

Comment Resolution Table

Final Environmental Data Gap Report for the Northeast Church Rock Site Removal Action and the United Nuclear Corporation Site Remedial Action, McKinley County, New Mexico, USA

Comment No.	Page No.	Line No.	Agency	Comment	Resolution	Change To Document?
1	Gen	Gen	EPA 9	There are several different types of Data Gaps identified in this report: a. Design Information Gap - One type of data gap is information that will come from the design process (e.g. the Stormwater Pollution Prevention Plan) or identification of the haul road locations). This information is a gap because of where we are in the design process, but the information will become available as part of that process. It is helpful to keep track of these information gaps and when the information will be available to coordinate the environmental review with the design review, but these don't require an effort separate from the ongoing design process. b. Environmental Data Gap – This type of data gap is environmental information that must be collected such as biological or cultural surveys. These are data collection efforts that are separate and parallel with the design process. Of course, the information collected may also inform the design process so timing is also important (avoiding culturally sensitive areas, etc.). c. Consultation Gap – This is information that is available, but requires consultation with other agencies such as McKinley County, Navajo government agencies, SHPO, THPO, FWS, etc. This may be the most uncertain type of gap because these consultations may identify new information that is important to the project design or schedule that wasn't anticipated. (For example, identification of new sensitive species.)	Useful distinction for data gaps to be considered.	No change
2	ES-1	14	EPA 9	Please add a reference date for the AOC.	The year "2015" has been added as the reference date for the AOC.	Change
3	1	25	EPA 9	Final reference to the Work Plan will need to be updated on Page 30: line 27 once the Work Plan deliverable is approved.	The reference will be updated if the Design Work Plan is approved prior to 11/23/15.	No change
4	3	15	EPA 9	Please add the MOU reference.	The reference has been added.	Change
5	4	14	EPA 9	Consider rock sources and possible work on the jetty or other areas identified in paragraph 35c of the SOW when identifying additional areas of disturbance.	The jetty and other areas identified in paragraph 35c of the SOW would be considered "additional areas of disturbance" that have not yet been identified. Once the footprint of such disturbance is defined, then an evaluation of gaps in environmental data will be made as appropriate.	No change
6	6	6	EPA 9	While there may be traffic counts from NM and Navajo DOT on major roads, it seems that one of the main traffic routes that would be impacted by the project is the traffic from the local communities along Pipeline Canyon Road and Red Water Pond Road. Are traffic counts for these roads available or necessary? I understand that when Pipeline Canyon Road is graded and in good condition, it can become a thoroughfare for the people in Standing Rock Chapter who are going to Gallup, NM. Therefore, the traffic may fluctuate over the project construction period.	UNC's review of traffic data did not reveal specific traffic counts for either Pipeline Canyon Road or Red Water Pond Road. As a result, the first bullet under "Gaps" was modified to remove "traffic counts" from the list of information where no gaps existed. In addition, the following language was added after the last sentence in the first paragraph of Section 2.2: <i>"However, counts for vehicle traffic on Pipeline Canyon Road and Red Water Pond Road are not available and may be used for evaluating impacts of the proposed action and reasonable alternatives on transportation in the Project Area."</i> In addition, the following text was added as the second bullet in Section 2.2: <i>"A gap exists with regard to counts of vehicle traffic on Pipeline Canyon Road and Red Water Pond Road."</i>	Change
7	12	20-22	EPA 9	The 2013 biological survey considered invasive species and migratory birds, and all new surveys should also include both.	The methods for collecting biological data will be described in the Data Collection Work Plan, which will be a separate deliverable from this Data Gap Report.	No change

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8	17	34	EPA 9	Add "(TCP)" after traditional cultural places	The term "Traditional Cultural Property" was assigned the acronym "TCP" earlier in this section. To address this comment, "traditional cultural places" was replaced with the acronym "TCP."	Change
9	18	29	EPA 9	Please replace "recreational" with "cultural use."	The term "recreational" was replaced with "cultural use"	Change
10	19	8 & 9	EPA 9	Will the 3-D visual model of the repository be updated to reflect the layout chosen to carry through design?	Yes. The 3-D visual model of the repository will be updated to reflect the approved design.	No change
11	19	22	EPA 9	McKinley County provides education and school bus service to many of the children living in this project area.	The comment has been noted.	No change
12	24	32	EPA 9	This sentence needs restructuring.	The word "of" has been added in between "as part" and "preparing" on line 32.	Change
13	Fig. 2, 3 & 5		EPA 9	Should the South Cell of the Tailings Disposal Area be included as an "Area of Proposed Ground Disturbance" for this project?	We have removed the orange-colored polygons that represent the boundary of the evaporation ponds and the South Cell of the Tailings Disposal Area from the "Area of Proposed Ground Disturbance." This change was made to Figures 2, 3, and 5.	Change
14	Gen	Gen	DOE	The purpose of this report is to ... "determine if existing data and information for the Northeast Church Rock (NECR) Mine Site and the UNC Mill Site are adequate for fulfilling Applicable or Relevant and Appropriate Requirements (ARARs) for cleanup activities and for preparing an Environmental Report..." <u>Comment</u> - It seems that identifying ARARs that have not been met because the design is not complete is either outside the scope of the report or should be identified as something other than a data gap. (e.g., identifying on page 8 that a Storm Water Management Plan to be completed during the 30% preliminary design submittal is labeled a data gap, although it appears all of the data is available to develop one.)	We understand the commenter's concern for distinguishing between a gap in environmental data and the need to complete future work. It is important to refer to the 2015 Design AOC SOW, where it specifically states that " <i>Respondents shall evaluate... information to identify any gaps in the data needed to support Respondent's compliance with ARARs and to support Respondent's preparation of an Environmental Report... .</i> " In the commenter's example of a Storm Water Management Plan (SWMP), the data required for the Respondent to prepare a SWMP to comply with an ARAR are incomplete. Without a final, accepted design, one would be making the assumption that all data are available to develop the SWMP. To avoid such an assumption, we have left this and other similar examples as a gap.	No change

