

Record of Decision

Four Corners Power Plant and Navajo Mine Energy Project

Decision to Approve Renewal of Existing Navajo Mine SMCRA Permit and to Approve the Proposed
Pinabete Area SMCRA Permit

Decision to Approve Four Corners Power Plant Site Lease Amendment

Decision to Approve the Four Corners Power Plant Right of Way

Decision to Grant Power Transmission Line Rights of Way for Arizona Public Service and Public
Service Company of New Mexico

Decision to Approve Rights of Way for Road Associated with the FCPP and Navajo Mine

Decision to Approve Resource Recovery Protection Plan

Lead Agency:

Office of Surface Mining Reclamation & Enforcement

Cooperating Agencies:

Bureau of Indian Affairs

Bureau of Land Management

U.S. Army Corps of Engineers

U.S. Environmental Protection Agency

U.S. Fish & Wildlife Service

National Park Service

Hopi Tribe

Navajo Nation

Applicants:

Arizona Public Service

Public Service Company of New Mexico

Salt River Project Agricultural Improvement and Power District

El Paso Electric Company

Tucson Electric Company

Navajo Transitional Energy Company

BHP Mine Management Company

July 14, 2015

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1.0 Introduction

This document constitutes the Record of Decision (ROD) of the United States Department of the Interior (DOI) and the Office of Surface Mining Reclamation and Enforcement (OSMRE), Bureau of Indian Affairs (BIA) and Bureau of Land Management (BLM) for the Four Corners Power Plant and Navajo Mine Energy Project (FCPP & NMEP). This ROD includes the following decisions:

1. OSMRE's decision, under the provisions of the Surface Mining Control and Reclamation Act of 1977 (SMCRA), to approve Navajo Transitional Energy Company, LLC's (NTEC) application to add a new permit area (Pinabete Permit Area) to the existing Navajo Mine lease area and to begin mining operations within this new permit area in 2016 and continue through 2041.
2. OSMRE's decision on NTEC's application to renew the Navajo Mine's existing SMCRA permit covering Mining Areas I, II, III, and portions of Area IV North, all within the Navajo Mine lease area, for an additional 5 years.
3. BIA's decision on the proposed Lease Amendment and Supplement #3 to Supplemental and Additional Indenture of Lease (Lease Amendment No. 3) to the FCPP site lease between Arizona Public Service Company (APS), Public Service Company of New Mexico (PNM), Salt River Project Agricultural Improvement and Power District (SRP), El Paso Electric Company (EPE), Tucson Electric Company (TEC), and the Navajo Nation.
4. BIA Navajo Region's decision on a right-of-way (ROW) application for the power plant site as proposed by APS, PNM, SRP, EPE, and TEC.
5. BIA Navajo Region's decision on APS's ROW application for the existing Cholla and El Dorado transmission lines on Navajo tribal trust lands.
6. BIA Western Region's decision on APS's ROW application for the existing El Dorado transmission line on Hopi tribal trust lands.
7. BIA Navajo Region's decision on NTEC's ROW application associated with existing Navajo Mine SMCRA Permit Area Access Road Office Facility.
8. BLM's finding that the modified Resource Recovery and Protection Plan (R2P2) for the Pinabete Mine Plan will achieve ultimate maximum recovery of coal and will adequately protect non-coal resources.

OSMRE, in conjunction with the other Federal entities listed above, has prepared an Environmental Impact Statement (EIS) and this ROD pursuant to the National Environmental Policy Act of 1969 (NEPA) (42 United States Code [USC] 4321, *et seq.*), and in compliance with the Council on Environmental Quality's (CEQ) implementing regulations for NEPA (40 Code of Federal Regulations [CFR] Part 1500 through 1508), and DOI's implementing procedures for NEPA (43 CFR Part 46). This ROD applies only to OSMRE, BIA (Navajo and Western Regions), and BLM actions on the FCPP & NMEP and connected actions. The United States Environmental Protection Agency (USEPA) and United States Army Corps of Engineers (USACE) are responsible for issuing their own decisions and applicable authorizations for the FCPP & NMEP.

OSMRE, with the other Federal entities, has also complied with Executive Order (E.O.) 13175, Consultation and Coordination with Indian Tribal Governments (Nov. 6, 2000); Section 7 of the Endangered Species Act (ESA), 16 USC 1536; and Section 106 of the National Historic Preservation

Act (NHPA), 54 USC 306108; by completing its consultations with tribal governments, the U.S. Fish and Wildlife Service (USFWS), government agencies, and local historic preservation groups.

2.0 Background

2.1 Navajo Mine

In July 1957, the Navajo Nation granted a 24,000-acre coal mining lease (Navajo Tribal Coal Lease 14-20-603-2505) to Utah Construction and Mining Company (subsequently BHP Billiton Navajo Coal Company [BNCC]). The original 1957 lease granted Utah Construction and Mining Company (Utah Construction) the right to begin surface coal mining at what would become the Navajo Mine. A series of lease amendments from 1957 to 1989 amended the original mining lease by granting a ROW to Four Corners Pipeline Company and adding additional mining lands. The lease area is oriented from north to south and is subdivided into six coal resource areas that start in the north and run south. The coal resource areas in the lease are: Areas I, II, III, IV North, IV South, and V. See Exhibit of Navajo Mine Area on page 4 of this ROD.

The Navajo Nation also granted a 38-acre Mine Plant lease (Lease 14-20-0603-6447) dated April 1, 1961 granting Utah Construction the right to build, maintain, and operate a mine office, shops, warehouse, coal analysis laboratory, turn around and storage area for mining and haulage equipment, and other surface uses related to large scale coal mining operations. The mine plant lease was amended on October 1, 1965 to add 223 acres.

With the original mining lease agreement in place, mining could commence and a coal supply was available to secure a potential coal-fired power plant. In 1961, APS reached an agreement with the Navajo Nation to operate a coal-fired power plant and purchase the coal supply from Navajo Mine. Surface mining activities at the Navajo Mine began near the FCPP in Area I in the early 1960s, and have since continued to the south. Units 1 and 2 of the FCPP began operations in 1962. See Exhibit of Four Corners Power Plant on page 5 of this ROD.

After the 1977 passage of the SMCRA (30 USC 1201 *et seq.*) and through a series of revisions and amendments to the original mining lease, Utah Construction was required to obtain a surface mining permit. SMCRA also created OSMRE to be the Federal regulatory authority over mining and reclamation activities conducted on the Navajo Mine.

After initially operating under SMCRA's interim program regulations for Indian Lands, BNCC applied for and received (in 1989) a permit under SMCRA's permanent program for Indian Lands. The existing SMCRA permit for the Navajo Mine includes coal resource Areas I, II, III, and portions of Area IV North within the Navajo Mine lease area (Federal SMCRA Permit NM-0003F). It is administered on a 5-year renewal schedule (30 USC 1256, 30 CFR 773.19). The approved mining plan under the permit currently authorizes mining in portions of Areas I, II, and III.

In March 2012, BNCC submitted an application for a SMCRA permit to develop an approximately 5,600-acre permit area within the existing Navajo Mine coal lease area, to be known as the Pinabete Permit Area. Portions of the Pinabete Permit Area fall within the previously approved life-of-operations permit area, and include portions of Area IV North. Although Area IV North is included in the previously permitted area, OSMRE must approve a mine plan specifying the pit sequence and timing of activities before mining can occur. Thus, for those portions of Area IV North not covered

by the existing SMCRA permit, and for the remaining portions of the Pinabete Permit Area, BNCC sought a new SMCRA permit to conduct mining operations on an approximately 4,100-acre portion of the proposed Pinabete Permit Area. The Pinabete Permit Area would include previously permitted but undeveloped coal reserves within Area IV North¹ of the Navajo Mine lease, and previously unpermitted and undeveloped coal reserves in a portion of Area IV South of the existing Navajo Mine lease. Development of the Pinabete SMCRA Permit Area and associated coal reserves would use surface mining methods, and based on current projected customer needs, would supply coal to the FCPP for up to 25 years, beginning in July 2016.

On April 29, 2013, the Navajo Nation Council formed NTEC, which became the SMCRA permittee of the Navajo Mine, as described below. On December 1, 2013, NTEC acquired 100 percent of the equity of Navajo Mine Coal Company (NMCC), formerly BNCC, whose assets included the lease of the Navajo Mine. BHP Billiton New Mexico Coal, Inc. (BBNMC) subsequently established a new subsidiary company, BHP Billiton Mine Management Company (MMCo), for the purpose of managing the operation of Navajo Mine on behalf of NTEC. In November 2013, OSMRE conditionally approved BNCC's permit transfer application and, once all approval conditions had been met, subsequently issued the Navajo Mine SMCRA permit to NTEC in February 2014. Once this permit was issued, NTEC became the applicant for the Pinabete Area and for the renewal of the Navajo Mine permit.

The current term of Permit NM-0003F expired September 25, 2014, prior to OSMRE's anticipated completion of the EIS and this ROD. NTEC submitted its renewal application on May 27, 2014. On September 16, 2014, OSMRE informed NTEC that it was administratively delaying its decision on the permit renewal application. OSMRE's administrative delay allowed NTEC to continue surface coal mining and reclamation operations under the current permit, given that the applicant had met all renewal application submittal requirements and procedures in accordance with 30 CFR 750.12(c)(1)(ii) and 774.15(a).

BHP Billiton originally filed for a ROW grant on November 12, 2012, for an existing Access Road within the Navajo Mine SMCRA Permit Area. The ROW encompasses 10.40 acres (approximately 4,500 feet in length and 100 feet in width) of Navajo tribal trust lands in San Juan County, New Mexico. With NTEC's purchase of NMCC, NTEC became the applicant for this ROW grant.

¹ The Pinabete Permit Area does not include the 830-acre portion of Area IV North approved for mining by OSMRE in 2012, which is subject to the April 6, 2015 remand order issued by the U.S. District Court for the District of Colorado (Civil Action No. 12-cv-01275-JLK).

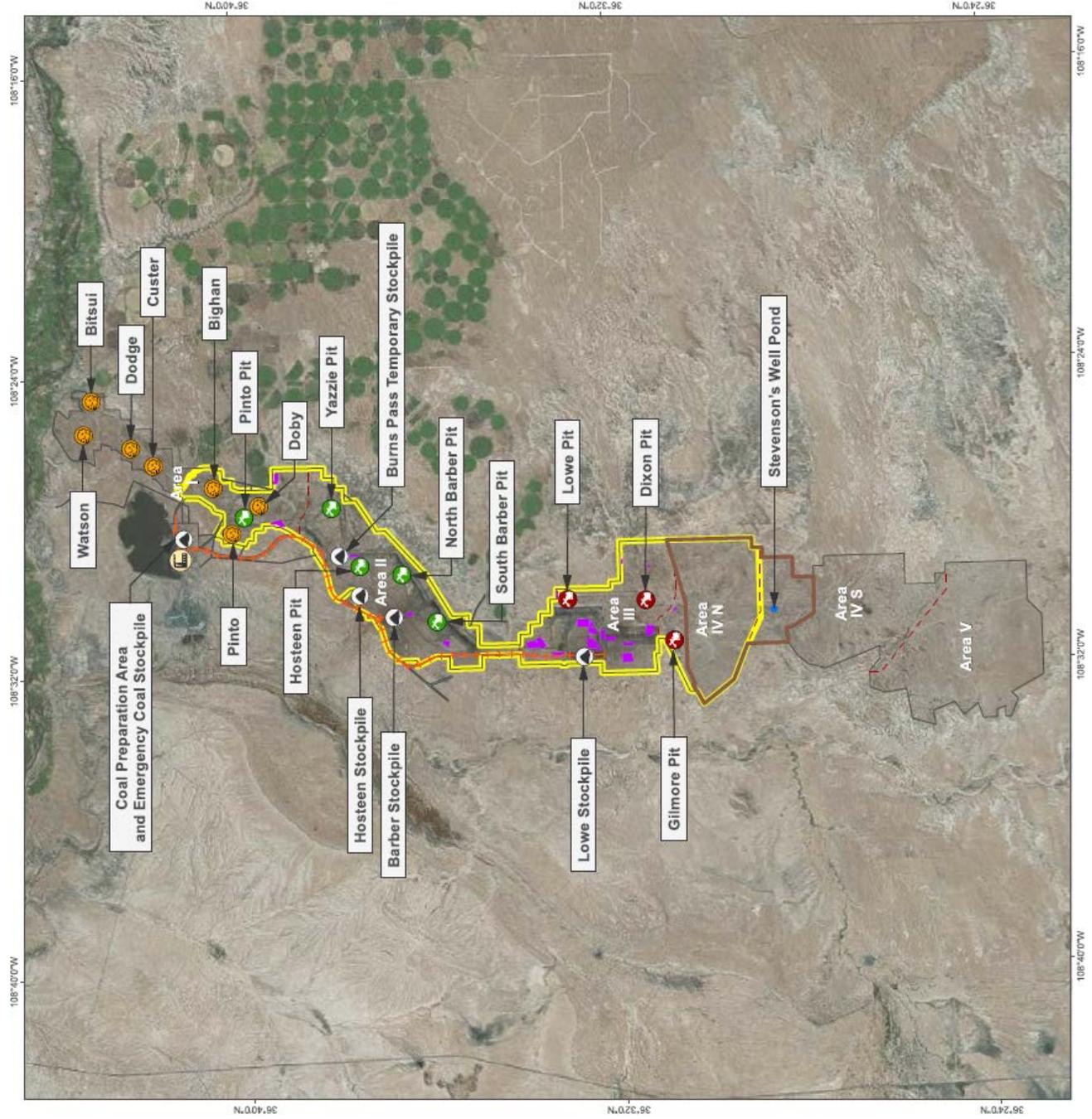
Navajo Mine Area

PROJECT FACILITIES

-  Four Corners Power Plant
-  Coal Stockpile
-  Historic Ash Placement Areas
-  Active Mining Pits
-  Inactive/Reclaimed Mining Pits
-  Topdressing/Regolith Stockpile
-  Navajo Mine Railroad

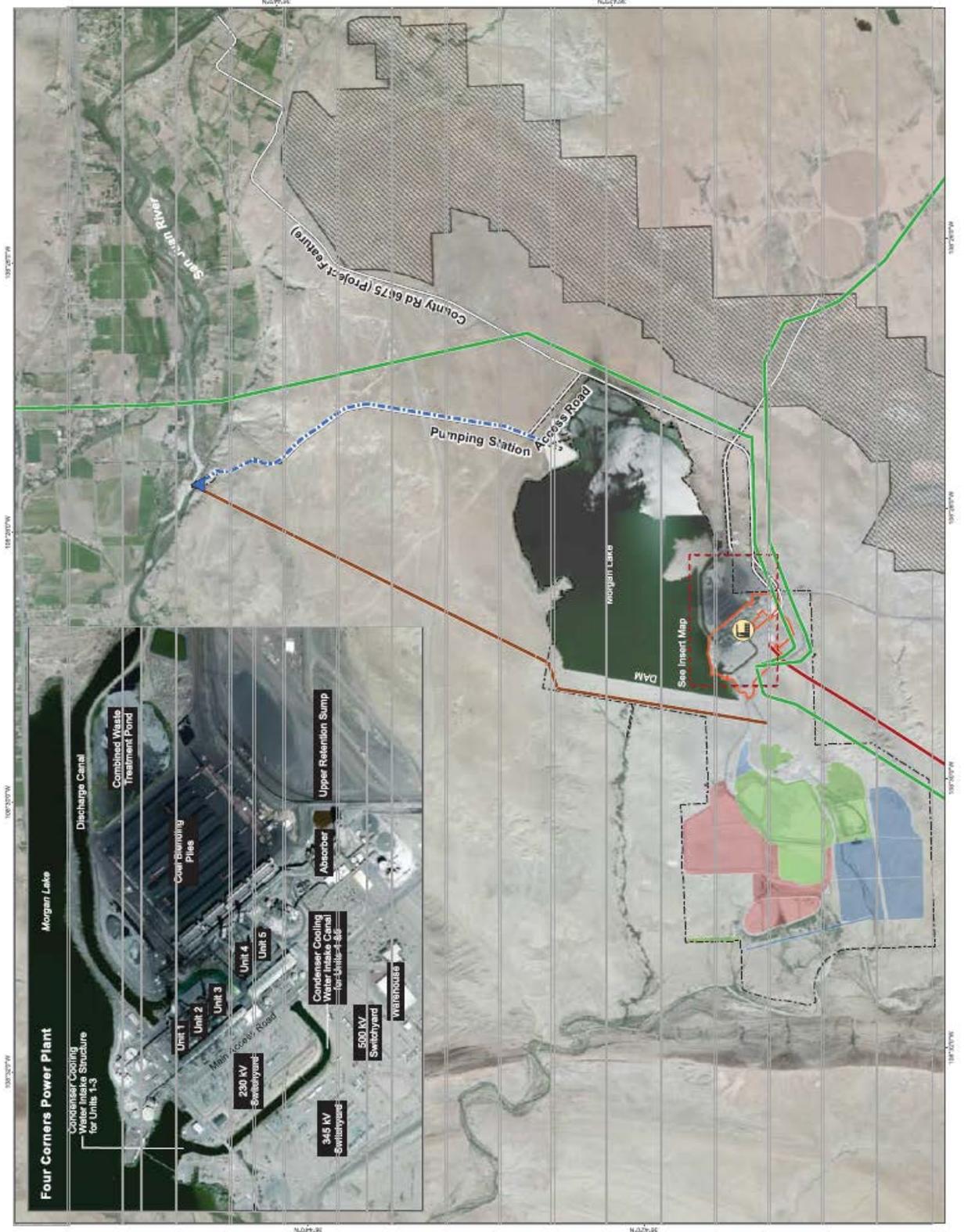
PROJECT BOUNDARIES

-  Navajo Mine Resource Areas
-  Navajo Mine Lease and ROW's
-  Navajo Mine SMCRA Permit Boundary
-  Proposed Pinabete SMCRA Permit Boundary



Appendix 8.1

Four Corners Power Plant



2.2 Four Corners Power Plant

FCPP is a coal-fired electric generating station that receives coal solely from the Navajo Mine. FCPP had five units until APS retired three of the units on December 30, 2013. The two remaining units (Units 4 and 5) currently generate 1,540 MW of energy. APS owned 100 percent of the retired units 1, 2, and 3. Five utilities jointly own Units 4 and 5: APS, PNM, Salt River Project Agricultural Improvement and Power District, El Paso Electric Company (EPE), and Tucson Electric Company. APS operates FCPP as the operating agent for all of the co-owners and owns 63 percent of the total plant capacity. A lease agreement for a power plant site between the Navajo Nation and APS was signed in 1960. The 1960 Indenture of Lease was amended in 1966 to allow the construction of Units 4 and 5 and added PNM, EPE, SRP, Tucson Electric Company, and Southern California Edison as operators. In 1985 the lease was amended to encompass additional lands. The original lease agreement also authorized associated ROWs for ancillary facilities within the plant lease area (e.g., transmission lines, water pipelines, access roads, etc.) on Navajo tribal trust lands. In 2011, after several years of negotiations, the Navajo Nation again agreed to amend the underlying leases. Through Navajo Nation Council Resolution No. CF-08-11 (Resolution) signed on March 7, 2011, the Nation's Council recommended approving Amendment and Supplement No. 2 and 3. Amendment No. 2 allowed Southern California Edison Company to sell their interest in the FCPP. The BIA Navajo Region approved Amendment No. 2 on December 2, 2011. APS and the other lease proponents also executed in 2011 a third lease amendment (Lease Amendment No. 3) with the Navajo Nation to, among other things, extend the term of the lease for the FCPP an additional 25 years, to 2041. The lease agreement and accompanying Resolution also serves as evidence of the Nation's consent to renew identified transmission lines including El Dorado and Cholla on Navajo tribal trust lands, and a ROW for the plant lease area. The approval of Lease Amendment No. 3 was evaluated in the FCPP & NMEP EIS and was subject to DOI Secretarial approval. Pursuant to the Secretarial Redesignation Order, 209 Department Manual (DM) 8, 230 DM 1, 3 Indian Affairs Manual 4, and 10 BIA Manual 11, the Regional Director or Agency Superintendent can be delegated the authority to approve the lease action.

