



**US Army Corps  
of Engineers®**

**Albuquerque District**

# **PUBLIC NOTICE**

**Application Number: SPA-2012-00253-ABQ**

**Date: July 27, 2012**

**Comments Due: September 27, 2012**

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**SUBJECT:** The U.S. Army Corps of Engineers, Albuquerque District (USACE) is evaluating an Individual Permit (IP) application to implement the proposed Pinabete Mine Plan for portions of Area 4 North and Area 4 South within the BHP Navajo Coal Company's (BNCC) Navajo Mine Lease. The mine plan would result in impacts to approximately 5.0 acres of waters of the United States (WUS) adjacent to Cottonwood and Pinabete Arroyos. This notice is to inform interested parties of the proposed activity and to solicit comments.

**AUTHORITY:** This application is being evaluated under Section 404 of the Clean Water Act for the discharge of dredged or fill material in WUS.

**APPLICANT:** Patrick Risner, General Manager, Navajo Mine  
BHP Navajo Coal Company  
PO Box 1717  
Fruitland, NM 87416

**LOCATION:** The proposed Clean Water Act 404 IP permit area is located on or near Cottonwood and Pinabete Arroyos, Section 26 Township 26N, Range 16W, Latitude (NAD 83) 36.469°, Longitude -108.511°, San Juan County, New Mexico.

**PROJECT DESCRIPTION:**

In the event BNCC and Arizona Public Service Company (APS) execute a new coal supply agreement to supply coal to the Four Corners Power Plant (FCPP) following the July 6, 2016 expiration of the existing coal supply agreement, BNCC plans to extend its mining operations on its mining lease, in portions of Area 4 North and into portions of Area 4 South, in order to supply coal to FCPP for approximately 25 years beginning in or about July, 2016. BNCC's Pinabete Mine Plan is expected to involve certain federal actions, including: (a) approval from the Office of Surface Mining Reclamation and Enforcement (OSM) for a new Surface Mining Control and Reclamation Act (SMCRA) permit; (b) approval from the Bureau of Land Management (BLM) for a revised Resource Recovery and Protection Plan (R2P2) for the maximum economic recovery of coal reserves within the Pinabete Mine Plan boundary; (c) approval of a Section 404 IP from the U.S. Army Corps of Engineers for unavoidable impacts to jurisdictional WUS; (d) approval of a Section 402 National Pollutant Discharge Elimination System (NPDES) permit or permit revision from United States Environmental Protection Agency (USEPA); and (e) approval from the Bureau of Indian Affairs (BIA) of the relocation of a portion of the Burnham Road through portions of Area 4 North and Area 4 South.

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The proposed permitting actions will require compliance with the National Environmental Policy Act (NEPA), Section 7 of the Endangered Species Act (ESA), Section 106 of the National Historic Preservation Act (NHPA), and other applicable federal, state, and tribal statutes and regulations. OSM is the lead federal agency for the NEPA EIS.

The proposed action is to authorize under Section 404 of the Clean Water Act approximately 5.0 acres of fill in WUS associated with BNCC's implementation of its Pinabete Mine Plan in order to meet BNCC's proposed contractual coal sales obligations to FCPP through 2041 in the event that a new coal supply agreement is reached. Also, the proposed action would improve safe, reliable public access to the Navajo Nation's Burnham Chapter area.

The proposed action includes several primary components: mining activities, transportation of coal from the mine permit site to the FCPP, road and infrastructure construction, and site reclamation. Other ancillary facilities related to the mining and reclamation activities including fencing, maintenance of roads, and distribution powerlines. The proposed mining operation is a continuation of the existing Navajo Mine operations, a mine mouth open pit operation. Coal would be extracted utilizing surface mining techniques, such as draglines or limited truck and loader stripping operations. Mined coal would be transported to existing coal stockpiles using haul trucks and an existing rail transport system and delivered to FCPP.

As part of the proposed action, approximately 2.8 miles of Burnham Road (BIA Road 3005 and Navajo Road 5082) would be realigned along the east side of the existing BNCC mining lease in portions of Areas 4 North and 4 South in order to move this public road a safe distance from active mining.

