



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105-3901

MEMORANDUM

DATE: November 10, 2014

SUBJECT: Review of Information and Literature to Assess Impacts on Threatened and Endangered Species and Critical Habitat Pursuant to the Federal Endangered Species Act.

FROM: Gary Sheth

TO: Administrative Record for NPDES Permit NN0000019

Background

The Endangered Species Act (ESA) requires and authorizes Federal agencies to evaluate the effects of their proposed actions on threatened or endangered species of fish, wildlife, or plants and habitat of such species that have been designated as critical. Specifically the ESA requires Federal agencies such as the U.S. Environmental Protection Agency (EPA) to ensure, in consultation with the U.S. Fish and Wildlife Service (USFWS), that any action authorized, funded or carried out by EPA is not likely to jeopardize the continued existence of any Federally-listed threatened or endangered species or adversely affect critical habitat of such species. [40 CFR 122.49(c)]. Since the issuance of National Pollutant Discharge Elimination System (NPDES) permits by EPA is a Federal action, consideration of a permitted discharge and its effect on any listed species is appropriate. This project relates to re-issuance of a NPDES permit to Arizona Public Service Company's Four Corners Power Plant (APS FCPP) for the discharge of cooling water from a cooling water lake called Morgan Lake to receiving water called No Name Wash, on Tribal land located within San Juan County in New Mexico. The creek is a tributary to the Chaco River, which itself flows into the San Juan River, a Water of the United States.

Review

The Federal Action that EPA is taking is to issue a NPDES permit for the discharge of cooling water on Tribal land. The impacts evaluated therefore relate only to direct and indirect impacts to federally listed Threatened and Endangered species from permitted discharge of cooling water to the receiving surface water.

The United States Office of Surface Mining Reclamation and Enforcement (OSMRE) is the lead federal agency that is conducting a Section 7 Endangered Species Act (ESA) consultation for the Four Corners Power Plant and Navajo Mine Energy Mine Project. The Proposed Action consists of issuance of permits by OSMRE and other cooperating agencies including EPA among several others. As part of this consultation OSMRE prepared a Biological Assessment (BA) to evaluate the effects of the Four Corners Power Plant and Navajo Mine Energy Project on species listed as threatened or endangered and for species that are proposed or candidates for listing under the ESA, that are likely to occur in the Action Area. The Action Area for the Proposed Action encompasses the lease areas for the APS FCPP and ancillary facilities, Navajo Mine, and transmission line right-of-ways (ROWs), as well as the Deposition Area for air emissions from the FCPP. With the exception of the transmission line ROWs, all the areas lie within San Juan County, New Mexico. The Action Area also extends to include the San Juan River from the upstream extent of the air Deposition Area downstream to San Juan River arm of Lake Powell.

EPA as a cooperating agency plans to use the review and analysis conducted by OSMRE and rely on the Biological Opinion developed by the USFWS to complete its obligations under ESA for this permit. However, it should be noted that because the Federal Action that EPA is simply to reissue a NPDES permit for the discharge of cooling water to a surface water on Tribal land, the impacts evaluated for this Action relate only to the uptake of water from the San Juan River to the cooling water system and discharge of cooling water to the receiving surface water.

EPA reviewed the List of Listed Species that occur in the proposed area within San Juan County, New Mexico. EPA requested information on federally listed species and important wildlife habitats that may occur in the project area from the United States Fish and Wildlife Service New Mexico Ecological Services Field Office. This information was provided via a letter dated September 02, 2014, a copy of which is included in the Administrative Record.

EPA compared the list of species with the list of 39 species to be considered by OSMRE in its BA for the larger FCPP and Navajo Mine Action Area. OSMRE concluded in its BA that there will likely be adverse affects on the listed Colorado pikeminnow (*Ptychocheilus lucius*) and Razorback sucker (*Xyrauchen texanus*). The adverse affects to these species result from various actions under the larger OSMRE Proposed Action, including impacts from air deposition pollutants from APS FCPP, entrainment at the APS Weir on the San Juan River, and release of non-native fish from Morgan Lake into the San Juan River via No Name Wash and the Chaco River. No adverse affects are attributed in the BA to the discharge of the cooling water itself from Morgan Lake.

Conclusion

As a cooperating and signatory agency to the BA, EPA anticipates that the USFWS will issue a final Biological Opinion (BO), including an incidental take statement and recommended reasonable and prudent measures (RPMs) that action agencies, including EPA can take to avoid jeopardizing the continued existence of listed species or destroying or adversely modifying critical habitat. EPA anticipates that appropriate implementation of applicable RPMs in the BO will allow it to meet its obligations for this NPDES permitting action under ESA.