

RESOLUTION OF THE  
RESOURCES AND DEVELOPMENT COMMITTEE  
OF THE 23<sup>rd</sup> NAVAJO NATION COUNCIL --- FIRST YEAR, 2015

AN ACTION

RELATING TO RESOURCES AND DEVELOPMENT; APPROVING A REVOCABLE USE PERMIT FOR NAVAJO TRANSITIONAL ENERGY COMPANY TO INSTALL, OPERATE TWO (2) GROUNDWATER MONITORING WELLS AND ACCESS ROADS ON NAVAJO TRUST LANDS TO COLLECT REQUIRED GROUND WATER SAMPLES FOR PERMIT OBLIGATIONS LOCATED ADJACENT TO THE NAVAJO TRANSITIONAL ENERGY COMPANY COAL MINING LEASE, IN THE VICINITY OF NENAHNEZAD CHAPTER, NAVAJO NATION (SAN JUAN COUNTY, NEW MEXICO)

BE IT ENACTED:

**Section One. Findings**

- A. Pursuant to 2 N.N.C. §500, the Resources and Development Committee is hereby established as a standing committee of the Navajo Nation Council; and
- B. Pursuant to 2 N.N.C. § 501 (B)(2)(a), the Resources and Development Committee grants final approval for permits, on Navajo Nation trust lands; and
- C. The Navajo Transitional Energy Company (NTEC) of P.O. Box 1749 Window Rock, Arizona 86515, has submitted a request for revocable use permit to install and operate two (2) groundwater monitoring wells and access roads on Navajo Nation Trust lands, San Juan county, New Mexico attached hereto and incorporated as Exhibit "A"; and
- D. The groundwater monitoring wells and access roads consist of approximately 0.18527 acres, more or less, of Navajo Nation Trust Lands located in Sections 3 and 4, Township 27 North, Range 15 West, NNPM, San Juan County, New Mexico, and the location is more particularly described on the survey maps, attached hereto and incorporated herein as Exhibits "B"; and
- E. The Project Review Section with the Navajo Land Department has obtained the consents from the affected

land users (i.e. grazing permittees) attached hereto and made a part hereof as Exhibit "C"; and

- F. The environmental and archaeological studies have been completed and are attached hereto and made a part hereof by this reference.
- G. All environmental and archaeological surveys and studies have been completed and received appropriate clearances attached hereto and incorporated herein by this reference. The Navajo Nation Fish and Wildlife Biological Resources Compliance Form is attached as Exhibit "E." The Biological Evaluation Proposed CA-1 and CA-6 Groundwater Monitoring Wells is attached as Exhibit "F." The Archaeological Inventory Report Documentation Page and Navajo Nation Archaeology Department Site Survey and Management Form are attached as Exhibit "G." The Cultural Resources Compliance Form is attached as Exhibit "H."

## **Section Two. Approval of Revocable Use Permit**

- A. The Resources and Development Committee of the Navajo Nation Council hereby approves the Revocable Use Permit for the Navajo Transitional Energy Company to install, operate and maintain two (2) groundwater monitoring wells and access roads on Navajo Nation Trust Lands to collect required ground water samples for permit obligations located adjacent to BHP Mining Lease, San Juan County, New Mexico. The location is more particularly described on the maps, attached hereto as Exhibit "B."
- B. The Resource and Development Committee of the Navajo Nation Council hereby approves the Revocable Use Permit subject to, but not limited to, the following Terms and Conditions attached hereto and incorporated herein as Exhibit "D".
- C. The Resource and Development Committee of the Navajo Nation Council hereby authorizes the President of the Navajo Nation to execute any and all documents necessary to affect the intent and purpose of this resolution.

CERTIFICATION

I, hereby, certify that the foregoing resolution was duly considered by the Resources and Development Committee of the 23<sup>rd</sup> Navajo Nation Council at a duly called meeting at Navajo Nation Council Chambers, Window Rock, Navajo Nation (Arizona), at which quorum was present and that same was passed by a vote of 4 in favor, 0 opposed, 0 abstain this 9<sup>th</sup> day of June, 2015.

A handwritten signature in blue ink, appearing to read 'Alton Joe Shepherd', is written over the text of the certification.

Alton Joe Shepherd, Chairperson  
Resources and Development Committee  
Of the 23<sup>rd</sup> Navajo Nation Council

Motion: Honorable Davis Filfred  
Second: Honorable Leonard Tsosie  
Vote: 4-0 (chair not voting)

BHP Billiton Mine Management Company

11 November 2014

Attn: Mike Halona  
Division of Natural Resources  
Navajo Land Department  
Project Review Section  
P.O. Box 2249  
Window Rock, AZ 86515



BHP Billiton Limited  
BHP Billiton Mine Management Company  
PO Box 1717  
16 Miles South of Fruitland on CR 6675  
Fruitland, New Mexico 87416 USA  
Tel +1 505 598 4200 Fax +1 505 598 3361  
bhpbilliton.com

**Re: Application to amend Right-of-Way, Navajo Nation Reference No. 000402: Navajo Mine – Water Monitoring Station to a Revocable Use Permit Application – Located within S ½ SE ¼ of Section 11, N ½ NW ¼ of Section 13, T27N, R16W, San Juan County, New Mexico**

Dear Mr. Halona,

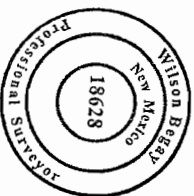
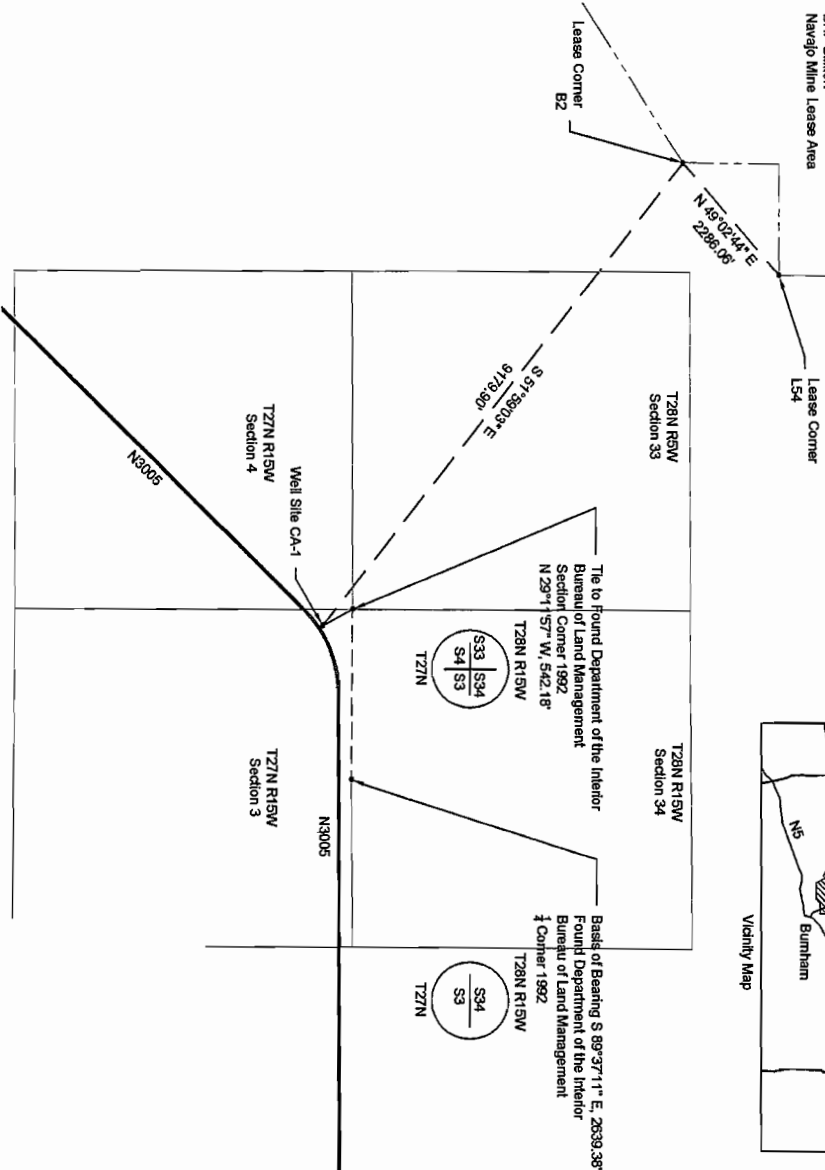
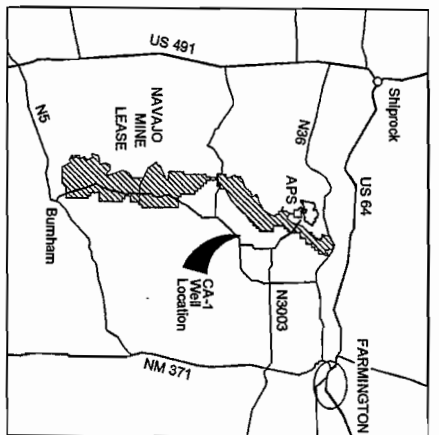
BHP Billiton Mine Management Company (MMCo.), as operator of the mine, and on behalf of Navajo Transitional Energy Company (NTEC), re-submits the application for Navajo Mine Environmental Monitoring Equipment (Document Reference No. 000402). In the meeting on June 30, 2014, Ryan Hunter, Arlene Benally, and you agreed that a Right-of-Way (ROW) was not required for this project instead a Revocable Use Permit (RUP) was needed. Therefore, the application is now re-submitted as an RUP. This new application replaces the prior application for a ROW.

Since the original application was submitted by BHP Navajo Coal Company, the application has been revised to reflect the current owner as NTEC. The RUP is being submitted in duplicate. The original Executive Official Review list is being returned with this RUP submittal to demonstrate the departments that have previously reviewed and approved this submittal as a ROW.

Should you need any additional information, please contact either Yolanda Benally at (505) 598-3375 or Jason Harvey (505) 598-2840. Thank you.

Sincerely,

**Jason Harvey**  
Specialist Land Management



BHP Billiton  
Navajo Coal Company  
Environmental Quality Well Site CA-1  
Parcel and Access Right of Way Description

A parcel of land in NW 1/4 of Section 3, T27N, R15W, San Juan County, New Mexico more particularly described as follows:

Beginning at a point called CA-1 from which the northwest section corner of Section 3, T27N, R15W, NMPLM bears N 29°11'57" W, a distance of 542.18 feet.  
Thence S 71°45'20" W, 38.08 feet to the southwest corner of the parcel which is the Point of Beginning.  
Thence N 14°29'11" W, 38.11 feet to the northwest corner.  
Thence N 69°38'22" E, 33.25 feet to an angle point.  
Thence S 63°48'30" E, 25.74 feet to an angle point.  
Thence S 55°58'26" E, 5.38 feet to an angle point.  
Thence S 11°20'16" W, 10.48 feet to an angle point.  
Thence S 75°30'49" W, 51.43 feet to the Point of Beginning.

Said parcel contains 0.0367 acre (1800.0 sq. ft.), more or less.

A strip of land for ingress and egress to the above mentioned Well Site CA-1, 10 feet in width, 5 feet on each of the described centerline, in NW 1/4 of Section 3 and NE 1/4 of Section 4, T27N, R15W, San Juan County, NM Mexico more particularly described as follows:

Beginning at a point called CA-1 from which the northwest section corner of Section 3, T27N, R15W, NMPLM bears N 29°11'57" W, a distance of 542.18 feet.  
Thence S 79°17'01" W, 38.08 feet to a point along the west edge of Well Site CA-1 parcel described above which is the Point of Beginning of right of way Station 0+00.  
Thence S 75°30'49" W, 10.00 feet to an angle point.  
Thence S 69°56'28" W, 50.00 feet to an angle point.  
Thence S 45°25'31" W, 45.00 feet to an angle point.  
Thence S 39°01'23" W, 125.00 feet to an angle point.  
Thence S 44°17'25" W, 75.00 feet to an angle point.  
Thence S 45°22'25" W, 96.65 feet to an angle point.  
Thence S 09°13'03" E, 25.35 feet to an angle point.  
Thence S 42°10'31" E, 25.35 feet to the edge of pavement of Navajo Route N3005, Station 4+52.63 which is the terminus of the access right of way.

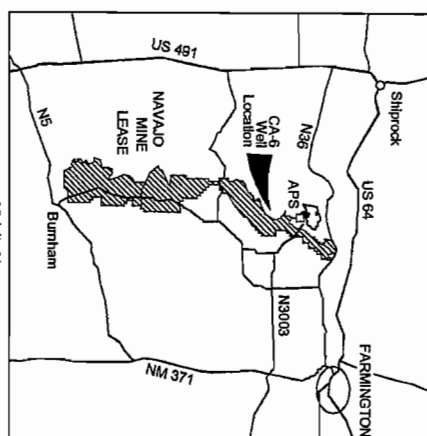
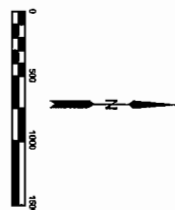
Said parcel contains 0.1039 acres (4526.3 sq. ft.), more or less.

I, Wilson Begay, New Mexico Professional Surveyor, hereby certify that this Survey Plat was prepared from a actual ground survey performed by me or under my supervision, that I am responsible for this survey, that this survey is true and correct to the best of my knowledge and belief, that this survey plat and the field survey up which it is based meet the Minimum Standards for Surveying in New Mexico, and that this survey is not a land division or subdivision as defined in the New Mexico Subdivision Act.

Wilson Begay P.S. # 18628, Date 1/25/13

A	X-4-4	30	2002	1
REV No.	Date Issued	Desig. BY	REASON (EXPLANATION)	0





**BHP Billiton**  
**Navajo Coal Company**  
**Environmental Quality Well Site CA-6**  
**Parcel and Access Right of Way Description**

A parcel of land in SE 1/4 of Section 24, T28N, R16W, San Juan County, New Mexico more particularly as follows:

Beginning at a point called CA-6 from which the southeast section corner of Section 24, T28N, R16W, bears S 69°10'37" E, a distance of 2039.97 feet,  
Thence N 19°36'34" E, 28.28 feet to the northeast corner which is the Point of Beginning,  
Thence S 25°23'26" E, 40.00 feet to the southeast corner,  
Thence S 64°38'34" W, 40.00 feet to the southwest corner,  
Thence N 25°23'26" W, 40.00 feet to the northwest corner,  
Thence N 64°38'34" E, 40.00 feet to the Point of Beginning.

Said parcel contains 0.0667 acres (1600.00 sq. ft.), more or less.

A strip of land for ingress and egress to the above mentioned Well Site CA-6, 10 feet in width, 5 feet on each side of the described easement, in SW 1/4 of Section 24, T28N, R16W, County, New Mexico more particularly described as follows:

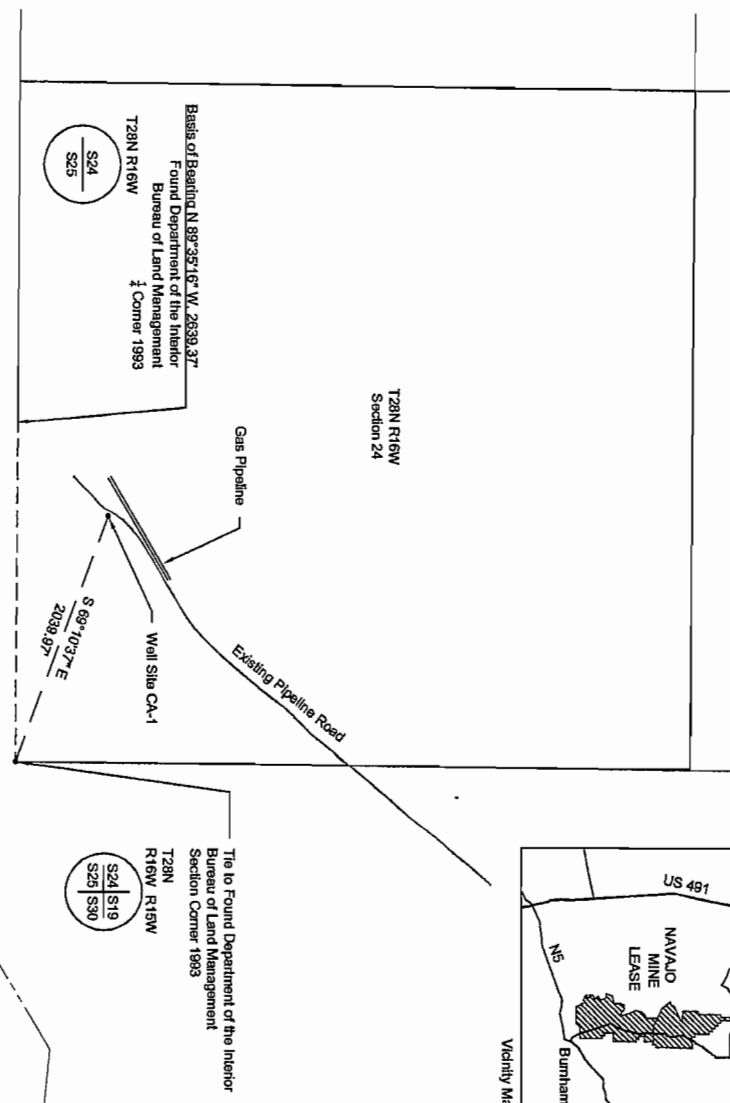
Beginning at a point called CA-6 from which the southeast section corner of Section 24, T28N, R16W, bears S 69°10'37" E, a distance of 2039.97 feet,  
Thence S 64°38'34" W, 20.00 feet to a point along the west edge of Well Site CA-6 parcel described as being the Point of Beginning of right of way, Station 0+00,  
Thence S 64°38'34" W, 12.81 feet to an angle point,  
Thence N 61°20'59" W, 20.00 feet to the edge of an existing gas line access road, Station 0+32.81 with terminus of the access right of way.

Said parcel contains 0.0076 acres (329.10 sq. ft.), more or less.

I, Wilson Begay, New Mexico Professional Surveyor, hereby certify that this Survey Plat was prepared actual ground survey performed by me or under my supervision, that I am responsible for this survey, survey is true and correct to the best of my knowledge and belief, that this Survey Plat and the field subdivision or subdivision as defined in the New Mexico Subdivision Act.

Wilson Begay P.S. # 18628, Date

*Wilson Begay* 1/25/13



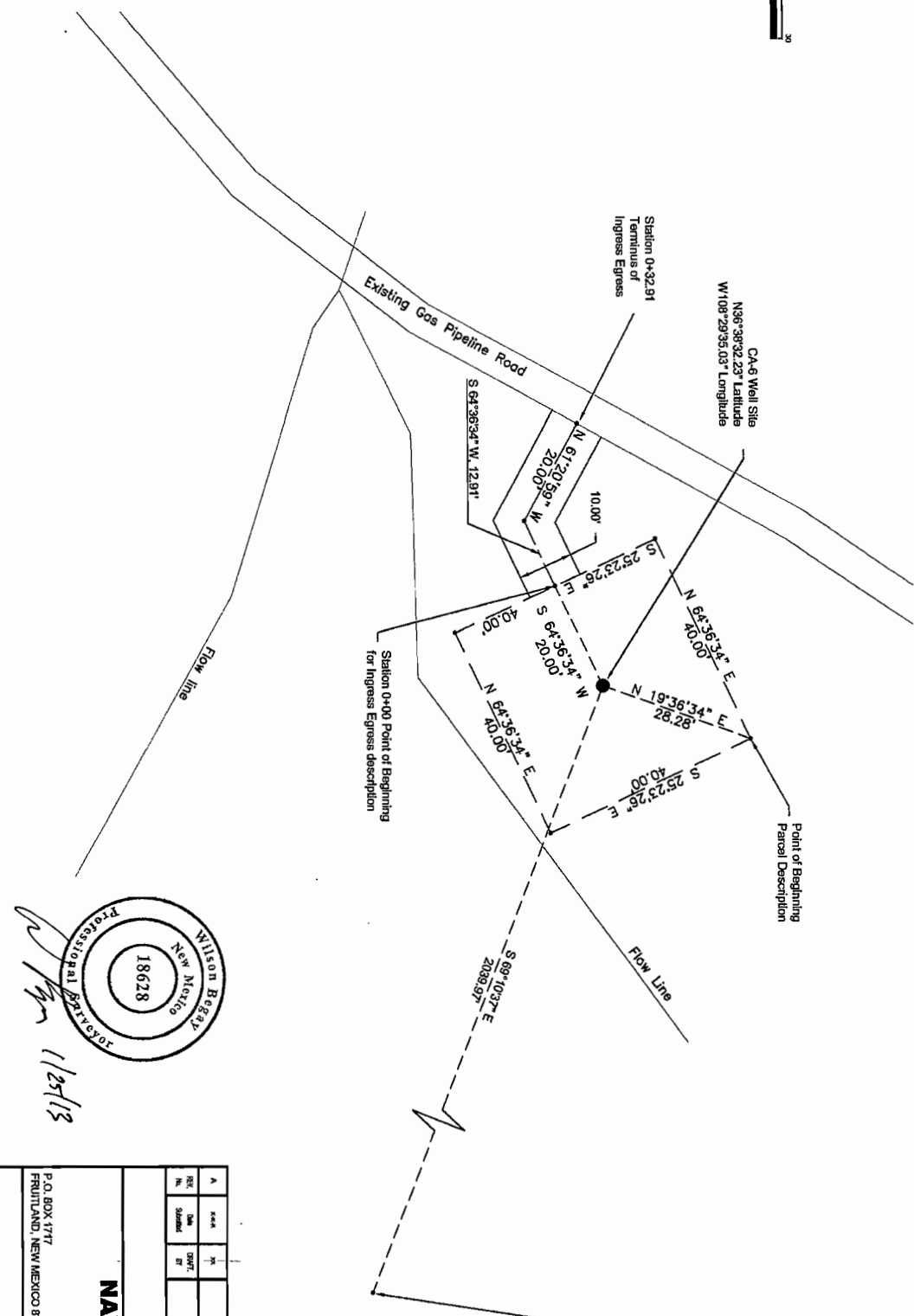
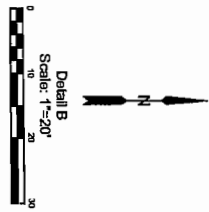
A	24.4	25	26	27	28	29	30
REV	1	2	3	4	5	6	7
DATE							
BY							
REASON FOR REVISION							

**NAVAJO COAL COMPANY**  
**bhpbilliton**  
P.O. BOX 177  
FRUITLAND, NEW MEXICO 87416  
PH

**CA-6 Monitoring Well**  
**Plat of Survey**  
**EXHIBIT CA-6**

PREPARED BY	W Begay	DRAWN BY	WB	SCALE
APPROVED BY	W Begay	DATE	1-10-13	
W:\SPECIAL_PROJECTS_2012\CA-6\CA-6.dwg				

Note:  
Reference document used is U.S. Department of the Interior, Bureau of Land Management, Original Survey Plat of Township 28 North, Range 16 West, New Mexico Principal Meridian, New Mexico dated May 21, 1996 surveyed by Shaw D. Cully.  
Basis of Bearing is between the Navajo Mine Lease monuments B-2 and J-54, N 49°02'44" E, 2296.06 feet as determined by RTK GPS observations using Navajo Mine Base Station. Field work performed on December 12, 2012.  
All distances and bearings are based on the local Navajo Mine coordinate system using International feet.



Tie to Found Department of the Interior  
Bureau of Land Management  
Section Corner 1933  
T28N  
R16W R15W  
S24 S19  
S25 S30

Wilson Begay  
New Mexico  
18628  
Professional Geographer  
1/25/13

Note:  
Reference document used is U.S. Department of the Interior, Bureau of Land Management, Original Survey Plat of Township 28 North, Range 16 West, New Mexico Principal Meridian, New Mexico dated May 21, 1996 surveyed by Steve D. Cully.  
Basis of Bearing is between the Navajo Mine Lease monuments B-2 and L-54, N 49°02'44" E, 2296.06 feet as determined by RTK GPS observations using Navajo Mine Base Station. Field work performed on December 12, 2012.  
All distances and bearings are based on the local Navajo Mine coordinate system using international feet.

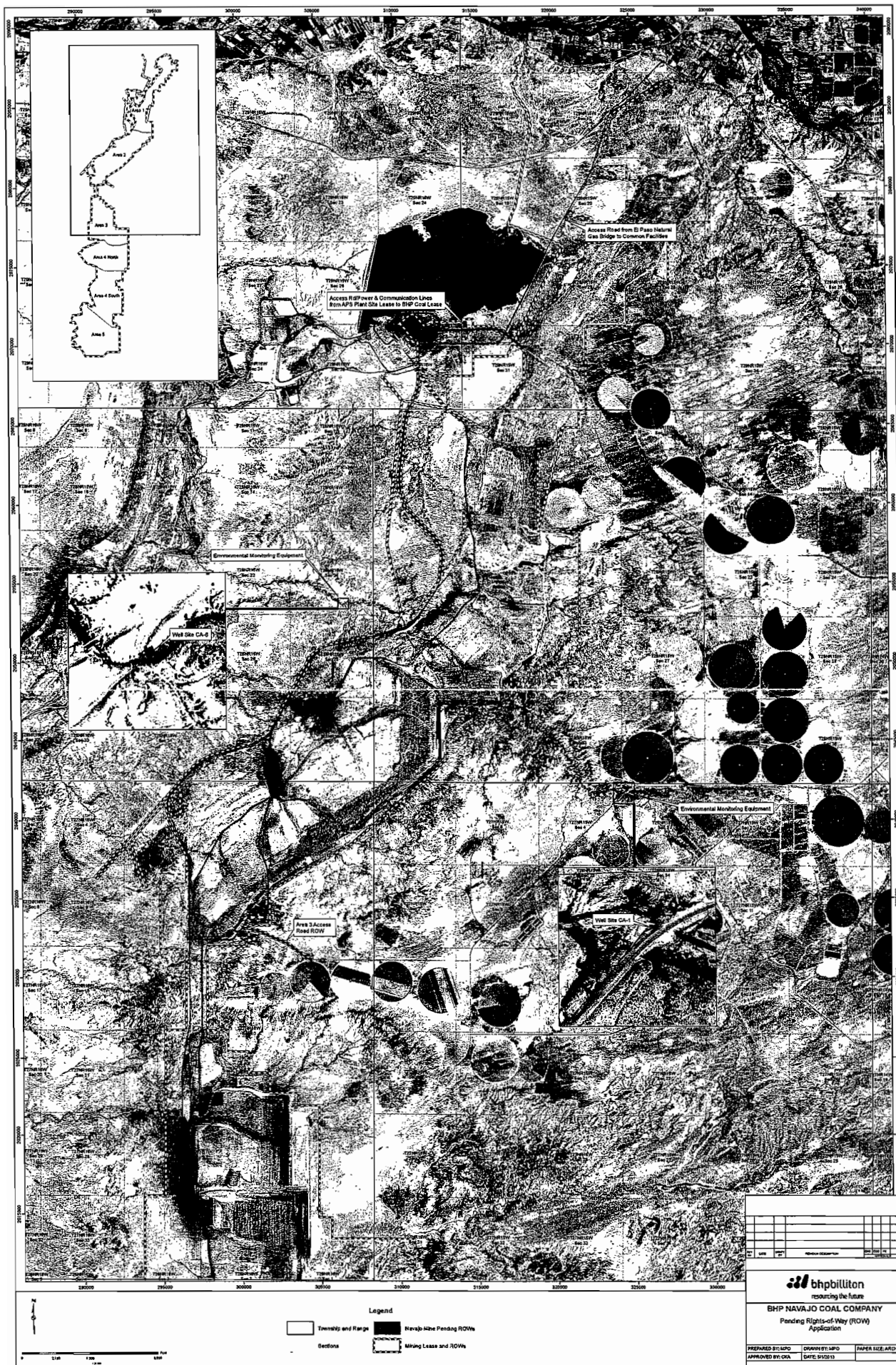
REV	DATE	BY	DESCRIPTION
1	1/25/13	WB	CA-6 Monitoring Well Site Detail

NAVAJO COAL COMPANY  
bhpbilliton  
P.O. BOX 1777  
FRUITLAND, NEW MEXICO 87416  
PK

CA-6 Monitoring Well  
Site Detail  
Ingress & Egress Detail

PREPARED BY	WBegay	DRAWN BY	WB	SCALE
APPROVED BY	WBegay	DATE	1-10-13	
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## FIELD CLEARANCE CHECKLIST

(This form covers only damages and compensation to individual land users. It does not cover consideration or other fees to the Navajo Nation. If necessary, use the back of this form for completion.)

### Project Identification:

**Applicant:** BHP Navajo Coal Company, Post Office Box 1717, Fruitland, New Mexico 87416.

### Identification:

**Purpose:** Right-of-way for two (2) Groundwater Well Monitors at Well CA-1 and Well CA-6, to access, install, monitoring Groundwater Well and to extend a Revocable Use Permit RUP-SR-01-98, (owned by BHP Navajo Coal Company), which will expire on October 2018.

**Location (Legal Description):** 1) Well CA-1, in NW 1/4 Section 3, T27N, R15W, 2) Well CA-6 in SE 1/4 Section 24, T28N, R16W, 3) Extending Revocable Use Permit in NE, NE, NE Section 4, T27N R15W, all in Nenahnezad Chapter, San Juan County, New Mexico.

**Amount of land affected:** 1) Well CA-1, contains of 0.0367 acres and access road of 0.1039 acres (total of 0.1406 acres), 2) Well CA-6, contains of 0.0367 and access road of 0.0076 acres (total of 0.0443 acres), 3) Revocable Use Permit, acres 0.00037. Total acreage of 0.18527.

**Land status:** Trust Fee Other

1. List of land use/grazing permittee whose land use rights will be affected project:

	<u>Names</u>	<u>Census No.</u>	<u>Type of and Use Right</u>
a.	Helena Hogue	98,365	Grazing Rights
b.	Daisy Mason (Dec.)	92,312	Grazing Rights
c.			Grazing Rights


2. Are all land users in the above list no. 4 with claims to the affected lands shown in the Branch of Land Operations records? Yes No

3. Have the Grazing Committee or Land Board Member (whichever is appropriate) for the affected area confirm the list no. 4 by signing acknowledgement form below.

### ACKNOWLEDGEMENT

I acknowledge that due notice was given to the affected community of the proposed project, and according to my records and to the best of my knowledge, the list no. 4 includes all land users who have rights in the affected lands.

4/11/13  
Date

  
Harold Dodge, Grazing Committee Member  
Nenahnezad Chapter

13  
District

4. Are any damages expected to individual improvements? Yes No

If yes, contact the Director of Navajo Land Administration because special arrangements will have to be made to compensate for these damages.

If no give full explanations why:

No damages is expected to individual improvement. Nominal surface/grazing damages is expected on the projects. Surface damage compensation will be paid out to the affected grazing permittees. And the disturbed grazing area will be reclaimed/reseed per Bureau of Indian Affairs regulations after the completion of the project.

5. List of land users where diminishment in value of land use rights is expected and/or where land use rights is expected to be enhanced as a result of the project. Specify whether or not there is diminishment or enhancement in value of land use rights. Note whether or not land users have consented and which consent forms were used. (If no expected damages, use Consent Form No. 1.)

<u>Names</u>	<u>Expected Diminishment</u>	<u>Expected Enhancement</u>	<u>Did Land Users Consent? Form?</u>
a. Helena Hogue	None	None	Yes, consent # 2
b. Daisy Mason (Deceased)	None	None	No, permittee deceased

List again the land users from list no. 8 where land use rights value will be diminished as a result of the project. Specify if land users is to receive compensation and the monetary amount in-kind compensation to be received, and use Consent Form No. 2. Indicate whether compensation is be received is adequate for the estimated damages to land use rights. Note whether land users have consented and which consent forms used. (If waiver of compensation for damages, use Consent Form No. 3.)

<u>Names</u>	<u>Compensation Amount</u>	<u>Is Amount Adequate</u>	<u>Did Land Users Consent? Form?</u>
a. Helena Hogue	\$22.15	Yes	Yes, consent # 2
b. Daisy Mason (Dec.) Escrow	\$70.49	Yes	No, permittee deceased.

How, when and by whom will land users be paid compensation? If any, is it specified in list no. 9 above?

Surface damages compensation will be paid out accordingly to the Grazing Committee Member's Payment Recommendation.

6. Is a topographical map of the project attached? Yes No
7. Was the project fully explained to the land users? Yes No
8. Which chapter will be affected by the project? Nenahnezad Chapter

9. Are supporting chapter resolution attached? Yes No

10. Will chapter receive any payments or benefits from the project?

Yes No If yes, what will be received?

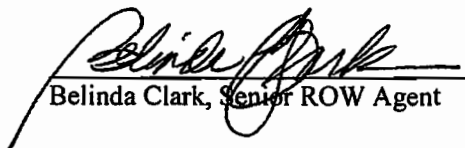
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Approved by:

Field Clearance Conducted by:

Utah Land Office/Navajo Land Department

\_\_\_\_\_  
Navajo Land Department  
(NLD)

  
\_\_\_\_\_  
Belinda Clark, Senior ROW Agent

(NLD approval necessary only if the  
field clearance was conducted by  
other than NLD Office)

Date: April 11, 2013

CONSENT FORM 2  
(Compensation for damages)

CONSENT TO USE  
NAVAJO NATION LANDS

TO WHOM IT MAY CONCERN:

I, Daisy Mason, hereby grant consent to the Navajo Nation and the Bureau of Indian Affairs, Window Rock, Arizona, to permit:

BHP Navajo Coal Company, Post Office Box 1717, Fruitland, New Mexico 87416

To use a portion of my land use area for the following purpose(s):

Right-of-way for two (2) Groundwater Well Monitors, to access, install, monitoring Groundwater Well and extend a Revocable Use Permit.

- 1) Well CA-1, contains of 0.0367 acres and access road of 0.1039 acres (total of 0.1406 acres), in NW 1/4 Section 3, T27N, R15W, San Juan County, New Mexico.
- 2) Well CA-6, contains of 0.0367 and access road of 0.0076 acres (total of 0.0443 acres), in SE 1/4 Section 24, T28N, R16W, San Juan County, New Mexico.
- 3) The Right-of-Way application also includes the area within an existing Revocable Use Permit RUP-SR-01-98 (owned by BHP Navajo Coal Company), which expires on October 2018, to extend the access of an existing surface water station on a BIA Road NN3005 culvert. RUP-SR-01-98 (Navajo Nation Resolution Number RCAU-171-97), acres 0.00037, in NE, NE, NE Section 4, T27N R15W, all in Nenahnezad Chapter, San Juan County, New Mexico. Total acreage of 0.18527.

As shown on the map showing the location of the proposed project attached.

My consent is given subject to the receipt of compensation in the amount of \$ 70.49, which I acknowledge as good and adequate compensation for the diminishment in value of my land use rights as a result of the above-referenced proposed project.

Remarks: Permittee is deceased.  
Grazing Permit not probated yet.  
Funds will be escrowed.

Date \_\_\_\_\_ X \_\_\_\_\_  
Land user Signature

Census No. 092312  
Permit No. 13-157  
SS No. N/A

Address: N/A

Witness: \_\_\_\_\_

4/11/13  
Date

[Signature]  
Grazing Committee Member Signature  
Harold Dodge, Nenahnezad Chapter

District 13

ACKNOWLEDGEMENT OF FIELD AGENT

I acknowledge that the consents of this consent form was read / ☒ or fully explained / ☒ to the land user in Navajo / ☒ or English / ☐ (check where applicable).

[Signature]  
Field Agent Signature  
Belinda Clark, Senior ROW Agent

CONSENT FORM 2  
(Compensation for damages)

CONSENT TO USE  
NAVAJO NATION LANDS

TO WHOM IT MAY CONCERN:

I, Helena Hogue, hereby grant consent to the Navajo Nation and the Bureau of Indian Affairs, Window Rock, Arizona, to permit:

BHP Navajo Coal Company, Post Office Box 1717, Fruitland, New Mexico 87416

To use a portion of my land use area for the following purpose(s):

Right-of-way for two (2) Groundwater Well Monitors, to access, install, monitoring Groundwater Well and extend a Revocable Use Permit.

- 1) Well CA-1, contains of 0.0367 acres and access road of 0.1039 acres (total of 0.1406 acres), in NW 1/4 Section 3, T27N, R15W, San Juan County, New Mexico.
- 2) Well CA-6, contains of 0.0367 and access road of 0.0076 acres (total of 0.0443 acres), in SE 1/4 Section 24, T28N, R16W, San Juan County, New Mexico.
- 3) The Right-of-Way application also includes the area within an existing Revocable Use Permit RUP-SR-01-98 (owned by BHP Navajo Coal Company), which expires on October 2018, to extend the access of an existing surface water station on a BIA Road NN3005 culvert. RUP-SR-01-98 (Navajo Nation Resolution Number RCAU-171-97), acres 0.00037, in NE, NE, NE Section 4, T27N R15W, all in Nenahnezad Chapter, San Juan County, New Mexico. Total acreage of 0.18527.

As shown on the map showing the location of the proposed project attached.

