

**EXHIBIT 7**  
**Part 1**

October 9, 2007

**BY ELECTRONIC MAIL**

Mr. Robert Baker  
Mr. Joseph Lapka  
Air Permitting  
U.S. Environmental Protection Agency, Region IX  
75 Hawthorne Street  
San Francisco, CA 94105

Email: [desertrockairpermit@epa.gov](mailto:desertrockairpermit@epa.gov)  
[Baker.robert@epa.gov](mailto:Baker.robert@epa.gov)  
[Lapka.joseph@epa.gov](mailto:Lapka.joseph@epa.gov)

**RE: Supplemental Comments on EPA's Proposed PSD Permit for the Desert Rock Energy Facility**

Dear Mr. Baker:

Environmental Defense respectfully submits these supplemental comments on behalf of thousands of members that will be adversely impacted by the construction and operation of the proposed Desert Rock Power Plant. Environmental Defense hereby incorporates as part of our comments for the administrative record in this proceeding all of the documents referenced and cited to herein. These comments are based on recent developments and information of central relevance to EPA's permit decision for the Desert Rock Power Plant.

**EPA Must Consider Its Own Recent Information and Findings in Making a Final Determination Regarding the PSD Permit for Desert Rock**

EPA must consider its own very recent statements and determinations in any final PSD permit decision for the Desert Rock Power Plant. EPA very recently found that carbon dioxide and other greenhouse gases contribute to global warming. In reviewing the impacts of a major coal plant proposed in Nevada, the White Pine Energy Station Project, EPA found that "[g]lobal warming is caused by emissions of carbon dioxide and other heat-trapping gases." See Letter from EPA Region IX to Jeffrey A Weeks, Bureau of Land Management (June 22, 2007), attached for inclusion in the administrative record for the Desert Rock PSD permit proceeding. There is no question that carbon dioxide and other greenhouse gases are "air pollutants," that carbon dioxide and other greenhouse gases have long been regulated under the Act and that they cause global warming.

EPA also recently found that there are in fact available methods, systems and techniques to control carbon dioxide and other greenhouse gases. In its June 22, 2007 letter on the White Pine Energy Station Project, EPA directed the BLM to "discuss carbon capture and

sequestration and other means of capturing and storing carbon dioxide as a component of the proposed alternatives.” *Id.* In submitting these comments to the BLM, EPA fulfilled its delegated responsibility under section 309 of the Clean Air Act to review and comment on a major federal agency action. 42 U.S.C. § 7609. These comments represented EPA’s findings on the draft EIS for the White Pine project and were made public. Thus, EPA has elsewhere determined that CCS is an available technology that should be considered, together with other means, for the control of carbon dioxide emissions. We submit these EPA comments for full consideration as part of the PSD permit decision for Desert Rock. EPA has a duty to account for these recent findings and recommendations which are of central relevance to the PSD permit decision.

In its June 22, 2007 comments on the White Pine Energy Station Project, EPA also addressed the importance of compliance with a new California law establishing greenhouse gas emissions performance standards for coal-fired power plants. EPA specifically recommended:

“If the potential purchasers of power include California utilities, the FEIS should address the issue of compliance with the new ‘greenhouse gas emissions performance standard’ as adopted by the California Public Utilities Commission (CPUC) on January 25, 2007. California utilities are barred from buying electricity from most coal-fired power plants unless specific standards are met, effective February 1, 2007.”

See EPA Letter at p. 2. EPA must likewise bar the sell of power from Desert Rock to California utilities consistent with the regulations adopted under California Senate Bill 1368 and implementing administrative decisions.

The Clean Air Act also instructs EPA to consider alternatives to the proposed project in the pre-construction review permitting program. This is a core element of the PSD program. Section 165(a)(2) directs the permitting authority to fully consider all written and oral presentations “on the air quality impact of such source, alternatives thereto, control technology requirements and other considerations.” 42 U.S.C. § 7475(a)(2) (emphasis added). This is consonant with the statutory purposes of the PSD program which expressly provide for the imperative of procedural rigor and fully informed decisionmaking in the preconstruction review permit process. The PSD program is pointedly designed “to assure that any decision to permit increased air pollution in any area to which this section applies is made only after careful evaluation of all the consequences of such a decision and after adequate procedural opportunities for informed public participation in the decisionmaking process.” CAA § 160(5), 42 U.S.C. § 7470(5).

