

Supporting Statement A
30 CFR 750 - Requirements for Surface Coal Mining and Reclamation
Operations on Indian Lands

OMB Control Number 1029-0091

Terms of Clearance:

General Instructions

A completed Supporting Statement A must accompany each request for approval of a collection of information. The Supporting Statement must be prepared in the format described below, and must contain the information specified below. If an item is not applicable, provide a brief explanation. When the question "Does this ICR contain surveys, censuses, or employ statistical methods?" is checked "Yes," then a Supporting Statement B must be completed. OMB reserves the right to require the submission of additional information with respect to any request for approval.

Specific Instructions

A. Justification

- 1. *Explain the circumstances that make the collection of information necessary. Identify any legal or administrative requirements that necessitate the collection.***

Section 710 of the Surface Mining Control and Reclamation Act of 1977 (the Act), 30 U.S.C. 1201 *et seq.*, provides for a two-phase program for the regulation by the Secretary of the Interior of surface coal mining operations on Indian lands. Section 710(c) describes the first phase and states "on and after 135 days from the enactment of this Act, all surface coal mining operations on Indian lands shall comply with requirements at least as stringent as those imposed by subsections 515(b)(2), 515(b)(3), 515(b)(5), 515(b)(10), 515(b)(13), 515(b)(19), and 515(d) of this Act." Section 710(d) of the Act describes the second phase for regulating mining on Indian lands. Section 710(d) requires compliance with sections 507, 508, 509, 510, 515, 516, 517, and 519 of the Act "on or after 30 months from the enactment of this Act." The regulations in 30 CFR Part 750 implement the sections of the Act specified in section 710(d) and were promulgated on September 28, 1984 (49 FR 38462). The regulations in 30 CFR Part 750 also implement other sections of the Act that are otherwise applicable either by necessary implication from one or more of the listed sections of the Act or because the sections are applicable to all mining.

Operators proposing to conduct surface coal mining and reclamation operations on Indian lands must comply with the permitting and approval requirements of 30 CFR Part 750. The requirements of Part 750 cross-reference the applicable requirements of the

permanent regulatory program as well as specifying those additional information requirements that are unique to Indian lands. However, since the information collection requirements imposed by the permanent regulatory program have been approved by the Office of Management and Budget (OMB) under separate Parts, this justification addresses only those additional information collection requirements imposed by Part 750.

2. ***Indicate how, by whom, and for what purpose the information is to be used. Except for a new collection, indicate the actual use the agency has made of the information received from the current collection. Be specific. If this collection is a form or a questionnaire, every question needs to be justified.***

Section 750.12(d) lists the additional information requirements specific to permit applications for surface coal mining and reclamation operations on Indian lands. Permit application information is submitted by applicants for coal mining permits to the regulatory authority. Tribal nations are sovereign nations and recognized as “domestic dependent nations.” There are no Indian Nations with primacy as a regulatory authority (RA). Mining is active on the Navajo and Crow Indian lands. The OSMRE Western Region Indian Programs Branch in Denver, Colorado, is the regulatory authority that receives and reviews the Permit application information from applicants for mining on the Navajo Nation Indian lands. The Casper Field Office, in Casper Wyoming administers the program where OSMRE is the RA. This office receives and reviews permit application from applicants where it currently has responsibility for the Absaloka South Permit on the Crow reservation.

Subsection (1) of §750.12(d) requires submission of the mining plan required to be submitted by 25 CFR 216.7 or 43 CFR Group 3400. OMB has approved this information collection requirement separately.

Subsection (2) of §750.12(d) contains nine additional information collection requirements. The first, §750.12(d)(2)(i), requires "the description of the proposed surface coal mining and reclamation operation with respect to: (A) increases in employment, population, and revenues to public and private entities; and (B) the ability of public and private entities to provide goods and services necessary to support surface coal mining and reclamation operations." This information is needed by the regulatory authority to prepare documentation in compliance with the National Environmental Policy Act (NEPA).