#### **PROPOSED MITIGATION:**

To offset the temporal loss of functionality impacts of WUS during active mining, BNCC has committed to the enhancement or creation of riparian habitat, functions, and values. BNCC is currently considering a proposed mitigation project along approximately 1.7 miles of Chinde Arroyo within the BNCC mining lease. Chinde Arroyo flows through Area 2 of Navajo Mine mining lease and was mined during the 1970's and 1980's and reclaimed in 2008. Chinde Arroyo receives irrigation return flow from the Navajo Agricultural Products Industry (NAPI) fields upstream. BNCC is currently conducting a feasibility study to determine the mitigation possibilities at the site. During the initial site visit, certified hydrologists determined that the site has great potential to provide compensatory mitigation. The feasibility study will determine appropriate reclamation measures to stabilize, preserve, and enhance portions of Chinde Arroyo, and create riparian and wetland habitat adjacent to Chinde Arroyo. Upon completion of the feasibility study, BNCC would develop a mitigation plan in conjunction with its 404(b)(1) Alternatives Analysis to ensure that temporal impacts to WUS from mining activities are avoided, minimized and mitigated in accordance with USACE requirements. If this site is not deemed feasible, BNCC, in coordination with the applicable agencies, has identified an alternative site along the San Juan River within the Nenahnezad Chapter of the Navajo Nation

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that could fulfill mitigation responsibilities.

**OTHER AUTHORIZATIONS:**

**Section 401 Water Quality Certification:** The applicant is required to obtain water quality certification, under Section 401 of the Clean Water Act, from the Navajo Nation Environmental Protection Agency (NNEPA). The NNEPA has certification responsibility under Section 401 of the Clean Water Act. Section 401 requires that any applicant for an individual Section 404 permit provide proof of water quality certification to the Corps of Engineers prior to permit issuance.

The proposed action requires approvals or permits by various Federal agencies and the Navajo Nation in addition to the USACE. These agencies and their roles in the proposed action are described below.

<b>Agency</b>	<b>Authority</b>
<b>OSM</b>	May approve a mine plan permit application package under SMCRA, and may authorize the Pinabete Mine Plan for mining and reclamation activities in portions of Area 4 North and Area 4 South in accordance with the purpose and need.
<b>BIA</b>	The OSM procedure (30 CFR 761.14 (c)) requires that a “public road authority” be designated which would authorize the relocation of the Burnham Road. Because the road has historically been maintained by the BIA and is entirely within the Navajo Indian Reservation, the BIA is recognized as the public road authority and can approve or deny the proposed re-alignment.
<b>USEPA</b>	May approve a NPDES permit or permit revision under Section 402 of the Clean Water Act, authorizing point source discharges associated with the Pinabete Mine Plan in portions of Area 4 North and Area 4 South.
<b>Navajo Nation</b>	<p>The Navajo Nation Department of Fish and Wildlife (NNDFW) reviews and may issue a Fish and Wildlife Clearance letter regarding the Biological Evaluation (BE).</p> <p>The Navajo Historic Preservation Department (NHPD) may issue a Cultural Clearance letter concurring with Section 106 compliance of the Historic Preservation Act.</p> <p>The Navajo Nation Environmental Protection Agency (NNEPA) may issue a 401 Water Quality Certification (WQC) in accordance with its authority under the CWA.</p>
<b>BLM</b>	May approve the revised Resource Recovery and Protection Plan (R2P2) for post-July 6, 2016 mining in Areas 4 North and South, which requires conducting mining operations in a manner that achieves maximum economic recovery (MER) of the available resource. MER is a key consideration in determining mining limits and methods.

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## **ADDITIONAL INFORMATION:**

**FCPP:** APS is preparing an approved jurisdictional determination request for a preliminary delineation result of isolation for a 0.07-acre wetland adjacent to a pumphouse near a concrete-lined detention pond within the FCPP project boundary. No other aquatic resources exhibiting either wetland characteristics or an ordinary high water mark were found within the FCPP project area. Both USACE and USEPA would be required to approve the request.