EPA made specific findings in the June 22, 2007 letter to BLM that are directly relevant to the Desert Rock PSD permit proceeding. EPA must take account of its own findings in considering “alternatives” to the Desert Rock Power Plant and ensuring that the permit decision is fully informed. For example, in the June 22, 2007 letter EPA expressed significant concern that the “density of new coal-burning plants in Nevada is in excess of

the demonstrated need for energy throughout the Western States.” EPA Letter at p. 2. EPA also found that BLM had erred in failing to consider alternatives to the proposed project such as energy efficiency, staged development, design for future carbon capture and storage, the potential for development of geothermal resources, and various other options. See EPA Letter at ps. 3-5, 14. EPA must likewise follow its own recommendations and findings in considering “alternatives” to Desert Rock and assuring that all of the consequences of the permitting decision are thoroughly considered and fully informed including energy efficiency, design for carbon capture and storage, and the potential for renewables.

EPA’s consideration of its own findings and expert analysis is required by law. See *Kent County v. EPA*, 963 F.2d 391, 394 (D.C. Cir. 1992). In *Kent County*, the court held that EPA’s decision to list a site on the National Priorities List was arbitrary and capricious because it failed to include in the administrative record relevant statements by agency experts. *Id.* at 396. It would likewise be reversible error for EPA to fail to consider its own highly relevant statements regarding another coal-fired power plant that carbon dioxide emissions cause global warming, that carbon dioxide can be controlled through available technology such as CCS, and to consider a range of alternatives to the proposed coal plant.

Moreover, EPA’s findings and determinations announced in the June 2007 action on the Nevada coal plant arose after the close of the comment period on the Desert Rock permit proceeding. See 40 C.F.R. § 124.13; *In re Encogen Cogeneration Facility*, 8 E.A.D. 244, 250 n.8 (EAB 1999) (“a petitioner may demonstrate that an issue was not reasonably ascertainable during the public comment period.”).

EPA’s findings regarding the proposed White Pine coal plant arose as the Agency was carrying out its duty to “review and comment in writing on the environmental impact” as part of the NEPA process set forth in Section 309 of the Clean Air Act. 42 U.S.C. § 7609. PSD permits have been exempted from the requirements of this section by the courts and statute because the PSD program is designed to be “functionally equivalent” to NEPA review. In *Portland Cement Ass’n v. Ruckelshaus*, the court exempted EPA from fulfilling NEPA requirements because the “Clean Air Act, properly construed, requires the functional equivalent of a NEPA impact statement.” *Portland Cement Ass’n v. Ruckelshaus*, 485 F.2d 375, 384 (D.C. Cir. 1973). Congress later explicitly exempted actions taken under the Clean Air Act from the NEPA process in the Energy Supply and Environmental Coordination Act (ESECA). 15 U.S.C. § 793(c)(1). The Eleventh Circuit categorized this “express exemption as Congress’ way of making more obvious what would likely occur as a matter of judicial construction.” *State of Ala. ex rel. Siegelman v. EPA*, 911 F.2d 499, 505 (11th Cir. 1990). Thus, EPA’s comments on the DEIS for the White Pine project are the “functional equivalent” of its determinations made in the Desert Rock PSD permit proceeding, and EPA must thoroughly address these findings, information and determinations as an integral part of the PSD permit proceeding.

EPA’s PSD permit proceeding for Desert Rock is subject to the general tenets of administrative law, including the requirement that the decision not be “arbitrary and

capricious.” Because EPA has made such clear, fact-based determinations regarding the White Pine power plant, EPA carries a heavy burden in taking a divergent position in the Desert Rock PSD permit proceeding. See *Motor Vehicle Manufacturers Ass’n v. State Farm Mutual Automobile Insurance Co.*, 463 U.S. 29, 42 (1983) (“an agency changing its course by rescinding a rule is obligated to supply a reasoned analysis for the change beyond that which may be required when an agency does not act in the first instance.”); see also *id.* at 43 (EPA “must examine the relevant data and articulate a satisfactory explanation for its action including a rational connection between the facts found and the choice made.”). In the Desert Rock PSD permit proceeding, EPA must articulate a satisfactory explanation why available measures to control greenhouse gas emissions, including CCS, were not evaluated, and why alternatives were not considered as it has stated is necessary in the context of the White Pine project.

