

**RESOLUTION OF THE
RESOURCES AND DEVELOPMENT COMMITTEE
OF THE 23rd NAVAJO NATION COUNCIL --- FIRST YEAR, 2015**

AN ACTION

RELATING TO RESOURCES AND DEVELOPMENT; APPROVING A RIGHT-OF-WAY TO NAVAJO TRANSITIONAL ENERGY COMPANY, LLC TO OPERATE AND MAINTAIN AN ACCESS ROAD FROM THE EL PASO BRIDGE TO THE ARIZONA PUBLIC SERVICE PLANT VICINITY (SAN JUAN COUNTY, NEW MEXICO)

BE IT ENACTED

Section One. Findings

- A. Pursuant to 2 N.N.C. §500, the Resources and Development Committee of the Navajo Nation Council is hereby established as a Standing Committee of the Navajo Nation; and
- B. Pursuant to 2 N.N.C. §501(B) 2(a), the Resources and Development Committee of the Navajo Nation is authorized to grant final approval for right-of-ways; and
- C. The Navajo Transitional Energy Company, LLC (NTEC) has submitted a right-of-way application to operate and maintain one access road on Navajo Nation Trust Lands, San Juan County, New Mexico attached hereto and incorporated herein as Exhibit A and
- D. The proposed right-of-way consists of approximately 42.39 acres, more or less, of Navajo Nation Trust Lands described in three portions: Portion A, which is 100 feet wide, 1.09 miles in length covering 13.24 acres located within Section 31, T29N, R15W and Section 36, T29N, R16W; and Portion B, which is 100 feet wide, 0.26 miles in length covering 3.14 acres in Section 36, T29N, R16W; and Portion C, which is a 40 feet wide right-of-way, 26.01 acres located within Sections 9, 10, 16, 17, 20, 29, 30, and 31, T29N, R15W, NMPM, San Juan County, New Mexico and the location is more particularly described on the survey

map attached hereto and incorporated herein as Exhibit B; and


- E. The proposed right-of-way is within the right-of-way granted to the Arizona Public Service Company (APS). NTEC has obtained a letter of consent from APS to use the right-of-way; and
- F. The Project Review Section with the Navajo Land Department has acknowledged the buy-outs of the affected land users based on the inclusion of the land release agreements that reflect these areas as consent to this right-of-way, originally signed on June 4, 1963 attached hereto and made a part hereof as Exhibit C; and
- G. The environmental and archaeological studies have been completed and are attached hereto and made a part hereof by this reference.

Section Two. Approval

- A. The Resources and Development Committee of the Navajo Nation Council hereby approves a right-of-way to Navajo Transitional Energy Company, LLC to operate and maintain an access road from the El Paso Bridge to the common facilities leading into the mine plant lease within the Navajo Mine Lease, located in San Juan County, New Mexico. The location is more particularly described on the map attached hereto as Exhibit B.
- B. The Resources and Development Committee of the Navajo Nation Council hereby approves the grant of the right-of-way subject to, but not limited to, the following terms and conditions attached hereto and incorporated herein as Exhibit D.

CERTIFICATION

I, hereby, certify that the foregoing resolution was duly considered by the Resources and Development Committee of the 23rd 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 5 in favor, 0 opposed, 0 abstain this 7th day of July, 2015.



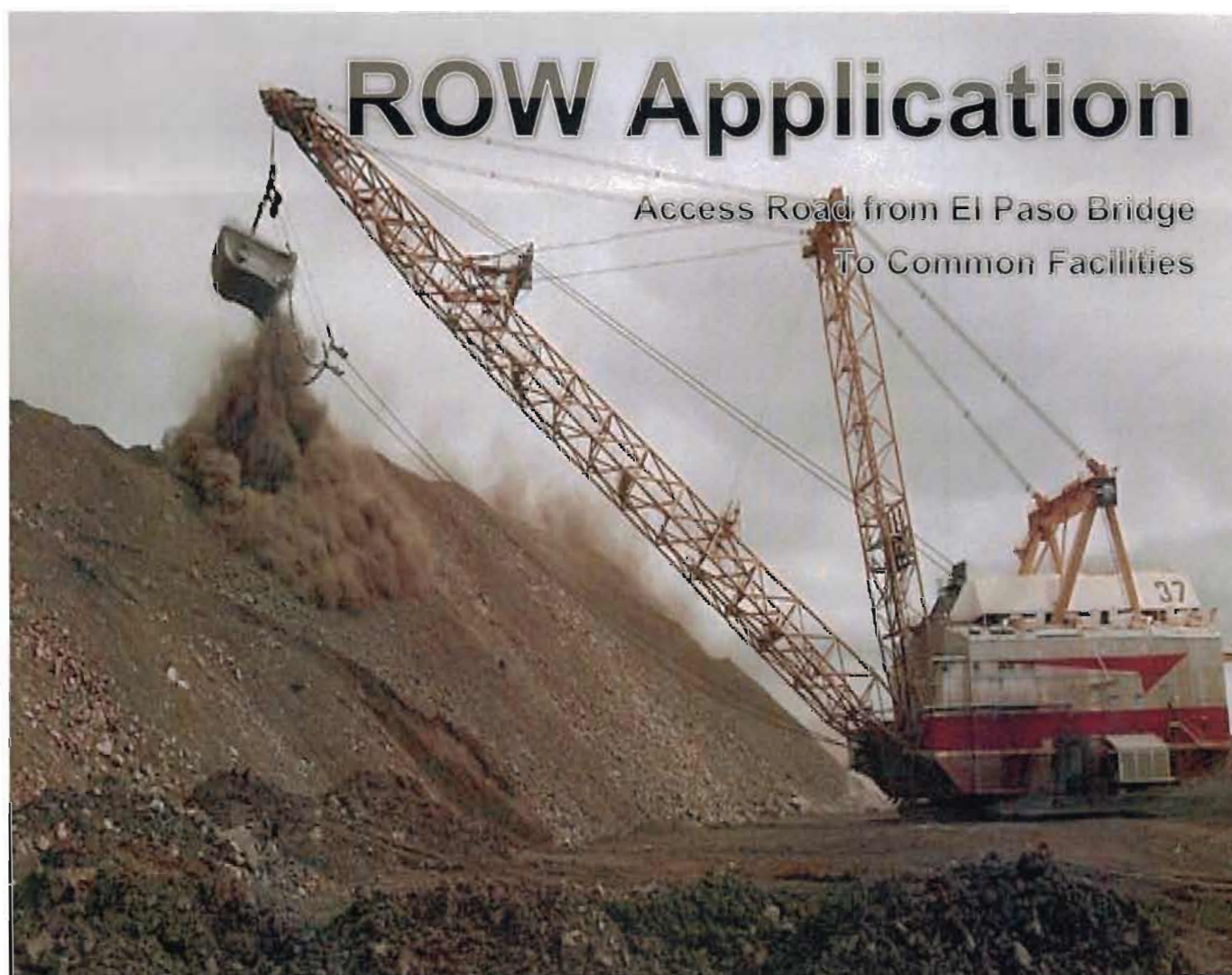
Alton Joe Shepherd, Chairperson
Resources and Development Committee
Of the 23rd Navajo Nation Council

Motion: Honorable Davis Filfred
Second: Honorable Leonard Pete
Vote: 5-0 (Chairman Not Voting)

**BHP Billiton Mine Management Company
As a Disclosed Agent for
Navajo Transitional Energy Company**

bhpbilliton
resourcing the future

NTEC Navajo Transitional Energy Company, LLC



BHP Billiton Mine Management Company as
Disclosed Agent for Navajo Transitional Energy Company



28 April 2015

Attn: Akhtar Zaman/Ram Das
Minerals Department
Navajo Nation
Post Office Box 2249
Window Rock, AZ 86515
Hand-delivered

BHP Billiton Limited

300 West Arrington Street
Farmington, New Mexico 87401 USA
Tel +1 505 598 4200 Fax +1 505 598 4300
bhpbilliton.com

**Re: Renewal Right-of-way Application
Access Road from El Paso Bridge to Common Facilities
Located within San Juan County, New Mexico**

Dear Gentlemen:

BHP Billiton Mine Management Company (MMCo), as operator of the mine, and on behalf of Navajo Transitional Energy Company (NTEC), have two pending Right-of-Ways that are both part of the NEPA EIS process as included from the beginning. We would like to meet with you to finalize the ROW's and obtain the Terms and Conditions for each within the next couple of weeks in time to schedule them on the Resources Committee review with a sponsor. The expeditious manner of these ROW's has become an important part to complete the BIA leasing action for the NEPA EIS Record of Decision approval process.

Since the original applications were submitted by BHP Navajo Coal Company, the application has been revised to reflect the current owner as NTEC.

Should you need any additional information, please contact either Yolanda Benally @ (505)598-3375 or Marian Wimsatt @ (505)598-4356. Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read 'Marian L. Wimsatt', with a stylized flourish at the end.

Marian L. Wimsatt, CPLTA, CPL
Land and Water

cc: Navajo Transitional Energy Company, LLC, Sam Woods, PO Box 1749, Window Rock, AZ 86515

Summary Details for ROW Application

Access Road from El Paso Bridge to Common Facilities

BHP Billiton Mine Management Company (MMCO), as Operator of the Navajo Mine, and on behalf of Navajo Transitional Energy Company, LLC (NTEC) is applying for the above existing Right-of-Way with no plans the change or alter the road or access to this road in any manner. This original ROW was applied for jointly with Arizona Public Service Company (APS) and granted on July 3, 1963 for a 50 year term, expiring on July 2, 2013. Prior to the expiration of this ROW, BHP Navajo Coal Company sent in an application and letter of intent to renew this ROW on May 10, 2013 along with an application fee for \$500.00.

There will not be any change in the size, type, purpose it is used for, or location of this existing ROW. This ROW has been in use for over 50 fifty years for the exact same purpose as the original intent and use. This ROW has been used by the public and employees of both BHP MMCO (NTEC) and APS to access both the Power Plant and the Mine Plant Lease areas also known as the Common Facilities.

This ROW is part of the application for the NEPA EIS studies. There are no changes in use or purpose for this existing access road and it is located in the following Sections, Township and Ranges.

This ROW access road begins at the southern exit of the El Paso Bridge which crosses the San Juan River leading to access the common facilities for both the Navajo Mine Plant Lease and the APS Plant lease. It is an access road, that is 100 feet wide right-of-way, 5765.4 feet or 1.09 miles in length covering 13.24 acres in Navajo Tribal Trust lands, located within Section 31, Township 29 North, Range 15 West, and within the Section 36, Township 29 North, Range 16 West, N.M.P.M., San Juan County, New Mexico as to Portion A. Then Portion B, which is 100 feet wide right-of-way, 1355.7 feet or 0.26 miles in length covering 3.14 acres in Navajo Trust lands, located within Section 36, Township 29 North, Range 16 West., N.M.P.M., San Juan County, New Mexico, and Portion C, which is a 40 feet wide right-of-way, 28325.5 feet or 5.36 miles in length, covering 26.01 acres in Navajo Tribal Trust lands, in Section 9,10,16,17,20,29,30, and 31, Township 29 North, Range 15 West, N.M.P.M., San Juan County, New Mexico. Approximately a total of 42.39 acres more or less that is approximately 6.71 miles in total length for this 100 to 150 foot wide access road.

May 10, 2013



Bureau of Indian Affairs
Shiprock Office
BIA Nataani Nez Complex, 2nd floor
Highway 491 South
Attn: Mary Lujan
Shiprock, NM 87420

BHP Billiton Limited
New Mexico Coal
300 West Arrington Street
Farmington, New Mexico 87401 USA
Tel +1 505 598 4200 Fax +1 505 598 XXXX
bhpbilliton.com

Re: Letter of Intent to Renew Grant of Easement for Right of Way
Original Navajo Mine – El Paso Bridge Access Road Right of Way

Ms. Mary Lujan:

Enclosed for your review and records is a copy of BHP Billiton, Navajo Coal Company's renewal of grant of easement for right of way by letter request to Akhtar Zaman, Navajo Nation, Minerals Department in Window Rock, New Mexico.

If you have any questions or need further information, please feel free to contact me.

Respectfully yours,

A handwritten signature in blue ink, appearing to read 'Skip Fraker', written over the closing 'yours,'.

Skip Fraker
Landman – Land and Water
505-598-2848
300 W. Arrington St, Suite 201
Farmington, NM 87401

BHP Navajo Coal Company



May 10, 2013

BHP Billiton Limited
New Mexico Coal
300 West Arrington Street
Farmington, New Mexico 87401 USA
Tel +1 505 598 4200 Fax +1 505 598 XXXX
bhpbilliton.com

Mr. Akhtar Zaman
Navajo Nation
Minerals Department
Route 64, Window Rock Blvd
Window Rock, Arizona 86515
Hand Delivered

Re: Letter of Intent to Renew Grant of Easement for Right-of-Way
Original Navajo Mine – El Paso Bridge Access Road Right of Way

Dear Mr. Zaman:

BHP Navajo Coal Company (BNCC), owner and operator of the Navajo Mine, situated on Navajo Trust Lands on the Navajo Reservation in San Juan County, New Mexico, submits this letter of intent for the renewal of the subject Right of Way for the above captioned location. I am unable to locate a copy of the Grant of Right of Way in our file at this time. I have information in our files where the right of way was set up in our files with an effect date of July 3, 1963 and expiration date of July 3, 2013. I am inclosing a copy of the original Right of Way Application letter that was dated April 4, 1963 and a letter from acting area BIA director Otto K. Weaver to Senator Pete Dominici, referencing and describing the Arizona Public Service and Utah Construction and Mining Company having 'private ownership (i.e. easement, as it is not possible for non tribal entities to have ownership on tribal lands) to the El Paso Bridge access road that would lead to confirm that the Bureau of Indian Affairs believed there was an active grant of easement for right of way.

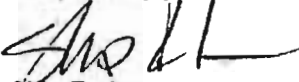
Under 25 C.F.R., Section 169.19, please consider this letter of intent as part of the renewal for this Rights of Way. The proposed renewal involves no change in the location or status of the original right of way grant. There will be no change in the size, type, or location of the right of ways. BNCC has no intention of moving the road or pursuing any new road construction on the right of way. Also enclosed, are originally executed and acknowledged Affidavit of Non-Deviations, reflecting three separately described portions of the right of way.

BNCC recognizes that this application requires consent from the Navajo Nation. BNCC anticipates that Navajo Nation consent will be conditioned on the payment of appropriate compensation for the renewal and BNCC acknowledges the requirements of 25 C.F. R., Section 169.12 concerning consideration of not less than fair market value, plus severance damages and the BIA's provision of the appraisal

to the Navajo Nation. Upon completion of the Navajo Nations S.A.S. process a complete application will be provided to the BIA for renewal. BNCC has had a meeting with the BIA to discuss this matter and would like to arrange a meeting with the Navajo Nation to begin the process, and confirm we are pursuing this renewal in the appropriate fashion.

Should you have any questions, comments or guidance, please feel free to contact me at your convenience. Thank you in advance for your cooperation in this matter.

Respectfully yours,



Skip Fraker

Landman – Land and Water
505-598-2848
300 W. Arrington St, Suite 101
Farmington, NM 87401

Cc; Howard Draper, Navajo Nation, Land Department
Ryan Hunter, Bureau of Indian Affairs, Real Estate, Gallup
Mary Lujan, Bureau of Indian Affairs, Shiprock
Sharon Pinto, Bureau of Indian Affairs, Gallup



DAVID A. HANSEN
Vice President
Fossil Operations

P.O. Box 53999
Phoenix, AZ 85072
Mail Station 9085
Tel 602 250 4402

May 1, 2015

Ryan Hunter
Navajo Region Realty Officer
Bureau of Indian Affairs–Navajo Regional Office
P.O. Box 1060, M/C N420
301 West Hill Avenue, Suite 301
Gallup, NM 87301

VIA E-MAIL

Dear Mr. Hunter:

It is Arizona Public Service Company's ("APS") understanding that Navajo Transitional Energy Company, LLC ("NTEC") is seeking two separate right-of-way ("ROW") grants from the Bureau of Indian Affairs ("BIA"). Specifically, we understand that NTEC has filed a ROW application for water, power, and communications lines running between the APS Four Corners Power Plant ("Plant") site and Navajo Mine ("Infrastructure ROW"), and that NTEC intends to submit to BIA a right of-way-application for the El Paso Bridge Access Road ("Road ROW"). (The Infrastructure ROW and Road ROW are hereinafter collectively referred to as the "NTEC ROW.") Graphical depictions of the NTEC ROW are attached to this letter.

As you are aware, on February 27, 2015, APS filed an application for a right-of-way for the Plant site for the continued ownership, operation, maintenance, relocation, and removal of the Plant ("Plant ROW"). APS acknowledges and understands that the NTEC ROW are within the Plant lease and Plant ROW area and consents to NTEC's applications for same.

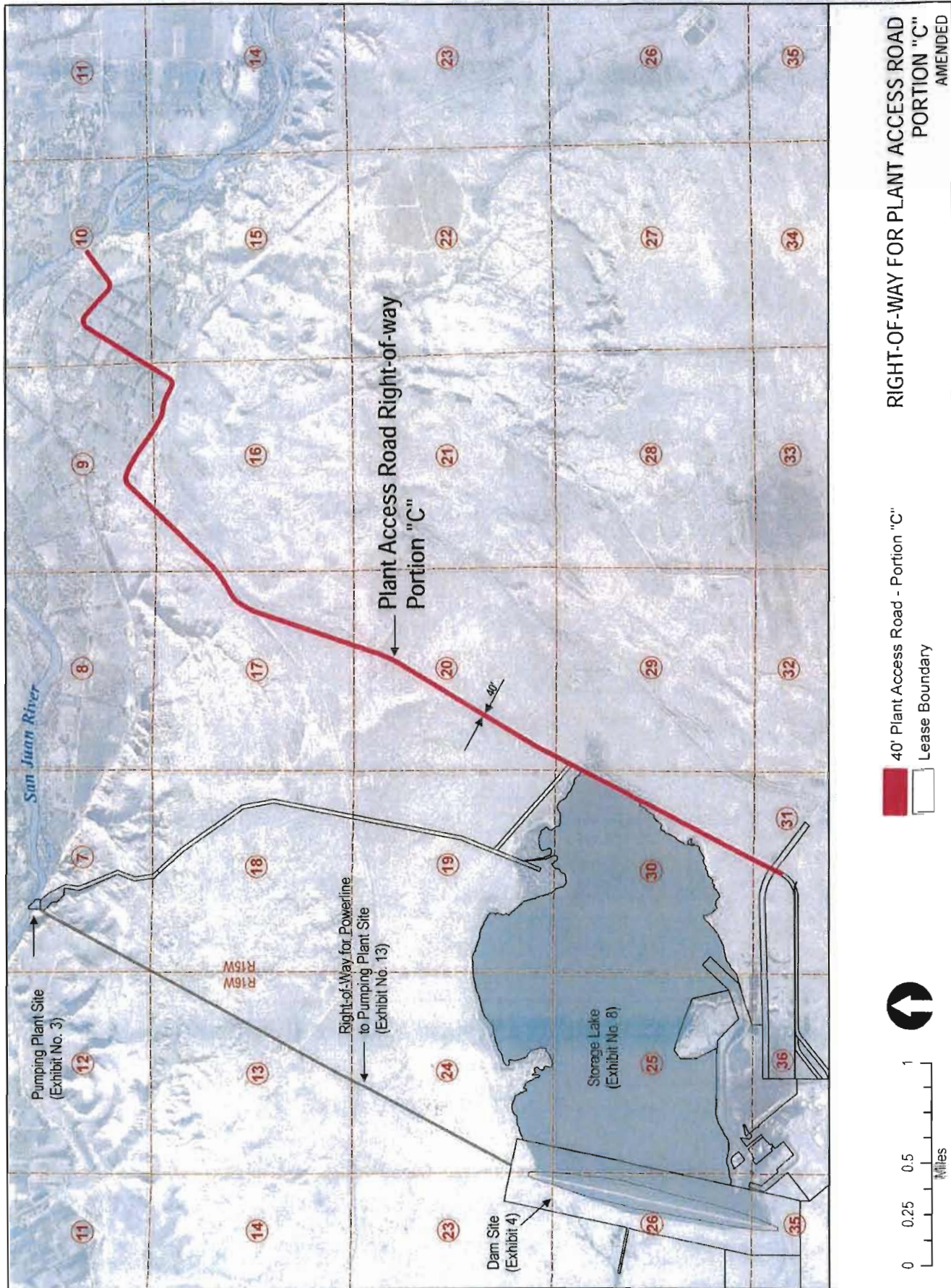
Please feel free to contact Michael Kafka at (602) 250-2404 if you have any questions.

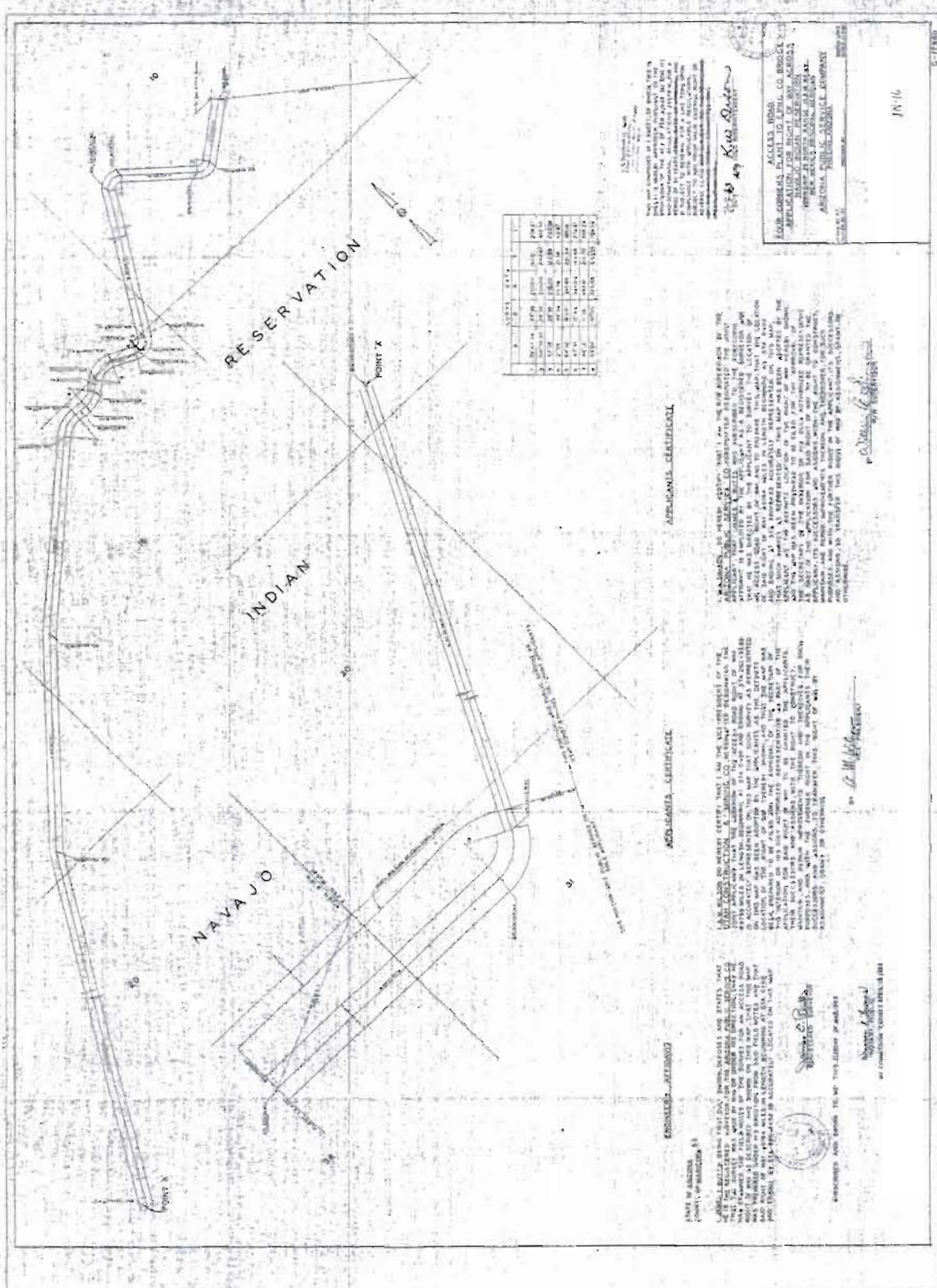
Sincerely,

A handwritten signature in black ink, appearing to read 'David A. Hansen', written over a horizontal line.

David A. Hansen
Vice President, Fossil Generation

cc: The Honorable Alton Joe Shepherd, Chairman
Resources and Development Committee, 23rd Navajo Nation Council
Clark Moseley, Chief Executive Officer, NTEC





of the 1990s. The 1990s saw a significant increase in the number of people who were employed in the service sector, which was a result of the fact that the service sector was the only sector that was growing at a rapid rate. This was due to the fact that the service sector was the only sector that was not affected by the recession of the 1980s. The service sector was the only sector that was able to maintain its growth rate, and this was due to the fact that the service sector was the only sector that was able to maintain its growth rate.

7-1-63 Kuo Bui

ACCESS ROAD
FOUR CORNERS PLANT TO LPHL CO. BRIDGE
APPLICATION FOR RIGHT OF WAY ACROSS
NAVALO EGGSAN RESERVATION
SPRING OF MOUNTAIN RANGE, JUNE 1932
NEW MEXICO, U.S. DEPT. OF THE INTERIOR
ARIZONA PUBLIC SERVICE COMPANY
THE ARIZONA POWER CO.

97-NI

C-17960

APPLICANT'S CERTIFICATE

[illegible]

James C. Smith

ACQUAINTANCE CATHYCAIL

[illegible]

2008年12月

ENDNUCLEO AFFIDAVIT

[illegible]

Wm. L. Howard
1875
1000 1/2 Ave. C. N. Y. C. 1875

APPLICATION FOR RIGHT OF WAY

The ARIZONA PUBLIC SERVICE COMPANY, a corporation organized and existing under and by virtue of the laws of the State of Arizona, with office and principal place of business at Phoenix, in the State of Arizona, and UTAH CONSTRUCTION & MINING CO., a corporation organized and existing under and by virtue of the laws of the State of Delaware, with office and principal place of business at San Francisco, in the State of California, hereby make application pursuant to the Act of February 5, 1948 (62 Stat. 17; 25 U. S. C. 323) and in accordance with Departmental Regulations 25 C. F. R. 161, for a right of way for an access road, beginning at the Arizona Public Service Company power plant property line and ending at the El Paso Natural Gas Company's bridge across the San Juan River, upon and across Tribal Indian Lands of the Navajo Indian Reservation, San Juan County, State of New Mexico.

The location of said access road is more particularly shown and delineated on the accompanying map which has been prepared in compliance with 25 C. F. R. 161.8 and which by this reference is made a part hereof. Reference is made to Section 2, paragraph (e), Exhibit "T", of the Indenture of Lease between the Navajo Tribe and Arizona Public Service Company dated December 1, 1960, and approved by the Secretary of the Interior on December 14, 1960. Further reference is made to paragraph 1 of the Indenture of Lease between the Navajo Tribe and Utah Construction Company, also known as Utah Construction & Mining Co. dated July 26, 1957, as amended by amendment dated July 26, 1957.

For the list of principal officers and directors, and a certified copy of the Articles of Incorporation of the Arizona Public Service Company, see its application for the Cholla-Leupp 230 KV transmission line.

For the list of principal officers and directors, and a certified copy of the Articles of Incorporation of the Utah Construction & Mining Co., see Indenture of Lease between the Navajo Tribe and Utah Construction Company, also known as Utah Construction & Mining Co.

The Arizona Public Service Company and the Utah Construction & Mining Co. hereby agree to comply to/with the following stipulations in the event the Right of Way herein applied for is granted.

- (a) To construct and maintain the right of way in a workmanlike manner.
- (b) To pay promptly all damages, in addition to the deposit made pursuant to 161.5 determined by the Superintendent to be due the land-owners on account of the construction and maintenance of the right of way.
- (c) To indemnify the land-owners against any liability for damages to life or property arising from the occupancy or use of the lands by the applicant.
- (d) To restore the lands as nearly as may be possible to their original condition upon the completion of construction.

- (e) That the applicant will not interfere with the use of the lands by or under authority of the land-owners for any purpose inconsistent with the primary purpose for which the right of way was granted.

Arizona Public Service Company and Utah Construction & Mining Co. are joint applicants herein as to that portion of the right of way shown on the accompanying map which lies Northerly of the Northerly right-of-way line of the access road described on the map accompanying the application executed February 15, 1962 by Arizona Public Service Company and February 27, 1962 by Utah Construction & Mining Co. and filed with the Superintendent of the Navajo Indian Agency on March 13, 1962, under Application No. IN-13. Arizona Public Service Company is the sole applicant with regard to so much of the right of way as shown on the map accompanying this application and hereinabove referred to which lies Southerly of the Northerly right-of-way line of the access road as described in the above-mentioned Application No. IN-13, filed March 13, 1962. The undertakings of the applicants as set forth in this application shall be joint as to that portion of the right of way as to which Arizona Public Service Company and Utah Construction & Mining Co. are joint applicants but shall be the sole responsibility and obligation of Arizona Public Service Company as to that portion of right of way for which it is the sole applicant.

IN WITNESS WHEREOF, ARIZONA PUBLIC SERVICE COMPANY has caused this instrument to be executed this 24th day of April, 1963.

ARIZONA PUBLIC SERVICE COMPANY

By: T. A. Phillips
T. A. Phillips, Vice President

ATTEST:

F. W. Smith
F. W. Smith, Secretary

IN WITNESS WHEREOF, UTAH CONSTRUCTION & MINING CO. has caused this instrument to be executed this 4th day of June, 1963.

UTAH CONSTRUCTION & MINING CO.

By: C. M. Wilson
VICE PRESIDENT

ATTEST:

W. S. Shore

EXHIBIT 10A
PLANT ACCESS ROAD - PORTION "C"

Portion "C" is a right of way, 40 feet wide, whose centerline is described as follows:

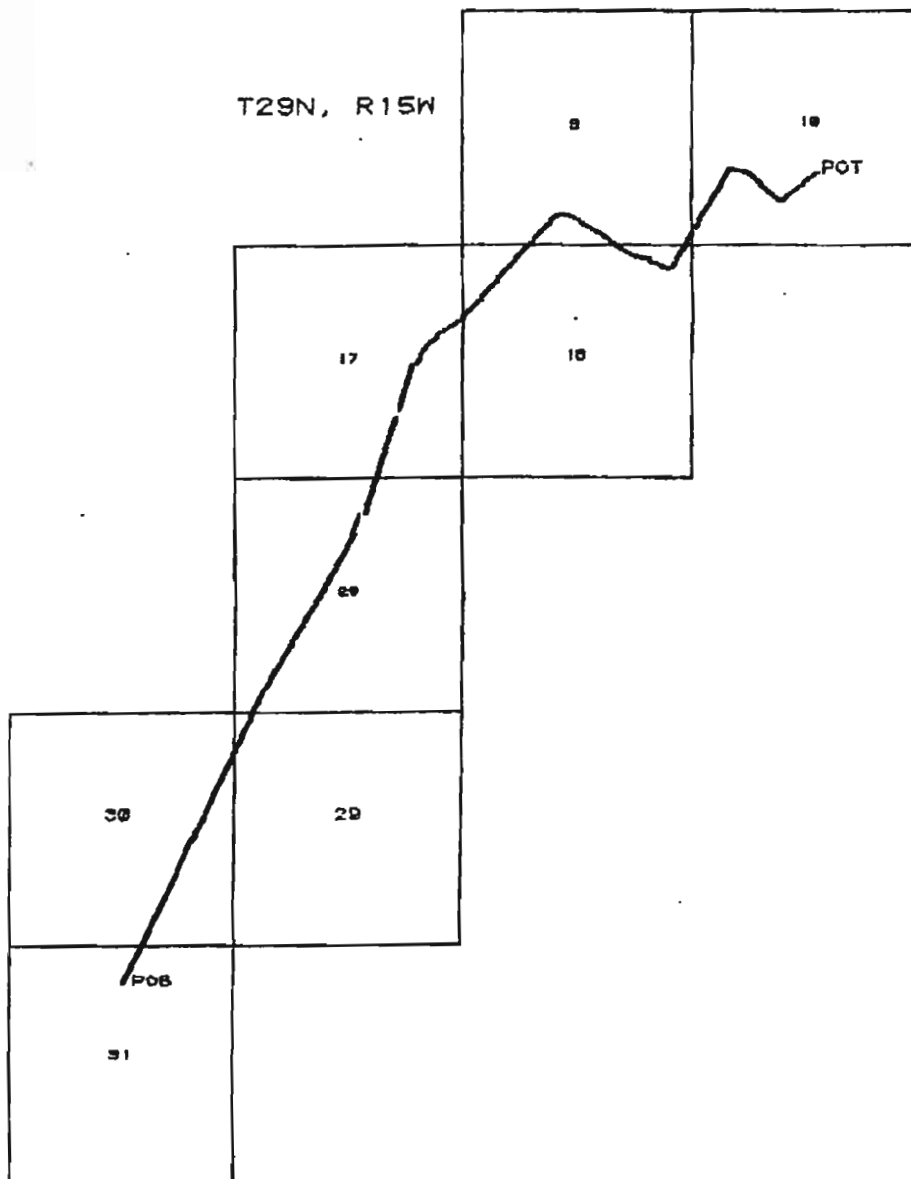
Continuing from the point common with Portion "A" of this right of way (Sta. 57+46.33), N 26° 30' E, 6887.25 feet; thence N 25° 52' E, 94.64 feet; thence N 29° 08' E, 434.70 feet; thence N 30° 50' E, 872.50 feet; thence N 30° 41' E, 1399.10 feet; thence N 30° 59' E, 1800.16 feet; thence along a circular curve to the left, 510.79 feet to (Sta. 177+45.47), the radius of the curve being 2341.45 feet and its angle of intersection being 12° 30'; thence N 18° 29' E, 3538.15 feet; thence along a circular curve to the right 857.50 feet to (Sta. 221+41.12), the radius of the curve being 1212.21 feet and its angle of intersection being 40° 32'; thence N 59° 01' E, 325.29 feet; thence N 52° 27' E, 378.40 feet; thence N 43° 30' E, 2118.80 feet; thence N 43° 59' E, 1030.20 feet; thence N 63° 23' E, 170.00 feet; thence N 87° 19' E, 99.80 feet; thence S 76° 20' E, 100.00 feet; thence S 66° 15' E, 124.50 feet; thence S 59° 50' E, 509.70 feet; thence S 54° 55' E, 703.50 feet; thence S 60° 39' E, 396.00 feet; thence S 81° 16' E, 228.51 feet; thence along a circular curve to the right 301.84 feet, the radius of the curve being 959.09 feet and its angle of intersection being 18° 02'; thence S 63° 14' E, 271.94 feet; thence along a circular curve to the left 238.29 feet to (Sta. 290+67.89) the radius of the curve being 160.00 feet, and its angle of intersection being 85° 20', to the point of tangency of this curve from which the northeast corner of Section 16, Township 29 North, Range 15 West, bears N 41° 51' E, 607.03 feet; thence N 31° 26' E, 2541.40 feet; thence along a circular curve to the right, 352.50 feet to (Sta. 319+61.79) the radius of the curve being 200.00 feet and its angle of intersection being 100° 59'; thence S 47° 35' E, 889.00 feet; thence along a circular curve to the left, 278.27 feet, the radius of the curve being 200.00 feet and its angle of intersection being 79° 44'; thence N 52° 41' E, 948.46 feet to a point (Sta. 340+77.52) at the south end of the San Juan County Bridge over the San Juan River, from which point the southeast corner of Section 10, Township 29 North, Range 15 West, bears S 52° 21' E, 2955.00 feet.

| | | | |
|-------------|------------------|-----------------------|----------------------|
| Portion "A" | Width = 100 Feet | Length = 1.0883 Miles | 13.1915 Acres |
| Portion "B" | Width = 100 Feet | Length = 0.2947 Miles | 3.5721 Acres |
| Portion "C" | Width = 40 Feet | Length = 5.3658 Miles | <u>26.0160 Acres</u> |

| | |
|---------------|---------------|
| Total Acreage | 42.7796 Acres |
|---------------|---------------|

APS

T29N, R15W



APS Plant Access Road - Portion 'C'
ROW, 40' in Width, 5.36 Miles or
28,900.8' in Length and containing
26.02 acres

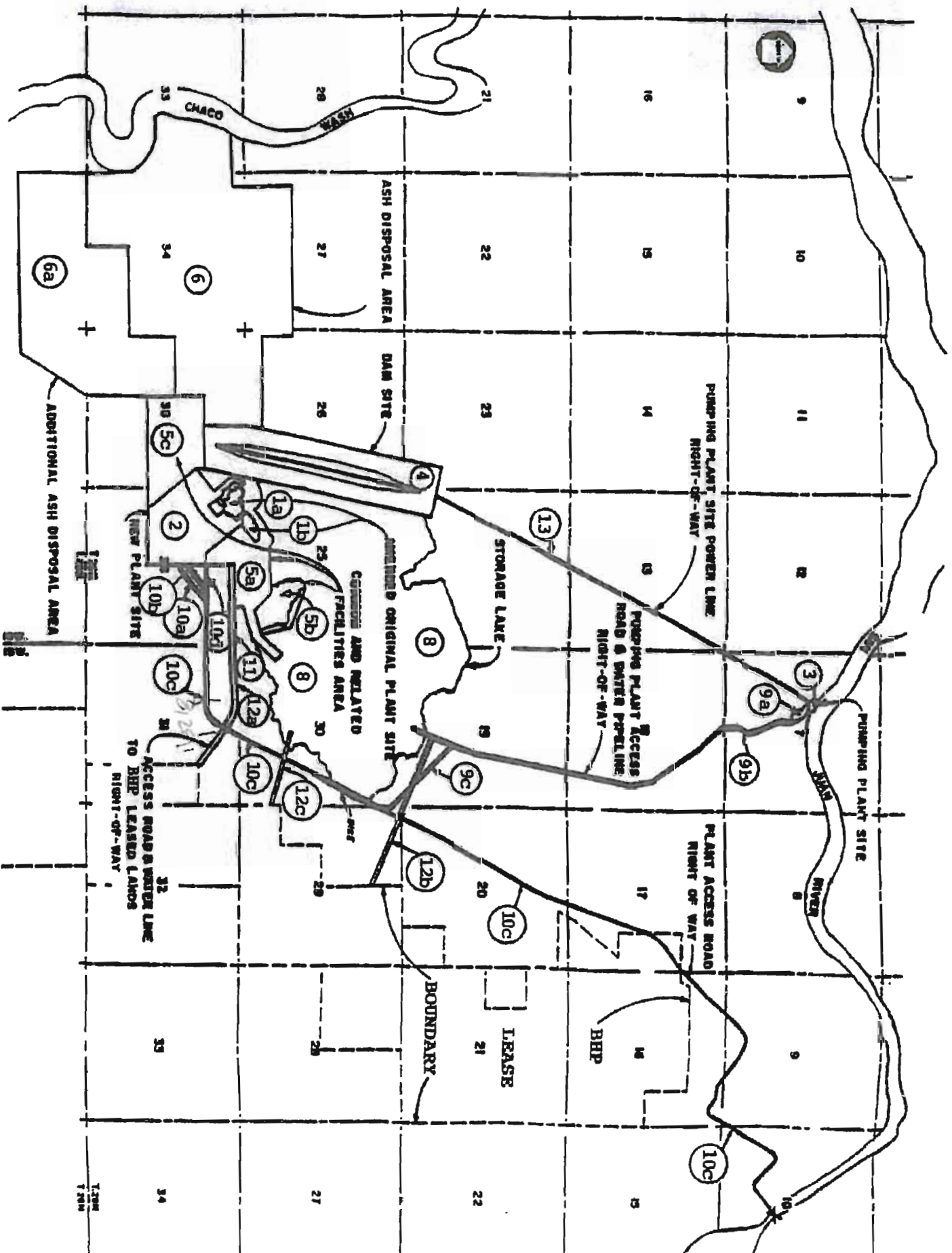
APS Plant Access Road - Portion 'C'

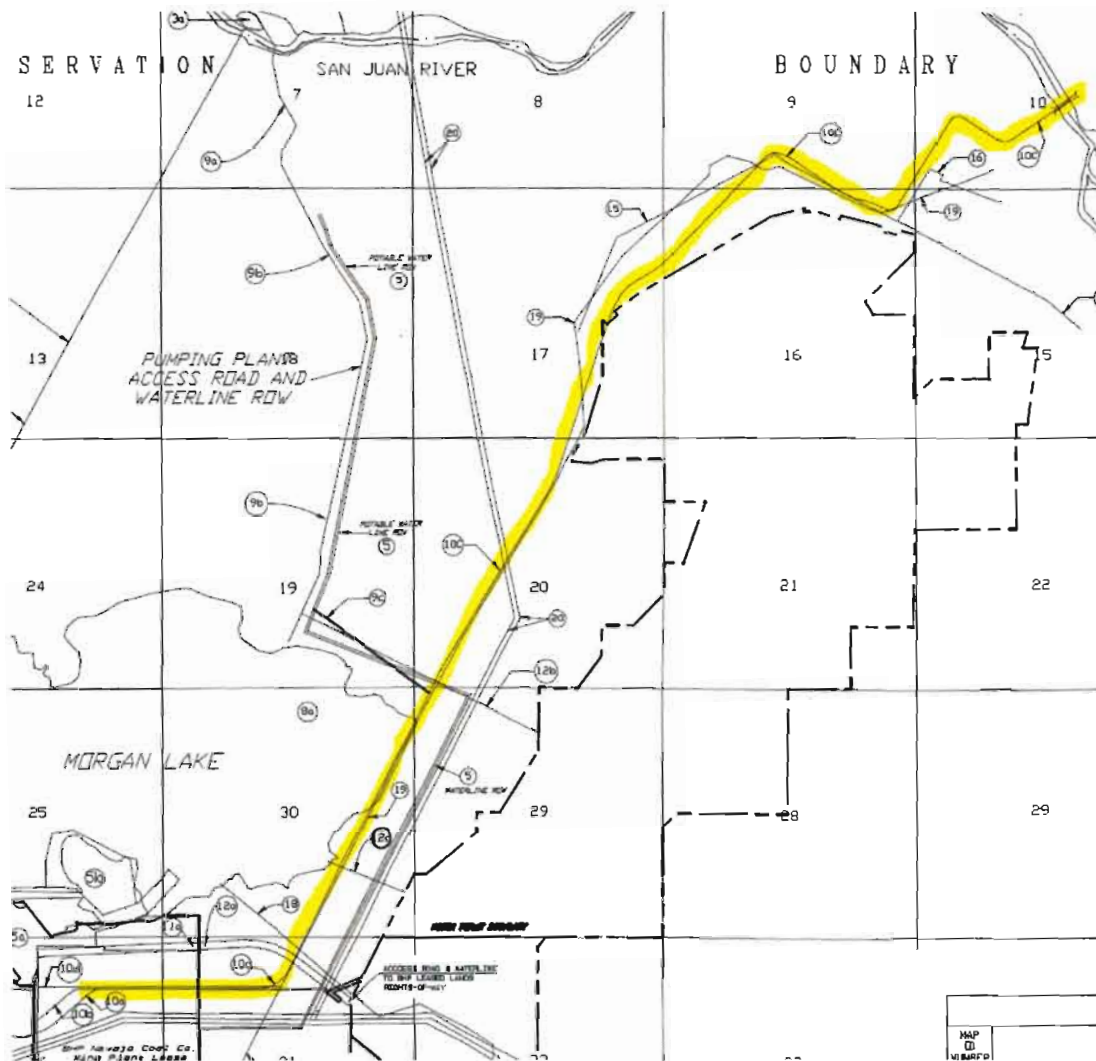
SCALE: 1 in = 4000 feet

**MAP
IDENT
NUMBER**

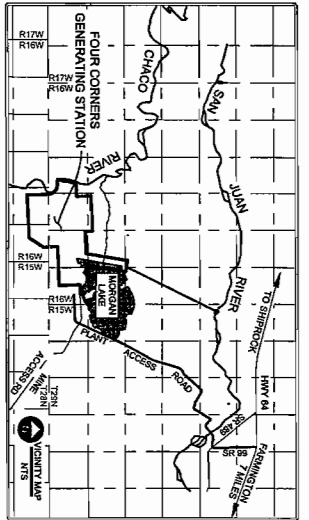
DESCRIPTION

| | |
|-----|---|
| | <u>Amended Original Plant Site</u> |
| 1a | Parcel "A" |
| 1b | Parcel "B" |
| 2 | <u>New Plant Site</u> |
| 3 | <u>Pumping Plant Site - 1.35 acres</u> |
| 4 | <u>Dam Site</u> |
| | <u>Common and Related Facilities Area - 300.44 acres</u> |
| 5a | Parcel "A" |
| 5b | Parcel "B" |
| 5c | Parcel "C" |
| 6 | <u>Ash Disposal Area - 1,048.24 acres</u> |
| 6a | <u>Additional Ash Disposal Area - 549.65 acres</u> |
| 8 | <u>Storage Lake - 1,119.94 acres</u> |
| | <u>Pumping Plant Access Road and Water Pipeline ROW - 42.16 acres</u> |
| 9a | Portion "A" - Water Pipeline ROW |
| 9b | Portion "B" - Pumping Plant Access Road and Water Pipeline ROW - 100' |
| 9c | Portion "C" - Pumping Plant Access Road ROW - 100' |
| | <u>Right-of-Way for Plant Access Road - 17.17 acres</u> |
| 10a | Portion "A" - Plant Access Road ROW - 100' |
| 10b | Portion "B" - Plant Access Road ROW - 100' |
| 10c | Portion "C" - Plant Access Road ROW (APS/BHP) - 40' & 100', 26.02 acres |
| 10d | Six Inch Gas Pipeline - 20' |
| 11 | <u>Access Road ROW to BHP Leased Lands - 150'</u> |
| | <u>Water Line ROW to BHP Leased Lands -150'</u> |
| 12a | Portion "A" - 150' |
| 12b | Portion "B" - 100' |
| 12c | Portion "C" - 100' |
| 13 | <u>Power Line ROW to Pumping Plant Site - 40'</u> |





| BHP/APS JOINT RIGHTS-OF-WAY AND EASEMENT | | |
|--|---|----------|
| 10C | ACCESS ROAD FROM EL PASO NATURAL GAS BRIDGE TO COMMON FACILITIES - 40' WIDE, 5.36 MILES | 12-14-60 |
| 11A | ACCESS ROAD/POWER AND COMMUNICATION LINES FROM APS PLANT SITE LEASE TO BHP COAL LEASE - 150' WIDE, 1.32 MILES | 07-28-61 |
| 12 | RAILWAY MAINLINE, SPUR E-1, AND SPUR E-2 200' WIDE. | 01-25-74 |
| 13 | OPEN | |
| 14 | OPEN | |



| PLANT AREA INTERIOR DIVISIONS AND ANCILLARY FACILITIES | |
|---|----------|
| | ACRES |
| Amended Original Plant Site (Amended) | 8.164 |
| New Plant Site (Amended) | 167.437 |
| Pumping Plant Site (Amended) | 1.350 |
| Dam Site (Amended) | 284.898 |
| Common and Related Facilities Area (Amended) | 309.071 |
| Ash Disposal Area (Amended) | 1049.630 |
| Additional Ash Disposal Area (Amended) | 549.657 |
| Storage Lake (Amended) | 1085.390 |
| ROW for Pumping Plant Access Rd & Water Pipeline (Amended) | 42.081 |
| ROW for Plant Access Road (Portions A&B) & Gas Pipeline (Amended) | 16.809 |
| ROW for Plant Access Road (Portion C) (Amended) | 26.008 |
| ROW for Mine Lease Access Road (Amended) | 23.850 |
| ROW for 68kV Power Line to Pumping Plant (Amended) | 12.822 |
| TOTAL | 3597.163 |

ENGINEER'S AFFIDAVIT

STATE OF ARIZONA
COUNTY OF MARICOPA } SS.

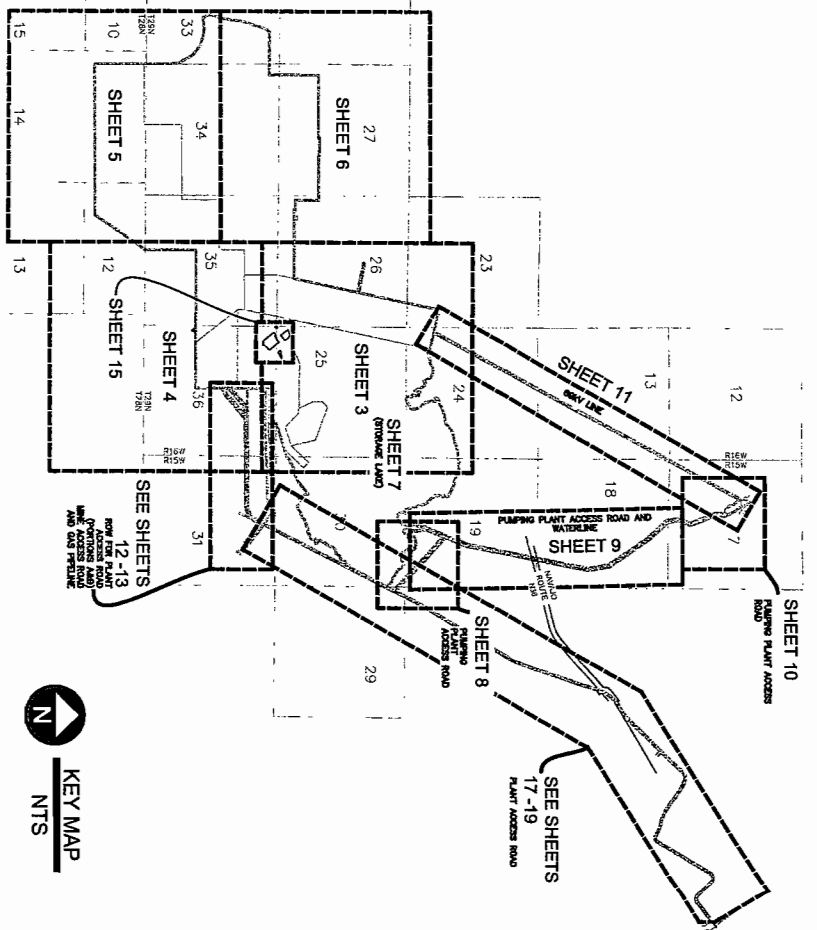
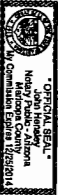
DAVID R. FERGLISON, BEING DULY SWORN, STATES THAT HE IS A REGISTERED LAND SURVEYOR THAT HE MADE THE SURVEY OF A PROPOSED RIGHT-OF-WAY AS DESCRIBED AND SHOWN ON THIS MAP, TO BE GRANTED TO ARIZONA PUBLIC SERVICE COMPANY, HEREINAFTER DESIGNATED THE APPLICANT, THAT THE SURVEY OF SUCH RIGHT-OF-WAY WAS MADE UNDER HIS SUPERVISION AND UNDER APPLICANT'S AUTHORITY, COMMENCING ON THE FIRST DAY OF NOVEMBER, 2010, AND ENDING ON THE THIRTIETH DAY OF JULY, 2012; THAT SUCH SURVEY IS ACCURATELY REPRESENTED ON THIS MAP.

NEW MEXICO SURVEYOR'S CERTIFICATE

I, DAVID R. FERGLISON, NEW MEXICO PROFESSIONAL SURVEYOR No. 20524, DO HEREBY CERTIFY THAT THIS BOUNDARY SURVEY PLAT AND THE ACTUAL SURVEY ON THE GROUND UPON WHICH IT IS BASED WERE PERFORMED BY ME OR UNDER MY DIRECT SUPERVISION; THAT I AM RESPONSIBLE FOR THIS SURVEY; THAT THIS SURVEY MEETS THE MINIMUM STANDARDS FOR SURVEYING IN NEW MEXICO; AND THAT IT IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF; I FURTHER CERTIFY THAT THIS SURVEY IS NOT A LAND DIVISION OR SUBDIVISION AS DEFINED IN THE NEW MEXICO SUBDIVISION ACT AND THAT THIS INSTRUMENT IS A RIGHT-OF-WAY SURVEY PLAT OF AN EXISTING RIGHT-OF-WAY.

SUBSCRIBED AND SWORN TO BEFORE ME THIS 31st DAY OF July, 2012.