Section 750.12(d)(2)(ii) requires an "evaluation of impacts to the scenic and aesthetic resources, including noise on the surrounding area, due to the proposed surface coal mining and reclamation operation." This information is also needed by the regulatory authority to prepare documentation in compliance with NEPA.

Sections 750.12(d)(2)(iii) and (iv) require information on cultural or historical sites eligible for listing or listed on the National Register of Historic Places. This information

assists the regulatory authority in ensuring compliance with the National Historical Preservation Act of 1976, the Archeological Resources Protection Act of 1977, and other related requirements pertaining to cultural and historical resources. However, this information requirement is a restatement of the permanent program requirement in 30 CFR 779.12(b), which has received separate approval from OMB and, therefore, 30 CFR 750.12(d)(2)(iii) and (iv) are not included in this information collection approval request.

Section 750.12(d)(2)(v) requires the prospective permittee to submit a "description of compliance with Federal laws aimed at protecting cultural resources on Indian lands." This information is required to be submitted in order to ensure that cultural resources on Indian lands will be protected. This section also requires that permit applicants submit information to comply with the American Indian Religious Freedom Act at OSMRE's request.

Section 750.12(d)(2)(vi) requires a description of the probable changes in air quality resulting from the proposed mining operation and any necessary measures to comply with the prevention of significant deterioration limitations and any other Federal laws for air quality protection. This information will allow a determination of compliance with the Clean Air Act. Information to show compliance with the Clean Air Act is also required under 30 CFR 780.18(b)(9) which has received separate OMB approval; therefore, 30 CFR 750.12(d)(2)(vi) is not included in this information collection approval request.

Subsections 750.12(d)(2)(vii) through (ix) require information pertaining to fish and wildlife resources to assist in evaluating compliance with the Fish and Wildlife Coordination Act, the Endangered Species Act, and other related requirements. These subparagraphs require: (1) a description of the location, acreage, and condition of important habitats of selected indicator species located within the permit and adjacent areas of the proposed surface coal mining and reclamation operation; (2) a description of active and inactive nests and prey areas of any bald or golden eagles located within the permit and adjacent areas of the proposed surface coal mining and reclamation operations; and (3) a description and special studies, if required, of all threatened and endangered species and their critical habitats located within the permit and adjacent areas of the proposed surface coal mining and reclamation operations. Collection of this information is also authorized under 30 CFR 780.16, which has received separate OMB approval, and 30 CFR 750.12(d)(2)(vii) through (ix) are therefore not included in this approval request.

3. ***Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses, and the basis for the decision for adopting this means of collection. Also describe any consideration of using information technology to reduce burden and specifically how this collection meets GPEA requirements.***

OSMRE is able to accept applications and supporting information in electronic form; we have no requirements that would constrain our ability to meet GPEA's requirements to allow individuals or entities to submit information or maintain records electronically. This is done through the Coal Information Management System (CIMS) found at: <https://cims.osmre.gov>. OSMRE continues to receive a portion of applications in hardcopy by the applicant's choice. For example, significant permit revisions on Indian lands continue to be submitted in paper form applications due to the significant time required by the permittee to convert the original permit and prior revisions into an electronic format for the new revision. However, a couple of large permits have been transferred from hard copy to electronic records by the permittee. This transfer required an investment of the permittee's time, but it has improved the efficiency of subsequent permit modification applications. In addition, the electronic format allows access to the information with a link that reduces the hard copies needed for cooperating agencies.

OSMRE continues to encourage electronic formats for permit applications. OSMRE anticipates that the few non-electronic revisions will be converted over the next three years, so that all electronic permit revisions on Indian lands will be processed electronically. Minor permit modifications are the majority of all permitting activity on Indian lands. Any new permit applications are anticipated to be received electronically.

