

**CORTEZ-MONTEZUMA LEAGUE OF WOMEN VOTERS COMMENTS ON U.S.D.I.
BUREAU OF INDIAN AFFAIRS (NAVAJO REGION) DRAFT ENVIRONMENTAL
IMPACT STATEMENT FOR THE DESERT ROCK ENERGY PROJECT**

Comment Deadline Aug. 20, 2007

Throughout the Draft EIS frequent reference is made to “Region of Influence” and “Local Area of Influence”, however neither term is defined well in usage, or in the Glossary. It is very confusing for the reviewer in that differing sections of the document use both scales, without explaining why a particular scale is being used. This must be addressed and better explained. Cortez does lie within the Region of Influence, and the “Region of Influence” and “Local Area of Influence” definitions should make that clear.

With reference to the Abstract, a single page preceding pg. I, para. 3. The EIS states that this Draft EIS is open for a 60 day public review and comment period. This is inadequate time for public response on a multi-billion dollar proposed project. The review and comment period should be expanded to 120 days total following the Federal Register Notice of Availability, which was June 20, 2007.

Pg. ES-2, Proposed Project and Alternatives: There are three alternatives evaluated in the draft EIS. However, there is one glaring omission for an alternative that should have been included, but was not included. This alternative might be named the “Net Environmental Improvement Alternative”. Sithe and BIA should add an alternative to the Final EIS that incorporates those actions proposed under Alternative B (1500 MW plant and associated facilities and Navajo Mine expansion), *conditioned by a commitment that Sithe will agree to a package of emission reductions (sulfur dioxide and/or nitrogen oxides) at the two nearby existing coal-fired power plants that will mitigate the contribution of the two existing power plants to regional visibility impairment*, while allowing the full scale Desert Rock Energy project to proceed at the 1500 MW level. Sithe would have much more support for Desert Rock if they would be so bold as to include this as their main Proposed Action.

Pg. ES-4, para 2., sentence 3: Optimizing water-use for zero-liquid discharge is not clearly stated and explained. Do you mean that the Desert Rock Energy project (DREP) water use efficiencies will result in no water being discharged to the environment? Then so state that.

Pg. ES-4, para 2, sentences 6 and 7: URS Corp. (2005) is cited here. The citation does not match the references shown in Ch. 7. Is it 2005a or 2005b?

Pg. ES-8, para. 2, last two sentences: Please provide a literature citation for the statement that “DREP would not result in additive degradation to existing air quality because of Sulfur Dioxide reductions on other projects”.

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Pg. ES-9, para. 4, first three sentences: The small increases in mercury referred to need to specify whether this is air or ground release (through surface water transport). Air release of the hundreds of pounds of additional Hg is likely to travel much greater distances than just to the San Juan River or Morgan Lake. These greater transport distances are shown by Gray et al. in Applied Geochemistry 20 (2005): pp 207-220.

Pg. ES-9, para. 4, last sentence needs editing. Remove either “may affect, or is likely to affect...”

Pg. ES-10, para. 4, regarding the fourth sentence: This statement dismisses any cumulative impact on human health from increased emission of air pollutants. However three local physicians from Durango and Cortez have met with local public groups and have indicated that there is now an impact on human health from these industrial emission sources in the Four Corners, and there will be even more of an impact with the operation of the proposed DREP action. The EIS should examine this medical data. (Contact is Dr. Marcus Higi , Cortez, CO, drhigi@yahoo.com)

Page ES-11, Table ES-2, Water Resources, Alt. B: The 1.46 acres total shown here for the permitted plant and associated facilities is too small a figure, when compared to the 149 acre figure for the Alt. B Power Plant footprint shown in Table ES-1 (Pg. ES-3).

