12/29/2015

U.S. DEPARTMENT OF THE INTERIOR
OFFICE OF SURFACE MINING RECLAMATION AND ENFORCEMENT (OSMRE)
FINDING OF NO NEW SIGNIFICANT IMPACT (FONNSI)
FOR

Navajo Mine Area IV North Permit Revision Application
Federal Permit NM-0003G
Navajo Tribal Lease 14-20-603-2505
OSMRE Permitting Project Tracking Code: NM-0003-F-R-03 & NM-0003-F-0029

A. Introduction

The Navajo Mine is located on approximately 33,600 acres of land leased from the Navajo Nation and located entirely within the boundaries of the Nation. The mine is located south of the San Juan River at Fruitland, New Mexico and extends south for approximately 25 miles. The Area IV North Surface Mining Control and Reclamation Act (SMCRA) permit revision proposes to mine 704 acres to recover 12,763,000 tons of coal on Area IV North of the Navajo Mine. An additional 126 acres of land would be disturbed for the installation of roads and other support facilities needed for mining the coal, including 75 acres of surface disturbance needed for the proposed realignment of the Burnham Road (in Areas III and IV). In total the permit revision application proposes to disturb approximately 830 acres all within the existing mine permit boundary.

In 2012 OSMRE prepared an Environmental Assessment (EA) to analyze the potential environmental impacts of the Area IV North permit revision application. On the basis of the 2012 EA, OSMRE determined that there would be no significant impacts as a result of the action and approved the SMCRA Permit revision. On April 6, 2015, the Colorado District Court vacated the EA/Finding of No Significant Impact (FONSI) and the 2012 OSMRE approval of the Area IV North SMCRA permit revision application, on the basis that OSMRE failed to adequately consider the reasonably foreseeable combustion-related effects resulting from the expansion of operations at the Navajo Mine. Consistent with the Court's decision, the only change to the EA is consideration of the combustion related effects of Area IV North mining.

A new EA has been prepared to extend the analyses in the 2012 EA by tiering to (incorporating by reference) the analysis presented in the Four Corners Power Plant (FCPP) and Navajo Mine Energy Project Environmental Impact Statement (FCPP/NMEP EIS), finalized and published on May 1, 2015. The Colorado District Court's decision noted that all parties agreed that OSMRE may be able to comply with NEPA in regards to its obligations relating to its consideration of the SMCRA permit revision application by "tiering" to the comprehensive FCPP/NMEP EIS. The 2015 EA adds analysis not included in the 2012 EA to address the reasonably foreseeable combustion-related effects of the Navajo Transitional Energy Company's (NTEC) proposed operations at the Navajo Mine. Combustion-related effects associated with Area IV North coal, occurring prior to July 2016, are directly analyzed in the EA. Combustion-related effects associated with the remaining coal from Area IV North that would be combusted after July 2016 (until approximately 2020) was previously evaluated in the FCPP/NMEP EIS and is incorporated by reference in the EA.

Based on the 2012 approval the following actions were completed prior to the April 6, 2015 vacatur:

- As of March 1, 2015, 530 of the 830 acres of Area IV North were disturbed, and 135 acres of the 310 mineable acres were mined.
- The realignment of Burnham Road was completed and no further improvements are proposed.
- The U.S. Army Corps of Engineers (USACE) authorized under Section 404 of the CWA approximately 1.7 acres of fill in waters of the U.S. associated with mining. Some of the fill activity authorized by this permit has occurred.
- The Bureau of Land Management (BLM) has approved the proposed Resource Recovery Protection Plan (mining plan)[1]; this is a completed federal action.

With the exception of OSMRE's approval of the SMCRA permit revision application, completed permits/authorizations (cited above) considered in the 2012 EA and FONSI were not challenged in District Court and were not included in the 2015 Colorado District Court vacatur and remand order.

B. Statement of Environmental Significance of the Proposed Action

The undersigned person has determined that OSMRE's approval of the Area IV North Permit Revision Application with additional conditions would not have any new significant impact on the quality of the human environment, that has not already been analyzed in the FCPP/NMEP EIS, under section 102(2)(C) of National Environmental Protection Policy Act of 1969 (NEPA), 42 U.S.C. §§ 4332(2) (C) and therefore, an Environmental Impact Statement (EIS) is not required. This finding of no new significant impact is based on the analysis included within OSMRE's 2015 Area IV North EA which identifies and discusses the environmental impacts of the proposed action and which tiers to the FCPP/NMEP EIS in accordance with 43 CFR 46.140 and incorporates by reference relevant information from the FCPP/NMEP EIS, as noted in specific sections of the EA in accordance with 43 CFR 46.135. OSMRE finds that the analysis and assumptions used in the FCPP/NMEP EIS are appropriate for the analysis of the proposed action, and that the conditions and environmental effects described in the FCPP/NMEP EIS are still valid and any exceptions have been addressed in the EA.

