

# **EXHIBIT 4**



## ***San Juan Citizens Alliance***

*A voice for environmental, social, and economic justice in the San Juan Basin of southwest Colorado and northwest New Mexico*

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November 10, 2006

### **VIA E-MAIL ATTACHMENT/CERTIFIED U.S. MAIL**

Mr. Robert Baker  
Air-3  
U.S. Environmental Protection Agency Region 9  
75 Hawthorne Street  
San Francisco, California 94105  
e-mail: baker.robert@epa.gov

### **Re: Comments for Proposed Desert Rock Energy Facility Clean Air Act Draft Prevention of Significant Deterioration Permit**

Dear Mr. Baker:

The San Juan Citizens Alliance (SJCA) New Mexico Chapter respectfully submits the following comments concerning the proposed Sithe Global Power, LLC (Sithe) Desert Rock Energy Facility (Desert Rock) Clean Air Act (CAA) Draft Prevention of Significant Deterioration (PSD) permit. The proposed Desert Rock project is the construction and operation of a 1,500 Megawatt (MW) coal-fired power plant and ancillary infrastructure to be located in Burnham on Navajo Nation lands on a 580-acre facility, approximately 30 miles southwest of Farmington, New Mexico.

SJCA New Mexico Chapter is a community membership non-profit organization. SJCA is actively involved with energy development issues in the San Juan Basin and has considerable concerns regarding existing and projected air quality in the Four Corners region.

As documented in testimony presented to the EPA Region 9 on October 3 and 4, 2006 in Shiprock, New Mexico and Durango, Colorado, SJCA has noted significant deficiencies with the Draft PSD permit, as currently prepared. This purpose of this letter is to provide additional information supporting SJCA testimony (PowerPoint presented during public hearings October 3 and 4, 2006) on the EPA's Draft PSD permit for the proposed Desert Rock facility. This comment letter also responds to EPA Region 9's initial denial of the SJCA request to extend the comment period on the Draft PSD permit and the EPA view that the National Environmental Policy Act (NEPA) process is "separate from the PSD permitting process." (letter from Gerardo Rios, Chief, Air Permits Office, Region 9, EPA to SJCA, October 20, 2006)

SJCA strongly objects to the fact that Sithe has had documented communication with EPA Region 9 to attempt to expedite the Draft PSD permit for Desert Rock.<sup>1</sup> The Four Corners region cannot afford streamlined analyses of a massive coal-fired power plant when the cumulative results would adversely affect already degraded air quality. EPA Region 9 needs to slow down and re-prepare the Draft PSD permit for Desert Rock with accurate monitoring and modeling inputs, a better understanding of existing air quality conditions in the Four Corners region, and full disclosure to the public of all facets of the proposed Desert Rock facility.

The EPA's refusal to hold a public hearing for the Draft PSD permit in Farmington (the largest population potentially affected by the proposed project) to cut costs, as described to SJCA staff by Colleen McKaughan of the EPA at the public information meeting in Burnham, September 13, 2006, is an affront to the citizens of northwestern New Mexico.

Comments in the local media by the EPA, attributed to Colleen McKaughan, include, "We're not moving backwards," she said. "The air here is considerably clean. It doesn't violate any of the national air-quality standards." In addition, the article included the statement that "...the two existing power plants in northwest New Mexico - Four Corners Power Plant and San Juan Generating Station - are improving their emissions... and a new power plant will use the best technology to reduce emissions."<sup>2</sup> How would the EPA Region 9 know, given the poor monitoring data used in evaluation of the Draft PSD permit and the complete failure to include cumulative existing air pollution sources used for modeling analysis? This statement "...air here is considerably clean" is unsubstantiated by valid existing data and results in perpetuating the mythic assertion that it's okay to pollute in the "pristine" Four Corners region where populations are low and consist of a high proportion of minority populations; and it's a great place to generate power to be transported elsewhere. Perhaps EPA Region 9 is unaware of the ozone problem in San Juan County. The Four Corners region has a long legacy of air pollution from the massive complex of coals mines, coal delivery systems and the two major coal-fired power plants (Four Corners Power Plant and San Juan Generating Station) located in the Shiprock area.