Pg. ES-11, Table ES-2, Air Quality: Under Alt. B, there would be more fugitive dust produced, in size classes PM10 and PM2.5, which BIA claims would be temporary and is to be mitigated through adherence to the recommended mitigation measures. The proposed infrastructure elements alone of the proposed alternative B would generate 229 tons of additional PM10 particulates. For the study area of the proposed power plant, approximately 73 percent of the 101,652 acres are in vegetation types with as little as 5-40 percent plant cover which means this large portion of the study area has 60-95 percent bare soil with little or no resistance to wind transport of soil particles. Fugitive dust and frequent dust storms in the Four Corners Region, specifically in the Montezuma Valley and eastern La Plata County are already a great nuisance for residents and travelers, and have been occurring multiple times each year since about 1999 when the current drought began. The lands of the Navajo Nation are among the largest source of fugitive dust during these dust storms, because they are upwind of our area. Why would we believe that the DREP construction supervision will enforce effective dust control measures?

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Grazing management and range management practices on Navajo Lands the past few decades have not protected vegetative cover to hold the soil in place when these 35-60 MPH winds tear through the Four Corners, transporting huge dust clouds far beyond the Four Corners, across the higher elevations of the San Juan Mountains and even into central Colorado's mountains. In view of the existing concentrations of arsenic in soil and native vegetation at the proposed plant site, and the high winds that often rake the Four Corners area from February through October, Sithe and BIA should strengthen the analysis and mitigation of fugitive dust from plant construction and operation.

Pg. 2-7, last para., the last complete sentence dealing with water-re-use: This sentence on water use being optimized for a zero-liquid discharge has a high fog factor. Please re-state the sentence in plain English.

Pg. 2-15, Sec. 2.2.2.4.1 Production Schedule and Sequence, Pre-Production, Second Bullet: The design flow capacity to divert ephemeral Pinabete flows into the "No Name Arroyo" would be wholly inadequate at the 10 year, 6 hour duration, based on 1.35 inches of rainfall (Table 3-15, Pg. 3-41), which is frequently exceeded during high intensity convective thunderstorms. Instead, the use of a 25 or 50 year 6 hour duration is recommended, particularly if there are bridges or personal property at risk downstream.

Pg. 2-28, Figure 2-6, Emissions from Coal-Fired Generating Plants: Because the proposed DREP would operate in a regional cumulative context in which the San Juan Generating Station and the Four Corners Power Plant already operate, both of these existing plants must be added to this graph.

Pg. 2-29, Conclusions from Evaluation of the Integrated Gasification Combined Cycle (IGCC): The degree of evaluation and the evidence of bias in the evaluation are very disappointing. Sithe and BIA have not seriously considered IGCC or other Clean Coal Technologies for this project in spite of existing, operating IGCC plants (Tampa Power for instance). Clean Coal technologies such as IGCC could substantially reduce annual SO₂, NO_x, PM₁₀, mercury and CO₂ emissions. Because the Four Corners regions is a special place with 27 units of the National Park System within 180 miles of the proposed project site, this EIS needs to give more serious consideration to Clean Coal Technology.

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Pg. 3-1, Table 3-1, Mean Monthly Snowfall Average section of Table: The Cortez winter average of 23.5 inches should be footnoted to define what the winter months are considered to be.

Pg. 3-5, Section 3.1.3 Air Quality: The air quality section of Ch. 3 completely ignores greenhouse gas emissions (Carbon Dioxide). Even though EPA has not yet issued regulations for greenhouse gases, the recent U.S. Supreme Court decision (Massachusetts et al. v. EPA et al., decided April 2, 2007) will eventually force EPA to promulgate regulations. In the meantime the EIS preparers and the BIA/Navajo Nation must add Carbon Dioxide in the Final EIS to the Table 3.9 listed emissions for coal-fired power plants in the area, including those of Desert Rock. The brief one page (Pg. 5-12), Section on Global Air Quality Impacts is an insufficient and sanitized discussion of greenhouse gases from the perspective of cumulative impacts and unavoidable adverse effects of these gases. This Section on Pg. 5-12 fails to discuss predicted Desert Rock Greenhouse gas emissions (12.7 million tpy of CO₂) in comparison to, and as a portion of the tens of millions of tons/yr. of Greenhouse gases that the San Juan and Four Corners Power Plants combined with Desert Rock would pump into our Four Corners atmosphere.