NOTARY PUBLIC



APPLICANT'S CERTIFICATE

I, JAMES D. LOONEY, DO HEREBY CERTIFY THAT I AM THE LAND SERVICES DEPARTMENT SECTION LEADER FOR ARIZONA PUBLIC SERVICE COMPANY, HEREINAFTER DESIGNATED THE APPLICANT; THAT DAVID R. FERGLISON, WHO SUBSCRIBED TO THE FOREGOING AFFIDAVIT, WAS UNDER CONTRACT TO THE APPLICANT AS A REGISTERED LAND SURVEYOR AND THAT HE WAS DIRECTED BY THE APPLICANT TO SURVEY THE LOCATION OF A RIGHT-OF-WAY AND TO PREPARE THIS MAP; THAT THE LOCATION OF SAID RIGHT-OF-WAY, 3597.163 ACRES, IS ACCURATELY REPRESENTED ON THIS MAP; THAT SUCH SURVEY AS REPRESENTED ON THIS MAP HAS BEEN ADOPTED BY THE APPLICANT AS THE DEFINITE LOCATION OF THE RIGHT-OF-WAY HEREBY SHOWN; AND THAT THE MAP HAS BEEN PREPARED TO BE FILED WITH THE SECRETARY OF THE INTERIOR OR HIS DULY AUTHORIZED REPRESENTATIVE AS PART OF THE APPLICATION FOR SAID RIGHT-OF-WAY TO BE GRANTED THE APPLICANT, ITS SUCCESSORS AND ASSIGNS, WITH THE RIGHT TO CONSTRUCT, MAINTAIN, AND REPAIR IMPROVEMENTS THEREON AND THEREAFTER FOR SUCH PURPOSES, AND WITH THE FURTHER RIGHT IN THE APPLICANT, ITS SUCCESSORS AND ASSIGNS, TO TRANSFER THIS RIGHT-OF-WAY BY ASSIGNMENT, GRANT, OR OTHERWISE.

ARIZONA PUBLIC SERVICE COMPANY

JAMES D. LOONEY
SECTION LEADER, LAND SERVICES DEPARTMENT

ARIZONA PUBLIC SERVICE COMPANY FOUR CORNERS GENERATING STATION

LOCATED IN THE NAVAJO NATION LYING WITHIN SECTIONS 7,9,10,16,17,18,19,20,29,30&31, T29N, R15W AND SECTIONS 13,23,24,25,26,27,33,34,35&36, T29N, R16W AND SECTIONS 11&12, T28N, R16W OF THE NEW MEXICO PRINCIPAL MERIDIAN, SAN JUAN COUNTY, NEW MEXICO

COVER SHEET

DATE: 07/30/2012
VERSION: # 5
DRAWN BY: JMW
REVIEWED BY: DFC
APS PROJECT:
JOB#: 1001.32.00

Ferguson
Land Services, Inc.
2432 West Pinal Avenue, Suite 1167, Phoenix, Arizona 85023
P: (602) 366-2668 F: (602) 366-4993



1 of 23

APS MAP NO. 11-10551

SURVEYOR'S NOTES

1. A DILIGENT EFFORT WAS MADE TO RECOVER EXISTING ORIGINAL MONUMENTATION FROM WHICH THE ORIGINAL LEASE BOUNDARY DESCRIPTIONS WERE DERIVED HOWEVER DUE TO THE FACT THAT A DEPENDENT RESURVEY OF TOWNSHIP 29 NORTH, RANGE 16 WEST WAS CONDUCTED BY THE BLM IN 2005 AND APPROVED IN 2008, NEARLY ALL OF THE SECTION CORNERS FOUND APPEAR TO BE IN DIFFERENT POSITIONS RELATIVE TO THE ORIGINAL SECTION CORNERS USED TO GENERATE THE PARCEL DESCRIPTIONS OF RECORD. THE BOUNDARIES AS SHOWN HEREON WERE ESTABLISHED USING EXISTING FOUND MONUMENTS, PLANT COORDINATES, AND IN SOME CASES THE PHYSICAL FEATURE THAT IS THE ONLY MONUMENT RECOVERABLE THAT REPRESENTS THE ORIGINAL LEASE LOCATION.

2. NEW MEXICO COORDINATE SYSTEM 1983, WEST ZONE 3003

LINEAR UNIT: US SURVEY FOOT
ALL DISTANCES SHOWN ARE GROUND
ALL BEARINGS SHOWN ARE GRID

3. COORDINATES SHOWN IN TABLES ON SHEETS 14 AND 15 ARE NEW MEXICO COORDINATE SYSTEM GRID

4. LEASE AREA

ACRES
PLANT SITE AND ANCILLARY FACILITIES 3597.163±

REFERENCE DOCUMENTS

BLM PLATS AND FIELD NOTES T29N R16W (ACCEPTED 2-19-2008) PLAT SHEETS 1-19 & FIELD NOTES SHEETS 1-228.

EL PASO NATURAL GAS CO. R/W DWG No. 01200.00-002.00

APS/NAVAJO NATION LEASES & RIGHT-OF-WAY BINDER PROVIDED BY APS

BASIS OF BEARING

THE BASIS OF BEARING FOR THIS SURVEY IS MARKED BY TWO LOCAL SURVEY CONTROL MONUMENTS KNOWN AS "HV53" AND "HV61".

HV53 IS A SOUTHERN CALIFORNIA EDISON BRASS CAP WITH A LATITUDE OF N36°41'18.45232" AND A LONGITUDE OF W108°29'39.75835".

HV61 IS A SOUTHERN CALIFORNIA EDISON BRASS CAP WITH A LATITUDE OF N36°41'17.81659" AND A LONGITUDE OF W108°31'31.59479".

THE GRID BEARING BETWEEN MONUMENTS IS N89°59'56"W AND THE HORIZONTAL GROUND DISTANCE BETWEEN MONUMENTS IS 9111.58 FEET (DERIVED BY GPS).

DATUM

NEW MEXICO COORDINATE SYSTEM 1983, WEST ZONE 3003

CONTROL FOR THIS SURVEY IS BASED ON ONLINE POSITIONING USER SERVICES (OPUS) FROM THE MEAN OF THREE INDEPENDENT STATIC OBSERVATIONS ON CONTROL POINT "HV 53" - SOUTHERN CALIFORNIA EDISON BRASS CAP AND CHECKED TO NGS CONTROL POINT E432 P10600210 NAD 83 EPOCH 2007 (SEE NGS DATA SHEET FOR RECOVERY)

GEOD 03, NAD 88 US SURVEY FEET

LATITUDE = N36°41'18.45232" LONGITUDE = W108°29'39.75835" ELEVATION = 5331.21' (SITE BENCHMARK)

AVERAGE COMBINED SCALE FACTOR USED FOR SHEETS 3-15 = 0.99971322 GROUND TO GRID
1.000288781 GRID TO GROUND

AVERAGE COMBINED SCALE FACTOR USED FOR SHEETS 16-18 = 0.99970332 GROUND TO GRID
1.00029687 GRID TO GROUND

BASE STATIONS USED:

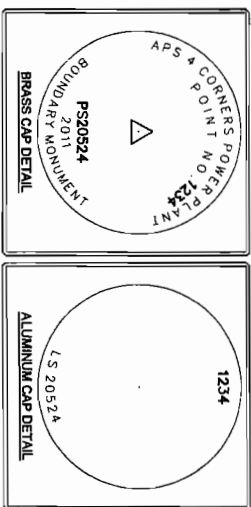
| PID | DESIGNATION | LATITUDE | LONGITUDE |
|--------|------------------------------------|----------------|-----------------|
| D12245 | P011 SPIRER ROCK AZ 2005 CORRS ARP | N36°08'59.363" | W109°31'09.175" |
| A10265 | AZCN AZTEC CORRS ARP | N36°50'23.235" | W107°54'39.422" |
| DH5816 | P028 CHACOONHP NM 2005 CORRS ARP | N36°01'54.048" | W107°54'30.222" |

LEGEND

- * DENOTES MONUMENT STAMPING OR MARKING
- + PRECEDES STAMPINGS ADDED TO FOUND MONUMENTS
- CALCULATED POINT (NOTHING SET UNLESS NOTED OTHERWISE)
- FOUND MONUMENT (AS NOTED)
- SET 3/4" REBAR WITH 3/4" BRASS CAP (SEE BC DETAIL)
- SET 3/4" REBAR WITH 1 1/2" ALUMINUM CAP OR TAG
- SET MAG SPIKE W/2" BRASS WASHER PS 20524
- SET MAG SPIKE
- ▲ SET 60d NAIL W/CHASER
- SET PK NAIL
- SET PK NAIL W/SHINER
- AC ALUMINUM CAP
- APS ARIZONA PUBLIC SERVICE COMPANY
- BC BRASS CAP
- BIA BUREAU OF INDIAN AFFAIRS
- BLM BUREAU OF LAND MANAGEMENT
- CC CLOSING CORNER
- CONC CONCRETE
- COR CORNER
- FSDS MONUMENT STAMPING ORIGIN UNKNOWN
- GLO GENERAL LAND OFFICE
- NAVD NORTH AMERICAN VERTICAL DATUM
- NGVD NATIONAL GEODETIC VERTICAL DATUM
- N'S NOT TO SCALE
- POL POINT ON LINE
- § SECTION LINE
- SC STANDARD CORNER
- RBR REBAR
- ROW RIGHT-OF-WAY
- RP REFERENCE POINT
- WC WITNESS CORNER
- WP WITNESS POINT

LEGEND

- CENTER LINE
- SECTION LINE
- SECTION SUBDIVISION LINE
- SECTION LINE (NOT SURVEYED)
- SECTION SUBDIVISION LINE (NOT SURVEYED)
- EASEMENT (AS NOTED)
- INTERIOR DIVISION BOUNDARY
- EXTERIOR RIGHT OF WAY BOUNDARY
- LAKE CONTOUR ELEV=5330.2
- SURVEY TIE



ARIZONA PUBLIC SERVICE COMPANY FOUR CORNERS GENERATING STATION

LOCATED IN THE NAVAJO NATION LYING WITHIN SECTIONS 7,9,10,16,17,18,19,20,29,30&31, T29N, R15W AND SECTIONS 13,23,24,25,26,27,33,34,35&36, T29N, R16W AND SECTIONS 11&12, T28N, R16W OF THE NEW MEXICO PRINCIPAL MERIDIAN, SAN JUAN COUNTY, NEW MEXICO

MAP INFORMATION

DATE: 07/20/2012
VERSION: 5
DRAWN BY: JMW
REVIEWED BY: DFCJ
APS PROJECT:



JOB# 1001.32.00

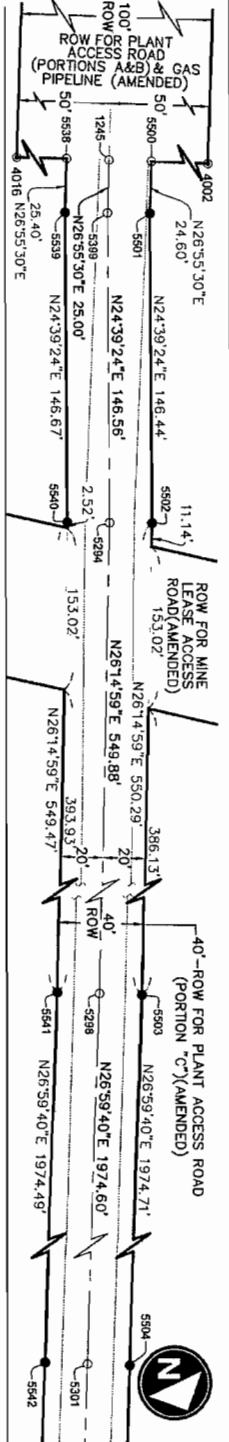
Ferguson
Land Services, Inc.
2933 West Fort Apache, Suite 1167, Phoenix, Arizona 85029
P: (602) 564-5666 F: (602) 564-6993



2 OF 23

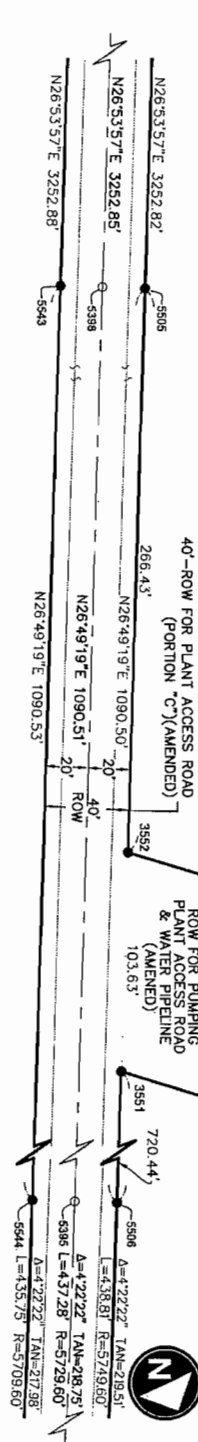
APS MAP NO. 11-10551

MATCH SHEET 13 TOP RIGHT



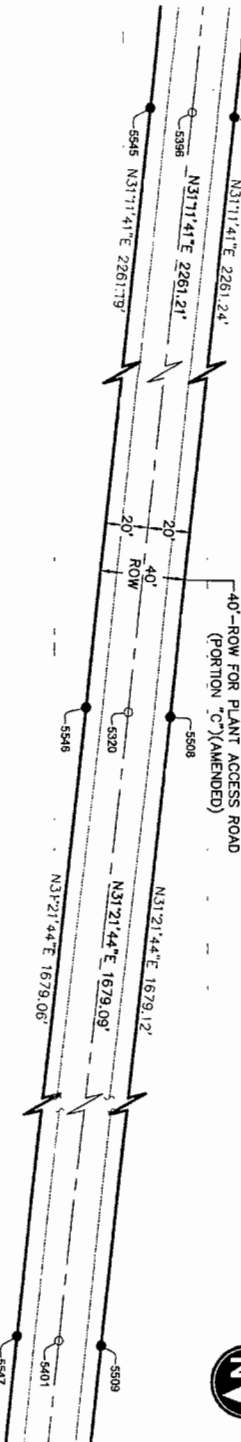
MATCH BELOW-LEFT

MATCH ABOVE-RIGHT



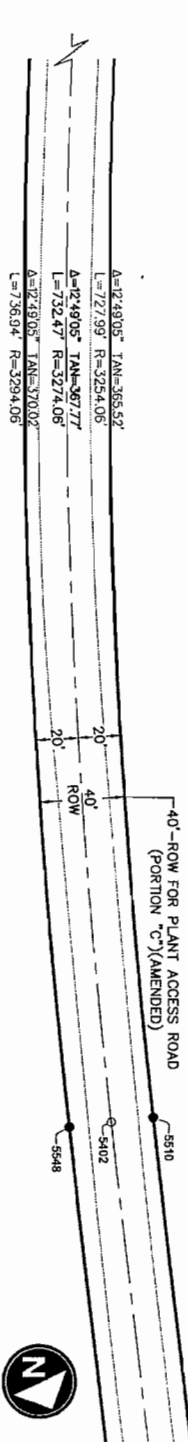
MATCH BELOW-LEFT

MATCH ABOVE-RIGHT



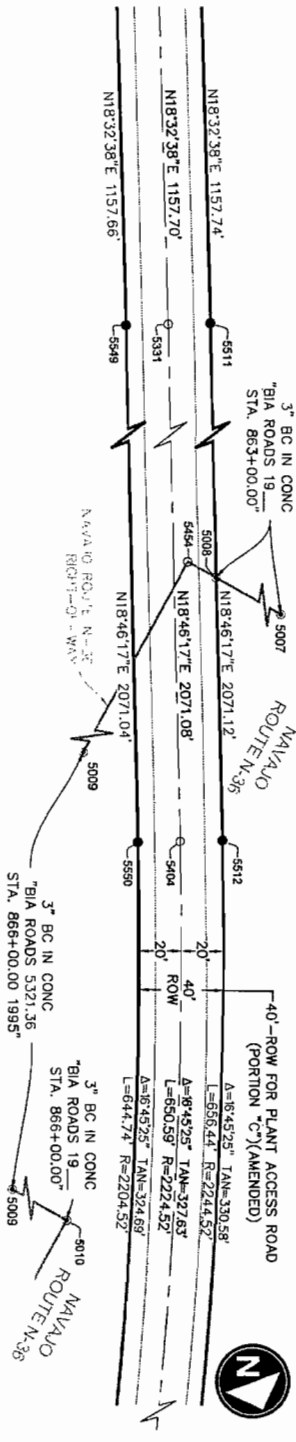
MATCH BELOW-LEFT

MATCH ABOVE-RIGHT



MATCH BELOW-LEFT

MATCH ABOVE-RIGHT



SEE SHEET 17
MATCH TOP-LEFT

ARIZONA PUBLIC SERVICE COMPANY FOUR CORNERS GENERATING STATION

LOCATED IN THE NAVAJO NATION LYING WITHIN
SECTIONS 7,9,10,16,17,18,19,20,29,30&31, T29N, R15W
AND SECTIONS 13,23,24,25,26,27,33,34,35&36, T29N,
R16W AND SECTIONS 11&12, T28N, R16W OF THE NEW
MEXICO PRINCIPAL MERIDIAN, SAN JUAN COUNTY, NEW
MEXICO

ROW FOR PLANT ACCESS
ROAD (PORTION "C")
(AMENDED)

DATE: 07/30/2012
VERSION #: 5
DRAWN BY: JMW
REVIEWED BY: DEJ
APS PROJECT:
JOB #: 1001.32.00

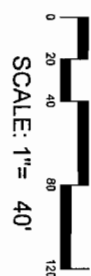


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P: (602) 544-6666 F: (602) 544-6093



16 OF 23

APS MAP NO. 11-10551





MATCH BELOW-LEFT



MATCH



SEE SHEET 18
MATCH TOP-LEFT



LOCATED IN THE NAVAJO NATION LYING WITHIN
SECTIONS 7,9,10,16,17,18,19,20,29,30&31, T29N, R15W
AND SECTIONS 13,23,24,25,26,27,33,34,35&36, T29N,
R16W AND SECTIONS 11&12, T28N, R16W OF THE NEW
MEXICO PRINCIPAL MERIDIAN, SAN JUAN COUNTY, NEW
MEXICO

DATE: 07/30/2012
VERSION #: 5
DRAWN BY: JMM
REVIEWED BY: DF, CJ
AFS PROJECT:
JOB#: 1001.32.00

David R. Bergstrom
DAVID R. BERGSTROM
NEW MEXICO
20064
PROFESSIONAL SURVEYOR
NMSBS

2472 West |
Corra Avenue, Suite 1167, I Home, Arizona 85029
P - (602) 368-2660 F - (602) 368-6903



17 OF 23
APS MAP NO. 11-105

AFFIDAVIT OF NON-DEVIATION

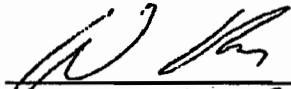
STATE OF: New Mexico

COUNTY OF: San Juan

I, Wilson Begay having been duly sworn depose and state that:

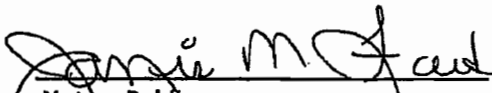
1. My position with BHP Navajo Coal Company, a Corporation is Survey Specialist.
2. My area of responsibility for BHP Navajo Coal Company is: Professional Land Surveyor.
3. I am familiar with the Navajo Mine Plant Access Road Portion A, which is a 100 feet wide right-of-way, 5765.4 feet or 1.09 miles in length covering 13.24 acres in Navajo Tribal Trust Lands In Section 31, T29N, R15W, and Section 36, T29N, R16W, NMPM, San Juan County, NM.
4. To the best of my knowledge, the access road is in its original location since installation. There has been NO CHANGE in the location or the status of the BHP Navajo Coal Company, Navajo Mine Plant Access Roads Portion A, rights-of-way.

FURTHER AFFIANT SAYETH NAUGHT:



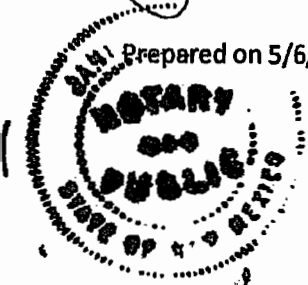
NAME: Wilson Begay
TITLE: Survey Specialist

SWORN AND SUBSCRIBE TO before me by Wilson Begay. This 07
day of May 2013.


Notary Public

08/14/13
Commission Expires

Prepared on 5/6/13



AFFIDAVIT OF NON-DEVIATION

STATE OF: New Mexico

COUNTY OF: San Juan

I, Wilson Begay having been duly sworn depose and state that:

1. My position with BHP Navajo Coal Company, a Corporation is Survey Specialist.
2. My area of responsibility for BHP Navajo Coal Company is: Professional Land Surveyor.
3. I am familiar with the Navajo Mine Plant Access Road Portion B, which is a 100 feet wide right-of-way, 1355.7 feet or 0.26 miles in length covering 3.14 acres in Navajo Tribal Trust Lands in Section 36, T29N, R16W, NMPM, San Juan County, New Mexico.
4. To the best of my knowledge, the access road is in its original location since its installation. There has been NO CHANGE in the location or the status of the BHP Navajo Coal Company, Navajo Mine Plant Access Road Portion B rights-of-way.

FURTHER AFFIANT SAYETH NAUGHT:

Wilson Begay
NAME: Wilson Begay
TITLE: Survey Specialist

SWORN AND SUBSCRIBE TO before me by Wilson Begay. This 07
day of May 2013.

Janie M. Ford
Notary Public

08/14/13
Commission Expires

Proclamation 5/6/13



AFFIDAVIT OF NON-DEVIATION

STATE OF: New Mexico

COUNTY OF: San Juan

I, Wilson Begay having been duly sworn depose and state that:

1. My position with BHP Navajo Coal Company, a Corporation is Survey Specialist.
2. My area of responsibility for BHP Navajo Coal Company is: Professional Land Surveyor.
3. I am familiar with the Navajo Mine Plant Access Road Portion C, which is a 40 feet wide right-of-way, 28325.5 feet or 5.36 miles in length, covering 26.01 acres in Navajo Tribal Trust Lands in Sections 9, 10, 16, 17, 20, 29, 30, and 31, T29N, R15W, NMPM, San Juan County, New Mexico.
4. To the best of my knowledge, this access road is in its original location since its installation. There has been NO CHANGE in the location or the status of the BHP Navajo Coal Company, Navajo Mine, Plant Access Roads Portion C, rights-of-way.

FURTHER AFFIANT SAYETH NAUGHT:

Wilson Begay
NAME: Wilson Begay
TITLE: Survey Specialist

SWORN AND SUBSCRIBE TO before me by Wilson Begay This 07
day of May 2013.

Janis H. [Signature]
Notary Public

06/14/13
Commission Expires

Prepared on 5/6/13



Jimmy Dodge C 2052
Caroline Dodge C 3758

R E L E A S E



For and in consideration of the total sum of \$ 170.82,
as itemized below, paid to the undersigned for (h self/themselves) and
(h /their) heirs, distributees, executors, administrators, and assigns,
does release and forever discharge the NAVAJO TRIBE, UTAH CONSTRUCTION
& MINING CO., and/or ARIZONA PUBLIC SERVICE COMPANY, their successors
and assigns, from any and every claim or cause of action arising out of
the loss of grazing lands on the following areas:

Morgan Lake, some 1,151 acres, under the
control of the Navajo Tribe:

Consideration

\$ ---

2,032 acres under Indenture of Lease be-
tween the Navajo Tribe of Indians and Arizona Pub-
lic Service Company and 421 acres more or less pro-
posed for expansion near the present Four Corners
Power Plant Site:

\$ ---

That portion of the Mining Lease as pre-
sently amended between the Navajo Tribe of Indians
and Utah Construction & Mining Co. located to the
north of a line drawn between lease corners 156 and
175, containing approximately 5,347 acres; 38.9 acres
under Mine Plant Lease between the Navajo Tribe of
Indians and Utah Construction & Mining Co.; and 184
acres, more or less proposed for expansion near the
present Navajo Mine Plant Site:

\$ 170.82

TOTAL CONSIDERATION - \$ 170.82

In witness whereof, (we/I) have hereunder set (my/our) hand(s)
this 28th day of November, 1965.

WITNESSES:

Allen T. [unclear]
Bob [unclear]

Jimmy Dodge

Paid by UC&M Co. Ck. No.

15886

Legal & Governmental
Affairs Files

Dated

November 24, 1965

Ind 1.3.22

R E L E A S E

For and in consideration of the total sum of \$ 170.82, as itemized below, paid to the undersigned for (h self/themselves) and (h /their) heirs, distributees, executors, administrators, and assigns, does release and forever discharge the NAVAJO TRIBE, UTAH CONSTRUCTION & MINING CO., and/or ARIZONA PUBLIC SERVICE COMPANY, their successors and assigns, from any and every claim or cause of action arising out of the loss of grazing lands on the following areas:

| | <u>Consideration</u> |
|---|----------------------|
| Morgan Lake, some 1,151 acres, under the control of the Navajo Tribe: | \$ <u>---</u> |

| | |
|---|---------------|
| 2,032 acres under Indenture of Lease between the Navajo Tribe of Indians and Arizona Public Service Company and 421 acres more or less proposed for expansion near the present Four Corners Power Plant Site: | \$ <u>---</u> |
|---|---------------|

| | |
|--|------------------|
| That portion of the Mining Lease as presently amended between the Navajo Tribe of Indians and Utah Construction & Mining Co. located to the north of a line drawn between lease corners L56 and L75, containing approximately 5,347 acres; 38.9 acres under Mine Plant Lease between the Navajo Tribe of Indians and Utah Construction & Mining Co.; and 184 acres, more or less proposed for expansion near the present Navajo Mine Plant Site: | \$ <u>170.82</u> |
|--|------------------|

TOTAL CONSIDERATION - \$ 170.82

In witness whereof, (we/I) have hereunder set (my/our) hand(s) this 29th day of November, 1965.

WITNESSES:


Franklin D. Dendron

Paid by UC&M Co. Ck. No. 15882

Dated November 24, 1965

Legal & Governmental
Affairs Files

Ind. 2.3.13

R E L E A S E

For and in consideration of the total sum of \$ 227.76, as itemized below, paid to the undersigned for (h self/themselves) and (h /their) heirs, distributees, executors, administrators, and assigns, does release and forever discharge the NAVAJO TRIBE, UTAH CONSTRUCTION & MINING CO., and/or ARIZONA PUBLIC SERVICE COMPANY, their successors and assigns, from any and every claim or cause of action arising out of the loss of grazing lands on the following areas:

| | |
|---|----------------------|
| | <u>Consideration</u> |
| Morgan Lake, some 1,151 acres, under the control of the Navajo Tribe: | \$ <u>---</u> |

| | |
|---|---------------|
| 2,032 acres under Indenture of Lease between the Navajo Tribe of Indians and Arizona Public Service Company and 421 acres more or less proposed for expansion near the present Four Corners Power Plant Site: | \$ <u>---</u> |
|---|---------------|

| | |
|--|------------------|
| That portion of the Mining Lease as presently amended between the Navajo Tribe of Indians and Utah Construction & Mining Co. located to the north of a line drawn between lease corners L56 and L75, containing approximately 5,347 acres; 38.9 acres under Mine Plant Lease between the Navajo Tribe of Indians and Utah Construction & Mining Co.; and 184 acres, more or less proposed for expansion near the present Navajo Mine Plant Site: | \$ <u>227.76</u> |
|--|------------------|

TOTAL CONSIDERATION - \$ 227.76

In witness whereof, (we/I) have hereunder set (my/our) hand(s) this 29th day of November, 1965.

WITNESSES:

Franklin D. Sandoval

Paid by UC&M Co. Ck. No. 15880

Dated November 24, 1965

Legal & Governmental
Affairs Files

Ind 2.3.25



EXHIBIT "D"

NAVAJO NATION TERMS AND CONDITIONS FOR RIGHTS-OF-WAY (ROW) For Navajo Transitional Energy Company, LLC (Grantee)

- 1) The terms of the ROW shall be for twenty (20) years, beginning on the date of ROW is approved by the Navajo Nation.
- 2) The Grantee shall make a lump sum payment as consideration in the amount of \$610,416.00 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 within 10 days of approval of the ROW by the Navajo Nation.
- 3) The Grantee may use and occupy the ROW for the purpose(s) of an access road from the El Paso Bridge to the common facilities leading into the mine plant lease. The Grantee may not develop, use or occupy the ROW for any other purpose without the prior written approval of the Navajo Nation and the Secretary of the Interior. The approval of the Navajo Nation may be granted, granted upon conditions or withheld in the sole discretion of the Navajo Nation. The Grantee may not develop, use or occupy the ROW 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 ROW.
- 6) The Grantee shall clear and keep clear the lands within the ROW to the extent compatible with the purpose of the ROW, 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 ROW.
- 8) The Grantee shall at all times during the term of the ROW and at the Grantee's sole cost and expense, maintain the land subject to the ROW 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 ROW 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 ROW by the Grantee.
- 12) Any assignment, conveyance or transfer by the Grantee, in any manner whatsoever, of the ROW or any interest therein, or in or to any of the improvements on the land subject to the ROW, 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 ROW may be terminated for violation of any of the terms and conditions stated herein. In addition, the ROW 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 ROW for the purpose for which it is granted for a consecutive two-year period; and
 - c. The use of the land subject to the ROW for any purpose inconsistent with the purpose for which the ROW is granted.
- 14) At the termination of this ROW, 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 applicable Federal laws, rules, and regulations.

- 15) Holding over by the Grantee after the termination of ROW 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 ROW 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 ROW, 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 ROW, 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 ROW 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 ROW 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 ROW and all lands burdened by the ROW, including without

limitations over all persons, including the public, and all activities conducted or otherwise occurring within the ROW; and the ROW and all lands burdened by the ROW shall be and forever remain Navajo Indian Country for purposes of Navajo Nation jurisdiction.

- 24) By acceptance of the ROW Grant, the Grantee shall obtain rights to Navajo Nation lands in the nature of easements only; a right to pass over, occupy and reasonably use and occupy the ROW for the particular purpose herein with limited rights of ingress and egress via those particular access roads that are in existence and useable at the grant of this ROW. Such easement shall be limited term usufructuary interest consistent with all general property rights flowing from beneficial ownership of Navajo Nation lands, with no subsurface rights to any minerals or natural resources located on or within the ROW. The ROW under no circumstances or rule of law, shall be interpreted as granting a fee simple interest or creating any greater property right possessed by the Grantee other than the limited easement described herein.

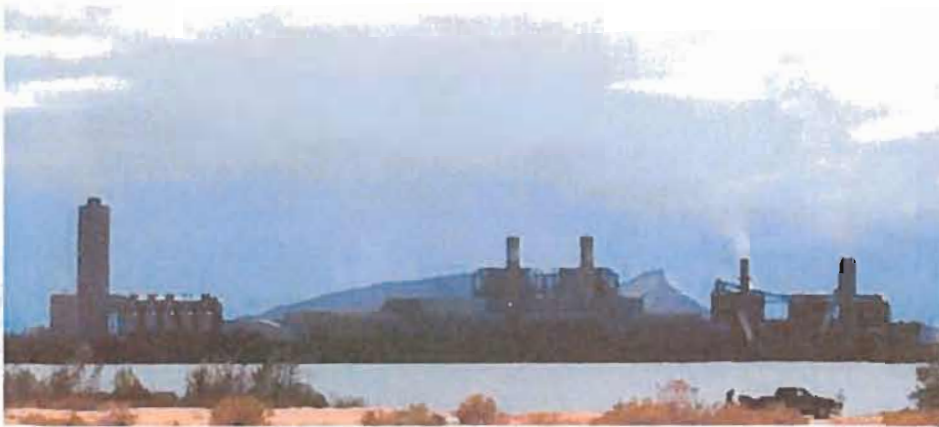
Environmental Impact Statement (EIS)

The environmental analysis for the Navajo Mine – Access Road from El Paso Bridge to Common Facilities Right-of-Way will be included in the Four Corners Power Plant Navajo Mine Energy Project EIS which is currently being prepared and is not ready at this time. Upon completion, BBNMC, as a disclosed agent for NTEC, will provide this document.



FOUR CORNERS POWER PLANT AND NAVAJO MINE ENERGY PROJECT

ENVIRONMENTAL IMPACT STATEMENT



The Office of Surface Mining Reclamation and Enforcement (OSM), a branch of the United States Department of the Interior, was created in 1977 when Congress enacted the Surface Mining Control and Reclamation Act. The Surface Mining Control and Reclamation Act of 1977 is the primary federal law that regulates the environmental effects of coal mining in the United States. OSM works with States and Tribes to ensure that citizens and the environment are protected during coal mining and that the land is restored to beneficial use when mining is finished.

The OSM Western Region, Denver, CO, is preparing an Environmental Impact Statement (EIS) to evaluate potential environmental impacts from a proposal to extend operation of the Four Corners Power Plant, renew rights-of-way for associated transmission lines, renew the Navajo Mine Permit in 2014, and issue a new mine permit area within the existing Navajo Lease area. This proposed new mine permit area is referred to as the Pinabete Permit. The EIS is being prepared in accordance with the National Environmental Policy Act of 1969 (NEPA).

While OSM is the lead agency for preparation of the Four Corners Power Plant and Navajo Mine Energy Project EIS, it works with several other agencies to ensure the development of a comprehensive and thorough environmental analysis. These other agencies are referred to as "cooperating agencies." A cooperating agency is any agency, other than the lead agency, that has jurisdiction by law or special expertise concerning a proposal. Cooperating agencies for the EIS include the Bureau of Indian Affairs, Navajo Nation, Hopi Tribe, Bureau of Land Management, U.S. Environmental Protection Agency, U.S. Fish and Wildlife Service, U.S. Army Corps of Engineers, and National Park Service.

The National Environmental Policy Act

Before U.S. federal agencies proceed with major federal actions, they must consider the potential impacts their proposed activities may have on the human, natural or cultural environment. An environmental analysis is mandated by the National Environmental Policy Act of 1969 (NEPA). NEPA requires federal agencies to examine the potential environmental effects of their actions to allow for more informed decision-making. An Environmental Impact Statement (EIS) is a detailed public document that provides an assessment of the potential effects a federal action may have on the environment. Community and agency involvement is a critical part of the NEPA process.



COOPERATING AGENCIES ASSISTING IN DEVELOPMENT OF THE EIS

| FEDERAL AGENCY | RESPONSIBILITIES/ACTIONS |
|--|--|
| Office of Surface Mining and Reclamation | <ul style="list-style-type: none"> • Act as lead agency in preparing the EIS • Approve or deny the application for a new mine area, known as the Pinabete Permit area • Approve or deny the 2014 Navajo Mine Permit renewal • Act as lead agency for Section 7 consultation with U.S. Fish and Wildlife Service and for National Historic Preservation Act Section 106 consultation |
| Bureau of Indian Affairs | <ul style="list-style-type: none"> • Approve or deny the lease amendment for the Four Corners Power Plant • Approve or deny renewal of associated rights-of-way for existing transmission lines and switchyards • Approve or deny proposed realignment of Burnham Road within the Navajo Mine Lease area |
| Navajo Nation | <ul style="list-style-type: none"> • Issue a biological opinion for tribally listed threatened and endangered species • Consult with OSM to identify, evaluate, and consider potential impacts to cultural and historic resources • Review and comment on the Surface Mining Control and Reclamation Act permit application package • Issue Clean Water Act Section 401 water quality certifications • Issue Title V Clean Air Act permit |
| Hopi Tribe | <ul style="list-style-type: none"> • Issue a biological opinion for tribally listed threatened and endangered species • Consult with OSM for potential impacts to cultural and historic resources |
| Bureau of Land Management | <ul style="list-style-type: none"> • Issue a decision on the Pinabete Mine Plan to ensure maximum economic recovery of coal |
| U.S. Environmental Protection Agency | <ul style="list-style-type: none"> • Ensure emissions comply with the Clean Air Act • Issue a decision on the National Pollutant Discharge Elimination System permit application for the Pinabete area under Section 402 of the Clean Water Act |
| U.S. Fish and Wildlife Service | <ul style="list-style-type: none"> • Issue a biological opinion for threatened and endangered species under Section 7 of the Endangered Species Act |
| U.S. Army Corps of Engineers | <ul style="list-style-type: none"> • Approve or deny permit for fill in waters of the United States under Section 404 of the Clean Water Act |
| National Park Service | <ul style="list-style-type: none"> • Review potential impacts to National Parks in the region |

ABOUT THE FOUR CORNERS POWER PLANT AND NAVAJO COAL MINE

Four Corners Power Plant

The Four Corners Power Plant is one of the largest coal-fired electric generating stations in the United States. The plant includes five units and generates approximately 2,100 megawatts, providing power to more than 500,000 homes in New Mexico, Arizona, California and Texas. The plant, operated by Arizona Public Service, is located on tribal trust lands in the New Mexico portion of the Navajo Reservation. Approximately 75 percent of employees at the plant are Native American.

The desired future operation of the Four Corners Power Plant site involves discontinuing operation of Units 1, 2 and 3 during or prior to 2014, installing pollution control upgrades on Units 4 and 5, and continued operation of the independent switchyard and transmission lines. This scenario would substantially reduce coal consumption and air emissions and lower the power output of the plant to approximately 1,500 megawatts. In future years, the ash disposal area would expand within the current Four Corners Power Plant lease boundary.

BHP Billiton Coal Company Navajo Mine Lease Area

In July 1957, the Navajo Nation granted a mining lease to Utah Construction & Mining Company, which as amended is 33,000 acres. Operation of the mine began in 1963 to supply the Four Corners Power Plant with coal. The 33,000-acre mining lease annually produces an average of 8.5 million tons of coal, which is transported via a dedicated rail to the Four Corners Power Plant. The Navajo Mine Lease area is located on tribal trust lands on the Navajo Reservation adjacent to the Four Corners Power Plant. Approximately 82 percent of employees at the coal mine are Native American.

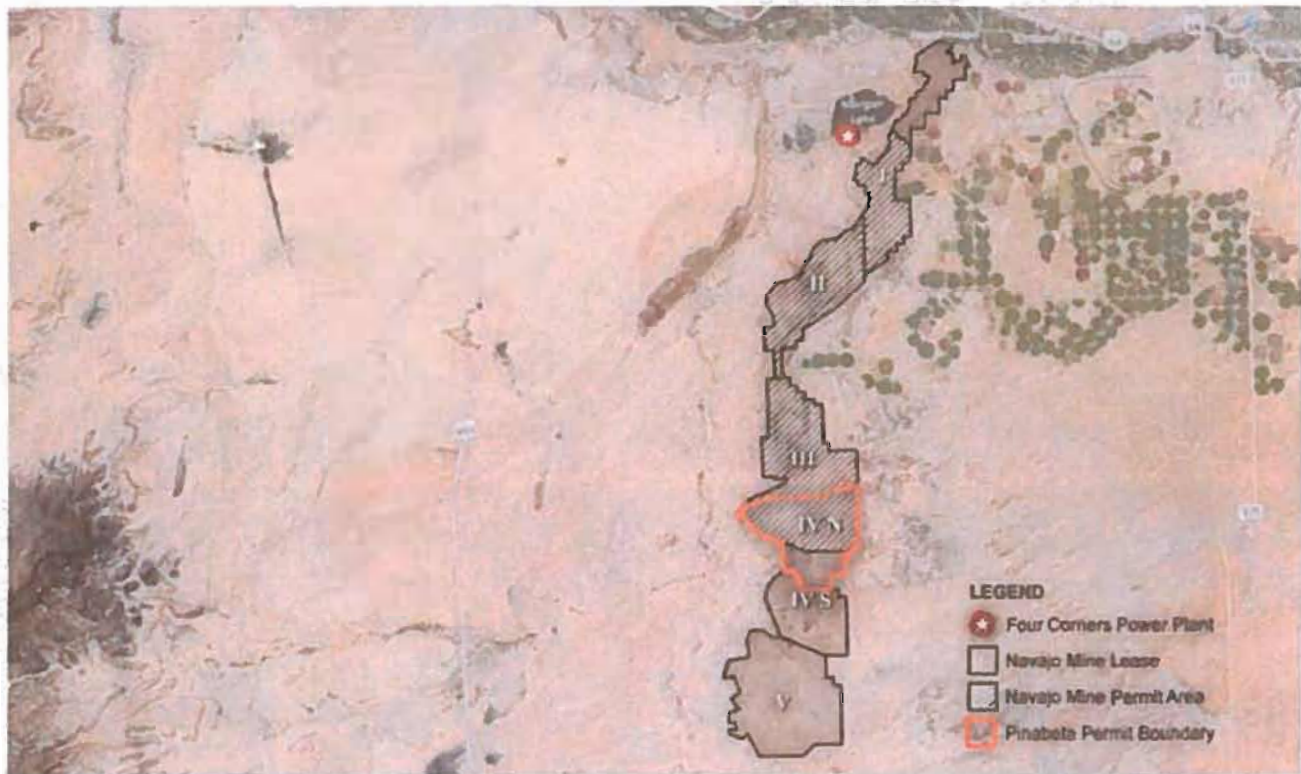


PROPOSED ACTIONS AND ALTERNATIVES

In accordance with NEPA, OSM and cooperating agencies will evaluate the direct, indirect and cumulative environmental impacts associated with the following proposed actions:

- **Power Plant Lease Amendment** – Arizona Public Service, as operating agent and on behalf of participant owners of the Four Corners Power Plant, recently executed a lease amendment (Lease Amendment No. 3) with the Navajo Nation to extend the term of the lease for the Four Corners Power Plant an additional 25 years, to 2041. Under the lease amendment, Arizona Public Service would proceed with discontinuing operation of Units 1, 2 and 3; installing emission reduction equipment on Units 4 and 5; and expanding the ash disposal area within the existing power plant boundaries. Environmental impacts from this lease amendment will be analyzed in the EIS.
- **Energy Transmission Lines Rights-of-Way Renewals** – Existing transmission lines owned and operated by Arizona Public Service or Public Service Company of New Mexico require rights-of-way renewals within the period of time this NEPA review is conducted. These transmission lines are considered connected actions to the continuing operation of the mine and power plant. There would be no new transmission lines. However, the environmental impacts from the continued operations of the transmission lines, in the event the rights-of-way permits are renewed, will be analyzed in the EIS.
- **Navajo Mine 2014 Permit Renewal** – OSM expects BHP Billiton Navajo Coal Company to submit a renewal application in 2014 for its existing Navajo Mine Surface Mining Control and Reclamation Act Permit (No. NM0003F). Therefore, the EIS will also analyze impacts of the 2014 renewal application.
- **New Coal Mine Area** – In spring 2012, BHP Billiton Navajo Coal Company submitted an application to OSM to develop a new 5,600-acre mine area, referred to as the Pinabete Permit area, within its existing Navajo Mine Lease. The Pinabete Permit area would supply coal to the Four Corners Power Plant for up to 25 years, beginning in July 2016. Environmental impacts from the proposed mine area will be analyzed in the EIS.

FOUR CORNERS POWER PLANT AND NAVAJO MINE ENERGY PROJECT AREA MAP



Alternatives

The NEPA process requires the evaluation of a range of alternatives to the proposed actions. The EIS will analyze the proposed actions and a "no action" alternative, as well as other reasonable alternatives that may be identified through the NEPA process, including public and agency comments. The range of reasonable alternatives to be considered will be determined based, in part, on public input received during the scoping process.

The no-action alternative would result in expiration of the Four Corners Power Plant lease and associated rights-of-way; expiration of BHP Billiton Navajo Coal Company's Surface Mining Control and Reclamation Act permit for the Navajo Mine; and there would not be a new Pinabete permit.



ENVIRONMENTAL RESOURCES TO BE ANALYZED

Threatened, Endangered and Sensitive Species

In accordance with Section 7 of the Endangered Species Act, OSM is consulting with the U.S. Fish and Wildlife Service to determine potential environmental impacts to threatened and endangered species and their critical habitat as a result of the proposed actions. OSM will also evaluate impacts to species protected under the Bald and Golden Eagle Act and Migratory Bird Treaty Act. OSM requires wildlife and raptor monitoring in compliance with Surface Mining Control and Reclamation Act permitting. This includes species listed by the Navajo and Hopi tribes, as well as those listed by the U.S. Fish and Wildlife Service.

The Navajo Nation, Hopi Tribe, and U.S. Fish and Wildlife Service would issue respective biological opinions for listed species.

A sample of threatened, endangered, and sensitive species in the area.



Environmental resource areas to be studied in the EIS are listed below. The public is encouraged to provide input on these or other environmental resource areas for consideration in the Draft EIS.

- Threatened and endangered species
- Air quality and climate change
- Surface and ground water quality
- Socioeconomics and environmental justice
- Cultural and historic resources
- Biological resources
- Visual resources
- Noise and vibration
- Public health and safety
- Land use and recreation
- Transportation
- Geology and minerals
- Topography and soils
- Agriculture and grazing
- Water rights
- Solid/hazardous waste

Air Quality

The Navajo Nation Environmental Protection Agency and the U.S. Environmental Protection Agency are both involved with the review of the continued operations of the power plant. The Clean Air Act's Regional Haze Rule requires the use of Best Available Retrofit Technology (BART) at older coal-fired power plants to reduce haze and improve visibility. In October 2010, the U.S. Environmental Protection Agency issued a proposed BART rule for the Four Corners Power Plant, which included installing additional nitrogen oxide and particulate controls. As part of BART compliance, approval of the lease renewals and the continued operation of the power plant would require the installation of additional nitrogen oxide controls on Units 4 and 5 by July 2018, and Units 1, 2 and 3 would close by January 2014.





Water Quality

Several Clean Water Act permits are needed for the proposed actions. In spring 2012, BHP Billiton Navajo Coal Company submitted an application to the U.S. Army Corps of Engineers for a Clean Water Act Section 404 permit that would allow the coal mine to discharge fill material into waters at specified disposal sites. Development of the Pinabete Permit area would impact approximately 5 acres of arroyos and dry channels over 25 years.

A Clean Water Act Section 402 permit, known as a National Pollutant Discharge Elimination System (NPDES) permit, is issued by the U.S. Environmental Protection Agency for discharge of certain pollutants into waters of the United States by industrial operators. The Navajo Nation would be responsible for issuing Section 401 water quality certifications to BHP Billiton Navajo Coal Company. BHP Billiton Navajo Coal Company is in the process of preparing an application for this permit.

Socioeconomics and Environmental Justice

The EIS will include analysis of how potential environmental impacts from the proposed actions could affect socioeconomics. Socioeconomics is a broad discipline and includes topics such as employment, tribal revenues, household income, business output, property values and disadvantaged populations. In the context of this project, the EIS will include a study of the socioeconomic effects of continued operations, the no action alternative (discontinuing operations at the mine and power plant), and any other reasonable alternatives identified.

In 1994, President Clinton issued Executive Order 12898, which requires federal agencies to consider environmental justice in carrying out their missions. Agencies are required to identify and address disproportionately high and adverse human health or environmental effects of their programs, policies and activities on minority and low-income populations. Environmental justice studies are part of the larger socioeconomics analysis in the NEPA process.

Diné Natural Law will inform the environmental justice analysis and requires that "The rights to use the land, natural resources, sacred sites, and other living beings must be accomplished through the protocol of offering and these practices must be protected" (Source: The Fundamental Laws of the Diné, Title 1, Chapter 1, Part 5. Nahasdzaán dóó Yádlhil Bits'áádéé' Beehaz'aanii- Diné Natural Law).

Cultural Resources and National Historic Preservation Act

Section 106 of the National Historic Preservation Act of 1966 requires federal agencies to take into account the effects of proposed actions on historic properties listed on or eligible for listing on the National Register of Historic Places. OSM will consult with Tribal and State Historic Preservation Officers to determine whether there would be potential impacts to cultural and historic resources and how to minimize or avoid impacts. Tribal concerns will be given due consideration, including potential impacts on Indian trust assets.



NEPA PROCESS AND COMMUNITY INVOLVEMENT

Community involvement is a critical part of the NEPA process. The public participates in the NEPA process by helping to identify environmental issues and potential alternatives during the scoping period and by evaluating the analysis of the proposed actions and alternatives during the public review period. All public comments are considered, and OSM will not proceed with any proposed actions until the NEPA process is complete. The table on page 8 describes the steps of the NEPA process and identifies the opportunities for public involvement.



How to Submit Comments on the EIS

In August 2012, OSM is holding nine open house scoping meetings to inform the public about the proposed actions and to receive comments on relevant issues to be considered in the EIS (see table on page 8 for schedule). During each open house, informational poster stations and project team representatives will be available to provide the public with an opportunity to learn more about the NEPA process and the proposed actions and alternatives currently under consideration. This scoping will also satisfy the public involvement and noticing requirement for Section 106 of the National Historic Preservation Act.

Government agencies, elected officials, tribes, organizations and individuals are encouraged to participate and comment in any of the following ways:

- Submit written or oral comments at the open house scoping meetings
- Submit comments via email at FCPPNavajoEnergyEIS@osmre.gov
- Send written comments via postal mail, hand delivery or courier to:

Mr. Marcelo Calle
OSM Western Region
1999 Broadway, Suite 3320
Denver, CO 80202-3050

All comments must be postmarked or received by the end of the comment period on Sept. 17, 2012, to be considered in the Draft EIS.

For More Information

Informational materials and project documents will be made available on the project website at <http://www.wrcc.osmre.gov/FCPPEIS.shtm>. More project information can also be obtained by calling Mr. Marcelo Calle, OSM EIS Coordinator, at 303-293-5035.

The public's participation in the EIS will help OSM make more informed decisions about the proposed actions. The scoping public comment period is from July 18, 2012, to Sept. 17, 2012. There will be an additional opportunity for the public to comment after the release of the Draft EIS, which is anticipated in fall 2013.

NEPA PROCESS AND TIMELINE

| MILESTONE | DESCRIPTION | ANTICIPATED SCHEDULE |
|--|--|---|
| Notice of Intent (NOI) to Prepare an EIS | Publication of the NOI in the Federal Register starts the initial public involvement phase. Notices are also published in local newspapers. | July 18, 2012 |
| Scoping Period | <p>The scoping process actively involves the public and other agencies in identifying the environmental issues to be addressed in the EIS and other potential alternatives to accomplish the purpose and need.</p> <p>The scoping period for this EIS provides for nine open house scoping meetings and a 60-day public comment period.</p> <p>Opportunity for Public Review and Comment</p> | <p>Scoping Period: July 18 – Sept. 17, 2012</p> <p>Open House Scoping Meetings: Hotevilla, AZ – Aug. 9 Cortez, CO – Aug. 10 Burnham, NM – Aug. 11 Nenahnezad, NM – Aug. 13 Farmington, NM – Aug. 14 Shiprock, NM – Aug. 15 Durango, CO – Aug. 16 Window Rock, AZ – Aug. 17 Albuquerque, NM – Aug. 18</p> |
| Draft EIS | The Draft EIS presents the analysis of potential environmental impacts for the proposed actions and alternatives. Public comments received during the scoping period are considered in the development of the Draft EIS. A notice announcing availability of the Draft EIS will be published in the Federal Register and local newspapers. The Draft EIS will be filed with the U.S. Environmental Protection Agency and made available to interested parties. | Fall 2013 |
| Public Meetings and Comment Period | NEPA regulations require a minimum of 45 days for the public to comment on the analysis presented in the Draft EIS. Comments may be submitted at public meetings, via U.S. mail or email. | Fall 2013 |
| Final EIS | The Final EIS is an update to the Draft EIS and includes responses to all comments received during the public meetings and comment period. A notice announcing availability of the Final EIS will be published in the Federal Register and local newspapers. The Final EIS will be filed with the U.S. Environmental Protection Agency and made available to interested parties. | Summer 2014 |
| 30-Day Wait Period | Regulations provide for a 30-day wait period after the Final EIS is published before the agency may take final action. | Summer/Fall 2014 |
| Record of Decision | After the 30-day wait period, OSM will select an alternative and issue a Record of Decision. A notice of the Record of Decision will be published in the Federal Register and local newspapers and made available to interested parties. | Fall 2014 |



Complete



In Progress



Next Steps

May 14, 2013



Navajo Regional Office
Bureau of Indian Affairs
Attn: Ryan Hunter
301 West Hill Street
Gallup, NM 87301

BHP Billiton Limited
New Mexico Coal
300 West Arrington Street
Farmington, New Mexico 87401 USA
Tel +1 505 598 4200 Fax +1 505 598 XXXX
bhpbilliton.com

Re: Letter of Intent to Renew Grant of Easement for Right of Way
Original Navajo Mine – El Paso Bridge Access Road Right of Way

Mr. Ryan Hunter:

Enclosed for your review and records is a copy of BHP Billiton, Navajo Coal Company's renewal of grant of easement for right of way by letter request to Akhtar Zaman, Navajo Nation, Minerals Department in Window Rock, New Mexico.

If you have any questions or need further information, please feel free to contact me.

Respectfully yours,

A handwritten signature in black ink, appearing to read 'Skip Fraker', written over a horizontal line.

Skip Fraker
Landman – Land and Water
505-598-2848
300 W. Arrington St, Suite 201
Farmington, NM 87401

May 10, 2013



Bureau of Indian Affairs
Shiprock Office
BIA Nataani Nez Complex, 2nd floor
Highway 491 South
Attn: Mary Lujan
Shiprock, NM 87420

BHP Billiton Limited
New Mexico Coal
300 West Arrington Street
Farmington, New Mexico 87401 USA
Tel +1 505 598 4200 Fax +1 505 598 XXXX
bhpbilliton.com

Re: Letter of Intent to Renew Grant of Easement for Right of Way
Original Navajo Mine – El Paso Bridge Access Road Right of Way

Ms. Mary Lujan:

Enclosed for your review and records is a copy of BHP Billiton, Navajo Coal Company's renewal of grant of easement for right of way by letter request to Akhtar Zaman, Navajo Nation, Minerals Department in Window Rock, New Mexico.