### **Environmental Setting.**

The Pinabete Mine Plan permit area within the BNCC mining lease is situated on the high desert terrain of the Colorado Plateau and consists of badlands, grasslands, and mesas. The permit area is sparsely vegetated with generally low vegetative cover values. The permit area and adjacent areas lie within the San Juan River Basin, a tributary to the Colorado River. Cottonwood and Pinabete Arroyos are typically dry ephemeral streams that pass through the proposed permit area and eventually drain into the Chaco River to the west. The Chaco River is tributary to the San Juan River. Ephemeral channels, rills, and gullies drain the permit area and occasionally convey water after large storm events. Surface water is limited to periodic inundation after storm events behind local detention ponds. Surface water within and adjacent to the permit area is not used for drinking by humans or for irrigation but has been used for stock watering. The average annual precipitation for the project area is 5.6 inches.

Cottonwood Arroyo has a drainage area of about 80 square miles, of which approximately 14 percent lies within the BNCC mining lease area. Pinabete Arroyo is south of Cottonwood Arroyo and has a drainage area of about 60 square miles, of which approximately 16 percent lies within the BNCC mining lease area.

The ephemeral channels within and adjacent to the permit area are typical of southwestern desert environments and are characterized by a wide variation in flow, going from no discharge (dry channel) to peak discharge, followed by a recession to a low discharge over several hours. Summer rains fall almost entirely during brief, but frequently intense thunderstorms. These rapidly varying flows can transport large amounts of sediment and cause extensive change in the shape of the channels.

**Alternatives.** A variety of alternatives are being considered to achieve the project purpose and need. These include mining in other areas within the Navajo Mine mining lease, extending the mining lease near active mining operations, and employing different coal recovery mining configurations and techniques. As a 404(b)(1) alternatives analysis is required, USACE will evaluate all alternatives that meet the purpose and need to determine their practicability, and can only permit the least environmentally damaging practicable alternative.

**EVALUATION FACTORS:** The decision whether to issue a permit will be based on an evaluation of the probable impacts, including cumulative impacts, of the described activity on the public interest. That decision will reflect the national concern for both protection and utilization of important resources. The benefit, which reasonably may be expected to accrue from

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the described activity, must be balanced against its reasonably foreseeable detriments. All factors which may be relevant to the described activity will be considered, including the cumulative effects thereof; among those are conservation, economics, aesthetics, general environmental concerns, wetlands, historic properties, fish and wildlife values, flood hazards, floodplain values, land use, navigation, shoreline erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs, consideration of property ownership and, in general, the needs and welfare of the people. The activity's impact on the public interest will include application of the Section 404(b)(1) guidelines promulgated by the Administrator, Environmental Protection Agency (40 CFR Part 230).

The USACE is soliciting comments from the public, Federal, State, and local agencies and officials, Indian tribes, and other interested parties in order to consider and evaluate the impacts of this proposed activity. Any comments received will be considered by the USACE to determine whether to issue, modify, condition, or deny a permit for this proposal. To make this decision, comments are used to assess impacts on endangered species, historic properties, water quality, general environmental effects, and other public interest factors listed above. Comments are used in the preparation of an Environmental Assessment and/or an Environmental Impact Statement pursuant to the National Environmental Policy Act. Comments are also used to determine the need for a public hearing and to determine the overall public interest of the proposed activity.

**HISTORIC PROPERTIES:** In accordance with Section 106 of the National Historic Preservation Act (NHPA) and its implementing regulations, the proposed Pinabete Mine Plan permit area has been surveyed for historic properties. Properties within the proposed Mine Plan SMCRA permit area will be identified, determined eligible or non-eligible, and all eligible sites will be mitigated in accordance with any memorandum of understanding entered in compliance with the NHPA. OSM, in conjunction with other consulting parties, will assess its prior compliance with applicable federal, state, and tribal laws, including without limitation NHPA Section 106, the Native American Graves Protection and Repatriation Act (NAGPRA), and the Archaeological Resources Protection Act (ARPA) to determine whether the federal actions described above require further compliance measures.