In August 2012, the USEPA published its Federal Implementation Plan (FIP) for the Best Available Retrofit Technology (BART) at FCPP (40 CFR 49.5512). The FIP allowed the power plant operators to choose between two options:

1. Shut down Units 1, 2, and 3 by January 2014 and install selective catalytic reduction (SCR) devices on Units 4 and 5 by July 2018; or
2. Retrofit all five units to meet certain emission rate limits.

The power plant operators chose the option of shutting down Units 1, 2, and 3, and installing SCR devices. APS has also agreed to purchase EPE's 7 percent ownership share in Units 4 and 5. Completion of the purchase is subject to approval by the Federal Energy Regulatory Commission, which is expected to occur in July 2016. Units 4 and 5 would continue to operate for the duration of the lease agreement to 2041, with the installation and operation of SCR equipment on both units by July 31, 2018. Although the BART rules specifically address oxides of nitrogen (NO_x) and particulate matter, the BART option chosen by the power plant operators would result in a decrease of all air pollutants emitted.

2.3 Connected Actions: Transmission Lines

Section 1508.25 of CEQ regulations for implementing NEPA discusses the inclusion of connected actions into the scope of the agency's environmental analysis of the effects of a proposed action. Actions are considered connected if they:

1. Are automatically triggered by the Proposed Action and would require their own environmental impact statement,
2. Cannot or will not proceed unless the Proposed Action is taken previously or simultaneously, or
3. Are interdependent parts of the larger Proposed Action and depend on the Proposed Action for their justification.

Eight existing transmission lines distribute electricity generated at the FCPP to the southwestern United States. Of these, the EIS considered as connected actions four transmission lines that require that ROWs be granted. Because grant of the easements for the ROWs would not likely occur without the FCPP's continued operation, and because the transmission lines depend primarily on the FCPP lease renewal for their utility, these actions are considered connected actions and were also addressed within the FCPP & NMEP EIS. As the source of the electricity, the FCPP is the physical origin of these connected actions, and the physical end point of each connected action is defined as the location where the transmission line segment connects to the larger southwestern U.S. electricity transmission grid, beyond which a significant portion of the electricity transmitted is not generated by FCPP.

The BIA has the authority to grant ROW over tribal trust lands provided that the affected landowners have given consent for the ROW over their lands in accordance with 25 USC 323 and 25 CFR 169.3 and the requirements of the DOI's ROW regulations are met. Of the four existing transmission line segments that require ROWs and were considered connected actions in the EIS, this ROD will include decisions on the following:

1. *Cholla (FCPP to Cholla Navajo Nation Exterior Boundary)*: APS owns and operates the FCPP to Cholla 345-kV lines that are parallel transmission lines that occupy a 315-foot width for approximately 85 miles then separate into two 195-foot width for approximately 40 miles, and then converge into a single 315-foot width for approximately 10 miles before crossing the border outside of Navajo tribal trust lands. These transmission lines were constructed in 1961. The two 345-kV transmission lines originate from the FCPP Switchyard to the southern boundary of the Navajo Nation for approximately 179 miles. Eighty-six percent of the use of this line is to transport FCPP electricity to APS customers. The remaining 14 percent use of this line is for other utilities besides FCPP electricity. The Navajo ROW for this transmission line expired in May 2011. The BLM ROW for the portion of the line from the Navajo Nation exterior boundary to Cholla Substation was renewed in 2012, with the term extending to 2041. Therefore, only the ROW for the portion of the lines from FCPP to the Navajo Nation exterior boundary is considered as a connected action.
2. *El Dorado (through Navajo and Hopi Tribal Trust Lands and including the Moenkopi Substation)*: APS owns and operates the existing El Dorado 500-kV line that transects Navajo, Navajo Indian Allotted lands, and Hopi tribal trust lands. The El Dorado transmission line was

constructed in 1966. The line is approximately 194.643 miles long and originates from the FCPP Switchyard to the southwestern boundary of the Navajo Nation with approximately 36 miles crossing Hopi tribal trust lands. The transmission line ROW also crosses approximately 11 acres of Navajo Indian Allotted lands between the Moenkopi Substation and boundary of the western Navajo Nation. The ROW for the portion of the transmission line that transects Navajo tribal trust lands expired March 1992 and the ROW for that portion that transects Hopi tribal trust lands expired in December 1991. This line was formerly used to transmit electricity from the FCPP to Southern California Edison's service territory in California. Southern California Edison divested its share of the FCPP and no longer imports power from FCPP. Since completion of the sale, APS no longer uses the transmission line west of Moenkopi Substation to transmit power from the FCPP to Southern California Edison's service territory. APS will now use the transmission line west of the Moenkopi Substation to dispatch power into APS' service territory in Arizona. Accordingly, the EIS considered the line from FCPP to Moenkopi Substation as a connected action, and the segment from Moenkopi Substation to the southwestern boundary of the Navajo Nation as a similar action.

See Exhibit of Project Area-Regional Location and Project Components on page 9 of this ROD. Two additional existing transmission lines were analyzed as connected actions in the EIS, the FCPP Switchyard to West Mesa Switchyard line, and the Four Corners-San Juan (9-Mile Tap) line. They are described, along with two other future transmission line ROW actions, in Section 2.4 of this ROD. Decisions on those lines or segments will not be part of this ROD, as explained in detail in Section 2.4.

Four Corners Power Plant and Navajo Mine Energy Project

Project Area

Regional Location and Project Components

PROJECT FACILITIES

-  Power Plant
-  Substation
-  Switchyard

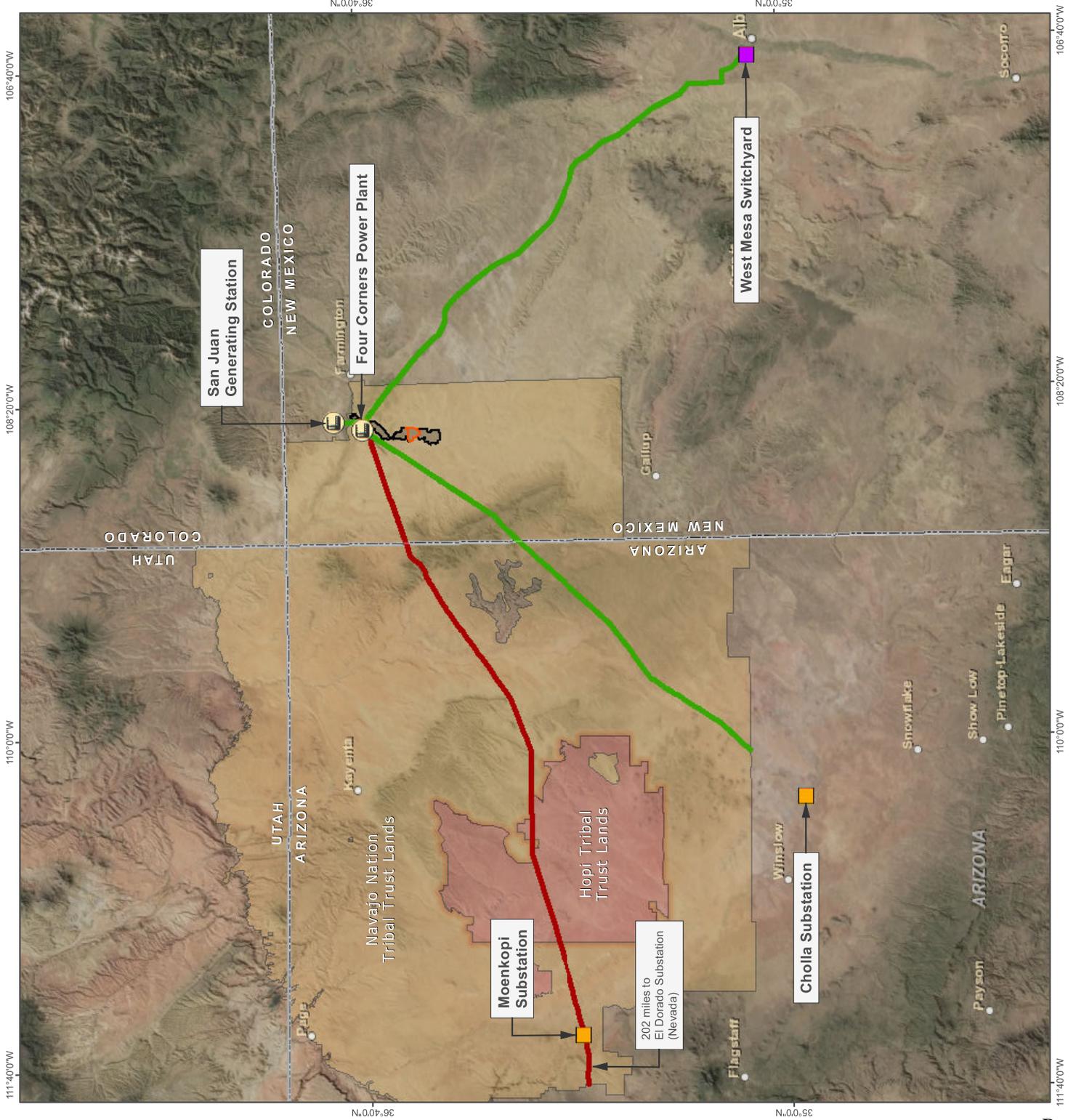
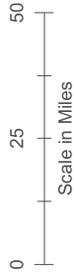
PROJECT BOUNDARIES

-  Navajo Mine Lease Area
-  Proposed Pinabete SMCRA Permit Boundary

TRANSMISSION LINES

-  345KV
-  500KV

Note: The FCPP to Cholla Substation transmission line consists of two parallel transmission lines that occupy the same right-of-way for approximately 85 miles before separating into two rights-of-way for another 40 miles and converging into a single right-of-way for 10 miles before leaving the Navajo Nation.



2.4 Completed and Forthcoming Federal Actions

Two additional unconnected Federal actions were completed prior to the Draft EIS: OSMRE's approval of a SMCRA permit transfer application associated with the equity sale and merger of NMCC with the NTEC, including all assets formerly held by BNCC; and the USEPA's issuance of a FIP for the installation of BART at the FCPP. These completed actions are not considered part of the Proposed Action, but part of the environmental baseline. The changes to the pre-2014 baseline as a result of these actions are described in the FCPP & NMEP EIS (Section 2, page 2-1; Section 3, page 3-1; Section 3.2.1.2, page 3-16) as the Interim Period (2014 to 2018).

Several additional ROWs were assessed in the EIS; however, the associated applications or administrative actions for those ROWs are forthcoming and are not addressed in this ROD. The ROW actions not included in this ROD are:

1. PNM's FCPP-West Mesa 345-kV existing transmission line ROW that expires in June 2018. The Four Corners-West Mesa transmission line extends approximately 156 miles to Rio Puerco, New Mexico.
2. The approximately 6.71 miles of the existing NTEC's Access Road/Power and Communication lines from the FCPP lease area to the Navajo Mine lease area.
3. The approximately 11-acre segment of APS's El Dorado 500-kV transmission line that continues west of the Moenkopi Substation and that crosses the Navajo Indian Allotted lands.
4. PNM's Four Corners-San Juan (9-Mile Tap) 345-kV existing transmission line. The 10-mile line transverses Navajo Nation, BLM, New Mexico State Land Office (SLO), and private lands.

2.5 Purpose and Need for the Action

The purpose of the Proposed Action is to allow continued operations at the Navajo Mine and FCPP and operation of the associated transmission lines. The Proposed Action would be accomplished in a manner consistent with Federal Indian trust policies, including, but not limited to, a preference for tribal self-determination and promoting tribal economic development for all tribes affected by the Proposed Action.

The Proposed Action is needed to:

1. Continue the generation and transmission of long-term, reliable, and uninterrupted base load electrical power for the residential, industrial, and other customers of the FCPP owners using existing generation and fuel resources.
2. Continue to provide coal to the FCPP, which receives coal exclusively from SMCRA permit areas in the Navajo Coal lease area.
3. Continue operation and maintenance of the associated transmission lines and ancillary facilities (including switchyards and substations) that serve to transmit the electric energy generated at FCPP. The operation of the transmission lines also facilitates electric grid reliability in the western U.S. and region-wide reserve sharing agreements necessary to respond to system emergencies.
4. Provide for tribal self-determination and promote tribal economic development in the energy and mining sectors for the Navajo Nation and Hopi Tribe.

3.0 Decision

OSMRE, as lead agency and in coordination with cooperating agencies, has selected Alternative D of the EIS, the Alternate Ash Disposal Area Configuration, as the preferred alternative. Under this alternative, OSMRE will approve NTEC's Pinabete SMCRA Permit application and Navajo Mine SMCRA application for permit renewal. The BIA Navajo Region will approve the FCPP Lease Amendment No. 3 and the ROW applications for the APS's Cholla and El Dorado transmission lines on Navajo tribal trust lands, including the Moenkopi Substation, the plant site ROW, and NTEC's Navajo Mine SMCRA Permit Area Access Road to the Area III Office Facility. BIA Western Region will approve the segment of APS's El Dorado transmission line located on Hopi tribal trust lands. In addition, APS will construct a single Dry Fly Ash Disposal Area (DFADA) that will be approximately 350 acres in area. The preferred alternative differs from the proposed action by creating one large fly ash disposal cell rather than seven smaller disposal cells with multiple access roads and embankments and that would have a larger disturbance foot print.

Alternative D also includes the BLM's finding that the modifications to the R2P2 for the new Pinabete Permit Area will result in ultimate maximum economic recovery of the coal deposit in that area and adequate protection of non-coal resources.

3.1 Navajo Mine

Approval of Pinabete SMCRA Permit

Under the selected alternative, OSMRE will approve, under 30 USC 1260 and 30 CFR 773.15, NTEC's application to develop a new permit area for surface coal mining and reclamation operations for Navajo Mine operations beyond July 6, 2016 (Pinabete Permit Area). The proposed Pinabete Permit Area includes 5,569 acres and is composed of portions of the current Navajo Mine SMCRA Permit Area (Federal Permit No. NM-0003F) and additional unpermitted areas of the Navajo Mine lease area. The new permit area will be used to supply coal to FCPP and fulfill NTEC's coal sale obligations through 2041 in 5-year permit renewal increments. Although annual production will vary, approximately 5.858 million tons of coal per year will be mined, for a cumulative total of approximately 134.439 million tons of coal mined and combusted, and 4,104 acres of total disturbance between 2016 and 2041.

As described in the EIS, the Pinabete Permit Area will be mined in the same manner as the current Navajo Mine operations using surface coal mining methods adapted for multiple coal seam mining. Overburden will be removed primarily through dragline stripping, although overburden may also be stripped by dozer and loaded onto trucks or loaders for removal. The main support facility for the Pinabete Permit Area operation will be the existing Area III support facilities. Water supply for irrigation and dust suppression will be provided from an extension of the existing raw water pipeline at Navajo Mine.

NTEC will use both primary and ancillary roads during mining operations in the Pinabete Permit Area. The Pinabete SMCRA Permit proposes construction of approximately 5 miles of primary roads and approximately 22 miles of ancillary roads to the Navajo Mine transportation network. BNCC originally submitted two applications to BIA for the ROW approval; however, applications were modified reflecting NTEC as the applicant for the following actions:

1. BNCC submitted an application for the Navajo Mine SMCRA Permit Area Access Road, which provides access in Area III. The Navajo Mine SMCRA Permit Area Access Road is an existing 4,528 foot road with no proposed plans to add improvements or for additional construction activities. Similar to the Pinabete SMCRA Permit application, upon transfer of ownership of the Navajo Mine to NTEC, the applicant for the ROW approval of the Navajo Mine SMCRA Permit Area Access Road changed from BNCC to NTEC.
2. NTEC submitted an application to the BIA for the ROW approval/grant of the Access Road/Power and Communication lines from the FCPP lease area to the Navajo Mine lease area, which was deemed incomplete and currently not considered as an action for this ROD.

To conduct operations in the Pinabete Permit Area, NTEC will eventually realign 2.8 miles of the existing Burnham Road to route public traffic around mine activities. Burnham Road will not need to be relocated until approximately 2022.

Reclamation will proceed by mass-balanced logical reclamation blocks. Through combination of the post-mining topography and final surface configuration designs, BNCC developed mass-balanced logical reclamation blocks for the mining area. Unbalanced surplus material will be redistributed within the reclamation blocks. Backfilling and grading will be completed in these logical reclamation blocks, which follow the stripping sequence and allow for large areas to be regraded at one time. In most cases, reclamation blocks will become available every 1 to 3 years in each mining area.

Renewal of Navajo Mine SMCRA Permit

In addition to a decision on the pending Pinabete SMCRA Permit Application, this ROD also addresses OSMRE's decision on an administratively-delayed permit renewal application for Navajo Mine Federal Permit NM-0003F. Consistent with SMCRA's requirements (30 CFR 774.15), NTEC submitted a renewal request for the existing SMCRA permit (Permit No. NM-0003F) within 120 days of the expiration of the permit term. OSMRE administratively delayed a decision on NTEC's renewal application to allow for completion of the FCPP & NMEP EIS. The existing SMCRA permit authorizes surface coal mining and reclamation on approximately 13,430 acres². In accordance with 30 USC 1256(d) and the regulations at 30 CFR 750.12(c)(1)(ii) and 774.15(a), a valid permit issued pursuant to an approved regulatory program carries with it the right of successive renewal within the boundaries of the existing permit.

OSMRE will approve the renewal application, with the following exception.

