

Appendix 8.3 - Disposition of Comments Received after Publishing EIS - Four Corners Power Plant and Navajo Mine Energy Project

Comment Letter from Western Environmental Law Center (May 15, 2015) – Final EIS Comments Four Corners Power Plant and Navajo Mine Energy Project (FCPP & NMEP)

Email from Mr. Mike Eisenfeld with San Juan Citizens Alliance (May 27, 2015) – “Extension request on FCPP/Navajo EIS”.

Email from Ms. Lori Goodman (previously identified as being with Dine Care) (June 25, 2015) – “ROD Extension”

Summary of Issues Raised

1. Requests 90-day extension of ROD issuance because Appendix F of the Final EIS files were not accessible for a period of time on OSMRE's website.
2. Extension request for recent change of Administration at the Navajo Nation.

Response to Comments

1. OSMRE responded to Mr. Shiloh Hernandez (with Western Environmental Law Center) on May 18, 2015 via email stating that OSMRE had repaired the broken links on its website.

The original 30-day period for issuing the ROD would have been June 1, 2015. OSMRE cannot verify how long the links were not working, but in an email from Mr. Mike Eisenfeld on May 27, 2015, Mr. Eisenfeld states that the links were broken from May 2 – May 18, a total of 16 days. OSMRE issued its ROD more than 46-days beyond the publishing of the Final EIS.

OSMRE received an email from Ms. Lori Goodman on June 25th asking if an extension of the ROD had been made. OSMRE responded to Ms. Goodman on June 29th, stating that “Since June 1st, OSMRE has been actively working to develop and finalize the ROD for the FCPP/NMEP. OSMRE does not anticipate delaying the signing of the ROD, once the document is finalized.”

2. 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. At this meeting OSMRE notified the Navajo Nation President and Vice President that the agency anticipated issuing the ROD for the FCPP/NMEP around mid-June.

Email Letter from Mr. Vincent Yazzie (June 1, 2015) – Final EIS Comments Four Corners Power Plant and Navajo Mine Energy Project

Summary of Issues Raised

1. The Biological Opinion mis-referenced the EPRI Technical Report that assessed the deposition of constituent elements in the San Juan River Basin.
2. Questioned the accuracy of the baseline for mercury based on technical sources used.
3. In general, the EPRI Technical Report and Biological Opinion are unacceptable.
4. The “supercell” DFADA should be designed differently (i.e. pyramidal).

5. Methane is naturally high in the Four Corners area and FCPP should further lower its reductions in response.
6. Would like to see solar, wind, or pump storage as alternative and would select the No Action otherwise.

Response to Comments

1. As noted in the comment, the recommended citation for the EPRI report states a 2013 publication date. This is due to the report first being released in 2013 to support the findings in the Draft EIS, and a revised version of the EPRI report was released in 2014 to expand the modeled deposition area to the entire San Juan River basin.
2. The sources used in characterizing the baseline for mercury are considered best available, including data from the National Atmospheric Deposition Program's National Trends Network and Mercury Deposition Network. Accessible on the web at: <http://nadp.sws.uiuc.edu/NADP/networks.aspx>. As well as data from the United Nations Environmental Programme's Global Mercury Assessment (2013): Sources, Emissions, Releases and Environmental Transport. Accessible on the web at: http://www.unep.org/publications/contents/pub_details_search.asp?ID=6282
3. The report and biological opinion were based on the best science available, and based on discussion among the cooperating agencies and the multi-agency Section 7 work group.
4. As described in Section 3.2.4.2, the "supercell" DFADA will be developed in phases to serve as a single impounded disposal area. The supercell will be engineered and developed to meet all applicable federal standards including EPA's new CCR rule, as described in the FEIS.
5. The CO and CO_{2e} emissions from FCPP have been significantly reduced with the shutdown of Units 1-3 and will continue to be reduced with the application of SCR on Units 4 and 5. Please see Sections 2.4.2 and 4.1 for additional discussion on the EPA FIP and emissions reductions. Specifically, CO_{2e} emissions are expected to be reduced by 4,045,526 tons per year, or 26 percent. This reduction represents EPA's administration of the Clean Air Act and a customized emission controls plan that requires the addition of BART (i.e. SCR). The published study with the findings of elevated levels of methane in the Four Corners area referenced in the comment letter notes that the primary cause of the levels is oil and gas extraction, including shale gas production in their area. Although other sources of methane, such as coal mining and ruminant animals, are mentioned, the focus is oil and gas extraction as the likely cause.
6. Please see Sections 3.1 and 3.3 of the FEIS for a discussion on the consideration of alternatives, including renewable energy.