If you have any questions or need further information, please feel free to contact me.

Respectfully yours,

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Skip Fraker
Landman – Land and Water
505-598-2848
300 W. Arrington St, Suite 201
Farmington, NM 87401

May 10, 2013



Navajo Regional Office
Bureau of Indian Affairs
Attn: Sharon Pinto
301 West Hill Street
Gallup, NM 87301

BHP Billiton Limited
New Mexico Coal
300 West Arrington Street
Farmington, New Mexico 87401 USA
Tel +1 505 598 4200 Fax +1 505 598 XXXX
bhpbilliton.com

Re: Letter of Intent to Renew Grant of Easement for Right of Way
Original Navajo Mine – El Paso Bridge Access Road Right of Way

Ms. Sharon Pinto:

Enclosed for your review and records is a copy of BHP Billiton, Navajo Coal Company's renewal of grant of easement for right of way by letter request to Akhtar Zaman, Navajo Nation, Minerals Department in Window Rock, New Mexico.

If you have any questions or need further information, please feel free to contact me.

Respectfully yours,

A handwritten signature in black ink, appearing to read 'Skip Fraker', written over a horizontal line.

Skip Fraker
Landman – Land and Water
505-598-2848
300 W. Arrington St, Suite 201
Farmington, NM 87401

May 10, 2013



Navajo Nation
Land Department
Attn: Howard Draper
PO Box 2249
Window Rock, AZ 86515

BHP Billiton Limited
New Mexico Coal
300 West Arrington Street
Farmington New Mexico 87401 USA
Tel +1 505 598 4200 Fax +1 505 598 XXXX
bhpbilliton.com

Re: Letter of Intent to Renew Grant of Easement for Right of Way
Original Navajo Mine – El Paso Bridge Access Road Right of Way

Mr. Howard Draper:

Enclosed for your review and records is a copy of BHP Billiton, Navajo Coal Company's renewal of grant of easement for right of way by letter request to Akhtar Zaman, Navajo Nation, Minerals Department in Window Rock, New Mexico.

If you have any questions or need further information, please feel free to contact me.

Respectfully yours,

A handwritten signature in black ink, appearing to read 'Skip Fraker', written over the words 'Respectfully yours,'.

Skip Fraker
Landman – Land and Water
505-598-2848
300 W. Arrington St, Suite 201
Farmington, NM 87401

BCDO 8998

Navajo Area Office
P. O. Box 1060
Gallup, New Mexico 87301

Honorable Pete V. Domenici
United States Senate
Washington, D. C. 20510

OCT 13 1977

Dear Senator Domenici:

Your August 29, 1977 letter concerning traffic problems in the Nanehnezad Community has been referred to this office.

On October 4, 1977 representatives of Arizona Public Service Company, Utah Construction and Mining Company, Bureau of Indian Affairs and the Local People held a meeting to explore possible solutions to traffic problems on the access road to the Power Plant and Mining Area.

The road (some five miles long) is located on Right of Way granted by the Navajo Tribe to the Arizona Public Service and Utah Construction and Mining Company in 1963. The road is privately owned and maintained by these Companies. The road begins at the San Juan River and runs in a Southerly direction past the Nanehnezad School, through about 1½ miles of irrigated lands and then on to the Plant and Mining Area. This road is reached from U. S. Highway 550 by traversing a County road through Fruitland and crossing a single-lane County bridge across the river.

Several meetings have been held between Arizona Public Service, Utah Construction and Mining Co. and the local people on their problems and minutes of the meetings are on record. As a result of these meetings the Arizona Public Service and Utah Construction and Mining Co. have resurfaced their road, hazardous curves have been delineated, traffic control signs have been erected, i.e., Speed Limit, Curve, School Bus, etc. and the Right of Way is fenced on both sides. The Companies put on a Traffic Patrolman during peak periods of traffic to enforce posted speed limits. Due to the requests of local people the Patrolman was discontinued.

The Arizona Public Service and Utah Construction and Mining Co. also relocated and constructed new homes for some of the people that were living close to the route. Now other people living further away from the route feel they should be offered the same benefits.

The Arizona Public Service and Utah Construction and Mining Co. have taken the stand that they have done all they can do and more than required in their agreements with the Navajo Tribe to alleviate the problems as posed by the local people.

Because of the Power Plant, Mining Area, Nahnanezad School, Navajo Indian Irrigation Project and local people, this area has a congested traffic problem. Unless various construction priorities are revised, and added road construction funding is received, it appears that people in and traveling this area will have to put up with traffic problems for some time to come. A partial solution to the problem would be a new bridge (two-lane) across the San Juan River and the construction of Navajo Route N36 from Farmington to U.S. 666 south of Shiprock. As prospects are now, construction of N36 may not materialize for another five to six years.

Because of all the economic development in this area we in the BIA have a problem in providing adequate roads to handle the ever increasing traffic. BIA will do what it can to alleviate as many problems as possible with the funding allotted.

Any assistance you can give us to get an increase in Road Construction funding would be greatly appreciated.

Sincerely yours,
OTTO K. WEAVER

ACTING Area Director

cc: 2 Public Information Office

file
005
m/f
520 reading file
AD's reading file
520:BTLORAAS:FEKEENE;ec:10/6/77

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.: Renewal Right-of-Way Application from El Paso Bridge to Common Facilities

DESCRIPTION: Proposed ROW renewal application for the existing access road from El Paso Bridge to Common Facilities. The access road ROW is 40-100 ft. wide and 35,446.6 ft. or 6.71 miles in length covering 42.39 acres.

LOCATION: Portion A: Section 31, T29N, R15W and Section 36, T29N, R16W, NMPM, San Juan County, NM

Portion B: Section 36, T29N, R16W, NMPM, San Juan County, NM

Portion C: Sections 9, 10, 16, 17, 20, 29, 30, & 31, T29N, R15W, NMPM, San Juan County, NM

REPRESENTATIVE: Marian L. Wimsatt, CPLTA, CPL, Land and Water, BHP Billiton Mine Management Company as disclosed agent for Navajo Transitional Energy Company (NTEC)

ACTION AGENCY: Bureau of Indian Affairs, Navajo Region

B.R. REPORT TITLE / DATE / PREPARER: None.

SIGNIFICANT BIOLOGICAL RESOURCES FOUND: Area 3 and 6.

POTENTIAL IMPACTS

NESL SPECIES POTENTIALLY IMPACTED: NA

FEDERALLY-LISTED SPECIES AFFECTED: NA

OTHER SIGNIFICANT IMPACTS TO BIOLOGICAL RESOURCES: NA


AVOIDANCE / MITIGATION MEASURES: NA

CONDITIONS OF COMPLIANCE*: NA

FORM PREPARED BY / DATE: Pamela A. Kyselka/05 MAY 2015

COPIES TO: (add categories as necessary)

☐ _____ ☐ _____

| | | |
|--|---|-----------------------|
| 2 NTC § 164 Recommendation: <input checked="" type="checkbox"/> Approval <input 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) | Signature  Gloria M. Tom, Director, Navajo Nation Department of Fish and Wildlife | Date 5/6/15 |
|--|---|-----------------------|

*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

07 February 2014

13EES-01

Mike Fitzgerald
Ecosphere Environmental Services
776 East 2nd Avenue
Durango, Colorado 81301

Dear Mr. Fitzgerald,
The Navajo Nation Department of Fish and Wildlife (NNDFW) reviewed the Biological Evaluation for the BHP Navajo Coal Company's proposed mine extension into the Pinabete Permit Area. 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 condition:

[1] All proposed power lines along the perimeter of the mine lease and within the Pinabete Permit Area shall be constructed with a raptor-safe power pole design per Raptor Electrocution Prevention Regulations (REPR). All guy wires shall be marked with highly visual daytime markers to prevent bird collisions within the RSA.

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

Date

**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.: Pinabete Permit Area

DESCRIPTION: BNCC proposes to extend mining operations in order to continue supplying coal to the Four Corners Power Plant (FCPP) for approximately 25 yrs. beginning on or about July 2016. Expansion of the mine would include undeveloped portions of Area 4 North and unpermitted portions of Area 4 South, known as the Pinabete Permit Area (PPA). Included in the proposed action is the realignment of approximately 2.8 miles of the Burnham Road (BIA Rd. 3005 and NR5082) to a safe distance from mining activity. Estimated surface disturbance within the PPA would be 4,104 acres..

LOCATION: Sections 6, 7, 18, & 19, T26N, R15W, Sections 1, 9-16, & 22-26, T26N, R16W, NMPM, San Juan County, New Mexico

REPRESENTATIVE: Ecosphere Environmental Services (EES).

ACTION AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Bureau of Indian Affairs (BIA) for BHP Navajo Coal Mine (BNCC)

B.R. REPORT TITLE / DATE / PREPARER: BE - Pinabete Permit Area/02 MAY 2013/EES. The BE is not certified with signature.

SIGNIFICANT BIOLOGICAL RESOURCES FOUND: Area 2. PPA is within a RSA.

POTENTIAL IMPACTS

NESL SPECIES POTENTIALLY IMPACTED: [1] *Aquila chrysaetos* (Golden Eagle), G3, GBENPR, REPR, BGEP, MBTA; [2] *Buteo regalis* (Ferruginous Hawk), G3, MBTA; [3] *Athene cunicularia* (Burrowing Owl), G4, MBTA; [4] *Charadrius montanus* (Mountain Plover), G4, MBTA.

FEDERALLY-LISTED SPECIES AFFECTED: NA

OTHER SIGNIFICANT IMPACTS TO BIOLOGICAL RESOURCES: NA

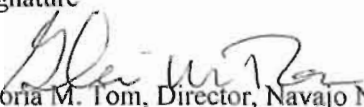
AVOIDANCE / MITIGATION MEASURES: None recommended in the BE for the avian species listed that have potential to occur within and adjacent to the PPA. This includes non-endangered MBTA-protected species that may experience impacts from initial mining activity (i.e. disturbance to ground, vegetation, & nesting substrates during the breeding season). The NNDFW recommends that Section 4.4.1 is amended to include the breeding season for the Burrowing Owl. The breeding season should be 01 MAR-15 AUG, and not 01 APR-15 AUG.

CONDITIONS OF COMPLIANCE*: [1] All proposed power lines along the perimeter of the mine lease and within the Pinabete Permit Area shall be constructed with a raptor-safe power pole design per Raptor Electrocution Prevention Regulations (REPR). All guy wires shall be marked with highly visual daytime markers to prevent bird collisions within the RSA.

FORM PREPARED BY / DATE: Pamela A. Kyselka/07 FEB 2014

COPIES TO: (add categories as necessary)

☒ BIA ☐

| | | |
|--|---|-------------|
| 2 NTC § 164 Recommendation: | Signature | Date |
| <input type="checkbox"/> Approval |  | 2/11/14 |
| <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 |

SECOND AMENDED PROGRAMMATIC AGREEMENT

Between

Office of Surface Mining Reclamation and Enforcement,

Bureau of Indian Affairs,

Bureau of Land Management,

United States Environmental Protection Agency,

United States Army Corps of Engineers,

Navajo Nation Tribal Historic Preservation Officer,

Advisory Council on Historic Preservation,

Navajo Transitional Energy Company, LLC, and

BHP Billiton Mine Management Company

Regarding

Management of Historic Properties at

**Navajo Mine Area III, Area IV North, Area IV South, and the Burnham Road North and South
Realignments**

This Programmatic Agreement ("Agreement") is between the Office of Surface Mining Reclamation and Enforcement, Western Region (OSMRE), the U.S. Bureau of Indian Affairs (BIA), the U.S. Bureau of Land Management (BLM), United States Environmental Protection Agency (USEPA), United States Army Corps of Engineers (USACE), Navajo Nation Tribal Historic Preservation Officer (NNTHPO), the Advisory Council on Historic Preservation (ACHP), Navajo Transitional Energy Company, LLC (NTEC), and BHP Billiton Mine Management Company (MMCo).

RECITALS

WHEREAS, NTEC, Arizona Public Services Company (APS), Public Service Company of New Mexico (PNM) and MMCo are proponents of the Four Corners Power Plant and Navajo Mine Energy Project ("Project") whose purpose is to facilitate on-going operations at the Four Corners Power Plant (FCPP) and on NTEC's Navajo Mine lease and associated properties to provide for long-term, reliable, continuous, and uninterrupted base load electrical power to customers in the southwestern U.S., using a reliable and readily available and permitted fuel source; and

WHEREAS, APS and PNM are invited signatory parties to the Agreement; and

Errata Sheet

“SECOND AMENDED PROGRAMMATIC AGREEMENT Between Office of Surface Mining Reclamation and Enforcement, Bureau of Indian Affairs, Bureau of Land Management, United States Environmental Protection Agency, United States Army Corps of Engineers, Navajo Nation Tribal Historic Preservation Officer, Advisory Council on Historic Preservation, Navajo Transitional Energy Company Regarding Management of Historic Properties at Navajo Mine Area III, Area IV North, Area IV South, and the Burnham Road North and South Realignments” (Navajo Mine PA)

March 4, 2015

The third “WHEREAS” recital statement, located on page 2, line 2 of the Navajo Mine PA states “...to permanently realign Burnham Road (as shown in Attachment A to this Agreement),” but Attachment A does not show the Burnham Road. Please see the corrected Attachment A map with symbol and legend that identify the proposed Burnham Road South included with this errata sheet.

WHEREAS, NTEC proposes to mine a portion of Area IV North, Area IV South, and to continue to mine in Area III, and to permanently realign Burnham Road (as shown in Attachment A to this Agreement), which are within NTEC's lease boundary on the Navajo Reservation southwest of Farmington in northwestern New Mexico. NTEC's activities are termed the "Mine Project" for mining in Area III, Area IV North, and Area IV South (including both the Navajo Mine Surface Mining Control and Reclamation Act of 1977 (SMCRA) Permit Area and the proposed Pinabete SMCRA Permit Area) and the completed realignment of Burnham Road North and the eventual realignment of Burnham Road South; and

WHEREAS, the Mine Project includes the following primary components that would be operated for the anticipated life of the project:

- Open pit surface coal mining and related activities (under the Navajo Mine SMCRA Permit and the proposed Pinabete Permit Area which includes portions of Area IV North and Area IV South),
- Reclamation activities,
- Mining infrastructure (e.g., roads, facilities, powerlines),
- Realignment of Burnham Road South, the application or proposal for which will be submitted in the future in advance of planned mining activities in the areas traversed by the existing Burnham Road; and

WHEREAS, pursuant to Section 106 of the National Historic Preservation Act (NHPA), OSMRE, the NNTHPO, the USACE, BIA, BLM, and BHP Navajo Coal Company (BNCC) were signatory parties to an Amended Programmatic Agreement governing permitted mining, reclamation, and related activities in Area III and Area IV North of BNCC's mine lease (2011 Amended Programmatic Agreement); and

WHEREAS, through the execution of this Second Amended Programmatic Agreement ("Agreement" or "APA"), OSMRE, NNTHPO, USACE, USEPA, BIA, BLM, and NTEC seek to amend the 2011 Amended Programmatic Agreement, in accordance with its terms, to accommodate certain project modifications; and

WHEREAS, OSMRE is the lead Federal agency responsible for ensuring compliance with Section 106 of the NHPA and under the Indian Lands Program, would need to approve, pursuant to the SMCRA, the mining permit for the proposed coal mining and therefore is a Signatory to this Agreement; and

WHEREAS, the Navajo Nation, acting through its Historic Preservation Department, has assumed the role of the NNTHPO pursuant to Section 101(d)(2) of the NHPA, as amended, and therefore the NNTHPO is a Signatory to this APA; and

WHEREAS, the USACE would need to approve, pursuant to Section 404 of the Clean Water Act, a permit(s) for the proposed mining in Areas III, IV North and IV South, and has agreed to participate in the Section 106 consultation process, and therefore is a Signatory to this APA; and

WHEREAS, the USEPA would need to approve a revised Section 402 National Pollutant Discharge Elimination System (NPDES) permit, and has agreed to participate in the Section 106 consultation process, and therefore is a Signatory to this APA; and

WHEREAS, the BIA: (a) has approved a realignment of a portion of the Burnham Road, now completed (BIA Road N-5028) ("Burnham Road North"); (b) would need to evaluate and approve a realignment of another portion of the Burnham Road to be proposed in the future ("Burnham Road South") as depicted on Attachment A; and (c) has applications for rights-of-way renewal pending for certain roads, and has agreed to participate in the Section 106 consultation process, and therefore is a Signatory to this APA; and

WHEREAS, the BLM would need to approve new Resource Recovery and Protection Plan(s) pursuant to BLM regulations and the Indian Mineral Leasing Act, and has agreed to participate in the Section 106 consultation process, and therefore is a Signatory to this APA; and

WHEREAS, as the result of a series of transactions, NTEC is now the lessee of the Navajo Mine Lease and holds the Navajo Mine SMCRA Permit and will be the Pinabete SMCRA Permit permittee in the event OSMRE determines to grant that permit; and

WHEREAS, MMCo and NTEC have entered an agreement under which MMCo will be serving as the mine manager for a period of time, and pursuant to which MMCo has certain obligations to NTEC to pursue the issuance of federal permits and approvals required for operation of Navajo Mine for periods after July 6, 2016; and

WHEREAS, NTEC (and its predecessor), as the proponent of the Mine Project, has provided information for mapping the Mine Project area and the Area of Potential Effects (APE) as determined by OSMRE in consultation with NNTHPO, agencies, and other Consulting Parties, and, using qualified outside consultants as specified in this Agreement, stands ready to undertake inventory work, to assist in evaluating eligibility, to assist in seeking to resolve adverse effects on historic properties, and fund activities related to the identification, evaluation, and treatment of adverse effects, and has been invited to participate as a Signatory to this Agreement; and

WHEREAS, this Agreement shall apply to all activities, including short-term construction and long-term operation, mining, reclamation and all related activities authorized and associated with the Mine Project including all modifications and revisions; and

WHEREAS, Section 106 of the NHPA and its implementing regulations for *Protection of Historic Properties*, Title 36, Code of Federal Regulations, Part 800 (36 CFR 800), require a Federal Agency with direct or indirect jurisdiction over a Federal, federally assisted, or federally permitted or approved undertaking to take into account the effects of the undertaking on historic properties included in or eligible for the National Register of Historic Places (NRHP), and, prior to approval of an undertaking, to afford the ACHP, Consulting Parties, and other interested parties a reasonable opportunity to comment on the undertaking (the Section 106 review process); and

WHEREAS, the ACHP has elected to participate in the Section 106 process; and

WHEREAS, during the previous 2011 Amended Programmatic Agreement, in addition to the participation of, and consultation with, NNTHPO, OSMRE sought consultation with tribes through correspondence and telephone inquiries; and

WHEREAS, prior to the execution of this Agreement, OSMRE (and its predecessor agency, the United States Geological Service, or USGS) has completed certain steps to comply with Section 106 of the NHPA in order to permit mining activities in Area III as memorialized in a 1978 Memorandum of Agreement, as amended, and related correspondence; and

WHEREAS, in accordance with the terms and conditions of the original 2011 Amended Programmatic Agreement, which this Agreement is intended to amend and supersede, OSMRE and other parties have complied with, and substantially completed the work required by, Stipulations in this Agreement for significant portions of Area IV North (as reflected in a November 9, 2009 letter referenced in Attachment G); and

WHEREAS, prior to the execution of this Agreement, OSMRE, NNTHPO and other parties have completed certain steps to comply with Section 106 of the NHPA relating to Navajo Mine activities; and

NOW, THEREFORE, the Signatories to this Agreement shall fulfill the following stipulations during the Burnham Road South realignment, and construction, operation, mining, reclamation and all related activities in Areas III, IV North and IV South. This will take into account the effects of the Mine Project on archaeological, historical, and Traditional Cultural Properties (TCPs) listed in or eligible for inclusion in the NRHP or otherwise subject to consideration under the Native American Graves Protection and Repatriation Act (NAGPRA), The Navajo Nation Policy for the Protection of Jishchaa, and related Federal and Navajo Nation cultural resources policies and regulations (Attachment B).

STIPULATIONS

Stipulation 1. The Area of Potential Effect and Identification of Historic Properties

- A. OSMRE, in consultation with the NNTHPO, and other Consulting Parties has established the APE, as defined at 36 CFR 800.16(d). For the Navajo Mine the APE includes mining areas and a one mile buffer around these areas for the additional consideration of TCPs (Attachment A).
- B. Under the direction of OSMRE and with the NNTHPO, and other Consulting Parties, through qualified outside consultants, NTEC (or its predecessor in interest) has conducted extensive inventory work for the identification of cultural resources within the APE, including archaeological and ethnographic investigations and surveys, as of the date of this Agreement.

Stipulation 2. Evaluation of Historic Properties for Eligibility

- A. In consultation with the NNTHPO, OSMRE has made determinations of eligibility for listing on the NRHP of sites identified through inventory work considered in accordance with the 2011

Amended Programmatic Agreement (Area III and Area IV North), and the 2009 Cultural Resources Compliance Form (HPD-09-611-Revised) prepared for Desert Rock Energy Project (Area IV South), as summarized in Attachment C. OSMRE and the Consulting Parties have reviewed and finalized the determinations of eligibility for potential TCPs within the APE and outside the Mine Lease boundaries.

- B. When making determinations of eligibility for the NRHP of reported, newly discovered, or reevaluated sites (that may be necessary), OSMRE shall consult with the NNTHPO to seek consensus determinations of the NRHP eligibility of properties identified on the Navajo Mine. OSMRE also shall consult with the Signatories to this Agreement and take into account their views.
- C. If the NNTHPO or other Signatories to this Agreement disagree with OSMRE determinations of eligibility, OSMRE shall consult with the objecting party or parties to resolve the objection. If a resolution cannot be agreed upon, OSMRE shall forward the required documentation to the Keeper of the NRHP for a final determination pursuant to regulations for *Determinations of Eligibility for the National Register of Historic Places* (36 CFR 63).
- D. Nothing in this Agreement shall be construed to require OSMRE to reconsider eligibility determinations made under the 2011 Amended Programmatic Agreement or its predecessor agreements, including without limitation the 1978 Memorandum of Agreement; or the 2009 Cultural Resources Compliance Form (HPD-09-611-Revised) prepared for Desert Rock Energy Project (Area IV South).

Stipulation 3. Determination of Effect and Adverse Effect of the Project on Historic Properties

- A. As summarized in Attachment C, in consultation with NNTHPO, NTEC, and review by Consulting Parties, OSMRE has applied the criteria of adverse effect (36 CFR 800.5) to NRHP-eligible properties located within the APE.
- B. OSMRE, in consultation with NNTHPO and other Consulting Parties who are Signatories to this Agreement, shall continue to apply the criteria of adverse effect (36 CFR 800.5) to NRHP-eligible properties located within the APE. OSMRE shall provide a review opportunity for all Signatories to this Agreement in accordance with Stipulation 7 to comment on effects to eligible and listed properties.
- C. Unless mining plans change which would result in a change to the APE, (Stipulation 5) nothing in this Agreement shall be construed to require OSMRE to reconsider effect or adverse effect determinations made under the 2011 Amended Programmatic Agreement; or the 2009 Cultural Resources Compliance Form (HPD-09-611-Revised) prepared for Desert Rock Energy Project (Area IV South).

Stipulation 4. Responsibilities of Federal Agencies and Project Proponents

- A. OSMRE, as a result of its permitting responsibilities, is the lead federal agency under Section 106 of the NHPA, as amended. OSMRE and NNTHPO shall coordinate as necessary to ensure that each of their respective responsibilities is clearly defined.
- B. NTEC and MMCo shall be responsible for communicating with OSMRE and/or NNTHPO regarding compliance with this Agreement, recognizing that NTEC is responsible for any obligations of the Mine Project proponents.


Stipulation 5. Project Modifications

If development designs or changes in designs, including without limitation the submittal of a specific proposal for the realignment of Burnham Road South, require expansion or other modification of the APE or materially modify the nature of potential effects, NTEC shall retain qualified outside consultants to undertake supplemental inventory work in newly defined portions of the APE, to identify any historic properties in the expanded or modified APE, and to provide recommendations on eligibility and assess effects. OSMRE shall consult with the NNTHPO on the NRHP-eligibility of any newly identified cultural resources, about the effect of the project on any NRHP-eligible properties, and about treatment to avoid, reduce, or mitigate any identified adverse effects, in a manner consistent with Stipulations 1, 2, and 3.

Stipulation 6. Resolution of Adverse Effects

- A. In accordance with the 1978 Memorandum of Agreement, as amended, relating to prior construction, mining, reclamation and all related activities on NTEC's mine lease, including without limitation Area III, OSMRE's predecessor, the ACHP, the New Mexico State Historic Preservation Officer (predecessor to NNTHPO under Section 106 of the NHPA, and Utah International, Inc. (BNCC and NTEC's predecessor), complied with the then existing requirements of Section 106 of the NHPA and its implementing regulations. Compliance is demonstrated by the December 12, 1984 letter from OSMRE's Mr. Allen D. Klein to Utah International's Mr. R.C. Diederich, and the July 1, 1986 letter from OSMRE's Mr. Melvin L. Shilling to Utah International's Mr. John Grubb (Attachment G).
- B. As summarized in Attachments C and D, OSMRE, NNTHPO, and NTEC consulted, and identified minimization, avoidance, and mitigation measures to resolve adverse effect determinations, and implemented measures to resolve adverse effects concerning certain historic properties within the APE.
- C. OSMRE, NNTHPO, and the other Signatories shall consult and identify minimization, avoidance, and mitigation measures to resolve any other adverse effect determinations concerning any other historic properties within the APE, not already addressed as shown in Attachments C and D or that may be identified in the future.
- D. If any of the Consulting Parties who execute this Agreement as Invited Signatories advise OSMRE and/or NNTHPO of concerns about effects on properties to which they ascribe traditional religious or cultural significance, OSMRE in consultation with the NNTHPO shall seek to consult with them about possible measures to resolve the adverse effects.

- E. For additional mining, or related activity of the Mine Project, OSMRE and NNTHPO shall guide NTEC in development of plans to resolve adverse effects, including without limitation treatment plans (Treatment Plans). Treatment Plan(s) shall conform to federal requirements (Attachment B), and the Navajo Nation's policies under the Navajo Nation Cultural Resources Protection Act (CMY-19-88), and will address any adverse effects, the resolution of which is agreed to be appropriate, on historic properties, including traditional cultural properties. The nature of the treatment may vary for the various types of affected historic properties, and separate Treatment Plans may be developed for different portions of the APE or for different types of historic properties. Treatment Plan(s) shall:
1. Be consistent with the Secretary of the Interior's Standards and Guidelines, as amended and annotated (http://www.cr.nps.gov/local-law/arch_stnds_0.htm), and other applicable ordinances, regulations, and policies of the Navajo Nation; and
 2. Describe the properties to be affected by mining and associated operations and the nature of those effects; and
 3. Identify the significant values of the properties within relevant historic contexts, as defined in NRHP Bulletin 16 (How to Complete the NRHP Registration Form) and Navajo regulation and guidance, and how those values would be affected; and
 4. Specify any measures to avoid, reduce, or mitigate adverse effects on those significant values.
 5. Specify safety and related protocols to facilitate access by Navajo Nation members who have an identifiable interest in Navajo TCPs and burial sites on the Mine Lease, provided such access does not interfere with operations and activities on the Mine Lease.
- F. OSMRE, in consultation with the NNTHPO, shall review draft Treatment Plan(s). On approval of the Treatment Plan(s), NTEC shall proceed to implement the Final Treatment Plan(s).
- G. OSMRE shall distribute the approved the Final Treatment Plan(s) to all parties to this agreement pursuant to Stipulation 7.
- H. OSMRE in conjunction with NNTHPO shall ensure that the Treatment Plan(s) is implemented and completed.
- I. Many of the affected historic properties are likely to be archaeological sites and if avoidance is not feasible, treatment, if any, is likely to involve studies to recover and preserve important archaeological materials and information. Treatment Plan(s) that involves archaeological data recovery shall specify at a minimum:
1. Research questions and goals that are derived from relevant historic contexts, as applicable to the region in which the project is located, and which can be addressed through data recovery and archival studies, along with an explanation of their relevance and importance; and

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2. Fieldwork and analytical methods that are appropriate for the collection of the requisite data to address the defined research questions; and
 3. The level of effort to be expended on the treatment of each property, including rationale and methods for proposed sampling; and
 4. Strategies for distributing and/or archiving collected information to both professional and nonprofessional audiences, including a proposed schedule of reports or media products (if multiple related studies are conducted to recover data, the strategies for distributing information shall include the preparation of a synthesis to integrate the results of the multiple related studies); and
 5. Methods and procedures for addressing any human remains and cultural objects pursuant to Stipulation 8, including plans of action or burial agreements as warranted; and
 6. Qualifications of the study team; and
 7. Obtainment of any necessary cultural resource permits.
- J. If mining and related activities remain unchanged, nothing in this Agreement shall be construed to require OSMRE to reconsider or require further treatment or other steps to resolve adverse effects for historic properties considered previously in Section 106 consultations relating to activities at Navajo Mine and ancillary facilities.

Stipulation 7. Review, Comment, and Consultation

- A. Plans prepared in accordance with this Agreement shall be consistent with Secretary of the Interior standards and guidelines for preservation planning and the Navajo Nation Cultural Resources Protection Act.
- B. OSMRE in conjunction with the NNTHPO shall consider any comments on draft plans or any other requests for consultation or comment from Signatories provided within thirty (30) calendar days, and request the project proponent to make appropriate revisions. OSMRE shall submit final documents to the NNTHPO and other parties to this Agreement for reference.
- C. If any Signatory does not respond within thirty (30) calendar days of any request for consultation, OSMRE will consider that Signatory to have waived its consultation right concerning that request or to have agreed with the agency recommendation.

Stipulation 8. Treatment of American Indian Remains and Cultural Objects

The treatment of American Indian remains and any funerary objects, sacred objects, or objects of cultural patrimony (cultural objects) found on the Navajo Reservation shall be addressed in accordance with the *Navajo Nation Policy for the Protection of Jishchaá: Gravesites, Human Remains, and Funerary*

Items (Jishchaá Policy), and in a manner that is consistent with the NAGPRA and its implementing regulations (43 CFR 10).

Stipulation 9. Authorization of Construction and Mining

- A. For purposes of compliance with cultural resources management requirements, including without limitation Section 106 of the NHPA and NAGPRA, NTEC is authorized to continue with construction, mining, reclamation, and all related activities in Area III of the Mine Lease.
- B. For purposes of compliance with cultural resources management requirements, including without limitation Section 106 of the NHPA and NAGPRA, NTEC is authorized to continue with construction, mining, reclamation, and all related activities in the portion of Area IV North of the Mine Lease permitted for mining and related activities under the Navajo Mine SMCRA Permit.
- C. Following implementation of Treatment Plans that may be determined to be necessary or appropriate for other Mine Project areas as approved pursuant to Stipulation 6 of this Agreement, OSMRE may, in its discretion, authorize the initiation of construction, mining, reclamation and other activities in those areas covered by a fully implemented Treatment Plan(s).

Stipulation 10. Confidentiality

The distribution of sensitive information about the locations and nature of inventoried historic properties shall be limited as provided for by Section 304 of the NHPA, 36 CFR 800.11(c), and Section 9(a) of the Archaeological Resource Protection Act (ARPA), 16 USC 470hh (a); regulations implementing the Surface Mining Control and Reclamation Act (30 CFR 773.6(d) (3) (iii)), and the Navajo Nation Privacy Act at 2 N.N.C. Section 85. Pursuant to this stipulation, the Consulting Parties to this Agreement agree to appropriately control the distribution of any confidential information they may receive as a result of their participation in this Agreement.

Stipulation 11. Unanticipated Discoveries

If potential historic properties or cultural objects are unexpectedly discovered during project implementation by activities other than archaeological testing or data recovery excavations conducted pursuant to a Treatment Plan, they shall be treated as discoveries. All work that might adversely affect the discovery shall cease and the Plan for Treatment of Unanticipated Discoveries of Potential Historic Properties (Attachment E) shall be implemented.

Stipulation 12. Damage of Known Historic Properties

If known historic properties are affected, directly or indirectly, in a manner that was not anticipated or authorized, the damages shall be treated as violations of the ARPA; the Navajo Nation Cultural Resources Protection Act, as applicable; and SMCRA. The project proponent shall cease all work at the site of the damage and immediately notify NNTHPO. In turn, NNTHPO shall coordinate with the proper

law enforcement agency, which will conduct an investigation and pursue criminal penalties or civil assessments as warranted. OSMRE inspectors may become involved as necessary.

Stipulation 13. Curation

All cultural materials collected from the Navajo Reservation lands in conjunction with inventory and treatment activities, including without limitation all potential historic properties, will remain the property of the Navajo Nation. OSMRE and the NNTHPO shall ensure that artifacts and records resulting from the inventory and treatment programs are curated in accordance with 36 CFR 79, except for the disposition of human remains, funerary objects, sacred objects and objects of cultural patrimony, which shall be determined in consultation pursuant to Stipulation 8. NTEC will pay reasonable curation costs at a NNTHPO-approved facility.

Stipulation 14. Professional Qualifications and Permits

OSMRE shall ensure that all historic preservation work pursuant to this Agreement is conducted by or under the supervision of a person or persons meeting the Secretary of the Interior's *Professional Qualifications Standards* (36 CFR 61), and in accordance with all required permits including those required under the ARPA and the Navajo Nation Code.

Stipulation 15. Dispute Resolution

Should any Signatory Party to this agreement object in writing to any actions proposed or carried out pursuant to this Agreement, OSMRE shall notify the NNTHPO and consult with this party to resolve the objection. If OSMRE determines that the objection cannot be resolved, OSMRE shall forward all documentation relevant to the dispute to the ACHP. Within 30 days after receipt of all pertinent documentation, the ACHP shall either:

1. Advise OSMRE that the ACHP concurs in the proposed response to the objection; or
2. Provide OSMRE with recommendations that the agency shall take into account in reaching a final decision regarding the dispute; or
3. Notify OSMRE that it will comment pursuant to 36 CFR 800.7(c), and proceed to comment. OSMRE shall take into account any ACHP comments made under this provision.

Any recommendation or comment provided by the ACHP will be understood to pertain only to the subject of the dispute. The responsibility of OSMRE to carry out all actions under this Agreement that is not the subject of the dispute will remain unchanged.

Stipulation 16. Amendments and Termination

- A. Any Signatory to this Agreement may request that it be amended by informing OSMRE in writing of the reason for the request and the proposed amendment language, whereupon OSMRE shall inform the other Signatories and request their views concerning the proposed amendment. All

Signatories must agree to any amendment before it can take effect, and such agreement shall not be unreasonably withheld.

- B. In the event that the terms of the Agreement cannot be, or are not being carried out, the Signatories shall consult to seek amendment of the Agreement. If an agreement cannot be reached on an amendment, any Signatory may terminate the Agreement pursuant to 36 CFR 800.6(c) (8). OSMRE then shall either seek to negotiate a memorandum of agreement under 36 CFR 800.6(c) or request and consider the comments of the ACHP, pursuant to 36 CFR 800.7(a).

Stipulation 17. Duration

OSMRE and NNTHPO and the Signatory Parties shall review this Agreement in January every five years after its execution as long as mining and related operations continue in any of Area III, Area IV North, and Area IV South to determine whether the Agreement needs to continue and whether any changes and/or termination may be needed. If at any other time the Signatories agree that the goals of the Agreement have been fulfilled, the Agreement may be terminated by mutual consent.

Stipulation 18. Execution

- A. Execution of this Agreement, filing of the Agreement with the ACHP pursuant to 36 CFR 800.6(b) (1) (iv), and implementation of its terms is evidence that OSMRE have taken into account the effects of mining in Area III, Area IV North, and Area IV South on historic properties protected under Section 106 of the NHPA, and has afforded the ACHP an opportunity to comment.
- B. On execution of this Agreement, all prior agreements regarding compliance with NHPA Section 106 and its implementing Agreements are superseded and replaced by this Agreement.

SIGNATORY PARTY

OFFICE OF SURFACE MINING RECLAMATION AND ENFORCEMENT


By Erwin J. Brubaker Date 12/18/2014

Acting Regional Director, Western Region

FCPP-NMMP Project: Navajo Mine PA
OSMRE Received 18 DEC 2014
OSMRE Received by
Jeremy Hagg
Jeremy Hagg

SIGNATORY PARTY

BUREAU OF INDIAN AFFAIRS

By  Date 12/19/2014
Sharon Pinto, Director, Navajo Region

ECPP-NMMP Project: Navajo Mine PA
OSMRE Received 19 DEC 2014
OSMRE Received by

Jeremy Hiff

SIGNATORY PARTY

BUREAU OF LAND MANAGEMENT

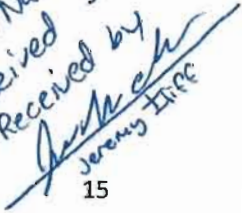
By Victoria Barr Date 12/16/14
Victoria Barr, Farmington District Manager

FCPP-NMMP Project: Navajo Mine PA
OSMRE Received 23 DEC 2014
OSMRE Received by
Jeremy H. H. H.
14

SIGNATORY PARTY

U.S. ENVIRONMENTAL PROTECTION AGENCY

By  Date 12/30/2014
Jane Diamond, Director, Water Division, Pacific Southwest Office

FCPP-NMMP Project: Navajo Mine PA
OSMRE Received 5/14/2015
OSMRE Received by 
Jeremy Hite

SIGNATORY PARTY

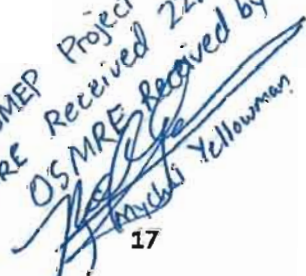
U.S. ARMY CORPS OF ENGINEERS

By Allan Steinle Date 2 Dec 14
Allan Steinle, Regulatory Division Chief, Albuquerque District

FCPP-NMMP Project : Navajo Mine PA
OSMRE Received 2DEC2014
OSMRE Received by
Jeremy IVFF

SIGNATORY PARTY**NAVAJO NATION TRIBAL HISTORIC PRESERVATION OFFICER**

By  Date 12-22-14
Ron Maldonado, Acting Tribal Historic Preservation Officer

FCPP-NMMP Project: Navajo Mine PA
OSMRE Received 22DEC 2014
OSMRE Received by

Amyli Yellowman

SIGNATORY PARTY


ADVISORY COUNCIL ON HISTORIC PRESERVATION


By



Date


2/23/15


 John M. Fowler, Executive Director

FCPP-NMHP Project: Navajo Mine PA
OSMRE Received 25 FEB 2015
OSMRE Received by 
Jeremy I. Hoff

SIGNATORY PARTY

NAVAJO TRANSITIONAL ENERGY COMPANY, LLC

By  Date 1-15-15
Chief Executive Officer
CLARK A. MOSELEY

FCPP-NMMP Project: Navajo Mine PA
OSMRE Received E-signed 6 JAN 2015
OSMRE Received by

Jeremy Ifft
15 JAN 2015

SIGNATORY PARTY

BHP BILLITON MINE MANAGEMENT COMPANY

By

Pat Risner

Date

12/8/14

Pat Risner, Director

FCPP-NMMA Project: Navajo Mine PA
OSMRE Received 8 DEC 2014
OSMRE Received by
Jeremy Iker
20

INVITED SIGNATORY PARTIES

ARIZONA PUBLIC SERVICE COMPANY

By _____ Date _____

[Stated no intention to sign due to no direct involvement via phone call
24NOV2014]

PUBLIC SERVICE COMPANY OF NEW MEXICO

By _____ Date _____

[Declined opportunity to sign via email 1DEC2014]

ATTACHMENTS

Attachment A - Navajo Mine Location and APE Map

Attachment B - Regulations and Guidelines

Attachment C - Archaeological Sites within the Mine Lease Area APE – Status Table [TO BE UPDATED AS NEEDED] (comprehensive list of all current and previous determinations within the APE)

Attachment D - Traditional Cultural Properties (TCPs) within the APE – Status Table [TO BE UPDATED AS NEEDED] (comprehensive list of all current and previous determinations within the APE)

Attachment E – Plan for Treatment of Unanticipated Discoveries of Potential Historic Properties

Attachment F - Definitions

Attachment G - List of Documents Reflecting Prior Compliance Efforts

Area of Potential Effect
Navajo Mine

PROJECT BOUNDARY
Navajo Mine Lease Area
Pinabete Mine Permit Boundary

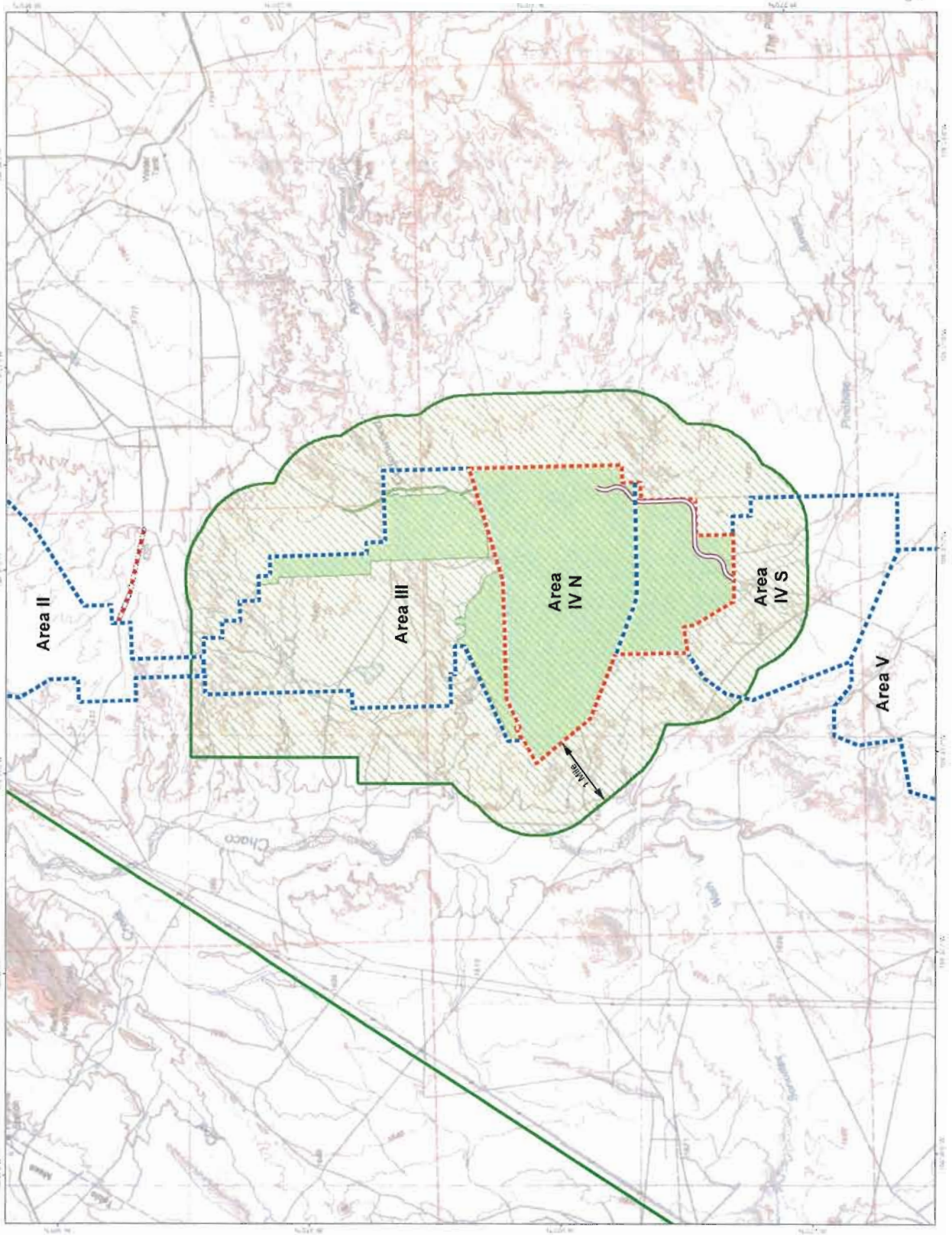
TRANSMISSION LINES
345kV

AREA OF POTENTIAL EFFECT
TCP ARE

Mining Related Disturbance Area

Area III Road

Proposed Burnham Road South



Attachment B - Regulations and Guidelines

American Indian Religious Freedom Act (AIRFA; 42 USC 1996 and 1996a)

Archaeological Resources Protection Act (ARPA; 16 USC 470, 43 CFR 7)

BLM 8110 Manual: Identifying and Evaluating Cultural Resources

National Historic Preservation Act (NHPA); (16 USC 470 et seq.)

National Register Bulletin 38, *Guidelines for Evaluating and Documenting Traditional Cultural Properties* (NPS 1990; Revised 1992; 1998)

Native American Graves Protection and Repatriation Act (NAGPRA; 25 USC 3001; 43 CFR 10)

Navajo Nation Cultural Resources Protection Act (NNCRPA) (CMY-19-88)

Navajo Nation Policy for the Disposition of Cultural Resource Collections

NHPA Implementing Regulations (36 CFR Part 800)

The ACHP's guidance on conducting archaeology under Section 106 (2009)

The ACHP's *Policy Statement Regarding the Treatment of Burial Sites, Human Remains and Funerary Objects* (February 23, 2007)

The Navajo Nation Policy for the Protection of Jishchaa'

The Secretary of the Interior's *Standards and Guidelines for Archaeology and Historic Preservation* (48 FR 44716-42, September 29, 1983)

Using Section 106 to Protect Historic Properties. (2011)

Attachment C. Archaeological Sites within the Mine Lease Area APE – Status Table.

Table C-1. Archaeological sites in Navajo Mine Area III.

| Site # | Land Ownership | Description | Affiliation | NRHP Eligibility Recommendation from Applicant | NRHP Determination by OSMRE | Action Recommended | THPO Concurrence with OSMRE Findings |
|----------|----------------|---|-------------|--|-----------------------------|----------------------------|--------------------------------------|
| LA 19325 | Navajo Nation | Previously recorded multiple structures | Navajo | Eligible | Eligible | Mitigated; No further work | Eligible |
| LA 19327 | Navajo Nation | Previously recorded multiple structures | Navajo | Eligible | Eligible | Mitigated; No further work | Eligible |
| LA 19334 | Navajo Nation | Previously recorded hogan and cairn | Navajo | Eligible | Eligible | Mitigated; No further work | Eligible |
| LA 19374 | Navajo Nation | Previously recorded lithic scatter | Archaic | Eligible | Eligible | Mitigated; No further work | Eligible |
| LA 19375 | Navajo Nation | Previously recorded lithic scatter | Archaic | Eligible | Eligible | Mitigated; No further work | Eligible |
| LA 19411 | Navajo Nation | Previously recorded lithic scatter | Archaic | Eligible | Eligible | Mitigated; No further work | Eligible |
| LA 19412 | Navajo Nation | Previously recorded lithic and ceramic scatter | Archaic | Eligible | Eligible | Mitigated; No further work | Eligible |
| LA 19413 | Navajo Nation | Previously recorded artifact scatter | Archaic | Eligible | Eligible | Mitigated; No further work | Eligible |
| LA 19414 | Navajo Nation | Previously recorded artifact scatter and features | Anasazi | Eligible | Eligible | Mitigated; No further work | Eligible |
| LA 19437 | Navajo Nation | Previously recorded artifact scatter and features | Anasazi | Eligible | Eligible | Mitigated; No further work | Eligible |
| LA 19439 | Navajo Nation | Previously recorded artifact scatter and features | Anasazi | Eligible | Eligible | Mitigated; No further work | Eligible |

Attachment C. Archaeological Sites within the Mine Lease Area APE – Status Table.

| Site # | Land Ownership | Description | Affiliation | NRHP Eligibility Recommendation from Applicant | NRHP Determination by OSMRE | Action Recommended | THPO Concurrence with OSMRE Findings |
|-----------|----------------|---|-------------|--|-----------------------------|----------------------------|--------------------------------------|
| LA 19439A | Navajo Nation | Previously recorded artifact scatter | Anasazi | Eligible | Eligible | Mitigated; No further work | Eligible |
| LA 19463 | Navajo Nation | Previously recorded artifact scatter with features | Anasazi | Eligible | Eligible | Mitigated; No further work | Eligible |
| LA 19464 | Navajo Nation | Previously recorded artifact scatter | Anasazi | Eligible | Eligible | Mitigated; No further work | Eligible |
| LA 19480 | Navajo Nation | Previously recorded artifact scatter | Anasazi | Eligible | Eligible | Mitigated; No further work | Eligible |
| LA 19508 | Navajo Nation | Previously recorded hogans and features | Navajo | Eligible | Eligible | Mitigated; No further work | Eligible |
| LA 19509 | Navajo Nation | Previously recorded hogan and wall | Navajo | Eligible | Eligible | Mitigated; No further work | Eligible |
| LA 19511 | Navajo Nation | Previously recorded structures | Navajo | Eligible | Eligible | Mitigated; No further work | Eligible |
| LA 19515 | Navajo Nation | Previously recorded rock ring | Anasazi | Eligible | Eligible | Mitigated; No further work | Eligible |
| LA 19516 | Navajo Nation | Previously recorded artifact scatter and habitation | Anasazi | Eligible | Eligible | Mitigated; No further work | Eligible |
| LA 19553 | Navajo Nation | Previously recorded artifact scatter and multiple residence | Anasazi | Eligible | Eligible | Mitigated; No further work | Eligible |
| LA 19554 | Navajo Nation | Previously recorded habitation and features | Navajo | Eligible | Eligible | Mitigated; No further work | Eligible |

Attachment C. Archaeological Sites within the Mine Lease Area APE – Status Table.

| Site # | Land Ownership | Description | Affiliation | NRHP Eligibility Recommendation from Applicant | NRHP Determination by OSMRE | Action Recommended | THPO Concurrence with OSMRE Findings |
|-------------|----------------|------------------------------------|-------------|--|-----------------------------|----------------------------|--------------------------------------|
| LA 19596 | Navajo Nation | Previously recorded lithic scatter | Archaic | Eligible | Eligible | Mitigated; No further work | Eligible |
| LA 19599 | Navajo Nation | Previously recorded lithic scatter | Archaic | Eligible | Eligible | Mitigated; No further work | Eligible |
| LA 19605 | Navajo Nation | Previously recorded lithic scatter | Archaic | Eligible | Eligible | Mitigated; No further work | Eligible |
| NM-H-29-105 | Navajo Nation | Previously recorded habitation | Navajo | Eligible | Eligible | Tested 2007; Avoided | Eligible |

Attachment C. Archaeological Sites within the Mine Lease Area APE – Status Table.

