

OFFICE OF SURFACE MINING RECLAMATION AND
ENFORCEMENT

Annual Evaluation Summary Report

Federal Program for Indian Lands

Hopi Tribe

for

Evaluation Year 2010

(October 1, 2009 to September 30, 2010)

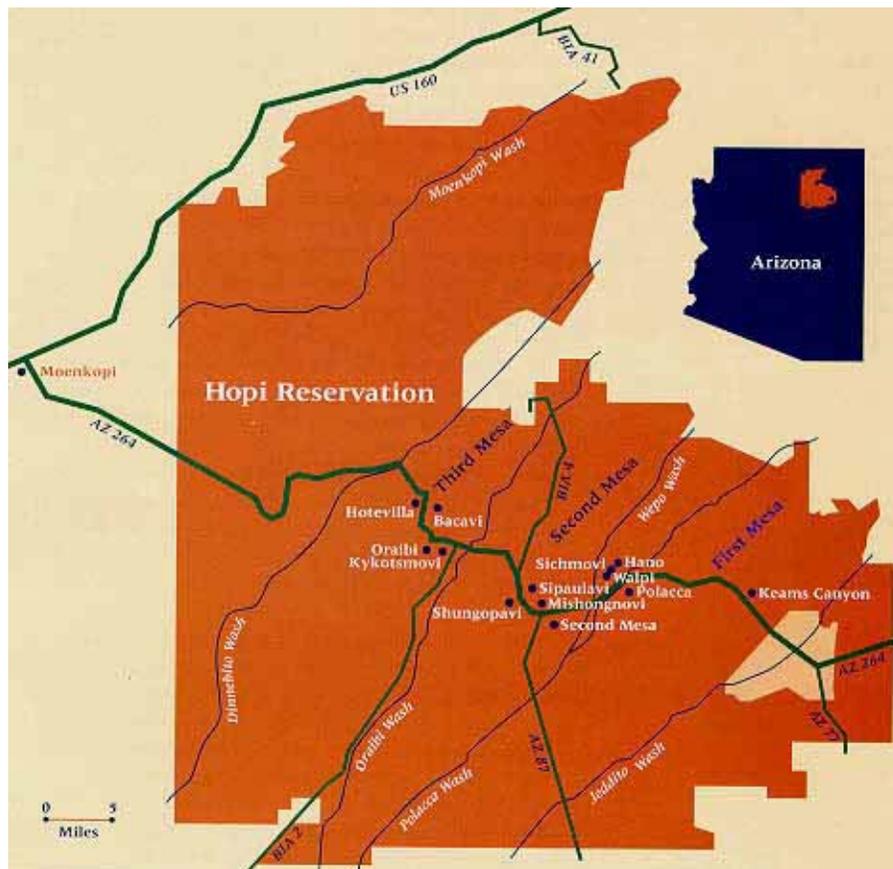


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I. Introduction

The Surface Mining Control and Reclamation Act of 1977 (SMCRA) created the Office of Surface Mining Reclamation and Enforcement (OSM) in the Department of the Interior. SMCRA provided authority for OSM to develop State Regulatory Programs to assume primary responsibility for the regulation of surface coal mining operations, within their jurisdictional boundaries, following Secretarial approval. However, SMCRA did not give the Secretary authority to approve regulatory programs for Indian Tribes. Instead, Section 710 of SMCRA directed the Secretary to propose legislation designed to allow Indian Tribes to assume eventual primacy over the implementation of SMCRA and to develop Tribal capabilities through Federal grants. Consequently, OSM has been the regulatory authority for coal mining operations on Indian Lands through the Federal Program for Indian Lands, found at 30 CFR 750.

This report contains summary information regarding the Federal Program for Indian Lands (Program) as conducted on lands of the Hopi Tribe, the effectiveness of the Program in meeting the applicable purposes of SMCRA as specified in section 102, and the status of and the authority for the Tribe to regulate surface mining for coal.

This report covers the period of October 1, 2009 to September 30, 2010.

II. Overview of the Coal Mining Industry on Lands of the Hopi Tribe

The Hopi Tribe is located in Northeastern Arizona and is surrounded by the Navajo Nation. Mining activities on lands of the Hopi Tribe date back to pre-Columbian times and continue to this day.

