

*Border Power Plant Working Group v. U.S. Department of Energy*, [260 F. Supp. 2d 997 \(S.D. Cal. 2003\)](#).

Location: Southern California and Mexico

Applicable Law: [National Environmental Policy Act](#) (NEPA) ([42 U.S.C. §§ 4321 et seq.](#))

Where Law Applies: Federal agencies funding

Holding: NEPA requires assessment of effects in the United States of power plants built in Mexico.

*Overview:*

Baja California Power (BCP) and Sempra Energy Resources (SER) applied to the Department of Energy (DOE) for Presidential Permits and Federal rights-of-way to build electric transmission lines within the U.S. and across the U.S.-Mexico border. The transmission lines were to connect new power plants in Mexico with the power grid of Southern California. The new power plants being built in Mexico were either dedicated completely or partially to exporting energy to Southern California. The DOE undertook environmental assessments (EA) of the plans and issued a Finding of No Significant Impact (FONSI). The District Court, however, found that the EAs were inadequate because they failed to consider the emissions of carbon dioxide from the new power plants being built in Mexico.

Without the transmission lines, it was likely that the new power plants in Mexico would not be constructed. Therefore, the court found that it was necessary to include the operation and emissions of the new power plants in the scope of the NEPA review because they were the effects of the proposed Federal action: licensing of the transmission lines. The effects must be causally linked to the proposed Federal action in order for NEPA to require consideration of those effects in an EA or an EIS. Here the effects were linked because they were caused by the operation of new power plants which would not be built if not for the transmission line licensing approval.

NEPA requires Federal agencies to prepare environmental impact statements (EIS) for all “major Federal actions significantly affecting the quality of the human environment.” 42 U.S.C. § 4332(2)(C). An agency may prepare an EA first to determine whether a full EIS is needed or whether a FONSI should be issued. The EA must consider environmental impacts, including reasonably foreseeable actions with potentially cumulative impacts. [Blue Mountains Biodiversity Project v. Blackwood](#), 161 F.3d 1208 (2002). Here, the Court found that the failure of the DOE EA to disclose or consider the effects of carbon dioxide and ammonia emissions from the power plants as well as the cumulative impact on water resources in the area was contrary to its obligations under NEPA.