### **EPA Must Thoroughly Consider Whether Desert Rock Will Contribute to Ozone Concentrations Exceeding Recently Proposed Health Protective Levels**

On July 11, 2007, EPA published proposed revisions to strengthen the national ambient air quality standards for ozone. See 72 Fed. Reg. 37,818. In October 2006, the EPA Clean Air Scientific Advisory Committee unanimously and unambiguously advised EPA Administrator Stephen Johnson: “(1) There is no scientific justification for retaining the current primary 8-hr NAAQS of 0.08 parts per million (ppm), and (2) The primary 8-hr NAAQS needs to be substantially reduced to protect human health, particularly in sensitive subpopulations.”<sup>1</sup> The Committee also unanimously agreed upon a recommended range: “Therefore, *the CASAC unanimously recommends a range of 0.060 to 0.070 ppm for the primary ozone NAAQS.*”<sup>2</sup> These recommendations leave no room for misinterpretation. Indeed, the CASAC pointedly found that “*there is no longer significant scientific uncertainty regarding CASAC’s conclusion that the current 8-hr primary NAAQS must be lowered*” and “[r]etaining this standard would continue to put large numbers of individuals at risk” –

*[T]here is no longer significant scientific uncertainty regarding the CASAC’s conclusion that the current 8-hr primary NAAQS must be lowered. A large body of data clearly demonstrates adverse human health effects at the current level of the 8-hr primary ozone standard. Retaining this standard would continue to put large numbers of individuals at risk for respiratory effects and/or significant impact on quality of life including asthma exacerbations, emergency room visits, hospital admissions and mortality.*<sup>3</sup>

In sum, CASAC unequivocally found that there is no basis in public health considerations for EPA to retain the current standard.

---

<sup>1</sup> Dr. Rogene Henderson, Chair, CASAC, to Stephen Johnson, EPA Administrator, “Clean Air Scientific Advisory Committee’s (CASAC) Peer Review of the Agency’s 2<sup>nd</sup> Draft Ozone Staff Paper,” (Oct. 24, 2006).

<sup>2</sup> *Id.* at 2 (italics in original).

<sup>3</sup> *Id.* at 5 (italics in original).

The scientific evidence of mortality benefits is one of the significant scientific developments since EPA's 1997 decision to lower the ozone health standard. The CASAC expressly pointed to the studies on ozone mortality effects as part of the body of evidence documenting adverse health effects below the current health standard. The CASAC found:

- ❖ “Several new single-city studies and large multi-city studies designed specifically to examine the effects of ozone and other pollutants on both morbidity and mortality have provided more evidence for adverse health effects at concentrations lower than the current standard.”<sup>4</sup>
- ❖ “[A]dverse health effects due to low-concentration exposure to ambient ozone (that is, below the current primary 8-hour NAAQS) found in the broad range of epidemiologic and controlled exposure studies cited above include . . . an increase in mortality (non-accidental, cardiorespiratory deaths) reported at exposure levels well below the current standard.”<sup>5</sup>
- ❖ “Retaining this [the current] standard would continue to put large numbers of individuals at risk for . . . mortality.”<sup>6</sup>

CASAC's series of statements in its October 2006 correspondence to the Administrator placed CASAC's full force, unanimously, on the evidence of mortality and other health effects in compelling EPA to adopt a lower standard to protect public health with an adequate margin of safety.

EPA must fully evaluate the potential for the proposed Desert Rock Power Plant to contribute to elevated ozone concentrations above and must address ozone concentrations above those health and welfare standards EPA itself provisionally recommended in the rulemaking proposal published on July 11, 2007. In this analysis, the extensive ozone-forming pollution Desert Rock Power Plant must be evaluated together with other sources in the region.

Environmental Defense has evaluated available National Park Service long-term ozone monitoring data at the Grand Canyon. Those data, presented graphically below, show that ozone concentrations at the Grand Canyon have been steadily rising and currently exceed health-protective levels. EPA must ensure that the Desert Rock Power Plant does not contribute to unhealthy ozone air pollution levels.

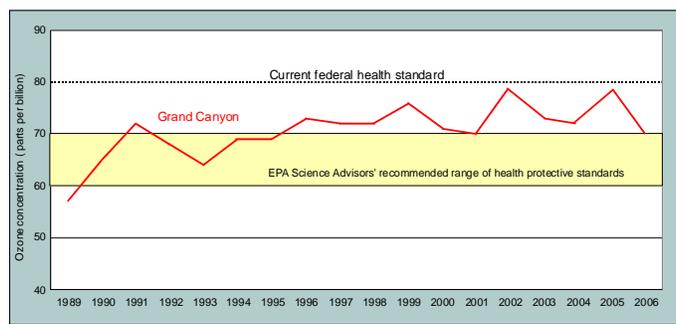
---

<sup>4</sup> *Id.* at 3 (citations omitted).