My consent is given subject to the receipt of compensation in the amount of \$ 22.15, which I acknowledge as good and adequate compensation for the diminishment in value of my land use rights as a result of the above-referenced proposed project.

Remarks:

4-11-13  
Date

X Helena Hogue  
Land user Signature  
Helena Hogue  
Address: P.O. Box 832

Census No. 98365  
Permit No. 13-649  
SS No. 585-50-3877

Witness: \_\_\_\_\_  
4/11/13  
Date

[Signature]  
Grazing Committee Member Signature  
Harold Dodge, Nenahnezad Chapter

Fruitland NM 87416

District 13

ACKNOWLEDGEMENT OF FIELD AGENT

I acknowledge that the consents of this consent form was read ☒ or fully explained ☒ to the land user in Navajo ☒ or English ☒ (check where applicable).

[Signature]  
Field Agent Signature  
Belinda Clark, Senior ROW Agent

## GRAZING COMMITTEE RECOMMENDATION

Date: April 2, 2013

Project Name/Legal Description: Right-of-way for two (2) Groundwater Well Monitors, to access, install, monitoring Groundwater Well and extend a Revocable Use Permit.

- 1) Well CA-1, contains of 0.0367 acres and access road of 0.1039 acres (total of 0.1406 acres), in NW 1/4 Section 3, T27N, R15W, San Juan County, New Mexico.
- 2) Well CA-6, contains of 0.0367 and access road of 0.0076 acres (total of 0.0443 acres), in SE 1/4 Section 24, T28N, R16W, San Juan County, New Mexico.
- 3) The Right-of-Way application also includes the area within an existing Revocable Use Permit RUP-SR-01-98 (owned by BHP Navajo Coal Company), which expires on October 2018, to extend the access of an existing surface water station on a BIA Road NN3005 culvert. RUP-SR-01-98 (Navajo Nation Resolution Number RCAU-171-97), acres 0.00037, in NE, NE, NE Section 4, T27N R15W, all in Nenahnezad Chapter, San Juan County, New Mexico.

Total acreage of 0.18527, for the sum of \$92.64.

Pursuant to the Shiprock Agency Grazing Committee Resolution dated July 20, 2007, in determining eligibility for grazing permittee/land use permittee to receive surface damage compensation; I Harold Dodge, Grazing Committee Member of District 13, Nenahnezad Chapter recommend this/these individual (s) as:

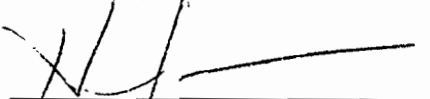
/ X / Recipient(s) of the surface damage and /or nuisance compensation deriving from the above referenced project from BHP Navajo Coal Company and compensation to be distributed as follows:

/ X / The permittees to consent to the above-referenced project:

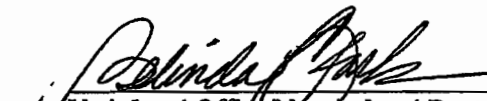
	<u>NAME</u>	<u>CENSUS #</u>	<u>SOC. SEC. #</u>	<u>% DISTRIBUTION</u>
1.	Helena Hogue	98,365	585-50-3877	24%
2.	Daisy Mason (Dec.)	92,312		76%
3.				
4.				
5.				
6.				

Witnesses: \_\_\_\_\_

CONCURRENCE:

  
\_\_\_\_\_  
Grazing Committee Member  
Harold Dodge, Nenahnezad Chapter

ACKNOWLEDGEMENT:

  
\_\_\_\_\_  
Utah Land Office/Navajo Land Dept.  
Belinda Clark, Senior ROW Agent





# THE NAVAJO NATION

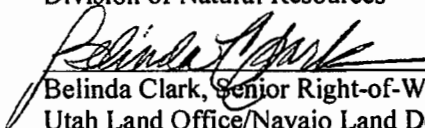
Utah Land Office/Navajo Land Dept./DNR  
Post Office Box 410  
Montezuma Creek, Utah 84534

BEN SHELLY  
PRESIDENT

REX LEE JIM  
VICE - PRESIDENT

## MEMORANDUM

To: Mr. Howard P. Draper, Senior Programs & Projects Specialist  
Project Review Section/Navajo Land Department  
Division of Natural Resources

From:   
Belinda Clark, Senior Right-of-Way Agent  
Utah Land Office/Navajo Land Department

Date: April 11, 2013

Subject: Field Clearance for BHP Navajo Coal Company

Pursuant to the field clearance request, the Utah Land Office has completed the below cited field clearance with Mr. Harold Dodge, Grazing Committee Member of Nenahnezad Chapter and two (2) grazing permittees. Thus, forward the proposed project for approval. The proposed projects are described below:

Right-of-way for two (2) Groundwater Well Monitors, to access, install, monitoring Groundwater Well and to extend a Revocable Use Permit. They are described below:

- 1) Well CA-1, 40' x 40' contains of 0.0367 acres and access road of 452.63' length x 10' width/0.1039 acres (total of 0.1406 acres), in NW 1/4 Section 3, T27N, R15W,
- 2) Well CA-6, 40' x 40' contains of 0.0367 and access road of 32.91' length x 10' width/0.0076 acres (total of 0.0443 acres), in SE 1/4 Section 24, T28N, R16W,
- 3) The Right-of-Way application also includes the area within an existing Revocable Use Permit RUP-SR-01-98 (owned by BHP Navajo Coal Company), which expires on October 2018, to extend the access of an existing surface water station on a BIA Road NN3005 culvert. RUP-SR-01-98 (Navajo Nation Resolution Number RCAU-171-97), acres 0.00037, in NE, NE, NE Section 4, T27N R15W, all in Nenahnezad Chapter, San Juan County, New Mexico.

Total acreage of 0.18527.

All of the original field clearance documents are attached. For any inquiries, call me at (435) 651-3504, fax (435) 651-3506 or email at [belclark@frontiernet.net](mailto:belclark@frontiernet.net) And if you should have any questions to the company you may call Ms. Kara L. Hart with BHP Billiton at (505) 598-2134 or email at [Kara.L.Hart@bhpbilliton.com](mailto:Kara.L.Hart@bhpbilliton.com) Thank you.

## Attachments

xc:  
Kara L. Hart/BHP Billiton  
W. Mike Halona, Dept. Mgr. III/NLD/DNR/NN  
Harlan Charley, SPPS/NLD/DNR/NN  
Harold Dodge, GCM/Nenahnezad Chapter/NN  
Akhtar Zaman, Director/Minerals Dept./NN  
Bill Freeman/NNEPA/NN  
Bertha Spencer/BIA  
NM Bureau of Land Management  
File, Utah Land Office/NLD/DNR/NN





NAVAJO NATION TERMS AND CONDITIONS  
FOR REVOCABLE USE PERMIT (RUP)  
For Navajo Transitional Energy Company (Grantee)  
[two (2) access roads/wells adjacent to BHP Mine Lease]

- 1) The terms of the RUP shall be for twenty (20) years, beginning on the date of RUP is approved by the Navajo Nation.
- 2) Consideration for the RUP is assessed at \$2,807.24, and shall be paid in full to the Controller of the Navajo Nation, in lawful money of the United States, and a copy of the receipt for such payment provided to the Navajo Nation Minerals Department, or its successor with 10 days of approval of the RUP by the Navajo Nation.
- 3) The Grantee may develop, use and occupy the RUP for the purpose(s) of construction, operating and maintain two (2) ground water monitoring wells and access roads. The Grantee may not develop, use or occupy the RUP for any other purpose without the prior written approval of the Navajo Nation. The approval of the Navajo Nation may be granted, grated upon condition or withheld in the sole discretion of the Navajo Nation. The Grantee may not develop, use or occupy the RUP for any unlawful purpose.
- 4) In all activities conducted by the Grantee within the Navajo Nation, the Grantee shall abide by all laws and regulations of the Navajo Nation and of the United States, now in force and effect or as hereafter may come into force and effect, including but not limited to the following:
  - a. Title 25, Code of Federal Regulations, Part 169;
  - b. All applicable federal and Navajo Nation antiquities laws and regulations, with the following additional condition: In the event of a discovery all operations in the immediate vicinity of the discovery must cease and the Navajo Nation Historic Preservation Department must be notified immediately. As used herein, "discovery" means any previously unidentified or incorrectly identified cultural resources, including but not limited to archeological deposits, human remains, or location reportedly associated with Native American religious/traditional beliefs or practices;

- c. The Navajo Preference in Employment Act, 15 N.N.C. §§ 601 et seq.; and the Navajo Nation Business Opportunity Act, 5 N.N.C. §§ 201 et seq.; and
  - d. The Navajo Nation Water Code, 22 N.N.C. § 1101 et seq., Grantee shall apply for and submit all applicable permits and information to the Navajo Nation Water Resources Department, or its successor.
- 
- 5) The Grantee shall ensure that the air quality of the Navajo Nation is not jeopardized due to violation of applicable laws and regulations by its operations pursuant to this RUP.
  - 6) The Grantee shall clear and keep clear the lands within the RUP to the extent compatible with the purpose of the RUP, and shall dispose of all vegetation and other materials cut, uprooted, or otherwise accumulated during any surface disturbance activities.
  - 7) The Grantee shall reclaim all surface lands distributed related to the RUP.
  - 8) The Grantee shall at all times during the term of the RUP and at the Grantee's sole cost and expense, maintain the land subject to the RUP and all improvements located thereon and make all necessary and reasonable repairs.
  - 9) The Grantee shall obtain prior written permission to cross existing rights-of-way, if any, from the appropriate parties.
  - 10) The Grantee shall be responsible for and promptly pay all damages attributable to the development, occupancy or use of the RUP by the Grantee.
  - 11) The Grantee shall indemnify and hold harmless the Navajo Nation and the Secretary and their respective authorized agents, employees, land users and occupants, against any liability for loss of life, personal injury and property damages arising from the development, use or occupancy or use of the area under the RUP by the Grantee.
  - 12) Any assignment, conveyance or transfer by the Grantee, in any manner whatsoever, of the RUP or any interest therein, or in or to any of the improvements on the land subject to the RUP, shall be subject to the written consent of the Navajo Nation. Any such attempted assignment, conveyance or transfer without such prior written consent shall be void and of no effect. The consent of the Navajo Nation may be granted, granted upon conditions or withheld at the sole discretion of the Navajo Nation.
  - 13) The RUP may be terminated for violation of any of the terms and conditions stated herein. In addition, the RUP shall be terminable in whole or part by the Navajo Nation for any of the following causes.

- a. Failure to comply with any terms and conditions of the grant or of applicable laws or regulations;
  - b. A non-use of the RUP for the purpose for which it is granted for a consecutive two-year period; and
  - c. The use of the land subject to the RUP for any purpose inconsistent with the purpose for which the RUP is granted.
- 14) At the termination of this RUP, the Grantee shall peaceably and without legal process deliver up the possession of the premises, in good condition, usual wear and tear excepted. Upon the written request of the Navajo Nation, the Grantee shall provide the Navajo Nation, at the Grantee's sole cost and expense, with an environmental audit assessment of the premises at least sixty (60) days prior to delivery of said premises. All reclamation or abandonment shall be performed in accordance with all applicable Navajo Nation and Federal rules, regulations and guidelines.
- 15) Holding over by the Grantee after the termination of RUP shall not constitute a renewal or extension thereof or give the Grantee any rights hereunder or in to the land subject to the permit or to any improvements located thereon.
- 16) The Navajo Nation and the Secretary shall have the right, at any reasonable time during the term of the RUP to enter upon the premises, or any part thereof, to inspect the same and any improvements located thereon.
- 17) By acceptance of the grant of the RUP, the Grantee consents to the full territorial legislative, executive and judicial jurisdiction of the Navajo Nation, including but not limited to the jurisdiction to levy fines and to enter judgments for compensatory and punitive damages and injunctive relief, in connection with all activities conducted by the Grantee within the Navajo Nation or which have a proximate (legal) effect on persons or property within the Navajo Nation.
- 18) By acceptance of the grant of the RUP, the Grantee covenants and agrees never to contest or challenge the legislative, executive or judicial jurisdiction of the Navajo Nation on the basis that such jurisdiction is inconsistent with the status of the Navajo Nation as an Indian nation, or that the Navajo Nation government is not a government of general jurisdiction, or that the Navajo Nation government does not possess full police power (i.e., the power to legislate and regulate for the general health and welfare) over all lands, persons and activities within its territorial boundaries, or on any other basis not generally applicable to a similar challenge to the jurisdiction of a state government. Nothing contained in this provision shall be construed to negate or impair federal responsibilities with respect to the land subject to the RUP or to the Navajo Nation.

- 19) Any action or proceeding brought by the Grantee against the Navajo Nation in connection with or arising out of the terms and conditions of the RUP shall be brought only in the Courts of the Navajo Nation, and no such action or proceeding shall be brought by the Grantee against the Navajo Nation in any court of any state.
- 20) Nothing contained herein shall be interpreted as constituting a waiver, express or implied, of the sovereign immunity of the Navajo Nation.
- 21) Except as prohibited by applicable federal law, the law of the Navajo Nation shall govern the construction, performance and enforcement of the terms and conditions contained herein.
- 22) The terms and conditions contained herein shall extend to and be binding upon the successors, heirs, assigns, executors, administrators, employees and agents, including all contractors and subcontractors, of the Grantee, and the term "Grantee", whenever used herein, shall be deemed to include all such successors, heirs, assigns, executors, administrators, employees and agents.
- 23) There is expressly reserved to the Navajo Nation full territorial legislative, executive and judicial jurisdiction over the RUP and all lands burdened by the RUP, including without limitations over all persons, including the public, and all activities conducted or otherwise occurring within the RUP; and the RUP and all lands burdened by the RUP shall be and forever remain Navajo Indian Country for purposes of Navajo Nation jurisdiction.

**BIOLOGICAL RESOURCES COMPLIANCE FORM**  
**NAVAJO NATION DEPARTMENT OF FISH AND WILDLIFE**  
**P.O. BOX 1480, WINDOW ROCK, ARIZONA 86515-1480**



It is the Department's opinion the project described below, with applicable conditions, is in compliance with Tribal and Federal laws protecting biological resources including the Navajo Endangered Species and Environmental Policy Codes, U.S. Endangered Species, Migratory Bird Treaty, Eagle Protection and National Environmental Policy Acts. This form does not preclude or replace consultation with the U.S. Fish and Wildlife Service if a Federally-listed species is affected.

**PROJECT NAME & NO.:** CA-1 and CA-6 Groundwater Monitoring Wells

**DESCRIPTION:** BNCC proposes to install two (2) long-term groundwater monitoring wells. The wells would be installed using a hand auger and track mounted Geoprobe® direct push drilling rig. Installation would require 2 days and the wells would be monitored on a quarterly basis. No new disturbance would be required for the CA-1 well. The CA-6 well would require a 50 ft. x 150 ft. area with an additional 20-ft. buffer around the perimeter. Total disturbance for the proposed action would be 0.07 acres. Both well sites would be accessed utilizing existing dirt roads.

**LOCATION:** 729699E 4054477N (CA-1), 724185E 4057915N (CA-6), Chinde Wash, San Juan Co., New Mexico

**REPRESENTATIVE:** Joey Herring, Project Manager, Ecosphere Environmental Services

**ACTION AGENCY:** BHP Billiton Navajo Coal Company (BNCC)

**B.R. REPORT TITLE / DATE / PREPARER:** CA-1 & CA-6 Groundwater Monitoring Wells/JAN 2013/EES

**SIGNIFICANT BIOLOGICAL RESOURCES FOUND:** Area 3. [1] RSA at both well sites; [2] Field survey occurred on 05 DEC 2012 and parallel transects spaced 15 ft. apart only covered the proposed action areas; [3] Three (3) known BURE nests are within 1 mile of the proposed action areas.

**POTENTIAL IMPACTS**

**NESL SPECIES POTENTIALLY IMPACTED:** [1] *Buteo regalis* (Ferruginous Hawk), G3, MBTA; [2] *Athene cunicularia* (Burrowing Owl), G4, MBTA; [3] *Vulpes macrotis* (Kit Fox), G4;

**FEDERALLY-LISTED SPECIES AFFECTED:** NA

**OTHER SIGNIFICANT IMPACTS TO BIOLOGICAL RESOURCES:** NA

**AVOIDANCE / MITIGATION MEASURES:** NA

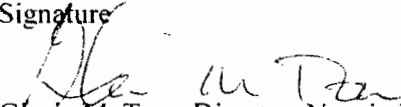
**CONDITIONS OF COMPLIANCE\*:** [1] Suitable nesting habitat for the Ferruginous Hawk (*Buteo regalis*) surrounds the proposed action areas. The field survey was conducted outside the recommended season. A pre-construction survey will be required if construction is planned to begin or occur during 01 MAR-31 JUL. It is recommended that the surveys include a 1.2 km (¾ mi) buffer outside the proposed action areas; [2] Suitable nesting habitat for the Burrowing Owl (*Athene cunicularia*) potentially occurs outside the proposed action areas that were surveyed on 05 DEC 2012. A pre-construction survey will be required if construction is planned to begin or occur during 01 MAR-15 AUG. It is recommended that the surveys include a 0.4 km (¼ mi) buffer outside the edge of the proposed action areas. If suitable nest burrows are not present within the 0.4-km buffer zone, surveys will not be necessary; [3] The

BE states that there is potential denning habitat for the Kit Fox (*Vulpes macrotis*) in the proposed action areas and immediate vicinity. The immediate vicinity area was not defined in the BE. Ground disturbing activities, year-round, will not be allowed within 60 m of a known den site and activity will not be allowed within 0.2 km (1/5 mi) of an active den during 01 DEC-31 AUG; [4] Clearing and grading of the proposed action areas must avoid the Migratory Bird breeding season of 01 MAR-15 AUG. If the breeding season cannot be avoided a survey for active nests will be required. The survey must include a 50 m (165 ft.) buffer outside the proposed action areas. Removal or disturbance of nesting habitat (i.e. trees & shrubs) will not be allowed within 50 meters of an active nest during incubation to fledging.

FORM PREPARED BY / DATE: Pamela A. Kyselka/29 JAN 2013

COPIES TO: (add categories as necessary)

☒ BIA ☐

2 NTC § 164 Recommendation:	Signature	Date
<input type="checkbox"/> Approval		01/30/13
<input checked="" type="checkbox"/> Conditional Approval (with memo)		
<input type="checkbox"/> Disapproval (with memo)		
<input type="checkbox"/> Categorical Exclusion (with request letter)		
<input type="checkbox"/> None (with memo)	Gloria M. Tom, Director, Navajo Nation Department of Fish and Wildlife	

\*I understand and accept the conditions of compliance, and acknowledge that lack of signature may be grounds for the Department not recommending the above described project for approval to the Tribal Decision-maker.

Representative's signature

Date



**PRESIDENT  
BEN SHELLY  
VICE PRESIDENT  
REX LEE JIM**

NAVAJO FISH AND WILDLIFE

P.O. BOX 1480

WINDOW ROCK, AZ 86515

29 January 2013

12EES-02

Joey Herring, Project Manager  
Ecosphere Environmental Services  
4801 North Butler, Suite 15101  
Farmington, New Mexico 87401

Ms. Herring,

The Navajo Nation Department of Fish and Wildlife (NNDFW) reviewed the Biological Evaluation for BHP Billiton Navajo Coal Company's proposed CA-1 and CA-6 Groundwater Monitoring Wells, both located adjacent to Chinde Wash. The purpose of this letter is to inform you that we are granting the proposed project a Conditional Approval. The project is approved with the following conditions:

[1] Suitable nesting habitat for the Ferruginous Hawk (*Buteo regalis*) surrounds the proposed action areas. The field survey was conducted outside the recommended season. A pre-construction survey will be required if construction is planned to begin or occur during 01 MAR-31 JUL. It is recommended that the surveys include a 1.2 km (¾ mi) buffer outside the proposed action areas.

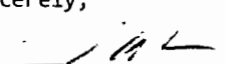
[2] Suitable nesting habitat for the Burrowing Owl (*Athene cunicularia*) potentially occurs outside the proposed action areas that were surveyed on 05 DEC 2012. A pre-construction survey will be required if construction is planned to begin or occur during 01 MAR-15 AUG. It is recommended that the surveys include a 0.4 km (½ mi) buffer outside the edge of the proposed action areas. If suitable nest burrows are not present within the 0.4-km buffer zone, surveys will not be necessary.

[3] The BE states that there is potential denning habitat for the Kit Fox (*Vulpes macrotis*) in the proposed action areas and immediate vicinity. The immediate vicinity area was not defined in the BE. Ground disturbing activities, year-round, will not be allowed within 60 m of a known den site and activity will not be allowed within 0.2 km (¼ mi) of an active den during 01 DEC-31 AUG.

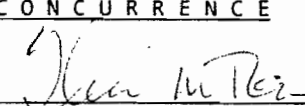
[4] Clearing and grading of the proposed action areas must avoid the Migratory Bird breeding season of 01 MAR-15 AUG. If the breeding season cannot be avoided a survey for active nests will be required. The survey must include a 50 m (165 ft.) buffer outside the proposed action areas. Removal or disturbance of nesting habitat (i.e. trees & shrubs) will not be allowed within 50 meters of an active nest during incubation to fledging.

Please contact me at 928-871-7065 with any questions that you have concerning the review of this project.

Sincerely,

  
Pamela A. Kyselka, Wildlife Biologist  
Navajo Natural Heritage Program  
Department of Fish and Wildlife

CONCURRENCE

  
Gloria Tom, Director  
Department of Fish and Wildlife

01/30/13  
Date

xc: CONS-100-13  
BIA





**Ecosphere**  
Environmental Services



# Biological Evaluation Proposed CA-1 and CA-6 Groundwater Monitoring Wells

**San Juan County, New Mexico**

**Prepared for:**

**BHP Billiton Navajo Coal Company  
P.O Box 1717  
Fruitland, NM 87416**

**January 2013**

Durango, CO  
Cortez, CO  
Pagosa Springs, CO  
Farmington, NM



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## ACRONYMS

BE	biological evaluation
BIA	Bureau of Indian Affairs
BNCC	BHP Navajo Coal Company
CA	Chinde Arroyo
Ecosphere	Ecosphere Environmental Services
ESA	Endangered Species Act
MBTA	Migratory Bird Treaty Act
NESL	Navajo Endangered Species List
NMPM	New Mexico Principal Meridian
NNDFW	Navajo Nation Department of Fish and Wildlife
NNHP	Navajo Nation Natural Heritage Program
TES	threatened and endangered species
USFWS	United States Fish and Wildlife Service
USGS	U.S. Geological Survey

## 1. INTRODUCTION

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BHP Billiton Navajo Coal Company (BNCC) retained Ecosphere Environmental Services (Ecosphere) to conduct a threatened and endangered species (TES) survey and prepare a biological evaluation (BE) for the proposed Chinde Arroyo (CA)-1 and CA-6 groundwater monitoring wells. The proposed CA-1 and CA-6 groundwater monitoring wells would be located on Navajo Nation tribal trust lands in San Juan County, New Mexico. The purpose of the proposed action is to install two groundwater monitoring wells off the Navajo Mine lease to meet the requirements of BNCC's Navajo Mine permit. If approved, the proposed action would allow BNCC to install the CA-1 and CA-6 groundwater monitoring wells and collect quarterly groundwater samples for laboratory analysis.

On December 5, 2012, Ecosphere conducted a TES survey of the proposed project areas under Navajo Nation Department of Fish and Wildlife (NNDFW) Special Permit #706. The purpose of the BE is to adhere to the Endangered Species Act of 1973 (ESA), as amended, and the Navajo Nation code requirement for species of concern (17 NNC 507) administered by the Navajo Nation Natural Heritage Program (NNHP). As such, the objectives of the BE were as follows:

1. Compile a list of federal and NNHP listed threatened, endangered, candidate, and sensitive species potentially occurring in the project areas.
2. Provide a physical and biological description of the project areas.
3. Determine the presence of federal and NNHP listed threatened, endangered, candidate, or sensitive species in the project areas.
4. Determine the presence of critical habitat for federally listed species in the project areas.
5. Assess potential impacts the proposed action may have on any listed or sensitive species or critical habitat present in the project areas.

## 2. PROJECT DESCRIPTION

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### 2.1 Location

As shown on Figure 1 in Attachment A, the proposed CA-1 and CA-6 groundwater monitoring wells would be located on Navajo Nation Tribal Trust lands in San Juan County, New Mexico. The proposed project areas would be located within the Bureau of Indian Affairs (BIA) Shiprock Agency, Nenahnezad Chapter. The general location of the proposed CA-1 groundwater monitoring well is approximately 2.5 miles east of Navajo Mine lease boundary, while the proposed CA-6 monitoring well would be located approximately 0.75 mile west of Navajo Mine lease boundary. Both groundwater monitoring wells would be located adjacent to Chinde Arroyo (a.k.a. Chinde Wash).

The proposed CA-1 monitoring well location is shown on the Kirtland SW, New Mexico United States Geological Survey (USGS) 7.5-minute topographic map on Figure 2 (Attachment A). The legal coordinates of the proposed project are:

Section 3, Township 27 North, Range 15 West  
New Mexico Principal Meridian (NMPM)

The proposed CA-6 monitoring well location is shown on the Fruitland, New Mexico USGS 7.5-minute topographic map on Figure 2 (Attachment A). The legal coordinates of the proposed project are:

Section 24, Township 28 North, Range 16 West, NMPM

The proposed CA-1 and CA-6 groundwater monitoring well locations are shown on the 2011 aerial photograph as Figures 3 and 4, respectively (Attachment A).

## **2.2 Proposed Action**

The proposed action would be the construction and long-term operation of two groundwater monitoring wells along Chinde Arroyo. The proposed wells would allow BNCC to collect groundwater samples for water quality analyses, as required by the BNCC Navajo Mine permit. BHP would acquire full right-of-way and water use permits from the BIA for the proposed monitoring wells. Both locations would have drive-point samplers and monitoring wells (piezometers) installed.

No new disturbance would be required to install the proposed CA-1 monitoring well. An existing bladed road spurring from Navajo Route 3005 would be used to access the site.

An approximate 50 by 150-foot area, with a 20-foot buffer around the perimeter, would be required to install the proposed CA-6 monitoring well. The proposed location would be accessed via an existing dirt road. Approximately 0.07 acre of new disturbance would result from the proposed action.

The wells would be installed using a hand auger and track mounted Geoprobe® direct push drilling rig. Installation would take approximately 2 days and the wells would be monitored on a quarterly basis. Photographs of the proposed groundwater monitoring well locations are provided in Attachment B.

## **3. AFFECTED ENVIRONMENT**

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The proposed action would be located within a "Low Sensitivity Wildlife Resources" (Area 3), as identified by the NNDFW and described in the Biological Resources Land Clearance Policies and Procedures, approved September 10, 2008. Area 3 has a low, fragmented concentration of species of concern.

Both the proposed CA-1 and CA-6 monitoring wells would be located on the upper floodplain of Chinde Arroyo. Other development in the area consists of scattered rural residences; Navajo Agricultural Products Industry crops and fields; Navajo Mine; and electric, water, and gas utility infrastructure.

The proposed CA-1 monitoring well would be located near the head of Chinde Arroyo on a broad plateau with low sandy undulating terrain overlooking barren badlands to the southwest. The proposed CA-1 monitoring well would be situated on generally level terrain, with a west-facing slope of 0 to 2 percent. Elevation of the proposed CA-1 location is approximately 5,490 feet.

The proposed CA-6 monitoring well would be located downstream of Navajo Mine on the Chinde Arroyo approximately 2 miles east (upstream) of the Chaco River. The proposed CA-6 monitoring well would be positioned on a gentle gradient characterized by slopes ranging between 1 and 3 percent with a westerly aspect. Elevation of the proposed CA-6 groundwater monitoring well is approximately 5,160 feet.

Surface geology underlying the proposed well locations is classified as Nah and Tsegi Alluvium from the Holocene period (O'Sullivan et al. 1979, Ward 1990). The most prominent topographical feature in the immediate vicinity of the proposed action is the Hogback, a monocline ridge that rises about 500 to 1,000 feet above the landscape. The Hogback is located approximately 3 miles west of the proposed CA-6 groundwater monitoring well. Soils within the proposed project areas are variable and range from fine sandy loam to clay loam. No biological soil crusts were observed within the proposed project areas.

The proposed action would be located in the Upper Colorado River Hydrologic Region within the Chaco sub-watershed. Surface water in this watershed is short lived and occurs primarily as spring runoff from snowmelt and summer thunderstorms. The Chinde Arroyo is shown on the USGS National Hydrography Dataset as an ephemeral drainage. The Chinde Arroyo is characterized as a narrow channel with predominately sandy to clay badland banks. Channel width is approximately 20 to 30 feet with banks 3 to 8 feet high. The ordinary high water mark is pronounced and is approximately 3 feet high. Moderate vegetation occurs along the bank channel. No wetlands or riparian habitats occur within or adjacent to the boundaries of the proposed well locations. No perennial surface water occurs within the proposed project areas.

### 3.1 Biological Environment

The natural vegetation in the area has been classified as a Great Basin desert scrub (saltbush series), arroyo riparian (greasewood desert shrub series), and successional-disturbance riparian (saltcedar series) (Dick-Peddie 1993). Vegetation also includes Navajo Agricultural Products Industry irrigated croplands. Vegetation communities found within the proposed project areas are discussed in more detail below. No trees occur within the proposed disturbance areas. No noxious weed species listed by the BIA Navajo Region were observed in the proposed project locations. A list of plant species observed during the biological surveys is provided as Attachment B.

The proposed CA-1 location had been previously disturbed and the present distribution and composition of vegetation consists mainly of herbaceous and woody species. The current vegetation is dominated by prickly Russian thistle (*Salsola tragus*), hoary tansyaster (*Machaeranthera canescens*), and fourwing saltbush (*Atriplex canescens*). Vegetation cover was visually estimated to range from 0 to 5 percent.

The proposed CA-6 project location is vegetated with a sparse cover of herbaceous and woody species such as mound saltbush (*Atriplex obovata*), greasewood (*Sarcobatus vermiculatus*), alkali sacaton (*Sporobolus airoides*), and Russian thistle. Vegetation cover was visually estimated to range from 0 to 5 percent.

The Chinde Arroyo is characterized as dry riparian community dominated by saltcedar (*Tamarix* sp.), greasewood, rubber rabbitbrush (*Ericameria nauseosa*), common reed (*Phragmites australis*), salt grass (*Distichlis spicata*), and scratchgrass (*Muhlenbergia asperifolia*). The wash banks show signs of previous disturbance from erosion and flood events. Vegetation cover within the riparian community was visually estimated to range from 20 to 80 percent.

Common mammal species that may occur in the project areas include desert cottontail (*Sylvilagus audubonii*), black-tailed jackrabbit (*Lepus californicus*), Botta's pocket gopher (*Thomomys bottae*), silky pocket mouse (*Perognathus flavus*), Ord's kangaroo rat (*Dipodomys ordii*), western harvest mouse (*Reithrodontomys megalotis*), deer mouse (*Peromyscus maniculatus*), white-throated woodrat (*Neotoma albigula*), coyote (*Canis latrans*), badger (*Taxidea taxus*), western spotted skunk (*Spilogale gracilis*), and striped skunk (*Mephitis mephitis*). No prairie dog (*Cynomys* sp.) colonies were observed in the proposed project areas. Bats found in Great Basin desert scrub communities include the Yuma myotis (*Myotis yumanensis*), California myotis (*Myotis californicus*), western pipistrelle (*Pipistrellus hesperus*), pallid bat (*Antrozous pallidus*), Brazilian free-tailed bat (*Tadarida brasiliensis*), big free-tailed bat (*Nyctinomops macrotis*), long-legged myotis (*Myotis yolans*), and small-footed myotis (*Myotis leibii*).

Great Basin desert scrub supports a unique suite of avian species. Birds that may nest in this habitat in San Juan County include horned lark (*Eremophila alpestris*), sage thrasher (*Oreoscoptes montanus*), vesper sparrow (*Pooecetes gramineus*), Brewer's sparrow (*Spizella breweri*), sage sparrow (*Amphispiza belli*), green-tailed towhee (*Pipilo chlorurus*), western meadowlark (*Sturnella neglecta*), and Cassin's kingbird (*Tyrannus vociferans*). Other species may utilize these habitats during the non-breeding season and may include mourning dove (*Zenaida macroura*), Gambel's quail (*Callipepla gambelii*), mountain bluebird (*Sialia currucoides*), and dark-eyed junco (*Juncus hyemalis*). The agricultural fields in the project areas and vicinity offer potential foraging habitat for several raptor species, including the red-tailed hawk (*Buteo jamaicensis*), golden eagle (*Aquila chrysaetos*), and ferruginous hawk (*Buteo regalis*). No signs of raptors or signs of consistent raptor use were observed during the biological surveys.

Reptile species that may occur in the project areas include collared lizard (*Crotaphytus collaris*), short-horned lizard (*Phrynosoma douglasii*), sagebrush lizard (*Sceloporus graciosus*), plateau striped whiptail (*Cnemidophorus velox*), gopher snake (*Pituophis cantifer*), and western rattlesnake (*Crotalis viridis*). Refer to Attachment C for a list of wildlife species observed during the biological survey.

## 4. SURVEY METHODOLOGY

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### 4.1 Pre-Field Survey

Prior to conducting fieldwork, a search was conducted for United States Fish and Wildlife Service (USFWS) threatened, endangered, and candidate species listed for San Juan County, New Mexico.

According to the USFWS, there are 11 federally listed threatened, endangered, and candidate species with potential to occur in San Juan County. Table 1 lists these species, their conservation status, habitat associations, and potential to occur in the action area, consists of the proposed project areas and surrounding terrain within a 1/3 mile radius of each well location.

**Table 1. Species listed by the USFWS under the authority of the Endangered Species Act of 1973 for San Juan County, New Mexico (E = endangered; T = threatened; C = candidate).**

Species	Status	Habitat Associations	Potential to Occur in the Action Area
<b>MAMMALS</b>			
<b>Black-footed ferret</b> ( <i>Mustela nigripes</i> )	E	Open grasslands with year-round prairie dog colonies at least 198 acres in size with ≥8 burrows/acre.	No prairie dog colonies were identified in the action area.
<b>Canada lynx</b> ( <i>Lynx canadensis</i> )	C	Generally occurs in boreal and montane forests dominated by coniferous or mixed forest with thick undergrowth.	No boreal or montane forests in action area.
<b>BIRDS</b>			
Mexican spotted owl ( <i>Strix occidentalis lucida</i> )	T	Nests in caves, cliffs, or trees in steep-walled canyons of mixed conifer forests.	No steep-walled canyons with mixed conifer forest or designated critical habitat occur in the action area.
Southwestern willow flycatcher ( <i>Empidonax traillii extimus</i> )	E	Breeds in dense, shrubby riparian habitats, usually in close proximity to surface water or saturated soil.	No suitable nesting habitat exists in action area due to insufficient riparian habitat density and composition along Chinde Arroyo.
Yellow-billed cuckoo ( <i>Coccyzus americanus occidentalis</i> )	C	Breeds in riparian woodlands with dense, understory vegetation.	No suitable nesting habitat exists in action area due to insufficient riparian habitat density and composition along Chinde Arroyo.
<b>FISH</b>			
Colorado pikeminnow ( <i>Ptychocheilus lucius</i> )	E	Large rivers with strong currents, deep pools, and quiet backwaters.	No perennial rivers occur in the action area.
Razorback sucker ( <i>Xyrauchen texanus</i> )	E	Medium to large rivers with silty to rocky substrates. Prefers strong currents and deep pools.	No perennial rivers occur in the action area.
Roundtail chub ( <i>Gila robusta</i> )	C	Large rivers. Present in low numbers in the San Juan, Mancos, La Plata, and Animas rivers in Colorado and New Mexico.	No perennial water sources occur in the action area.



PLANTS			
Knowlton's cactus ( <i>Pediocactus knowltonii</i> )	E	Alluvial deposits that form rolling gravelly hills in piñon-juniper and sagebrush communities (6,200-6,400 feet).	The action area does not have alluvial deposits or piñon-juniper woodland vegetation.
Mancos milk-vetch ( <i>Astragalus humillimus</i> )	E	Cracks of Point Lookout Sandstone of the Mesa Verde series (5,000-6,000 feet).	The action area does not contain any outcrops of Point Lookout Sandstone.
Mesa Verde cactus ( <i>Sclerocactus mesae-verdae</i> )	T	Highly alkaline soils in sparse shale or adobe clay badlands of the Mancos Shale and Fruitland formations (4,000-5,550 feet).	The action area does not contain the preferred geological formation.

Source: USFWS 2012.

In addition to federally listed species, a list of Navajo Nation species of concern was obtained through consultation with the NNHP (Table 2). The NNHP consultation letter is provided in Attachment D. Species of concern include NNHP and federally protected candidate and other rare or sensitive species. The species listed by the Navajo Nation are map quadrangle-specific rather than project-site specific; therefore, project-specific habitat analyses were conducted to determine the potential for each species listed by the Navajo Nation to occur in the action area.

