

US EPA ARCHIVE DOCUMENT



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105

July 7, 2008

Dennis Winterringer
Office of Surface Mining Reclamation and Enforcement
P.O. Box 46667
Denver, CO 80201-6667

Subject: Reopening of the comment period for the Black Mesa Project Draft Environmental Impact Statement (EIS)

Dear Dennis Winterringer:

The U.S. Environmental Protection Agency (EPA) has reviewed the Office of Surface Mining Reclamation and Enforcement's (OSM) Federal Register notice regarding the reopening of the comment period for the Black Mesa Project Draft EIS. Our review and comments are provided pursuant to the National Environmental Policy Act (NEPA), the Council on Environmental Quality's NEPA Implementation Regulations at 40 CFR 1500-1508, and Section 309 of the Clean Air Act.

Since the original publication of the Draft EIS in 2006, the proposed project has been reduced to eliminate transport of Black Mesa coal to the Mohave Generating Station. The preferred alternative is now Alternative B - Conditional Approval of the Life-of-Mine Revision, without Approval of the Black Mesa Mining Operations, Coal-Slurry Pipeline, and C Aquifer Water-Supply System. Alternative B involves incorporating the 18,984 acres associated with the Black Mesa mining operation into the expanded permit area, which includes the Kayenta portion of the mine. The preferred alternative excludes approval of the new haul road. In our February 6, 2007 comment letter on the Draft EIS, we rated the Draft EIS as LO – "Lack of Objections." (See the enclosed "Summary of Rating Definitions.")

Given the redefinition of the preferred alternative, EPA is concerned that the Draft EIS does not discuss how the long-term environmental impacts of Alternative B will be analyzed. Unlike Alternative A, the preferred Alternative B does not identify a specific product delivery/customer use scenario, and the Draft EIS does not discuss how the environmental impacts of future coal delivery/customer use scenarios will be analyzed. EPA is also concerned that the Draft EIS does not discuss greenhouse gas emissions from the proposed project. Based on these concerns, we have rated this Draft EIS as EC-2 – "Environmental Concerns - Insufficient Information." Please see our specific recommendations below.

Long-Term Environmental Impacts of Alternative B

The new Federal Register notice changes OSM's proposed preferred alternative from Alternative A to Alternative B. Alternative A involved a specific product delivery/customer use scenario, but Alternative B does not. EPA is concerned that the shift to a more open ended customer use alternative makes it difficult to assess potential environmental impacts from mine operations. The Final EIS should discuss both the limitations of analyzing future coal delivery/customer use scenarios today, and how future coal delivery/customer use scenarios will be analyzed once they are proposed. For example, the Final EIS should discuss whether future actions under the proposed permit would be subject to NEPA and under whose authority or jurisdiction. We also wish to reiterate our recommendations from our February 6, 2007 comment letter on the Draft EIS that the Final EIS clarify the status of EPA's permits and include mitigation measures for impacts to water quality.

Greenhouse Gas Emissions

There have been significant developments in the scientific, regulatory¹, and judicial² landscape regarding greenhouse gas emissions since the original publication of the Draft EIS. Given these recent developments, EPA believes the potential greenhouse gas emissions from the proposed project and alternatives should be discussed in the Final EIS. We recommend the Final EIS quantify the greenhouse gas emissions from the proposed project. This would include, for example, greenhouse gas emissions from the mining, transport, and burning of coal from the Black Mesa Mine Complex, as well as cumulative emissions within the project study area. We also recommend that the Final EIS include a qualitative discussion of climate change impacts related to greenhouse gas emissions.

¹ For example, in January 2007, the California Public Utilities Commission issued interim standards for coal-fired power stations that included a ban on California utility acquisitions of electricity from out-of-state power producers unless specific standards are met.

² Since the issuance of the April 2, 2007 Supreme Court opinion in Massachusetts, et al. v. EPA, 549 U.S. (2007), EPA has begun to develop regulations to address greenhouse gas emissions from motor vehicles and fuels under the direction of the President's May 14, 2007 Executive Order and relevant Clean Air Act authorities. The Agency continues to evaluate the potential effects of the Court's decision with respect to addressing emissions of greenhouse gases under other provisions of the Clean Air Act. Thus, neither this comment letter nor the EIS for an individual project reflects, and should not be construed as reflecting, the type of judgment that might form the basis for a positive or negative finding under any provision of the Clean Air Act.

We also note here the recent decision of the United States Court of Appeals for the Ninth Circuit, *Center for Biological Diversity v. National Highway Traffic Safety Administration*, 508 F3d 508 (9th Cir. 2007).

We appreciate the opportunity to participate as a cooperating agency in the preparation and review of this Draft EIS and look forward to working with OSM on the Final EIS. If you have any questions, please contact Jeanne Geselbracht at (415) 972-3853 or geselbracht.jeanne@epa.gov.

Sincerely,

/ s /

Nova Blazej, Manager
Environmental Review Office

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Enclosure: EPA's Summary of Rating Definitions

Cc: List Attached