~18~~, 2012 from 11~~0:00~~030 a.m. to 3:00 p.m. at the All Indian Pueblo Center.

Times, dates, and specific locations for these meetings will also be announced through the OSM Western Region Web site [http://www.wrcc.osmre.gov/\[TBD\]](http://www.wrcc.osmre.gov/[TBD]), press releases, local newspapers, and other media, at least 15 days prior to each event.

~~At the scoping meetings, the public is invited to submit comments and resource information, and identify issues or concerns to be considered in the NEPA compliance process. To be included in the Draft EIS, all comments must be received prior to the close of the scoping period or 15 days after the last public meeting, whichever is later. We OSM will provide additional opportunities for public participation upon publication of the Draft and Final EIS.~~

Hopi and Navajo interpreters will be present at meetings on the Hopi and Navajo Reservations.

If you are disabled or need special accommodations to attend one of the meetings, contact the person under **FOR FURTHER INFORMATION CONTACT** at least one week before the meeting.

ADDRESSES: Oral comments will be recorded during the public scoping meetings. In addition, comments may be submitted in writing or by e-mail. At the top of your letter or in the subject line of your e-mail message, please indicate that the comments are "Four Corners-Pinabete EIS Comments."

- E-mail comments should be sent to: fcppnavajoenergyeis@osmre.gov.

Comment [MC2]: Question or concern regarding removing "...15 days after last public meeting, which ever later..."
Do we need time after the last scoping meeting to allow for submission of comments?

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- Written comments sent by first class or priority U.S. Postal Service must be postmarked by [DATE AND TIME TBD], and should be mailed to: Marcelo Calle, OSM Western Region, 1999 Broadway, Suite 3320, Denver, Colorado 80202-3050
- Comments delivered by U.S. Postal Service Express Mail or by courier service must be postmarked by [DATE AND TIME TBD], and should be sent to: Marcelo Calle, OSM Western Region, 1999 Broadway, Suite 3320, Denver, Colorado 80202-3050

FOR FURTHER INFORMATION CONTACT: For further information about the Project and/or to have your name added to the mailing list, contact: Marcelo Calle, OSM Project Manager, at 303-293-5035. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION:

- I. Background on the Project.
- II. Background on the Four Corners Power Plant.
- III. Application for the Pinabete Mine Permit and the Navajo Mine Permit Renewal.
- IV. Alternatives and Related Impacts Under Consideration.
- V. Public Comment Procedures.

I. Background on the Project.

The purpose of the Project is to facilitate ongoing operations at the FCPP, and on BNCC's Navajo Mine Lease to provide for long-term, reliable, continuous, and uninterrupted base load

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electrical power to customers in the southwestern U.S. using a reliable and readily available fuel source. The Project will accomplish this while complying with tribal trust responsibilities to support economic opportunities on Navajo Nation and Hopi tribal trust lands and to help provide for economic development of the Navajo Nation and Hopi Tribe through lease and right-of-way revenue, royalties, tribal taxes and jobs. The EIS will address the direct, indirect, and cumulative impacts of these connected and other actions at both the FCPP ~~and~~ the proposed Pinabete Permit area, and the existing Navajo Mine Permit area, including any other connected federal actions relating to operations on the Navajo Mine Lease and at FCPP.

The Navajo Nation, Bureau of Indian Affairs (BIA), Bureau of Land Management (BLM), U.S. Environmental Protection Agency (USEPA), U.S. Fish and Wildlife Service (USFWS), National Park Service (NPS), and U.S. Army Corps of Engineers (USACE) will cooperate with OSM in the preparation of the EIS.

OSM solicits public comments on the scope of the EIS and significant issues that should be addressed in the EIS. At the scoping meetings, the public is invited to submit comments and resource information, and identify issues or concerns to be considered in the NEPA compliance process.

OSM will conduct compliance with Section 106 of the National Historic Preservation Act (16 U.S.C. 470f) (NHPA Section 106) as provided for in 36 CFR 800.2(d)(3) concurrently with the NEPA process, including the public involvement requirements. Native American tribal consultations will be conducted in accordance with applicable laws, regulations, and Department of Interior policy, and tribal concerns will be given due consideration, including impacts on Indian trust assets. Federal, tribal, state, and local agencies, along with other stakeholders that may be interested in or affected by the federal agencies' OSM's decisions on this the

~~project~~Project, are invited to participate in the scoping process and, if eligible, may request or be requested by OSM to participate as a cooperating agency.

Interested persons may view information about the proposed Project on our website at <http://www.wrcc.osmre.gov/> [TBD]; the website contains information related to: the comment period during which persons may submit comments; the locations, dates, and times of public scoping meetings

As part of its consideration of impacts of the proposed Project on threatened and endangered species, OSM will conduct formal consultation with the USFWS pursuant to Section 7 of the Endangered Species Act (ESA) and its implementing regulations. Formal consultation will consider direct and indirect impacts from the proposed Project, including FCPP, continuing operation and maintenance of existing transmission lines and ancillary facilities, and all mining and related operations within the Navajo Mine Lease.

Compliance with NEPA, NHPA Section 106 and ESA obligations will be accompanied by compliance with other applicable requirements of, without limitation, the Indian Business Site Leasing Act, 25 U.S.C. 415, the General Right-of-Way-Act of 1948, 25 U.S.C 323-328, the Surface Mining Control and Reclamation Act (SMCRA), the Clean Water Act, the Clean Air Act, the National Historic Preservation Act, the Native American Graves Protection and Repatriation Act, and Executive Orders relating to Environmental Justice, Sacred Sites, and Tribal Consultation, and related laws and regulations.

II. Background on the Four Corners Power Plant

The FCPP, located on tribal trust lands in the New Mexico portion of the Navajo Reservation, is a coal-fired electric generating station, which currently includes five units generating approximately 2,100 megawatts, and provides power to more than 500,000

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customers. Nearly 80 percent of the employees at the plant are Native American. APS operates the FCPP, and recently executed a lease amendment (Lease Amendment No.3) with the Navajo Nation to extend the term of the lease for the FCPP an additional 25 years, to 2041. As the operator of the FCPP, implementation is expected to require specific federal actions,

including APS requests specifically:

- Approval from BIA of Lease Amendment No.3 for the FCPP site, which has been signed by the Navajo Nation after Navajo Nation Council approval, pursuant to 25 U.S.C. 415.
- Issuance by BIA of renewed rights-of-way for existing facilities, pursuant to 25 U.S.C. 323, for the FCPP and its switchyard and ancillary facilities (totaling approximately 3,595 acres), a 500 kilovolt (kV) transmission line and two 345 kV transmission lines (totaling approximately 372 miles), and ancillary transmission line facilities (including the Moenkopi Switchyard, an associated 12 kV line, and access road; collectively the "Existing Facilities"). The Existing Facilities are located on the Navajo Reservation, and the 500 kV transmission line crosses both Navajo and Hopi tribal lands. The Existing Facilities are already in place and will/would continue to be maintained and operated as part of the proposed action. No upgrades to these transmission lines or ancillary facilities are planned as part of the proposed Project.

The desired future operation of the FCPP site involves removing Units 1, 2, and 3 from service on or before 2014, installing pollution control upgrades on Units 4 and 5, and continued operation of the independent switch yard and transmission lines. This scenario would substantially reduce coal consumption and air emissions, and lower the power output of the plant to approximately 1,500 megawatts. The ash disposal area would expand in future years within

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the current FCPP lease boundary. There is no proposed change to the exterior boundary of the FCPP site, the switch yard, or any of the transmission lines and ancillary facilities as part of the proposed actions.

PNM, a co-owner of the FCPP, will be requesting issuance of renewed rights-of-way from the BIA for two existing 345 kV transmission facilities which cross the Navajo Nation. The transmission facilities are owned and controlled by PNM, which total approximately 55 miles on the Navajo Nation. These facilities are already in place and will continue to be maintained and operated as part of the proposed action. No upgrades to these transmission lines are planned as part of the proposed Project.

III. Application for the Pinabete Mine Permit and the Navajo Mine Permit Renewal

Concurrent with the proposed FCPP lease amendment approval and renewed rights-of-way grant actions, BNCC proposes to develop a new approximately 5,600-acre permit area, called the Pinabete Permit. Currently proposed mining operations would occur on an approximately 3,100-acre portion of the new Pinabete Permit area, which is within BNCC's existing Navajo Mine Lease, which is located adjacent to the FCPP on tribal trust lands on the Navajo Reservation. The new Pinabete Permit area would, in conjunction with the mining of any reserves remaining within the existing Navajo Mine Permit area (Federal SMCRA Permit NM0003F), mine permit area, which is within its existing Navajo Mine Lease area. The new permit area would supply low-sulfur coal to the FCPP at a rate of approximately 5.8 million tons per year. Located entirely on trust lands within the Navajo Reservation and adjacent to the FCPP. ~~Development of the Pinabete Permit area and associated coal reserves would use surface mining methods and, based on current projected customer needs, would supply coal to FCPP for~~

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up to 25 years beginning in 2016. The proposed Pinabete Permit ~~new permit~~ area would include previously permitted (Federal SMCRA Permit NM0003F) but undeveloped coal reserves within Area IV North of the Navajo Mine Lease, and unpermitted and undeveloped coal reserves in a portion of Area IV South of the existing Navajo Mine Lease. Full implementation of the proposed Pinabete Permit is expected to require specific federal actions, including:

- Approval from OSM of the new SMCRA permit.
- Approval from the BLM of a revised Mine Plan developed for the proposed maximum economic recovery of coal reserves.
- Approval of a Section 404 Individual Permit from the USACE for the impacts to waters of the United States from proposed mining activities.
- Approval of a Section 402 National Pollutant Discharge Elimination System (NPDES) permit or permit revision from the EPA.
- Approval by the BIA of a proposed realignment for approximately 2.8 miles of BIA 3005/Navajo Road N-5082 (Burnham Road) in Area IV South to avoid proposed mining areas.
- Approval or grant of other associated facilities, permits, or rights-of-way for access and haul roads, power supply for operations, and related facilities.
- ~~Consultation with the US FWS under Section 7 of the ESA.~~
- ~~Consultation with the State Historic Preservation Officer/Tribal Historic Preservation Officer under Section 106 of the National Historic Preservation Act (16 U.S.C. 470f) as provided for in 36 CFR 800.2(d)(3).~~

Comment [MC3]: These elements apply to both APS and BNCC project. Has been moved to end of next section.

In addition, in due course and consistent with applicable OSM regulations, BNCC plans

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to submit its 2014 renewal application for its existing Navajo Mine SMCRA Permit No. NM00003F. The EIS will address alternatives and direct, indirect, and cumulative impacts of the 2014 renewal application action. The activities supported by the proposed federal actions are located within lands of the Navajo and Hopi Reservations in New Mexico and Arizona. The proposed actions, and any other connected actions, will be considered in a single EIS.

IV. Alternatives and Related Impacts Under Consideration.

The proposed actions, and any other connected actions, will be considered in a single EIS that will address alternatives and direct, indirect, and cumulative impacts of the Four Corners Power Plant and Navajo Mine Energy Project. The activities supported by the proposed federal actions are located within lands of the Navajo and Hopi Reservations in New Mexico and Arizona.

The purpose of the public scoping process is to determine relevant issues that could influence the scope of the environmental analysis, including alternatives, and guide the process for developing the EIS and related compliance efforts.

Alternatives for the Project that are under consideration include:

- (a) the proposed actions described;
- (b) a no action alternative, which would result in the expiration of the FCPP lease and associated rights-of-way, but would not result in the expiration of BNCC's Navajo Mine Lease; and
- (c) any environmentally preferable alternatives that may be identified in accordance with 40 CFR. Part 1500 and 43 CFR Part 46.

The final range of reasonable alternatives to be considered will be determined based in part on the comments received during the scoping process.

Deliberative Process Material

At present, OSM has identified the following preliminary issues and potential impacts:

- Threatened and endangered species, including the Razorback sucker (*Xyrauchen texanus*), Colorado pikeminnow (*Ptychocheilus Lucius*), and Southwestern Willow Flycatcher (*Empidonax traillii extimus*);
- Air quality and climate change;
- Surface and ground water quality;
- Environmental Justice considerations;
- Cultural and historic resources;
- Biological resources;
- Visual resources;
- Public Health;
- Socioeconomics; and
- Noise and vibration.

•

As part of its consideration of impacts on threatened and endangered species, OSM will pursue formal consultation with the United States Fish and Wildlife Service pursuant to Section 7 of the Endangered Species Act (ESA) and its implementing regulations. The formal consultation will consider direct and indirect impacts from the FCPP, continuing operation and maintenance of existing transmission lines and ancillary facilities, and from all mining and related operations within the Navajo Mine Lease. Consultation with the State Historic Preservation Officer/Tribal Historic Preservation Officer under Section 106 of the National Historic Preservation Act (16 U.S.C. § 470f) as provided for in 36 CFR § 800.2(d)(3) will also be required.

Deliberative Process Material

V. Public Comment Procedures

In accordance with the Council on Environmental Quality's regulations for implementing NEPA, 40 CFR Parts 1500 through 1508, and the Department of the Interior's NEPA regulations, 43 CFR Part 46, OSM solicits public comments on the scope of the EIS and significant issues that it should address in the EIS.

Written comments, including email comments, should be sent to OSM at the addresses given in the **ADDRESSES** section of this notice. Comments should be specific and pertain only to the issues relating to the proposals. OSM will include all comments in the administrative record.

If you would like to be placed on the mailing list to receive future information, please contact the person listed in the section, **FOR FURTHER INFORMATION CONTACT**, above.

Hopi and Navajo interpreters will be present at meetings on the Hopi and Navajo Reservations.

If you are disabled or need special accommodations to attend one of the meetings, contact the person under **FOR FURTHER INFORMATION CONTACT** at least one week before the meeting.

Availability of Comments

OSM will make comments, including names and addresses of respondents, available for public review during normal business hours. Comments submitted anonymously will be accepted and considered; however, those who submit anonymous comments may not have standing to appeal the subsequent decision.

Before including your address, phone number, e-mail address, or other personal

Deliberative Process Material

identifying information in your comment, you should be aware that your entire comment – including your personal identifying information – may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

All submissions from organizations or businesses and from individuals identifying themselves as representatives or officials of organizations or businesses will be available for public review in their entirety.

Dated: _____

Al Klein

Regional Director, Western Region

INFORMATION MEMORANDUM FOR THE DIRECTOR

November 5, 2010

FROM: Al Klein, Western Regional Director

SUBJECT: Diné CARE Complaint about OSM permitting decisions at Navajo Mine, NM

SUMMARY: On July 13, 2007, the Diné Citizens Against Ruining Our Environment (Diné CARE) along with the San Juan Citizens Alliance (the Alliance) filed a complaint against OSM in US District Court in Denver. The complaint alleges that OSM violated National Environmental Policy Act (NEPA) and Administrative Procedure Act (APA) by renewing the permit in September 2004 and approving a revision of the permit in October 2005 without preparing an EIS. The 151-point complaint includes allegations that OSM approved improper methods for placement and monitoring of coal combustion by-products, allows insufficient monitoring of the impacts from blasting and is not following adequate public notification and participation procedures.

DISCUSSION: The Navajo Mine, located within the Navajo Reservation in northwest New Mexico about 15-20 miles southwest of Farmington, is operated by the BHP Navajo Coal Company (BHP). The mine is the sole supplier of coal to the adjacent Arizona Public Service (APS) Four Corners Generating Station. In September 2004, OSM renewed the existing permit with minor revisions. The renewal was categorically excluded from the requirement to conduct an EIS in accordance with the Departmental Manual (516 DM 6, Appendix 8, Section 8.4B (11), now 516 DM 13.5B(11)). In October 2005, OSM approved a significant permit revision, which authorized BHP Navajo Coal Company to expand the Navajo Mine into "Area IV North." OSM prepared an environment assessment of the proposed action and found that no significant impacts would result from the mine expansion.

STATUS: OSM's answer was filed on September 24, 2007. BHP and APS have intervened. Plaintiffs' first amended complaint was filed on December 21, 2007. OSM's answer to the amended complaint was filed on January 28, 2008. OSM's administrative record was filed on February 25, 2008. OSM's motion to dismiss for lack of jurisdiction and failure to join an indispensable party was filed on March 10, 2008. On the same date, BHP filed a motion to dismiss for lack of jurisdiction, to which APS filed a motion of joinder. The merits briefing schedule has been stayed pending resolution of the motions to dismiss. The US Attorney is awaiting notice from the judge regarding resolution of motions.

On July 1, 2009 Judge John L. Kane with the US District Court in Denver ordered a supplemental response to cross motions from the Federal Defendants regarding the status of disclosure of two documents, an archeological and an ethnographic report that were determined to be privileged, and of discussions with the Navajo Nation Historic Preservation department regarding the redaction of these documents and any other recent events related to the litigation. On August 3, 2009 Judge Kane issued a Protective Order for these two documents and they have been placed in our safe, a secure location. On September 30, 2009 Judge Kane ruled on OSM's motion to dismiss. The Judge dismissed one claim and upheld five claims. The Plaintiffs filed their opening brief to the court on December 15, 2009. OSM and Intervenor's response briefs were filed January 29, 2010. Plaintiffs' reply was filed February 26, 2010.

By order dated June 12, 2010, the Court set oral argument and ordered supplemental briefing on specific issues (mootness, range of alternatives studied in the EA in light of OSM's statutory authority, and adequacy of public notice of the EA under a totality of the circumstances analysis). Supplemental briefs were filed August 17, 2010 and oral argument was held August 25, 2010. OSM and Intervenors have argued that the case would be moot with approval of BHP's pending application for permit renewal.

On October 28, 2010, the Court in a memorandum opinion and order ruled that OSM's approval of the 2005 Permit Revision Application is vacated and remanded to the agency for further proceedings consistent with this decision. It was ordered that OSM:

1. Address the presumption that approval of the 2005 Permit Revision Application is a type of action for which an EIS is normally prepared;
2. Consider the environmental effects of the Burnham Road Realignment in connection with its analysis of the 2005 Permit Revision Application;
3. Include a meaningful discussion of all reasonable alternatives, including approving the 2005 Permit Revision Application with conditions;
4. Discuss the specific mitigation measures proposed in the ethnographic studies in determining the severity of the effects that BHP's 2005 Permit Revision Application will have on scientific, historic, and cultural resources in Area IV North;
5. Include in their revised EA a discussion of coal combustion waste (CCW) to the extent it is mentioned in the 2005 Permit Revision Application; and
6. Provide meaningful public notice, including but not limited to publication in the Navajo Times and airing advertisements in both English and Navajo on local Navajo radio stations, for all future actions related to its permitting responsibilities at the Navajo Mine.

It was further ordered that all pending motions are denied as moot.

On November 3, 2010, the Applicants filed a motion for summary decision regarding their appeal of OSM's approval of the Burnham Road Realignment with the Office of Hearings and Appeals Departmental Cases Hearings Division. Based on the Court's final order vacating the Area IV North approval and the judge's order to consider the environmental effects of the Burnham Road Realignment in connection with its analysis of the Area IV North permit revision application, the applicants request that the approval of the Burnham Road realignment be vacated. OSM's response to the motion for summary disposition in the Burnham Road case is due November 19.

Conversation Contents

OSM-BLM Coordination Conference Call

Attachments:

/69. OSM-BLM Coordination Conference Call/1.1
Connected_Actions_Analysis_04092013 v3.pdf
/69. OSM-BLM Coordination Conference Call/1.2 Connected_Actions_inclusion of
West Mesa 12172012.pdf
/69. OSM-BLM Coordination Conference Call/1.3
FourCorners_Figure4_9_2_JurisdictionalBoundaries.pdf
/69. OSM-BLM Coordination Conference Call/1.4 BLM PNM Lines.xlsx
/69. OSM-BLM Coordination Conference Call/2.1
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/69. OSM-BLM Coordination Conference Call/2.3
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/69. OSM-BLM Coordination Conference Call/2.4 BLM PNM Lines.xlsx

"Calle, Marcelo" <mcalle@osmre.gov>

From: "Calle, Marcelo" <mcalle@osmre.gov>
Sent: Thu Apr 11 2013 09:16:44 GMT-0600 (MDT)
To: Powell King <pking@blm.gov>, Shannon Hoefeler
<shoele@blm.gov>, Marcella Martinez
<mmartine@blm.gov>, Joseph Galluzzi
<jgalluzz@blm.gov>
Subject: OSM-BLM Coordination Conference Call
Connected_Actions_Analysis_04092013 v3.pdf
Attachments: Connected_Actions_inclusion of West Mesa 12172012.pdf
FourCorners_Figure4_9_2_JurisdictionalBoundaries.pdf
BLM PNM Lines.xlsx

Afternoon,

Thank you all again for participation on yesterdays call. I wanted to follow up with some action items defined in the meeting.

Shannon - Could you please discuss with the appropriate BLM contact the question Powell King raised regarding the BLM's participation as described in the current MOU. Specifically, the current MOU does not describe the BLM's action related to the ROW renewal. Does the BLM wish to amend the current MOU to include the BLM ROW

renewal action? I looked at notes from a previous meeting and Jim Copeland was mentioned as a contact.

Powell - If the PNM 345 kV TL ROW from Arizona Public Service (APS) Four Corners Power Plant (FCPP) to the West Mesa Switchyard (FW TL ROW) is not fully administered by the BLM FFO, could you please forward me the contact information for the appropriate BLM person at the Rio Puerco - Albuquerque Field Office to discuss the Project including Section 106 related to the this line.

In response to the question brought up by Dan Tormey (Cardno) during the call regarding the applicable expiration date of the BLM FW TL ROW.

Early during our analysis of actions to be considered within the scope of the EIS analysis and other consultation e.g. Section 7 ESA & Section 106 NHPA; there was a question regarding the expiration date for ROW renewals associated with BLM administered portions of the PNM 345 kV TL extending from the Arizona Public Service (APS) Four Corners Power Plant (FCPP) to the Rio Puerco Switchyard and then on to the West Mesa Switchyard. OSM had originally considered including the action from FCPP to Rio Puerco substation but later concluded the action should be extended to the West Mesa Switchyard. (see attached connected action documents)

The confusion over the applicable ROW renewal date arose upon review of information provided by the BLM FFO (see attached BLM Row spreadsheet) indicating there is a ROW administered by the BLM described as the **Rio Puerco Line** (expiration date 2018) and another ROW administered by the BLM described as the **APS Plant to West Mesa Switch** (expiration 2016). Through coordination with the BLM and PNM it was concluded that the applicable line for consideration as a connected action within the EIS was the **APS Plant to West Mesa Switch** (expiration 2016). Please let OSM know if this conclusion is not correct.

Regards,

--

Marcelo Calle

EIS Coordinator, The Four Corners & Navajo Mine Energy Project
Office of Surface Mining Reclamation and Enforcement
Program Support Division, Indian Programs Branch
1999 Broadway, Suite 3320
Denver, CO 80202-3050

mcalle@osmre.gov

(303) 293-5035 Office

(303) 293-5032 Fax

"Spencer, Stephen" <stephen_spencer@ios.doi.gov>

From: "Spencer, Stephen" <stephen_spencer@ios.doi.gov>
Sent: Thu Apr 11 2013 10:05:20 GMT-0600 (MDT)
To: Shirley Martinez <Shirley_Martinez@ios.doi.gov>
Subject: Fwd: OSM-BLM Coordination Conference Call
Connected_Actions_Analysis_04092013 v3.pdf
Connected_Actions_inclusion of West Mesa 12172012.pdf
Attachments: FourCorners_Figure4_9_2_JurisdictionalBoundaries.pdf
BLM PNM Lines.xlsx

Please print these attachments for my file. They are only 2-3 pages each so do one-sided. Except for the one spreadsheet, they are graphics so they are big files

----- Forwarded message -----

From: **Calle, Marcelo** <mcalle@osmre.gov>
Date: Thu, Apr 11, 2013 at 9:16 AM
Subject: OSM-BLM Coordination Conference Call
To: Powell King <pkking@blm.gov>, Shannon Hoefeler <shoefele@blm.gov>, Marcella Martinez <mmartine@blm.gov>, Joseph Galluzzi <jgalluzz@blm.gov>
Cc: Dan Tormey <daniel.tormey@cardno.com>, Joe Lockerd <joe.lockerd@cardnotec.com>, Amanda Nisula <anisula@blm.gov>, Scott Hall <shall@blm.gov>, Foster Kirby <FKirby@osmre.gov>, Kimberly.Demuth@cardno.com, Rick Williamson <RLWilliamson@osmre.gov>, Stephen Spencer <Stephen_Spencer@ios.doi.gov>

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Regards,

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Marcelo Calle

EIS Coordinator, The Four Corners & Navajo Mine Energy Project
Office of Surface Mining Reclamation and Enforcement
Program Support Division, Indian Programs Branch
1999 Broadway, Suite 3320
Denver, CO 80202-3050

mcalle@osmre.gov

(303) 293-5035 Office

(303) 293-5032 Fax

--

Stephen R. Spencer, PhD
Regional Environmental Officer
Office of Environmental Policy and Compliance
U.S. Department of the Interior
1001 Indian School Road NW, Suite 348
Albuquerque, NM 87104
Phone: (505) 563-3572 Fax: (505) 563-3066 Cell: (505) 249-2462
Stephen_Spencer@ios.doi.gov
Web Site: www.doi.gov/oepec/albuquerque.html

Conversation Contents

Fwd: High Priority Issues for the new Secretary

/70. Fwd: High Priority Issues for the new Secretary/4.1 Navajo Mine Briefing Paper 4-9-2013.docx

"Taylor, Willie" <willie_taylor@ios.doi.gov>

From: "Taylor, Willie" <willie_taylor@ios.doi.gov>
Sent: Tue Apr 09 2013 12:05:50 GMT-0600 (MDT)
Allison O'Brien <Allison_O'Brien@ios.doi.gov>, Andrew Raddant <Andrew_Raddant@ios.doi.gov>, Joyce Stanley <joyce_stanley@ios.doi.gov>, Lindy M Nelson <Lindy_Nelson@ios.doi.gov>, Pamela Bergmann <Pamela_Bergmann@ios.doi.gov>, Patricia Port <patricia_port@ios.doi.gov>, Robert Stewart <Robert_F_Stewart@ios.doi.gov>, Stephen Spencer <Stephen_Spencer@ios.doi.gov>, Willie Taylor <Willie_Taylor@ios.doi.gov>, David Behler <david_behler@ios.doi.gov>, David Sire <david_sire@ios.doi.gov>, Kathleen Bartholomew <Kathleen_Bartholomew@ios.doi.gov>, Lajuan Randolph <lajuan_randolph@ios.doi.gov>, Mary Josie Blanchard <MaryJosie_Blanchard@ios.doi.gov>, William Lodder <william_lodder@ios.doi.gov>
To:
Subject: Fwd: High Priority Issues for the new Secretary

Topics and timeframes due by 3:00 PM today.

----- Forwarded message -----

From: **Faeth, Lori** <lori_faeth@ios.doi.gov>
Date: Tue, Apr 9, 2013 at 1:55 PM
Subject: High Priority Issues for the new Secretary
To: joel_clement@ios.doi.gov, Barb Pitkin <Barbara_Pitkin@ios.doi.gov>, David Downes <David_Downes@ios.doi.gov>, Kimo Kaloi <Kaiini_Kaloi@ios.doi.gov>, Mary Josie Blanchard <MaryJosie_Blanchard@ios.doi.gov>, Olivia Ferriter <Olivia_Ferriter@ios.doi.gov>, Rick Dawson <Richard_Dawson@ios.doi.gov>, Steve Glomb <Steve_Glomb@ios.doi.gov>, Willie Taylor <Willie_Taylor@ios.doi.gov>

All,

Rhea just asked me to put together a list of high priority things that should get on the new

Secretary's radar screen for the first 100 days.

Need to get this to her by COB today so please send me anything you think we need to flag. Not looking for transition documents, just high-level, priority issues/meetings she should do.

(b) (5)

thanks

Lori

--

Lori Faeth
U.S. Department of the Interior
Deputy Assistant Secretary for Policy and International Affairs
202-208-4852
lori_faeth@ios.doi.gov

--

Willie R. Taylor, PhD
Director, Office of Environmental Policy
and Compliance
(O)202/208-3891
(F)202/208-6970

"Spencer, Stephen" <stephen_spencer@ios.doi.gov>

From: "Spencer, Stephen" <stephen_spencer@ios.doi.gov>
Sent: Tue Apr 09 2013 12:12:42 GMT-0600 (MDT)
To: "Taylor, Willie" <willie_taylor@ios.doi.gov>
Subject: Re: High Priority Issues for the new Secretary

I don't think I have anything at that level in the next 100 days. I have some updated time frames for the Navajo Mine briefing paper if you want me to update that.

On Tue, Apr 9, 2013 at 12:05 PM, Taylor, Willie <willie_taylor@ios.doi.gov> wrote:
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<[Olivia Ferriter@ios.doi.gov](mailto:Olivia_Ferriter@ios.doi.gov)>, Rick Dawson <[Richard Dawson@ios.doi.gov](mailto:Richard_Dawson@ios.doi.gov)>, Steve Glomb <[Steve Glomb@ios.doi.gov](mailto:Steve_Glomb@ios.doi.gov)>, Willie Taylor <[Willie Taylor@ios.doi.gov](mailto:Willie_Taylor@ios.doi.gov)>

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Stephen_Spencer@ios.doi.gov
Web Site: www.doi.gov/oepec/albuquerque.html

"Taylor, Willie" <willie_taylor@ios.doi.gov>

From: "Taylor, Willie" <willie_taylor@ios.doi.gov>
Sent: Tue Apr 09 2013 12:13:34 GMT-0600 (MDT)
To: "Spencer, Stephen" <stephen_spencer@ios.doi.gov>
Subject: Re: High Priority Issues for the new Secretary

Please do so, tomorrow is fine if they do not occur within 100 days.

On Tue, Apr 9, 2013 at 2:12 PM, Spencer, Stephen <stephen_spencer@ios.doi.gov> wrote:

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On Tue, Apr 9, 2013 at 12:05 PM, Taylor, Willie <willie_taylor@ios.doi.gov> wrote:
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Date: Tue, Apr 9, 2013 at 1:55 PM

Subject: High Priority Issues for the new Secretary

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U.S. Department of the Interior

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"Spencer, Stephen" <stephen_spencer@ios.doi.gov>

From: "Spencer, Stephen" <stephen_spencer@ios.doi.gov>
Sent: Tue Apr 09 2013 13:04:41 GMT-0600 (MDT)
To: "Taylor, Willie" <willie_taylor@ios.doi.gov>
Subject: Re: High Priority Issues for the new Secretary
Attachments: Navajo Mine Briefing Paper 4-9-2013.docx

The updated Navajo Mine briefing paper is attached. Mainly updated the schedule and made a few clarifying tweaks. I had a visit from a person that works in the Navajo Nation Office of the President and Vice President and mentioned we were preparing this briefing for the new Secretary and she was wondering if I could provide it to her. I told her I would

ask your opinion. I don't think it is urgent since she knows everything that is in it. I think she is just wondering what we are telling the new Secretary.

On Tue, Apr 9, 2013 at 12:13 PM, Taylor, Willie <willie_taylor@ios.doi.gov> wrote:

Please do so, tomorrow is fine if they do not occur within 100 days.

On Tue, Apr 9, 2013 at 2:12 PM, Spencer, Stephen <stephen_spencer@ios.doi.gov> wrote:

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Lori

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Lori Faeth

U.S. Department of the Interior

Deputy Assistant Secretary for Policy and International Affairs

202-208-4852

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"Taylor, Willie" <willie_taylor@ios.doi.gov>

Memorandum

Date October 29, 2012

To: Rick Williamson and Marcelo Calle
Harrilene Yazzie

From: Cardno: B. Pogue, M. Schwartz, D. Tormey

RE: **Deliberative Process Material – Draft criteria and list of projects to be considered in the cumulative effects analysis for the FCPP and Navajo Mine Energy Project**

In order to accurately capture all projects that should be considered in the cumulative effects analysis for the FCPP and Navajo Mine Energy Project, we have developed the following draft criteria and list for consideration by OSM and the Cooperating Agencies. This list was developed through review of the cumulative project list provided in the Desert Rock Energy Project EIS, and work with BIA Navajo Region, regarding projects on the Navajo Nation and nearby tribal lands.

At this stage of our analysis, we are seeking to identify projects with the potential to contribute to cumulative impacts. Once the list of projects is developed, we will analyze them to determine whether there is sufficient overlap in the temporal, spatial, and type of impact expected from the projects to be included in the Cumulative Impact Analysis. Please circulate this list among the Cooperating Agencies, for their review of the accuracy of the descriptions for projects that are presently listed, as well as their input on any additional projects that should be considered.

Criteria for Project Selection

The Council on Environmental Quality (CEQ) regulations for implementing the procedural provisions of NEPA define cumulative impacts as those impacts “on the environment which result from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (federal or non-federal) or person undertakes such other actions” (40 CFR 1508.7). Considering this guidance, an initial list of projects/actions and existing facilities in the Four Corners region was developed on the basis that an existing or future action may have an effect on resources, the ecosystem, or the human environment.

The projects/actions presented in Table 1 below meet both the temporal and spatial criteria to be considered in the cumulative analysis. A project would meet the temporal criteria if that action has already occurred, is ongoing, or is “reasonably foreseeable”; that is, the project is funded for future implementation, or is included in firm near-term plans. Since the time period for the Proposed Action would extend operations of the FCPP and Navajo Mine through 2041, the list includes all reasonably foreseeable projects that have the potential to be executed within this time frame. Types of actions with firm near-term plans include:

- Actions for which NEPA documents are in preparation or finalized;
- Actions in a detailed design or planning phase;

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- Actions listed in formal NOI published in the Federal Register or State publications;
- Actions for which enabling legislation has been passed or a Memorandum of Understanding has been signed; and,
- Actions that have been submitted to Federal and State regulators to begin the permitting process (i.e. land use/ROW applications).

A project would meet the spatial criteria if that action could have an environmental effect in same region of influence as the Proposed Action. Considering that environmental effects are manifested in various ways, the cumulative study area for each resource will be developed specifically to that resource's potential area of effect. For example, air emissions can travel long distances, whereas noise would travel shorter distances.