Pg. 3-12, Figure 3-3, Ambient Air Monitoring Station Locations: Why was the Sandoval, NM site chosen (> 200 km distant) and yet Mesa Verde National Park's ambient air monitoring station (50-100 km distant) was not chosen? The final EIS will be inadequate and incomplete unless the Mesa Verde National Park's ambient air monitoring station is included.

Pg. 3-18, Table 3-7, Standard Visual Ranges from the IMPROVE Monitors Near the Project Site: These data show only the distance that can be seen on a given day under the best and the worst visibility conditions at various monitors such as at Mesa Verde N.P. The draft EIS does not show the number of days in the year that we find the visibility conditions to be in the Best, Intermediate, and Worst Visibility Day Classes from a given IMPROVE Monitor.

Pg. 3-32, Uses and Water Quality Section, 2nd paragraph of this Section, last sentence: The BLM (2004) average sediment yield calculated by the Farmington Field Office for the Chaco River watershed is NOT substantiated by a reference in the Ch. 7 References. It is likely to be the Pacific Southwest Sedimentation Interagency Committee technique developed and published as the "PSIAC Method" about 1968.

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Pg. 3-37, Sec. 3.2.3.4 Water Quality, para. 2 of this section. This paragraph describes results of water quality sample analyses collected on May 11, 2005 from three wells documented as producing groundwater from the Morrison Formation. In review of Appendix B, we could not find the results for these three sampled wells. Instead, Appendix B contains two Water Quality Comparison Reports (for 6 Burnham Chapter artesian wells, and for 6 Sanostee Chapter artesian wells). Water Quality Comparisons are made for these artesian wells to historical water quality data for groundwater samples collected in wells reported to have withdrawn groundwater from the Morrison Formation (data of Dam, et al. 1990).

The EIS draft is erroneous in concluding (Pg. 3-37, para. 2, last sentence) that the water appears to be of acceptable quality (for the constituents tested) for use at the proposed power plant. This statement is erroneous because, in the case of the 6 Burnham Chapter artesian wells, water quality comparison for the Morrison Formation wells (Dam et al., 1990) and the Burnham Chapter wells showed distinct and dissimilar geochemical footprints, according to the App. B letter report of January 30, 2007 to Ms. Jennifer Pyne, URS Corporation from Miller Brooks Environmental..... meaning that Burnham Chapter wells are not tapping Morrison Formation groundwater. As for the water quality comparison for the Morrison Formation wells (Dam et al., 1990) and the 6 Sanostee Chapter artesian wells, Miller Brooks in a January 31, 2007 letter report to Ms. Jennifer Pyne indicated that their analyses did not conclusively indicate that the Sanostee Chapter wells are tapping into Morrison Formation groundwater. Therefore URS Corp. and BIA to this point in the draft EIS have not shown that groundwater from a planned new well-field tapping into the Morrison Formation would be of acceptable quality for use at the proposed power plant.

Pg. 3-49, Sec. 3.2.5.1 Water Resource Regulation: This seven paragraph section is incomplete because it does not address the Colorado River Basin Salinity Control Program (CRBSC) pursuant to Public Law 93-320 of 1974. Title II of P.L. 93-320 created a water quality program for salinity control in the United States, with primary responsibility for implementation and management given to the Secretary of the Interior. It is essential that the Desert Rock EIS address the effects of soil surface disturbance on diffuse sources of salinity transport within the project area. The Navajo Nation Division of Natural Resources, Department of Water Resources is responsible for water quality planning, including salinity control within the reservation. The Navajo DWR is well-aware of the CRBSC and has communicated with this program for years. The EPA Region IX in San Francisco is also very aware

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of this program and has salinity control oversight responsibilities for the Navajo Nation, particularly in the NPDES arena for point discharge salt releases. The consequence of the EIS not disclosing salinity transport impacts and mitigation is that additional tonnages of dissolved solids will travel into tributaries of the San Juan River and this will push the Colorado River Basin States, including the State of Colorado, incrementally closer to a violation of the numeric criteria for salinity at Hoover Dam, Parker Dam, and Imperial Dam.

