

3/16/2012

**U.S. DEPARTMENT OF THE INTERIOR
OFFICE OF SURFACE MINING RECLAMATION AND ENFORCEMENT
FINDING OF NO SIGNIFICANT IMPACT (FONSI)
FOR
Navajo Mine Area IV North Permit Revision Application
Permit Number NM-0003F
Navajo Tribal Lease 14-20-603-2505
OSM Permitting Project Tracking Code: NM-0003-F-R-03 & NM-0003-F-Y01**

A. Introduction

The Navajo Mine is located on approximately 33,600 acres of land leased by the Navajo Nation and located entirely within its boundaries. The mine is located south of the San Juan River at Fruitland, New Mexico and extends south for approximately 25 miles. The permit revision proposes to mine 704 acres to recover 12,763,000 tons of coal. An additional 126 acres of land would be disturbed for the installation of roads and other support facilities needed for mining the coal. Included within the 126 acres is the 75 acres of surface disturbance needed for the proposed realignment of the Burnham Road (in Areas III and IV). In total the permit revision application proposes to disturb approximately 830 acres all within the existing mine permit boundary known as 'Area IV North'. Coal mining operations would continue at the approximate same pace and in the same manner as historic operations. The proposed action would extend mining until July 6, 2016.

B. Statement of Environmental Significance of the Proposed Action

The undersigned person has determined that OSM's approval of the Area IV North Permit Revision Application with additional conditions would not have a significant impact on the quality of the human environment under section 102(2) (C) of National Environmental Protection Policy Act of 1969 (NEPA), 42 U.S.C. §§ 4332(2) (C) and therefore, an environmental impact statement is not required. This finding of no significant impact is based on the attached OSMRE prepared environmental assessment (EA) which identifies and discusses the environmental impacts of the proposed action. OSM's initial review confirmed that the scope of this permit revision application did not meet the criteria addressed in Chapter 13, subsection 13.4(A) (4) of Part 519 of the Department of Interior's NEPA Manual, for actions normally requiring preparation of an environmental impact statement (EIS). This EA was prepared by a consulting firm, at the direction of OSM. During the development of the draft EA, OSM independently reviewed the document to ensure compliance with 43 CFR 46.320 and all relevant provisions of the Council on Environmental Quality (CEQ) regulations, and other program requirements. This independent review of the EA included OSM's evaluation of all environmental issues discussed therein. OSM subsequently adopted the EA and takes full responsibility for the scope and the content of this document. Additionally, OSMRE bases this finding on the following reasons.

C. Reasons

OSM has evaluated the information presented within this EA and has determined that the proposed action would cause no significant adverse environmental effects that would not be mitigated in accordance with the eight standard permit conditions within the federal regulations at 30 CFR subpart 773.17, the standard permit terms and specifications of the permit application package (PAP), and two special permit condition requiring supplementary hydrologic monitoring and an updated Cultural resources Programmatic Agreement (PA) for Area III, Area IV and the Burnham Road (see appendix C of the EA).

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

Based upon OSM's review of the attached EA and the supporting documents, OSM has 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. This finding is based on the context and intensity of the project as described in the following paragraphs.

Context: The approval of the Area IV North Permit Revision Application with additional conditions is a site-specific action directly involving lands within the BNCC coal permit area that does not in and of itself have international, national or regional importance. The proposed Area IV North and the realignment of the Burnham Road (in Areas III and IV) are entirely within the Navajo Mine permit area.

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

1. Impacts that may be both beneficial and adverse:

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

Continued mining at Navajo Mine which would:

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

Permanent realignment of Burnham Road would:

- Relocate the existing road away from current mining operations in Area III and proposed operations in Area IV North;
- Maximize coal recovery under terms of the existing lease and permit allowing mining in areas where it was restricted by the presence of the road;
- Promote public safety and provide for improved road construction in accordance with BIA road design standards; and
- Provide for a safe public road access route from the Nenahnezad Chapter, Upper Fruitland Chapter and San Juan Chapter, to the Burnham Chapter.

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

Overall, it is expected that there would be limited negative environmental and health impacts but they would not rise above acceptable norms. The proposed action will not result in any significant impacts.

2. Degree of effect on public health and safety:

OSM has selected the Proposed Action with Conditions alternative as presented in the attached EA. The selected alternative achieves the balance of resource protection and beneficial uses of the human environment envisioned by NEPA.