On April 6 2015, the U.S. District Court for the District of Colorado (Civil Action Number 12-cv-01275-JLK) remanded and vacated OSMRE's March 2012 approval of a permit revision approving a mining and reclamation plan for approximately 830 acres of the northern most part of Area IV North. For the

² The FCPP & NMEP EIS (ES-ix) incorrectly stated that the existing Navajo Mine SMCRA permit authorizes activities on 20,590 acres. That number is the total acreage within the Navajo Mine SMCRA permit boundary, including pre-SMCRA, SMCRA initial program, and SMCRA permanent program lands, together with lands outside of the permit boundary that were disturbed by historic mining prior to SMCRA. The EIS (3-3) incorrectly stated that the existing SMCRA permit authorized activities on 18,520 acres. That number is the total acreage within the SMCRA permit boundary. The existing permanent program permit subject to renewal authorizes operations on approximately 13,430 acres.

purpose of interim compliance with the District Court's order, mining and mining-related disturbance in that area, as approved in March 2012, have ceased. The 830 acres of Area IV North is within the Navajo Mine NM-0003F permit area and was included in the administratively-delayed permit renewal application and analyzed in the FCPP & NMEP EIS. So long as necessary for interim compliance with the District Court's remand and vacatur, approval of the renewal application for NM-0003F will not extend to the mining and reclamation plan for the 830 acres of Area IV North approved in March 2012, and does not authorize NTEC to re-initiate mining or mining-related disturbances in that area.

Maximum Recovery Under the Pinabete Mine Plan

Under the selected alternative, the BLM would find that the modifications to the R2P2 for the Pinabete Mine ensure ultimate maximum recovery of the coal deposit. The modified R2P2 for the Navajo mine was submitted in April 2012 and July 2014. That plan serves as the basis for determining the recoverable coal reserves for the mine. In accordance with 25 CFR Parts 211 and 216, and 43 CFR Subparts 3480 and 3590, the BLM must determine whether a mining plan for Indian coal ensures ultimate maximum recovery of the coal deposit and adequate protection of non-coal resources. Ultimate maximum recovery, 43 CFR 3590.0-5, on Indian lands requires the Indian coal lessee to fully produce the mineral resource for the benefit of Indian owners and assure that Indian owners are treated in a manner comparable to the Federal Government when the Federal Government is coal lessor. In accordance with 43 CFR 3590.0-5(h), this means that all portions of a leased Indian coal deposit will be mined consistent with standard industry operating practices.

3.2 Four Corners Power Plant

Approval of Lease Amendment No. 3

On March 7, 2011, APS, as operating agent and on behalf of FCPP's participant owners, 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 July 6, 2041. This lease amendment along with the corresponding tribal resolution evidences tribal consent and provides compensation for the FCPP site and ROWs across Navajo tribal trust lands for the El Dorado and Cholla transmission lines, including the Moenkopi Substation. BIA Navajo Region's approval of Lease Amendment No. 3 is required pursuant to 25 USC 415, and BIA Navajo Region's approval of the ROWs are required pursuant to 25 USC 323. The BIA Navajo Region is responsible for actions associated with Navajo tribal trust lands and Navajo Indian Allotted lands, and as such, will be processing the Navajo Lease Amendment No. 3 and associated ROWs.

As part of its BART compliance requirements, APS shut down Units 1, 2, and 3, and will install SCR devices on Units 4 and 5. The SCR process requires relatively large amounts of ammonia and hydrated lime, which will be delivered to FCPP by truck and stored on site prior to use. Other than the SCR installation, Units 4 and 5 will continue operating in the same manner as they do currently. Although it is estimated that the shutdown of Units 1, 2, and 3 has reduced annual water consumption by 5,000 to 7,000 acre-feet per year, the water supply system to the FCPP is not anticipated to change. The size of the leased acreage or footprint of the FCPP facilities will not change. All three switchyards will remain in service to distribute power from FCPP and other generators. Other than minor equipment

upgrades, no changes or modifications are anticipated for the three FCPP switchyards, Moenkopi Substation, 12-kV Moenkopi line, or Moenkopi access road during the lease term.

The BIA Navajo Region's approval of Lease Amendment No. 3 will allow for the continued operation of the FCPP as provided by the BART FIP. The FIP required that APS choose how it would implement the BART rule by December 31, 2013. On December 30, 2013, the purchase and sale transaction of Southern California Edison's share of Units 4 and 5 to APS was completed and Units 1, 2, and 3 were shut down. As described in the FCPP & NMEP EIS, during the interim period between the 2014 required shutdown date through July 2018 (when SCR must be installed and operational), the FCPP will operate only Units 4 and 5 in the same manner as current operations. After July 2018, APS will operate Units 4 and 5 with SCR installed.

Between 2014 and 2016, Flue Gas Desulfurization (FGD) waste generated from Units 4 and 5 will continue to be placed in DFADA Sites 1 and 2 and advance through phases to Site 7, eventually becoming a 350 acre 'super cell' DFADA that will reach capacity in 2041. As each subsequent site is constructed, the liner and leachate collection system will be extended such that the sites will act as a single facility. The DFADA will be set back at least 300 feet from the FCPP lease area boundary.

Approval of Plant Site ROW

In addition to the decision to approve Lease Amendment No. 3, this ROD also addresses the BIA Navajo Region's decision on a ROW for the site of the power plant. This ROW will encompass the entire 3,597.163 acres of Navajo tribal trust lands that are currently the site of the FCPP. This ROW will be granted to the five operators of the FCPP: APS, PNM, SRP, EPE, and TEC. This ROW will be for a term of 25 years.

3.3 Approval of Transmission Lines

Under the selected alternative, the BIA will grant the following ROWs as allowed under 25 USC 323-328. Four existing transmission lines directly associated with the FCPP require ROW grants within the period of time this NEPA review was conducted and were considered connected actions to the continued operation of the mine and power plant. Of the four lines considered connected actions in the FCPP & NMEP EIS, this ROD will include decisions for ROW applications on the following two transmission lines segments:

1. *Cholla (FCPP to Cholla Navajo Nation Exterior Boundary)*: The BIA will grant the approximately 179-mile ROW for the two 345-kV transmission lines that originate from the FCPP Switchyard to the southern boundary of the Navajo Nation. The ROW is for parallel transmission lines that occupy a 315-foot width for approximately 85 miles then separate into two 195-foot width for approximately 40 miles, and then converge into a single 315-foot width for approximately 10 miles before crossing the border outside of Navajo tribal trust lands. .
2. *El Dorado (through Navajo and Hopi tribal trust lands, including the Moenkopi Substation)*: The 500-kV line is approximately 195 miles long and originates from the FCPP Switchyard to the southwestern boundary of the Navajo Nation. The BIA will grant segments of APS's existing transmission line ROWs that transect Navajo and Hopi tribal trust lands. Approximately 156 miles of the ROW, with a width of 200.00 feet and consisting of approximately 3,778 acres, crosses Navajo tribal trust lands. The Moenkopi Substation ROWs on Navajo tribal trust lands include 12kV electric lines with a width of 20.00 feet consisting of 0.529 acres; access road

with a 50.00 feet width consisting of 0.463 acres; and Moenkopi Switchyard that encompasses 211.555 acres. Approximately 36 miles of the line crosses Hopi tribal trust lands.

No new towers or access roads will be constructed as part of the project, and no changes to the existing ROWs will occur.

3.4 Other Alternatives Considered

In addition to the selected Alternative D, the FCPP & NMEP EIS fully analyzed the following alternatives:

Action Alternatives. Under these alternatives OSMRE would issue a SMCRA permit for the Pinabete Permit Area and renew the SMCRA permit for the Navajo Mine Permit Area, BIA Navajo Region would approve FCPP Lease Amendment No. 3 and ancillary ROWs for the ancillary facilities, and BIA (Navajo Region and Western Region) would grant the ROWs for the associated transmission lines, lines identified as connected actions in Sections 2.3 and 3.3 above.

1. *Alternative A – Proposed Action.* All components of this alternative are as described for the selected alternative, with the exception of the single large “super cell” DFADA. Rather than the large DFADA, under this particular alternative, APS would have constructed five smaller DFADAs to accommodate future disposal of all fly ash, bottom ash, and FGD waste generated through the duration of the lease term. Each DFADA would have been anticipated to be approximately 60 acres and approximately 120 feet high. Estimated annual storage volumes would be 1,118 acre-feet per year. Each site was anticipated to be in operation for 5 years. Once the storage capacity of each site was met, FCPP would have closed the facility using an evapotranspiration cover. The evapotranspiration cover would include a layer consisting of finer-grained sands, silts, and clayey soils and an erosion layer consisting of soil and rock mixture. The material for the cover would be borrowed from five areas inside the existing FCPP lease area. In addition to the five new DFADA sites, a surge pond (lined impoundment) would be constructed to capture generated FGD waste and historic ash impoundment seepage intercept water. All soil for impoundments and berms surrounding the impoundment would be borrowed from one of the five areas inside the existing FCPP lease area.
2. *Alternative B – Navajo Mine Extension Project.* All components of this alternative are as described for the selected alternative, except the Pinabete Mine Plan would be replaced with the Navajo Mine Extension Plan. Under this alternative, NTEC would seek a 5,412 acre SMCRA permit and a proposed mining disturbance of approximately 4,998 acres therein. Mining would commence with the construction of a new box cut near the western lease boundary and progress eastward in north/south-orientated strip lines. The mining block would be divided into a North Pit and a South Pit. NTEC would operate two draglines, one in each mine pit. After the coal was exposed by the stripping operation, it would be either drilled and blasted or ripped by dozers before mining. Once the coal was broken up, it would be mined by front-end loaders and haul trucks. Coal would be transported to a field coal stockpile on the western permit boundary, prior to being transported 8.4 miles to Lowe Stockpile in Area III via primary haul roads. Under this alternative, the mining would occur through Pinabete Arroyo and require a diversion of flows from the arroyo around mining activities. Surface flows from Pinabete Arroyo upstream of the mine plan would be diverted into No Name Arroyo. The diversion would remain for the duration of proposed mining. NTEC would realign

6.2 miles of Burnham Road along the eastern lease boundary. Alternative B would also include construction of 12.6 miles of primary roads and 13.7 miles of ancillary roads. This alternative would result in 28 acres of greater disturbance to waters of the U.S. than either the selected alternative or Alternative A. In addition, NTEC would need to construct 5 more miles of roadways and 8 more miles of transmission lines than described for both of those alternatives. The haul distance from the field coal stockpiles to Lowe Stockpile would also increase by approximately 3 miles.

3. *Alternative C – Alternative Pinabete Mine Plan.* All components of this alternative are as described for the selected alternative, except the Pinabete Mine Plan would be replaced with an alternative Pinabete Mine Plan. Under this alternative, NTEC would seek a 10,094 acre SMCRA permit and a proposed mining disturbance of approximately 6,492 acres therein. Mining would be located in both Area IV North and Area IV South, as described for the selected alternative or Alternative A, and would supply coal through 2041. Mining activities in Area IV North would continue along the existing strip lines to the south. The Area IV South Pit would be located southwest of Pinabete Arroyo and would require a new box cut to develop the pit. Once the box cut was complete, only two draglines would be needed, one in each pit. Coal from the Area IV North Pit would be hauled directly to Lowe Stockpile in Area III for a distance of 3.7 miles. A field coal stockpile would be located in Area IV South, and coal from the Area IV South Pit would be hauled to this stockpile prior to being hauled the 8.4 miles to Lowe Stockpile. NTEC would realign 6.2 miles of Burnham Road as described under the selected alternative and Alternative A. In addition, approximately 15.1 miles of primary haul roads and 14.8 miles of ancillary roads would be constructed. In addition, NTEC would construct approximately 16.8 miles of power lines extending the existing transmission lines from the Navajo Mine SMCRA Permit Area to the new permit area. Under Alternative C, approximately 1.6 more acres of waters of the U.S. would be impacted than under the selected alternative or Alternative A. NTEC would need to construct over 10 more miles of roadways and 8 more miles of transmission lines than described for either of those alternatives. The haul distance from the field coal stockpiles to Lowe Stockpile would also increase by about 3 miles.
4. *No Action Alternative.* Under this alternative, OSMRE would not approve the SMCRA permit for the Pinabete Permit Area and OSMRE would not renew the existing SMCRA permit for the Navajo Mine Permit Area, including Areas I, II, III, and portions of Area IV North; BIA Navajo Region would not approve FCPP Lease Amendment No. 3; BIA (Navajo and Western Regions) would not grant the ROW renewals for the associated transmission lines, and BLM would not approve the mine plan.

Alternatives Considered But Not Carried Forward for Detailed Analysis. In addition to the alternatives cited above, several other alternatives were considered but eliminated from detailed study in the FCPP & NMEP EIS. These additional alternatives were developed during internal scoping or were proposed during public scoping. These alternatives were considered by OSMRE and used when developing the range of alternatives, but not carried forward for more detailed analysis in the FCPP & NMEP EIS because they did not satisfy screening criteria. The screening criteria set out in the EIS were whether the alternative: 1) met the purpose and need, 2) was technically feasible, and 3) was economically feasible. Table 1 below (Table 5 in the FCPP & NMEP EIS) summarizes the

alternatives considered by OSMRE, along with the results of the screening-level analysis and the reasons for the determination.

Table 1 Comparison of Alternatives Considered in Screening-Level Analysis

Alternative	Screening-Level Analysis Criteria Meets Purpose and Need	Screening-Level Analysis Criteria Technically Feasible	Screening-Level Analysis Criteria Economically Feasible	Carried Forward for Full Analysis
Proposed Action	Yes	Yes	Yes	Yes
Navajo Mine Extension Plan	Yes	Yes	Yes	Yes
Alternative Pinabete Mine Plan	Yes	Yes	Yes	Yes
Alternate Ash Disposal Area Configuration	Yes	Yes	Yes	Yes
No Action	No	Yes	N/A	Yes
Conversion of FCPP to Natural Gas	No	Yes	No	No
Conversion of FCPP to Renewable Energy – Solar Power	No	Yes	No	No
Conversion of FCPP to Renewable Energy – Wind	No	Yes	No	No
Conversion of FCPP to Renewable Energy – Geothermal	No	No	No	No
Conversion of FCPP to Renewable Energy – Biomass	No	No	No	No
Solar Thermal/Coal Hybrid	Partially	No	No	No
Carbon Capture and Storage	Yes	Unknown	No	No
Implement Highwall or Longwall Mining Technique	No	Yes	No	No
Off-Site Coal Supply	No	Yes	No	No

3.5 Environmentally Preferred Alternative

In accordance with CEQ regulations (40 CFR 1505.2(b)), and DOI regulations, the environmentally preferred alternative that must be identified in the ROD is the alternative “that causes the least damage to the biological and physical environment and best protects, preserves, and enhances historical, cultural, and natural resources.” (43 CFR 46.30).

After weighing the long-term environmental impacts against the short-term impacts, and considering the best protection of resources, OSMRE has selected the No Action alternative as the environmentally preferred alternative for the FCPP & NMEP. This alternative would result in the least amount of impact to the majority of the impacted biological and physical environment, and would best protect, preserve, and enhance historical, cultural, and natural resources.

However, the No Action alternative would fail to meet the purpose and need of the proposed action. Further, the action alternatives are preferable to the No Action alternative in terms of socioeconomic impacts to the Navajo Nation and the Hopi Tribe. Implementation of the No Action alternative would result in a major impact from the loss of revenue from fiscal contributions derived from FCPP and Navajo Mine and from the large loss of high paying jobs. The reduction in revenues from payments and tax royalties from the Navajo Mine and FCPP could also negatively impact the quality and quantity of public services for the Navajo Nation. Negative impacts to the nearby communities outside of the reservation boundary would also be expected due to the ripple effect related to the loss of jobs at the mine and power plant. Therefore, and due to the considerations below, the environmentally preferred alternative, No Action, was not selected.

3.6 Basis for Decision

Based on the information contained in the FCPP & NMEP EIS, the results of tribal consultation, consultations under the ESA and NHPA, and the additional considerations listed in this ROD, OSMRE has selected Alternative D, subject to the mitigation and monitoring requirements of Section 2 of this ROD, because it achieves the project goals consistent with all applicable regulatory requirements, while minimizing potential impacts. As set forth in Section 7 of this ROD, the responsible bureaus have determined that all applicable statutory and regulatory requirements necessary for approval of the project components addressed in the ROD have been satisfied.

The FCPP & NMEP EIS was prepared in response to the lessees' and ROW holders' requests for the Federal authorizations necessary to extend the operation of the Navajo Mine and the FCPP. NTEC, an entity created by and wholly owned by the Navajo Nation, has sought to exercise the mineral rights under the terms and conditions of Navajo Tribal Coal Lease 14-20-603-2505 through a permit application to add additional area to the Navajo Mine and through application to renew the existing SMCRA permit for the Navajo Mine. The decisions included in this ROD ensure the maximum and effective recovery of the tribal trust coal resource from the lease area in accordance with the Indian Mineral Leasing Act and SMCRA and its environmental performance standards. Although the proposed surface mining requires intensive surface-disturbing activities that may have locally significant impacts to resource values, long-term reestablishment to the approved post-mining land use of grazing land and wildlife habitat will occur through adherence to SMCRA reclamation performance standards, as set forth in the reclamation plan of the permit approved in this decision. This alternative minimizes potential impacts by having the smallest mine footprint (4,100 acres) and the smallest impact to waters of the U.S. as compared to the alternative mine plans. Further, this alternative requires the least amount of new roadways (5 miles of primary roads and 22 miles of ancillary roads), and would result in the smallest DFADA footprint at FCPP (350 acres). This alternative is the most environmentally preferred of all the action alternatives.

The environmental impacts of the decisions included in this ROD were fully disclosed in the Draft and Final EIS. Based on internal and external scoping, OSMRE developed several key issues for analysis in the FCPP & NMEP EIS, including:

1. Effects to air and water quality, including mercury deposition and greenhouse gas (GHG) emissions,
2. Continuance of economic benefits from the operation of the FCPP and Navajo Mine,
3. Public health and environmental justice concerns,
4. Effects from the disposal of coal combustion residuals (CCR),
5. Consideration of alternative energy sources, and
6. The potential for adverse effects on Native American cultural properties.

Several of the key issues for analysis in the EIS result from continued emissions or operation of the FCPP. The FCPP & NMEP EIS analyzes the direct, indirect, and cumulative effects of the continued operation of the FCPP and Navajo Mine as result of the DOI and other Federal authorizations necessary for approval of the FCPP & NMEP.

The FCPP & NMEP EIS disclosed that approval of the Pinabete SMCRA Permit would allow for the extraction of an approximate total of 134,439 million tons of coal over the 25-year permit period, with a total area of soil disturbance of 4,100 acres. The coal would be processed, transported, blended and combusted at the FCPP at rates determined by the capacity of the units: prior to their shutdown in December 2013, at full load, Units 1, 2, and 3 burned approximately 9,000 tons of coal per day, and Units 4 and 5 at full load burn approximately 19,000 tons of coal per day. While it is possible that Units 4 and 5 could burn approximately 19,000 tons of coal per day for the life of the project, these are maximum potential rates; the actual rates would be less based on the capacity factor (approximately 80 percent operation). The environmental effects of mining, power production, atmospheric emissions and deposition, including mercury and selenium, and the effects to all relevant environmental resources of these actions are explicitly considered in this EIS, including the cumulative effects of these activities for the 25-year project duration. The results are provided for in each environmental resource category set forth in the FCPP & NMEP EIS, and in the cumulative impact assessment.