Four Corners citizens are tired of hearing that Desert Rock would be a "clean" coal-fired power plant and are understandably concerned that EPA Region 9 has demonstrated limited knowledge of the proposed project area and region. The Four Corners region has waited many years for the San Juan Generating Station and Four Corners Power Plant to "reduce" their emissions. Up to

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<sup>1</sup> January 30, 2006 e-mail from Gus Eghneim, Desert Rock's director of environmental affairs, to Colleen McKaughan, EPA Associate Director, Air Division.

<sup>2</sup> "Critics blast power plant," Durango Herald, October 4, 2006

13.7 million tons per year (tpy) of carbon dioxide (CO<sub>2</sub>) would be emitted by the proposed Desert Rock facility – this massive power plant would emit almost as much CO<sub>2</sub> as the Four Corners Power Plant and more than the San Juan Generating Station. What are the “best technologies” that Site would utilize in emitting up to 13.7 million tpy of CO<sub>2</sub>? The proposed Desert Rock facility is yet another coal-fired power plant: proposed to be irresponsibly located with inadequate analysis. The Dine Power Authority stated at the Public Hearing in Shiprock, October 4, 2006 that 0-5% of the power generated by the proposed Desert Rock facility would stay on the Navajo Reservation to be utilized by the Navajo people. Pollute here and use the power elsewhere.

## **I. DEFICIENCIES OF THE DRAFT PSD PERMIT FOR THE PROPOSED DESERT ROCK FACILITY**

### **1. Background Ambient Air Quality Data**

Site used monitors in Farmington, New Mexico (22-24 kilometers [km] from the proposed project site) for sulfur dioxide (SO<sub>2</sub>), nitrogen oxides (NO<sub>x</sub>), particulate matter smaller than 10 micrometers diameter (PM<sub>10</sub>), and ozone, and Rio Rancho, New Mexico (136 km from the proposed project site) for carbon monoxide (CO) to determine background concentrations of pollutants in the modeling for Desert Rock. According to the Ambient Air Quality Impact Report (NSR 4-1-3, AZP 04-01), “the EPA has determined that these monitors will record higher background concentrations of pollutants than we would expect closer to the DREF (Desert Rock) site is because Farmington and Rio Rancho have greater residential and commercial activity than the project site on the Navajo Nation.” This is deficient methodology that neglects analysis of the major sources of air pollution in the Four Corners region.

There are no monitors in the proposed project area or immediate vicinity. At an early ozone meeting in Farmington (April 23, 2002) the New Mexico Environmental Department/Air Quality Bureau (NMED/AQB) was asked the following question, “**Can the AQB monitor near the Navajo Nation?**” **The answer:** “AQB used to have a site called “Reservation” that was located on the Navajo Reservation, approximately 1 mile NNW of the APS Four Corners power plant and 5 miles SW of the PNM San Juan power plant, where it measured SO<sub>2</sub> and NO<sub>2</sub> concentrations. That site was shut down in 1994 because of vandalism and because tribal authorities took over responsibility for that area. A monitoring site outside of Shiprock, which measured SO<sub>2</sub> and PM<sub>10</sub>, was closed in 1998. When they were in operation, these sites did not show very high values of the pollutants they were measuring.”<sup>3</sup> It is highly likely that monitors in these sites would paint a different air quality picture today.

The EPA should reinitiate monitoring, for example, on the northern portion of the Hogback where more accurate assessments could be made concerning the pollution from the two existing power plants and cumulative air quality impacts. The lack of monitors in appropriate locations results in inaccurate modeling for the Draft PSD permit for the proposed Desert Rock facility. Several years of monitoring in appropriate locations would give EPA Region 9 the information needed for modeling.