The NNHP currently has no record of species of concern occurring within the proposed project locations, but does lists 23 species of concern with potential to occur on the Fruitland and Kirtland SW, New Mexico, USGS 7.5-minute topographic maps. Ferruginous hawk (*Buteo regalis*) is listed as occurring within 1 mile of each monitoring well. Burrowing owl (*Athene cunicularia*) is listed as occurring within 3 miles of each monitoring well. In addition, Naturita milkweed (*Astragalus naturitensis*) is listed as occurring within 3 miles of the proposed CA-6 monitoring well. The NNHP consultation letter mentions that the potential for Parish's alkali grass (*Puccinellia parishii*) should be evaluated if wetland conditions exist in the area. No wetlands were identified in the project locations during the biological survey.

Table 2 lists the NNHP listed species, their conservation status, habitat associations, and potential to occur in the action area. Some of the species listed in Table 2 are dually listed in Table 1. Species that have the potential to occur in the action area are in bold text. Parish's alkali grass is included in Table 2.

**Table 2. NNHP listed species with potential to occur in the area encompassed by the Fruitland and Kirtland SW, New Mexico, USGS 7.5-minute topographic maps.**

Species	Status	Habitat Associations	Potential to Occur in the Action Area
MAMMALS			
Black-footed ferret ( <i>Mustela nigripes</i> )	Group 2	Open grasslands with year-round prairie dog colonies at least 198 acres in size with ≥8 burrows/acre.	No prairie dog colonies were identified in the action area.

Species	Status	Habitat Associations	Potential to Occur in the Action Area
Pronghorn ( <i>Antilocapra americana</i> )	Group 3	Grasslands or desert scrub areas with rolling or dissected hills or small mesas.	No potential habitat in action area. Grasslands and other level areas have been converted to agricultural fields.
Kit fox ( <i>Vulpes macrotis</i> )	Group 4	Dens excavated in desert scrub or desert grasslands with soft, alluvial, or silty clay soils.	Potential habitat occurs in the action area.
<b>BIRDS</b>			
Bald eagle ( <i>Haliaeetus leucocephalus</i> )	Group 2 MBTA	Occurs near seacoasts, rivers, large lakes, and other large areas of open water. Prefers to nest, perch, and roost primarily in old-growth and mature stands of conifers or hardwoods.	No perennial streams or large lakes in the action area.
Southwestern willow flycatcher ( <i>Empidonax traillii extimus</i> )	Group 2 MBTA	Breeds in dense, shrubby riparian habitats, usually in close proximity to surface water or saturated soil.	No suitable nesting habitat exists in action area due to insufficient riparian habitat density and composition along Chinde Arroyo.
Yellow-billed cuckoo ( <i>Coccyzus americanus</i> )	Group 2 MBTA	Breeds in riparian woodlands with dense, understory vegetation.	No suitable nesting habitat exists in action area due to insufficient riparian habitat density and composition along Chinde Arroyo.
Ferruginous hawk ( <i>Buteo regalis</i> )	Group 3 MBTA	Flat or rolling terrain in grasslands, shrub-steppes, deserts, and badlands. Prefers elevated nest sites (e.g., buttes, utility poles, trees, and on the ground). Species is a secretive nester preferring little human disturbance.	Action area provides potential foraging and nesting habitat. Known to occur within 1 mile of the action area.
Golden eagle ( <i>Aquila chrysaetos</i> )	Group 3 MBTA	In the West, mostly open habitats in mountainous, canyon terrain. Nests primarily on cliffs and trees.	Action area provides potential foraging habitat.
Belted kingfisher ( <i>Ceryle alcyon</i> )	Group 4 MBTA	Nests in burrows in earthen banks usually near a major water source. Clear water, riffles, and lack of overgrown vegetation are important components of habitat.	No streams or rivers in the action area.

Species	Status	Habitat Associations	Potential to Occur in the Action Area
Burrowing owl ( <i>Athene cunicularia</i> )	Group 4 MBTA	Rarely digs own burrows and is typically associated with prairie dog colonies. Found in dry, open, short-grass, treeless plains. Also inhabits human-modified landscapes, such as golf courses and parking lots.	No prairie dog burrows in project areas. Known to occur within 3 miles of action area.
Clark's grebe ( <i>Aechmophorus clarkia</i> )	Group 4 MBTA	Nests on fresh-water lakes and marshes with extensive areas of open water bordered by emergent vegetation.	No streams or rivers in the action area.
Mountain plover ( <i>Charadrius montanus</i> )	Group 4 MBTA	Breeds in extremely dry, level shrublands; shortgrass prairie; barren agricultural fields; and other sparsely vegetated areas.	No potential habitat within the action area, given the lack of extensive, flat, grasslands.
Peregrine falcon ( <i>Falco peregrinus</i> )	Group 4 MBTA	Prefers open habitat and steep cliffs area. Forages in extensive wetland and/or forest habitat.	No steep cliffs, wetlands, or forested habitat in the action area.
Sora ( <i>Porzana carolina</i> )	Group 4 MBTA	Nests in wetlands with shallow to intermediate-depth water and fine-leaved emergent vegetation.	No wetlands or perennial waters in the action area.
Yellow warbler ( <i>Dendroica petechia</i> )	Group 4 MBTA	Nests in wet, deciduous thickets, especially those dominated by willows, and in disturbed and early successional habitats.	No wet, deciduous thickets or other sufficient riparian vegetation in the action area.
<b>FISH</b>			
Colorado pikeminnow ( <i>Ptychocheilus lucius</i> )	Group 2	Large rivers with strong currents, deep pools, and quiet backwaters.	No perennial rivers occur in the action area.
Razorback sucker ( <i>Xyrauchen texanus</i> )	Group 2	Medium to large rivers with silty to rocky substrates. Prefers strong currents and deep pools.	No perennial rivers occur in the action area.
Roundtail chub ( <i>Gila robusta</i> )	Group 2	Large rivers. Present in low numbers in the San Juan, Mancos, La Plata, and Animas rivers in Colorado and New Mexico.	No perennial water sources occur in the action area.
Bluehead sucker ( <i>Catostomus discobolus</i> )	Group 4	Occupies a wide range of water conditions within river or stream habitats, with variable temperature and stream volume; often occupies swift mountain streams.	No streams or rivers in the action area.

Species	Status	Habitat Associations	Potential to Occur in the Action Area
Mottled sculpin ( <i>Cottus bairdi</i> )	Group 4	Prefers stream sections with coarse gravel and rock substrates (usually riffle areas). Adults rarely use areas with slow current and silt substrate; young typically use areas with little or no current, and may hide within silt of slow-water shorelines.	No streams or rivers in the action area.
<b>AMPHIBIANS</b>			
Northern leopard frog ( <i>Rana pipiens</i> )	Group 2	Breeds in wetlands with permanent water and aquatic vegetation (especially cattails). Occurs in irrigation ditches, marches, ponds, lakes, and reservoirs.	No potential habitat in the action area. No wetlands or permanent waters.
<b>PLANTS</b>			
San Juan milkweed ( <i>Asclepias sanjuanensis</i> )	Group 4	Sandy loam soils (usually in disturbed sites), in juniper savanna, and Great Basin desert scrub (5,000-6,200 feet).	No potential habitat in project footprint. Potential habitat occurs in the action area.
Naturita milk-vetch ( <i>Astragalus naturitensis</i> )	Group 3	Sand filled pockets of sandstone slickrock and rimrock pavement along canyons in the piñon-juniper zone (5,000-7,000 feet).	No potential habitat in the action area.
Parish's alkali grass ( <i>Puccinellia parishii</i> )	Group 4	Alkaline seeps, springs, and seasonally wet areas such as washes. Restricted to alkaline or salty moist soils with a white crusts. Occurs at 5,000-7,000 feet.	No wetlands or alkaline soils in the action area.

Note: Navajo Endangered Species List (NESL) Group definitions: Group 2 = endangered and includes species whose prospects of survival or recruitment are in jeopardy; Group 3 = endangered and includes species whose prospects of survival and recruitment are likely to be in jeopardy in the foreseeable future; Group 4 = candidates and includes species that may be endangered but for which NNHP lacks sufficient information to support being listed.

MBTA = Migratory Bird Treaty Act

## 4.2 Field Survey

Pedestrian surveys of the proposed project locations were conducted by Ecosphere on December 5, 2012. The weather was sunny and clear with ambient temperatures near 60 degrees Fahrenheit. Parallel transects spaced approximately 15 feet apart were surveyed over the project areas during the survey. All plant and wildlife species and signs of wildlife observed in the project areas were recorded and digital photos of the project areas were taken. Binoculars were used to survey for raptors and potential nest habitat.

## 5. FEDERALLY LISTED AND CANDIDATE SPECIES

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### 5.1 Species Eliminated from Detailed Evaluation

Based upon evaluation of habitat associations (Table 1) and field survey findings, none of the 11 federally listed threatened, endangered, and candidate species have potential to occur in the project or action area; therefore, all species are eliminated from further evaluation.

## 6. NAVAJO NATION SPECIES OF CONCERN

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### 6.1 Species Eliminated from Detailed Evaluation

Based upon evaluation of habitat associations (Table 2) and field survey findings, 19 of the 24 NNHP species of concern can be eliminated from detailed consideration. These species are black-footed ferret (*Mustela nigripes*), pronghorn (*Antilocapra americana*), bald eagle (*Haliaeetus leucocephalus*), belted kingfisher (*Ceryle alcyon*), Clark's grebe (*Aechmophorus clarkia*), mountain plover (*Charadrius montanus*), peregrine falcon (*Falco peregrinus*), sora (*Porzana carolina*), southwestern willow flycatcher (*Empidonax traillii extimus*), yellow-billed cuckoo (*Coccyzus americanus*), yellow warbler (*Dendroica petechia*), northern leopard frog (*Rana pipiens*), bluehead sucker (*Catostomus discobolus*), Colorado pikeminnow (*Ptychocheilus lucius*), mottled sculpin (*Cottus bairdi*), razorback sucker (*Xyrauchen texanus*), roundtail chub (*Gila robusta*), Naturita milk-vetch (*Astragalus naturitensis*), San Juan milkweed (*Asclepias sanjuanensis*), and Parish's alkali grass.

### 6.2 Species Warranting Detailed Evaluation

Four NNHP species of concern have potential to occur within the project or action area. These species are kit fox (*Vulpes macrotis*), ferruginous hawk, golden eagle, and burrowing owl. None of these species are federally listed under the ESA.

#### 6.2.1 Kit Fox

Status: NESL Group 4

Distribution and habitat: The historical range of the kit fox includes the desert areas of southern Oregon, down to the Baja Peninsula, and over to western Texas. Kit fox have the potential to inhabit all desert lands on the Navajo Nation. They excavate dens in desert scrub or desert grasslands with soft, alluvial or silty-clay soils, and often with sparse saltbrush (*Atriplex* sp.), shadscale (*Atriplex obovata*), greasewood or sagebrush, and grasses. Dens have an average of three key-hole shaped entrances that are 20 to 25 centimeters (cm) in height and less than 20 cm wide (Mikesic and Roth 2008).

Remarks: The vegetation communities and soft alluvial soils in the action area and immediate vicinity of monitoring well locations provide potential denning habitat for the kit fox. No signs of kit fox were observed in the proposed project locations during the field surveys conducted on December 5, 2012.

### 6.2.2 Ferruginous Hawk

Status: NESL Group 3; Migratory Bird Treaty Act (MBTA).

Distribution and habitat: Ferruginous hawks occur year-round throughout the Navajo Nation, inhabiting dry, flat or rolling grasslands and desert scrub (Mikesic and Roth 2008). This species prefers elevated nest sites. Nests on the Navajo Nation are most often on rock pinnacles, buttes, or short cliffs. Nests have also been documented in juniper trees, transmission-line towers, and on the ground (Mikesic and Roth 2008). Nest sites are adjacent to habitats supporting populations of preferred prey species such as desert cottontails, black-tailed jackrabbits, prairie dogs, and ground squirrels.

Remarks: The agricultural croplands and badland terrain in the action area have the potential to provide suitable nesting and foraging habitat for ferruginous hawks. No suitable nesting habitat occurs in the monitoring well locations. According to the NNHP consultation letter, ferruginous hawks are known to nest within 1 mile of the project locations (see Attachment D). The proposed CA-6 groundwater monitoring well is approximately 0.8 mile from a historical ferruginous hawk nest. According to Navajo Mine annual raptor nest inventories, this nest was described as old and mud covered when it was inventoried in 2009 and the nest has not been active since 1993. A ferruginous hawk nest is located approximately 0.9 mile from the proposed CA-1 project location. According to Navajo Mine annual raptor nest inventories, the nest has not been active since 2006. The occurrence of ferruginous hawks in the action area would be limited to individuals flying over the site during foraging trips. No ferruginous hawks were observed in the proposed project locations during field surveys conducted on December 5, 2012.

### 6.2.3 Golden Eagle

Status: NESL Group 3; Eagle Protection Act and MBTA.

Distribution and habitat: Golden eagles are found year round throughout northwestern New Mexico. They typically inhabit mountainous or hilly terrain, hunting over open country. On the Navajo Nation, golden eagles typically nest on steep cliff ledges, usually greater than 100 feet in height; although shorter cliffs may also be used (Mikesic and Roth 2008). In other parts of its range, golden eagles may nest in large trees, man-made structures, and rarely on the ground. Nest sites are adjacent to open habitats that support preferred prey populations.

Remarks: The agricultural croplands located in the action area provide potential foraging habitat for golden eagles. No suitable nesting habitat occurs within the proposed groundwater monitoring well locations. The cliff faces of Hogback, located approximately 3 to 8 miles west of the proposed wells provide potential nesting and perching habitat for golden eagles. Golden eagle territories may be as large as 12 to 20 square miles (Kochert et al. 2002) so it is possible that eagles occupying these territories may utilize the action area for foraging. No golden eagles were observed in the proposed monitoring well locations during field survey conducted on December 5, 2012.

## 6.2.4 Burrowing Owl

Status: NESL Group 4; and MBTA.

Distribution and habitat: Burrowing owl breeding range is widely distributed across western North America. Its winter range includes most of Texas and southern portions of New Mexico, Arizona, and California (Mikesic and Roth 2008). The burrowing owl is a small migratory ground-dwelling owl that occupies prairie dog colonies on dry open grassland or desert scrub habitats. On the Navajo Nation, potential habitat includes low elevation desert land and sparse juniper habitats with grassland understory (Mikesic and Roth 2008).

Remarks: The agricultural croplands located in action area provide potential habitat for burrowing owl. The proposed monitoring well locations do not contain suitable nesting habitat due to the lack of prairie dog colonies and level of human and vehicular activity. No burrowing owls were observed in during field surveys conducted on December 5, 2012.

## 7. ANALYSIS AND DETERMINATION OF EFFECTS

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As required in the guidelines for preparation of BEs issued by the NNHP, the following sections discuss impacts to federally listed species, Navajo Nation species of concern, and avian species protected under the Migratory Bird Treaty Act (MBTA).

### 7.1 Federally Listed Species

Given the lack of suitable habitat in the action area, a determination of no effect is expected for all 11 of the federally listed species with potential to occur in San Juan County, New Mexico.

### 7.2 NNHP Species of Concern

No kit fox dens or signs thereof were observed in the project areas. Kit fox may incidentally cross through the project locations or action area. Impacts to kit fox may include avoidance of the area during construction. These impacts would be short term (2 days). Quarterly monitoring of the wells is not expected to impact kit fox.

There would be no disturbance to known ferruginous hawk nests or potential nesting habitat. No potential nesting habitat for golden eagle or ferruginous hawk occurs within the proposed well locations. Potential impacts to ferruginous hawk and golden eagle would result from disturbance from noise and increased activity during construction and drilling. Golden eagles or ferruginous hawks may avoid the area during that time. This impact would be of short duration (2 days). Quarterly monitoring of the wells is not expected to disturb ferruginous hawks or golden eagles. Indirect impacts to area raptors would include the modification of 0.07 acre of foraging habitat.

No burrowing owls were observed within the proposed project locations. The proposed project is tentatively scheduled to be completed in March 2013, outside the burrowing owl breeding season.

Quarterly monitoring is not expected to result in disturbance to burrowing owls. No impacts to burrowing owls are expected to occur from the proposed action.

The proposed action could impact individual golden eagle, ferruginous hawk, and kit fox. However, no population level impacts are expected given the size and location of the proposed project. Impacts to NESL listed species are not expected to result in a loss of species viability range-wide.

### **7.3 Species Protected Under the MBTA**

The entire CA-1 project area has been previously disturbed, while the CA-6 project area would disturb about 0.07 acre of vegetation. Vegetation removal would result in a minimal loss of habitat for a variety of ground and shrub-nesting birds protected under the MBTA. Avian species most likely to breed and forage in the project areas are discussed in Section 3.1. The proposed project is scheduled to be constructed in March 2013, which is outside the breeding bird season; therefore, impacts to migratory birds would be limited to the modification of 0.07 acre of habitat. Population-level impacts are not expected to occur given the size of the proposed action and the availability of suitable habitat outside the project areas.

### **7.4 Cumulative Effects**

Cumulative effects include the incremental impacts of an action when added to other past, present, and reasonably foreseeable future actions. The proposed project is located in an area that has been industrialized with roads, natural gas pipelines, agriculture, and mining. Reasonably foreseeable development within the area would be limited to scattered residential development. Other actions such as the expansion of Navajo Mine or Navajo Agricultural Products Industry would be evaluated as federal actions and are not discussed here.

The potential future development in the action area is expected to be minimal given the constraints of land status and the level of existing development. The proposed action would have low cumulative impacts on ferruginous hawk, golden eagle, and kit fox. The proposed action would not contribute significantly to the regional loss or degradation of biological resources due to the size and location of the proposed action.

The proposed action would have no cumulative effects to federally listed threatened, endangered, or candidate species.

## **8. MITIGATION**

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General mitigations for wildlife include confining construction activities and equipment to the permitted area to reduce disturbance to wildlife due to noise and human/vehicle/equipment presence. All trash would be removed and hauled to a licensed landfill.

To reduce erosion, BNCC Navajo Mine will minimize areas of surface disturbance through sound construction planning. In addition, best management practices would be employed to reduce potential



impacts associated with erosion and soil disturbance. Reclamation will commence following construction. Reseeding will occur in accordance with Navajo Department of Agriculture guidance, including seed mixes and appropriate seeding dates (recommendation of June 15 through August 30 or dormant seeding November 1 through December 15). In addition, regular maintenance activities by the BNCC Navajo Mine would include control of weedy and invasive weed species that may become established within the project areas.

To minimize the potential for negative effects to ferruginous hawk, BNCC will implement the Ferruginous Hawk Management Guidelines for Nest Protection as outlined by the NNHP (Mikesic and Roth 2008).

No specific mitigation measures are recommended for other listed federal and NNHP species of concern.

## 9. CERTIFICATION

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It is believed by Ecosphere that the proposed action would not violate any of the provisions of the Endangered Species Act of 1973, as amended, or the Navajo Nation code requirements for endangered species (17NNC507). Conclusions of this report are based on actual field examination and are correct to the best of my knowledge. I certify that I have conducted field surveys for the proposed CA-1 and CA-6 groundwater monitoring wells.



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John Dodge, Project Biologist  
Ecosphere Environmental Services

## 10. PERSONNEL

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Joey Herring, Project Manager, B.S. Environmental Biology  
John Dodge, Project Biologist, B.S. Environmental Biology  
Ecosphere Environmental Services  
4801 N. Butler Suite 15101  
Farmington, NM 87401  
(505) 327-3088

## 11. CONSULTATION AND COORDINATION

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Sonja Detsoi, Wildlife Technician  
Pamela Kyselka, Wildlife Biologist  
Navajo Department of Fish and Wildlife  
Navajo Natural Heritage Program  
P.O. Box 9000  
Window Rock, Arizona 86515

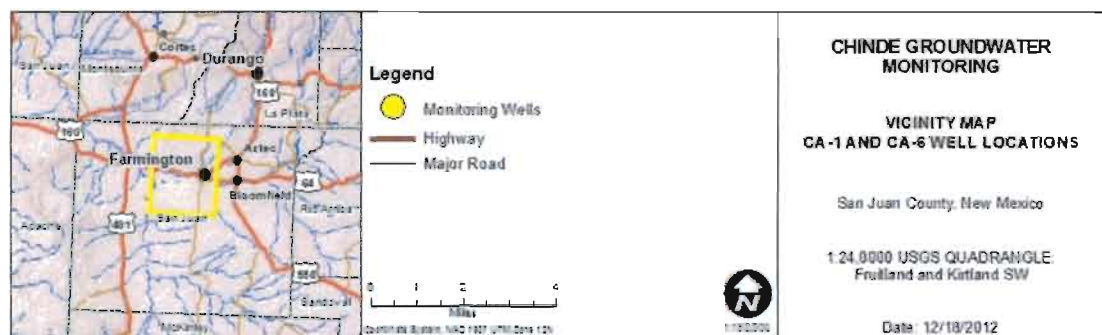
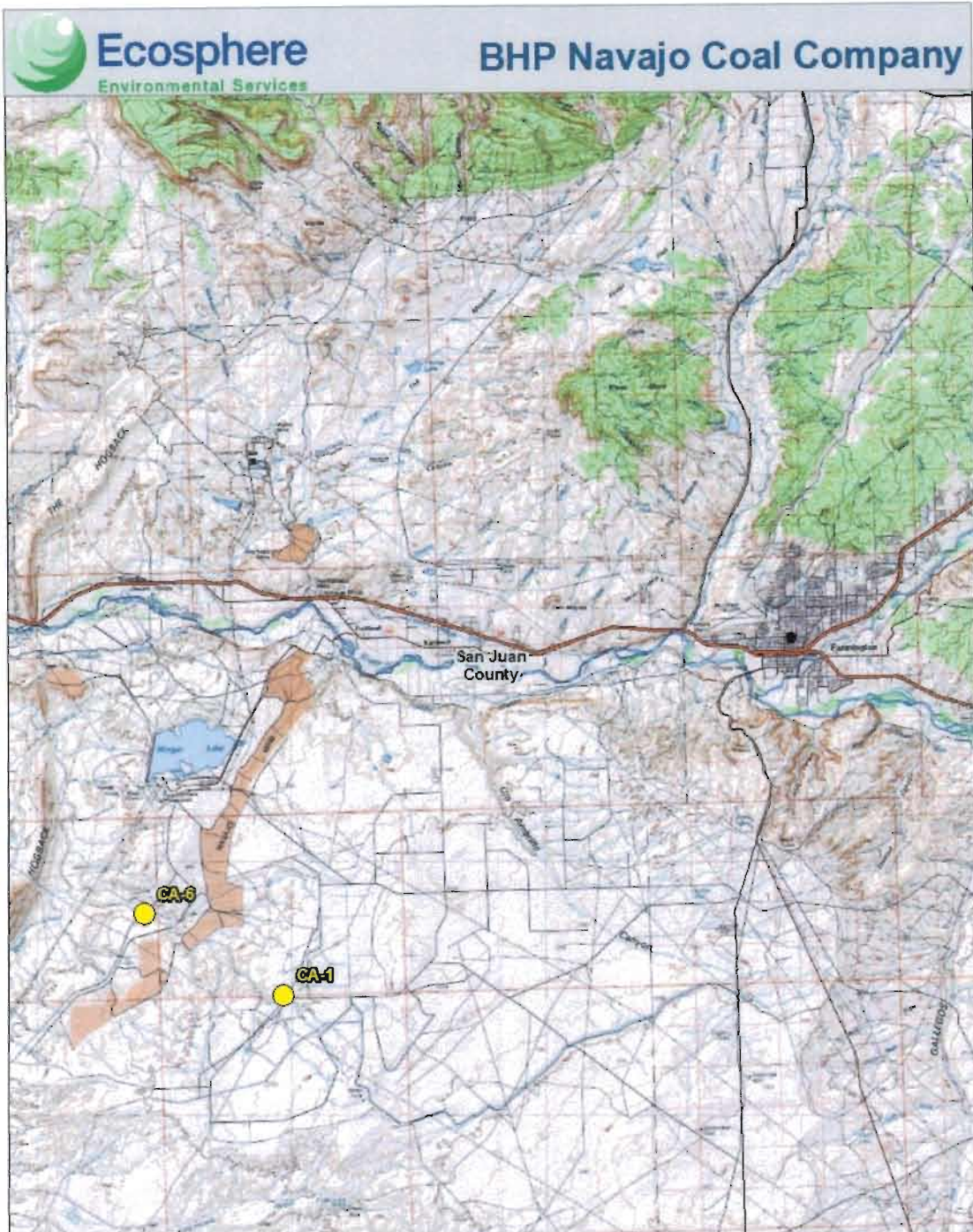
Kara Hart, P.G., Specialist Environmental Permitting  
Environmental Services/New Mexico Coal, Energy Coal  
BHP Billiton  
P.O. Box 1717  
Fruitland, NM 87416

## 12. REFERENCES AND LITERATURE CITED

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- Kochert, M. N., K. Steenhof, C. L. McIntyre, and E. H. Craig. 2002. Golden eagle (*Aquila chrysaetos*). In The Birds of North America, No. 684 (A. Poole and F. Gill, eds.). The Birds of North America, Inc., Philadelphia, PA.
- Mikesic, D. and D. Roth. 2008. Navajo Nation endangered species list; species accounts. Navajo Nation, Division of Natural Resources, Department of Fish and Wildlife. Window Rock, Arizona.
- O'Sullivan, R.B., G.R. Scott, and J.S. Heller. 1979. Preliminary geology map of the Kirtland SW quadrangle, San Juan County, New Mexico. US Geological Survey Miscellaneous Field Studies Map, Series MF-1080, Scale 1:24,000.
- U.S. Fish and Wildlife Service (USFWS). 2012. Endangered species lists. U.S. Fish and Wildlife Service, Southwest Region Ecological Services. Available at <http://www.fws.gov/southwest/es/EndangeredSpecies/lists/>. Accessed December 2012.
- Ward, A. W. 1990. Geologic map emphasizing the surficial deposits of the Farmington 30 by 60 quadrangle, New Mexico and Colorado. US Geological Survey Miscellaneous Investigations Series, I-1978, Scale 1:100,000.

## Attachment A—Figures



**Figure 1: Vicinity of proposed groundwater monitoring wells**



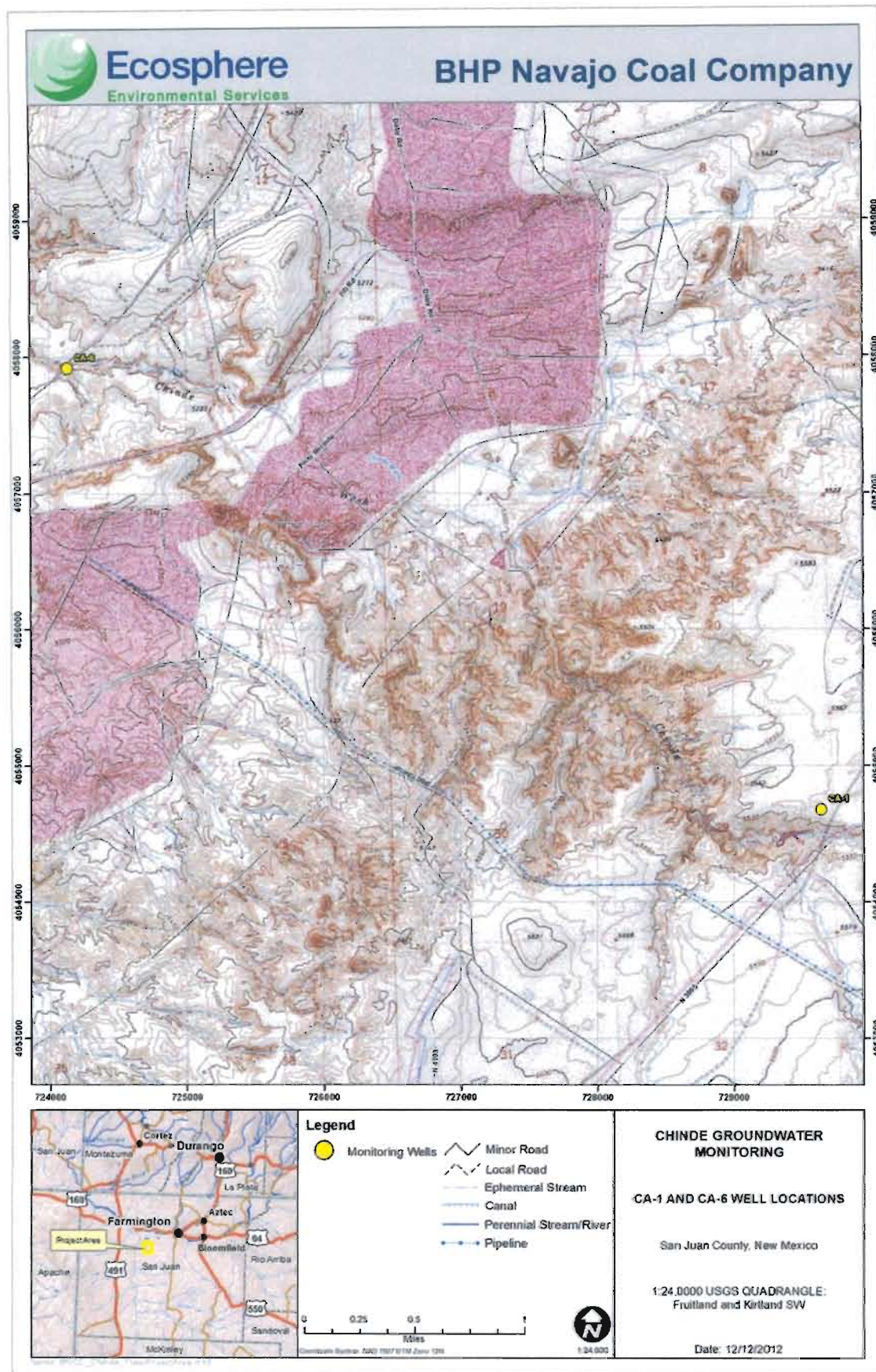


Figure 2: Proposed groundwater monitoring well locations shown on the USGS 7.5 minute topographic maps



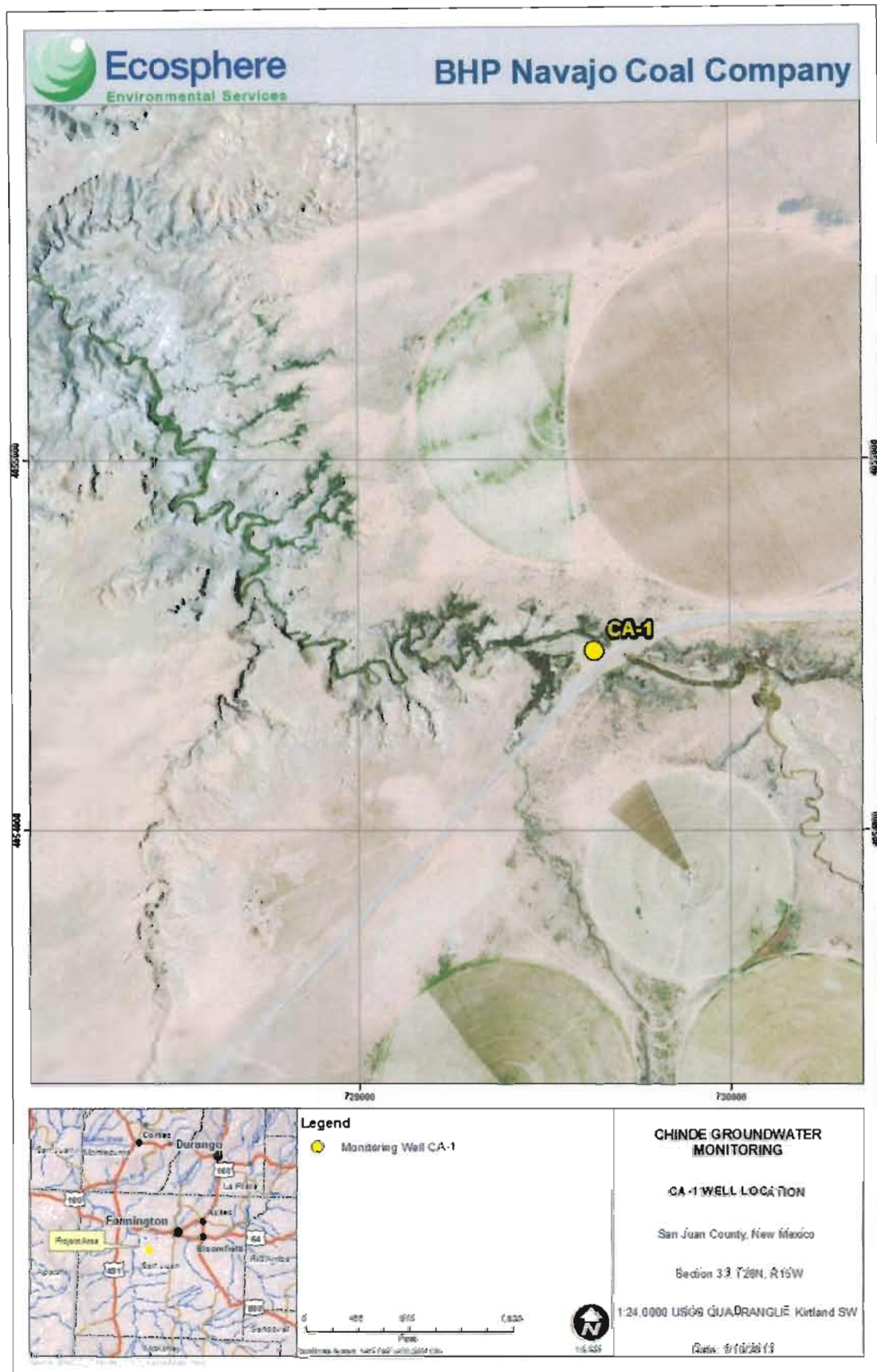


Figure 3: Proposed CA-1 groundwater monitoring well location.