The FCPP & NMEP EIS, section 4.1, directly analyzes the environmental effects of coal combustion at FCPP, including past effects, current effects, and future effects. The analysis considers the effects of air emissions based on ability to meet air quality standards, as well as the effects of air emissions and atmospheric deposition on human health, ecological health, and other resources. For analyses of emission-related effects, the FCPP & NMEP EIS uses both historic, measured emissions data, and modelled future emissions to characterize the baseline and the future conditions. The FCPP & NMEP EIS presents the data as emission rates, compound concentrations, and total annual emissions. The analysis projects these through the 25-year timeframe considered in the selected action, to 2041. The FCPP & NMEP EIS relied on extensive modeling efforts developed in consultation with the USEPA and other cooperating agencies to assess the potential effects to air quality, including a National Ambient Air Quality Standards (NAAQS) Modeling Study (AECOM 2013a) and an Ozone Impact Assessment (AECOM 2013b). A plume visibility assessment to evaluate the potential contributions of the selected action on regional haze was also conducted. The

results of these models were critically reviewed by Federal agencies (e.g., NPS, USEPA), and where applicable, are incorporated into the impact analyses for each alternative. The analyses predict the rate and mass of air emissions and atmospheric deposition, typically presenting the rates by year or as annual averages (see Table 2 below). In this way, the FCPP & NMEP EIS disclosed the cumulative effects of 25 years of combustion of coal at FCPP.

Table 2 Summary of Air Emissions from BART Compliance at FCPP

Criteria Pollutants, Greenhouse Gases and Target Metals	Historic Pre-2014 Baseline Emissions Units 1, 2, 3, 4, 5 tons/yr	Estimated Post-2018 Baseline Emissions Units 4 & 5 tons/yr	Estimated Cumulative 2016-2041 Emissions Units 4 & 5 tons
Sulfur Dioxide (SO ₂)	11,971	9,800	245,000
Nitrogen Oxides (NO _X)	41,121	5,420	178,850
Carbon Monoxide (CO)	2,096	1,580	39,500
Filterable Particulate	1,976	830	20,750
Carbon Dioxide Equivalents (CO _{2e})	15,439,236	11,396,710	284,917,750
Arsenic (As)	1.78	0.06	1.5
Lead (Pb)	1.82	0.07	1.75
Mercury (Hg)	0.36	0.07	1.75
Selenium (Se)	5.63	0.28	7.0

Modeling using conservative assumptions for elevated stack or ground-level fugitive sources at FCPP or Navajo Mine SMCRA Permit Area and Pinabete SMCRA Permit Area show that the continued operation of the mine and power plant is not likely to result in exceedances of NAAQS (AECOM 2013d). In addition to stack emissions, modeling of fugitive dust emissions from road traffic, materials handling, and mining operations determined that the selected action would not cause local exceedances of NAAQS for PM₁₀ (respirable particulate) and PM_{2.5} (fine particulate). The FCPP & NMEP EIS explains that attainment of primary NAAQS is protective of public health and therefore impacts in the short- or long-term operation of the FCPP and Navajo Mine are considered minor. The FCPP & NMEP EIS goes further, and considered site-specific human health risk, including assessment of the protectiveness of NAAQS in light of the specific dust composition likely to be generated at the mine. Likewise, impacts on ozone are also considered minor due to anticipated NAAQS attainment. Similarly, through implementation of FIP for the FCPP, emissions of hazardous air pollutant metals from FCPP would decrease substantially under the selected action, and nonmetal hazardous air pollutants would slightly increase. Overall impacts from hazardous air pollutants, based upon these reductions and on site-specific risk assessment, are anticipated to be minor.

In terms of regional haze, the FIP for the FCPP requires a reduction of emissions of NO_X and defines emission limits for PM. These pollutants contribute to visibility impairment (regional haze) in the

16 mandatory Class I Federal areas surrounding FCPP within a 300-km (186-mile) radius. Compared to plantwide historic levels, implementation of the FIP is anticipated to reduce potential NOX emissions 87 percent over the long term, and to reduce potential PM emissions 58 percent. While these reductions are very significant on a plantwide basis, they are somewhat less significant on a regional scale. These regional percentages suggest that reducing emissions from FCPP would result in an incremental improvement in regional haze and visibility.

The FCPP & NMEP EIS (Section 4.6) also based the evaluation of the potential effects of future emissions from the combustion of coal at the FCPP on the local ecosystems, in part, on two ecological risk assessments (ERAs). The ERA process evaluated the potential for adverse ecological effects to special-status species that may occur as a result of exposure to emissions-related environmental stressors. The ERAs were developed in consultation with the USFWS, an expert group convened for purposes of evaluating ecological risk, and other cooperating agencies. The first assessment, the Deposition Area ERA, was conducted to evaluate ecological risks to both terrestrial and aquatic environments within the area identified by air dispersion modeling as having a one percent future increase in soil metals concentrations above current condition (baseline) metals concentrations due to 25-years of project operation (AECOM 2013c). The Deposition Area ERA relied on dispersion and deposition modeling of eight metals (arsenic, cadmium, chromium, mercury, antimony, lead, copper, and selenium) understood to be the primary risk drivers for adverse ecological effects associated with coal-fired power plants.

The second ERA, the San Juan River ERA, was conducted to evaluate the ecological risks associated with current conditions, 25 additional years of FCPP emissions, and future regional global emissions to the aquatic environment of the San Juan River within the deposition area and downstream of the deposition area into the San Juan River arm of Lake Powell (AECOM 2013h). The San Juan River ERA addressed potential risks due to arsenic, mercury, and selenium deposition from multiple sources to aquatic and riparian (birds and mammals) receptors in the San Juan River basin.

For all metals and all ecological receptors evaluated in the two ERAs, assessment of FCPP emissions associated with the proposed 25-year project did not reveal significant ecological risk above the existing conditions. The existing conditions result from geological sources, anthropogenic causes other than the project facilities including global sources, as well as the historic operation of those facilities. The ERAs showed that metals concentrations under current conditions alone, absent operation of FCPP, may pose a potential risk to some ecological receptors within the deposition area and in the San Juan River downstream of the deposition area. Although the ERA findings do not mean that the FCPP would not contribute to ecological risk during the life of the proposed project, they indicate that the contributions would be relatively negligible compared to current conditions.

Cumulatively, as a result of the past, present, and reasonably foreseeable emissions from power plants in the region and globally, and other sources of emissions, continued FCPP operation may contribute to substantive emission-related impacts in the study areas. This risk would remain with or without the future operation of FCPP, and as indicated in the ERAs, its future operation would not meaningfully increase those risks. The contribution of FCPP to potential cumulative effects would be significantly less than historic conditions, and would still represent a decline over baseline emissions. Based on the ERAs, future FCPP operations would not, overall, contribute substantively to cumulative ecological risks.

Based on the ERAs, the FCPP & NMEP EIS estimated a moderate long-term contribution of FCPP operation to cumulative impacts to threatened and endangered species. In compliance with the ESA, OSMRE has consulted with the USFWS since early in 2012, culminating in the development of three key documents and the identification of mitigation measures and offsets to ameliorate adverse impacts:

1. An August 2014 Biological Assessment (BA) that evaluated the impacts in sufficient detail to determine to what extent the Project might affect any threatened, endangered, proposed or candidate species and designated critical habitats that may occur in the action area. In preparing this assessment, OSMRE used best scientific and commercial information available, pursuant to statutory requirements. The BA determined that the proposed action would likely adversely affect the following species: Colorado pikeminnow, razorback sucker, southwestern willow flycatcher and yellow-billed cuckoo. The BA also determined that the proposed action may affect, but is not likely to adversely affect the following species: California condor, Mexican spotted owl, Mancos milk vetch, Fickeisen plains cactus, Mesa Verde cactus, and Zuni fleabane.
2. Following extended detailed discussions with the USFWS, the project proponents (APS, PNM, NTEC), and the BIA, in March 2015 OSMRE amended the previously issued BA with eleven Voluntary Conservation Measures proposed to reduce the Project's adverse effects to the Colorado pikeminnow, razorback sucker, southwestern willow flycatcher, and yellow-billed cuckoo.
3. In April 2015 the USFWS issued their Biological Opinion (BO), concurring that the proposed action is not likely to adversely affect the California condor, Mexican spotted owl, Mancos milk vetch, Fickeisen plains cactus, Mesa Verde cactus, and Zuni fleabane. The BO also confirmed that, through the implementation of Conservation Measures, Reasonable and Prudent Measures, and Terms and Conditions, the proposed action will not jeopardize the continued existence of the Colorado pikeminnow, razorback sucker, southwestern willow flycatcher, and yellow-billed cuckoo.

GHGs from the proposed project would contribute incrementally to climate change. The FCPP & NMEP EIS analysis shows (Section 4.2.1.2) that these emissions comprise less than 1 percent of the U.S. GHG inventory and the national electric power sector. Nonetheless, taken together with regional, national, and worldwide GHG emissions, the FCPP & NMEP EIS analyzed global effects related to GHGs and climate change. As a result of implementing the steps required for BART compliance, GHG emissions from the FCPP would be reduced by about 26 percent, and as a result of those GHG emission reductions, the percentage contribution of the FCPP to regional GHG emissions will decrease from 16.7 percent to approximately 12 percent.

In addition, OSMRE considered estimates of the global social cost of carbon (SCC) as a result of GHG emissions from the Project, as disclosed in the FCPP & NMEP EIS. To provide further context and enhance the disclosure of climate change impacts in the Draft EIS, and in response to comment, the Final EIS included quantitative estimates of the SCC associated with the proposed action and alternatives using the Interagency Working Group (IWG) protocol (Feb. 2010 and May 2013). Providing dollar amounts of SCC did not, however, change the findings or the level of significance determined in the Draft EIS for climate change effects, which relied on a qualitative analysis of SCC.

Using the IWG protocol, OSMRE estimated that the selected alternative had a cumulative SCC ranging from approximately 4.2 to 22.1 billion dollars (\$40.3 to \$46.3 billion at the 95th percentile), depending on dollar value and discount rate. The FCPP & NMEP EIS estimates the cumulative SCC of the no action alternative at approximately one half that amount, ranging from \$2.0 to \$10.7 billion (\$19.6 to \$22.5 billion at the 95th percentile), (EIS Section 4.2.4.1, Emissions Monetization, Page 4.2-25).

While the quantification of SCC for this project may further underlying NEPA policies and provide some context, the IWG protocol limits its overall utility in deciding whether to approve the Project. For example, there is no consensus for the quantitative value of greenhouse gas emissions, and estimates for an incremental ton of carbon dioxide vary widely (IWG 2010). And, as shown in the FCPP & NMEP EIS, the choice of discount rate to apply over a long period of time also produces a large range of estimated costs.

SCC quantification provides only one element of a benefit-cost analysis, the monetization of only certain effects on social welfare. Consideration of that element alone can lead to an unbalanced assessment of socio-economic impacts. A full cost-benefit analysis of the Project is not required by NEPA (40 CFR 1502.23) and was not prepared. Unlike the global scope of SCC, the socioeconomic analysis of the FCPP & NMEP EIS is at a regional scale and is focused on the Navajo Nation. The FCPP & NMEP EIS anticipates that the Navajo Nation will receive \$40-60 million per year of direct revenue with the selected action. The FCPP and Navajo Mine also support indirect and induced economic activity (across the state of New Mexico) of 2,340 jobs, \$164.8 million in annual labor income, and \$430.8 million in annual gross state product (GSP). Over the life of the Project, a lower end estimate (i.e., unadjusted) of that economic activity is approximately \$1-1.5 billion in direct revenue to the Navajo Nation, \$4.1 billion in labor income, and \$10.8 billion in GSP. This decision is made in light of the action agencies' regulatory reach and project purposes, which includes furthering Federal Indian trust policies, including a preference for tribal self-determination. The cumulative consideration of these factors led the agencies to not select the No Action alternative.

Further, although the No Action alternative is the environmentally preferred of all alternatives, the action alternatives are preferable to the No Action alternative in terms of socioeconomic impacts. Implementation of the No Action alternative would result in a major impact from the loss of revenue from fiscal contributions derived from FCPP and Navajo Mine, and loss of 757 direct jobs at the power plant and mine combined. The reduction in revenues from payments and tax royalties from the Navajo Mine and FCPP could also negatively impact the quality and quantity of public services for the Navajo Nation, which rely on revenues of the project for approximately 35 percent of the Navajo Nation's general fund. The decision to approve the actions associated with the FCPP & NMEP recognizes that the Navajo Nation has thus far determined the continued operation of the mine and power plant is in the best interest of the Nation. Since the execution of the original mining lease in 1957, the mine and later the power plant have been a consistent source of revenue and employment for tribal members. The SMCRA permit decisions and FCPP lease approval of this ROD allow for the continued operation of the Navajo Mine and FCPP, which will continue to serve as an economic development opportunity; provide continued stable lease income as a revenue source; maintain employment opportunities; and provide future benefits for the Navajo Nation. Consistent with those goals, the Navajo Nation created NTEC to pursue future economic benefits for tribal members utilizing its diverse natural resources. Until other economically stable energy projects are

realized, the Navajo Mine and FCPP will provide vital revenue and employment sources for the Navajo Nation.

The FCPP & NMEP EIS also contained an extensive analysis of public health and safety/worker safety, focusing primarily on the human health risks from exposure to contaminants in air emissions produced by the existing and proposed activities at the Navajo Mine and FCPP, including stack emissions, dust generation, and diesel particulate matter. The analysis considers the cumulative effects to human health from the 25 years of continued future operations at the facilities. Public health and worker safety associated with hazardous materials and coal combustion, including the potential for public and worker exposure to hazardous wastes and hazardous materials is discussed in Section 4.15 of the FCPP & NMEP EIS. Air contaminants that could contribute to human health risks are also addressed in Section 4.1. A screening level risk assessment evaluating potential risk from diesel exhaust and a Human Health Risk Assessment (HHRA) were conducted for the project (AECOM 2013d). The HHRA included evaluation of the risk of inhalation of contaminants from stack emissions as well as from consumption of food and water within the deposition area. The HHRA focused on 24 chemicals of potential concern, including lead and mercury, known to be present in coal combustion emissions and sulfuric acid mist, a byproduct of SCR operation. The results of the multipathway HHRA predicted that for 25 years of future operation of FCPP, none of the estimated cancer risks exceed the strictest risk threshold of 1 in a million. For noncancer effects, the HHRA reported all Hazard Indices were below USEPA-recommend levels and the estimated blood lead concentrations were well below the Centers for Disease Control and Prevention target blood lead concentration. Therefore, as described in the FCPP & NMEP EIS Section 4.17, the HHRA concludes that operation of FCPP over the next 25 years would not have a major impact on human health in the vicinity of FCPP. Similarly, the FCPP & NMEP EIS (Section 4.15) analyzed the use, storage, and transportation of ammonia and lime for the SCR at the FCPP under the selected alternative. Due to existing regulatory requirements, the effects to worker and public safety were also considered to be relatively minor.

The FCPP & NMEP EIS also analyzed the effects of historic and proposed CCR and ash placement at the Navajo Mine and FCPP. Historic placement of CCR at the Navajo Mine ceased in 2008. No further CCR placement is proposed at the Navajo Mine SMCRA Permit or Proposed Pinabete SMCRA Permit Areas. The FCPP & NMEP EIS showed the historic practice results in no continuing substantive adverse effects impacts to surface or groundwater. The potential for off-site contamination to water resources from the historic and active ash disposal areas at the FCPP is similarly characterized as minor.

The potential for adverse impacts resulting from CCR disposal at the FCPP under the selected alternative is also characterized as low. Due in part to structural controls for the DFADAs (e.g., synthetic liners and evapotranspiration covers), best management practice (BMPs) (e.g., silt fencing, berms, and settling basins), compliance with the USEPA's final rule for CCR disposal (40 CFR Parts 257 and 261), and monitoring requirements, the impacts to surface and groundwater associated with CCR disposal at the FCPP under the selected alternative are considered minor. Another of the potential impacts from the disposal of CCR disclosed in the FCPP & NMEP EIS is an accidental release of the ash disposal surface impoundments at the FCPP. Based on the rated condition of the dam and regulatory compliance requirements, including adherence to an

Emergency Action Plan, Ash Impound Dam Inspection and Maintenance Program, and inspection by the New Mexico State Engineer's Office, the likelihood of a release is low.

The FCPP & NMEP EIS also explored the potential for alternative energy sources. As explained in the EIS and in this ROD (Section 3.4), six alternative energy proposals were considered for detailed analysis but were determined to not meet the purpose and need of the proposal, or were technically or economically infeasible.

In addition to analysis in the FCPP & NMEP EIS, potential effects to cultural properties were considered in accordance with the requirements of the NHPA. OSMRE and BIA consulted with the Navajo THPO and SHPO and other appropriate tribes and agencies for determinations of Project effects related to the FCPP and associated transmission lines, and the Navajo Mine permitting actions; and have determined that impacts would be minor. OSMRE, as lead agency for NHPA Section 106 consultation, developed two separate Programmatic Agreements (PAs), one for the Navajo Mine, including the Pinabete Area and one for the FCPP and the associated transmission lines. As summarized in the ROD, Section 4.0, each of these PAs requires mitigation for adverse effects on historic properties. No additional mitigation is required for cultural resources.

This decision is also made in consideration of and consistent with EO 12898, *Federal Actions to Address Environmental Justice in Minority and Low Income Populations* (Feb. 16, 1994). Consistent with the EO, the agencies provided for effective community participation in the NEPA process for the relevant populations, members of the Navajo Nation and Hopi Tribe. These efforts began at an early stage in the process, as detailed in the FCPP & NMEP EIS and summarized in this ROD. In accordance with the EO, the FCPP & NMEP EIS (Section 4.11) addressed environmental justice concerns through analysis of environmental effects, including human health, economic, and the social effects of the proposed Federal actions on minority and low income populations. The analysis showed that the selected action, including the continuing operations of Navajo Mine, FCPP, and the transmission lines, would not result in major adverse impacts that would disproportionately affect low income or minority populations. Therefore, although feasible mitigation measures for environmental justice concerns were considered, no additional mitigation beyond that already recommended for identified adverse impacts in specific resource areas was recommended.

The environmental justice analysis also considered the preference of the primary affected community. The Navajo Nation has the authority to discontinue operations at the mine, as well as the FCPP. Yet the Navajo Nation Tribal Council, the elected representatives of the primary environmental justice community, voted to create NTEC for purposes including the purchase of the Navajo Mine, voted to approve Lease Amendment No. 3 for the FCPP, and has approved each of the relevant ROWS. Those actions may be considered an expression by the affected community that investment in the Navajo Mine and continuation of the FCPP would meet, for the near future, its goals of controlling the mineral resource and continuing stable employment and economic benefits for tribal members.