After a review of existing and proposed projects in the relative vicinity of the Four Corners Power Plant & Navajo Mine, the following project-types could have environmental consequences that are similar to the Proposed Action, and therefore have the potential for cumulative impacts:

1. Energy Generation and Transmission Projects
2. Oil & Gas Projects
3. Mining Projects
4. Transportation Projects
5. Water-Related Projects
6. Other Developments

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Table 1 Draft Summary List of Projects Considered in the Cumulative Effects Analysis

Project Type	Project Name	Status	Project Description	Location
Energy Generation & Transmission Projects	San Juan Generating Station (SJGS)	Ongoing	SJGS is operated by PNM and consists of four coal-fired, pressurized units that generate about 1,800 gross megawatts of electricity. SJGS went online in 1973. It is the seventh-largest coal-fired generating station in the West, and is PNM's primary generation source, serving 58 percent of the power needs of PNM customers. The regional haze provision of the Clean Air Act requires the San Juan Generating Station to reduce NOx emissions by September 2016 through the installation of Best Available Retrofit Technology, or BART. Although the state and EPA are in court to determine the specific BART, the timeline for compliance remains 2016. PNM announced October 16 at a Farmington City Council meeting that two units of the plant would close in 2017 and the remaining two units would be shut-down by 2053 (Daily Times October 16, 2012)	About 15 miles northwest of Farmington, NM
	Navajo Generating Station (NGS)	Ongoing	NGS is a coal-fired power plant with a capacity of 2,250 megawatts from three 750-MW units. NGS serves electric customers in Arizona, Nevada and California. It began producing commercial power in 1974. The power plant is served by coal mined at Peabody's Kayenta mining operations (50 miles to the east) and hauled by the Black Mesa and Lake Powell Railroad. SRP and Peabody have submitted applications to the Bureau of Reclamation, OSM, and other agencies to continue operations of the power plant and mine through 2044. If the approvals are not granted, the power plant would shut down in 2019.	About 5 miles east of Page, AZ
	Escalante Generating Station	Ongoing	Escalante Generating Station, located in Prewitt, NM, is a single-unit, 250-megawatt, coal-fired power plant, constructed in 1984. Escalante Station is owned and operated by Tri-State Generation & Transmission Association, a cooperative. Western Fuels Association (WFA) purchases coal from the Lee Ranch Mine and operates the Escalante-Western Railway to transport it to the Escalante Station. WFA provided 1.1 million tons of coal in 2005.	Prewitt, NM, 27 miles northwest of Grants, NM
	Animas/Bloomfield Power Plant	Ongoing	Gas power plant. Owned and operated by the City of Farmington. Pipeline, natural gas, cogeneration. 51 MW.	Bloomfield, NM
	Desert Rock Energy Project	Proposed	Sithe Global Power, LCC (Sithe Global) proposes to construct a hybrid dry-cooled, coal-fired, 1,500-megawatt (mW) electrical power generating plant approximately 30 miles southwest of Farmington, New Mexico, on the Navajo Indian Reservation. Sithe Global is developing the project with the Diné Power Authority, an enterprise of the Navajo Nation. A Draft EIS was prepared in June 2007. No Final EIS or Agency Decision has been released.	Approximately 30 miles southwest of Farmington, NM
	Comanche Generating Stations (CGS)	Ongoing	CGS is a cogeneration 1,410 MW power plant. owned by Xcel Energy. Two of the power plant's units were constructed in the 1970s. Unit 3 was approved in 2004, constructed in 2005, and became operational in 2010.	Pueblo, CO

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Project Type	Project Name	Status	Project Description	Location
Energy Generation & Transmission Projects	Navajo Transmission Project (NTP)	Proposed	The NTP, proposed by the Dine Power Authority (an enterprise of the Navajo Nation), would involve the construction of 470 miles of 500kV alternating current transmission lines. The line would connect the Four Corners area to the Las Vegas area, with an interconnection point north of Flagstaff to allow access to the metropolitan Phoenix market. NTP received a Record of Decision (ROD) and Grant of Rights-of-Ways from Bureau of Land Management (BLM) for Segments I and II on September 29, 2008. The Bureau of Indian Affairs (BIA) issued a similar ROD for the Navajo Nation Trust Lands in Segments I and II on October 8, 2008. However, both records of decision have been rescinded. The project is currently on hold.	NM, AZ, NV
	Ute Mountain Ute Power Generation Facility	Proposed	The Ute Mountain power generation facility would include new coal-bed methane and oil and gas wells. The Ute Mountain Indian Tribe has filed a water rights claim with the Eleventh Judicial District Court, which serves as the arbitrator for water rights claims on the San Juan River. The tribe claimed between 7,300 and 9,300 acre-feet of water. It is anticipated that a decision regarding water rights would occur (when?).	San Juan Basin, CO
	Milagro Power Plant	Existing	The Milagro power plant is a gas power plant, pipeline, natural gas, cogeneration. It consists of two 61 MW units and is owned and operated by William Field Services. The first 61 MW unit was installed in 1981 and the second was installed in 1996.	Bloomfield, NM
	Algodones Solar Facility	Existing	The Algodones solar facility is a 25-kilowatt solar generating station operated and owned by PNM. Through its customer- owned solar photovoltaic program, PNM purchases renewable energy certificates from participating customers at a rate of 13 cents every time their interconnected solar PV systems generate a kilowatt-hour of electricity. There are currently 59 customers enrolled in the program, for a combined capacity of 113 kilowatts (AC) of solar energy.	Algodones, NM
	Energy utility corridor planning	Planned	The final programmatic environmental impact statement (PEIS) to designate energy corridors in 11 western states was published in 2008 by an interagency project management team (DOE, BLM, USFS, and DOD) to identify energy utility corridors for the implementation of Section 368 of the Energy Policy Act of 2005 (designation of West-wide energy corridors). No Record of Decision has yet been published. Only 1 new energy corridor in San Juan County was analyzed in the study – 80-273 – running north-south from Ute lands in Utah, through the county to approximately Zia Pueblo, New Mexico.	Various locations throughout the western US
	Sunshine Wind Project (Hopi)	Planned	The Hopi Tribal Council and the Coconino County Planning & Zoning Department approved the project. The proposed Sunshine Wind Park in eastern Coconino County is the most fully developed and market-ready wind project in Arizona. Approximately 40 wind turbines would be installed and provide 60 megawatts of generating capacity. The wind park was targeted for development in 2007 and turbines would be sited on a combination of Hopi private fee lands and private ranch lands (Bar-T-Bar Ranch and other private lands); however, the project was delayed due to purchase issues with APS, a viewshed lawsuit by a nearby landowner, and rising costs of materials.	35 miles east of Flagstaff near the Meteor Crater exit along I-40

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Project Type	Project Name	Status	Project Description	Location
	Other FCPP Transmission Lines	Existing	APS operates the FC-Pillar transmission line, a 230-kV line which spans 102 miles. The ROW for this line was approved in [YEAR]. In addition, two other transmission lines transmit power generated by the FCPP, the FC-Shiprock 345-kV line operated by the Western Area Power Association which runs 6.1 miles to Shiprock and PacifiCorp's 345KV line which runs 30.6 miles to the northwest. Rights-of-way for these two lines were approved in [YEAR] and [YEAR], respectively.	Extending to the northwest and southeast from the FCPP
Oil & Gas Projects	Proposed oil and gas drilling	Planned	Western Oil and Gas has proposed approximately 600 natural gas wells in eastern Burnham Chapter extending north into Upper Fruitland and Nenahnezad/San Juan Chapters. The installation of each well would require well pads (approximately 50 by 50 feet each) and construction areas, in addition to access roads, pipelines, or distribution power lines as needed (for productive wells). The BIA is currently performing NEPA review for this project and an Agency Decision is expected in 2013.	NAPI area, Navajo Reservation, NM
	Oil & Gas Exploration on BLM Lands	Planned	The Resource Management Plan for the lands managed by the BLM Farmington Office indicates development of 9,942 new oil and gas wells from 2003 and 2023 in the San Juan Basin, allowing for about 16,100 acres of long-term disturbance.	BLM Farmington District
	San Juan Refinery, Bloomfield	Ongoing	Giant owns and operates the Bloomfield oil and gas refinery, located on 285 acres near Farmington, New Mexico. The total approximate refining capacity of the refinery is 16,600 bpd. A locally produced, high-quality crude known as Four Corners Sweet is the primary feedstock, although the supply is supplemented, as necessary, with other feedstocks from within and outside the four corners area. Crude oil supply to the refinery comes primarily from the Four Corners area and is either collected by Giant's pipeline network or delivered by truck transports to pipeline injection points and/or refinery tankage.	Bloomfield, NM
	San Juan River Gas Plant	Ongoing	The San Juan River gas plant is owned by Western Gas Resources. And is a natural gas treatment plant located near Fruitland, New Mexico. The San Juan River Plant consists of several units; a purification plant, a natural gasoline plant, a compressor station and a dehydration unit. The Gas Plant facility includes compression, amine gas treating, liquids stabilization, Claus sulfur recovery plant, dehydration, and a cryogenic liquid recovery plant. The plant produces a lean, dry residue gas stream, a mixed natural gas liquid stream (NGL) and a liquid sulfur stream. The liquid products contain ethane, propane, butanes, pentanes and heavier components. The plant handles regulated flammables such as ethane, propane, mixed butanes and mixed pentanes. The plant uses an amine process to remove carbon dioxide and hydrogen sulfide but does not contain threshold quantities of any materials classified as toxic.	Located about 10 miles west of Farmington, NM

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Project Type	Project Name	Status	Project Description	Location
Oil & Gas Projects	Transwestern Pipeline Company's Phoenix Expansion Project	Existing	Construction is currently underway on the Phoenix Expansion Project, which expands the Transwestern Pipeline Company's natural gas pipeline system by approximately 260 miles from its mainline in Yavapai, County, Arizona to delivery points in the Phoenix metropolitan area market. As part of the overall project, Transwestern is building approximately 25 miles of pipeline looping parallel to its existing San Juan Lateral, in San Juan County (FERC 2006). The San Juan Lateral extends from San Juan County, New Mexico, to connect with Transwestern's mainline in McKinley County, New Mexico, and is located approximately 15 miles or further from the study area.	San Juan County, NM
	Oil and Gas Development (BLM Tres Rios Field Office)	Projected	According to the Draft San Juan Basin Land Use Plan (2008), approximately 1.3 million acres of USFS and BLM managed land, as well as some private land, in the San Juan Basin would be made available to oil and gas leases during the project period. A Draft EIS analyzing impacts was released for public comment in 2008; a final EIS or Record of Decision has not yet been published.	La Plata and Montezuma Counties, CO
	Oil and Gas Development (BLM Farmington Office)	Projected	The Record of Decision for the Farmington Final EIS indicates the potential development of 9,942 new oil and gas wells on the lands managed by the BLM Farmington Office.	San Juan, McKinley, and Rio Arriba Counties, NM
	Southern Ute Indian Tribe (SUIT) Development of Fruitland Coal Bed Methane	Projected	Current basin-wide Fruitland coalbed spacing allows one gas well per 320 acres. Infill applications for specific areas have been approved by the COGCC, allowing an optional second Fruitland coal bed gas well on each 320-acre spacing unit. Infill drilling within 320-acre spacing units is currently occurring and may be a future trend Basin-wide. If oil and gas operators and regulators continue to see sufficient economic merit and legal justification to perpetuate the current trend of drilling optional infill wells on existing 320 acre spacing units, 1000 additional infill Fruitland coal bed methane wells (350 north of the Ute Indian Reservation) could be drilled in the Colorado portion of the San Juan Basin.	San Juan Basin, CO
	Mid-America Pipeline	Existing	Bureau of Land Management (BLM) approved a proposed natural gas liquids pipeline project in 2005, and granted rights-of-way and temporary use permits for 12 pipeline loop sections that were constructed by the Mid-America Pipeline Company (MAPL). Parallel sections of pipeline total 202 miles along an 840-mile route between Granger and Wamsutter areas in Wyoming, and Hobbs, New Mexico. The pipelines are 8 to 16 inches in diameter, buried, steel, and carry natural gas liquids. Existing ancillary facilities, including pump stations, were expanded to have more capacity.	Would pass through San Juan County, NM [to pass through Huerfano, NM, 30 miles east of the project site]
	Ciniza Refinery	Ongoing	Giant owns and operates the Ciniza refinery. The total approximate refining capacity of the refinery is 26,000 bpd. A locally produced, high-quality crude known as Four Corners Sweet is the primary feedstock. Crude oil supply to the refinery comes primarily from the Four Corners area and is either collected by Giant's pipeline network or delivered by truck.	Near Gallup, NM

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Project Type	Project Name	Status	Project Description	Location
Mining	San Juan Coal Company San Juan Mine	Existing	An active underground mine which is the exclusive supplier of coal to the SJGS. Surface mining at San Juan reached a depth in the early 2000s that represented an economic limit, but underground mining is feasible and the coal supply contract with SJGS extends through 2017. It is expected that the contract would be renewed for 25 years in 2017.	15 miles west of Farmington, NM
	San Juan Coal Company La Plata Mine	Past	From 1986 through 2002 the La Plata mine also supplied coal to the San Juan Generating Station. The mine ceased operation in 2002 and reclamation continued through 2005.	State Highway 170, La Plata, San Juan County, NM
Mining	McKinley Mine (Chevron Mine Inc.)	Existing	The McKinley Mine is located between Gallup, NM and Window Rock, AZ. Coal extraction ceased in 2009 and reclamation activity continues presently.	Navajo Reservation, Four Corners area
	Kayenta Mine Complex Permit Revision (Peabody Western Coal Company)	Part Existing / Part Past, Suspended, Proposed	The Kayenta Mine Complex (KMC) permit area is located on about 44,073 acres of land leased within the boundaries of the Hopi Tribe and Navajo Nation Indian Reservations in northern Arizona, about 15 miles south of the town of Kayenta, in Navajo County. The KMC operation produces about 8.2 million tons of coal per year. The coal is delivered by electric railroad 78 miles northwest to the NGS near Page, in northern Coconino County, Arizona. PWCC has submitted a permit revision application to OSM, proposing modifications to the LOM plan for the KMC. In summary, the Permit Revision would approve a revised LOM plan that addresses all of the leased tons and reserves under the existing permit, would incorporate the existing support facilities under a single permit, and would abandon future plans to mine coal reserves in the area that was previously operated as the Black Mesa Mine. Approval of the proposed permit revision application would not change the mining methods or average annual production rate of the Kayenta Mine.	Mining operations south of Kayenta AZ. Other components to south of Leupp, AZ and to Laughlin, NV
Transportation	Durango Pumping Plant (tied to the Animas – La Plata Project (ALP))	Existing	The Durango Pumping Plant was proposed as part of the ALP project and the water settlement with the Ute Mountain Ute Tribe and the Southern Ute Indian Tribe. These tribes have water rights that date back to 1868. Under the settlement, the Bureau of Reclamation's obligations, one of which is completing the Animas-La Plata Project, will provide non-Indian water users in Southwest Colorado certainty to the continued, historical use of water. The Durango Pumping Plant lifts water from the Animas River up through the Ridges Basin Inlet Conduit into Lake Nighthorse. Lake Nighthorse impounds approximately 120,000 acre-feet (AF) of water and includes an inactive pool of approximately 30,000 AF for recreational, fishery, and water quality purposes. The pumping plant is located about 200 feet from the river and includes: an intake structure, a service yard, 8 pumps of various size, and a surge chamber. Construction was initiated in 2003 and completed in 20011..	Just south of downtown Durango, CO across from Santa Rita Park

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Project Type	Project Name	Status	Project Description	Location
	Improvements to US 491	Planned	Highway improvements have been planned for US 491 and include widening the existing 2-lane highway to 4 lanes. The new roadway is being constructed on the eastern side of the existing roadway and would be fully contained within the existing right-of-way. (FHA et al. 2006). This project underwent NEPA review and a FONSI was issued in 2007. Improvements to US 491 were initiated in 2007 and are currently ongoing.	US 491, 10 miles south of Shiprock, NM to Sheep Springs, NM
Water	Animas –La Plata Project	Existing	Implementation of the Colorado Ute Settlement Act Amendments of 2000. The project is being built to fulfill the water rights settlement of the Ute Mountain Ute Tribe and the Southern Ute Indian Tribe. Fulfillment of the settlement obligations, one of which is completing the Animas-La Plata Project, would provide non-Indian water users in Southwest Colorado certainty to the continued, historical use of water. Storage would largely be reserved for Indian water users, but would also provide nearly 33 percent of the storage in Lake Nighthorse for use by non-Indian entities in the Four Corners region. Seven entities would benefit. These are: 1) Southern Ute Indian Tribe, 2) Ute Mountain Ute Tribe, 3) Animas-La Plata Water Conservancy District, 4) State of Colorado, 5) Navajo Nation, 6) San Juan Water Commission and 7) La Plata Conservancy District. The Navajo Municipal Pipeline, sometimes referred to as the Farmington to Shiprock Pipeline, was authorized under the Animas-La Plata Project. Construction was completed and reservoir filled in 2011.	Approximately 3 miles southwest of downtown Durango, CO
	Navajo Water Settlement	Existing	On April 19, 2005, the State of New Mexico and the Navajo Nation signed the Navajo Settlement Agreement (Navajo Nation - State of New Mexico, 2005). The Secretary of the Interior authorized the Settlement in December 2010. The agreement will resolve the claims of the Navajo Nation to the use of waters of the Basin in New Mexico. The Navajo Settlement Agreement is intended to provide water rights and associated water development projects, including the proposed project, for the benefit of the Navajo Nation in exchange for a release of claims to water that potentially might otherwise displace existing non-Navajo water uses in the Basin in New Mexico. Additional NEPA compliance may be needed to implement other portions of the agreement (Fruitland-Cambridge, Hogback-Cudei, conjunctive use groundwater wells, and others).	Navajo Reservation, NM
	Jicarilla Apache Nation Navajo River Water Supply Project	Existing	This project involves the Bureau of Reclamation approving a subcontract between the Jicarilla Apache Nation (Nation) and the city of Santa Fe (City). Under the subcontract, the Nation would make available for delivery to the city at the outlet works of Heron Dam up to 3,000 acre-feet per year (acre-ft/yr) of the Nation's San Juan-Chama Project water entitlement under the Federal Contract. The term of the subcontract would be limited to 50 years beginning in 2007. The city's development of its distribution system, located near Santa Fe NM, is covered by a separate EIS.	Rio Arriba and Sante Fe Counties, NM

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Project Type	Project Name	Status	Project Description	Location
Water	Navajo Indian Irrigation Project (NIIP) & San Juan Irrigation Projects	Present	Irrigation water is released at Navajo Dam through diversion headworks. Irrigation water travels through a series of concrete lined open canals, membrane lined open canals, 7 tunnels, 15 siphons, and an in-line earth channel and reservoir behind Cutter Dam. Three pumping plants lift water to concrete lined open laterals. At full capacity, the system would carry 1,800 cubic feet per second. Two open lateral systems, totaling 40.6 miles in length, convey water to the southern and eastern parts of the development. Water is distributed to the turnouts at the individual farm units through about 340 miles of underground pipe lateral systems ranging from 6 to 84 inches in diameter.	San Juan River, NM
	Kutz Pumping Plant	Existing	The Kutz Pumping Plant is east of New Mexico State Highway 44. It lifts water from the Main Canal to Coury Lateral, which flows southward through Block 5. Using 5 electric motor-driven pumps, this plant has a capacity of 200 cubic feet per second with a dynamic head of 365 feet. It was completed in 1982.	NIIP Area, San Juan County, NM
	Gallegos Pumping Plant	Existing	The Gallegos Pumping Plant is near where the Main Canal crosses Gallegos Canyon. It lifts water from the Main Canal to Burnham Lateral, Stage 1. It has 8 electric motor-driven pumps, and has a capacity of 880 cubic feet per second, with a total dynamic head of 337 feet. It was completed in 2000.	NIIP Area, San Juan County, NM
	Moncisco Pumping Plant	Existing	Construction of the Moncisco Pumping Plant was scheduled to begin in 2003. It will lift water into the Burnham lateral, Stage 2, and open channel lateral, which will provide water for pumping plants to irrigate Blocks 10 and 11. Current design estimates call for this pumping plant to have a total capacity of 440 cfs and a total dynamic head of 168 feet.	NIIP Area, San Juan County, NM
	Navajo Dam Power Plant	Existing	Construction of the Navajo Dam was initiated in 1962 and was originally not designed for power generation. In 1983, the City of Farmington received authorization from Reclamation to install a 32mW hydrological power plant and switchyard. However, a United States District Judge ordered that construction of the Navajo Dam power plant cease. The decision cited the inadequate Environmental Impact Statement (EIS) and lack of authority to construct the plant. After the project concluded further environmental studies on the river, the effects of a power plant, and initiated action to complete a new EIS and obtain authorization, the city of Farmington successfully applied with the Federal Energy Regulatory Commission (FERC) to construct a power plant at Navajo Dam for their use. The FERC issued a license to the city of Farmington to construct the power plant in 1983, and the license expires in 2035.	Approximately 34 miles (45 miles upstream) east of Farmington, NM from Farmington, NM

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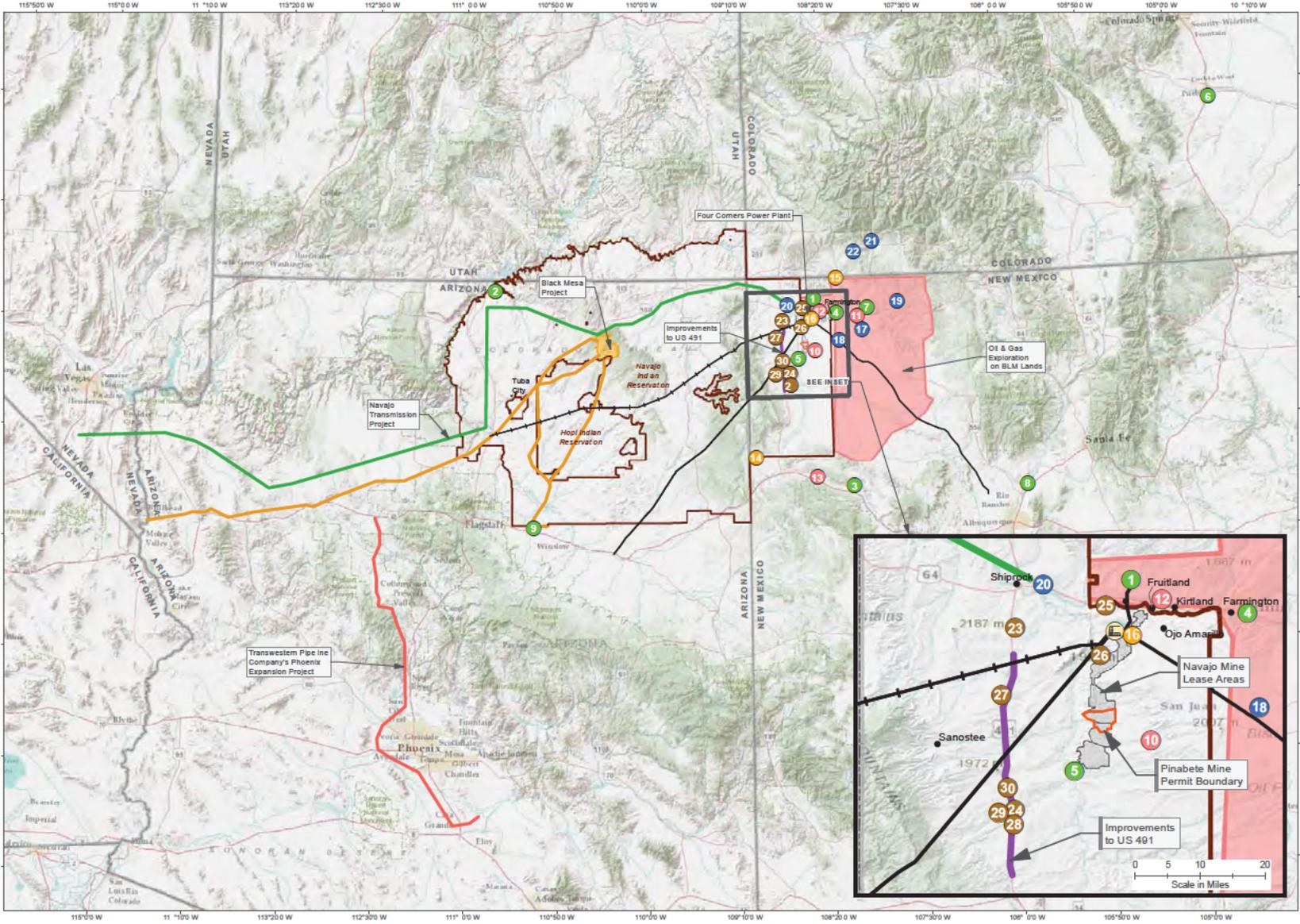
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Project Type	Project Name	Status	Project Description	Location
Water	Hogback Diversion Dam Project	Existing	The Bureau of Reclamation with funding appropriated for the San Juan Recovery Implementation Program Navajo Indian Irrigation Project constructed the dam. Project water is used for agricultural irrigation. The dam is intended to divert water (approximately 24,200 acre feet annually) into the irrigation system during periods of low water flow and to provide a more reliable river habitat for the protection of native fish species. The dam is not intended to create a permanent reservoir. Temporary methods were employed by the Irrigation Project to divert water by building dikes in the river with river sediments. The permanent diversion dam has an embankment that has a structural height of 10 feet and a crest length of 1110 feet. It was completed in 2001.	San Juan River near Shiprock, NM
	Navajo-Gallup Water Supply Project	Existing	The USBR approved the development of 2 lateral pipelines for water deliver – the San Juan and Cutter laterals. One pipeline will predominantly parallel US 491 and transport San Juan River water to the Navajo Nation and the Gallup area. Another spur will run north along Highway 591 to serve the communities of Naschitte and Sanostee. The second pipeline will serve the eastern portion of the Navajo Nation south of highway 550 (FHA et al. 2006). This pipeline from NIIP will be treated and sent along Highway 550 to Nageezi and then south to Torreon. Storage tanks and re-chlorination facilities are included in the project. This project underwent NEPA review and Reclamation issued a Record of Decision in September 2009. Pre-construction activities have been initiated and the project is slated for completion in 2015.	US 491 and Highway 550, Navajo Reservation, NM
	Hogback-Cudei Irrigation Project	Existing	A diversion of 48,550 acre-feet, or the quantity of water necessary to supply a depletion of 21,280 acre-feet from the San Juan River, whichever is less, of surface water from the direct flow of the San Juan River in any one year at the diversion dam for the Hogback-Cudei Irrigation Project for irrigation of 8,830 acres of land on the project generally located along the north and south sides of the San Juan River in the vicinity of the community of Shiprock, New Mexico, and between the diversion dam for the project and Four Corners, with a maximum diversion flow rate of 221 cubic feet per second, including any diversions from an alternate point of diversion at the historic Cudei ditch diversion heading.	Near Shiprock, NM
	Fruitland-Cambridge Irrigation Project	Existing	A diversion of 18,180 acre-feet, or the quantity of water necessary to supply a depletion of 7,970 acre-feet from the San Juan River, whichever is less, of surface water from the direct flow of the San Juan River in any one year at the diversion dam for the Fruitland-Cambridge Irrigation Project for irrigation of 3,335 acres of land on the project generally located along the south side of the San Juan River in the vicinity of the community of Fruitland, New Mexico, and between the City of Farmington and the diversion dam for the Hogback-Cudei irrigation Project, with a maximum diversion flow rate of 100 cubic feet per second, including any diversions from an alternate point of diversion at the historic Cambridge ditch diversion heading.	Along the San Juan River in Fruitland, NM
	Municipal Water Development	Existing & Planned	Navajo Tribal Utility Authority public water systems and other wells serve residential and livestock purposes on the Navajo Reservation. Planned developments include PL 87-121 projects on the Indian Health Service's sanitation deficiency list. Many of these projects would rely on groundwater.	Navajo Reservation

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Project Type	Project Name	Status	Project Description	Location
	Navajo Reservoir Operations & San Juan River Basin Recovery Implementation Program	Existing	Navajo Dam and Reservoir is owned, operated, and maintained by the Bureau of Reclamation. Since its original authorization in 1956, Congress has approved the use of Navajo Reservoir to fulfill a portion of the Jicarilla Settlement Act. After completion of the Navajo Unit in December 1963, the focus of the criteria for releasing water from the dam was primarily on flood control, NIIP supplies, and water storage. However, in the 1990s, the focus of the criteria and associated pattern of releasing water from the dam changed. The new focus included the needs of the endangered fish species, such as the Colorado pikeminnow and the razorback sucker, in the San Juan River. This project underwent NEPA review in 2006 where Bureau of Reclamation was the lead federal agency.	Approximately 34 miles (45 miles upstream) east of Farmington, NM from Farmington, NM
Other Projects	Shiprock Airport	Existing	A Navajo Nation Primary Airport used primarily for medical emergencies and secondarily for tribal government.	Shiprock, NM
	Burnham Airstrip	Past	Not in service. The Burnham Chapter community would like to see it reactivated as a regional airstrip or airport for emergency services or commercial development since it is centrally located between chapters.	Near the Burnham Chapter House
	San Juan Community-Based Land Use Plan	Planned & Existing	The San Juan Chapter Community-Based Land Use Plan (2002) identifies various Navajo trust lands in the San Juan Chapter area for grazing, recreation (i.e. nature trail from San Juan River to the San Juan Chapter house) and additional protections for an existing ceremonial burial area. These lands are located approximately 2 miles southwest of the FCPP.	Approximately 2 miles southwest of FCPP, Navajo Reservation, NM
	Proposed Prison	Existing (by the time the draft comes out)	As proposed in the Sanostee Land Use Plan (2004), a prison is being developed approximately 3 miles southwest of the FCPP. The prison is slated for completion in 2013.	Between milepost 7 and milepost 9 of Alternative Segment B
	Proposed Housing (Sanostee Chapter)	Planned	The Sanostee Land Use Plan (2004) identifies a possible 100-acre housing site adjacent to the eastern side of US 491 and directly south of the proposed utility corridor/water pipeline.	US 491, San Juan County, NM
	Proposed Housing & Commercial Development (Burnham Chapter)	Planned	The Burnham Chapter Land Use Plan (2005) identifies two areas for potential housing development. One site is located approximately a quarter mile south of the Chapter House, and the other site is approximately two miles west of the Chapter House on the north side of NR5. The Land Use Plan also identifies two locations at the junction of NR5 and NR5082 for commercial development.	1 mile from the southernmost portion of Navajo Mine



Four Corners
Power Plant and Navajo Mine Energy Project

PROJECTS CONSIDERED IN THE CUMULATIVE EFFECTS ANALYSIS

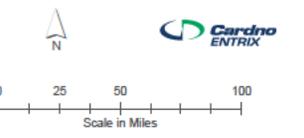
Figure 4.23-1 | Cumulative Effects

- PROJECT FACILITIES**
- Four Corners Power Plant
 - Navajo Mine Lease Areas
 - Pinabete Mine Permit Boundary

- TRANSMISSION LINES**
- 345kV
 - 500kV

PROJECT LOCATIONS ARE APPROXIMATE

- Energy Generation & Transmission**
 1. San Juan Generating Station
 2. Navajo Generating Station
 3. Escalante Generating Station
 4. Animas/Bloomfield Power Plant
 5. Desert Rock Energy Project
 6. Comanche Generating Station
 7. Milgro Power Plant
 8. Algodones Solar Facility
 9. Sunshine Wind Project
- Oil & Gas**
 10. Proposed Oil and Gas Drilling
 11. San Juan Refinery
 12. San Juan River Gas Plant
 13. Ciniza Refinery
- Mining**
 14. McKinley Mine
 15. San Juan Coal Company La Plata Mine
 16. Navajo Mine
- Water**
 17. Kutz Pumping Station
 18. Gallegos Pumping Station
 19. Navajo Dam Power Plant
 20. Hogback Diversion Dam Project
 21. Durango Pumping Plant
 22. Animas-La Plata Project
- Other**
 23. Shiprock Airport
 24. Burham Airstrip
 25. San Juan Community-Based Land Use Plan
 26. Proposed Prison
 27. Proposed Housing (Sanostee Chapter)
 - 28-30. Proposed Housing & Commercial Development (Burnham Chapter)



From: [Calle, Marcelo](#)
To: [Frank Lupo](#); [Art Kleven](#); [David Sire](#); [Stephen Spencer](#)
Cc: [Rick Williamson](#)
Subject: Fwd: Completed comment/response matrices for solicitors and OEPC
Date: Tuesday, February 25, 2014 2:21:54 PM
Attachments: [131218 PDEIS Review Comment Form LUP0 comments.docx](#)
[131218 PDEIS Review Comment Form-SOL-RMR-ARK.docx](#)
[131218 PDEIS Review Comment Form OEPC.docx](#)
[PDEIS Review Comment Form OEPC Albuquerque Spencer.docx](#)

Please see attached responses. Let me know if you have any questions. Thanks

----- Forwarded message -----

From: **Daniel Tormey** <DTormey@environcorp.com>
Date: Tue, Feb 25, 2014 at 2:17 PM
Subject: Completed comment/response matrices for solicitors and OEPC
To: "Calle, Marcelo" <mcalle@osmre.gov>, Rick Williamson <RLWilliamson@osmre.gov>
Cc: "Bartz, Kate L." <Kate.Bartz@cardnotec.com>, "Benjamin Pogue (ben.pogue@cardno.com)" <ben.pogue@cardno.com>, "Lockerd, Joe" <Joe.Lockerd@cardnotec.com>, Megan Schwartz <MSchwartz@environcorp.com>

Hi Marcelo,

Completed CRMs attached. Let me know if you need anything else.

Thanks

Dan



Dan Tormey, Ph.D., P.G. | Principal

ENVIRON International Corporation

707 Wilshire Boulevard, Suite 4950 | Los Angeles, CA 90017

T: +1 213 943 6327 | F: +1 213 943 6301 | M: +1 818 317 7716

dtormey@environcorp.com

This message contains information that may be confidential, privileged or otherwise protected by law from disclosure. It is intended for the exclusive use of the Addressee(s). Unless you are the addressee or authorized agent of the addressee, you may not review, copy, distribute or disclose to anyone the message or any

information contained within. If you have received this message in error, please contact the sender by electronic reply to email@environcorp.com and immediately delete all copies of the message.

--

Marcelo Calle

EIS Coordinator, The Four Corners & Navajo Mine Energy Project
Office of Surface Mining Reclamation and Enforcement
Program Support Division, Indian Programs Branch
1999 Broadway, Suite 3320
Denver, CO 80202-3050

mcalle@osmre.gov

(303) 293-5035 Office

(303) 293-5032 Fax

Cooperating Agencies Review Comment Form

Title of Document	Preliminary DRAFT Environmental Impact Statement (PDEIS) for FCPP & Navajo Mine Energy Project
EIS Section Title: PDEIS Complete	
Review Conducted by: Frank Lupo	
Title of Reviewer: DOI Solicitor	
Date: February 7, 2014	

Com ment #	Section of EIS	Page #s	Line #s	Review Comment & Suggested Edits ¹	Comment Disposition	Review Comment and/or Suggested Edits Adequately Addressed? (Yes/No) ²
1				(b) (5)		

¹ Cut/paste edits into individual table cell unless more than 2 paragraphs; Attach separate sheet to review form if more than 2 paragraphs for a cell.

² Use this column after Consultant has responded to review comments.

Com ment #	Section of EIS	Page #s	Line #s	Review Comment & Suggested Edits ¹	Comment Disposition	Review Comment and/or Suggested Edits Adequately Addressed? (Yes/No) ²
				(b) (5)		
2				(b) (5)		
3				(b) (5)		
4				(b) (5)		

Com ment #	Section of EIS	Page #s	Line #s	Review Comment & Suggested Edits ¹	Comment Disposition	Review Comment and/or Suggested Edits Adequately Addressed? (Yes/No) ²
				(b) (5)		

Com ment #	Section of EIS	Page #s	Line #s	Review Comment & Suggested Edits ¹	Comment Disposition	Review Comment and/or Suggested Edits Adequately Addressed? (Yes/No) ²
				(b) (5)		
5						
6						

Com ment #	Section of EIS	Page #s	Line #s	Review Comment & Suggested Edits ¹	Comment Disposition	Review Comment and/or Suggested Edits Adequately Addressed? (Yes/No) ²
				(b) (5)		
7				(b) (5)		

Com ment #	Section of EIS	Page #s	Line #s	Review Comment & Suggested Edits ¹	Comment Disposition	Review Comment and/or Suggested Edits Adequately Addressed? (Yes/No) ²
				(b) (5)		
8				(b) (5)		
9				(b) (5)		

Com ment #	Section of EIS	Page #s	Line #s	Review Comment & Suggested Edits ¹	Comment Disposition	Review Comment and/or Suggested Edits Adequately Addressed? (Yes/No) ²
10				(b) (5)		

Com ment #	Section of EIS	Page #s	Line #s	Review Comment & Suggested Edits ¹	Comment Disposition	Review Comment and/or Suggested Edits Adequately Addressed? (Yes/No) ²
11				(b) (5)		
12						
13						

Com ment #	Section of EIS	Page #s	Line #s	Review Comment & Suggested Edits ¹	Comment Disposition	Review Comment and/or Suggested Edits Adequately Addressed? (Yes/No) ²
				(b) (5)		
14						
15						

Com ment #	Section of EIS	Page #s	Line #s	Review Comment & Suggested Edits ¹	Comment Disposition	Review Comment and/or Suggested Edits Adequately Addressed? (Yes/No) ²	
				(b) (5)			
16							
17							

Com ment #	Section of EIS	Page #s	Line #s	Review Comment & Suggested Edits ¹	Comment Disposition	Review Comment and/or Suggested Edits Adequately Addressed? (Yes/No) ²
				(b) (5)		
18						

Com ment #	Section of EIS	Page #s	Line #s	Review Comment & Suggested Edits ¹	Comment Disposition	Review Comment and/or Suggested Edits Adequately Addressed? (Yes/No) ²
				(b) (5)		
19						

Com ment #	Section of EIS	Page #s	Line #s	Review Comment & Suggested Edits ¹	Comment Disposition	Review Comment and/or Suggested Edits Adequately Addressed? (Yes/No) ²
				(b) (5)		

Cooperating Agencies Review Comment Form

Title of Document	Preliminary DRAFT Environmental Impact Statement (PDEIS) for FCPP & Navajo Mine Energy Project
EIS Section Title: PDEIS Complete	
Review Conducted by: Dave Sire & Loretta Sutton	
Title of Reviewer: OEPC Natural Resources Management Team Leader	
Date: 01/16/14	

Com ment #	Section of EIS	Page #s	Line #s	Review Comment & Suggested Edits ¹	Comment Disposition	Review Comment and/or Suggested Edits Adequately Addressed? (Yes/No) ²
1	Exec Summary	i	37	(b) (5)		
2	Exec Summary	iii	7-8			
3	Exec Summary	iv	11&14			
4	Exec Summary	vi	Table ES-1			
5	Exec Summary	xvii	11			
6	Exec Summary	xviii	17			

¹ Cut/paste edits into individual table cell unless more than 2 paragraphs; Attach separate sheet to review form if more than 2 paragraphs for a cell.

² Use this column after Consultant has responded to review comments.