**ENDANGERED SPECIES:** OSM, as lead federal agency, will review the U.S. Fish and Wildlife Service's (USFWS) latest published version of Federally-listed endangered and threatened species located in San Juan County, New Mexico to determine if any listed species or their critical habitat may occur in the proposed Clean Water Act 404 IP permit area. OSM, with participation of other cooperating agencies including USACE, will consult with the USFWS through section 7 consultation and determine the effect of the proposed action will have on any Federally-listed endangered or threatened species or their critical habitat that are protected by the Endangered Species Act.

**FLOODPLAIN MANAGEMENT:** The USACE is sending a copy of this public notice to the local floodplain administrator. In accordance with 44 CFR part 60 (Flood Plain Management Regulations Criteria for Land Management and Use), the floodplain administrators of participating communities are required to review all proposed development to determine if a floodplain development permit is required and maintain records of such review.

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**SCOPING MEETINGS:** USACE is participating in the OSM-sponsored scoping meeting process for the EIS, and this is intended to satisfy any public meeting or hearing request or requirement. Comments may be submitted at the scoping meetings for the USACE Section 404 permit action. To find a schedule of the scoping meetings, please follow this link or copy and paste into a web browser: [http://www.wrcc.osmre.gov/Current\\_Initiatives/fcnavprj/PubInv.shtm](http://www.wrcc.osmre.gov/Current_Initiatives/fcnavprj/PubInv.shtm)

**CLOSE OF COMMENT PERIOD:** All comments pertaining to this Public Notice must reach this office on or before **September 27, 2012**, which is the close of the comment period. Extensions of the comment period may be granted for valid reasons provided a written request is received by the limiting date. If no comments are received by that date, it will be considered that there are no objections. Anyone may request, in writing, that a public hearing be held to consider this application. Requests shall specifically state, with particularity, the reason(s) for holding a public hearing. If the USACE determines that the information received in response to this notice is inadequate for thorough evaluation, a public hearing may be warranted. If a public hearing is warranted, interested parties will be notified of the time, date, and location. Comments and requests for additional information should be submitted to:

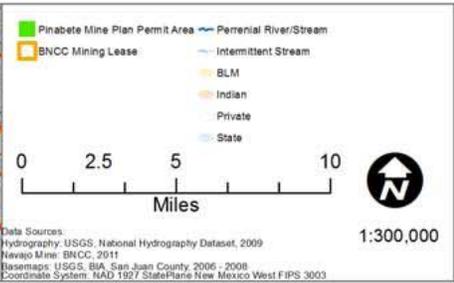
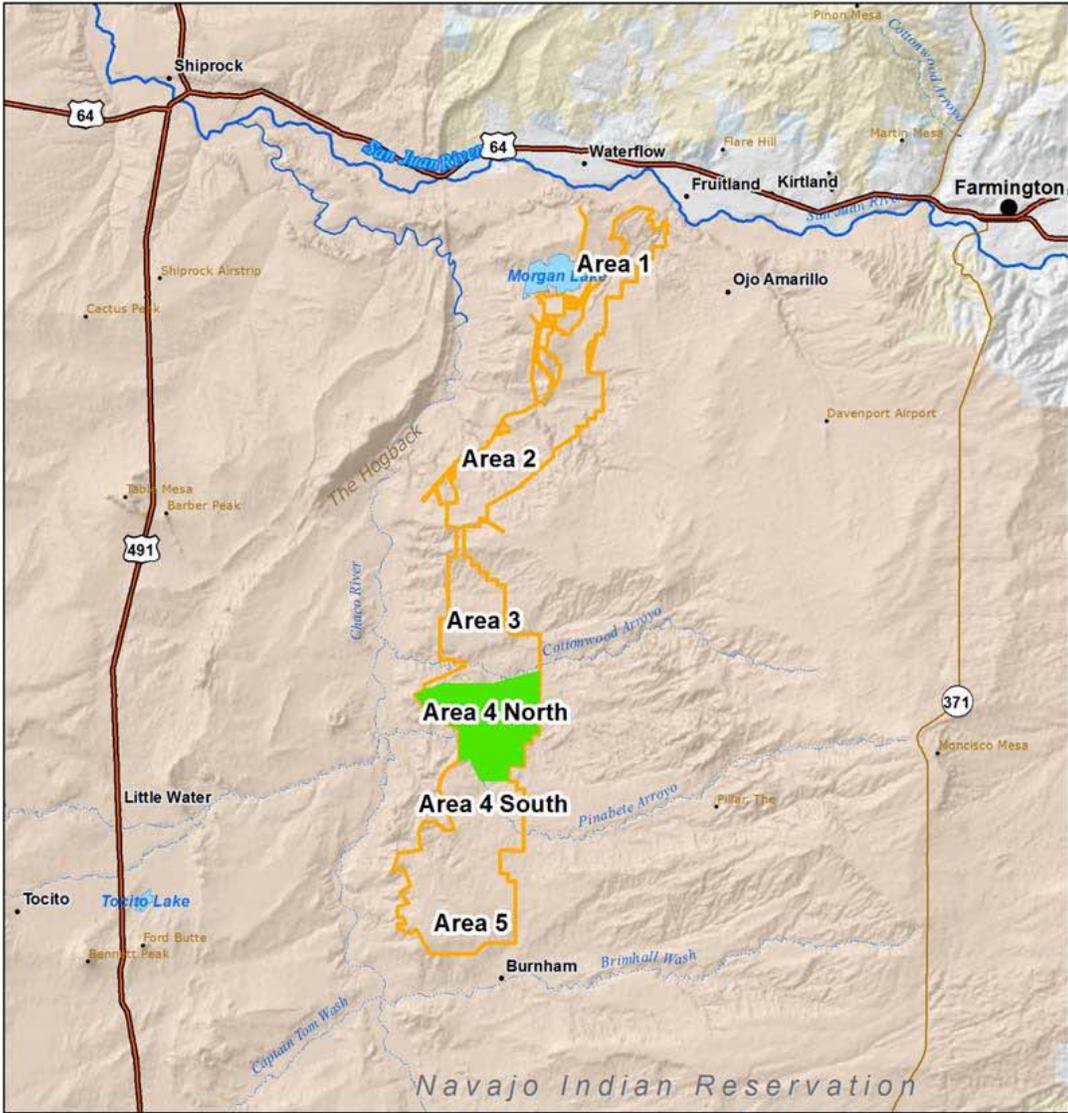
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Please note that names and addresses of those who submit comments in response to this public notice may be made publicly available through the Freedom of Information Act.

DISTRICT ENGINEER  
ALBUQUERQUE DISTRICT  
US ARMY CORPS OF ENGINEERS

Enclosure

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**BNCC Pinabete Mine Plan Individual Permit Application**