4.0 Conditions of Approval

In accordance with 40 CFR 1505.2(c), all practical means to avoid or minimize environmental harm associated with the selection of Alternative D have been adopted, in accordance with laws, regulations, rules, and policies. This section provides a summary of all measures that would reduce

the identified impacts of Alternative D (the selected preferred alternative). This section also includes mitigation required in the USFWS’s BO. The protective measures include applicant-proposed measures, regulatory compliance measures, and additional recommended mitigation measures. Taken together, the applicant proposed measures, regulatory compliance, and the additional mitigation measures, will reduce or eliminate the major impacts of the Project.

Required regulatory compliance measures are extensive, and are described fully in the FCPP & NMEP EIS. These measures are actions required under statute or regulation, or are necessary to meet regulatory standards and include measures such as those ensuring adherence to applicable SMCRA, CWA, and CAA standards, as well as the terms and conditions of permits issued under those authorities. They are not fully described in the ROD but can be found in Section 4.0 (Affected Environment, Impacts, and Mitigation) of the FCPP & NMEP EIS.

4.1 Applicant-Proposed Measures, Best Management Practices, and Standard Operating Procedures

As part of the proposed Project, APS, NTEC, and PNM will incorporate various applicant-proposed measures, standard operating procedures, and BMPs that are designed to avoid or minimize potential impacts related to operation of the FCPP, Navajo Mine, and associated transmission lines. These measures are described by resource area in Table 3 below (see Table ES-11 in the FCPP & NMEP EIS).

Table 3 Applicant-Proposed Measures, Best Management Practices, and Standard Operating Procedures Applicable to All Action Alternatives

Resource Area	Navajo Mine	FCPP	Transmission Lines
Air Quality	Fugitive dust control measures (included within the SMCRA Permit Application Package [PAP])	Dust Control Plan	Vehicle restrictions to existing roads Speed limits
Climate Change	No specific measures proposed	No specific measures are proposed	No specific measures are proposed
Earth Resources	Mine Plan (Resource Recovery and Protection), Topdressing Management practices Surface Stabilization for Reclaimed Lands Paleo Resources Management Plan (all included within the SMCRA PAP)	No specific measures are proposed	No maintenance when soil is too wet Return boulders to original location if moved

Resource Area	Navajo Mine	FCPP	Transmission Lines
Cultural Resources	<p>Testing and data recovery program prior to ground disturbance at significant sites</p> <p>Monitoring of ground-disturbing activities near eligible sites by a qualified archaeologist and Navajo Cultural Specialist. (Requirement included within the SMCRA PAP)</p> <p>Incorporate Navajo Mine SMCRA Permit Area and Pinabete Permit Area PA requirements (Requirement included within the SMCRA PAP)</p> <p>Provide use of the Ceremonial Hogan</p>	<p>Specific protection measures listed in the PA for FCPP and transmission lines. Internal evaluation to ensure cultural property protection. Avoidance or monitoring for ground-disturbing activities in the vicinity of eligible or unevaluated sites. If the internal evaluation process indicates that National Register of Historic Places (NRHP)-eligible will not be avoided, the BIA, in consultation with the appropriate agency, will develop a Treatment Plan to resolve adverse effects in accordance with the final PA.</p>	<p>Specific protection measures listed in the PA for FCPP and associated transmission lines. Internal evaluation to ensure cultural property protection. Avoidance or monitoring for ground-disturbing activities in the vicinity of eligible or unevaluated sites. If the internal evaluation process indicates that NRHP-eligible will not be avoided, the BIA, in consultation with the appropriate agency, will develop a Treatment Plan to resolve adverse effects in accordance with the final PA.</p>

Resource Area	Navajo Mine	FCPP	Transmission Lines
Water Resources/Hydrology	Groundwater Monitoring Plan Sediment Control practices Surface Water Monitoring Plan Spill Prevention, Control, and Countermeasures (SPCC) Plan Project design to minimize impacts to waters of the U.S. (All requirements included within the SMCRA PAP)	Storm water Pollution Prevention Plan On-site structural controls SPCC Plan	Hazardous fluid spill prevention and protection practices Standard construction BMPs, including silt fences, straw bales, silt curtains
Vegetation	Environmental and Biological Resources Compliance Monitoring Plan Vegetation resource protection procedures Noxious weed management practices Fluvial geomorphic surface stabilization (All requirements included within the SMCRA PAP)	No specific measures are proposed	Noxious weed control
Wildlife and Habitats	Wildlife and raptor monitoring (Requirement included within the SMCRA PAP) Compliance with Navajo Nation Department of Fish and Wildlife (NNDFW) and Federal regulations (Requirement included within the SMCRA PAP) Fish and Wildlife Enhancement plan. Please Section 4.2 for RPM's from USFWS' BO (Requirement to be included as special condition in SMCRA Permit)	See ROD Section 4.2 for RPM's from USFWS' BO	Protective measures during herbicide treatments Nesting bird surveys Wildlife protection programs. See ROD Section 4.2 for RPM's from USFWS' BO

Resource Area	Navajo Mine	FCPP	Transmission Lines
Special-Status Species	<p>Wildlife monitoring, if special status species noted USFWS contacted. (Requirement to be included as special condition in SMCRA Permit)</p> <p>See ROD Section 4.2 for RPM's from USFWS' BO</p>	<p>Surveys for southwestern willow flycatcher and yellow-billed cuckoo habitat prior to vegetation removal.</p> <p>Please Section 4.2 for RPM's from USFWS' BO</p>	<p>Environmental screening programs</p> <p>Biologically sensitive areas mapped prior to construction</p> <p>Breeding season timing restrictions if suitable nesting habitat for Mexican spotted owl identified within ¼ mile of associated transmission lines</p> <p>Avoidance of suitable habitat for sensitive plant species</p> <p>Conservation measures for Mancos milkvetch, Fickeisen plains cactus, and Zuni fleabane on APS associated transmission lines</p> <p>Conservation measures for Mesa Verde cactus on PNM associated transmission lines</p> <p>Please Section 4.2 for RPM's from USFWS' BO</p>

Resource Area	Navajo Mine	FCPP	Transmission Lines
Land Use and Transportation	<p>Compensation of customary users for loss of grazing areas</p> <p>Assistance with permanent relocation of three dwellings located within the Pinabete Permit Area</p> <p>Compensation of families and individuals with land use rights within the Navajo Mine lease area</p> <p>(SMCRA PAP discusses land use and relocation, but does not provide detail on compensation)</p>	No specific measures are proposed	No specific measures are proposed
Socioeconomics	Implement a Native America hiring and vendor preference policy	No specific measures are proposed	No specific measures are proposed
Environmental Justice	No specific measures are proposed	No specific measures are proposed	No specific measures are proposed
Indian Trust Assets	No specific measures are proposed	No specific measures are proposed	No specific measures are proposed
Visual Resources	Interim reclamation of exhausted mine pits	No specific measures are proposed	No specific measures are proposed
Noise and Vibration	Implement protective measures related to blasting, including, only conducting blasting during daytime hours, posting signage, sounding audible blast warnings, publishing blast schedules, and conducting pre-blast surveys as requested (Requirement included within the SMCRA PAP)	No specific measures are proposed	No specific measures are proposed

Resource Area	Navajo Mine	FCPP	Transmission Lines
Hazardous and Solid Wastes	Hazardous waste management and Chemical Procurements system and adherence to all applicable tribal, state, and Federal regulations (Requirement included within the SMCRA PAP)	Pollution prevention and waste management plan Chemical procurement procedures	No specific measures are proposed
Recreation	No specific measures are proposed	No specific measures are proposed	No specific measures are proposed
Health and Safety	Compliance with Health and Safety Standards at mine-site (Addressed within the SMCRA PAP) Emergency Response Plan Surface Fire Plan Environmental, Health, Safety, and Community Event Reporting Overburden Blasting Management Pre-blast and shot-firing Management Contractor Management Program Chemical Management System Ground Control Plan Mine Site Traffic Management Plan Surface Mobile Equipment Management with all-terrain vehicles (ATVs) On-site Light Vehicle Safety Isolation Management Lifting Management Program Working at Heights	Fire Protection Plan Tailboard Conferences Waste Management Plans Digging Operations Program Mobile Equipment Fleet and Shop Safety Work Zone Safety	APS Public Safety Electrical Outreach Program PNM Health and Safety Program

Resource Area	Navajo Mine	FCPP	Transmission Lines
	<p>Management Pathogens and Viruses Management</p> <p>There is a permit system that limits the use and transport of coal from the community coal stockpile at Navajo Mine. In addition, representatives from local chapter houses receive training on the safe use and transport of coal, and these representatives are expected to inform the community. This training is conducted with participation of Northern Navajo Medical Center, Indian Health Services, and includes a video produced by Four Directions, Office of Environmental Health that informs the participants on the safe home use of coal.</p>		

4.2 Mitigation Measures

For some resource categories additional, reasonable mitigation measures were developed for impacts not adequately addressed through regulatory compliance or applicant-proposed measures. The additional mitigation measures, where recommended by OSMRE, are listed below by resource category.

1. Air
 - Impacts will be addressed or mitigated through regulatory compliance or applicant-proposed measures. No further mitigation measures are recommended.
2. Climate Change
 - No further mitigation measures are recommended.
3. Earth Resources
 - No further mitigation measures are recommended.
4. Cultural Resources

a. Navajo Mine

As part of the Proposed Action, the responsible agencies worked with the project proponents in developing an amended PA for the Navajo Mine that defines the procedures for mitigation of adverse effects on historic properties. In the PA (Appendix 8.2), OSMRE recommends avoiding all Traditional Cultural Properties (TCPs) through appropriate routing of access roads and design. The PA stipulates procedures for developing and implementing measures to avoid, reduce, or mitigate any adverse effects. NHPA regulations at 36 CFR 800.4(b) (2), allow an agency to defer final identification and evaluation of historic properties if it is specifically provided for in a PA. The PA provides procedures and responsibilities (agencies and/or project proponents) for ongoing identification, evaluation, and mitigation of historic properties and procedures to minimize effects to historic properties. The PA contains standards, guidelines, and unanticipated discovery protocols. The PA for the Navajo Mine includes mitigation measures for instances where it is not possible to avoid the resource. No further mitigation measures are recommended.

b. Four Corners Power Plant

As part of the Proposed Action, the responsible agencies worked with the project proponents in developing a PA for the FCPP. In that PA, OSMRE recommends avoiding all TCPs through design of proposed earth-moving activities (e.g., borrow pits and DFADA, see appendix 8.2 for details). The PA stipulates procedures for developing and implementing measures to avoid, reduce, or mitigate any adverse effects. The PA for the FCPP includes proposed specific mitigation measures for instances where it is not possible to avoid the historic property. No further mitigation measures are recommended.

c. Associated Transmission Lines

As part of the Proposed Action and FCPP PA, the responsible agencies worked with the project proponents in developing a PA for the associated transmission lines Area of Potential Effect (APE) (appendix 8.2). In that PA OSMRE recommends avoiding all TCPs through design of proposed earth-moving activities (e.g., borrow pits and DFADA). The PA stipulates procedures for developing and implementing measures to avoid, reduce, or mitigate any adverse effects. The PA for the FCPP includes proposed specific mitigation measures for instances where it is not possible to avoid the historic property. No further mitigation measures are recommended.

5. Water Resources/Hydrology

a. Navajo Mine

Compensatory mitigation for unavoidable impacts to waters of the U.S. is required under the 404 Individual Permit. USACE included compensatory mitigation requirements as part of the 404 Permit for the Navajo Mine that are designed to compensate for the loss of jurisdictional areas in the Project Area, so as to ensure no net loss of functions and services of waters of the U.S. as a result of the permitted activity. The primary mechanisms for mitigating the loss of jurisdictional areas are re-establishment and creation. MMCo has proposed the re-establishment of native

riparian habitat and the creation of wetland habitat. Since these mitigation measures are not under the jurisdiction of the DOI, these measures are not imposed under this ROD. The analysis of the FCPP & NMEP EIS and OSMRE's cumulative hydrologic impact analysis found the hydrologic impacts of the mine to be negligible. OSMRE therefore recommends no additional mitigation measures beyond the regulatory compliance and applicant-committed measures.

b. Four Corners Power Plant

The analysis of the FCPP & NMEP EIS found the hydrologic impacts of the FCPP under the action alternatives to be negligible, including those for the preferred alternative (D). OSMRE therefore recommends no additional mitigation measures beyond the regulatory compliance and applicant-committed measures.

c. Associated Transmission Lines

No further mitigation measures are recommended.

6. Vegetation

No further mitigation measures are recommended.

7. Wildlife and Habitats

Beyond those for Special Status Species (addressed below), no mitigation measures are recommended.

8. Special Status Species

In the BA, as amended, OSMRE and the Project Proponents proposed Conservation Measures to reduce impacts to listed species and their critical habitats. The USFWS considered these Conservation Measures in reaching Reasonable and Prudent Measures (RPMs) necessary and appropriate to minimize impacts of incidental take of the Colorado pikeminnow, razorback sucker, southwestern willow flycatcher, and yellow-billed cuckoo resulting from the project.

Reasonable and Prudent Measures

The RPMs set forth in the BO and summarized below are non-discretionary and must be undertaken by OSMRE or delegated to the other Federal action agencies, so that they become binding conditions of any grant or permit issued to any applicants, as appropriate, for the exemption in Section 7(o)(2) to apply. OSMRE has a continuing duty to regulate the activity covered by this incidental take statement. If OSMRE (1) fails to assume and implement the terms and conditions, or (2) fails to require applicants to adhere to the terms and conditions of the incidental take statement through enforceable terms that are added to the permit or grant document, the protective coverage of Section 7(o)(2) may lapse. In order to monitor the impact of incidental take, OSMRE must report the progress of the action and its impact on the species to USFWS as specified in the incidental take statement. 50 CFR 402.14(i)(3). Full descriptions of the RPMs (1-8) are contained in the BO (Appendix 8.1). A summary of these RPMs are listed as follows:

- 1) Federal agencies shall use all available authorities and agency discretion to reduce atmospheric mercury deposition (and selenium loading) in the San Juan River Basin to ameliorate adverse effects to Colorado pikeminnow and adverse effects to its critical habitat.
- 2) Project Proponents will develop and implement a Pumping Plan to reduce the magnitude and types of entrainment of Colorado pikeminnow and razorback sucker. The Pumping Plan will optimize avoidance of entrainment of larvae and impingement of larger fishes through measures that are deemed feasible without altering the current operating configuration at the river pump station.
- 3) Project Proponents will develop and implement a Non-native Species Escapement Prevention Plan, which will include the following measures to minimize: (a) the risk of non-native species (plants, invertebrates, and fish) that inhabit Morgan Lake invading San Juan River; and (b) the introduction of additional nonnative species into Morgan Lake.
- 4) Project Proponents shall fund implementation of Recovery Actions to continue working towards endangered fish survival and recovery in the San Juan River Basin and create, maintain, or improve habitat for Colorado Pikeminnow and Razorback Sucker through the San Juan River Recovery Implementation Program (SJRRIP).
- 5) OSMRE will work with USEPA and the Project Proponents to minimize the effects of the Proposed Action on Colorado pikeminnow, razorback sucker, southwestern willow flycatcher, or yellow-billed cuckoo, by coordinating with the USFWS in developing the analytical methods and conduct an analysis of duration, magnitude, concentration and contribution of discharges associated with National Pollution Discharge Elimination System permitting actions that will be used to conduct ESA review prior to development of future USEPA-issued NPDES permits for the Project.
- 6) FCPP Project Proponents will minimize potential takes of Colorado pikeminnow, razorback suckers, southwestern willow flycatchers, or yellow-billed cuckoos by providing a Spill Contingency Countermeasures Plan which addresses potential Ash Pond Failure impacts on suitable habitat.
- 7) Project Proponents will minimize takes of southwestern willow flycatchers and yellow-billed cuckoos by conducting standard protocol surveys within the Deposition Areas and contribute to improved riparian or floodplain habitat conditions along the San Juan River Basin (as identified in RPM 3 (f)) or as described by the Project conservation measures).
- 8) OSMRE will coordinate the provision of data and an annual report to USFWS at a frequency that is specifically identified by the RPMs on implementation of the proposed action, and their implementing terms and conditions.

Terms and Conditions of Biological Opinion

In order to be exempt from the prohibitions of Section 9 of the ESA, the agencies must comply with the following terms and conditions. These terms and conditions implement the RPMs described above and outline required reporting and monitoring requirements.

These terms and conditions are non-discretionary. The USFWS Terms & Conditions are summarized below. For detailed descriptions, please see the BO (Appendix 8.1). RPMs (1-8) are implemented respectively as follows:

- 1) Federal agencies shall use all available authorities and agency discretion to reduce atmospheric Hg deposition (and Se loading) in the San Juan River Basin.
- 2) Project Proponents shall minimize entrainment and impingement losses of Colorado pikeminnow and razorback sucker through measures taken at the APS cooling water intakes above APS Weir.
- 3) Federal agencies and Project Proponents shall develop and implement a Nonnative Species Escapement Prevention Plan.
- 4) Fund implementation of the following Recovery Actions to continue working towards endangered fish survival and recovery in the San Juan River Basin, create, maintain, or improve habitat for Colorado Pikeminnow and Razorback sucker through the SJRRIP.
- 5) Develop Evaluation Methods for future NPDES reviews. USEPA and OSMRE shall consider multiple specified factors (see Appendix 8.1 for details).
- 6) Provide Spill Contingency Countermeasures Plan for Ash Pond Failure. The Federal action agencies shall follow specified requirements (see Appendix 8.1 for details).
- 7) Conduct flycatcher and cuckoo protocol surveys. The Federal action agencies shall require southwestern willow flycatcher and yellow-billed cuckoo protocol surveys conducted by the Project Proponents as per specified requirements (see Appendix for details).
- 8) OSMRE shall prepare and submit a report summarizing the status of all RPMs, and the Terms and Conditions and any additional data or relevant information to USFWSs NMESFO annually, no later than May 30 for the previous calendar year's activities.

Reporting Requirements

Documentation and reporting on the implementation of the RPMs and terms and conditions will occur within 1 year following the completion of the ROD for the FCPP & NMEP and annually thereafter for a period of up to twenty five years or until the Project ceases operation. OSMRE is responsible for coordinating and ensuring the reporting requirements to the USFWS are met. Complete descriptions of the reporting requirements are included within the BO; See Appendix 8.1.

9. Land Use and Transportation

Impacts will be addressed or mitigated through regulatory compliance or applicant-proposed measures. No further mitigation measures are recommended.

10. Socioeconomics

No mitigation further measures are recommended.

11. Environmental Justice

No further mitigation measures are recommended.

