

SECTION 11

CULTURAL, HISTORIC, AND ARCHEOLOGICAL RESOURCES

TABLE OF CONTENTS

SECTION	SECTION TITLE	PAGE NUMBER
SECTION 11	CULTURAL, HISTORIC, AND ARCHEOLOGICAL RESOURCES	1
11.1	Cultural, Historic, and Archeological Resources Information.....	1
11.2	Cultural, Historic, and Archeological Resources Information Collection and Analysis.....	4
	References	5

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LIST OF APPENDICES

APPENDIX	
NUMBER	APPENDIX TITLE
11.A	Section 106 Programmatic Agreement for the No Name Permit
11.B	CONFIDENTIAL Cultural Resources Ethnography Report
11.C	CONFIDENTIAL Cultural Resources Class I Inventory
11.D	CONFIDENTIAL Cultural Resources Class II and III Inventory
11.E	CONFIDENTIAL Cultural Resources Data Recovery Plan for Areas 4 South and 5

SECTION 11

CULTURAL, HISTORIC, AND ARCHEOLOGICAL RESOURCES

LIST OF REVISIONS DURING PERMIT TERM

REV.		DATE
NUMBER	REVISION DESCRIPTION	APPROVED

SECTION 11 CULTURAL, HISTORIC, AND ARCHEOLOGICAL RESOURCES

The cultural, historic, and archeological resources information covers the No Name Permit (NNP) Area of the Navajo Transitional Energy Company (NTEC) mining lease. Information concerning the nature and location of cultural, historic, and archaeological resources and properties, including survey and study reports submitted as part of this permit application package will be maintained as confidential under applicable law. Confidential cultural resources information is provided to and maintained by the Office Surface Mining Reclamation and Enforcement (OSM) separately from non-confidential information.

NNP permitting activities relating to cultural, historic, and archeological resources and properties on NTEC's leasehold have been, and will be, conducted in compliance with all applicable federal, state, and tribal laws, including without limitation: the National Historic Preservation Act (NHPA), the Archaeological Resources Protection Act (ARPA), the American Indian Religious Freedom Act (AIRFA), the Native American Graves Protection and Repatriation Act (NAGPRA), the Navajo Nation Cultural Properties Act, the Navajo Nation Policy to Protect Traditional Cultural Properties (NNTCP), the Navajo Nation Guidelines for the Treatment of Historic, Modern, and Contemporary Abandoned Sites (NNTCS), and the Navajo Nation Policy for the Protection of Jishchaa': Gravesites, Human Remains, and Funerary Items (NNJGH). NTEC will operate in compliance with these statutes, regulations, and policies as applicable.

Pursuant to NHPA and its implementing regulations, NTEC plans to enter into a Section 106 Programmatic Agreement in 2026/2027 for the NNP area (Appendix 11.A). The Programmatic Agreement (PA) will be initiated by OSM as the lead federal agency responsible for the preparation of the National Environmental Policy Act (NEPA) document for the NNP. The PA will establish protocols and procedures for compliance with NHPA, its implementing regulations, and other applicable statutes and regulations. NTEC will comply with the terms and conditions of the PA.

11.1 Cultural, Historic, and Archeological Resources Information

This section describes the multiple surveys and inventories that were completed to describe the nature of cultural, historic, and archeological resources listed or eligible for listing on the National Register of Historic Places (NRHP) and known archeological sites within the NNP area. These surveys and inventories made recommendations on what cultural resource sites should be considered eligible for listing in the NRHP, and those recommendations will be submitted to OSM and the Navajo Nation Historic Preservation Department (NNHPD), and other parties to the PA in order for NNHPD to make the final determination of what sites are NRHP-eligible based on the data within the reports and the recommendations of the cultural resource professionals.

Ethnographic Study

An ethnography study of NNP Area 4 South and Area 5 of the NTEC lease, including a 1-mi buffer zone around those areas, was conducted in 2006 and finalized in 2007 by the Navajo Nation Archaeology Department (NNAD), and was submitted to NNHPD (Chavez and Tsosie 2008). This study, among other studies and inventory work, was conducted for use in the NHPA Section 106 compliance process, and for other purposes including compliance with NAGPRA and NNJGH. This ethnographic report was completed and submitted to NNHPD for their review and for NNHPD to determine what cultural resources should be considered for nomination to the NRHP. The 10 January 2008 report, entitled *An Ethnographic Assessment of Navajo Traditional Cultural Properties and Burials within the BHP-Navajo Mine Coal Company Lease Areas IV-North, IV-South, and V, San Juan County, New Mexico* for URS Corporation in Conjunction with BHP, is confidential, and is included in the CONFIDENTIAL cultural resources appendix (Appendix 11.B).