<sup>5</sup> *Id.* at 4.

<sup>6</sup> *Id.* at 5.

Ozone Concentrations in Grand Canyon National Park  
4<sup>th</sup> highest daily maximum 8-hour ozone concentration (ppb), 1989 - 2006



Source: National Park Service at: [ww2.nature.nps.gov/air/Monitoring/docs/2006\\_O3ParkConc.pdf](http://ww2.nature.nps.gov/air/Monitoring/docs/2006_O3ParkConc.pdf)

### **EPA Must Determine BACT for CO2 and Other Greenhouse Gases, and May Not Shirk Its Responsibility to Address Global Warming Pollution from the Desert Rock Power Plant**

In refusing to regulate carbon dioxide and other greenhouse gases that would be discharged from the proposed addition of a coal-fired unit at the Deseret power plant located on tribal lands in Utah, EPA very recently claimed that the requirement providing for the application of BACT to each pollutant “subject to regulation under the Act” is limited to pollutants that are subject to a statutory or regulatory requirement controlling emissions of that pollutant:

EPA has historically interpreted the term “subject to regulation under the Act” to describe pollutants that are presently subject to a statutory or regulatory provision that requires actual control of emissions of that pollutant. *See* 43 Fed. Reg. 26388, 26397 (June 19, 1978) (describing pollutants subject to BACT requirements); 61 Fed. Reg. 38250, 38309-10 (July 23, 1996) (listing pollutants subject to PSD review). In 2002, EPA codified this approach for implementing PSD by defining the term “regulated NSR pollutant” and clarifying that Best Available Control Technology is required “for each regulated NSR pollutant that [a major source] would have the potential to emit in significant amounts.” 40 C.F.R. § 52.21(j)(2); 40 CFR 52.21(b)(50). In defining a “regulated NSR pollutant,” EPA identified such pollutants by referencing pollutants regulated in three principal program areas -- NAAQS pollutants, pollutants subject to a section 111 NSPS, and class I or II substance under title VI of the Act-- as well as any pollutant “that otherwise is subject to regulation under the Act.” 40 CFR 52.21(b)(50)(i)-(iv). As used in this provision, EPA continues to interpret the phrase “subject to regulation under the Act” to refer to pollutants that are presently subject to a statutory or regulatory

provision that requires actual control of emissions of that pollutant. Because EPA has not established a NAAQS or NSPS for CO<sub>2</sub>, classified CO<sub>2</sub> as a title VI substance, or otherwise regulated CO<sub>2</sub> under any other provision of the Act, CO<sub>2</sub> is not currently a “regulated NSR pollutant” as defined by EPA regulations.

EPA Response to Comments for the Deseret Power Plant, available at <http://www.epa.gov/region8/air/permitting/deseret.html> (Aug. 31, 2007).

EPA’s arguments seriously miss the mark. The regulatory definition on its face is expansive and applies to any pollutant that otherwise is subject to regulation under the Act. 40 CFR 52.21(b)(50). Specifically, the regulation states:

Regulated NSR pollutant, for purposes of this section, means the following:

- (i) Any pollutant for which a national ambient air quality standard has been promulgated and any constituents or precursors for such pollutants identified by the Administrator (e.g., volatile organic compounds are precursors for ozone);
- (ii) Any pollutant that is subject to any standard promulgated under Section 111 of the Act;
- (iii) Any Class I or Class II substance subject to a standard promulgated under or established by title VI of the Act; or
- (iv) Any pollutant that otherwise is subject to regulation under the Act; except that any or all hazardous air pollutants either listed in section 112 of the Act or added to the list pursuant to section 112(b)(2) of the Act, which have not been delisted pursuant to section 112(b)(3) of the Act, are not regulated NSR pollutants unless the listed hazardous air pollutant is also regulated as a constituent or precursor of a general pollutant listed under section 108 of the Act.

40 C.F.R. § 52.21(b)(50)(emphasis added). EPA may not reinvent the statute and regulations to eliminate its current legal duty to regulate carbon dioxide and other greenhouse gases.

Indeed, as laid out in extensive supplemental comments by a coalition of organizations, carbon dioxide and other greenhouse gases have long been regulated under the Act. We hereby incorporate by reference the supplemental comments submitted on October 4<sup>th</sup> by a coalition of organizations in the Desert Rock PSD permit proceeding documenting the manner in which carbon dioxide has been subject to regulation under the Act.