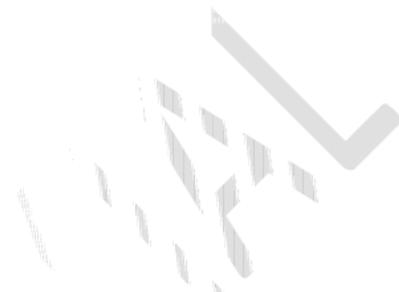
Com ment #	Section of EIS	Page #s	Line #s	Review Comment & Suggested Edits ¹	Comment Disposition	Review Comment and/or Suggested Edits Adequately Addressed? (Yes/No) ²
7	Introduction	1-1	31	(b) (5)		
8	1	1-3	4-5			
9	1	1-4	30			
10	1	1-9	14			
11	1	1-12	19-22			
12	1	1-13	1-14			

Com ment #	Section of EIS	Page #s	Line #s	Review Comment & Suggested Edits ¹	Comment Disposition	Review Comment and/or Suggested Edits Adequately Addressed? (Yes/No) ²																								
				(b) (5)																										
13	2	2-11	5				(b) (5)																							
14	2	2-34	11							(b) (5)																				
15	2	2-35	13-14										(b) (5)																	
16	3	3-15	9+													(b) (5)														
17	4	1-14	33																(b) (5)											
18	4	19-2	33																			(b) (5)								
19	4	19-4	19																						(b) (5)					
20	5	5-1	29																									(b) (5)		

ATTORNEY-CLIENT/ATTORNEY WORK PRODUCT PRIVILEGED

Cooperating Agencies Review Comment Form

Title of Document	Preliminary DRAFT Environmental Impact Statement (PDEIS) for FCPP & Navajo Mine Energy Project
EIS Section Title: PDEIS Complete	
Review Conducted by: A. Kleven	
Title of Reviewer: Attorney-Advisor, DOI, SOL-RMR	
Date: 4-10-14	



Com ment #	Section of EIS	Page #s	Line #s	Review Comment & Suggested Edits¹	Comment Disposition	Review Comment and/or Suggested Edits Adequately Addressed? (Yes/No)²
1	ES	i	35-36	(b) (5)		
2	ES	ii	12-13			
3	ES and throughout	ii	38			
4	ES	iv	2			
5	ES	iv	29			
6	ES	v, vi	Table ES-1			

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² Use this column after Consultant has responded to review comments.

ATTORNEY-CLIENT/ATTORNEY WORK PRODUCT PRIVILEGED

Com ment #	Section of EIS	Page #s	Line #s	Review Comment & Suggested Edits ¹	Comment Disposition	Review Comment and/or Suggested Edits Adequately Addressed? (Yes/No) ²
				(b) (5)		
7	ES	vi	10-11			
8	ES	vi, vii	Table ES-2			
9	ES	vii	18-20			
10	ES	xiv	43			
11	ES	xv	23			
12	ES	xix, xx	Table ES-9			
13	ES	xx	Table ES-9			
14	ES	xxiii	Table ES-10			
15	ES	xxiv	Table ES-10			
16	ES	xxv	Table ES-10			

ATTORNEY-CLIENT/ATTORNEY WORK PRODUCT PRIVILEGED

Com ment #	Section of EIS	Page #s	Line #s	Review Comment & Suggested Edits ¹	Comment Disposition	Review Comment and/or Suggested Edits Adequately Addressed? (Yes/No) ²
17	Ch. 1			(b) (5)		
18	1.1.1	1-1	28			
19	1.1.1	1-1	31-32			
20	1.1.1	1-2	7, 10-11			
21	1.1.2	1-2, and through out	36			
22	1.4.2.9	1-12	19-22			
23	2.1.1	2-3	Table 2-1			
24	2.1.6	2-13	23, 27			
25	2.1.7	2-15 and beyond	Section and Table 2-5			

ATTORNEY-CLIENT/ATTORNEY WORK PRODUCT PRIVILEGED

Com ment #	Section of EIS	Page #s	Line #s	Review Comment & Suggested Edits ¹	Comment Disposition	Review Comment and/or Suggested Edits Adequately Addressed? (Yes/No) ²			
				(b) (5)					
26	2.1.8	2-17	13						
27	2.4.1								
28	2.4.1	2-33	25-29						
29	2.4.2.2	2-35	13-14						
30	Ch. 3	3-1	19-22						

ATTORNEY-CLIENT/ATTORNEY WORK PRODUCT PRIVILEGED

Com ment #	Section of EIS	Page #s	Line #s	Review Comment & Suggested Edits ¹	Comment Disposition	Review Comment and/or Suggested Edits Adequately Addressed? (Yes/No) ²
				(b) (5)		
31	3.2.1.1	3-9	24			
32	3.2.2.1	3-20	7			
33	3.2.2.4	3-20 – 3-21				
34	3.2.3.4	3-24				
35	3.2.2, 3.2.3					
36	3.2.5					
37	3.2.5.2	3-30	29			
38	3.2.5.6	3-34	24			
39	3.3	3-42 and beyond				

ATTORNEY-CLIENT/ATTORNEY WORK PRODUCT PRIVILEGED

Com ment #	Section of EIS	Page #s	Line #s	Review Comment & Suggested Edits ¹	Comment Disposition	Review Comment and/or Suggested Edits Adequately Addressed? (Yes/No) ²
40	3.3.5	3-48 to 50		(b) (5)		
41	3.4	Table 3-12				
42	3.4	3-52	Table 3-12			
43	3.4	3-54	Table 3-12			

ATTORNEY-CLIENT/ATTORNEY WORK PRODUCT PRIVILEGED

Com ment #	Section of EIS	Page #s	Line #s	Review Comment & Suggested Edits ¹	Comment Disposition	Review Comment and/or Suggested Edits Adequately Addressed? (Yes/No) ²
				(b) (5)		
44	Ch. 3			(b) (5)		
45	throughout					
46						
47	Ch. 4					
48						
49	Ch. 4	4-1 to 4-2	44, 1-2			

ATTORNEY-CLIENT/ATTORNEY WORK PRODUCT PRIVILEGED

Com ment #	Section of EIS	Page #s	Line #s	Review Comment & Suggested Edits ¹	Comment Disposition	Review Comment and/or Suggested Edits Adequately Addressed? (Yes/No) ²
50	Ch. 4	4-2	23-29	(b) (5)		
51	4.1.1.4	4.1-11	36-44			
52	4.1.1.4	4.1-12	12-20			
53	4.1.1.4	4.1-14	33-39			
54	4.1.4	4.1-71	25-26			
55	4.1.4	4.1-71 and beyond				
56	4.2.5	4.2-24	5			
57	4.4.1.1	4.4-3	25, 39			
58	4.4.4	4.4-17 and beyond				
59	4.5.2.1	4.5-13,-14	45-46, 1-2, and elsewh			

ATTORNEY-CLIENT/ATTORNEY WORK PRODUCT PRIVILEGED

Com ment #	Section of EIS	Page #s	Line #s	Review Comment & Suggested Edits ¹	Comment Disposition	Review Comment and/or Suggested Edits Adequately Addressed? (Yes/No) ²
			ere	(b) (5)		
60	4.5.2.2	4.5-22	7			
61	4.5.4.1	4.5-44	33			
62	4.5.4.1	4.5-59	6-7			
63	4.6.1.1	4.6-1				
64	4.6.4.1	4.6-16				
65	4.7					
66	4.9.1.1	4.9-1	17-18,			

ATTORNEY-CLIENT/ATTORNEY WORK PRODUCT PRIVILEGED

Com ment #	Section of EIS	Page #s	Line #s	Review Comment & Suggested Edits ¹	Comment Disposition	Review Comment and/or Suggested Edits Adequately Addressed? (Yes/No) ²
			19-20	(b) (5)		
67	4.9.1.1	4.9-2	11			
68	4.9.1.1	4.9-3	11-15			
69	4.13.1	4.13-1	27-30			
70	4.15.1.2	4.15-4, -5, -7	19-20; 4, 38-43; 5-21			
71	4.16.2.1	Figure 4.16-1 and other maps				
72	4.17.1	4.17-2	4			
73	4.17.2.2	4.17-5, -6	38			

ATTORNEY-CLIENT/ATTORNEY WORK PRODUCT PRIVILEGED

Com ment #	Section of EIS	Page #s	Line #s	Review Comment & Suggested Edits ¹	Comment Disposition	Review Comment and/or Suggested Edits Adequately Addressed? (Yes/No) ²
74	4.18.2	4.18-5	Table 4.18-1	(b) (5)		
75	4.18.2	4.18-11	Table 4.18-1			
76	4.18.2	4.18-18				
77	Ch. 4					

Cooperating Agencies Review Comment Form

Title of Document	Preliminary DRAFT Environmental Impact Statement (PDEIS) for FCPP & Navajo Mine Energy Project
EIS Section Title: PDEIS Complete	
Review Conducted by: Stephen Spencer	
Title of Reviewer: OEPC Regional Environmental Officer	
Date: 2/7/2014	

Com ment #	Section of EIS	Page #s	Line #s	Review Comment & Suggested Edits ¹	Comment Disposition	Review Comment and/or Suggested Edits Adequately Addressed? (Yes/No) ²
1	Abstract page Coop. Agencies			(b) (5)		
2	Exec Summary	ii	1			
3	Exec Summary	ii-iii				
4	Exec Summary	xi	14			
5	Exec Summary	xii	6-7			
6	Exec Summary	xv	23			
7	Exec Summary	xviii	1-7			

¹ Cut/paste edits into individual table cell unless more than 2 paragraphs; Attach separate sheet to review form if more than 2 paragraphs for a cell.

² Use this column after Consultant has responded to review comments.

Com ment #	Section of EIS	Page #s	Line #s	Review Comment & Suggested Edits ¹	Comment Disposition	Review Comment and/or Suggested Edits Adequately Addressed? (Yes/No) ²												
8	Exec Summary	xxvi	Special Status Species	(b) (5)														
9	Appendix D						(b) (5)											
10	1-2									(b) (5)								
11	1.4.2.9	1-12	20-21										(b) (5)					
12	3.3.2.4	3-44	30-43													(b) (5)		
13	Table 4.1-3	4.1-18																

From: [Spencer, Stephen](#)
To: [Shirley Martinez](#)
Subject: Fwd: OSM-BLM Coordination Conference Call
Date: Thursday, April 11, 2013 10:05:20 AM
Attachments: [Connected Actions Analysis 04092013 v3.pdf](#)
[Connected Actions inclusion of West Mesa 12172012.pdf](#)
[FourCorners_Figure4_9_2_JurisdictionalBoundaries.pdf](#)
[BLM PNM Lines.xlsx](#)

Please print these attachments for my file. They are only 2-3 pages each so do one-sided. Except for the one spreadsheet, they are graphics so they are big files

----- Forwarded message -----

From: **Calle, Marcelo** <mcalle@osmre.gov>
Date: Thu, Apr 11, 2013 at 9:16 AM
Subject: OSM-BLM Coordination Conference Call
To: Powell King <pkling@blm.gov>, Shannon Hoefeler <shoefe@blm.gov>, Marcella Martinez <mmartine@blm.gov>, Joseph Galluzzi <jgalluzz@blm.gov>
Cc: Dan Tormey <daniel.tormey@cardno.com>, Joe Lockerd <joe.lockerd@cardnotec.com>, Amanda Nisula <anisula@blm.gov>, Scott Hall <shall@blm.gov>, Foster Kirby <FKirby@osmre.gov>, Kimberly.Demuth@cardno.com, Rick Williamson <RLWilliamson@osmre.gov>, Stephen Spencer <Stephen_Spencer@ios.doi.gov>

Afternoon,

Thank you all again for participation on yesterdays call. I wanted to follow up with some action items defined in the meeting.

Shannon - Could you please discuss with the appropriate BLM contact the question Powell King raised regarding the BLM's participation as described in the current MOU. Specifically, the current MOU does not describe the BLM's action related to the ROW renewal. Does the BLM wish to amend the current MOU to include the BLM ROW renewal action? I looked at notes from a previous meeting and Jim Copeland was mentioned as a contact.

Powell - If the PNM 345 kV TL ROW from Arizona Public Service (APS) Four Corners Power Plant (FCPP) to the West Mesa Switchyard (FW TL ROW) is not fully administered by the BLM FFO, could you please forward me the contact information for the appropriate BLM person at the Rio Puerco - Albuquerque Field Office to discuss the Project including Section 106 related to the this line.

In response to the question brought up by Dan Tormey (Cardno) during the call regarding the applicable expiration date of the BLM FW TL ROW.

Early during our analysis of actions to be considered within the scope of the EIS analysis and other consultation e.g. Section 7 ESA & Section 106 NHPA; there was a question regarding the expiration date for ROW renewals associated with BLM administered portions of the PNM 345 kV TL extending from the Arizona Public Service (APS) Four Corners Power Plant (FCPP) to the Rio Puerco Switchyard and then on to the West Mesa Switchyard. OSM had originally considered including the action from FCPP to Rio Puerco substation but later concluded the action should be extended to the West Mesa Switchyard. (see attached connected action

documents)

The confusion over the applicable ROW renewal date arose upon review of information provided by the BLM FFO (see attached BLM Row spreadsheet) indicating there is a ROW administered by the BLM described as the *Rio Puerco Line* (expiration date 2018) and another ROW administered by the BLM described as the *APS Plant to West Mesa Switch* (expiration 2016). Through coordination with the BLM and PNM it was concluded that the applicable line for consideration as a connected action within the EIS was the **APS Plant to West Mesa Switch** (expiration 2016). Please let OSM know if this conclusion is not correct.

Regards,

--

Marcelo Calle

EIS Coordinator, The Four Corners & Navajo Mine Energy Project
Office of Surface Mining Reclamation and Enforcement
Program Support Division, Indian Programs Branch
1999 Broadway, Suite 3320
Denver, CO 80202-3050

mcalle@osmre.gov

(303) 293-5035 Office

(303) 293-5032 Fax

--

Stephen R. Spencer, PhD
Regional Environmental Officer
Office of Environmental Policy and Compliance
U.S. Department of the Interior
1001 Indian School Road NW, Suite 348
Albuquerque, NM 87104
Phone: (505) 563-3572 Fax: (505) 563-3066 Cell: (505) 249-2462
Stephen_Spencer@ios.doi.gov
Web Site: www.doi.gov/oepec/albuquerque.html

From: [Calle, Marcelo](#)
To: [Powell King](#); [Shannon Hoefeler](#); [Marcella Martinez](#); [Joseph Galluzzi](#)
Cc: [Dan Tormey](#); [Joe Lockerd](#); [Amanda Nisula](#); [Scott Hall](#); [Foster Kirby](#); [Kimberly.Demuth@cardno.com](#); [Rick Williamson](#); [Stephen Spencer](#)
Subject: OSM-BLM Coordination Conference Call
Date: Thursday, April 11, 2013 9:16:51 AM
Attachments: [Connected Actions Analysis 04092013 v3.pdf](#)
[Connected Actions inclusion of West Mesa 12172012.pdf](#)
[FourCorners Figure4_9_2 JurisdictionalBoundaries.pdf](#)
[BLM PNM Lines.xlsx](#)

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Regards,

--

Marcelo Calle

EIS Coordinator, The Four Corners & Navajo Mine Energy Project
Office of Surface Mining Reclamation and Enforcement
Program Support Division, Indian Programs Branch
1999 Broadway, Suite 3320
Denver, CO 80202-3050

mcalle@osmre.gov

(303) 293-5035 Office

(303) 293-5032 Fax

From: [Cardno TECftp](#)
To: david_sire@ios.doi.gov; amy.heuslein@bia.gov; krishnab@frontier.com; stephen_spencer@ios.doi.gov; Joe.Lockerd@cardnotec.com
Cc: mcalle@osmre.gov
Subject: Files Ready at Cardno TECftp
Date: Monday, January 06, 2014 2:14:36 PM

Files Ready at Cardno TECftp

Marcelo Calle (mcalle@osmre.gov) has uploaded the following files for your review.

For your review and comment download the FCPP and Navajo Mine Energy Project EIS (OSM Navajo Mine EIS and EIS Appendices) Please plan to forward all comments to me by February 7, 2014 using the Comment Form provided with the PDEIS. Please contact me if you have any questions

Your files will be removed from this system at 1/11/2014 4:13:43 PM Eastern. If you were unable to download the files before this time please contact your POC to have the files reposted.

[OSM Navajo Mine EIS.pdf](#)
[EIS Appendices.pdf](#)
[131218 PDEIS Review Comment Form.docx](#)

If you are experiencing issues with the links or files, please contact your Cardno TEC Point of Contact.

Thank you,

Cardno TECftp



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105

February 1, 2012

Rick Williamson
Manager, Indian Programs (Permitting) Branch
Western Region, Program Support Division
Office of Surface Mining Reclamation & Enforcement (OSM)
1999 Broadway, Suite 3320
Denver, Colorado 80202

Subject: Cooperating Agency Participation in the Navajo Coal Mine/Four Corners Power Plant
Environmental Impact Statement, Navajo Nation, New Mexico

Dear Mr. Williamson:

We have been in discussion with your agency, the Bureau of Indian Affairs, and the Department of Interior's Office of Environmental Policy and Compliance regarding cooperating agency participation in the subject EIS. We appreciate your follow-up email dated January 9, 2012 formally inviting EPA to serve as a cooperating agency. We accept your invitation. In lieu of being a signatory to the inter-agency Memorandum of Understanding under development, we are documenting our anticipated role and responsibilities below.

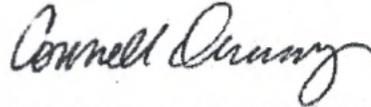
As a cooperating agency, EPA intends to:

1. Participate in the EIS process, including attending inter-agency coordination meetings, reviewing preliminary documents, and participating in the public scoping process, as time and resources allow. Due to limited travel funding, participation may need to occur via teleconference.
2. Assist OSM in identifying significant environmental issues, particularly those that relate to EPA's special expertise and jurisdiction;
3. Provide comments on preliminary versions of the draft and final EIS to OSM within 30 days;
4. If requested by OSM, assist with responses to public comments that concern EPA's areas of expertise and jurisdictional responsibilities;
5. Work with OSM to ensure that the EIS content is consistent with any EPA program or agency requirements.
6. Adhere to the project schedule, to the extent feasible.

Please be aware that EPA's status as a cooperating agency does not affect our independent responsibilities under Section 309 of the Clean Air Act to review and comment publicly on all draft EISs. Participation as a cooperating agency does not imply endorsement of the proposed project, nor can it be used to obligate or commit funds or as the basis for the transfer of funds. Please reference or incorporate this acceptance letter into the Draft and Final EIS.

EPA looks forward to working with OSM, the Tribe, and the other cooperating agencies on this project. If you have any questions, please contact Karen Vitulano, who will serve as the point of contact for the project, at 415-947-4178 or vitulano.karen@epa.gov.

Sincerely,



For

Kathleen Martyn Goforth, Manager
Environmental Review Office

cc: Ben Shelly, President, Navajo Nation
Stephen B. Etsitty, EPA Director, Navajo Nation

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 49

[EPA-R09-OAR-2010-0683; FRL-9703-2]

**Source Specific Federal Implementation Plan for Implementing
Best Available Retrofit Technology for Four Corners Power Plant:
Navajo Nation**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final Rule.

SUMMARY: The Environmental Protection Agency (EPA) is promulgating a source-specific Federal Implementation Plan (FIP) requiring the Four Corners Power Plant (FCPP), a coal-fired power plant located on the Navajo Nation near Farmington, New Mexico, to achieve emissions reductions required by the Clean Air Act's (CAA) Best Available Retrofit Technology (BART) provision. In this final action, EPA is requiring FCPP to reduce emissions of oxides of nitrogen (NO_x) and is setting emission limits for particulate matter (PM) based on emission rates already achieved at FCPP. These pollutants contribute to visibility impairment in the numerous mandatory Class I Federal areas surrounding FCPP. For NO_x emissions, EPA is requiring FCPP to meet a plant-wide emission limit of 0.11 lb/MMBtu on a rolling 30-day heat input-weighted average. This represents an 80 percent reduction from the current NO_x emission rate and is

expected to provide significant improvement in visibility. EPA is also finalizing an alternative emission control strategy that gives the owners of FCPP the option to close Units 1 - 3 and install controls on Units 4 and 5 to each meet an emission limit of 0.098 lb/MMBtu, based on a rolling average of 30 successive boiler operating days. For PM, EPA is requiring Units 4 and 5 at FCPP to meet an emission limit of 0.015 lb/MMBtu, and retaining the existing 20 percent opacity limit. These PM limits are achievable through the proper operation of the existing baghouses. EPA is also requiring FCPP to comply with a 20 percent opacity limit on its coal and material handling operations.

EFFECTIVE DATE: This rule is effective on [insert date 60 days from date of publication in the Federal Register].

FOR FURTHER INFORMATION CONTACT: Anita Lee, EPA Region 9, (415) 972-3958, r9air_fcpcbart@epa.gov.

SUPPLEMENTARY INFORMATION: EPA has established a docket for this action under Docket ID No. EPA-R09-OAR-2010-0683. The index to the docket for this action is available electronically at <http://www.regulations.gov> and in hard copy at EPA Region 9, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g. copyrighted material), and some may not be publicly available in

either location (e.g. Confidential Business Information (CBI)). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section. A reasonable fee may be charged for copies.

Throughout this document, "we", "us", and "our" refer to EPA.

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I. Background of the Final Rule

FCPP is a privately owned and operated coal-fired power plant located on the Navajo Nation Indian Reservation near Farmington, New Mexico. Based on lease agreements signed in 1960, FCPP was constructed and has been operating on real property held in trust by the Federal government for the Navajo Nation. The facility consists of five coal-fired electric utility steam generating units with a total capacity of 2060 megawatts (MW). Units 1, 2, and 3 at FCPP are owned entirely by Arizona Public Service (APS) which serves as the facility operator, and are rated to 170 MW (Units 1 and 2) and 220 MW (Unit 3). Units 4 and 5 are each rated to a capacity of 750 MW, and are co-owned by six entities: Southern California Edison¹ (48

¹ Arizona Public Service is currently seeking regulatory approvals to purchase Southern California Edison's share of Units 4 and 5.

percent), APS (15 percent), Public Service Company of New Mexico (13 percent), Salt River Project (SRP) (10 percent), El Paso Electric Company (7 percent), and Tucson Electric Power (7 percent).

EPA's proposed BART determination for FCPP, published on October 19, 2010, provided a thorough discussion of the statutory and regulatory framework for addressing visibility through application of BART for sources located in Indian country, and of the factual background for BART determinations at FCPP. 75 FR 64221.

On February 25, 2011, as a result of additional information provided by stakeholders, EPA published a Supplemental Proposal. FR 76 10530. We briefly summarize the provisions of our Proposal and our Supplemental Proposal below.

Part C Subpart II of the 1977 CAA establishes a visibility protection program that sets forth "as a national goal the prevention of any future, and the remedying of any existing, impairment of visibility in mandatory class I Federal areas which impairment results from manmade air pollution." 42 U.S.C. 7491A(a)(1). EPA promulgated regional haze regulations on April 22, 1999. 64 FR 35765. Consistent with the statutory requirement in 42 U.S.C. 7491(b)(2)(a), EPA's 1999 regional haze regulations include a provision requiring States to require certain major stationary sources to procure, install and operate BART. This

provision covers sources "in existence on August 7, 1977, but which ha[ve] not been in operation for more than fifteen years as of such date" and which emit pollutants that are reasonably anticipated to cause or contribute to any visibility impairment. EPA has determined that FCPP is a BART-eligible source (75 FR 64221).

In determining BART, States are required to take into account five factors identified in the CAA and EPA's regulations. 42 U.S.C. 7491(g)(2) and 40 CFR 51.308. Those factors are: (1) the costs of compliance, (2) the energy and non-air quality environmental impacts of compliance, (3) any pollution control equipment in use or in existence at the source, (4) the remaining useful life of the source, and (5) the degree of improvement in visibility which may reasonably be anticipated to result from the use of such technology. 40 CFR 51.308(e)(1)(ii)(A). EPA's guidelines for evaluating BART are set forth in Appendix Y to 40 CFR Part 51.

In 1998, EPA promulgated the Tribal Authority Rule (TAR) relating to implementation of CAA programs in Indian country. See 40 CFR part 49; see also 59 FR 43956 (Aug. 25, 1994) (proposed rule); 63 FR 7254 (Feb. 12, 1998) (final rule); *Arizona Public Service Company v. EPA*, 211 F.3d 1280 (DC Cir. 2000), *cert. den.*, 532 U.S. 970 (2001) (upholding the TAR).

In the TAR, EPA determined that it has the discretionary authority to promulgate "such federal implementation plan provisions as are necessary or appropriate to protect air quality" consistent with CAA sections 301(a) and 301(d)(4) when a Tribe has not submitted or EPA has not approved a Tribal Implementation Plan (TIP). 40 CFR 49.11(a).

EPA has previously promulgated FIPs under the TAR to regulate air pollutants emitted from FCPP. In 1999, EPA proposed a FIP for FCPP. That FIP proposed to fill the regulatory gap that existed because New Mexico permits and State Implementation Plan (SIP) rules are not applicable or enforceable in the Navajo Nation, and the Tribe had not sought approval of a TIP covering the plant. 64 FR 48731 (Sept. 8, 1999).

Before EPA finalized the 1999 FIP, the operator of FCPP began negotiations to reduce SO₂ emissions from FCPP by making upgrades to improve the efficiency of its SO₂ scrubbers. The parties to the negotiations requested EPA to make those SO₂ reductions enforceable through a source-specific FIP. Therefore, EPA proposed a new FIP for FCPP in September 2006. 71 FR 53631 (Sept. 12, 2006). In the final FIP, EPA indicated that the new SO₂ emissions limits were close to or the equivalent of the emissions reductions that would have been required in a BART determination. 72 FR 25698 (May 7, 2007). The FIP also required FCPP to comply with a 20 percent opacity limit on both the

combustion and fugitive dust emissions from material handling operations.

APS, the operator of FCPP, and Sierra Club each filed Petitions seeking judicial review of EPA's promulgation of the 2007 FIP for FCPP on separate grounds. The Court of Appeals for the Tenth Circuit rejected both Petitions. The Court agreed with EPA's request for a voluntary remand of a single narrow aspect of the 2007 FIP: the opacity limit for the fugitive dust for the material handling operations. *Id.* At 1131.

On October 19, 2010 (75 FR 64221) EPA proposed a second FIP under 40 CFR 49.11(a) finding it is necessary or appropriate to establish BART requirements for NO_x and PM emissions from FCPP, and proposed specific NO_x and PM limits as BART. For NO_x, EPA proposed a plant-wide emission limit of 0.11 lb/MMBtu, representing an 80 percent reduction from current NO_x emission rates, achievable by installing and operating SCR technology on Units 1-5. For PM, EPA proposed an emission limit of 0.012 lb/MMBtu for Units 1 - 3 and 0.015 lb/MMBtu for Units 4 and 5 achievable by installing and operating any of several equivalent controls on Units 1 - 3, and through proper operation of the existing baghouses on Units 4 and 5. EPA also proposed a 10 percent opacity limit from Units 1 - 5 and a 20 percent opacity limit to apply to FCPP's material handling operations to respond

to the voluntary remand EPA took on this issue from the 2007 FIP.

On November 24, 2010, APS, acting on behalf of FCPP's owners, submitted a letter to EPA offering an alternative to reduce visibility-impairing pollution. APS proposed to close Units 1 - 3 by 2014 and install and operate SCR on Units 4 and 5 to each meet an emission limit of 0.11 lb/MMBtu by the end of 2018. On February 25, 2011, we published a Supplemental Proposal (76 FR 10530) with a technical evaluation of APS' alternative. Our Supplemental Proposal also provides a detailed summary of the legal background for proposing an alternative emission control strategy as achieving better progress towards the national visibility goal (76 FR 10530).

In our Supplemental Proposal, EPA proposed to allow APS the option to comply with the alternative emission control strategy in lieu of complying with our October 19, 2010, proposed BART determination. EPA's alternative emission control strategy involved closure of Units 1 - 3 by 2014 and installation and operation of add-on post combustion controls on Units 4 and 5 to each meet a NO_x emission limit of 0.098 lb/MMBtu by July 31, 2018. EPA proposed that this alternative emission control strategy represents reasonable progress towards the national visibility goal, under CAA Section 169A(b)(2), because it would result in greater visibility improvement in surrounding Class I

areas at a lower cost than our October 19, 2010, BART proposal. The proposal to require PM and opacity limits on Units 1 - 5, as well as 20 percent opacity limits for controlling dust from coal and ash handling and storage facilities, was unchanged.

II. Summary of Final FIP Provisions

EPA is finding today that it is necessary or appropriate to promulgate a source-specific FIP requiring FCPP to achieve emissions reductions required by the CAA's BART provision. Specifically, EPA is requiring FCPP to meet new emissions limits for NO_x and PM. These pollutants contribute to visibility impairment in the 16 mandatory Class I Federal areas surrounding FCPP. For NO_x emissions, EPA is finalizing a BART determination as well as an optional alternative to BART. FCPP can choose which emissions control strategy to follow and must notify EPA of its choice by July 1, 2013. Our final BART determination requires FCPP to meet a plant-wide heat input-weighted emission limit of 0.11 lb/MMBtu on a rolling 30-calendar day average which represents an 80 percent reduction from current NO_x emission rates. This NO_x limit is achievable by installing and operating add-on post-combustion controls on Units 1 - 5. Installation and operation of the new NO_x controls on one 750 MW unit must be within 4 years of **[insert date 60 days from date of publication in Federal Register]**. NO_x controls on the remaining

units must be installed and operated within 5 years of **[insert date 60 days from date of publication in Federal Register]**.

Alternatively, FCPP may choose to comply with an alternative emission control strategy for NO_x in lieu of complying with EPA's final BART determination for NO_x. This alternative emission control strategy requires permanent closure of Units 1 - 3 by January 1, 2014, and installation and operation of add-on post combustion controls on Units 4 and 5 to meet a NO_x emission limit of 0.098 lb/MMBtu each, based on a rolling average of 30 successive boiler operating days, by July 31, 2018.

For PM, EPA is requiring Units 4 and 5 to meet a BART emission limit of 0.015 lb/MMBtu within 60 days after restart following the scheduled major outages for Units 4 and 5 in 2013 and 2014. This emission limit is achievable through the proper operation of the existing baghouses. EPA is determining that it is not necessary or appropriate to finalize our proposed PM BART determination for Units 1 - 3 or our proposed opacity limit of 10 percent on Units 1 - 5. FCPP must continue to meet the existing 20 percent opacity limit on Units 1 - 5.

To address our voluntary remand of the material handling requirements from the 2007 FIP, EPA is finalizing our proposal to require FCPP to comply with a 20 percent opacity limit on its material handling operations, including coal handling.

In our final rule, EPA has made several revisions to the proposed rule and Supplemental Proposal based on comments we received during the public comment period. These revisions include: revising the compliance date under BART from within 3 to 5 years² of the effective date of the final rule to within 4 to 5 years³ of the effective date; revising the interim limits to only include an interim limit for one 750 MW unit rather than all units to match the revised compliance timeframes; adding 6 months to the notification dates to EPA on APS's plans to implement BART or the BART Alternative; revising the averaging time for the NO_x limit under the BART Alternative from a 30-day average to a rolling average of 30 successive boiler operating days; retaining the existing opacity limit of 20 percent instead of setting a new 10 percent opacity limit on Units 1 - 5; determining that it is not necessary or appropriate at this time to finalize a BART determination for PM for Units 1 - 3; and revising the effective date of the PM emission limit for Units 4 and 5 to the next schedule major outage rather than following installation of new post-combustion NO_x controls. We include the rationale for these revisions in our responses to comments. All

² We proposed to require phased installation of add-on NO_x controls on at least 560 MW of generation within 3 years of the effective date of the final rule, on at least 1310 MW of generation within 4 years of the effective date, and plant-wide within 5 years of the effective date.

³ We are finalizing the rule to require phased installation of add-on NO_x controls on at least 750 MW of generation within 4 years of the effective date and on the remaining units within 5 years of the effective date.

comments we received are included in the docket and EPA has summarized and responded to all comments in a separate Response to Comments (RTC) document that is also included in the docket for this final rulemaking. In this *Federal Register* notice, EPA is including a summary of the major comments we received and a summary of our responses.

III. Summary of Major Issues Raised by Commenters

Our October 19, 2010, proposal included a 60-day public comment period that ended on December 20, 2010. On November 12, 2010, EPA published a notice of public hearings to be held in the Four Corners area on December 7 - 9, 2010 (75 FR 69374). On December 8, 2010, EPA published in the Federal Register a notice that EPA received an alternative proposal from APS and would be extending the public comment period to March 18, 2011, and postponing the previously scheduled public hearings in order to evaluate that alternative proposal (75 FR 76331). Notices of public hearings and rescheduled hearings were published in three newspapers near the Four Corners Power Plant⁴. Our supplemental proposal on February 25, 2011, subsequently extended the public comment period until May 2, 2011, and announced four public

⁴ Notices of scheduled public hearings were published in the Farmington Daily Times and the Durango Herald on November 3, 2010 and February 17, 2011, and the Navajo Times on November 4, 2010 and February 17, 2011. Notices of the extended public comment period and postponement of the December public hearings were published in the Farmington Daily Times and the Durango Herald on November 24, 2010 and in the Navajo Times on December 2, 2010.

hearings on the proposed BART determination and supplemental proposal in the Four Corners area on March 29, 30, and 31, 2011. In all, 90 oral testimonies were presented at the public hearings.

We received nearly 13,000 written comments. Of these, over 12,800 comments came from private citizens who submitted substantially similar comments. We received an additional 110 unique written comments (not including duplicates, requests for extension of the public comment period, or requests for additional hearings). We do not consider or address letters or comments unrelated to the rulemaking in this notice or in our response to comments document. The unique comments can be broken down by general type as follows: 78 from private citizens, eight from environmental advocacy groups, four from the owners of FCCP, five from state/local government entities, four from public interest advocacy groups, two from tribes, four from utility industry associations, three from federal agencies, one from a U.S. Senator, and one from the operator of the Navajo Mine.

A. Comments on Factor One - Cost of Controls

We received a number of comments on our approach for estimating the cost of SCR at FCCP, the incremental cost effectiveness of controls, and on our top-down approach for evaluating controls.

1. Comments on the Analysis of the Cost of SCR at FCPP

Comment: Some of the owners of FCPP and a utility industry association stated that in analyzing the cost of SCR at FCPP, EPA improperly reworked and reduced the SCR cost estimates submitted for FCPP by eliminating line item costs that are not explicitly included in the *EPA Control Cost Manual* (citing 75 FR 64227). Commenters noted that APS' estimate was prepared by B&V, an engineering firm with extensive experience with the installation and operation of pollution control equipment and that the prices used in the cost analysis were based on quotes from equipment vendors that reflected current pricing.

Response: EPA disagrees with the comment that EPA improperly reworked and reduced the SCR cost estimates. EPA used a hybrid approach for our cost analysis that relied primarily on the highest of several cost estimates provided by APS, but also followed the BART Guidelines that state "[i]n order to maintain and improve consistency, cost estimates should be based on the *OAQPS Control Cost Manual*, where possible",⁵ to determine whether APS included cost estimates for services or equipment associated with SCR that were either not needed (e.g., mitigation for increased sulfuric acid emissions or catalyst disposal), or not allowed under the *EPA Control Cost Manual* (e.g., legal fees).

⁵ The *OAQPS Control Cost Manual* is now called the *EPA Control Cost Manual*. The *EPA Control Cost Manual* is available from the following website: <http://www.epa.gov/ttn/catc1/products.html#cccinfo>

Our cost analysis relied primarily on the highest cost estimates submitted by APS. EPA accepted all site-specific costs provided by APS for cost categories (e.g., purchased equipment, installation) that are typically included in a cost estimate conducted in accordance with the *EPA Control Cost Manual*, and only excluded line item costs that are not explicitly included in the *EPA Control Cost Manual* or in a limited number of cases where EPA determined alternative costs were more appropriate (e.g., costs of catalysts, interest rates). We note that EPA's cost estimate presented in the Technical Support Document (TSD)⁶ (\$718 million total for Units 1 - 5) is only 18 percent lower than the highest B&V cost estimate and less than 0.6 percent lower than the lowest and most recent B&V cost estimate.

Our detailed, line-by-line analysis⁷ was included in the docket for our proposed rulemaking and provided an explanation for why we retained, modified, or rejected each line item in the SCR cost estimate for each of the five units at FCPP.

Comment: One of the owners of FCPP asserted that EPA's estimate of the average cost effectiveness of SCR at FCPP is significantly higher than the level (\$1,600 per ton of NO_x removed) that EPA determined was not cost effective in the 2005

⁶ See "TSD Proposal - Technical Support Document 10-6-10", Document No. EPA-R09-OAR-2010-0683-0002.

⁷ See "TSD ref [40] Four Corners SCR Cost Analysis (EPA) 8-26-10", Document No. EPA-R09-OAR-2010-0683-0033.

BART rules for presumptive BART limits. The commenter asserted that there is no basis for EPA to depart from its own rules by concluding that SCR is BART for FCPP when this technology is many times more expensive than the costs EPA rejected as presumptive BART in the 2005 BART rules. The commenter noted that its cost analysis estimated that the average cost effectiveness of combustion controls for the five units at FCPP would range from \$524 to \$1,735 per ton of NO_x removed, while the average cost effectiveness of SCR would range from \$4,215 to \$5,283 per ton. The commenter also noted that EPA's estimate of average cost effectiveness for SCR at FCPP ranged from \$2,515 to \$3,163 per ton. The commenter stated that, at the low end, only the estimate of the average cost effectiveness of combustion controls is in line with EPA's estimates of cost-effective controls for presumptive BART limits, while the estimate of average cost effectiveness of SCR is significantly higher.