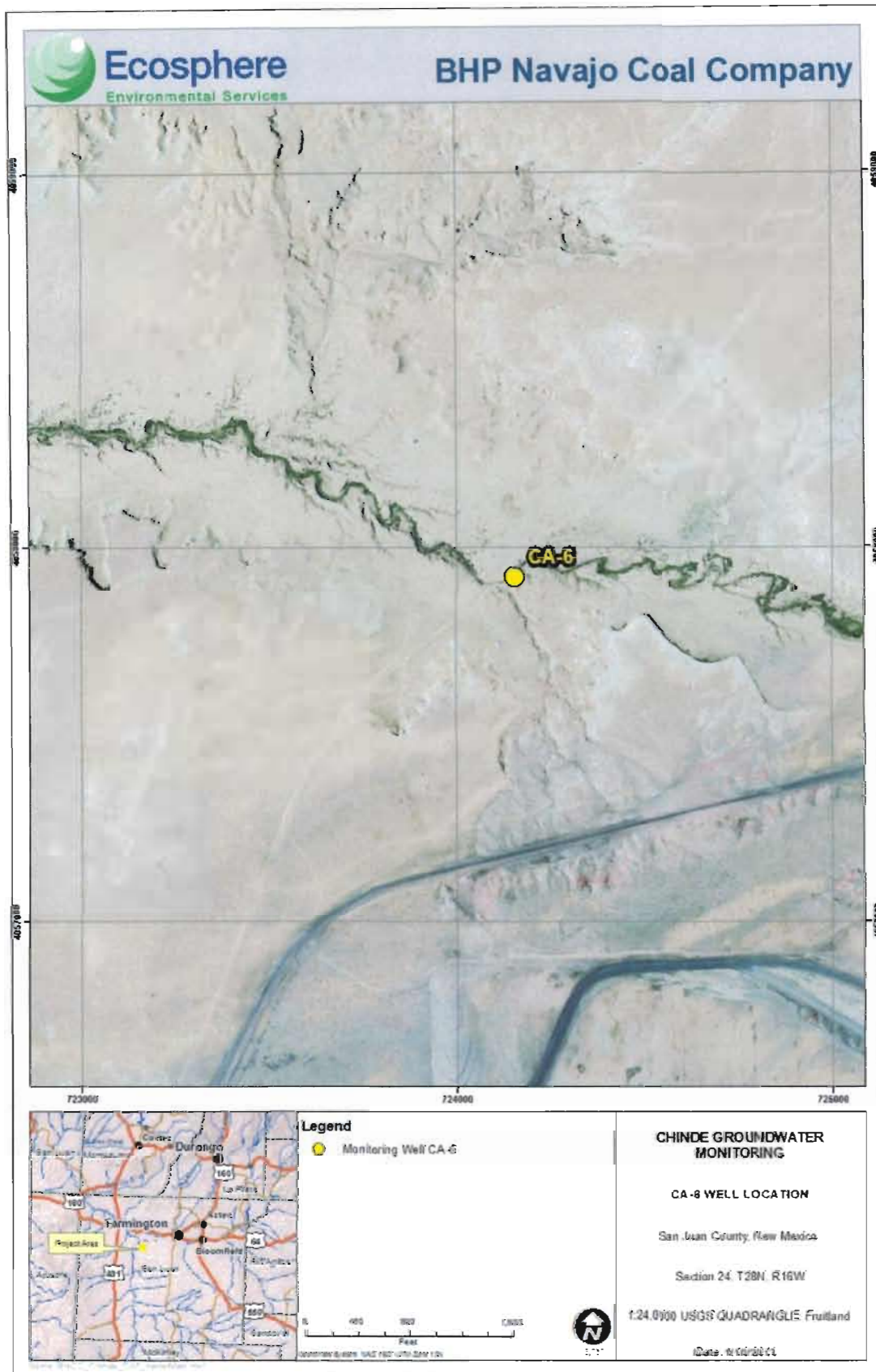


Figure 4: Proposed CA-6 groundwater monitoring well location



## Attachment B—Photographs



**Photograph 1. Looking south at the proposed CA-1 project area, red arrow points to proposed well location (12/5/2012)**



**Photograph 2. Looking west at the proposed CA-6 project area, red arrow points to well location (12/5/2012)**

## **Attachment C—Plants and Wildlife Observed in the Proposed Project Area**

## PLANTS AND WILDLIFE OBSERVED IN THE PROPOSED PROJECT AREA

### Grasses:

*Achnatherum hymenoides*  
*Aristida purpurea*  
*Bouteloua gracilis*  
*Distichlis spicata*  
*Sporobolus airoides*  
*Muhlenbergia asperifolia*

Indian ricegrass  
purple threeawn  
blue grama  
salt grass  
alkali sacaton  
scratchgrass

### Forbs:

*Cryptantha crassisepala*  
*Lappula occidentalis*  
*Phragmites australis*  
*Salsola tragus*

thicksepal cryptantha  
flatspine stickseed  
common reed  
prickly Russian thistle

### Shrubs:

*Atriplex canescens*  
*Atriplex obovata*  
*Ericameria nauseosa*  
*Sarcobatus vermiculatus*  
*Tamarix* sp.

fourwing saltbush  
mound saltbush  
rubber rabbitbrush  
greasewood  
saltcedar

### Cacti/Yucca:

*Opuntia polyacantha*

prickly pear

### Mammals:

*Canis latrans*  
*Lepus californicus*  
*Sylvilagus audubonii*

coyote  
black-tailed jackrabbit  
desert cottontail

### Birds:

*Sturnella neglecta*  
*Circus cyaneus*  
*Corvus corax*

western meadowlark  
northern harrier  
common raven

**Attachment D—Navajo Natural Heritage Program Species of Concern  
Consultation Letter**



NAVAJO NATION  
Department of Fish & Wildlife  
Navajo Natural Heritage Program  
P.O. Box 1480  
Window Rock, AZ 86515



Phone: 928.871.6472 • Fax: 928.871.7603 • <http://nnhp.nndfw.org>

Ben Shelly, President

Rex Lee Jim, Vice President

19 November 2012

File#12EES-02

Joey Herring  
Ecosphere Environmental Services  
4801 N. Butler  
Suite 15101  
Farmington, NM 87401

NAVAJO ENDANGERED SPECIES LIST (NESL) INFORMATION FOR:

PROJECT: BHP NAVAJO COAL COMPANY - GROUNDWATER MONITORING SITE

CA-6: LEGAL DESCRIPTION SEC. 24 SE, T28N, R16W, SAN JUAN COUNTY, NM  
UTM COORDINATES 724185E, 4057915N

CA-1: LEGAL DESCRIPTION SEC. 3 NW, T27N, R15W, SAN JUAN COUNTY, NM  
UTM COORDINATES 729699E, 4054477N

SAN JUAN COUNTY, NM

Ms. Herring:

The following information on species of concern<sup>1</sup> is provided in response to your 13 November 2012 request concerning the subject project, which consists of the BHP Navajo Coal Company (BHP) proposed installation of two groundwater monitoring wells (CA-1 and CA-6) east of the Navajo mine lease area. BHP would acquire full right-of-way (ROW) and water use permits for the monitoring wells. Initially, both locations would have drive point samplers installed. Once the clearances have been obtained, BHP would install a monitoring well at CA-6. No new disturbance would be required at CA-1; approximately 0.07 acre of new disturbance would be required at CA-6. Both monitoring wells would be located on Navajo Nation land.

Each 7.5-minute quadrangle containing project boundaries is addressed separately below. For potentially occurring species these species lists are quadrangle-specific rather than project-specific. Potential for species has been determined primarily on quadrangle-wide coarse habitat characteristics and species range information. Your project biologist should determine habitat suitability at the project site(s).

<sup>1</sup>"Species of concern" include protected, candidate, and other rare or otherwise sensitive species, including certain native species and species of economic or cultural significance. For each species, the following tribal and federal statuses are indicated: Navajo Endangered Species List (NESL), federal Endangered Species Act (ESA), Migratory Bird Treaty Act (MBTA), and Eagle Protection Act (EPA). No legal protection is afforded species with only ESA candidate or NESL group 4 status; please be aware of these species during surveys and inform the NFWF of observations. Documentation that these species are more numerous or widespread than currently known, and addressing these species in project planning and management is important for conservation and may contribute to ensuring they will not be uplisted in the future. Species without ESA or NESL legal protection (e.g., NESL group 4 species) are only included in responses on a regular basis and may not be included in this response. Please refer to the NESL for a list of group 4 species; contact me if you need a copy.

A total of twenty-one (21) species both known and/or potential are included in this response. They are:

	SCIENTIFIC NAME	COMMON NAME	NESL STATUS	FED. STATUS and/or MBTA*
1.	<i>Aechmophorus clarkii</i>	Clark's Grebe	G4	MBTA
2.	<i>Antilocapra americana</i>	Pronghorn	G3	
3.	<i>Aquila chrysaetos</i>	Golden Eagle	G3	MBTA
4.	<i>Asclepias sanjuaensis</i>	San Juan Milkweed	G4	
	<i>Asragalus naturitensis</i>	Naturita Milk-verch	G3	
5.	<i>Athene cunicularia</i>	Burrowing Owl	G4	MBTA
6.	<i>Burco regalis</i>	Ferruginous Hawk	G3	MBTA
	<i>Catostomus discobolus</i>	Bluehead Sucker	G4	
7.	<i>Ceryle alcyon</i>	Belted Kingfisher	G4	MBTA
8.	<i>Charadrius montanus</i>	Mountain Plover	G4	ESA Proposed Threatened; MBTA.
9.	<i>Coccyzus americanus</i>	Yellow-billed Cuckoo	G2	ESA Candidate species; MBTA.
10.	<i>Cottus bairdi</i>	Mottled Sculpin	G4	
11.	<i>Dendroica petechia</i>	Yellow Warbler	G4	MBTA
12.	<i>Empidonax traillii eximius</i>	Southwestern Willow Flycatcher	G2	ESA Endangered; MBTA.
13.	<i>Falco peregrinus</i>	Peregrine Falcon	G4	MBTA
14.	<i>Gila robusta</i>	Roundtail Chub	G2	ESA Candidate Species
15.	<i>Haliaeetus leucocephalus</i>	Bald Eagle	G2	MBTA
16.	<i>Lithobates pipiens</i>	Northern Leopard Frog	G2	
17.	<i>Mustela nigripes</i>	Black-footed Ferret	G2	ESA Endangered
18.	<i>Porzana carolina</i>	Sora	G4	MBTA
19.	<i>Ptychocheilus lucius</i>	Colorado Pikeminnow	G2	ESA Endangered
20.	<i>Xyrauchen texanus</i>	Razorback Sucker	G2	ESA Endangered
21.	<i>Vulpes macrotis</i>	Kit Fox	G4	

MBTA = Migratory Bird Treaty Act

#### FRUITLAND, NM 7.5-MINUTE QUADRANGLE

Project Location: CA-6

Species of concern known to occur on or near the project site(s) include:

1. *Buteo regalis*

**All or parts of this project currently are within areas protected by the Raptor Electrocution Prevention Regulations; consult with NNDFW Zoologist and/or EA Reviewer for more information and recommendations.**

Known to occur within three miles of the project site:

1. *Athene cunicularia*
2. *Astragalus nauritensis*

Species of concern with potential to occur on the 7.5-minute quadrangle(s) containing the project boundaries include the following:

1. *Aquila chrysaetos*
2. *Accipiter velox*
3. *Asclepias sanjuaensis*
4. *Catostomus discobolus*
5. *Ceryle alcyon*
6. *Charadrius montanus*
7. *Coccyzus americanus*
8. *Cottus bairdi*
9. *Dendroica petechia*
10. *Empidonax traillii extimus*
11. *Falco peregrinus*
12. *Gila robusta*
13. *Haliaeetus leucocephalus*
14. *Mustela nigripes*
15. *Parzana carolina*
16. *Ptychocheilus lucius*
17. *Lithobates pipiens*
18. *Vulpes macrotis*
19. *Xyrauchen texanus*

#### AREA 3: LOW SENSITIVITY WILDLIFE RESOURCES

##### KIRTLAND SW, NM 7.5-MINUTE QUADRANGLE

Project Location: CA-1

Species of concern known to occur on or near the project site(s) include:

1. *Buteo regalis*

**All or parts of this project currently are within areas protected by the Raptor Electrocution Prevention Regulations; consult with NNDFW Zoologist and/or EA Reviewer for more information and recommendations.**

Known to occur within three miles of the project site:

1. *Athene cunicularia*



Species of concern with potential to occur on the 7.5-minute quadrangle(s) containing the project boundaries include the following:

1. *Aquila chrysaetos*
2. *Antilocapra americana*
3. *Asclepias sanjuansensis*
4. *Charadrius montanus*
5. *Mustela nigripes*
6. *Vulpes macrotis*

### AREA 3: LOW SENSITIVITY WILDLIFE RESOURCES

Potential for the black-footed ferret should be evaluated if prairie-dog towns of sufficient size (per NFWD guidelines) occur in the project area.

Potential for Puccinellia parishii should be evaluated if wetland conditions exist that contain white alkaline crusts.

Biological surveys need to be conducted during the appropriate season to ensure they are complete and accurate please refer to NN Species Accounts.<sup>4</sup> Further questions pertaining to surveys should be referred to Species Account. Surveyors on the Navajo Nation must be permitted by the Director, NFWD. Contact Jeff Cole at (928) 871-6595 for permitting procedures. Questions pertaining to surveys should be directed to the NFWD Zoologist (Chad Smith) for animals at 871-7070 and Botanist (Andrea Hazelton) for plants at (928) 523-3221. Questions regarding biological evaluations should be directed to Pamela Kyselka (Acting Environmental Reviewer) at 871-7065.

Potential impacts to wetlands should also be evaluated. The U.S. Fish & Wildlife Service's National Wetlands Inventory (NWI) maps should be examined to determine whether areas classified as wetlands are located close enough to the project site(s) to be impacted. In cases where the maps are inconclusive (e.g., due to their small scale), field surveys must be completed. For field surveys, wetlands identification and delineation methodology contained in the 'Corps of Engineers Wetlands Delineation Manual' (Technical Report Y-87-1) should be used. When wetlands are present, potential impacts must be addressed in an environmental assessment and the Army Corps of Engineers, Phoenix office, must be contacted. NWI maps are available for examination at the NFWD's Natural Heritage Program (NHP) office, or may be purchased through the U.S. Geological Survey (order forms are available through the NHP). The NHP has complete coverage of the Navajo Nation, excluding Utah, at 1:100,000 scale; and coverage at 1:24,000 scale in the southwestern portion of the Navajo Nation.

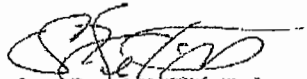
The information in this report was identified by the NFWD's biologists and computerized database, and is based on data available at the time of this response. If project planning takes more than two (02) years from the date of this response, verification of the information provided herein is strongly recommended. It should not be regarded as the final statement on the occurrence of any species, nor should it substitute for on-site surveys. Also, because the NFWD's information is continually updated, any given information response is only wholly appropriate for its respective request.

For a list of sensitive species on the Navajo Nation in addition to the species listed on the Navajo Endangered Species List (NESL) please refer to our website at [www.nndfw.org](http://www.nndfw.org).

<sup>4</sup> Available free of charge on our website at <http://nnp.navajofishandwildlife.org/>

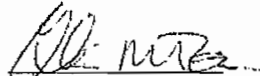
An invoice for this information is attached.

If you have any questions I may be reached at (928) 871-6472.



Sonja Detsoi, Wildlife Tech.  
Natural Heritage Program  
Department of Fish and Wildlife

CONCURRENCE



Gloria M. Tom, Director  
Department of Fish & Wildlife  
Division of Natural Resources

xc: file/chrono

1. HPD REPORT NO. B12773		
2. TITLE OF REPORT: Class III Survey of Test Wells CA-1 and CA-6 for BHP Navajo Coal Company, Navajo Reservation, Nenahnezad Chapter, Shiprock Agency, San Juan County, New Mexico (B12773)	3. FIELDWORK DATES: 12/6/12	4. REPORT DATE: December 2012
5. CONSULTANT NAME AND ADDRESS: Woods Canyon Archaeological Consultants 206 North Washington Cortez, CO 81321	6. PERMIT NO.: B12773	7. CONSULTANT REPORT NO.: WCAC12-001
8. SPONSOR NAME AND ADDRESS: BHP Navajo Coal Company PO Box 1717 Fruitland, NM 87416	9. SPONSOR PROJECT NO.: N/A	10. AREA OF EFFECT: 0.15 ac. TOTAL AREA SURVEYED: 3.2 ac.

11. LOCATION (MAP ATTACHED):

- a. Chapter Nenahnezad
- b. Agency: Shiprock Agency
- c. County: San Juan
- d. State: New Mexico
- e. Land Status Navajo Trust Land
- f. UTM Zone 12 CA-1 = Z12, 729548E, 4054544N to 729645E, 4054712N  
CA-6 = Z12, 724104E, 4058115N to 724132E, 4058123N  
NAD 83
- g. Legal: NMPM-CA-1=T28N, R15W, Sec. 29; CA-6=T28N, R16W, Sec. 14
- h. 7.5' Map(s): CA-1=Kirtland SW, NM (36108-E4), 1966; CA-6=Fruitland, NM (36108-F4), 1966
- i. Lead Agency: Navajo Nation Historic Preservation Department

12. Report Attachments

a. Description of Undertaking:

BHP Navajo Coal Company proposes the construction of two groundwater sampling locations (CA-1 and CA-6). The sampling wells will first be installed with a drive point. Later, a monitoring well will be constructed at CA-6. The total disturbance for the wells/drive points will be approximately 10 feet x 20 feet.

CA-1 is located within a previously disturbed area, and access to the well location will be located entirely within a previously disturbed area. A proposed new 150 feet x 20 feet wide road will be utilized to access CA-6.

b. Existing data Review:

An online NMCRIS search was conducted on 10/29/12. Two sites are located within 0.25 miles of CA-1: LA26496 and LA26569. Three sites are located within 0.25 miles of CA-6: LA99454, LA99455, and LA99456. The sites include a lithic scatter, Anasazi artifact scatter, two Pueblo III roomblocks, and a historic Navajo habitation with a hogan and petroglyph. These sites were identified during the Block III N.I.I.P. survey, the C.G.P. Survey, and the Battelle Columbus Labs environmental survey. No sites are located within 100 meters of the current project area.

A literature review and TCP search was conducted at the NNHPD offices in Window Rock on 12/6/12. The literature review identified similar resources as those from the online search, as well as, the Questar Corp. Southern Trails Pipeline Blanco Interconnect Mine Reroute and Access Road (01-582) and El Paso Corps Line A201 Pipeline ROW for Testing Repair and Replacement and Associated Access Roads (02-966.1). The TCP files search revealed that Tsetaak'aan/Rock Tilted Into Water/Hogback (No. 439) is the closest TCP. No documented TCPs are within 1 mile of the project area.

c. Area Environmental & Cultural Setting:

Both well locations are located in Chinde Wash. Vegetation consists of scrub, grasses, and tamarisk. Sediments are alluvial within the drainage, and a sandy loam outside of the drainage. CA-1 is adjacent to irrigated NAPI farm fields. CA-6 is in an area of mesa top dissected by numerous deep and shallow arroyos. The surrounding area has a lengthy history of Archaic, Anasazi, Basketmaker II, and Historic Navajo occupation. These sites include habitations, fieldhouses, hogans, corrals, hornos, camps, and rock art.

d. Field Methods:

A previous disturbance surrounds the proposed location of CA-1. This disturbance area includes an existing 10+ feet wide x 300 feet long access road which was surveyed to a width of 15 meters. The area of effect of the drive point/monitoring well is 20 feet x 20 feet. A 50 meter x 70 meter area of the disturbance was surveyed. The total APE for CA-1 and access is 0.04 acres (all of which is previously disturbed). The survey surrounding the APE is 1.2 acres in size.

20 feet x 20 feet new APE is proposed for the CA-6 drivepoint/monitoring well. A 150 feet long x 10 feet wide access route will be constructed to access CA-6. The total survey area surrounding the APE is 50 meters x 70 meters. For CA-6, the total APE area is 0.11 acres, and the total survey area is 2 acres.

For the entire project, the total APE area is 0.15 acres, and the total survey area is 3.2 acres. The survey was conducted using a submeter GPS to aid in accurately walking the survey area. The survey area was walked by one archaeologist on 15 meter wide transects.

15. CULTURAL RESOURCE FINDINGS:

a. Location/Identification of Each Resource:

b. Evaluation of Significance of Each Resource:

[illegible]

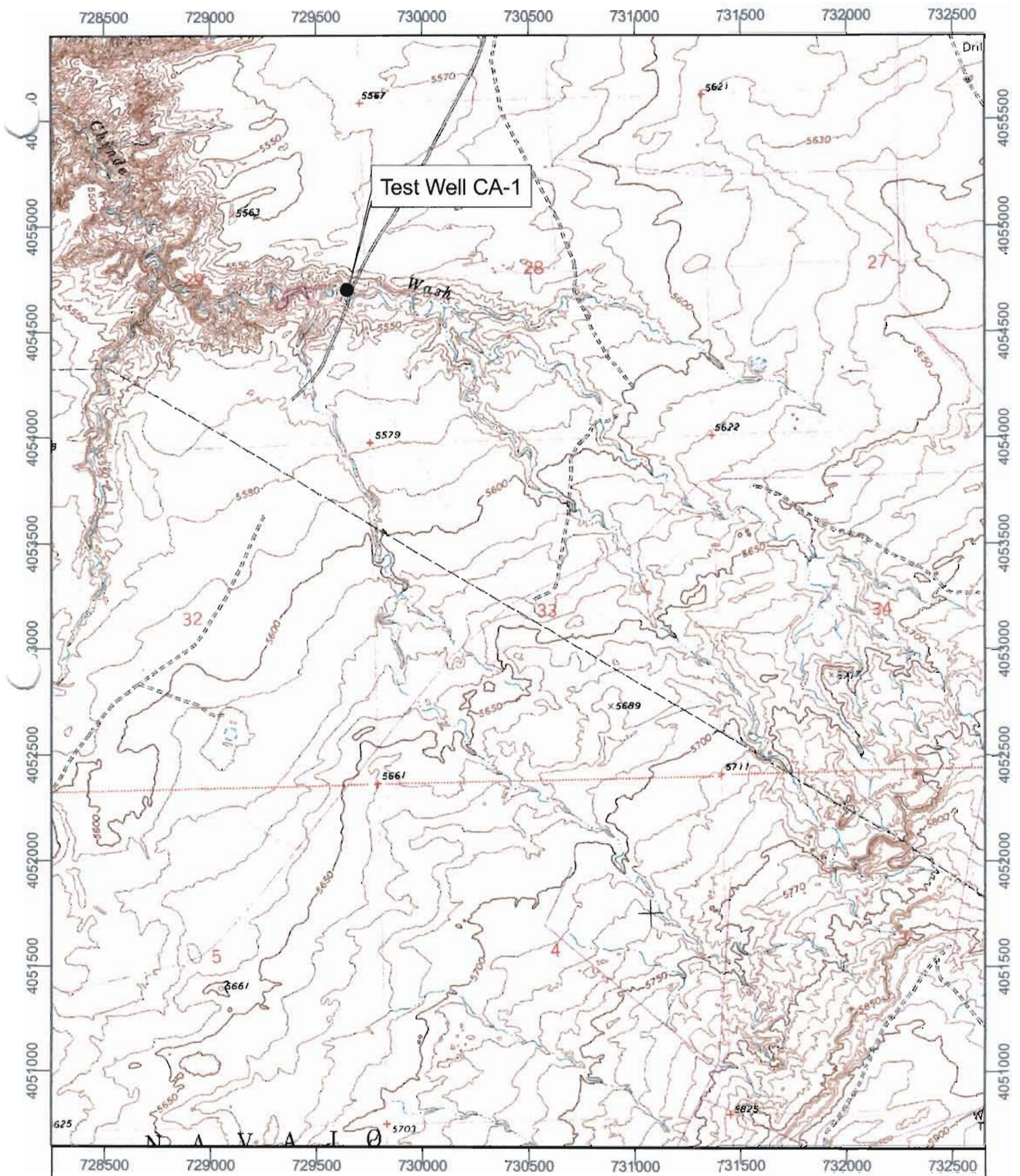
DATE:

*James Bell*

12/06/2012

Bayan Shaks

12/06/2012



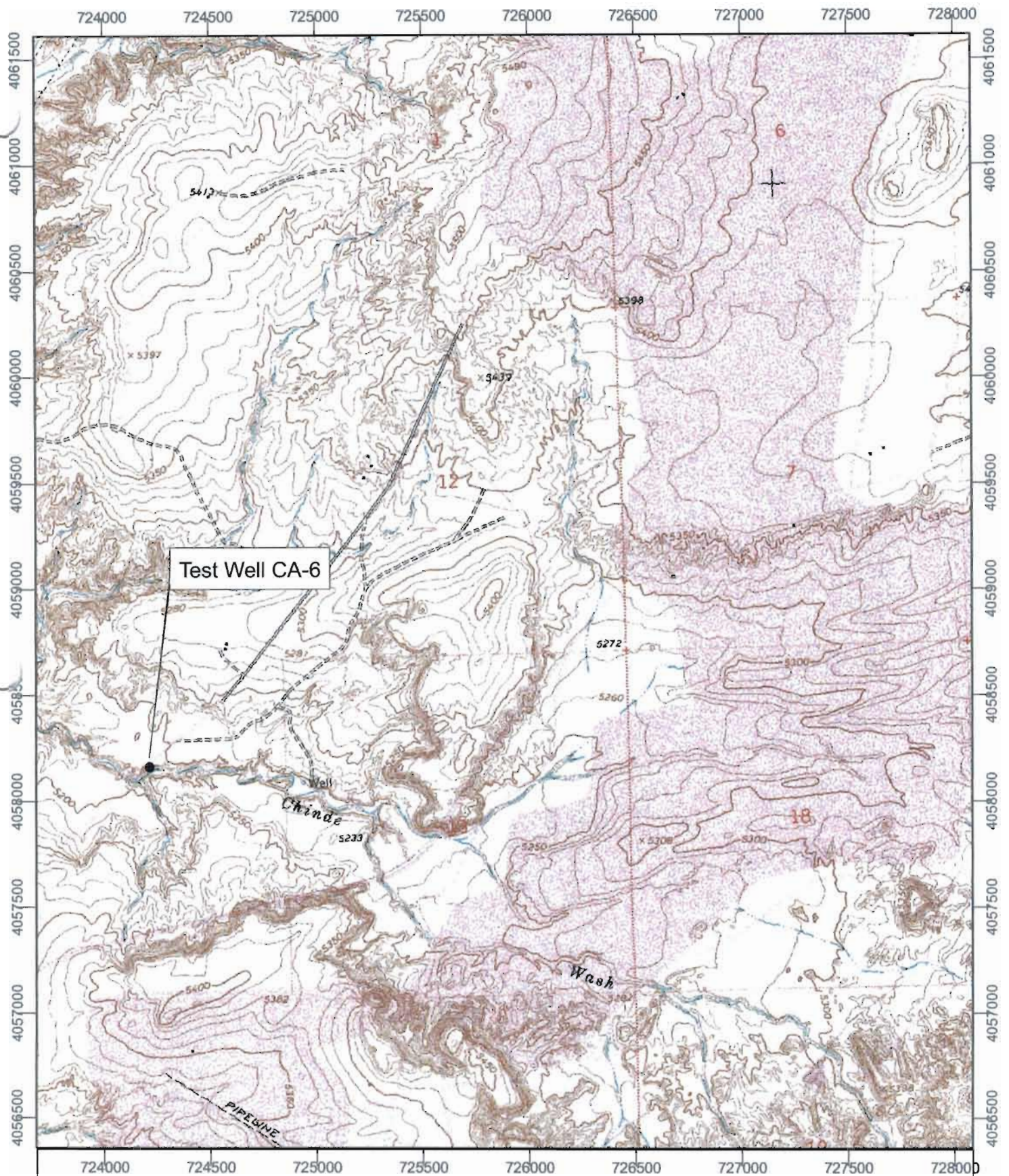
**Class III Survey of Test Wells CA-1 and CA-6 for  
BHP Navajo Coal Company, Navajo Reservation,  
Nenahnezad Chapter, Shiprock Agency,  
San Juan County, New Mexico (B12773)  
December 2012**

For Official Use only; disclosure  
of site location prohibited  
(36CFR 296.18)

USGS Kirtland SW (36108-E4), 7.5', 1966  
NMPM T 28N, R 15W, Section 29  
Zone 12; NAD83



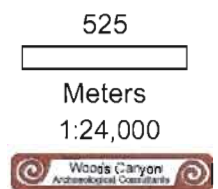




**Class III Survey of Test Wells CA-1 and CA-6 for  
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December 2012**

For Official Use only: disclosure  
of site location prohibited  
(36CFR 296.18)

USGS Fruitland (36108-F4), 7.5', 1966  
NMPM T 28N, R 16W, Section 14  
Zone 12; NAD83





Easting: 729637 Northing: 4054678 Zone: 12  
There will be no new disturbance

NAPI ROAD

NAPI  
FIELD

CHINDE ARROYO

CA-1

CA-1 Looking Northeast

N3005

Location  
for CA-1

N 3005

EXISTING DISTURBED AREA

PROPOSED DRIVE POINT

PHOTO LOCATION

500

Feet



Chinde Monitoring

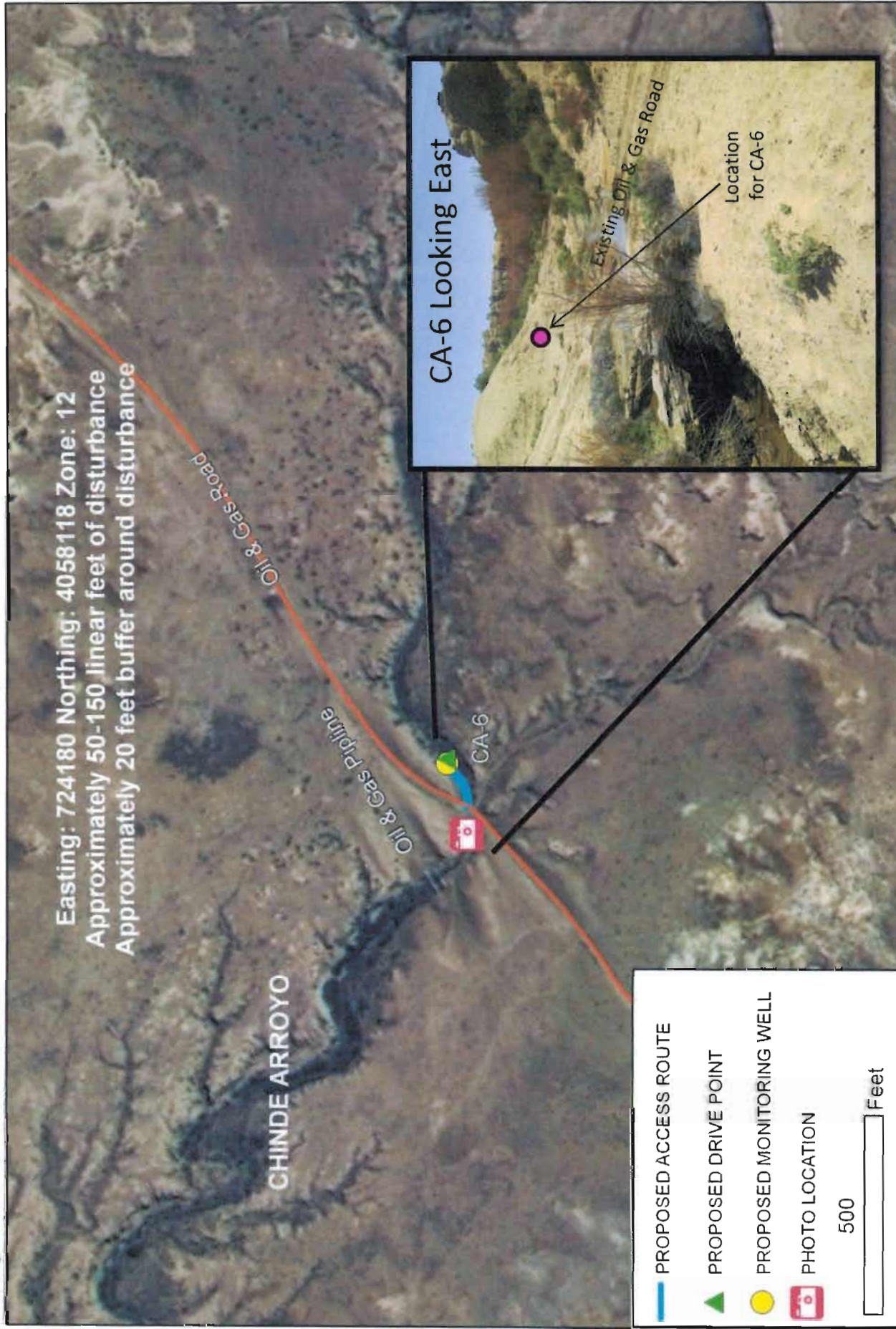
Figure 1



CA-1 Disturbance Area

BHP Navajo Coal Company

P.O. Box 1717 Fruitland, New Mexico 87416





		<p>Chinde Monitoring</p> <p><b>Figure 2</b></p> <p><b>CA-6 Disturbance Area</b></p>	<p><b>BHP Navajo Coal Company</b></p> <p>P.O. Box 1717      Fruitland, New Mexico      87416</p>
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NAVAJO NATION ARCHAEOLOGY DEPARTMENT  
Site Survey and Management Form

SITE NO: NM-H-21-215

SITE NO: NM-H-21-215 FIELD OR OTHER NAME: Mwbs001 Possibly LA 99454 (CGP 731)

DATE RECORDED: 6-Dec-12

SUBJECT NUMBER AND NAME: Class III Survey of Test Wells CA-1 and CA-6 for BHP Navajo Coal Company, Navajo Reservation, Nenahnezad Chapter, Shiprock Agency, San Juan County, New Mexico (B12773)

ORGANIZATION: Woods Canyon Archaeological Consultants, Inc.

ARCHAEOLOGIST(S): Bryan Shanks

USGS MAP REFERENCE CA-1=Kirtland SW, NM (36108-E4), 1966; CA-6=Fruitland, NM (36108-F4), 1966

LEGAL LOCATION: NMPM Township 28N Range 16W Section 14 1/4 of NW 1/4 of SW 1/4 of NE 1/4

UTM: Zone 12 Northing 4058108 Easting 724188 Accuracy (+/- m) 1 Duration (min) 5

STATE: New Mexico COUNTY: San Juan CHAPTER: Nenahnezad Platted: No

LAND STATUS: Navajo Trust Land

GROUND VISIBILITY: KIND AND EXTENT OF COVER? 90% scrub and grasses

TOPOGRAPHY: The site is located on a narrow ridge formed from the dissection of a mesa top by deep drainage. Chinde Wash is located immediately north of the site and an unnamed drainage is south of the site. These two drainages join immediately west of the site. A large rock knob is on the site.

DRAINAGE: Chinde Wash is located 20 m north of the site.

ELEVATION (ft/m): 5200 ft/1584 m SLOPE & DIRECTION: all directions, up to a 40+ degree slope at edge of site

SEDIMENT TYPE: light brown sandy loam that ranges in depth from 0 (bedrock) to 30+ cm

OTHER: None

VEGETATION PRESENT: greasewood, grasses, tamarisk in Chinde Wash

CULTURAL AFFILIATION - Component 1: Anasazi

SITE TYPE - Component 1: Storage Room and Special Use

PERIOD(S) OF OCCUPATION AND DATE RANGE: Pueblo II or Pueblo III

HOW DATED? - Component 1: ceramics

CULTURAL AFFILIATION - Component 2: Navajo, Historic

SITE TYPE - Component 2: Petroglyph

PERIOD(S) OF OCCUPATION AND DATE RANGE: 1900 to 1950s?

HOW DATED? - Component 2: Petroglyph Iconography

DIMENSIONS OF SITE (L x W): 100 m x 50 m TOTAL AREA (SQ M): 5000

HOW DETERMINED: The site boundary was defined by spatial distribution of artifacts and features.

ARCHITECTURE PRESENT? ☒ DESCRIBE ARCHITECTURE:

A small room (F9) beneath a bedrock overhang. Walls constructed of large upright slabs. F5 is a slightly arc-shaped low wall.

ARTIFACTS OBSERVED/COUNTED: 1 chert secondary flake, 3 chert tertiary flake  
1 chert retouched flake  
1 ferrous metal band with wire nail  
8 indeterminate corrugated sherd  
1 indeterminate black-on-white sherd (thick black bands)

COLLECTIONS MADE? ☐ PHOTOS TAKEN? ☒ DIGITAL IMAGE NUMBERS: 453-486

SITE DESCRIPTION:

The site consists of a series of four petroglyph panels (Features 1 to 4), a drylaid wall alignment (Feature 5), two unburned rock concentrations (Features 6 and 7), a linear clearing with low berms on either side (Feature 8), and a storage room (Feature 9). The site is located on a ridge formed by the dissection of a mesa top by Chinde Wash and an unnamed drainage, where a large rock knob is located. It is possible that this site was originally recorded as LA 99454 (CGP 731) during the CGP (Coal Gasification Project) in 1974 by Peter Eschman. The site form for that site describes a Navajo site with two areas of petroglyphs, a rectangular coursed masonry hogan, and a coursed masonry storeroom. The petroglyphs are present; Features 5, 6, and 7, could be interpreted as a hogan remnant, and Feature 9 could be the storeroom (although not coursed). Unfortunately, there is no site map with the LA 99454 site form, so without a larger block survey of the general area, it is impossible to state with certainty that this recordation is the same site.

Feature 1 is a vertical petroglyph panel on a rock face oriented at a compass bearing of 230 degrees. The two elements are a pecked anthropomorph on a horse with a saddle and reins and a pecked and etched standing anthropomorphic figure.

Feature 2 is a vertical petroglyph panel on a rock face oriented at a compass bearing of 320 degrees. Three zig-zag elements are pecked on the rock face.

Feature 3 is a large and complex vertical panel on a rock face oriented at a compass bearing of 180 degrees with numerous elements. Most elements are pecked but a few also have minor etching. The elements include zig-zags, anthropomorphs, arrows, zoomorphs, and abstracts.

Feature 4 is a vertical petroglyph panel on a rock face oriented at a compass bearing of 100 degrees. Two elements are present: a possible anthropomorph and a square with a T.

Feature 5 is a 5 m long x 0.5 m tall wall alignment at the edge of a bedrock ledge. The alignment is slightly arc-shaped with its opening towards the south. The wall alignment is mostly crumbled and fallen but was never very high (only approximately 5 courses) and is constructed of mostly tabular rocks. The feature could be a windbreak or hunting blind. It is also possible that the feature is a herradura type Chacoan road feature.

Feature 6 (2 m x 2m) and Feature 7 (3 m x 3 m) are concentrations of unburned rock. It is uncertain if the features are cultural or natural but neither appear to have much depth.

Feature 8 is a 2 m wide cleared path that is oriented roughly east to west. Low berms of earth are located north and south of the path, and appear to have been removed to clear the pathway. The purpose of the feature is unknown but could be associated with a Chacoan road, or a historic trail.

Feature 9 is a 3 m x 3 m enclosure beneath a 1 m tall bedrock rockshelter on the north side of the ridge. The north side of the enclosure consists of a wall segment constructed of large upright slabs. The south wall is the back of the rockshelter. The front 2 to 3 slabs have fallen down slope and are now in an area with a small concentration of artifacts including corrugated sherds, a black-on-white sherd, and lithics. Based on the associated artifacts, the feature is likely an Anaasazi Pueblo II or Pueblo III storage room.

The site is interpreted as a multi-component site that dates to the Anaasazi Pueblo II or Pueblo III period and the 1900s to 1950s Historic Navajo period. Feature 9, and possibly Features 5, 6, 7, and 8, are associated with the Anaasazi component, and could represent storage and special use functions. Most or all of Features 1, 2, 3, and 4, are associated with the Navajo component.

CONDITION OF SITE: The site is in good condition. A few graffiti elements are present: "SH 7-14-12 USMC", "ACTS 2:38" "July 17, 1989". A portion of the Feature 9 slabs have collapsed and fallen downslope.