EPA’s argument that the phrase “subject to regulation under the Act” means a control requirement for the pollutant ignores the plain language which is expansive on its face. Section 169(3) is capacious in applying BACT to “*each* pollutant subject to regulation

under this chapter emitted from or which results from *any* major emitting facility.” Emphasis added.

Congress did not, by contrast, limit the application of BACT to pollutants “that are presently subject to a statutory or regulatory provision that requires actual control of emissions of that pollutant” as EPA claims. Indeed, the terms “emission limitation” and “emission standard” are directly defined under the Act. See 42 U.S.C. § 7602(k). Had Congress intended to confine the application of BACT to pollutants subject to an “emission limitation” or “emission standard” as it pointedly did in numerous instances under the law, it would have in fact used those terms. But it did not. And EPA may not graft them on to the statute where they do not appear.<sup>7</sup>

Section 821 of the Clean Air Act Amendments of 1990 requires some sources, including coal fired power plants, to monitor and report CO<sub>2</sub> emissions. The regulations implementing § 821 require the owner of a coal fired power plant to use a CO<sub>2</sub> continuous emission monitoring system and a flow monitoring system to record CO<sub>2</sub> concentration and mass emissions. 40 C.F.R. § 75.10(3)(i). Carbon dioxide is thus a “pollutant that otherwise is subject to regulation under the Act.”

The statutory purpose of the PSD program is to protect public health and welfare from any actual or potential adverse effect of air pollution which the Administrator reasonably anticipates could occur. 42 U.S.C. §7470(1). Given this sweeping statutory purpose, it is particularly appropriate that EPA impose BACT limitations for *all* pollutants subject to regulation, including those which are subject to monitoring requirements. Monitoring is an essential tool of regulation, not just an ancillary data collection exercise. Environmental regulations rely heavily on monitoring for their success. Each of the NSPS standards establishes detailed monitoring and reporting requirements. See, e.g., 40 C.F.R. §§ 60.35c, 60.756, 60.757. Failure to comply with monitoring requirements may result in significant civil penalties. The Supreme Court in Massachusetts v. EPA recognized the importance of collaboration and research, enabled by monitoring and reporting, for any “thoughtful regulatory effort.” Massachusetts, 127 S. Ct. 1438, 1461 (2007).

While §821 of the Clean Air Act Amendments of 1990 and implementing regulatory requirements plainly qualify CO<sub>2</sub> as a pollutant subject to regulation under the Act, greenhouse gases such as CO<sub>2</sub> and methane are also regulated as a component of landfill gases. EPA has promulgated emission guidelines and standards of performance for “municipal solid waste landfill emissions.” 40 CFR §§ 60.33c, 60.752. Landfill emissions are defined as “gas generated by the decomposition of organic waste deposited in an MSW landfill or derived from the evolution of organic compounds in the waste.” 40 CFR § 60.751. The pollutants regulated by these standards, “MSW landfill emissions,

---

<sup>7</sup> Environmental Defense notes that even the statutory definition of the terms “emission limitation” and “emission standard” encompass “*any* requirement relating to the operation or maintenance of a source to assure continuous emission reduction and any design, equipment, work practice or operational standard promulgated under this chapter.” 42 U.S.C. §7602(k).

or LFG, is composed of methane, CO<sub>2</sub>, and NMOC.” Air Emissions from Municipal Solid Waste Landfills – Background Information for Final Standards and Guidelines, EPA-453/R-94-021, December 1995, available at <http://www.epa.gov/ttn/atw/landfill/landflpg.html>. Thus, CO<sub>2</sub> and methane are regulated through the landfill emission regulations at 40 C.F.R. Part 60 Subparts Cc, WWW. See also 56 Fed. Reg. 24468 (May 30, 1991) (“Today's notice designates air emissions from MSW landfills, hereafter referred to as "MSW landfill emissions," as the air pollutant to be controlled”).

EPA’s long-standing interpretation of BACT applicability is expansive and dynamic, and EPA has long found that BACT must be adjusted to reflect regulations covering a wide range of pollutants. In EPA’s October 1990 NSR Workshop Manual, EPA described the fact that BACT applies by operation of law upon regulation of pollutants under other provisions of the Act:

Regulations covering several pollutants such as cadmium, coke oven emissions, and municipal waste incinerator emissions have recently been proposed. Applicants should, therefore, verify what pollutants have been regulated under the Act at the time of application.