4. ***Describe efforts to identify duplication. Show specifically why any similar information already available cannot be used or modified for use for the purposes described in Item 2 above.***

Since circumstances vary with each situation in which mining permits are requested, there is no other information which can be used in lieu of that supplied in each application. No similar information pertaining to Indian lands is collected by other Federal agencies. It is common for other federal agencies (such as BLM) to contact OSMRE requesting various information that is collected through the Permit application process.

5. ***If the collection of information impacts small businesses or other small entities, describe any methods used to minimize burden.***

There are no special provisions or exceptions for small businesses or other small entities; however, small organizations may be eligible for assistance under the Small Operators Assistance Program. As in the case of all requests for information, the information required is limited to the minimum necessary to determine whether there will be major impacts to the environment from the proposed mining operation.

6. ***Describe the consequence to Federal program or policy activities if the collection is not conducted or is conducted less frequently, as well as any technical or legal obstacles to reducing burden.***

The information is collected only at the time an application for a mining permit or permit modification is submitted. Thus, there is no opportunity to reduce the frequency of collection.

7. ***Explain any special circumstances that would cause an information collection to be conducted in a manner:***
- * requiring respondents to report information to the agency more often than quarterly***
 - * requiring respondents to prepare a written response to a collection of information in fewer than 30 days after receipt of it;***
 - * requiring respondents to submit more than an original and two copies of any document;***
 - * requiring respondents to retain records, other than health, medical, government contract, grant-in-aid, or tax records, for more than three years;***
 - * in connection with a statistical survey that is not designed to produce valid and reliable results that can be generalized to the universe of study;***
 - * requiring the use of a statistical data classification that has not been reviewed and approved by OMB;***
 - * that includes a pledge of confidentiality that is not supported by authority established in statute or regulation, that is not supported by disclosure and data security policies that are consistent with the pledge, or which unnecessarily impedes sharing of data with other agencies for compatible confidential use; or***
 - * requiring respondents to submit proprietary trade secrets, or other confidential information, unless the agency can demonstrate that it has instituted procedures to protect the information's confidentiality to the extent permitted by law.***

New Permit or Permit Modifications applications are submitted from the operator to the RA's in order to modify their mining and reclamation plans. Guidelines in 5 CFR 1320.5(d)(2) require that no more than one original and two copies of a permit application be submitted. Generally, RA's in primacy states request the appropriate one original and two copies. Also, many RA's promote electronic submissions as a method to reduce applicant costs and promote RA review. However, OMB has authorized OSMRE to receive additional copies of non-electronic permit applications for surface coal mining operations on Indian lands. Typically, a minimum of eight copies are required by OSMRE for proposed Indian lands operations for use and distribution as follows: one copy each to the Bureau of Indian Affairs, Bureau of Land Management (mining plan review), and the affected Indian tribe¹; one file copy for public review at the regional office; one file copy for public review at the appropriate OSMRE field office; one copy for internal permit application review by the responsible OSMRE permitting unit; one copy for the OSMRE inspector; and one approved copy which is returned to the

¹ Tribes are involved with decision making related to cultural resources. For example, the Absaloka permit on the Crow Nation requires approval and consent by the Crow Tribal Historic Preservation Officer for all permitting actions.

operator. Additional copies of permit applications are required by OSMRE if the proposed operation involves more than one Indian tribe and any additional Federal agencies not mentioned above.

OSMRE continues to strongly urge that permit applications for Indian lands (and Federal lands) be submitted through electronic means to reduce the number of copies and ease the process of review.

8. ***If applicable, provide a copy and identify the date and page number of publication in the Federal Register of the agency's notice, required by 5 CFR 1320.8(d), soliciting comments on the information collection prior to submission to OMB. Summarize public comments received in response to that notice and in response to the PRA statement associated with the collection over the past three years, and describe actions taken by the agency in response to these comments. Specifically address comments received on cost and hour burden.***

Describe efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of collection, the clarity of instructions and recordkeeping, disclosure, or reporting format (if any), and on the data elements to be recorded, disclosed, or reported.