Table C-2. Archaeological sites in Navajo Mine Area IV North.

| Site # | Land Ownership | Description | Affiliation | NRHP Eligibility Recommendation from Applicant | NRHP Determination by OSMRE | Action Recommended | THPO Concurrence with OSMRE Findings |
|-------------|----------------|--|--------------------------|--|-----------------------------|--|--------------------------------------|
| NM-H-28-2 | Navajo Nation | Previously recorded artifact scatter | Anasazi | Not eligible | Eligible | Data recovery conducted 2008; avoided | Eligible |
| NM-H-28-4 | Navajo Nation | Previously recorded habitation/ field house | Anasazi | Eligible | Eligible | Data recovery conducted 2008; no further work | Eligible |
| NM-H-28-174 | Navajo Nation | Previously recorded habitation and feature | Anasazi/ Navajo | Eligible | Eligible | Tested 2007; Data recovery conducted 2008; no further work | Eligible |
| NM-H-29-31 | Navajo Nation | Previously recorded feature | Unknown | Eligible | Not eligible | No further work | Not eligible |
| NM-H-29-32 | Navajo Nation | Previously recorded features | Unknown | Not eligible | Not eligible | Tested 2007; no further work | Not eligible ¹ |
| NM-H-29-33 | Navajo Nation | Previously recorded features | Unknown/ possible Navajo | Not eligible | Not eligible | Tested 2007; No further work | Not eligible ¹ |
| NM-H-29-34 | Navajo Nation | Previously recorded artifact scatter and multiresidence habitation complex | Anasazi/ Navajo | Eligible | Eligible | Tested 2007; data recovery conducted 2007; avoided | Eligible |
| NM-H-29-35 | Navajo Nation | Previously recorded habitation | Navajo | Eligible | Eligible | Data recovery conducted 2007; no further work | Eligible |

Attachment C. Archaeological Sites within the Mine Lease Area APE – Status Table.

| Site # | Land Ownership | Description | Affiliation | NRHP Eligibility Recommendation from Applicant | NRHP Determination by OSMRE | Action Recommended | THPO Concurrence with OSMRE Findings |
|------------|----------------|-----------------------------|---------------------------------------|--|-----------------------------|--|--------------------------------------|
| NM-H-29-80 | Navajo Nation | Habitation | Anasazi | Eligible | Eligible | Tested 2007; Data recovery conducted 2007; no further work | Eligible |
| NM-H-29-81 | Navajo Nation | Rockshelter/ temporary camp | Navajo | Not eligible | Not eligible | Tested 2007; no further work | Not eligible ¹ |
| NM-H-29-82 | Navajo Nation | Caim | Possible Navajo | Not eligible | Not eligible | Ethnography conducted 2007; no further work | Not eligible |
| NM-H-29-83 | Navajo Nation | Caim | Possible Navajo | Not eligible | Not eligible | Ethnography conducted 2007; no further work | Not eligible |
| NM-H-29-84 | Navajo Nation | Caim | Possible Navajo | Not eligible | Not eligible | Ethnography conducted 2007; no further work | Not eligible |
| NM-H-29-85 | Navajo Nation | Caim | Possible Navajo | Not eligible | Not eligible | Ethnography conducted 2007; no further work | Not eligible |
| NM-H-29-86 | Navajo Nation | Caim | Possible Navajo | Not eligible | Not eligible | Ethnography conducted 2007; no further work | Not eligible |
| NM-H-29-87 | Navajo Nation | Sheepherders camp | Navajo | Not eligible | Not eligible | Tested 2007; no further work | Not eligible ¹ |
| NM-H-29-88 | Navajo Nation | Habitation | Anasazi | Eligible | Eligible | Data recovery conducted 2008; no further work | Eligible |
| NM-H-29-89 | Navajo Nation | Mining test pits | Recent Anglo-Euro/ American Mining | Not eligible | Eligible | Ethnography conducted 2007; no further work | Eligible |

Attachment C. Archaeological Sites within the Mine Lease Area APE – Status Table.

| Site # | Land Ownership | Description | Affiliation | NRHP Eligibility Recommendation from Applicant | NRHP Determination by OSMRE | Action Recommended | THPO Concurrence with OSMRE Findings |
|------------|----------------|--|----------------------|--|-----------------------------|---|--------------------------------------|
| NM-H-29-90 | Navajo Nation | Sheepherders camp | Navajo | Not eligible | Not eligible | Ethnography conducted 2007; no further work | Not eligible. ¹ |
| NM-H-29-91 | Navajo Nation | Previously recorded Wagon road and masonry wall support | Navajo | Not eligible | Eligible | Ethnography conducted 2007; no further work | Eligible |
| NM-H-29-92 | Navajo Nation | Previously recorded features | Navajo | Eligible | Eligible | Ethnography conducted 2007; no further work | Eligible |
| NM-H-29-93 | Navajo Nation | Previously recorded coal mine shaft/ test pit | Unspecified historic | Not eligible | Eligible | Ethnography conducted 2007; no further work | Eligible |
| NM-H-29-94 | Navajo Nation | Previously recorded water control check-dams | Navajo | Not eligible | Not eligible | Ethnography conducted 2007; no further work | Not eligible |
| NM-H-29-95 | Navajo Nation | Previously recorded water control earthen dam | Unknown | Not eligible | Not eligible | Ethnography conducted 2007; no further work | Not eligible |
| NM-H-29-96 | Navajo Nation | Previously recorded habitation | Navajo | Not eligible | Not eligible | Tested 2007; no further work | Not eligible. ¹ |
| NM-H-29-97 | Navajo Nation | Previously recorded multi-residence habitation complex | Navajo | Eligible | Eligible | Data recovery conducted 2007; no further work | Eligible |
| NM-H-29-98 | Navajo Nation | Previously recorded habitation | Navajo | Not eligible | Eligible | Tested 2007; no further work | Eligible |
| NM-H-29-99 | Navajo Nation | Previously recorded ceramic scatter and pastoral residence | Anasazi/ Navajo | Eligible | Eligible | Data recovery conducted 2008; no further work | Eligible |

Attachment C. Archaeological Sites within the Mine Lease Area APE – Status Table.

| Site # | Land Ownership | Description | Affiliation | NRHP Eligibility Recommendation from Applicant | NRHP Determination by OSMRE | Action Recommended | THPO Concurrence with OSMRE Findings |
|-------------|----------------|--|-------------|--|-----------------------------|--|--------------------------------------|
| NM-H-29-100 | Navajo Nation | Previously recorded seasonal ranching habitation | Navajo | Not eligible | Not eligible | No further work | Not eligible |
| NM-H-29-101 | Navajo Nation | Previously recorded sandstone quarry | Unknown | Not eligible | Not eligible | No further work | Not eligible |
| NM-H-29-102 | Navajo Nation | Previously recorded temporary camp | Navajo | Not eligible | Not eligible | Tested 2007; no further work | Not eligible ¹ |
| NM-H-29-103 | Navajo Nation | Previously recorded temporary camp | Navajo | Not eligible | Not eligible | Tested 2007; no further work; avoidance | Not eligible ¹ |
| NM-H-29-104 | Navajo Nation | Previously recorded feature | Unknown | Not eligible | Not eligible | No further work | Not eligible |
| NM-H-29-106 | Navajo Nation | Previously recorded habitation | Navajo | Not Eligible | Not Eligible | Tested 2007; no further work | Not eligible ¹ |
| NM-H-29-107 | Navajo Nation | Previously recorded single residence habitation | Navajo | Eligible | Eligible | Tested 2007; data recovery conducted 2008; no further work | Eligible |
| NM-H-29-108 | Navajo Nation | Previously recorded storage structure | Anasazi | Not eligible | Not eligible | Tested 2007; no further work | Not eligible ¹ |
| NM-H-29-109 | Navajo Nation | Previously recorded feature | Navajo | Not eligible | Not eligible | No further work | Not eligible |
| NM-H-29-110 | Navajo Nation | Previously recorded habitation | Anasazi | Eligible | Eligible | Avoided, outside of mine boundary. | Eligible |
| NM-H-29-111 | Navajo Nation | Previously recorded sheep camp | Navajo | Not eligible | Not eligible | Tested 2007; no further work | Not eligible ¹ |

Attachment C. Archaeological Sites within the Mine Lease Area APE – Status Table.

| Site # | Land Ownership | Description | Affiliation | NRHP Eligibility Recommendation from Applicant | NRHP Determination by OSMRE | Action Recommended | THPO Concurrence with OSMRE Findings |
|-------------|----------------|---|---------------------|--|-----------------------------|--|--------------------------------------|
| NM-H-29-112 | Navajo Nation | Previously recorded water control features | Navajo | Not eligible | Not eligible | No further work | Not eligible |
| NM-H-29-113 | Navajo Nation | Previously recorded features | Unknown | Not eligible | Not eligible | No further work | Not eligible |
| NM-H-36-22 | Navajo Nation | Previously recorded lithic scatter and lithic and ceramic scatter | Anasazi | Not eligible | Not eligible | Tested 2007; no further work | Not eligible. ¹ |
| NM-H-36-23 | Navajo Nation | Previously recorded temporary camp and burial | Unknown | Not eligible | Not eligible | Tested 2007; no further work | Not eligible. ¹ |
| NM-H-36-24 | Navajo Nation | Previously recorded artifact scatter with features | Archaic/ Anasazi | Eligible | Eligible | Data recovery conducted 2008; no further work | Eligible |
| NM-H-36-25 | Navajo Nation | Previously recorded lithic scatter | Archaic | Eligible | Eligible | Data recovery conducted 2007; no further work | Eligible |
| NM-H-36-26 | Navajo Nation | Previously recorded artifact scatter and sheep herders camp | Anasazi/ Navajo | Eligible | Eligible | Data recovery conducted 2007; no further work | Eligible |
| NM-H-36-28 | Navajo Nation | Previously recorded fieldhouse and pastoral habitation | Anasazi/ Navajo | Eligible | Eligible | Data recovery conducted 2007; no further work | Eligible |
| NM-H-36-29 | Navajo Nation | Previously recorded buried pueblo | Anasazi | Eligible | Eligible | Tested 2007; data recovery conducted 2008; no further work | Eligible |
| NM-H-36-30 | Navajo Nation | Previously recorded feature | Unknown | Not eligible | Not eligible | Tested 2007; no further work | Not eligible. ¹ |

Attachment C. Archaeological Sites within the Mine Lease Area APE – Status Table.

| Site # | Land Ownership | Description | Affiliation | NRHP Eligibility Recommendation from Applicant | NRHP Determination by OSMRE | Action Recommended | THPO Concurrence with OSMRE Findings |
|------------|----------------|--|-----------------|--|-----------------------------|---|--------------------------------------|
| NM-H-36-31 | Navajo Nation | Previously recorded activity area and habitation | Anasazi/ Navajo | Eligible | Eligible | Data recovery conducted 2007; no further work | Eligible |
| NM-H-36-76 | Navajo Nation | Lithic scatter | Unknown | Not eligible | Not eligible | Tested 2007; no further work | Not eligible ¹ |
| NM-H-36-77 | Navajo Nation | Temporary camp | Navajo | Not eligible | Not eligible | Tested 2007; no further work | Not eligible ¹ |
| NM-H-36-78 | Navajo Nation | Lithic scatter and feature | Unknown/ Navajo | Not eligible | Not Eligible | Tested 2007; no further work | Not eligible |
| NM-H-36-79 | Navajo Nation | Petroglyph panel | Navajo | Eligible | Eligible | Ethnography conducted 2007; no further work | Eligible |
| NM-H-36-80 | Navajo Nation | Lithic scatter and cairn markers | Unknown/ Navajo | Not eligible | Eligible | Tested 2007; no further work | Eligible |
| NM-H-36-81 | Navajo Nation | Previously recorded lithic scatter and sheepherders camp | Unknown/ Navajo | Not eligible | Not eligible | Tested 2007; no further work | Not eligible ¹ |
| NM-H-36-82 | Navajo Nation | Previously recorded activity areas | Archaic | Eligible | Eligible | Data recovery conducted 2007; no further work | Eligible |
| NM-H-36-83 | Navajo Nation | Previously recorded lithic scatter | Unknown | Not eligible | Not eligible | No further work | Not eligible |
| NM-H-36-84 | Navajo Nation | Previously recorded temporary camp | Navajo | Not eligible | Eligible | Ethnography conducted 2007; no further work | Eligible |
| NM-H-36-85 | Navajo Nation | Previously recorded water control dams | Unknown recent | Not eligible | Eligible | Ethnography conducted 2007; no further work | Eligible |

Attachment C. Archaeological Sites within the Mine Lease Area APE – Status Table.

| Site # | Land Ownership | Description | Affiliation | NRHP Eligibility Recommendation from Applicant | NRHP Determination by OSMRE | Action Recommended | THPO Concurrence with OSMRE Findings |
|------------|----------------|---|-----------------|--|-----------------------------|--|--------------------------------------|
| NM-H-36-86 | Navajo Nation | Previously recorded lithic scatter and temporary camp | Unknown/ Navajo | Not eligible | Eligible | Ethnography conducted 2007; no further work | Eligible |
| NM-H-36-87 | Navajo Nation | Previously recorded sheepherders camp | Navajo | Not eligible | Eligible | Ethnography conducted 2007; no further work | Eligible |
| NM-H-37-46 | Navajo Nation | Previously recorded lithic scatter | Archaic | Not eligible | Not eligible | No further work | Not eligible |
| NM-H-37-47 | Navajo Nation | Previously recorded ceramic and lithic scatter | Anasazi | Not eligible | Not Eligible | Tested 2007; no further work | Not eligible |
| NM-H-37-48 | Navajo Nation | Previously recorded ceramic and lithic scatter | Anasazi | Eligible | Eligible | Tested 2007; data recovery conducted 2008; avoided | Eligible |
| NM-H-37-49 | Navajo Nation | Previously recorded sheepherders camp | Navajo | Not eligible | Not eligible | Tested 2007; no further work | Not eligible ¹ |
| NM-H-37-50 | Navajo Nation | Previously recorded lithic scatter and habitation | Unknown/ Navajo | Not eligible | Eligible | Tested 2007; no further work | Eligible |
| NM-H-37-51 | Navajo Nation | Previously recorded sheepherders camp | Navajo | Not eligible | Not eligible | Ethnography conducted 2007; no further work | Not eligible |
| NM-H-37-52 | Navajo Nation | Previously recorded lithic scatter | Unknown | Not eligible | Not eligible | Tested 2007; no further work | Not eligible ¹ |
| NM-H-37-53 | Navajo Nation | Previously recorded ceramic scatter | Anasazi | Not eligible | Not eligible | No further work | Not eligible |
| NM-H-37-54 | Navajo Nation | Previously recorded activity area | Navajo | Not eligible | Not eligible | No further work | Not eligible |

Attachment C. Archaeological Sites within the Mine Lease Area APE – Status Table.

1. Site was initially determined eligible by NNTHPO and recommended for testing (see HPD-04-1252). Ecosystems Management, Inc. conducted testing and recommended site not eligible for NRHP (Johnson et al. 2007). NNTHPO accepted testing report.

Attachment C. Archaeological Sites within the Mine Lease Area APE – Status Table.

Table C-3. Archaeological sites in Burnham Road.

| Site # | Land Ownership | Description | Affiliation | NRHP Eligibility Recommendation from Applicant | NRHP Determination by OSMRE | Action Recommended | THPO Concurrence with OSMRE Findings |
|--|----------------|--|-------------|--|-----------------------------|--|--------------------------------------|
| NM-H-28-175 (Area III) | Navajo Nation | Previously recorded artifact scatter with feature | Unknown | Eligible | Eligible | Avoided | Eligible |
| NM-H-28-176 (Area III) | Navajo Nation | Previously recorded multiple habitation | Navajo | Not eligible | Eligible | Avoided | Eligible |
| NM-H-28-177 (Area III) | Navajo Nation | Previously recorded artifact scatter with features | Archaic | Eligible | Eligible | Tested 2007; Data recovery conducted 2008; no further work | Eligible |
| NM-H-28-178/ NM-H-36-123 (Area IV North) | Navajo Nation | Artifact scatter with features | Unknown | Not eligible | Eligible | Avoided | Eligible |

Attachment C. Archaeological Sites within the Mine Lease Area APE – Status Table.

Table C-4. Archaeological sites in Navajo Mine Area IV South.

| Site # | Land Ownership | Description | Affiliation | NRHP Eligibility Recommendation from Applicant | NRHP Determination by OSMRE | Action Recommended by Applicant ¹ | THPO Concurrence with OSMRE Findings |
|-------------|----------------|--|------------------|--|-----------------------------|--|--------------------------------------|
| NM-H-36-35 | Navajo Nation | Previously recorded activity area | Anasazi | Eligible | Eligible | Testing | Eligible |
| NM-H-36-50 | Navajo Nation | Previously recorded multiple residence/rock art panels | Anasazi// Navajo | Eligible | Eligible | Avoidance | Eligible |
| NM-H-36-134 | Navajo Nation | Previously recorded single residence | Navajo | Eligible | Eligible | Testing | Eligible |
| NM-H-36-135 | Navajo Nation | Previously recorded multiple residences | Navajo | Eligible | Eligible | Testing | Eligible |
| NM-H-36-136 | Navajo Nation | Previously recorded single residence | Anasazi | Eligible | Eligible | Testing | Eligible |
| NM-H-36-137 | Navajo Nation | Previously recorded artifact scatter and features | Navajo | Eligible | Eligible | Avoidance | Eligible |
| NM-H-36-138 | Navajo Nation | Previously recorded artifact scatter and features/rock art panel | Unknown/ Navajo | Eligible | Eligible | Avoidance | Eligible |
| NM-H-36-139 | Navajo Nation | Previously recorded artifact scatter and features | Archaic | Eligible | Eligible | Testing | Eligible |
| NM-H-36-140 | Navajo Nation | Previously recorded single residence | Navajo | Eligible | Eligible | Avoidance | Eligible |
| NM-H-36-141 | Navajo Nation | Previously recorded artifact scatter | Anasazi | Eligible | Eligible | Testing | Eligible |

Attachment C. Archaeological Sites within the Mine Lease Area APE – Status Table.

| Site # | Land Ownership | Description | Affiliation | NRHP Eligibility Recommendation from Applicant | NRHP Determination by OSMRE | Action Recommended by Applicant ¹ | THPO Concurrence with OSMRE Findings |
|-------------|----------------|---|-----------------|--|-----------------------------|--|--------------------------------------|
| NM-H-36-144 | Navajo Nation | Previously recorded multiple residence | Navajo | Eligible | Eligible | Avoidance | Eligible |
| NM-H-36-145 | Navajo Nation | Previously recorded artifact scatter and features | Navajo | Eligible | Eligible | Testing | Eligible |
| NM-H-36-146 | Navajo Nation | Previously recorded lithic scatter/ artifact scatter and features | Unknown/ Navajo | Eligible | Eligible | Testing | Eligible |
| NM-H-36-147 | Navajo Nation | Previously recorded ceremonial feature | Navajo | Eligible | Eligible | Testing | Eligible |
| NM-H-36-150 | Navajo Nation | Previously recorded artifact scatter and single residence | Anasazi/ Navajo | Eligible | Eligible | Testing | Eligible |
| NM-H-36-151 | Navajo Nation | Previously recorded residential complex | Navajo | Eligible | Eligible | Testing | Eligible |
| NM-H-36-152 | Navajo Nation | Previously recorded features | Navajo | Eligible | Eligible | Testing | Eligible |
| NM-H-36-153 | Navajo Nation | Previously recorded artifact scatter | Archaic | Not eligible | Not eligible | No further work | Not eligible |
| NM-H-36-155 | Navajo Nation | Previously recorded artifact scatter and features | Archaic | Eligible | Eligible | Avoidance | Eligible |
| NM-H-36-236 | Navajo Nation | Features | Navajo | Not eligible | Not eligible | No further work | Not eligible |
| NM-H-36-237 | Navajo Nation | Artifact scatter | Unknown | Eligible | Eligible | Testing | Eligible |
| NM-H-36-240 | Navajo Nation | Feature | Navajo | Not eligible | Not eligible | Avoidance | Not eligible |

Attachment C. Archaeological Sites within the Mine Lease Area APE – Status Table.

| Site # | Land Ownership | Description | Affiliation | NRHP Eligibility Recommendation from Applicant | NRHP Determination by OSMRE | Action Recommended by Applicant ¹ | THPO Concurrence with OSMRE Findings |
|-------------|----------------|---|-----------------|--|-----------------------------|--|--------------------------------------|
| NM-H-36-244 | Navajo Nation | Single residence and burials | Navajo | Eligible | Eligible | Testing | Eligible |
| NM-H-36-247 | Navajo Nation | Single residence/ recent trash dump | Navajo | Residence eligible/ trash dump not eligible | Eligible | Testing | Eligible |
| NM-H-36-248 | Navajo Nation | Rock art panels | Navajo | Eligible | Eligible | Avoidance | Eligible |
| NM-H-36-254 | Navajo Nation | Artifact scatter/ artifact scatter and features | Unknown/ Navajo | Eligible | Eligible | Testing | Eligible |
| NM-H-36-260 | Navajo Nation | Artifact scatter and features | Anasazi | Eligible | Eligible | Testing | Eligible |
| NM-H-37-57 | Navajo Nation | Previously recorded artifact scatter and features | Archaic | Eligible | Eligible | Testing | Eligible |
| NM-H-37-91 | Navajo Nation | Previously recorded artifact scatter and rock artifact/ artifact scatter with features and rock art | Unknown/ Navajo | Eligible | Eligible | Avoidance | Eligible |
| NM-H-37-92 | Navajo Nation | Previously recorded artifact scatter and features | Archaic | Eligible | Eligible | Testing | Eligible |

Attachment C. Archaeological Sites within the Mine Lease Area APE – Status Table.

| Site # | Land Ownership | Description | Affiliation | NRHP Eligibility Recommendation from Applicant | NRHP Determination by OSMRE | Action Recommended by Applicant ¹ | THPO Concurrence with OSMRE Findings |
|-------------|----------------|---|-------------|--|-----------------------------|--|--------------------------------------|
| NM-H-37-93 | Navajo Nation | Previously recorded artifact scatter and features | Navajo | Eligible | Eligible | Testing | Eligible |
| NM-H-37-94 | Navajo Nation | Previously recorded artifact scatter | Archaic | Eligible | Eligible | Testing | Eligible |
| NM-H-37-95 | Navajo Nation | Previously recorded artifact scatter and features | Archaic | Eligible | Eligible | Testing | Eligible |
| NM-H-37-96 | Navajo Nation | Previously recorded artifact scatter and features | Archaic | Eligible | Eligible | Testing | Eligible |
| NM-H-37-100 | Navajo Nation | Previously recorded artifact scatter and features | Navajo | Not eligible | Not eligible | No further work | Not eligible |

1. Testing recommended based on Navajo Nation Historic Preservation Department Cultural Resource Compliance Forms HPD-04-1252 and HPD-09-611.

Table D-1. TCPs Identified Within and Adjacent to APE at Navajo Mine..¹

| TCP Number | Internal Ref/ TCP Name | Affiliation | NRHP Eligibility Recommendation from Report/ Applicant | Mine Lease Area | Within APE | NN CRPA | NRHP Determination by OSMRE | Action Recommended | THPO Concurrence with OSMRE Finding |
|--------------|--|-------------|--|-----------------------|------------|---------|-----------------------------|---|-------------------------------------|
| TCP 1 | Offering area | Navajo | Not Eligible (NRHP) | Area IV North | Yes | Yes | Not Eligible (NRHP) | Mitigated | Not Eligible (NRHP) |
| Chavez TCP 2 | Lightning-struck corral/ offering area | Navajo | Not Eligible (NRHP) | Outside of lease area | Yes | Yes | Not Eligible (NRHP) | No further work, outside buffer | Not Eligible (NRHP) |
| Kelley TCP 2 | Onion gathering area | Navajo | Not Eligible (NRHP) | Area III | Yes | Yes | Not Eligible (NRHP) | No further work, replanted | Not Eligible (NRHP) |
| TCP 3 | Mineral-gathering area | Navajo | Not Eligible (NRHP) | Outside of lease area | Yes | Yes | Not Eligible (NRHP) | No further work, not affected by mining | Not Eligible (NRHP) |
| TCP 4 | Mineral-gathering area | Navajo | Not Eligible (NRHP) | Outside of lease area | Yes | Yes | Not Eligible (NRHP) | No further work, not affected by mining | Not Eligible (NRHP) |
| TCP 5 | Eagle-nesting area/offering site | Navajo | Not Eligible (NRHP) | Outside of lease area | Yes | Yes | Not Eligible (NRHP) | Avoidance | Not Eligible (NRHP) |
| TCP 6 | Offering site | Navajo | Not Eligible (NRHP) | Area V | No | Yes | N/A | N/A | Not Eligible (NRHP) |
| TCP 7 | Death Hogan/ house | Navajo | Not Eligible (NRHP) | Area IV South | Yes | Yes | Not Eligible (NRHP) | Avoidance | Pending |
| TCP 8 | Offering place | Navajo | Not Eligible (NRHP) | Outside of lease area | No | Yes | N/A | N/A | Not Eligible (NRHP) |
| TCP 9 | Herb gathering area | Navajo | Not Eligible (NRHP) | Outside of lease area | No | Yes | N/A | N/A | Not Eligible (NRHP) |

Attachment D. Traditional Cultural Properties (TCPs) and Historic Resources/In-Use Areas Within and Adjacent to the Mine Lease Area – Status Table.

| TCP Number | Internal Ref/ TCP Name | Affiliation | NRHP Eligibility Recommendation from Report/ Applicant | Mine Lease Area | Within APE | NN CRPA | NRHP Determination by OSMRE | Action Recommended | THPO Concurrence with OSMRE Finding |
|--|--|-------------|--|-----------------------|------------|---------|-----------------------------|------------------------------------|-------------------------------------|
| TCP 10 | Herb gathering area | Navajo | Not Eligible (NRHP) | Outside of lease area | No | No | N/A | N/A | Not Eligible (NRHP) |
| Deenasts'a a' Bito | Where wild sheep drink | Navajo | Not Eligible (NRHP) | Area IV North | Yes | Yes | Not Eligible (NRHP) | No further work | Not Eligible (NRHP) |
| Deenasts'a a' Dah Njah | Where wild sheep bed | Navajo | Not Eligible (NRHP) | Area IV North | Yes | Yes | Not Eligible (NRHP) | No further work | Not Eligible (NRHP) |
| Teel (Chaco River) | Gathering area | Navajo | NRHP Criteria B | Outside of lease area | Yes | Yes | Eligible | Avoidance, ceremony with community | Eligible |
| Bij' Ditch' ii Dahazkani (Tangy Spring Mesa Breeze Mountain) | Eagle taking area (possibly same as TCP 5) | Navajo | NRHP Criteria A | Area IV North | Yes | Yes | Eligible | Avoidance, No further work | Eligible |
| Halli | Spring and nlt'iz (offering place) | Navajo | Not Eligible (NRHP) | Un-known | Un-known | Yes | Pending | Pending THPO determination | Pending |
| Lok'aa' Deeshjin (Cottonwood Spring) | Sacred place | Navajo | Not Eligible (NRHP) | Outside of lease area | No | Yes | N/A | N/A | N/A |
| To Ba Jisdahni (Water that you wait for) | Well and possible nlt'iz (offering place) | Navajo | Not Eligible (NRHP) | Un-known | Un-known | Yes | Pending | Pending THPO determination | Pending |

Attachment D. Traditional Cultural Properties (TCPs) and Historic Resources/In-Use Areas Within and Adjacent to the Mine Lease Area – Status Table.

| TCP Number | Internal Ref/ TCP Name | Affiliation | NRHP Eligibility Recommendation from Report/ Applicant | Mine Lease Area | Within APE | NN CRPA | NRHP Determination by OSMRE | Action Recommended | THPO Concurrence with OSMRE Finding |
|---|---------------------------|-------------|---|-----------------------|------------|---------|-----------------------------|----------------------------|-------------------------------------|
| Tse Achiih (Nose Rock) | Sacred place | Navajo | Not Eligible (NRHP) | Un-known | Un-known | Yes | Pending | Pending THPO Determination | Pending |
| Tse Bijaati'ool (Rock Earrings) | Sacred place | Navajo | NRHP Criteria A | Outside of lease area | No | Yes | N/A | N/A | Eligible |
| Lid Dlyeeehi (Dach'Inyo od) (Collecting Smoke Drove them out) | Sacred place | Navajo | NRHP Criteria A | Outside of lease area | No | Yes | N/A | N/A | Eligible |

¹ This table includes TCPs located outside the APE. Only those sites within the APE are managed by the Programmatic Agreement for the Navajo Mine.

Attachment D. Traditional Cultural Properties (TCPs) and Historic Resources/In-Use Areas Within and Adjacent to the Mine Lease Area – Status Table.

Table D-2. Historic Resources/In-Use Areas Identified Within and Adjacent to APE at Navajo Mine.¹

| Site # | Description | Affiliation | NRHP Eligibility Recommendation from Applicant | Mine Lease Area | Within APE | NRHP Determination by OSMRE | Action Recommended | THPO Concurrence with OSMRE Findings |
|-------------------|---|-------------|--|-----------------|------------|-----------------------------|--|--------------------------------------|
| IUA1 | Post A.D. 1945/ Habitation Complex | Navajo | NRHP Criterion D | IV N | Yes | Not Eligible | Relocation completed | Not Eligible |
| IUA2 | Circa A.D. 1920- Present/Habitation- Pastoral | Navajo | NRHP Criterion D | IV N | Yes | Not Eligible | Relocation completed | Not Eligible |
| IUA1/LA 19685 | A.D. 1945 -Present. Habitation Complex | Navajo | NRHP Criterion D | IV S | Yes | Not Eligible | Relocation/ compensation prior to disturbance | Not Eligible |
| IUA2/LA 19951 | A.D. 1945 -Present. Habitation Complex | Navajo | NRHP Criterion D | IV S | No | N/A | N/A | Not Eligible |
| IUA3/ LA 19921 | A.D. 1945 -Present. Habitation Complex | Navajo | NRHP Criterion D | IV S | No | N/A | N/A | Not Eligible |
| IUA4/ LA 19831 | A.D. 1945 -Present. Habitation Complex | Navajo | NRHP Criterion D | V | No | N/A | N/A | Not Eligible |

¹ This table includes historic resources/in-use areas located outside the APE. Only those sites within the APE are managed by the Programmatic Agreement for the Navajo Mine.

Attachment E

Plan for Treatment of Unanticipated Discoveries of Potential Historic Properties

In the event that unanticipated potential historic properties are discovered during implementation of mining activities within the APE, or should known historic properties be inadvertently affected in a manner that was not anticipated, the following procedures shall be implemented:

1. The project proponent(s) and contractor(s) shall immediately halt all activities in the vicinity of the discovery and take steps to stabilize and protect the discovered resource until it can be evaluated.
2. The project proponents shall immediately notify NNTHPO and OSMRE, and arrange for an archaeologist with appropriate expertise to document and preliminarily assess the find and formulate a recommendation regarding whether the discovery is NRHP-eligible and merits further consideration. The archaeologist shall prepare the documentation and conduct the assessment in accordance with any permits that may be required pursuant to the Archaeological Resources Protection Act and the Navajo Nation Cultural Resources Protection Act. The assessment shall address the following factors:
 - A. The nature of the resource, such as the number and kinds of artifacts, and presence or absence of archaeological features. This may require screening of already disturbed deposits, photographs of the discovery, and collection of other information.
 - B. The spatial extent of the resource. This may require additional testing, mapping, or inspection.
 - C. The nature of the deposits in which the discovery was made. This may require additional testing, inspection, or interviews with persons involved in the discovery.
 - D. The contextual integrity of the resource, damage related to the initial discovery, and potential impacts of the continued activity that resulted in the discovery.
3. If the preliminary evaluation concludes that the find is not a type of resource protected by Federal laws or Navajo Nation laws and policies, the evaluating archaeologist shall document that conclusion and provide documentation to NNTHPO and OSMRE. If OSMRE concurs, they may authorize resumption of the activity that resulted in the discovery, with the provision that NNTHPO approval also must be obtained pursuant to the Navajo Nation Cultural Resources Protection Act.
4. If the preliminary evaluation concludes that a discovery is a type of resource that may be eligible for the NRHP or protected by the Navajo Nation Cultural Resources Protection Act or other Navajo Nation policies, the evaluating archaeologist shall provide that documentation and recommendations to the NNTHPO and OSMRE.

- A. OSMRE shall evaluate the discovery in consultation with the NNTHPO, and if they concur that the find is not eligible for the NRHP, no further action shall be required, and OSMRE may authorize resumption of the activity that resulted in the discovery, with the provision that NNTHPO approval also must be obtained pursuant to the Navajo Nation Cultural Resources Protection Act.
 - B. If OSMRE and NNTHPO concur that the find is eligible for the NRHP or is protected by the Navajo Nation Cultural Resources Protection Act or other Navajo Nation policies, they shall review the applicability of any relevant Treatment Plan. If they determine that a plan is appropriate, OSMRE shall ensure that the project proponents implement the plan to treat the discovery. If OSMRE and NNTHPO conclude that the plan is not applicable, OSMRE shall ensure that the project proponents prepare and implement a supplemental plan to resolve the adverse effects. The supplemental plan shall be reviewed and revised pursuant to Stipulation 8 except that the period of review by the participating parties shall be limited to 5 days. The project proponents shall not resume the activity that resulted in the discovery in the vicinity of the discovery until NNTHPO and OSMRE has determined that the adverse effect has been resolved and has authorized resumption of the activity.
5. Any discoveries of human remains, funerary objects, sacred objects and objects of cultural patrimony shall be treated pursuant to Stipulation 8.

Attachment F

Definitions

Concurring Parties: An invited Consulting Party to this PA that agrees with the content of the PA. The refusal of a concurring party to sign the PA does not invalidate this PA as noted in 36 CFR Part 800.6(c) (3). Concurring parties may not terminate the PA.

Consulting Parties: Parties that have consultative roles in the Section 106 process, as defined in 36 CFR Part 800.2(c).

Data Recovery: The recovery of archaeological information from a historic property subject to an adverse effect.

Determination of Effect: A determination made by OSMRE in regards to a Project's effect upon a historic property as defined in 36 CFR Part 800.

Determination of Eligibility: A determination made by OSMRE in regards to a cultural resource's eligibility for inclusion in the NRHP and more fully described in 36 CFR Part 60 and 36 CFR Part 800.16(1)(2).

Effect: An alteration to the characteristics of a historic property qualifying it for inclusion in or eligibility for the NRHP (see 36 CFR Part 800.16(g)).

Environmental Impact Statement: An analysis of a major federal action's environmental impacts conducted consistent with the National Environmental Policy Act (NEPA).

Historic Property: Any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in, the NRHP maintained by the Secretary of the Interior. This term includes artifacts, records, and remains that are related to and located within such properties. The term includes properties of traditional religious and cultural significance to an Indian tribe or Native Hawaiian organization and that meet the NRHP criteria (see 36 CFR Part 800.16(1) (1)).

Invited Signatory: OSMRE has invited PNM and APS to be signatories to this PA pursuant to 36 CFR Part 800.6(c) (2). The refusal of any invited signatory to sign the PA does not invalidate the PA.

Signatory Parties: All signatories to this PA, other than Concurring Parties, which includes OSMRE, BLM, BIA, USEPA, USACE, NNTHPO, NTEC, and MMCo.

Treatment Plan: A plan developed in consultation with the parties to this Agreement that identifies the minimization and mitigation measure for historic properties located within the APE that will be adversely affected by the Project.

Attachment G

List of Documents Reflecting Prior Compliance Efforts

1. Fetterman, Jerry. 2011. Cultural Resource Investigations within Area IV North, BHP Navajo Coal Company's Navajo Mine, Navajo Reservation, Nenahnezad Chapter, Shiprock Agency, San Juan County, New Mexico. Volume I: Introduction and Preceramic Occupations; Volume 2: Anasazi Occupations; Volume 3: Navajo Occupations;
2. November 9, 2009 Letter from Brenda A. Steele, OSMRE, to Ron Maldonado, NNTHPO, regarding compliance with 2007 Programmatic Agreement, including signed acknowledgment by NNTHPO and OSMRE concerning fulfillment of 2007 Programmatic Agreement Stipulations;
3. Honeycutt, L. 2008. Preliminary Report on Excavation of 19 Sites, Lease Area IVN, BHP Billiton Navajo Coal Company's Navajo Mine, Navajo Reservation, Nenahnezad Chapter, Shiprock Agency, San Juan County, New Mexico;
4. Johnson, J. Harris, N., Yost, S.W., Messerli, T.F. & Shine, T. 2007. NRHP Eligibility Testing at 33 Sites Located within Lease Area IV North, BHP Billiton Navajo Coal Company's Navajo Mine, Navajo Reservation, Nenahnezad Chapter, Shiprock Agency, San Juan County, New Mexico, (EMI Report Number 745), Ecosystem Management Inc.;
5. Kelly, K., Francis, H., Martin, R., Torrez-Nez, J. and Bernard M. 2007. Each Place Brings Stories. Navajo Mine, Area IV North Cultural Resources Intensive Data Recovery Project, Navajo Ethnography Sub-Project. Dine'tahdoo CRM, Farmington, New Mexico;
6. Fetterman, J. 2007. Cultural Resource Summary and Site Specific Recommendations for Phase II Investigations within Lease Area IV North, BHP-Billiton Navajo Coal Company's Navajo Mine, Navajo Reservation, Nenahnezad Chapter, Shiprock Agency, San Juan County, New Mexico. Woods Canyon Archaeological Consultants, Inc. Prepared for BHP Navajo Mine;
7. March 07, 2008 Cultural Resources Compliance Form, NNPHD No. HPD-06-843-Revised, Project Title: Cultural Resource Survey of 188 Acres (76 hectares) for Proposed Realignment of Burnham Road, within and outside the Navajo Mine Lease Area, Located in the Nenahnezad Chapter, Navajo Nation, San Juan County New Mexico;
8. Programmatic Agreement for Area IV North, executed in June and August, 2007, and attachments;
9. Burleson, R. 2006. Cultural Resources Survey of 188 Acres (76 hectares) for a Proposed Realignment of Burnham Road, Within the Navajo Mine Lease Area, Located in the Nenahnezad Chapter, Navajo Nation, San Juan County, New Mexico, (EMI Report Number 685a), Ecosystem Management, Inc;

10. Burleson, R., Phippen, R. and Yost, S.W. 2006. Data Recovery and Treatment Plan For 47 Sites Located on Lease Area IV North, BHP Billiton Navajo Coal Company's Navajo Mine, Navajo Reservation, Nenahnezad Chapter, Shiprock Agency, San Juan County, New Mexico, (EMI Report Number 685), Ecosystem Management, Inc.;
11. Chavez, L. 2006. An Ethnographic Assessment of Navajo Traditional Cultural Properties and Burials within the BHP-Navajo Mine Coal Company Lease Areas IV-North, IV-South, and V, San Juan County, New Mexico for URS Corporation in Conjunction with BHP, Navajo Nation Archaeology Department, Window Rock;
12. June 08, 2005, Cultural Resources Compliance Form, NNHPD No. HPD-04-1252, Project Title: The Eligibility Evaluation of Cultural Resources Located Within Lease Area IV North of BHP Billiton Navajo Coal Company's Navajo Mine, Navajo Indian Reservation, Nenahnezad Chapter, Shiprock Agency, San Juan County, New Mexico;
13. Meininger, J. and L. Wharton. 2004. The Eligibility Evaluation of Cultural Resources Location Within Lease Area IV North of BHP Billiton Navajo Coal Company's Navajo Mine, Navajo Indian Reservation, Nenahnezad Chapter, Shiprock Agency, New Mexico, (DCA Technical Report No. 04-DCA-114) Larry L. Baker, Executive Director, San Juan County Museum Association, Division of Conversation Archaeology;
14. Mietty, T. 1997. The On-Site Inspection and Eligibility Evaluation of Twenty-Three Sites Located in Area IV North of BHP World Mineral's Navajo Mine, Nenahnezad Chapter, Shiprock Agency, San Juan County, New Mexico, Prepared by Division of Conservation Archaeology;
15. July 01, 1986 Letter from Melvin L. Shilling, OSMRE Mining Analysis Division, to John W. Grubb, Utah International, Inc. (predecessor to BNCC), providing approval for continued mining activities at Dixon Pit in the area of a "possible" human burial SJC-1345;
16. December 12, 1984 Letter from Allen D. Klein, Administrator, OSMRE Western Technical Center, to Mr. R.C. Diederich, Utah International, Inc. (predecessor to BNCC) providing archaeological clearance and authorizing mining operations in Area III, subject to limited conditions;
17. Hogan, P. and J. Winter. 1983. Economy and Interaction Along the Lower Chaco River. University of New Mexico, Office of Contract Archaeology;
18. York, F. E. 1980. An Historic Ethnography of Navajo Sites on the UII Lease. In Human Adaptations in a Marginal Environment: The UII Mitigation Project: Archaeological Report of the Mitigation of Eight Archeological Sites in Mining Area III of the Utah International, Inc. on Navajo Reservation Land for the Utah International, Inc., edited by James L. Moore and Joseph C. Winter. Office of Contract Archaeology. University of New Mexico, Albuquerque;
19. Moore, James L. and J. Winter. 1980. Human Adaptations in a Marginal Environment: The UII Mitigation Project. Office of Contract Archaeology. University of New Mexico Albuquerque.

20. Memorandum of Agreement between Advisory Council on Historic Preservation, the United States Geological Survey (predecessor for these purposes to OSMRE), and the New Mexico State Historic Preservation Officer (predecessor to NNTHPO for these purposes), ratified March 1, 1978 by the Advisory Council, as amended; and
21. Reher, Charles A. 1977. Settlement and Subsistence Along the Lower Chaco River: The Coal Gasification (CGP) Survey. Charles Reher, editor. University of New Mexico Press.

PROPOSED RESOLUTION OF
THE RESOURCES and DEVELOPMENT COMMITTEE OF THE
NAVAJO NATION COUNCIL

Approving an existing Right-of-Way to Navajo Transitional Energy Company, LLC to operate and maintain an access road from the El Paso Bridge to the common facilities leading into the mine plant lease.

WHEREAS:

1. Pursuant to 2 N.N.C. § 500, the Resources and Development Committee of the Navajo Nation Council is hereby established as a standing committee of the Navajo Nation; and
2. Pursuant to 2 N.N.C. § 500 B 2(a), the Resources and Development Committee of the Nation Council shall "oversee regulation of activities on Navajo Nation lands for disposition or acquisition of resources, surface disturbance, or alteration of the natural state of the resources, including the enforcement and administration of applicable Navajo Nation and federal laws, regulations, guidelines, and administrative procedures in the development and use of resources as a good steward"; and
3. The Navajo Transitional Energy Company, LLC ^(NTEC) has submitted a right-of-way (ROW) application to operate and maintain one Access Roads on Navajo Nation Trust Lands, San Juan County, New Mexico attached hereto and incorporated herein as Exhibit "A"; and
4. The existing right-of-way consists of approximately 42.39 acres, more or less, of Navajo Nation Trust Lands described in three portions: Portion A, which is 100 feet wide, 1.09 miles in length covering 13.24 acres located within Section 31, T29N, R15W and Section 36, T29N, R16W; and Portion B, which is 100 feet wide, 0.26 miles in length covering 3.14 acres in Section 36, T29N, R16W; and Portion C, which is a 40 feet wide right-of-way, 26.01 acres located within Sections 9, 10, 16, 17, 20, 29, 30, and 31, T29N, R15W, NMPM, San Juan County, New Mexico and the location is more particularly described on the survey map attached hereto and incorporated herein as Exhibits "B"; and
5. The Project Review Section with the Navajo Land Department has acknowledged the buy-outs of the affected land users based on the inclusion of the land release agreements that reflect these areas as consent to this Right of Way, originally signed on June 4, 1963 attached hereto and made a part hereof as Exhibit "C"; and
6. NTEC has obtained the consent of Arizona Public Service Company to use the land leased to APS

6. The environmental and archaeological studies have been completed and are attached hereto and made a part hereof by this reference.

NOW, THEREFORE, BE IT RESOLVED THAT:

1. The Resources and Development Committee of the Navajo Nation Council hereby approves a Right-of-Way to Navajo Transitional Energy Company, LLC to operate and maintain an access road from the El Paso Bridge to the common facilities leading into the mine plant lease. Within the Navajo Mine Lease, located in San Juan County, New Mexico. The location is more particularly described on the map attached hereto as Exhibit "B."

2. The Resources and Development Committee of the Navajo Nation Council hereby approves the renewal of a grant the right-of-way subject to, but not limited to, the following terms and conditions attached hereto and incorporated herein as Exhibit "D."

3. Resources 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 Committee of the Navajo Nation Council at a duly called meeting at Window Rock, Navajo Nation (Arizona), at which a quorum was present and that the same was passed by a vote of__ in favor, __ opposed, and __ abstained, this__ day of __, 2015.

Presiding Chairperson
Resources and Development Committee

MOTION BY: SECONDED BY:

**RUSH****EXECUTIVE OFFICIAL REVIEW**Title of Document: NTEC/ El Paso Bridge2Comm.Facilities ROW Contact Name: DRAPER, HOWARDProgram/Division: DIVISION OF NATURAL RESOURCESEmail: 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: _____ ☐ ☐

☐ **Rights of Way**

1. NLD _____ Date: _____ ☐ ☐
2. F&W _____ Date: _____ ☐ ☐
3. HPD _____ Date: _____ ☐ ☐
4. Minerals _____ Date: _____ ☐ ☐
5. NNEPA _____ Date: _____ ☐ ☐
6. Office of the Attorney General: _____ Date: _____ ☐ ☐
7. OPVP _____ Date: _____ ☐ ☐

☐ **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: *5-5-15* ☒ ☐
2. F&W _____ Date: *5/6/15* ☒ ☐
3. HPD _____ Date: *5/8/15* ☒ ☐
4. Minerals (*subject to changes*) _____ Date: *5-5-15* ☒ ☐
5. NNEPA _____ Date: *5-11-2015* ☒ ☐
6. DNR _____ Date: *5/8/15* ☒ ☐
7. DOJ *(ie)* _____ Date: *5/14/15* ☒ ☐
8. OPVP _____ Date: *5/18/15* ☒ ☐

☐ **OTHER:**

1. _____ Date: _____ ☐ ☐
2. _____ Date: _____ ☐ ☐
3. _____ Date: _____ ☐ ☐
4. _____ Date: _____ ☐ ☐
5. _____ Date: _____ ☐ ☐



NAVAJO NATION DEPARTMENT OF JUSTICE

DOCUMENT REVIEW REQUEST FORM

☐ RESUBMITTAL



| | |
|---|--------|
| DOJ | |
| 05-11-15 @ 2:34pm | |
| DATE / TIME | |
| <input type="checkbox"/> 7 Day Deadline | |
| DOC #: | 203895 |
| SAS #: | |
| UNIT: | NRU |

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

CLIENT TO COMPLETE

| | | | |
|---|--------------------|-------------|---|
| DATE OF REQUEST: | 5/4/2015 | DIVISION: | Natural Resources (DNR) |
| CONTACT NAME: | Howard P. Draper | DEPARTMENT: | Navajo Land Dept (NLD) |
| PHONE NUMBER: | X-6447, 6401, 6490 | E-MAIL: | Howarddraper@frontiernet.net or verashurley@frontiernet.net |
| TITLE OF DOCUMENT: Approving existing ROW to Navajo Transitional Energy Co., LLC to operate and maintain existing access road from the El Paso Bridge to the common facilities leading into the mine plant lease | | | |

DOJ SECRETARY TO COMPLETE

| | | | |
|-----------|----------------|------------------------------|------------|
| DATE/TIME | 5-11-15 3:45pm | REVIEWING ATTORNEY/ADVOCATE: | Irvin Chee |
| DATE TIME | | | 5/20/15 |

DOJ ATTORNEY / ADVOCATE COMMENTS

Document is legally sufficient.

| | | | |
|----------------------|-------------|----------------------|-------------|
| REVIEWED BY: (Print) | Date / Time | SURNAMED BY: (Print) | Date / Time |
| JAMIE HEE | 5-13-15 | TONI LORA | 5/14/15 2pm |

| | | | |
|-----------------------|-------------------------|----|-----|
| DOJ Secretary Called: | for Document Pick Up on | at | By: |
| | Howard P. Draper | | |
| PICKED UP BY: (Print) | DATE / TIME: 5/14/15 | | |



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.navajonationnepa.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: May 11, 2015

SUBJECT: 164 EOR 003895 NTEC El Paso Bridge to Community Facilities ROW

BHP Billiton Mine Management Company, as operator of the Navajo Mine, and on behalf of Navajo Transitional Energy Company LLC (NTEC) submitted a right-of-way (ROW) application to operate and maintain one access road on Navajo Nation Trust Lands, San Juan County, New Mexico. The ROW consists of approximately 42.39 acres, more or less, of Navajo Nation Trust Lands. The length of the existing road is 6.71 miles. No changes are expected in the proposed ROW renewal.

The Navajo Nation Environmental Protection Agency (NNEPA) reviewed and recommends **approval** for the proposed ROW renewal as stated in EOR 003895 pursuant the Title 4, NNC Chapter 9 Navajo Nation Environmental Policy Act, Subchapter 1, §904. *The ROW application reference the EIS for the Four Corners Power Plant-Navajo Mine Energy Project. The EIS covers various ROW's for the mine. The EIS adequately addresses compliance with the Clean Water Act requirements (Section 401 Water Quality Certifications, Section 404 Dredge & Fill permits and Section 401 Storm Water General Construction Permit) [Patrick Antonio, memo May 6, 2015].*

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

Cc: NNEPA Water Quality, Administration chrono file
Contact person: Yolanda Benally 505-215-1466 BHP

LEGISLATIVE SUMMARY SHEET

Tracking No. 0220-15

DATE: June 24, 2015


TITLE OF RESOLUTION: PROPOSED STANDING COMMITTEE RESOLUTION; AN ACTION RELATING TO RESOURCES AND DEVELOPMENT; APPROVING A RIGHT-OF-WAY TO NAVAJO TRANSITIONAL ENERGY COMPANY, LLC TO OPERATE AND MAINTAIN AN ACCESS ROAD FROM THE EL PASO BRIDGE TO THE ARIZONA PUBLIC SERVICE PLANT VICINITY (SAN JUAN COUNTY, NEW MEXICO)

PURPOSE: Approving a right-of-way to Navajo Transitional Energy Company, LLC to operate and maintain an access road from the El Paso Bridge vicinity of the Arizona Public Service Plant.

This written summary does not address recommended amendments as may be provided by the standing committees. The Office of Legislative Counsel requests each Council Delegate to review each proposed resolution in detail.

PROPOSED STANDING COMMITTEE RESOLUTION
23rd NAVAJO NATION COUNCIL -- First Year, 2015

INTRODUCED BY



(Prime Sponsor)

TRACKING NO. 0200-15

AN ACTION

RELATING TO RESOURCES AND DEVELOPMENT; APPROVING A RIGHT-OF-
WAY TO NAVAJO TRANSITIONAL ENERGY COMPANY, LLC TO OPERATE
AND MAINTAIN AN ACCESS ROAD FROM THE EL PASO BRIDGE TO THE
ARIZONA PUBLIC SERVICE PLANT VICINITY (SAN JUAN COUNTY, NEW
MEXICO)

BE IT ENACTED

Section One. Findings

- A. Pursuant to 2 N.N.C. §500, the Resources and Development Committee of the Navajo Nation Council is hereby established as a Standing Committee of the Navajo Nation; and
- B. Pursuant to 2 N.N.C. §501(B) 2(a), the Resources and Development Committee of the Navajo Nation is authorized to grant final approval for right-of-ways; and
- C. The Navajo Transitional Energy Company, LLC (NTEC) has submitted a right-of-way application to operate and maintain one access road on Navajo Nation Trust Lands, San Juan County, New Mexico attached hereto and incorporated herein as Exhibit A and
- D. The proposed right-of-way consists of approximately 42.39 acres, more or less, of Navajo Nation Trust Lands described in three portions: Portion A, which is 100 feet wide, 1.09 miles in length covering 13.24 acres located within Section

31, T29N, R15W and Section 36, T29N, R16W; and Portion B, which is 100 feet wide, 0.26 miles in length covering 3.14 acres in Section 36, T29N, R16W; and Portion C, which is a 40 feet wide right-of-way, 26.01 acres located within Sections 9, 10, 16, 17, 20, 29, 30, and 31, T29N, R15W, NMPM, San Juan County, New Mexico and the location is more particularly described on the survey map attached hereto and incorporated herein as Exhibit B; and

E. The proposed right-of-way is within the right-of-way granted to the Arizona Public Service Company (APS). NTEC has obtained a letter of consent from APS to use the right-of-way; and

F. The Project Review Section with the Navajo Land Department has acknowledged the buy-outs of the affected land users based on the inclusion of the land release agreements that reflect these areas as consent to this right-of-way, originally signed on June 4, 1963 attached hereto and made a part hereof as Exhibit C; and

G. The environmental and archaeological studies have been completed and are attached hereto and made a part hereof by this reference.

Section Two. Approval

A. The Resources and Development Committee of the Navajo Nation Council hereby approves a right-of-way to Navajo Transitional Energy Company, LLC to operate and maintain an access road from the El Paso Bridge to the common facilities leading into the mine plant lease within the Navajo Mine Lease, located in San Juan County, New Mexico. The location is more particularly described on the map attached hereto as Exhibit B.