*See* EPA NSR Workshop Manual at p. A.21, n. d.

EPA’s recent arguments in the Deseret PSD permit proceeding for evading responsibility to regulate greenhouse gases are without merit. EPA must establish BACT emissions limitations for carbon dioxide and other greenhouse gases that are indeed subject to regulation under the Act.

Sincerely yours,

Vickie Patton  
Deputy General Counsel  
Environmental Defense  
2334 North Broadway  
Boulder, CO 80304  
(303) 447-7215



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

**REGION IX**

**75 Hawthorne Street**

**San Francisco, CA 94105-3901**

June 22, 2007

Jeffrey A. Weeks  
Bureau of Land Management  
Ely Field Office  
HC 33 Box 33500  
Ely, Nevada 89301

Subject: Draft Environmental Impact Statement for the White Pine Energy Station Project, Nevada [CEQ# 20070151]

Dear Mr. Weeks:

The U.S. Environmental Protection Agency (EPA) has reviewed the Bureau of Land Management's (BLM) Draft Environmental Impact Statement (DEIS) for the White Pine Energy Station Project. Our review and comments are provided pursuant to the National Environmental Policy Act (NEPA), the Council on Environmental Quality (CEQ) Regulations (40 CFR Parts 1500-1508), and our NEPA review authority under Section 309 of the Clean Air Act (CAA).

The proposed project includes the construction of the White Pine Energy Station, development of a well field in the Steptoe Valley Hydrographic Basin to meet the water needs of the plant, construction of a rail spur to supply coal, electric transmission facilities, electric distribution line, access roads, and additional construction sites. The White Pine Energy Station would consist of an approximately 1,590-megawatt (MW) coal-fired electric power generating plant using hybrid cooling systems, and containing up to three units. The proposed power plant site would encompass approximately 1,281 acres, including an onsite solid waste disposal facility for the disposal of coal combustion by-products and material collected by the pollution control equipment. Under separate cover, EPA has sent comments on the draft air permit (March 8, 2007) to the Nevada Bureau of Air Pollution Control for this project.

EPA recognizes the complexity of the proposed project and advocates an energy development approach which assures a long-term, sustainable balance between available energy supplies, energy demand, and protection of ecosystems and human health. EPA believes that the goals of providing additional energy supplies, aggressive energy conservation, and diversification of energy supply sources should be carefully balanced.

We have several concerns about the environmental impacts of the proposed project, as well as a lack of critical information in the DEIS. As such, we have rated this DEIS as EO-2, Environmental Objections – Insufficient Information (See attached “Summary of EPA Rating System”). An “EO” signifies that EPA’s review of the DEIS has identified potential significant environmental impacts that must be avoided in order to provide adequate protection for the environment. Corrective measures may involve substantial changes to the project. A “2” rating signifies that the DEIS does not contain sufficient information for EPA to fully assess

environmental impacts that should be avoided in order to fully protect the environment. In particular, we are concerned about the potential impact to approximately 440 acres of waters, including wetlands. We understand that this acreage has not been jurisdictionally delineated by the U.S. Army Corps of Engineers (Corps). However, impacts of this magnitude, especially within an arid ecosystem, are of significant environmental concern. We are also concerned about the impacts resulting from ground water withdrawal, air quality impacts from the operation of the proposed plant, including potential mercury emissions, and the general lack of mitigation described in the DEIS.

We recommend that EPA, the Corps, BLM, and the project proponent meet at the earliest possible convenience to: 1) discuss the extent of jurisdictional waters on the project site and the direct, indirect/secondary impacts which would occur as a result of the proposed project; 2) identify opportunities to avoid and minimize impacts to waters of the U.S.; 3) review the process for identifying the Least Environmentally Damaging Practicable Alternative (LEDPA); and 4) outline the requirements of a compensatory mitigation plan. The Final Environmental Impact Statement (FEIS) should provide additional information on wetland impacts, including a demonstration of the LEDPA and mitigation of those impacts. The FEIS should also include a discussion of potential impacts from mercury emissions and proposed mitigation. Overall, the FEIS should include a robust discussion of all mitigation measures proposed for the project, and these should be summarized in the Executive Summary.

We are glad to have had the opportunity to discuss this project with you in brief today and look forward to working with you to resolve our concerns. Please send one hard copy of the FEIS and one CD ROM copy to this office at the same time it is officially filed with our Washington D.C. Office. If you have any questions, please contact me at (415) 972-3846 or Ann McPherson, the lead reviewer for this project, at (415) 972-3545 or at [mcperson.ann@epa.gov](mailto:mcperson.ann@epa.gov).

