

**DEPARTMENT OF THE INTERIOR****Office of Surface Mining Reclamation and Enforcement****Black Mesa and Kayenta Mines, Life-of-Mine Plans and Water Supply Project, Coconino, Navajo, and Mohave Counties, AZ, and Clark County, NV**

**AGENCY:** Office of Surface Mining Reclamation and Enforcement, Interior.

**ACTION:** Notice of intent to prepare an environmental impact statement and to hold public scoping meetings.

**SUMMARY:** Pursuant to the National Environmental Policy Act of 1969 (NEPA), the Office of Surface Mining Reclamation and Enforcement (OSM), as the lead Federal agency, plans to prepare an environmental impact statement (EIS) to analyze the effects of Peabody Western Coal Company's proposed operation and reclamation plans for the Black Mesa and Kayenta coal mines; the Coal Slurry Preparation Plant at the Black Mesa Mine; the reconstruction of the 273-mile long Coal Slurry Pipeline across northern Arizona from the Coal Slurry Preparation Plant to the Mohave Generating Station (electrical) in Laughlin, Nevada; the construction and operation of water wells in the Coconino aquifer (C-aquifer) northwest of Winslow, Arizona; and construction and operation of a water supply pipeline running about 120 miles across the Navajo and Hopi Reservations from the wells to the Coal Slurry Preparation Plant.

The Hopi Tribe, Navajo Nation, Bureau of Indian Affairs (BIA), Bureau of Land Management (BLM), Bureau of Reclamation (BOR), U.S. Environmental Protection Agency (USEPA); U.S. Department of Agriculture Forest Service (USFS), County of Mohave, Arizona; and City of Kingman, Arizona, will cooperate with OSM in the preparation of the EIS.

OSM solicits public comments on the scope of the EIS and significant issues that should be addressed in the EIS.

At <http://www.wrcc.osmre.gov/bmk-eis>, interested persons may view information about the proposed projects; the comment period during which persons may submit comments; the locations, dates, and times of public scoping meetings; and the procedures that OSM will follow at the scoping meetings.

**DATES:** Written comments must be received by OSM by 4 p.m. on January 21, 2005, to ensure consideration in the preparation of the draft EIS.

Public scoping meetings will be held in:

- Saint Michaels, Arizona, on Monday, January 3, 2005, from 6 p.m. to 10 p.m. at the Saint Michaels Chapter House on Indian Route 12 about 2 miles south and west of Window Rock, Arizona.

- Forest Lake, Arizona, on Tuesday, January 4, 2005, from 12 p.m. to 4 p.m. at the Forest Lake Chapter House on Navajo Route 41 about 20 miles north of Pinon, Arizona.

- Kayenta, Arizona, on Tuesday, January 4, 2005, from 6 p.m. to 10 p.m. at the Kayenta Chapter House on Highway 163 at the intersection with Navajo Route 6485, Kayenta, Arizona.

- Kykotsmobi, Arizona, on Wednesday, January 5, 2005, from 6 p.m. to 10 p.m. at the Community Center, Kykotsmobi, Arizona.

- Leupp, Arizona, on Thursday, January 6, 2005, from 12 p.m. to 4 p.m. at the Leupp Chapter House on Navajo Route 15, Leupp, Arizona.

- Kingman, Arizona, Wednesday, January 12, 2005, from 12 p.m. to 4 p.m. at the Mohave County Board Room, Negus Building, 809 E. Beale Street, Kingman, Arizona.

- Laughlin, Nevada, on Wednesday, January 12, 2005, from 6 p.m. to 10 p.m. at the Laughlin Town Hall, 101 Civic Way, Laughlin, Nevada.

- Flagstaff, Arizona, on Thursday, January 13, 2005, from 6 p.m. to 10 p.m. at the Coconino County Board Room, 219 E. Cherry, Flagstaff, Arizona.

**ADDRESSES:** Comments may be submitted in writing or by e-mail. At the top of your letter or in the subject line of your e-mail message, please indicate that the comments are "BMK EIS Comments."

- E-mail comments should be sent to: [BMK-EIS@osmre.gov](mailto:BMK-EIS@osmre.gov).

- Written comments sent by first-class or priority U.S. Postal Service should be mailed to: Richard Holbrook, Chief, Southwest Branch, OSM WRCC, P.O. Box 46667, Denver, Colorado 80201-6667.

- Comments delivered by U.S. Postal Service Express Mail or by courier service should be sent to: Richard Holbrook, Chief, Southwest Branch, OSM WRCC, 1999 Broadway, Suite 3320, Denver, Colorado 80202-5733.