Under the No Action Alternative described within the EA, the mine permit revision application would not be approved and ground disturbance and mining activities, other than currently approved, would not take place in Area IV North. Mining on the Navajo Mine could continue in Areas II and III, as approved, but would not extend beyond July of 2016 upon expiration of the current coal contract. The impacts to public health and safety would remain virtually the same as mining would continue. The Burnham Road realignment would not occur. The road would not be improved in accordance with the BIA road design standards and a safer public road access route to the Burnham Chapter from the Nenahnezad Chapter, Upper Fruitland Chapter and San Juan Chapter, would not be constructed.

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

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

As part of its compliance efforts, OSM must comply with applicable federal cultural resources management statutes, including the National Historic Preservation Act (“Section 106”) and the

Native American Graves Protection and Repatriation Act (“NAGPRA”). As described in the EA, impacts to cultural resources in the project area were identified. Cultural resources including prehistoric and historic archaeological sites, traditional cultural properties (including burials) were identified and recorded for the project area(s). The identified resources were evaluated for their importance, and potential impacts to those determined important, were mitigated. An updated Cultural Resource Programmatic Agreement (PA) for Area IV North, Area III and the Burnham Road realignment, has been developed between OSM, BIA, BLM, USACE, the Navajo Nation and BNCC. Furthermore, the selected alternative contains a condition that requires implementation and application of the updated PA.

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

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

Two public workshops were held in April of 2011 at the Tiis Tsoh Sikaad (Burnham) and Nenahnezad Chapter Houses, on the Navajo Nation near the project site. OSM and USACE personnel made presentations and a series of informational posters were on display. Technical personnel from OSM, BIA, BLM, USACE and Navajo Nation Surface Mining Program (NSMP), along with a Navajo/ English translator and a court reporter, were available to answer and record comments. Comment forms were made available for written comments. In addition, OSM conducted an informal conference on June 15, 2011, at the Nenahnezad Chapter House. A court reporter and a Navajo/English translator were also available at the informal conference. A listing of comments is included in the Section 1.5 of the EA and the concerns raised are discussed throughout the document.

Based on the comments received from the public, coupled with the environmental analysis, the effects on the quality of the human environment are not considered highly controversial.

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

No highly uncertain or unknown risks to the human environment were identified as a result of the environmental analysis. The action is continuation of mining using known mining techniques and proven reclamation methods in a regulatory framework.

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

The action is a continuation of mining using known mining techniques and proven reclamation methods in a regulatory framework. The selected alternative neither establishes a precedent for

future OSM actions with significant effects nor represents a decision in principle about a future consideration.

7. Whether the action is related to other actions with individually insignificant but cumulatively significant impacts:

Impacts identified for the selected alternative, in conjunction with any impacts of other past, present, or reasonably foreseeable future actions, will result in negligible to moderate impacts to natural and human environment as presented in the EA. No individually or cumulatively significant impacts were identified for the selected alternative.

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

See Item 3 above.

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

OSM has completed several Endangered Species Act (ESA) section 7 consultations with U.S. Fish and Wildlife Service (USFWS) since the Life of Mine Permit was issued in 1988. The prior biological assessments/evaluations have concluded that no listed species or designated critical habitat would be adversely affected by mining operations. No new species have been listed or any new critical habitat designated for San Juan County, New Mexico, including on or near the Navajo Mine.

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

The federally endangered southwestern willow flycatcher is the only federally listed species with potential to occur in the mine area.

The current BE finds that the proposed action may affect, but is not likely to adversely effect, the southwestern willow flycatcher. There is no currently suitable nesting habitat in the Navajo Mine; however reclamation activities may provide suitable nesting areas in the future. There is very limited stopover habitat for birds in migration. The flycatcher is the only species of concern

identified for the permit revision application area and is the only listed species within the mine area with the potential to be affected by the proposed action.

OSM has finalized necessary consultations and received concurrences from the NNDFW and the USFWS on its effects determination for the Proposed Navajo Mine Area IV North Significant Permit Revision. USFWS provided its concurrence on January 19, 2012 and NNDFW provided its Biological Resources Compliance Form for Area IV North, Area III and Burnham Road, on November 30, 2011.

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

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

Rick Williamson

03/16/12

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Date

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