USE OF DISTURBANCE: Graffiti, erosion

LOCATION OF SITE RELATIVE TO PROJECT AREA: The site is located more than 30 meters from the are of direct effect, and is on a high ridge, on the opposite side of Chinde Wash.

EXTENT OF INVESTIGATION TO DATE: No certain previous recordations.

RESEARCH POTENTIAL: The site has extensive research potential in rock art studies, architecture, subsistence, chronology, and possibly road analysis.

RECOMMENDATIONS: Historic Properties Affected: No Effect

- ☒ Preserve/Avoid
- ☐ No Further Work
- ☐ Fence
- ☐ Mitigate

The site will not be impacted by the proposed monitoring well or access road. The site is over 30 meters from the area of direct effect of the undertaking.

SITE ASSESSMENT UNDER 36 CFR 60.4 (NATIONAL REGISTER): Eligible

INTEGRITY: The site retains the qualities of integrity of location, materials, and workmanship. An existing road and pipeline are west of the site.

CRITERIA a-d: The site does not appear to represent a property which is potentially eligible for inclusion on the NHRP under criteria a, or b. It appears to be eligible under criterion d, based on its potential to yield subsurface deposits. It appears to be eligible under criterion c, based on high artistic value of the rock art panels. The site is recommended as potentially eligible for inclusion on the NRHP.

50 YEAR GUIDELINE: The site does meet the 50-year guideline.

EXCLUSIONS: The site components do not fall into categories a-g, and thus does not qualify as exclusions.

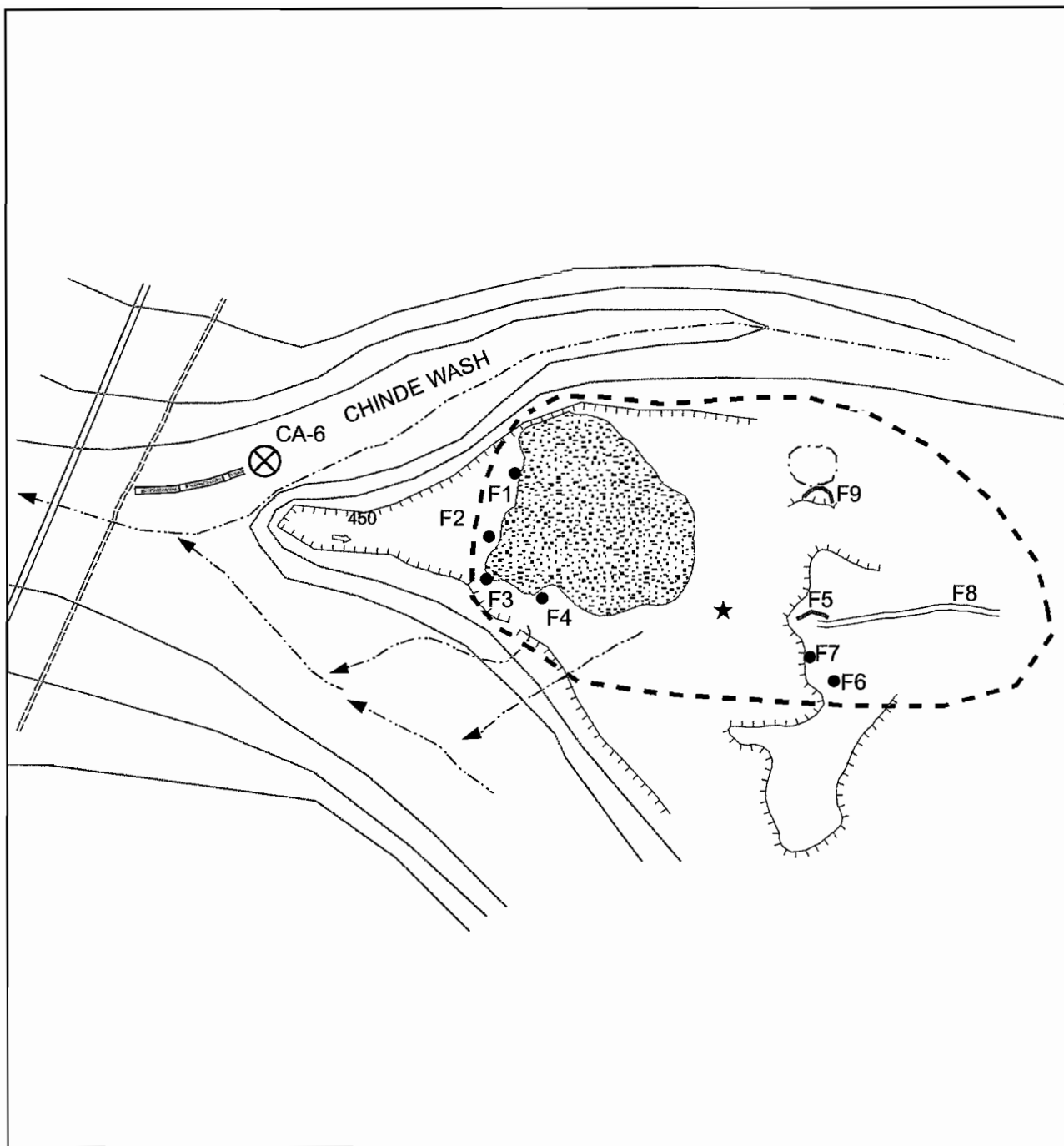
SITE ASSESSMENT UNDER 43 CFR 7.3 (ARPA): The site does appear to meet the 100-year age requirement and is of archaeological interest. The site does merit protection under the provisions of ARPA.

SITE ASSESSMENT UNDER AIRFA: It is uncertain if the site retains religious significance. Elements of the rock art panels could have religious significance. The site may merit protection under provisions of AIRFA.

#### HOW CAN SITE BE REACHED?

From Fruitland, take Road 6675 south over the bridge, across the San Juan River. Turn east onto N365, past the school, to the intersection with N36 Highway. Take N36 Highway to N3005. Turn south on N3005, and follow past Ojo Amarillo. Follow N3005 into the mine area and turn west at the Area III Mine office sign. Follow road past the Area III BHP mine office, cross the haul road and cross the railroad tracks. Follow the dirt road less than 1/2 mile after railroad tracks to first dirt road heading north. Follow road north for approximately 5 miles. Park where road crosses Chinde Wash. Site is immediately east of road.

OTHER COMMENTS (ETHNOGRAPHIC DATA, ETC.):



Project/Permit Number B12773

**NM-H-21-215**

Site Perimeter

Feature

Proposed Monitoring Well

Datum

Photo

Cliff or Ledge

Contour

Drainage

Pipeline

Feature

Proposed Road

Road

Wall

Rocky Knob

Artifact conc.

25

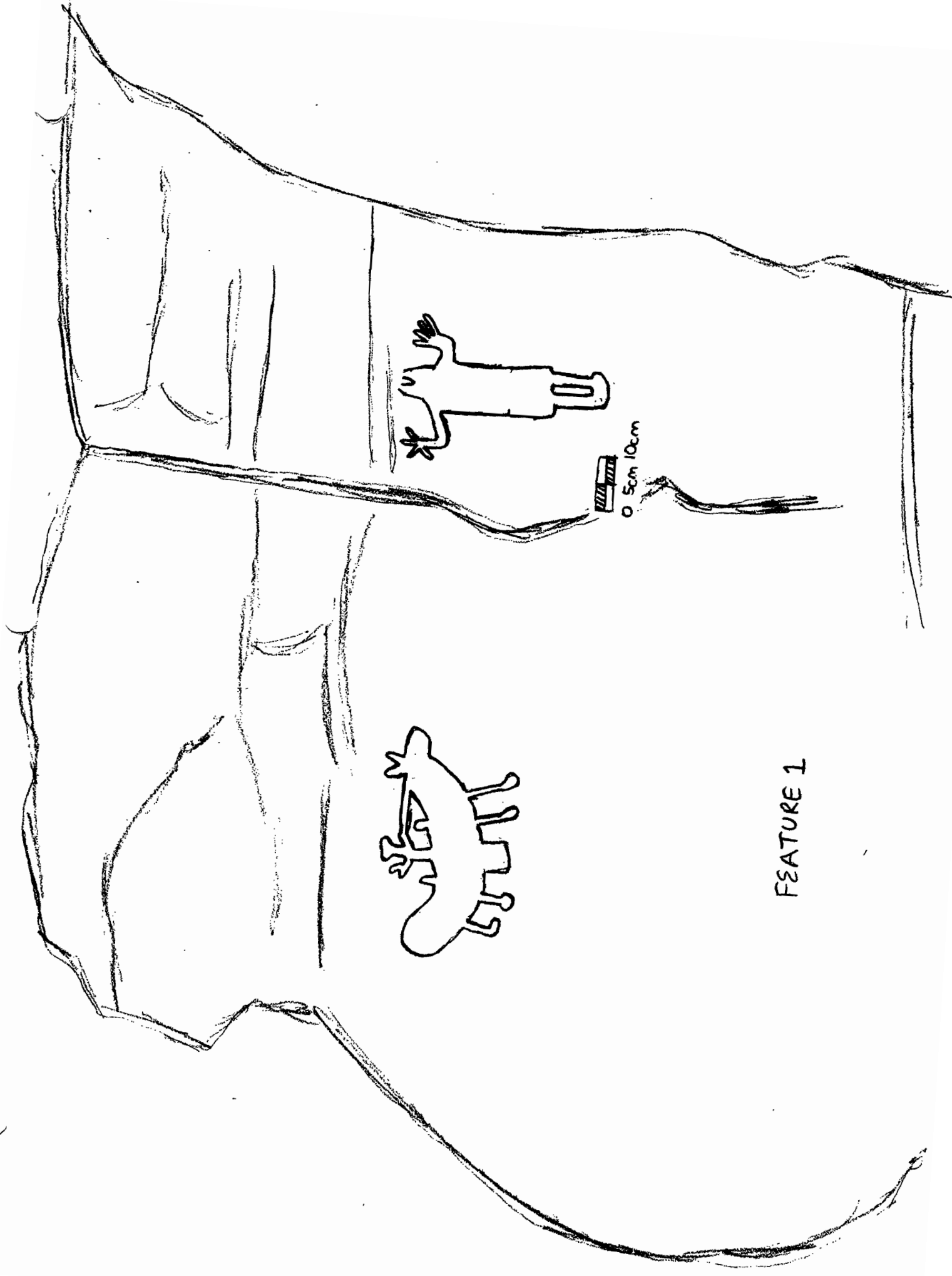
Meters

N

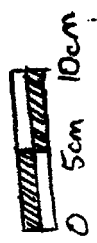
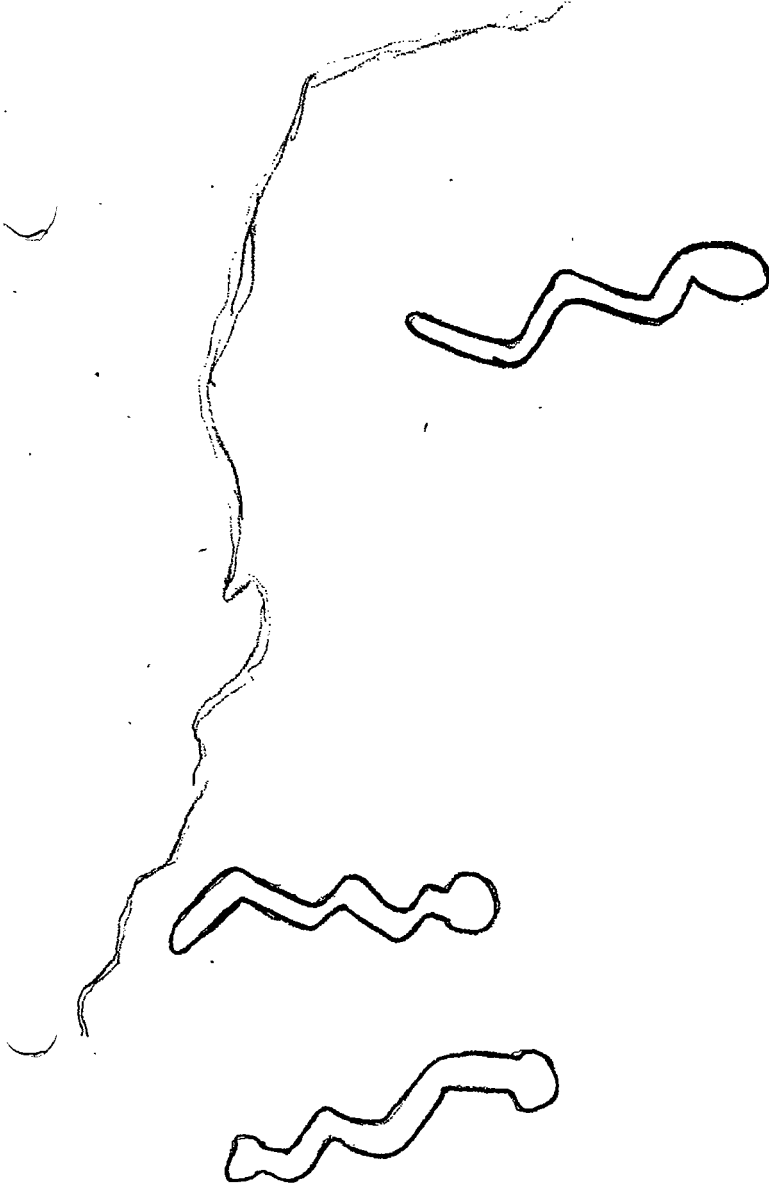


2012





FEATURE 1



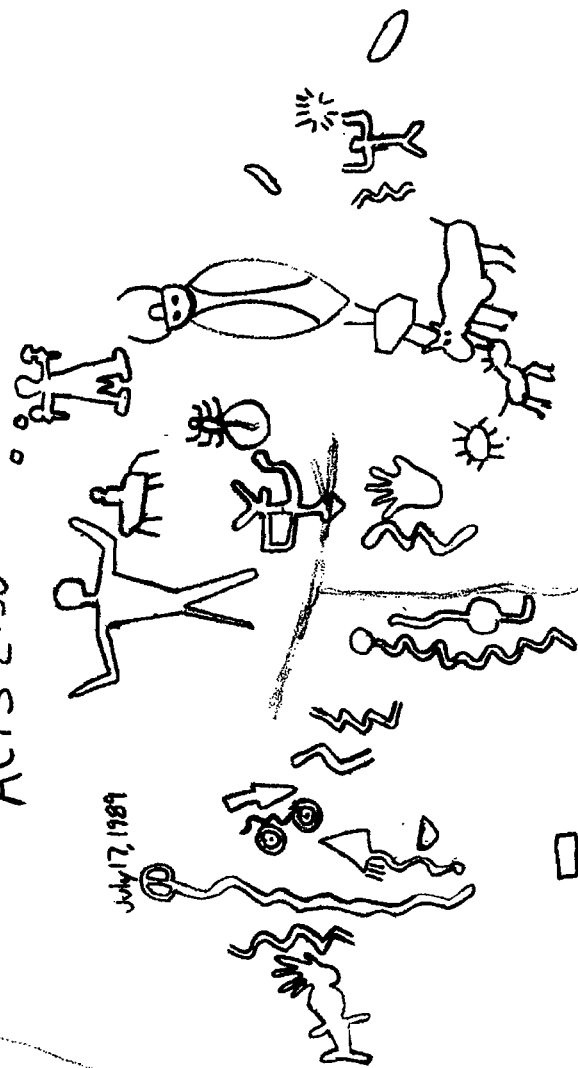
FEATURE 2

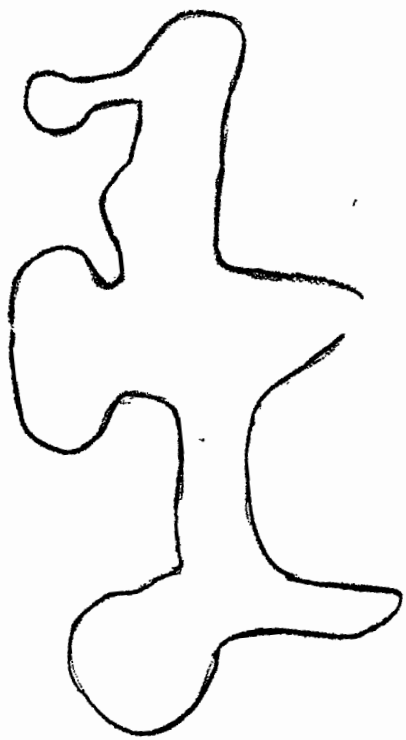
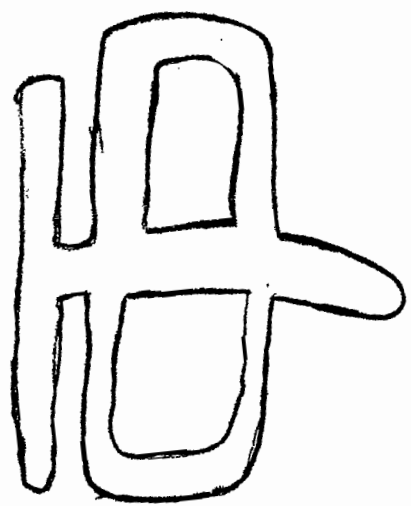
FEATURE 3

ACTS 2:38

July 17, 1989

10cm



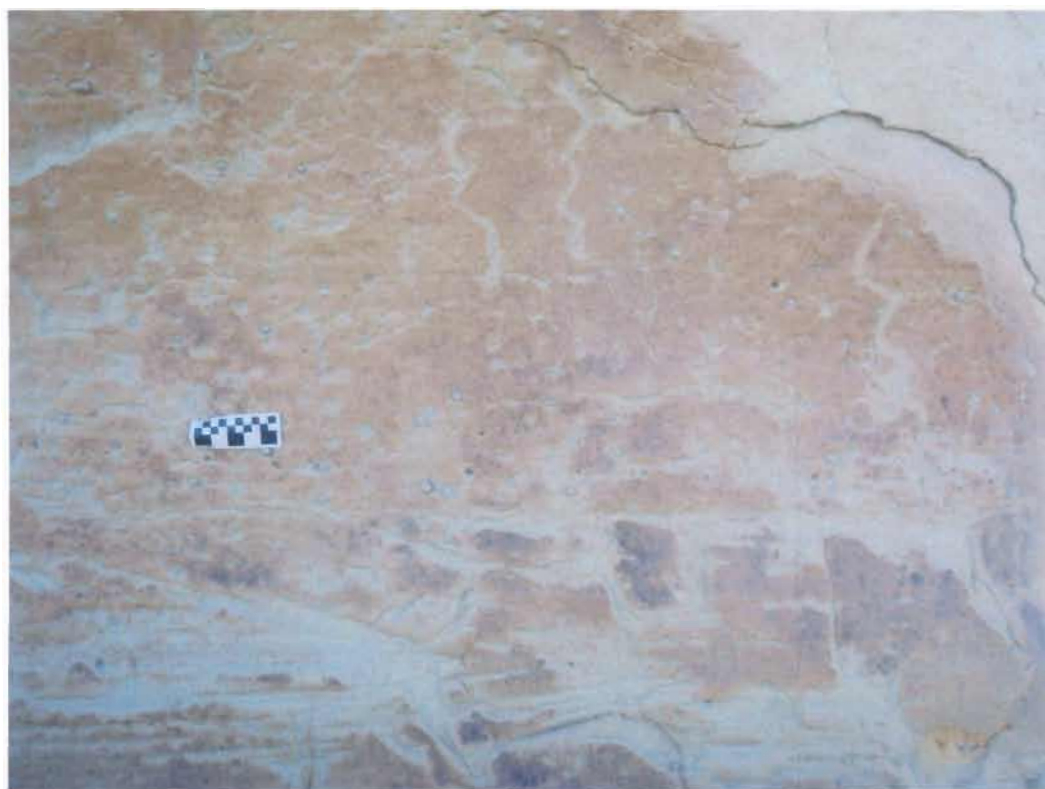


FEATURE 4





NM-H-21-215 Site Overview looking east.  
450.JPG



NM-H-21-215 Closeup of Feature 2.  
453.JPG

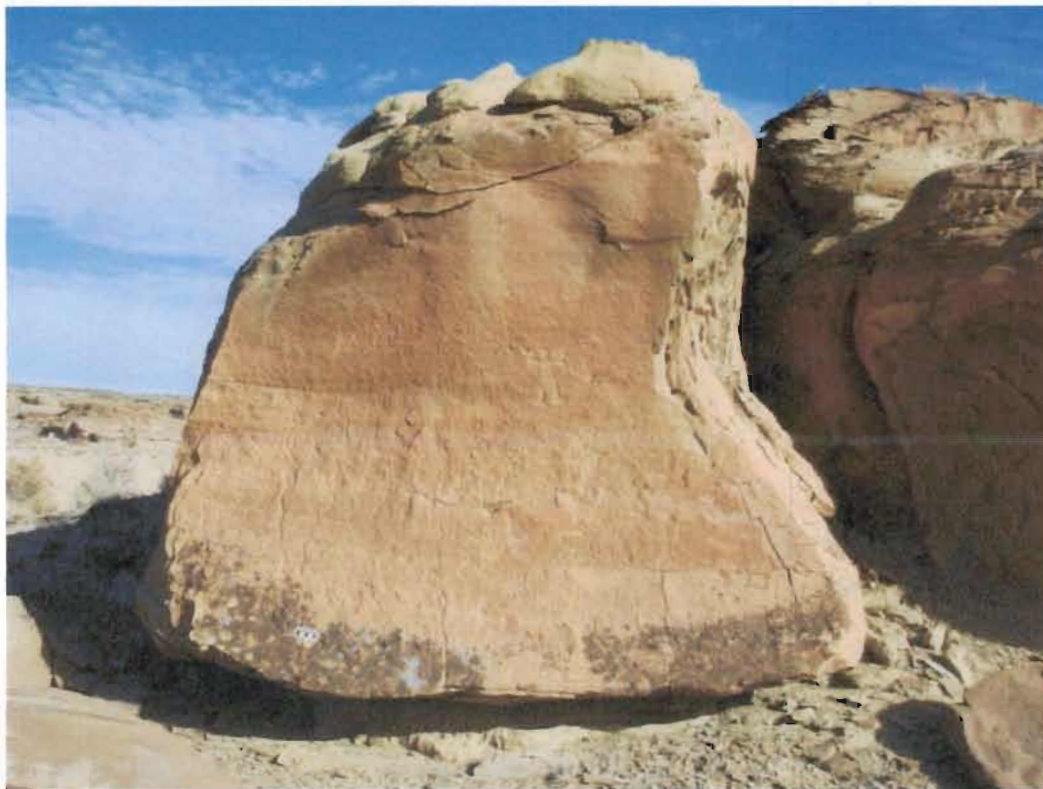


NM-H-21-215      Closeup of Feature 1.  
455.JPG



NM-H-21-215      Overview of Feature 1.  
457.JPG

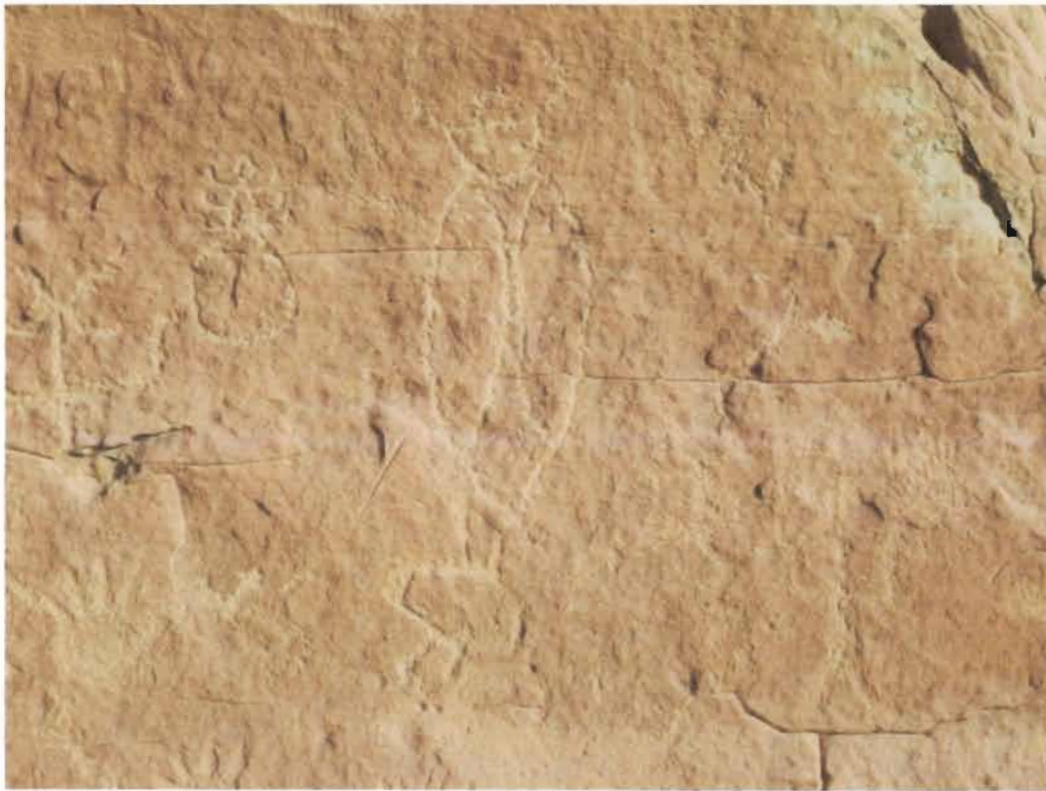




NM-H-21-215 Overview of Feature 3.  
459.JPG



NM-H-21-215 Closeup of Feature 3.  
463.JPG



NM-H-21-215 Closeup of Feature 3.  
464.JPG



NM-H-21-215 Closeup of Feature 3.  
466.JPG





NM-H-21-215      Closeup of Feature 3.  
467.JPG



NM-H-21-215      Closeup of Feature 3.  
468.JPG



NM-H-21-215 Closeup of Feature 4.  
477.JPG



NM-H-21-215 Closeup of Feature 5.  
479.JPG





NM-H-21-215      Closeup of Feature 6.  
480.JPG



NM-H-21-215      Closeup of Feature 7.  
481.JPG



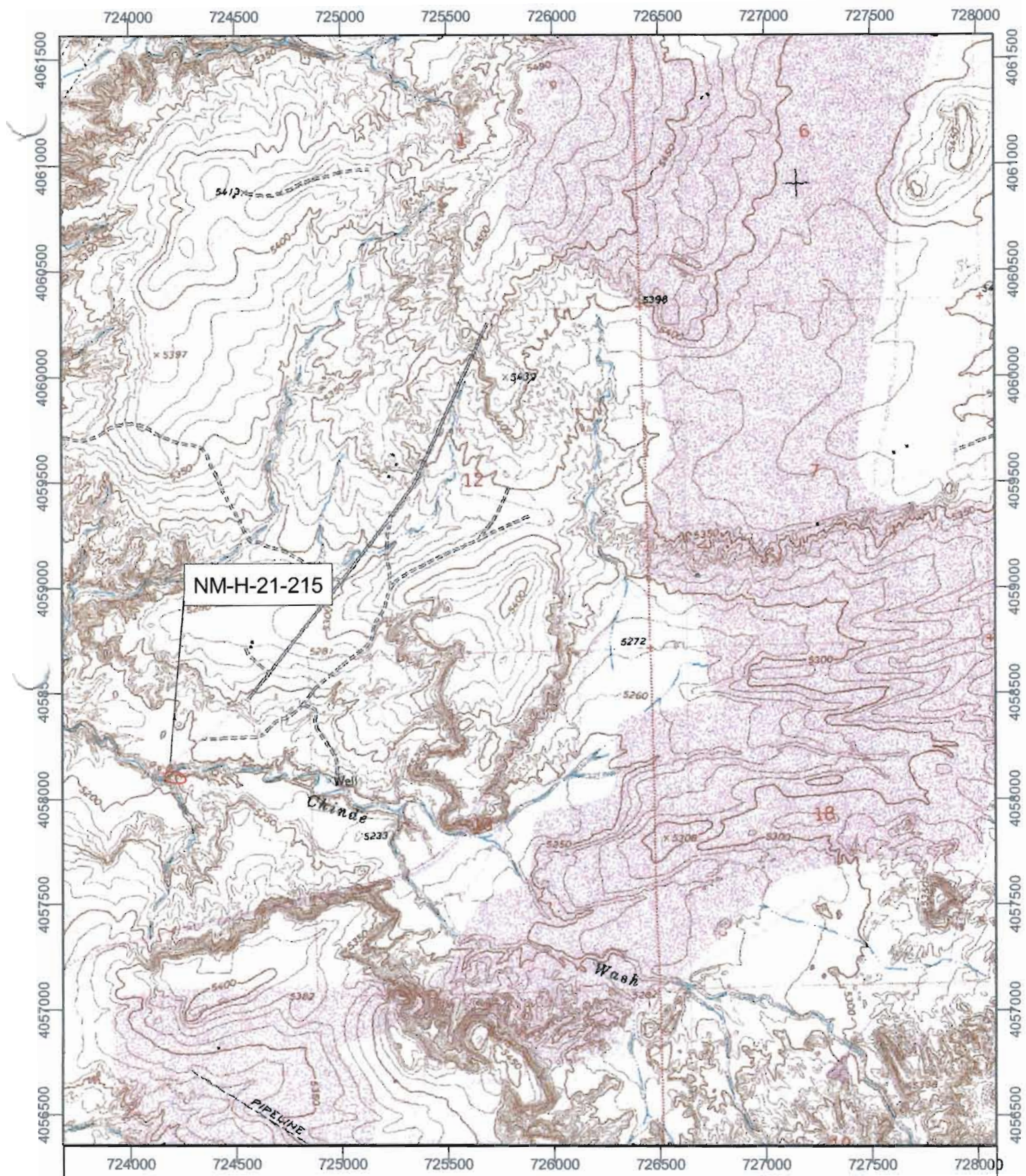


NM-H-21-215      Feature 8 looking west.  
482.JPG



NM-H-21-215      Closeup of Feature 9 looking west.  
486.JPG

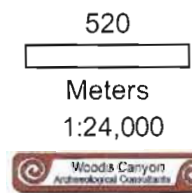




Class III Survey of Test Wells CA-1 and CA-6 for  
BHP Navajo Coal Company, Navajo Reservation,  
Nenahnezad Chapter, Shiprock Agency,  
San Juan County, New Mexico (B12773)  
December 2012

USGS Fruitland (36108-F4), 7.5', 1966  
NMPM T 28N, R 16W, Section 14  
Zone 12; NAD83

For Official Use only: disclosure  
of site location prohibited  
(36CFR 296.18)





# CULTURAL RESOURCES COMPLIANCE FORM

THE NAVAJO NATION  
HISTORIC PRESERVATION DEPARTMENT  
PO BOX 4950  
WINDOW ROCK, ARIZONA 86515



## ROUTE COPIES TO:

☒ WCAC

NNHPD NO. **HPD-12-1049**

OTHER PROJECT NO.: **WCAS 12-001**

PROJECT TITLE: Class III Survey of Test Wells CA-1 and CA-6 for BHP Navajo Coal Company, Navajo Reservation Nenahnezad Chapter, Shiprock Agency, San Juan County, New Mexico

LEAD AGENCY: BIA/NR

SPONSOR: BHP Navajo Coal Company, PO Box 1717, Fruitland, New Mexico 87416

PROJECT DESCRIPTION: The proposed undertaking will involve the construction of two groundwater sampling locations measuring 20-ft by 20-ft. Also a new 150-ft by 20-ft wide road will be used to access CA-6. The area of effect is 0.15-acre. Ground disturbance will be intensive and extensive with the use of heavy equipment.

LAND STATUS: Navajo Tribal Trust

CHAPTER: Nenahnezad

LOCATION: T.28N, R.15W - Sec. 29; T.28N, R.16W - Sec. 14; Kirtland SW and Fruitland Quadrangles, San Juan County, New Mexico NMPM

PROJECT ARCHAEOLOGIST: Bryan Shanks

NAVAJO ANTIQUITIES PERMIT NO.: B12773

DATE INSPECTED: 12/06/12

DATE OF REPORT: 12/2012

TOTAL ACREAGE INSPECTED: 3.2- ac.

METHOD OF INVESTIGATION: Class III pedestrian inventory with transects spaced 15 m. apart.

LIST OF CULTURAL RESOURCES FOUND:

(1) Site (NM-H-21-215)

LIST OF ELIGIBLE PROPERTIES:

(1) Site (NM-H-21-215)

LIST OF NON-ELIGIBLE PROPERTIES:

None

LIST OF ARCHAEOLOGICAL RESOURCES:

(1) Site (NM-H-21-215)

EFFECT/CONDITIONS OF COMPLIANCE: **No historic properties affected with the following conditions:**

### Site NM-H-21-215:

1. Site boundary will be flagged by a qualified archaeologist prior to ground disturbing activities.
2. Site will be avoided by all construction activities by a minimum of 50-ft.

In the event of a discovery ["discovery" means any previously unidentified or incorrectly identified cultural resources including but not limited to archaeological deposits, human remains, or locations reportedly associated with Native American religious/traditional beliefs or practices], all operations in the immediate vicinity of the discovery must cease, and the Navajo Nation Historic Preservation Department must be notified at (928) 871-7147.

FORM PREPARED BY: Tamara Billie

FINALIZED: January 14, 2013

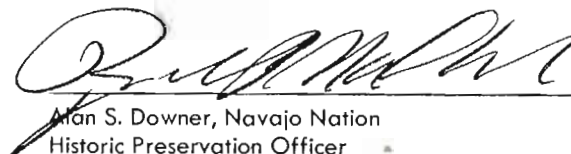
Notification to

Proceed Recommended:

Yes ☒ No ☐

Conditions:

Yes ☒ No ☐

 1-16-13  
Alan S. Downer, Navajo Nation  
Historic Preservation Officer Date

Navajo Region Approval:

Yes ☒ No ☐

 1/29/13  
BIA-Regional Director Date

TLN 1-24-13

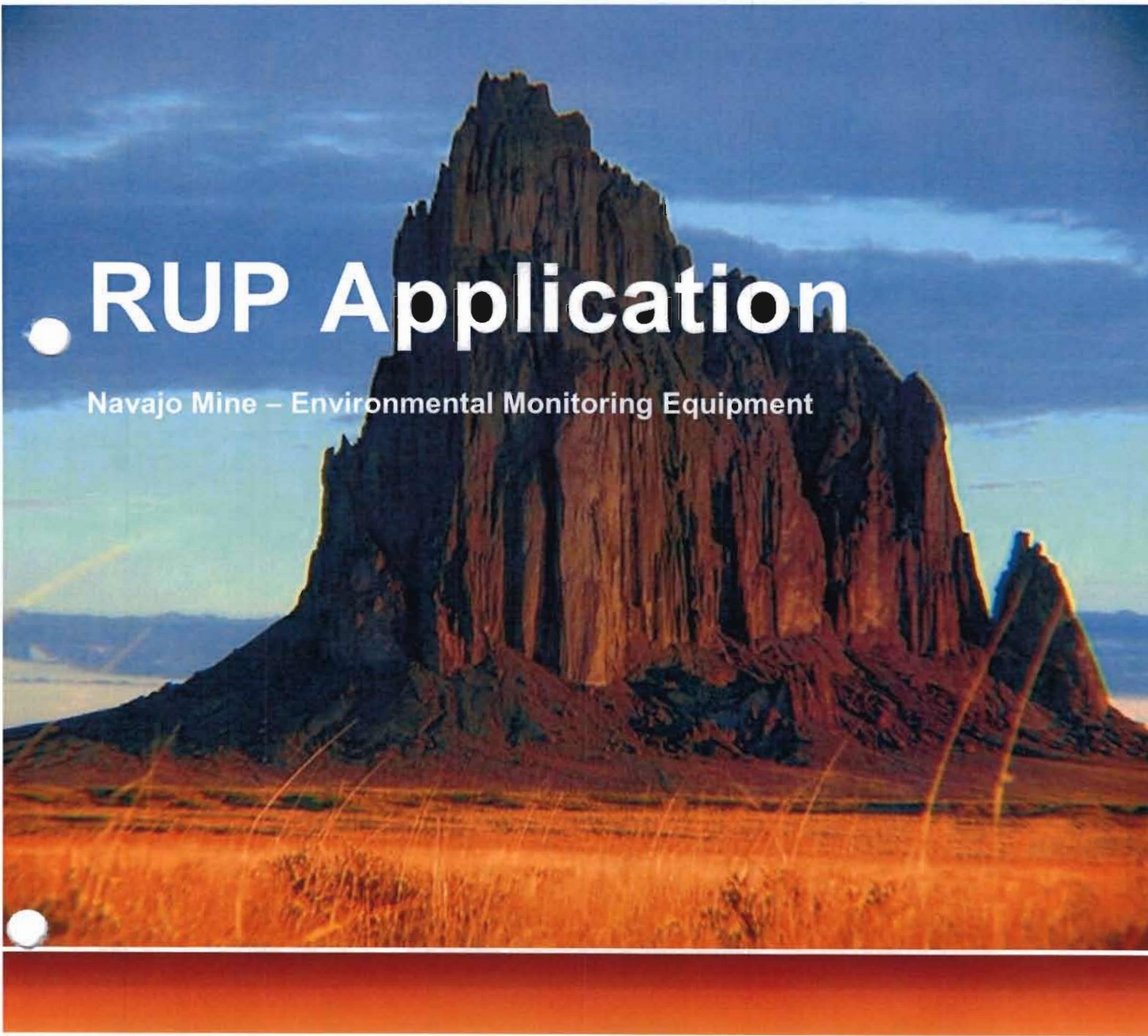
**BHP Billiton Mine Management  
Company as a disclosed agent of**

Navajo Transitional Energy Company, LLC.