**FOR FURTHER INFORMATION CONTACT:** Richard Holbrook, Chief, Southwest Branch, Program Support Division, OSM Western Regional Coordinating Center, by telephone at (303) 844-1400, extension 1491, or by e-mail at [BMK-EIS@osmre.gov](mailto:BMK-EIS@osmre.gov).

**SUPPLEMENTARY INFORMATION:**

I. Background on the Black Mesa and

Kayenta Mines

II. Proposals for the Mines, Coal Slurry Pipeline, and C-Aquifer Water Supply System

III. Decisions to Be Made by OSM and the Cooperating Agencies

IV. Public Comment Procedures

**I. Background on the Black Mesa and Kayenta Mines**

The contiguous Black Mesa and Kayenta surface coal mines have operated since 1970 and 1973, respectively. Peabody Western Coal Company operates the mines on three leaseholds comprising about 65,000 acres within the boundaries of the Navajo and Hopi Reservations. The mines are located on the Black Mesa about 125 miles northeast of Flagstaff, Arizona, and 10 miles southwest of Kayenta, Arizona. The Kayenta Mine produces about 8.5 million tons of coal per year, all of which are delivered to the Navajo Generating Station near Page, Arizona, by electric railroad. Currently, the Kayenta Mine is to provide coal to the Navajo Generating Station through 2011. The Black Mesa Mine produces about 4.8 million tons of coal annually, all of which are delivered to the Mohave Generating Station at Laughlin, Nevada, through the 273-mile long Coal Slurry Pipeline originating at the Black Mesa Coal Slurry Preparation Plant. Currently, the Black Mesa Mine is to provide coal to the Mohave Generating Station through 2005.

Black Mesa Pipeline, Inc., operates the Coal Slurry Preparation Plant and the Coal Slurry Pipeline that transports coal from the Black Mesa Mine to the Mohave Generating Station. Currently, about 3,100 acre-feet of water from Peabody Western Coal Company's wells in the Navajo aquifer (N-aquifer) are used annually to slurry the coal.

**II. Proposals for the Mines, Coal Slurry Pipeline, and C-Aquifer Water Supply System**

In the past, public concern about the mines and related projects has centered on use of the N-aquifer water. Under the proposals, most of the water used by the Black Mesa and Kayenta Mines and Coal Slurry Pipeline would come from the C-aquifer rather than the N-aquifer. Peabody Western Coal Company would continue to pump some water from wells in the N-aquifer (about 500 acre-feet per year) for domestic uses at the mines, providing potable water for use by the local residents in the vicinity of the mines, and to ensure that the wells are functional in the event that they are needed for mining-related purposes or for the Coal Slurry Pipeline if there is a temporary or emergency disruption in

water delivery from the C-aquifer Water Supply System.

Peabody Western Coal Company's life-of-mine revision proposes that the Black Mesa and Kayenta Mines would continue mining through at least 2026. Mining methods would not change at either mine. The annual coal production rate at the Black Mesa Mine would increase from 4.8 million tons to 6.2 million tons and would remain unchanged at the Kayenta Mine. A coal wash plant would be constructed at the Black Mesa Mine to remove waste from the coal. The plant would extract about 0.8 million tons of waste from the coal each year. About 500 acre-feet of water would be used each year for washing the coal. Waste would be dewatered and disposed in the mining pits. The wastewater would be recycled through the wash plant. About 5.4 million tons of washed coal produced each year would be crushed and slurried with C-aquifer water at the Coal Slurry Preparation Plant and would be shipped to the Mohave Generating Station through the Coal Slurry Pipeline. Because of the increased coal production, the amount of water needed to slurry coal from the mine would increase from about 3,100 to 3,700 acre-feet per year. The Black Mesa Mine would use an additional 1,300 acre-feet of water for mine-related and domestic purposes (including coal washing). The Kayenta Mine would use an additional 800 acre-feet of water for mine-related and domestic purposes.

