



United States Department of the Interior

OFFICE OF SURFACE MINING
Reclamation and Enforcement
Western Region Office
1999 Broadway, Suite 3320
Denver, CO 80202-3050



NM-0003F

March 16, 2012

Certified Mail Return Receipt Requested

Mr. Steve Perkins
BHP Navajo Coal Company
P.O. Box 1717
Fruitland, NM 87416

Re: ***Approval of Area IV North Permit Revision Application***
Navajo Mine Federal Permit NM0003F
OSM Project Tracking Code: NM-0003-F-R-03
OSM ARMS¹ Mail Numbers: 11/02/18-01, 11/05/02-23, 11/07/14-08, 11/09/28-01,
11/11/18-01, 11/11/21-05, & 11/12/14-08

Dear Mr. Perkins:

Please be advised that the Office of Surface Mining Reclamation & Enforcement (OSM) has completed its review and processing of the Area IV North Permit Revision Application for BHP Navajo Coal Company's (BNCC's) Navajo Mine. This application was initially proposed in a submittal dated February 15, 2011. In accordance with the federal regulations at 30 CFR 750.12 (c) (B), OSM had defined this proposal action to be a 'significant' permit revision application; and has processed the application accordingly.

In a letter dated March 18, 2011, OSM informed BNCC that the revision application was administratively complete; and posted an electronic copy of the permit application on the OSM Western Region internet website as a pending permitting action. BNCC subsequently initiated the publication of notices within local newspapers, of the availability of the permit revision application for public review and comment. As confirmed in BNCC's correspondence to OSM dated May 10, 2011, containing copies of Affidavits of Publication, these notices appeared in the Navajo Times Newspaper on March 24 and 31, 2011, and on April 7 and 14, 2011; and on March 26, April 2, April 9, and April 16, 2011, in the Gallup Independent Newspaper. The notices also appeared in the Farmington Daily Times on March 27, April 3, April 10 and April 17, 2011. As clarified within these notices, the final date for providing public comments on this application was thirty days after the last published date; therefore May 14, 2011, was the deadline for submitting comments. However, at the request of interested members of the public, OSM extended the public comment period to June 30, 2011.

¹ Administrative Records Management System.

In letters and memoranda dated March 30, 2011, OSM informed sixteen federal, state and tribal government agencies of BNCC's pending permit revision application, and requested that these organizations provide any review comments that they may have.

In public notices in The Navajo Times, Gallup Independent and The Farmington Daily Times Newspapers and announcements on radio stations KNDN and KTNN in Navajo and English, OSM notified the public of two public outreach workshops to be held. The public outreach workshops were held on April 13, 2011 at the Tiis Tsoh Sikaad (Burnham) Chapter House and on April 14, 2011 at the Nenahnezad Chapter House. The public outreach workshops provided public involvement with the permit revision application. Representatives from USACE, Navajo Nation Surface Mining Program, BIA and BLM were present to answer questions and provide information at the informal poster-style workshops. Navajo translation services were made available at the workshops as well as a court reporter so that participants could give verbal comments as well as written comments.

In a letter from the International Union of Operating Engineers Local No. 953 (IUOE) dated May 5, 2011, OSM received a request for an informal conference to be held in accordance with 30 CFR 773.6(c). In response, on June 1, 2012, OSM notified the public of a public conference to be held at the Nenahnezad Chapter House in Fruitland, New Mexico, on June 15, 2011.

Public notices for the June 15, 2011, informal conference were published in The Navajo Times, Gallup Independent and The Farmington Daily Times news papers; and were broadcast as a public service announcement in Navajo and English on radio stations KNDN and KTNN for two weeks prior to the informal conference. The IUOE was notified by letter of the scheduled informal conference. Approximately one-hundred persons attended the conference. OSM contracted with an independent service to record and develop a transcript of all comments provided during this conference.