Sincerely,



Nova Blazej, Manager  
Environmental Review Office

Enclosures: Summary of EPA Rating Definitions  
Detailed Comments

Cc: Col. Alex C. Dornstauder, U.S. Army Corps of Engineers  
Kevin Roukey, U.S. Army Corps of Engineers  
Michael Elges, Nevada Division of Environmental Protection  
Matthew DeBurl, Nevada Bureau of Air Pollution Control  
John Bunyak, National Park Service  
Cindy Nielson, National Park Service  
Curt Dimmick, National Park Service  
Tracy Taylor, State of Nevada Water Resources State Engineer

# SUMMARY OF EPA RATING DEFINITIONS <sup>1</sup>

This rating system was developed as a means to summarize EPA's level of concern with a proposed action. The ratings are a combination of alphabetical categories for evaluation of the environmental impacts of the proposal and numerical categories for evaluation of the adequacy of the EIS.

## ENVIRONMENTAL IMPACTS OF THE ACTION

### **"LO" (Lack of Objections)**

The EPA review has not identified any potential environmental impacts requiring substantive changes to the proposal. The review may have disclosed opportunities for application of mitigation measures that could be accomplished with no more than minor changes to the proposal.

### **"EC" (Environmental Concerns)**

The EPA review has identified environmental impacts that should be avoided in order to fully protect the environment. Corrective measures may require changes to the preferred alternative or application of mitigation measures that can reduce the environmental impact. EPA would like to work with the lead agency to reduce these impacts.

### **"EO" (Environmental Objections)**

The EPA review has identified significant environmental impact that must be avoided in order to provide adequate protection for the environment. Corrective measures may require substantial changes to the preferred alternative or consideration of some other project alternative (including the no action alternative or a new alternative). EPA intends to work with the lead agency to reduce these impacts.

### **"EU" (Environmentally Unsatisfactory)**

The EPA review has identified adverse environmental impacts that are of sufficient magnitude that they are unsatisfactory from the standpoint of public health or welfare or environmental quality. EPA intends to work with the lead agency to reduce these impacts. If the potentially unsatisfactory impacts are not corrected at the final EIS stage, this proposal will be recommended for referral to the CEQ.

## ADEQUACY OF THE IMPACT STATEMENT

### **"Category 1" (Adequate)**

EPA believes the draft EIS adequately sets forth the environmental impact(s) of the preferred alternative and those of the alternatives reasonably available to the project or action. No further analysis or data collection is necessary, but the reviewer may suggest the addition of clarifying language or information.

### **"Category 2" (Insufficient Information)**

The draft EIS does not contain sufficient information for EPA to fully assess environmental impacts that should be avoided in order to fully protect the environment, or the EPA reviewer has identified new reasonably available alternatives that are within the spectrum of alternatives analyzed in the draft EIS, which could reduce the environmental impacts of the action. The identified additional information, data, analyses, or discussion should be included in the final EIS.

### **"Category 3" (Inadequate)**

EPA does not believe that the draft EIS adequately assesses potentially significant environmental impacts of the action, or the EPA reviewer has identified new, reasonably available alternatives that are outside of the spectrum of alternatives analyzed in the draft EIS, which should be analyzed in order to reduce the potentially significant environmental impacts. EPA believes that the identified additional information, data, analyses, or discussions are of such a magnitude that they should have full public review at a draft stage. EPA does not believe that the draft EIS is adequate for the purposes of the NEPA and/or Section 309 review, and thus should be formally revised and made available for public comment in a supplemental or revised draft EIS. On the basis of the potential significant impacts involved, this proposal could be a candidate for referral to the CEQ.

<sup>1</sup> From EPA Manual 1640, Policy and Procedures for the Review of Federal Actions Impacting the Environment.

**US EPA DETAILED COMMENTS ON THE SCOPING NOTICE FOR THE DRAFT ENVIRONMENTAL IMPACT STATEMENT (DEIS) FOR THE WHITE PINE ENERGY STATION PROJECT, WHITE PINE COUNTY, NEVADA, JUNE 22, 2007**

Project Description

White Pine Energy Associates, LLC, (WPEA) has proposed to construct, own, operate, and maintain an approximately 1,590-megawatt (MW) coal-fired electric power generating plant in White Pine County in eastern Nevada. The power plant would be located on lands managed by the Ely Field Office of the U.S. Department of the Interior Bureau of Land Management (BLM). The site for the Proposed Action is the Steptoe Valley, approximately 34 miles north of Ely. An alternative power plant site (Alternative 1) also in Steptoe Valley is approximately 12 miles south of the Proposed Action power plant site. Features associated with both alternatives include: electric transmission facilities, water supply system, electric distribution line, rail spur, access roads, and additional construction sites.

