



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX**

75 Hawthorne Street
San Francisco, CA 94105

November 24, 2008

Jane Peterson
Bureau of Land Management
Ely Field Office
HC 33 Box 33500
Ely, Nevada 89301

Subject: Final Environmental Impact Statement for the White Pine Energy Station Project,
Nevada [CEQ# 20080394]

Dear Ms. Peterson:

The U.S. Environmental Protection Agency (EPA) has reviewed the Final Environmental Impact Statement (FEIS) 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 Section 309 of the Clean Air Act (CAA).

EPA reviewed the Draft Environmental Impact Statement (DEIS) and provided comments to the Bureau of Land Management (BLM) on June 22, 2007. We rated the DEIS as Environmental Objections - Insufficient Information (EO-2) because of concerns regarding the potential impact to approximately 440 acres of waters, including wetlands. We also expressed concern about impacts resulting from ground water withdrawal, air quality impacts from the operation of the proposed plant, and the general lack of mitigation described in the DEIS. We recommended that the FEIS provide additional information on wetland impacts, effects of groundwater withdrawal, the evaluation of alternatives and alternative control technologies, and mercury emissions, and include a robust discussion of all mitigation measures proposed for the project.

We greatly appreciate the efforts of the BLM and its consultants to respond to our comments on the DEIS. Most of the issues identified in our review of the DEIS have been addressed in greater detail in the FEIS. In response to our comments, we note that the FEIS includes a much more comprehensive discussion on climate change, alternative coal-fueled generating technologies, carbon capture and sequestration (CC&S), and the ground water monitoring program. We are also pleased to see additional information on air pollution control technologies and strategies, including Best Available Control Technology (BACT), mercury emissions, and greenhouse gas (GHG) emissions.

Based on our review of the FEIS, EPA continues to have concerns about the proposed project. Our objection to the proposed project was based primarily on concern for potential impacts to approximately 440 acres of wetlands. The FEIS clarifies that potential impacts to wetlands will be substantially less, ranging from 2 - 27 acres of temporary impacts and 4 - 6 acres of permanent impacts, depending on the alternative. The FEIS indicates that BLM proposes to mitigate these impacts through the enhancement or creation of wetlands at a 1.5:1 ratio within the Steptoe Valley Region with an associated two-year monitoring period. EPA does not believe a ratio of 1.5:1 will be sufficient to offset the loss of wetlands within Steptoe Valley. Mitigation must be based on *“what is practicable and capable of compensating for the aquatic resource functions that will be lost as a result of the permitted activity”* (40 CFR 230.93(a)). Mitigation in the form of enhancement may only serve to increase specific functions that a particular class of wetlands performs, and may not provide adequate compensation for the loss of all function provided by this valuable wetland acreage in the arid west. In addition, EPA questions whether a two-year monitoring period is an adequate period of time to determine whether the wetland mitigation is successful. Such a brief monitoring period is inconsistent with the requirements of 40 CFR 230.96(b). The mitigation must comply with the April 10, 2008 Final Rule for Compensatory Mitigation for Losses of Aquatic Resources (40 CFR Part 230). At minimum, EPA recommends that BLM consider mitigation at a higher ratio to offset impacts to acreage and function of waters, as well as at least a 5-year comprehensive monitoring and management plan. In addition, long-term protection for the mitigation site(s) must be provided through an appropriate mechanism, such as the BLM’s land management plans, as provided by 40 CFR 230.97(a). We recommend that BLM commit to this within the Record of Decision (ROD).

With regard to air quality, the FEIS incorrectly states that the Nevada Division of Environmental Protection (NDEP) has reviewed and approved the applicant's BACT analysis (pg. 2-108; Appendix D, pg. 5). The NDEP has not yet taken final action on the Prevention of Significant Deterioration (PSD) permit application for the proposed White Pine facility; therefore, NDEP has not made a final determination on BACT.

The FEIS contains a substantial amount of new information related to climate change. While we appreciate the expanded discussion of this topic, we note that the statements and conclusions discounting the quantifiability of the project’s contributions to climate change¹ do not appear to be accurate in light of other available, recent analyses. For example, the extent to which specific impacts of GHG emissions can be quantified has recently been addressed by the National Highway Transportation and Safety Administration (NHTSA) in its FEIS on the proposed Corporate Average Fuel Economy Standards². Similarly, in response to public

¹ The FEIS states that it is not possible to: 1) “determine whether or how the Station’s relatively small incremental contribution might translate into physical effects on the environment;” 2) “discern whether the presence or absence of carbon dioxide emitted by the Station would result in any altered conditions;” and 3) “extrapolate any meaningful climate predictions that would result from the presence or absence of the proposed Station” (Section 4.6.2). The FEIS concludes that: “the proposed Station will not result in identifiable direct or indirect effects on climate change...the proposed Station will not result in identifiable incremental cumulative effects on climate change...the proposed project is not expected to result in adverse impacts on climate” (Section 4.21.5.2).