12. Indian Trust Assets

No further mitigation measures are recommended

13. Visual Resources

No further mitigation measures are recommended.

14. Noise and Vibration

a. Navajo Mine

OSMRE requires the following measures to reduce noise and annoyance when operations are within approximately 1/2 mile (2,500 feet) of a receptor (people/occupied building) during Project activities:

- All equipment must be operated and maintained to minimize noise generation. Equipment and vehicles must be kept in good repair and fitted with “manufacturer-recommended” mufflers.
- Natural barriers such as vegetation curtains or soil berms must be installed where practicable at the boundaries of active mining operations within 1 mile of any occupied residence.
- Portable noise screens or enclosures to provide shielding for high-noise activities or equipment must be used where practicable. The effectiveness of a barrier depends upon factors such as relative height of the barrier relative to the line-of-sight from the source of the receiver, the distance from the barrier to the source and to the receiver, and the reflections of sound. To be effective, a barrier must block the line-of-sight from the source to the receiver. A properly designed noise barrier can reduce noise as much as 20 dBA.
- Alternate methods of noise shielding are acceptable, if noise monitoring is conducted to verify that the 55 dBA level at the receptor site is achieved.
- Combine noisy operations to occur in the same period. The total noise produced would not be significantly greater than the level produced if the operations were performed separately.

b. Four Corners Power Plant

Impacts will be addressed or mitigated through regulatory compliance or applicant-proposed measures. No further mitigation measures are recommended.

c. Associated Transmission Lines

Impacts will be addressed or mitigated through regulatory compliance or applicant-proposed measures. No further mitigation measures are recommended.

15. Hazardous and Solid Wastes

Impacts will be addressed or mitigated through regulatory compliance or applicant-proposed measures. No further mitigation measures are recommended.

16. Recreation

No further mitigation measures are recommended.

17. Health and Safety

Impacts will be addressed or mitigated through regulatory compliance or applicant-proposed measures. No further mitigation measures are recommended.

4.3 Monitoring and Enforcement

Required monitoring and Reasonable and Prudent Measures defined in USFWS' BO for the FCPP & NMEP are discussed in the previous section (Section 4.2 Mitigation Measures).

Navajo Mine & Pinabete Permit Areas

The Navajo Mine SMCRA Permit requires ongoing monitoring of surface and ground water quality, air, reclamation vegetation, wildlife, overburden and soil. The proposed Pinabete Permit includes the same requirements. In addition to regular monitoring, OSMRE works with the Navajo Nation, BIA, and BLM and regularly inspects the operations to ensure their compliance with the approved SMCRA Permit and SMCRA performance standards. OSMRE field inspections generally occur twelve times per year for each permit, i.e., twelve for the Navajo Mine and twelve for the new Pinabete permit area.

Power Plant and Transmission Lines Lease and ROW

Applicants will comply with the lease and ROW terms and conditions. All mitigation measures and plans discussed in the FCPP & NMEP EIS will be implemented by the Applicant, in the case of the BO, the BIA, Navajo Region will report directly to OSMRE regarding the Razorback Sucker Selenium Study.

5.0 Public Involvement

In accordance with the CEQ's and the DOI's NEPA regulations, OSMRE issued a Notice of Intent (NOI) to prepare an EIS in the Federal Register on July 18, 2012 (77 FR 42329). The scoping period began on July 18, 2012, and ended November 1, 2012. In addition, notices of the scoping period and scoping meetings were published in 13 local newspapers. Notification fliers were posted at community centers, post offices, libraries, grocery stores, gas stations, trading posts, town halls, and other gathering places throughout the Four Corners region to further reach community members and remote locations where interested stakeholders potentially reside. The notification flier provided the scoping meeting locations, dates, and times and provided information on how to submit comments. A public service announcement announcing the dates and times of the local scoping meetings was distributed to 31 local radio stations. It was translated and recorded in Navajo and Hopi. During the public scoping period, OSMRE hosted nine scoping meetings to inform interested parties of the Project and provide opportunity for comment on the scope of the environmental document. Scoping meetings were held in Hotevilla, Arizona; Cortez, Colorado; T'is Tsoh Sikaad (Burnham), New Mexico; Nenahnezad (Fruitland), New Mexico; Farmington, New Mexico; Shiprock, New Mexico; Durango, Colorado; Window Rock, Arizona; and Albuquerque, New Mexico, from August 9 through 18, 2012. All meetings were held in an open house format, where informational stations discussing varying aspects of the Project were located throughout the venue and topic experts were available to answer questions. During all scoping meetings, opportunity to

comment in written or oral form was provided; translation services were provided for both Navajo and Hopi speakers. Written, oral, and video comments were also received via email, fax, and the U.S. Postal Service mail. OSMRE received a total of 539 comments during the scoping period.

OSMRE determined the Pinabete SMCRA Permit application to be administratively complete on May 10, 2012, and OSMRE held informal conferences on the Pinabete SMCRA application on August 11, 2012 at the T'iis Tsoh Sikaad (Burnham) Chapter House and August 13, 2012 at the Nenahnezad Chapter House. OSMRE also arranged for a site tour of the Proposed Pinabete Permit Area on August 10, 2012, for Western Environmental Law Center on behalf of members of: Dine CARE, San Juan Citizens Alliance, and Center for Biological Diversity, Sierra Club-Rio Grande Chapter, and Amigos Bravos.

OSMRE determined the Navajo Mine SMCRA Permit renewal application to be administratively complete on June 30, 2014, and NTEC ran public notices in the Navajo Times, Farmington Daily Times and Gallup Independent newspapers from July 3 through August 4, 2014. Announcements in Navajo and English were also aired on 2 local radio stations from July 16 through July 26, 2014. The comment period for the renewal application started on July 3, 2014, and continued to August 25, 2014, for a total of 54 days. OSMRE did not receive any comments or request for an informal conference on the Navajo Mine permit renewal application.

5.1 Summary of Comments – EIS Scoping Period

Sixty-five oral comments and 469 written comments were received during the public scoping period. Some of the concerns and questions the public expressed include (in no specific order):

1. Concerns about air quality, water quality, and public health.
2. Support for the economic benefits from the operation of the FCPP and SMCRA permit areas.
3. Support for open house style meetings and the way in which information was presented and communicated.
4. Preference for public meeting format instead of open house style meetings.
5. Opposition to coal as a source of energy; support for alternative energy sources.
6. Support for APS and BNCC's historical contributions to local communities.
7. Concern about proximity of transmission lines to residents and sacred Native American sites.
8. Coal fly ash disposal, management, and monitoring.
9. Inquiries about public access to air and water quality data collected by the applicants.

5.2 Public Meetings and Public Review – Draft EIS

The public comment period for the FCPP & NMEP Draft EIS began March 28, 2014, when a Notice of Availability (NOA) was published in the Federal Register (79 FR 17569) announcing the availability of the Draft EIS and comment period. This NOA initiated a 61-day public comment period, which was scheduled to end on May 27, 2014, but was later extended 31 days until June 27, 2014. On May 16, 2014, OSMRE published (79 FR 28549) a revision to the Federal Register notice published March 28, 2014, to announce the 31-day extension of the Draft EIS public comment period.

In addition to the Federal Register notice, the public review period was announced via publication in 13 local newspapers and notification fliers posted in appropriate community centers, post offices, libraries, grocery stores, gas stations, trading posts, town halls, and other gathering places throughout the Four Corners region to further reach community members and remote locations where interested stakeholders potentially resided. A public service announcement announcing the dates and times of the local public meetings was distributed to 31 local radio stations. It was translated and recorded in Navajo and Hopi. Efforts to notify the public, government agencies, elected officials, and media about the open house public meetings were conducted in accordance with NEPA and the Public Involvement Plan developed for the FCPP & NMEP EIS.

During the public review period, OSMRE held nine open house public meetings between April 30, 2014 and May 9, 2014. The purpose of the public meetings was to provide an opportunity for the public and other agencies to learn about and comment on the proposed actions and environmental analysis presented in the Draft EIS. The public meetings also served to satisfy the public involvement and noticing requirement for Section 106 of the NHPA. Interested parties were provided an opportunity to provide written and oral comments related to the Draft EIS.

5.3 Summary of Comments Received – Draft EIS

During the Draft EIS public comment period, 50 oral comments and 4,531 written comments were received, including the comments received at the public meetings. The comments received reflected the same themes as the scoping comments received in 2012. Some of the concerns and questions expressed by the public include (not prioritized):

1. Opposition to coal as a source of energy; support for alternative energy sources.
2. Support for APS and BHP Billiton's contributions to local communities.
3. Concern about disposal of coal combustion residues and impacts to water resources.
4. Questions clarifying statements in the description of proposed action and alternatives.
5. Inquiries about public access to air and water quality data collected by APS and BNCC.
6. Requests for a public health study.
7. Concerns about mercury deposition and impacts related to consumption of fish.
8. Support for the economic benefits from the operation of the FCPP and Navajo Coal Mine.
9. Support for open house style meetings and the way in which information was presented and communicated.
10. Preference for public hearing format instead of open house style meetings.
11. Concerns about the social costs of coal combustion.
12. Requests to recirculate the Draft EIS.
13. Requests to translate the Draft EIS into Navajo and/or Hopi.

Responses to public comments received on the EIS are found in Appendix F of the EIS.

5.4 Comments received after the Draft EIS Comment Period

OSMRE received supplemental comments on the DEIS from the Western Environmental Law Center on February 18, 2015. The letter included 4 topics:

1. Quantification of SCC
2. Proposed Changes to the Ozone Standard
3. Four Corners Methane Hot Spot
4. Final USEPA Coal Combustion Residue Rule

Although received well after the June 27, 2014 comment deadline, OSMRE considered these comments in preparation of the Final EIS. These comments and the corresponding responses are included in Appendix F of the Final EIS.

Additional comments on the Final EIS were received by OSMRE after publication of the May 1, 2015, NOA for the finalized EIS. Comments were received from the USEPA-Region 9, R. Knoki, San Juan Citizens Alliance (SJCA), and V. Yazzie. OSMRE's review of these comments found that the issues raised were adequately addressed in the FCPP & NMEP EIS and did not warrant a need for changes to the EIS analysis or the decisions discussed in this document. Disposition of those comments can be found in Appendix 8.3 of this ROD. One comment from WELC was received but was deemed non-substantive and no response was prepared.

6.0 Agency Authorities, Consultation and Coordination

6.1 Authorities

OSMRE was the lead agency and is the regulatory authority for surface coal mining and reclamation operations on Indian lands. As lead agency, OSMRE had the responsibility of consultation and meeting the requirements of Section 106 of the NHPA and Section 7 of the ESA.

As lead agency, OSMRE prepared an EIS on the FCPP & NMEP. The review was conducted in accordance with the NEPA as amended, 42 USC 4321-4347; the CEQ's regulations for implementing NEPA, 40 CFR 1500 through 1508; and the DOI's NEPA regulations, 43 CFR Part 46.

Office of Surface Mining Reclamation and Enforcement

SMCRA established a nationwide program regulating surface coal mining that Congress intended to "strike a balance between protection of the environment and agricultural productivity and the Nation's need for coal as an essential source of energy." 30 USC 1202(f). Title V of SMCRA addresses the management of environmental impacts from surface coal mining operations. 30 USC 1251-1279. For the protection of the environment, Subchapter V prohibits surface coal mining without a permit. 30 USC 1256(a). SMCRA requires an operation plan that minimizes impacts from mining as well as a reclamation plan that mitigates mining-related impacts to the following resources: Earth Resources, Cultural Resources, Water Resources, Vegetation, Wildlife and Habitats, Land Use, Indian Trust Assets, Noise and Vibration, Hazardous and Solid Wastes and Health and Safety. The issuance of a SMCRA permit means that the applicant has provided an application that OSMRE finds

will manage the environmental effects of mining, by minimizing and mitigating those impacts within the SMCRA permit area and by finding no off-site impacts outside of the SMCRA permit area. SMCRA also requires that the applicant comply with all applicable Federal, Tribal, State and or local regulations and requirements protective of other resources that may be impacted. Additionally, a SMCRA permit requires a reclamation performance bond be provided to the regulatory authority to ensure that the applicant fulfills its SMCRA commitments by successfully reclaiming the permitted area. The reclamation performance bond is held until the applicant has demonstrated to OSMRE that the land is in as good or better condition than pre-mining conditions and meets the approved land use.

OSMRE regulates surface coal mining operations in states and on Indian lands where primacy has not yet been assumed, including lands and mineral interests held in trust for tribes by the United States. 30 CFR Part 750 (Federal Program for Indian Lands). In making decisions related to its regulatory responsibilities on Indian lands, OSMRE consults with the BIA and the affected tribe “with respect to special requirements relating to the protection of non-coal resources of the area affected by surface coal mining and reclamation operations” 30 CFR 750.6(a) (4). OSMRE also consults with BLM concerning “requirements relating to the development, production and recovery of mineral resources on Indian lands” 30 CFR 750.6(a) (5).

Bureau of Indian Affairs

The BIA’s mission is to enhance the quality of life, to promote economic opportunity, and to carry out the responsibility to protect and improve the trust assets of American Indians, Indian tribes and Alaska Natives. This is accomplished through the delivery of quality services, maintaining government-to-government relationships within the spirit of Indian self-determination.

Leases of Restricted Lands

25 USC 415(a) allows for the Secretary to authorize any restricted Indian lands, whether tribally, or individually owned, to be leased by the Indian owners for business purposes, including the development or utilization of natural resources in connection with operations under such leases. In accordance with 25 CFR Part 162, BIA approval is required for the FCPP Lease Amendment No. 3.

ROW for All Purposes across any Indian Lands

The BIA’s fiduciary responsibility on behalf of the Indian Landowners is to protect and conserve the resources on trust and restricted land, including the land itself. The BIA must use sustainable yield principles and conservation management practices to regulate appropriate use and development of Indian trust lands. The United States hold legal title to trust or restricted lands for the benefit of Tribes or Indian Individuals. The BIA administers title on behalf of the Indian owner and authorizes ROWs over Indian lands to assist in protection of Indian lands. BIA grants ROWs pursuant to the Indian Right of Way Act of 1948, 25 USC 323 *et seq.* That statute allows the Secretary of the Interior to grant ROWs for all purposes, subject to such conditions, over and across any lands held in trust by the United States for individual Indians or Indian tribes, communities, bands, or nations. In accordance with 25 CFR Part 169, the BIA must decide whether to approve the ROW applications for the two associated

transmission lines on Navajo Tribal trust lands (APS Cholla and El Dorado), and the associated transmission line on Hopi Tribal trust land (El Dorado) plant site ROW, Access/Power and Communication Lines from the FCPP lease area to the Navajo Mine lease area, and the Navajo Mine access road.

Bureau of Land Management

In accordance with the Indian Mineral Development Act (IMDA) of 1982, 25 USC 2101 *et seq.*, the BLM as a mineral agency of the DOI shares Indian trust responsibilities to provide advice, technical assistance, and oversight during the operation and maintenance of a tribal IMDA agreement.

The BLM provides the normal point of contact for the operator and all others for coal development, production, and resource recovery (mining plan) for Indian coal as outlined in 25 CFR Parts 211, 212, 216, and 225; 30 CFR Part 750, and in minerals agreements or lease terms and conditions related to the mining plan. The BLM also makes a finding regarding ultimate maximum recovery of Indian coal. The BIA regulations at 25 CFR 211.4, 212.4, and 225.4, incorporate, through an explicit cross-reference, the BLM regulations at 43 CFR Parts 3480 and 3590. Unless expressly exempted, the provisions contained in 43 CFR Parts 3480 and 3590 apply to Indian coal lands. The BLM regulations at 43 CFR 3480.0-4 provide that certain sections of Part 3480, including the maximum economic recovery standard (43 CFR 3480.0-5(a)(21)), do not apply to Indian lands. But BLM's regulations at 43 CFR Part 3590 "also govern operations for all minerals on Indian tribal lands and allotted Indian lands leased under 25 CFR parts 211 and 212." 43 CFR 3590.0-7. Therefore, the BLM's ultimate maximum recovery regulation at 43 CFR 3590.0-5(h) extends to the oversight of all minerals on Indian lands. The maximum economic recovery standard for Federal coal and the ultimate maximum recovery standard achieve similar management objectives. To achieve maximum mineral development of coal on Indian lands, BLM applies the UMR standards. See 43 CFR 3590.0-5(h); 43 CFR 3590.0-7; 43 CFR 3594.1.

Each Federal and Tribal agency's authorities and actions are described in the Table 4 (Table 1-1 in the FCPP & NMEP EIS) below as they pertain to each component of the FCPP & NMEP.

Table 4 Federal and Tribal Authorities and Actions

Agency	FCPP and Ancillary Facilities	Navajo Coal Mine	Associated Transmission Lines
OSMRE	None	Approve, approve with conditions, or disapprove the Pinabete SMCRA Permit application; approve, approve with conditions, or disapprove the request to renew the existing Navajo Mine SMCRA Permit.	None
BIA	Approve, approve with conditions, or disapprove the APS Lease Amendment No. 3 and plant site ROW.	Approve, approve with conditions, or disapprove the ROW renewal for one access road.	Grant, grant with conditions, or not grant ROWs for APS and PNM associated transmission lines on tribal trust lands.
BLM	None	Issue a decision on the Pinabete Mine Plan to ensure ultimate maximum recovery of coal.	Consult with OSMRE to identify and evaluate potential impacts to cultural resources under NHPA Section 106.
USACE	None	Approve or disapprove MCo application for an Individual permit under Clean Water Act (CWA) Section 404.	None

Agency	F CPP and Ancillary Facilities	Navajo Coal Mine	Associated Transmission Lines
USEPA	<p>Ensure that F CPP emissions comply with the CAA during modification of Title V Operating Permit and Title IV Acid Rain Permits.</p> <p>Approve or disapprove a renewed NPDES permit under Section 402 of the CWA.</p>	<p>Approve or disapprove a new source NPDES permit application for the Pinabete SMCRA Permit under CWA Section 402.</p>	None
USFWS	<p>Issue BO for Federally listed species under ESA Section 7.</p>	<p>Issue BO for Federally listed species under ESA Section 7.</p>	<p>Issue BO for Federally listed species under ESA Section 7.</p>
Navajo Nation	<p>Consult with OSMRE to identify and evaluate potential impacts to cultural resources under NHPA Section 106; biological resources under ESA Section 7; issues CAA Title V permit.</p>	<p>Consult with OSMRE to identify and evaluate potential impacts to cultural resources under NHPA Section 106; biological resources under ESA Section 7; review and comment on the SMCRA permit application; issue CWA Section 401 water quality certification.</p>	<p>Consult with OSMRE to identify and evaluate potential impacts to cultural resources under NHPA Section 106; biological resources under ESA Section 7.</p>

Agency	F CPP and Ancillary Facilities	Navajo Coal Mine	Associated Transmission Lines
Hopi Tribe	None	None	Consult with OSMRE to identify and evaluate potential impacts to cultural resources under NHPA Section 106; biological resources under ESA Section 7.
National Park Service (NPS)	Review potential impacts to National Parks in the region.	None	Consult with OSMRE to identify and evaluate potential impacts to cultural resources under NHPA Section 106.