Consultation with representatives of those from whom information is to be obtained or those who must compile records should occur at least once every three years — even if the collection of information activity is the same as in prior periods. There may be circumstances that may preclude consultation in a specific situation. These circumstances should be explained.

In May 2020, OSMRE contacted coal operators on Indian Lands to obtain comments and estimates of their burden in complying with the regulations specific to 30 CFR 750 - Requirements for Surface Coal Mining and Reclamation Operations on Indian Lands. These companies are identified below and the specific information provided is outlined in Item 12. The current operator of Navajo Mine is the Navajo Transitional Energy Company (NTEC). NTEC is a wholly owned subsidiary of the Navajo Nation which was authorized by the Navajo Nation to purchase the Navajo Mine in 2013. Bisti Fuels Company, LLC, a subsidiary of the North American Coal Company, currently manages the operations consistent with applicable regulatory requirements under a mine management agreement on behalf of NTEC. Under a mine management agreement, Bisti Fuels Company has the responsibility of preparing permit applications and permit revisions pursuant to 30 CFR 750. The contact with NTEC coordinated with the operators from Bisti Fuels Company, to obtain the information. The name of the current operator and permit applicant on the Crow Indian Lands is Westmoreland Resources, Inc. Westmoreland Coal Company, with various partners, formed *Westmoreland Resources, Inc. - Absaloka Mine* to lease coal reserves from the Crow Tribe in the Montana area.

These entities provided estimates of burden based on recent permitting actions. The contact information is provided below.

Westmoreland Resources, Inc.
P.O. Box 449
Hardin, MT 59034

Navajo Transitional Energy Company
P.O. Box 958
Shiprock, Navajo Nation (New Mexico), 87420
Email - ntec@navajo-tec.com

Bisti Fuels Company, LLC
P.O. Box 3767
Farmington, NM 87499
Phone - 505-598-3284

On May 7, 2020, OSMRE published in the Federal Register (85 FR 27242) a notice requesting comments from the public regarding the need for the collection of information, the accuracy of the burden estimate, ways to enhance the information collection, and ways to minimize the burden on respondents. This notice gave the public 60 days in which to comment. However, no comments were received.

9. Explain any decision to provide any payment or gift to respondents, other than remuneration of contractors or grantees.

No payments or gifts are provided to respondents.

10. Describe any assurance of confidentiality provided to respondents and the basis for the assurance in statute, regulation, or agency policy.

Information obtained for the permit application and associated NEPA reviews include cultural and religious resources information. This information is considered confidential based on 18 CFR 1312.18 and multiple federal agency policy documents. Frequently site locations and information are kept inaccessible to the public in order to respect tribal cultures and prevent damages from potential vandals. OSMRE coordinates with the tribes on an as needed basis to determine the appropriate measures needed to obtain the information needed in order to respect their culture and need for confidentiality.

The operator typically requests that coal explorations and coal quality be kept confidential in accordance with 30 CFR 944.16(a) (59 FR 35255, 35258–9, July 11, 1994). These requirements for confidentiality regarding coal exploration and quality are

not unique to Part 750 and the effort for this burden is not covered in this information collection.

11. ***Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private. This justification should include the reasons why the agency considers the questions necessary, the specific uses to be made of the information, the explanation to be given to persons from whom the information is requested, and any steps to be taken to obtain their consent.***

Sensitive questions are not asked directly to or by an applicant. However, OSMRE does experience and accommodate any of the Indian tribe's sensitivity regarding religious and cultural beliefs. For example, there are some topics that are only to be discussed with men and not women. In addition, ceremonies, such as those associated with tribal law structure, culture, or religion, are not open to the public and are planned around in scheduling meetings.