OSM is the regulatory authority for one (1) coal-mining operation, a portion of the Black Mesa Mine, on Hopi Tribal lands. For the near future, new coal development is not anticipated to occur on Hopi Tribal lands.

III. Success in Achieving the Purposes of SMCRA as Measured by the Number of Observed Off-Site Impacts and the Number of Acres Meeting the Performance Standards at the time of Bond Release.

The following Performance standard evaluations provide a national perspective in terms of the number and extent of observed off-site impacts, the number of acres that have been mined and reclaimed and the amount of reclaimed acreage that meet bond release requirements for the various phases of reclamation. The same data is collected annually for approved State Programs.

Off-Site Impacts

OSM conducted two (2) complete and one (1) partial inspection during the reporting period. OSM management reviewed all inspection reports filed for those inspections. These inspections resulted in no enforcement actions. There were no off-site impacts observed. This information appears in Tables 4, 9 and 10, Appendix A, of this report.

Reclamation Success

No bond releases were granted during the review period. This information appears in Table 5, Appendix A, of this report.

Customer Service

OSM received no citizen complaints pertaining to lands of the Hopi Tribe during the period.

IV. Major Accomplishments/Issues/Innovations of the Federal Program for Indian Lands on Hopi Tribal Lands

The purpose of the Program, as conducted on Hopi Tribal lands, is to accomplish the goals and responsibilities of SMCRA: elimination of off-site impacts and achieving successful reclamation of the post-mining land use, improving regulatory efficiency, and on-the-ground reclamation.

As of September 30, 2010, there was one (1) coal-mining operation on Hopi Tribal lands, consisting of one (1) inspectable unit (BM J7-Hopi) with a total of 286 acres disturbed, and 6,140 acres of Hopi Reservation located within the permit area, but largely undisturbed. The program manages that mining and reclamation operation in accordance with the requirements of SMCRA and the Federal regulations found at 30 CFR 750.

Bond Release Guidance Document and Administrative Procedures

OSM developed a Bond Release Guidance Document for Indian Lands and Western States with Federal Programs. The document contains administrative procedures that explain how OSM will process bond release applications as well as guidance for what information operators will be required to submit. The document was prepared with input from the Navajo Nation, Hopi Tribe, Crow Tribe and the Bureau of Indian Affairs (BIA).

The document lists four (4) sources of information that OSM will use to evaluate a Bond Release application. The first source is the information required under the Federal regulations at 30 CFR 800.40 and the applicable permanent program performance standards in 30 CFR Chapter VII, Subchapter K. The second source is applicable information provided by the permittee that is required by the approved permit, including any terms and conditions. The third source is the discretionary information identified in the guidance document which, if supplied as part of the application, would facilitate the processing of the bond release application. The fourth source will be information collected by OSM during inspections and site visits. The document encourages permittees to meet with OSM prior to applying for bond release to discuss data and information that could facilitate review of the bond release application.

The guidance document does not replace the regulations at 30 CFR 800.40, “Requirement to release performance bonds”. Bond release actions may occur at the completion of the phases of reclamation defined under 30 CFR 800.40(c) and upon receipt of an application for release under 30 CFR 800.40(a).

Geomorphic Guidance

Geomorphic principles for mined land reclamation involve the contouring of reclaimed surfaces and simulating natural stream configurations to create a landscape similar to that which naturally would have formed over time. Landform shaping and grading plans are based on computer-generated topographical designs. In addition, the principles are used to provide slopes and drainage channels that are stable over the long term.

Application of the principles takes into account the creation of landforms together with the processes by which those landforms would be created naturally over time. Soil, slope and weather are all considered. The objective is to create functional landforms that blend with the surrounding natural terrain and are stable, ensuring long-term, maintenance-free reclamation.