PERMIT AREA MAP

NAVAJO MINE

SAN JUAN COUNTY, NEW MEXICO

Date: 3/21/2012

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# BHP Navajo Coal Company

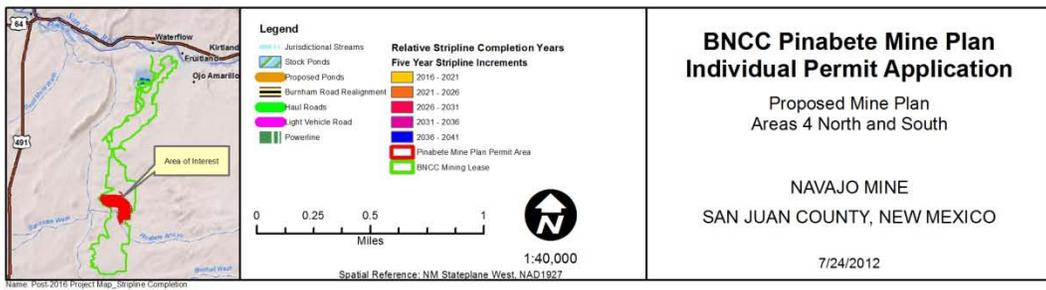
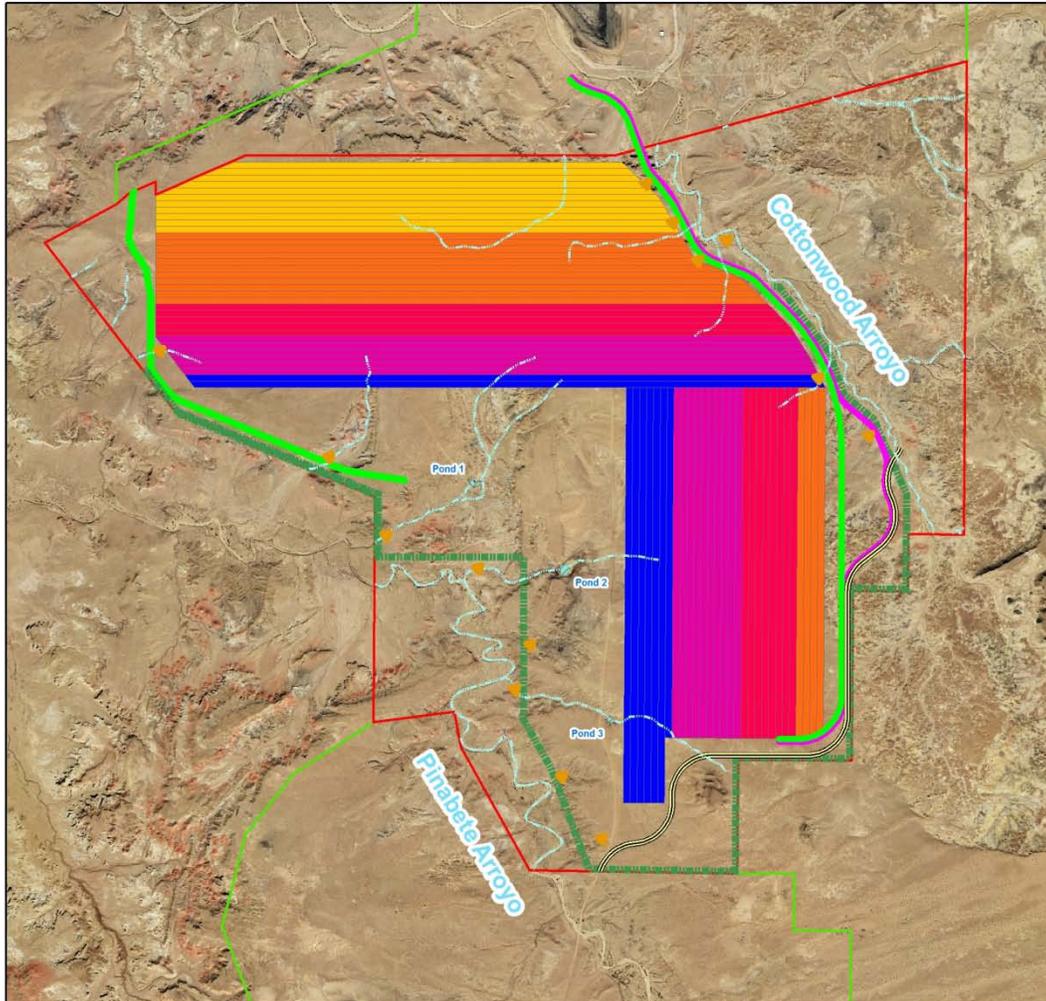


Figure 2. Pinabete Mine Plan for Portions of Area 4 North and Area 4 South.