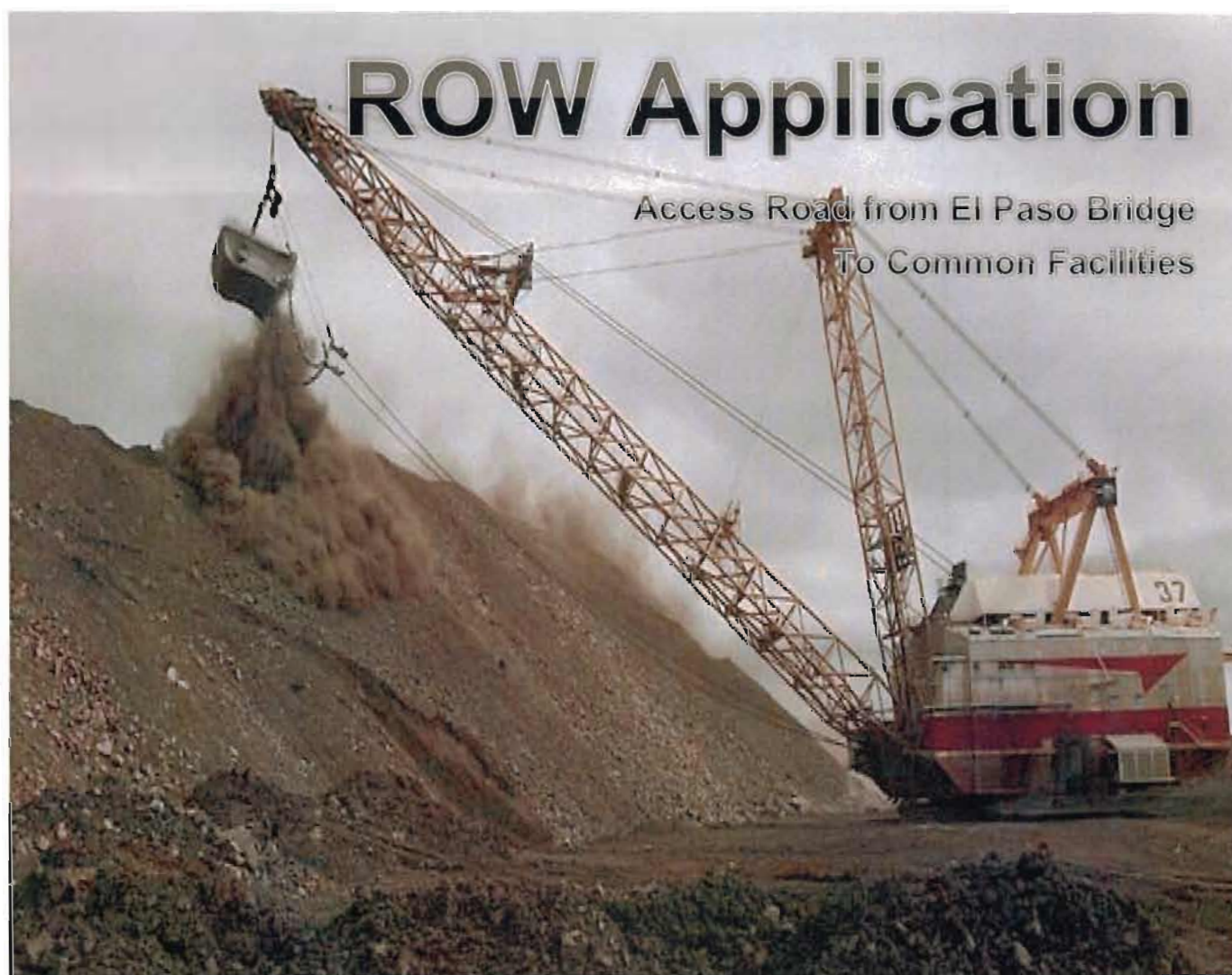
B. The Resources and Development Committee of the Navajo Nation Council hereby approves the grant of the right-of-way subject to, but not limited to, the following terms and conditions attached hereto and incorporated herein as Exhibit D.

C. Resources 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.

BHP Billiton Mine Management Company
As a Disclosed Agent for
Navajo Transitional Energy Company

bhpbilliton
resourcing the future

NTEC Navajo Transitional Energy Company, LLC



BHP Billiton Mine Management Company as
Disclosed Agent for Navajo Transitional Energy Company



28 April 2015

Attn: Akhtar Zaman/Ram Das
Minerals Department
Navajo Nation
Post Office Box 2249
Window Rock, AZ 86515
Hand-delivered

BHP Billiton Limited

300 West Arrington Street
Farmington, New Mexico 87401 USA
Tel +1 505 598 4200 Fax +1 505 598 4300
bhpbilliton.com

**Re: Renewal Right-of-way Application
Access Road from El Paso Bridge to Common Facilities
Located within San Juan County, New Mexico**

Dear Gentlemen:

BHP Billiton Mine Management Company (MMCo), as operator of the mine, and on behalf of Navajo Transitional Energy Company (NTEC), have two pending Right-of-Ways that are both part of the NEPA EIS process as included from the beginning. We would like to meet with you to finalize the ROW's and obtain the Terms and Conditions for each within the next couple of weeks in time to schedule them on the Resources Committee review with a sponsor. The expeditious manner of these ROW's has become an important part to complete the BIA leasing action for the NEPA EIS Record of Decision approval process.

Since the original applications were submitted by BHP Navajo Coal Company, the application has been revised to reflect the current owner as NTEC.

Should you need any additional information, please contact either Yolanda Benally @ (505)598-3375 or Marian Wimsatt @ (505)598-4356. Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read 'Marian L. Wimsatt', with a stylized flourish at the end.

Marian L. Wimsatt, CPLTA, CPL
Land and Water

cc: Navajo Transitional Energy Company, LLC, Sam Woods, PO Box 1749, Window Rock, AZ 86515

Summary Details for ROW Application

Access Road from El Paso Bridge to Common Facilities

BHP Billiton Mine Management Company (MMCO), as Operator of the Navajo Mine, and on behalf of Navajo Transitional Energy Company, LLC (NTEC) is applying for the above existing Right-of-Way with no plans the change or alter the road or access to this road in any manner. This original ROW was applied for jointly with Arizona Public Service Company (APS) and granted on July 3, 1963 for a 50 year term, expiring on July 2, 2013. Prior to the expiration of this ROW, BHP Navajo Coal Company sent in an application and letter of intent to renew this ROW on May 10, 2013 along with an application fee for \$500.00.

There will not be any change in the size, type, purpose it is used for, or location of this existing ROW. This ROW has been in use for over 50 fifty years for the exact same purpose as the original intent and use. This ROW has been used by the public and employees of both BHP MMCO (NTEC) and APS to access both the Power Plant and the Mine Plant Lease areas also known as the Common Facilities.

This ROW is part of the application for the NEPA EIS studies. There are no changes in use or purpose for this existing access road and it is located in the following Sections, Township and Ranges.

This ROW access road begins at the southern exit of the El Paso Bridge which crosses the San Juan River leading to access the common facilities for both the Navajo Mine Plant Lease and the APS Plant lease. It is an access road, that is 100 feet wide right-of-way, 5765.4 feet or 1.09 miles in length covering 13.24 acres in Navajo Tribal Trust lands, located within Section 31, Township 29 North, Range 15 West, and within the Section 36, Township 29 North, Range 16 West, N.M.P.M., San Juan County, New Mexico as to Portion A. Then Portion B, which is 100 feet wide right-of-way, 1355.7 feet or 0.26 miles in length covering 3.14 acres in Navajo Trust lands, located within Section 36, Township 29 North, Range 16 West., N.M.P.M., San Juan County, New Mexico, and Portion C, which is a 40 feet wide right-of-way, 28325.5 feet or 5.36 miles in length, covering 26.01 acres in Navajo Tribal Trust lands, in Section 9,10,16,17,20,29,30, and 31, Township 29 North, Range 15 West, N.M.P.M., San Juan County, New Mexico. Approximately a total of 42.39 acres more or less that is approximately 6.71 miles in total length for this 100 to 150 foot wide access road.

May 10, 2013



Bureau of Indian Affairs
Shiprock Office
BIA Nataani Nez Complex, 2nd floor
Highway 491 South
Attn: Mary Lujan
Shiprock, NM 87420

BHP Billiton Limited
New Mexico Coal
300 West Arrington Street
Farmington, New Mexico 87401 USA
Tel +1 505 598 4200 Fax +1 505 598 XXXX
bhpbilliton.com

Re: Letter of Intent to Renew Grant of Easement for Right of Way
Original Navajo Mine – El Paso Bridge Access Road Right of Way

Ms. Mary Lujan:

Enclosed for your review and records is a copy of BHP Billiton, Navajo Coal Company's renewal of grant of easement for right of way by letter request to Akhtar Zaman, Navajo Nation, Minerals Department in Window Rock, New Mexico.

If you have any questions or need further information, please feel free to contact me.

Respectfully yours,

A handwritten signature in blue ink, appearing to read 'Skip Fraker', written over the closing 'yours,'.

Skip Fraker
Landman – Land and Water
505-598-2848
300 W. Arrington St, Suite 201
Farmington, NM 87401

BHP Navajo Coal Company



BHP Billiton Limited
New Mexico Coal
300 West Arrington Street
Farmington, New Mexico 87401 USA
Tel +1 505 598 4200 Fax +1 505 598 XXXX
bhpbilliton.com

May 10, 2013

Mr. Akhtar Zaman
Navajo Nation
Minerals Department
Route 64, Window Rock Blvd
Window Rock, Arizona 86515
Hand Delivered

Re: Letter of Intent to Renew Grant of Easement for Right-of-Way
Original Navajo Mine – El Paso Bridge Access Road Right of Way

Dear Mr. Zaman:

BHP Navajo Coal Company (BNCC), owner and operator of the Navajo Mine, situated on Navajo Trust Lands on the Navajo Reservation in San Juan County, New Mexico, submits this letter of intent for the renewal of the subject Right of Way for the above captioned location. I am unable to locate a copy of the Grant of Right of Way in our file at this time. I have information in our files where the right of way was set up in our files with an effect date of July 3, 1963 and expiration date of July 3, 2013. I am inclosing a copy of the original Right of Way Application letter that was dated April 4, 1963 and a letter from acting area BIA director Otto K. Weaver to Senator Pete Dominici, referencing and describing the Arizona Public Service and Utah Construction and Mining Company having 'private ownership (i.e. easement, as it is not possible for non tribal entities to have ownership on tribal lands) to the El Paso Bridge access road that would lead to confirm that the Bureau of Indian Affairs believed there was an active grant of easement for right of way.

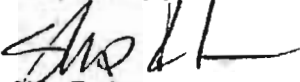
Under 25 C.F.R., Section 169.19, please consider this letter of intent as part of the renewal for this Rights of Way. The proposed renewal involves no change in the location or status of the original right of way grant. There will be no change in the size, type, or location of the right of ways. BNCC has no intention of moving the road or pursuing any new road construction on the right of way. Also enclosed, are originally executed and acknowledged Affidavit of Non-Deviations, reflecting three separately described portions of the right of way.

BNCC recognizes that this application requires consent from the Navajo Nation. BNCC anticipates that Navajo Nation consent will be conditioned on the payment of appropriate compensation for the renewal and BNCC acknowledges the requirements of 25 C.F. R., Section 169.12 concerning consideration of not less than fair market value, plus severance damages and the BIA's provision of the appraisal

to the Navajo Nation. Upon completion of the Navajo Nations S.A.S. process a complete application will be provided to the BIA for renewal. BNCC has had a meeting with the BIA to discuss this matter and would like to arrange a meeting with the Navajo Nation to begin the process, and confirm we are pursuing this renewal in the appropriate fashion.

Should you have any questions, comments or guidance, please feel free to contact me at your convenience. Thank you in advance for your cooperation in this matter.

Respectfully yours,



Skip Fraker

Landman – Land and Water
505-598-2848
300 W. Arrington St, Suite 101
Farmington, NM 87401

Cc; Howard Draper, Navajo Nation, Land Department
Ryan Hunter, Bureau of Indian Affairs, Real Estate, Gallup
Mary Lujan, Bureau of Indian Affairs, Shiprock
Sharon Pinto, Bureau of Indian Affairs, Gallup



DAVID A. HANSEN
Vice President
Fossil Operations

P.O. Box 53999
Phoenix, AZ 85072
Mail Station 9085
Tel 602 250 4402

May 1, 2015

Ryan Hunter
Navajo Region Realty Officer
Bureau of Indian Affairs–Navajo Regional Office
P.O. Box 1060, M/C N420
301 West Hill Avenue, Suite 301
Gallup, NM 87301

VIA E-MAIL

Dear Mr. Hunter:

It is Arizona Public Service Company's ("APS") understanding that Navajo Transitional Energy Company, LLC ("NTEC") is seeking two separate right-of-way ("ROW") grants from the Bureau of Indian Affairs ("BIA"). Specifically, we understand that NTEC has filed a ROW application for water, power, and communications lines running between the APS Four Corners Power Plant ("Plant") site and Navajo Mine ("Infrastructure ROW"), and that NTEC intends to submit to BIA a right of-way-application for the El Paso Bridge Access Road ("Road ROW"). (The Infrastructure ROW and Road ROW are hereinafter collectively referred to as the "NTEC ROW.") Graphical depictions of the NTEC ROW are attached to this letter.

As you are aware, on February 27, 2015, APS filed an application for a right-of-way for the Plant site for the continued ownership, operation, maintenance, relocation, and removal of the Plant ("Plant ROW"). APS acknowledges and understands that the NTEC ROW are within the Plant lease and Plant ROW area and consents to NTEC's applications for same.

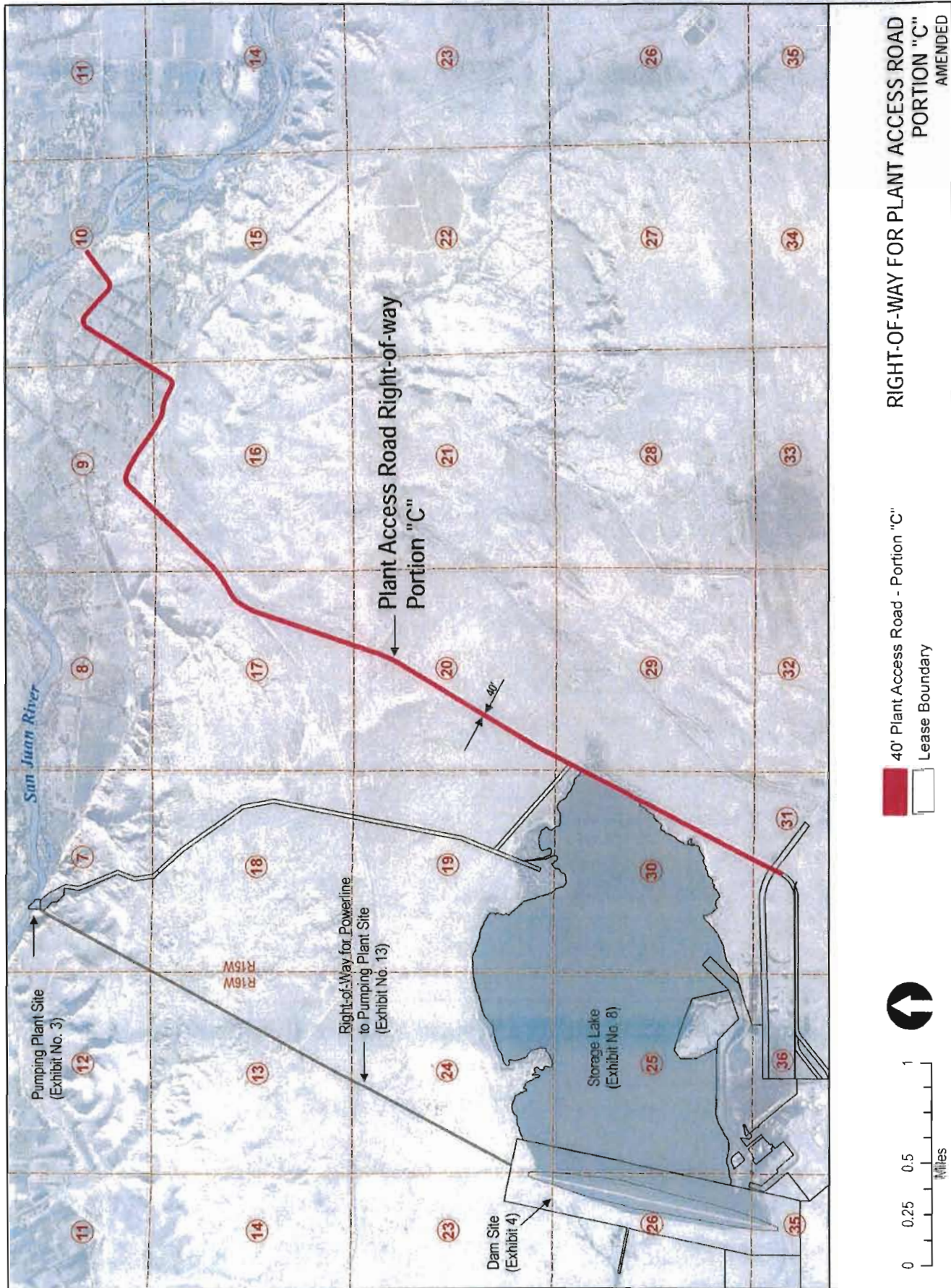
Please feel free to contact Michael Kafka at (602) 250-2404 if you have any questions.

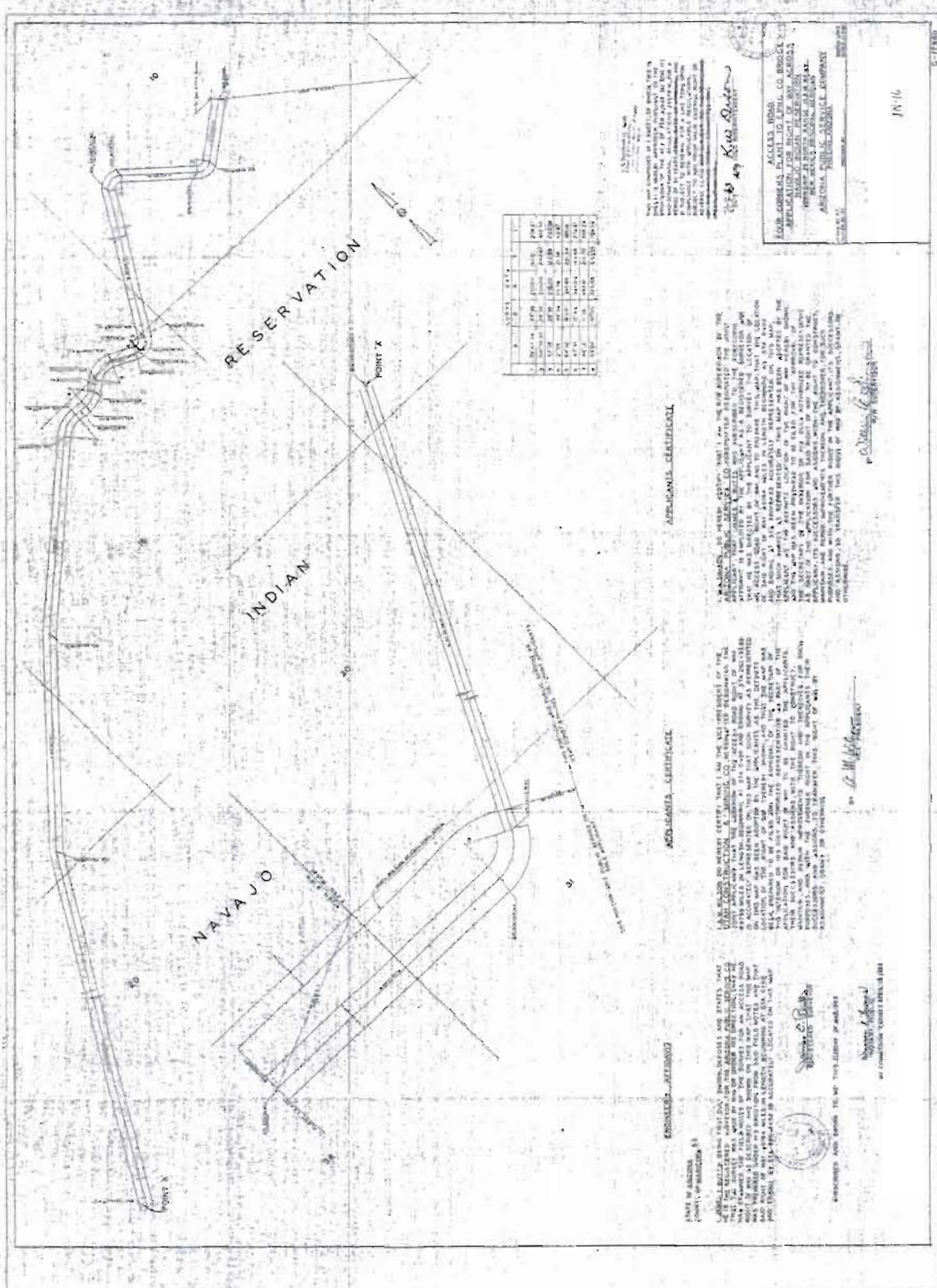
Sincerely,

A handwritten signature in black ink, appearing to read 'David A. Hansen', written over a horizontal line.

David A. Hansen
Vice President, Fossil Generation

cc: The Honorable Alton Joe Shepherd, Chairman
Resources and Development Committee, 23rd Navajo Nation Council
Clark Moseley, Chief Executive Officer, NTEC





of the 1990s. The 1990s saw a significant increase in the number of people who were employed in the service sector, which was a result of the fact that the service sector was the only sector that was growing at a rapid rate. This was due to the fact that the service sector was the only sector that was not affected by the recession of the 1980s. The service sector was the only sector that was able to maintain its growth rate, and this was due to the fact that the service sector was the only sector that was able to maintain its growth rate.

7-1-63 Kuo Bui

ACCESS ROAD
FOUR CORNERS PLANT TO LPHL CO. BRIDGE
APPLICATION FOR RIGHT OF WAY ACROSS
NAVALO EGGSAN RESERVATION
SPRING IN NORTH BRANCH JUAN DE LA
NEW MEXICO PUBLIC SERVICE COMPANY
ARIZONA PUBLIC SERVICE COMPANY
THE ARIZONA POWER

97-NI

C-17960

APPLICANT'S CERTIFICATE

[illegible]

William C. Sullivan
27 W. Superior Ave.

ACQUAINTANCE CATHYCAIL

[illegible]

2000 11 17

ENDNUCLEO AFFIDAVIT

[illegible]

James C. Bell

• Exchange App. Beta 1.0: Tech. Issues for analysis

Wm. L. Howard
1875

per il controllo della qualità e della sicurezza, in linea

APPLICATION FOR RIGHT OF WAY

The ARIZONA PUBLIC SERVICE COMPANY, a corporation organized and existing under and by virtue of the laws of the State of Arizona, with office and principal place of business at Phoenix, in the State of Arizona, and UTAH CONSTRUCTION & MINING CO., a corporation organized and existing under and by virtue of the laws of the State of Delaware, with office and principal place of business at San Francisco, in the State of California, hereby make application pursuant to the Act of February 5, 1948 (62 Stat. 17; 25 U. S. C. 323) and in accordance with Departmental Regulations 25 C. F. R. 161, for a right of way for an access road, beginning at the Arizona Public Service Company power plant property line and ending at the El Paso Natural Gas Company's bridge across the San Juan River, upon and across Tribal Indian Lands of the Navajo Indian Reservation, San Juan County, State of New Mexico.

The location of said access road is more particularly shown and delineated on the accompanying map which has been prepared in compliance with 25 C. F. R. 161.8 and which by this reference is made a part hereof. Reference is made to Section 2, paragraph (e), Exhibit "T", of the Indenture of Lease between the Navajo Tribe and Arizona Public Service Company dated December 1, 1960, and approved by the Secretary of the Interior on December 14, 1960. Further reference is made to paragraph 1 of the Indenture of Lease between the Navajo Tribe and Utah Construction Company, also known as Utah Construction & Mining Co. dated July 26, 1957, as amended by amendment dated July 26, 1957.

For the list of principal officers and directors, and a certified copy of the Articles of Incorporation of the Arizona Public Service Company, see its application for the Cholla-Leupp 230 KV transmission line.

For the list of principal officers and directors, and a certified copy of the Articles of Incorporation of the Utah Construction & Mining Co., see Indenture of Lease between the Navajo Tribe and Utah Construction Company, also known as Utah Construction & Mining Co.

The Arizona Public Service Company and the Utah Construction & Mining Co. hereby agree to comply to/with the following stipulations in the event the Right of Way herein applied for is granted.

- (a) To construct and maintain the right of way in a workmanlike manner.
- (b) To pay promptly all damages, in addition to the deposit made pursuant to 161.5 determined by the Superintendent to be due the land-owners on account of the construction and maintenance of the right of way.
- (c) To indemnify the land-owners against any liability for damages to life or property arising from the occupancy or use of the lands by the applicant.
- (d) To restore the lands as nearly as may be possible to their original condition upon the completion of construction.

- (e) That the applicant will not interfere with the use of the lands by or under authority of the land-owners for any purpose inconsistent with the primary purpose for which the right of way was granted.

Arizona Public Service Company and Utah Construction & Mining Co. are joint applicants herein as to that portion of the right of way shown on the accompanying map which lies Northerly of the Northerly right-of-way line of the access road described on the map accompanying the application executed February 15, 1962 by Arizona Public Service Company and February 27, 1962 by Utah Construction & Mining Co. and filed with the Superintendent of the Navajo Indian Agency on March 13, 1962, under Application No. IN-13. Arizona Public Service Company is the sole applicant with regard to so much of the right of way as shown on the map accompanying this application and hereinabove referred to which lies Southerly of the Northerly right-of-way line of the access road as described in the above-mentioned Application No. IN-13, filed March 13, 1962. The undertakings of the applicants as set forth in this application shall be joint as to that portion of the right of way as to which Arizona Public Service Company and Utah Construction & Mining Co. are joint applicants but shall be the sole responsibility and obligation of Arizona Public Service Company to that portion of right of way for which it is the sole applicant.

IN WITNESS WHEREOF, ARIZONA PUBLIC SERVICE COMPANY has caused this instrument to be executed this 24th day of April, 1963.

ARIZONA PUBLIC SERVICE COMPANY

By: T. A. Phillips
T. A. Phillips, Vice President

ATTEST:

F. W. Smith
F. W. Smith, Secretary

IN WITNESS WHEREOF, UTAH CONSTRUCTION & MINING CO. has caused this instrument to be executed this 4th day of June, 1963.

UTAH CONSTRUCTION & MINING CO.

By: C. M. Wilson
VICE PRESIDENT

ATTEST:

W. S. Shore

EXHIBIT 10A
PLANT ACCESS ROAD - PORTION "C"

Portion "C" is a right of way, 40 feet wide, whose centerline is described as follows:

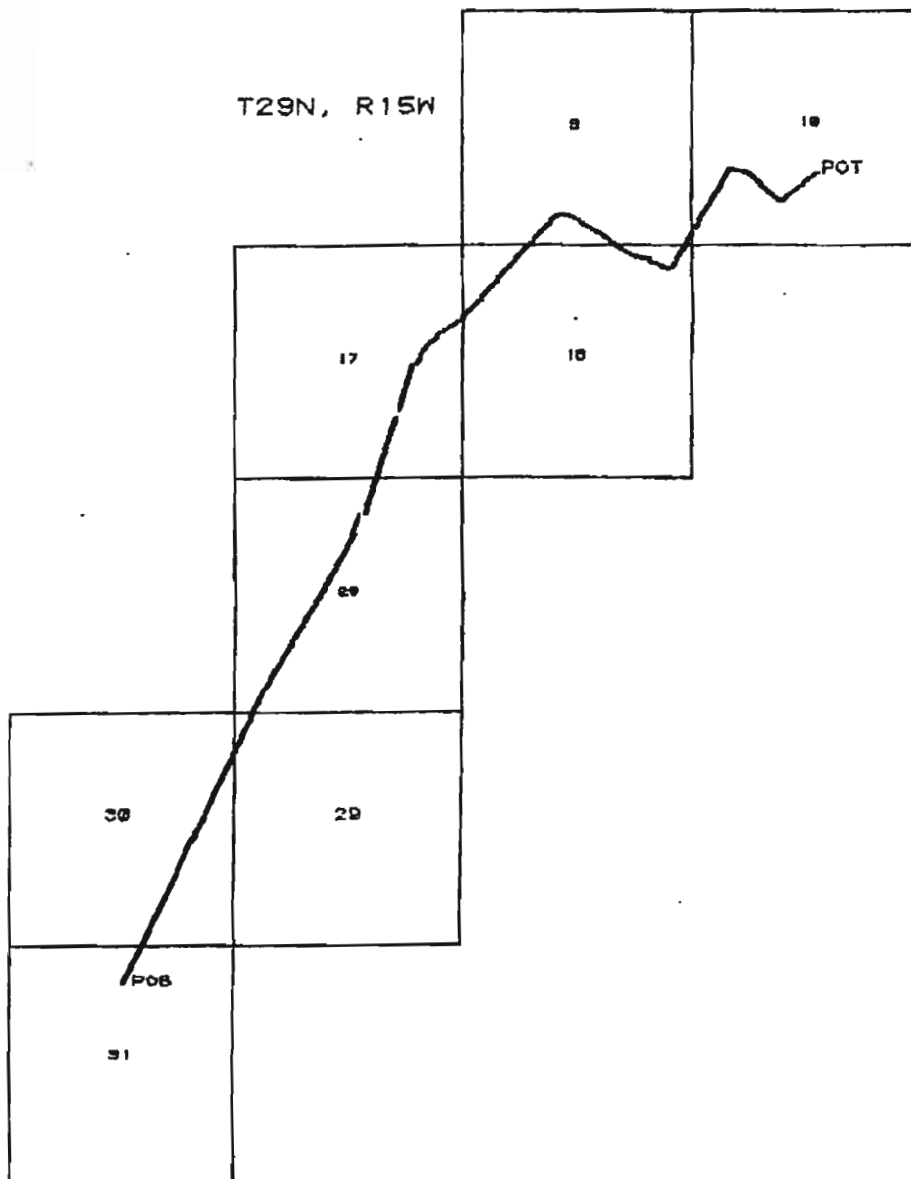
Continuing from the point common with Portion "A" of this right of way (Sta. 57+46.33), N 26° 30' E, 6887.25 feet; thence N 25° 52' E, 94.64 feet; thence N 29° 08' E, 434.70 feet; thence N 30° 50' E, 872.50 feet; thence N 30° 41' E, 1399.10 feet; thence N 30° 59' E, 1800.16 feet; thence along a circular curve to the left, 510.79 feet to (Sta. 177+45.47), the radius of the curve being 2341.45 feet and its angle of intersection being 12° 30'; thence N 18° 29' E, 3538.15 feet; thence along a circular curve to the right 857.50 feet to (Sta. 221+41.12), the radius of the curve being 1212.21 feet and its angle of intersection being 40° 32'; thence N 59° 01' E, 325.29 feet; thence N 52° 27' E, 378.40 feet; thence N 43° 30' E, 2118.80 feet; thence N 43° 59' E, 1030.20 feet; thence N 63° 23' E, 170.00 feet; thence N 87° 19' E, 99.80 feet; thence S 76° 20' E, 100.00 feet; thence S 66° 15' E, 124.50 feet; thence S 59° 50' E, 509.70 feet; thence S 54° 55' E, 703.50 feet; thence S 60° 39' E, 396.00 feet; thence S 81° 16' E, 228.51 feet; thence along a circular curve to the right 301.84 feet, the radius of the curve being 959.09 feet and its angle of intersection being 18° 02'; thence S 63° 14' E, 271.94 feet; thence along a circular curve to the left 238.29 feet to (Sta. 290+67.89) the radius of the curve being 160.00 feet, and its angle of intersection being 85° 20', to the point of tangency of this curve from which the northeast corner of Section 16, Township 29 North, Range 15 West, bears N 41° 51' E, 607.03 feet; thence N 31° 26' E, 2541.40 feet; thence along a circular curve to the right, 352.50 feet to (Sta. 319+61.79) the radius of the curve being 200.00 feet and its angle of intersection being 100° 59'; thence S 47° 35' E, 889.00 feet; thence along a circular curve to the left, 278.27 feet, the radius of the curve being 200.00 feet and its angle of intersection being 79° 44'; thence N 52° 41' E, 948.46 feet to a point (Sta. 340+77.52) at the south end of the San Juan County Bridge over the San Juan River, from which point the southeast corner of Section 10, Township 29 North, Range 15 West, bears S 52° 21' E, 2955.00 feet.

| | | | |
|-------------|------------------|-----------------------|----------------------|
| Portion "A" | Width = 100 Feet | Length = 1.0883 Miles | 13.1915 Acres |
| Portion "B" | Width = 100 Feet | Length = 0.2947 Miles | 3.5721 Acres |
| Portion "C" | Width = 40 Feet | Length = 5.3658 Miles | <u>26.0160 Acres</u> |

| | |
|---------------|---------------|
| Total Acreage | 42.7796 Acres |
|---------------|---------------|

APS

T29N, R15W



APS Plant Access Road - Portion 'C'
ROW, 40' in Width, 5.36 Miles or
28,900.8' in Length and containing
26.02 acres

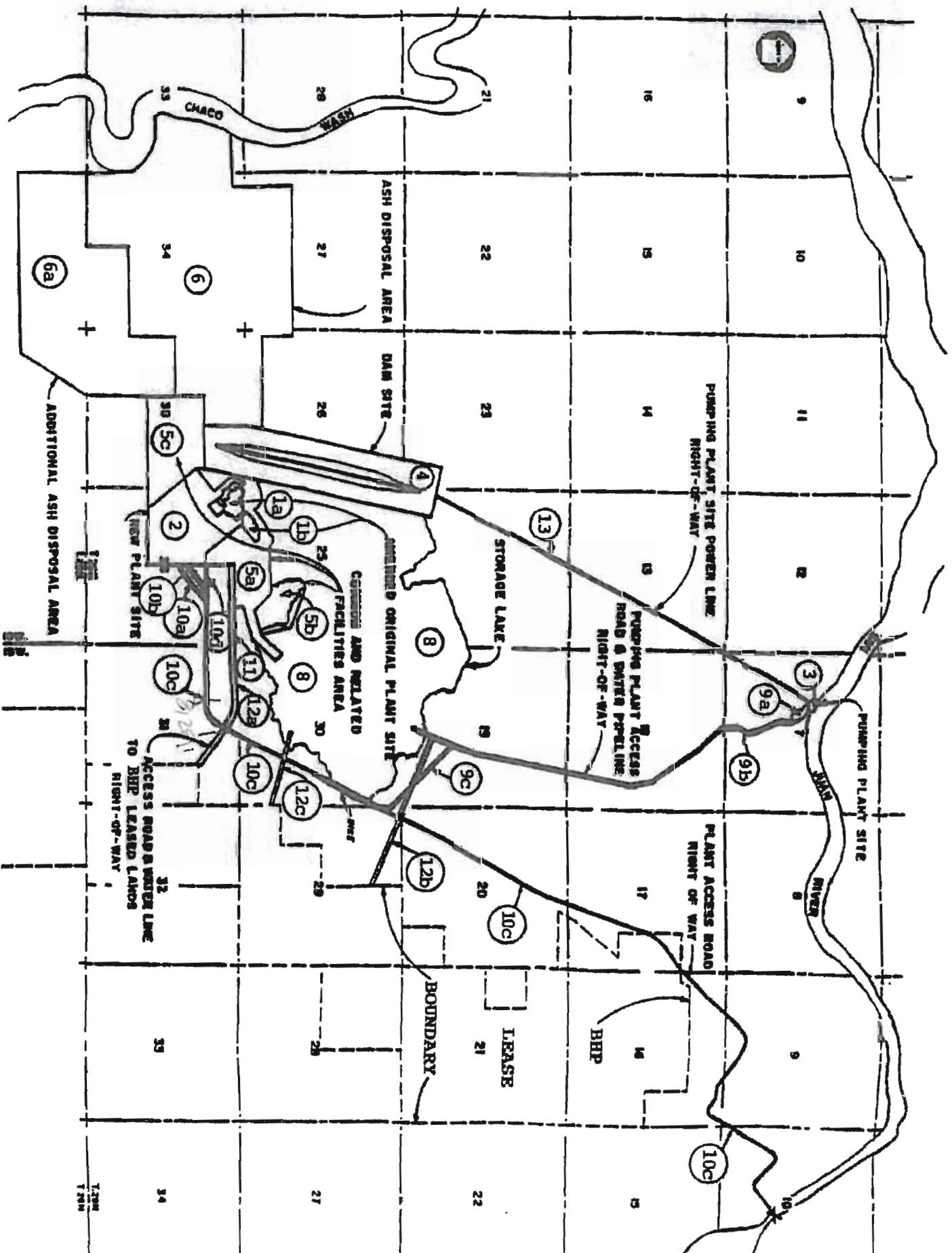
APS Plant Access Road - Portion 'C'

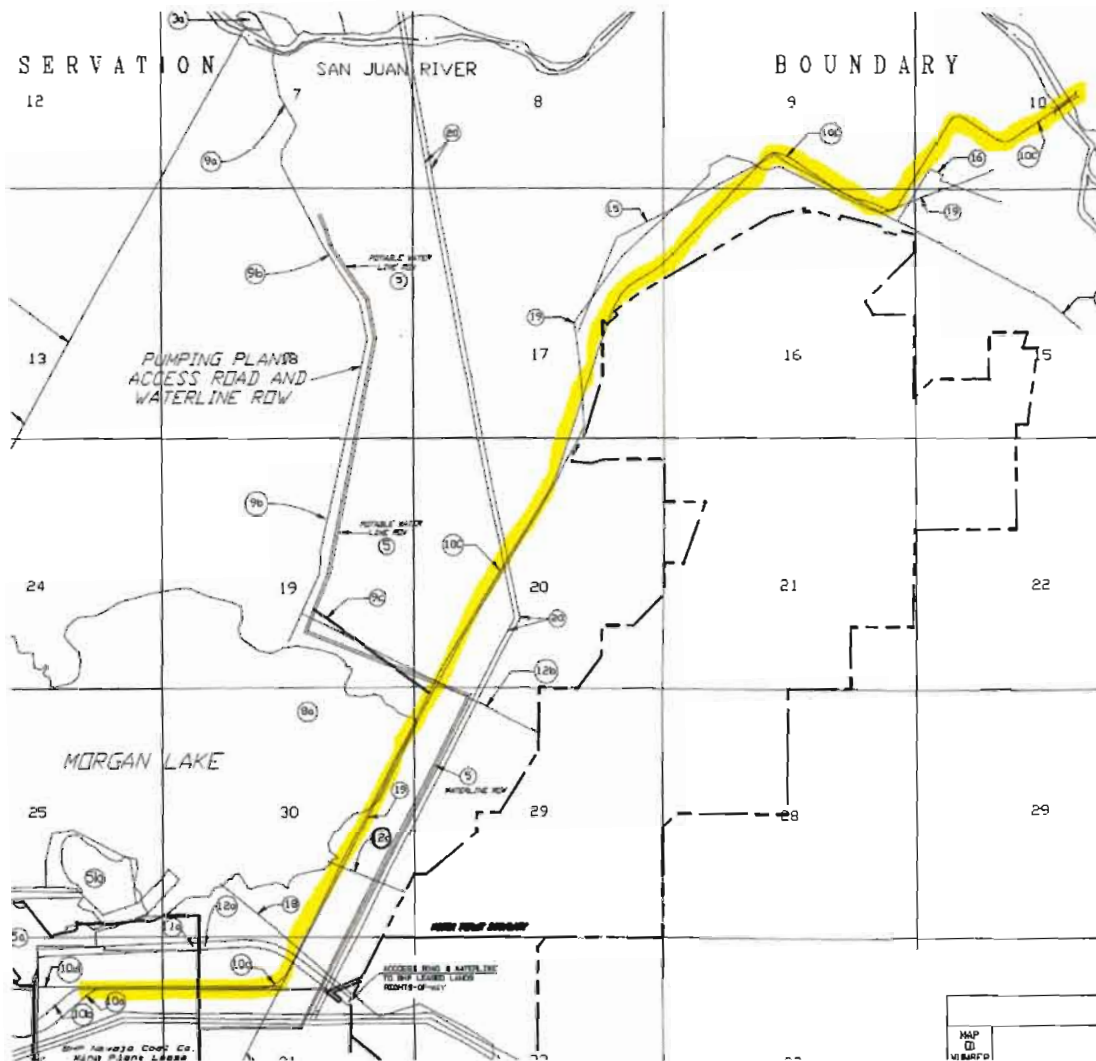
SCALE: 1 in = 4000 feet

**MAP
IDENT
NUMBER**

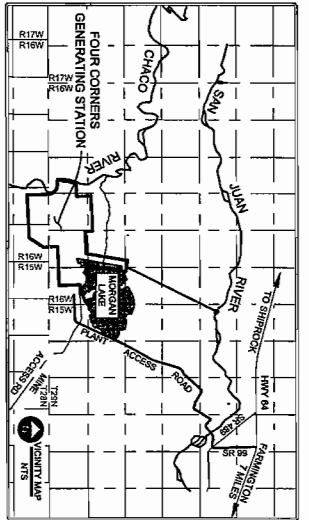
DESCRIPTION

| | |
|-----|---|
| | <u>Amended Original Plant Site</u> |
| 1a | Parcel "A" |
| 1b | Parcel "B" |
| 2 | <u>New Plant Site</u> |
| 3 | <u>Pumping Plant Site - 1.35 acres</u> |
| 4 | <u>Dam Site</u> |
| | <u>Common and Related Facilities Area - 300.44 acres</u> |
| 5a | Parcel "A" |
| 5b | Parcel "B" |
| 5c | Parcel "C" |
| 6 | <u>Ash Disposal Area - 1,048.24 acres</u> |
| 6a | <u>Additional Ash Disposal Area - 549.65 acres</u> |
| 8 | <u>Storage Lake - 1,119.94 acres</u> |
| | <u>Pumping Plant Access Road and Water Pipeline ROW - 42.16 acres</u> |
| 9a | Portion "A" - Water Pipeline ROW |
| 9b | Portion "B" - Pumping Plant Access Road and Water Pipeline ROW - 100' |
| 9c | Portion "C" - Pumping Plant Access Road ROW - 100' |
| | <u>Right-of-Way for Plant Access Road - 17.17 acres</u> |
| 10a | Portion "A" - Plant Access Road ROW - 100' |
| 10b | Portion "B" - Plant Access Road ROW - 100' |
| 10c | Portion "C" - Plant Access Road ROW (APS/BHP) - 40' & 100', 26.02 acres |
| 10d | Six Inch Gas Pipeline - 20' |
| 11 | <u>Access Road ROW to BHP Leased Lands - 150'</u> |
| | <u>Water Line ROW to BHP Leased Lands -150'</u> |
| 12a | Portion "A" - 150' |
| 12b | Portion "B" - 100' |
| 12c | Portion "C" - 100' |
| 13 | <u>Power Line ROW to Pumping Plant Site - 40'</u> |





| BHP/APS JOINT RIGHTS-OF-WAY AND EASEMENT | | |
|--|---|----------|
| 10C | ACCESS ROAD FROM EL PASO NATURAL GAS BRIDGE TO COMMON FACILITIES - 40' WIDE, 5.36 MILES | 12-14-60 |
| 11A | ACCESS ROAD/POWER AND COMMUNICATION LINES FROM APS PLANT SITE LEASE TO BHP COAL LEASE - 150' WIDE, 1.32 MILES | 07-28-61 |
| 12 | RAILWAY MAINLINE, SPUR E-1, AND SPUR E-2 200' WIDE. | 01-25-74 |
| 13 | OPEN | |
| 14 | OPEN | |



| PLANT AREA INTERIOR DIVISIONS AND ANCILLARY FACILITIES | |
|---|----------|
| | ACRES |
| Amended Original Plant Site (Amended) | 8.164 |
| New Plant Site (Amended) | 167.437 |
| Pumping Plant Site (Amended) | 1.350 |
| Dam Site (Amended) | 284.898 |
| Common and Related Facilities Area (Amended) | 309.071 |
| Ash Disposal Area (Amended) | 1049.630 |
| Additional Ash Disposal Area (Amended) | 549.657 |
| Storage Lake (Amended) | 1085.390 |
| ROW for Pumping Plant Access Rd & Water Pipeline (Amended) | 42.081 |
| ROW for Plant Access Road (Portions A&B) & Gas Pipeline (Amended) | 16.809 |
| ROW for Plant Access Road (Portion C) (Amended) | 26.008 |
| ROW for Mine Lease Access Road (Amended) | 23.850 |
| ROW for 68kV Power Line to Pumping Plant (Amended) | 12.822 |
| TOTAL | 3597.163 |

ENGINEER'S AFFIDAVIT

STATE OF ARIZONA
COUNTY OF MARICOPA } SS.

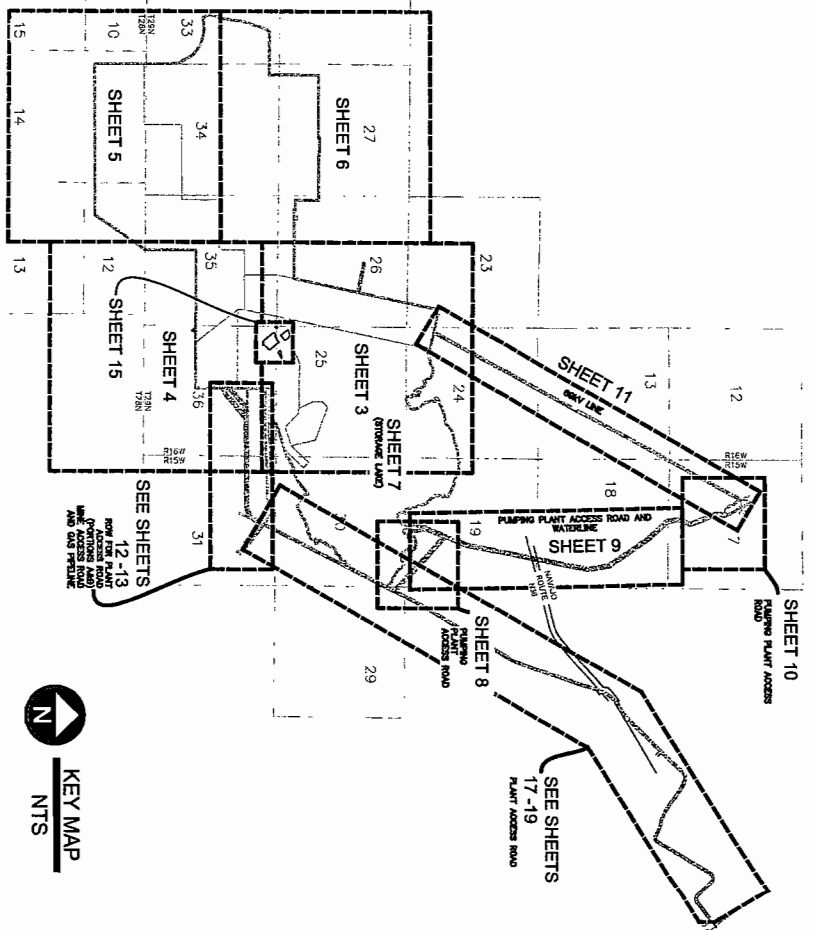
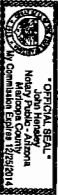
DAVID R. FERGLISON, BEING DULY SWORN, STATES THAT HE IS A REGISTERED LAND SURVEYOR THAT HE MADE THE SURVEY OF A PROPOSED RIGHT-OF-WAY AS DESCRIBED AND SHOWN ON THIS MAP, TO BE GRANTED TO ARIZONA PUBLIC SERVICE COMPANY, HEREINAFTER DESIGNATED THE APPLICANT, THAT THE SURVEY OF SUCH RIGHT-OF-WAY WAS MADE UNDER HIS SUPERVISION AND UNDER APPLICANT'S AUTHORITY, COMMENCING ON THE FIRST DAY OF NOVEMBER, 2010, AND ENDING ON THE THIRTIETH DAY OF JULY, 2012; THAT SUCH SURVEY IS ACCURATELY REPRESENTED ON THIS MAP.

NEW MEXICO SURVEYOR'S CERTIFICATE

I, DAVID R. FERGLISON, NEW MEXICO PROFESSIONAL SURVEYOR No. 20524, DO HEREBY CERTIFY THAT THIS BOUNDARY SURVEY PLAT AND THE ACTUAL SURVEY ON THE GROUND UPON WHICH IT IS BASED WERE PERFORMED BY ME OR UNDER MY DIRECT SUPERVISION; THAT I AM RESPONSIBLE FOR THIS SURVEY; THAT THIS SURVEY MEETS THE MINIMUM STANDARDS FOR SURVEYING IN NEW MEXICO; AND THAT IT IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF; I FURTHER CERTIFY THAT THIS SURVEY IS NOT A LAND DIVISION OR SUBDIVISION AS DEFINED IN THE NEW MEXICO SUBDIVISION ACT AND THAT THIS INSTRUMENT IS A RIGHT-OF-WAY SURVEY PLAT OF AN EXISTING RIGHT-OF-WAY.

SUBSCRIBED AND SWORN TO BEFORE ME THIS 31st DAY OF July, 2012.

NOTARY PUBLIC



APPLICANT'S CERTIFICATE

I, JAMES D. LOONEY, DO HEREBY CERTIFY THAT I AM THE LAND SERVICES DEPARTMENT SECTION LEADER FOR ARIZONA PUBLIC SERVICE COMPANY, HEREINAFTER DESIGNATED THE APPLICANT; THAT DAVID R. FERGLISON, WHO SUBSCRIBED TO THE FOREGOING AFFIDAVIT, WAS UNDER CONTRACT TO THE APPLICANT AS A REGISTERED LAND SURVEYOR AND THAT HE WAS DIRECTED BY THE APPLICANT TO SURVEY THE LOCATION OF A RIGHT-OF-WAY AND TO PREPARE THIS MAP; THAT THE LOCATION OF SAID RIGHT-OF-WAY, 3597.163 ACRES, IS ACCURATELY REPRESENTED ON THIS MAP; THAT SUCH SURVEY AS REPRESENTED ON THIS MAP HAS BEEN ADOPTED BY THE APPLICANT AS THE DEFINITE LOCATION OF THE RIGHT-OF-WAY HEREBY SHOWN; AND THAT THE MAP HAS BEEN PREPARED TO BE FILED WITH THE SECRETARY OF THE INTERIOR OR HIS DUTY AUTHORIZED REPRESENTATIVE AS PART OF THE APPLICATION FOR SAID RIGHT-OF-WAY TO BE GRANTED THE APPLICANT, ITS SUCCESSORS AND ASSIGNS, WITH THE RIGHT TO CONSTRUCT, MAINTAIN, AND REPAIR IMPROVEMENTS THEREON AND THEREAFTER FOR SUCH PURPOSES, AND WITH THE FURTHER RIGHT IN THE APPLICANT, ITS SUCCESSORS AND ASSIGNS, TO TRANSFER THIS RIGHT-OF-WAY BY ASSIGNMENT, GRANT, OR OTHERWISE.

ARIZONA PUBLIC SERVICE COMPANY

JAMES D. LOONEY
SECTION LEADER, LAND SERVICES DEPARTMENT

ARIZONA PUBLIC SERVICE COMPANY FOUR CORNERS GENERATING STATION

LOCATED IN THE NAVAJO NATION LYING WITHIN SECTIONS 7,9,10,16,17,18,19,20,29,30&31, T29N, R15W AND SECTIONS 13,23,24,25,26,27,33,34,35&36, T29N, R16W AND SECTIONS 11&12, T28N, R16W OF THE NEW MEXICO PRINCIPAL MERIDIAN, SAN JUAN COUNTY, NEW MEXICO

COVER SHEET

DATE: 07/30/2012

VERSION: # 5

DRAWN BY: JMW

REVIEWED BY: DFCL

APS PROJECT:

JOB#: 1001.32.00

Ferguson
Land Services, Inc.
2432 West Pinal Avenue, Suite 1167, Phoenix, Arizona 85033
P: (602) 366-2668 F: (602) 366-4993



1 of 23

APS MAP NO. 11-10551

SURVEYOR'S NOTES

1. A DILIGENT EFFORT WAS MADE TO RECOVER EXISTING ORIGINAL MONUMENTATION FROM WHICH THE ORIGINAL LEASE BOUNDARY DESCRIPTIONS WERE DERIVED HOWEVER DUE TO THE FACT THAT A DEPENDENT RESURVEY OF TOWNSHIP 29 NORTH, RANGE 16 WEST WAS CONDUCTED BY THE BLM IN 2005 AND APPROVED IN 2008, NEARLY ALL OF THE SECTION CORNERS FOUND APPEAR TO BE IN DIFFERENT POSITIONS RELATIVE TO THE ORIGINAL SECTION CORNERS USED TO GENERATE THE PARCEL DESCRIPTIONS OF RECORD. THE BOUNDARIES AS SHOWN HEREON WERE ESTABLISHED USING EXISTING FOUND MONUMENTS, PLANT COORDINATES, AND IN SOME CASES THE PHYSICAL FEATURE THAT IS THE ONLY MONUMENT RECOVERABLE THAT REPRESENTS THE ORIGINAL LEASE LOCATION.

2. NEW MEXICO COORDINATE SYSTEM 1983, WEST ZONE 3003

LINEAR UNIT: US SURVEY FOOT
ALL DISTANCES SHOWN ARE GROUND
ALL BEARINGS SHOWN ARE GRID

3. COORDINATES SHOWN IN TABLES ON SHEETS 14 AND 15 ARE NEW MEXICO COORDINATE SYSTEM GRID

4. LEASE AREA

| PLANT SITE AND ANCILLARY FACILITIES | ACRES |
|-------------------------------------|-----------|
| | 3597.163± |

REFERENCE DOCUMENTS

BLM PLATS AND FIELD NOTES T29N R16W (ACCEPTED 2-19-2008) PLAT SHEETS 1-19 & FIELD NOTES SHEETS 1-228.

EL PASO NATURAL GAS CO. R/W DWG No. 01200.00-002.00

APS/NAVAJO NATION LEASES & RIGHT-OF-WAY BINDER PROVIDED BY APS

BASIS OF BEARING

THE BASIS OF BEARING FOR THIS SURVEY IS MARKED BY TWO LOCAL SURVEY CONTROL MONUMENTS KNOWN AS "HV53" AND "HV61".

HV53 IS A SOUTHERN CALIFORNIA EDISON BRASS CAP WITH A LATITUDE OF N36°41'18.45232" AND A LONGITUDE OF W108°29'39.75835".