OSMRE's initial review confirmed that the scope of this permit revision application did not meet the criteria addressed in Chapter 13, sub-section 13.4(A) (4) of Part 519 of the Department of Interior's NEPA Manual, for actions normally requiring preparation of an EIS. This EA was prepared by an environmental consulting firm, operating exclusively at the direction of OSMRE. During the development of the draft EA, OSMRE independently reviewed the work product consistent with 43 CFR 46.320 and all relevant provisions of the Council on Environmental Quality (CEQ) regulations, and other program requirements. This independent review of the EA included OSMRE's evaluation of all environmental issues discussed therein. OSMRE takes full responsibility for the scope and the content of the EA. Additionally, OSMRE bases its findings on the following reasons.

C. Reasons

[1] The BLM regulations at 43 CFR 3480.0-4 provide that certain sections of Part 3480, including the maximum economic recovery (MER) standard (43 Code of Federal Regulations [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 ultimate maximum recovery standard and the MER standard achieve the similar management objective of maximum mineral development. In the EA, the Mine Plan approved by the BLM for the Proposed Action is referred to as a Resource Recovery and Protection Plan (mining plan).

OSMRE has evaluated the information presented within this EA and has determined that the proposed action would cause no new significant adverse environmental effects, that have not already been analyzed in the FCPP/NMEP EIS or that would not be mitigated in accordance with the eight standard permit conditions within the federal regulations at 30 CFR 773.17, the standard permit terms and specifications of the Permit Application Package (PAP), two special permit conditions requiring supplementary hydrologic monitoring and an updated Cultural resources Programmatic Agreement (PA) for Area III, Area IV and the Burnham Road (see Appendix B of the EA). This determination is also supported by analysis presented in the 2012 Biological Evaluation (2012 BE) [see Appendix D of the EA], the Four Corners Power Plant and Navajo Mine Energy Project Biological Assessment (FCPP/NMEP BA), the Four Corners Power Plant and Navajo Mine Energy Project Biological Opinion (FCPP/NMEP BO), and the 2015 Navajo Mine Area IV North Biological Assessment (2015 BA) [see Appendix G of the EA].

The attached EA considers a reasonable range of alternatives to the proposed action, discusses the potential environmental effects of the proposed action and provides sufficient evidence and analysis for this FONNSI.

Based upon OSMRE's review of the EA and the supporting documents, OSMRE has determined, in accordance with 43 CFR 46.140, that the proposed action is not a major federal action and will have no new significant effect on the quality of the human environment individually or cumulatively with other actions within the region, that has not already been analyzed in the FCPP/NMEP EIS. No new environmental effects meet the definition of significance in context or intensity, as defined within the federal regulations at 40 CFR 1508.27. An EA prepared in support of an individual proposed action can be tiered to a programmatic or other broader-scope environmental impact statement, as is this EA. A finding of no significant impact other than those already disclosed and analyzed in the EIS to which the EA is tiered may be called a "finding of no new significant impact" (43 CFR 46.140 (c)). Therefore, an EIS is not required and OSMRE has made a finding of no new significant impact. This finding is based on the context and intensity of the project as described in the following paragraphs.

Context: The approval of the Area IV North Permit Revision Application applies to an existing mining operation that supplies an existing power plant (FCPP), both of which have operated continuously since 1960. The Area IV North mining area would provide a stable coal supply source to the FCPP until at least July 2016, when OSMRE's July 15, 2015 decision for the Pinabete SMCRA Permit Area authorizes the initiation of mining in that area. Although there are no federal actions being considered for the continued operation of the FCPP, the combustion-related effects of the Area IV North coal being burned at the FCPP up until July 2016 are fully analyzed in the 2015 Area IV North EA; and were analyzed in the FCPP/NMEP EIS for the period after July 2016. The Area IV North approval is for a site-specific action directly involving lands within the SMCRA coal permit area for the Navajo Mine. The mining proposed within the Area IV North permit revision application area falls entirely within the Navajo Mine permit boundary. Combustion related impacts associated with use of Area IV North coal at FCPP will, however, extend to a regional scale. Nevertheless, the approval of the Area IV North Permit Revision Application does not in and of itself have international, national or regional importance.