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<sup>3</sup> <http://www.nmenv.state.nm.us/aqb/projects/Ozone-QandA.html>

## **2. Analysis of Impacts on Ozone Concentrations**

The EPA Region 9 should be aware of the San Juan County Early Action Compact (EAC) for ozone. San Juan County, the Cities of Aztec, Bloomfield, and Farmington, the NMED, and the EPA signed the EAC on December 20, 2002. The EAC entails milestones over the next several years that are designed to keep San Juan County in attainment of the federal standard for ground-level ozone. Through its air monitoring program, NMED has in recent years recorded levels of ozone that approach, but have not exceeded the ozone standard in San Juan County. As a result of the EAC, the New Mexico Ozone Task Force and the Four Corners Air Quality Task Force have been working over the past 5 years to develop strategies to stay in attainment for ozone and other air pollution emissions. These EAC strategies include an inventory of ozone precursor emissions in San Juan and Rio Arriba counties over a two-year period. This inventory must be complete for action to be taken on ozone precursor emissions reduction, providing cumulative impact analysis. The goal of the EAC is to maintain San Juan County compliance with the 8-hour ozone National Ambient Air Quality Standards (NAAQS) through 2007.

The Draft PSD permit for the proposed Desert Rock facility includes no analysis of ozone concentrations. EPA is required to include one year of on-site preconstruction monitoring of ozone concentrations at the proposed Desert Rock site. This has not occurred to date for the Draft PSD permit. The proposed Desert Rock facility would have the potential to emit 166 tpy of volatile organic compounds (VOCs) and 3,315 tpy of NO<sub>x</sub>. These precursors could exacerbate existing air pollution levels, in conjunction with other sources (including natural gas facilities and automobiles) in San Juan County and cause a violation of the NAAQS for ozone.

EPA's failure to include ozone concentrations in the Draft PSD permit is a major deficiency, representing an inaccurate baseline of existing air quality conditions in the Four Corners region. The Bureau of Land Management (BLM) Farmington Field Office (Farmington) Resource Management Plan (RMP) of 2003 documents the emission of 72,000 tpy of NO<sub>x</sub> and 3,000 tpy of VOCs over the next 20 years in the Four Corners region as a result of new natural gas development. This more than doubles the combined existing NO<sub>x</sub> emissions from the San Juan Generating Station (26,800 tpy) and the Four Corners Power Plant (40,742 tpy).

EPA has the legal obligation to revise the Draft PSD permit to evaluate ozone precursor emissions from the proposed Desert Rock facility, evaluate cumulative ozone levels in the Four Corners, and determine public health impacts as a result of the proposed Desert Rock facility in conjunction with existing air pollution sources.

## **3. Analysis of Impacts from Fugitive Dust**

The Draft PSD permit discusses how the proposed Desert Rock facility will avoid fugitive dust emissions as a mine-mouth power plant through the use of dust suppression systems, enclosures and/or fabric filters. This needs to be explained by the EPA in more detail in the proposed PSD permit as to the mining systems, length of the proposed enclosed conveyors, the amount of coal being conveyed and the method of 'recycling' the coal combustion wastes into Navajo Mine. Again, the impacts of fugitive dust from the proposed Desert Rock facility are potentially part of the larger, cumulative impacts associated with the massive existing complex of coal extraction,

delivery, pulverization, burning, waste disposal that have occurred over the past 40 years in the area from the BHP Billiton (BHP) mines and the two existing power plants. The area proposed for coal mining for the proposed Desert Rock facility would be subject to subsidence, with commensurate sediment transfer and fugitive dust. Information provided to date is that the mining of up to an additional six million tpy of Navajo coal from the BHP Navajo Coal Company lease area (Areas IV South and V) would be required for the proposed Desert Rock facility. The Draft PSD permit discussion of Material Handling Sources for particulate matter represents a significant departure from accepted practices in the area (open recycling into excavated coal mines) that have led to large amounts of fugitive dust in the Burnham region. EPA Region 9 needs to revise the entire section on fugitive dust in the Draft PSD permit.

#### **4. Fine Particulate Matter (PM2.5) Omitted for the Draft PSD Permit**

Sithe failed to properly analyze fine particulate (PM2.5) concentrations in the Draft PSD permit. EPA Region 9 must adhere to PM2.5 ambient air quality standards as revised by EPA on September 21, 2006 and must correlate all analysis/modeling impacts from the proposed Desert Rock facility with public health analysis in the Four Corners region. PM2.5 is entirely distinct from PM10 and cannot be treated as a surrogate. EPA 9 has failed to determine the amount of PM2.5 that would be emitted by the potential Desert Rock facility. In addition, EPA Region 9 must accurately characterize fugitive dust emissions from all facets of the construction and operation of the proposed Desert Rock facility (including all mining operations) to evaluate potential PM2.5 emissions.