² NHTSA, October 2008, FEIS Corporate Average Fuel Economy Standards, Passenger Cars and Light Trucks, Model Years 2011-2015. See <http://www.nhtsa.gov/portal/staticfiles/DOT/NHTSA/Rulemaking/Rules/Associated%20Files/CAFE%20FEIS.pdf>

comment suggesting that GHG emissions from an individual source could present potential risks for certain threatened and endangered species, EPA analyzed this issue within the context of the Endangered Species Act. Results of EPA's assessment are described in detail in the October 3, 2008 letter (enclosed) EPA sent to the U.S. Fish and Wildlife Service and the National Marine Fisheries Service, and indicate that the global mean temperature change associated with emissions from a single source can be modeled and quantified³.

We also note that the FEIS now includes a short discussion on the social cost of carbon (SCC) (Section 4.19.3.6.2 and Appendix M). We recommend that BLM examine the *Technical Support Document on the Benefits of Reducing Climate Change*⁴ (June 12, 2008) that summarizes the most current Agency work regarding this issue. We also recommend that conversion factors presented in the FEIS discussion be verified, as discrepancies were noted. In particular, it is important to maintain consistency in both the dollar-year and year of emissions when discussing and comparing estimates of the SCC.

The FEIS also contains additional information on CC&S and includes a copy of the Memorandum of Understanding signed between the White Pine Energy Associates, LLC (WPEA) and the State of Nevada (November 20, 2007). WPEA has committed to use commercially reasonable efforts to design the electrical generation facility in a manner that is "Carbon Capture Ready." Please note that a State and/or federal permit will be required for any deep underground injection of carbon dioxide for geologic carbon sequestration. Furthermore, please note that EPA recently proposed new regulations⁵ for the underground injection of carbon dioxide under the Underground Injection Control Program (July 25, 2008).

Finally, we recommend that BLM consider other voluntary measures to reduce and mitigate GHG emissions, in addition to CC&S. For example, the Minnesota Owners⁶ of the Big Stone Unit II project, a 630 megawatt (MW) coal-fired power plant proposed in South Dakota, agreed to offset 100% of the emissions of carbon dioxide from the Big Stone Unit II that are attributable to the generation of electricity for Minnesota consumers. Options that were incorporated into the agreement included: CC&S; carbon trading on a recognized GHG exchange; purchases of carbon credits from a credible offset program; carbon offset fund; transmission investments for renewables; renewable energy investments beyond that required by law; energy efficiency investments; and any other method that will achieve permanent, quantifiable, and verifiable reductions in GHG emissions that would not otherwise have

³ We note this modeling capability to make sure BLM is aware of efforts undertaken to analyze emissions; this observation is not meant to suggest that federal agencies must quantify any such potential links in the context of their NEPA analyses. Rather, EPA recommends that an agency's cumulative impacts analysis include a general, qualitative discussion of the anticipated effects of climate change, including potential effects at a regional level.

⁴ *Technical Support Document on Benefits of Reducing GHG Emissions*, U.S. Environmental Protection Agency, June 12, 2008, www.regulations.gov. Search for ID "EPA-HQ-OAR-2008-0318-0078". This document was included in the Agency's ANPR referenced in footnote 7 and open for public comment until November 28, 2008.

⁵ See Federal Requirements under the Underground Injection Control (UIC) Program for Carbon Dioxide (CO₂) Geologic Sequestration (GS) Wells, 40 CFR Parts 144 and 146, Federal Register, Vol. 73, No. 144, pp. 43492 – 43541. See <http://www.epa.gov/fedrgstr/EPA-WATER/2008/July/Day-25/w16626.pdf>.

⁶ See Settlement Agreement: High Voltage Transmission Lines-Big Stone Unit II, Minnesota Public Utilities Commission Docket No. CN-05-619, signed August 30, 2007. See <https://www.edockets.state.mn.us/EFiling/ShowFile.do?DocNumber=4763145>.

occurred. In conclusion, we recommend that BLM consider additional voluntary mitigation measures to reduce or mitigate GHG emissions, and document this within the ROD⁷.

We appreciate the opportunity to review the FEIS for the White Pine Energy Station. When the ROD is signed, please send one copy to the address above (mail code: CED-2). Should you have any questions regarding our comments, please contact me at (415) 972-3521, or contact Ann McPherson, the lead reviewer for this project. Ann can be reached at (415) 972-3545 or mcperson.ann@epa.gov.

Sincerely,

/s/

Kathleen M. Goforth, Manager
Environmental Review Office

Enclosure

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 DeBurle, Nevada Bureau of Air Pollution Control
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Russ Land, Nevada Bureau of Water 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

⁷ EPA published an Advanced Notice of Proposed Rulemaking (ANPR) on July 30, 2008 (73 FR 44354) as part of its response to the Supreme Court decision in *Massachusetts v. EPA*, 127 S. Ct. 1438 (2007). That ANPR discusses many issues related to the potential regulation of greenhouse gases under the Clean Air Act and is open for public comment until November 28, 2008. Thus, this NEPA letter is not articulating, and should not be construed as articulating, a new policy under the Clean Air Act. Nor does it reflect the type of judgment that might form the basis for a positive or negative finding under any provision of the Clean Air Act.