Pg. 3-87, Soils Section. It is apparent that the two USDS-NRCS soil survey reports covering the study area (Soil Survey of San Juan County, NM- Eastern Part, 1980 and Soil Survey of Shiprock Area, Parts of San Juan County, NM and Apache County, AZ, 1992) have not been correlated. Thus the differences in soil descriptions, soil names, and delineations between these two uncorrelated soil surveys create a situation where BIA and its contractors are unable to conduct a credible job of analyzing the effects of the proposed action and the alternatives on soil resources of the study area.

Pg. 3-128, Visual Resources Summary: Steam from the existing San Juan Generating Station and the Four Corners GS is clearly visible from Far View and other high viewpoints and visitor trails within Mesa Verde National Park on many days. This is a long distance vista of some 40-50 miles from within a protected Class I air shed. The addition of another power plant industrial stack and cooling towers 60 miles south of Far View is an encroachment upon the Air Quality Related Values of Mesa Verde National Park. Nowhere in the draft EIS can analysis of this impact be found.

Pg. 4-6, Fugitive Dust from Earthmoving Section: Emissions of Particulate Matter add to a discernible degradation of regional air quality (blowing dust) because of the frequent occurrences of 30-50 MPH surface winds that entrain Particulate Matter and transport it many miles, into the Montezuma and Mancos Valleys, and over into La Plata County. This is a moderate impact for Particulate Matter.

Pg. 4-7, last para. Summary: This three sentence summary section is too brief, and therefore does not explain whether the 77+63.2+17.1+13.4 tons of PM10 emissions from the four previous surface-disturbing activities are additive or not. \

Pg. 4-12: The draft EIS should explain the basis for the statement that “.....only a small percentage of elemental mercury vapor would settle out within 25 km. of the plant.” The Four Corners region is home to numerous water bodies which have

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mercury impairments and are posted for fish consumption advisories, particularly in NM and CO. Even small amounts of additional mercury deposition into the environment in the Four Corners Region are of critical importance to us, and we demand that Sithe do far better than 90 percent reduction in elemental mercury emission. Industry literature indicates that 95 percent would be achievable. If the Sithe design cannot practically achieve better than 95 percent reduction, then it is our position that Sithe should include in their design alternatives an Integrated Gasification Combined Cycle design. It is well known that IGCC allows removal of elemental mercury after the coal gasification stage at far lower flow rates (than post burn stack gas rates). Lower flow rates and other factors allow much more mercury removal before burning with smaller, less expensive equipment.

Pg. 4-27, Section 4.1.3 Summary of Impact Analysis: The credibility, accuracy, and completeness of the analyzed air quality impacts of the proposed mine and power plant operations, including mining operations in BNCC Lease Areas IV South and V is questionable because the public and interagency comment to the Environmental Protection Agency Region IX Draft Federal Prevention of Significant Deterioration (PSD) program is still pending. Therefore the public and this reviewer cannot verify that corrected and refined air quality modeling and resource information was used between fall, 2006 and spring, 2007 in the analysis of air quality impacts in Chapter 4, and the conclusion that the potential effects on air quality and air quality related values will result in no adverse impacts. From fall 2006-summer, 2007 the Environmental Protection Agency was (and still is) evaluating the over 1,000 comments received, and preparing a Response Document for the public comments on the proposed PSD permit and draft Air Quality technical Document that accompanied it. In not yet knowing the outcome of EPA draft PSD review and comment, it is not possible for URS Corp. to conclude (Pg. 4-17, last Bullet) that the Method 6 results with P-G coefficients indicate that the 98 percent day has impacts only marginally higher than a 5 percent change in extinction at Mesa Verde. The same may be said on the results of the sensitivity run with a lower background concentration, and with the Method 6 results for the 98 percentile day for Mesa Verde (Pg. 4-18, top Bullet).