HV61 IS A SOUTHERN CALIFORNIA EDISON BRASS CAP WITH A LATITUDE OF N36°41'17.81659" AND A LONGITUDE OF W108°31'31.59479".

THE GRID BEARING BETWEEN MONUMENTS IS N89°59'56"W AND THE HORIZONTAL GROUND DISTANCE BETWEEN MONUMENTS IS 9111.58 FEET (DERIVED BY GPS).

DATUM

NEW MEXICO COORDINATE SYSTEM 1983, WEST ZONE 3003

CONTROL FOR THIS SURVEY IS BASED ON ONLINE POSITIONING USER SERVICES (OPUS) FROM THE MEAN OF THREE INDEPENDENT STATIC OBSERVATIONS ON CONTROL POINT "HV 53" - SOUTHERN CALIFORNIA EDISON BRASS CAP AND CHECKED TO NGS CONTROL POINT E432 P10600210 NAD 83 EPOCH 2007 (SEE NGS DATA SHEET FOR RECOVERY)

GEOD 03, NAD 88 US SURVEY FEET

LATITUDE = N36°41'18.45232" LONGITUDE = W108°29'39.75835" ELEVATION = 5331.21' (SITE BENCHMARK)

AVERAGE COMBINED SCALE FACTOR USED FOR SHEETS 3-15 = 0.99971322 GROUND TO GRID
1.000288781 GRID TO GROUND

AVERAGE COMBINED SCALE FACTOR USED FOR SHEETS 16-18 = 0.99970332 GROUND TO GRID
1.00029687 GRID TO GROUND

BASE STATIONS USED:

| PID | DESIGNATION | LATITUDE | LONGITUDE |
|--------|-----------------------------------|----------------|-----------------|
| D12245 | P011 SPIER ROCK AZ 2005 CORRS ARP | N36°08'59.363" | W109°31'09.175" |
| A10265 | AZCN AZTEC CORRS ARP | N36°50'23.235" | W107°54'39.422" |
| DH5816 | P028 CHACOONHP NM 2005 CORRS ARP | N36°01'54.048" | W107°54'30.222" |

LEGEND

* DENOTES MONUMENT STAMPING OR MARKING

+ PRECEDES STAMPINGS ADDED TO FOUND MONUMENTS

○ CALCULATED POINT (NOTHING SET UNLESS NOTED OTHERWISE)

● FOUND MONUMENT (AS NOTED)

● SET 3/4" REBAR WITH 3/4" BRASS CAP (SEE BC DETAIL)

● SET 3/4" REBAR WITH 1 1/2" ALUMINUM CAP OR TAG

■ SET MAG SPIKE W/2" BRASS WASHER PS 20524

□ SET MAG SPIKE

▲ SET 60d NAIL W/CHASER

○ SET PK NAIL

● SET PK NAIL W/SHINER

● SET PK NAIL W/SHINER

● SET PK NAIL W/SHINER

● SET PK NAIL W/SHINER

● SET PK NAIL W/SHINER

AC ALUMINUM CAP

APS ARIZONA PUBLIC SERVICE COMPANY

BC BRASS CAP

BIA BUREAU OF INDIAN AFFAIRS

BLM BUREAU OF LAND MANAGEMENT

CC CLOSING CORNER

CONC CONCRETE

COOR CORNER

FSDS MONUMENT STAMPING ORIGIN UNKNOWN

GLO GENERAL LAND OFFICE

NAVD NORTH AMERICAN VERTICAL DATUM

NGVD NATIONAL GEODETIC VERTICAL DATUM

NIS NOT TO SCALE

POL POINT ON LINE

§ SECTION LINE

SC STANDARD CORNER

RBR REBAR

ROW RIGHT-OF-WAY

RP REFERENCE POINT

WC WITNESS CORNER

WP WITNESS POINT

WP WITNESS POINT

WP WITNESS POINT

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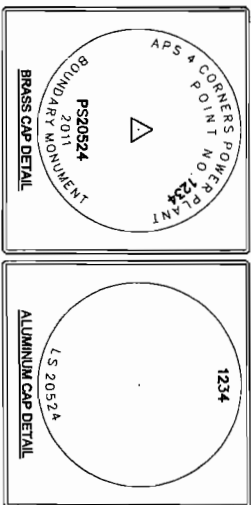
WP WITNESS POINT

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WP WITNESS POINT



ARIZONA PUBLIC SERVICE COMPANY FOUR CORNERS GENERATING STATION

LOCATED IN THE NAVAJO NATION LYING WITHIN
SECTIONS 7,9,10,16,17,18,19,20,29,30&31, T29N, R15W
AND SECTIONS 13,23,24,25,26,27,33,34,35&36, T29N,
R16W AND SECTIONS 11&12, T28N, R16W OF THE NEW
MEXICO PRINCIPAL MERIDIAN, SAN JUAN COUNTY, NEW
MEXICO

MAP INFORMATION

DATE: 07/20/2012
VERSION: 5
DRAWN BY: JMW
REVIEWED BY: DFCJ
APS PROJECT:



JOBS: 1001.32.00

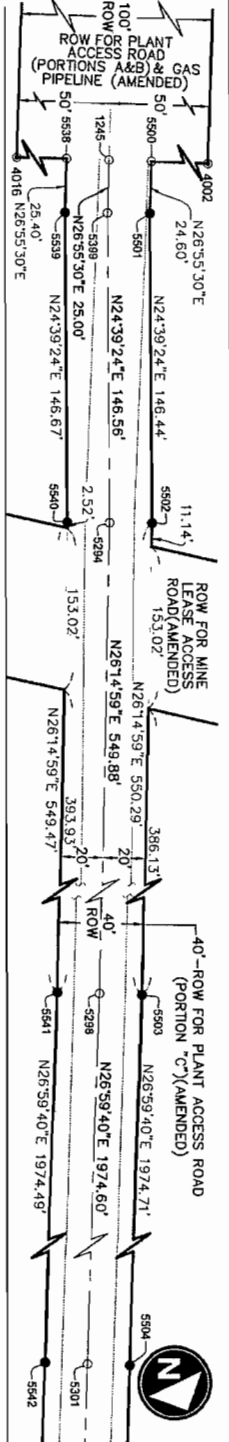
Ferguson
Land Services, Inc.
2933 West Fort Apache, Suite 1167, Phoenix, Arizona 85029
P: (602) 564-5666 F: (602) 564-6993



2 OF 23

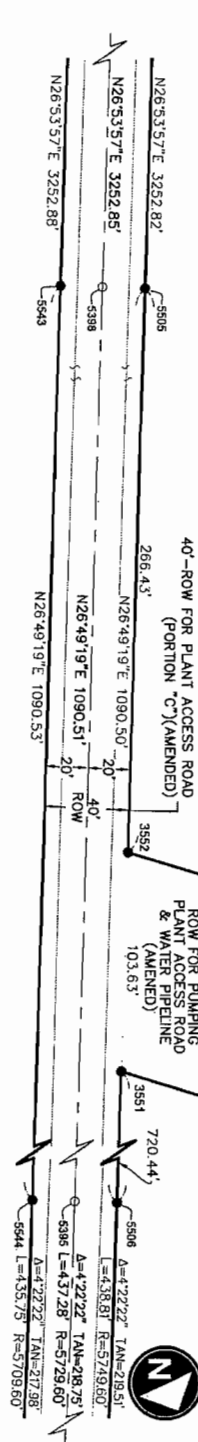
APS MAP NO. 11-10551

MATCH SHEET 13 TOP RIGHT



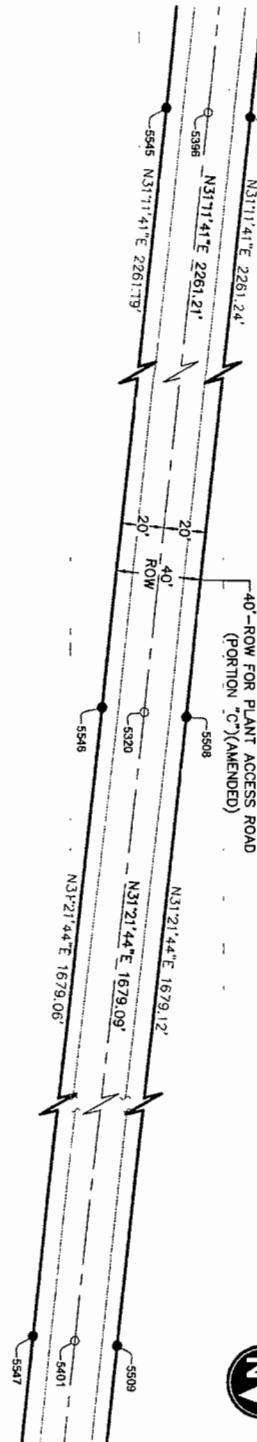
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MATCH ABOVE-RIGHT



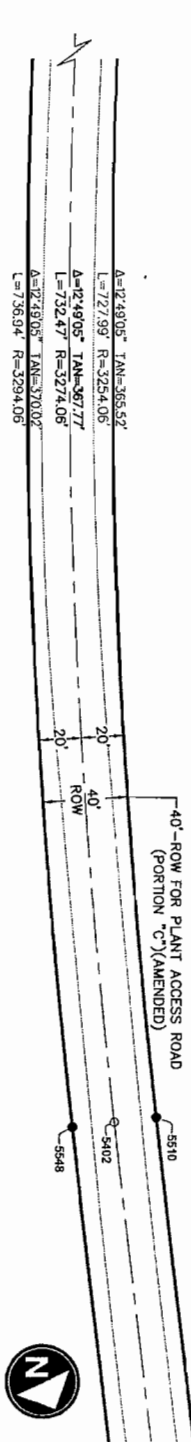
MATCH BELOW-LEFT

MATCH ABOVE-RIGHT



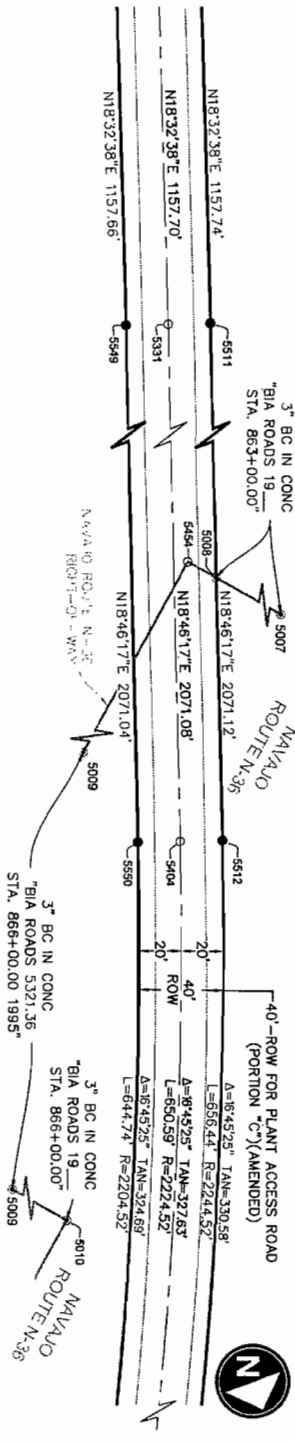
MATCH BELOW-LEFT

MATCH ABOVE-RIGHT



MATCH BELOW-LEFT

MATCH ABOVE-RIGHT



SEE SHEET 17
MATCH TOP-LEFT

ARIZONA PUBLIC SERVICE COMPANY FOUR CORNERS GENERATING STATION

LOCATED IN THE NAVAJO NATION LYING WITHIN
SECTIONS 7,9,10,16,17,18,19,20,29,30&31, T29N, R15W
AND SECTIONS 13,23,24,25,26,27,33,34,35&36, T29N,
R16W AND SECTIONS 11&12, T28N, R16W OF THE NEW
MEXICO PRINCIPAL MERIDIAN, SAN JUAN COUNTY, NEW
MEXICO

ROW FOR PLANT ACCESS
ROAD (PORTION "C")
(AMENDED)

DATE: 07/30/2012
VERSION #: 5
DRAWN BY: JMW
REVIEWED BY: DEJ
APS PROJECT:
JOB #: 1001.32.00

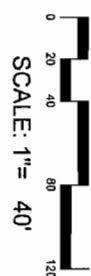


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Land Services, Inc.
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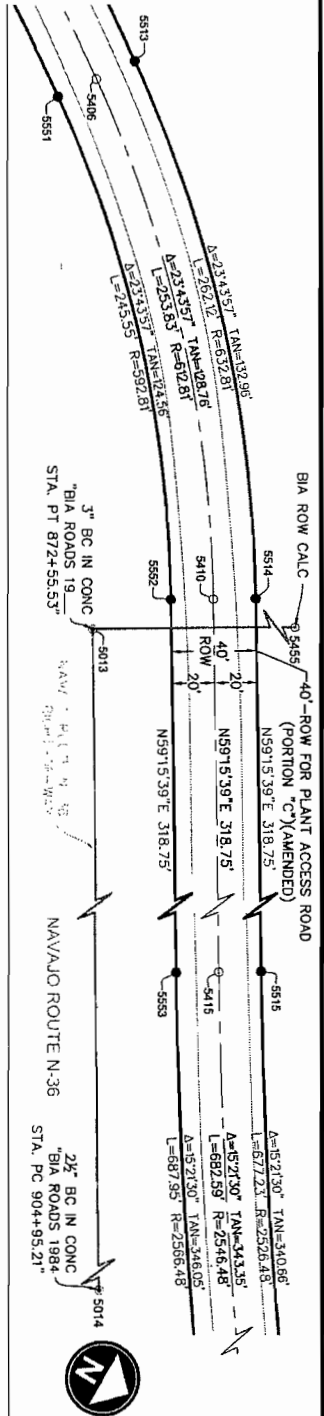


16 OF 23

APS MAP NO. 11-10551

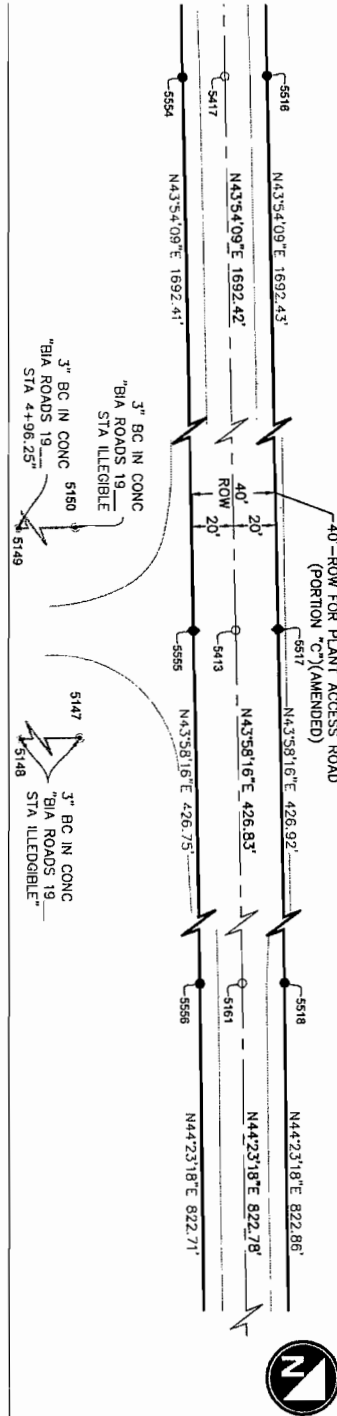


SEE SHEET 16
MATCH BOTTOM-RIGHT



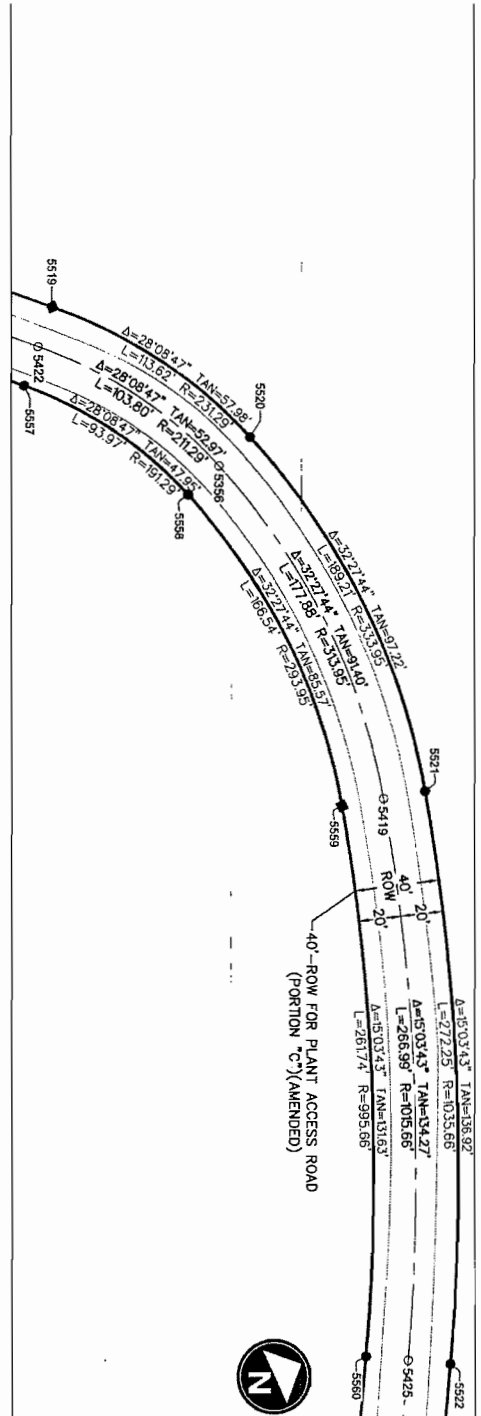
MATCH BELOW-LEFT

MATCH ABOVE-RIGHT



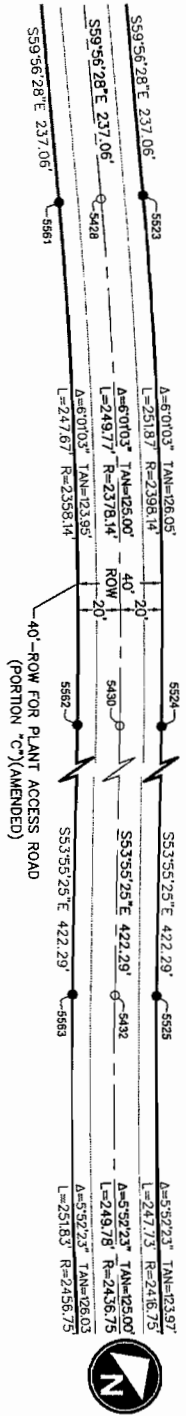
MATCH BELOW-LEFT

MATCH ABOVE-RIGHT



MATCH BELOW-LEFT

MATCH ABOVE-RIGHT



SEE SHEET 18
MATCH TOP-LEFT

ARIZONA PUBLIC SERVICE COMPANY FOUR CORNERS GENERATING STATION

LOCATED IN THE NAVAJO NATION LYING WITHIN
SECTIONS 7,9,10,16,17,18,19,20,29,30&31, T29N, R15W
AND SECTIONS 13,23,24,25,26,27,33,34,35&36, T29N,
R16W AND SECTIONS 11&12, T28N, R16W OF THE NEW
MEXICO PRINCIPAL MERIDIAN, SAN JUAN COUNTY, NEW
MEXICO

ROW FOR PLANT ACCESS
ROAD (PORTION "C")
(AMENDED)

| |
|-------------------|
| DATE: 07/30/2012 |
| VERSION #: 5 |
| DRAWN BY: JMW |
| REVIEWED BY: DFCJ |
| APS PROJECT: |
| JOB#: 1001.32.00 |

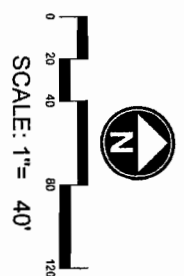


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Land Services, Inc.
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17 OF 23

APS MAP NO. 11-10551



AFFIDAVIT OF NON-DEVIATION

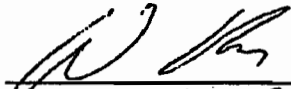
STATE OF: New Mexico

COUNTY OF: San Juan

I, Wilson Begay having been duly sworn depose and state that:

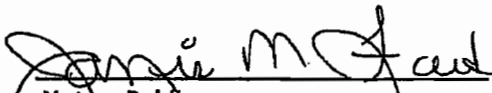
1. My position with BHP Navajo Coal Company, a Corporation is Survey Specialist.
2. My area of responsibility for BHP Navajo Coal Company is: Professional Land Surveyor.
3. I am familiar with the Navajo Mine Plant Access Road Portion A, which is a 100 feet wide right-of-way, 5765.4 feet or 1.09 miles in length covering 13.24 acres in Navajo Tribal Trust Lands In Section 31, T29N, R15W, and Section 36, T29N, R16W, NMPM, San Juan County, NM.
4. To the best of my knowledge, the access road is in its original location since installation. There has been NO CHANGE in the location or the status of the BHP Navajo Coal Company, Navajo Mine Plant Access Roads Portion A, rights-of-way.

FURTHER AFFIANT SAYETH NAUGHT:



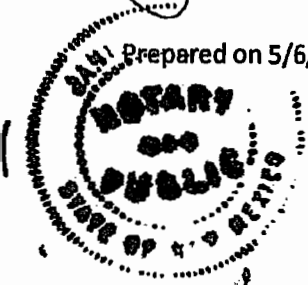
NAME: Wilson Begay
TITLE: Survey Specialist

SWORN AND SUBSCRIBE TO before me by Wilson Begay. This 07
day of May 2013.


Notary Public

08/14/13
Commission Expires

Prepared on 5/6/13



AFFIDAVIT OF NON-DEVIATION

STATE OF: New Mexico

COUNTY OF: San Juan

I, Wilson Begay having been duly sworn depose and state that:

1. My position with BHP Navajo Coal Company, a Corporation is Survey Specialist.
2. My area of responsibility for BHP Navajo Coal Company is: Professional Land Surveyor.
3. I am familiar with the Navajo Mine Plant Access Road Portion B, which is a 100 feet wide right-of-way, 1355.7 feet or 0.26 miles in length covering 3.14 acres in Navajo Tribal Trust Lands in Section 36, T29N, R16W, NMPM, San Juan County, New Mexico.
4. To the best of my knowledge, the access road is in its original location since its installation. There has been NO CHANGE in the location or the status of the BHP Navajo Coal Company, Navajo Mine Plant Access Road Portion B rights-of-way.

FURTHER AFFIANT SAYETH NAUGHT:

Wilson Begay
NAME: Wilson Begay
TITLE: Survey Specialist

SWORN AND SUBSCRIBE TO before me by Wilson Begay. This 07
day of May 2013.

Janie M. Ford
Notary Public

08/14/13
Commission Expires

Proclamation 5/6/13



AFFIDAVIT OF NON-DEVIATION

STATE OF: New Mexico

COUNTY OF: San Juan

I, Wilson Begay having been duly sworn depose and state that:

1. My position with BHP Navajo Coal Company, a Corporation is Survey Specialist.
2. My area of responsibility for BHP Navajo Coal Company is: Professional Land Surveyor.
3. I am familiar with the Navajo Mine Plant Access Road Portion C, which is a 40 feet wide right-of-way, 28325.5 feet or 5.36 miles in length, covering 26.01 acres in Navajo Tribal Trust Lands in Sections 9, 10, 16, 17, 20, 29, 30, and 31, T29N, R15W, NMPM, San Juan County, New Mexico.
4. To the best of my knowledge, this access road is in its original location since its installation. There has been NO CHANGE in the location or the status of the BHP Navajo Coal Company, Navajo Mine, Plant Access Roads Portion C, rights-of-way.

FURTHER AFFIANT SAYETH NAUGHT:

Wilson Begay
NAME: Wilson Begay
TITLE: Survey Specialist

SWORN AND SUBSCRIBE TO before me by Wilson Begay This 07
day of May 2013.

Janis H. [Signature]
Notary Public

06/14/13
Commission Expires

Prepared on 5/6/13



Jimmy Dodge C 2052
Caroline Dodge C 3758

R E L E A S E



For and in consideration of the total sum of \$ 170.82,
as itemized below, paid to the undersigned for (h self/themselves) and
(h /their) heirs, distributees, executors, administrators, and assigns,
does release and forever discharge the NAVAJO TRIBE, UTAH CONSTRUCTION
& MINING CO., and/or ARIZONA PUBLIC SERVICE COMPANY, their successors
and assigns, from any and every claim or cause of action arising out of
the loss of grazing lands on the following areas:

Morgan Lake, some 1,151 acres, under the
control of the Navajo Tribe:

Consideration

\$ ---

2,032 acres under Indenture of Lease be-
tween the Navajo Tribe of Indians and Arizona Pub-
lic Service Company and 421 acres more or less pro-
posed for expansion near the present Four Corners
Power Plant Site:

\$ ---

That portion of the Mining Lease as pre-
sently amended between the Navajo Tribe of Indians
and Utah Construction & Mining Co. located to the
north of a line drawn between lease corners 156 and
175, containing approximately 5,347 acres; 38.9 acres
under Mine Plant Lease between the Navajo Tribe of
Indians and Utah Construction & Mining Co.; and 184
acres, more or less proposed for expansion near the
present Navajo Mine Plant Site:

\$ 170.82

TOTAL CONSIDERATION - \$ 170.82

In witness whereof, (we/I) have hereunder set (my/our) hand(s)
this 28th day of November, 1965.

WITNESSES:

Allen T. [unclear]
Bob [unclear]

Jimmy Dodge

Paid by UC&M Co. Ck. No.

15886

Legal & Governmental
Affairs Files

Dated

November 24, 1965

Ind 1.3.22

R E L E A S E

For and in consideration of the total sum of \$ 170.82, as itemized below, paid to the undersigned for (h self/themselves) and (h /their) heirs, distributees, executors, administrators, and assigns, does release and forever discharge the NAVAJO TRIBE, UTAH CONSTRUCTION & MINING CO., and/or ARIZONA PUBLIC SERVICE COMPANY, their successors and assigns, from any and every claim or cause of action arising out of the loss of grazing lands on the following areas:

| | <u>Consideration</u> |
|---|----------------------|
| Morgan Lake, some 1,151 acres, under the control of the Navajo Tribe: | \$ <u>---</u> |

| | |
|---|---------------|
| 2,032 acres under Indenture of Lease between the Navajo Tribe of Indians and Arizona Public Service Company and 421 acres more or less proposed for expansion near the present Four Corners Power Plant Site: | \$ <u>---</u> |
|---|---------------|

| | |
|--|------------------|
| That portion of the Mining Lease as presently amended between the Navajo Tribe of Indians and Utah Construction & Mining Co. located to the north of a line drawn between lease corners L56 and L75, containing approximately 5,347 acres; 38.9 acres under Mine Plant Lease between the Navajo Tribe of Indians and Utah Construction & Mining Co.; and 184 acres, more or less proposed for expansion near the present Navajo Mine Plant Site: | \$ <u>170.82</u> |
|--|------------------|

TOTAL CONSIDERATION - \$ 170.82

In witness whereof, (we/I) have hereunder set (my/our) hand(s) this 29th day of November, 1965.

WITNESSES:


Franklin D. Dendron

Paid by UC&M Co. Ck. No. 15882

Dated November 24, 1965

Legal & Governmental
Affairs Files

Ind. 2.3.13

R E L E A S E

For and in consideration of the total sum of \$ 227.76, as itemized below, paid to the undersigned for (h self/themselves) and (h /their) heirs, distributees, executors, administrators, and assigns, does release and forever discharge the NAVAJO TRIBE, UTAH CONSTRUCTION & MINING CO., and/or ARIZONA PUBLIC SERVICE COMPANY, their successors and assigns, from any and every claim or cause of action arising out of the loss of grazing lands on the following areas:

| | |
|---|----------------------|
| | <u>Consideration</u> |
| Morgan Lake, some 1,151 acres, under the control of the Navajo Tribe: | \$ <u>---</u> |

| | |
|---|---------------|
| 2,032 acres under Indenture of Lease between the Navajo Tribe of Indians and Arizona Public Service Company and 421 acres more or less proposed for expansion near the present Four Corners Power Plant Site: | \$ <u>---</u> |
|---|---------------|

| | |
|--|------------------|
| That portion of the Mining Lease as presently amended between the Navajo Tribe of Indians and Utah Construction & Mining Co. located to the north of a line drawn between lease corners L56 and L75, containing approximately 5,347 acres; 38.9 acres under Mine Plant Lease between the Navajo Tribe of Indians and Utah Construction & Mining Co.; and 184 acres, more or less proposed for expansion near the present Navajo Mine Plant Site: | \$ <u>227.76</u> |
|--|------------------|

TOTAL CONSIDERATION - \$ 227.76

In witness whereof, (we/I) have hereunder set (my/our) hand(s) this 29th day of November, 1965.

WITNESSES:

Franklin D. Sandora

Paid by UC&M Co. Ck. No. 15880

Dated November 24, 1965

Legal & Governmental
Affairs Files

Ind 2.3.25



EXHIBIT "D"

NAVAJO NATION TERMS AND CONDITIONS FOR RIGHTS-OF-WAY (ROW) For Navajo Transitional Energy Company, LLC (Grantee)

- 1) The terms of the ROW shall be for twenty (20) years, beginning on the date of ROW is approved by the Navajo Nation.
- 2) The Grantee shall make a lump sum payment as consideration in the amount of \$610,416.00 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 within 10 days of approval of the ROW by the Navajo Nation.
- 3) The Grantee may use and occupy the ROW for the purpose(s) of an access road from the El Paso Bridge to the common facilities leading into the mine plant lease. The Grantee may not develop, use or occupy the ROW for any other purpose without the prior written approval of the Navajo Nation and the Secretary of the Interior. The approval of the Navajo Nation may be granted, granted upon conditions or withheld in the sole discretion of the Navajo Nation. The Grantee may not develop, use or occupy the ROW 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 ROW.
- 6) The Grantee shall clear and keep clear the lands within the ROW to the extent compatible with the purpose of the ROW, 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 ROW.
- 8) The Grantee shall at all times during the term of the ROW and at the Grantee's sole cost and expense, maintain the land subject to the ROW 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 ROW 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 ROW by the Grantee.
- 12) Any assignment, conveyance or transfer by the Grantee, in any manner whatsoever, of the ROW or any interest therein, or in or to any of the improvements on the land subject to the ROW, 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 ROW may be terminated for violation of any of the terms and conditions stated herein. In addition, the ROW 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 ROW for the purpose for which it is granted for a consecutive two-year period; and
 - c. The use of the land subject to the ROW for any purpose inconsistent with the purpose for which the ROW is granted.
- 14) At the termination of this ROW, 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 applicable Federal laws, rules, and regulations.

- 15) Holding over by the Grantee after the termination of ROW 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 ROW 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 ROW, 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 ROW, 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 ROW 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 ROW 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 ROW and all lands burdened by the ROW, including without

limitations over all persons, including the public, and all activities conducted or otherwise occurring within the ROW; and the ROW and all lands burdened by the ROW shall be and forever remain Navajo Indian Country for purposes of Navajo Nation jurisdiction.

- 24) By acceptance of the ROW Grant, the Grantee shall obtain rights to Navajo Nation lands in the nature of easements only; a right to pass over, occupy and reasonably use and occupy the ROW for the particular purpose herein with limited rights of ingress and egress via those particular access roads that are in existence and useable at the grant of this ROW. Such easement shall be limited term usufructuary interest consistent with all general property rights flowing from beneficial ownership of Navajo Nation lands, with no subsurface rights to any minerals or natural resources located on or within the ROW. The ROW under no circumstances or rule of law, shall be interpreted as granting a fee simple interest or creating any greater property right possessed by the Grantee other than the limited easement described herein.

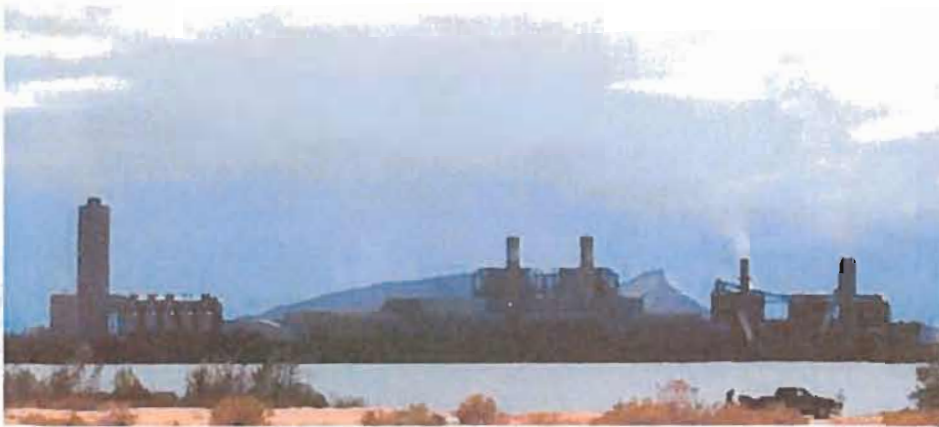
Environmental Impact Statement (EIS)

The environmental analysis for the Navajo Mine – Access Road from El Paso Bridge to Common Facilities Right-of-Way will be included in the Four Corners Power Plant Navajo Mine Energy Project EIS which is currently being prepared and is not ready at this time. Upon completion, BBNMC, as a disclosed agent for NTEC, will provide this document.



FOUR CORNERS POWER PLANT AND NAVAJO MINE ENERGY PROJECT

ENVIRONMENTAL IMPACT STATEMENT



The Office of Surface Mining Reclamation and Enforcement (OSM), a branch of the United States Department of the Interior, was created in 1977 when Congress enacted the Surface Mining Control and Reclamation Act. The Surface Mining Control and Reclamation Act of 1977 is the primary federal law that regulates the environmental effects of coal mining in the United States. OSM works with States and Tribes to ensure that citizens and the environment are protected during coal mining and that the land is restored to beneficial use when mining is finished.

The OSM Western Region, Denver, CO, is preparing an Environmental Impact Statement (EIS) to evaluate potential environmental impacts from a proposal to extend operation of the Four Corners Power Plant, renew rights-of-way for associated transmission lines, renew the Navajo Mine Permit in 2014, and issue a new mine permit area within the existing Navajo Lease area. This proposed new mine permit area is referred to as the Pinabete Permit. The EIS is being prepared in accordance with the National Environmental Policy Act of 1969 (NEPA).

While OSM is the lead agency for preparation of the Four Corners Power Plant and Navajo Mine Energy Project EIS, it works with several other agencies to ensure the development of a comprehensive and thorough environmental analysis. These other agencies are referred to as "cooperating agencies." A cooperating agency is any agency, other than the lead agency, that has jurisdiction by law or special expertise concerning a proposal. Cooperating agencies for the EIS include the Bureau of Indian Affairs, Navajo Nation, Hopi Tribe, Bureau of Land Management, U.S. Environmental Protection Agency, U.S. Fish and Wildlife Service, U.S. Army Corps of Engineers, and National Park Service.

The National Environmental Policy Act

Before U.S. federal agencies proceed with major federal actions, they must consider the potential impacts their proposed activities may have on the human, natural or cultural environment. An environmental analysis is mandated by the National Environmental Policy Act of 1969 (NEPA). NEPA requires federal agencies to examine the potential environmental effects of their actions to allow for more informed decision-making. An Environmental Impact Statement (EIS) is a detailed public document that provides an assessment of the potential effects a federal action may have on the environment. Community and agency involvement is a critical part of the NEPA process.



COOPERATING AGENCIES ASSISTING IN DEVELOPMENT OF THE EIS

| FEDERAL AGENCY | RESPONSIBILITIES/ACTIONS |
|--|--|
| Office of Surface Mining and Reclamation | <ul style="list-style-type: none"> • Act as lead agency in preparing the EIS • Approve or deny the application for a new mine area, known as the Pinabete Permit area • Approve or deny the 2014 Navajo Mine Permit renewal • Act as lead agency for Section 7 consultation with U.S. Fish and Wildlife Service and for National Historic Preservation Act Section 106 consultation |
| Bureau of Indian Affairs | <ul style="list-style-type: none"> • Approve or deny the lease amendment for the Four Corners Power Plant • Approve or deny renewal of associated rights-of-way for existing transmission lines and switchyards • Approve or deny proposed realignment of Burnham Road within the Navajo Mine Lease area |
| Navajo Nation | <ul style="list-style-type: none"> • Issue a biological opinion for tribally listed threatened and endangered species • Consult with OSM to identify, evaluate, and consider potential impacts to cultural and historic resources • Review and comment on the Surface Mining Control and Reclamation Act permit application package • Issue Clean Water Act Section 401 water quality certifications • Issue Title V Clean Air Act permit |
| Hopi Tribe | <ul style="list-style-type: none"> • Issue a biological opinion for tribally listed threatened and endangered species • Consult with OSM for potential impacts to cultural and historic resources |
| Bureau of Land Management | <ul style="list-style-type: none"> • Issue a decision on the Pinabete Mine Plan to ensure maximum economic recovery of coal |
| U.S. Environmental Protection Agency | <ul style="list-style-type: none"> • Ensure emissions comply with the Clean Air Act • Issue a decision on the National Pollutant Discharge Elimination System permit application for the Pinabete area under Section 402 of the Clean Water Act |
| U.S. Fish and Wildlife Service | <ul style="list-style-type: none"> • Issue a biological opinion for threatened and endangered species under Section 7 of the Endangered Species Act |
| U.S. Army Corps of Engineers | <ul style="list-style-type: none"> • Approve or deny permit for fill in waters of the United States under Section 404 of the Clean Water Act |
| National Park Service | <ul style="list-style-type: none"> • Review potential impacts to National Parks in the region |

ABOUT THE FOUR CORNERS POWER PLANT AND NAVAJO COAL MINE

Four Corners Power Plant

The Four Corners Power Plant is one of the largest coal-fired electric generating stations in the United States. The plant includes five units and generates approximately 2,100 megawatts, providing power to more than 500,000 homes in New Mexico, Arizona, California and Texas. The plant, operated by Arizona Public Service, is located on tribal trust lands in the New Mexico portion of the Navajo Reservation. Approximately 75 percent of employees at the plant are Native American.

The desired future operation of the Four Corners Power Plant site involves discontinuing operation of Units 1, 2 and 3 during or prior to 2014, installing pollution control upgrades on Units 4 and 5, and continued operation of the independent switchyard and transmission lines. This scenario would substantially reduce coal consumption and air emissions and lower the power output of the plant to approximately 1,500 megawatts. In future years, the ash disposal area would expand within the current Four Corners Power Plant lease boundary.

BHP Billiton Coal Company Navajo Mine Lease Area

In July 1957, the Navajo Nation granted a mining lease to Utah Construction & Mining Company, which as amended is 33,000 acres. Operation of the mine began in 1963 to supply the Four Corners Power Plant with coal. The 33,000-acre mining lease annually produces an average of 8.5 million tons of coal, which is transported via a dedicated rail to the Four Corners Power Plant. The Navajo Mine Lease area is located on tribal trust lands on the Navajo Reservation adjacent to the Four Corners Power Plant. Approximately 82 percent of employees at the coal mine are Native American.

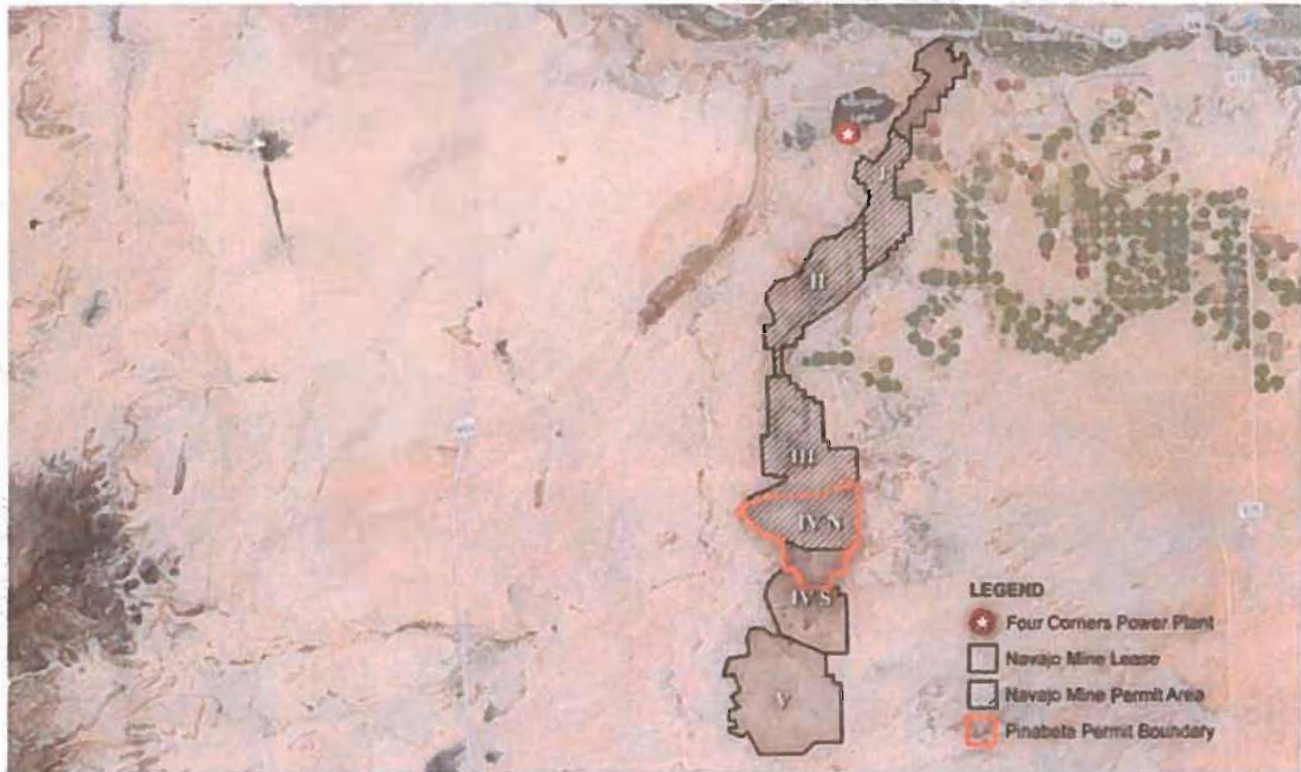


PROPOSED ACTIONS AND ALTERNATIVES

In accordance with NEPA, OSM and cooperating agencies will evaluate the direct, indirect and cumulative environmental impacts associated with the following proposed actions:

- **Power Plant Lease Amendment** – Arizona Public Service, as operating agent and on behalf of participant owners of the Four Corners Power Plant, recently executed a lease amendment (Lease Amendment No. 3) with the Navajo Nation to extend the term of the lease for the Four Corners Power Plant an additional 25 years, to 2041. Under the lease amendment, Arizona Public Service would proceed with discontinuing operation of Units 1, 2 and 3; installing emission reduction equipment on Units 4 and 5; and expanding the ash disposal area within the existing power plant boundaries. Environmental impacts from this lease amendment will be analyzed in the EIS.
- **Energy Transmission Lines Rights-of-Way Renewals** – Existing transmission lines owned and operated by Arizona Public Service or Public Service Company of New Mexico require rights-of-way renewals within the period of time this NEPA review is conducted. These transmission lines are considered connected actions to the continuing operation of the mine and power plant. There would be no new transmission lines. However, the environmental impacts from the continued operations of the transmission lines, in the event the rights-of-way permits are renewed, will be analyzed in the EIS.
- **Navajo Mine 2014 Permit Renewal** – OSM expects BHP Billiton Navajo Coal Company to submit a renewal application in 2014 for its existing Navajo Mine Surface Mining Control and Reclamation Act Permit (No. NM0003F). Therefore, the EIS will also analyze impacts of the 2014 renewal application.
- **New Coal Mine Area** – In spring 2012, BHP Billiton Navajo Coal Company submitted an application to OSM to develop a new 5,600-acre mine area, referred to as the Pinabete Permit area, within its existing Navajo Mine Lease. The Pinabete Permit area would supply coal to the Four Corners Power Plant for up to 25 years, beginning in July 2016. Environmental impacts from the proposed mine area will be analyzed in the EIS.

FOUR CORNERS POWER PLANT AND NAVAJO MINE ENERGY PROJECT AREA MAP



Alternatives

The NEPA process requires the evaluation of a range of alternatives to the proposed actions. The EIS will analyze the proposed actions and a "no action" alternative, as well as other reasonable alternatives that may be identified through the NEPA process, including public and agency comments. The range of reasonable alternatives to be considered will be determined based, in part, on public input received during the scoping process.

The no-action alternative would result in expiration of the Four Corners Power Plant lease and associated rights-of-way; expiration of BHP Billiton Navajo Coal Company's Surface Mining Control and Reclamation Act permit for the Navajo Mine; and there would not be a new Pinabete permit.



ENVIRONMENTAL RESOURCES TO BE ANALYZED

Threatened, Endangered and Sensitive Species

In accordance with Section 7 of the Endangered Species Act, OSM is consulting with the U.S. Fish and Wildlife Service to determine potential environmental impacts to threatened and endangered species and their critical habitat as a result of the proposed actions. OSM will also evaluate impacts to species protected under the Bald and Golden Eagle Act and Migratory Bird Treaty Act. OSM requires wildlife and raptor monitoring in compliance with Surface Mining Control and Reclamation Act permitting. This includes species listed by the Navajo and Hopi tribes, as well as those listed by the U.S. Fish and Wildlife Service.

The Navajo Nation, Hopi Tribe, and U.S. Fish and Wildlife Service would issue respective biological opinions for listed species.

A sample of threatened, endangered, and sensitive species in the area.



Environmental resource areas to be studied in the EIS are listed below. The public is encouraged to provide input on these or other environmental resource areas for consideration in the Draft EIS.

- Threatened and endangered species
- Air quality and climate change
- Surface and ground water quality
- Socioeconomics and environmental justice
- Cultural and historic resources
- Biological resources
- Visual resources
- Noise and vibration
- Public health and safety
- Land use and recreation
- Transportation
- Geology and minerals
- Topography and soils
- Agriculture and grazing
- Water rights
- Solid/hazardous waste

Air Quality

The Navajo Nation Environmental Protection Agency and the U.S. Environmental Protection Agency are both involved with the review of the continued operations of the power plant. The Clean Air Act's Regional Haze Rule requires the use of Best Available Retrofit Technology (BART) at older coal-fired power plants to reduce haze and improve visibility. In October 2010, the U.S. Environmental Protection Agency issued a proposed BART rule for the Four Corners Power Plant, which included installing additional nitrogen oxide and particulate controls. As part of BART compliance, approval of the lease renewals and the continued operation of the power plant would require the installation of additional nitrogen oxide controls on Units 4 and 5 by July 2018, and Units 1, 2 and 3 would close by January 2014.





Water Quality

Several Clean Water Act permits are needed for the proposed actions. In spring 2012, BHP Billiton Navajo Coal Company submitted an application to the U.S. Army Corps of Engineers for a Clean Water Act Section 404 permit that would allow the coal mine to discharge fill material into waters at specified disposal sites. Development of the Pinabete Permit area would impact approximately 5 acres of arroyos and dry channels over 25 years.

A Clean Water Act Section 402 permit, known as a National Pollutant Discharge Elimination System (NPDES) permit, is issued by the U.S. Environmental Protection Agency for discharge of certain pollutants into waters of the United States by industrial operators. The Navajo Nation would be responsible for issuing Section 401 water quality certifications to BHP Billiton Navajo Coal Company. BHP Billiton Navajo Coal Company is in the process of preparing an application for this permit.

Socioeconomics and Environmental Justice

The EIS will include analysis of how potential environmental impacts from the proposed actions could affect socioeconomics. Socioeconomics is a broad discipline and includes topics such as employment, tribal revenues, household income, business output, property values and disadvantaged populations. In the context of this project, the EIS will include a study of the socioeconomic effects of continued operations, the no action alternative (discontinuing operations at the mine and power plant), and any other reasonable alternatives identified.

In 1994, President Clinton issued Executive Order 12898, which requires federal agencies to consider environmental justice in carrying out their missions. Agencies are required to identify and address disproportionately high and adverse human health or environmental effects of their programs, policies and activities on minority and low-income populations. Environmental justice studies are part of the larger socioeconomics analysis in the NEPA process.

Diné Natural Law will inform the environmental justice analysis and requires that "The rights to use the land, natural resources, sacred sites, and other living beings must be accomplished through the protocol of offering and these practices must be protected" (Source: The Fundamental Laws of the Diné, Title 1, Chapter 1, Part 5. Nahasdzaán dóó Yádlhil Bits'áádéé' Beehaz'aanii- Diné Natural Law).

Cultural Resources and National Historic Preservation Act

Section 106 of the National Historic Preservation Act of 1966 requires federal agencies to take into account the effects of proposed actions on historic properties listed on or eligible for listing on the National Register of Historic Places. OSM will consult with Tribal and State Historic Preservation Officers to determine whether there would be potential impacts to cultural and historic resources and how to minimize or avoid impacts. Tribal concerns will be given due consideration, including potential impacts on Indian trust assets.



NEPA PROCESS AND COMMUNITY INVOLVEMENT

Community involvement is a critical part of the NEPA process. The public participates in the NEPA process by helping to identify environmental issues and potential alternatives during the scoping period and by evaluating the analysis of the proposed actions and alternatives during the public review period. All public comments are considered, and OSM will not proceed with any proposed actions until the NEPA process is complete. The table on page 8 describes the steps of the NEPA process and identifies the opportunities for public involvement.



How to Submit Comments on the EIS

In August 2012, OSM is holding nine open house scoping meetings to inform the public about the proposed actions and to receive comments on relevant issues to be considered in the EIS (see table on page 8 for schedule). During each open house, informational poster stations and project team representatives will be available to provide the public with an opportunity to learn more about the NEPA process and the proposed actions and alternatives currently under consideration. This scoping will also satisfy the public involvement and noticing requirement for Section 106 of the National Historic Preservation Act.

Government agencies, elected officials, tribes, organizations and individuals are encouraged to participate and comment in any of the following ways:

- Submit written or oral comments at the open house scoping meetings
- Submit comments via email at FCPPNavajoEnergyEIS@osmre.gov
- Send written comments via postal mail, hand delivery or courier to:

Mr. Marcelo Calle
OSM Western Region
1999 Broadway, Suite 3320
Denver, CO 80202-3050

All comments must be postmarked or received by the end of the comment period on Sept. 17, 2012, to be considered in the Draft EIS.

For More Information

Informational materials and project documents will be made available on the project website at <http://www.wrcc.osmre.gov/FCPPEIS.shtm>. More project information can also be obtained by calling Mr. Marcelo Calle, OSM EIS Coordinator, at 303-293-5035.

The public's participation in the EIS will help OSM make more informed decisions about the proposed actions. The scoping public comment period is from July 18, 2012, to Sept. 17, 2012. There will be an additional opportunity for the public to comment after the release of the Draft EIS, which is anticipated in fall 2013.

NEPA PROCESS AND TIMELINE

| MILESTONE | DESCRIPTION | ANTICIPATED SCHEDULE |
|--|--|--|
| Notice of Intent (NOI) to Prepare an EIS | Publication of the NOI in the Federal Register starts the initial public involvement phase. Notices are also published in local newspapers. | July 18, 2012 |
| Scoping Period | <p>The scoping process actively involves the public and other agencies in identifying the environmental issues to be addressed in the EIS and other potential alternatives to accomplish the purpose and need.</p> <p>The scoping period for this EIS provides for nine open house scoping meetings and a 60-day public comment period.</p> <p>Opportunity for Public Review and Comment</p> | <p>Scoping Period: July 18 – Sept. 17, 2012</p> <p>Open House Scoping Meetings: Hotevilla, AZ – Aug. 9 Cortez, CO – Aug. 10 Burnham, NM – Aug. 11 Nenahnezad, NM – Aug. 13 Farmington, NM – Aug. 14 Shiprock, NM – Aug. 15 Durango, CO – Aug. 16 Window Rock, AZ – Aug. 17 Albuquerque, NM – Aug. 18 </p> |
| Draft EIS | The Draft EIS presents the analysis of potential environmental impacts for the proposed actions and alternatives. Public comments received during the scoping period are considered in the development of the Draft EIS. A notice announcing availability of the Draft EIS will be published in the Federal Register and local newspapers. The Draft EIS will be filed with the U.S. Environmental Protection Agency and made available to interested parties. | Fall 2013 |
| Public Meetings and Comment Period | NEPA regulations require a minimum of 45 days for the public to comment on the analysis presented in the Draft EIS. Comments may be submitted at public meetings, via U.S. mail or email. | Fall 2013 |
| Final EIS | The Final EIS is an update to the Draft EIS and includes responses to all comments received during the public meetings and comment period. A notice announcing availability of the Final EIS will be published in the Federal Register and local newspapers. The Final EIS will be filed with the U.S. Environmental Protection Agency and made available to interested parties. | Summer 2014 |
| 30-Day Wait Period | Regulations provide for a 30-day wait period after the Final EIS is published before the agency may take final action. | Summer/Fall 2014 |
| Record of Decision | After the 30-day wait period, OSM will select an alternative and issue a Record of Decision. A notice of the Record of Decision will be published in the Federal Register and local newspapers and made available to interested parties. | Fall 2014 |



Complete



In Progress



Next Steps

May 14, 2013



Navajo Regional Office
Bureau of Indian Affairs
Attn: Ryan Hunter
301 West Hill Street
Gallup, NM 87301

BHP Billiton Limited
New Mexico Coal
300 West Arrington Street
Farmington, New Mexico 87401 USA
Tel +1 505 598 4200 Fax +1 505 598 XXXX
bhpbilliton.com

Re: Letter of Intent to Renew Grant of Easement for Right of Way
Original Navajo Mine – El Paso Bridge Access Road Right of Way

Mr. Ryan Hunter:

Enclosed for your review and records is a copy of BHP Billiton, Navajo Coal Company's renewal of grant of easement for right of way by letter request to Akhtar Zaman, Navajo Nation, Minerals Department in Window Rock, New Mexico.