# • RUP Application

Navajo Mine – Environmental Monitoring Equipment



1	Division of Natural Resources Navajo Land Department – Revocable Use Permit Application
2	Revocable Use Permit – RUP-SR-01-98
3	Water Use Permits 12-033 & 12-304
4	Legal Descriptions/Plat Maps
5	Biological Evaluation
6	Navajo Nation Department of Fish and Wildlife Biological Resources Compliance
7	Archaeological Inventory Report
8	Navajo Nation Historic Preservation Department Cultural Resources Compliance Form
9	Right-of-Way Application Supporting Documents
10	Miscellaneous



BHP Billiton  
Accounts Payable Department  
P.O.Box 155  
Fruitland, NM 87416

00013-00072



OM

NAVAJO NATION  
P.O. BOX 2249  
WINDOW ROCK, AZ 86525

Check No. 0000139365  
Check Date 02/28/2013  
Check Amount \$500.00  
Vendor No. 0004000000

Ph: 505-598-4260

Email: NMC.Accounts.Payable@bhpbilliton.com

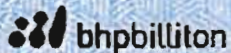
Date	Invoice No / Description	Gross Amount	Discount Amount	Amount
02/11/2013	APPLICATION FEE	\$500.00		\$500.00
TOTAL				\$500.00

PLEASE FOLD ON PERFORATION AND DETACH HERE

PAGE 1/1

VERIFY THE AUTHENTICITY OF THIS MULTI-TONE SECURITY DOCUMENT.

CHECK BACKGROUND AREA CHANGES COLOR GRADUALLY FROM TOP TO BOTTOM.



BHP Billiton  
Accounts Payable Department  
P.O.Box 155  
Fruitland, NM 87416

CHECK NO. 0000139365

FEBRUARY 28, 2013  
64 1276/611

TO THE ORDER OF

NAVAJO NATION  
P.O. BOX 2249  
WINDOW ROCK, AZ 86525

\*\*\*\*\*500.00\*\*\*

VOID AFTER 90 DAYS

PAY EXACTLY \*\*FIVE HUNDRED AND NO/100 DOLLARS\*\*

Bank of America  
Atlanta, Dekalb County, GA

AUTHORIZED SIGNATURE

⑈0000139365⑈ ⑆061112788⑆ 3299788812⑈



# United States Department of the Interior

## BUREAU OF INDIAN AFFAIRS

Navajo Area Office

P.O. Box 1060

Gallup, New Mexico 87305-1060

IN REPLY REFER TO:

ARES/542

NOV 30 1998

Mr. J. Gregg Wurtz  
Hydrologist, Navajo Mine  
BHP Navajo Coal Company  
P.O. Box 1717  
Fruitland, New Mexico 87416

Dear Mr. Wurtz:

Enclosed for your information and use is the approved Revocable Use Permit to install a surface monitoring station across Navajo Tribal Trust lands within Navajo Indian Irrigation Project (NIIP), which will be setup within Bureau of Indian Affairs (BIA) Roads Project N3005 existing right-of-way. The permit site is located in Section 29; Township 28 North, Range 15 West, NMPM, San Juan County, New Mexico.

An affidavit of completion of construction will be submitted to Area Real Estate Services, for on-site inspection for compliance.

Sincerely,

ACTING

Area Director

Enclosure





10. MEMBER OF CONGRESS NOT TO BE BENEFIT. No member of or delegate to Congress or resident commissioner, shall be admitted to any share or part of this Permit or to any benefit that may arise therefrom. This provision shall not be construed to extend to this Permit if made with a corporation or company for its general benefit.

11. ENVIRONMENT. Permittee shall take all necessary measures to assure compliance with applicable Federal and Tribal laws and regulations now in force and effect and any amendments thereto which by this reference are made a part hereof. This shall include, but shall not be limited to, aesthetics, erosion controls and protection of timber or other vegetation. An environmental assessment report shall be submitted in writing to the Area Director and the Navajo Environmental Protection Administration for approval prior to construction of required improvements or any access roads.

12. BOND. Except when prohibited by laws or regulations, Permittee shall furnish a bond to the Secretary of the Interior or his authorized representative for the faithful performance of this Permit in the amount of \_\_\_\_\_

13. EMPLOYMENT OF NAVAJOS. Permittee shall give preference in employment arising in connection with this Permit to qualified, willing and available Navajos and other Indians living on or near the Navajo Reservation during the term of this Permit, and in construction of any facilities thereon, to the extent authorized by law.

14. AGREEMENT TO ABIDE BY NAVAJO LAWS. The Permittee and its employees and agents agree to abide by all laws, regulations, and ordinances of the Navajo Nation now in force and effect or which may hereafter be in force and effect. This agreement to abide by Navajo laws shall not forfeit rights which the Permittee and its employees and agents enjoy under the Federal laws of the United States Government.

IN WITNESS WHEREOF, the parties hereto have executed the Permit this day of \_\_\_\_\_, 19\_\_\_\_.

APPROVED: 11/27/98  
Pursuant to Secretarial Redesignation  
Order 209 DM 8, Secretary's Order  
Nos. 3150 and 3177, and 10 BIAM  
Bulletin 13, as amended.

By: [Signature]  
Area Director, NAVAJO AREA  
BUREAU OF INDIAN AFFAIRS

APPROVED: \_\_\_\_\_  
Pursuant to Secretarial Redesignation Order 209  
DM 8 and 230 DM 3 and Navajo Area Addendum to  
10 BIAM 3.3E

\_\_\_\_\_  
Superintendent, \_\_\_\_\_ Agency  
Bureau of Indian Affairs

NAVAJO NATION PERMITTER

BY: [Signature] OCT 31 1997  
VICE President  
THE NAVAJO NATION

PERMITTEE

BY: E.A. Pettynew  
Mine Manager  
Navajo Mine  
PP Navajo Coal Company



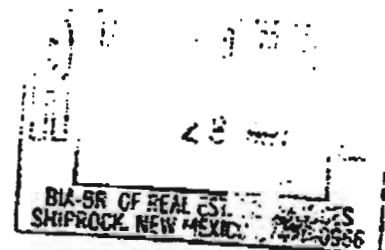


**THE  
NAVAJO  
NATION**

P.O. BOX 9000 • WINDOW ROCK, ARIZONA 86515 • (520) 871-6000

**ALBERT A. HALE**  
PRESIDENT**THOMAS E. ATCITY**  
VICE PRESIDENT**OCT 31 1997**

Ms. Elouise Chicharello, Acting Area Director  
Bureau of Indian Affairs  
Navajo Area Office  
Post Office Box 1060  
Gallup, New Mexico 87301



Dear Ms. Chicharello:

On August 1, 1997, the Resources Committee of the Navajo Nation Council approved a Revocable Use Permit Granted to BHP Minerals.

Resolution Number RCAU-171-97, entitled "Approving a Revocable Use Permit Application for BHP Minerals to Utilize Navajo Nation Trust Lands for Scientific Monitoring Station Use Adjacent to NAPI Lease Area, San Juan County, State of New Mexico."

Approval of the Revocable Use Permit is given subject to the terms and conditions stipulated in the resolution approved by the Resources Committee and exhibits attached to such resolution.

Your prompt approval of this permit is appreciated.

Sincerely,

THE NAVAJO NATION

FOR Albert Hale  
President

ENCLOSURES

RCND-171-97

**RESOLUTION  
OF THE RESOURCES COMMITTEE  
OF THE NAVAJO NATION COUNCIL**

**Approving a Revocable Use Permit Application for BHP Minerals to  
Utilize Navajo Nation Trust Lands for Scientific Monitoring  
Station Use Adjacent to NAPI Lease Area, San Juan County,  
State of New Mexico**

**WHEREAS:**

1. Pursuant to 2 N.N.C. § 695 (B) (2), the Resources Committee of the Navajo Nation Council has been delegated the authority to give final approval of revocable use permits in accordance with applicable Federal and Navajo Nation laws; and

2. The BHP World Minerals, Environmental Quality Department, New Mexico Operations, Navajo Mine, New Mexico, has submitted a Revocable Use Permit, attached hereto as Exhibit "A" and made a part hereof, to operate and maintain scientific monitoring station to measure water surface flow; and

3. The proposed permit consists of approximately 0.00037 acres, more or less, of Navajo Nation Trust lands located adjacent to the Navajo Agricultural Products Industry (NAPI), San Juan County, New Mexico. The location of said site is more particularly described on the map marked as Exhibit "B", attached hereto and made a part hereof; and

4. The Project Review Office with the Division of Natural Resources has obtained the necessary consents (Utility Permit No. N48-3005-122) from the affected land user (BIA Area Director), attached hereto as Exhibit "C" and made a part hereof; and

5. The environmental and archaeological studies have been completed and are attached hereto.

**NOW THEREFORE BE IT RESOLVED THAT:**

1. The Resources Committee of the Navajo Nation Council hereby grants approval of a Revocable Use Permit for BHP Minerals to utilize approximately 0.00037 acres, more or less, of Navajo Nation Trust lands for scientific monitoring station more particularly described in Exhibit "B", attached hereto and made a part hereof.

2. The Resources Committee of the Navajo Nation Council hereby approves the Revocable Use Permit subject to, but not limited to, the terms and conditions attached hereto as Exhibit "D".

**Motion: Harold Tunney**  
**Second: Willis Peterson**



**TERMS AND CONDITIONS**  
**for BHP MINERALS**  
**REVOCABLE USE PERMIT**  
**adjacent to NAPI**

- a) The term of the revocable use permit shall not exceed twenty (20) years. BHP shall provide the Navajo Nation thirty (30) days advance notice if the project is terminated prior to the expiration of the twenty (20) year term.
- b) The grantee shall pay Navajo Nation consideration in the amount of \$ 500.00 per year. This amount shall be adjusted annually based upon the increase in the Consumer Price Index (CPI) for All Urban Consumers. The CPI for April, 1997 shall be used as the base for its adjustments.
- c) The Grantee shall post a reclamation bond in the amount of \$ 500.00.
- d) The Grantee shall abide by all laws and regulations of the Navajo Nation and of the United States, now in force and effect or as may be hereafter in force and effect, including but not limited to the following:
- i. Title 25, Code of Federal Regulations, Parts 162 and 169.
  - ii. All applicable Federal and Tribal antiquities laws and regulations, with the following additional condition: In the event of a discovery all operations in the immediate vicinity of the discovery must cease and the Historic Preservation Department must be notified immediately. As used herein, "discovery" means any previously unidentified or incorrectly identified cultural resources, including but not limited to archaeological deposits, human remains, or location reportedly associated with Native American religious/traditional beliefs or practices; and
  - iii. The Navajo Preference in Employment Act, 15 N.N.C. §§ 601 et seq., and the Navajo Nation Business Preference Law, 5 N.N.C. §§ 201 et seq.;
  - iv. The Navajo Nation Water Code, 22 N.N.C. § 1101 et seq. Grantee shall apply for and submit all applicable permits and information to the Navajo Nation Department of Water Resources Management.
- e) The Grantee shall ensure that the air quality of the Navajo Nation is not jeopardized due to violation of applicable laws and regulations by its operation pursuant to the revocable use permit; and the Grantee shall comply with the air pollution control practices for minimizing emissions as specified in 40 C.F.R. Part 60, Subpart I, Standards of Performance for Hot Mix Asphalt Facilities; and the Grantee shall submit all applicable permits and information to the Navajo Nation Air Quality Control Program, Navajo Nation Environmental Protection Agency (NNEPA).

- f) The Grantee shall clear and keep clear the lands within the revocable use permit to the extent compatible with the purpose of the revocable use permit, and shall dispose of all vegetation and other materials cut, uprooted, or otherwise accumulated during construction and maintenance of the project.
- g) The Grantee shall reclaim all surface disturbed lands related to the project, as outlined in a restoration and revegetation plan, which shall be submitted to, and must be approved by, the NNEPA, prior to any surface disturbance. The Grantee shall comply with all provisions of such restoration and revegetation plan and shall notify the Director of the NNEPA immediately upon completion of construction of the project so that a site inspection can be made.
- h) The Grantee shall at all times during the term of the revocable use permit and at the Grantee's sole cost and expense, maintain the land and all improvements thereon and make all necessary and reasonable repairs.
- i) The Grantee shall obtain permission to cross existing right-of-way and at the Grantee's sole cost and expense, maintain the land and all improvements thereon and make all necessary and reasonable repairs.
- j) The Grantee shall be responsible for and promptly pay all damages when they are sustained.
- k) The Grantee shall indemnify and hold harmless the Navajo Nation and its authorized agents, employees, landusers and occupants, against any liability for loss of life, personal injury and property damages arising from the construction, maintenance, occupancy or use of lands by the Grantee.
- l) The Grantee shall not assign, convey or transfer, in any manner whatsoever, the revocable use permit or any interest therein, or to any of the improvements on the land, without the prior written consent of the Navajo Nation and the Secretary. Any such attempted assignments, conveyance or transfer without such prior written consent shall be void and of no effect. The consent of the Navajo Nation may be granted, granted upon conditions or withheld in the sole discretion of the Navajo Nation.
- m) The Navajo Nation may terminate the revocable use permit for violation of any of the terms and conditions stated herein. In addition, the revocable use permit shall be terminable in whole or part by the Navajo Nation for any of the following causes:
  - i. Failure to comply with any terms or conditions of the grant or of applicable laws or regulations;
  - ii. A non-use of the revocable use permit for the purpose for which it is granted for a consecutive two year period.
  - iii. An abandonment of the revocable use permit;



- n) At the termination of this revocable use permit, the Grantee shall peaceably and without legal process deliver up the possession of the premises, in good condition, usual wear and tear excepted. Upon the written request of the Navajo Nation, the Grantee shall provide the Navajo Nation, at the Grantee's sole cost and expense, with an environmental audit assessment of the premises at least sixty (60) days prior to delivery of said premises.
- o) Holding over by the Grantee after the termination of the revocable use permit shall not constitute a renewal or extension thereof or give the Grantee any rights hereunder or in or to the land or to any improvements located thereon.
- p) The Navajo Nation and the Secretary shall have the right, at any reasonable time during the term of the revocable use permit, to enter upon the premises, or any part thereof, to inspect the same and any buildings and other improvements erected or placed thereon.
- q) Except as may be prohibited by applicable Federal law, the laws of the Navajo Nation shall govern the construction, performance and enforcement of the terms and conditions contained herein.
- r) By acceptance of the grant of revocable use permit, the Grantee consents to the jurisdiction of the Navajo Nation, including but not limited to, jurisdiction to levy fines and to enter judgments for compensatory and punitive damages and injunctive relief, in connection with all activities conducted by the Grantee on the Navajo Nation or which have a proximate (legal) effect on persons or property within the Navajo Nation.
- s) Any action or proceeding brought by the Grantee against the Navajo Nation in connection with or arising out of the terms and conditions of the revocable use permit shall be brought only in the Courts of the Navajo Nation, and no such action or proceeding shall be brought by the Grantee against the Navajo Nation in any court of any state.
- t) Nothing contained herein shall be construed to affect or be deemed a waiver of the sovereign immunity from suit of the Navajo Nation.
- u) The terms and conditions contained herein shall extend to and be binding upon the successors, heirs, assigns, executors, administrators, employees and agents, including all contractors and subcontractors, of the Grantee, and the term "Grantee," whenever used herein, shall be deemed to include all such successors, heirs, assigns, executors, administrators, employees and agents.



Navajo Mine  
**BHP Minerals**

July 27, 1998

Elouise Chicharello  
BIA Area Director  
Area Real Estate Services  
P.O. Box 1060  
Gallup, New Mexico 87305

RE: REVOCABLE USE PERMIT. BHP MINERALS NAVAJO COAL COMPANY

Dear Ms. Chicharello,

Attached is an application package for a Revocable Use Permit across Navajo Tribal Trust lands within the Navajo Indian Irrigation Project (NIIP). The permit is necessary to install surface water monitoring equipment that will collect scientific information. The location is within BIA Roads Project No. N3005 existing right-of-way, located in the NE1/4 of Section29; Township28 North, Range 15 West, NMPM, San Juan County, New Mexico. Originally this application was sent to Howard Draper, Division of Natural Resources Project Review Section, Window Rock, AZ (see attached April 25, 1997 application package). Additional information requested by Ms. Lena M. Yazzie, Reality Specialist (See attached letter received February 5, 1998) is enclosed.

The Revocable Use Permit is for a location 4 feet by 4 feet, to install a small scientific instrument that will be used to collect stream flow data. Area land disturbance will be negligible and no stream flow disturbance will occur.

Access to the site will use existing roads (N3005 and dirt road off N3005).

Information included in this application:

Project information: Purpose, term desired, general location, land status, approximate acres involved, and existing access to the site.

Appraisal Report: Copies of payments made to Navajo Nation for calendar year 1997. BHP requests that the 1997 annual fee be applied to calendar year 1998 assuming approval is granted. No use of the land was approved in 1997.



Environmental Assessment (EA) and FONSI: The existing EA prepared for the BIA Roads Project No. N3005 was applied. A Categorical Exclusion is attached and copies sent to Mr. Leonard Robbins, Area Environmental Quality Services.

Survey Plat: Legal survey certified by a State of New Mexico certified surveyor, including metes and bounds description.

Thank you for your time and consideration. If you have concerns regarding this application please contact me or Charlene Gorman at (505) 598-3359 or 3201 respectively.

Yours sincerely,



J Gregg Wurtz  
Environmental Specialist

CC: Mr. Leonard Robbins, Area Environmental Quality Services  
Charlene Gorman, Environmental Coordinator, BHP Minerals Navajo Coal Company  
Steve Flammang, Chief Engineer, BHP Minerals Navajo Coal Company  
Main File 270.5.5.4

BHP Navajo Coal Company



BHP Billiton Limited  
BHP Navajo Coal Company  
PO Box 1717  
16 Miles South of Fruitland on CR 6675  
Fruitland, New Mexico 87416 USA  
Tel +1 505 598 4200 Fax +1 505 598 3361  
bhpbilliton.com

September 24, 2012

Mr. Jack Utter  
Principle Hydrologist  
Navajo Nation  
Water Code Administration  
P.O. Box 678  
Ft. Defiance, AZ 86504

**Re: Water Use Permits and Fees for Wells 12-033 (CA-1) and 12-034 (CA-6).**

Dear Mr. Utter,

BHP Navajo Coal Company (BNCC) is submitting for your review and approval Water Use Permits for wells 12-033 (CA-1) and 12-034 (CA-6). The purpose of the proposed wells is environmental monitoring, and BNCC selected locations with the intention of limiting impacts to the area. BNCC is aware that approval of these permits is contingent upon the completion of biological and archaeological surveys of the areas. BNCC is in the process of scoping this work and once the surveys are completed the resulting reports will be forwarded to your office. Also included with this submission is an 8 1/2x11 location map for each well and a check for the sum of \$250.00. This amount is intended to cover the filing fees for both well locations for five years.

Condition 5 of the Water Use Permit specifies a payment rate of \$2.70 per 1,000 gallons extracted from a well. BNCC will use less than 50 gallons per year at each well, which equates to a maximum payment of only 27 cents. Given that the administrative cost to both the Navajo Nation and BNCC to process the payment would far exceed this nominal amount, BNCC proposes that Condition 5 be withdrawn.

Condition 6 requires that meter readings be submitted to the Water Code Administrator on a monthly basis. As noted previously, the quantity of water use at each well will be extremely low (<50 gallons a year) and will consist only of the volume required to obtain a valid water sample for laboratory analysis. Therefore, the wells will not be fitted with a meter, and BNCC also proposes that Condition 6 be withdrawn.

If you have any questions regarding this application, please contact Kara Hart at 505-598-2134.

Sincerely,



**Steven Perkins**

Superintendent Environmental Permitting and Technical Services

Enclosed:

Water Use Permit Application 12-033 (CA-1)

Water Use Permit Application 12-034 (CA-6)

Figure 1 – CA-1 Disturbance Area

Figure 2 – CA-6 Disturbance Area

Check # 000138905 - \$250.00, Fee payment (2 wells for 5 years)

Navajo Nation Water Code Administration  
Mailing Address: P.O. Box 678, Fort Defiance, Arizona 86504

Physical Address: 1/4 mile E. of NTUA, Gray Trailer E. of Dept. of Water Resources Bldg., Navajo Route 12  
Ft. Defiance, Arizona 86504  
Phone: (928) 729-4132 Fax: (928) 729-4421

WATER USE PERMIT

WUP NO: \_\_\_\_\_

VALID FROM \_\_\_\_\_ to \_\_\_\_\_

NOTE: This permit is valid only upon signature of the Department of Water Resources Director. Please read Water Use Permit information sheet before completing this form.

APPLICANT: _____		BHP Navajo Coal Company	
LAST NAME		FIRST; OR COMPANY NAME	
MAILING ADDRESS: P.O. Box 1717			
CITY: Fruitland		STATE: NM	ZIP CODE: 87416
CONTACT PERSON: Steve Perkins		TELEPHONE NO: 505-598-2821	
*****			
DATE RECEIVED: _____		DATE COMPLETED _____	
\$25.00 Filing Fee Received _____		Receipt No. _____	Initial _____
IDENTIFIED WATER SOURCE TO BE USED			
( ) Spring No: _____		( ) Stream Name: _____	
( ) Stockpond Name/No: _____		( ) Lake/Reservoir Name: _____	
<input checked="" type="checkbox"/> Well No: 12-033		( ) Injection Well No: _____	
Amount of water requested: <50 gallons per year			
( ) Other Description/Name: _____		Grazing District: 13	
Chapter: Nenahnezad		Chapter Code: _____	
State:	( ) AZ/Arizona	<input checked="" type="checkbox"/> NM/New Mexico	( ) UT/Utah
County:	( ) AP/Apache	( ) MK/McKinley	( ) SJ/San Juan
	( ) NA/Navajo	( ) VL/Valencia	( ) KA/Kane
	( ) CO/Coconino	( ) BL/Bernalillo	
		( ) SD/Sandoval	
		( ) SO/Socorro	
		( ) RA/Rio Arriba	
		<input checked="" type="checkbox"/> SA/San Juan	
Quad. No: (7.5 min. Series) Fruitland			
UTM COORDINATES: X (East) 729637		Y (North) 4054678	ZONE 12
NE SE SW NW	NE SE SW NW	NE SE SW NW	4
10 Acre	40 Acre	160 Acre	Section
			27
			Township
			15
			Range

WUP NO: \_\_\_\_\_

## LAND STATUS

☒ TRUST      ☐ FEE      ☐ LEASE      ☐ ALLOTMENT      ☐ OTHER \_\_\_\_\_  
 WATERSHED NAME: Chaco      USGS WATERSHED CODE NO. 140801096

## CONSUMPTIVE WATER USE NEEDED FOR

**PRIMARY:**

☐ Domestic  
☐ Municipal  
☐ Livestock  
☐ Irrigation Agriculture  
☐ Wildlife and Fish  
☐ Recreational  
☐ Industrial  
☐ Mining  
☐ Commercial  
☒ Other Environmental Monitoring

**DOMESTIC/MUNICIPAL:**

**Number of People:** \_\_\_\_\_ **Number of Homes:** \_\_\_\_\_ **Others:** \_\_\_\_\_

**TYPE OF LIVESTOCK:**      ☐ **Horses**      No: \_\_\_\_\_      ☐ **Goats**      No: \_\_\_\_\_  
                                  ☐ **Cattle**      No: \_\_\_\_\_      ☐ **Sheep**      No: \_\_\_\_\_  
                                  ☐ **Other:** \_\_\_\_\_      ☐ **No:** \_\_\_\_\_

**TYPE OF CROPS:**

( ) Row (e.g., corn)	Acres _____
( ) Forage-Hay-Pasture	Acres _____
( ) Small Grains	Acres _____
( ) Horticulture (e.g., Fruits & Vegetables)	Acres _____

**TYPE OF WILDLIFE:**

( ) Fish	No: _____	( ) Small Game	No: _____
( ) Large Game	No: _____	( ) Birds	No: _____
( ) Others	No: _____		

**IF WATER IS USED FOR INDUSTRIAL OR MINING PURPOSES, ATTACH WATER SUPPLY PLAN**

**DESCRIBING SOURCE AND METHODS OF DIVERSION, CONVEYANCE AND USES.**

**SEASON OF MAXIMUM USE:**    ☒ Spring                  ☒ Summer                  ☒ Fall                  ☒ Winter

**MAXIMUM RATE OF USE:** 1  $\infty$  GPM ( ) CFS

**EXPECTED DATE WATER USAGE TO BEGIN:** Upon Approval of Permit

**EXPECTED VOLUME OF WATER TO BE USED:** \_\_\_\_\_ ac/ft (< 50 per year gallons)

**METHOD OF WATER DIVERSION:** ☐ Instream Pump ☐ Gate or Gravity Flow  
☒ Other: None

**METHOD OF WATER CONVEYANCE:** ☐ Ditch ☐ Canal ☐ Pipeline ☐ Truck  
☒ Other: Sample Bottle

**ATTACH AN 8 1/2" X 11" MAP SHOWING EXACT LOCATION OF IDENTIFIED WATER SOURCE AND SCENARIO/ LOCATION OF WHERE WATER IS TO BE USED.**

### RETURN FLOW OR DISCHARGE

AMOUNT OF WATER: \_\_\_\_\_ METHOD: ☐ Direct  
☐ GPM ☐ CFS ☐ GPD ☐ Indirect  
☐ Injection

IS DISCHARGE TREATED ( ) YES ( ) NO  
IS QUALITY AFFECTED ( ) YES ( ) NO  
FEDERAL/UIC PERMIT: NPDES PERMIT NUMBER:

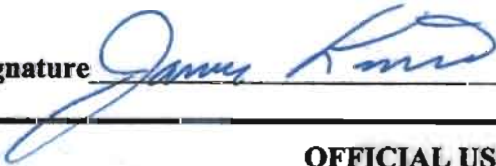
## CONDITIONS

1. Purpose of definition "Department" means the Navajo Nation Department of Water Resources and "Permittee" means entity, company, water user and its successors.
2. Permittee agrees to comply with the terms and conditions of the Water Use Permit and the Navajo Nation Water Code. Permittee understands and agrees that failure to comply with the permit shall result in forfeiture of this permit.
3. This permit may be revoked if:
  - A. Permittee is not in compliance with any conditions set forth in this permit.
  - B. Permittee is in violation of any provision of the Navajo Nation Water Code.
  - C. Insufficient water supplies are present for whatever reason or term.
  - D. For any other due cause as a result of negative findings from investigation that is performed by both department and permittee.
4. Permit is valid only for the term specified and shall expire at the end of the term or at the completion of the proposed project or required water usage, which ever comes first. It is agreed between the parties, that in the event the Permittee needs less than 50 gallons of water for the above referenced projects, Permittee's rights to obtain water will be limited to such amount. Permittee does not have authority to transfer, convey, or allocate the water subject to this permit to any third party or for any other project not specified herein. It is further agreed between the parties that this permit does not give the Permittee the right to haul water for hire on the Navajo Reservation, or on land subject to the jurisdiction of the Navajo Nation.
5. Permittee agrees to pay for the water used at the rate of \$2.70 per 1,000 gallons. Permittee will be invoiced based on truck tickets, transportation invoices, meter readings, etc., which are to be submitted to the Water Code Administration each month. Payment must be made by Permittee within ten working days of receipt of the invoice.
6. Permittee agrees to submit meter readings or other evidence showing the quantity of water withdrawn pursuant to this permit to the Water Code Administrator on a monthly basis.
7. Any breach of this permit or any failure to pay in full for the water used by due date will be a breach of this permit and the Navajo Nation may terminate this permit upon any breach by giving the Permittee notice of such termination in writing not less than ten (10) days prior to the effective date of termination, provided that if, Permittee remedies any such breach within said ten (10) days period, the permit will remain in effect. Said notice shall state the grounds upon which the termination is being made. It will be a breach of this permit and grounds for termination thereof, if Permittee obtains, or attempts to obtain any other water from any source within the jurisdiction of the Navajo Nation other than the source or sources permitted in this permit.
8. Permittee agrees to obtain a Water Use Permit for each place of withdrawal of water in conjunction with the place of use prior to making use of such source.
9. Permittee agrees to hold harmless and indemnify the Navajo Nation against any and all losses, costs, damages, claims, expenses or other liability whatsoever, rising out of, or connected with Permittee's services under this permit including but not limited to, any accident or injury to person or property.



10. All disputes arising from the subject matter of this permit or the performance thereof will be settled in the Navajo Nation Courts and under the laws of the Navajo Nation. Nothing herein shall be construed as a waiver of the sovereign immunity of the Navajo Nation, pursuant to 1 N.T.C. §351 et seq.
11. Permittee agrees to maintain the immediate area in a safe and sanitary manner, free of unnecessary debris.
12. Authorization granted under this permit is only for the stated use of the indicated water source location. Permittee is responsible for obtaining any applicable permit from the appropriate department/agency that may be required for the proposed work.
13. If permittee hires sub-contractors to haul water covered by Water Use Permit, Permittee must notify the Navajo Water Code Administration of sub-contractors in writing.
14. In case of a Tribal Well, no more than two-thirds of the water in the water tank will be withdrawn. Before further withdrawals are to be made from a water tank, the water level in the tank must be allowed to rise back to the original level.
15. It is agreed that the Department of Water Resources reserves the right to limit the quantity of water that can be taken under this permit to the above stated amount or less, to limit or restrict the sources of the Navajo Nation and in the best interests of the Navajo Nation. Such limitation will be imposed at the discretion of the Director, Department of Water Resources.
16. Permittee agrees to allow reasonable entry upon their premises by Navajo Nation Employees engaged in the administration of this permit.

Permittee's Signature



Date 9-21-2012

**OFFICIAL USE ONLY**

Recommendation: ( ) Yes ( ) No \_\_\_\_\_ Date \_\_\_\_\_  
Water Code Administrator

( ) Yes ( ) No \_\_\_\_\_ Date \_\_\_\_\_  
Technical Reviewer

Approved/Disapproved: \_\_\_\_\_ Date \_\_\_\_\_  
Director, Department of Water Resources

If Disapproved State Reasons:

Revised 04/16/97

**WATER USE PERMIT:****INFORMATION SHEET****GENERAL:**

The Navajo Nation Water Code provides for the management of present water use, future water resource development and ensures that water quality is not impaired. It is the intent of the Navajo Nation to exercise its authority over the water resources in Navajo Indian Country to the fullest extent permitted under the laws of the Navajo Nation of the United States. Any persons or entities to use or take other actions affecting Navajo Nation water resources should become familiar with the Navajo Nation Water code. Copies of the Navajo Nation Water Code are available for \$2.50 each from the Navajo Water Code Administration.

**WATER USE PERMIT:**

The Navajo Nation Water Code requires all persons within the territorial jurisdiction of the Navajo Nation, as defined in 7 N.T.C. subchapter 254, desiring to initiate new use or activity which has the potential to affect waters of the Navajo Nation, to file a Water Use Permit. This includes all surface and ground waters. The purpose of the Water Use Permit is to provide the Navajo Nation with the means to develop, manage, and preserve the water resources of the Navajo Nation.

A Water Use Permit constitutes nothing more than Navajo Nation permission to use the water or conduct an activity which may affect waters within the territorial jurisdiction of the Navajo Nation, subject to the terms and conditions of the permit. No Water Use Permit issued should be construed as creating or recognizing any right other than Navajo Nation permission to use water or conduct the activity indicated in the permit.

A Water Use Permit form may be obtained from the Water Code Administration, Department of Water Resources, P.O. Box 678, Fort Defiance, Arizona 86504, or by calling (520) 729-4130/4132.

**Any person (s) having any questions or needing aid in filing or filling out a Water Use Permit form should contact the Water Code Administrator of the Department of Water Resources at the above number for assistance.**

**WATER USE PERMIT FORM: INSTRUCTION SHEET**

WUP NO.	Do not fill in, Office Use Only.
VALID FROM _____ to _____	Do not fill in, Office Use Only.
APPLICANT	Name of individual (last name first), chapter, commercial or company applicant.
ADDRESS	Current mailing address.
CONTACT PERSON	Fill in if different from applicant.
TELEPHONE NO.	Current telephone number (if available)
WATER USE PERMIT RECEIVED, \$25.00 FILING FEE RECEIVED AND PERMIT COMPLETED	Do not fill in, Office Use Only. Do not fill in, Office Use Only. <b><u>(A \$25.00 FILING FEE MUST ACCOMPANY THE PERMIT)</u></b>

**WATER SOURCE**

If application is for use of diversion of water, check description of the source or sources from which water is or will be diverted or withdrawn and fill in name or number, if available.

If application is for construction of retention or diversion structure, check appropriate box and include project name or number. Check OTHER for classification other than those specified.

If application is for construction, conversion, or use of an injection well, provide both company designator e.g., COMPANY #XX-XX and API number, if available.

CHAPTER Fill in chapter name, CHAPTER CODE will be completed in the office.

STATE/COUNTY Check appropriate STATE and COUNTY.  
GRAZING DISTRICT Fill in appropriate GRAZING DISTRICT (if known).

**LOCATION**

Provide the location of the source of water either by UTM coordinates or township, range, section (if none of these are available attach USGS topographic map with location indicated). Include a 8 1/4" x 11" topographical map showing project and water source location.

LAND STATUS Check current land status.

WATERSHED NAME Fill in, if applicable.

USGS WATERSHED CODE NO. Fill in, if applicable.

**WATER USE**

Check appropriate **Primary** use; check **Other**, if no primary use is applicable. Fill in description of how water is or will be applied or consumed (TYPE OF LIVESTOCK, NUMBER OF PEOPLE, NUMBER OF HOMES, TYPE OF CROPS, ACRES, TYPE OF WILDLIFE).

IF WATER IS USED FOR INDUSTRIAL OR MINING PURPOSES

Please attach Water Supply Plan describing source and methods or diversions, conveyance and uses.

SEASON OF MAXIMUM USE

Check appropriate season, if peak seasons are anticipated. This is for determination of availability for requested season.

SPRING March 21 - June 20

SUMMER June 21 - September 21

FALL September 22 - December 21

WINTER December 02 - March 20

MAXIMUM RATE OF USE

Indicate maximum number of gallons/minute or cubic feet/second of water to be used.

**DATE EXPECTED FOR WATER USAGE TO BEGIN**

Enter date water use or uses began or will begin (bests reasonable estimate)

**EXPECTED VOLUME OF WATER TO BE USED**

Total gallons/acre feet of water to be used for the year.

METHOD OF WATER DIVERSION

Check description of the method of diversion.

METHOD OF WATER CONVEYANCE

Check description of method of conveyance.

ATTACH LEGAL DESCRIPTION OF LOCATION WHERE WATER IS TO BE USED

(If such is readily available, and other descriptions reasonably describing the point or points of diversion, withdrawal or impoundment).

**RETURN FLOW OR DISCHARGE**

If permitted activity will result in discharge to stream, wash, canal, impoundment, injection well, or any other receiving zone whether point source, non-point source, or by injection, complete applicable portions of these section.

AMOUNT OF WATER

Indicate rate of discharge.

METHOD

Check direct - if point source.

Check indirect - if non-point source.

Check injection - if injection well.

IS DISCHARGE TREATED

Check whether quality effluent is treated prior to discharge and attach description of treatment process.

IS QUALITY AFFECTED

Check whether quality of water is affected and attach description.

IS TEMPERATURE AFFECTED

Check whether temperature of water is affected and attach description.

FEDERAL/UIC PERMIT

Fill in Federal/UIC permit number (if injection wells).

**APPLICANTS SIGNATURE/DATE**

If individual - signature of applicant

If corporation - signature of responsible Corporation Officer or authorized manager

If public agency - Executive Officer having significant supervisory responsibility for operation.

RECOMMENDATION

Do not fill in, Office Use Only.

Navajo Nation Water Code Administration  
Mailing Address: P.O. Box 678, Fort Defiance, Arizona 86504

Physical Address: 1/4 mile E. of NTUA, Gray Trailer E. of Dept. of Water Resources Bldg., Navajo Route 12  
Ft. Defiance, Arizona 86504  
Phone: (928) 729-4132 Fax: (928) 729-4421

WATER USE PERMIT

WUP NO: \_\_\_\_\_

VALID FROM \_\_\_\_\_ to \_\_\_\_\_

NOTE: This permit is valid only upon signature of the Department of Water Resources Director. Please read Water Use Permit information sheet before completing this form.