Black Mesa Pipeline, Inc., would replace about 95 percent of the 273-mile long Coal Slurry Pipeline because the existing pipeline is reaching its design life. The pipeline passes through the Navajo and Hopi Reservations; through Federal lands administered by the Bureau of Land Management and the U.S. Forest Service (Kaibab National Forest); through lands owned by the State of Arizona, the County of Mohave, Arizona, and the City of Kingman, Arizona; and through privately-owned lands. Pipeline reconstruction would involve decommissioning the existing buried pipeline (mostly leaving it in place) and burying a new coal slurry pipeline adjacent to the existing pipeline. Additional right-of-way width (about 15 feet) would be needed for construction activities along much of the 50-foot wide right-of-way. The new pipeline would pass under the Colorado River at Laughlin, Nevada and under the Little Colorado River east of Cameron, Arizona. The C-aquifer Water Supply System would provide an alternative water source to N-aquifer water currently used to slurry coal at the Black Mesa Preparation Plant and for mine-

related uses at the Black Mesa Mine and Kayenta Mine. The system would be capable of providing 6,000 acre-feet per year for coal slurry and mine-related uses. Development of this water supply system would provide an opportunity to make water available to the Navajo Nation and Hopi Tribe for municipal and industrial uses by expanding the system. In anticipation of the potential future use of the system for tribal purposes, OSM anticipates that it would evaluate an alternative that provides an expanded delivery system and well configuration design for up to an additional 5,600 acre-feet per year (*i.e.*, up to a total capacity of 11,600 acre-feet per year). The additional capacity would allow future spur pipelines to be constructed to Navajo and Hopi communities.

Major components of the C-aquifer Water Supply System would include:

- A well field in the southwest part of the Navajo Reservation (southwest of Leupp, Arizona) and, possibly, a well field on Hopi-owned lands immediately south of the Navajo Reservation well field, consisting of approximately 20 production wells (for the 11,600 acre-foot maximum capacity) and associated collector pipelines.
- An approximately 120-mile long main pipeline from the well field(s) north-northeast to the Black Mesa Mine following, to the extent possible, existing roads.
- Associated facilities (*e.g.*, an estimated five pump stations, access roads and electrical transmission lines).

### III. Decisions To Be Made by OSM and the Cooperating Agencies

Under applicable laws, OSM and the cooperators would need to make several decisions on whether to approve various aspects of the Black Mesa and Kayenta Mines life-of-mine revision, the Coal Slurry Preparation Plant, the Coal Slurry Pipeline, and the C-aquifer Water Supply System. OSM has approval authority for the permit revision application for the Kayenta and Black Mesa Mines and the permit application for the Coal Slurry Preparation Plant. BLM has approval authority for the mining plan for the Kayenta and Black Mesa Mines. BIA, Navajo Nation, and Hopi Tribe would have various realty actions to undertake such as granting of rights-of-way, as well as approval authorities and responsibilities for several other components of the project, such as C-aquifer water usage. BLM, USFS, Mohave County, and City of Kingman also would have realty actions to undertake such as granting of rights-of-way. USEPA has a number of responsibilities under the Clean Water

Act including section 401 certification authority, which is a prerequisite to section 404 permit authorization. Under section 402, USEPA issues and enforces National Pollutant Discharge Elimination System (NPDES) permits. USEPA also is responsible for implementing the Clean Air Act requirements on the Hopi reservation and for implementing most Clean Air Act requirements on the Navajo reservation. USEPA recently delegated to the Navajo Environmental Protection Agency the Clean Air Act Part 71 Operating Permit Program for sources located on Navajo land. Some aspects of the proposed projects will require a Department of the Army permit from the U.S. Army Corps of Engineers under section 404 of the Clean Water Act and section 10 of the River and Harbor Act of 1899.

The EIS would evaluate the environmental effects of the proposed project and a variety of alternatives. Alternatives that may be evaluated include alternative alignments for the Coal Slurry Pipeline and the C-aquifer water supply pipeline, amounts of water to be withdrawn from the C-aquifer for tribal municipal and industrial uses as well as mine related and coal slurry uses, and a variety of approval and disapproval options related to the various components of the project. Other alternatives may be evaluated based on the comments received during the scoping comment period.

### IV. Public Comment Procedures

In accordance with the Council on Environmental Quality's regulations for implementing NEPA, 40 CFR parts 1500 through 1508, OSM solicits public comments on the scope of the EIS and significant issues that it should address in the EIS.

Written comments, including email comments, should be sent to OSM at the addresses given in the ADDRESSES section of this notice. Comments should be specific and pertain only to the issues relating to the proposals. OSM will include all comments in the administrative record.

If you would like to be placed on the mailing list to receive future information, please contact the person listed in the section, **FOR FURTHER INFORMATION CONTACT**, above.

### Availability of Comments

OSM will make comments, including names and addresses of respondents, available for public review during normal business hours. OSM will not consider anonymous comments. If individual respondents request confidentiality, OSM will honor their

requests to the extent allowable by law. Individual respondents who wish to withhold their name or address (except for the city or town) from public review must state this prominently at the beginning of their comments and must submit their comments by regular mail. All submissions from organizations or businesses and from individuals identifying themselves as representatives or officials of organizations or businesses will be available for public review in their entirety.