#### **5. Inaccurate modeling and use of unenforceable mitigation to avoid visibility and deposition impacts on Class 1 areas in the Southwestern U.S.**

The Draft PSD permit includes flawed modeling that led to the conclusion that adverse visibility and deposition impacts in eleven Class 1 areas would not occur as a result of the proposed Desert Rock facility. The EPA Region 9 failed to properly evaluate cumulative air pollution in the Four Corners region in the modeling of the proposed Desert Rock facility.

The Draft PSD requires involvement of Federal Land Managers (FLMs) including the United States Department of Agriculture- Forest Service (USDA-FS), and Department of Interior - National Park Service (NPS). Glaringly absent from this FLM involvement is the BLM, an agency that has a huge responsibility to protect the Four Corners public from air pollution as a result of approved actions (primarily natural gas facilities) and oversees the leasing of the BHP mines. Initial modeling of the proposed Desert Rock facility showed that adverse visibility impacts would occur at numerous Class I areas including Mesa Verde National Park. Sithe then worked with the Navajo Nation, the EPA and FLMs to develop a mitigation plan to preclude an adverse impact determination being made for the proposed Desert Rock facility. In response to the request of the FS to include the mitigation plan in Sithe's PSD permit so that Sithe's proposal would be federally enforceable, the EPA Region 9's "...preference is to allow the mitigation strategy to remain in a side agreement between Sithe and FLMs rather than in Sithe's PSD permit."<sup>4</sup> Without any details to the public concerning the mitigation plan, permit conditions

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<sup>4</sup> USEPA Ambient Air Quality Impact Report (NSR 4-1-3, AZP 04-01), page 38

and timeframes, and the lack of any federally enforceable measures to offset impacts to visibility and deposition, the EPA Region 9 has not shown that adverse impacts determination to Class I areas will not occur as a result of the proposed Desert Rock facility. The EPA Region 9 needs to include federally enforceable conditions related to the proposed Desert Rock facility in the Draft PSD permit or they are entirely unenforceable. The EPA Region 9 must come to the realization that air quality in the Four Corners region is already severely degraded and they are responsible for public health protection in potential issuance of a PSD permit. The last thing this region needs is unenforceable mitigation strategies for air pollution shuffled from agency to agency, with none taking action on air quality and public health.

## **6. Greenhouse Gas Emissions Analysis**

Perhaps the greatest known impact to date for the proposed Desert Rock facility would be emissions of up to 13.7 million tpy of CO<sub>2</sub> in conjunction with other greenhouse gasses. EPA's Ambient Air Quality Impact Report for the proposed Desert Rock Draft PSD permit neglects to include greenhouse gas emissions from the proposed Desert Rock facility. There is absolutely no analysis of the environmental impact from greenhouse emissions nor any consideration of best available control technology (BACT) to minimize CO<sub>2</sub> emissions. What will be the public health and economic costs to the Four Corners region as a result of 13.7 million tpy of CO<sub>2</sub> added to the already compromised airshed? The EPA Region 9 should be aware that the State of New Mexico has established statewide greenhouse gas emission reduction goals. EPA Region 9 should begin consultation with the State of New Mexico to evaluate how the proposed Desert Rock facility emission of 13.7 million tpy of CO<sub>2</sub> fits in the state's reduction goals. In addition, EPA Region 9 should work with the Navajo Nation to explain how impending carbon taxes have the potential to wipe out financial benefit of the proposed Desert Rock facility from the tribe.