The ethnographic report contains locations of culturally sensitive areas, sacred/religious places (traditional cultural properties [TCPs]), and burials within the project area and identified through ethnographic research. All TCPs were evaluated and recommended as eligible for nomination to the NRHP, and were evaluated in consideration of AIRFA, NNTCP, and NNTCS. The identified burials are not considered NRHP-eligible. Management of these burials has not been decided at this time.

Class I Review

The Division of Conservation Archaeology (DCA) of the San Juan County Museum Association conducted a Class I cultural review on 27 April 2006 entitled, *An Overview of The Cultural Resources of BHP Billiton's Navajo Mine Area 4 North, Area 4 South, and Area 5, San Juan County, New Mexico* (DCA Report No. 05-DCA-180) (Division of Conservation Archaeology 2006). This report is confidential and is included in the CONFIDENTIAL cultural resources appendix (Appendix 11.C). The purpose of this Class I review was to review existing data sources to identify information on prior studies and previously recorded cultural resources within the NNP area of Area 4 South and Area 5 and a 1-mi buffer. The existing information was used to summarize the regional cultural history and the existing data within the NNP area. The primary data sources for this review were the records of the New Mexico Cultural Resources Information System (NMCRIS), files of NNHPD in Window Rock, Arizona, and files of the Bureau of Land Management, Farmington Field Office in Farmington, New Mexico. Ancillary data sources included records maintained by NTEC, DCA, the San Juan County Archaeological Research Center and Library at Bloomfield, New Mexico, the Office of Contract Archeology at the University of New Mexico, Albuquerque, and Alpine Archaeological Consultants, Montrose, Colorado.

Class II and Class III Surveys and Inventories

A Class II survey and Class III inventory were conducted for eligibility evaluation of cultural, historic, and archeological resources and properties within Areas 4 South and 5 between 1 November, 2006 and 16 April 2008. The final report is entitled, *The Eligibility Evaluation of Cultural Resources Located Within Lease Area IV South and Area V of BHP Billiton Navajo Coal Company's Navajo Mine, Navajo Indian Reservation, Nenahnezad/San Juan and Burnham Chapters, Shiprock Agency, San Juan County, New Mexico*, (DCA Technical Report No. 07-DCA-001). Concurrent with the Class II survey, the Class III inventory was performed of lands that would be subject to surface disturbance required for the collection of baseline resource data necessary to meet certain OSM Surface Mining Control and Reclamation Act (SMCRA) and related permitting requirements.

The confidential report, included in CONFIDENTIAL cultural resources appendix (Appendix 11.D), details the results of the Class II and Class III survey work. The Class II work within the report details the location and eligibility evaluation of 144 previously recorded historic properties (Reher 1977), 54 newly identified historic properties, 54 isolated occurrences, and 4 in-use areas. The details of the Class III survey work within the confidential report are results of the inventory of 563 proposed areas of minor surface disturbance and associated access roads used to collect baseline data.

The investigation involved the location and eligibility verification of known historic properties through Class II inventory in order to make recommendations as to the eligibility status/cultural resource significance of the properties with regard to the National Register of Historic Places (NRHP [36 CFR 60]), the provisions of the Archaeological Resources Protection Act (ARPA) of 1979 (P.L. 95-96), the American Indian Religious Freedom Act (AIRFA) of 1978 (P.L. 95-341), and other applicable statutes and regulations which provide guidance with respect to the treatment of certain properties or resources. Newly recorded historic properties encountered during the survey and inventory work were also presented and evaluated. Based on the eligibility evaluations, a strategy to mitigate the adverse effects of the proposed mining is presented in the CONFIDENTIAL cultural resources appendix (Appendix 11.D).

As a result of the Class II and III inventory, 198 historic properties, 4 in-use sites, and 54 isolated occurrences (“isolates”) were evaluated, and 166 of those have been determined to be eligible or potentially eligible for inclusion on the NRHP. The research potential for 32 historic properties has been exhausted through site recordation and therefore were recommended as not eligible for inclusion on the NRHP. Thirty-five of the properties merit or may merit protection under the provisions of AIRFA. Although the “isolates” meet or may meet the 50-year guideline, they do not meet “criterion d” in that their research potential has been exhausted through comprehensive in-field recordation. Criterion d is one of four criteria (Criteria a, b, c, and d) for evaluation that is defined under the provisions of the NRHP (U.S. Department of the Interior, National Park Service 2002). None of the isolates represent NRHP-eligible properties. The in-use sites appear to be

NRHP eligible under criterion d because of their research potential to provide important information on local and/or regional history; however, they are less than 50 years in age and are therefore recommended as ineligible for the NRHP.

Research Design and Treatment Plans

A draft research design and treatment plan prepared by the Center for Desert Archaeology (CDA) for Areas 4 South and 5 (Reed, Benally, and Sliva 2009; Appendix 11.E). This mitigation plan was developed from the data and eligibility evaluations obtained during the Class II and Class III inventories completed by DCA for Areas 4 South and 5 (Meininger and Wharton 2009). This research design includes mitigation recommendations for sites in the southern portion of the permit area. This document will require modification to serve as a basis for data recovery for the permit area.