Response: EPA disagrees with this comment. Although the commenters argue that the BART guidelines established a threshold for cost effectiveness against which future BART determinations must be compared, the BART Guidelines did not establish a cost effectiveness threshold for all BART determinations. In developing the presumptive NO_x limits for BART in 2005, EPA did not set the cost effectiveness values estimated for combustion controls as the threshold for determining whether

a given control technology was or was not cost effective. The BART Guidelines do not set a numerical definition for "cost effective", and the analysis of presumptive limits uses cost effectiveness as a means to broadly compare control technologies, not as threshold for rejecting controls for an individual unit or facility that exceed the average cost effectiveness of combustion controls.

Additionally, a comparison of the average cost effectiveness estimates in the 2005 BART guidelines against EPA's cost effectiveness estimates in 2010 for FCPP is not an "apples to apples" comparison. The technical support documentation for the 2005 BART guidelines indicate that cost effectiveness of controls was not determined based on site-specific cost estimates developed for each BART-eligible facility; rather, cost estimates for existing facilities were determined using assumptions for capital and annual costs per kilowatt (kW)⁸ or kilowatt-hour (kW-hr), and then scaled according to boiler size at the existing facilities. The supporting information for the 2005 BART Guidelines estimated SCR costs⁹ for FCPP Units 4 and 5 that are comparable to SCR cost

⁸ In the 2005 BART presumptive limit analysis, EPA estimated capital costs at all facilities nationwide assuming that SCR costs were \$100/kW, and then scaling by the size of the facility (kW).

⁹ The 2005 BART guidelines estimated SCR capital costs at FCPP to be \$64 million and total annual costs to be \$11 million. Cost effectiveness

estimates generated by the National Park Service (NPS) in 2009 using the *EPA Control Cost Manual*¹⁰. The same commenters have previously dismissed the NPS SCR cost estimates based on the *EPA Control Cost Manual* because it does not include site-specific costs.¹¹ In short, the commenter's recommendation to use generalized cost estimates from the 2005 BART Guidelines as a bright line threshold for comparison with site-specific 2010 cost estimates is inconsistent with its own criticisms of the *EPA Control Cost Manual*.

In determining that a different level of control than the presumptive limit was warranted as BART for FCPP, EPA evaluated the five statutory factors in our assessment for FCPP. This evaluation was detailed in the Technical Support Document for our proposed BART determination and included an analysis of cost effectiveness, energy and non-air quality impacts of controls, existing controls at the facility, the remaining useful life of the facility, and the visibility improvement reasonably

calculations rely on total annual costs and annual NO_x reductions from the control technology.

¹⁰ In the ANPRM, in addition to reporting APS' cost estimates and EPA's revisions to APS' cost estimates, for reference, EPA also reported cost estimates developed by NPS using the *EPA Control Cost Manual* and provided to EPA during consultations with the FLMs prior to our ANPRM. NPS estimated SCR capital costs to be \$53 million and total annual costs to be \$10 million. See Table 9 in the October 2010 TSD for the proposed BART determination for FCPP. In its comments on the ANPRM, NPS revised its cost estimates for SCR on Units 4 and 5 to \$114 million (capital cost) and \$18 million (total annual cost) - see Table 12 in the TSD for the proposed BART determination.

¹¹ APS and other entities provided comments to EPA on the NPS cost estimates reported in the ANPRM, see document titled "Comments on ANPRM 09 0598 APS Comments and Exhibits" document ID number EPA-R09-OAR-2009-0598-0195.

anticipated to result from controls. Therefore, EPA has not improperly disregarded the BART guidelines in our analysis for FCPP.

Comment: A number of commenters stated that EPA's BART analysis for FCPP was inconsistent with its own regulations in that it failed to consider control costs as a function of visibility improvement. These commenters typically stated that EPA's BART determination for FCPP must consider the cost effectiveness of control technology options in terms of dollars per deciview-improved.

Response: The BART Guidelines require that cost effectiveness be calculated in terms of annualized dollars per ton of pollutant removed, or \$/ton.¹² The commenters are correct in that the BART Guidelines list the \$/deciview ratio as an additional cost effectiveness metric that can be employed along with \$/ton for use in a BART evaluation. However, the use of this metric further implies that additional thresholds or notions of acceptability, separate from the \$/ton metric, would need to be developed for BART determinations. We have not used this metric for BART purposes at FCPP because (1) it is unnecessary in judging the cost effectiveness of BART, (2) it complicates the BART analysis, and (3) it is difficult to judge.

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In particular, the \$/deciview metric has not been widely used and is not well-understood as a comparative tool. In our experience, \$/deciview values tend to be very large because the metric is based on impacts at one Class I area on one day and does not take into account the number of affected Class I areas or the number of days of improvement that result from controlling emissions. In addition, the use of the \$/deciview suggests a level of precision in the CALPUFF model that may not be warranted. As a result, the \$/deciview can be misleading. We conclude that it is sufficient to analyze the cost effectiveness of potential BART controls for FCPP using \$/ton, in conjunction with an assessment of the modeled visibility benefits of the BART control.

EPA considered cost of controls, including the total capital costs, annual costs, and \$/ton of NO_x pollution reduced in our proposed BART determination. Additionally, in response to comments received on our proposal, EPA included calculations and consideration of incremental cost effectiveness (see Section 3.2 of the Response to Comments document in the docket for this final rulemaking). EPA considered visibility impacts, including the degree of impairment, the number of Class I areas affected by FCPP, the deciview improvement resulting from controls, and the percent change in improvement. EPA determined that these

metrics are sufficient in completing our five-factor analysis for FCPP.

Comment: One commenter stated that BART must be determined in the context of reasonable progress rather than in isolation and that the cost effectiveness metric used by EPA (i.e., \$/ton of NO_x reduced) does not satisfy the statutory requirement to consider the cost to comply with the Regional Haze program because it does not include compliance costs related to requirements for reasonable progress.

Response: Congress identified BART as a key measure for ensuring reasonable progress. We disagree that BART must be determined in the context of reasonable progress. If anything, reasonable progress depends on BART. Because the Class I areas affected by emissions from FCPP are not achieving the glidepath, it is important that states, tribes, and EPA require reasonable measures to be implemented to ensure that progress is made towards the national visibility goal.

The BART guidelines specify that the cost of controls be estimated by identifying the emission units being controlled, defining the design parameters for emission controls, and developing a cost estimate based on those design parameters using the *EPA Control Cost Manual* while taking into account any site-specific design or other conditions that affect the cost of a particular BART control option. The BART guidelines do not

require the costs of compliance under BART to consider costs that may be associated with reasonable progress.

Comment: The Navajo Nation commented that EPA should analyze the affordability of controls under the supplemental proposal by performing a detailed analysis, rather than an approximation, of the cost of compliance for installing SCR on Units 4 and 5, including a consideration of the impacts of closing Units 1 - 3.

Response: EPA disagrees that we should perform a detailed cost analysis of the alternative emission control strategy put forth in the Supplemental Proposal. The Regional Haze Rule, in assessing an alternative measure in lieu of BART (40 CFR 51.308(e)(2)) requires several elements in the alternative plan (e.g., a demonstration that the alternative will achieve greater reasonable progress than BART, and that reductions are surplus to the baseline date of the SIP), but does not require an analysis of the cost of the alternative plan.

Similarly, an affordability analysis of the alternative emission control strategy is not required under the Regional Haze Rule; however, at the request of the Navajo Nation, pursuant to EPA's customary practice of engaging in extensive and meaningful consultation with tribes, EPA commissioned a study to estimate potential adverse impacts to the Navajo Nation of APS's option to close Units 1 - 3 and will provide the report

to the Navajo Nation by letter as a follow-up to our consultation.

2. Comments on Top-Down Analysis Versus Incremental Cost Effectiveness

Comment: A number of commenters note that EPA's proposed BART analysis was inconsistent with its own regulations in that it used a top-down analytic approach and failed to conduct an incremental cost evaluation. Commenters indicated that in using the top-down analysis, EPA failed to carry out the five-factor analysis for each of the technically feasible retrofit technologies as required by the BART Guidelines (citing 40 CFR part 51, Appendix Y, section I.F.2.c), including combustion control technology which the BART Guidelines identify as presumptive BART.

Response: EPA disagrees with these comments. In the preamble to the final BART guidelines, EPA discusses two options presented in the 2001 proposal and 2004 reproposal of the guidelines for evaluating ranked control technology options (See discussion at 70 FR 39130). Under the first option, States would use a sequential process for conducting the analysis, beginning with a complete evaluation of the most stringent control option. The process described is a top-down approach analogous to the analysis we used in our proposed BART determination for FCPP. If the analysis shows no outstanding issues regarding cost or

energy and non-air quality environmental impacts, the analysis is concluded and the top level of technically feasible controls is identified as the "best system of continuous emission reduction". Therefore, in conducting our BART determination for FCPP, EPA's top-down approach for assessing the five factors was consistent with the discretion allowed under the BART guidelines. EPA additionally notes that the TSD for our proposed rulemaking included analyses of the costs, non-air impacts, and visibility improvements associated with combustion controls at FCPP, but that there is no requirement for a five-factor analysis on all potentially available control options if the top down approach is used and the top level of technically feasible controls is selected (70 FR 39130).

Comment: One of the owners of FCPP asserted that the BART rules require an incremental cost analysis and provided an analysis comparing the costs of combustion controls to the costs of SCR. According to the commenter's analysis, the incremental cost effectiveness of moving from combustion controls to SCR ranges from \$6,553 to \$8,605 per ton of NO_x reduced for the five units at FCPP. This commenter and another FCPP owner asserted that this "extraordinarily high" incremental cost highlights the fact that combustion controls, not SCR, satisfy the cost effectiveness test applied by EPA in adopting the presumptive BART limits in the BART rules.

Response: EPA agrees that the BART Guidelines recommend consideration of both average and incremental cost effectiveness, however, EPA disagrees with the commenter that the incremental cost effectiveness should be a comparison between combustion controls and SCR for this particular facility. As discussed at length in the TSD for our proposed BART determination for FCPP, Region 9 has determined that combustion controls (burner modifications and overfire air, including ROFA) will not be effective at significantly reducing emissions at Four Corners without potential operational difficulties due to inherent design and physical limitations of the boilers. Therefore, in estimating incremental cost, it is inappropriate and misleading to include combustion controls in the analysis for this particular facility. To respond to this comment, EPA conducted an incremental cost effectiveness analysis and included it in our docket for this final rulemaking.¹³ Based on our incremental cost analysis, EPA has determined that the incremental cost of SCR compared to selective non-catalytic reduction (SNCR), the next most stringent option (\$2,500 per ton to \$3,300 per ton), is reasonable and does not support the commenter's conclusion that SCR is not BART for FCPP.

¹³ See "Incremental cost.xlsx" in the docket for this final rulemaking.

EPA estimated the total capital cost of BART for NO_x to be \$718 million and total annual costs (annualized capital costs plus additional operating costs) to be \$93 million per year. This final BART determination is expected to reduce emissions of NO_x by 80 percent, from 43,000 tons per year to 8,500 tons per year, resulting in a facility-wide average cost effectiveness of about \$2,700 per ton of NO_x removed. EPA anticipates that this investment will reduce the visibility impairment caused by FCPP by an average of 57 percent at 16 Class I areas within 300 km of the facility. A detailed summary of the cost and visibility benefits were provided in the Technical Support Document for the proposed rulemaking. As discussed in our Supplemental Proposal, although APS did not provide a cost estimate for the BART Alternative and the RHR does not require an evaluation of costs associated with a BART Alternative, if APS chooses to implement the Alternative, EPA anticipates those costs to be approximately 39 percent lower than the cost of BART. The BART Alternative is expected to reduce emissions of NO_x by 87 percent, from 43,000 tons per year to 5,600 tons per year, resulting in a facility-wide average cost effectiveness of roughly \$1,600 per ton of NO_x removed.¹⁴ EPA anticipates that implementation of the BART

¹⁴ EPA estimates facility-wide average cost effectiveness of the BART Alternative to be lower than BART because under the BART Alternative, Units 1

Alternative will reduce visibility impairment caused by FCPP by an average of 72 percent at 16 Class I areas within 300 km of the facility.

B. Comments on Factor Two - Economic, Energy, and Non-Air Quality Environmental Impacts

We received a number of comments on the economic impacts and on the energy and non-air quality environmental impacts.

1. Comments on Economic Impacts

a. General Comments on Economic Impacts

Comment: Several commenters stated that EPA's analysis of historical and expected costs of electricity from FCPP neglect to include public health costs related to air pollution and the negative impacts to tourism resulting from loss of visibility. The commenters concluded that the cost effectiveness metric used to determine BART must account for health costs related to poor air quality.

Response: EPA disagrees with the comment that the cost effectiveness of BART must account for public health costs associated with poor air quality. Neither Section 169A of the CAA, nor the BART Guidelines, require the BART analysis to

- 3 can be closed instead of retrofitted with new air pollution controls. On a per unit basis, the cost effectiveness of Units 4 and 5 is not expected to differ between BART or the BART Alternative.

include or quantify benefits to health or tourism. Moreover, an analysis of health and tourism benefits is unlikely to alter the outcome of our BART determination, which already requires the most stringent control technology available for NO_x.

Comment: The Navajo Nation, one federal agency, and two of the owners of FCPP stated that EPA must consider the collateral adverse effects on the Navajo Nation and the surrounding communities of its BART determination. The commenters provided background on the substantial interest that the Navajo Nation has in the continued operation of FCPP. The commenters indicated that FCPP and its coal supplier, the Navajo Mine operated by BHP Billiton (BHP), together provide income to the Navajo Nation that contributes substantially to the Nation's economic viability and its sustainability as an independent sovereign nation. The commenters added that this resource extraction-based economy is the result of a conscious effort of the United States dating from the 1950s to develop the Nation's coal resources. According to the commenter, if FCPP and the Navajo Mine were to close as the result of the imposition of cost-prohibitive emission controls, the resulting revenue and job losses would be significant for the Navajo Nation.

Response: EPA agrees with commenters that the operation of FCPP and the Navajo Mine contribute significantly to the economy of the Navajo Nation and the Four Corners Region.

It is not EPA's intention to cause FCPP to shut down, nor is it within our regulatory authority under the Regional Haze Rule to require shutdown or redesign of the source as BART. As expressed in comments from the Navajo Nation to our Advanced Notice of Proposed Rulemaking,¹⁵ EPA understands that the Navajo Nation's primary concern regarding the BART determination is the potential for FCPP closure. Therefore, as discussed in our proposed BART determination, EPA conducted an affordability analysis not typically included in a BART five-factor analysis in order to assess whether requiring SCR on all five units at FCPP would cause the power plant to close.

The model was designed to determine which future alternative results in lower power costs: a) power produced at FCPP after installation of SCR or, b) replacing the power from FCPP with the appropriate amount of wholesale power purchases. As discussed in the TSD for our proposed BART determination, the model results suggested that even if the owners of FCPP installed and operated SCR on all five units, the facility could still produce power at a lower cost than the cost to purchase replacement wholesale power on the open market. Thus, EPA concluded in our proposed BART determination that requiring SCR as BART on all five units would not likely result in plant

¹⁵ Comment letter from President Joe Shirley, Jr. dated March 1, 2010 in the docket for the ANPR: EPA-R09-OAR-2009-0583-0209.

closure. No information was provided by the commenter to change this conclusion in the proposal.

Comment: The Navajo Nation asserted that EPA failed to consult with the Nation prior to publishing the supplemental proposal and failed in its trust responsibility to consider the economic impacts of closing Units 1 - 3. A federal agency commenter noted that EPA's current analysis focuses primarily on increased costs to rate payers and the companies' profitability, and stated that the analysis needs to incorporate the loss in revenue, jobs, and royalties resulting from the closure of Units 1 - 3 under the supplemental proposal.

Response: A timeline of correspondence and consultation with the Navajo Nation and other tribes for EPA actions on FCPP and Navajo Generating Station is included in the docket for the final rulemaking.¹⁶ EPA notes that the Regional Administrator of EPA Region 9 called President Joe Shirley on February 9, 2011 to inform him of EPA's Supplemental Proposal. However, government-to-government consultation with the Navajo Nation on FCPP did not occur until May 19, 2011, with additional consultation occurring on June 13, 2012, prior to issuing our final rulemaking. The Navajo Nation raised concerns about the

¹⁶ See document titled: "Timeline of all tribal consultations on BART.docx" in the docket for this final rulemaking.

potential adverse impacts of the BART Alternative and requested that EPA conduct an analysis to estimate those impacts.

Although the Regional Haze Rule does not require a cost analysis of a BART alternative, at the request of the Navajo Nation, as part of EPA's customary practice of engaging in extensive and meaningful consultation with tribes and tribal authorities with regard to relevant Agency actions, EPA did commission an analysis to estimate potential adverse impacts on the Navajo Nation, with respect to coal- and power plant-related revenues, of the optional BART Alternative to retire Units 1 - 3. The report will be provided to President Shelly by letter as a follow-up to our consultation with the Navajo Nation.

Comment: One owner of FCPP stated that EPA's proposal to require SCR at FCPP presents significant challenges and risks with regard to its resource planning. The commenter pointed out that implementation of the BART proposal would require the commenter to make a significant capital investment in FCPP, which could only be recovered through long-term operation of the plant. According to the commenter, this would have the effect of locking FCPP into the commenter's generation portfolio for a considerable period or risk stranding those investments.

Response: EPA appreciates the perspectives shared in this comment, but we disagree that our five-factor BART analysis should consider the potential loss of an owner's flexibility to

respond to possible future economic or regulatory scenarios. EPA cannot give substantial consideration in our BART analysis to external factors that are of uncertain magnitude and that may or may not occur. EPA further notes that the RHR allows for the development of BART alternatives that achieve greater reasonable progress than BART and EPA appreciates the fact that the owners of FCPP put forth an alternative that gives them more flexibility and results in greater emission reductions at FCPP.

b. Comments on EPA's Economic Analysis

Comment: One public interest advocacy group concurred with the EPA's analysis that the potential increase to APS rate payers as a result of SCR is expected to be less than 5 percent, as described in the TSD. The commenter stated that EPA's estimates are reasonable and that the average increase in the cost of generation at FCPP as a result of SCR implementation would be 22 percent, or \$0.0074 per kWh, as stated in the TSD.

One of the owners of FCPP stated that installation of BART controls would increase its average residential customer monthly bills by \$5.10 (3.8 percent) and larger industrial customer monthly bills by \$17,400 (6.4 percent). The commenter also indicated that installing SCR and baghouses on Units 1 - 3 would increase the cost of electricity production on a \$/MWh basis by more than 50 percent which, in conjunction with other market and regulatory uncertainties, may make the units uneconomical. The

commenter also raised concerns related to the economic viability of Units 4 and 5 if SCR were installed on those units.

Another of the owners of FCPP, who also owns part of San Juan Generating Station and Navajo Generating Station, indicated that if SCR was required on all three power plants, its customers would face a rate increase of 4 to 6 percent, which would be significant because the local economy is fragile and has endured an 8 percent rate increase (not adjusted for inflation) since 1992.

Response: EPA agrees with the first commenter that based upon our analysis the potential increase to APS rate payers as a result of SCR is expected to be less than 5 percent. EPA cannot assess the estimated residential and industrial rate increase claimed by the second and third commenters with our economic analysis because the commenters did not provide information for us to evaluate their conclusions. However, EPA notes that the installation of baghouses on Units 1 - 3 is no longer relevant because EPA has determined that it is not necessary or appropriate at this time to set new PM limits for Units 1 - 3. This is because the Mercury and Air Toxics Standard (MATS) rule, which sets a filterable PM limit of 0.03 lb/MMBtu, is now final¹⁷ and EPA is finalizing in this rulemaking the option to allow APS

¹⁷ See 77 FR 9304, February 16, 2012.

to comply with either BART or the BART alternative, which involves closure of Units 1 - 3.

Comment: One of the owners of FCPP expressed concern that EPA's analysis focuses on the effects on APS and Southern California Edison ratepayers, and not on the other owners of FCPP. This commenter's specific concerns include that the use of a "return on rate"-based methodology would not apply to organizations of the commenter's type (a publicly owned utility) because it is not an investor-owned utility. In addition, the commenter stated that the EPA analysis did not attempt to determine the impact of different assumptions, such as an uncertainty with the future price of coal, on the conclusions of the analysis. Specifically, the "small difference" that EPA estimates between FCPP with SCR installed and the cost of purchasing power to replace FCPP generation suggests that a small change in an underlying assumption (return on rate, coal price, carbon pricing, etc.) could result in model results that show SCR to be a higher cost option than purchasing power. The commenter also raised the concern that EPA's analysis did not examine different "payback periods," but instead relied on a payback period of 25 years, which may be inappropriate because the useful life of the plant is far from certain. The commenter said that EPA should recognize that there is a real risk that one or more owners may decide not to invest in SCR, which would

force the shutdown of FCPP unless another owner could be found in a timely manner. The commenter also said that shutdown of FCPP would have significant adverse consequences on the Navajo Nation.

Response: The commenter is correct that EPA calculated rate impacts for only two of the four investor-owned utilities that own FCPP and excluded others, including an owner that operates as a publicly owned utility. The analysis estimating the increase in electricity generation costs is applicable to all owners of FCPP, but the rate impact analysis provided in the model was not intended to capture the rate impacts of all owners. APS and Southern California Edison (SCE) were selected because their combined ownership shares account for nearly 75 percent of the plant's output. In addition to our expectation that the utilities with the largest ownership share in FCPP would generally experience greater ratepayer impacts from capital expenditure projects like SCR installation, we also assumed that ratepayers of investor-owned utilities would likely experience larger impacts than public power customers due to the fundamental difference between their respective approaches to setting rates. Specifically, rates for public power utilities, in contrast to investor-owned utilities, do not include recovery for a margin above cost allowed as part of a regulated rate of return. Thus, all other variables being equal, one would expect

the same capital investment to result in a larger rate impact for customers of investor-owned utilities than for customers of public power entities. Therefore, EPA continues to believe that our analysis of ratepayer impacts for only APS and SCE are appropriately conservative to demonstrate worst-case impacts to ratepayers of all six owners.

EPA agrees with the commenter that there are many company-specific factors and a wide range of assumptions that would affect a given owner's decision to make further substantial investments (such as SCR) at FCPP. Although many of those factors were outside the focus of the modeling because they were either unrelated to BART or were related to regulatory uncertainties in the future, we included a qualitative discussion in Appendix B to the TSD regarding decision variables that EPA assumed each owner must consider before making capital expenditures. Additionally, EPA notes that the use of low, medium and high future projected prices for the Palo Verde Index in Appendix B to the TSD for the proposed rulemaking represents a sensitivity analysis for the market comparison.

With respect to the comment on the "payback period", the economic analysis for the proposed BART determination did not identify "payback periods". Rather, the commenter appears to be referring to the 25-year period used in the discounted cash flow model. EPA does not disagree with the commenter's stated concern

that a shorter plant life, and thus shorter discounting periods, would yield different economic results. However, EPA disagrees with commenters that a shorter useful life should be considered in the economic analysis because there is no enforceable obligation on APS to cease operations on a given (earlier) date.

2. Comments on Energy and Non-Air Quality Environmental Impacts

Comment: One private citizen stated that no consideration was given to the effect of removing FCPP generation from the grid. According to the commenter, the events of February 2, 2011, show there are times when gas-fired generation cannot replace coal-fired generation because there is not enough gas transportation capacity.

Response: EPA disagrees with the commenter that we should consider the effect of removing FCPP generation from the grid. As stated elsewhere, it is not EPA's intention, nor is it within our regulatory authority, to require closure or require a redefinition of the source, in order to comply with the BART requirement of the Regional Haze Rule. Furthermore, the owners of FCPP did not provide evidence that the installation of SCR would cause FCPP to close.

EPA also notes that APS proposed to purchase the shares of Units 4 and 5 currently owned by Southern California Edison in order to close Units 1 - 3 (of which APS is sole owner) and

install SCR on Units 4 and 5 as an alternative to BART. APS has received approval from the Arizona Corporation Commission and the California Public Utilities Commission to purchase Southern California Edison's share of Units 4 and 5. APS is also seeking approval from the Federal Energy Regulatory Commission to implement its proposal.¹⁸ Decisions on investing in pollution controls or shutting down units are made by the owners in conjunction with their oversight boards or public utility commissions. These oversight bodies are also responsible for assuring the adequacy of electrical generating capacity, whether from coal, gas or nuclear fuels or renewable sources.

Comment: Thirty-seven private citizens commented that FCPP causes significant threats to public health due to its effects on air quality. In addition, a number of environmental and public interest advocacy groups provided comments on health and ecosystem impacts of the pollutants emitted by FCPP.

Regarding health impacts, the commenter noted that the same pollutants that contribute to visibility impairment also harm public health - the fine particulates that cause regional haze can cause decreased lung function, aggravate asthma, and result in premature death in people with heart or lung disease. The

¹⁸ On March 22, 2012, the California Public Utilities Commission (PUC) approved the sale of SCE's ownership share in FCPP to APS. On April 18, 2012, the Arizona Corporation Commission voted to allow APS to purchase SCE's ownership share in FCPP.

commenter added that NO_x and volatile organic compounds (VOCs) can also be precursors to ground-level ozone, which is associated with respiratory diseases, asthma attacks, and decreased lung function. According to the commenter, ozone concentrations in parks in the Four Corners region approach the current health standards, and likely violate anticipated lower standards.

The same commenter also contended that consideration of non-air quality impacts extends to impacts on wildlife and habitat as well as natural and cultural heritage. According to the commenter, haze-causing emissions also harm terrestrial and aquatic plants and animals, soil health, and water bodies by contributing to acid rain, ozone formation, and nitrogen deposition.

With these health and environmental considerations in mind, in addition to visibility and economic considerations discussed in other sections of this document, the commenter urged the EPA to finalize more stringent BART determinations for FCPP.

The commenter noted that FCPP is a significant source of mercury emissions and provided information on the health and ecosystem effects of mercury, as well as on the deposition of mercury and the levels of mercury found in the Four Corners area. In addition, the commenter stated that FCPP emits more than 16 million tons per year (tpy) of CO₂, and that such

emissions contribute significantly to climate change which is likely to result in increasing temperatures and increase drought in the Southwest. The commenter noted that the supplemental proposal would reduce emissions of both mercury and CO₂.

One environmental advocacy group stated that a formal Health Impact Assessment should be conducted by independent experts before EPA's final decision to answer such questions as whether shutting down Units 1 - 3 is sufficient to protect local health, and what health impacts would result from delaying pollution controls on Units 4 and 5 until 2018.

Response: EPA agrees that there are potential benefits to health and the environment from reducing emissions of NO_x. However, quantifying health benefits is not within the scope of the BART five factor analysis required under the CAA (§169A(g)). The BART Guidelines provide additional information on how to analyze "non-air quality environmental impacts, and focuses on adverse environmental impacts associated with control technologies, i.e., generation of solid or hazardous wastes and discharges of polluted water, that have the potential to affect the selection or elimination of a control alternative" (see 70 FR 39169). Thus, although the BART Guidelines do state that relative environmental impacts (both positive and negative) of alternatives can be compared with each other, they state that "if you propose to adopt the most stringent alternative, then it

is not necessary to perform this analysis of environmental impacts for the entire list of technologies". EPA agrees with commenters that controlling pollutant emissions may have co-benefits for reducing ozone production and acid deposition. EPA does not interpret the BART Guidelines to require quantification of human health or environmental co-benefits in determining BART, particularly if the most stringent BART option is finalized. Similarly, EPA does not interpret the BART guidelines to require human health or environmental assessments of alternative compliance strategies as long as we have determined that the alternative strategy achieves better progress towards the national visibility goal.

Comment: The commenter stated that human exposure to environmental hazards is an important factor in assessing impacts of FCPP. The commenter encouraged EPA to pursue health studies in collaboration with the Navajo Nation to study local risks associated with exposure to criteria pollutants, indoor air pollutants, and other contributing air pollutants, from which improved public health and effective rulemakings under the CAA may be achieved.

Response: Assessing human exposure and quantifying health benefits are outside the scope of the requirements of the Regional Haze Rule. EPA sets National Ambient Air Quality Standards (NAAQS) to establish levels of air quality that are

protective of public health, including the health of sensitive populations, for a number of pollutants including particulate matter. These "sensitive" populations include asthmatics, children, and the elderly. At this time the Navajo Nation is not identified as out of attainment with any of the NAAQS. However, EPA recognizes that there are significant concerns about risk and exposure to air pollutants on the Navajo Nation and EPA will continue discussions with the Navajo Nation and will involve other federal agencies, as appropriate, to help address these concerns.

C. Comments on Factor Three - Existing Controls at FCPP

Comment: One of the owners of FCPP agreed with EPA's summary of the existing controls at the plant, but noted that the proposed FIP is only the most recent action in a long line of regulatory and voluntary efforts to reduce emissions of pollutants that impact visibility, including SO₂, NO_x, and PM emissions. The commenter asserted that FCPP has a strong history of retrofitting pollution controls and recounted the facility's history of installing these controls and reducing emissions.

Response: EPA agrees that there have been numerous installations of pollution controls over the several decades that FCPP has been in operation. The most recent voluntary effort by FCPP increased the SO₂ removal from its long-term level of 72 percent removal to 88 percent removal. This was

accomplished before the end of 2004 and became effective as a regulatory requirement in June 2007. The improvement in SO₂ removal has resulted in a decrease of over 22,000 tons of SO₂ per year since that time.

D. Comments on Factor Four - Remaining Useful Life at FCPP

Comment: One of the owners of FCPP noted that the BART rules state that the normal amortization period (20 years for NO_x control devices) is appropriate to use as the remaining useful life if the plant's "remaining useful life will clearly exceed" that amortization period (citing 70 FR 39169). The commenter asserted, however, that as a result of substantial uncertainty related to multiple factors, it is not at all clear that the plant's remaining useful life is at least 20 years.

Moreover, according to the commenter, one factor that should not be allowed to shorten the useful life under the BART rules is the choice of BART itself - EPA cannot use a 20-year amortization period to justify a specified technology (e.g., SCR) if the application of the technology would be so costly as to make the facility uneconomical and shorten its useful life (citing 70 FR 39164, 39171).

The commenter made a number of arguments related to the possibility of a shorter useful life at FCPP that are briefly summarized here. The excessive cost of SCR will dramatically increase the energy costs of the plant, potentially making it

uneconomical. The proposed "phase-in schedule" for SCR may force closure of units because APS will not have certainty by the compliance deadline that the lease will be extended or that Southern California Edison's ownership share will have been successfully transitioned. Emerging environmental laws and regulations present cost and operational uncertainty that may shorten FCPP's useful life (including new GHG laws and regulations, MATS, new ash-handling requirements, and new requirements for cooling water intake structures).

Response: EPA disagrees that we must consider a shorter useful life because of uncertainty related to the factors cited by the commenter. It is inappropriate to consider a useful life shorter than 20 years based solely on uncertainty or the possibility of shut down. EPA further notes that in its cost analysis on behalf of APS, B&V stated "the remaining useful life of Units 1 through 5 was at least 20 years".¹⁹ Unless there is an enforceable obligation for APS to cease operations or unless APS convincingly demonstrates that controls (rather than uncertainty associated with future requirements) will cause facility closure, the default 20 year amortization period represents the appropriate period for the remaining useful life.

¹⁹ See B&V Engineering Analysis for Units 1 - 5 at FCPP dated December 2007. Document number 0011 in docket for proposed rulemaking: EPA-R09-OAR-2010-0683.

EPA agrees that our proposed "phase-in" schedule for installation of add-on post-combustion NO_x controls on Unit 1 - 3 for BART, which was added in the supplemental proposal, may have allowed less than two years for engineering and installation from the date by which APS intends to make its decision on continuing operation or shutting the units down by 2014. EPA is finalizing a modified schedule for the installation of add-on post combustion controls from what was originally proposed (phased-in installation of controls within three to five years of effective date) by requiring one of the 750 MW units to comply with the BART emission limit within 4 years of the effective date of this final rule and the remaining units (Units 1 - 3 and either Unit 4 or 5) within 5 years of the effective date of this final rule.

Comment: One industry commenter stated that EPA, rather than evaluate APS' supplemental proposal as an alternative emission control strategy, should instead "re-determine" BART for each of the five units at FCPP based on the APS-proposed shutdown scenario for Units 1 - 3, i.e., reducing the remaining useful life of Units 1 - 3 to 2014 and then using the short remaining life of those units to determine that BART for Units 1 - 3 is no additional control. The commenter concluded that a "better-than-BART" control strategy does not seem to be necessary for determining the appropriate requirements for FCPP

under the APS-proposed shutdown scenario; instead, a BART determination for each unit with appropriate weighting of the statutory factors appears to present a logical and less-burdensome means of applying section 169A(b)(2) of the CAA to FCPP.

Response: EPA disagrees that APS's supplemental proposal should be evaluated in terms of a BART re-determination rather than in terms of its current status as a "better-than-BART" alternative measure. The 2006 Regional Haze Rule (71 FR 60612) established the procedures described in 40 CFR 51.308(e)(2) and (3) for scenarios involving programs that may make greater reasonable progress than source-by-source BART. These provisions were specifically included to allow for the flexibility to consider alternative measures such as the one proposed by APS, and EPA considers it the most appropriate method for evaluating APS'S supplemental proposal.

Comment: One industry commenter discussed the "remaining useful life" statutory factor, noting that under the BART Guidelines remaining useful life is ignored in the majority of BART determinations (citing 40 CFR part 51, Appendix Y, section IV.D.4.k), which the commenter asserted is inappropriate. According to the commenter, Congress designated the remaining useful life of the source as an important consideration because it did not want to impose the burdens of control technology

retrofits on sources that were more than 15 years old at the time the statute was enacted. Given that it is now 34 years after the BART requirements were enacted, the commenter stated that the "remaining useful life" statutory factor should weigh heavily in BART determinations for older sources such as FCPP, instead of being ignored.

Response: EPA disagrees with the commenter that we ignored the "remaining useful life" statutory factor in our BART decision. EPA considered this factor in our BART analysis (see pages 42-43 of the TSD for our proposed BART determination). As discussed in the TSD, the remaining useful life of an Electric Generating Unit (EGU) subject to BART is determined by the utility. EPA cannot arbitrarily decide that an EGU has less useful life when it is not within our BART rulemaking authority to require closure of an EGU. If a utility used a shorter useful life than one that would allow the full amortization of any necessary pollution controls, EPA would take that into account in the cost analysis, provided that there was an enforceable obligation for the facility to cease operation by that time.

E. Comments on Factor Five - Anticipated Visibility

Improvements

Comment: One of the owners of FCPP presented information on visibility conditions on the Colorado Plateau and the role of NO_x emissions in Western visibility impairment. The commenter

noted that SO₂ and NO_x emissions have been decreasing in recent years. The commenter also presented information that purported to show that whether averaged over the haziest 20 percent of days, the clearest 20 percent of days, or all days, power plant NO_x emissions contribute less than 1.5 percent to the light extinction at Mesa Verde National Park.

Another commenter questioned EPA's assertion that NO_x and PM from FCPP are significant contributors to visibility impairment in the numerous mandatory Class I areas surrounding FCPP (citing 75 FR 64221), stating that coal-fired power plants, including FCPP, are relatively small contributors to regional haze in the surrounding Class I Areas.

Response: EPA modeling of FCPP showed visibility impacts ranging from 1.2 to 6.0 deciviews (dv), depending on the Class I area, with the sum of impacts at all sixteen Class I areas totaling 43 dv. This is a significant contribution to visibility impairment. Even if an individual source category appears small to some commenters, the many segments of the emissions inventory together cause significant visibility impairment and must be addressed in order to make progress towards the national goal of remedying visibility impairment from manmade pollution. Section 169A of the CAA requires BART determinations on BART-eligible EGUs regardless of trends or ambient visibility conditions. Application of BART is one means by which we can ensure that

downward emission and visibility impairment trends continue. EPA identifies stationary sources as an important category to evaluate in a BART analysis.

Comment: Three of the owners of FCPP, the Navajo Nation, and two utility industry associations argued that EPA's use of Interagency Workgroup on Air Quality Modeling (IWAQM) Phase II default background ammonia values is not appropriate. They argued the following points: (1) actual field measurements show lower ammonia concentrations than used by EPA; (2) EPA is mistaken in its assumption that background ammonia concentrations along the path of the plant's plume determine nitrate concentrations and their contribution to haze at the receptor site; (3) EPA's "corroborating" approach of "back-calculating" ammonia is flawed because it erroneously assumes that the ammonia associated with measured sulfate and nitrate would all be available to react with FCPP emissions, whereas in reality those measurements reflect emissions from many sources; (4) EPA's analysis of nitrate predictions as a check on the ammonia values used is also flawed because it erroneously assumes that the resulting measured nitrate levels are solely due to FCPP emissions; (5) comparable analysis using the EPA ammonia value shows substantial and "physically impossible" over-predictions of nitrate. The commenters conclude that the

use of IWAQM values invalidates EPA's BART modeling and the BART determination that relied on the modeling.

