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

February 6, 2007

Peter A. Rutledge
Office of Surface Mining Reclamation and Enforcement
P.O. Box 46667
Denver, CO 80201-6667

Subject: Black Mesa Project Draft Environmental Impact Statement (EIS)
[CEQ # OSM-K65321-00]

Dear Mr. Rutledge:

The U.S. Environmental Protection Agency (USEPA) has reviewed the above referenced document. Our review and comments are provided pursuant to the National Environmental Policy Act (NEPA), the Council on Environmental Quality's NEPA Implementation Regulations at 40 CFR 1500-1508, and Section 309 of the Clean Air Act.

USEPA has worked closely as a cooperating agency with the Office of Surface Mining Reclamation and Enforcement (OSM) and the other cooperating agencies and interested parties in preparing this EIS. We appreciate the effort OSM has made to address our issues as we have raised them.

Modeling conducted on groundwater pumping scenarios indicate the preferred alternative would have minor to negligible impacts on stream base flows, water quality and pumping costs. However, we are well aware of the controversy over the use of groundwater resources for this project, as well as the trade offs between this resource consumption and the project's economic benefits to the Navajo Nation and Hopi Tribe.

USEPA has rated this Draft EIS as LO – Lack of Objections (see the enclosed "Summary of Rating Definitions"). We have a few recommendations that should be addressed in the Final EIS for clarification and to improve mitigation measures. Specifically, the Final EIS should clarify the status of USEPA's permits and include mitigation measures for impacts to water quality, including waters of the U.S., and riparian vegetation. Our detailed comments are enclosed.

We appreciate the opportunity to participate as a cooperating agency in the preparation and review of this Draft EIS and look forward to working with you on the Final EIS. If you have any questions, please call me at (415) 972-3846, or have your staff call Jeanne Geselbracht at (415) 972-3853.

Sincerely,

/s/

Nova Blazej, Manager
Environmental Review Office

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Enclosures: (1) EPA's Summary of Rating Definitions
(2) EPA's Detailed Comments

Cc: List Attached

Preferred Alternative

The Draft EIS (pp. ES-17and 2-49) states that the preferred alternative specifically includes approvals of modifications to the National Pollutant Discharge Elimination System (NPDES) permit and the Title V air quality permit. The fact that these permits will be needed to implement the project is disclosed elsewhere in the Draft EIS (p. 1-6). However, these permits have not yet been submitted to or reviewed by USEPA; therefore, any USEPA determinations concerning these permits have yet to be made. For this reason, we recommended in a June 2, 2006, letter to the Office of Surface Mining Reclamation and Enforcement (OSM) that approval of these two permits not be specifically included as part of the preferred alternative in the EIS.

> **Recommendation:** We reiterate our recommendation that these two permits not be specifically included as part of the preferred alternative in the EIS.

Water Quality

Peabody's annual seepage monitoring reports indicate multiple exceedences of water quality standards from seeps associated with sedimentation impoundments. The Draft EIS (p. 2-52, bullet 5; and p. 4-21, par. 1) appears to dismiss the potentially significant impacts of this contamination by stating that the seeps will be diluted by stormwater runoff. As we stated in response to preliminary drafts of the EIS, these seeps may run all year and, for much of the year, are not diluted by stormwater. During dry months, these undiluted seeps may be attractive to wildlife and livestock.

> **Recommendation:** The Final EIS should clarify that seeps downgradient from sedimentation impoundments may run all year and, during dry months, are not diluted by stormwater and may be attractive to wildlife and livestock. The Clean Water Act is designed to protect beneficial uses. Fencing will not exclude all wildlife from contaminated seeps or protect beneficial uses. Other measures exist to protect water quality standards and beneficial uses, such as treating the water, eliminating the settling pond, sealing the pond so seeps stop, capturing the water and infiltrating it outside of waters of the U.S., or intercepting the seep water and pumping it back into the pond until the pond is removed. Other measures may also exist. The Final EIS should indicate the measures that will be taken to protect water quality and designated beneficial uses of waters of the U.S. from seeps associated with existing and future sedimentation ponds.

Waters of the U.S.

Under the proposed project, the coal slurry and water pipelines will cross numerous washes and streams, and may parallel streams for significant distances. The proposed project includes many effective and appropriate measures to minimize impacts to waters of the U.S. and riparian areas during pipeline construction, such as narrowing the

construction right-of-way in dense riparian vegetation. Construction staging should also be carefully managed to prevent impacts to waters of the U.S. and riparian vegetation.

> **Recommendation:** We recommend that the Final EIS include a requirement that staging areas be set back with a sufficient buffer from waters of the U.S. and riparian vegetation to avoid all staging impacts to these resources.