Intensity: The following discussion is organized around the 10 Significance Criteria described at 40 CFR 1508.27. The following have been considered in evaluating intensity for this proposal:

1. **Impacts that may be both beneficial and adverse:**

The attached EA has analyzed and disclosed both the beneficial and adverse effects of the proposed Area IV North Significant Revision. The beneficial effects include:

Continued mining at Navajo Mine which would:

- Result in additional royalties and tax revenue for the tribe; and
- Provide the opportunity for continued employment for tribal members.

Adverse effects include minor impacts to soils, vegetation, wildlife, hydrology, and visual resources that will occur temporarily during mining with minor inconveniences associated with road construction and transportation reroutes. Short term localized impacts related to blasting will occur. Other longer term effects may include relocation of grazing areas, changes in grazing capacity and access to grazing areas. Additionally, impacts to cultural resources are addressed through the PA, and would be considered permanent.

Combustion related adverse impacts associated with the use of coal from Area IV North at the FCPP are as follows;

- Moderate impacts to surface water quality through deposition of metals from FCPP air emissions, specifically mercury and selenium.
- Minor noise impacts associated with noise generation at FCPP
- Moderate visual impacts associated with construction of the new Dry Fly Ash Disposal Areas (DFADAs) at FCPP
- Minor air quality impacts associated with ozone generation at FCPP
- Minor climate change impacts associated with FCPP Green House Gas (GHG) emissions
- Moderate impacts to the Colorado pikeminnow and razorback sucker related to FCPP diversions from the San Juan River and entrainment at the FCPP diversion
- Moderate impacts to public health and safety from FCPP emissions of Criteria Pollutants, Hazardous Air Pollutants (HAPs) and Compounds of Chemical Concern (COPC)

Overall, it is expected that there would be limited negative environmental and health impacts. The proposed action will not result in any new significant impacts not already analyzed in the FCPP/NMEP EIS.

2. **Degree of effect on public health and safety:**

OSMRE has selected the Proposed Action with Conditions alternative as presented in the EA. A detailed analysis of impacts to human health and safety can be found in section 4.15 of the EA. Indirect moderate impacts to public health and safety are associated with combustion of Area IV North coal at FCPP, specifically emissions of Criteria Pollutants, HAPs and COPCs. Despite this moderate impact, the selected alternative achieves the balance of resource protection and beneficial uses of the human environment envisioned by NEPA.

3. **Unique characteristics of the geographic area such as proximity to historic or cultural resources, park lands, prime farmlands, wetlands, wild and scenic rivers, or ecologically**

critical areas:

There are no park lands, prime farmlands, wild and scenic rivers, or ecologically critical areas in the project area. There are no wetlands within the Area IV North location of the mine or the FCPP.

As part of its compliance efforts, OSMRE must comply with applicable federal cultural resources management statutes, including the National Historic Preservation Act ("Section 106") and the Native American Graves Protection and Repatriation Act ("NAGPRA"). As described in the EA, impacts to cultural resources in the project area were identified and recorded for the project area(s), evaluated for their importance, and potential impacts to those determined important, were mitigated. An amended Programmatic Agreement (PA) regarding Management of Historic Properties at Navajo Mine at Area III, IV North, Area IV South and the Burnham Road North and South realignments has been developed and executed between OSMRE, Bureau of Indian Affairs (BIA), BLM, the US Environmental Protection Agency (USEPA), USACE, the Navajo Nation Tribal Historic Preservation Officer, the Advisory Council on Historic Preservation, NTEC, and BHP Billiton Mine Management Company (MMCo). Furthermore, the selected alternative contains a condition that requires implementation and application of the updated PA.

The deposition area of the air emissions from FCPP occur in critical habitat for the Colorado Pikeminnow and the Razorback Sucker. OSMRE has consulted with the U.S. Fish and Wildlife Service (USFWS) on this and other effects under the endangered species act, as described in Item 9 below.

Therefore the unique characteristics of the Project area have been considered in the analysis, either the characteristics are not present, or the proposed Project would not result in any new significant impacts not already analyzed in the FCPP/NMEP EIS.

4. Degree to which the possible effects on the quality of the human environment are likely to be highly controversial:

The definition of highly controversial in the NEPA context is provided in 43 CFR 46.30, and refers to circumstances where a substantial dispute exists as to the environmental consequences of the proposed action, and does not refer to the existence of opposition to a proposed action.

Public input regarding the Proposed Action has been solicited during a wide-ranging project planning process. Electronic versions of the currently approved PAP for the Navajo Mine, the Area IV North permit revision application, the 2012 EA and 2012 FONSI were made available to the public on OSMRE's Western Region webpage and at the Farmington, New Mexico, Public Library.