Pg. 4-30, last para. sentence 4 indicates that implementation of construction Best Management Practices (BMPs) would prevent degradation to surface waters. We are aware of no BMPs for construction practices developed by the NM Environment Dept. that would be able to be applied on Navajo lands. The draft EIS must cite whose BMPs for construction practices will be employed. Are they Navajo BMPs, and who certified them? Will they include provisions for monitoring to evaluate the

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effectiveness of BMP implementation, and will they be flexible enough to be able to be modified based on the outcome of monitoring? Ineffective results of BMP implementation could result in additional sediment and nutrient loadings to the San Juan River, already declared impaired by the State of NM for specific water quality standards and water uses. Same Comment reference to: Pg. 4-32, first full paragraph; Pg. 4-33, two places in top paragraph; Pg. 4-33, near center of last paragraph; and Pg. 4-35, last paragraph.

Pg. 4-31, Section on Operation (of the proposed Power Plant), second para.: The citation of recent studies by “Grey et al., (2004)” about emissions of Hg from Power Plants is incorrect. Based upon Chapter 7 references, it should be Gray, et al. (2003). The cite is also out of date. A better and more recent citation is (John E. Gray, David L. Fey, Charles W. Holmes and Brenda K. Lasora, 2005), *Journal of Applied Geochemistry* v. 20: p. 207-220, *Historical Deposition and Fluxes of Hg in Narraguinnep reservoir, Southwestern Colorado, USA*.

Pg. 4-39, Section 4.2.1.3 Summary of Surface Water Impacts, third para.: The first sentence of this paragraph should include not only Navajo reservoir as possible airborne mercury receptor, but also Mcphee and Narraguinnep Reservoirs (southwest Colorado) and Vallecito Lake near Durango. Each of these water bodies is posted by the Colorado Game and Fish with fish consumption advisories warning of high mercury concentrations in selected species and size classes of gamefish.

Pg. 4-62, Mitigation to Reduce Impacts Section 4.3.2.2.6: Each of the 19 Bullets items listed here should identify the responsible oversight or implementing organization or individual responsible for that item. Some, but not all, show this information.

Pg. 4-75, Section 4.3.3.2.5 Water-supply System, Water Well Field A: This section does not adequately disclose the impacts on aquatic wildlife of drying up numerous springs and seeps in the vicinity of, and hydrologically connected to Water Well Field A. The Proponents should explore the possible use of managing storm water where feasible, to create artificial seeps, partially offsetting the loss of aquatic habitat.

Chap. 4, Pg. 4-184, Sec. 4.13.1: In the second paragraph, four lines from the bottom, the draft EIS states that Sec. 4.13.2 will focus on the health effects of those residing within 50 km. of the proposed power plant. This radius is too small, because the

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population figure within that radius is relatively small. Figure 3-18, “Region of Influence, Socioeconomic Studies”, Pg. 3-133 makes our point; in 2000 there were over 193,000 persons residing on the Navajo, Ute Mountain, and Southern Ute reservations in the Region of Influence. For the same year, another 183,000 persons were living in the remainder of the four counties in the Region of Influence. Using 50 km eliminates the Cortez-Mancos-Dolores, Colorado areas. Because of the numerous health concerns aggravated by air pollutants in these communities, we highly recommend that the radius of concern be increased to 100 km.