By the June 30, 2011, expiration of the extended public comment period for the permit revision application, OSM had received comment submissions by letter or email from four individuals, three non-governmental organizations (NGOs), and the Navajo Nation Historic Preservation Department – Traditional Culture Program (NNHPD-TCP); and received oral comments from an additional thirty-six persons during the public outreach workshops and informal conference. A total of one-hundred-and-eleven comments were received by forty-two individuals. The majority of comments received were in support of BNCC's pending permit revision application, with many citing the economic benefits that the mine and power plant provides to the local community. The comments received by NNHPD-TCP questioned whether the proposed project would impact two Navajo traditional cultural resources – the Hogback rock formation and the San Juan River. NNHPD-TCP's comments have been addressed in the EA, OSM's responses to comments on the Significant Permit Revision and the amended PA. One individual commenter and those from the NGOs objected to the pending permit revision application. OSM has reviewed and considered each of the comments received against the criteria of approval stipulated at 30 CFR 774.13(c). OSM has prepared responses to these comments in combination with the later comments OSM received after publication of the EA and the unsigned Findings of No Significant Impact (FONSI).

In support of OSM's review of the permit revision application, an environmental assessment (EA) has been prepared. OSM's initial review confirmed that the scope of this permit revision application did not meet the criteria addressed in Chapter 13, sub-section 13.4(A) (4) of Part 516

of the Department of Interior's NEPA Manual, for actions normally requiring preparation of an environmental impact statement (EIS). The EA prepared was developed by a consulting firm, at the direction of OSM. Upon completion OSM adopted the EA and takes full responsibility for the scope and the content of this document. The EA considered a reasonable range of alternatives to the proposed action, discussed the potential environmental effects of the proposed action and provided sufficient evidence and analysis for the development of a finding of no significant impact (FONSI)². Based upon OSM's review of the EA it has been determined that the proposed action is not a major federal action that will have a significant effect on the quality of the human environment individually or cumulatively with other actions within the region. No environmental effects meet the definition of significance in context or intensity, as defined within the federal regulations at 40 CFR 1508.27. Therefore, an EIS is not required.

In accordance with the Indian Lands Program regulation at 30 CFR 750.12(c)(1)(ii), OSM's review confirms that the application is in compliance with the criteria applicable to permit revision applications at 30 CFR 773.15. This letter notifies you that OSM, as per the federal regulations at 30 CFR 773.15 and the Federal Program for Indian Lands, has approved BNCC's Area IV North Permit Revision Application for Federal Permit NM0003F, Navajo Mine.

Enclosed you will find Federal Permit NM0003F. This Permit authorizes the continuation of mining and reclamation operations for the life of the current permit term within the designated permit area.

Approval for a modification to the existing Mine Plan from the BLM for coal extraction within the portion of Area IV North proposed for pre-2016 mining, was issued on January 9, 2011.

The relocation of the temporary Burnham Road to the proposed permanent location within the permit area, as set forth in the 2011 revision application, is being approved with this letter. Since this road will not be used for any mining related activities, OSM's approval is limited to illustrations of the relocation on the existing permit maps. Please be advised that final authorization of the permanent relocation of this public road is the purview of the Bureau of Indian Affairs (BIA); therefore approval from the BIA must be acquired by BNCC prior to initiation of construction activities associated with this relocation. As you are aware, prior to construction the US Army Corps of Engineers (USACOE) must also approve BNCC's Clean Water Act (CWA) Section 404 Standard Individual Permit (IP) application for the planned disturbances within the drainages being crossed by the road. From OSM's communications with both the BIA and USACOE, it is our understanding that these agencies will be issuing a decision in the near future on these applications.

BNCC, as well as the Bureau of Indian Affairs, the Bureau of Land Management, the Navajo Nation Minerals Department, the Navajo Nation's Tiis Tsoh Sikaad and Nenahnezad Chapter Houses, and the OSM Albuquerque Area Office, should insert BNCC's revised Area IV North revision application submittals (commencing with the February 15, 2011, submittal) into the approved permit application package (PAP) in accordance with the insertion instructions included within these submittals.