6.2 Agency Consultation

Consultation and coordination with Federal, tribal and state agencies was conducted in order to ensure that environmental issues have been identified, all relevant data was available for use in preparing the EIS, and that agency and tribal concerns and comments were identified, addressed, and incorporated into decision making. Throughout the preparation of the EIS, formal and informal efforts were made by OSMRE to involve agencies and tribes. This was achieved primarily through the scoping process, monthly cooperating agency conference calls, and formal agency consultation. This section describes the consultation and coordination efforts that occurred between the Project applicants, Federal, tribal and state officials during development of the EIS.

Consultation and coordination contributed to a successful, collaborative EIS process, with the goal of identifying key issues and sources of information early in the EIS process to inform the preparation and analysis of project actions. The process ensures that each tribe and agency's information requirements for their own permit review process were adequately addressed. Early involvement with Federal, tribal, state, and local governments established a solid working relationship among agencies and governments, building trust and credibility while broadening the sources of available data for use in development of the EIS, BA, and cultural resource PAs. Many agency staff also served as subject matter experts in the development and review process. In addition, the cooperation among agencies and tribal, state, and local governments ensures that a diverse and comprehensive set of issues and concerns are evaluated, as each participating agency and government investigates its regulatory interest or special concerns.

At the beginning of the F CPP & NMEP EIS process, OSMRE sent letters to relevant Navajo and Hopi Tribal agencies and Navajo Nation chapter houses, as well as Federal, state, and county agencies to introduce the F CPP & NMEP and associated EIS. These letters initiated coordination between OSMRE and other governments and agencies that continued throughout the EIS development

process. Additionally, meetings were held in Albuquerque on May 22 & 23, 2012 to initiate the NEPA and associated Section 106 of NHPA and Section 7 of the ESA components of the project. From thereafter until the EIS was completed, as well as the NHPA Section 106 and ESA Section 7 consultations, monthly teleconference meetings were held with the cooperating agencies. Special work group meetings made up of members of the cooperating agencies involved in NHPA and ESA consultations, were held on an as needed basis. Weekly meetings, often more than one, between OSMRE, the independent consultant, and BIA were held. Monthly project status reports, detailing development of the EIS, agency permitting actions, and the consultations under NHPA and ESA, were provided to all cooperating agency contacts.

6.3 Cooperating Agencies

An entity may be included as a cooperating agency if it is a Federal, state, or local government agency or Native American government that has either jurisdiction by law or that has special expertise regarding the potential environmental impacts of a proposal or reasonable alternative for a major Federal Action affecting the quality of the human environment. The benefits of participation by cooperating agencies in the preparation of an EIS include:

1. Disclosure of relevant information early in the analytical process;
2. Application of available technical expertise and staff support;
3. Avoidance of duplication of other Federal, tribal, state, and local procedures; and
4. Establishment of a mechanism for addressing intergovernmental issues.

On October 1, 2012, a Memorandum of Understanding was signed to establish a cooperating agency relationship between several Federal agencies and the Navajo Nation and Hopi Tribe for the purpose of preparing an EIS.

Several Federal agencies, in concert with the Navajo Nation and Hopi Tribe, were involved with or were responsible for making decisions on certain elements of the proposed project. As summarized in Table 4 of this ROD, the Federal agencies with an action(s) are: OSMRE, the BIA, the USFWS, USEPA, BLM, and USACE. The NPS participated as a cooperating agency because of its special expertise with regard to national park units and air quality analysis. The DOI Office of Environmental Policy and Compliance (OEPC) participated to assist with compliance of NEPA and other applicable Federal laws. The Navajo Nation and the Hopi Tribe also have actions to take. The responsibilities of each of the cooperating agencies with respect to this project are as follows:

1. BIA Navajo Region represents the Secretary of the Interior in the Federal Indian trust relationship with the Navajo Nation and consultation with the Navajo Nation as owners of the surface and the minerals. The BIA has responsibility for approving lease amendments and approving the grant of easement for ROWs for the FCPP and Navajo Mine. BIA Western Region represents the Secretary of the Interior in the Federal Indian trust relationship with the Hopi Tribe and has responsibility for renewing the FCPP ROWs crossing Hopi tribal trust lands. The BIA was defined early on as a key cooperating agency due to their multiple actions under consideration and due to the agencies unique level of expertise as related to this project. The BIA worked very closely with OSMRE during all phases of development of the

EIS, as well as during ESA Section 7 and NHPA Section 106 consultations associated with the project.

2. The Hopi Tribe is a sovereign Indian nation exercising exclusive and concurrent authorities and responsibilities relating to the development, administration, and regulation of natural resource development activities within its jurisdiction. The Hopi Tribe is the beneficial owner of the surface over which one of the transmission lines servicing the FCPP traverses; whereas the United States holds legal title to the surface in trust on behalf of the Hopi Tribe.
3. The Navajo Nation is the beneficial owner of surface and minerals lying beneath Navajo Nation lands impacted by this Project; whereas the United States holds legal title to surface and minerals in trust on behalf the Navajo Nation. The Navajo Nation is a sovereign Indian nation exercising exclusive and concurrent authorities and responsibilities relating to the development, administration, and regulation of natural resource development activities within its jurisdiction, including certain regulatory authorities delegated by USEPA over air and water resources.
4. USFWS has the regulatory responsibility, under the ESA (16 USC 1531 *et seq.*), for the protection and recovery of Federally-listed species. USFWS has responsibility under the Fish and Wildlife Coordination Act (16 USC 661-667e), as amended, which requires agencies to consult with the USFWS "waters of any stream or other body of water are proposed or authorized, permitted or licensed to be impounded, diverted or otherwise controlled or modified" by any agency under a Federal permit or license. Consultation is to be undertaken for the purpose of "preventing loss of and damage to wildlife resources."
5. USEPA Region IX's action with regard to the Navajo Mine is to approve or disapprove the MMCo's permit application for a new source Section 402 NPDES Industrial Permit associated with the mining and reclamation operations and coal preparation facilities. The determination as to whether this application constitutes a new source permitting action subject to NEPA is determined by the criteria set forth in 40 CFR 122.29(b).
6. NPS is mandated to conserve national park resources and values, as established by the Organic Act and reaffirmed by the General Authorities Act and NPS Management Policies. The proposed project has the potential to affect several national park units including, but not limited to Mesa Verde National Park; Aztec Ruins, Yucca House, Hovenweep, Navajo, and Canyon de Chelly National Monuments; and Chaco Culture National Historical Park. NPS has no regulatory or management action to take for the FCPP & NMEP, but has participated as cooperating agency due to its special expertise, particularly in air quality impacts analysis.
7. BLM has regulatory authority for resource and recovery associated with mining plans for the Navajo Mine.
8. USACE has regulatory authority for Section 404 CWA Permitting.

DOI's OEPC ensures DOI agency compliance with NEPA and other applicable laws. OEPC has no action related to the proposed project.

These nine entities agreed to provide information to meet OSMRE data needs, expand upon and provide expertise related to issue areas identified during scoping and public comment periods, and provide advance reviews of the Draft and Final EIS.

Close communication between OSMRE and the cooperating agencies was maintained during development of the EIS through the preparation of monthly status reports from the lead agency to the cooperating agencies, monthly teleconference calls among all the cooperating agencies, and in-person meetings at key times in EIS development requiring specific input from the cooperating agencies. The cooperating agencies assisted in the development of projects to be analyzed in the cumulative impact analysis, provided feedback on project description and alternatives to be considered, information related to their information needs in their own permit actions to assure consistency of analysis, and provided comprehensive review of the Preliminary Draft EIS, prior to release of the Draft EIS for public comment, as well as the Preliminary Final EIS, prior to publication of the EIS. USEPA, Navajo Nation Environmental Protection Agency, and NPS provided technical reviews of Air Quality reports developed by the proponents in support of EIS development, based on their specialized technical expertise and interest.

6.4 Regional Task Force

At the request of the Navajo Nation, an eight-person task force representing DOI Regional leadership and other involved Federal agencies was developed and was available as needed to address project timelines and issues that might require resolution over the life of the EIS development process. This Task Force was led by OSMRE's Director.

Regional Task Force Members

1. OSMRE Western Regional Director: Al Klein (September 2012-May 2014), Ervin Barchenger (May 2014-March 2015), David Berry (March 2015-Present) (Denver, Colorado)
2. BIA Regional Director, Navajo Area Office, Sharon Pinto (Gallup, New Mexico)
3. BLM New Mexico State Director, Aden Seidlitz (Acting) (Santa Fe, New Mexico)
4. USEPA Director of Communications and Ecosystems Division, Enrique Manzanilla (San Francisco, California)
5. USACE District Regulatory Division Chief, Allan Steinle (Albuquerque, New Mexico)
6. USFWS SW Regional Director, Benjamin N. Tuggle (Albuquerque, New Mexico)
7. NPS Intermountain Region Regional Director, John Wessels (Lakewood, Colorado)
8. OEPC Regional Officer, Stephen Spencer (Albuquerque, New Mexico)

OSMRE's Regional Director reported to the Director of OSMRE (Joseph Pizarchik) who was responsible for managing the coordination of the task force, providing routine status reports, and ensuring timely project completion.

6.5 Tribal Consultation

Consultation included multiple meetings, presentations, telephone conferences and written correspondence between OSMRE and Tribal Governments involved in the Project as cooperating

agencies or as interested parties. The FCPP & NMEP is primarily located on Navajo Nation lands, with one of the transmission lines also crossing Hopi Tribal Land. Navajo Nation and Hopi were included in the project as cooperating agencies. As cooperating agencies, the Navajo Nation and Hopi Tribe were engaged in the project early and frequently. They participated in the kickoff meeting in Albuquerque, NM, May 22-23, 2012, and on teleconferences from the beginning July 2012 until March 2015.

OSMRE conducted continual coordination and consultation with the Navajo Nation and Hopi Tribe from the inception of the project up through publication of the EIS. As cooperating agencies, the Navajo Nation and Hopi Tribe were part of the team providing input on EIS preparation and reviewing draft documents. In addition, the Navajo Nation Department of Fish & Wildlife and Navajo Nation Historic Preservation Department were consulted regarding compliance with Navajo Nation regulations and policies addressing biological and cultural resources, respectively.

For SMCRA-related activities within the FCPP & NMEP, the Navajo Nation was engaged to review the Pinabete Permit Application Package and the Navajo Mine Permit Renewal Application and provide OSMRE with any comments or concerns. OSMRE holds monthly meetings with the Navajo Nation's Surface Mine Program (NN/SMP) staff to discuss the permitting activities associated with Navajo Mine and the Proposed Pinabete Permits. Quarterly agency (OSMRE, BIA, and BLM) meetings with the NN/SMP to discuss SMCRA and lease related issues on all Indian lands mines are also conducted.

Under Section 7 of the ESA, OSMRE invited the Navajo Nation and Hopi Tribe to review the BA that was submitted by OSMRE to USFWS. The Navajo Nation and Hopi Tribe also reviewed the Draft BO issued by the USFWS.

Under Section 106 of the NHPA, OSMRE contacted 34 tribes that may be affected by the proposed project. Of those 34, only the Hopi Tribe, Navajo Nation, and Zia Pueblo requested formal tribal consultation on Section 106. OSMRE and the cooperating agencies worked with the Tribal Historic Preservation Officers (THPOs) for those tribes as well as State of New Mexico and State of Arizona State Historic Preservation Officers (SHPOs) to produce two PAs for the Navajo and Pinabete Mine Areas and the FCPP and associated transmission corridors.

After new Navajo Nation President (Mr. Russell Begaye) and Vice President (Mr. Jonathan Nez) took office on May 12, 2015, OSMRE conducted a briefing and government-to-government consultation meeting with the new leadership of the Navajo Nation on May 28, 2015, in Window Rock, Arizona. BIA accompanied OSMRE in this meeting which focused on the development of the FCPP & NMEP EIS, and the related consultations under Section 7 of the ESA and Section 106 of the NHPA. Government-to-government consultation was conducted during a Hopi Tribal Council Meeting in Kykotsmovi, Arizona, on October 29, 2014. The meeting was between OSMRE and the Hopi Tribe, and focused on the effects of the FCPP & NMEP on Hopi tribal trust lands.

6.6 USFWS ESA Section 7 Consultation

Consultation with the USFWS is required by the Fish and Wildlife Coordination Act (16 USC 661 *et seq.*) and ESA (16 USC 1531 *et seq.*) prior to initiation of a project that may affect any federally listed species or its habitat. The FCPP and NMEP are considered a major Federal Action and consultation occurred in accordance with Section 7 of the ESA. As a cooperating agency, USFWS was involved early in the NEPA process. In the spring of 2012 OSMRE established a Section 7 Working Group that met regularly via teleconference and in-person on over 40 occasions to provide updates on relevant studies (e.g., ERA and mercury deposition modeling) and to obtain data and technical expertise necessary for completion of the EIS, BA, and eventually the USFWS's issuance of the BO.

OSMRE submitted a request to USFWS for a species of concern list on November 14, 2013, beginning informal consultation. OSMRE submitted a Final BA to USFWS on August 7, 2014, initiating formal consultation with the USFWS. OSMRE amended the BA to propose additional Conservation Measures on March 13, 2015. The EIS incorporated the findings included within the BA, including the amendments made in March 2015. The consultation process between OSMRE and USFWS resulted in a determination of whether the Proposed Action was likely to jeopardize the continued existence of a listed species or destroy or adversely modify critical habitat, and identified appropriate mitigation measures. In April 2015, the USFWS issued their BO, concurring with OSMRE's BA determination that the proposed action is not likely to adversely affect the California condor, Mexican spotted owl, Mancos milk vetch, Fickeisen plains cactus, Mesa Verde cactus and Zuni fleabane. The BO also confirmed that, through the implementation of Conservation Measures proposed in the BA, Reasonable and Prudent Measures, and Terms and Conditions, the proposed action will not jeopardize the continued existence of the Colorado pikeminnow, razorback sucker, southwestern willow flycatcher and yellow-billed cuckoo.

6.7 NHPA Section 106 Programmatic Agreements

Numerous Federal laws, regulations, and Executive Orders and the Navajo Nation Cultural Resource Protection Act (Title 19, Section 201. Navajo Nation Code) define requirements for protecting cultural resources, but the primary regulatory requirements are those of Section 106 of the NHPA (54 USC 306108). Section 106 of the NHPA and its implementing regulations require a Federal agency with direct or indirect jurisdiction over a Federal, Federally assisted, or Federally permitted or approved undertaking to take into account the effects of the undertaking on historic properties included in or eligible for the NRHP, afford the Advisory Council on Historic Preservation (ACHP) a reasonable opportunity to comment on the undertaking, and consult with applicable THPOs, SHPOs, Indian tribes, representatives of local governments, applicants for Federal approvals, and the public. Section 101(b) (4) of NEPA, 42 USC 4331(b) (4); established a Federal policy of preserving not only important natural aspects of our national heritage but also historical and cultural aspects. Accordingly, regulations implementing NEPA (40 CFR 1502.16(g)) require that Federal agencies consider the consequences of their undertakings on historic and cultural resources. The regulations that govern NHPA implementation allow for a parallel NEPA and Section 106 process in an effort to streamline the environmental compliance process. OSMRE was the Lead Federal Agency for the Section 106 process for the proposed project.

The following were contacted in September 2012, requesting identification of their interest in participation in the Section 106 process:

1. Arizona SHPO
2. New Mexico SHPO
3. ACHP
4. Fort McDowell Yavapai Nation, Arizona
5. Havasupai Tribe of the Havasupai Reservation, Arizona
6. Hopi Tribe of Arizona
7. Hualapai Indian Tribe of the Hualapai Indian Reservation, Arizona and THPO
8. Jicarilla Apache Nation, New Mexico and THPO
9. Kaibab of Paiute Indians of the Kaibab Indian Reservation, Arizona
10. Kewa Pueblo, New Mexico
11. Las Vegas Tribe of Paiute Indians of the Las Vegas Indian Colony, Nevada
12. Moapa Band of Paiute Indians of the Moapa River Indian Reservation
13. Navajo Nation, Arizona, New Mexico, Utah and THPO
14. Paiute Indian Tribe of Utah (Cedar, Kanosh, Koosharem, Indian Peaks, and Shivwits Bands)
15. Pueblo of Acoma, New Mexico
16. Pueblo of Cochiti
17. Pueblo of Ildefonso
18. Pueblo of Isleta, New Mexico
19. Pueblo of Jemez
20. Pueblo of Laguna, New Mexico
21. Pueblo of Nambe
22. Pueblo of San Felipe
23. Pueblo of Sandia
24. Pueblo of Santa Ana and THPO
25. Pueblo of Santa Clara
26. Ohkay Owingeh, formerly Pueblo of San Juan
27. Pueblo of Tesuque, New Mexico and THPO
28. Pueblo of Zia
29. Zuni Tribe of the Zuni Reservation, New Mexico and THPO
30. Ramah Navajo Chapter

31. San Carlos Apache Tribe of the San Carlos Reservation, Arizona and THPO
32. San Juan Southern Paiute Tribe of Arizona
33. Southern Ute Indian Tribe of the Southern Ute Indian Reservation, Colorado
34. White Mountain Apache Tribe of the Fort Apache Reservation, Arizona and THPO
35. Ute Mountain Tribe of the Ute Mountain Indian Reservation, Colorado, New Mexico, and Utah
36. Kiowa Tribe of Oklahoma
37. Comanche Nation and THPO
38. The Cooperating Agencies

In addition to the parties contacted in September 2012, OSMRE included the New Mexico SLO on correspondence letters to the New Mexico SHPO on February 25, 2013 and May 15, 2013. OSMRE subsequently consulted directly with the New Mexico SLO beginning September 2, 2014.

Based on responses received, OSMRE, as lead agency, consulted with the Navajo Nation THPO, Hopi Tribe, Zia Pueblo, New Mexico and Arizona SHPOs, and the ACHP. OSMRE formed a Section 106 Working Group that met through teleconferences and in person to discuss the consultation process and provide input on the two project PAs. Working Group participants included representatives from: OSMRE and third-party consultant, BIA, Navajo Nation, Hopi Tribe, BLM, USEPA Region IX, USACE, New Mexico SLO, New Mexico Historic Preservation Division/SHPO, Arizona State Parks/SHPO, PNM, BNCC and consultants, APS and consultants, and the ACHP.