On August 11, 2009, OSM, Western Region (WR) distributed a draft guidance document on geomorphic reclamation for comment. The document was distributed to surface coal mine operators as well as the regulatory authorities for New Mexico, Wyoming, and Montana. Comments were requested by August 31, 2009. As of the end of the evaluation period, OSM has received comments from; Peabody Western Coal Co. (PWCC), Black Mesa Complex, Arizona, TransAlta Centralia Mining, Centralia Mine, Washington State, Westmoreland Resources Inc., Absaloka Mine, Montana, Montana Department of Environmental Quality, Helena, Montana, Wyoming Department of Environmental Quality, Cheyenne, Wyoming, New Mexico Mining and Minerals Division, Santa Fe, NM. The BHP Billiton, Navajo Mine and Chevron Mining, Inc., McKinley Mine have also responded. OSM has reviewed and incorporated many of their comments within the developing guidance document.

New Technology Employed

OSM inspectors use Trimble GeoXt GPS units to collect geo-spatial information as part of the inspection process. The information supports documentation of site conditions during partial and complete inspections. OSM maintains the information in a geo-database. Inspectors use the database to prepare for inspections, to record locations where data has been collected, and after inspections for preparing reports. GPS information collected during partial and complete inspections often supports later decisions on bond release applications and/or termination of jurisdiction requests.

V. Federal Program for Indian Lands Permitting Activity on Hopi Tribal Lands

Significant Revision Activity

Black Mesa Project Environmental Impact Statement

On November 22, 2006, OSM published a draft environmental impact statement (EIS) in compliance with the National Environmental Policy Act (NEPA) to analyze the potential environmental impacts resulting from approval of a permit application proposing numerous revisions to the life-of-mine plans for the PWCC Kayenta and Black Mesa Mines, delivering coal to the Mohave Generating Station (MGS) located in Laughlin, NV and the Navajo Generating Station (NGS), located near Page, AZ. At that time, the application included the two mining operations, as well as: (1) the operation of the coal-slurry preparation plant located at the Black Mesa Mine; (2) the reconstruction of the coal-slurry pipeline from the coal-slurry preparation plant to the MGS and; (3) the construction and operation of a new water-supply system which would provide water from a well field near Leupp, Arizona, to the Black Mesa Mine via an approximately one hundred (100) mile pipeline. These actions were collectively referred to as the Black Mesa Project in the EIS.

On May 18, 2007, OSM suspended work on the final EIS when Southern California Edison, owner of MGS (out of operation since December 2005), terminated funding of the EIS because it had not found an operator who would restart the power plant. Although the MGS itself was never a part of the proposed Black Mesa Project, several components of the original application were dependent upon the power plant for their existence. While OSM continued to analyze these project components in the final EIS under alternative A, OSMRE decided to designate alternative B (incorporation of the Black Mesa Mine surface facilities and coal deposits into the Kayenta Mine Permit, new service and haul roads, and no operations supporting the supply of coal to MGS) as the proposed project and preferred alternative.

On May 23, 2008, OSM reopened the comment period for the proposed Black Mesa Project draft EIS with alternative B as the new preferred alternative. Previously submitted comments were considered in the final EIS. The project, if approved, would continue to supply coal to another power plant, the NGS.

The reopened comment period closed on July 7, 2008. OSM issued the final EIS on December 1, 2008. On December 22, 2008, OSM issued a record of decision approving the PWCC mine permit revision application for the Black Mesa Complex. By letter dated December 22, 2008, OSM notified commenters on the permit application of the right of affected persons to appeal the permit decision.

OSM has received ten (10) appeals. Two have been dismissed, and the remaining eight (8) were consolidated into four. On January 7, 2010, administrative law judge Robert Holt in summary decision on one of the appellant's prehearing motions vacated and remanded OSM's decision to approve Peabody Western Coal Company's permit revision

application for the Black Mesa Complex. The judge stated that OSM violated the National Environmental Policy Act by not preparing a supplemental draft environmental impact statement (EIS) when Peabody changed the proposed action in July 2008. He further stated that the final EIS, which OSM issued in November 2008, “did not consider a reasonable range of alternatives, described the wrong affected environment baseline, and did not achieve the informed decision-making and meaningful public comment required by NEPA.” The decision was not appealed.