Purpose and Need:

According to the Draft Environmental Impact Statement (DEIS), the purpose of the White Pine Energy Station is to supply reliable, low-cost electricity in an environmentally responsible manner to meet baseload energy needs in Nevada and the western United States, and to bring economic benefits to White Pine County, Nevada (pg. 1-2). To achieve this purpose, the DEIS states that the White Pine Energy Station must: 1) utilize commercially proven and reliable technology; 2) be cost-effective; 3) be located in proximity to infrastructure and water supplies in White Pine County; 4) put water rights held by White Pine county for energy production in Steptoe Valley to a beneficial use in producing energy; and 5) provide traffic for the Nevada Northern Railway (NNR).

The DEIS states that the Energy Information Administration (2006) forecasts the need for approximately 24,000 MW of new power generation in the western United States by 2015 and the new coal-fired generation facilities will supply 5,700 MW of this need (pg. 1-2; pg. 1-3). Five coal-burning plants have been proposed for Nevada alone, including: the White Pine Energy Station (1,590 MW), Toquop Energy Power Project (750 MW), Ely Energy Center (1,500 MW), Newmont Nevada Energy project (200 MW), and the Granite Fox project (1,450 MW). The combined power that would be generated from these five proposed power plants in Nevada exceeds 5,400 MW.

While the DEIS states that the purpose of the proposed project is to meet baseload energy needs in Nevada and the Western United States, there is no discussion of the broader context of energy demand in these markets. The purpose of the project is to meet inter- and intra-state demand for energy. This should be explicitly discussed in the Final Environmental Impact Statement (FEIS).

*Recommendation:*

The FEIS should discuss the proposed project in the context of the larger energy market that this project would serve. The FEIS should identify the potential purchases of power and provide a description of how the power would be bought, sold, and used so that the reader can better evaluate the tradeoffs between resource protection and power generation.

*Recommendation:*

If the potential purchasers of power include California utilities, the FEIS should address the issue of compliance with the new "greenhouse gas emissions performance standard" as adopted by the California Public Utilities Commission (CPUC) on January 25, 2007. California utilities are barred from buying electricity from most coal-fired power plants unless specific standards are met, effective February 1, 2007.

*Recommendation:*

EPA is concerned that the density of new coal-burning plants proposed in Nevada is in excess of the demonstrated need for energy throughout the Western States. The FEIS should more clearly describe how the overall need for the power in the Western States has been determined. The FEIS should also describe how the energy planning process for the Western States will ensure that individual states or regions do not carry an undue burden of power generation.

Alternatives Analysis:

CEQ Regulations for implementing NEPA (40 CFR, Parts 1500 - 1508) state that the alternatives section of an EIS should "rigorously explore and objectively evaluate all reasonable alternatives, and for alternatives which were eliminated from detailed study, briefly describe the reasons for their having been eliminated" (40 CFR, part 1502.14). Six key criteria were developed to evaluate the feasibility of alternative energy technologies: 1) capable of providing approximately 1,590 MW of reliable baseload power generation capacity; 2) environmentally permissible; 3) cost effectiveness relative to pulverized coal; 4) commercially proven and reliable; 5) place water held by White Pine County for power production in Steptoe Valley to beneficial use for power production; and 6) provide traffic for NNR.

The DEIS presents only two alternatives and a no-action scenario. The two alternatives are virtually identical except for location, and provide very little range of options for decision makers to evaluate the proposed project. The DEIS does identify several alternatives which were eliminated from further evaluation because they did not meet the purpose and need. While the DEIS included a discussion of some of the reasons for their elimination, there was not a clear set of quantitative criteria identified which were used to screen all alternatives in a similar manner. For example, no criteria outlining a cut-off point for financial feasibility/profit margin, minimal plant efficiency rates, level of air, water or habitat impacts were provided. Also, it is unclear how unquantified environmental impacts (such as a reduction of air pollutants, reduced ash disposal, or reduced water use) may have been considered in the economic analysis. Each