The revised EA was available on the OSMRE website and by request to OSMRE as noted in the EA, the FONNSI, and public/stakeholder noticing for the EA. The Revised EA and unsigned FONNSI were posted on OSMRE's Western Region website for public review and comment on October 15, 2015. Public notices were placed in the Navajo Times, Farmington Daily Times and Gallup Independent newspapers. Radio announcements were aired in Navajo and English on AM 660 in Window Rock, AZ and AM 960 in Farmington, NM. On October 26, 2015, OSMRE discovered that it had inadvertently cut off the pages from the end of Chapter 4 of the publicly available versions. OSMRE immediately corrected the EA the morning of October 26th. On October 29, 2015, OSMRE ran new public notices

extending the public comment period from November 16th to November 25, 2015.

Additionally, letters soliciting comments and announcing the availability of the revised EA and unsigned FONNSI were mailed to sixteen Federal, State and Tribal governmental agencies as well as all individuals that had commented on the 2012 EA & FONSI.

Public workshops were conducted for the 2012 EA which addressed the same Proposed Action. Two public workshops were held in April of 2011 at the Tiis Tsoh Sikaad (Burnham) and Nenahnezad Chapter Houses, on the Navajo Nation near the project site. OSMRE and USACE personnel made presentations and a series of informational posters were on display. Technical personnel from OSMRE, BIA, BLM, USACE and Navajo Nation Surface Mining Program (NSMP), along with a Navajo/ English interpreter and a court reporter, were available to answer and record comments. Comment forms were made available for written comments. In addition, OSMRE conducted an informal conference on June 15, 2011, at the Nenahnezad Chapter House on the SMCRA permit revision application. A court reporter and a Navajo/English interpreter were also available at the informal conference. In addition, the EA uses the results of recent public involvement conducted in 2012 and 2014 associated with the FCPP/NMEP EIS published in May 2015, which also discussed continued mining at the Navajo Mine including Area IV North. A summary of issues from the 2011 public meetings is included in Section 1.8 of the EA and is supported by the summary of issues provided in the FCPP/NMEP EIS, which has been incorporated by reference into the EA.

In addition, this EA also received and considers comments received during the 42-day review period of the EA, detailed comment responses can be found in Appendix H of the EA. Concerns raised by the public are also discussed throughout the document.

Based on the environmental analysis, the effects on the quality of the human environment are not considered highly controversial.

5. Degree to which the possible effects on the quality of the human environment are highly uncertain or involve unique or unknown risk.

No highly uncertain or unknown risks to the human environment were identified as a result of the environmental analysis. The action is continuation of mining using known mining techniques and proven reclamation methods in a regulatory framework. There are no highly uncertain or unique or unknown risks as a result of combustion of the coal at FCPP, which is an existing power plant operating in compliance with an extensive regulatory framework.

6. Degree to which the action may establish a precedent for future actions with significant effects or represents a decision in principle about a future consideration:

The action is a continuation of mining using known mining techniques and proven reclamation methods, which supplies coal to an existing power plant (FCPP) operating in compliance with an extensive regulatory framework. The selected alternative neither establishes a precedent for future OSMRE actions with significant effects nor represents a decision in principle about a future consideration.

7. Whether the action is related to other actions with individually insignificant but

cumulatively significant impacts:

Impacts identified for the selected alternative, in conjunction with any impacts of other past, present, or reasonably foreseeable future actions, will result in negligible to moderate impacts to the natural and human environment, with the exception of potentially cumulative major impacts to water quality and aquatic species associated with FCPP emissions in combination with the 16 other power plants in the region, as presented in the EA and addressed in the FCPP/NMEP EIS. However, no new cumulatively significant impacts not already analyzed in the FCPP/NMEP EIS were identified for the selected alternative.

8. Degree to which the action may adversely affect district, sites, highways, structures, or objects listed on the National Register of Historic Places or may cause loss or destruction of significant scientific, cultural, or historical resources:

See Item 3 above.

9. Degree to which the action may adversely affect an endangered or threatened species or its critical designated habitat:

OSMRE has completed several Endangered Species Act (ESA) section 7 consultations with USFWS since the Life of Mine Permit was issued in 1988. The prior biological assessments/evaluations have concluded that no listed species or designated critical habitat would be adversely affected by mining operations.