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# BHP Navajo Coal Company

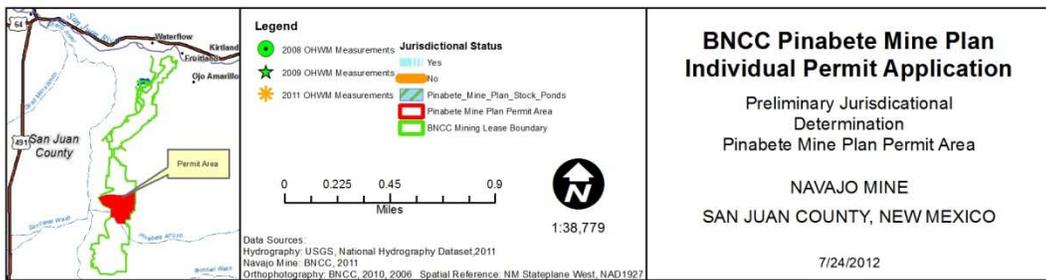
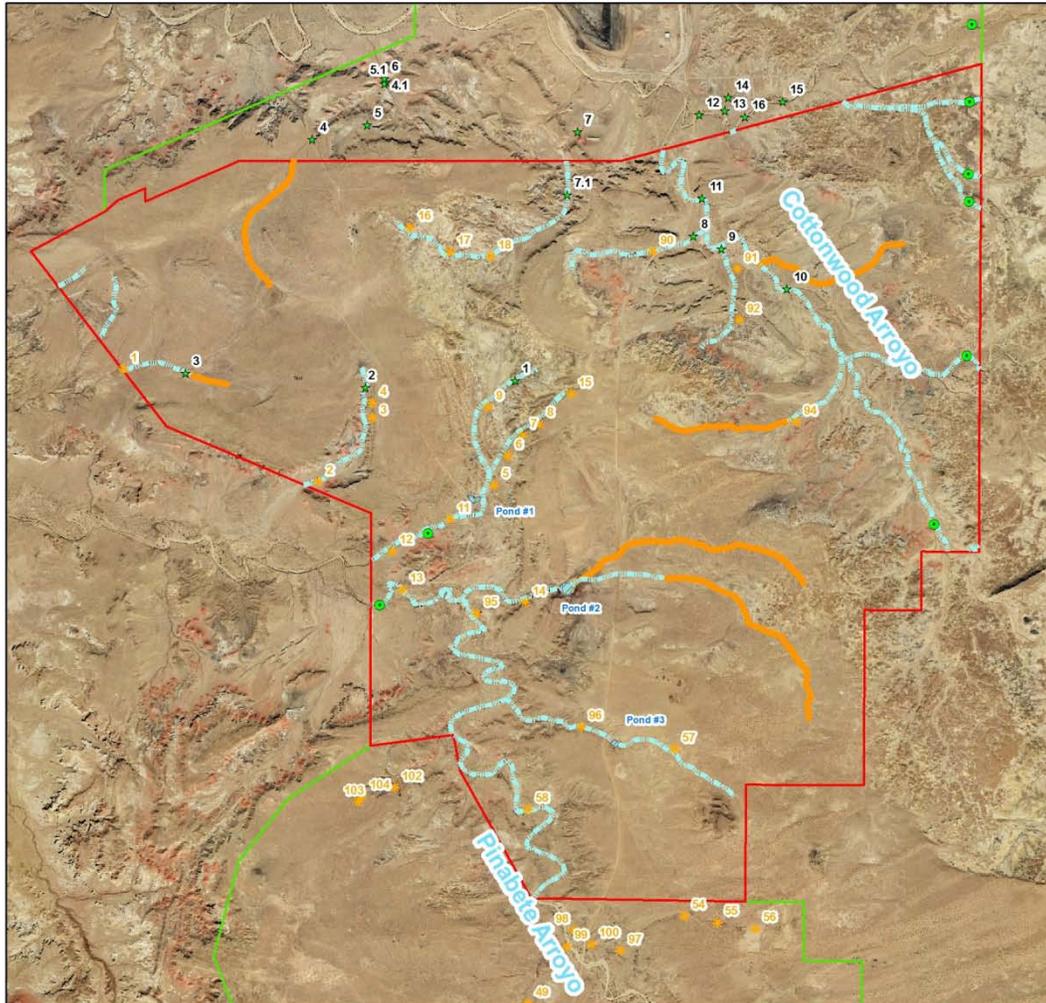


Figure 3. Preliminary jurisdictional determination for the Pinabete Mine Plan permit area.

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