## **7. Emission Limits for Mercury**

The Draft PSD permit for the proposed Desert Rock facility proposes no emission limits for mercury. The failure of the EPA Region 9 to include mercury emission limits means that the proposed Desert Rock facility emission limits would have no enforceable limits and mercury emissions would be potentially much higher than the 264 pounds per year of mercury emissions described in the Draft PSD permit. Data from the EPA's Persistent Bioaccumulative and Toxic (PBT) Chemical Program website provides year 2000 total mercury emissions from the Four Corners Power Plant (1,174 pounds) and San Juan Generating Station (1,194 pounds). This emitted mercury is showing up as mercury deposition in virtually all of the major water bodies in the Four Corners region. These regional waters include the San Juan, Animas, La Plata rivers; Navajo and Vallecito lakes; Narraguinnep and McPhee reservoirs, and numerous water bodies found on the Navajo Nation where fish consumption advisories due to mercury contamination have been issued. The EPA Region 9 must analyze mercury emissions and controls from the proposed Desert Rock facility prior to issuing the PSD permit. In addition, EPA Region 9 should conduct analyses of water, soils and vegetation in a 100-mile radius of the existing massive coal power complex (including San Juan Generating Station, Four Corners Power Plant, and Navajo Mine) to determine mercury uptake by livestock and humans, and wildlife as a result of power plant emissions.

## 8. Environmental Justice Provision in Ambient Air Quality Impact Report

Compliance with Environmental Justice, including Executive Order 12898, “Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations,” is required for issuance of the PSD permit, where issues of concern include, “Disproportionate exposure to pollutants, potential health problems (respiratory, heavy metals in fish).”

“EPA defines environmental justice as the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations and policies.” EPA continues on with....”the EPA expects that these issues will be addressed during the NEPA process.”<sup>5</sup> Environmental Justice issues for the EPA to evaluate, as a result of the proposed Desert Rock facility, include disproportionate adverse health impacts on low-income and minority populations, loss of grazing rights by Navajo tribal members, displacement of citizens for siting of the power plant, and the lack of current monitors in place to provide accurate assessments of air quality in the eastern Navajo Nation area. The EPA expects to defer this to the separate NEPA process, yet the information needed to make a determination on Environmental Justice issues is required for evaluation of the Draft PSD permit.

Environmental Justice is an integral responsibility of EPA Region 9 in evaluating the Draft PSD permit for the proposed Desert Rock facility. Environmental Justice applies to a larger geographical region than the EPA Region 9 has identified in the Draft PSD permit for the proposed Desert Rock facility. “Fair treatment and meaningful involvement” may have different connotations to the EPA in evaluating Environmental Justice. To SJCA, this means involving all communities within the Four Corners region and the multitude of communities that continue to be adversely impacted by air pollution and human rights violations. A recent document by EPA Office of Inspector General states the following:

Our survey results showed that EPA program and regional offices have not performed environmental justice reviews in accordance with Executive Order 12898. Respondents stated that EPA senior management has not sufficiently directed program and regional offices to conduct environment justice reviews. Also, respondents expressed a need for further guidance on conducting these reviews, including protocols, a framework, or additional directions. Until these program and regional offices perform reviews, the Agency cannot determine whether its programs cause disproportionately high and adverse human health or environmental effects on minority and low-income populations.<sup>6</sup>

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<sup>5</sup> USEPA Air Quality Impact Report, NSR 4-1-3, AZP 04-01, pages 46-47

<sup>6</sup> Evaluation Report: EPA Needs to Conduct Environmental Justice Reviews of its Programs, Policies and Activities (Report No. 2006-P-00034) September 18, 2006

Additionally, EPA regulations specifically prohibit the air program from,

choos[ing] a site or location of a facility that has the purpose or effect of ... subjecting [individuals] to discrimination under any program or activity to which this part applies on the grounds of race, color, or national origin or sex; or with the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of this subpart.

[Or]

use criteria or methods of administering its program or activity which have the effect of subjecting individuals to discrimination because of their race, color, national origin, or sex, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program or activity with respect to individuals of a particular race, color, national origin, or sex.<sup>7</sup>

EPA has failed to comply with these requirements in the issuance of its Draft PSD permit for the Desert Rock facility. Public health has not been properly evaluated or secured for citizens of the Four Corners region in regards to air pollution (and in particular, local tribal communities). High incidences of asthma and other respiratory illnesses are prevalent in the Four Corners region. In complying with Executive Order 12898, SJCA requests that EPA Region 9 include the following data collection and evaluation of regional health impacts such as asthma, cancer, stroke, and premature death (due to existing air pollution) in the Draft PSD permit analysis:

- A complete respiratory health analysis of the communities surrounding the existing San Juan Generating Station, the existing Four Corners Power Plant, and the proposed Desert Rock power plant, including but not limited to: Sanostee, Burnham, Huerfano, Nageezi, Shiprock, Toadalena, Fruitland, Kirtland, Farmington, Aztec, Bloomfield, Durango, Ignacio, Bayfield, Crownpoint, Cortez, Red Mesa, and Aneth. This analysis must include:
  - (1) Asthma levels in all age groups and a comparison with areas of similar populations.
  - (2) Correlation of hospital visits with air quality.
  - (3) A complete analysis of whether respiratory health problems are similar for different ethnic and / or cultural groups within the region.
  - (4) Comparison of prevalence of respiratory health rates with areas of similar populations.
- An analysis of regional autism levels, and a comparison with areas of similar populations.
- An analysis of cancer and stroke rates, and a comparison with areas of similar populations.

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<sup>7</sup> 40 CFR §7.35(b)

## **9. National Historic Preservation Act (NHPA) compliance in Ambient Air Quality Impact Report**

The EPA Region 9 has not provided the public with necessary information to prove compliance with Section 106 of the NHPA. In the Ambient Air Quality Impact Report, the EPA states:

As a follow up to initial contact, the applicant is prepared to work with the BIA in consulting with the Navajo Nation THPO (Tribal Historic Preservation Office) about defining the area of potential effect, identifying other potentially interested parties who should be involved in the consultations, and developing an appropriate strategy to inventory and evaluate cultural resources that could be affected.

This is unacceptable. The EPA should have complete Class III cultural resource survey results in hand for the entire proposed Desert Rock facility prior to any decision being made on the Draft PSD permit for the Desert Rock facility. It is SJCA's understanding that the EPA is accepting a 1977 survey of the proposed project area as the basis for evaluating compliance with Section 106 of the NHPA. How many burial sites, cultural resources (including a Navajo pueblo) and significant traditional cultural properties are in the proposed project area? The EPA cannot evaluate compliance with Section 106 without a current Class III cultural resources inventory and analysis of the entire proposed Desert Rock facility.

## **10. Endangered Species Provision of Ambient Air Quality Impact Report**

The on-site and off-site impacts to vegetation, soils, wildlife, fish, endangered, threatened, or sensitive species, migratory birds, and ecologically sensitive habitats as a result of air quality emissions must be analyzed over the life of the proposed Desert Rock facility for the Draft PSD permit. This analysis must include impacts caused by the power plant, access roads, transmission lines, conveyors, coal mining, and any other aspect of the proposed Desert Rock facility. A specific provision of the Draft PSD permit is compliance requirements with Section 7 of the Endangered Species Act (ESA), 16 U.S.C. § 1536 and its implementing regulations at 50 CFR § 402. The EPA has determined that this PSD permitting action triggers ESA Section 7 consultation requirements where the EPA is required to consult with the United States Fish & Wildlife Service. This consultation process indicates to the public that there are endangered and/or threatened species in the proposed project area. From the Ambient Air Quality Impact Report,

When a Federal action involves more than one agency, consultation and conference responsibilities may be fulfilled through a lead agency pursuant to 50 CFR § 402.07. Since the land, electric transmission lines, and access roads required for the proposed project are located on the Navajo Indian Reservation and lands under the jurisdiction of the Bureau of Indian Affairs (BIA), the BIA will act as the lead Federal agency for purposes of fulfilling the responsibilities under Section 7 of the ESA for the project.

It is highly improbable that the Draft PSD permit includes adequate information for the EPA concerning the proposed Desert Rock facility and range of alternatives (in development of a Preferred Alternative) that the BIA is evaluating in the DEIS to evaluate impacts to endangered species and determine compliance with the ESA. This is another example of the Draft PSD permit being rushed, while information provided to the public is inadequate. Perhaps a response from EPA Region 9 is in order at this point, relating to the public which specific endangered species will be impacted, the extent to which they will be impacted and how the EPA intends to comply with the ESA (in association with the Lead and cooperating agencies involved in the EIS).

The EPA, by law, cannot issue the final PSD permit until the conclusion of the Section 7 consultation, the USFWS issuance of the Biological Opinion for the Preferred Alternative and consistency review with ESA requirements.