Letter from San Juan Citizens Alliance, Western Environmental Law Center, Dine Citizens Against Ruining Our Environment, Center for Biological Diversity, and Amigos Bravos (May 30, 2015) – Supplemental Comments on Four Corners Power Plant (FCPP) and Navajo Mine Energy Project Final Environmental Impact Statement (FEIS)

Summary of Issues Raised

1. The FEIS fails to accurately consider the EPA's new CCR disposal rule. Specifically, how future operations scenarios at FCPP will be affected by the new EPA CCR rule.
2. The FEIS fails to account for the renewal of the FCPP NPDES permit for future power plant operations.
3. The Draft renewal NPDES permit for FCPP is deficient.
4. NNEPA water quality standards should apply to Morgan Lake.

Response to Comment

OSMRE acknowledges and clarifies that EPA signed the final rule on December 19, 2014 and publication in the Federal Register occurred on April 17, 2015. The FEIS states on both pages xiv and 3-17 that the Final Rule is effective on Indian lands and therefore is applicable to the FCPP. APS' commitment to

comply with all provisions of the Final Rule is documented in both the draft EIS and FEIS. The FEIS takes a hard look at potential impacts of future operations of the FCPP considering the Final Rule. Although the FEIS evaluates impacts of operations prior to publication of the rule, the Final Rule itself does not apply retroactively and only applies to existing facilities and future impoundments. With regard to the specific items mentioned:

- a. FEIS discusses regulation of beneficial reuse options for CCR on page 2-26.
- b. FEIS specifically states that APS would be required to comply with location restrictions, minimum design criteria and operating criteria for proposed new ash disposal areas
- c. FEIS discusses groundwater monitoring and corrective action requirements on page 4.5-60
- d. FEIS discusses closure and post-closure care on page 4.15-23

NPDES permit conditions are described in the FEIS on page 4.5-2. OSMRE clarified the status of the FCPP NPDES permit renewal in Appendix G. Response to Comments.

Adequacy of the draft renewal NPDES permit for FCPP is the jurisdiction and responsibility of EPA. EPA is a Cooperating Agency for the FCPP and NMEP and has provided information regarding the FCPP NPDES permit as well as reviewed the FEIS and response to comments, specifically with regard to discussion of the NPDES permit. The FEIS provides factual information on the status of the permit and existing permit conditions and takes a hard look at potential impacts of FCPP operations considering compliance with the NPDES permit. Consideration of the potential construction and operation of a wastewater treatment facility is not indicated by the review, and would therefore be speculative and is not a reasonably foreseeable regulatory obligation; OSMRE consultation with EPA has confirmed that EPA has administratively extended the existing NPDES permit.

NNEPA water quality standards do not apply to Morgan Lake; however, the FEIS compares water quality data to NNEPA standards in order to evaluate potential impacts. As described in Section 4.5, no major adverse water quality impacts were identified.

Letter from Rosemary Knoki, Ed.D., Knoki Research Associates (May 17, 2015) – Response 225.075, Final Environmental Impact Statement, Four Corners Power Plant and Navajo Mine Energy Project, Volume 3, Appendix F; U.S. Department of the Interior, Office of Surface Mining Reclamation and Enforcement, Denver, Colorado; May 2015, p. 4-326.

Summary of Issues Raised

1. The FEIS fails to consider the San Juan River as a sacred site.
2. Provides report that describes the traditional use, religious importance, and ceremonial value of the San Juan River to the Navajo Nation.

Response to Comment

The comment states that the EIS does not provide a definition of sacred sites. "Sacred site" is not a relevant term to use in the EIS because, as defined within the Federal nexus under Executive Order 13007 (EO), a "sacred site means any specific, discrete, narrowly delineated location on Federal land that is identified by an Indian tribe, or Indian individual determined to be an appropriately authoritative representative of an Indian religion, as sacred by virtue of its established religious significance to, or ceremonial use by, an Indian religion; provided that the tribe or appropriately authoritative representative of an Indian religion has informed the agency of the existence of such a site" and the EO states that Federal land does not include Indian trust lands. Therefore, a definition of sacred sites would be semantically irrelevant because the Area of Potential Effects that is adjacent to the San Juan River is on Indian trust lands. However, in taking the commenter's use of "sacred site" in meaning rather than verbiage, the San Juan River is now further assessed for its value as a Traditional Cultural Property (TCP), which is a type of historic property.