If you have any questions or need further information, please feel free to contact me.

Respectfully yours,

A handwritten signature in black ink, appearing to read 'Skip Fraker', written over a horizontal line.

Skip Fraker
Landman – Land and Water
505-598-2848
300 W. Arrington St, Suite 201
Farmington, NM 87401

May 10, 2013



Bureau of Indian Affairs
Shiprock Office
BIA Nataani Nez Complex, 2nd floor
Highway 491 South
Attn: Mary Lujan
Shiprock, NM 87420

BHP Billiton Limited
New Mexico Coal
300 West Arrington Street
Farmington, New Mexico 87401 USA
Tel +1 505 598 4200 Fax +1 505 598 XXXX
bhpbilliton.com

Re: Letter of Intent to Renew Grant of Easement for Right of Way
Original Navajo Mine – El Paso Bridge Access Road Right of Way

Ms. Mary Lujan:

Enclosed for your review and records is a copy of BHP Billiton, Navajo Coal Company's renewal of grant of easement for right of way by letter request to Akhtar Zaman, Navajo Nation, Minerals Department in Window Rock, New Mexico.

If you have any questions or need further information, please feel free to contact me.

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Skip Fraker
Landman – Land and Water
505-598-2848
300 W. Arrington St, Suite 201
Farmington, NM 87401

May 10, 2013



Navajo Regional Office
Bureau of Indian Affairs
Attn: Sharon Pinto
301 West Hill Street
Gallup, NM 87301

BHP Billiton Limited
New Mexico Coal
300 West Arrington Street
Farmington, New Mexico 87401 USA
Tel +1 505 598 4200 Fax +1 505 598 XXXX
bhpbilliton.com

Re: Letter of Intent to Renew Grant of Easement for Right of Way
Original Navajo Mine – El Paso Bridge Access Road Right of Way

Ms. Sharon Pinto:

Enclosed for your review and records is a copy of BHP Billiton, Navajo Coal Company's renewal of grant of easement for right of way by letter request to Akhtar Zaman, Navajo Nation, Minerals Department in Window Rock, New Mexico.

If you have any questions or need further information, please feel free to contact me.

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Skip Fraker
Landman – Land and Water
505-598-2848
300 W. Arrington St, Suite 201
Farmington, NM 87401

May 10, 2013



Navajo Nation
Land Department
Attn: Howard Draper
PO Box 2249
Window Rock, AZ 86515

BHP Billiton Limited
New Mexico Coal
300 West Arrington Street
Farmington New Mexico 87401 USA
Tel +1 505 598 4200 Fax +1 505 598 XXXX
bhpbilliton.com

Re: Letter of Intent to Renew Grant of Easement for Right of Way
Original Navajo Mine – El Paso Bridge Access Road Right of Way

Mr. Howard Draper:

Enclosed for your review and records is a copy of BHP Billiton, Navajo Coal Company's renewal of grant of easement for right of way by letter request to Akhtar Zaman, Navajo Nation, Minerals Department in Window Rock, New Mexico.

If you have any questions or need further information, please feel free to contact me.

Respectfully yours,

A handwritten signature in black ink, appearing to read 'Skip Fraker', written over the words 'Respectfully yours,'.

Skip Fraker
Landman – Land and Water
505-598-2848
300 W. Arrington St, Suite 201
Farmington, NM 87401

BCDO 8998

Navajo Area Office
P. O. Box 1060
Gallup, New Mexico 87301

Honorable Pete V. Domenici
United States Senate
Washington, D. C. 20510

OCT 13 1977

Dear Senator Domenici:

Your August 29, 1977 letter concerning traffic problems in the Nenanhezad Community has been referred to this office.

On October 4, 1977 representatives of Arizona Public Service Company, Utah Construction and Mining Company, Bureau of Indian Affairs and the Local People held a meeting to explore possible solutions to traffic problems on the access road to the Power Plant and Mining Area.

The road (some five miles long) is located on Right of Way granted by the Navajo Tribe to the Arizona Public Service and Utah Construction and Mining Company in 1963. The road is privately owned and maintained by these Companies. The road begins at the San Juan River and runs in a Southerly direction past the Nehnanhezad School, through about 1½ miles of irrigated lands and then on to the Plant and Mining Area. This road is reached from U. S. Highway 550 by traversing a County road through Fruitland and crossing a single-lane County bridge across the river.

Several meetings have been held between Arizona Public Service, Utah Construction and Mining Co. and the local people on their problems and minutes of the meetings are on record. As a result of these meetings the Arizona Public Service and Utah Construction and Mining Co. have resurfaced their road, hazardous curves have been delineated, traffic control signs have been erected, i.e., Speed Limit, Curve, School Bus, etc. and the Right of Way is fenced on both sides. The Companies put on a Traffic Patrolman during peak periods of traffic to enforce posted speed limits. Due to the requests of local people the Patrolman was discontinued.

The Arizona Public Service and Utah Construction and Mining Co. also relocated and constructed new homes for some of the people that were living close to the route. Now other people living further away from the route feel they should be offered the same benefits.

The Arizona Public Service and Utah Construction and Mining Co. have taken the stand that they have done all they can do and more than required in their agreements with the Navajo Tribe to alleviate the problems as posed by the local people.

Because of the Power Plant, Mining Area, Nahnanezad School, Navajo Indian Irrigation Project and local people, this area has a congested traffic problem. Unless various construction priorities are revised, and added road construction funding is received, it appears that people in and traveling this area will have to put up with traffic problems for some time to come. A partial solution to the problem would be a new bridge (two-lane) across the San Juan River and the construction of Navajo Route N36 from Farmington to U.S. 666 south of Shiprock. As prospects are now, construction of N36 may not materialize for another five to six years.

Because of all the economic development in this area we in the BIA have a problem in providing adequate roads to handle the ever increasing traffic. BIA will do what it can to alleviate as many problems as possible with the funding allotted.

Any assistance you can give us to get an increase in Road Construction funding would be greatly appreciated.

Sincerely yours,
OTTO K. WEAVER

ACTING Area Director

cc: 2 Public Information Office

file
005
m/f
520 reading file
AD's reading file
520:BTLORAAS:FEKEENE;ec:10/6/77

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.: Renewal Right-of-Way Application from El Paso Bridge to Common Facilities

DESCRIPTION: Proposed ROW renewal application for the existing access road from El Paso Bridge to Common Facilities. The access road ROW is 40-100 ft. wide and 35,446.6 ft. or 6.71 miles in length covering 42.39 acres.

LOCATION: Portion A: Section 31, T29N, R15W and Section 36, T29N, R16W, NMPM, San Juan County, NM

Portion B: Section 36, T29N, R16W, NMPM, San Juan County, NM

Portion C: Sections 9, 10, 16, 17, 20, 29, 30, & 31, T29N, R15W, NMPM, San Juan County, NM

REPRESENTATIVE: Marian L. Wimsatt, CPLTA, CPL, Land and Water, BHP Billiton Mine Management Company as disclosed agent for Navajo Transitional Energy Company (NTEC)

ACTION AGENCY: Bureau of Indian Affairs, Navajo Region

B.R. REPORT TITLE / DATE / PREPARER: None.

SIGNIFICANT BIOLOGICAL RESOURCES FOUND: Area 3 and 6.

POTENTIAL IMPACTS

NESL SPECIES POTENTIALLY IMPACTED: NA

FEDERALLY-LISTED SPECIES AFFECTED: NA

OTHER SIGNIFICANT IMPACTS TO BIOLOGICAL RESOURCES: NA


AVOIDANCE / MITIGATION MEASURES: NA

CONDITIONS OF COMPLIANCE*: NA

FORM PREPARED BY / DATE: Pamela A. Kyselka/05 MAY 2015

COPIES TO: (add categories as necessary)

☐ _____ ☐ _____

| | | |
|--|---|-----------------------|
| 2 NTC § 164 Recommendation: <input checked="" type="checkbox"/> Approval <input 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) | Signature  Gloria M. Tom, Director, Navajo Nation Department of Fish and Wildlife | Date 5/6/15 |
|--|---|-----------------------|

*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

07 February 2014

13EES-01

Mike Fitzgerald
Ecosphere Environmental Services
776 East 2nd Avenue
Durango, Colorado 81301

Dear Mr. Fitzgerald,
The Navajo Nation Department of Fish and Wildlife (NNDFW) reviewed the Biological Evaluation for the BHP Navajo Coal Company's proposed mine extension into the Pinabete Permit Area. 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 condition:

[1] All proposed power lines along the perimeter of the mine lease and within the Pinabete Permit Area shall be constructed with a raptor-safe power pole design per Raptor Electrocution Prevention Regulations (REPR). All guy wires shall be marked with highly visual daytime markers to prevent bird collisions within the RSA.

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

Date

**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.: Pinabete Permit Area

DESCRIPTION: BNCC proposes to extend mining operations in order to continue supplying coal to the Four Corners Power Plant (FCPP) for approximately 25 yrs. beginning on or about July 2016. Expansion of the mine would include undeveloped portions of Area 4 North and unpermitted portions of Area 4 South, known as the Pinabete Permit Area (PPA). Included in the proposed action is the realignment of approximately 2.8 miles of the Burnham Road (BIA Rd. 3005 and NR5082) to a safe distance from mining activity. Estimated surface disturbance within the PPA would be 4,104 acres..

LOCATION: Sections 6, 7, 18, & 19, T26N, R15W, Sections 1, 9-16, & 22-26, T26N, R16W, NMPM, San Juan County, New Mexico

REPRESENTATIVE: Ecosphere Environmental Services (EES).

ACTION AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Bureau of Indian Affairs (BIA) for BHP Navajo Coal Mine (BNCC)

B.R. REPORT TITLE / DATE / PREPARER: BE - Pinabete Permit Area/02 MAY 2013/EES. The BE is not certified with signature.

SIGNIFICANT BIOLOGICAL RESOURCES FOUND: Area 2. PPA is within a RSA.

POTENTIAL IMPACTS

NESL SPECIES POTENTIALLY IMPACTED: [1] *Aquila chrysaetos* (Golden Eagle), G3, GBENPR, REPR, BGEP, MBTA; [2] *Buteo regalis* (Ferruginous Hawk), G3, MBTA; [3] *Athene cunicularia* (Burrowing Owl), G4, MBTA; [4] *Charadrius montanus* (Mountain Plover), G4, MBTA.

FEDERALLY-LISTED SPECIES AFFECTED: NA

OTHER SIGNIFICANT IMPACTS TO BIOLOGICAL RESOURCES: NA

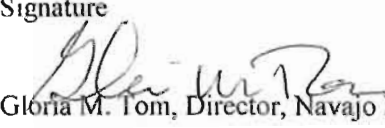
AVOIDANCE / MITIGATION MEASURES: None recommended in the BE for the avian species listed that have potential to occur within and adjacent to the PPA. This includes non-endangered MBTA-protected species that may experience impacts from initial mining activity (i.e. disturbance to ground, vegetation, & nesting substrates during the breeding season). The NNDFW recommends that Section 4.4.1 is amended to include the breeding season for the Burrowing Owl. The breeding season should be 01 MAR-15 AUG, and not 01 APR-15 AUG.

CONDITIONS OF COMPLIANCE*: [1] All proposed power lines along the perimeter of the mine lease and within the Pinabete Permit Area shall be constructed with a raptor-safe power pole design per Raptor Electrocution Prevention Regulations (REPR). All guy wires shall be marked with highly visual daytime markers to prevent bird collisions within the RSA.

FORM PREPARED BY / DATE: Pamela A. Kyselka/07 FEB 2014

COPIES TO: (add categories as necessary)

☒ BIA ☐

| | | |
|--|---|-------------|
| 2 NTC § 164 Recommendation: | Signature | Date |
| <input type="checkbox"/> Approval |  | 2/11/14 |
| <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 |

SECOND AMENDED PROGRAMMATIC AGREEMENT

Between

Office of Surface Mining Reclamation and Enforcement,

Bureau of Indian Affairs,

Bureau of Land Management,

United States Environmental Protection Agency,

United States Army Corps of Engineers,

Navajo Nation Tribal Historic Preservation Officer,

Advisory Council on Historic Preservation,

Navajo Transitional Energy Company, LLC, and

BHP Billiton Mine Management Company

Regarding

Management of Historic Properties at

**Navajo Mine Area III, Area IV North, Area IV South, and the Burnham Road North and South
Realignments**

This Programmatic Agreement ("Agreement") is between the Office of Surface Mining Reclamation and Enforcement, Western Region (OSMRE), the U.S. Bureau of Indian Affairs (BIA), the U.S. Bureau of Land Management (BLM), United States Environmental Protection Agency (USEPA), United States Army Corps of Engineers (USACE), Navajo Nation Tribal Historic Preservation Officer (NNTHPO), the Advisory Council on Historic Preservation (ACHP), Navajo Transitional Energy Company, LLC (NTEC), and BHP Billiton Mine Management Company (MMCo).

RECITALS

WHEREAS, NTEC, Arizona Public Services Company (APS), Public Service Company of New Mexico (PNM) and MMCo are proponents of the Four Corners Power Plant and Navajo Mine Energy Project ("Project") whose purpose is to facilitate on-going operations at the Four Corners Power Plant (FCPP) and on NTEC's Navajo Mine lease and associated properties to provide for long-term, reliable, continuous, and uninterrupted base load electrical power to customers in the southwestern U.S., using a reliable and readily available and permitted fuel source; and

WHEREAS, APS and PNM are invited signatory parties to the Agreement; and

Errata Sheet

“SECOND AMENDED PROGRAMMATIC AGREEMENT Between Office of Surface Mining Reclamation and Enforcement, Bureau of Indian Affairs, Bureau of Land Management, United States Environmental Protection Agency, United States Army Corps of Engineers, Navajo Nation Tribal Historic Preservation Officer, Advisory Council on Historic Preservation, Navajo Transitional Energy Company Regarding Management of Historic Properties at Navajo Mine Area III, Area IV North, Area IV South, and the Burnham Road North and South Realignments” (Navajo Mine PA)

March 4, 2015

The third “WHEREAS” recital statement, located on page 2, line 2 of the Navajo Mine PA states “...to permanently realign Burnham Road (as shown in Attachment A to this Agreement),” but Attachment A does not show the Burnham Road. Please see the corrected Attachment A map with symbol and legend that identify the proposed Burnham Road South included with this errata sheet.

WHEREAS, NTEC proposes to mine a portion of Area IV North, Area IV South, and to continue to mine in Area III, and to permanently realign Burnham Road (as shown in Attachment A to this Agreement), which are within NTEC's lease boundary on the Navajo Reservation southwest of Farmington in northwestern New Mexico. NTEC's activities are termed the "Mine Project" for mining in Area III, Area IV North, and Area IV South (including both the Navajo Mine Surface Mining Control and Reclamation Act of 1977 (SMCRA) Permit Area and the proposed Pinabete SMCRA Permit Area) and the completed realignment of Burnham Road North and the eventual realignment of Burnham Road South; and

WHEREAS, the Mine Project includes the following primary components that would be operated for the anticipated life of the project:

- Open pit surface coal mining and related activities (under the Navajo Mine SMCRA Permit and the proposed Pinabete Permit Area which includes portions of Area IV North and Area IV South),
- Reclamation activities,
- Mining infrastructure (e.g., roads, facilities, powerlines),
- Realignment of Burnham Road South, the application or proposal for which will be submitted in the future in advance of planned mining activities in the areas traversed by the existing Burnham Road; and

WHEREAS, pursuant to Section 106 of the National Historic Preservation Act (NHPA), OSMRE, the NNTHPO, the USACE, BIA, BLM, and BHP Navajo Coal Company (BNCC) were signatory parties to an Amended Programmatic Agreement governing permitted mining, reclamation, and related activities in Area III and Area IV North of BNCC's mine lease (2011 Amended Programmatic Agreement); and

WHEREAS, through the execution of this Second Amended Programmatic Agreement ("Agreement" or "APA"), OSMRE, NNTHPO, USACE, USEPA, BIA, BLM, and NTEC seek to amend the 2011 Amended Programmatic Agreement, in accordance with its terms, to accommodate certain project modifications; and

WHEREAS, OSMRE is the lead Federal agency responsible for ensuring compliance with Section 106 of the NHPA and under the Indian Lands Program, would need to approve, pursuant to the SMCRA, the mining permit for the proposed coal mining and therefore is a Signatory to this Agreement; and

WHEREAS, the Navajo Nation, acting through its Historic Preservation Department, has assumed the role of the NNTHPO pursuant to Section 101(d)(2) of the NHPA, as amended, and therefore the NNTHPO is a Signatory to this APA; and

WHEREAS, the USACE would need to approve, pursuant to Section 404 of the Clean Water Act, a permit(s) for the proposed mining in Areas III, IV North and IV South, and has agreed to participate in the Section 106 consultation process, and therefore is a Signatory to this APA; and

WHEREAS, the USEPA would need to approve a revised Section 402 National Pollutant Discharge Elimination System (NPDES) permit, and has agreed to participate in the Section 106 consultation process, and therefore is a Signatory to this APA; and

WHEREAS, the BIA: (a) has approved a realignment of a portion of the Burnham Road, now completed (BIA Road N-5028) ("Burnham Road North"); (b) would need to evaluate and approve a realignment of another portion of the Burnham Road to be proposed in the future ("Burnham Road South") as depicted on Attachment A; and (c) has applications for rights-of-way renewal pending for certain roads, and has agreed to participate in the Section 106 consultation process, and therefore is a Signatory to this APA; and

WHEREAS, the BLM would need to approve new Resource Recovery and Protection Plan(s) pursuant to BLM regulations and the Indian Mineral Leasing Act, and has agreed to participate in the Section 106 consultation process, and therefore is a Signatory to this APA; and

WHEREAS, as the result of a series of transactions, NTEC is now the lessee of the Navajo Mine Lease and holds the Navajo Mine SMCRA Permit and will be the Pinabete SMCRA Permit permittee in the event OSMRE determines to grant that permit; and

WHEREAS, MMCo and NTEC have entered an agreement under which MMCo will be serving as the mine manager for a period of time, and pursuant to which MMCo has certain obligations to NTEC to pursue the issuance of federal permits and approvals required for operation of Navajo Mine for periods after July 6, 2016; and

WHEREAS, NTEC (and its predecessor), as the proponent of the Mine Project, has provided information for mapping the Mine Project area and the Area of Potential Effects (APE) as determined by OSMRE in consultation with NNTHPO, agencies, and other Consulting Parties, and, using qualified outside consultants as specified in this Agreement, stands ready to undertake inventory work, to assist in evaluating eligibility, to assist in seeking to resolve adverse effects on historic properties, and fund activities related to the identification, evaluation, and treatment of adverse effects, and has been invited to participate as a Signatory to this Agreement; and

WHEREAS, this Agreement shall apply to all activities, including short-term construction and long-term operation, mining, reclamation and all related activities authorized and associated with the Mine Project including all modifications and revisions; and

WHEREAS, Section 106 of the NHPA and its implementing regulations for *Protection of Historic Properties*, Title 36, Code of Federal Regulations, Part 800 (36 CFR 800), require a Federal Agency with direct or indirect jurisdiction over a Federal, federally assisted, or federally permitted or approved undertaking to take into account the effects of the undertaking on historic properties included in or eligible for the National Register of Historic Places (NRHP), and, prior to approval of an undertaking, to afford the ACHP, Consulting Parties, and other interested parties a reasonable opportunity to comment on the undertaking (the Section 106 review process); and

WHEREAS, the ACHP has elected to participate in the Section 106 process; and

WHEREAS, during the previous 2011 Amended Programmatic Agreement, in addition to the participation of, and consultation with, NNTHPO, OSMRE sought consultation with tribes through correspondence and telephone inquiries; and

WHEREAS, prior to the execution of this Agreement, OSMRE (and its predecessor agency, the United States Geological Service, or USGS) has completed certain steps to comply with Section 106 of the NHPA in order to permit mining activities in Area III as memorialized in a 1978 Memorandum of Agreement, as amended, and related correspondence; and

WHEREAS, in accordance with the terms and conditions of the original 2011 Amended Programmatic Agreement, which this Agreement is intended to amend and supersede, OSMRE and other parties have complied with, and substantially completed the work required by, Stipulations in this Agreement for significant portions of Area IV North (as reflected in a November 9, 2009 letter referenced in Attachment G); and

WHEREAS, prior to the execution of this Agreement, OSMRE, NNTHPO and other parties have completed certain steps to comply with Section 106 of the NHPA relating to Navajo Mine activities; and

NOW, THEREFORE, the Signatories to this Agreement shall fulfill the following stipulations during the Burnham Road South realignment, and construction, operation, mining, reclamation and all related activities in Areas III, IV North and IV South. This will take into account the effects of the Mine Project on archaeological, historical, and Traditional Cultural Properties (TCPs) listed in or eligible for inclusion in the NRHP or otherwise subject to consideration under the Native American Graves Protection and Repatriation Act (NAGPRA), The Navajo Nation Policy for the Protection of Jishchaa, and related Federal and Navajo Nation cultural resources policies and regulations (Attachment B).

STIPULATIONS

Stipulation 1. The Area of Potential Effect and Identification of Historic Properties

- A. OSMRE, in consultation with the NNTHPO, and other Consulting Parties has established the APE, as defined at 36 CFR 800.16(d). For the Navajo Mine the APE includes mining areas and a one mile buffer around these areas for the additional consideration of TCPs (Attachment A).
- B. Under the direction of OSMRE and with the NNTHPO, and other Consulting Parties, through qualified outside consultants, NTEC (or its predecessor in interest) has conducted extensive inventory work for the identification of cultural resources within the APE, including archaeological and ethnographic investigations and surveys, as of the date of this Agreement.

Stipulation 2. Evaluation of Historic Properties for Eligibility

- A. In consultation with the NNTHPO, OSMRE has made determinations of eligibility for listing on the NRHP of sites identified through inventory work considered in accordance with the 2011

Amended Programmatic Agreement (Area III and Area IV North), and the 2009 Cultural Resources Compliance Form (HPD-09-611-Revised) prepared for Desert Rock Energy Project (Area IV South), as summarized in Attachment C. OSMRE and the Consulting Parties have reviewed and finalized the determinations of eligibility for potential TCPs within the APE and outside the Mine Lease boundaries.

- B. When making determinations of eligibility for the NRHP of reported, newly discovered, or reevaluated sites (that may be necessary), OSMRE shall consult with the NNTHPO to seek consensus determinations of the NRHP eligibility of properties identified on the Navajo Mine. OSMRE also shall consult with the Signatories to this Agreement and take into account their views.
- C. If the NNTHPO or other Signatories to this Agreement disagree with OSMRE determinations of eligibility, OSMRE shall consult with the objecting party or parties to resolve the objection. If a resolution cannot be agreed upon, OSMRE shall forward the required documentation to the Keeper of the NRHP for a final determination pursuant to regulations for *Determinations of Eligibility for the National Register of Historic Places* (36 CFR 63).
- D. Nothing in this Agreement shall be construed to require OSMRE to reconsider eligibility determinations made under the 2011 Amended Programmatic Agreement or its predecessor agreements, including without limitation the 1978 Memorandum of Agreement; or the 2009 Cultural Resources Compliance Form (HPD-09-611-Revised) prepared for Desert Rock Energy Project (Area IV South).

Stipulation 3. Determination of Effect and Adverse Effect of the Project on Historic Properties

- A. As summarized in Attachment C, in consultation with NNTHPO, NTEC, and review by Consulting Parties, OSMRE has applied the criteria of adverse effect (36 CFR 800.5) to NRHP-eligible properties located within the APE.
- B. OSMRE, in consultation with NNTHPO and other Consulting Parties who are Signatories to this Agreement, shall continue to apply the criteria of adverse effect (36 CFR 800.5) to NRHP-eligible properties located within the APE. OSMRE shall provide a review opportunity for all Signatories to this Agreement in accordance with Stipulation 7 to comment on effects to eligible and listed properties.
- C. Unless mining plans change which would result in a change to the APE, (Stipulation 5) nothing in this Agreement shall be construed to require OSMRE to reconsider effect or adverse effect determinations made under the 2011 Amended Programmatic Agreement; or the 2009 Cultural Resources Compliance Form (HPD-09-611-Revised) prepared for Desert Rock Energy Project (Area IV South).

Stipulation 4. Responsibilities of Federal Agencies and Project Proponents

- A. OSMRE, as a result of its permitting responsibilities, is the lead federal agency under Section 106 of the NHPA, as amended. OSMRE and NNTHPO shall coordinate as necessary to ensure that each of their respective responsibilities is clearly defined.
- B. NTEC and MMCo shall be responsible for communicating with OSMRE and/or NNTHPO regarding compliance with this Agreement, recognizing that NTEC is responsible for any obligations of the Mine Project proponents.


Stipulation 5. Project Modifications

If development designs or changes in designs, including without limitation the submittal of a specific proposal for the realignment of Burnham Road South, require expansion or other modification of the APE or materially modify the nature of potential effects, NTEC shall retain qualified outside consultants to undertake supplemental inventory work in newly defined portions of the APE, to identify any historic properties in the expanded or modified APE, and to provide recommendations on eligibility and assess effects. OSMRE shall consult with the NNTHPO on the NRHP-eligibility of any newly identified cultural resources, about the effect of the project on any NRHP-eligible properties, and about treatment to avoid, reduce, or mitigate any identified adverse effects, in a manner consistent with Stipulations 1, 2, and 3.

Stipulation 6. Resolution of Adverse Effects

- A. In accordance with the 1978 Memorandum of Agreement, as amended, relating to prior construction, mining, reclamation and all related activities on NTEC's mine lease, including without limitation Area III, OSMRE's predecessor, the ACHP, the New Mexico State Historic Preservation Officer (predecessor to NNTHPO under Section 106 of the NHPA, and Utah International, Inc. (BNCC and NTEC's predecessor), complied with the then existing requirements of Section 106 of the NHPA and its implementing regulations. Compliance is demonstrated by the December 12, 1984 letter from OSMRE's Mr. Allen D. Klein to Utah International's Mr. R.C. Diederich, and the July 1, 1986 letter from OSMRE's Mr. Melvin L. Shilling to Utah International's Mr. John Grubb (Attachment G).
- B. As summarized in Attachments C and D, OSMRE, NNTHPO, and NTEC consulted, and identified minimization, avoidance, and mitigation measures to resolve adverse effect determinations, and implemented measures to resolve adverse effects concerning certain historic properties within the APE.
- C. OSMRE, NNTHPO, and the other Signatories shall consult and identify minimization, avoidance, and mitigation measures to resolve any other adverse effect determinations concerning any other historic properties within the APE, not already addressed as shown in Attachments C and D or that may be identified in the future.
- D. If any of the Consulting Parties who execute this Agreement as Invited Signatories advise OSMRE and/or NNTHPO of concerns about effects on properties to which they ascribe traditional religious or cultural significance, OSMRE in consultation with the NNTHPO shall seek to consult with them about possible measures to resolve the adverse effects.

- E. For additional mining, or related activity of the Mine Project, OSMRE and NNTHPO shall guide NTEC in development of plans to resolve adverse effects, including without limitation treatment plans (Treatment Plans). Treatment Plan(s) shall conform to federal requirements (Attachment B), and the Navajo Nation's policies under the Navajo Nation Cultural Resources Protection Act (CMY-19-88), and will address any adverse effects, the resolution of which is agreed to be appropriate, on historic properties, including traditional cultural properties. The nature of the treatment may vary for the various types of affected historic properties, and separate Treatment Plans may be developed for different portions of the APE or for different types of historic properties. Treatment Plan(s) shall:
1. Be consistent with the Secretary of the Interior's Standards and Guidelines, as amended and annotated (http://www.cr.nps.gov/local-law/arch_stnds_0.htm), and other applicable ordinances, regulations, and policies of the Navajo Nation; and
 2. Describe the properties to be affected by mining and associated operations and the nature of those effects; and
 3. Identify the significant values of the properties within relevant historic contexts, as defined in NRHP Bulletin 16 (How to Complete the NRHP Registration Form) and Navajo regulation and guidance, and how those values would be affected; and
 4. Specify any measures to avoid, reduce, or mitigate adverse effects on those significant values.
 5. Specify safety and related protocols to facilitate access by Navajo Nation members who have an identifiable interest in Navajo TCPs and burial sites on the Mine Lease, provided such access does not interfere with operations and activities on the Mine Lease.
- F. OSMRE, in consultation with the NNTHPO, shall review draft Treatment Plan(s). On approval of the Treatment Plan(s), NTEC shall proceed to implement the Final Treatment Plan(s).
- G. OSMRE shall distribute the approved the Final Treatment Plan(s) to all parties to this agreement pursuant to Stipulation 7.
- H. OSMRE in conjunction with NNTHPO shall ensure that the Treatment Plan(s) is implemented and completed.
- I. Many of the affected historic properties are likely to be archaeological sites and if avoidance is not feasible, treatment, if any, is likely to involve studies to recover and preserve important archaeological materials and information. Treatment Plan(s) that involves archaeological data recovery shall specify at a minimum:
1. Research questions and goals that are derived from relevant historic contexts, as applicable to the region in which the project is located, and which can be addressed through data recovery and archival studies, along with an explanation of their relevance and importance; and

- 
2. Fieldwork and analytical methods that are appropriate for the collection of the requisite data to address the defined research questions; and
 3. The level of effort to be expended on the treatment of each property, including rationale and methods for proposed sampling; and
 4. Strategies for distributing and/or archiving collected information to both professional and nonprofessional audiences, including a proposed schedule of reports or media products (if multiple related studies are conducted to recover data, the strategies for distributing information shall include the preparation of a synthesis to integrate the results of the multiple related studies); and
 5. Methods and procedures for addressing any human remains and cultural objects pursuant to Stipulation 8, including plans of action or burial agreements as warranted; and
 6. Qualifications of the study team; and
 7. Obtainment of any necessary cultural resource permits.
- J. If mining and related activities remain unchanged, nothing in this Agreement shall be construed to require OSMRE to reconsider or require further treatment or other steps to resolve adverse effects for historic properties considered previously in Section 106 consultations relating to activities at Navajo Mine and ancillary facilities.

Stipulation 7. Review, Comment, and Consultation

- A. Plans prepared in accordance with this Agreement shall be consistent with Secretary of the Interior standards and guidelines for preservation planning and the Navajo Nation Cultural Resources Protection Act.
- B. OSMRE in conjunction with the NNTHPO shall consider any comments on draft plans or any other requests for consultation or comment from Signatories provided within thirty (30) calendar days, and request the project proponent to make appropriate revisions. OSMRE shall submit final documents to the NNTHPO and other parties to this Agreement for reference.
- C. If any Signatory does not respond within thirty (30) calendar days of any request for consultation, OSMRE will consider that Signatory to have waived its consultation right concerning that request or to have agreed with the agency recommendation.

Stipulation 8. Treatment of American Indian Remains and Cultural Objects

The treatment of American Indian remains and any funerary objects, sacred objects, or objects of cultural patrimony (cultural objects) found on the Navajo Reservation shall be addressed in accordance with the *Navajo Nation Policy for the Protection of Jishchaá: Gravesites, Human Remains, and Funerary*

Items (Jishchaá Policy), and in a manner that is consistent with the NAGPRA and its implementing regulations (43 CFR 10).

Stipulation 9. Authorization of Construction and Mining

- A. For purposes of compliance with cultural resources management requirements, including without limitation Section 106 of the NHPA and NAGPRA, NTEC is authorized to continue with construction, mining, reclamation, and all related activities in Area III of the Mine Lease.
- B. For purposes of compliance with cultural resources management requirements, including without limitation Section 106 of the NHPA and NAGPRA, NTEC is authorized to continue with construction, mining, reclamation, and all related activities in the portion of Area IV North of the Mine Lease permitted for mining and related activities under the Navajo Mine SMCRA Permit.
- C. Following implementation of Treatment Plans that may be determined to be necessary or appropriate for other Mine Project areas as approved pursuant to Stipulation 6 of this Agreement, OSMRE may, in its discretion, authorize the initiation of construction, mining, reclamation and other activities in those areas covered by a fully implemented Treatment Plan(s).

Stipulation 10. Confidentiality

The distribution of sensitive information about the locations and nature of inventoried historic properties shall be limited as provided for by Section 304 of the NHPA, 36 CFR 800.11(c), and Section 9(a) of the Archaeological Resource Protection Act (ARPA), 16 USC 470hh (a); regulations implementing the Surface Mining Control and Reclamation Act (30 CFR 773.6(d) (3) (iii)), and the Navajo Nation Privacy Act at 2 N.N.C. Section 85. Pursuant to this stipulation, the Consulting Parties to this Agreement agree to appropriately control the distribution of any confidential information they may receive as a result of their participation in this Agreement.

Stipulation 11. Unanticipated Discoveries

If potential historic properties or cultural objects are unexpectedly discovered during project implementation by activities other than archaeological testing or data recovery excavations conducted pursuant to a Treatment Plan, they shall be treated as discoveries. All work that might adversely affect the discovery shall cease and the Plan for Treatment of Unanticipated Discoveries of Potential Historic Properties (Attachment E) shall be implemented.

Stipulation 12. Damage of Known Historic Properties

If known historic properties are affected, directly or indirectly, in a manner that was not anticipated or authorized, the damages shall be treated as violations of the ARPA; the Navajo Nation Cultural Resources Protection Act, as applicable; and SMCRA. The project proponent shall cease all work at the site of the damage and immediately notify NNTHPO. In turn, NNTHPO shall coordinate with the proper

law enforcement agency, which will conduct an investigation and pursue criminal penalties or civil assessments as warranted. OSMRE inspectors may become involved as necessary.

Stipulation 13. Curation

All cultural materials collected from the Navajo Reservation lands in conjunction with inventory and treatment activities, including without limitation all potential historic properties, will remain the property of the Navajo Nation. OSMRE and the NNTHPO shall ensure that artifacts and records resulting from the inventory and treatment programs are curated in accordance with 36 CFR 79, except for the disposition of human remains, funerary objects, sacred objects and objects of cultural patrimony, which shall be determined in consultation pursuant to Stipulation 8. NTEC will pay reasonable curation costs at a NNTHPO-approved facility.

Stipulation 14. Professional Qualifications and Permits

OSMRE shall ensure that all historic preservation work pursuant to this Agreement is conducted by or under the supervision of a person or persons meeting the Secretary of the Interior's *Professional Qualifications Standards* (36 CFR 61), and in accordance with all required permits including those required under the ARPA and the Navajo Nation Code.

Stipulation 15. Dispute Resolution

Should any Signatory Party to this agreement object in writing to any actions proposed or carried out pursuant to this Agreement, OSMRE shall notify the NNTHPO and consult with this party to resolve the objection. If OSMRE determines that the objection cannot be resolved, OSMRE shall forward all documentation relevant to the dispute to the ACHP. Within 30 days after receipt of all pertinent documentation, the ACHP shall either:

1. Advise OSMRE that the ACHP concurs in the proposed response to the objection; or
2. Provide OSMRE with recommendations that the agency shall take into account in reaching a final decision regarding the dispute; or
3. Notify OSMRE that it will comment pursuant to 36 CFR 800.7(c), and proceed to comment. OSMRE shall take into account any ACHP comments made under this provision.

Any recommendation or comment provided by the ACHP will be understood to pertain only to the subject of the dispute. The responsibility of OSMRE to carry out all actions under this Agreement that is not the subject of the dispute will remain unchanged.

Stipulation 16. Amendments and Termination

- A. Any Signatory to this Agreement may request that it be amended by informing OSMRE in writing of the reason for the request and the proposed amendment language, whereupon OSMRE shall inform the other Signatories and request their views concerning the proposed amendment. All

Signatories must agree to any amendment before it can take effect, and such agreement shall not be unreasonably withheld.

- B. In the event that the terms of the Agreement cannot be, or are not being carried out, the Signatories shall consult to seek amendment of the Agreement. If an agreement cannot be reached on an amendment, any Signatory may terminate the Agreement pursuant to 36 CFR 800.6(c) (8). OSMRE then shall either seek to negotiate a memorandum of agreement under 36 CFR 800.6(c) or request and consider the comments of the ACHP, pursuant to 36 CFR 800.7(a).

Stipulation 17. Duration

OSMRE and NNTHPO and the Signatory Parties shall review this Agreement in January every five years after its execution as long as mining and related operations continue in any of Area III, Area IV North, and Area IV South to determine whether the Agreement needs to continue and whether any changes and/or termination may be needed. If at any other time the Signatories agree that the goals of the Agreement have been fulfilled, the Agreement may be terminated by mutual consent.

Stipulation 18. Execution

- A. Execution of this Agreement, filing of the Agreement with the ACHP pursuant to 36 CFR 800.6(b) (1) (iv), and implementation of its terms is evidence that OSMRE have taken into account the effects of mining in Area III, Area IV North, and Area IV South on historic properties protected under Section 106 of the NHPA, and has afforded the ACHP an opportunity to comment.
- B. On execution of this Agreement, all prior agreements regarding compliance with NHPA Section 106 and its implementing Agreements are superseded and replaced by this Agreement.

SIGNATORY PARTY

OFFICE OF SURFACE MINING RECLAMATION AND ENFORCEMENT


By Erwin J. Berchenger Date 12/18/2014

Acting Regional Director, Western Region

FCPP-NMMP Project: Navajo Mine PA
OSMRE Received 18 DEC 2014
OSMRE Received by
Jeremy Hagg
Jeremy Hagg

SIGNATORY PARTY

BUREAU OF INDIAN AFFAIRS

By  Date 12/19/2014
Sharon Pinto, Director, Navajo Region

ECPP-NMMP Project: Navajo Mine PA
OSMRE Received 19 DEC 2014
OSMRE Received by

Jeremy Hiff

SIGNATORY PARTY

BUREAU OF LAND MANAGEMENT

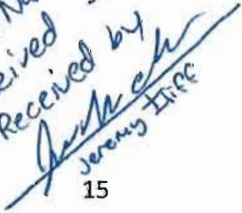
By Victoria Barr Date 12/16/14
Victoria Barr, Farmington District Manager

FCPP-NMMP Project: Navajo Mine PA
OSMRE Received 23 DEC 2014
OSMRE Received by
Jeremy H. H. H.
14

SIGNATORY PARTY

U.S. ENVIRONMENTAL PROTECTION AGENCY

By  Date 12/30/2014
Jane Diamond, Director, Water Division, Pacific Southwest Office

FCPP-NMMP Project: Navajo Mine PA
OSMRE Received 5/14/2015
OSMRE Received by 
Jeremy Hite


SIGNATORY PARTY

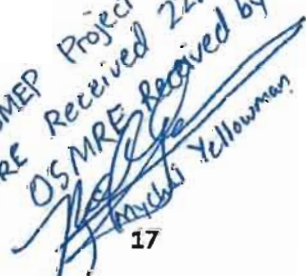
U.S. ARMY CORPS OF ENGINEERS

By Allan Steinle Date 2 Dec 14
Allan Steinle, Regulatory Division Chief, Albuquerque District

FCPP-NMMP Project : Navajo Mine PA
OSMRE Received 2DEC2014
OSMRE Received by
Jeremy IVFF

SIGNATORY PARTY**NAVAJO NATION TRIBAL HISTORIC PRESERVATION OFFICER**

By  Date 12-22-14
Ron Maldonado, Acting Tribal Historic Preservation Officer

FCPP-NMMP Project: Navajo Mine PA
OSMRE Received 22DEC 2014
OSMRE Received by

Amyli Yellowman

SIGNATORY PARTY

ADVISORY COUNCIL ON HISTORIC PRESERVATION

By



Date


2/23/15


for John M. Fowler, Executive Director

FCPP-NMHP Project: Navajo Mine PA
OSMRE Received 25 FEB 2015
OSMRE Received by
Jeremy I. Hoff

SIGNATORY PARTY

NAVAJO TRANSITIONAL ENERGY COMPANY, LLC

By  Date 1-15-15
Chief Executive Officer
CLARK A. MOSELEY

FCPP-NMMP Project: Navajo Mine PA
OSMRE Received E-signed 6 JAN 2015
OSMRE Received by

Jeremy Hitt

SIGNATORY PARTY

BHP BILLITON MINE MANAGEMENT COMPANY

By

Pat Risner

Date

12/8/14

Pat Risner, Director

FCPP-NMMA Project: Navajo Mine PA
OSMRE Received 8 DEC 2014
OSMRE Received by
Jeremy Iker
20

INVITED SIGNATORY PARTIES

ARIZONA PUBLIC SERVICE COMPANY

By _____ Date _____

[Stated no intention to sign due to no direct involvement via phone call
24NOV2014]

PUBLIC SERVICE COMPANY OF NEW MEXICO

By _____ Date _____

[Declined opportunity to sign via email 1DEC2014]

ATTACHMENTS

Attachment A - Navajo Mine Location and APE Map

Attachment B - Regulations and Guidelines

Attachment C - Archaeological Sites within the Mine Lease Area APE – Status Table [TO BE UPDATED AS NEEDED] (comprehensive list of all current and previous determinations within the APE)

Attachment D - Traditional Cultural Properties (TCPs) within the APE – Status Table [TO BE UPDATED AS NEEDED] (comprehensive list of all current and previous determinations within the APE)

Attachment E – Plan for Treatment of Unanticipated Discoveries of Potential Historic Properties

Attachment F - Definitions

Attachment G - List of Documents Reflecting Prior Compliance Efforts

Area of Potential Effect
Navajo Mine

PROJECT BOUNDARY
Navajo Mine Lease Area
Pinabete Mine Permit Boundary

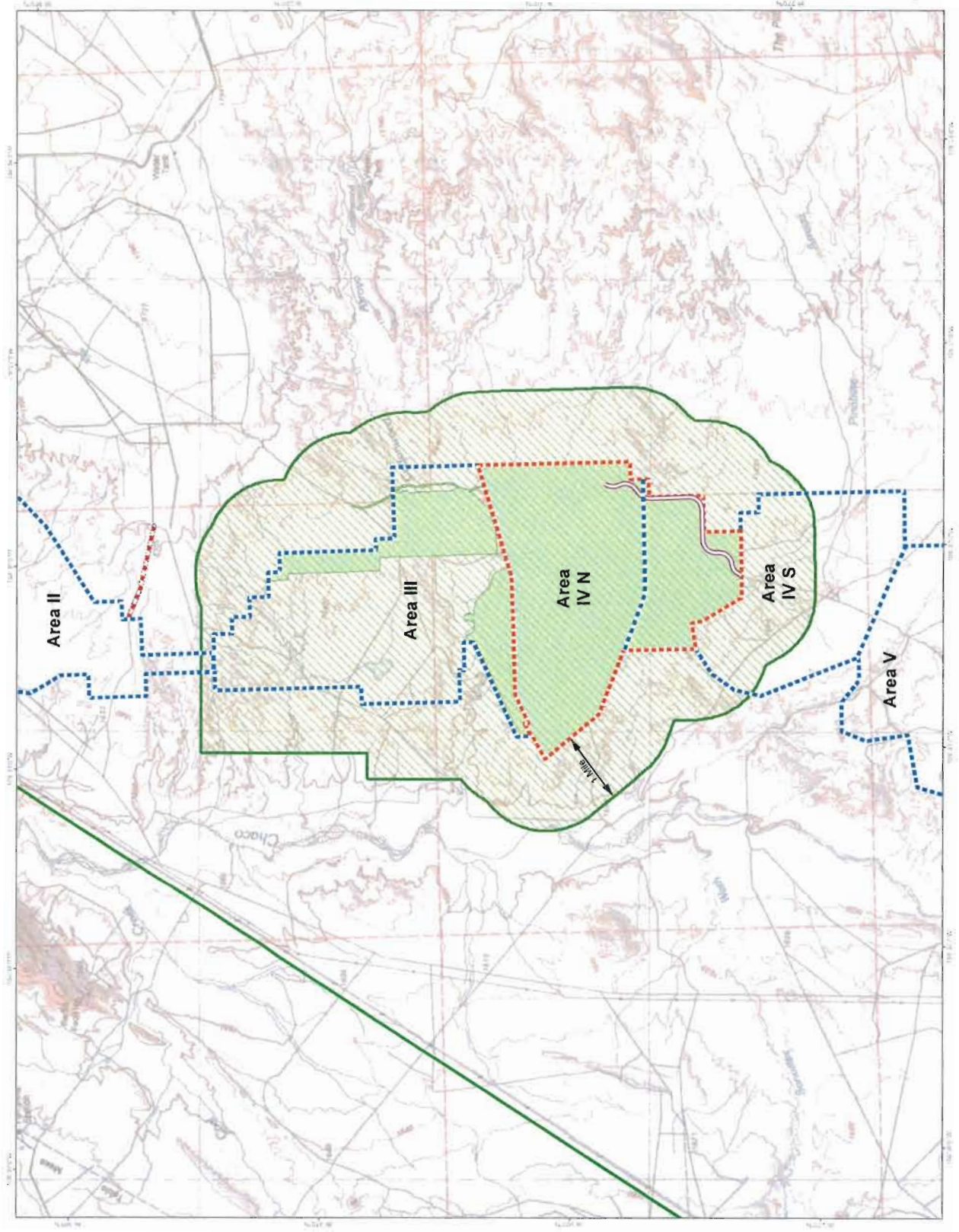
TRANSMISSION LINES
345kV

AREA OF POTENTIAL EFFECT
TCP ARE

Mining Related Disturbance Area

Area III Road

Proposed Burinham Road South



Attachment B - Regulations and Guidelines

American Indian Religious Freedom Act (AIRFA; 42 USC 1996 and 1996a)

Archaeological Resources Protection Act (ARPA; 16 USC 470, 43 CFR 7)

BLM 8110 Manual: Identifying and Evaluating Cultural Resources

National Historic Preservation Act (NHPA); (16 USC 470 et seq.)

National Register Bulletin 38, *Guidelines for Evaluating and Documenting Traditional Cultural Properties* (NPS 1990; Revised 1992; 1998)

Native American Graves Protection and Repatriation Act (NAGPRA; 25 USC 3001; 43 CFR 10)

Navajo Nation Cultural Resources Protection Act (NNCRPA) (CMY-19-88)

Navajo Nation Policy for the Disposition of Cultural Resource Collections

NHPA Implementing Regulations (36 CFR Part 800)

The ACHP's guidance on conducting archaeology under Section 106 (2009)

The ACHP's *Policy Statement Regarding the Treatment of Burial Sites, Human Remains and Funerary Objects* (February 23, 2007)

The Navajo Nation Policy for the Protection of Jishchaa'

The Secretary of the Interior's *Standards and Guidelines for Archaeology and Historic Preservation* (48 FR 44716-42, September 29, 1983)

Using Section 106 to Protect Historic Properties. (2011)

Attachment C. Archaeological Sites within the Mine Lease Area APE – Status Table.

Table C-1. Archaeological sites in Navajo Mine Area III.

| Site # | Land Ownership | Description | Affiliation | NRHP Eligibility Recommendation from Applicant | NRHP Determination by OSMRE | Action Recommended | THPO Concurrence with OSMRE Findings |
|----------|----------------|---|-------------|--|-----------------------------|----------------------------|--------------------------------------|
| LA 19325 | Navajo Nation | Previously recorded multiple structures | Navajo | Eligible | Eligible | Mitigated; No further work | Eligible |
| LA 19327 | Navajo Nation | Previously recorded multiple structures | Navajo | Eligible | Eligible | Mitigated; No further work | Eligible |
| LA 19334 | Navajo Nation | Previously recorded hogan and cairn | Navajo | Eligible | Eligible | Mitigated; No further work | Eligible |
| LA 19374 | Navajo Nation | Previously recorded lithic scatter | Archaic | Eligible | Eligible | Mitigated; No further work | Eligible |
| LA 19375 | Navajo Nation | Previously recorded lithic scatter | Archaic | Eligible | Eligible | Mitigated; No further work | Eligible |
| LA 19411 | Navajo Nation | Previously recorded lithic scatter | Archaic | Eligible | Eligible | Mitigated; No further work | Eligible |
| LA 19412 | Navajo Nation | Previously recorded lithic and ceramic scatter | Archaic | Eligible | Eligible | Mitigated; No further work | Eligible |
| LA 19413 | Navajo Nation | Previously recorded artifact scatter | Archaic | Eligible | Eligible | Mitigated; No further work | Eligible |
| LA 19414 | Navajo Nation | Previously recorded artifact scatter and features | Anasazi | Eligible | Eligible | Mitigated; No further work | Eligible |
| LA 19437 | Navajo Nation | Previously recorded artifact scatter and features | Anasazi | Eligible | Eligible | Mitigated; No further work | Eligible |
| LA 19439 | Navajo Nation | Previously recorded artifact scatter and features | Anasazi | Eligible | Eligible | Mitigated; No further work | Eligible |

Attachment C. Archaeological Sites within the Mine Lease Area APE – Status Table.

| Site # | Land Ownership | Description | Affiliation | NRHP Eligibility Recommendation from Applicant | NRHP Determination by OSMRE | Action Recommended | THPO Concurrence with OSMRE Findings |
|-----------|----------------|---|-------------|--|-----------------------------|----------------------------|--------------------------------------|
| LA 19439A | Navajo Nation | Previously recorded artifact scatter | Anasazi | Eligible | Eligible | Mitigated; No further work | Eligible |
| LA 19463 | Navajo Nation | Previously recorded artifact scatter with features | Anasazi | Eligible | Eligible | Mitigated; No further work | Eligible |
| LA 19464 | Navajo Nation | Previously recorded artifact scatter | Anasazi | Eligible | Eligible | Mitigated; No further work | Eligible |
| LA 19480 | Navajo Nation | Previously recorded artifact scatter | Anasazi | Eligible | Eligible | Mitigated; No further work | Eligible |
| LA 19508 | Navajo Nation | Previously recorded hogans and features | Navajo | Eligible | Eligible | Mitigated; No further work | Eligible |
| LA 19509 | Navajo Nation | Previously recorded hogan and wall | Navajo | Eligible | Eligible | Mitigated; No further work | Eligible |
| LA 19511 | Navajo Nation | Previously recorded structures | Navajo | Eligible | Eligible | Mitigated; No further work | Eligible |
| LA 19515 | Navajo Nation | Previously recorded rock ring | Anasazi | Eligible | Eligible | Mitigated; No further work | Eligible |
| LA 19516 | Navajo Nation | Previously recorded artifact scatter and habitation | Anasazi | Eligible | Eligible | Mitigated; No further work | Eligible |
| LA 19553 | Navajo Nation | Previously recorded artifact scatter and multiple residence | Anasazi | Eligible | Eligible | Mitigated; No further work | Eligible |
| LA 19554 | Navajo Nation | Previously recorded habitation and features | Navajo | Eligible | Eligible | Mitigated; No further work | Eligible |

Attachment C. Archaeological Sites within the Mine Lease Area APE – Status Table.

| Site # | Land Ownership | Description | Affiliation | NRHP Eligibility Recommendation from Applicant | NRHP Determination by OSMRE | Action Recommended | THPO Concurrence with OSMRE Findings |
|-------------|----------------|------------------------------------|-------------|--|-----------------------------|----------------------------|--------------------------------------|
| LA 19596 | Navajo Nation | Previously recorded lithic scatter | Archaic | Eligible | Eligible | Mitigated; No further work | Eligible |
| LA 19599 | Navajo Nation | Previously recorded lithic scatter | Archaic | Eligible | Eligible | Mitigated; No further work | Eligible |
| LA 19605 | Navajo Nation | Previously recorded lithic scatter | Archaic | Eligible | Eligible | Mitigated; No further work | Eligible |
| NM-H-29-105 | Navajo Nation | Previously recorded habitation | Navajo | Eligible | Eligible | Tested 2007; Avoided | Eligible |

Attachment C. Archaeological Sites within the Mine Lease Area APE – Status Table.