11.2 Cultural, Historic, and Archeological Resources Information Collection and Analysis

The ethnographic study was conducted by NNAD for the purposes of the Section 106 compliance process for a previous NEPA process that includes the NNP area (Chavez and Tsosie 2008)

The Class I cultural review was conducted by DCA, for the purposes of BIA to develop a previous EIS within the NNP area. The Class I review was administered by Larry L. Baker, Executive Director for DCA. The report was prepared by Jason Meininger (Project Director), Larry Baker (Principal Investigator), and DCA Projects Manager, Lyn Wharton. The report details the findings of the review of existing data sources within the NNP area (Division of Conservation Archaeology 2006).

The Class II survey, the Class III inventory of select areas of proposed ground disturbance within Area 4 South and Area 5, and eligibility evaluation were conducted between 1 November, 2006 and 16 April, 2008 by DCA. The surveys and inventories were conducted in order to evaluate the current status and condition of previously recorded historic properties and newly identified historic properties, as well as to verify or determine eligibility status with regard to the National Register of Historic Places (NRHP [36 CFR 60]), the provisions of the Archaeological Resources Protection Act (ARPA) of 1979 (P.L. 95-96), and the American Indian Religious Freedom Act (AIRFA) of 1978 (P.L. 95-341). The project area, Area 4 South and 5 of the NTEC lease, is located wholly within the Navajo Reservation south of the current Navajo Mine and Pinabete Permit area and north of the community of Burnham in the Nenahnezad/San Juan and Burnham chapters, Shiprock Agency, San Juan County, New Mexico, and is under the jurisdiction of the Navajo Nation (Tribal Trust Land). The surveys and inventories were completed under the authority of Navajo Nation Cultural Resources Inventory Permit No. B-06718.

The Class I, II, and III surveys and inventories were administered by Larry L. Baker, Executive Director, and Lyn Wharton, DCA Projects Manager, San Juan County Archaeological Research Center and Library. The

fieldwork was conducted by Jason Meininger (Project Director), Larry Baker (Principal Investigator), field supervisors, and DCA staff archaeologists. San Juan College Cultural Resources Management Program (SJC CRMP), Farmington, New Mexico and Woods Canyon Archaeological Consultants (WCAC), Yellow Jacket, Colorado provided field assistance to DCA.

NTEC anticipates that further NHPA Section 106 compliance work may be appropriate as part of OSM's review of this permit application package (PAP). Any mitigation to sites will comply with NHPA Section 106 and other applicable regulations following appropriate consultation.

References

- Chavez, Loretta, and Lenora Tsosie. 2008. An Ethnographic Assessment of Navajo Traditional Cultural Properties and Burials within the BHP-Navajo Mine Coal Company Lease Area IV North, IV South, and V, San Juan County, New Mexico for URS Corporation in Conjunction with BHP (URS Job No. 23444264, Work Order No. 3) (Final Report). Navajo Nation Archaeology Department, Shiprock, New Mexico.
- Division of Conservation Archaeology. 2006. An Overview of the Cultural Resources of BHP Billiton's Navajo Mine Area 4 North, Area 4 South, and Area 5, San Juan County, New Mexico. DCA Report No. 05-DCA-180. San Juan County Archaeological Research Center and Library, Bloomfield, New Mexico.
- Meininger, Jason, and Lyn Wharton, 2009. The Eligibility Evaluation of Cultural Resources Located Within Lease Area IV South and Area V of BHP Billiton Navajo Coal Company's Navajo Mine, Navajo Indian Reservation, Nenahnezad/San Juan and Burnham Chapters, Shiprock Agency, San Juan County, New Mexico. Division of Conservation Archaeology Technical Report No. 07-DCA-001. (Final Report). San Juan County Archaeological Research Center and Library, Bloomfield, New Mexico.
- Reed, Paul F., Karen Benally, and R. Jane Sliva, 2009. Archaic, Anasazi, and Navajo Landscapes Through Time in the Lower Chaco River Area: A Cultural Resources Research Design and Treatment Plan for BHP Navajo Coal Company's Mine Lease Areas Four South and Five. Center for Desert Archaeology Technical Report No. 2009-101. Tucson, Arizona.
- Reher, Charles A. 1977. Settlement and Subsistence Along the Lower Chaco River: The CGP Survey. University of New Mexico Press, Albuquerque, New Mexico.
- U.S. Department of the Interior, National Park Service, Cultural Resources. 2002 How to Apply the National Register Criteria for Evaluation Bulletin. Available online at: <http://www.nps.gov/nr/publications/bulletins/nrb15/> (Verified 30 January 2009).