## **11. Cumulative Air Quality Impacts in the Four Corners Region**

The EPA's Desert Rock Clean Air Act Proposed Permit Overview includes the following statement:

US EPA has reviewed extensive computer modeling studies that predict the effect of the plant on air quality. Total outdoor air pollution levels are determined by adding the impacts from this project to the total levels of pollution expected from all other existing sources combined.

Given the known air quality issues in the Four Corners region and the jurisdiction of several EPA Regional offices, state and tribal agencies, it is critical that the EPA Region 9 prove collaboration with, for example, EPA Region 6 (responsible for New Mexico), EPA Region 8 (includes Colorado) and the NMED/AQB to develop an accurate assessment of air quality sources and emissions here. SJCA requests that the EPA Region 9 provide details on collaboration to date with EPA Regions 6 and 8, and the NMED/AQB in the Draft PSD permit for the proposed Desert Rock facility.

The EPA Region 9 would serve itself well to go back and properly analyze NO<sub>x</sub>, VOCs and ozone with some of the insight gained by EPA Regions 6 and 8, and NMED participation in the Air Quality Task Force in Colorado and New Mexico.

The Draft PSD permit must analyze the cumulative human health and environmental impacts caused by all air pollutant emissions from the proposed Desert Rock facility, transmission facilities, and Navajo Mine expansion (Areas IV South and V), including, but not limited to:

- Emission of criteria and hazardous air pollutants for the life of the facility--including SO<sub>2</sub>, CO, NO<sub>x</sub>, particulate matter, mercury, sulfuric acid, and CO<sub>2</sub> and other greenhouse gases.
- The cumulative impacts analysis must include a consideration of emissions from existing and reasonably anticipated proposed air emission sources on NAAQS, air

increment compliance for SO<sub>2</sub>, NO<sub>x</sub>, and particulate matter, visibility degradation in Class I and Class II areas, greenhouse gas emission levels, mercury deposition, and nitrogen deposition. This analysis must include all existing power plants, oil and natural gas wells and associated facilities, and coal mines; as well as all proposed and foreseeable power plants, oil and gas wells and associated facilities, and coal mines. This includes all natural gas wells and ancillary facilities analyzed in the 2003 BLM Farmington RMP, the Northern San Juan Basin Coal Bed Methane EIS, and the Southern Ute Oil and Gas EIS.

- EPA Region 9 knows that Four Corners Power Plant has been operating without an air quality permit for 7 years. The San Juan Generating Station is finally initiating air quality emission reductions as a result of a citizen-based lawsuit. For true cumulative impact analysis, the EPA Region 9 cannot allow Site to take credit for SO<sub>2</sub> reductions made over twenty years ago at the Four Corners Power Plant and the San Juan Generating Station.

## **II. EPA REGION 9 STANCE THAT THE DRAFT PSD PERMIT AND DRAFT ENVIRONMENTAL IMPACT STATEMENT ARE SEPARATE PROCESSES**

The Draft Environmental Impact Statement (DEIS) currently being prepared under NEPA for the proposed Desert Rock facility has not been released to the public. Without full disclosure to the public of the entire proposed Desert Rock facility (including power plant design, transmission alignments, coal mining, coal delivery, ash disposal) to be evaluated in the Draft EIS, analysis of the Draft PSD permit is marginal, at best. EPA's responsibility concerning EIS preparation in relation to PSD permits is clearly specified in Federal PSD rules at 40 CFR § 52.21:

**Environmental impact statements.** Whenever any proposed source or modification is subject to action by a Federal Agency which might necessitate preparation of an environmental impact statement pursuant to the National Environmental Policy Act (42 U.S.C. 4321), review by the Administrator conducted pursuant to this section shall be coordinated with the broad environmental reviews under that Act and under section 309 of the Clean Air Act to the maximum extent feasible and reasonable.

EPA Region 9 has failed to coordinate the Draft PSD permit for the proposed Desert Rock facility with the EIS to the "maximum extent feasible and reasonable." EPA Region 9 has accommodated Site reasonably; any delays to date for evaluation of the Draft PSD permit have been due to Site's inability to provide a clear description of the proposed project and ongoing consultations with FLM's to modify modeling results and develop mitigation. EPA Region 9 has certainly not complied with "broad environmental reviews" to the maximum extent feasible. Decisions concerning the Draft PSD cannot occur until the Final EIS has been completed. SJCA requests that EPA Region 9 re-open the comment period for the Draft PSD permit once the Draft EIS has been released to the public.