APPLICANT: _____		BHP Navajo Coal Company	
LAST NAME		FIRST; OR COMPANY NAME	
MAILING ADDRESS: P.O. Box 1717			
CITY: Fruitland		STATE: NM	ZIP CODE: 87416
CONTACT PERSON: Steve Perkins		TELEPHONE NO: 505-598-2821	
*****			
DATE RECEIVED: _____		DATE COMPLETED _____	
\$25.00 Filing Fee Received _____		Receipt No. _____	Initial _____
IDENTIFIED WATER SOURCE TO BE USED			
( ) Spring No: _____		( ) Stream Name: _____	
( ) Stockpond Name/No: _____		( ) Lake/Reservoir Name: _____	
<input checked="" type="checkbox"/> Well No: 12-034		( ) Injection Well No: _____	
Amount of water requested: <50 gallons per year			
( ) Other Description/Name: _____		Grazing District: 13	
Chapter: Nenahnezad		Chapter Code: _____	
State:	( ) AZ/Arizona	<input checked="" type="checkbox"/> NM/New Mexico	( ) UT/Utah
County:	( ) AP/Apache	( ) MK/McKinley	( ) SJ/San Juan
	( ) NA/Navajo	( ) VL/Valencia	( ) KA/Kane
	( ) CO/Coconino	( ) BL/Bernalillo	
		( ) SD/Sandoval	
		( ) SO/Socorro	
		( ) RA/Rio Arriba	
		<input checked="" type="checkbox"/> SA/San Juan	
Quad. No: (7.5 min. Series) Fruitland			
UTM COORDINATES: X (East) 724180		Y (North) 4058118	ZONE 12
<input checked="" type="checkbox"/> NE <input checked="" type="checkbox"/> SE <input checked="" type="checkbox"/> SW <input checked="" type="checkbox"/> NW	<input checked="" type="checkbox"/> NE <input checked="" type="checkbox"/> SE <input checked="" type="checkbox"/> SW <input checked="" type="checkbox"/> NW	<input checked="" type="checkbox"/> NE <input checked="" type="checkbox"/> SE <input checked="" type="checkbox"/> SW <input checked="" type="checkbox"/> NW	
10 Acre	40 Acre	160 Acre	
Section 24		Township 28	Range 15



**LAND STATUS**

☒ TRUST      ☐ FEE      ☐ LEASE      ☐ ALLOTMENT      ☐ OTHER \_\_\_\_\_  
 WATERSHED NAME: Chaco      USGS WATERSHED CODE NO. 140801096

**CONSUMPTIVE WATER USE NEEDED FOR****PRIMARY:**

☐ Domestic      ☐ Recreational  
☐ Municipal      ☐ Industrial  
☐ Livestock      ☐ Mining  
☐ Irrigation Agriculture      ☐ Commercial  
☐ Wildlife and Fish      ☒ Other Environmental Monitoring

\*\*\*\*\*

**DOMESTIC/MUNICIPAL:**

Number of People: \_\_\_\_\_ Number of Homes: \_\_\_\_\_ Others: \_\_\_\_\_

**TYPE OF LIVESTOCK:**      ☐ Horses      No: \_\_\_\_\_      ☐ Goats      No: \_\_\_\_\_  
                                  ☐ Cattle      No: \_\_\_\_\_      ☐ Sheep      No: \_\_\_\_\_  
                                  ☐ Other: \_\_\_\_\_      ☐ No: \_\_\_\_\_

**TYPE OF CROPS:**      ☐ Row (e.g., corn)      Acres \_\_\_\_\_  
                                  ☐ Forage-Hay-Pasture      Acres \_\_\_\_\_  
                                  ☐ Small Grains      Acres \_\_\_\_\_  
                                  ☐ Horticulture (e.g., Fruits & Vegetables)      Acres \_\_\_\_\_

**TYPE OF WILDLIFE:**      ☐ Fish      No: \_\_\_\_\_      ☐ Small Game      No: \_\_\_\_\_  
                                  ☐ Large Game      No: \_\_\_\_\_      ☐ Birds      No: \_\_\_\_\_  
                                  ☐ Others      No: \_\_\_\_\_

**IF WATER IS USED FOR INDUSTRIAL OR MINING PURPOSES, ATTACH WATER SUPPLY PLAN**

**DESCRIBING SOURCE AND METHODS OF DIVERSION, CONVEYANCE AND USES.**

**SEASON OF MAXIMUM USE:**      ☒ Spring      ☒ Summer      ☒ Fall      ☒ Winter

**MAXIMUM RATE OF USE:** 1 \_\_\_\_\_ ☒ GPM      ☐ CFS

**EXPECTED DATE WATER USAGE TO BEGIN:** Upon Approval of Permit

**EXPECTED VOLUME OF WATER TO BE USED:** \_\_\_\_\_ ac/ft (< 50 per year gallons)

**METHOD OF WATER DIVERSION:**      ☐ Instream Pump      ☐ Gate or Gravity Flow  
☒ Other: None

**METHOD OF WATER CONVEYANCE:**      ☐ Ditch      ☐ Canal      ☐ Pipeline      ☐ Truck  
☒ Other: Sample Bottle

**ATTACH AN 8 1/2" X 11" MAP SHOWING EXACT LOCATION OF IDENTIFIED WATER SOURCE AND SCENARIO/ LOCATION OF WHERE WATER IS TO BE USED.**

**RETURN FLOW OR DISCHARGE**

**AMOUNT OF WATER:**      ☐ GPM      ☐ CFS      ☐ GPD      **METHOD:**      ☐ Direct  
                                  ☐ GPM      ☐ CFS      ☐ GPD      ☐ Indirect  
                                  ☐ GPM      ☐ CFS      ☐ GPD      ☐ Injection

**IS DISCHARGE TREATED**      ☐ YES      ☐ NO  
**IS QUALITY AFFECTED**      ☐ YES      ☐ NO      **IS TEMPERATURE AFFECTED**      ☐ YES      ☐ NO  
**FEDERAL/UIC PERMIT:** \_\_\_\_\_ **NPDES PERMIT NUMBER:** \_\_\_\_\_



## CONDITIONS

1. Purpose of definition "Department" means the Navajo Nation Department of Water Resources and "Permittee" means entity, company, water user and its successors.
2. Permittee agrees to comply with the terms and conditions of the Water Use Permit and the Navajo Nation Water Code. Permittee understands and agrees that failure to comply with the permit shall result in forfeiture of this permit.
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  - B. Permittee is in violation of any provision of the Navajo Nation Water Code.
  - C. Insufficient water supplies are present for whatever reason or term.
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9. Permittee agrees to hold harmless and indemnify the Navajo Nation against any and all losses, costs, damages, claims, expenses or other liability whatsoever, rising out of, or connected with Permittee's services under this permit including but not limited to, any accident or injury to person or property.

10. All disputes arising from the subject matter of this permit or the performance thereof will be settled in the Navajo Nation Courts and under the laws of the Navajo Nation. Nothing herein shall be construed as a waiver of the sovereign immunity of the Navajo Nation, pursuant to 1 N.T.C. §351 et seq.
11. Permittee agrees to maintain the immediate area in a safe and sanitary manner, free of unnecessary debris.
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15. It is agreed that the Department of Water Resources reserves the right to limit the quantity of water that can be taken under this permit to the above stated amount or less, to limit or restrict the sources of the Navajo Nation and in the best interests of the Navajo Nation. Such limitation will be imposed at the discretion of the Director, Department of Water Resources.
16. Permittee agrees to allow reasonable entry upon their premises by Navajo Nation Employees engaged in the administration of this permit.

Permittee's Signature



Date 9-21-2012

**OFFICIAL USE ONLY**

Recommendation: ( ) Yes ( ) No \_\_\_\_\_ Date \_\_\_\_\_  
Water Code Administrator

( ) Yes ( ) No \_\_\_\_\_ Date \_\_\_\_\_  
Technical Reviewer

Approved/Disapproved: \_\_\_\_\_ Date \_\_\_\_\_  
Director, Department of Water Resources

If Disapproved State Reasons:

Revised 04/16/97

**WATER USE PERMIT:****INFORMATION SHEET****GENERAL:**

The Navajo Nation Water Code provides for the management of present water use, future water resource development and ensures that water quality is not impaired. It is the intent of the Navajo Nation to exercise its authority over the water resources in Navajo Indian Country to the fullest extent permitted under the laws of the Navajo Nation of the United States. Any persons or entities to use or take other actions affecting Navajo Nation water resources should become familiar with the Navajo Nation Water code. Copies of the Navajo Nation Water Code are available for \$2.50 each from the Navajo Water Code Administration.

**WATER USE PERMIT:**

The Navajo Nation Water Code requires all persons within the territorial jurisdiction of the Navajo Nation, as defined in 7 N.T.C. subchapter 254, desiring to initiate new use or activity which has the potential to affect waters of the Navajo Nation, to file a Water Use Permit. This includes all surface and ground waters. The purpose of the Water Use Permit is to provide the Navajo Nation with the means to develop, manage, and preserve the water resources of the Navajo Nation.

A Water Use Permit constitutes nothing more than Navajo Nation permission to use the water or conduct an activity which may affect waters within the territorial jurisdiction of the Navajo Nation, subject to the terms and conditions of the permit. No Water Use Permit issued should be construed as creating or recognizing any right other than Navajo Nation permission to use water or conduct the activity indicated in the permit.

A Water Use Permit form may be obtained from the Water Code Administration, Department of Water Resources, P.O. Box 678, Fort Defiance, Arizona 86504, or by calling (520) 729-4130/4132.

**Any person (s) having any questions or needing aid in filing or filling out a Water Use Permit form should contact the Water Code Administrator of the Department of Water Resources at the above number for assistance.**

**WATER USE PERMIT FORM: INSTRUCTION SHEET**

WUP NO.	Do not fill in, Office Use Only.
VALID FROM _____ to _____	Do not fill in, Office Use Only.
APPLICANT	Name of individual (last name first), chapter, commercial or company applicant.
ADDRESS	Current mailing address.
CONTACT PERSON	Fill in if different from applicant.
TELEPHONE NO.	Current telephone number (if available)
WATER USE PERMIT RECEIVED, \$25.00 FILING FEE RECEIVED AND PERMIT COMPLETED	Do not fill in, Office Use Only. Do not fill in, Office Use Only. <b><u>(A \$25.00 FILING FEE MUST ACCOMPANY THE PERMIT)</u></b>

**WATER SOURCE**

If application is for use of diversion of water, check description of the source or sources from which water is or will be diverted or withdrawn and fill in name or number, if available.

If application is for construction of retention or diversion structure, check appropriate box and include project name or number. Check OTHER for classification other than those specified.

If application is for construction, conversion, or use of an injection well, provide both company designator e.g., COMPANY #XX-XX and API number, if available.

CHAPTER Fill in chapter name, CHAPTER CODE will be completed in the office.

STATE/COUNTY Check appropriate STATE and COUNTY.  
GRAZING DISTRICT Fill in appropriate GRAZING DISTRICT (if known).

**LOCATION**

Provide the location of the source of water either by UTM coordinates or township, range, section (if none of these are available attach USGS topographic map with location indicated). Include a 8 1/2" x 11" topographical map showing project and water source location.

LAND STATUS Check current land status.

WATERSHED NAME Fill in, if applicable.

USGS WATERSHED CODE NO. Fill in, if applicable.

**WATER USE**

Check appropriate **Primary** use; check **Other**, if no primary use is applicable. Fill in description of how water is or will be applied or consumed (TYPE OF LIVESTOCK, NUMBER OF PEOPLE, NUMBER OF HOMES, TYPE OF CROPS, ACRES, TYPE OF WILDLIFE).

IF WATER IS USED FOR INDUSTRIAL OR MINING PURPOSES

Please attach Water Supply Plan describing source and methods or diversions, conveyance and uses.

SEASON OF MAXIMUM USE

Check appropriate season, if peak seasons are anticipated. This is for determination of availability for requested season.

SPRING March 21 - June 20

SUMMER June 21 - September 21

FALL September 22 - December 21

WINTER December 02 - March 20

MAXIMUM RATE OF USE

Indicate maximum number of gallons/minute or cubic feet/second of water to be used.

**DATE EXPECTED FOR WATER USAGE TO BEGIN**

Enter date water use or uses began or will begin (bests reasonable estimate)

**EXPECTED VOLUME OF WATER TO BE USED**

Total gallons/acre feet of water to be used for the year.

METHOD OF WATER DIVERSION

Check description of the method of diversion.

METHOD OF WATER CONVEYANCE

Check description of method of conveyance.

ATTACH LEGAL DESCRIPTION OF LOCATION WHERE WATER IS TO BE USED

(If such is readily available, and other descriptions reasonably describing the point or points of diversion, withdrawal or impoundment).

**RETURN FLOW OR DISCHARGE**

If permitted activity will result in discharge to stream, wash, canal, impoundment, injection well, or any other receiving zone whether point source, non-point source, or by injection, complete applicable portions of these section.

AMOUNT OF WATER

Indicate rate of discharge.

METHOD

Check direct - if point source.

Check indirect - if non-point source.

Check injection - if injection well.

IS DISCHARGE TREATED

Check whether quality effluent is treated prior to discharge and attach description of treatment process.

IS QUALITY AFFECTED

Check whether quality of water is affected and attach description.

IS TEMPERATURE AFFECTED

Check whether temperature of water is affected and attach description.

FEDERAL/UIC PERMIT

Fill in Federal/UIC permit number (if injection wells).

**APPLICANTS SIGNATURE/DATE**

If individual - signature of applicant

If corporation - signature of responsible Corporation Officer or authorized manager

If public agency - Executive Officer having significant supervisory responsibility for operation.

RECOMMENDATION

Do not fill in, Office Use Only.



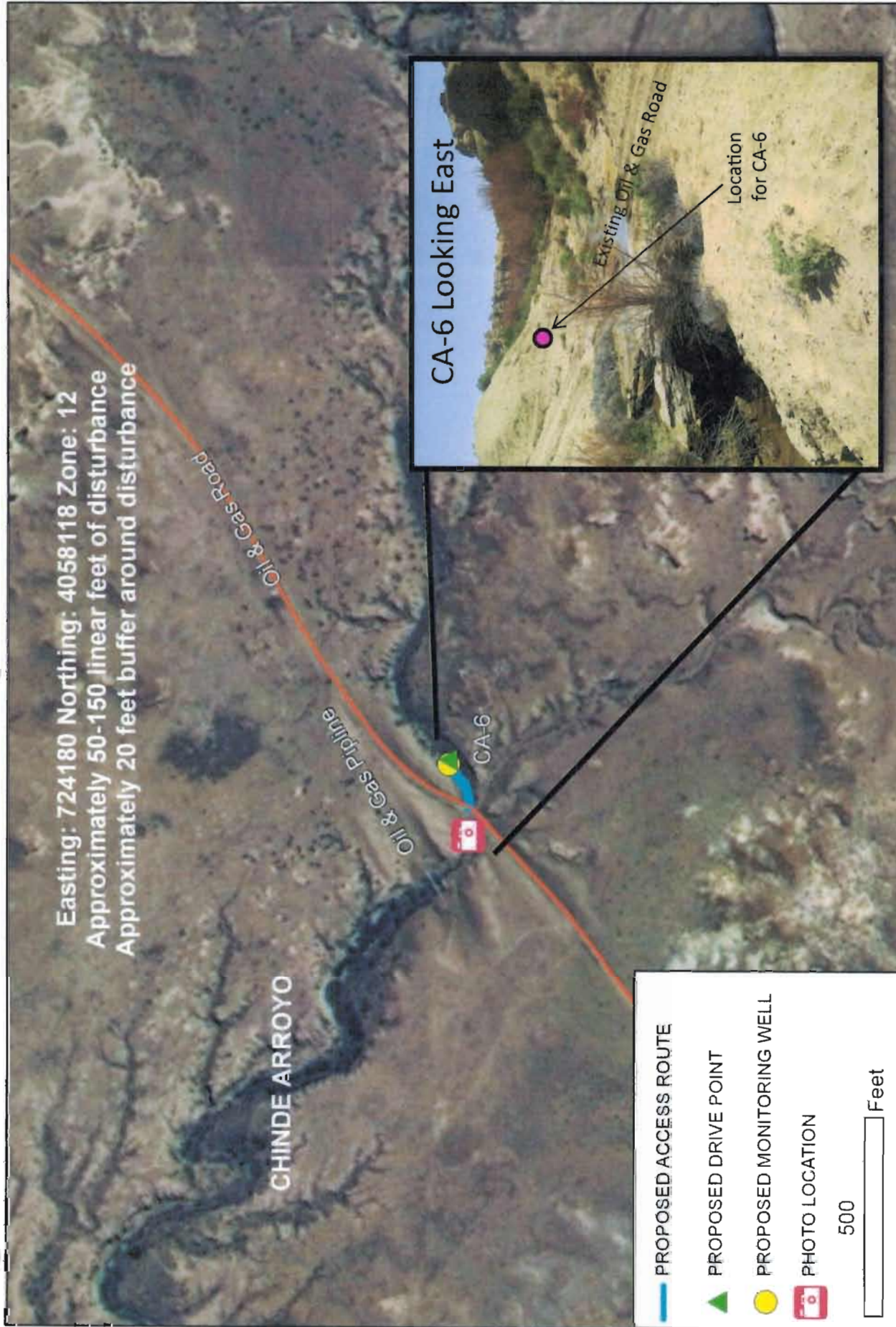


EXISTING DISTURBED AREA  
▲ PROPOSED DRIVE POINT  
CAM PHOTO LOCATION

500  Feet

	
	<div>Chinde Monitoring</div> <div>Figure 1</div> <div>CA-1 Disturbance Area</div>
<div>BHP Navajo Coal Company</div> <div>P.O. Box 1717 Fruitland, New Mexico 87416</div>	





Easting: 724180 Northing: 4058118 Zone: 12  
 Approximately 50-150 linear feet of disturbance  
 Approximately 20 feet buffer around disturbance



Chinde Monitoring

**Figure 2**  
**CA-6 Disturbance Area**

**BHP Navajo Coal Company**

P.O. Box 1717 Fruitland, New Mexico 87416

BHP Billiton  
Accounts Payable Department  
P.O.Box 155  
Fruitland, NM 87416

OM

NAVAJO DEPARTMENT OF WATER RESOURCE  
P.O. BOX 678  
FORT DEFIANCE, AZ 86504-0678

Check No. 0000138905  
Check Date 08/15/2012  
Check Amount \$250.00  
Vendor No. 0004006051

Ph: 505-598-4260

Email: NMC.Accounts.Payable@bhpbilliton.com

Date	Invoice No / Description	Gross Amount	Discount Amount	Amount
07/23/2012	WATER USE PERMIT	\$250.00		\$250.00
TOTAL				\$250.00

PLEASE FOLD ON PERFORATION AND DETACH HERE

PAGE 1/1

VERIFY THE AUTHENTICITY OF THIS MULTI-TONE SECURITY DOCUMENT.

CHECK BACKGROUND AREA CHANGES COLOR GRADUALLY FROM TOP TO BOTTOM.



BHP Billiton  
Accounts Payable Department  
P.O.Box 155  
Fruitland, NM 87416

CHECK NO. 0000138905  
AUGUST 15, 2012  
841278/811

TO THE ORDER OF NAVAJO DEPARTMENT OF WATER RESOURCE  
P.O. BOX 678  
FORT DEFIANCE, AZ 86504-0678

\*\*\*\*\* 250.00 \*\*\*\*\*

VOID AFTER 90 DAYS

PAY EXACTLY \*\*TWO HUNDRED FIFTY AND NO/100 DOLLARS\*\*

Bank of America  
Atlanta, Dekalb County, GA

  
AUTHORIZED SIGNATURE

⑈0000138905⑈ ⑆061112788⑆ 3299788812⑈



UNITED STATES DEPARTMENT OF THE INTERIOR  
BUREAU OF INDIAN AFFAIRS

RIGHT-OF-WAY APPLICATION

LANDOWNER NAME: Navajo Nation ALLOTMENT NUMBER: N/A Tribal Trust  
LEGAL DESCRIPTION: See Attached Exhibits

COMES NOW THE APPLICANT BHP Navajo Coal Company of this 11 day of February, 2013, who whereby petition(s) the Bureau of Indian Affairs and respectfully files under the terms and provisions of the Act of February 5, 1948 (62 Stat. 17; 25 USC 323-328), and Departmental Regulations 25 CFR 169, an application of a 20 year (term of years) right-of-way for the following purposes and reasons: To install and monitor environmental equipment

Across the following described restricted land (easement description):

Multiple Areas 0.18527

Said right-of-way to be NA ft length, NA ft width, and acre in size (or area), as shown on attached map of definite location, attached hereto, and made a part hereof.

SAID APPLICANT UNDERSTANDS AND EXPRESSLY AGREES TO THE FOLLOWING STIPULATIONS:

1. To construct and maintain the right-of-way in a workmanlike manner.
2. To pay all damages and compensation, in addition to the deposit made pursuant to 169.4, determined by the Secretary to be due the landowners and authorized users and occupants of the land due to the survey, granting, construction and maintenance of the right-of-way.
3. To indemnify the landowners and authorized users and occupants against any liability for loss of life, personal injury and property damage arising from the construction, maintenance, occupancy or use of the lands by the applicant, his employees, contractors and their employees, or subcontractors and their employees.
4. To restore the lands as nearly as may be possible to their original condition upon the completion of construction, to the extent compatible with the purpose for which the right-of-way was granted.
5. To clear and keep clear the lands within the right-of-way to the extent compatible with the purpose of the right-of-way; and dispose of all vegetative and other material cut, uprooted or otherwise accumulated during construction and maintenance of the project.
6. To take soil and resources conservation protection measures, including weed control, on the land covered by the right-of-way.
7. To do everything reasonable within its power to prevent and suppress fires on or near the lands to be occupied under the right-of-way.
8. To build and repair such roads, fences and trails as may be destroyed or injured by construction work and to build and maintain necessary and suitable crossings for all roads and trails that intersect the works constructed, maintained, or operated under the right-of-way.
9. That upon revocation or termination of the right-of-way, the applicant shall, so far as in reasonably possible, restore the land to its original condition. The determination of "reasonably possible" is subject to Secretary's approval.
10. To at all times keep the Secretary informed of its address, and in case of corporations, of the address of its principal place of business and the names and addresses of its principal officers.
11. That the applicant will not interfere with the use of the lands by or under the authority of the landowners for any purpose not inconsistent with the primary purpose for which the right-of-way is granted.

NOTE

1. The

2. The

3. The

4. The

5. The



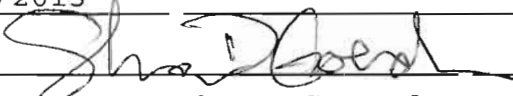
12. During the term of this Grant of Easement, if any previously unidentified cultural resources are discovered within the easement area, work should be halted immediately and the BIA and/or Tribal Contractor should be contacted immediately.

THE APPLICANT FURTHER STIPULATES AND EXPRESSLY AGREES AS FOLLOWS:

To conform and to abide by all applicable requirements with respect to the right-of-way herein applied for. The applicant agrees to conform to and abide by the rules, regulations, and requirements contained in the *Code of Federal Regulations*, Title 25 Indians, Part 169, as amended, and by reference includes such rules, regulations and requirements as a part of this application to the same effect as if the same were herein set out in full.

DATE 2/11/2013

APPLICANT

  
Shawn D. Goeckner, General Manager of BHP Navajo Coal Company



BHP Navajo Coal Company



October 24, 2013

BHP Billiton Limited  
BHP Navajo Coal Company  
PO Box 1717  
16 Miles South of Fruitland on CR 6675  
Fruitland, New Mexico 87416 USA  
Tel +1 505 598 4200 Fax +1 505 598 3381  
bhpbilliton.com

Harrilene Yazzie  
Bureau of Indian Affairs  
Division of Environmental, Cultural and Safety Management  
P.O. Box 1060  
Gallup, NM 87305-10170

**Re: Categorical Exclusion Request for BHP Navajo Coal Company (BNCC) Right-of-Way application to install and monitor environmental equipment**

Dear Ms. Yazzie,

This letter requests that the Bureau of Indian Affairs (BIA) issue a Categorical Exclusion for approval of the Right-of-Way (ROW) application by BHP Navajo Coal Company (BNCC) submitted to BIA on February 11, 2013. The purpose of the ROW application is to allow BNCC to gain access to areas upstream and downstream of the Navajo Mine lease to install equipment to monitor surface and groundwater quantity and quality along the Chinde Arroyo. The proposed activities include installation of groundwater monitoring wells and environmental data collection activities in existing and proposed ROW near Navajo Mine.

One monitoring well (CA-1) would be installed upstream of the mine lease along the Chinde Arroyo within the existing BIA Roads Project N3005 Right-of-Way. The surface water monitoring station is located on the BIA Roads Project N3005 culvert for the Chinde Arroyo, and this location has a current Revocable Use Permit (RUP-SR-01-98) that will expire in 2018. The other groundwater monitoring well (CA-6) would be located downstream of the mine along the Chinde Arroyo. An existing oil and gas road will be used for access. BNCC has submitted Water Use Permits for both CA-1 and CA-6 to the Navajo Nation. The ROW application includes detailed information about the proposed action as well as results from a Biological Evaluation (BE) completed by Ecosphere Environmental Services (Ecosphere) and a Class III cultural survey completed by Woods Canyon Archaeological Services.

The proposed activities conform to the BIA's categorical exclusion criteria outlined in 516 DM 10.5 for "establishment of non-disturbance environmental quality monitoring programs and field monitoring stations including testing services." Attachment 1 includes a completed Exception Checklist for BIA Categorical Exclusions for the proposed action using the descriptions, maps and survey data included in the ROW application.

If you require additional data to consider this Categorical Exclusion request, please contact Vivie Melendez at 505-598-3284. Thank you for your attention to this matter.

Sincerely,



Steven Perkins  
Environmental Superintendent, Permitting and Technical Services



**Attachment 1****CATEGORICAL EXCLUSION EXCEPTION REVIEW (CEER) CHECKLIST****Project: BNCC ROW Application February 11, 2013      Date: October 23, 2013**

See Figures 1 and 2 for project location maps.

**Letter and Text of category (BIA - 516 DM 10.5; DOI - 43 CFR46-210)****Evaluation of Extraordinary Circumstances (43 CFR 46.215):****1. This action would have significant impacts on public health or safety. ☐ NO ☒ YES***The proposed action would have no adverse effects on public health or safety.***2. This action would have significant impacts on: natural resources & unique geographical features as historic or cultural resources; park, recreation or refuge lands; wilderness areas; wild & scenic rivers; national natural landmarks; sole or prime drinking water aquifers; prime farmlands wetlands; floodplains; national monuments; migratory birds; and other ecologically significant areas. ☐ NO ☒ YES***This action would not have significant impacts on: natural resources & unique geographical features as historic or cultural resources; park, recreation or refuge lands; wilderness areas; wild & scenic rivers; national natural landmarks; sole or prime drinking water aquifers; prime farmlands wetlands; floodplains; national monuments; migratory birds; and other ecologically significant areas because these features are not present in the project area.***3. This action would have highly controversial environmental effects or unresolved conflicts concerning alternate uses of available resources. ☐ NO ☒ YES***No controversial environmental effects or unresolved conflicts concerning use of the resources for water monitoring are expected. A water use permit has been applied for and granted for these wells and the water used in groundwater quality monitoring.***4. This action would have highly uncertain environmental effects or involve unique or unknown environmental risk. ☐ NO ☒ YES***No uncertain environmental effects are expected because the proposed action would be located within a "Low Sensitivity Wildlife Resources" (Area 3), as identified by the Navajo Nation Department of Fish and Wildlife (NNDFW) and described in the Biological Resources Land Clearance Policies and Procedures, approved September 10, 2008. Area 3 has a low, fragmented concentration of species of concern. Furthermore, on December 5, 2012, Ecosphere conducted a Threatened, Endangered and Sensitive (TES) species survey of the proposed project area to determine environmental effects. Additionally, the environmental effects and risks associated with the installation and use of monitoring equipment are well understood, and standard protocols will be followed to manage these effects and risks.***5. This action will establish a precedent for future actions. ☐ NO ☒ YES**

No precedent would be set for future actions because the BIA includes the "establishment of non-disturbance environmental quality monitoring programs and field monitoring stations including testing services" as in the proposed action on the list of activities eligible for issuance of Categorical Exclusions.

**6. This action is related to other actions with individually insignificant but cumulatively significant environmental effects. ☐ NO ☒ YES**

The proposed environmental data gathering and monitoring activities are not related to other actions with individually insignificant effects. In the BE Ecosphere staff find that the potential future development in the project area is expected to be minimal given the constraints of land status and the level of existing development. The proposed action would have low cumulative impacts on ferruginous hawk, golden eagle, and kit fox Navajo Nation species of significance. The proposed action would not contribute significantly to the regional loss or degradation of biological resources due to the limited size and location of the proposed action. The proposed action would have no cumulative effects to federally listed threatened, endangered, or candidate species.

**7. This action will have significant impacts on properties listed or eligible for listing in the National Register of Historic Places. ☐ NO ☒ YES**

The Class III cultural resource survey (Summary included in Figure 3 below) found that the proposed action would have no effect on historic properties with the following conditions:

- 1) Site NM-H-21-215 boundary will be flagged by a qualified archaeologist prior to ground disturbing activities.
- 2) Site NM-H-21-215 will be avoided by all construction activities by a minimum of 50 feet.

**8. This action will have significant impacts on a species listed or proposed to be listed as endangered or threatened, or Critical Habitat of these. ☐ NO ☒ YES**

On December 5, 2012, Ecosphere conducted a TES survey of the proposed project areas under NNDFW Special Permit #706. The purpose of the BE is to adhere to the Endangered Species Act of 1973 (ESA), as amended, and the Navajo Nation code requirement for species of concern (17 NNC 507) administered by the Navajo Nation Natural Heritage Program (NNHP).

Given the lack of suitable habitat in the project area, a determination of no effect is expected for all 11 of the federally listed species with potential to occur in San Juan County, New Mexico. Impacts to NESL listed species are not expected to result in a loss of species viability range-wide.

**9. This action violates federal, state, local, or tribal law or requirements imposed for protection of the environment. ☐ NO ☒ YES**

The proposed activities do not violate any environmental protection requirements. The proposed action includes mitigation measures to minimize impacts to wildlife and cultural resources.

**10. This action will have a disproportionately high and adverse effect on low income or minority populations. ☐ NO ☒ YES**

*There would be no adverse impact to low income or minority populations from the proposed activities.*

**11. This action will limit access to, and ceremonial use of, Indian sacred sites on federal lands, by Indian religious practitioners, and/or adversely affect the physical integrity of such sites. ☐ NO ☒ YES**

*The proposed action would not limit access or adversely affect Indian sacred sites on federal lands.*

**12. This action will contribute to the introduction, continued existence, or spread of noxious weeds or non-native invasive species known to occur in the area, or may promote the introduction, growth, or expansion of the range of such species. ☐ NO ☒ YES**

*The proposed activities are not expected to contribute to the spread or introduction of noxious weeds or non-native invasive species. No noxious weed species listed by the BIA Navajo Region were observed in the proposed project locations during the biological survey. BNCC is committed to the control and eradication of such. In addition, regular maintenance activities by BNCC would include control of weedy and invasive weed species that may become established within the project areas.*

**Name and Title of person preparing this checklist**

*Carolyn Dunmire, Senior Project Manager Ecosphere Environmental Services Date: October 23, 2013*

Concur: Date:

**Regional Archeologist**

Concur:

**Other Environmental Professional Date:**

Concur: Date:

**Regional/Agency/OFMC NEPA Reviewer**

Approve: Date:

**Regional Director/Agency Superintendent/**

**OFMC Official**

**NOTES:**



Figure 1 CA-1 Groundwater Monitoring Well Location

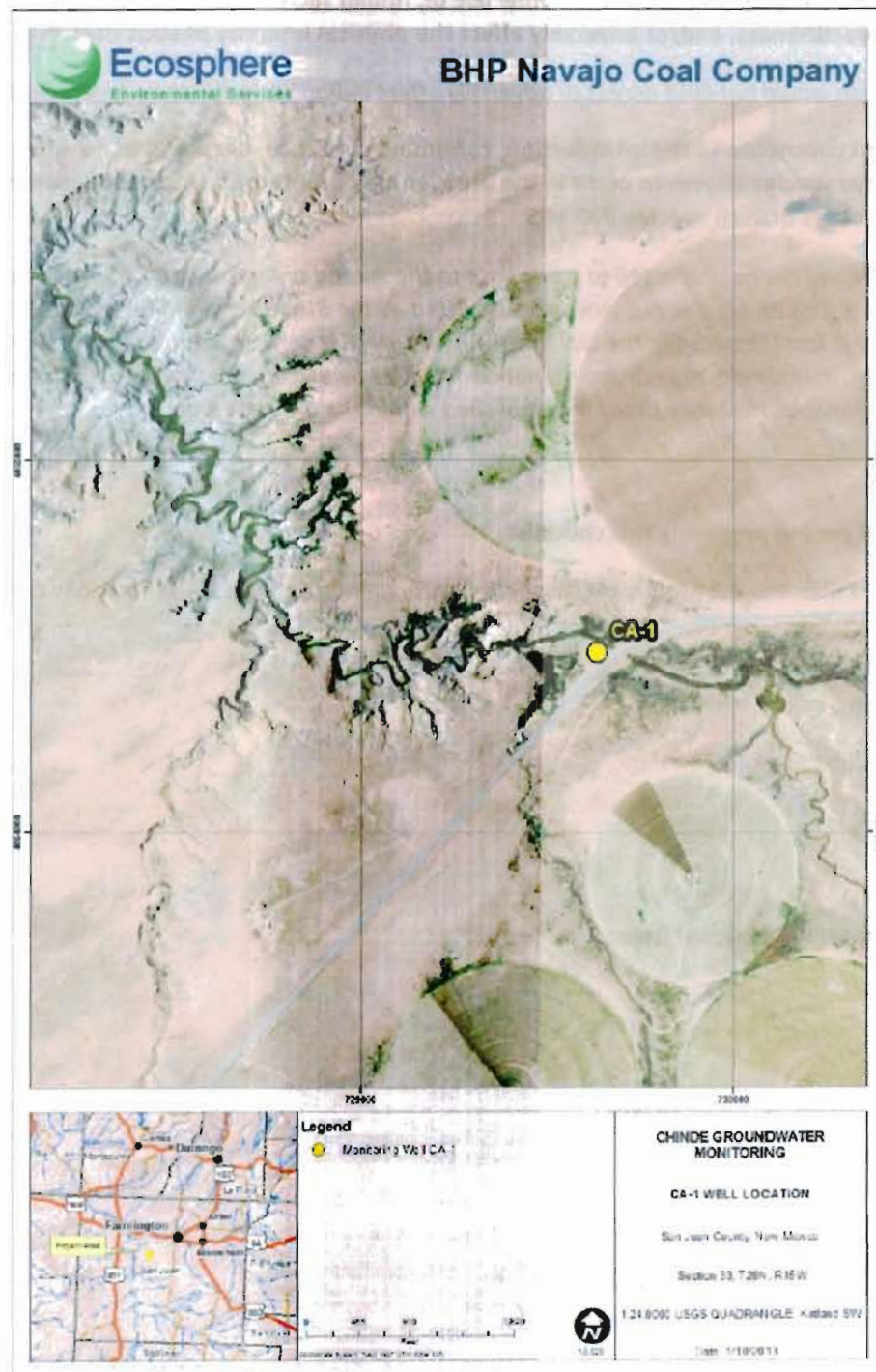




Figure 2. CA-6 Groundwater Monitoring Well Location

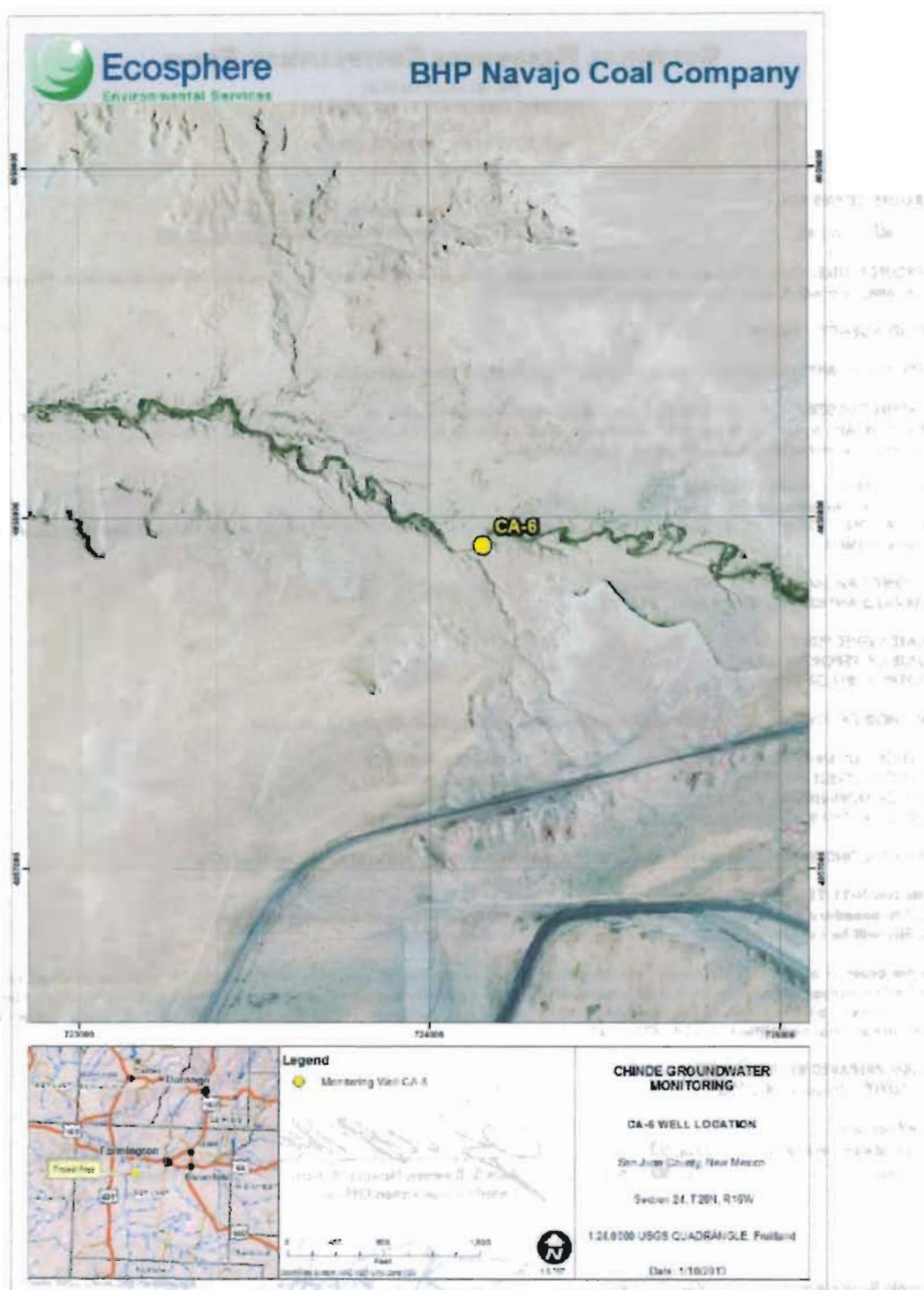


Figure 3. Cultural Survey Summary

**CULTURAL RESOURCES COMPLIANCE FORM**

THE NAVAJO NATION  
HISTORIC PRESERVATION DEPARTMENT  
PO BOX 4950  
WINDOW ROCK, ARIZONA 86515

**ROUTE COPIES TO:**☒ WCAC**NNHPD NO. HPD-12-1049****OTHER PROJECT NO.: WCA5 12-001**

**PROJECT TITLE:** Class III Survey of Test Wells CA-1 and CA-6 for BHP Navajo Coal Company, Navajo Reservation Nenahnezad Chapter, Shiprock Agency, San Juan County, New Mexico

**LEAD AGENCY:** BIA/NR

**SPONSOR:** BHP Navajo Coal Company, PO Box 1717, Fruitland, New Mexico 87416

**PROJECT DESCRIPTION:** The proposed undertaking will involve the construction of two groundwater sampling locations measuring 20-ft by 20-ft. Also a new 150-ft by 20-ft wide road will be used to access CA-6. The area of effect is 0.15-acre. Ground disturbance will be intensive and extensive with the use of heavy equipment.