12. ***Provide estimates of the hour burden of the collection of information. The statement should:***
 - * Indicate the number of respondents, frequency of response, annual hour burden, and an explanation of how the burden was estimated. Unless directed to do so, agencies should not conduct special surveys to obtain information on which to base hour burden estimates. Consultation with a sample (fewer than 10) of potential respondents is desirable. If the hour burden on respondents is expected to vary widely because of differences in activity, size, or complexity, show the range of estimated hour burden, and explain the reasons for the variance. Generally, estimates should not include burden hours for customary and usual business practices.***
 - * If this request for approval covers more than one form, provide separate hour burden estimates for each form and aggregate the hour burdens.***
 - * Provide estimates of annualized cost to respondents for the hour burdens for collections of information, identifying and using appropriate wage rate categories. The cost of contracting out or paying outside parties for information collection activities should not be included here. Instead, this cost should be included under "Annual Cost to Federal Government."***

Reporting and Reviewing Burden

a. Annual Respondent Burden:

The operators noted that their estimates vary based on scope and complexity on the two Indian Lands and the estimated hours are based on their most recent permit revisions. The effort for major revisions is substantially greater per revision than the minor permit revisions.

Respondents stated that they have not had any new permits since 2015 and do not anticipate any in the near future with slumping market demand of coal. OSMRE reviewed

the estimates from the operators with consideration given to the varying scope of the mines and resulting scope of the efforts involved.

OSMRE receives an average of 2 significant revisions and 28 minor permit modifications a year that are subject to the additional information requirements of 30 CFR Part 750. Correspondence with respondents was with OSMRE's Western Region Indian Programs Branch and the Casper Field Office. The estimates for each permit type are as follows:

- Significant Revision/Modification – 731 hours x 2 revisions = 1,462 hours per year
- Minor Revision/Modification – 143 hours x 28 revisions = 4,006 hours per year

Using these estimates, the total burden per year is 5,468 hours.

b. Estimated Wage Cost to Respondents:

OSMRE estimates hourly wage cost for environmental scientist and mining engineers at \$37.47 and \$46.63 respectively based on the Bureau of Labor Statistics (BLS) estimates found at: <https://www.bls.gov/oes/current/oes192041.htm> and at <https://www.bls.gov/oes/current/oes172151.htm>. Hourly wage cost for administrative and clerical staff are estimated at \$19.73 based on BLS estimates found at <https://www.bls.gov/oes/current/oes430000.htm>.

OSMRE includes an industry benefit cost calculated using 1.4 multiplier times respondent wages, as determined by BLS news release dated June 18, 2020, USDL-20-1232 for EMPLOYER COSTS FOR EMPLOYEE COMPENSATION-MARCH 2020 found at <http://www.bls.gov/news.release/pdf/ecec.pdf>. Thus, the respondent's hourly cost for each staff type respectively would be \$52.46 (37.47 x 1.4), \$65.28(\$46.63 x1.4), and \$27.62(\$19.73 x 1.4).

The following tables provide the estimates for significant and minor permit revisions/modifications:

Significant Permit Modification/Revision (Part 750)- Industry Burden and Wage Cost

Position	Hours per Response	Annual Response	Total Burden Hours	Staff Wage Cost Per Hour	Total Staff Wage Cost
Environmental Scientists	325	2	600	\$52.46	\$38,098
Mining Engineer	400	2	800	\$65.28	\$52,226
Administrative/Clerical	6	2	12	\$27.62	\$331
Total	731		1,462		\$86,655

Minor Permit Modification/Revision (Part 750) - Industry Burden and Wage Cost

Position	Hours per Response	Annual Response	Total Burden Hours	Staff Wage Cost Per Hour	Total Staff Wage Cost
Environmental Scientists	68	28	1,900	\$52.46	\$99,670
Staff Engineering	73	28	2,050	\$65.28	\$133,828
Administrative/Clerical	2	28	56	\$27.62	\$1,547
Total	143		4,006		\$235,045

13. Provide an estimate of the total annual non-hour cost burden to respondents or recordkeepers resulting from the collection of information. (Do not include the cost of any hour burden already reflected in item 12.)