Chap. 4, Pg. 4-192, Last paragraph: The draft EIS concludes, erroneously, that “review of the available literature has not found that the communities in the vicinity of the proposed plant have higher susceptibility rates to particulate matter emissions than other populations of the U.S.....” This conclusion is invalid for these reasons:

- The Review looked at asthma rates in NM as a whole, thus leaving out southwest Colorado, and communities such as Cortez, Dolores, Mancos and Durango all of which will receive air quality impact from the proposed plant, even though they are outside of the 50 km. radius.
- The Review looked at NM asthma rates as a whole, thus ignoring the fact that the Navajo Tribe is a very distinct sub-population of NM.
- The Review also focuses on asthma as defining susceptibility. Defining susceptible populations is a very active area of research, and the literature suggests that there are many other factors which influence susceptibility, including socioeconomic status and the occurrence of other health conditions.

Chap. 4, Pg. 4-206, Section on Indian Trust Assets, third paragraph on Indian water rights: This paragraph is deficient in detail and is misleading. For example, it does not distinguish between those water rights appropriated under NM State Engineer regulations for recognized beneficial water uses, and those Indian reserved water rights, as found in the Winters Doctrine (*Winters v. the United States*, U.S. Supreme Court, 1908). This section is also deficient because it provides no specific information on water as an Indian Trust Asset that will be utilized as a result of the proposed project. Furthermore the section is deficient because there is no disclosure of what the legal basis is for the Indian water that will be consumed as a result of the

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project. A disclosure of the legal basis needs to lay out in detail the information on Indian water rights (both appropriated and reserved under the Winters Doctrine) that will or may be affected by the proposed Desert Rock energy project. None of these items have been described in this paragraph on Indian Trust Assets. The consequence of this omission is very serious because it falls short in disclosing to Navajo Tribal Members what the Desert Rock Project means to them in terms of their available water resources. This omission is also serious for people living adjacent to the project area in San Juan County, New Mexico, whose livelihoods may be dependent upon agriculture and their use of appropriated water. They have inadequate information in this draft EIS to evaluate the impact of the DREP on their own adjudicated water resources, partly because of the inadequate documentation on use of Indian water and the legal framework for making that water available for the intended water use.

APPENDIX COMMENTS:

Appendix J, Risk Analysis, Pg. J-35, Para. 4, first sentence states that local mercury data are available for the San Juan River in Table 3-9 of the main text (Draft EIS). This is incorrect. Table 3-9 presents no Hg data for the San Juan River, but it does present Hg emission data for six other coal-fired power plants in the area.

In order to do a credible job of evaluating data and human health risks and ecological system risks to mercury, Appendix J needed to examine stream, river, and lake sediment deposits for presence of methyl mercury far beyond the 25 km. radius from the proposed power plant. Specific sites for sediment and fish tissue mercury data that the authors should have looked at are Navajo Reservoir on the San Juan River, McPhee reservoir on the Dolores, Vallecito Reservoir in the Pine River drainage, and Narraguinnep Reservoir north of Cortez. Each of the fish consumption advisories for mercury at these four water bodies is known to be at least in part, impacted by atmospheric deposition of mercury. Desert Rock will contribute to the atmospheric loading of elemental mercury vapor far beyond the 25 km. radius. Therefore, Appendix J inadequately analyzes mercury as a Chemical of Potential Concern.

Appendix K, Air Quality Technical Information: We believe that there is credible published evidence that contemporary methods for estimation of emissions from proposed power plants, in this case the DREP, result in 1) an underestimating emissions (of NOX, SO2, Ozone, and Particulate Matter), and 2) incorrect accounting for atmospheric chemical reactions. (See: Marufu et al. (2004), Geophysical

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Research Letters v. 31, L13106, doi:10.1029/2004GL019771, *The 2003 North American electrical blackout: An accidental experiment in atmospheric chemistry.*

Sithe must publish in the final EIS assurances that the best available CPU technology (64-bit), incorporating the four-fold increases in computing power since 2004, has been taken advantage of in Sithe's CAMX air quality modeling prediction work.