### Scoping Meetings

If you wish to speak at a scoping meeting, you should sign up to speak when you arrive at the meeting. OSM will call upon persons to speak in the order of the sign-in. If you are in the audience and have not signed up to speak, you will be allowed to speak after those who have signed up. For persons who wish not to speak, OSM also will accept written comments at the meeting.

A transcriber will be present at the meetings to record comments. To assist the transcriber and ensure an accurate record, OSM requests that each speaker provide a written copy of his or her comments, if possible. OSM will end the meeting after everyone who wishes to speak has been heard. If a large number of people wish to speak at a meeting, OSM may limit the length of time each person has to speak in order to give everyone an opportunity to speak.

Hopi and Navajo interpreters will be present at meetings on the Hopi and Navajo Reservations.

If you are disabled or need special accommodations to attend one of the meetings, contact the person under **FOR FURTHER INFORMATION CONTACT** at least one week before the meeting.

Dated: November 17, 2004.

**Allen D. Klein,**

*Regional Director, Western Regional Coordinating Center.*

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## INTERNATIONAL TRADE COMMISSION

[Inv. No. 337-TA-508]

### Certain Absorbent Garments; Notice of a Commission Determination Not To Review an Initial Determination Terminating the Investigation With Respect to all Respondents on the Basis of a Consent Order; Issuance of Consent Order; Termination of Investigation

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination ("ID") of the presiding administrative law judge ("ALJ") granting the joint motion of the complainants and four respondents, Grupo ABS Internacional, S.A. de C.V., Absormex S.A. de C.V., and ABS Bienes de Capital S.A. de C.V. all of Mexico, and Absormex USA, Inc., of Laredo, Texas, to terminate the above-captioned investigation with respect to those respondents on the basis of a consent order. The investigation is terminated in its entirety.

**FOR FURTHER INFORMATION CONTACT:** Michael K. Haldenstein, Esq., telephone 202-205-3041, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Copies of all nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202-205-2000. General information concerning the Commission may also be obtained by accessing its Internet server (<http://www.usitc.gov>). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS-ON-LINE) at <http://edis.usitc.gov>. Hearing-impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal on 202-205-1810.

**SUPPLEMENTARY INFORMATION:** The Commission instituted this investigation on May 2, 2004, based on a complaint filed by Tyco Healthcare Retail Group, Inc. and Paragon Trade Brands, Inc. A supplement to the complaint was filed on April 26, 2004. The complaint, as supplemented, alleges violations of section 337 in the importation into the United States, the sale for importation,

and the sale within the United States after importation of certain absorbent garments by reason of infringement of claims 1, 9, 12-13 of U.S. Patent No. 5,275,590, claims 1-2 of U.S. Patent No. 5,403,301, and claims 8-9 of U.S. Patent No. 4,892,528. The complaint further alleges that there exists an industry in the United States as required by subsection (a)(2) of section 337. The complaint named three respondents: Grupo ABS Internacional, S.A. de C.V. and Absormex S.A. de C.V. of Mexico, and Absormex USA, Inc. of Laredo Texas. ABS Bienes de Capital S.A. de C.V. was added as a respondent on July 15, 2004.

On October 12, 2004, the two complainants and the four respondents filed a joint motion to terminate the investigation as to all four respondents. The joint motion was based on a proposed consent order, filed pursuant to a consent order stipulation and Memorandum of Understanding (MOU) between the parties. The Commission Investigative Attorney ("IA") filed a response in support of the motion on October 22, 2004. The ALJ denied the joint motion on October 27, 2004 because it appeared to him that the parties may have intended to have the Commission enforce the MOU. The parties then moved for reconsideration of the denial of the joint motion on October 29, 2004.

The ALJ issued the subject ID on November 2, 2004, granting the motion for reconsideration and terminating the investigation as to all four respondents on the basis of a consent order. The ALJ indicates in the ID that he is satisfied that the parties made clear in their motion for reconsideration that they do not intend for the Commission to enforce the MOU. The ID also indicates that the consent order stipulation satisfies the provisions of Commission rule 210.21(c)(3)(i). No petitions for review of the subject ID were filed.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and Commission rule 210.42, 19 CFR 210.42.

Issued: November 24, 2004.

By order of the Commission.

**Marilyn R. Abbott,**

*Secretary to the Commission.*

[FR Doc. 04-26485 Filed 11-30-04; 8:45 am]

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