Another utility industry association stated that several measurement programs on the Colorado Plateau show that actual ammonia values in Class I areas near FCPP are significantly lower than the IWAQM default value, indicating that these values typically range from 0.1 to 0.6 ppb. The commenter noted that ammonia concentrations are lowest during the cold season when the visibility impacts of NO_x emissions are the highest. Accordingly, the commenter asserted that using a single ammonia value throughout the year is not scientifically valid and should be replaced with seasonally variable values.

The Navajo Nation expressed concern regarding discrepancies between EPA and APS modeling inputs, given the commenter's understanding that APS obtained advance EPA approval for its modeling protocols. Some commenters stated that EPA had earlier agreed to lower ammonia concentrations, and so should not be using the higher IWAQM value now.

In contrast, one public interest advocacy group concurred with EPA's back-calculation method for ammonia background levels (citing the TSD, page 60). The commenter added that the requests to EPA from other commenters for additional ammonia monitoring data are unrealistic in today's budget environment.

Response: EPA disagrees with commenter objections to the background ammonia concentrations used in our modeling. Our use of the 1 ppb IWAQM Phase II default background ammonia value is appropriate. Most of the objections have already been discussed in EPA's TSD for the proposal; and several of them concern the "back-calculation" method that we used only as corroboration for using the 1 ppb results we principally relied on. Also, even if the lower ammonia concentrations urged by some commenters were accepted, EPA's sensitivity modeling results provided in the TSD for our proposed BART determination showed the visibility benefits would still support EPA's BART determination. EPA also provided the results of modeling runs that used the lower ammonia background concentrations recommended by some commenters (see TSD Table 37). The visibility benefits of the NO_x controls for BART are substantial under all ammonia scenarios, including the lower background ammonia concentrations recommended by commenters. For 12 Class I areas, modeling even with those lower background concentrations showed improvements of 0.5 dv or more, an amount recognized in the BART Guidelines as significant (e.g. at 70 FR 39120).

The lack of ammonia and ammonium measurements in the Class I areas of concern requires that EPA estimate background ammonia concentrations by some method, considering available data and approaches. As discussed in the BART proposal and its

accompanying TSD, EPA understands that there is no single accepted method for estimating the background concentration of ammonia, and that any method will have advantages and disadvantages. The lack of consensus on a method was a factor in EPA's decision to rely on the 1 part per billion (ppb) default value in IWAQM, as was the fact that IWAQM is the only available guidance on this issue. In summary, there is insufficient monitoring information available to use a different value, or to support any seasonally varying values and, as described below, these values are reasonable to use in this analysis.

On the first issue, field measurements cited by the commenters were not performed in the Four Corners area, nor at the Class I areas near FCPP, so they do not give appropriate ammonia background concentrations for modeling of FCPP. In addition, the studies provide only gaseous ammonia (NH_3) and not ammonium (NH_4) that has reacted with SO_2 or NO_x emissions. For purposes of assessing FCPP impacts relative to natural background, per the BART Guidelines, both ammonia and ammonium should be assumed to be available to interact with emissions from FCPP. The ammonia-only measurements cited by the commenters underestimate the available ammonia. Finally, as discussed in the TSD, field measurements in the Four Corners area showed ammonia measurements ranging from 1.0 ppb to 1.5 ppb, and

sometimes as high as 3.5 ppb.²⁰ This provides some additional support for the 1 ppb used by EPA.

On the second issue, in using a 1 ppb background EPA did not rely on an assumption about the importance of background ammonia along the path of the plume, as claimed by the commenters. The 1 ppb background is a representative value for areas in the west under existing EPA guidance, in the IWAQM document. The commenters' objection is based on the rapidity of the nitrate-nitric acid equilibrium, which they state implies that ammonium nitrate can only be estimated using ammonia measurements right at the Class I area, and not the ammonia that occurs earlier along the plume's path to the area. EPA's TSD for the proposed rulemaking did state (TSD p.62) that the Federal Land Managers partly relied on this assumption as one of the rationales for the back-calculation method, discussed below; EPA also expressed support for the idea that the method can be viewed as a 24-hour temporal integration, not just a spatial integration over the plume path, and that this aspect can be viewed as desirable for the 24-hour average visibility estimate that CALPUFF provides (TSD pp.71-72). This plausibility argument applies despite the rapid nitrate-nitric acid equilibrium cited

²⁰ Mark E. Sather *et al.*, 2008. "Baseline ambient gaseous ammonia concentrations in the Four Corners area and eastern Oklahoma, USA". *Journal of Environmental Monitoring*, 2008, 10, 1319-1325, DOI: 10.1039/b807984f

by the commenters, and in any case was not relied on by EPA in using the 1 ppb default ammonia background.

As the commenters stated under the third issue, EPA used a back-calculation ammonia estimation method as an alternative means of corroboration for the 1 ppb IWAQM method, which is more fully explained in the TSD for the proposed rulemaking.

Essentially, it uses measured particulate ammonium sulfate and nitrate to estimate the amount of ammonia that must have been present to form those ammonia compounds. The commenters object that the method assumes that all the calculated ammonia is available to interact with the FCPP plume as background ammonia. However, this assumption is reasonable for the single-source CALPUFF modeling performed under the BART Guidelines. It estimates ammonia concentrations that would be monitored at the Class I area if only this single source existed; it includes ammonia that is currently in the form of ammonium because of interaction with other sources' emissions. It remains true that some portion of the calculated ammonia would in reality not be available for FCPP, because it arrives at the monitor from a different direction than FCPP's pollutant plume; on the other hand, the data would also include directions contributing below-average ammonia, reducing that effect.

In addition, the back-calculated ammonia is based on measurements only of particulate ammonium, the form associated

with measured sulfate and nitrate; it does not include any gaseous ammonia that may also be present. In this sense, the back-calculated ammonia is a lower bound on the ammonia that may be available to interact with source emissions; that is, the method may underestimate ammonia concentrations. This possible underestimation tends to offset possible overestimation discussed above.

EPA does not claim that the back-calculation method is dispositive; it incorporates various assumptions and imperfections that make clear it is only an estimate. However, it is based on real measured data at Class I areas, and has some counterbalancing tendencies for over- and under-estimation. After weighing various lines of argument about the back-calculation method, EPA disagrees with the commenters who recommended that it be rejected altogether. The method provides a useful estimate of ammonia for BART modeling, by providing concentrations representative of the high values that would be observed at the Class I areas in the absence of other sources. The back-calculation method, therefore, is used to corroborate that it is appropriate to use the 1 ppb IWAQM default for background ammonia concentrations.

In the fourth issue raised by commenters, the commenters claim that the assumption of full availability to FCPP of the back-calculated ammonia invalidates EPA's comparison of

monitored nitrate levels with those modeled using the back-calculated ammonia (TSD p.73). As just discussed for the third issue, EPA disagrees that the assumption is invalid for corroboration of single-source BART assessment modeling. For single-source BART modeling, on balance, is reasonable to assume all the ammonia is available to the source, given the counterbalancing tendencies for over- and underestimation inherent in the back-calculation method discussed above. In any case, this method mainly provided corroboration for the results from using the 1 ppb ammonia default.

The fifth issue about "physically impossible" nitrate over-predictions does not account for the fact that any model evaluation is expected to have under- and over-predictions, depending on the meteorological conditions and the geographic location modeled, as well as on the location of the monitor used for comparison. The commenter's apparent requirement for no overpredictions whatsoever would require a model with the converse problem, a bias toward underprediction. While consistent over-prediction in a full model performance evaluation would indeed raise concerns over its validity, as EPA stated, our nitrate comparison was not intended as a model performance evaluation, but rather as a "rough check" for the back-calculation corroboratory method (TSD p.73). EPA found that

the modeled and monitored values, for both the maximum values and the 98th percentiles, were generally in agreement.

Finally, contrary to the commenter's assertion, EPA did not receive a modeling protocol in advance of modeling by APS's contractor. EPA disagrees with commenters that EPA committed to use the same ammonia concentrations used by APS's contractor in our own modeling analysis for our BART determination.

Comment: Three of the owners of FCPP and a utility industry association asserted that CALPUFF version 5.8 used in EPA's BART analysis is outdated. Because of enhancements to the model's chemistry, the commenters asserted that CALPUFF version 6.4 represents the best application that is currently available. A number of the commenters mentioned a December 2010 meeting between the CALPUFF developer and the FLMs where the FLMs reportedly supported an expedited review and approval of CALPUFF version 6.4.

Another owner of FCPP stated that the version of CALPUFF used by EPA has a tendency to over-predict nitrate concentrations, which is compounded by EPA's use of what the commenter stated are overestimated ammonia background values. The commenter asserted that this combination of errors results in a significant over-prediction of visibility improvements for more stringent NO_x BART control options. Further, the commenter stated that this disproportionately affects the incremental

visibility benefits predicted for SCR over Low NO_x Burners (LNB) compared to LNB over baseline.

In contrast, one federal agency was generally supportive of the modeling methods employed by EPA with the regulatory approved version 5.8 of the CALPUFF modeling system.

Response: EPA disagrees with the commenters that any new CALPUFF version should be used for the BART determination. EPA relied on version 5.8 of CALPUFF because it is the EPA-approved version in accordance with the Guideline on Air Quality Models ("GAQM", 40 CFR 51, Appendix W, section 6.2.1.e); EPA updated the specific version to be used for regulatory purposes on June 29, 2007, including minor revisions as of that date; the approved CALPUFF modeling system includes CALPUFF version 5.8, level 070623, and CALMET version 5.8 level 070623. CALPUFF version 5.8 has been thoroughly tested and evaluated, and has been shown to perform consistent with the version from the time of the initial 2003 promulgation, in the analytical situations CALPUFF has been approved for. Any other version would be considered an "alternative model", subject to the provisions of GAQM section 3.2.2(b), requiring full model documentation, peer-review, and performance evaluation. No such information for the later CALPUFF versions that meet the requirements of section 3.2.2(b) has been submitted to or approved by EPA. Experience has shown that when the full evaluation procedure is not

followed, errors that are not immediately apparent can be introduced along with new model features. For example, changes introduced to CALMET to improve simulation of over-water convective mixing heights caused their periodic collapse to zero, even over land, so that CALPUFF concentration estimates were no longer reliable.

In addition, the latest version of CALPUFF, 6.4, incorporates a detailed treatment of chemistry. EPA's promulgation of CALPUFF (68 FR 18440, April 15, 2003) as a "preferred" model approved it for use in analyses of Prevention of Significant Deterioration increment consumption and for complex wind situations, neither of which involve chemical transformations. For visibility impact analyses, which do involve chemical transformations, CALPUFF is considered a "screening" model, rather than a "preferred" model; this "screening" status is also described in the preamble to the BART Guidelines (at 70 FR 39123, July 6, 2005). The change to CALPUFF 6.4 is not a simple model update to address bug fixes, but a significant change in the model science that requires its own rulemaking with public notice and comment.

Furthermore, it should be noted that the US Forest Service and EPA review of CALPUFF version 6.4 results for a limited set of BART applications showed that differences in its results from those of version 5.8 are driven by two input assumptions and not

associated with the chemistry changes in 6.4. Use of the so-called "full" ammonia limiting method and finer horizontal grid resolution are the primary drivers in the predicted differences in modeled visibility impacts between the model versions. These input assumptions have been previously reviewed by EPA and the FLMS and have been rejected based on lack of documentation, inadequate peer review, and lack of technical justification and validation.

EPA intends to conduct a comprehensive evaluation of the latest CALPUFF version along with other "chemistry" air quality models in consultation with the Federal Land Managers, including a full statistical performance evaluation, verification of its scientific basis, determination of whether the underlying science has been incorporated into the modeling system correctly, and evaluation of the effect on the regulatory framework for its use, including in New Source Review permitting. CALPUFF version 5.8 has already gone through this comprehensive evaluation process and remains the EPA-approved version, and is thus the appropriate version for EPA's BART determination for FCPP.

Comment: Some commenters argued against the visibility metrics that EPA introduced in the BART proposal. One commenter noted that none of the metrics (percent improvement in dv impacts, cumulative changes in dv , and dv impacts scaled by the

geographic area of the affected Class I area) is addressed in the BART rules, and posited that their introduction into the BART process is intended to inflate the estimated visibility benefits of the control options at FCPP. Regarding the percent improvement metric, the commenter stated that these values (unlike values of the haze index in dv) have no consistent relationship to the human perception of haze changes and no consistent relationship to changes in ambient visibility-impairing particle concentrations.

Similarly, one of the owners of FCPP stated that cumulative change in dv is not an appropriate metric to describe visibility improvement and should be withdrawn. This commenter made a number of points which are briefly described here. The peak impact from a source occurs at different times in different Class I areas because a facility's emissions cannot result in peak concentrations in all directions at once. Thus, this metric really does not represent a cumulative regional impact of the source (and hence the benefit of controls); rather it simply produces a mathematical summation of the peak impacts occurring at different times at various Class I areas. It is inappropriate to add improvements over all Class I areas. A 0.5 dv improvement in one Class I area and a 0.5 dv improvement in another area does not result in a 1 dv improvement - the improvement is a 0.5 dv improvement, which occurs in two different locations. Any one

observer would experience only a 0.5 dv improvement; he or she can only experience the visibility improvement in the Class I area being visited.

Conversely, one environmental advocacy group commenter supported the use of a cumulative impact analysis. The commenter asserted that the cumulative impact of a source's emissions on visibility, as well as the cumulative benefit of emission reductions, is a necessary consideration as part of the fifth step in the BART analysis, particularly in cases such as FCPP where the source causes or contributes to visibility impairment at a significant number of Class I areas. The commenter stated that failing to account for a source's cumulative impairment and the cumulative pollution control benefit would result in a failure to acknowledge the regional approach to reducing haze.

Response: EPA believes that it is important to consider the visibility impact on multiple Class I areas. The goal of the visibility program is to remedy visibility impairment at all Class I areas. CAA 169A(a)(1). One approach to account for the benefits to all affected Class I areas is the cumulative "total dv" metric. EPA relied on the modeled impacts and benefits at each Class I area individually, the number of Class I areas affected, and also considered, but did not rely on, the sum of visibility impacts and benefits across all 16 Class I areas.

Comment: Two commenters questioned EPA's use of 0.5 dv as the threshold of a humanly perceptible change in visibility (citing 75 FR 64228). One commenter added that the establishment of a specific deciview threshold as a "bright line" to define whether a certain control will be imposed as BART is contrary to the intent of the BART rules and the objectives of the Regional Haze program, which require EPA to consider the cost of each control option in relation to the associated visibility benefit.

One of the owners of FCPP expressed the belief that application of SCR at FCPP would result in no perceptible visibility improvement and therefore cannot be BART.

Response: EPA disagrees with the commenters that the visibility benefit from the proposed BART controls is too small to warrant requiring the controls; in addition, EPA is not using a perceptibility threshold in this BART determination. EPA agrees that thresholds should not be considered a "bright line" in making BART decisions. In the BART Guidelines, EPA described 1 dv as the threshold for an impact that "causes" visibility impairment, and 0.5 dv as a threshold for an impact that "contributes" to visibility impairment, for determining whether a source is subject to BART, though States were accorded discretion to use different thresholds (70 FR 39118, July 6, 2005; also 39120-39121). These thresholds do not apply to BART determinations for sources that have been found subject to BART;

States or EPA could consider visibility impacts less than 0.5 dv to warrant BART controls. To the extent that the comment is questioning the BART eligibility of FCPP, EPA has already established that FCPP is BART eligible and the commenter did not provide evidence to the contrary.

Even if the commenters are correct that 0.5 dv change is not perceptible, EPA noted that "[e]ven though the visibility improvement from an individual source may not be perceptible, it should still be considered in setting BART because the contribution to haze may be significant relative to other source contributions in the Class I area. Thus, we disagree that the degree of improvement should be contingent upon perceptibility. Failing to consider less-than-perceptible contributions to visibility impairment would ignore the CAA's intent to have BART requirements apply to sources that contribute to, as well as cause, such impairment." (70 FR 39129) That is, impacts smaller than 0.5 dv do contribute to impairment. Conversely, an improvement of 0.5 dv or even less contributes to improvement in visibility impairment. As stated in the proposal, the modeled improvements in visibility are large enough to warrant requiring the proposed BART controls. While the actual improvements may be larger, from 0.6 to 2.8 dv, even as small an improvement as 0.5 dv is a contribution toward improving visibility, especially when the benefits at multiple Class I areas are considered. In

conjunction with improvements from other sources, this will help and is necessary for progress toward the CAA goal of remedying manmade visibility impairment.

Comment: One environmental advocacy group commenter stated that EPA underestimated visibility improvement from installing NO_x controls because it overestimated the production of sulfuric acid by the SCR and underestimated the amount of sulfuric acid removed downstream of the SCR. The commenter cited reports attached to the comments to argue that sulfuric acid does not limit SCR NO_x control efficiency. The reports also state that modeling shows that greater NO_x removal rates are not offset by sulfuric acid emissions but instead yield greater visibility improvements than those proposed by EPA. The commenter states that this would result in a significant visibility benefit from increasing the SCR NO_x efficiency from 80 percent to 90 percent and therefore concludes that a higher level of NO_x control than 80 percent should be determined BART.

Response: EPA disagrees that we overstated the production of sulfuric acid from the SCR catalyst and underestimated the amount of sulfuric acid removed downstream of the SCR. In the TSD for our proposed BART determination, we estimated sulfuric acid emissions using the Electric Power Research Institute (EPRI) methodology and provided detailed explanations for all of the assumptions we applied (see TSD p.55-59, 64-65, and 68).

While we fully acknowledge and understand that the generalized EPRI methodology does not precisely represent true sulfuric acid emissions for a given facility, this method is a commonly used calculation methodology for estimating sulfuric acid emissions under a future operating scenario involving SCR.

EPA assumed in our BART proposal that a 3+1 system (four layers of catalyst) would achieve 80 percent NO_x removal. Greater reduction efficiencies would likely require an additional layer of catalyst, which models indicate would increase sulfuric acid emissions. Based on the SO₂ to SO₃ conversion rate guarantee we received from Hitachi for its CX series catalyst (ultra-low conversion) of 0.167 percent per layer, the use of an additional catalyst layer would equal five layers of catalyst and a 0.835 percent conversion rate. EPA is not aware of SCR systems that use five layers of catalyst, and the addition of a fifth layer would also affect the cost and operation of the unit.

Although EPA agrees that the modeling referenced by the commenter indicates greater visibility improvement from an SCR system achieving 90 percent removal compared to 80 percent removal despite higher sulfuric acid emissions,²¹ EPA does not agree that this requires EPA to determine that a greater level

²¹ EPA notes that the baghouses on Units 4 and 5 are assumed to provide a significant amount of control of sulfuric acid emissions, therefore, such slight increases in sulfuric acid emissions would not be expected on units that are not equipped with baghouses.

of control is required as BART. The level of control recommended by the commenter is equivalent to those required as the Best Available Control Technology (BACT) for new facilities. As discussed in responses to other comments, the Regional Haze Rule requires a case-by-case BART determination, which need not be equivalent to BACT for new facilities. As discussed in our proposed BART determination and in our Supplemental proposal, given the boiler size and configuration at FCPP that limit use of combustion controls, and other considerations related to ash content of coal, EPA is finalizing its determination that 80 percent control is appropriate as BART for FCPP.

F. Comments on BART Determinations

1. Comments on the Proposed BART Determination for NO_x

Comment: A number of commenters, including owners of FCPP, the Navajo Nation, and a utility industry association, assert that EPA's BART analysis was inconsistent with its own regulations in that it did not give proper weight to the "presumptive BART" limits for NO_x that it established for EGUs through notice-and-comment rulemaking (generally citing 70 FR 39104, July 6, 2005). The commenters noted that these presumptive BART limits are based on the use of combustion controls, and that EPA had considered and rejected establishing presumptive BART limits based on SCR. A brief summary of these comments follows.

In establishing presumptive BART limits for NO_x emissions from EGUs, EPA concluded that combustion control-based presumptive limits "are extremely likely to be appropriate for all greater than 750 MW power plants subject to BART" (a category that includes FCPP), that they are "highly cost-effective controls," and that they "would result in significant improvements in visibility and help to ensure reasonable progress toward the national visibility goal (citing 70 FR 39131). Additionally, EPA has made clear that "the presumptions represent a reasonable estimate of a stringent case BART..." (citing 71 FR 60612, 60619, Oct. 13, 2006).

Commenters argue that EPA was not correct in stating in the proposed BART determination for FCPP that in setting presumptive BART limits, it "did not consider the question of what more stringent control technologies might be appropriately determined to be BART" (citing 75 FR 64226). Rather, EPA's 2005 rules were clear that the Agency had considered - and rejected - establishing presumptive BART limits based on SCR (citing 70 FR 39136). Thus, EPA established through rulemaking that SCR is not an appropriate basis for presumptive BART limits and that combustion controls should generally be deemed BART.

Commenters also argue that a BART analysis must begin with and take into account the presumptive BART limits and EPA's rationale for setting them. If a source is able to meet the

limit through the application of combustion controls, there should be an exceedingly strong presumption that such controls constitute BART.

Commenters state that EPA's analytical approach disregarded the presumptive limits entirely. By using a top-down approach in which it started its analysis by evaluating SCR and then determined that SCR is BART for FCPP, EPA never undertook an assessment of combustion controls.

Commenters further argue that in its BART analysis, APS demonstrated that each unit at FCPP can meet the presumptive BART limits through the application of advanced combustion control technologies.

Under the BART rules, a deviation from presumptive BART, either upwards or downwards, is authorized if an alternative control level is justified based on "careful consideration of the statutory factors" (citing 70 FR 39131). Commenters argue that EPA did not carefully consider the BART factors and then conclude that an alternative to presumptive BART limits is appropriate. Instead, commenters state that EPA dismissed the presumptive BART limits before even considering the BART factors.

Response: EPA disagrees with the commenters' assertions that we did not give sufficient weight to presumptive BART NO_x

limits, or that the BART determination for FCPP was performed in a manner inconsistent with the RHR.

As noted in other responses in this document, the presumptive NO_x limits established in the BART Guidelines are determined to be cost effective and appropriate for most units. The establishment of presumptive BART limits, and the corresponding technology upon which those limits are based, does not preclude States or EPA from setting limits that differ from those presumptions. Indeed, the five statutory factors enumerated in the BART Guidelines provide the mechanism for establishing different requirements. We note the RHR states:

States, as a general matter, must require owners and operators of greater than 750 MW power plants to meet these BART emission limits. We are establishing these requirements based on the consideration of certain factors discussed below. Although we believe that these requirements are extremely likely to be appropriate for all greater than 750 MW power plants subject to BART, a State may establish different requirements if the State can demonstrate that an alternative determination is

justified based on a consideration of the five statutory factors.²²

The RHR also states:

If, upon examination of an individual EGU, a State determines that a different emission limit is appropriate based upon its analysis of the five factors, then the State may apply a more or less stringent limit.²³

Therefore, the presumptive emission limits in the BART Guidelines are rebuttable.²⁴ The presumptive emission limits apply to power plants with a total generating capacity of 750 MW or greater insofar as these sources are required to adopt emission limits at least as stringent as the presumptive limits, unless after considering the five statutory factors, the State determines that the presumptive emission limits are not appropriate. Moreover, the RHR and BART Guidelines do not exempt States from a five factor BART analysis, and that BART analysis may result in a determination of BART emission limits that are more or less stringent than the presumptive emission limits for subject to BART sources. The RHR states:

For each source subject to BART, 40 CFR 51.308(e)(1)(ii)(A) requires that States identify the

²² 70 FR 39131

²³ 70 FR 39132

²⁴ 71 FR 60619

level of control representing BART after considering the factors set out in CAA section 169A(g), as follows:

States must identify the best system of continuous emission control technology for each source subject to BART taking into account the technology available, the costs of compliance, the energy and non-air quality environmental impacts of compliance, any pollution control equipment in use at the source, the remaining useful life of the source, and the degree of visibility improvement that may be expected from available control technology.²⁵

EPA's site-specific five-factor analysis performed for FCPP demonstrates that, in considering the expected remaining useful life of FCPP and the existing controls, SCR is cost effective, results in the most visibility improvement of all feasible control technologies, and does not cause energy or non-air quality environmental impacts that warrant its elimination as the top control option. As a result, regardless of the appropriateness of SCR as a control technology for most units on a national scale, or the extent to which EPA considered SCR in establishing the presumptive limits, the site-specific five-

²⁵ 70 FR 39158

factor analysis performed for FCPP justifies a different NO_x BART limit than the presumptive NO_x BART limit.

EPA disagrees with commenters' assertions that we disregarded presumptive NO_x BART limits. Although we do not rely upon the numerical values of the presumptive NO_x limits listed in the BART Guidelines, the technological basis for presumptive NO_x BART limits, such as the use of combustion control technology, boiler type, and coal type, were considered in the site-specific five-factor analysis. Combustion control technology was specifically considered as a potential retrofit technology, and costs and visibility improvements associated with combustion controls were calculated and included in the TSD in order to provide a comparison to other NO_x control technologies.

In addition, EPA disagrees that the rule directs authorities to consider non-combustion control technology only when presumptive limits cannot be met using combustion control technology. While a BART determination deviating from presumptive BART must be supported by the results of the five-factor analysis, the rule does not restrict the ability of States (or in this case, EPA) to initiate a five-factor analysis.

Comment: Two of the owners of FCPP and the Navajo Nation asserted that advanced combustion controls constitute BART for FCPP because such controls will result in meaningful emission

reductions and will contribute to reasonable progress toward visibility improvement.

One of these commenters noted that EPA has "determined that combustion controls are not likely to be effective control technologies at FCPP" (citing 75 FR 64226). The commenter asserted that EPA's determination is based on superficial analysis and is mistaken. This commenter cited its comments which contain a detailed analysis of the use of LNB and OFA on FCPP's units. According to the commenter, this analysis confirms that the use of advanced combustion controls on the five units at FCPP will reduce plant-wide NO_x emissions by 34 percent and, for those units that are subject to presumptive BART limits, the reductions more than satisfy the presumptive limits in the BART rules.

Two of the commenters added that considering that neither SCR nor advanced combustion controls will produce humanly perceptible visibility improvements in the nearby Class I areas, control technologies that result in limits that meet presumptive BART should be determined BART and that these reductions will contribute to reasonable progress toward the national visibility goal.

The Navajo Nation stated that a phased approach to emissions controls at FCPP, beginning with combustion controls, is fully consistent with both the CAA and the RHR, and is the

approach that the EPA should take as a prudent trustee of the Navajo Nation.

This commenter added that the BART component of the CAA and RHR was meant to provide for a measured response to emissions from aging power plants; thus, requiring the most expensive controls is inconsistent with the law and regulations governing the BART process. The commenter also asserted that requiring a power plant over which EPA has exclusive jurisdiction to bear a greater regulatory burden than similarly situated plants regulated by the States is contrary to the purposes of the Act, the RHR, and to the economic interests of the Navajo Nation.

Response: EPA disagrees with the comment that advanced combustion controls on all five units at FCPP will reduce plant-wide NO_x emissions by 34 percent. APS has provided conflicting information regarding whether or not advanced combustion controls will be effective at significantly reducing NO_x emissions at FCPP. As outlined in the TSD for our 2010 BART proposal, we have concluded that combustion controls will not be effective at significantly reducing NO_x emissions at FCPP.

EPA disagrees that installation of SCR will not result in humanly perceptible impacts. As noted above, EPA's visibility modeling of the impacts of SCR installation at FCPP indicates visibility improvements at the sixteen nearby Class I areas ranging from 0.9 to 2.5 dv.

EPA agrees with certain aspects of comments from the Navajo Nation regarding a phased implementation strategy to attaining national visibility goals. In 40 CFR 51.308(f), States are required to revise their regional haze implementation plans every ten years, which is a process that involves evaluating their ability to attain reasonable progress goals and potentially updating their long-term strategy for regional haze. The periodic revision requirement described in 40 CFR 51.308(f), however, does not extend to the implementation plan for BART requirements. The phased approach described by the Navajo Nation has certain benefits, and a phased approach is incorporated into the alternative emission control strategy.

Comment: Two federal agencies and two groups of environmental advocacy groups assert that the NO_x emission limit for the units at FCPP should be 0.05 lb/MMBtu based on the capabilities of SCR. The federal agency commenters stated that, given that BART is meant to achieve the best possible emissions reductions, EPA should not base its emission limits on the "minimum reduction expected from SCR, estimated by Hitachi Power Systems America" (citing the TSD for our proposed rulemaking) because real-world application of SCR indicates that lower NO_x emission limits are routinely reached. Regarding the emission limits for Units 4 and 5, the commenters noted that of the 20 cell burners with SCR in 2010, 12 had lower NO_x limits than

proposed by EPA for FCPP, with 3 EGUs at less than 0.06 lb/MMBtu. Based on this information, the original APS BART analysis of SCR at 0.06 lb/MMBtu (annual and 24-hour average), and the "common knowledge" that SCR can achieve at least 90 percent reduction, the commenters concluded that the installation of SCR at FCPP is capable of reducing annual NO_x emissions by 90 percent to 0.05 lb/MMBtu on an annual average basis.

One of the federal agency commenters specifically refuted EPA's rationale in the supplemental proposal for its 80 percent SCR efficiency estimate. The main points are summarized below.

EPA took into account the degradation of the SCR catalyst over its lifetime and calculated the emission limit to reflect the capability of the catalyst just prior to its replacement on a 3-year cycle. Commenters assert this issue is not a technical limitation on SCR, but is simply a cost item to be accounted for in the proper design and operation of the SCR.

EPA stated that pursuing NO_x control efficiencies of greater than 80 percent on Units 4 and 5 is limited by formation of H₂SO₄ from the SCR catalyst because the additional layers of catalyst needed to increase NO_x control efficiency would increase emissions of H₂SO₄, most affecting nearby Mesa Verde National

Park. The commenter gave several reasons why this argument is incorrect.

EPA stated that the high ash content (approximately 25 percent) of the coal burned at FCCPP may adversely affect the capability of SCR to reach the highest end of the control efficiency range without the use of additional layers of catalyst or more frequent catalyst replacement. According to the commenter, this is not consistent with previous EPA proposals for SCR emissions limits at facilities that use coal with similar ash content. Unless the FCCPP ash contains some unusual catalyst poison, the 25 percent ash content is not a technical feasibility issue that would affect SCR effectiveness, but is a matter of proper SCR design, operation, and maintenance.

This federal agency commenter also asserted that NO_x BART for Units 1 - 3 should be 0.05 lb/MMBtu on an annual basis. The commenter noted that unsuccessful attempts to reduce NO_x emissions at FCCPP with combustion controls occurred over a decade ago when this technology was not as fully developed as now, and pointed out that APS'S BART analysis concluded that such controls are technically feasible and would reduce NO_x emissions significantly.

The commenter evaluated Clean Air Markets Division (CAMD) data for 2000 - 2009 and found 33 dry-bottom, wall-fired boilers with NO_x emissions rates similar to FCCPP Units 1 - 3 (0.6 - 0.8

lb/MMBtu) that had been reduced to 0.4 lb/MMBtu or less by application of modern combustion controls. The commenter asserted that because the typical approach is to first reduce NO_x emissions by combustion controls before adding SCR, these real-world CAMD data support the belief that using combustion controls and SCR could reduce NO_x at FCPP Units 1 - 3 to 0.05 lb/MMBtu on an annual basis.

The commenter asserted that modern SCRs are routinely designed and operated to achieve 90 percent NO_x control and that based on this well-accepted industry standard, NO_x control of at least 90 percent is BART.

The commenter also contended that LNB and OFA are feasible for all five units at FCPP. The commenter rejected EPA's statement that it would be difficult to retrofit Units 4 and 5 with modern LNB technology (citing 76 FR 10534) and pointed out that the operator of FCPP has stated that the combination of LNB and OFA is technically feasible for these units. The commenter indicated that the use of LNB/OFA on Units 1-5 would reduce NO_x emissions by 27 to 46 percent, making SCR with a removal efficiency of 90 percent sufficient to satisfy a 0.05 lb/MMBtu NO_x limit.

The commenter stated that a 0.05 lb/MMBtu limit is consistent with EPA's determinations elsewhere, such as for the San Juan Generating Station (proposed limit of 0.05 lbs/MMBtu,

30-day rolling average) and for Desert Rock (final permit limit of 0.035 lbs/MMBtu, 365-day rolling average). According to the commenter, an EPA-issued permit containing a lower NO_x limit creates a presumption of technical feasibility for purposes of BART. Commenters also argued that emission limits should be based on a 30-boiler operating day rolling average.

Response: EPA disagrees with the commenter's assertion that emission limits associated with BART must meet the lowest emission rate achieved with that technology at any coal-fired power plant. The Regional Haze Regulations at 40 CFR §51.308(e)(1)(ii)(A) state that:

The determination of BART must be based on an analysis of the best system of continuous emission control technology available and associated emission reductions achievable for each BART-eligible source that is subject to BART . . .

Additionally, the BART Guidelines state that: "[i]n assessing the capability of the control alternative, latitude exists to consider special circumstances pertinent to the specific source under review, or regarding the prior application of the control alternative", (70 FR 39166) and that "[t]o complete the BART process, you must establish enforceable emission limits that reflect the BART requirements. . ." (70 FR 39172). The five-factor BART analysis described in the Guidelines is a case-by-

case analysis that considers site specific factors in assessing the best technology for continuous emission controls. After a technology is determined as BART, the BART Guidelines require establishment of an emission limit that reflects the BART requirements, but does not specify that the emission limit must represent the maximum level of control achieved by the technology selected as BART. The BART Guidelines and the Regional Haze Rule do not preclude selection of the maximum level of control achieved by a given technology as BART, however, the emission limit set to reflect BART must be achievable by the specific source and should be determined based on consideration of site-specific factors. Therefore, limits set as Best Available Control Technology (BACT) during Prevention of Significant Determination (PSD) review (e.g., Desert Rock) may provide relevant information, but should not be construed to automatically represent the most appropriate BART limits representative of a given technology for every facility.

While some commenters asserted that combustion controls would be feasible upstream of SCR to further reduce NO_x emissions to meet a limit of 0.05 lb/MMBtu, in its comment letter, the National Park Service (NPS) agreed with EPA that the addition of combustion controls may "not (be) worth the small incremental reduction in NO_x emissions". As discussed in the TSD for our proposed BART determination, because additional combustion

controls at FCPP would not achieve significant reductions in NO_x and may cause operability issues for the boilers, EPA determined that SCR, without the addition of new combustion controls, is BART for FCPP.

Several environmental organizations argued that a 30-day rolling average emission limit of 0.05 lb/MMBtu should be determined BART for FCPP and provided supporting documentation.²⁶ EPA disagrees that an emission limit set in association with a BART determination must represent the lowest achieved emission rate from the best performing unit using that technology. EPA notes that, after further examination²⁷ of the commenters' supporting documentation, the maximum 30-day calendar average emission rates for the 17 top performing units exhibited significant variability (0.056 - 1.1 lb/MMBtu), even though the annual average emission rates listed are all below 0.07 lb/MMBtu.

In its comments, the National Park Service provided examples of 3 cell burner boilers currently equipped with SCR: Cardinal Units 1 and 2 and Belews Creek Unit 1. Based on NO_x data from the Clean Air Markets Division (CAMD), EPA notes that over 2009 - 2011, NO_x emissions from Cardinal Unit 1 showed an

²⁶ See items (2 and 3) in collection of documents titled "Public Comment_8 Environmental Groups (Barth)_Letter 5-2-11". Document Number EPA-R09-OAR-2010-0182.

²⁷ See the Response to Comments, Section 8.1 in the docket for this final rulemaking.

increasing trend. Cardinal Unit 2 shows a similar pattern as Unit 1, with an increasing trend in minimum and maximum 30-day calendar averages. Belews Creek 1 also showed a similar pattern of generally increasing minimum and maximum 30-day calendar average emission rates. Although commenters are correct in stating that the best performing units can achieve 30-day rolling emission rates of 0.05 lb/MMBtu or lower, CAMD data show significant variability in emission rates, both over time for a given unit, and between the best performing units. Some of this variability may be related to catalyst aging, or may be related to the participation of these units in trading programs (therefore these units operate without an absolute limit on individual boilers). Regardless of the cause of this variability, EPA notes that significant variability over a 30-day average, even among the best performing units, does exist, and EPA disagrees that an emission limit set in association with a BART determination must represent the lowest rate achieved on 30-day rolling average basis from the best performing unit using that technology.