Table C-2. Archaeological sites in Navajo Mine Area IV North.

| Site # | Land Ownership | Description | Affiliation | NRHP Eligibility Recommendation from Applicant | NRHP Determination by OSMRE | Action Recommended | THPO Concurrence with OSMRE Findings |
|-------------|----------------|--|--------------------------|--|-----------------------------|--|--------------------------------------|
| NM-H-28-2 | Navajo Nation | Previously recorded artifact scatter | Anasazi | Not eligible | Eligible | Data recovery conducted 2008; avoided | Eligible |
| NM-H-28-4 | Navajo Nation | Previously recorded habitation/ field house | Anasazi | Eligible | Eligible | Data recovery conducted 2008; no further work | Eligible |
| NM-H-28-174 | Navajo Nation | Previously recorded habitation and feature | Anasazi/ Navajo | Eligible | Eligible | Tested 2007; Data recovery conducted 2008; no further work | Eligible |
| NM-H-29-31 | Navajo Nation | Previously recorded feature | Unknown | Eligible | Not eligible | No further work | Not eligible |
| NM-H-29-32 | Navajo Nation | Previously recorded features | Unknown | Not eligible | Not eligible | Tested 2007; no further work | Not eligible ¹ |
| NM-H-29-33 | Navajo Nation | Previously recorded features | Unknown/ possible Navajo | Not eligible | Not eligible | Tested 2007; No further work | Not eligible ¹ |
| NM-H-29-34 | Navajo Nation | Previously recorded artifact scatter and multiresidence habitation complex | Anasazi/ Navajo | Eligible | Eligible | Tested 2007; data recovery conducted 2007; avoided | Eligible |
| NM-H-29-35 | Navajo Nation | Previously recorded habitation | Navajo | Eligible | Eligible | Data recovery conducted 2007; no further work | Eligible |

Attachment C. Archaeological Sites within the Mine Lease Area APE – Status Table.

| Site # | Land Ownership | Description | Affiliation | NRHP Eligibility Recommendation from Applicant | NRHP Determination by OSMRE | Action Recommended | THPO Concurrence with OSMRE Findings |
|------------|----------------|-----------------------------|---------------------------------------|--|-----------------------------|--|--------------------------------------|
| NM-H-29-80 | Navajo Nation | Habitation | Anasazi | Eligible | Eligible | Tested 2007; Data recovery conducted 2007; no further work | Eligible |
| NM-H-29-81 | Navajo Nation | Rockshelter/ temporary camp | Navajo | Not eligible | Not eligible | Tested 2007; no further work | Not eligible ¹ |
| NM-H-29-82 | Navajo Nation | Caim | Possible Navajo | Not eligible | Not eligible | Ethnography conducted 2007; no further work | Not eligible |
| NM-H-29-83 | Navajo Nation | Caim | Possible Navajo | Not eligible | Not eligible | Ethnography conducted 2007; no further work | Not eligible |
| NM-H-29-84 | Navajo Nation | Caim | Possible Navajo | Not eligible | Not eligible | Ethnography conducted 2007; no further work | Not eligible |
| NM-H-29-85 | Navajo Nation | Caim | Possible Navajo | Not eligible | Not eligible | Ethnography conducted 2007; no further work | Not eligible |
| NM-H-29-86 | Navajo Nation | Caim | Possible Navajo | Not eligible | Not eligible | Ethnography conducted 2007; no further work | Not eligible |
| NM-H-29-87 | Navajo Nation | Sheepherders camp | Navajo | Not eligible | Not eligible | Tested 2007; no further work | Not eligible ¹ |
| NM-H-29-88 | Navajo Nation | Habitation | Anasazi | Eligible | Eligible | Data recovery conducted 2008; no further work | Eligible |
| NM-H-29-89 | Navajo Nation | Mining test pits | Recent Anglo-Euro/ American Mining | Not eligible | Eligible | Ethnography conducted 2007; no further work | Eligible |

Attachment C. Archaeological Sites within the Mine Lease Area APE – Status Table.

| Site # | Land Ownership | Description | Affiliation | NRHP Eligibility Recommendation from Applicant | NRHP Determination by OSMRE | Action Recommended | THPO Concurrence with OSMRE Findings |
|------------|----------------|--|----------------------|--|-----------------------------|---|--------------------------------------|
| NM-H-29-90 | Navajo Nation | Sheepherders camp | Navajo | Not eligible | Not eligible | Ethnography conducted 2007; no further work | Not eligible. ¹ |
| NM-H-29-91 | Navajo Nation | Previously recorded Wagon road and masonry wall support | Navajo | Not eligible | Eligible | Ethnography conducted 2007; no further work | Eligible |
| NM-H-29-92 | Navajo Nation | Previously recorded features | Navajo | Eligible | Eligible | Ethnography conducted 2007; no further work | Eligible |
| NM-H-29-93 | Navajo Nation | Previously recorded coal mine shaft/ test pit | Unspecified historic | Not eligible | Eligible | Ethnography conducted 2007; no further work | Eligible |
| NM-H-29-94 | Navajo Nation | Previously recorded water control check-dams | Navajo | Not eligible | Not eligible | Ethnography conducted 2007; no further work | Not eligible |
| NM-H-29-95 | Navajo Nation | Previously recorded water control earthen dam | Unknown | Not eligible | Not eligible | Ethnography conducted 2007; no further work | Not eligible |
| NM-H-29-96 | Navajo Nation | Previously recorded habitation | Navajo | Not eligible | Not eligible | Tested 2007; no further work | Not eligible. ¹ |
| NM-H-29-97 | Navajo Nation | Previously recorded multi-residence habitation complex | Navajo | Eligible | Eligible | Data recovery conducted 2007; no further work | Eligible |
| NM-H-29-98 | Navajo Nation | Previously recorded habitation | Navajo | Not eligible | Eligible | Tested 2007; no further work | Eligible |
| NM-H-29-99 | Navajo Nation | Previously recorded ceramic scatter and pastoral residence | Anasazi/ Navajo | Eligible | Eligible | Data recovery conducted 2008; no further work | Eligible |

Attachment C. Archaeological Sites within the Mine Lease Area APE – Status Table.

| Site # | Land Ownership | Description | Affiliation | NRHP Eligibility Recommendation from Applicant | NRHP Determination by OSMRE | Action Recommended | THPO Concurrence with OSMRE Findings |
|-------------|----------------|--|-------------|--|-----------------------------|--|--------------------------------------|
| NM-H-29-100 | Navajo Nation | Previously recorded seasonal ranching habitation | Navajo | Not eligible | Not eligible | No further work | Not eligible |
| NM-H-29-101 | Navajo Nation | Previously recorded sandstone quarry | Unknown | Not eligible | Not eligible | No further work | Not eligible |
| NM-H-29-102 | Navajo Nation | Previously recorded temporary camp | Navajo | Not eligible | Not eligible | Tested 2007; no further work | Not eligible ¹ |
| NM-H-29-103 | Navajo Nation | Previously recorded temporary camp | Navajo | Not eligible | Not eligible | Tested 2007; no further work; avoidance | Not eligible ¹ |
| NM-H-29-104 | Navajo Nation | Previously recorded feature | Unknown | Not eligible | Not eligible | No further work | Not eligible |
| NM-H-29-106 | Navajo Nation | Previously recorded habitation | Navajo | Not Eligible | Not Eligible | Tested 2007; no further work | Not eligible ¹ |
| NM-H-29-107 | Navajo Nation | Previously recorded single residence habitation | Navajo | Eligible | Eligible | Tested 2007; data recovery conducted 2008; no further work | Eligible |
| NM-H-29-108 | Navajo Nation | Previously recorded storage structure | Anasazi | Not eligible | Not eligible | Tested 2007; no further work | Not eligible ¹ |
| NM-H-29-109 | Navajo Nation | Previously recorded feature | Navajo | Not eligible | Not eligible | No further work | Not eligible |
| NM-H-29-110 | Navajo Nation | Previously recorded habitation | Anasazi | Eligible | Eligible | Avoided, outside of mine boundary. | Eligible |
| NM-H-29-111 | Navajo Nation | Previously recorded sheep camp | Navajo | Not eligible | Not eligible | Tested 2007; no further work | Not eligible ¹ |

Attachment C. Archaeological Sites within the Mine Lease Area APE – Status Table.

| Site # | Land Ownership | Description | Affiliation | NRHP Eligibility Recommendation from Applicant | NRHP Determination by OSMRE | Action Recommended | THPO Concurrence with OSMRE Findings |
|-------------|----------------|---|---------------------|--|-----------------------------|--|--------------------------------------|
| NM-H-29-112 | Navajo Nation | Previously recorded water control features | Navajo | Not eligible | Not eligible | No further work | Not eligible |
| NM-H-29-113 | Navajo Nation | Previously recorded features | Unknown | Not eligible | Not eligible | No further work | Not eligible |
| NM-H-36-22 | Navajo Nation | Previously recorded lithic scatter and lithic and ceramic scatter | Anasazi | Not eligible | Not eligible | Tested 2007; no further work | Not eligible. ¹ |
| NM-H-36-23 | Navajo Nation | Previously recorded temporary camp and burial | Unknown | Not eligible | Not eligible | Tested 2007; no further work | Not eligible. ¹ |
| NM-H-36-24 | Navajo Nation | Previously recorded artifact scatter with features | Archaic/ Anasazi | Eligible | Eligible | Data recovery conducted 2008; no further work | Eligible |
| NM-H-36-25 | Navajo Nation | Previously recorded lithic scatter | Archaic | Eligible | Eligible | Data recovery conducted 2007; no further work | Eligible |
| NM-H-36-26 | Navajo Nation | Previously recorded artifact scatter and sheep herders camp | Anasazi/ Navajo | Eligible | Eligible | Data recovery conducted 2007; no further work | Eligible |
| NM-H-36-28 | Navajo Nation | Previously recorded fieldhouse and pastoral habitation | Anasazi/ Navajo | Eligible | Eligible | Data recovery conducted 2007; no further work | Eligible |
| NM-H-36-29 | Navajo Nation | Previously recorded buried pueblo | Anasazi | Eligible | Eligible | Tested 2007; data recovery conducted 2008; no further work | Eligible |
| NM-H-36-30 | Navajo Nation | Previously recorded feature | Unknown | Not eligible | Not eligible | Tested 2007; no further work | Not eligible. ¹ |

Attachment C. Archaeological Sites within the Mine Lease Area APE – Status Table.

| Site # | Land Ownership | Description | Affiliation | NRHP Eligibility Recommendation from Applicant | NRHP Determination by OSMRE | Action Recommended | THPO Concurrence with OSMRE Findings |
|------------|----------------|--|-----------------|--|-----------------------------|---|--------------------------------------|
| NM-H-36-31 | Navajo Nation | Previously recorded activity area and habitation | Anasazi/ Navajo | Eligible | Eligible | Data recovery conducted 2007; no further work | Eligible |
| NM-H-36-76 | Navajo Nation | Lithic scatter | Unknown | Not eligible | Not eligible | Tested 2007; no further work | Not eligible ¹ |
| NM-H-36-77 | Navajo Nation | Temporary camp | Navajo | Not eligible | Not eligible | Tested 2007; no further work | Not eligible ¹ |
| NM-H-36-78 | Navajo Nation | Lithic scatter and feature | Unknown/ Navajo | Not eligible | Not Eligible | Tested 2007; no further work | Not eligible |
| NM-H-36-79 | Navajo Nation | Petroglyph panel | Navajo | Eligible | Eligible | Ethnography conducted 2007; no further work | Eligible |
| NM-H-36-80 | Navajo Nation | Lithic scatter and cairn markers | Unknown/ Navajo | Not eligible | Eligible | Tested 2007; no further work | Eligible |
| NM-H-36-81 | Navajo Nation | Previously recorded lithic scatter and sheepherders camp | Unknown/ Navajo | Not eligible | Not eligible | Tested 2007; no further work | Not eligible ¹ |
| NM-H-36-82 | Navajo Nation | Previously recorded activity areas | Archaic | Eligible | Eligible | Data recovery conducted 2007; no further work | Eligible |
| NM-H-36-83 | Navajo Nation | Previously recorded lithic scatter | Unknown | Not eligible | Not eligible | No further work | Not eligible |
| NM-H-36-84 | Navajo Nation | Previously recorded temporary camp | Navajo | Not eligible | Eligible | Ethnography conducted 2007; no further work | Eligible |
| NM-H-36-85 | Navajo Nation | Previously recorded water control dams | Unknown recent | Not eligible | Eligible | Ethnography conducted 2007; no further work | Eligible |

Attachment C. Archaeological Sites within the Mine Lease Area APE – Status Table.

| Site # | Land Ownership | Description | Affiliation | NRHP Eligibility Recommendation from Applicant | NRHP Determination by OSMRE | Action Recommended | THPO Concurrence with OSMRE Findings |
|------------|----------------|---|-----------------|--|-----------------------------|--|--------------------------------------|
| NM-H-36-86 | Navajo Nation | Previously recorded lithic scatter and temporary camp | Unknown/ Navajo | Not eligible | Eligible | Ethnography conducted 2007; no further work | Eligible |
| NM-H-36-87 | Navajo Nation | Previously recorded sheepherders camp | Navajo | Not eligible | Eligible | Ethnography conducted 2007; no further work | Eligible |
| NM-H-37-46 | Navajo Nation | Previously recorded lithic scatter | Archaic | Not eligible | Not eligible | No further work | Not eligible |
| NM-H-37-47 | Navajo Nation | Previously recorded ceramic and lithic scatter | Anasazi | Not eligible | Not Eligible | Tested 2007; no further work | Not eligible |
| NM-H-37-48 | Navajo Nation | Previously recorded ceramic and lithic scatter | Anasazi | Eligible | Eligible | Tested 2007; data recovery conducted 2008; avoided | Eligible |
| NM-H-37-49 | Navajo Nation | Previously recorded sheepherders camp | Navajo | Not eligible | Not eligible | Tested 2007; no further work | Not eligible ¹ |
| NM-H-37-50 | Navajo Nation | Previously recorded lithic scatter and habitation | Unknown/ Navajo | Not eligible | Eligible | Tested 2007; no further work | Eligible |
| NM-H-37-51 | Navajo Nation | Previously recorded sheepherders camp | Navajo | Not eligible | Not eligible | Ethnography conducted 2007; no further work | Not eligible |
| NM-H-37-52 | Navajo Nation | Previously recorded lithic scatter | Unknown | Not eligible | Not eligible | Tested 2007; no further work | Not eligible ¹ |
| NM-H-37-53 | Navajo Nation | Previously recorded ceramic scatter | Anasazi | Not eligible | Not eligible | No further work | Not eligible |
| NM-H-37-54 | Navajo Nation | Previously recorded activity area | Navajo | Not eligible | Not eligible | No further work | Not eligible |

Attachment C. Archaeological Sites within the Mine Lease Area APE – Status Table.

1. Site was initially determined eligible by NNTHPO and recommended for testing (see HPD-04-1252). Ecosystems Management, Inc. conducted testing and recommended site not eligible for NRHP (Johnson et al. 2007). NNTHPO accepted testing report.

Attachment C. Archaeological Sites within the Mine Lease Area APE – Status Table.

Table C-3. Archaeological sites in Burnham Road.

| Site # | Land Ownership | Description | Affiliation | NRHP Eligibility Recommendation from Applicant | NRHP Determination by OSMRE | Action Recommended | THPO Concurrence with OSMRE Findings |
|--|----------------|--|-------------|--|-----------------------------|--|--------------------------------------|
| NM-H-28-175 (Area III) | Navajo Nation | Previously recorded artifact scatter with feature | Unknown | Eligible | Eligible | Avoided | Eligible |
| NM-H-28-176 (Area III) | Navajo Nation | Previously recorded multiple habitation | Navajo | Not eligible | Eligible | Avoided | Eligible |
| NM-H-28-177 (Area III) | Navajo Nation | Previously recorded artifact scatter with features | Archaic | Eligible | Eligible | Tested 2007; Data recovery conducted 2008; no further work | Eligible |
| NM-H-28-178/ NM-H-36-123 (Area IV North) | Navajo Nation | Artifact scatter with features | Unknown | Not eligible | Eligible | Avoided | Eligible |

Attachment C. Archaeological Sites within the Mine Lease Area APE – Status Table.

Table C-4. Archaeological sites in Navajo Mine Area IV South.

| Site # | Land Ownership | Description | Affiliation | NRHP Eligibility Recommendation from Applicant | NRHP Determination by OSMRE | Action Recommended by Applicant ¹ | THPO Concurrence with OSMRE Findings |
|-------------|----------------|--|------------------|--|-----------------------------|--|--------------------------------------|
| NM-H-36-35 | Navajo Nation | Previously recorded activity area | Anasazi | Eligible | Eligible | Testing | Eligible |
| NM-H-36-50 | Navajo Nation | Previously recorded multiple residence/rock art panels | Anasazi// Navajo | Eligible | Eligible | Avoidance | Eligible |
| NM-H-36-134 | Navajo Nation | Previously recorded single residence | Navajo | Eligible | Eligible | Testing | Eligible |
| NM-H-36-135 | Navajo Nation | Previously recorded multiple residences | Navajo | Eligible | Eligible | Testing | Eligible |
| NM-H-36-136 | Navajo Nation | Previously recorded single residence | Anasazi | Eligible | Eligible | Testing | Eligible |
| NM-H-36-137 | Navajo Nation | Previously recorded artifact scatter and features | Navajo | Eligible | Eligible | Avoidance | Eligible |
| NM-H-36-138 | Navajo Nation | Previously recorded artifact scatter and features/rock art panel | Unknown/ Navajo | Eligible | Eligible | Avoidance | Eligible |
| NM-H-36-139 | Navajo Nation | Previously recorded artifact scatter and features | Archaic | Eligible | Eligible | Testing | Eligible |
| NM-H-36-140 | Navajo Nation | Previously recorded single residence | Navajo | Eligible | Eligible | Avoidance | Eligible |
| NM-H-36-141 | Navajo Nation | Previously recorded artifact scatter | Anasazi | Eligible | Eligible | Testing | Eligible |

Attachment C. Archaeological Sites within the Mine Lease Area APE – Status Table.

| Site # | Land Ownership | Description | Affiliation | NRHP Eligibility Recommendation from Applicant | NRHP Determination by OSMRE | Action Recommended by Applicant ¹ | THPO Concurrence with OSMRE Findings |
|-------------|----------------|---|-----------------|--|-----------------------------|--|--------------------------------------|
| NM-H-36-144 | Navajo Nation | Previously recorded multiple residence | Navajo | Eligible | Eligible | Avoidance | Eligible |
| NM-H-36-145 | Navajo Nation | Previously recorded artifact scatter and features | Navajo | Eligible | Eligible | Testing | Eligible |
| NM-H-36-146 | Navajo Nation | Previously recorded lithic scatter/ artifact scatter and features | Unknown/ Navajo | Eligible | Eligible | Testing | Eligible |
| NM-H-36-147 | Navajo Nation | Previously recorded ceremonial feature | Navajo | Eligible | Eligible | Testing | Eligible |
| NM-H-36-150 | Navajo Nation | Previously recorded artifact scatter and single residence | Anasazi/ Navajo | Eligible | Eligible | Testing | Eligible |
| NM-H-36-151 | Navajo Nation | Previously recorded residential complex | Navajo | Eligible | Eligible | Testing | Eligible |
| NM-H-36-152 | Navajo Nation | Previously recorded features | Navajo | Eligible | Eligible | Testing | Eligible |
| NM-H-36-153 | Navajo Nation | Previously recorded artifact scatter | Archaic | Not eligible | Not eligible | No further work | Not eligible |
| NM-H-36-155 | Navajo Nation | Previously recorded artifact scatter and features | Archaic | Eligible | Eligible | Avoidance | Eligible |
| NM-H-36-236 | Navajo Nation | Features | Navajo | Not eligible | Not eligible | No further work | Not eligible |
| NM-H-36-237 | Navajo Nation | Artifact scatter | Unknown | Eligible | Eligible | Testing | Eligible |
| NM-H-36-240 | Navajo Nation | Feature | Navajo | Not eligible | Not eligible | Avoidance | Not eligible |

Attachment C. Archaeological Sites within the Mine Lease Area APE – Status Table.

| Site # | Land Ownership | Description | Affiliation | NRHP Eligibility Recommendation from Applicant | NRHP Determination by OSMRE | Action Recommended by Applicant ¹ | THPO Concurrence with OSMRE Findings |
|-------------|----------------|---|-----------------|--|-----------------------------|--|--------------------------------------|
| NM-H-36-244 | Navajo Nation | Single residence and burials | Navajo | Eligible | Eligible | Testing | Eligible |
| NM-H-36-247 | Navajo Nation | Single residence/ recent trash dump | Navajo | Residence eligible/ trash dump not eligible | Eligible | Testing | Eligible |
| NM-H-36-248 | Navajo Nation | Rock art panels | Navajo | Eligible | Eligible | Avoidance | Eligible |
| NM-H-36-254 | Navajo Nation | Artifact scatter/ artifact scatter and features | Unknown/ Navajo | Eligible | Eligible | Testing | Eligible |
| NM-H-36-260 | Navajo Nation | Artifact scatter and features | Anasazi | Eligible | Eligible | Testing | Eligible |
| NM-H-37-57 | Navajo Nation | Previously recorded artifact scatter and features | Archaic | Eligible | Eligible | Testing | Eligible |
| NM-H-37-91 | Navajo Nation | Previously recorded artifact scatter and rock artifact/ artifact scatter with features and rock art | Unknown/ Navajo | Eligible | Eligible | Avoidance | Eligible |
| NM-H-37-92 | Navajo Nation | Previously recorded artifact scatter and features | Archaic | Eligible | Eligible | Testing | Eligible |

Attachment C. Archaeological Sites within the Mine Lease Area APE – Status Table.

| Site # | Land Ownership | Description | Affiliation | NRHP Eligibility Recommendation from Applicant | NRHP Determination by OSMRE | Action Recommended by Applicant ¹ | THPO Concurrence with OSMRE Findings |
|-------------|----------------|---|-------------|--|-----------------------------|--|--------------------------------------|
| NM-H-37-93 | Navajo Nation | Previously recorded artifact scatter and features | Navajo | Eligible | Eligible | Testing | Eligible |
| NM-H-37-94 | Navajo Nation | Previously recorded artifact scatter | Archaic | Eligible | Eligible | Testing | Eligible |
| NM-H-37-95 | Navajo Nation | Previously recorded artifact scatter and features | Archaic | Eligible | Eligible | Testing | Eligible |
| NM-H-37-96 | Navajo Nation | Previously recorded artifact scatter and features | Archaic | Eligible | Eligible | Testing | Eligible |
| NM-H-37-100 | Navajo Nation | Previously recorded artifact scatter and features | Navajo | Not eligible | Not eligible | No further work | Not eligible |

1. Testing recommended based on Navajo Nation Historic Preservation Department Cultural Resource Compliance Forms HPD-04-1252 and HPD-09-611.

Table D-1. TCPs Identified Within and Adjacent to APE at Navajo Mine..¹

| TCP Number | Internal Ref/ TCP Name | Affiliation | NRHP Eligibility Recommendation from Report/ Applicant | Mine Lease Area | Within APE | NN CRPA | NRHP Determination by OSMRE | Action Recommended | THPO Concurrence with OSMRE Finding |
|--------------|--|-------------|--|-----------------------|------------|---------|-----------------------------|---|-------------------------------------|
| TCP 1 | Offering area | Navajo | Not Eligible (NRHP) | Area IV North | Yes | Yes | Not Eligible (NRHP) | Mitigated | Not Eligible (NRHP) |
| Chavez TCP 2 | Lightning-struck corral/ offering area | Navajo | Not Eligible (NRHP) | Outside of lease area | Yes | Yes | Not Eligible (NRHP) | No further work, outside buffer | Not Eligible (NRHP) |
| Kelley TCP 2 | Onion gathering area | Navajo | Not Eligible (NRHP) | Area III | Yes | Yes | Not Eligible (NRHP) | No further work, replanted | Not Eligible (NRHP) |
| TCP 3 | Mineral-gathering area | Navajo | Not Eligible (NRHP) | Outside of lease area | Yes | Yes | Not Eligible (NRHP) | No further work, not affected by mining | Not Eligible (NRHP) |
| TCP 4 | Mineral-gathering area | Navajo | Not Eligible (NRHP) | Outside of lease area | Yes | Yes | Not Eligible (NRHP) | No further work, not affected by mining | Not Eligible (NRHP) |
| TCP 5 | Eagle-nesting area/offering site | Navajo | Not Eligible (NRHP) | Outside of lease area | Yes | Yes | Not Eligible (NRHP) | Avoidance | Not Eligible (NRHP) |
| TCP 6 | Offering site | Navajo | Not Eligible (NRHP) | Area V | No | Yes | N/A | N/A | Not Eligible (NRHP) |
| TCP 7 | Death Hogan/ house | Navajo | Not Eligible (NRHP) | Area IV South | Yes | Yes | Not Eligible (NRHP) | Avoidance | Pending |
| TCP 8 | Offering place | Navajo | Not Eligible (NRHP) | Outside of lease area | No | Yes | N/A | N/A | Not Eligible (NRHP) |
| TCP 9 | Herb gathering area | Navajo | Not Eligible (NRHP) | Outside of lease area | No | Yes | N/A | N/A | Not Eligible (NRHP) |

Attachment D. Traditional Cultural Properties (TCPs) and Historic Resources/In-Use Areas Within and Adjacent to the Mine Lease Area – Status Table.

| TCP Number | Internal Ref/ TCP Name | Affiliation | NRHP Eligibility Recommendation from Report/ Applicant | Mine Lease Area | Within APE | NN CRPA | NRHP Determination by OSMRE | Action Recommended | THPO Concurrence with OSMRE Finding |
|---|--|-------------|--|-----------------------|------------|---------|-----------------------------|------------------------------------|-------------------------------------|
| TCP 10 | Herb gathering area | Navajo | Not Eligible (NRHP) | Outside of lease area | No | No | N/A | N/A | Not Eligible (NRHP) |
| Deenasts'a a' Bito | Where wild sheep drink | Navajo | Not Eligible (NRHP) | Area IV North | Yes | Yes | Not Eligible (NRHP) | No further work | Not Eligible (NRHP) |
| Deenasts'a a' Dah Njah | Where wild sheep bed | Navajo | Not Eligible (NRHP) | Area IV North | Yes | Yes | Not Eligible (NRHP) | No further work | Not Eligible (NRHP) |
| Teel (Chaco River) | Gathering area | Navajo | NRHP Criteria B | Outside of lease area | Yes | Yes | Eligible | Avoidance, ceremony with community | Eligible |
| Biji' Dichi' ii Dahazkani (Tangy Spring Mesa Breeze Mountain) | Eagle taking area (possibly same as TCP 5) | Navajo | NRHP Criteria A | Area IV North | Yes | Yes | Eligible | Avoidance, No further work | Eligible |
| Halli | Spring and nlt'iz (offering place) | Navajo | Not Eligible (NRHP) | Un-known | Un-known | Yes | Pending | Pending THPO determination | Pending |
| Lok'aa' Deeshjin (Cottonwood Spring) | Sacred place | Navajo | Not Eligible (NRHP) | Outside of lease area | No | Yes | N/A | N/A | N/A |
| To Ba Jisdahni (Water that you wait for) | Well and possible nlt'iz (offering place) | Navajo | Not Eligible (NRHP) | Un-known | Un-known | Yes | Pending | Pending THPO determination | Pending |

Attachment D. Traditional Cultural Properties (TCPs) and Historic Resources/In-Use Areas Within and Adjacent to the Mine Lease Area – Status Table.

| TCP Number | Internal Ref/ TCP Name | Affiliation | NRHP Eligibility Recommendation from Report/ Applicant | Mine Lease Area | Within APE | NN CRPA | NRHP Determination by OSMRE | Action Recommended | THPO Concurrence with OSMRE Finding |
|---|---------------------------|-------------|---|-----------------------|------------|---------|-----------------------------|----------------------------|-------------------------------------|
| Tse Achiih (Nose Rock) | Sacred place | Navajo | Not Eligible (NRHP) | Un-known | Un-known | Yes | Pending | Pending THPO Determination | Pending |
| Tse Bijaati'ool (Rock Earrings) | Sacred place | Navajo | NRHP Criteria A | Outside of lease area | No | Yes | N/A | N/A | Eligible |
| Lid Dlyeeehi (Dach'Inyo od) (Collecting Smoke Drove them out) | Sacred place | Navajo | NRHP Criteria A | Outside of lease area | No | Yes | N/A | N/A | Eligible |

¹ This table includes TCPs located outside the APE. Only those sites within the APE are managed by the Programmatic Agreement for the Navajo Mine.

Attachment D. Traditional Cultural Properties (TCPs) and Historic Resources/In-Use Areas Within and Adjacent to the Mine Lease Area – Status Table.

Table D-2. Historic Resources/In-Use Areas Identified Within and Adjacent to APE at Navajo Mine.¹

| Site # | Description | Affiliation | NRHP Eligibility Recommendation from Applicant | Mine Lease Area | Within APE | NRHP Determination by OSMRE | Action Recommended | THPO Concurrence with OSMRE Findings |
|----------------|--|-------------|--|-----------------|------------|-----------------------------|---|--------------------------------------|
| IUA1 | Post A.D. 1945/ Habitation Complex | Navajo | NRHP Criterion D | IV N | Yes | Not Eligible | Relocation completed | Not Eligible |
| IUA2 | Circa A.D. 1920- Present/Habitation-Pastoral | Navajo | NRHP Criterion D | IV N | Yes | Not Eligible | Relocation completed | Not Eligible |
| IUA1/LA 19685 | A.D. 1945 -Present. Habitation Complex | Navajo | NRHP Criterion D | IV S | Yes | Not Eligible | Relocation/ compensation prior to disturbance | Not Eligible |
| IUA2/LA 19951 | A.D. 1945 -Present. Habitation Complex | Navajo | NRHP Criterion D | IV S | No | N/A | N/A | Not Eligible |
| IUA3/ LA 19921 | A.D. 1945 -Present. Habitation Complex | Navajo | NRHP Criterion D | IV S | No | N/A | N/A | Not Eligible |
| IUA4/ LA 19831 | A.D. 1945 -Present. Habitation Complex | Navajo | NRHP Criterion D | V | No | N/A | N/A | Not Eligible |

¹ This table includes historic resources/in-use areas located outside the APE. Only those sites within the APE are managed by the Programmatic Agreement for the Navajo Mine.

Attachment E

Plan for Treatment of Unanticipated Discoveries of Potential Historic Properties

In the event that unanticipated potential historic properties are discovered during implementation of mining activities within the APE, or should known historic properties be inadvertently affected in a manner that was not anticipated, the following procedures shall be implemented:

1. The project proponent(s) and contractor(s) shall immediately halt all activities in the vicinity of the discovery and take steps to stabilize and protect the discovered resource until it can be evaluated.
2. The project proponents shall immediately notify NNTHPO and OSMRE, and arrange for an archaeologist with appropriate expertise to document and preliminarily assess the find and formulate a recommendation regarding whether the discovery is NRHP-eligible and merits further consideration. The archaeologist shall prepare the documentation and conduct the assessment in accordance with any permits that may be required pursuant to the Archaeological Resources Protection Act and the Navajo Nation Cultural Resources Protection Act. The assessment shall address the following factors:
 - A. The nature of the resource, such as the number and kinds of artifacts, and presence or absence of archaeological features. This may require screening of already disturbed deposits, photographs of the discovery, and collection of other information.
 - B. The spatial extent of the resource. This may require additional testing, mapping, or inspection.
 - C. The nature of the deposits in which the discovery was made. This may require additional testing, inspection, or interviews with persons involved in the discovery.
 - D. The contextual integrity of the resource, damage related to the initial discovery, and potential impacts of the continued activity that resulted in the discovery.
3. If the preliminary evaluation concludes that the find is not a type of resource protected by Federal laws or Navajo Nation laws and policies, the evaluating archaeologist shall document that conclusion and provide documentation to NNTHPO and OSMRE. If OSMRE concurs, they may authorize resumption of the activity that resulted in the discovery, with the provision that NNTHPO approval also must be obtained pursuant to the Navajo Nation Cultural Resources Protection Act.
4. If the preliminary evaluation concludes that a discovery is a type of resource that may be eligible for the NRHP or protected by the Navajo Nation Cultural Resources Protection Act or other Navajo Nation policies, the evaluating archaeologist shall provide that documentation and recommendations to the NNTHPO and OSMRE.

- A. OSMRE shall evaluate the discovery in consultation with the NNTHPO, and if they concur that the find is not eligible for the NRHP, no further action shall be required, and OSMRE may authorize resumption of the activity that resulted in the discovery, with the provision that NNTHPO approval also must be obtained pursuant to the Navajo Nation Cultural Resources Protection Act.
 - B. If OSMRE and NNTHPO concur that the find is eligible for the NRHP or is protected by the Navajo Nation Cultural Resources Protection Act or other Navajo Nation policies, they shall review the applicability of any relevant Treatment Plan. If they determine that a plan is appropriate, OSMRE shall ensure that the project proponents implement the plan to treat the discovery. If OSMRE and NNTHPO conclude that the plan is not applicable, OSMRE shall ensure that the project proponents prepare and implement a supplemental plan to resolve the adverse effects. The supplemental plan shall be reviewed and revised pursuant to Stipulation 8 except that the period of review by the participating parties shall be limited to 5 days. The project proponents shall not resume the activity that resulted in the discovery in the vicinity of the discovery until NNTHPO and OSMRE has determined that the adverse effect has been resolved and has authorized resumption of the activity.
5. Any discoveries of human remains, funerary objects, sacred objects and objects of cultural patrimony shall be treated pursuant to Stipulation 8.

Attachment F

Definitions

Concurring Parties: An invited Consulting Party to this PA that agrees with the content of the PA. The refusal of a concurring party to sign the PA does not invalidate this PA as noted in 36 CFR Part 800.6(c) (3). Concurring parties may not terminate the PA.

Consulting Parties: Parties that have consultative roles in the Section 106 process, as defined in 36 CFR Part 800.2(c).

Data Recovery: The recovery of archaeological information from a historic property subject to an adverse effect.

Determination of Effect: A determination made by OSMRE in regards to a Project's effect upon a historic property as defined in 36 CFR Part 800.

Determination of Eligibility: A determination made by OSMRE in regards to a cultural resource's eligibility for inclusion in the NRHP and more fully described in 36 CFR Part 60 and 36 CFR Part 800.16(1)(2).

Effect: An alteration to the characteristics of a historic property qualifying it for inclusion in or eligibility for the NRHP (see 36 CFR Part 800.16(g)).

Environmental Impact Statement: An analysis of a major federal action's environmental impacts conducted consistent with the National Environmental Policy Act (NEPA).

Historic Property: Any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in, the NRHP maintained by the Secretary of the Interior. This term includes artifacts, records, and remains that are related to and located within such properties. The term includes properties of traditional religious and cultural significance to an Indian tribe or Native Hawaiian organization and that meet the NRHP criteria (see 36 CFR Part 800.16(1) (1)).

Invited Signatory: OSMRE has invited PNM and APS to be signatories to this PA pursuant to 36 CFR Part 800.6(c) (2). The refusal of any invited signatory to sign the PA does not invalidate the PA.

Signatory Parties: All signatories to this PA, other than Concurring Parties, which includes OSMRE, BLM, BIA, USEPA, USACE, NNTHPO, NTEC, and MMCo.

Treatment Plan: A plan developed in consultation with the parties to this Agreement that identifies the minimization and mitigation measure for historic properties located within the APE that will be adversely affected by the Project.

Attachment G

List of Documents Reflecting Prior Compliance Efforts

1. Fetterman, Jerry. 2011. Cultural Resource Investigations within Area IV North, BHP Navajo Coal Company's Navajo Mine, Navajo Reservation, Nenahnezad Chapter, Shiprock Agency, San Juan County, New Mexico. Volume I: Introduction and Preceramic Occupations; Volume 2: Anasazi Occupations; Volume 3: Navajo Occupations;
2. November 9, 2009 Letter from Brenda A. Steele, OSMRE, to Ron Maldonado, NNTHPO, regarding compliance with 2007 Programmatic Agreement, including signed acknowledgment by NNTHPO and OSMRE concerning fulfillment of 2007 Programmatic Agreement Stipulations;
3. Honeycutt, L. 2008. Preliminary Report on Excavation of 19 Sites, Lease Area IVN, BHP Billiton Navajo Coal Company's Navajo Mine, Navajo Reservation, Nenahnezad Chapter, Shiprock Agency, San Juan County, New Mexico;
4. Johnson, J. Harris, N., Yost, S.W., Messerli, T.F. & Shine, T. 2007. NRHP Eligibility Testing at 33 Sites Located within Lease Area IV North, BHP Billiton Navajo Coal Company's Navajo Mine, Navajo Reservation, Nenahnezad Chapter, Shiprock Agency, San Juan County, New Mexico, (EMI Report Number 745), Ecosystem Management Inc.;
5. Kelly, K., Francis, H., Martin, R., Torrez-Nez, J. and Bernard M. 2007. Each Place Brings Stories. Navajo Mine, Area IV North Cultural Resources Intensive Data Recovery Project, Navajo Ethnography Sub-Project. Dine'tahdoo CRM, Farmington, New Mexico;
6. Fetterman, J. 2007. Cultural Resource Summary and Site Specific Recommendations for Phase II Investigations within Lease Area IV North, BHP-Billiton Navajo Coal Company's Navajo Mine, Navajo Reservation, Nenahnezad Chapter, Shiprock Agency, San Juan County, New Mexico. Woods Canyon Archaeological Consultants, Inc. Prepared for BHP Navajo Mine;
7. March 07, 2008 Cultural Resources Compliance Form, NNPHD No. HPD-06-843-Revised, Project Title: Cultural Resource Survey of 188 Acres (76 hectares) for Proposed Realignment of Burnham Road, within and outside the Navajo Mine Lease Area, Located in the Nenahnezad Chapter, Navajo Nation, San Juan County New Mexico;
8. Programmatic Agreement for Area IV North, executed in June and August, 2007, and attachments;
9. Burleson, R. 2006. Cultural Resources Survey of 188 Acres (76 hectares) for a Proposed Realignment of Burnham Road, Within the Navajo Mine Lease Area, Located in the Nenahnezad Chapter, Navajo Nation, San Juan County, New Mexico, (EMI Report Number 685a), Ecosystem Management, Inc.;

10. Burleson, R., Phippen, R. and Yost, S.W. 2006. Data Recovery and Treatment Plan For 47 Sites Located on Lease Area IV North, BHP Billiton Navajo Coal Company's Navajo Mine, Navajo Reservation, Nenahnezad Chapter, Shiprock Agency, San Juan County, New Mexico, (EMI Report Number 685), Ecosystem Management, Inc.;
11. Chavez, L. 2006. An Ethnographic Assessment of Navajo Traditional Cultural Properties and Burials within the BHP-Navajo Mine Coal Company Lease Areas IV-North, IV-South, and V, San Juan County, New Mexico for URS Corporation in Conjunction with BHP, Navajo Nation Archaeology Department, Window Rock;
12. June 08, 2005, Cultural Resources Compliance Form, NNHPD No. HPD-04-1252, Project Title: The Eligibility Evaluation of Cultural Resources Located Within Lease Area IV North of BHP Billiton Navajo Coal Company's Navajo Mine, Navajo Indian Reservation, Nenahnezad Chapter, Shiprock Agency, San Juan County, New Mexico;
13. Meininger, J. and L. Wharton. 2004. The Eligibility Evaluation of Cultural Resources Location Within Lease Area IV North of BHP Billiton Navajo Coal Company's Navajo Mine, Navajo Indian Reservation, Nenahnezad Chapter, Shiprock Agency, New Mexico, (DCA Technical Report No. 04-DCA-114) Larry L. Baker, Executive Director, San Juan County Museum Association, Division of Conversation Archaeology;
14. Mietty, T. 1997. The On-Site Inspection and Eligibility Evaluation of Twenty-Three Sites Located in Area IV North of BHP World Mineral's Navajo Mine, Nenahnezad Chapter, Shiprock Agency, San Juan County, New Mexico, Prepared by Division of Conservation Archaeology;
15. July 01, 1986 Letter from Melvin L. Shilling, OSMRE Mining Analysis Division, to John W. Grubb, Utah International, Inc. (predecessor to BNCC), providing approval for continued mining activities at Dixon Pit in the area of a "possible" human burial SJC-1345;
16. December 12, 1984 Letter from Allen D. Klein, Administrator, OSMRE Western Technical Center, to Mr. R.C. Diederich, Utah International, Inc. (predecessor to BNCC) providing archaeological clearance and authorizing mining operations in Area III, subject to limited conditions;
17. Hogan, P. and J. Winter. 1983. Economy and Interaction Along the Lower Chaco River. University of New Mexico, Office of Contract Archaeology;
18. York, F. E. 1980. An Historic Ethnography of Navajo Sites on the UII Lease. In Human Adaptations in a Marginal Environment: The UII Mitigation Project: Archaeological Report of the Mitigation of Eight Archeological Sites in Mining Area III of the Utah International, Inc. on Navajo Reservation Land for the Utah International, Inc., edited by James L. Moore and Joseph C. Winter. Office of Contract Archaeology. University of New Mexico, Albuquerque;
19. Moore, James L. and J. Winter. 1980. Human Adaptations in a Marginal Environment: The UII Mitigation Project. Office of Contract Archaeology. University of New Mexico Albuquerque.

20. Memorandum of Agreement between Advisory Council on Historic Preservation, the United States Geological Survey (predecessor for these purposes to OSMRE), and the New Mexico State Historic Preservation Officer (predecessor to NNTHPO for these purposes), ratified March 1, 1978 by the Advisory Council, as amended; and
21. Reher, Charles A. 1977. Settlement and Subsistence Along the Lower Chaco River: The Coal Gasification (CGP) Survey. Charles Reher, editor. University of New Mexico Press.

PROPOSED RESOLUTION OF
THE RESOURCES and DEVELOPMENT COMMITTEE OF THE
NAVAJO NATION COUNCIL

Approving an existing Right-of-Way to Navajo Transitional Energy Company, LLC to operate and maintain an access road from the El Paso Bridge to the common facilities leading into the mine plant lease.

WHEREAS:

1. Pursuant to 2 N.N.C. § 500, the Resources and Development Committee of the Navajo Nation Council is hereby established as a standing committee of the Navajo Nation; and
2. Pursuant to 2 N.N.C. § 500 B 2(a), the Resources and Development Committee of the Nation Council shall "oversee regulation of activities on Navajo Nation lands for disposition or acquisition of resources, surface disturbance, or alteration of the natural state of the resources, including the enforcement and administration of applicable Navajo Nation and federal laws, regulations, guidelines, and administrative procedures in the development and use of resources as a good steward"; and
3. The Navajo Transitional Energy Company, LLC ^(NTEC) has submitted a right-of-way (ROW) application to operate and maintain one Access Roads on Navajo Nation Trust Lands, San Juan County, New Mexico attached hereto and incorporated herein as Exhibit "A"; and
4. The existing right-of-way consists of approximately 42.39 acres, more or less, of Navajo Nation Trust Lands described in three portions: Portion A, which is 100 feet wide, 1.09 miles in length covering 13.24 acres located within Section 31, T29N, R15W and Section 36, T29N, R16W; and Portion B, which is 100 feet wide, 0.26 miles in length covering 3.14 acres in Section 36, T29N, R16W; and Portion C, which is a 40 feet wide right-of-way, 26.01 acres located within Sections 9, 10, 16, 17, 20, 29, 30, and 31, T29N, R15W, NMPM, San Juan County, New Mexico and the location is more particularly described on the survey map attached hereto and incorporated herein as Exhibits "B"; and
5. The Project Review Section with the Navajo Land Department has acknowledged the buy-outs of the affected land users based on the inclusion of the land release agreements that reflect these areas as consent to this Right of Way, originally signed on June 4, 1963 attached hereto and made a part hereof as Exhibit "C"; and
6. NTEC has obtained the consent of Arizona Public Service Company to use the land leased to APS

6. The environmental and archaeological studies have been completed and are attached hereto and made a part hereof by this reference.

NOW, THEREFORE, BE IT RESOLVED THAT:

1. The Resources and Development Committee of the Navajo Nation Council hereby approves a Right-of-Way to Navajo Transitional Energy Company, LLC to operate and maintain an access road from the El Paso Bridge to the common facilities leading into the mine plant lease. Within the Navajo Mine Lease, located in San Juan County, New Mexico. The location is more particularly described on the map attached hereto as Exhibit "B."

2. The Resources and Development Committee of the Navajo Nation Council hereby approves the renewal of a grant the right-of-way subject to, but not limited to, the following terms and conditions attached hereto and incorporated herein as Exhibit "D."

3. Resources 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 Committee of the Navajo Nation Council at a duly called meeting at Window Rock, Navajo Nation (Arizona), at which a quorum was present and that the same was passed by a vote of__ in favor, __ opposed, and __ abstained, this__ day of __, 2015.

Presiding Chairperson
Resources and Development Committee

MOTION BY: SECONDED BY:

**RUSH****EXECUTIVE OFFICIAL REVIEW**Title of Document: NTEC/ El Paso Bridge2Comm.Facilities ROW Contact Name: DRAPER, HOWARDProgram/Division: DIVISION OF NATURAL RESOURCESEmail: 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: _____ ☐ ☐

☐ **Rights of Way**

1. NLD _____ Date: _____ ☐ ☐
2. F&W _____ Date: _____ ☐ ☐
3. HPD _____ Date: _____ ☐ ☐
4. Minerals _____ Date: _____ ☐ ☐
5. NNEPA _____ Date: _____ ☐ ☐
6. Office of the Attorney General: _____ Date: _____ ☐ ☐
7. OPVP _____ Date: _____ ☐ ☐

☐ **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: *5-5-15* ☒ ☐
2. F&W _____ Date: *5/6/15* ☒ ☐
3. HPD _____ Date: *5/8/15* ☒ ☐
4. Minerals (*subject to changes*) _____ Date: *5-5-15* ☒ ☐
5. NNEPA _____ Date: *5-11-2015* ☒ ☐
6. DNR _____ Date: *5/8/15* ☒ ☐
7. DOJ *(ie)* _____ Date: *5/14/15* ☒ ☐
8. OPVP _____ Date: *5/18/15* ☒ ☐

☐ **OTHER:**

1. _____ Date: _____ ☐ ☐
2. _____ Date: _____ ☐ ☐
3. _____ Date: _____ ☐ ☐
4. _____ Date: _____ ☐ ☐
5. _____ Date: _____ ☐ ☐



NAVAJO NATION DEPARTMENT OF JUSTICE

DOCUMENT REVIEW REQUEST FORM

☐ RESUBMITTAL



| |
|---|
| DOJ |
| 05-11-15 @ 2:34pm |
| DATE / TIME |
| <input type="checkbox"/> 7 Day Deadline |
| DOC #: 203895 |
| SAS #: |
| UNIT: NRU |

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

CLIENT TO COMPLETE

| | | | |
|---|--------------------|-------------|---|
| DATE OF REQUEST: | 5/4/2015 | DIVISION: | Natural Resources (DNR) |
| CONTACT NAME: | Howard P. Draper | DEPARTMENT: | Navajo Land Dept (NLD) |
| PHONE NUMBER: | X-6447, 6401, 6490 | E-MAIL: | Howarddraper@frontiernet.net or verashurley@frontiernet.net |
| TITLE OF DOCUMENT: Approving existing ROW to Navajo Transitional Energy Co., LLC to operate and maintain existing access road from the El Paso Bridge to the common facilities leading into the mine plant lease | | | |

DOJ SECRETARY TO COMPLETE

| | | | |
|-----------|----------------|------------------------------|------------|
| DATE/TIME | 5-11-15 3:45pm | REVIEWING ATTORNEY/ADVOCATE: | Irvin Chee |
| DATE TIME | 5-20-15 | | |

DOJ ATTORNEY / ADVOCATE COMMENTS

Document is legally sufficient.

| | | | |
|----------------------|-------------|----------------------|-------------|
| REVIEWED BY: (Print) | Date / Time | SURNAMED BY: (Print) | Date / Time |
| JAMIE HEE | 5-13-15 | TONI LORA | 5/14/15 2pm |

| | | | |
|-----------------------|-------------------------|---------|-----|
| DOJ Secretary Called: | for Document Pick Up on | at | By: |
| | Howard P. Draper | | |
| PICKED UP BY: (Print) | DATE / TIME: | 5/14/15 | |



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.navajonationnepa.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: May 11, 2015

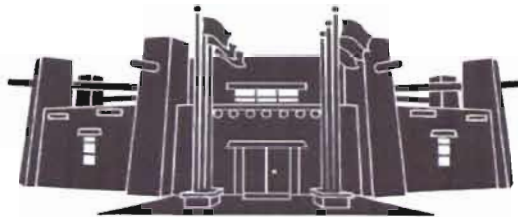
SUBJECT: 164 EOR 003895 NTEC El Paso Bridge to Community Facilities ROW

BHP Billiton Mine Management Company, as operator of the Navajo Mine, and on behalf of Navajo Transitional Energy Company LLC (NTEC) submitted a right-of-way (ROW) application to operate and maintain one access road on Navajo Nation Trust Lands, San Juan County, New Mexico. The ROW consists of approximately 42.39 acres, more or less, of Navajo Nation Trust Lands. The length of the existing road is 6.71 miles. No changes are expected in the proposed ROW renewal.

The Navajo Nation Environmental Protection Agency (NNEPA) reviewed and recommends **approval** for the proposed ROW renewal as stated in EOR 003895 pursuant the Title 4, NNC Chapter 9 Navajo Nation Environmental Policy Act, Subchapter 1, §904. *The ROW application reference the EIS for the Four Corners Power Plant-Navajo Mine Energy Project. The EIS covers various ROW's for the mine. The EIS adequately addresses compliance with the Clean Water Act requirements (Section 401 Water Quality Certifications, Section 404 Dredge & Fill permits and Section 401 Storm Water General Construction Permit) [Patrick Antonio, memo May 6, 2015].*

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

Cc: NNEPA Water Quality, Administration chrono file
Contact person: Yolanda Benally 505-215-1466 BHP



MEMORANDUM

TO: Honorable Ben Bennett
Crystal, Fort Defiance, Red Lake, Sawmill Chapters

FROM: Mariana Kahn
Mariana Kahn, Attorney
Office of Legislative Counsel

DATE: June 26, 2015

SUBJECT: PROPOSED STANDING COMMITTEE RESOLUTION; AN ACTION RELATING TO RESOURCES AND DEVELOPMENT; APPROVING A RIGHT-OF-WAY TO NAVAJO TRANSITIONAL ENERGY COMPANY, LLC TO OPERATE AND MAINTAIN AN ACCESS ROAD FROM THE EL PASO BRIDGE TO THE ARIZONA PUBLIC SERVICE PLANT VICINITY (SAN JUAN COUNTY, NEW MEXICO)

As requested, I have prepared the above-referenced proposed resolution and associated legislative summary sheet pursuant to your request for legislative drafting. Based on existing law and review of documents submitted, the resolution as drafted is legally sufficient. As with any action of government however, it can be subject to review by the courts in the event of proper challenge. Please ensure that his particular resolution request is precisely what you want. You are encouraged to review the proposed resolution to ensure that it is drafted to your satisfaction.

If you are satisfied with the proposed resolution, please sign it as “sponsor” and submit it to the Office of Legislative Services where it will be given a tracking number and sent to the Office of the Speaker for assignment.

If the proposed resolution is unacceptable to you, please contact me at the Office of Legislative Counsel and advise me of the changes you would like made to the proposed resolution. Ahéhee’.

THE NAVAJO NATION
LEGISLATIVE BRANCH
INTERNET PUBLIC REVIEW PUBLICATION



LEGISLATION NO: _0220-15_____

SPONSOR: Benjamin Bennett

TITLE: An Action Relating To Resources and Development; Approving a Right-of-Way to Navajo Transitional Energy Company, LLC to Operate and Maintain an Access Road From the El Paso Bridge to the Arizona Public Service Plant Vicinity (San Juan County, New Mexico)

Date posted: June 29, 2015 at 3:48pm

Digital comments may be e-mailed to comments@navajo-nsn.gov

Written comments may be mailed to:

Executive Director
Office of Legislative Services
P.O. Box 3390
Window Rock, AZ 86515
(928) 871-7590

Comments may be made in the form of chapter resolutions, letters, position papers, etc. Please include your name, position title, address for written comments; a valid e-mail address is required. Anonymous comments will not be included in the Legislation packet.

Please note: This digital copy is being provided for the benefit of the Navajo Nation chapters and public use. Any political use is prohibited. All written comments received become the property of the Navajo Nation and will be forwarded to the assigned Navajo Nation Council standing committee(s) and/or the Navajo Nation Council for review. Any tampering with public records are punishable by Navajo Nation law pursuant to 17 N.N.C. §374 *et. seq.*

THE NAVAJO NATION
LEGISLATIVE BRANCH
INTERNET PUBLIC REVIEW SUMMARY

LEGISLATION NO.: 0220-15

SPONSOR: Honorable Benjamin Bennett

TITLE: An Action Relating To Resources And Development; Approving A Right-Of Way To Navajo Transitional Energy Company, LLC To Operate And Maintain An Access Road From The El Paso Bridge To The Arizona Public Service Plant Vicinity (San Juan County, New Mexico).

Posted: June 29, 2015 at 3:48 pm

5 DAY Comment Period Ended: July4, 2015

Digital Comments received: *No comments were received.*


Policy Analyst
Office of Legislative Services

7/6/15 8:40am
Date/Time