**LAND STATUS:** Navajo Tribal Trust

**CHAPTER:** Nenahnezad

**LOCATION:** T.28N, R.15W - Sec. 29; T.28N, R.16W - Sec. 14; Kirland SW and Fruitland Quadrangles, San Juan County, New Mexico NMPM

**PROJECT ARCHAEOLOGIST:** Bryan Shanks

**NAVAJO ANTIQUITIES PERMIT NO.:** B12773

**DATE INSPECTED:** 12/06/12

**DATE OF REPORT:** 12/2012

**TOTAL ACREAGE INSPECTED:** 3.2- ac

**METHOD OF INVESTIGATION:** Class III pedestrian inventory with transects spaced 15 m. apart.

**LIST OF CULTURAL RESOURCES FOUND:**

(1) Site (NM-H-21-215)

**LIST OF ELIGIBLE PROPERTIES:**

(1) Site (NM-H-21-215)

**LIST OF NON-ELIGIBLE PROPERTIES:**

None

**LIST OF ARCHAEOLOGICAL RESOURCES:**

(1) Site (NM-H-21-215)

**EFFECT/CONDITIONS OF COMPLIANCE:** No historic properties affected with the following conditions:

**Site NM-H-21-215:**

1. Site boundary will be flagged by a qualified archaeologist prior to ground disturbing activities.

2. Site will be avoided by all construction activities by a minimum of 50-ft.

In the event of a discovery ("discovery" means any previously unidentified or incorrectly identified cultural resources including but not limited to archaeological deposits, human remains, or locations reportedly associated with Native American religious/traditional beliefs or practices), all operations in the immediate vicinity of the discovery must cease, and the Navajo Nation Historic Preservation Department must be notified at (928) 871-7147.

**FORM PREPARED BY:** Tamara Billie

**FINALIZED:** January 14, 2013

**Notification to**

**Proceed Recommended:**

Yes ☒ No ☐

**Conditions:**

Yes ☒ No ☐

*[Signature]*  
Brian S. Downer, Navajo Nation  
Historic Preservation Officer

Date 1/16/13

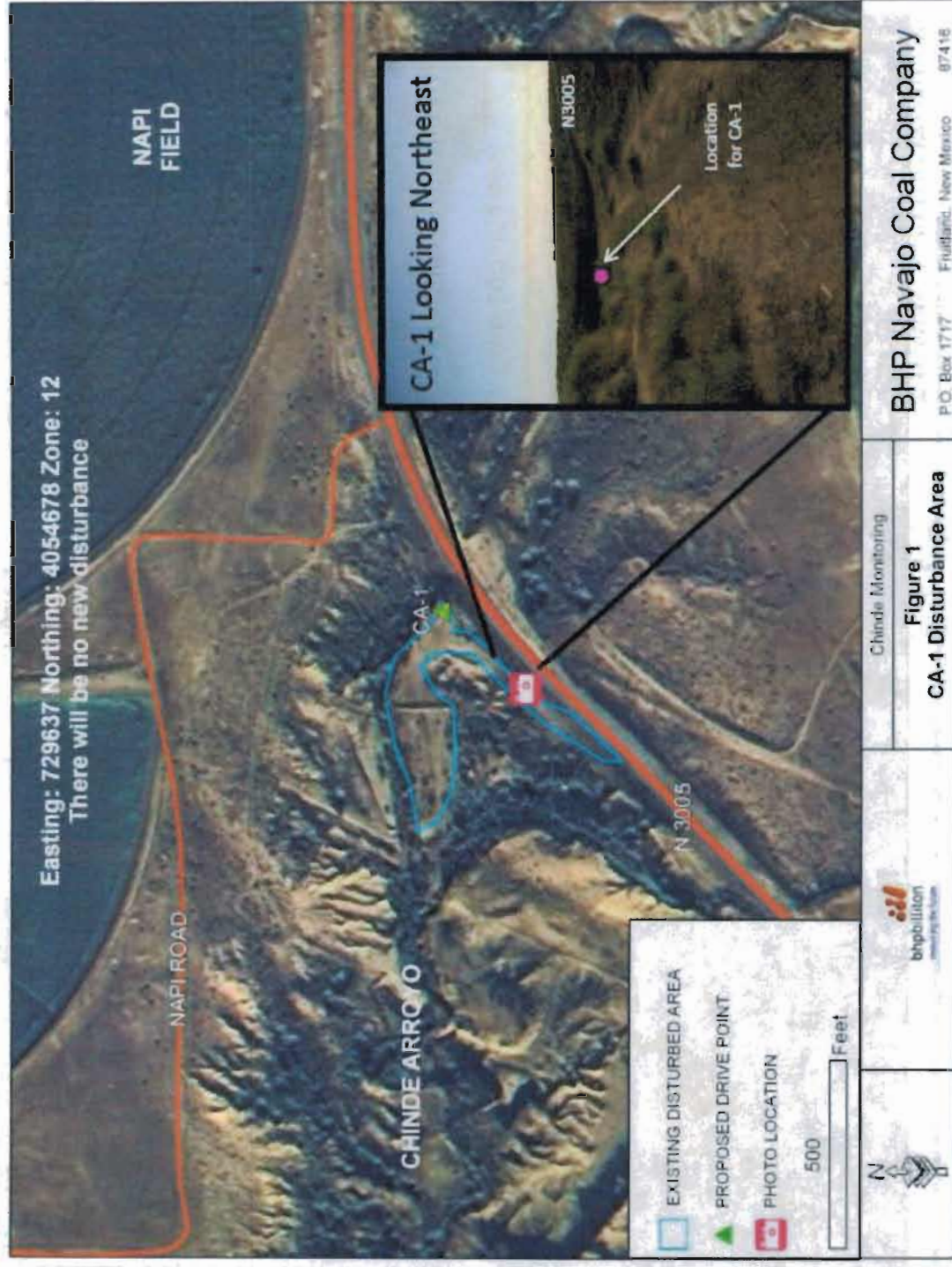
**Navajo Region Approval:**

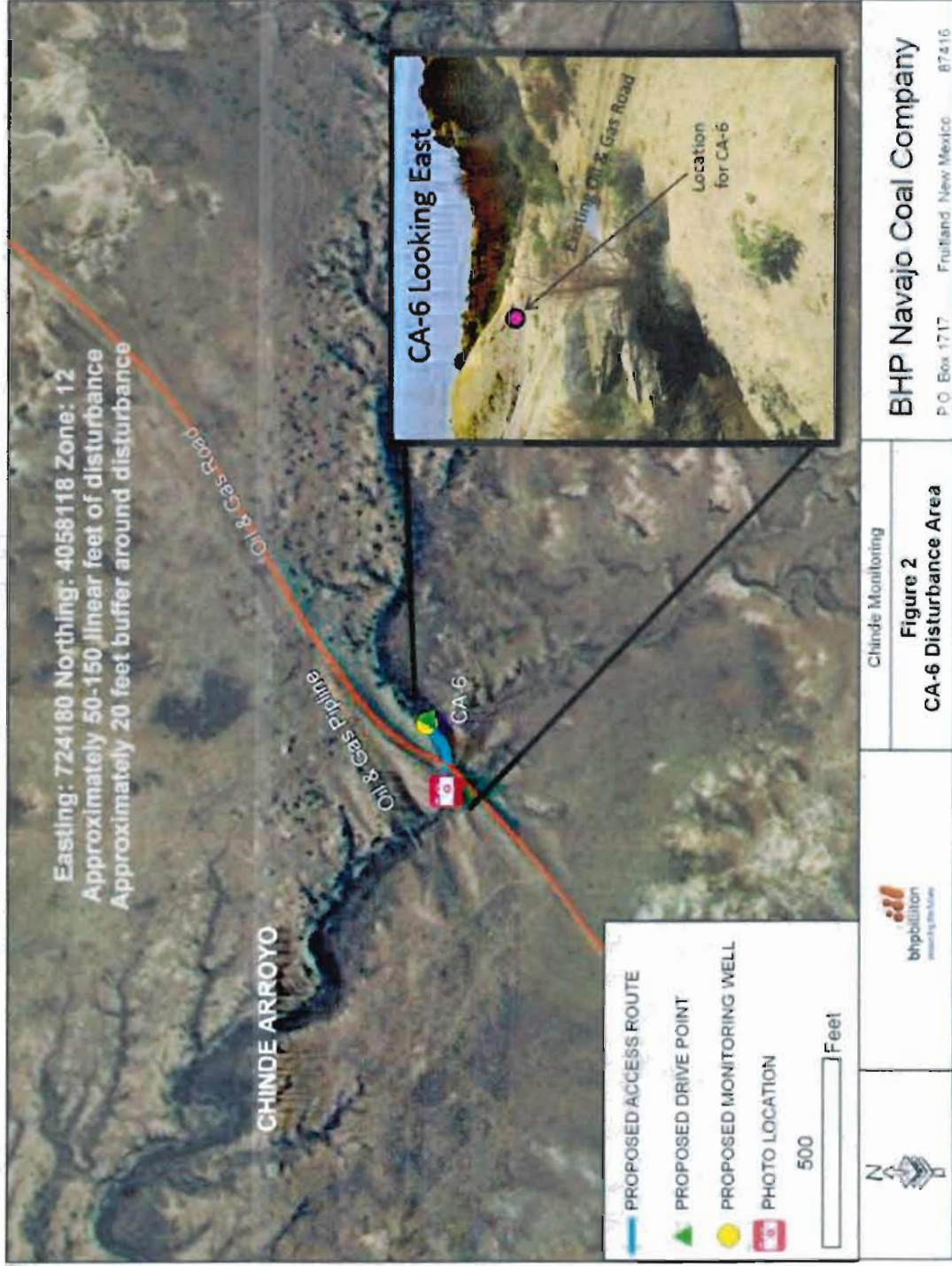
Yes ☒ No ☐

*[Signature]*  
BIA-Regional Director

Date 1/24/13











# United States Department of the Interior

## BUREAU OF INDIAN AFFAIRS

Navajo Area Office

P O Box 1060

Gallup, New Mexico 87305-1060

IN REPLY REFER TO:

ARES/542

Mr. J. Gregg Wurtz  
Hydrologist, Navajo Mine  
BHP Navajo Coal Company  
P O Box 1717  
Fruitland, New Mexico 87416

ENVIRONMENTAL QUALITY	
[Redacted Box]	
CC: EOD	CG PS LW
ENGR.	SE
file 270.5.5	

FEB 05 1998

Dear Mr. Wurtz:

Area Real Estate Services has completed the review of an application for a Revocable Use Permit across Navajo Tribal Trust lands within the Navajo Indian Irrigation Project (NIIP), to install surface water monitoring station, within BIA Roads Project No. N3005 existing right-of-way, located in the NE¼ of Section 29, Township 28 North, Range 15 West, NMPM, San Juan County, New Mexico

The application is an incomplete package and lacks the following documents:

1. Application for the revocable use permit addressed to Navajo Area Director. Permit application should describe the project, purpose, term desired, general location and land status, approximate acres involved, existing or new access to the site and other pertinent information.
2. Appraisal Report - Offer of annual rental for use of land. Submit copies of all payments made to the Navajo Nation. Once we receive the appraisal report, we will request for an opinion through our Area Appraiser.
3. Environmental Assessment (EA) and FONSI - EA was not part of the application package. We will require an EA for the project site since BHP is considered as a Third Party. You may be able to get a categorical exclusion if there's an existing EA that was prepared for the BIA Roads, Project No. N3005. You may contact their office and request if the company can use their existing EA. Enclosed is a form for "Categorical Exclusion" to fill out and send it directly to Area Environmental Quality Services at same above address, attention to Mr. Leonard Robbins. You can contact Mr. Robbins directly at (505) 863-8287.
4. Survey Plat - We will require a legal survey by a certified land surveyor due to the term of twenty (20) years. The map should have metes and bounds description, able to scale. Map should show the permit site, definite location, structures and utilities, highway right-of-way drawing(s), etc., proposed access for ingress and egress and accurate as possible.



Environmental Quality  
Department  
New Mexico Operations  
BHP World Minerals

April 25, 1997

Howard Draper  
Division of Natural Resources  
Project Review Section  
P.O. Box 9000  
Window Rock, AZ 86515

Dear Mr. Draper:

The purpose of this letter is to request that right of access be provided to BHP Navajo Mine to install and operate a scientific monitoring station on the Chinde Wash within a BIA roads right of way easement. The station will be used to collect scientific information characterizing surface water flows. The proposed location is adjacent to the NAPI lease hold but within the BIA Roads Division right of way easement of 75 feet from the centerline of the road. The site will be a NAPI/NIIP and BHP cooperative surface water monitoring location installed and operated by BHP.

This letter contains the specific information concerning the surface water monitoring project including:

1. Letter of application, describing the type of project, general location, a legal description of the location and detailed scope of activities (Attachment 1)
2. A completed Revocable Use Permit filled out in triplicate (Attachment 2).
3. Site location map, certified by a State of New Mexico certified surveyor (Attachment 3).
4. Conceptual designs of the proposed station (Attachment 4).
5. Bureau of Indian Affairs Branch of Roads Right of Way approval letter from the Agency Road Engineer, Farmington, NM and Area Road Engineer, and Area Director, Gallup, NM (Attachment 5).
6. A letter of concurrence and understanding from NAPI/NIIP (Attachment 6).
7. Environmental Assessment survey and clearance (Attachment 7).
8. Archeological survey and clearance survey. (Attachment 8). and
9. Processing fee of \$300 based on the application being approved without field clearance site visits. Based on site being located within the BIA road way easement (Attachment 9).

Environmental Quality Department, New Mexico Operations, Navajo Mine, New Mexico Operations E-Mail address:  
wurtz.gregg.j@bmc.com.au.

BHP World Minerals is a Division of BHP Minerals, which is a Business Group of The Broken Hill Proprietary Company Limited  
Telephone: (505) 598-3359 Facsimile: (505) 598-3361



Environmental Quality  
Department  
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2. A completed Revocable Use Permit filled out in triplicate (Attachment 2).
3. Site location map, certified by a State of New Mexico certified surveyor (Attachment 3).
4. Conceptual designs of the proposed station (Attachment 4).
5. Bureau of Indian Affairs Branch of Roads Right of Way approval letter from the Agency Road Engineer, Farmington, NM and Area Road Engineer, and Area Director, Gallup, NM (Attachment 5).
6. A letter of concurrence and understanding from NAPI/NIP (Attachment 6).
7. Environmental Assessment survey and clearance (Attachment 7).
8. Archeological survey and clearance survey, (Attachment 8), and
9. Processing fee of \$300 based on the application being approved without field clearance site visits. Based on site being located within the BIA road way easement (Attachment 9).

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Environmental Quality Department, New Mexico Operations, Navajo Mine, New Mexico Operations E-Mail address:  
wurtz.gregg.jg@bhp.com.au

BHP World Minerals is a Division of BHP Minerals, which is a Business Group of The Broken Hill Proprietary Company Limited  
Telephone: (505) 598-3359 Facsimile: (505) 598-3361



**ENVIRONMENTAL ASSESSMENT DOCUMENT  
CONTENT AND FORMAT**  
(Simplified version of 17 EIA Supplement 1)

**PURPOSE:** The purpose of this content and format document is to provide a simplified environmental assessment format to individuals, companies, corporations, and government agencies involved in preparing environmental assessment documents for proposed construction projects in the Navajo Area. Cultural resource inventories and historic preservation consultation with the Navajo Historic Preservation Department (NHPD), and consultation with other Federal agencies and Tribal entities, for example, the Clean Water Act (CWA) Sections 401 and 404, and threatened and endangered species, are integral parts of the environmental document.

**IMMEDIATE CONSULTATION REQUIREMENTS:**

1. Field cultural resources inventories and National Historic Preservation Act (NHPA) Section 106 consultation with NHPD are required as part of the environmental assessment package. Notify the Navajo Nation Cultural Resources Compliance Section (CRCS) for permit/survey class determinations and application for cultural resource surveys including archaeology and traditional cultural properties surveys. As required after initial consultation with CRCS, the operator or document preparer shall sponsor a cultural resource field survey and prepare a cultural resource survey report. The report shall be submitted to NHPD for consultation and clearance. NHPA Section 106 consultation with the state SHPOs shall be conducted by NHPD. In the ultimate, a Cultural Resource Compliance Form for the project will be issued by NHPD. Write Cultural Resource Compliance Officer, CRCS, NHPD, P. O. Box 2898, Window Rock, Arizona 86515, or call (602) 871-7132 for additional information.

2. The environmental document preparer shall request a specific listing/information on threatened and endangered (T&E) species in the project area from the U.S. Fish and Wildlife Service (USF&WS) and the Navajo Fish and Wildlife Department Natural Heritage Program. In response to the informal request for T&E species listing information, the preparer may perform field surveys to address the USF&WS T&E listing and the Navajo Nation species of concern. Write the U.S. Fish and Wildlife Service Ecological Services Field Office in the state where the action is proposed and the Navajo Nation Fish and Wildlife Department, P. O. Box 9000, Window Rock, Arizona 86515, or call (602) 871-7060.

If T&E species and/or their habitat occur on the proposed project area, the preparer may be required to address the T&E species more adequately in the EA document. An initial field survey and/or prepare a biological assessment may be required. Current biological assessment protocol for that specific T&E species will



Additional Information.

6. Should the project involve tree cutting in the woodland areas or commercial forest, trees within or outside the proposed lease or right-of-way area, a forestry tree cutting permit will be required. For information and assistance, write the Director, Navajo Nation Forestry Department, P.O. Box 230, Fort Defiance, Arizona 86054, or call 802/729-4007.

7. Consultation is also required with the Area Roads Engineer if your project includes an access road within an established road right-of-way. Write to the Area Roads Engineer, Branch of Roads, Navajo Area Office, Bureau of Indian Affairs, P. O. Box 1060, Gallup, New Mexico 87305. For additional information and immediate assistance, call 505/862-8281.

8. The project may involve prime farmland. Contact the local district Natural Resource Conservation Service in the project area.

ENVIRONMENTAL CONTENT AND FORMAT (See Sections 1500.3, 1501.3 and 516 DM 2.4.)

As set forth in regulation, the environmental assessment will include brief discussions of the proposed action, alternatives as required by Section 102 (2) (e) of the National Environmental Policy Act (NEPA), environmental impacts of the proposed action and mitigation measures to facilitate planning and decision-making. The environmental planning for the projects will include selecting site alternatives; examining the project setting and delineating each projects environmental sensitivities by describing the existing environment; assessing the impacts of the projects; and determining appropriate mitigation measures. In section 6 environmental consequences and section 7 mitigation, address only those components of the existing environment that will be affected by the proposed action. On the other hand, discuss why those components were deleted from concern in section 6 environmental consequences. The following components are required to be addressed in each environmental assessment document:

1. Conveyance Cover Letter: Provide a cover Letter addressed to the Area Director, Bureau of Indian Affairs, Navajo Area Office, Attention: Branch of Environmental Services, P. O. Box 1060, Gallup, New Mexico 87305. This letter should have a return address or letterhead, date, briefly reference the proposed project, contact person and telephone number. The Navajo Nation may also require a copy of the environmental assessment.

2. Cover Sheet: The cover sheet will present a project name and number, date, name, and address of the sponsoring operator (applicant), Federal Agency, Tribal entity or third party preparer.

3. Table of Contents: List section headings with page numbers.

D. Biotic Resources

1. Description of Ecosystems and Biological Communities
2. Wildlife
  - a. Terrestrial
  - b. Riparian/Aquatic
  - c. Threatened and Endangered Species
3. Vegetation
  - a. Terrestrial
  - b. Riparian/Aquatic
  - c. Threatened and Endangered Species
4. Agriculture (livestock, crops, prime and unique farmland)

E. Cultural Resources

1. Traditional Cultural Properties, Historic, Religious Properties
2. Archeological Resources

F. Socioeconomic Conditions

1. Employment and Income
2. Demographics and Trends
3. Lifestyles, Cultural Values, Attitudes, Expectations (from ethnographic survey)
4. Community Infrastructure

G. Resource/Land Use Patterns, i.e.

1. Hunting, Fishing, Gathering
2. Timber Harvesting
3. Agriculture
4. Mining
5. Outdoor Recreation
6. Transportation Use Networks
7. Land Use Plans
8. Solid Waste Sites
9. Hazardous Waste Sites, include any environmental assessments

H. Other Values

1. Wilderness
2. Sound and Noise
3. Public Health and Safety
4. Visual Setting
5. Non-User Values

IV. Environmental Consequences of the Proposed Action (include nature and duration; address only those pertinent components and subcomponents listed in Section III, A through H that will be impacted. Discuss your rationale for any component deletions):

A. Biological Impacts: Description of all the impacts to the biotic communities and populations in the project area; including

of-way legal descriptions, environmental site assessments, biological assessments, etc.

#### IX. FONSI Statement

Submittals, Time Frames and Direction for Further Work on the EA:  
Draft Environmental Assessment - The environmental document preparer will present a draft copy of the environmental assessment to the decision-maker. The decision-maker will immediately make the document available for interdisciplinary analysis and interested party review and comment.

The document preparer may make a draft environmental assessment available to the Navajo Environmental Protection Administration, Environmental Assessment and Environmental Impact Statement Review Office, P. O. Box 529, Fort Defiance, Arizona 86504, for their review; copy the BIA Environmental Quality Services Office. The decision-maker will convey comments back to the preparer, usually within 15 calendar days of submittal.

Final Draft Environmental Assessment - The preparer will incorporate viable/pertinent commentary into the document. The preparer may be directed to correct any deficiencies. When the revisions are complete, the preparer will make available a final draft copy environmental assessment to the decision-maker within 30 calendar days of receipt of review comments. The document preparer will prepare the final document and will include all necessary adjustments.

Final Environmental Assessment Document - The decision-maker will then make determinations of the findings of no significant impact, or if significant impacts do occur, then an environmental impact statement may be justified. The Finding of No Significant Impact statement, will be signed by the decision-maker.

A "yes" to any of the above exceptions will require that an EA be prepared.

NEPA Action --- CE - EA

Preparer's Name and Title: \_\_\_\_\_

Area Archeologist concurrence with item ? \_\_\_\_\_

Concur: \_\_\_\_\_ Date: \_\_\_\_\_  
Area Director/Superintendent

Concur: \_\_\_\_\_ Date: \_\_\_\_\_  
Agency/Area Office Environmental  
Coordinator

BIAM Release No. 9303

9/24/93

Replaces 30 BIAM, Supp. 1, dated 2/22/82






ENVIRONMENTAL PROTECTION AGENCY  
OFFICE OF EXECUTIVE DIRECTOR/ADMINISTRATION  
OFFICE OF ENVIRONMENTAL REVIEW  
PO BOX 339 WINDOW ROCK ARIZONA 86515 Office: 928/871-7188 Fax: 928/871-7996  
Website: [www.navajonationepa.org](http://www.navajonationepa.org)

## M E M O R A N D U M

TO: Howard Draper, Program & Project Specialist  
Project Review Office  
Navajo Land Department  
Division of Natural Resources

FROM:

  
Rita Whitehorse-Larsen, Senior Environmental Specialist  
Office of Environmental Review  
Office of the Executive Director/Administration  
NNEPA

DATE: March 4, 2015

SUBJECT: 164 EOR 000402 RUP to BHP 2 Monitoring Wells

The Navajo Nation Environmental Protection Agency (NNEPA) reviewed<sup>1</sup> and recommends **conditional approval** for the proposed two (2) groundwater monitoring wells [CA-1 and CA-6] and to extend the access of an existing surface water station. BHP Navajo Coal Company (BNCC) also known as Navajo Transitional Energy Company (NTEC) is proposing to install 2 groundwater monitoring wells adjacent to the Chinde Arroyo (Chinde Wash) off the Navajo Mine Lease to meet the requirements of BNCC's Navajo Mine Permit. The proposed action will allow BNCC to install the groundwater monitoring wells and collect quarterly groundwater samples for laboratory analysis. The monitoring wells will have drive-point samplers and monitoring wells piezometers installed. The No new disturbance is expected. An existing bladed road spurring from NR 3005 will be the access to the site. A 50 x 150 foot area with a 20 foot buffer around the perimeter is required to install the CA-6 MW. The existing access road will be used to install the CA-6 MW.

Conditional approval is recommended for the proposed action based on the following:

1. Avoid any physical disturbance within the ordinary high water mark (OHW) of the Chinde Wash. If any physical surface disturbance is required within the OHW, Clean Water Act Section 401 and 404 permits will be required before construction activities commences.

<sup>1</sup> Ecosphere Environmental Services. Categorical Exclusion Exception Review (CEER) Checklist BNCC ROW Application February 11 2013. October 2013.

If there are any questions, contact Rita Whitehorse-Larsen at 928/871-7188. Thank you.

Cc: BHP Billiton New Mexico Coal, PO Box 561, Waterflow, New Mexico, 87421  
NNEPA Administration; Departments; Programs

Document No. 000402

Date Issued: 08/23/2013

**EXECUTIVE OFFICIAL REVIEW**

Title of Document: Row to BHP Monitor2grndwtrs. Contact Name: DRAPER, HOWARD

Program/Division: DIVISION OF NATURAL RESOURCES

Email: howarddraper@frontiernet.net Phone Number: 928-871-6447

☐ **Business Site Lease** Sufficient    Insufficient

1. Division: \_\_\_\_\_ Date: \_\_\_\_\_ ☐ ☐  
2. Office of the Controller: \_\_\_\_\_ Date: \_\_\_\_\_ ☐ ☐  
(only if Procurement Clearance is not issued within 30 days of the initiation of the E.O. review)  
3. Office of the Attorney General: \_\_\_\_\_ Date: \_\_\_\_\_ ☐ ☐

☐ **Business and Industrial Development Financing, Veteran Loans, (i.e. Loan, Loan Guarantee and Investment) or Delegation of Approving and/or Management Authority of Leasing transactions**

1. Division: \_\_\_\_\_ Date: \_\_\_\_\_ ☐ ☐  
2. Office of the Attorney General: \_\_\_\_\_ Date: \_\_\_\_\_ ☐ ☐

☐ **Fund Management Plan, Expenditure Plans, Carry Over Requests, Budget Modifications**

1. Office of Management and Budget: \_\_\_\_\_ Date: \_\_\_\_\_ ☐ ☐  
2. Office of the Controller: \_\_\_\_\_ Date: \_\_\_\_\_ ☐ ☐  
3. Office of the Attorney General: \_\_\_\_\_ Date: \_\_\_\_\_ ☐ ☐

☐ **Navajo Housing Authority Request for Release of Funds**

1. NNEPA: \_\_\_\_\_ Date: \_\_\_\_\_ ☐ ☐  
2. Office of the Attorney General: \_\_\_\_\_ Date: \_\_\_\_\_ ☐ ☐

☐ **Lease Purchase Agreements**

1. Office of the Controller: \_\_\_\_\_ Date: \_\_\_\_\_ ☐ ☐  
(recommendation only)  
2. Office of the Attorney General: \_\_\_\_\_ Date: \_\_\_\_\_ ☐ ☐

☐ **Grant Applications**

1. Office of Management and Budget: \_\_\_\_\_ Date: \_\_\_\_\_ ☐ ☐  
2. Office of the Controller: \_\_\_\_\_ Date: \_\_\_\_\_ ☐ ☐  
3. Office of the Attorney General: \_\_\_\_\_ Date: \_\_\_\_\_ ☐ ☐

☐ **Five Management Plan of the Local Governance Act, Delegation of an Approving Authority from a Standing Committee, Local Ordinances (Local Government Units), or Plans of Operation/Division Policies Requiring Committee Approval**

1. Division: \_\_\_\_\_ Date: \_\_\_\_\_ ☐ ☐  
2. Office of the Attorney General: \_\_\_\_\_ Date: \_\_\_\_\_ ☐ ☐

☐ **Relinquishment of Navajo Membership**

1. Land Department: \_\_\_\_\_ Date: \_\_\_\_\_ ☐ ☐  
2. Elections: \_\_\_\_\_ Date: \_\_\_\_\_ ☐ ☐  
3. Office of the Attorney General: \_\_\_\_\_ Date: \_\_\_\_\_ ☐ ☐

☐ Land Withdrawal or Relinquishment for Commercial Purposes

Sufficient Insufficient

1. Division: \_\_\_\_\_ Date: \_\_\_\_\_ ☐ ☐  
2. Office of the Attorney General: \_\_\_\_\_ Date: \_\_\_\_\_ ☐ ☐

☐ Land Withdrawals for Non-Commercial Purposes, General Land Leases and Resource Leases

1. NLD \_\_\_\_\_ Date: \_\_\_\_\_ ☐ ☐  
2. F&W \_\_\_\_\_ Date: \_\_\_\_\_ ☐ ☐  
3. HPD \_\_\_\_\_ Date: \_\_\_\_\_ ☐ ☐  
4. Minerals \_\_\_\_\_ Date: \_\_\_\_\_ ☐ ☐  
5. NNEPA \_\_\_\_\_ Date: \_\_\_\_\_ ☐ ☐  
6. DNR \_\_\_\_\_ Date: \_\_\_\_\_ ☐ ☐  
7. DOJ \_\_\_\_\_ Date: \_\_\_\_\_ ☐ ☐

☒ REVOCABLE USE PERMIT  
Rights of Way (See below)

1. NLD ☒ Date: 2/23/13 ☒ ☐  
2. F&W \_\_\_\_\_ Date: 8/26/13 ☒ ☐  
3. HPD \_\_\_\_\_ Date: 8-27-13 ☒ ☐  
4. Minerals ☒ Date: 8/29-13 ☒ ☐  
6. 5. NNEPA ☒ Date: 3-4-2015 ☒ ☐  
7. 6. Office of the Attorney General: ☒ Date: 3-13-2015 ☒ ☐  
8. 7. OPVP ☒ Date: 4/21/15 ☒ ☐

☐ Oil and Gas Prospecting Permits, Drilling and Exploration Permits, Mining Permit, Mining Lease

1. Minerals \_\_\_\_\_ Date: \_\_\_\_\_ ☐ ☐  
2. OPVP \_\_\_\_\_ Date: \_\_\_\_\_ ☐ ☐  
3. NLD \_\_\_\_\_ Date: \_\_\_\_\_ ☐ ☐

☐ Assignment of Mineral Lease

1. Minerals \_\_\_\_\_ Date: \_\_\_\_\_ ☐ ☐  
2. DNR \_\_\_\_\_ Date: \_\_\_\_\_ ☐ ☐  
3. DOJ \_\_\_\_\_ Date: \_\_\_\_\_ ☐ ☐

☐ ROW (where there has been no delegation of authority to the Navajo Land Department to grant the Nation's consent to a ROW)

1. NLD \_\_\_\_\_ Date: \_\_\_\_\_ ☐ ☐  
2. F&W \_\_\_\_\_ Date: \_\_\_\_\_ ☐ ☐  
3. HPD \_\_\_\_\_ Date: \_\_\_\_\_ ☐ ☐  
4. Minerals \_\_\_\_\_ Date: \_\_\_\_\_ ☐ ☐  
5. NNEPA \_\_\_\_\_ Date: \_\_\_\_\_ ☐ ☐  
6. DNR \_\_\_\_\_ Date: \_\_\_\_\_ ☐ ☐  
7. DOJ \_\_\_\_\_ Date: \_\_\_\_\_ ☐ ☐  
8. OPVP \_\_\_\_\_ Date: \_\_\_\_\_ ☐ ☐

☒ OTHER:

1. \_\_\_\_\_ Date: \_\_\_\_\_ ☐ ☐  
2. \_\_\_\_\_ Date: \_\_\_\_\_ ☐ ☐  
3. \_\_\_\_\_ Date: \_\_\_\_\_ ☐ ☐  
4. \_\_\_\_\_ Date: \_\_\_\_\_ ☐ ☐  
5. Office of Controller ☒ Date: 9/9/13 ☒ ☐





# NAVAJO NATION DEPARTMENT OF JUSTICE

## DOCUMENT REVIEW REQUEST FORM



DOJ
3/4/15 3:24 PM
DATE / TIME
<input type="checkbox"/> 7 Day Deadline
DOC #: 000402
SAS #:
UNIT: New

☐ RESUBMITTAL

\*\*\* FOR NNDJ USE ONLY - DO NOT CHANGE OR REVISE FORM. VARIATIONS OF THIS FORM WILL NOT BE ACCEPTED. \*\*\*

### CLIENT TO COMPLETE

DATE OF REQUEST: 8/23/13	ENTITY/DIVISION: Natural Resources
CONTACT NAME: Vera Shirley or HP Draper	DEPARTMENT: Navajo Land Dept
PHONE NUMBER: X-6447	E-MAIL: howard.draper@frontier.net

TITLE OF DOCUMENT: Approving a Right-of-Way to BHP Billiton, aka BHP Navajo Coal Co. to Install, Operate & Maintain Access Roads & 2 monitoring wells on NN Trust Lands adjacent to BHP Lease Area

### DOJ SECRETARY TO COMPLETE

	DOJ SECRETARY UNIT: 3/4/15 3:40 PM REVIEWING ATTORNEY/ADVOCATE: Biddick Becker 3/13/15
DATE / TIME OF UNIT: NATURAL RESOURCES UNIT	

### DOJ ATTORNEY / ADVOCATE COMMENTS

legally sufficient; please correct the Executive Official Review form to correctly state the Title of Document. It is an RUP

REVIEWED BY: (PRINT)	DATE / TIME	SURNAMED BY: (PRINT)	DATE / TIME
		Becker	3/13/15 9:30 PM

DOJ Secretary Called: for Document Pick Up on By:

PICKED UP BY: (PRINT) DATE / TIME:

NNDJ/DRRF-July 2013

for NTEC