In addition to USFWS consultations, all federal actions at the Navajo Mine were evaluated by the Navajo Nation Department of Fish and Wildlife (NNDFW) and the Navajo Nation Natural Heritage Program (NNHP) to consider potential impacts to Navajo Nation listed sensitive species. In addition annual raptor and wildlife monitoring has been ongoing at Navajo Mine since 1993 and continues today in all active areas of the mine. For the proposed action biological surveys were conducted to evaluate the potential presence or absence of federal and Navajo Nation listed species and to determine whether activities proposed by the current proposed action would have potential to impact species from either list. The biological surveys were conducted in an Action Area delineated based on consideration of direct and indirect effects of the proposed action.

OSMRE prepared the 2012 BE to analyse the potential impacts of the Area IV North permit revision on threatened and endangered (T&E) species, which is included as Appendix D of the EA. The 2012 BE found that the proposed action may affect, but is not likely to adversely effect, the southwestern willow flycatcher. There is no currently suitable nesting habitat in the Navajo Mine; however reclamation activities may provide suitable nesting areas in the future. There is very limited stopover habitat for birds in migration. The flycatcher was the only listed species within the mine area with the potential to be affected by the proposed action. The potential effects on listed species that could result from the mining of Area IV North coal under the Proposed Action were addressed in ESA Section 7 Consultation conducted for the 2012 EA and supported by the 2012 BE. The USFWS concurred with OSMRE's affects analysis in a letter dated January 19, 2012 and NNDFW provided its Biological Resources Compliance Form for Area IV North, Area III and Burnham Road, on November 30, 2011.

In August 2014 OSMRE finalized the FCPP/NMEP BA and provided the BA to the USFWS. The

USFWS subsequently issued their FCPP/NMEP BO on April 8, 2015. The FCPP/NMEP BA and FCPP/NMEP BO evaluated the ongoing mining at Navajo Mine (including that within Area IV North), future operations on the Pinabete Permit Area and ongoing combustion at the FCPP for the next 25 years, including potential impacts on federally listed species. The FCPP/NMEP BA and FCPP/NMEP BO considered the effects of past, present and reasonably foreseeable future actions on listed species, and evaluated impacts based on the total impact associated with all of those actions. The past actions considered in the FCPP/NMEP BA and FCPP/NMEP BO included OSMRE's prior 2012 approval of the Area IV North permit revision application. The Area IV North mining area and all associated impacts, including those associated with the atmospheric deposition from the burning of Area IV North coal at FCPP, lie entirely within the Action Area considered in the FCPP/NMEP BA and FCPP/NMEP BO. The FCPP/NMEP BO concluded that the FCPP/NMEP project will not jeopardize the continued existence of the Colorado pikeminnow, razorback sucker, southwestern willow flycatcher or yellow-billed cuckoo, nor will it adversely modify or destroy their designated critical habitats in the San Juan River Basin. The FCPP/NMEP BO issued by the USFWS also concurred in OSMRE's determination, within the August 2014 FCPP/NMEP BA, that the FCPP/NMEP project was not likely to adversely affect the other listed species.

OSMRE prepared the 2015 BA to further analyse the potential impacts of the Area IV North permit revision on T&E species, which is available as Appendix G of the EA. OSMRE's determination in the 2012 BE was not at issue in the litigation and remain valid thus the effects analyzed in the 2012 BE are not readdressed in the 2015 BA. Rather the 2015 BA focuses on coal combustion-related effects at FCPP, in light of the FCPP/NMEP BA and FCPP/NMEP BO. Based on the Conservation Measures (CMs) proposed in the 2015 BA, along with the binding CMs and Reasonable & Prudent Measures from the FCPP/NMEP BO that become effective January 1, 2016; OSMRE concludes that the Proposed Action (OSMRE approval of the Area IV North permit revision application) may affect but is not likely to adversely affect any endangered or threatened species or their proposed or designated critical habitat. For the 2015 Area IV North BA, OSMRE consulted with the USFWS on its effects determination for the Proposed Navajo Mine Area IV North permit revision application. OSMRE provided the 2015 BA for the Area IV North permit revision application to the USFWS on October 13, 2015. In a letter dated October 19, 2015, the USFWS concurred with OSMRE's determination of "may affect, not likely to adversely affect" the Colorado pikeminnow, razorback sucker, the flycatcher and the cuckoo, and their respective designated critical habitats.

10. Whether the action threatens a violation of federal, state, or tribal environmental protection law:

Federal, state, and tribal agencies with an interest in the proposed action were properly notified of and given appropriate comment time to respond. The selected alternative does not threaten a violation of any federal, state, or tribal environmental protection law.

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12-29-2015

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Date