² The EA and the FONSI are being posted on OSM's Western Region Web Site.

As set forth in the Indian Lands Program regulation at 30 CFR 750.12(c)(iii), BNCC or any person with an interest which is or may be adversely affected, may appeal this decision under the procedures set forth in 30 CFR 775 and 43 CFR Part 4.

If you have any questions or concerns regarding the permit revision application approval, please contact the Mine Team Leader (Mychal Yellowman) at 303-293-5049 or myself at 303-293-5047 or by email (MYellowman@osmre.gov; RLWilliamson@osmre.gov).

Sincerely,



Rick Williamson, Manager
Indian Program Branch
Program Support Division
Western Region-OSM

Enclosure

cc: OSM, Albuquerque Field Office w/enclosure
Navajo Nation Minerals Department w/enclosure
BLM Farmington Resource Area Office w/enclosure
BIA Navajo Regional Office w/enclosure
Tiis Tsoh Sikaad Chapter no enclosure
Nenahnezad Chapter no enclosure

**UNITED STATES
DEPARTMENT OF THE INTERIOR
OFFICE OF SURFACE MINING RECLAMATION AND ENFORCEMENT**

**INDIAN LANDS PROGRAM FOR THE NAVAJO NATION
PERMIT FOR SURFACE COAL MINING OPERATIONS**

Permit Number:	NM-0003F	Permit Effective Date:	09/25/2009
		Amended Date:	03/16/12
Permit Term:	5 years	Permit Expiration Date:	09/25/2014
Permittee:	BHP Navajo Coal Company P.O. Box 1717 Fruitland, New Mexico 87416		
Operation Name:	Navajo Mine		
General Location:	San Juan County, New Mexico Navajo Tribal Coal Lease 14-20-603-2505		

The permit area is within the following unsurveyed townships and sections of the New Mexico Principal Meridian and is more particularly shown on the permit area maps included in the approved permit application as Exhibit 1-4, Sheets 1 through 7:

T. 29 N., R. 15 W.	Section 30, 31, 32
T. 29 N., R. 16 W.	Section 25, 36
T. 28 N., R. 15 W.	Section 7, 8, 9, 16, 17, 18, 19, 20, 21, 28, 29, 30, 31, 32
T. 28 N., R. 16 W.	Section 25, 26, 34, 35, 36
T. 27 N., R. 15 W.	Section 6, 31
T. 27 N., R. 16 W.	Section 1, 2, 3, 4, 9, 10, 11, 12, 15, 22, 23, 25, 26, 27, 34, 35, 36
T. 26 N., R. 15 W.	Section 6, 7, 18
T. 26 N., R. 16 W.	Section 1, 2, 3, 9, 10, 11, 12, 13, 14, 15, 16

1. **STATUTES AND REGULATIONS** - This permit is issued pursuant to the Surface Mining Control and Reclamation Act of 1977 (SMCRA), 30 U.S.C. §§ 1201, *et seq.*, and the Indian Lands Program, 30 CFR Part 750. This permit is subject to all applicable laws and regulations that are now or hereafter in force, even though not specifically referenced herein.
2. **AUTHORIZATION** - This permit authorizes those surface coal mining and reclamation operations described in the application for this permit approved by the Office of Surface Mining Reclamation and Enforcement (OSM) on September 22, 1994 except to the extent directed otherwise in this permit. The approved permit application is incorporated by reference into this permit. The permit area for the Navajo Mine consists of approximately 13,430 acres, as shown on the location maps included in the approved permit application, Exhibit 1-4, Sheets 1 through 7.

In approving the application for this permit OSM granted no variances.

3. **CONDITIONS** - The standard permit conditions at 30 CFR § 773.17 and the terms and conditions of Navajo Tribal Coal Lease 14-20-603-2505 are incorporated by reference into this permit. This permit also includes special conditions as specified in Attachment A.