EPA examined the most recent Clean Air Markets Division (CAMD) emission rate data for 12 cell burner boilers currently operating with SCR over 2009 - June 2011²⁸. In order to determine

²⁸ See the Response to Comments Section 8.1 in the docket for this final rulemaking.

what might be an appropriate percent reduction to represent all cell burner boilers currently using SCR, we calculated the average percent reduction from the highest emission rate achieved over all 12 units. The percent reduction achieved from the monthly calendar average emission rate over 2009 - June 2011 from the 12 units ranged from 48 to 90 percent, with an average value of 78 percent.

Commenters claim that emissions of sulfuric acid mist and the high ash content of coal used by FCPP, and considerations of catalyst life are not barriers to achieving higher NO_x reduction efficiencies than proposed by EPA. EPA disagrees with comments that our statement regarding the impact of additional layers of catalyst on increasing sulfuric acid emissions is unsupported. EPA understands from our correspondence with Hitachi Power Systems America that each layer of catalyst used results in an incremental increase in the conversion rate of SO₂ to SO₃. The EPRI method used for calculating sulfuric acid requires the input of a SCR catalyst oxidation rate. This oxidation rate varies depending on catalyst type and number of layers used. For the ultra low SO₂ to SO₃ oxidation catalysts offered by Hitachi, each layer contributed roughly 0.167 percent conversion, with three layers totaling 0.5 percent. The use of an additional layer, such as in a 3+1 system, would thus increase the conversion rate to nearly 0.7 percent when all four catalyst

layers are in operation. Further NO_x reductions achieved from the addition of a 5th layer of catalyst would likely exacerbate pluggage and back-pressure concerns related to the ash content of the coal and may affect cost and operation of the unit. Commenters have not submitted information to refute this.

The ash content of coal has an important effect on the effectiveness of SCR because high ash content in coal can cause pluggage and catalyst erosion and thus reduce available catalyst area and activity for NO_x reduction. Commenters point to San Juan Generating Station (SJGS) and Desert Rock as facilities with lower SCR-based NO_x emission limits that use high ash content coal. EPA Region 6 recently finalized a FIP for SJGS with a limit of 0.05 lb/MMBtu, representing an 83 percent reduction in NO_x emissions. The emission limit EPA Region 6 set for SJGS is lower than the limit we set for FCPP because SJGS uses a different boiler type than FCPP and modern combustion controls have already been installed and have reduced NO_x emissions at SJGS by 29 - 33 percent²⁹. EPA has determined that because Units 4 and 5 at FCPP are cell burner boilers, modern combustion controls would not significantly reduce NO_x emissions from FCPP. Even though the emission limit differs, the reduction efficiency

²⁹ See page 4-3 of report titled "PNM BART Report for SJGS_final to PNM_June 18, 2007.pdf" in the docket for this final rulemaking. Pre-consent decree emission rates on Units 1 - 4 at SJGS ranged from 0.42 - 0.45 lb/MMBtu. Post-consent decree emission limits for those units were 0.30 lb/MMBtu

from the installation and operation of SCR at FCPP and SJGS are generally consistent, particularly when considering the similarly high ash content of coal (greater than 20 percent) used at both facilities. In 2008, EPA Region 9 issued a pre-construction Prevention of Significant Deterioration (PSD) permit to allow construction of a new coal-fired power plant on the Navajo Nation, known as the Desert Rock Energy Facility (Desert Rock)³⁰. If constructed, Desert Rock would have used the same coal as FCPP from the BHP Navajo Mine and the final PSD permit set a NO_x limit of 0.05 lb/MMBtu (on a rolling 365-day average). Commenters argue that if Desert Rock was required to meet a limit of 0.05 lb/MMBtu using the same coal as FCPP, the ash content should not hinder FCPP from achieving similarly low NO_x emission rates. EPA notes that if constructed, Desert Rock would have been a new, state-of-the-art facility specifically designed with boiler characteristics, combustion controls, and post-combustion controls to meet the Best Available Control Technology (BACT) requirements for numerous criteria and non-criteria pollutants. FCPP is an existing, over 40-year-old power plant. The Regional Haze Rule requires a case-by-case BART (best

³⁰ Desert Rock has not been constructed. EPA requested a voluntary remand of the Desert Rock PSD permit in 2009 to incorporate new applicable requirements. The developers of Desert Rock have not yet submitted a revised PSD application to EPA.

available retrofit technology) determination, which need not be equivalent to BACT for new facilities.

Based on the significant 30-calendar day average variability exhibited by the top performing units cited by commenters, and the variability in 30-calendar day average and the 2009 - June 2011 30- calendar day average percent NO_x reduction of 78 percent exhibited by 12 cell burner boilers equipped with SCR, EPA continues to affirm that a limit representing an 80 percent reduction in NO_x emissions reflects what is achievable using the technology determined as BART for FCPP.

Comment: One of the owners of FCPP stated a willingness to support a NO_x emission limit of 0.098 lb/MMBtu for Units 4 and 5 under the alternative proposal, but only in the context of an alternative emission reduction strategy that includes resolution of the related issues.

The Navajo Nation similarly endorsed the proposed 80 percent reduction in NO_x emissions from Units 4 and 5, with a limit of 0.098 lb/MMBtu, under the supplemental proposal, based on the site-specific parameters at FCPP.

Response: EPA agrees that the appropriate limit for Units 4 and 5 under the alternative strategy is 0.098 lb/MMMtu (based on a rolling average of 30 successive boiler operating days). The final rule reflects this limit.

Comment: One of the owners of FCPP opposed EPA's proposal to "phase in" NO_x controls at FCPP under a traditional BART FIP, commencing 3 years from the date the FIP becomes effective. The commenter asserted that this proposal does not afford adequate time to properly design, engineer, and construct the controls before the compliance deadline.

Response: EPA partially agrees with this comment. We revised the BART compliance date for one 750 MW unit to within 4 years from the effective date of this final rule. The remaining 750 MW unit and Units 1 - 3 must meet a compliance date of within 5 years of the effective date of the final rule. The revised compliance time within 4 and 5 years allows time for design, engineer, and construct controls.

Comment: One environmental advocacy group stated that the proposed plant-wide BART limit of 0.11 lb/MMBtu across all five FCPP units violates Executive Order 12898 on environmental justice. Specifically, the commenter asserted that given the significant differences in pollution control systems among FCPP's five units, allowing a plant-wide average could create pollution "hotspots" with respect to co-pollutants. As an example, the commenter noted that while Units 4 and 5 have baghouses, Units 1 - 3 use less efficient venturi scrubbers for control of sulfur dioxide, particulate matter, and mercury. The commenter asserted that the plant-wide average limit for NO_x

would allow increased emissions from Units 1 - 3 in the event of a temporary outage or reduced output from one or both of the larger units. The commenter stated that while this may not increase the total NO_x emissions from the plant, it would increase the amount of mercury and other toxic co-pollutants emitted into the surrounding community, which is a low-income community of color.

Response: EPA disagrees with the commenter that a plant-wide BART limit of 0.11 lb/MMBtu across all five FCPP units violates Executive Order 12898 on environmental justice. This final rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income population because it increases the level of environmental protection for all affected populations in the area including any minority or low-income population.

The commenter is correct that in the event of a temporary outage or reduced output from Unit 4 or 5 the operator could continue to operate FCPP units 1 - 3 under the original BART proposal provided that they maintain compliance with the plant-wide emission limit of 0.11 lb/MMBtu for NO_x. In order to maintain compliance with the plant-wide emission limit, Units 1 - 3 would have to operate at a lesser capacity than they would normally operate if Unit 4 and 5 were functioning because units 1 - 3 have higher NO_x emission rates than Units 4 and 5. The NO_x

emission rates from Units 1 - 3 with SCR, based on 80 percent control of current emission rates would be 0.16, 0.13, and 0.12 lb/MMBtu respectively which are higher than the proposed plant-wide emission limit. Therefore, to maintain compliance with the plant-wide NO_x emission limit (which is based upon a 30-calendar day rolling average), Units 1 - 3 would have to operate at a reduced capacity in any 30-day period in which Units 4 and 5 are operating a reduced capacity, so as to maintain the balance among the five units. This reduced capacity would result in an overall lower rate of emission for mercury and other co-pollutants from Units 1 - 3. Therefore, there would be no increased emissions of mercury or other co-pollutants and no "hot-spots" or disproportionately high and adverse human health or environmental effects on minority or low-income population.

2. Comments on the Proposed BART Determination for PM

Comment: One of the owners of FCPP asserted that the existing controls at FCPP constitute BART for PM emissions. The commenter contended that the impact of PM controls on the visibility in the neighboring Class I areas would be "vanishingly small" while the cost would be "exorbitant" (resulting in cost effectiveness ranging from \$51,500 - \$148,659 per ton reduced and from \$1.4 billion - \$3.7 billion per dv improvement).

The Navajo Nation stated that EPA acknowledged the high incremental cost of new PM controls on Units 1 - 3 (citing 75 FR 64230), yet justified the cost effectiveness of baghouses by comparison with similar retrofit projects in EPA Region 9. This commenter asserted that EPA failed to properly evaluate the costs associated with installation of baghouses using site-specific parameters, thereby deviating from the BART Guidelines. The commenter asserted that continued operation of venturi scrubbers to meet emission limits of 0.03 lb/MMBtu and an opacity limit of 20 percent satisfies BART for Units 1 - 3.

The Navajo Nation expressed support for the supplemental proposal to require a PM emission limit of 0.015 lb/MMBtu and 10 percent opacity limit on Units 4 and 5. The commenter presumed that FCPP can readily meet these standards prior to installation of SCR since the limits can be achieved with the existing baghouses.

Regarding the EPA's proposed 10 percent opacity standard for each unit, two of the owners of FCPP stated that the EPA has not specified any costs or predicted any improvement in visibility that would result from such limits. The commenters asserted that without such basis, the EPA cannot justify the proposed opacity limits.

Response: As stated in our proposed BART determination for PM, the existing venturi scrubbers on Units 1 - 3 at FCPP do not

constitute BART. In our proposed BART determination for FCPP, EPA proposed a PM emission limit for Units 1 - 3 that can be achieved through the installation of any of four different PM control options. At the time of our BART proposal, the MATS Rule for electric utility steam generating units had not yet been proposed, nor had APS suggested its alternative emission control strategy to close Units 1 - 3 in lieu of complying with BART for NO_x. Because the final MATS rule has been issued³¹ and sets filterable PM and mercury limits that would be applicable to the units at FCPP, and because EPA is finalizing this rule to allow APS to either comply with the alternative emission control strategy or BART for NO_x, EPA is determining that it is not necessary or appropriate at this time to finalize our proposal to set new PM limits for Units 1 - 3.

Regarding our proposed BART determination for PM for Units 4 and 5, we are finalizing the proposed 0.015 lb/MMBtu emission limit based upon the proper operation of the existing baghouses. However, we have determined based on the comments we received from the operator of FCPP that it is not necessary or appropriate to take final action on the proposed 10 percent opacity limit. We have determined that imposing a 10 percent opacity limit will not provide greater assurance that Units 4

³¹ See 77 FR 9304, February 16, 2012

and 5 at FCPP are meeting the PM emission limit of 0.015. We have determined previously that a 20 percent opacity limit is sufficient to ensure the PM emission limit is being continuously met. The 10 percent opacity limit was generally supported by the Navajo Nation and environmental groups. EPA has promulgated some recent rules for electric generating units that have retained a 20 percent opacity standard rather than reducing that limit to 10 percent. Specifically, EPA's revised the New Source Performance Standard for large electric generating units at 40 CFR Part 60, Subpart Da, to lower the PM emission limit for new units to 0.09 lb/MMBtu for gross energy output or 0.097 lb/MMBtu for net energy output. For existing units that reconstruct or modify, Subpart Da establishes an emissions limit of 0.015 lb/MMBtu. For both standards, EPA retained a 20 percent opacity standard as being sufficient to ensure compliance with either the 0.090 (0.097) lb/MMBtu or 0.015 lb/MMBtu PM emission limit. EPA's MATS rule, which was finalized just a few months ago, also retained a 20 percent opacity standard as being sufficient to ensure compliance with the PM emission limit that will be required for electric generating units subject to that rule.

The importance of the opacity limit is that a certain percentage opacity is an instantaneous demonstration that a unit is in compliance with its PM emission limit. If a unit does not install and operate a PM continuous emissions monitor, then EPA

ensures compliance with the PM emission limit by requiring an episodic source test. For the periods between episodic source testing, EPA can reasonably assure continuous compliance with the PM emission limit by observing that the unit's stack emissions do not exceed a set opacity. EPA's recent rulemakings have determined that 20 percent opacity is sufficient to ensure compliance with a PM emission limit lower than the emission limit we have determined is BART for Units 4 and 5. Accordingly, EPA is determining the 20 percent opacity limit that we promulgated in our 2007 FIP for FCPP as being adequate to ensure continuous compliance with the PM BART limit or 0.015 lb/MMBtu. EPA concludes that this change is a logical outgrowth of the comments received on the proposal.

Comment: One commenter indicated that EPA has proposed a BART limit only for PM, which appears to be only filterable particulate matter. The commenter asserted that the BART guidelines specify that BART should be evaluated and defined for both PM₁₀ and PM_{2.5} (citing 40 CFR part 51, Appendix Y, section IV.A) and, consequently, that EPA must evaluate and define BART limits for both PM₁₀ and PM_{2.5}. The commenter also asserted that as part of the PM_{2.5} BART determination, EPA must impose emission limits on condensable particulate matter, which is typically in the size range of 2.5 micrometers or smaller. Thus, the

commenter stated that in addition to a filterable PM BART limit, EPA should impose a BART limit on total PM_{2.5}.

One public interest advocacy group supported EPA's proposal and supplemental proposal to require a PM limit and a 10 percent opacity limit on Units 4 and 5. The commenter indicated that these limits should become effective prior to SCR installation, regardless of whether the BART or alternative emission control plan is implemented.

Response: EPA disagrees with the commenters' recommendation that the condensable fraction must be included in the PM BART limits. EPA has previously outlined our rationale for why an H₂SO₄ limit is not appropriate at this time (it will be addressed through the pre-construction permitting process if needed) and EPA expects that H₂SO₄ will be the main component of condensable PM that would be expected from a coal-fired EGU with an SCR.

EPA agrees with commenters that PM limits on Units 4 and 5 should become effective prior to SCR installation, as Units 4 and 5 generally already meet the 0.015 lb/MMBtu limit.³² EPA is finalizing a compliance date for PM emission limits on Units 4 and 5 to be within 6 months after restart following the next scheduled major outages in 2013 and 2014. As discussed

³² See document titled: "TSD ref. [2-3, 95] FCPP_BART_Scenarios_Emissions_EPA_Proposal.xlsx" in the docket for this proposed rulemaking at EPA-R09-OAR-2010-0683-0017.

previously, EPA has determined that finalizing the proposed opacity limit of 10 percent on Units 4 and 5 is not necessary or appropriate at this time.

3. Comments on BART for SO₂

Comment: Some commenters stated that SO₂ BART should be required for FCPP, while one commenter simply noted that FCPP is subject to BART for SO₂. One federal agency commenter stated that FCPP is subject to BART for SO₂. The commenter stated that Units 4 and 5 should be able to meet a limit of 0.12 lb/MMBtu on an annual average basis by upgrading the existing scrubbers.

One set of environmental advocacy groups discussed the Regional Haze rules, the TAR, and the SO₂ emissions from FCPP and concluded that EPA is under a legal obligation to conduct a BART analysis for SO₂ emissions from FCPP and, to the extent EPA has failed to make a finding that it is "necessary or appropriate" to regulate SO₂ emissions from the FCPP, such a failure is arbitrary, capricious, and not supported by the administrative record.

According to the commenter, EPA argues that FCPP's current SO₂ emissions limits are "close to or equivalent" to the limit that would be established under BART. The commenter asserted that this conclusion is arbitrary and capricious because EPA has failed to undertake any scientific or technical analysis to support its conclusion.

A public interest advocacy group stated that the SO₂ limits need to be tightened for FCPP to further reduce visibility impairment and to reduce the acidification of rainfall caused by the formation of H₂SO₄. The commenter stated that because the damaging effects of H₂SO₄ in precipitation on ancestral Puebloan sandstone dwellings and pictographs are not fully understood, it is disappointing for the FCPP proposals not to address SO₂.

Response: EPA finalized a FIP in May 2007 that required significant SO₂ emissions reductions from FCPP and established continuous SO₂ emissions limits for FCPP. See 72 FR 25698 (May 7, 2007). The 2007 FIP required FCPP to increase the removal efficiency of its SO₂ emissions controls from 72 percent to 88 percent, resulting in a SO₂ emissions reduction of approximately 22,000 tons per year. EPA had proposed this FIP in September 2006. The 2006 proposed FIP stated that "EPA believes that the SO₂ controls proposed today for FCPP are close to or the equivalent of a regional haze BART determination of SO₂. This takes into consideration the early reductions this action will achieve and the modification to the existing SO₂ scrubbers." 72 FR 25700. In finalizing that rulemaking in the 2007 FIP, EPA stated that it was exercising its authority pursuant to Section 49.11 of the TAR to implement measures that are necessary or appropriate to protect air quality in Indian country. *Id.* EPA determined that the SO₂ emissions reductions would be federally

enforceable as soon as the 2007 FIP was finalized which would be potentially five years before EPA could achieve enforceable SO₂ emissions reductions through making a BART determination. See *id.* EPA also considered the Navajo Nation's request for EPA to establish enforceable SO₂ emissions reductions immediately that, in the opinion of the Navajo Nation, "appear[] to be equivalent to BART." *Id.* Therefore, EPA's determination on this issue in finalizing the 2007 FIP was "that it is neither necessary nor appropriate at this time to undertake a BART determination for SO₂ from FCPP given the timing of the substantial SO₂ reductions resulting from this FIP." *Id.* In addition, we stated that "given that the SO₂ controls for FCPP immediately achieve significant reductions in SO₂ comparable to what could ultimately be achieved through a formal BART determination, EPA believes that it will not be necessary or appropriate to develop a regional haze plan to address SO₂ for the Navajo Nation in the near term." *Id.* 25700-701. Both APS, as operator of FCPP, and Sierra Club sought judicial review of our 2007 FIP.

The comments on this action essentially repackage the comments we received and provided a response for on the 2007 FIP. The comments have not presented any new facts or legal considerations that have arisen or changed since we responded to comments requesting a BART determination for SO₂ in 2007.

4. Other Comments on BART

Comment: One group of environmental advocacy groups stated that as an alternative to a condensable PM_{2.5} limit, EPA could set limits on the pollutants which form condensable PM_{2.5}, such as sulfuric acid mist (H₂SO₄) and ammonia, as EPA proposed as part of the San Juan Generating Station (SJGS) BART rulemaking (citing 76 FR 503-4, January 5, 2011). If EPA adopts this approach, the commenter urged EPA to set an emission limit for H₂SO₄ no higher than the limit of 1.06 x 10⁻⁴ lb/MMBtu for each unit as proposed for SJGS based on the use of low reactivity catalyst and the most current information from the Electric Power Research Institute. If CEMS are unavailable for this pollutant, the commenter urged EPA to require stack test monitoring for H₂SO₄ on a more frequent basis than annual monitoring.

The commenter also requested that EPA set emission limits for ammonia at a rate no higher than the 2.0 parts per million as proposed at SJGS, to be monitored with CEMs.

Response: EPA disagrees with the comment that Region 9 should set the same emission limits for ammonia and sulfuric acid as Region 6 in its proposed BART determination for SJGS.

In its January 5, 2011 proposed rulemaking for SJGS, Region 6 proposed an ammonia slip limit of 2.0 ppmvd on an hourly average and requested comment on a range from 2.0 ppmvd to 6.0 ppmvd. In its final BART rulemaking (76 FR 52388, August 22,

2011), Region 6 determined that an emission limit and monitoring were not warranted for ammonia and did not finalize its BART determination for SJSG with the proposed 2.0 ppmvd ammonia limit.

In its proposal for SJGS, Region 6 proposed an emission limit for sulfuric acid of 1.06×10^{-4} lb/MMBtu on an hourly average, and requested comment on a range from 1.06×10^{-4} to 7.87×10^{-4} lb/MMBtu. In its final rulemaking, Region 6 finalized an emission limit for sulfuric acid of 2.6×10^{-4} lb/MMBtu to minimize its contribution to visibility impairment. Region 6 calculated this emission limit using an estimation methodology from EPRI, assuming the use of an ultra-low activity catalyst (0.5 percent total conversion of SO_2 to SO_3), zero ammonia slip, no sorbent injection, and EPRI-recommended values for removal by existing downstream control equipment.

Actual measurements of baseline sulfuric acid emissions have not yet been determined at FCPP and the calculation of projected sulfuric acid emissions after installation and operation of SCR using the EPRI methodology is dependent on future decisions made by the facility on the type of SCR catalyst and number of layers used, as well as numerous assumptions about loss to downstream components, such as air preheaters and baghouses, the true values of which are currently not yet defined or known for FCPP. Furthermore, EPA Region 9 is

the permitting authority for preconstruction permits on the Navajo Nation, and an increase in sulfuric acid emissions from the installation of SCR may trigger major modification PSD permit requirements at a low threshold of 7 tpy (see 40 CFR 52.21) or Tribal minor new source review (NSR) permit requirements at a threshold of 2 tpy (see 40 CFR Part 49 Subpart C). Preconstruction permitting review may also be triggered from significant emissions increases of PM_{2.5} from SCR installation at FCPP. If one of these pollutant triggers PSD, the permitting authority must provide an Additional Impact Analysis under the PSD program. The PSD program also requires the permitting authority to determine BACT for pollutants that triggered PSD. A similar control technology review may also be required at the discretion of the permitting authority under the Tribal Minor NSR program. For these reasons, Region 9 has determined that for FCPP, emission limits and monitoring requirements for sulfuric acid are more appropriately reviewed in the preconstruction permitting process.

Comment: Citing the BART Guidelines at 40 CFR part 51, Appendix Y, section V, one environmental advocacy group stated that BART emission limits and compliance schedules must be based on "boiler operating day."

The commenter asserted that the "very high" proposed BART emission limits suggest that EPA set these limits to encompass

spikes that occur during startups and shutdowns. The commenter asserted that setting and enforcing limits based on boiler operating day would necessarily exclude spikes that occur before and after outages, such as startups, shutdowns, and malfunctions. According to the commenter, such periods should be subject to separate limits set at the pre-SCR uncontrolled level to encourage good work practice standards during these periods while allowing the SCR and other emission control technologies to be operated at an efficient and continuous capacity in compliance with BART.

Response: EPA agrees that the NO_x limit under the alternative emission control strategy should be set for 30 successive boiler operating days and that a "boiler operating day" should be defined as any day in which the boiler fires fossil fuel. Because the NO_x emission limit under the alternative emission control strategy already includes periods of startup and shutdown, separate limits are not required. The final rule reflects this approach.

For the original proposed BART determination, EPA does not find it necessary to define boiler operating day because the BART limit is a heat input-weighted plant-wide limit. Only operating hours for any of the five units would be included. When a unit is not operating, those hours are not included in the plant-wide 30-day average. Additionally, the heat input-

weighted plant-wide limit also includes periods of startup and shutdown; therefore, separate limits are not required.

Comment: One environmental advocacy group stated that EPA should require FCPP to install all control equipment within 3 years of the date of a final FIP, as EPA did at SJGS. The commenter stated that there is ample data to support the contention that all this emission control technology can be installed and operational within 3 years or less.

Response: EPA disagrees with the comment that Region 9 should set a 3-year compliance timeframe because Region 6 proposed a 3-year compliance timeframe for SJGS. In its proposed rulemaking for SJGS,³³ Region 6 proposed a 3-year timeframe for SJGS to comply with the proposed limits but requested comment on a compliance range of 3 - 5 years³⁴. In its final rulemaking³⁴, Region 6 finalized a compliance timeframe of 5 years and determined that because of site congestion at SJGS, a longer timeframe than average (37 - 43 months) to install SCR on the 4 units at SJGS would be required. The final BART determination for FCPP requires retrofit of five existing units at FCPP. In the final rule for FCPP, Region 9 is requiring installation and operation of SCR controls for one 750 MW unit within 4 years of the effective date, and the remaining 750 MW unit and Units 1 -

³³ See 76 FR 491, January 5, 2011

³⁴ See 76 FR 52388, August 22, 2011

3 within 5 years of the effective date. Based on all of the factors that will be involved in the design, purchase and operation of the SCR controls, Region 9 considers this schedule to be appropriate and expeditious.

G. Comments on APS's Alternative and EPA's Supplemental Proposal

Comment: One of the owners of FCPP pointed out that the November 2010 APS proposal included two critical components: (1) a proposal to close Units 1 - 3 and install SCRs on Units 4 and 5; and (2) EPA's contemporaneous agreement that these activities resolve any liability FCPP may have under regional haze BART, Reasonably Attributable Visibility Impairment Best Available Retrofit Technology (RAVI BART), NSR, and New Source Performance Standard (NSPS). The commenter asserted that EPA's supplemental proposal addresses only half of APS'S proposal - the half that achieves better than BART emission reductions, plant-wide reductions of all other emissions, and greater visibility improvement at nearby Class I areas - but ignores the other half of the APS proposal - the half that provides APS and the FCPP co-owners with needed regulatory certainty. Unless there is a contemporaneous resolution of these key issues with EPA, the commenter cannot and does not support EPA's supplemental proposal.

Response: EPA understands that the owners of FCPP were seeking to resolve any potential regulatory noncompliance issues simultaneously. However, EPA must use different mechanisms for promulgating rules and resolving enforcement issues. The comment requests resolution of potential past non-compliance with NSR and NSPS requirements. Potential past non-compliance can be resolved through entering into a Consent Decree containing a judicially approved release from liability. Such a Consent Decree under the CAA must be approved by the United States Department of Justice and must also be lodged in a United States District Court where the public is allowed to comment on it. Consent Decrees must be entered by the United States District Court for a release of liability of potential past non-compliance to be effective. Accordingly, this rulemaking action cannot effectuate any release of liability for potential past non-compliance with NSR or NSPS.

EPA is aware that several environmental groups have petitioned the Department of Interior to make a finding that impairment at Class I areas is reasonably attributable to FCPP.³⁵ The NPS, on behalf of Department of Interior, has declined to

³⁵ See National Parks Conservation Association, et al., Petition to United States Department of Interior, United States Department of Agriculture, and United States Forest Service, February 16, 2010, in the docket for this rulemaking.

make such a finding based on EPA's work in this rulemaking.³⁶ The environmental groups also filed a Complaint in the United States District Court for the District of Columbia³⁷ contending that the Department of Interior was unreasonably delaying making a finding of reasonable attribution from FCPP. On June 30, 2011, the Court dismissed the Complaint³⁸ holding that the NPS's letters refusing to make the finding of reasonable attribution constituted denying the Petitioners' request for a RAVI finding. Therefore, there are no pending petitions with the Department of Interior requesting a finding that visibility impairment at any Class I areas is reasonably attributable to FCPP. In any event, a BART determination under RAVI would likely be the same as under this BART determination.

Comment: One of the owners of FCPP stated that it is imperative to note that its support of the supplemental proposal (if other potential liabilities are resolved as discussed above) is based solely on the rationale that this achieves a result better than the proposed BART FIP, and that this "better than

³⁶ See letter from Will Shafroth, Department of Interior to Stephanie Kodish, NPCA, March 8, 2011 in the docket for this proposed rulemaking.

³⁷ See National Parks Conservation Association, et al., Petition to United States District Court for the District of Columbia, January 20, 2011, in the docket for this final rulemaking.

³⁸ See National Parks Conservation Association, et al., Plaintiffs, v. United States Department of Interior and United States Department of Agriculture, Defendants. Civil Action No. 11-130 (GK). United States District Court for the District of Columbia, June 30, 2011, 794 F. Supp. 2d 39; 2011 U.S. Dist. LEXIS 70170; 74 ERC (BNA) 1015. In the docket for this final rulemaking.

BART" outcome is a result of the closure of Units 1, 2, and 3. The commenter stressed that in no case - either in the original BART FIP proposal or in the supplemental proposal - does the commenter support any determination that SCR constitutes BART for FCPP. A second FCPP owner stated that its acceptance of the supplemental proposal upon resolution of the other potential issues would be a voluntary action based on its own business interests; the commenter does not support any BART determination that calls for installation of SCR at FCPP.

Response: EPA disagrees with the commenters that SCR is not BART. Based on our five-factor analysis, as described in the TSD for our proposed BART determination, SCR is cost effective and results in the greatest anticipated improvement in visibility. One of the owners of FCPP notes that the "better-than-BART" outcome is a result of the closure of Units 1, 2, and 3. However, the closure of Units 1 - 3 alone does not result in greater emission reductions than EPA's proposed BART determination, and represents only a roughly 30 percent reduction from baseline emissions. The closure of Units 1 - 3, in combination with SCR on Units 4 and 5, results in the "better-than-BART" outcome.

The voluntary nature of the alternative emission control strategy does not negate EPA's BART determination because (1) EPA must first determine what BART is in order to fulfill the

requirements of the alternative program to BART as prescribed in the Regional Haze Rule, and (2) EPA cannot require the full or partial closure of a facility as a BART alternative, therefore the alternative emission control strategy remains an optional business choice of the owners of FCPP to implement in lieu of BART, if they see fit.

Comment: One environmental advocacy group and one federal agency asserted that the supplemental proposal is not better than BART for NO_x. Generally, commenters argue that based on the extended compliance timeframe for the alternative emission control strategy, the use of an artificially inflated baseline, the potential increase in output from Units 4 and 5, and assuming that SCR can achieve 0.05 lb/MMBtu of NO_x on an annual basis, the BART alternative fails to achieve greater cumulative NO_x reductions than would installation of BART (SCR) on all five units.

Response: EPA disagrees with the comment that the alternative emission control strategy is not better than BART, but agrees that a reexamination of baseline emissions and projected capacity factors in the future is warranted. As reported in the TSD for our proposed BART determination, facility-wide NO_x emissions over 2001 - 2009 ranged from 40,331 to 47,300 tpy. While the baseline emissions provided by APS and used by EPA in our Supplemental Proposal was within the range of

annual NO_x emissions, in response to these comments, we conducted an additional analysis to compare the alternative emission control strategy against our final BART determination for NO_x using the 2001 - 2010 average as the baseline emission rate and an assumed capacity factor of 81 percent³⁹ for Units 4 and 5 under the alternative emission control strategy.⁴⁰ This analysis shows that in 2014 and 2015, the alternative emission control strategy results in lower NO_x emissions than BART due to the closure of Units 1 - 3 at the end of 2013. In 2016, 2017, and 2018, BART results in lower emissions than the alternative, and in 2019 and beyond, the alternative emission control strategy (5,556 tpy), with phased-in controls on Units 4 and 5 by the end of 2018, results in lower emissions than BART (8,479 tpy). In total, the BART Alternative results lower emissions from FCPP over more calendar years (2014-2015, and 2019 and beyond) than does BART (2016-2018). Even if APS operated Units 4 and 5 at 100 percent capacity, EPA calculates that emissions under the alternative emission control scenario in 2019 and beyond to be 6,859 tpy, which is still lower than under BART (8,479 tpy). On a cumulative basis, i.e., the sum total of NO_x emissions over

³⁹ In testimony to the ACC, Mark Schiavoni of APS testified that he anticipates capacity factors over 2015 - 2030 to range from 75 - 81 percent for Units 4 and 5. See document titled "Schiavoni Testimony_TRANSCRIPT.pdf" in the docket for this final rulemaking

⁴⁰ See document titled "BART vs Alternative.xlsx" in the docket for this final rulemaking.

2011 to 2064, the BART Alternative also results in lower emissions than BART, both at an 81 percent capacity factor and at 100 percent capacity.

Commenters argue that if the BART emission limit were lower, the alternative would not be better than BART. For example, if EPA required an emission limit representing a 90 percent reduction in NO_x emissions, annual NO_x emissions would be lower than 5,000 tpy. However, as discussed in responses to similar comments, EPA has determined that an 80 percent reduction in NO_x emissions is BART for FCPP. It is inappropriate to compare the alternative emission control strategy against a target for BART that commenters would like to see based on maximum emission reductions achieved without consideration of site-specific characteristics of FCPP that EPA has determined are not appropriate for FCPP.

Commenters further argue that by offering FCPP a BART compliance deadline of July 2018, EPA is illegally extending a mandatory deadline under the CAA, and that installation of SCR at Units 4 and 5 can easily be accomplished within 2 years. EPA disagrees and notes that the compliance timeframe for EPA's BART determination requiring SCR installation on all 5 units is within 5 years of the effective date of the final rule, consistent with the maximum time allowed under the CAA §169A(g)(4) in the definition of "as expeditiously as

practicable". The commenter is confusing requirements under BART and requirements under the alternative to BART. EPA is not extending the BART compliance deadline beyond a 5-year period. Rather, EPA is allowing additional time to implement the alternative emission control strategy, as allowed under the provisions of the RHR for the implementation of "other alternative measure rather than to require sources subject to BART to install, operate, and maintain BART" (See 40 CFR §51.308(e)(2)). In our Supplemental Proposal, EPA cited the requirement (under 40 CFR §51.308(e)(2)(iii)) that "all necessary emission reductions take place during the period of the first long-term strategy for regional haze".

EPA disagrees with commenters that reductions under the alternative to BART violates 40 CFR §51.308(e)(2)(iii). The requirement simply states the reductions take place during the period of the first long term strategy and does not specifically prescribe that those reductions must take place at the beginning, middle, or end of the period of the first long term strategy.

H. Other Comments

Comment: Forty-five private citizens and several private citizens who submitted written comments at a public hearing explicitly stated that they support EPA's efforts to clean up FCPP. Many of these commenters asked for the strictest

regulations. Another private citizen implied that EPA should act to clean up emissions from FCPP and noted that cleaner air will result in a cleaner Colorado snow pack, which will result in cleaner water in the Colorado River.

Twelve private citizens and a few private citizens who submitted written comments at a public hearing stated that FCPP should be de-commissioned. Several of these commenters asserted that the plant should only be shut down if it cannot cease emitting pollutants, while others stated the plant should be shut down immediately.

Nine private citizens and some of the private citizens who submitted written comments at a public hearing stated that renewable energy sources can be used in place of coal-fired power plants.

Response: EPA acknowledges the comments supportive of our proposals but disagrees with commenters that suggest that FCPP should be de-commissioned or shut down immediately.

In addition to other CAA programs, EPA assesses air quality with respect to NAAQS. The Four Corners area is designated attainment for each of the NAAQS.⁴¹ This means that the air quality in the Four Corners area is meeting the national health-based standards set by EPA.

⁴¹ Please see http://www.epa.gov/region09/air/maps/maps_top.html for EPA Region IX air quality designations.

For this action, EPA finds that under 40 CFR 49.11, it is necessary or appropriate to achieve emissions reductions of NO_x from FCPP required by the CAA's Regional Haze program. NO_x is a significant contributor to visibility impairment in the numerous mandatory Class I Federal areas surrounding FCPP. The emission reductions finalized will help achieve the goals of the Regional Haze Rule. The Regional Haze Rule however does not require nor does it authorize EPA to de-commission or shut down facilities to achieve the goals of the rule.

EPA agrees with commenters who stated that renewable energy sources can be used in place of coal-fired power plants. However, the Regional Haze Rule does not require that coal-fired facilities use or switch to renewable energy sources to meet the goals of the rule.

Comment: The Navajo Nation pointed out that as a federal agency, EPA has a trust responsibility to the Navajo Nation that requires it to give special consideration to the Nation's best interests in any action.⁴² Because of the significant economic interest of the Navajo Nation in FCPP the commenter asserted that the BART proposal clearly implicates the Nation's tribal trust interests. The commenter further contended that since EPA

⁴² To support this assertion, the commenter cited Executive Order 13175 (65 FR 67249, November 6, 2000; *EPA Policy on Consultation and Coordination with Indian Tribes*, section IV "Guiding Principles," May 4, 2011 (EPA Tribal Policy); and the 1984 EPA Indian Policy.

is adopting a FIP for BART in lieu of a TIP by the Navajo Nation, the EPA is essentially "standing in the shoes" of the Nation for purposes of making the BART determination and should, therefore, defer to tribal views when making environmental policy decisions and give the same weight to the BART factors that the Navajo Nation would in determining BART for FCPP; that is, to the extent that the Nation recommends a particular control technology as BART for power plants located on the Nation's lands, EPA should give substantial weight to that recommendation as part of its decision-making process. (The commenter asserted that advanced combustion controls, rather than SCR, properly represent BART for FCPP.) Thus, the commenter stated that as the Nation's trustee and "stand-in" for the BART determination for FCPP, the EPA should not select a more stringent BART than the commenter stated is required by the Regional Haze Rule to achieve "reasonable progress" where doing so would likely have substantial adverse impacts on the Navajo Nation.