The Sithe web page for the proposed Desert Rock facility contains the following statements concerning NEPA:

Under NEPA, actions such as the Desert Rock Energy Project must consider the potential effects on the environment including human, natural, and cultural resources. Questions that typically are considered by agencies during this type of planning process include:

- Is there a valid purpose and need for the project?
- **Have a reasonable range of alternatives been considered?** (bold for emphasis)
- Is the proposed project consistent with applicable existing regulations and plans?
- Will the proposed project cause adverse effects on the human and natural environment?
- Is mitigation effective in minimizing impact?
- Has the public been informed about the proposed project and had an opportunity to express issues or concerns?<sup>8</sup>

These are astute questions pertaining to the NEPA process, with application to the Draft PSD permitting. SJCA agrees with Sithe's acknowledgment of the importance of the development and evaluation of a full range of Alternatives in the Draft EIS. A possible reasonable range of alternatives includes alternative siting for the proposed Desert Rock facility (i.e. closer to where the power is being transmitted to), alternative coal technologies for energy production, or alternative methods of producing energy to fulfill the purpose and need of the project (including conservation and renewable energy). The fact that the BIA has been designated as the lead agency responsible for preparation of the EIS with numerous cooperating agencies (including the Office of Surface Mining Reclamation and Enforcement, EPA, U.S. Army Corps of Engineers, BLM, and Navajo Nation) speaks to the complexity of the proposed Desert Rock facility. The EPA has Cooperating Agency status for the EIS for the Desert Rock facility and will be required to fully analyze cumulative air quality and public health impacts in the Four Corners region. The speculative nature of the proposed Desert Rock facility suggests that plant and mining designs, and ancillary facilities have not been finalized. Perhaps that is the reason that the release of the Draft EIS has been delayed (it was supposed to be released in September 2006 and is now projected for January of 2007).

SJCA is concerned about the correlation of the timing of the Draft PSD permit and the Draft EIS as the proposed Desert Rock facility seems to be constantly changing. At the Town Hall Meeting on August 2, 2006 in Farmington, New Mexico, Sithe told the public that fly and bottom ash generated by the proposed Desert Rock facility would be sent to Gallup, New Mexico to be marketed. If this is indeed the case, the EPA must evaluate the associated air quality

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<sup>8</sup> [www.desertrockenergy.com](http://www.desertrockenergy.com)

impacts of trucking the ash to Gallup and all return trips. The Draft PSD permit claims that the ash will be “recycled” in Navajo Mine.

The EIS requires full disclosure to the public of all design details of the Proposed Action and Action Alternatives, the reasonable range of Alternatives. The Draft PSD permit process, including public hearings, can begin anew if the EPA is presented by Sithe, and/or the BIA, with new Alternatives for the proposed Desert Rock facility. The public knows nothing about the full extent of the proposed Desert Rock facility and EPA currently has limited information.

EPA has not been close to coordinating with the broad environmental reviews (the EIS) to the “maximum extent feasible and reasonable” for the Draft PSD permit. SJCA strongly disagrees with EPA Region 9 that the Draft PSD permit and the Draft EIS are separate processes; EPA Region 9 has failed to comply with 40 CFR § 52.21.

### **III. CONCLUSION**

The Draft PSD permit is flawed. No decision should be made by EPA Region 9 for the proposed Desert Rock facility until acceptable air quality data is gathered and analyzed. EPA should work to place monitors in the right places, use appropriate modeling, and evaluate the cumulative effects of adding the proposed Desert Rock facility to the Four Corners region (an area already degraded by air pollution). EPA’s responsibility is to evaluate and protect public health, rather than expediting PSD permits for Sithe based on deficient monitoring and modeling. In addition, EPA Region 9 needs to comply with 40 CFR § 52.21 for broad environmental review of the proposed Desert Rock facility.

Sincerely,

*s/Mike Eisenfeld*

Mike Eisenfeld  
New Mexico Staff Organizer  
San Juan Citizens Alliance