TCP studies for the project did not identify the San Juan River as a TCP during the EIS evaluation. However, in response to the current comment, a Navajo Nation Historic Preservation Department (NNHPD) study was examined that provides the basis for defining the TCPs of the Navajo Nation (Martin et al. 2002). In that study, NNHPD identified the San Juan River as a sacred river, which NNHPD also details as a type of TCP. The archaeological inventory report for the power plant built environment, which includes the San Juan River intake, has not yet been approved by NNHPD. NNHPD, BIA, and OSMRE have requested additional information be added to that inventory report and that the San Juan River be noted as being a TCP within the report.

The EIS does not specifically detail the San Juan River as a TCP; however, the EIS is adequate because it details that the Programmatic Agreement Regarding Management of Historic Properties Associated with the Four Corners Power Plant, Ancillary Facilities, and Transmission Lines (PA) will be used for the process to resolve any adverse effects to historic properties. An agency may defer final identification and evaluation of historic properties if it is specifically provided for in a PA, as stated in 36 CFR 800.4(b). Any future activities which may affect the San Juan River shall be mitigated, if mitigation is required, in consultation with the Navajo Nation Tribal Historic Preservation Officer under the process contained within the PA.

The EIS addresses the potential effects of water released from Morgan Lake into the Chaco River, which feeds into the San Juan River.

REFERENCES CITED

2002 Martin, Judy A., Robert M. Begay, and Steven Begay
Significant Traditional Cultural Properties of the Navajo People. Traditional Culture Program, Navajo Nation Historic Preservation Department, Window Rock, Arizona.

Letter from U.S. Environmental Protection Agency, Kathleen Martyn Goforth (June 1, 2015) – EPA Comments of the Four Corners Power Plant and Navajo Mine Energy Project Final Environmental Impact Statement, Navajo nation, San Juan County, New Mexico.

Summary of Issues Raised

1. EPA rated the Draft Environmental Impact Statement (DEIS) as Environmental Concerns - Insufficient Information (EC-2) due to concerns regarding:
 - o The existing contamination of groundwater from coal combustion residue (CCR) disposal and the need for enforceable commitments regarding future CCR management, monitoring and remediation.
 - o The assessment of cumulative health impacts from continued operation of the project, given the severely compromised existing public health environment.
 - o Public notices discouraging the use of groundwater for livestock watering on the reclaimed mine areas be issued, because livestock grazing is a designated post-reclamation land use.
 - o A procedure for complaints regarding dust from the ash disposal piles.
2. The FEIS concludes that "mine methane capture was determined to be infeasible"; however, it is not clear whether it was determined to be technically or economically infeasible.
3. If mine methane capture was determined to be economically infeasible, the FEIS doesn't state whether California Air Resources Board (CARB) offset credits were considered in the methane capture project feasibility economics. A surface coal mine methane project qualifies under the CARB Cap-and-Trade Program as a compliance offset with a value of about \$10/ton of carbon dioxide equivalent (tCo_{2e}).
4. There is an error in the units for residual chlorine that will be allowed under the National Pollutant Discharge Elimination System (NPDES) permit on p. 4.5-2.

Response to Comments

1. The USEPA letter acknowledges that OSMRE responded to each of the concerns raised during their review of the Draft EIS. OSMRE appreciates EPA's assistance as a Cooperating Agency in adequately resolving the concerns with the DEIS.
 2. Section 4.2.5, Climate Change Mitigation Measures, addresses the feasibility of mine methane capture. The section states: "Methane in the Navajo Mine coal seams exists in a very low pressure environment, which would require the seams to be pressurized during the extraction process. Additionally no infrastructure, such as pipeline collection systems, is near enough to the mine to make collection and resale feasible." The FEIS intended to indicate that mine methane capture at Navajo Mine is technically very difficult, and is not an economic resource, making it economically infeasible. There was no further consideration of the California Air Resources Board offset credits.
 3. Table 4.5-1 indicated discharge limits for chlorine at 954 mg/L. To clarify, the correct units are pounds per day.
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