The commenter also stated that EPA has a duty to undertake government-to-government consultations with the Navajo Nation, and that EPA must coordinate with the Navajo Nation in its relationship with, and reliance on, other federal agencies. The commenter pointed out that EPA relies on data provided by the NPS, another federal trustee of the Nation, but has not

coordinated consultation between NPS and the Navajo Nation on this rulemaking. The commenter indicated that the May 2011 EPA Tribal Policy recognizes that such coordination is required under Executive Order 13175 and asserted that EPA should coordinate consultation with the U.S. Forest Service (who provided data used in the proposed rulemaking) as well as various Department of the Interior (DOI) agencies that have an interest in this rulemaking, including NPS, the Bureau of Indian Affairs, the U.S. Fish and Wildlife Service, the Office of Surface Mining Reclamation and Enforcement, and potentially the Bureaus of Land Management and Reclamation. The commenter added that consultation with Department of Energy (DOE) may be important in regard to including FCPP in a study that DOE is proposing to carry out for NGS, which also is located on the Navajo reservation and uses Navajo coal.

Response: It is EPA's policy (EPA Policy on Consultation and Coordination with Indian Tribes, May 4, 2011, (EPA Tribal Consultation Policy))⁴³ to consult on a government-to-government basis with federally recognized tribal governments when EPA actions and decisions may affect tribal interests. Consultation is a process of meaningful communication and coordination between EPA and tribal officials prior to EPA taking actions or

⁴³ See "EPA Policy on Consultation and Coordination with Indian Tribes", May 4, 2011, in the docket for this final rulemaking.

implementing decisions that may affect tribes. One of the primary goals of the EPA Tribal Policy is to fully implement both Executive Order 13175 and the 1984 Indian Policy, with the ultimate goal of assuring tribal concerns and interests are considered whenever EPA's actions may affect tribes by strengthening the consultation, coordination, and partnership between tribal governments and EPA.

For this action, EPA consulted with Navajo Nation in accordance with the Executive Order and EPA's Indian Policies on numerous occasions. A record of all consultations with tribes is included in the Docket for this final rulemaking.⁴⁴ As stated in the 2011 EPA Tribal Consultation Policy, as a process, consultation includes several methods of interaction that may occur at different levels.⁴⁵ EPA consulted with the Navajo Nation at various times throughout the process at various levels of government, including in-person meetings with the President of the Navajo Nation on May 19, 2011, and June 13, 2012.

EPA acknowledges the significant interest of the Navajo Nation in FCPP. Based on the results from the original analysis for the proposed BART determination, EPA concluded that the installation and operation of SCR on all five units at FCPP

⁴⁴ See document "Timeline of all Tribal Consultations on BART.docx" in the docket for this final rulemaking.

⁴⁵ See "EPA Policy on Consultation and Coordination with Indian Tribes", May 4, 2011, in the docket for this final rulemaking.

would not adversely affect the competitiveness of FCPP's cost to generate electricity compared to the cost to purchase electricity on the open market. Thus, EPA infers that a BART determination requiring SCR on all five units, in itself, should not force the closure of FCPP. EPA notes that we do not expect adverse impacts to the Navajo Nation if FCPP continues operating all units and complies with BART. However, potential adverse impacts to the Navajo Nation may result if the owners of FCPP choose to implement the optional BART Alternative. At the request of the Navajo Nation during consultation, EPA commissioned a study to examine potential adverse impacts to Navajo Nation from the BART Alternative. The results of this analysis were discussed with President Shelly during a consultation meeting on July 13, 2012 and will be provided to President Shelly by letter as a follow-up to our consultation.

EPA agrees that we are acting to implement the BART requirements for a facility located on the Navajo Reservation in circumstances in which the Tribe has not applied, or been approved, to administer the applicable CAA program. EPA is mindful of the Navajo Nation's views and recommendations, particularly where there is a potential substantial adverse economic impact to the Navajo Nation. We disagree however that the Agency must "defer to tribal views when making environmental policy decisions". EPA is carrying out the requirements of the

CAA and the Regional Haze Rule pursuant to our authority to implement these requirements in the absence of an EPA-approved program. EPA notes that the CAA and the TAR provide mechanisms for eligible Indian tribes to seek approval of tribal programs should they wish to administer CAA requirements.

For this action EPA carefully considered the unique location of FCPP with respect to proximate Class I areas as well as its economic importance to Navajo Nation. We conducted a detailed analysis of available emission control technologies against the five-factors specified in the BART Guidelines. EPA also conducted extensive air modeling (included in the Supplemental Proposal). Additionally, we have considered the numerous comments we received on our proposals. In making our final decision we have had to balance the findings of our analysis along with the interests of various stakeholders, our unique government-to-government relationship with tribes, and our responsibility to carry out the requirements of the CAA and Regional Haze Rule to achieve reasonable progress towards visibility improvements.

This final FIP strikes a reasonable balance between reducing emissions to improve visibility while allowing for the facility to implement those reductions in a manner that is consistent with its continued operation and economic viability.

EPA has received information and comments from numerous federal agencies for this rulemaking and considered these in our final decision (all information and comments are included in the docket). EPA plans to coordinate with the Department of Interior or other federal agencies, as appropriate, in any future tribal consultations related to BART for FCPP or the Navajo Generating Station, the other coal-fired power plant located Navajo Nation.

EPA acknowledges that the Department of Interior has contracted with the National Renewable Energy Lab (NREL) of the Department of Energy to examine renewable energy options for the Navajo Generating Station, which is also located on the Navajo Nation and uses coal from the Kayenta Mine, located on Navajo and Hopi land. Information on the NREL study is available from DOI⁴⁶ and will be included in the docket for EPA's upcoming proposed rulemaking for NGS.

Comment: One public interest advocacy group, the Navajo Nation, and one environmental advocacy group supported establishment of a 20 percent opacity limit for material handling. The public interest advocacy group stated that the FCPP site is subject to numerous dust-storm events originating in northwestern Arizona, and the additional fugitive dust that could be picked up by these strong winds at the FCPP property

⁴⁶ <http://www.doi.gov/navajo-gss/index.cfm>

added to the incoming dust from the west makes breathing and outdoor activity miserable on from 4 to 12 days per year for residents of Montezuma County, CO and San Juan County, NM.

One of the owners of FCPP noted that in addition to the proposed BART requirements, EPA proposed separate fugitive dust control requirements and a 20 percent opacity limitation for certain material handling operations, which are unrelated to the CAA visibility program. The commenter laid out the history of EPA's past attempt to apply fugitive dust controls to FCPP. The commenter argued that the proposed requirements are arbitrary and should not be finalized because the facts upon which EPA relies are inadequate to support the conclusion that fugitive dust control requirements are "necessary or appropriate" to protect air quality at FCPP.

Response: EPA acknowledges support for establishing a 20 percent opacity limit for material handling and a Dust Control Plan at FCPP. EPA has finalized both these requirements. EPA notes that the Dust Control Plan shall include a description of the dust suppression methods for controlling dust from site activities including coal handling and storage facilities, ash handling, storage, and landfills, and road sweeping activities. The 20 percent opacity standard will apply to any crusher, grinding mill, screening operation, belt conveyor, or truck loading or unloading operation.

EPA agrees with the commenter that the fugitive dust and 20 percent opacity limit are unrelated to the CAA visibility program. EPA also agrees with the history laid out by the commenter on fugitive dust controls at FCPP. EPA included these dust control requirements in the previous FIP finalized in 2007 because EPA considered them necessary or appropriate under the TAR to assure that dust from this facility does not contribute to possible violations of the NAAQS for PM₁₀. The commenter is correct that EPA withdrew the 2007 FIP requirements on dust when APS appealed the rule. EPA had not adequately documented in the record for the 2007 FIP our basis for establishing the 20 percent opacity regulation. For the 2007 FIP, EPA chose not to defend our position based on the record for that rulemaking and instead chose to address the issue in a subsequent FIP action, such as this one.

EPA disagrees with the commenter that the fugitive dust and opacity requirements are arbitrary or that our argument is inadequate to support our conclusion that fugitive dust control requirements are necessary or appropriate to protect air quality at FCPP.⁴⁷

EPA's basis for finding that it is necessary or appropriate for FCPP to comply with a requirement to limit its material

⁴⁷ For example, see document titled "Four Corners Power Plant Complaint to MSHA" in the docket for this final rulemaking.

handling emissions to 20 percent or less is being set forth in this rulemaking. FCPP receives approximately 10 million tons of coal per year for combusting in Units 1-5. This massive quantity of coal moves by conveyor belt across FCPP's property line through numerous transfer points before the coal is loaded into the storage silos that feed the individual combustion units. Each of these transfer points along with the conveyor belts has the potential for PM emissions. The PM can be minimized through the use of collection devices or dust suppression techniques such as covered conveyors or spraying devices at the transfer points. EPA first promulgated dust control requirements for new coal handling equipment on January 15, 1976 (41 FR 2232). This rule affected equipment constructed or modified after the 1970s that affected facilities built or modified after October 24, 1974. The purpose of these New Source Performance Standards (NSPS) was:

NSPS implement CAA section 111(b) and are issued for categories of sources which have been identified as causing, or contributing significantly to, air pollution which may reasonably be anticipated to endanger public health or welfare. The primary purpose of the NSPS are to help States attain and maintain ambient air quality by ensuring

that the best demonstrated emission control technologies are installed as the industrial infrastructure is modernized.

See 74 FR 51951 (October 8, 2009).

EPA's basis for finding that it is necessary or appropriate for FCPP to comply with a requirement to limit its material handling emissions to 20 percent or less is being set forth in this rulemaking. EPA has promulgated a 20 percent opacity limit for all new coal handling operations built after the mid 1970s in the New Source Performance Standards. This NSPS standard applied to any coal handling equipment processing more than 200 tons per day of coal. Because FCPP receives approximately 10 million tons of coal per year for combusting in Units 1 - 5, it may be processing more than 27,000 tons per day. This is more than 100 times the smallest size coal handling operation subject to the NSPS, and which EPA considered necessary for protecting public health and welfare. As mentioned before, FCPP's massive quantity of coal moves by conveyor belt across FCPP's property line, passing through numerous transfer points before the coal is loaded into the storage silos that feed the individual pulverizers and combustion units. Each of these transfer points along with the conveyor belts has the potential for PM emissions. The PM can be minimized by collection devices or dust

suppression techniques such as covered conveyors or spraying devices at the transfer points.

FCPP and the BHP Navajo Mine that provides FCPP's coal are within close proximity to Morgan Lake which is a recreational lake with public access just beyond the FCPP's property line. Excess dust can blow over the FCPP property line to Morgan Lake and adjacent properties. EPA and Navajo Nation EPA receive numerous complaints from Navajo Tribal members concerning excess dust emissions generated from the ash landfill FCPP maintains, as well as from the other material handling and storage operations.

EPA concludes that it is necessary or appropriate to set enforceable fugitive dust/PM suppression measures to protect ambient air quality because (1) there is a large potential for dust emissions from the facility coal and ash operations to be emitted and blow across the property line, (2) EPA and Navajo Nation EPA have received numerous complaints concerning excess dust from the ash landfill and other operations, and (3) these activities are occurring in close proximity to a public access area.

EPA disagrees with the commenter that the 20 percent opacity limit is arbitrary and capricious. While EPA acknowledges that New Mexico does not have a general opacity limit that applies to dust, the other three Four Corners States

do. In Arizona and Colorado a general 20 percent opacity limit applies at all facilities including "grandfathered" coal-fired EGUs. In Utah the general opacity limit for facilities built before the CAA in 1971 is a 40 percent opacity limit. However, all of Utah's large coal-fired EGUs were constructed after 1971 and are subject to a 20 percent general opacity limit, i.e., the NSPS. Therefore, if FCPP had been built a few years later or a few miles in a different direction, it would be subject to the NSPS or a SIP provision limiting its coal material handling and storage operations to 20 percent opacity.

Because FCPP is located on the Navajo Nation where generally applicable limits that often are included in SIPs do not exist and because it was constructed nearly 40 years ago, and because dust control measures at coal-fired power plants are important for maintaining the PM₁₀ NAAQS in the areas adjacent to the power plant properties, EPA finds that it is necessary or appropriate to impose measures to limit the amount of PM emissions from these material handling and storage emission sources. EPA recently imposed similar dust control requirements at the Navajo Generating Station, which is also on the Navajo Nation. 75 FR 10174.

Comment: One environmental advocacy group stated that the EPA must consult in accordance with sections 7(a)(1) and 7(a)(2) of the Endangered Species Act (ESA) with regards to the proposed

FIP because of the impacts of FCPP on threatened and endangered fish, wildlife, and plants and their designated critical habitats, which the commenter discussed at some length. The commenter added that EPA has discretion under the TAR to limit emissions of mercury, selenium, and other pollutants that may adversely affect the razorback sucker and Colorado pikeminnow, and these species' critical habitats. According to the commenter, this discretion is part of what triggers the Agency's obligation to consult pursuant to sections 7(a)(1) and 7(a)(2) of the ESA.

Response: EPA disagrees with the commenter that determining BART and promulgating this FIP for FCPP necessitates ESA Section 7 consultation. EPA understands that the U.S. Fish and Wildlife Service (FWS) is primarily concerned about the effects of mercury and selenium on endangered fish species in the San Juan River. EPA notes that under the BART Alternative, mercury and selenium emissions will be reduced from FCPP due to the closure of Units 1 - 3. Additionally, EPA's national MATS rule set new emission limits for mercury that would apply to Units 1 - 3 at FCPP if those units continue operation. EPA further notes that the goal of the Regional Haze Rule is to reduce emissions of visibility-impairing pollutants in order to restore visibility to natural conditions at the mandatory Federal Class I areas, and mercury and selenium do not affect

visibility. Therefore, EPA does not have authority to regulate emissions of mercury or selenium under BART.

Comment: The coal supplier for FCCP questioned the legality of EPA's approach to the Regional Haze program at FCCP. According to the commenter, EPA's BART and better-than-BART proposals are not authorized because BART is not "reasonably separable" from the remainder of a regional haze implementation plan for the Navajo Nation under the TAR. The commenter concluded that the minimum amount of reasonable progress that BART needs to achieve in a given Class I area cannot be determined until the amount of reasonable progress achieved by other CAA and state programs is subtracted from that area's reasonable progress goal. The commenter asserted that the NO_x emission reductions that would be achieved under the supplemental proposal are in excess of the amount required to achieve the reasonable progress goals in the area.

The commenter added that EPA must consider the reasonable progress already achieved by past FCCP emission reductions. The commenter concluded that any necessary reasonable progress remaining to be achieved by NO_x BART at FCCP cannot be determined until the reasonable progress achieved by prior emissions reductions at FCCP is considered.

The commenter stated that EPA's BART determination did not properly weigh the statutory factors. Specifically, the

commenter indicated that individual Class I area visibility improvements from SCR have not been compared with respect to the statutory factors to visibility improvements from LNB, and the actual amounts of those improvements have not been measured against the amounts of improvements needed to meet reasonable progress goals.

Response: EPA disagrees with the commenter who questioned the legality of our approach and that stated that EPA's BART and "better-than-BART" proposals are not authorized because BART is not "reasonably separable" from the remainder of a regional haze implementation plan for the Navajo Nation under the TAR. We also disagree that our approach to the Regional Haze program impermissibly isolates BART from the context of the overall reasonable progress goal in violation of the CAA, and that our proposed BART for FCPP should be withdrawn.

EPA's authority to promulgate a source-specific FIP in Indian Country is based on CAA sections 301(a) and (d)(4) and section 49.11 of the TAR provides EPA with broad discretion to promulgate regulations directly for sources located in Indian country, including on Indian reservations if we determine such Federal regulations are "necessary or appropriate" and the Tribe has not promulgated a TIP. Specifically, in 40 CFR 49.11, EPA interpreted CAA section 301(d)(4) to authorize EPA to promulgate "such Federal implementation plan provisions as are necessary or

appropriate to protect air quality". As such, because the Navajo Nation has not adopted a TIP for Regional Haze, the TAR provides discretion to EPA to determine which requirements of the Regional Haze Rule are necessary or appropriate to protect air quality, and to promulgate just those implementation plan provisions accordingly. Because two stationary sources on the Navajo Nation meet the BART eligibility criteria, EPA has determined that it is necessary or appropriate at this time to evaluate source-specific FIPs to implement the BART requirement of the RHR for each BART-eligible facility located on the Navajo Nation. The basis for our determination is discussed in several prior responses (See, e.g., Sections 2.1, 4.1.2, and 8.1). The Courts have agreed with EPA that it may implement requirements that are necessary or appropriate without providing for all aspects of the CAA programs at a single time. See *Arizona Public Service v. EPA*, 562 F.3d 1116 (10th Cir. 2009).

EPA disagrees with the comment that BART must be established in relation to reasonable progress goals. State or Tribal Implementation Plans for Regional Haze must establish goals that provide for reasonable progress towards achieving natural visibility conditions for each mandatory Class I Federal area located within its borders (40 CFR 51.308 (d)(1)). FCPP and NGS are both located within the Navajo Nation Indian Reservation, and for the reasons outlined above, EPA is

conducting BART determinations for each facility. There are no mandatory Class I Federal areas as designated by Congress located within the Navajo Nation.⁴⁸ EPA further notes that the five-factor analysis outlined in the BART Guidelines, which were promulgated as a notice and comment rulemaking, does not require consideration of reasonable progress goals in determining BART for a given facility.

EPA also disagrees that the minimum amount of reasonable progress that BART needs to achieve in a given Class I area cannot be determined until the amount of reasonable progress achieved by other CAA and state programs is subtracted from that area's reasonable progress goal. Neither the CAA nor Regional Haze regulations set any quantitative presumptive targets for the amount of reasonable progress that must be achieved. Rather, the regulations allow for flexibility in determining the amount of reasonable progress towards the ultimate goal of returning to natural background conditions.

EPA disagrees with the commenter that EPA must consider the reasonable progress already achieved by past FCPP emission reductions and that previously uncontrolled SO₂, NO_x, and PM emission rates prior to previous FIPs for FCPP should serve as

⁴⁸ EPA notes that Navajo Nation has established its own parks and monuments, including Monument Valley, Canyon de Chelly, and the Four Corners Monument, however, these parks are not mandatory Class I Federal Areas as set by Congress.

the baseline for measuring visibility improvements. In its own five-factor BART analysis, APS used actual NO_x emissions from 2001 - 2003 as baseline emissions for determining visibility improvement from NO_x controls. NO_x emissions from 2001 - 2003 were generally consistent with and representative of NO_x emissions over the past ten years. EPA agrees with APS in its use of actual emissions over a recent time frame, rather than attempting to rely on previously uncontrolled emissions emission rates from FCPP as a baseline.

Additionally, nothing in the BART regulations or guidance requires that EPA consider past emission reductions in determining BART under the RHR. However, as part of the required five-factor analysis for BART EPA did evaluate and consider the current pollution control equipment in use at FCPP.

EPA disagrees with the comment that EPA's BART determination did not properly weigh the statutory factors. As discussed elsewhere in this document, the BART Guidelines allow the reviewing authority (State, Tribe, or EPA) the discretion to determine how to weigh and in what order to evaluate the statutory factors (cost of compliance, the energy and non air quality environmental impacts of compliance, any existing pollution control technology in use at the source, the remaining useful life of the source, and the degree of improvement in visibility which may reasonably be anticipated to result from

the use of such technology), as long as the reviewing authority justifies its selection of the "best" level of control and explains the CAA factors that led the reviewing authority to choose that option over other control levels (see 70 FR 39170, July 6, 2005). EPA provided a detailed justification for our BART evaluation process and five-factor analysis in the TSD for our proposed BART determination.

EPA also disagrees with the comment that individual Class I area visibility improvements from SCR have not been compared with respect to the statutory factors to visibility improvements from LNB. In the preamble to our October 19, 2010, proposed BART determination and in the accompanying TSD, EPA compared the anticipated visibility improvement from SCR with the anticipated improvement from combustion controls (LNB or LNB+OFA) (See 75 FR 64230, Table 3, and TSD Tables 36 - 39), and noted that EPA modeled the visibility improvement from SCR to far exceed the modeled improvement from combustion controls.

IV: Administrative Requirements

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action will finalize a source-specific FIP for a single generating source. This type of action is exempt from

review under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011).

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* Under the Paperwork Reduction Act, a "collection of information" is defined as a requirement for "answers to . . . identical reporting or recordkeeping requirements imposed on ten or more persons . . ." 44 U.S.C. 3502(3)(A). Because the final FIP applies to a single facility, Four Corners Power Plant, the Paperwork Reduction Act does not apply. See 5 CFR 1320(c).

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR Part 9.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) a small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this action on small entities, I certify that this final action will not have a significant economic impact on a substantial number of small entities. The Four Corners Power Plant is not a small entity and the FIP for Four Corners Power Plant being finalized today does not impose any compliance requirements on small entities. See *Mid-Tex Electric Cooperative, Inc. v. FERC*, 773 F.2d 327 (D.C. Cir. 1985).

D. Unfunded Mandates Reform Act (UMRA)

This rule will impose an enforceable duty on the private sector owners of FCPP. However, this rule does not contain a Federal mandate that may result in expenditures of \$100 million (in 1996 dollars) or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. EPA's estimate for the total annual cost to install and operate SCR on all five units at FCPP does not exceed \$100 million (in 1996 dollars) in any one year. Thus, this rule is not subject to the requirements of sections 202 or 205 of UMRA. This action is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. This rule will not impose direct compliance costs on the Navajo Nation, and will not preempt Navajo law. This final action will

reduce the emissions of two pollutants from a single source, the Four Corners Power Plant.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or in the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This final action requires emission reductions of NO_x at a specific stationary source located in Indian country. Thus, Executive Order 13132 does not apply to this action.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Subject to the Executive Order 13175 (65 FR 67249, November 9, 2000) EPA may not issue a regulation that has tribal implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by tribal governments, or EPA consults with tribal officials early in the process of developing the proposed regulation and develops a tribal summary impact statement.

EPA has concluded that this action will have tribal implications. However, it will neither impose substantial direct

compliance costs on tribal governments, nor preempt Tribal law. This final rule requires FCPP, a major stationary source located on the Navajo Nation, to reduce emissions of NO_x under the BART requirement of the Regional Haze Rule. The owners of FCPP submitted a BART Alternative to EPA for consideration that would provide compliance flexibility to the owners and result in greater reasonable progress than BART toward the national visibility goal. This BART Alternative involves closure of Units 1 - 3 at FCPP and installation of add-on pollution controls to Units 4 and 5. EPA issued a Supplemental Proposal to allow the owners of FCPP the option to implement BART or the BART Alternative. Because the BART Alternative involves the optional closure of Units 1 - 3 and an associated decline in the amount of coal mined and combusted, taxes and royalties paid to the Navajo Nation by the owners of FCPP and BHP Billiton, operator of the coal mine that supplies FCPP, are expected to decline. The closure of Units 1 - 3 is not expected to result in layoffs, but is expected to result in a reduction in workforce at the mine and power plant over time through attrition.

EPA consulted with tribal officials early in the process of developing this regulation to permit them to have meaningful and timely input into its development. EPA proposed to determine that it was necessary or appropriate to implement the BART requirement of the Regional Haze Rule for the Navajo Nation to

protect air quality and improve visibility at the sixteen mandatory Class I Federal areas surrounding FCPP and the eleven Class I areas surrounding NGS. EPA first put forth an Advanced Notice of Proposed Rulemaking (ANPR) on August 28, 2009 to accept comment on preliminary information provided by FCPP and NGS and to begin the consultation process with affected tribes and the Federal Land Managers. EPA has consulted on numerous occasions with officials of the Navajo Nation in the process of developing this FIP, including meetings with the President Ben Shelly of the Navajo Nation and his staff on May 19, 2011, after the close of the public comment period for our proposed BART determination and Supplemental Proposal, and on June 13, 2012, prior to our final action. The agendas for these two consultation meetings are provided in the docket for this final rulemaking.⁴⁹ A timeline of correspondence and consultation with tribes on both power plants is included in the docket for this final rulemaking.

Several tribes, including the Navajo Nation, submitted comments on the ANPR, which we considered in developing our proposal and the accompanying Technical Support Document. The

⁴⁹ See document number 0222 in docket EPA-R09-OAR-2011-0683 titled "Agenda May 19, 2011 Meeting; Gov to Gov Consultation with Navajo Nation", and document titled: "2012_0613 Consultation with Navajo Nation agenda and attendees.pdf" in the docket for this final rulemaking.

main concern expressed by the Navajo Nation was that requiring the top NO_x control option, selective catalytic reduction (SCR) as BART would cause FCPP to close. In developing our proposed BART determination, EPA conducted an analysis to examine whether requiring SCR on Units 1 - 5 at FCPP would cause electricity generation costs to exceed the cost to purchase power on the wholesale market. Based on our analysis, we determined that electricity generation costs resulting from installation of SCR would not make FCPP uneconomical compared to the wholesale power market; therefore, we concluded that our proposed BART determination was unlikely to cause FCPP to close.

The Navajo Nation provided comments on our proposed rule and Supplemental Proposal, in consultation and by letter, which EPA considered in developing this final rule. The Navajo Nation also expressed concern about the potential adverse impacts of the BART Alternative to the Navajo Nation and requested that EPA conduct an analysis to estimate potential adverse impacts to the Navajo Nation. Pursuant to EPA's customary practice of engaging in extensive and meaningful consultation with tribes and tribal authorities with regard to relevant Agency actions, EPA commissioned an analysis of the optional BART Alternative to estimate potential adverse impacts to the Navajo Nation if the owners of FCPP chose to retire Units 1 - 3. EPA communicated these potential impacts to the Navajo Nation in our consultation

meeting with President Shelly on June 13, 2012. The report will be provided to President Shelly by letter as a follow-up to our consultation with the Navajo Nation.

The Navajo Nation also expressed support for phased-implementation of controls to provide compliance flexibility to FCPP. The final rule allows the owners of FCPP to choose between BART or the BART Alternative and provides timeframes for phased-implementation of control options.

EPA summarized and responded to comments from the Navajo Nation and the Salt River Pima Maricopa Indian Community received on the ANPR in the Technical Support Document for our proposed rulemaking. Following our meeting with President Shelly on May 19, 2011, EPA sent a follow up letter summarizing and responding to the concerns expressed by the Navajo Nation.⁵⁰ In coordination with this final rulemaking, EPA will also be sending a letter to the President Shelly that summarizes and responds to the comments raised in his letter to EPA dated June 2, 2011.

G. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks

⁵⁰ See document 0231 in docket EPA-R09-OAR-2011-0683 titled "EPA response to Navajo Nation dated 09/06/2011".

Executive Order 13045: *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be economically significant as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it requires emissions reductions of NO_x from a single stationary source. Because this action only applies to a single source and is not a rule of general applicability, it is not economically significant as defined under Executive Order 12866, and does not have a disproportionate effect on children. However, to the extent that the rule will reduce emissions of NO_x, which contributes to ozone formation, the rule will have a beneficial effect on children's health by reducing air pollution that causes or exacerbates childhood asthma and other respiratory issues.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211 (66 FR 28355 (May 22, 2001)), because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Pub L. No. 104-113, 12 (10) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards (VCS) in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. VCS are technical standards (e.g., materials specifications, test methods, sampling procedures and business practices) that are developed or adopted by the VCS bodies. The NTTAA directs EPA to provide Congress, through annual reports to OMB, with explanations when the Agency decides not to use available and applicable VCS.

Consistent with the NTTAA, the Agency conducted a search to identify potentially applicable VCS. For the measurements listed below, there are a number of VCS that appear to have possible use in lieu of the EPA test methods and performance specifications (40 CFR Part 60, Appendices A and B) noted next to the measurement requirements. It would not be practical to specify these standards in the current rulemaking due to a lack of sufficient data on equivalency and validation and because some are still under development. However, EPA's Office of Air

Quality Planning and Standards is in the process of reviewing all available VCS for incorporation by reference into the test methods and performance specifications of 40 CFR Part 60, Appendices A and B. Any VCS so incorporated in a specified test method or performance specification would then be available for use in determining the emissions from this facility. This will be an ongoing process designed to incorporate suitable VCS as they become available.

Particulate Matter Emissions - EPA Methods 1 through 5

Opacity - EPA Method 9 and Performance Specification Test 1
for Opacity Monitoring

NO_x Emissions - Continuous Emissions Monitors

*J. Executive Order 12898: Federal Actions to Address
Environmental Justice in Minority Populations and Low-Income
Populations*

Executive Order 12898 (59 FR 7629, February 16, 1994), establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this final rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it increases the level of environmental protection for all affected populations without having any disproportionately high and adverse human health or environmental effects on any population, including any minority or low-income population. This rule requires emissions reductions of two pollutants from a single stationary source, Four Corners Power Plant.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 804 exempts from section 801 the following types of rules (1) rules of particular applicability; (2) rules relating to agency management or personnel; and (3) rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C 804(3). EPA is not required to submit a rule report regarding today's action under section 801 because this action is a rule of particular

applicability. This rule finalizes a source-specific FIP for a single generating source.

L. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by [*insert date 60 days from publication in Federal Register*]. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See CAA section 307(b)(2).)

List of Subjects in 40 CFR Part 49

Environmental protection, Administrative practice and procedure, Air pollution control, Indians, Intergovernmental relations, Reporting and recordkeeping requirements.

August 6, 2012

_____/s/____

Dated:

Lisa P. Jackson,
Administrator

Title 40, chapter I of the Code of Federal Regulations is amended as follows:

PART 49--[AMENDED]

1. The authority citation for part 49 continues to read as follows:

Authority: 42 U.S.C. 7401, *et seq.*

2. Section 49.5512 is amended by adding paragraphs (i) and (j) to read as follows:

§ 49.5512 Federal Implementation Plan Provisions for Four Corners Power Plant, Navajo Nation.

* * * * *

(i) Regional Haze Best Available Retrofit Technology limits for this plant are in addition to the requirements of paragraphs (a) through (h) of this section. All definitions and testing and monitoring methods of this section apply to the limits in paragraph (i) of this section except as indicated in paragraphs (i)(1) through (4) of this section. The interim NO_x emission limit in paragraph (i)(2)(ii) of this section shall be effective 180 days after re-start of the unit after installation of add-on post-combustion NO_x controls for that unit and until the plant-wide limit goes into effect. The plant-wide NO_x limit shall be effective no later than 5 years after [insert date 60 days from date of publication in the Federal Register]. The owner or operator may elect to meet the plant-wide limit early to remove

the individual unit limits. Particulate limits for Units 4 and 5 shall be effective 60 days after restart following the scheduled major outage for Units 4 and 5 in 2013 and 2014.

(1) Particulate Matter from Units 4 and 5 shall be limited to 0.015 lb/MMBtu for each unit as measured by the average of three test runs with each run collecting a minimum of 60 dscf of sample gas and with a duration of at least 120 minutes. Sampling shall be performed according to 40 CFR Part 60 Appendices A-1 through A-3, Methods 1 through 4 and Method 5 or Method 5e. The averaging time for any other demonstration of the particulate matter compliance or exceedance shall be based on a 6-hour average. Particulate testing shall be performed annually as required by paragraph (e)(3) of this section. This test with 120 minute test runs may be substituted and used to demonstrate compliance with the particulate limits in paragraph (d)(2) of this section.

(2) Plant-wide nitrogen oxide emission limits.

(i) The plant-wide nitrogen oxide limit, expressed as nitrogen dioxide (NO₂), shall be 0.11 lb/MMBtu as averaged over a rolling 30-calendar day period. NO_x emissions for each calendar day shall be determined by summing the hourly emissions measured as pounds of NO₂ for all operating units. Heat input for each calendar day shall be determined by adding together all hourly heat inputs, in millions of Btu, for all operating units. Each

day the rolling 30-calendar day average shall be determined by adding together that day's and the preceding 29 days' pounds of NO₂ and dividing that total pounds of NO₂ by the sum of the heat input during the same 30-day period. The results shall be the rolling 30-calendar day-average pound per million Btu emissions of NO_x.

(ii) The interim NO_x limit for the first 750 MW boiler retrofitted with add-on post-combustion NO_x control shall be as follows:

(A) Unit 4 or 5 shall meet, based on a rolling average of 30 successive boiler operating days, a limit of 0.11 lb/MMBtu.

(iii) Schedule for add-on post-combustion NO_x controls installation

(A) Within 4 years of the effective date of this rule, FCPP shall have installed add-on post-combustion NO_x controls on at least 750 MW (net) of generation to meet the interim emission limit in paragraph (i)(2)(ii)(A).

(B) Within 5 years of the effective date of this rule, FCPP shall have installed add-on post-combustion NO_x controls on all 2060 MW (net) of generation to meet the plant-wide emission limit for NO_x in paragraph (i)(2)(i).

(iv) Testing and monitoring shall use the 40 CFR part 75 monitors and meet the 40 CFR part 75 quality assurance requirements. In addition to these 40 CFR part 75 requirements,

relative accuracy test audits shall be performed for both the NO_x pounds per hour measurement and the heat input measurement.

These shall have relative accuracies of less than 20 percent.

This testing shall be evaluated each time the 40 CFR part 75 monitors undergo relative accuracy testing.

(v) If a valid NO_x pounds per hour or heat input is not available for any hour for a unit, that heat input and NO_x pounds per hour shall not be used in the calculation of the 30 day plant-wide rolling average.

(vi) Upon the effective date of the plant-wide NO_x average, the owner or operator shall have installed CEMS and COMS software that complies with the requirements of this section.

(3) In lieu of meeting the NO_x requirements of paragraph (i)(2) of this section, FCPP may choose to permanently shut down Units 1, 2, and 3 by January 1, 2014 and meet the requirements of this paragraph to control NO_x emissions from Units 4 and 5. By July 31, 2018, Units 4 and 5 shall be retrofitted with add-on post-combustion NO_x controls to reduce NO_x emissions. Units 4 and 5 shall each meet a 0.098 lb/MMBtu emission limit for NO_x expressed as NO₂ based on a rolling average of 30 successive boiler operating days. A "boiler operating day" is defined as any 24-hour period between 12:00 midnight and the following midnight during which any fuel is combusted at any time at the steam generating unit. Emissions from each unit shall be

measured with the 40 CFR part 75 continuous NO_x monitor system and expressed in the units of lb/MMBtu and recorded each hour. A valid hour of NO_x data shall be determined per 40 CFR part 75. For each boiler operating day, every valid hour of NO_x lb/MMBtu measurement shall be averaged to determine a daily average. Each daily average shall be averaged with the preceding 29 valid daily averages to determine the 30 boiler operating day rolling average. The NO_x monitoring system shall meet the data requirements of 40 CFR 60.49Da(e)(2) (at least 90 percent valid hours for all operating hours over any 30 successive boiler operating days). Emission testing using 40 CFR part 60 Appendix A Method 7E may be used to supplement any missing data due to continuous monitor problems. The 40 CFR part 75 requirements for bias adjusting and data substitution do not apply for adjusting the data for this emission limit.

(4) By January 1, 2013, the owner or operator shall submit a letter to the Regional Administrator updating EPA of the status of lease negotiations and regulatory approvals required to comply with paragraph (i)(3) of this section. By July 1, 2013, the owner or operator shall notify the Regional Administrator by letter whether it will comply with paragraph (i)(2) of this section or whether it will comply with paragraph (i)(3) of this section and shall submit a plan and time table for compliance with either paragraph (i)(2) or (i)(3) of this

section. The owner or operator shall amend and submit this amended plan to the Regional Administrator as changes occur.

(5) The owner or operator shall follow the requirements of 40 CFR part 71 for submitting an application for permit revision to update its Part 71 operating permit after it achieves compliance with paragraph (i)(2) or (i)(3) of this section.

(j) *Dust*. Each owner or operator shall operate and maintain the existing dust suppression methods for controlling dust from the coal handling and ash handling and storage facilities. Within ninety (90) days after promulgation of this paragraph, the owner or operator shall develop a dust control plan and submit the plan to the Regional Administrator. The owner or operator shall comply with the plan once the plan is submitted to the Regional Administrator. The owner or operator shall amend the plan as requested or needed. The plan shall include a description of the dust suppression methods for controlling dust from the coal handling and storage facilities, ash handling, storage, and landfills, and road sweeping activities. Within 18 months of promulgation of this paragraph each owner or operator shall not emit dust with opacity greater than 20 percent from any crusher, grinding mill, screening operation, belt conveyor, or truck loading or unloading operation.

Conversation Contents

CPUC draft decision regarding fund for renewable energy projects

Attachments:

/82. CPUC draft decision regarding fund for renewable energy projects/1.1 PUC Mohave decision.PDF

/82. CPUC draft decision regarding fund for renewable energy projects/2.1 Hopi Tribe Press Release on CPUC Decision on Mohave Credits 3 06 13.pdf

"VITULANO, KAREN" <Vitulano.Karen@epa.gov>

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Sent: Wednesday, March 06, 2013 2:28 PM

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Subject: Re: FCPP & Navajo Mine Energy Project EIS - Cooperating Agency Teleconference

Afternoon all,

I have attached the corrected the March Project Status Report to include 45 days of public review and comment from the date the NOA is published. Let me know if you have any questions. Thanks again for your participation.