VI. OSM Assistance to the Hopi Tribe Toward Achieving Primacy Over the Regulation of Surface Coal Mining

On December 20, 2006, President Bush signed The Tax Relief and Healthcare Act of 2006 (H.R. 6111) that included provisions for amending Section 710 of SMCRA to provide for approval of tribal regulatory programs. The new provisions of Section 710 (j) of SMCRA provide the basis for Indian tribes to apply for and obtain approval for primacy “in whole or in part”, in the same manner as States. The legislation also mandates that the Federal government provide the tribes with 100% funding for developing, administering, and enforcing an approved tribal program. OSM fully supports tribal primacy and is actively working with the tribes to assist them in meeting their goals for primacy. The Hopi Tribe has expressed a strong intent to pursue immediate primacy. OSM will proceed to review Tribal program submittals solely under the provisions of the Statute, and the provisions of Subchapter C of the Federal Regulations at 30 CFR Part 700. The Hopi Tribe, through the Office of Mining and Mineral Resources (OMMR), has produced a set of draft regulations which are now under internal review.

Annual Grant Agreement and Award

This year OSM provided \$ 390,182 in Federal assistance for the operation of the OMMR. The goals of the grant agreement, the measurements for meeting those goals and the actual accomplishments, as reported by OMMR, are discussed in part VII of this report.

Technical Information and Professional Services (TIPS), Technical Transfer and Library Activities

Employees from the Hopi Tribe were provided the opportunity to attend TIPS instructor-led training throughout the reporting period. OMMR staff participated in TIPS teleconferences to discuss OSM’s 2011 federal agency budget cuts and OSM Oversight Improvement Action.

OMMR staff participated in the monthly Black Mesa mine team and TIPS meetings via telephone conferences, discussions involved monthly updates on inspection activities, mine revision concerns, NOV’s issued by Inspectors, monthly focus of inspections for next 30 days, and how TIPS application software and equipment are being utilized by federal, state, and tribal programs.

VII. Overview of Participation by the Hopi Tribe in the Federal Program for Indian Lands

The OMMR is responsible for developing the Tribe's capability to regulate energy and minerals development on Hopi Tribal lands and those lands where the Tribe has recognized management interests in surface and subsurface mineral resources. In return for funding from OSM, the OMMR promised to develop regulations and program policies for the regulation of surface coal mining activities on Hopi lands, assist OSM with inspection duties and investigations, support enforcement actions, participate in permit reviews and mine plan modification approvals and the processing of bond release applications.

The grant agreement requires the OMMR to meet an agreed upon set of objectives. The individual objectives, the measurement for meeting the objectives and the actual accomplishments, as reported by the OMMR, are shown as follows:

Mission

To regulate energy and minerals development on Hopi Tribal lands and those lands where the Tribe has recognized management interests of surface and subsurface mineral resources.

Function

To develop Tribal regulations and program policies for the regulation of surface coal mining activities on the Hopi lands, and to assist OSM with the inspection of mining and reclamation operations, the enforcement of applicable regulations and permit conditions, mine plan and permit reviews, and bond release application reviews and approvals.

Inspection & Enforcement

Objective

To assist OSM with inspections of the BM J7-Hopi completed reclamation area located in the Hopi Partitioned Land (HPL) and with citizen complaint investigations.

Measurement

Conduct at least two (2) mine inspections and assist with citizen complaint investigations, prepare and submit inspection reports to OSM for review.

Accomplishment

Inspections of the J-7 reclaimed area on the Hopi Partitioned Land included looking at areas of reclamation to determine whether topsoil materials applied are stable. An estimated 80 percent of vegetation success has been recorded on most reclaimed areas.

In conjunction with the BLM, the OMMR conducted four coal recovery mine pit inspections during this evaluation period. As a result of these inspections the company is in compliance with its mine and coal recovery plan.

Mine Plan Review

Objective

To participate in the review of mine permit applications and permit modifications as submitted by the mining company.

Measurement

OMMR will review and provide comments to OSM on permit revision requests, that affect the Hopi Tribe's common interest, submitted by the mining company,

Accomplishment

Permit revision requests submitted by Peabody Western Coal Company are reviewed on a consistent basis. Any relevant concerns or issues raised by reviewing staff are shared with the Tribal administration to ensure relevant information is forwarded to appropriate offices.