The terms and conditions of this permit are binding on the permittee, its officers, directors, employees, agents, contractors, and subcontractors, and the officers, directors, and employees of its agents, contractors, and subcontractors.

4. **INITIATION OF OPERATIONS** - This permit will terminate if the permittee has not begun the surface coal mining operations covered by this permit within 3 years of its effective date. OSM may grant a reasonable extension of time for the commencement of operations in accordance with 30 CFR § 773.19(e).

5. RENEWAL - This permit may be renewed in accordance with 30 CFR § 774.15. An application for renewal shall be filed with OSM at least 120 days before the expiration date of this permit.
6. REVISION - (a) OSM may order reasonable revision of this permit at any time in accordance with 30 CFR § 774.11. (b) OSM may revise this permit upon application from the permittee in accordance with 30 CFR §§ 774.13 and 750.12(c)(3)(ii).
7. TRANSFER, ASSIGNMENT, OR SALE - This permit may be transferred or assigned, or the rights granted herein may be sold, in accordance with 30 CFR §§ 774.17 and 750.12(c)(3)(i). No transfer, assignment, or sale of rights granted by this permit shall be made without the prior written approval of OSM.
8. SUSPENSION, RESCISSION, OR REVOCATION - This permit may be suspended, rescinded, or revoked by OSM in accordance with 30 CFR § 773.21 or 30 CFR Chapter VII, Subchapter L.
9. HISTORIC AND PREHISTORIC RESOURCES PROTECTION - If previously unidentified historic resources, prehistoric resources, or traditional cultural properties including burials are discovered during the course of surface coal mining and reclamation operations under this permit, the permittee shall ensure that the resources are not disturbed until authorization to do so is provided by OSM. Upon discovery of any such resources, the permittee shall immediately notify OSM of their nature and location. The permittee shall take the action specified by OSM to protect the resources.
10. APPEALS - The permittee may appeal any decision or action of any official of OSM under this permit in accordance with the applicable provisions of 30 CFR §§ 773.24(d)(2)(ii), 842.15(d), 843.16, 845.19, and 846.17(b), 30 CFR Part 775, and 43 CFR Part 4.

Issued by:

Rick Williamson

Date:

March 16, 2012

Rick Williamson
Manager, Indian Program Branch
Program Support Division - Western Region
Office of Surface Mining Reclamation and Enforcement

Attachment A
SPECIAL PERMIT CONDITIONS
March 16, 2012

1. BLOCK "A" SOIL RESOURCES: Prior to the disturbance of Block "A" the permittee shall submit the completed soil profile descriptions for each of the separate areas in Block "A". The soil profile descriptions shall also include calculations of the total volume of suitable topdressing materials available within each individual block.
2. HYDROLOGIC MONITORING:
 - BNCC must re-instate upstream and downstream quality and continuous quantity monitoring (i.e. continuous gage) on Cottonwood Arroyo. Upstream stations must be located in the north, middle, and south forks of Cottonwood Arroyo.
 - BNCC must re-instate downstream monitoring at the previous ground water monitoring well QACW-2B location, and alluvial quality and water level monitoring must also be reinstated upstream of both the Chinde Diversion and the proposed mining activity. Upstream wells must be located in the north (as close to the historic GM-17 location as possible), middle, and south forks, as close to the permit boundary as possible.
 - BNCC must install at least one nested Fruitland well screened in the No. 3 and No. 8 coal seams that will not be mined through, but will be adjacent to the mined area.
 - All surface water monitoring stations and groundwater monitoring wells will be located such that they will not be mined through, considering both current and reasonably foreseeable mining in the area.
3. CULTURAL RESOURCES: Implementation and application of the updated Cultural Resources Programmatic Agreement (PA) for Area III, Area IV, and the Burnham Road.