Regards,

Micah Lomaomvaya <MLomaomvaya@hopi.nsn.us>

From: Micah Lomaomvaya <MLomaomvaya@hopi.nsn.us>

Sent: Fri Mar 08 2013 08:48:37 GMT-0700 (MST)

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Subject: RE: CPUC draft decision regarding fund for renewable
energy projects

Attachments: Hopi Tribe Press Release on CPUC Decision on Mohave
Credits 3 06 13.pdf

FYI

Micah Loma'omvaya, Chief of Staff

The Hopi Tribe - Office of the Chairman

From: Calle, Marcelo [<mailto:mcalle@osmre.gov>]

Sent: Wednesday, March 06, 2013 2:28 PM

To: Amanda Nisula; Amy Heuslein; Cheryl Eckhardt; Clayton Honyumtewa; Dan Tormey; Deanna L SPA Cummings; Denise Begay; Foster Kirby; Frederick H. White; Garry Cantley; George Mase; Gilbert Becenti; Gloria Tom; Joe Lockerd; John Reber; John Stucker; John Wessels; Joseph Galluzzi; VITULANO, KAREN; Kate Bartz; Lara Rozzell; Marcella Martinez; Marvin Keller; Michele Morris; Postle, Bob; Powell King; R MALDONADO; Sam Yazzie; Scott Hall; Shannon Hoefeler; Simone Jones; Stan Webb; stephenbetsitty@navajo-nsn.gov; Tamera Dawes; Williamson, Rick L.; Yellowman, Mychal; david_campbell@fws.gov; deanna.l.cummings@spa02.usace.army.mil; denise_baker@fws.gov; harrilene.yazzie@bia.gov; joel_lusk@fws.gov; kurt.schweigert@cardno.com; leroyshingoi@yahoo.com; MacFarlane, John; mlomaomvaya@hopi.nsn.us; sharon.pinto@bia.gov; sharon_whitmore@fws.gov; stephen_spencer@ios.doi.gov; terry.mcclung@bia.gov; wendell.honanie@bia.gov

Subject: Re: FCPP & Navajo Mine Energy Project EIS - Cooperating Agency Teleconference

Afternoon all,

I have attached the corrected the March Project Status Report to include 45 days of public review and comment from the date the NOA is published. Let me know if you have any questions. Thanks again for your participation.

Regards,

Conversation Contents

BHP Pinabete/FCPP Update on 404 status, need for early coordination on 404 portion of scoping presentation (UNCLASSIFIED)

"Cummings, Deanna L SPA" <Deanna.L.Cummings@usace.army.mil>

From: "Cummings, Deanna L SPA" <Deanna.L.Cummings@usace.army.mil>
Sent: Fri Jul 06 2012 13:08:49 GMT-0600 (MDT)
To: "Calle, Marcelo" <mcalle@osmre.gov>
Subject: BHP Pinabete/FCPP Update on 404 status, need for early coordination on 404 portion of scoping presentation (UNCLASSIFIED)

Classification: UNCLASSIFIED
Caveats: NONE

All:

[REDACTED] (b) [REDACTED]
(5)

[REDACTED]

[REDACTED]

[REDACTED]

(b) (5)

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

Please let me know if you have any questions or comment on the above status update.
Many thanks. Deanna

Deanna L. Cummings
US Army Corps of Engineers
Regulatory Division
4101 Jefferson Plaza NE
Albuquerque, NM 87109
505-342-3280 phone
505-342-3498 fax

<http://www.spa.usace.army.mil/reg/default.asp>

<ftp://ftp.usace.army.mil> Please use this ftp site (.../pub/spa) to upload attachments greater than 5 MB

Classification: UNCLASSIFIED
Caveats: NONE

"Spencer, Stephen" <Stephen_Spencer@ios.doi.gov>

From: "Spencer, Stephen" <Stephen_Spencer@ios.doi.gov>
Sent: Fri Jul 06 2012 13:10:24 GMT-0600 (MDT)
To: "Cummings, Deanna L SPA"
<Deanna.L.Cummings@usace.army.mil>
Subject: RE: BHP Pinabete/FCPP Update on 404 status, need for early coordination on 404 portion of scoping presentation (UNCLASSIFIED)

Thanks Deanna.

Stephen R. Spencer, PhD
Regional Environmental Officer
Office of Environmental Policy and Compliance
U.S. Department of the Interior
1001 Indian School Road NW, Suite 348
Albuquerque, NM 87104

Phone: (505) 563-3572 Fax: (505) 563-3066 Cell: (505) 249-2462

Stephen_Spencer@ios.doi.gov

Web Site: www.doi.gov/oepc/albuquerque.html



From: Cummings, Deanna L SPA [mailto:Deanna.L.Cummings@usace.army.mil]
Sent: Friday, July 06, 2012 1:09 PM
To: Calle, Marcelo
Cc: carlos.jallo@cardnotec.com; kate.bartz@cardnotec.com; Benjamin Pogue; Williamson, Rick L.; Dietrich, Ellen; Applegate, Kent KC; Brent.Musslewhite@BHPBilliton.com; Mike Fitzgerald; Leavitt, Marcy L. SPA; Steinle, Allan E SPA; Pitrolo, Elizabeth A. SPA; Spencer, Stephen; Neal.Brown@aps.com; Richard.Grimes@aps.com; Cummings, Deanna L SPA
Subject: BHP Pinabete/FCPP Update on 404 status, need for early coordination on 404 portion of scoping presentation (UNCLASSIFIED)

Classification: UNCLASSIFIED

Caveats: NONE

All:

[REDACTED] (b) [REDACTED]
(5)

[REDACTED]

[REDACTED]

(b) (5)

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

(b) (5)

[Redacted]

Please let me know if you have any questions or comment on the above status update.
Many thanks. Deanna

Deanna L. Cummings
US Army Corps of Engineers
Regulatory Division
4101 Jefferson Plaza NE
Albuquerque, NM 87109
505-342-3280 phone
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<http://www.spa.usace.army.mil/reg/default.asp>

<ftp://ftp.usace.army.mil> Please use this ftp site (.../pub/spa) to upload attachments greater than 5 MB

Classification: UNCLASSIFIED

Caveats: NONE

From: [Cummings, Deanna L SPA](#)
To: [Spencer, Stephen](#)
Cc: [Cummings, Deanna L SPA](#)
Subject: RE: Revised Cooperators' MOU for Navajo Pinabete Mine (UNCLASSIFIED)
Date: Wednesday, November 07, 2012 8:39:43 AM

Classification: UNCLASSIFIED
Caveats: NONE

Thanks.

Deanna

505-342-3280

-----Original Message-----

From: Spencer, Stephen [mailto:stephen_spencer@ios.doi.gov]
Sent: Wednesday, November 07, 2012 8:33 AM
To: Marcelo Calle; Rick Williamson; Harrilene Yazzie; Amy Heuslein; Garry Cantley; Gilbert Becenti; mlmorris@navajo-nsn.gov; htsosie@nndoj.org; stephenbetsitty@navajo-nsn.gov; frederickhwhite@frontiernet.net; chonyumtewa@hopi.nsn.us; Joseph Galluzzi; Shannon Hoefeler; Powell King; Cummings, Deanna L SPA; Sharon Whitmore; John Reber; Art Kleven; Frank Lupo; Sonia Overholser
Subject: Revised Cooperators' MOU for Navajo Pinabete Mine

I received corrected contact information for BLM after the document was signed and sent to all of you so I made changes to page 14. You can replace page 14 in the original signed version with page 14 in this version or just print out and use this attached version.

Steve

--
Stephen R. Spencer, PhD
Regional Environmental Officer
Office of Environmental Policy and Compliance U.S. Department of the Interior
1001 Indian School Road NW, Suite 348
Albuquerque, NM 87104
Phone: (505) 563-3572 Fax: (505) 563-3066 Cell: (505) 249-2462 Stephen_Spencer@ios.doi.gov Web
Site: www.doi.gov/oepec/albuquerque.html

Classification: UNCLASSIFIED
Caveats: NONE

From: [Cummings, Deanna L SPA](#)
To: [Calle, Marcelo](#); [Amanda Nisula](#); [Cheryl Eckhardt](#); [Clayton Honyumtewa](#); [Dan Tormey](#); [Denise Begay](#); [Foster Kirby](#); [Frederick H. White](#); [Garry Cantley](#); [George Mase](#); [Gilbert Becenti](#); [Gloria Tom](#); [Joe Lockerd](#); [John Reber](#); [John Stucker](#); [John Wessels](#); [Joseph Galluzzi](#); [Karen Vitulano](#); [Kate Bartz](#); [Lara Rozzell](#); [Marvin Keller](#); [Michele Morris](#); [Postle, Bob](#); [Powell King](#); [R MALDONADO](#); [Sam Yazzie](#); [Scott Hall](#); [Shannon Hoefeler](#); [Simone Jones](#); [Stan Webb](#); [Stephen B. Etsitty](#); [Tamera Dawes](#); [Williamson, Rick L.](#); [Yellowman, Mychal](#); [amy.heuslein@bia.gov](#); [david_campbell@fws.gov](#); [denise_baker@fws.gov](#); [harrilene.yazzie@bia.gov](#); [joel_lusk@fws.gov](#); [kurt.schweigert@cardno.com](#); [leroyshingoi@yahoo.com](#); [macfarlane.john@epamail.epa.gov](#); [mlomaomvaya@hopi.nsn.us](#); [sharon.pinto@bia.gov](#); [sharon_whitmore@fws.gov](#); [stephen_spencer@ios.doi.gov](#); [terry.mcclung@bia.gov](#); [wendell.honanie@bia.gov](#)
Cc: [Cummings, Deanna L SPA](#)
Subject: RE: FCPP & Navajo Mine Energy Project - February Cooperating Agencies Coordination Conference Call (UNCLASSIFIED)
Date: Wednesday, February 06, 2013 7:54:04 AM

Classification: UNCLASSIFIED
Caveats: NONE

Marcelo:

(b) (5)



Deanna

505-342-3280

-----Original Message-----

From: Calle, Marcelo [<mailto:mcalle@osmre.gov>]

Sent: Tuesday, February 05, 2013 7:40 PM

To: [Amanda Nisula](#); [Cheryl Eckhardt](#); [Clayton Honyumtewa](#); [Dan Tormey](#); [Cummings, Deanna L SPA](#); [Denise Begay](#); [Foster Kirby](#); [Frederick H. White](#); [Garry Cantley](#); [George Mase](#); [Gilbert Becenti](#); [Gloria Tom](#); [Joe Lockerd](#); [John Reber](#); [John Stucker](#); [John Wessels](#); [Joseph Galluzzi](#); [Karen Vitulano](#); [Kate Bartz](#); [Lara Rozzell](#); [Marvin Keller](#); [Michele Morris](#); [Postle, Bob](#); [Powell King](#); [R MALDONADO](#); [Sam Yazzie](#); [Scott Hall](#); [Shannon Hoefeler](#); [Simone Jones](#); [Stan Webb](#); [Stephen B. Etsitty](#); [Tamera Dawes](#); [Williamson, Rick L.](#); [Yellowman, Mychal](#); [amy.heuslein@bia.gov](#); [david_campbell@fws.gov](#); [Cummings, Deanna L SPA](#); [denise_baker@fws.gov](#); [harrilene.yazzie@bia.gov](#); [joel_lusk@fws.gov](#); [kurt.schweigert@cardno.com](#); [leroyshingoi@yahoo.com](#); [macfarlane.john@epamail.epa.gov](#); [mlomaomvaya@hopi.nsn.us](#); [sharon.pinto@bia.gov](#); [sharon_whitmore@fws.gov](#); [stephen_spencer@ios.doi.gov](#); [terry.mcclung@bia.gov](#); [wendell.honanie@bia.gov](#)
Subject: FCPP & Navajo Mine Energy Project - February Cooperating Agencies Coordination Conference Call

Morning,

As a reminder OSM will be conducting the recurring monthly Cooperating Agencies Coordination call on Wednesday, February 6, 2013 from 10-11 AM MST. I have attached the final minutes from the January 16, 2013 call (with submitted edits applied) as well as the February 2013 project Status Update report.

The conference line information is:

Call Number

(b) (5)



Participant Code: (b) (5)

General Agenda

- * EIS Development Status (OSM report)
- * Section 7 ESA coordination status (OSM report)
- * Section 106 NHPA consultation and coordination status (OSM report)
- * Federal Action Agencies status (respective agencies report)
- * Project Q&A

--

Marcelo Calle

EIS Coordinator, The Four Corners & Navajo Mine Energy Project
Office of Surface Mining Reclamation and Enforcement
Program Support Division, Indian Programs Branch
1999 Broadway, Suite 3320
Denver, CO 80202-3050

mcalle@osmre.gov

(303) 293-5035 Office

(303) 293-5032 Fax

Classification: UNCLASSIFIED
Caveats: NONE

From: [Spencer, Stephen](#)
To: ["Cummings, Deanna L SPA"](#)
Subject: Navajo Pinabete Mine/Four Corners Power Plant Draft Environmental Impact Statement Cooperators" MOU
Date: Thursday, June 28, 2012 10:22:03 AM

Hi Deanna: I need to be sure I have the correct information inserted in the subject MOU before I send it around for signature. For the signature line for the Corps I now have this:

FOR US Army Corps of Engineers
Durango Colorado Regulatory Branch

B.A. Esto				Date
Lieutenant	Colonel,	U.S.	Army,	District
Commander				

I am pretty sure that is not correct. Could you correct it for me?

Also for your information I have this:

U.S. Army Corps of Engineers
Deanna L. Cummings
Chief, Durango Regulatory Office
Albuquerque District
US Army Corps of Engineers
103 Sheppard Drive, Suite 116
Durango, CO 81303
970-375-9509
970-375-9531 fax
Deanna.L.Cummings@spa02.usace.army.mil

I am pretty sure this also is not correct. Could you please correct it for me? Thanks. We are trying to get this ready for entry into the signature process as soon as possible.

Steve

Stephen R. Spencer, PhD
Regional Environmental Officer
Office of Environmental Policy and Compliance
U.S. Department of the Interior
1001 Indian School Road NW, Suite 348
Albuquerque, NM 87104
Phone: (505) 563-3572 Fax: (505) 563-3066 Cell: (505) 249-2462
Stephen_Spencer@ios.doi.gov
Web Site: www.doi.gov/oepec/albuquerque.html



From: [Spencer, Stephen](#)
To: [Cummings, Deanna L SPA](#)
Subject: RE: LTC Gant MOU signature page (UNCLASSIFIED)
Date: Friday, September 21, 2012 3:29:49 PM

Thanks! Have a good weekend.

Steve

Stephen R. Spencer, PhD
Regional Environmental Officer
Office of Environmental Policy and Compliance
U.S. Department of the Interior
1001 Indian School Road NW, Suite 348
Albuquerque, NM 87104
Phone: (505) 563-3572 Fax: (505) 563-3066 Cell: (505) 249-2462
Stephen_Spencer@ios.doi.gov
Web Site: www.doi.gov/oepc/albuquerque.html



From: Cummings, Deanna L SPA [<mailto:Deanna.L.Cummings@usace.army.mil>]
Sent: Friday, September 21, 2012 3:29 PM
To: Spencer, Stephen
Cc: Cummings, Deanna L SPA
Subject: RE: LTC Gant MOU signature page (UNCLASSIFIED)

Classification: UNCLASSIFIED
Caveats: NONE

I can do that!

Deanna
505-342-3280

From: Spencer, Stephen [mailto:Stephen_Spencer@ios.doi.gov]
Sent: Friday, September 21, 2012 3:27 PM
To: Cummings, Deanna L SPA
Subject: FW: LTC Gant MOU signature page (UNCLASSIFIED)

Deanna: I will need the original signature page sent to me so I can put all of them together for the final document and for the administrative record file (which I will then give to OSM). Can you send it to me at the address below? Thanks.

Steve

Stephen R. Spencer, PhD
Regional Environmental Officer
Office of Environmental Policy and Compliance
U.S. Department of the Interior
1001 Indian School Road NW, Suite 348
Albuquerque, NM 87104
Phone: (505) 563-3572 Fax: (505) 563-3066 Cell: (505) 249-2462
Stephen_Spencer@ios.doi.gov
Web Site: www.doi.gov/oepec/albuquerque.html



From: Calle, Marcelo
Sent: Friday, September 21, 2012 3:13 PM
To: Spencer, Stephen
Cc: Williamson, Rick L.
Subject: FW: LTC Gant MOU signature page (UNCLASSIFIED)

Stephen,

Not sure if you were forwarded this information regarding ACOE signature and Cooperator MOU.

Marcelo Calle
EIS Coordinator, The Four Corners & Navajo Mine Energy Project
Office of Surface Mining Reclamation and Enforcement
Program Support Division, Indian Programs Branch
1999 Broadway, Suite 3320
Denver, CO 80202-3050

mcalle@osmre.gov
(303) 293-5035 Office
(303) 293-5032 Fax

From: Cummings, Deanna L SPA [<mailto:Deanna.L.Cummings@usace.army.mil>]
Sent: Friday, September 21, 2012 2:53 PM
To: Calle, Marcelo
Cc: Cummings, Deanna L SPA
Subject: LTC Gant MOU signature page (UNCLASSIFIED)

Classification: UNCLASSIFIED

Caveats: NONE

Marcello:

Please see attached and have a good weekend. Deanna

Deanna L. Cummings
US Army Corps of Engineers
Regulatory Division
4101 Jefferson Plaza NE
Albuquerque, NM 87109
505-342-3280 phone
505-342-3498 fax

<http://www.spa.usace.army.mil/reg/default.asp>

<ftp://ftp.usace.army.mil> Please use this ftp site (.../pub/spa) to upload attachments greater than 5 MB

Classification: UNCLASSIFIED

Caveats: NONE

Classification: UNCLASSIFIED

Caveats: NONE

From: [Cummings, Deanna L SPA](#)
To: [Spencer, Stephen](#)
Cc: [Cummings, Deanna L SPA](#)
Subject: RE: LTC Gant MOU signature page (UNCLASSIFIED)
Date: Friday, September 21, 2012 3:29:18 PM

Classification: UNCLASSIFIED

Caveats: NONE

I can do that!

Deanna
505-342-3280

From: Spencer, Stephen [mailto:Stephen_Spencer@ios.doi.gov]
Sent: Friday, September 21, 2012 3:27 PM
To: Cummings, Deanna L SPA
Subject: FW: LTC Gant MOU signature page (UNCLASSIFIED)

Deanna: I will need the original signature page sent to me so I can put all of them together for the final document and for the administrative record file (which I will then give to OSM). Can you send it to me at the address below? Thanks.

Steve

Stephen R. Spencer, PhD
Regional Environmental Officer
Office of Environmental Policy and Compliance
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1001 Indian School Road NW, Suite 348
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Phone: (505) 563-3572 Fax: (505) 563-3066 Cell: (505) 249-2462
Stephen_Spencer@ios.doi.gov
Web Site: www.doi.gov/oepc/albuquerque.html



From: Calle, Marcelo
Sent: Friday, September 21, 2012 3:13 PM
To: Spencer, Stephen
Cc: Williamson, Rick L.
Subject: FW: LTC Gant MOU signature page (UNCLASSIFIED)

Stephen,

Not sure if you were forwarded this information regarding ACOE signature and Cooperator

MOU.

Marcelo Calle
EIS Coordinator, The Four Corners & Navajo Mine Energy Project
Office of Surface Mining Reclamation and Enforcement
Program Support Division, Indian Programs Branch
1999 Broadway, Suite 3320
Denver, CO 80202-3050

mcalle@osmre.gov

(303) 293-5035 Office

(303) 293-5032 Fax

From: Cummings, Deanna L SPA [<mailto:Deanna.L.Cummings@usace.army.mil>]
Sent: Friday, September 21, 2012 2:53 PM
To: Calle, Marcelo
Cc: Cummings, Deanna L SPA
Subject: LTC Gant MOU signature page (UNCLASSIFIED)

Classification: UNCLASSIFIED

Caveats: NONE

Marcello:

Please see attached and have a good weekend. Deanna

Deanna L. Cummings
US Army Corps of Engineers
Regulatory Division
4101 Jefferson Plaza NE
Albuquerque, NM 87109
505-342-3280 phone
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<ftp://ftp.usace.army.mil> Please use this ftp site (.../pub/spa) to upload attachments greater than 5 MB

Classification: UNCLASSIFIED

Caveats: NONE

Classification: UNCLASSIFIED

Caveats: NONE

From: [Spencer, Stephen](#)
To: [Calle, Marcelo](#)
Subject: RE: LTC Gant MOU signature page (UNCLASSIFIED)
Date: Friday, September 21, 2012 3:24:28 PM

That answers that question and I will follow up with her.

Stephen R. Spencer, PhD
Regional Environmental Officer
Office of Environmental Policy and Compliance
U.S. Department of the Interior
1001 Indian School Road NW, Suite 348
Albuquerque, NM 87104
Phone: (505) 563-3572 Fax: (505) 563-3066 Cell: (505) 249-2462
Stephen_Spencer@ios.doi.gov
Web Site: www.doi.gov/oepc/albuquerque.html



From: Calle, Marcelo
Sent: Friday, September 21, 2012 3:19 PM
To: Spencer, Stephen
Subject: RE: LTC Gant MOU signature page (UNCLASSIFIED)

You should follow up with Deanna about the mailing. The signed MOU from the Navajo Nation was mailed to you yesterday. Let me know when you receive.

Marcelo Calle
EIS Coordinator, The Four Corners & Navajo Mine Energy Project
Office of Surface Mining Reclamation and Enforcement
Program Support Division, Indian Programs Branch
1999 Broadway, Suite 3320
Denver, CO 80202-3050

mcalle@osmre.gov
(303) 293-5035 Office
(303) 293-5032 Fax

From: Spencer, Stephen
Sent: Friday, September 21, 2012 3:17 PM
To: Calle, Marcelo
Subject: RE: LTC Gant MOU signature page (UNCLASSIFIED)

I wonder if she is sending the original to either of us. Did you send the signature page from the Navajo Nation. I haven't received it yet so just checking.

Stephen R. Spencer, PhD
Regional Environmental Officer
Office of Environmental Policy and Compliance
U.S. Department of the Interior
1001 Indian School Road NW, Suite 348
Albuquerque, NM 87104
Phone: (505) 563-3572 Fax: (505) 563-3066 Cell: (505) 249-2462
Stephen_Spencer@ios.doi.gov
Web Site: www.doi.gov/oepec/albuquerque.html



From: Calle, Marcelo
Sent: Friday, September 21, 2012 3:13 PM
To: Spencer, Stephen
Cc: Williamson, Rick L.
Subject: FW: LTC Gant MOU signature page (UNCLASSIFIED)

Stephen,

Not sure if you were forwarded this information regarding ACOE signature and Cooperator MOU.

Marcelo Calle
EIS Coordinator, The Four Corners & Navajo Mine Energy Project
Office of Surface Mining Reclamation and Enforcement
Program Support Division, Indian Programs Branch
1999 Broadway, Suite 3320
Denver, CO 80202-3050

mcalle@osmre.gov
(303) 293-5035 Office
(303) 293-5032 Fax

From: Cummings, Deanna L SPA [<mailto:Deanna.L.Cummings@usace.army.mil>]
Sent: Friday, September 21, 2012 2:53 PM
To: Calle, Marcelo
Cc: Cummings, Deanna L SPA
Subject: LTC Gant MOU signature page (UNCLASSIFIED)

Classification: UNCLASSIFIED

Caveats: NONE

Marcello:

Please see attached and have a good weekend. Deanna

Deanna L. Cummings

US Army Corps of Engineers

Regulatory Division

4101 Jefferson Plaza NE

Albuquerque, NM 87109

505-342-3280 phone

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<http://www.spa.usace.army.mil/reg/default.asp>

<ftp://ftp.usace.army.mil> Please use this ftp site (.../pub/spa) to upload attachments greater than 5 MB

Classification: UNCLASSIFIED

Caveats: NONE

From: [Spencer, Stephen](mailto:Stephen.Spencer@ios.doi.gov)
To: Deanna.L.Cummings@usace.army.mil
Subject: Re: LTC Gant MOU signature page (UNCLASSIFIED)
Date: Friday, September 21, 2012 4:43:19 PM

Saw some on another site. Too bad they were as close as White Sands and didn't fly over ABQ.

Stephen R. Spencer, PhD
Regional Environmental Officer
U.S. Department of the Interior
Office of Environmental Policy and Compliance
1001 Indian School RD NW, Suite 348
Albuquerque, NM 87104
Phone: (505) 563-3572
Fax: (505) 563-3066
Cell: (505) 249-2462

From: Cummings, Deanna L SPA [mailto:Deanna.L.Cummings@usace.army.mil]
Sent: Friday, September 21, 2012 04:08 PM
To: Spencer, Stephen
Cc: Cummings, Deanna L SPA <Deanna.L.Cummings@usace.army.mil>
Subject: RE: LTC Gant MOU signature page (UNCLASSIFIED)

Classification: UNCLASSIFIED
Caveats: NONE

I put it in a small envelope with your address below. There's no transmittal so you might want let your admin know to keep an eye out for it. Have a good weekend. If you're interested, we just oohd and aahd over the photos of Endeavor over LA – you might take a look at the photos on LA Times. <http://www.latimes.com/>

Deanna
505-342-3280

From: Spencer, Stephen [mailto:Stephen_Spencer@ios.doi.gov]
Sent: Friday, September 21, 2012 3:30 PM
To: Cummings, Deanna L SPA
Subject: RE: LTC Gant MOU signature page (UNCLASSIFIED)

Thanks! Have a good weekend.

Steve

Stephen R. Spencer, PhD
Regional Environmental Officer
Office of Environmental Policy and Compliance
U.S. Department of the Interior
1001 Indian School Road NW, Suite 348
Albuquerque, NM 87104
Phone: (505) 563-3572 Fax: (505) 563-3066 Cell: (505) 249-2462

Stephen_Spencer@ios.doi.gov

Web Site: www.doi.gov/oepec/albuquerque.html



From: Cummings, Deanna L SPA [<mailto:Deanna.L.Cummings@usace.army.mil>]
Sent: Friday, September 21, 2012 3:29 PM
To: Spencer, Stephen
Cc: Cummings, Deanna L SPA
Subject: RE: LTC Gant MOU signature page (UNCLASSIFIED)

Classification: UNCLASSIFIED
Caveats: NONE

I can do that!

Deanna
505-342-3280

From: Spencer, Stephen [mailto:Stephen_Spencer@ios.doi.gov]
Sent: Friday, September 21, 2012 3:27 PM
To: Cummings, Deanna L SPA
Subject: FW: LTC Gant MOU signature page (UNCLASSIFIED)

Deanna: I will need the original signature page sent to me so I can put all of them together for the final document and for the administrative record file (which I will then give to OSM). Can you send it to me at the address below? Thanks.

Steve

Stephen R. Spencer, PhD
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From: Calle, Marcelo
Sent: Friday, September 21, 2012 3:13 PM
To: Spencer, Stephen
Cc: Williamson, Rick L.
Subject: FW: LTC Gant MOU signature page (UNCLASSIFIED)

Stephen,

Not sure if you were forwarded this information regarding ACOE signature and Cooperator MOU.

Marcelo Calle
EIS Coordinator, The Four Corners & Navajo Mine Energy Project
Office of Surface Mining Reclamation and Enforcement
Program Support Division, Indian Programs Branch
1999 Broadway, Suite 3320
Denver, CO 80202-3050

mcalle@osmre.gov
(303) 293-5035 Office
(303) 293-5032 Fax

From: Cummings, Deanna L SPA [<mailto:Deanna.L.Cummings@usace.army.mil>]
Sent: Friday, September 21, 2012 2:53 PM
To: Calle, Marcelo
Cc: Cummings, Deanna L SPA
Subject: LTC Gant MOU signature page (UNCLASSIFIED)

Classification: UNCLASSIFIED
Caveats: NONE

Marcello:

Please see attached and have a good weekend. Deanna

Deanna L. Cummings
US Army Corps of Engineers
Regulatory Division
4101 Jefferson Plaza NE
Albuquerque, NM 87109
505-342-3280 phone
505-342-3498 fax

<http://www.spa.usace.army.mil/reg/default.asp>
<ftp://ftp.usace.army.mil> Please use this ftp site (.../pub/spa) to upload attachments greater than 5 MB

Classification: UNCLASSIFIED
Caveats: NONE

Classification: UNCLASSIFIED
Caveats: NONE

Classification: UNCLASSIFIED
Caveats: NONE

From: Spencer, Stephen
To: Cummings, Deanna L SPA
Subject: RE: Final Cooperators MOU for Navajo Pinabete Mine/Four Corners PP - Need Signatures for Agency/Tribal Officials (UNCLASSIFIED)
Date: Monday, August 20, 2012 1:57:26 PM

Thanks for the update.

Stephen R. Spencer, PhD
Regional Environmental Officer
Office of Environmental Policy and Compliance
U.S. Department of the Interior
1001 Indian School Road NW, Suite 348
Albuquerque, NM 87104
Phone: (505) 563-3572 Fax: (505) 563-3066 Cell: (505) 249-2462
Stephen_Spencer@ios.doi.gov
Web Site: www.doi.gov/oepc/albuquerque.html

-----Original Message-----

From: Cummings, Deanna L SPA [<mailto:Deanna.L.Cummings@usace.army.mil>]
Sent: Monday, August 20, 2012 1:54 PM
To: Spencer, Stephen; Calle, Marcelo; Williamson, Rick L.; Yazzie, Harrilene; Heuslein, Amy; Michele Morris; chonyumptewa@hopi.nsn.us; Galluzzi, Joseph; Hoefeler, Shannon D; King, Powell F; Whitmore, Sharon; Murphy, Wally; Reber, John
Cc: Lupo, Frank R; Kleven, Art; Overholser, Sonia; Cummings, Deanna L SPA
Subject: RE: Final Cooperators MOU for Navajo Pinabete Mine/Four Corners PP - Need Signatures for Agency/Tribal Officials (UNCLASSIFIED)

Classification: UNCLASSIFIED
Caveats: NONE

I am working the signature through our internal process and will forward when signed. Thanks.

Deanna

505-342-3280

-----Original Message-----

From: Spencer, Stephen [mailto:Stephen_Spencer@ios.doi.gov]
Sent: Friday, July 20, 2012 1:50 PM
To: Calle, Marcelo; Williamson, Rick L.; Yazzie, Harrilene; Heuslein, Amy; Michele Morris; chonyumptewa@hopi.nsn.us; Galluzzi, Joseph; Hoefeler, Shannon D; King, Powell F; Cummings, Deanna L SPA; Whitmore, Sharon; Murphy, Wally; Reber, John
Cc: Lupo, Frank R; Kleven, Art; Overholser, Sonia
Subject: Final Cooperators MOU for Navajo Pinabete Mine/Four Corners PP - Need Signatures for Agency/Tribal Officials

All: Attached is the final version of the subject MOU for signature. I have placed each agency/tribal official's signature block on a separate page. If you will have them sign on their page and mail the original back to me, I will scan them and build all of them into a final document. I

will then send you the final document once I have everything. I will send all the original signature pages and the completed document to OSM so it can be added to the Administrative Record. If you have any questions feel free to let me know. Thanks for your patience as I kept bothering you for information. With the completion of this document and the issuance of the NOI, among other items, I guess we are moving forward. I am sure it will be an interesting and challenging adventure for all.

Steve

Stephen R. Spencer, PhD

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Web Site: www.doi.gov/oepec/albuquerque.html

cid:_2_0827C2600827BCF80077B9A1892576F6

Classification: UNCLASSIFIED

Caveats: NONE

From: [Cummings, Deanna L SPA](#)
To: [Spencer, Stephen](#); [Calle, Marcelo](#); [Williamson, Rick L.](#); [Yazzie, Harrilene](#); [Heuslein, Amy](#); [Michele Morris](#); chonyumtewa@hopi.nsn.us; [Galluzzi, Joseph](#); [Hoefeler, Shannon D](#); [King, Powell F](#); [Whitmore, Sharon](#); [Murphy, Wally](#); [Reber, John](#)
Cc: [Lupo, Frank R](#); [Kleven, Art](#); [Overholser, Sonia](#); [Cummings, Deanna L SPA](#)
Subject: RE: Final Cooperators MOU for Navajo Pinabete Mine/Four Corners PP - Need Signatures for Agency/Tribal Officials (UNCLASSIFIED)
Date: Monday, August 20, 2012 1:54:03 PM

Classification: UNCLASSIFIED
Caveats: NONE

I am working the signature through our internal process and will forward when signed. Thanks.

Deanna

505-342-3280

-----Original Message-----

From: Spencer, Stephen [mailto:Stephen_Spencer@ios.doi.gov]
Sent: Friday, July 20, 2012 1:50 PM
To: Calle, Marcelo; Williamson, Rick L.; Yazzie, Harrilene; Heuslein, Amy; Michele Morris; chonyumtewa@hopi.nsn.us; Galluzzi, Joseph; Hoefeler, Shannon D; King, Powell F; Cummings, Deanna L SPA; Whitmore, Sharon; Murphy, Wally; Reber, John
Cc: Lupo, Frank R; Kleven, Art; Overholser, Sonia
Subject: Final Cooperators MOU for Navajo Pinabete Mine/Four Corners PP - Need Signatures for Agency/Tribal Officials

All: Attached is the final version of the subject MOU for signature. I have placed each agency/tribal official's signature block on a separate page. If you will have them sign on their page and mail the original back to me, I will scan them and build all of them into a final document. I will then send you the final document once I have everything. I will send all the original signature pages and the completed document to OSM so it can be added to the Administrative Record. If you have any questions feel free to let me know. Thanks for your patience as I kept bothering you for information. With the completion of this document and the issuance of the NOI, among other items, I guess we are moving forward. I am sure it will be an interesting and challenging adventure for all.

Steve

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Web Site: www.doi.gov/oepc/albuquerque.html

cid:_2_0827C2600827BCF80077B9A1892576F6

Classification: UNCLASSIFIED

Caveats: NONE

From: [Spencer, Stephen](#)
To: [Cummings, Deanna L SPA](#)
Subject: RE: BHP Pinabete/FCPP Update on 404 status, need for early coordination on 404 portion of scoping presentation (UNCLASSIFIED)
Date: Friday, July 06, 2012 1:10:25 PM

Thanks Deanna.

Stephen R. Spencer, PhD
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Web Site: www.doi.gov/oepec/albuquerque.html



From: Cummings, Deanna L SPA [mailto:Deanna.L.Cummings@usace.army.mil]
Sent: Friday, July 06, 2012 1:09 PM
To: Calle, Marcelo
Cc: carlos.jallo@cardnotec.com; kate.bartz@cardnotec.com; Benjamin Pogue; Williamson, Rick L.; Dietrich, Ellen; Applegate, Kent KC; Brent.Musslewhite@BHPBilliton.com; Mike Fitzgerald; Leavitt, Marcy L. SPA; Steinle, Allan E SPA; Pitrolo, Elizabeth A. SPA; Spencer, Stephen; Neal.Brown@aps.com; Richard.Grimes@aps.com; Cummings, Deanna L SPA
Subject: BHP Pinabete/FCPP Update on 404 status, need for early coordination on 404 portion of scoping presentation (UNCLASSIFIED)

Classification: UNCLASSIFIED
Caveats: NONE

All:

I may not be able to attend the conference call on the 11th, as I have a conflict. I will try to break away; if not, I am providing the following update.

The current Corps status for the FCPP jurisdictional determination:

We are awaiting a revised delineation and approved jurisdictional determination for the FCPP lease area. The only potential location with an ordinary high water mark or meeting wetland delineation criteria within the proposed project area is a potentially isolated wetland associated with a below-pond pumping station. APS/FCPP and AECOM are currently preparing a revised delineation, which, upon concurrence with the determination, the Corps would forward to EPA and Corps HQ for final

approval. APS/FCPP will also submit a delineation request for an unrelated action in the general vicinity.

The current Corps status for the BHP Pinabete delineation:

We are awaiting a revised delineation and amended application based on site visits conducted in June. Additional verification field work may be conducted later in the year to refine delineation further and provide documentation Corps has visited most areas and concurred with determination.

404 Public Notice:

Once we receive the revised FCPP delineation determination request and the BHP Pinabete revised delineation/amended application, the Corps will proceed with issuing 404-related public notice. If possible, we would prefer to be able to issue that public notice in advance of the scoping meetings, although there was information in the NOI that the scoping meeting fulfilled part of the Corps' public meeting/hearing process. Our preference would be to issue our public notice around the 3rd or 4th week of July. We will likely have an extended public comment period to incorporate time after the scoping meetings.

Scoping meetings presentation preparation:

I would like to start the discussion between the Corps, OSM, BHP, Cardno, and Ecosphere on the presentation preparation for the scoping meetings. I have a full schedule during the next three weeks, and want to ensure that we have ample time to work out the presentation prior to the meeting in Denver on the 26th.

General concerns:

The Corps is particularly concerned that the 404 decision document has no conflicts with the EIS and vice versa. To that end, we may want to have a separate meeting between the Corps, BHP, Cardno, and Ecosphere to determine/discuss critical document agreement areas. We may want to do this during the week of the scoping meetings, since all parties will be in the area. I currently have plans to attend the scoping meetings on the 13th through the 16th (most in the Farmington/Durango area).

Please let me know if you have any questions or comment on the above status update. Many thanks. Deanna

Deanna L. Cummings
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