*** The cost estimate should be split into two components: (a) a total capital and start-up cost component (annualized over its expected useful life) and (b) a total operation and maintenance and purchase of services component. The estimates should take into account costs associated with generating, maintaining, and disclosing or providing the information (including filing fees paid for form processing). Include descriptions of methods used to estimate major cost factors including system and technology acquisition, expected useful life of capital equipment, the discount rate(s), and the time period over which costs will be incurred. Capital and start-up costs include, among other items, preparations for collecting information such as purchasing computers and software; monitoring, sampling, drilling and testing equipment; and record storage facilities.**

*** If cost estimates are expected to vary widely, agencies should present ranges of cost burdens and explain the reasons for the variance. The cost of purchasing or contracting out information collection services should be a part of this cost burden estimate. In developing cost burden estimates, agencies may consult with a sample of respondents (fewer than 10), utilize the 60-day pre-OMB submission public comment process and use existing economic or regulatory impact analysis associated with the rulemaking containing the information collection, as appropriate.**

*** Generally, estimates should not include purchases of equipment or services, or portions thereof, made: (1) prior to October 1, 1995, (2) to achieve regulatory compliance with requirements not associated with the information collection, (3) for reasons other than to provide information or keep records for the government, or (4) as part of customary and usual business or private practices.**

Total Annual Cost Burden.

- a. Capital and Start-up Cost: A base processing fee of \$3,600 is assessed to each new permit application on Indian lands. An additional processing fee is assessed based on the number of acres to be disturbed which increases the cost of processing each application. The total processing fee is approximately \$34,000 annually.
- b. Operations and Maintenance: There are no operations and maintenance requirements associated with this information collection once submitted beyond customary business practices.

- 14. *Provide estimates of annualized cost to the Federal government. Also, provide a description of the method used to estimate cost, which should include quantification of hours, operational expenses (such as equipment, overhead, printing, and support staff), and any other expense that would not have been incurred without this collection of information.***

Estimated Cost to the Federal Government.

Based on recent compilations of effort, OSMRE estimates that approximately 1,500 hours per year are spent reviewing significant revisions and minor revisions for the information specific to Indian lands outlined in Part 750. A combined average annual salary was calculated as \$79.26 per hour (49.54 x 1.6 benefit multiplier) based the GS-13, step 5 federal wage level found at https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/pdf/2020/RUS_h.pdf. Using this wage, OSMRE estimates the annual cost of reviewing associated with Part 750 to be \$118,890 (1,500 hours/year x \$79.26 per hour).

- 15. *Explain the reasons for any program changes or adjustments in hour or cost burden.***

This information collection request re-estimates the burden hours for respondents to prepare permit revisions on Indian lands recognizing that the majority of revisions (25 of 28) are minor revisions on the Navajo Indian Lands, where permit revisions require less than 150 hours per revision to process. The prior information collection requests used a simple average of two widely different minor revisions estimates each from the two Indian Lands. In doing so, the total hours burden associated with minor permit revisions was overstated (590 hours x 25 revisions = 14,750 hours). This information collection request corrects that error reducing the burden by 10,409 hours.

This request increases the non-wage cost burden based on updated information from the applicants identified in item 8.

16,427 Hours currently approved by OMB
- 10,409 Hours due to a correction as an adjustment
5,468 Hours requested

- 16. For collections of information whose results will be published, outline plans for tabulation and publication. Address any complex analytical techniques that will be used. Provide the time schedule for the entire project, including beginning and ending dates of the collection of information, completion of report, publication dates, and other actions.**

OSMRE has no plans to publish the information collection collected under Part 750.

- 17. If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons that display would be inappropriate.**

OSMRE does not seek a waiver from the requirement to display the expiration date of the OMB approval of the information collection for 30 CFR Part 750.

- 18. Explain each exception to the topics of the certification statement identified in "Certification for Paperwork Reduction Act Submissions."**

There are no exceptions to OMB's *Certification for Paperwork Reduction Act Submissions*.