OSMRE elected to execute two PAs for the project given the different aspects of the undertaking, the jurisdiction of various Federal agencies, the separate project proponents and their respective responsibilities, and because effects on historic properties cannot be fully determined prior to the renewal of permits for the undertaking. OSMRE amended the existing PA for the Navajo Mine and has prepared a new PA to address the FCPP, the ancillary facilities and associated transmission Lines, and associated responsibilities related to continued operation of those facilities. The PAs stipulate procedures for continuing to consider cultural resources as the EIS is completed and to develop and implement measures to avoid, reduce, or mitigate any adverse effects during post-EIS phases of project implementation. The PAs provide a process for compliance with NHPA pursuant to 36 CFR 800.14(b) in parallel with NEPA. Specifically, 36 CFR 800.4(b)(2) states that an agency may defer final identification and evaluation of historic properties if it is specifically provided for in a PA or documents used by an agency to comply with NEPA. Accordingly, the identification and evaluation of historic properties within the APE will be completed as specific aspects are refined pursuant to 36 CFR 800.4(b) (1) and 36 CFR 800.4(c). The PAs provide procedures and responsibilities for the ongoing identification, evaluation, and mitigation of historic properties and procedures to minimize effects to historic properties. The PAs also contain additional information including standards, guidelines, and unanticipated discovery protocols.

Consultation with the Hopi Tribe and NNHPD, which also serves as the Navajo Nation THPO, has been essential in the EIS process. Coordination with NNHPD about the project began with agency and public scoping and continued through development of the PAs. The consultation addressed 1)

identifying the types of potential impacts of the proposed project, 2) defining the area of potential effects, 3) identifying the types of cultural resources that could be affected, and 4) developing an appropriate resource inventory and evaluation strategy.

7.0 Final Agency Actions

7.1 Pinabete SCMRA Permit and Navajo Mine Permit Renewal Applications

It is the decision of the OSMRE to approve:

1. The Pinabete SMCRA Permit Application (Federal Permit NM-0042), which is located within the existing Navajo Mine lease area, to begin operations in 2016 and continue through 2041;
2. The application to renew Navajo Mine's existing SMCRA permit (Federal Permit NM-0003) for Areas I, II, III, and portions of Area IV North of the Navajo Mine lease area for 5 years beginning in 2014. A portion of the Area IV North mining and reclamation plan was vacated by a March 2, 2015, Federal District ruling and is not included within the permit renewal approval.

OSMRE has completed its administrative and technical evaluation of the permit application package for the Pinabete Area and has determined that the proposed operations meet requirements for approval under SMCRA, 30 USC 1260; and Federal regulations, 30 CFR 773.15. Based on the information set forth in the application; the EIS; consultation with governmental agencies, including consultation under the ESA and NHPA; and public comment, OSMRE's evaluations have found:

1. The application is accurate and complete and the applicant has complied with all requirements of SMCRA and the Indian Lands Program.
2. The applicant has demonstrated that the reclamation plan in the application accomplishes requirements of SMCRA and the Indian lands program.
3. The proposed surface mining operations are:
 - a. Not on any lands within the boundaries of the National Park System, the National Wildlife Refuge System, the National System of Trails, the National Wilderness Preservation System, the Wild and Scenic Rivers System, including study rivers designated under section 5(a) of the Wild and Scenic Rivers Act (16 USC 1276(a)) or study rivers or study river corridors established in any guideline pursuant to that Act, and National Recreation Areas designated by Act of Congress;
 - b. Not on any Federal lands within the boundaries of any national forest;
 - c. Not on any lands where mining will adversely affect any publicly owned park or places included in the National Register of Historic Places;
 - d. Not within 100 feet, measured horizontally, of the outside ROW line of any public road, except where mine access roads or haulage roads join such ROW line;
 - e. Not to be conducted within 300 feet, measured horizontally, of any occupied dwelling;
 - f. Not within 300 feet, measured horizontally, of any public building, school, church, community or institutional building or public park; and
 - g. Not within 100 feet, measured horizontally, of a cemetery.

4. No mining operations by surface mining methods are proposed to be conducted on lands where the private mineral estate to be mined has been severed from the private surface estate.
5. The operations proposed in the application have been designed to prevent material damage to the hydrologic balance outside the permit area.
6. The operations proposed in the application will not use any existing structures.
7. The applicant has paid all reclamation fees from previous and existing operations as required by 30 CFR Chapter VII, Subchapter R.
8. No requirements of 30 CFR Part 785, Special Categories of Mining are applicable. The application does not propose changes to the type of mining operations, or propose experimental practices. OSMRE has determined that no alluvial valley floors exist within the permit area and adjacent area.
9. The operation will not affect the continued existence of endangered or threatened species or result in destruction or adverse modification of their critical habitats as determined under the ESA.
10. OSMRE has taken into account the proposed permitting action on properties listed or eligible for listing on the National Register of Historic Places.

Based on the administrative and technical review of the permit renewal application, OSMRE has determined that the application is complete and accurate, and the applicant has complied with all applicable requirements of SMCRA and the Indian Lands program at 30 CFR Part 750. Any valid permit issued under SMCRA carries with it the right of successive renewal upon expiration (30 USC 1256(d) (1), 30 CFR 773.19(d)). OSMRE's review of the application indicates that no surface coal mining and reclamation activities in the application are in violation of SMCRA, or any State or Federal law, rule or regulation pertaining to air or water environmental protection. OSMRE's review has confirmed that the application meets the permit renewal criteria at 30 USC 1256(d) (1) and 30 CFR 774.15 (c). OSMRE will approve the renewal application, with one exception.

Exception: On April 6, 2015, the U.S. District Court for the District of Colorado (Civil Action No. 12-cv-01275-JLK) remanded and vacated OSMRE's March 2012 approval of a permit revision approving a mining and reclamation plan for approximately 830 acres of the northern most part of Area IV North. For the purpose of interim compliance with the District Court's order, mining and mining-related disturbance in that area, as approved in March 2012, has ceased. The 830 acres of Area IV North is within the Navajo Mine NM-0003F permit area and was included in the permit renewal application. So long as it is necessary for interim compliance with the District Court's remand and vacatur, approval of the renewal application for NM-0003F will not extend to the mining and reclamation plan for the 830 acres of Area IV North approved in March 2012; and does not authorize NTEC to re-initiate mining or mining-related disturbances in that area.

The approvals of the Pinabete Area permit application and the permit renewal application for the Navajo Mine are effective on the date this ROD is signed. Coincident with the signing of this ROD

OSMRE will sign its Findings and Determination for Approval for the Pinabete Permit Application and the Navajo Mine Permit Renewal Application. Upon receipt of the required reclamation bond instruments for each of these applications, the permits will issue. The approval and issuance of these permits was analyzed in the FCPP & NMEP EIS. These approvals were also addressed in accordance with: 1) the consultation requirements under Section 7 of the ESA and the associated mitigation measures and monitoring requirements set forth in Section 4 of this ROD; and 2) the consultation requirements under Section 106 of the NHPA and the requirements of the PAs. The approval and issuance of these permits are subject to all the mitigation and monitoring requirements set forth in Section 4 of this ROD. OSMRE's SMCRA decisions may be appealed by a person with an interest which is or may be adversely affected under the procedures set forth in 30 CFR Part 775 and 43 CFR Part 4.

Approved by:



Joseph G. Pizarchik
Director
Office of Surface Mining Reclamation and Enforcement



Date

7.2 APS Lease Amendment No. 3

It is the decision of the BIA Navajo Region to approve “Lease Amendment No.3 to Supplemental and Additional Indenture of lease between the Navajo Nation and APS, El Paso Electric Company, Public Service Company of New Mexico, Salt River Project Agricultural Improvement and Power District and Tucson Power and Electric Power Company” (tenants in common), together referred to as “Lessees”, dated March 7, 2011.

The BIA Navajo Region has determined that Lease Amendment No. 3 meets the regulatory requirements found in 25 CFR Part 162. The amendment extends the term of the 1960 lease, as amended, issued to APS and the 1966 lease, as amended, issued to Lessees. The proposed amendment assures the continued operation of the power plant and appurtenant facilities, encompassing approximately 3,597 acres of tribal trust land.

The Navajo Nation (landowner), through Council Resolution Number CF-08-11 on March 7, 2011, approved the negotiated new terms and conditions. Amendment and Supplement No. 3 extends the term of the 1960 and 1966 leases to 2041. Annual compensation to the Navajo Nation was also increased and extended to 2041. It is the decision of the BIA, Navajo Region, to approve Lease Amendment No. 3 which extends the lease for an additional 25 years from 2016 to 2041 and increases the annual compensation owed the Nation.

The BIA Navajo Region has reviewed Lease Amendment No. 3 for compliance with 25 USC 415 and its implementing regulations at 25 CFR Part 162. The BIA Navajo Region has determined that Lease Amendment No. 3 is in the best interest of the Navajo Nation. The lease approval allows for the continued operation of the FCPP that will continue to serve as an economic development opportunity; provide continued stable lease income as a revenue source; maintain employment opportunities; and provide future benefits.

The approval of Lease Amendment and Supplement #3 to Supplemental and Additional Indenture Lease (Lease Amendment No. 3) to the FCPP site lease between the lessees and the Navajo Nation is effective on the date this ROD is signed. This ROD authorizes the Navajo Regional Office to proceed with approval of Lease Amendment No. 3. The approval and issuance of these actions were analyzed in the FCPP & NMEP EIS. By letters dated December 2, 2014 and January 13, 2015, the Navajo Nation requested the Secretary waive, pursuant to 25 CFR 1.2, the appraisals for the Grants of Easement (323 Grants) required pursuant to 25 CFR 196.12 and the valuation of the leasehold requirements found at 25 CFR 162.604(b). In response to the Navajo Nation's request, the Assistant Secretary, Indian Affairs, waived the appraisals for Grants of Easement and valuation of the leasehold on June 30, 2015. These approvals were addressed in accordance with: 1) the consultation requirements under Section 7 of the ESA and the associated mitigation measures and monitoring requirements set forth in Section 4 of this ROD; and 2) the consultation requirements under Section 106 of the NHPA and the requirements of the PAs. The approval and issuance of these permits are subject to all the mitigation and monitoring requirements set forth in Section 4 of this ROD.

Approved by:

A handwritten signature in black ink, appearing to read 'Michael Black', written over a horizontal line.A handwritten date '7/9/15' written in black ink over a horizontal line.

Michael Black
Director
Bureau of Indian Affairs

Date

7.3 BIA Approvals to Grant ROWs

It is the decision of the BIA to approve certain grants of easement for ROWs across Navajo and Hopi tribal trust lands, as described more specifically below. The grants of easement for ROWs across Navajo and Hopi tribal trust land are approved under the authority pursuant to the provision of the Act of February 5, 1948 (62 Stat. 17; 25 USC 323-328); and 25 CFR Part 169. The approval and issuance of these actions were analyzed in the FCPP & NMEP EIS. These approvals were also addressed in accordance with: 1) the consultation requirements under Section 7 of the ESA and the associated mitigation measures and monitoring requirements set forth in Section 4 of this ROD; and 2) the consultation requirements under Section 106 of the NHPA and the requirements of the PAs. The approval and issuance of these grants of easements are subject to all the mitigation and monitoring requirements set forth in Section 4 of this ROD. This ROD authorizes the BIA Navajo and Western Regional Offices, as appropriate, to proceed with issuance of these grants of easements.

FCPP Plant Site ROW (Multi-Party § 323 Grant)

A Grant of Easement will be issued for the site of the FCPP to APS, Public Service Company of New Mexico, Salt River Project Agricultural Improvement and Power District, El Paso Electric Company, and Tucson Electric Power. The grant encompasses the entire 3,597.163 acres, more or less, located within the FCPP lease site, near Fruitland, San Juan County, New Mexico.

The Navajo Nation has given its consent for this ROW under Amendment and Supplement Nos. 2 and 3 to the Supplemental and Additional Indenture of Lease between the Navajo Nation and APS, El Paso Electric Company, Public Service Company of New Mexico, Salt River Project Agricultural Improvement and Power District and Tucson Electric Power Company. The Navajo Nation approved Amendment and Supplemental No's 2 and 3 by the Resources Development Committee Resolution Number CF-08-11, dated on March 7, 2011. Lease Amendment No. 3 and the accompanying tribal resolution gave consent for this ROW. By letters dated December 2, 2014 and January 13, 2015, the Navajo Nation requested the Secretary waive, pursuant to 25 CFR 1.2, the appraisals for the Grants of Easement (323 Grants) required pursuant to 25 CFR 169.12 and the valuation of the leasehold requirements found at 25 CFR 162.604 (b). In response to the Navajo Nation's request, the Assistant Secretary, Indian Affairs, waived the appraisals for Grants of Easement and valuation of the leasehold on June 30, 2015. This ROD authorizes the BIA Navajo Region to proceed with the issuance of the grants of ROWs.

Transmission Line ROWs on Navajo trust lands

1. *Cholla Transmission Lines.* A Grant of Easement will be issued for the two-345kV electric transmission lines crossing Navajo tribal trust land. The 345kV lines are parallel from the FCPP, located in Fruitland, San Juan County, New Mexico, extending southwesterly into McKinley County, New Mexico into Apache and Navajo Counties, Arizona and ending at the boundary of the Navajo Reservation. The total length is approximately 178.673 miles, with a width of 200.00 feet and containing 5,632.768 acres, more or less.
2. *El Dorado Transmission Line.* A Grant of Easement will be issued for the 500kV electric transmission line segments crossing Navajo tribal trust lands from the FCPP located in San Juan County, New Mexico, crossing into Apache, Navajo and Coconino Counties, Arizona. The operation of the 500 kV electric transmission line include the following: (1) The

approximately 156 miles for the electric transmission line with a width of 200.00 feet consisting of approximately 3,778 acres; (2) The 12kV electric lines with a width of 20.00 feet consisting of 0.529 acre; (3) The access road with a 50.00 feet width consisting of 0.463 acres; and (4) The Moenkopi Switchyard, described as 211.555 acres in area.

The Navajo Nation has given its consent for these two ROWs under Amendment and Supplement Nos. 2 and 3 to the Supplemental and Additional Indenture of Lease between the Navajo Nation and APS, El Paso Electric Company, Public Service Company of New Mexico, Salt River Project Agricultural Improvement and Power District and Tucson Electric Power Company. The Navajo Nation approved Amendment and Supplemental Nos. 2 and 3 by the Resources Development Committee Resolution Number CF-08-11, dated on March 7, 2011. Lease Amendment No. 3 and the accompanying tribal resolution gave consent for these ROWs. By letters dated December 2, 2014 and January 13, 2015, the Navajo Nation requested the Secretary waive, pursuant to 25 CFR 1.2, the appraisals for the Grants of Easement (323 Grants) required pursuant to 25 CFR 169.12 and the valuation of the leasehold requirements found at 25 CFR 162.604 (b). In response to the Navajo Nation's request, the Assistant Secretary, Indian Affairs, waived the appraisals for Grants of Easement and valuation of the leasehold on June 30, 2015. This ROD authorizes the BIA Navajo Region to proceed with the issuance of the grants of ROWs.

Transmission Line ROW on Hopi trust lands

A grant of easement will be issued for the El Dorado 500 kV transmission line. The grant of easement will be issued for a 500kV- approximately 200 foot wide electric transmission line crossing over approximately 36.6 miles of Hopi tribal trust lands beginning on the easterly boundary of the Hopi/Navajo Reservation boundary line, near Section 34, Township 31 North, Range 19 East, Navajo County, Arizona and ending on the westerly Hopi Reservation boundary line near Section 36, Township 30 North, Range 12 ½ East, Coconino County, Arizona, said ROW being 886.385 acres more or less. The grant of easement for ROW over and across lands held in trust for the Hopi Tribe for the continued ownership, operation, maintenance, relocation, and removal of APS's 500 kV electrical transmission line together with all ancillary and appurtenant equipment, facilities, and access routes within the ROW corridor.

The Hopi Tribe has given its consent for this ROW in Tribal Resolution H-078-2013, adopted on October 9, 2013, and affirmatively stated that the Tribal Council had found the negotiated terms to be in the Tribe's best interest. By letter dated May 21, 2015, the Hopi Tribe requested the Secretary waive, pursuant to 25 CFR 1.2, the appraisal for this grant of easement required pursuant to 25 CFR 169.12. In response to the Hopi Tribe's request, the Assistant Secretary, Indian Affairs, waived the appraisal for this grant of easement on June 12, 2015. This ROD authorizes the BIA Western Region to proceed with the issuance of the grant of easement for this ROW.

NTEC's Navajo Mine SMCRA Permit Area Access Road (Access Road to Area III Office Facility)

A Grant of Easement encompassing 10.40 acres (approximately 4,500 feet in length and 100 feet in width) of Navajo tribal trust lands in San Juan County, New Mexico, will be issued to NTEC.

The Navajo Nation has given its consent for this ROW in Resolution RDCAP-30-14 dated April 29, 2014. The effective date of the appraisal was July 15, 2013. The appraisal was reviewed by Office of

Special Trustee on March 29, 2013. This ROD authorizes the BIA Navajo Region to proceed with the issuance of the grant of ROW.

Approved by:



Michael Black
Director
Bureau of Indian Affairs



Date

7.4 Pinabete Mine Plan-Ultimate Maximum Recovery

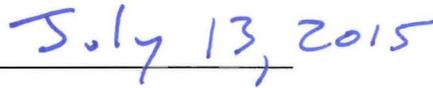
It is the decision of the BLM to approve the modifications to the Resource Recovery and Protection Plan (R2P2), for the Navajo Mine submitted in April 2012 and July 2014. The modified R2P2 will serve as the basis for the determination of recoverable coal reserves for the mine. The R2P2, as modified, meets the requirements of 25 CFR Parts 211 and 216, and 43 CFR Subparts 3480 and 3590.

Specifically, the modified R2P2 indicates that all economic portions of the coal deposit will be mined, based on standard industry operating practices and in a manner comparable to the Federal Government when the Federal Government is coal lessor, therefore ensuring ultimate maximum recovery of the deposit. The R2P2 also ensures that non-coal resources on the lands will be adequately protected.

Approved by:



Neil Kornze
Director
Bureau of Land Management



Date

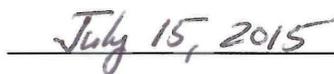
7.5 Office of the Secretary Approval

I hereby approve these decisions of OSMRE, BIA, and BLM. My approval of BIA and BLM's decisions constitutes the final decision of the Department of the Interior on those actions and, in accordance with the regulations at 25 CFR 2.6, 43 CFR 4.331(b), and 43 CFR 4.410(a)(3), those decisions are not subject to appeal before the Department's Office of Hearings and Appeals under the Departmental regulations at 43 CFR Part 4. Any challenges to BIA and BLM's decisions must be brought in Federal district court. OSMRE's decisions may be appealed to the Department's Office of Hearings and Appeals by a person with an interest which is or may be adversely affected under the procedures set forth in 30 CFR Part 775 and 43 CFR Part 4.

Approved by:



Michael Connor
Deputy Secretary
U.S. Department of the Interior



Date

8.0 Appendices

8.1 USFWS Biological Opinion

8.2 NHPA Section 106 Programmatic Agreements

8.3 Disposition of Comments Received after Publishing EIS