The current process is to transmit mine plan submittals electronically followed by submittal of a hardcopy of the documents. This process has eliminated the delay in permit document retrieval, review and responses; however follow-ups should be conducted prior to permit revision approval by the Team Leader.

Two Tribal Inspectors have been participants in the monthly Mine Team teleconferences where mine issues, concerns, inspections, and permit revisions were discussed. These meetings have contributed tremendously in keeping the OMMR informed of reclamation activities at the Black Mesa/Kayenta mine as well as, on pending permit revisions.

Assessment Conferences

Objective

To participate in assessment conferences regarding Notices of Violation (NOV) issued by OSM.

Measurement

The purpose of the hearing is to allow the mine operator an opportunity to dispute the amount of the proposed penalty. OSM notifies OMMR of scheduled assessment

conferences. Tribal Inspectors will participate on at least two (2) assessment conferences scheduled by OSM.

Accomplishment

During this fiscal year the Hopi Tribe received at least two notifications of Notice of Violations (NOVs) issued by the OSM Inspector which were later assessed penalties by the Assessment Officer. The Hopi Tribe did not participate on the hearings because the NOVs issued were for violations on exclusive Navajo surface.

Administration

Objective

To develop Tribal regulations and policies with respect to the Federal Energy Policy Act and SMCRA

Accomplishment

The Hopi Tribe has expressed a strong interest in developing a regulatory program that will gain approval by the Secretary of the Interior for primacy over the administration and implementation of SMCRA. OMMR continues to make revisions to the initial draft regulations and have conducted at least three review and revision meetings during this fiscal year. In fiscal year 2010 there were major staff changes for the Hopi Tribe as a result of termination of appointed and contracted personnel, such as the legal counsel. This has delayed the legal review of the developing Ordinance. However a temporary legal counsel was hired and the Hopi Tribe is optimistic that development of the Ordinance will be completed by end of 2011.

Objective

To administer OMMR program operations and financial reporting based on the OSM Federal Requirements.

Measurement

OMMR will maintain ongoing communications with OSM regarding financial reporting, and administrative operations.

Accomplishment

The program staff met with OSM Financial Specialist at four times throughout this fiscal year to discuss program financial expenditure updates, concerns by Grant Specialist, and concerns with proposed Federal government legislation that could affect tribe's program.

The OMMR staff attended quarterly agency coordination meetings, participated on teleconferences with federal agencies, and attended meetings regarding reclamation concerns and regulatory changes. The quarterly agency coordination meetings have always been productive and serve as a source of vital information, concerns, and updates are shared with the Federal agencies (BIA, BLM, and OSM).

The OMMR staff visited the OSM Albuquerque Area Office to update the Hopi permit files.

The Director and Reclamation Specialist met with OSM's Service Manager twice this report year regarding the TIPS program and to conduct a program needs assessment.

Training

To attend trainings to broaden program staff's knowledge in areas of surface mining reclamation and capacity building.

Accomplishment

The following training classes were attended by OMMR Staff:

1. Trust Training
2. Employment Law
3. Map Design with ArcGIS I

APPENDIX A

These tables present data pertinent to mining operations and State and Federal regulatory activities on lands of the Hopi Tribe. They also summarize funding provided by OSM and Hopi Tribe staffing. Unless otherwise specified, the reporting period for the data contained in all tables is the same as the evaluation year. Additional data used by OSM in its evaluation of OSM and Hopi Tribe performance is available for review in the evaluation files maintained by the Western Region Office, in Denver, Colorado and the Albuquerque Area Office.

When OSM's Directive REG-8, Oversight of State Programs, was revised in December 2006, the reporting period for coal production on Table 1 was changed from a calendar year basis to an evaluation year basis. The change was effective for the 2007 evaluation year. However, with Change Notice REG-8-1, effective July 1, 2008, the calendar year reporting period in Table 1 for coal produced for sale, transfer or use was reestablished and is effective for the 2008 evaluation year. In addition, for the 2008 evaluation report, coal production for the two prior years reported on Table 1 was recalculated on a calendar year basis so that all three years of production reported in the table are directly comparable. This difference in reporting periods should be noted when attempting to compare coal production figures from annual evaluation reports originating both before and after the December 2006 revision to the reporting period.