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15	2 & 3		DOE	<p>1.1 Scope of Review, pages 2 and 3- "The license transfer and decommissioning of the UNC Mill Site and the long-term maintenance and surveillance [LTS&M] that would follow the Proposed Action are not considered part of this review." <u>Comment</u>- The license transfer and LTS&M are a crucial part of the design and should not be separated from the design process, including the data gap report. Satisfying the Uranium Mill Tailings Radiation Control Act requirements, as discussed in Section 2.13 Waste Management is a critical part of the license transfer for the UMTRCA portion. While technically true that the CERCLA portion need not be specifically adherent to UMTRCA, it can indeed alter the existing license conditions and affect the future transfer. NRC and EPA regulations require a design to be effective for 1000 years, to the extent reasonably achievable, (and in any case for at least 200 years) and that the final design require little to no maintenance to maintain the remedy. In addition, all future environmental actions are required to include addressing climate change resiliency in accordance with Executive Order 13653, including addressing the potential for increased seismic activity, more severe and frequent wildfires, and heavier, longer downpours. These are all crucial elements to the long-term stability of the remedy</p>	<p>"Long-term maintenance and surveillance" was changed to "long-term surveillance and maintenance." We agree that LTS&M activities and processes under UMTRCA and Operations and Maintenance activities under CERCLA are both important and necessary factors as part of developing an appropriate design solution for the remedy selected by the EPA in the 2013 Record of Decision and 2011 Action Memo. UNC agrees that the design and construction of the remedy should eliminate foreseeable maintenance problems and looks forward to working closely with the EPA, NRC, and DOE, as well as other agencies, as part of the design process to meet the objectives and responsibilities under the relevant, regulatory authorities to provide long-term protection at the UNC Mill Site. As part of its responsibilities for standard review plan sections described in 10 CFR Part 40 Appendix A, UNC expects the NRC to follow its review procedures and adopt acceptance criteria for all areas of review pertinent to each section. Although there may be shared objectives between each process for avoiding or minimizing long-term active maintenance, UNC expects the NRC to follow its process for review of the design and the long-term surveillance plan. UNC does expect the NRC to integrate data and tools relevant to climate issues into their decision making. As a result, the following language has been added to Section 2.6.1: <i>"In response to the President's Climate Action Plan and Executive Order to help the nation prepare for climate-related changes and impacts, the U.S. Climate Resilience toolkit serves as a web-based portal for assisting agencies to identify, develop, and integrate relevant tools and data in their decision-making process (NOAA, 2015d)."</i></p>	Change
16	4		DOE	<p>Additional areas of disturbance, such as a new haul road or staging areas, have not yet been identified..." <u>Comment</u>- it appears that the proposed areas of disturbance as shown in Figure 2 is based on Removal Action Level (RAL) boundaries established from gamma and downhole surveys. These boundaries are approximate. DOE experience shows that these boundaries are likely to change; consequently, we suggest an additional buffer be established around the RAL for surveying cultural resources, vegetation, etc. In addition, based on past interim actions and knowledge of the site, we believe UNC and its consultants can reasonably establish initial construction staging areas and other potential areas of disturbance at this stage of the design process.</p>	<p>Survey methods, including boundaries and associated buffers, will be described in detail as part of the Environmental Data Collection Work Plan.</p>	No change

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17	5		DOE	<p>“Mineral resources and mineral rights of the Project Area are well-known and documented because of the previous mine permitting and licensing efforts.” Comment-Ownership of mineral rights is normally one of the most difficult issues encountered by licensees in termination of a Title II license and transfer of a site to DOE. When the UMTRCA site portion is transferred to DOE, will mineral rights remain with UNC? Can these rights be sold? If necessary, can DOE prohibit drilling beneath and or around the existing disposal cell via Institutional Controls or Land use Controls? It would appear that the CERCLA cell would be of equally valid concern. The data gap discussion should ensure that existing documentation will assist UNC in answering these questions.</p>	<p>As stated, there is sufficient, existing information regarding mineral ownership for UNC to comply with ARARs and to prepare and Environmental Report. The commentor raises good questions on property title issues, each of which are not within the scope of this report, which focuses on environmental data gaps.</p>	No change
18	6		DOE	<p>Transportation: The entire discussion summarizes transportation route issues. Comment-Might be easier to have the discussion in paragraph 2.2 or 2.13 Waste Management to identify how the necessary characterization information for the PTW will be gained. The information is needed so that the hazmat, shipping and packaging requirements of 49CFR Parts 170 through 180 can be met.</p>	<p>This change was considered but not made. There is sufficient information on the characterization of the PTW included in the Pre-Design Studies report (MWH, 2014b).</p>	No change
19	7	25-28	DOE	<p>“However, a deterministic seismic hazard analysis to be performed as part of the design process to estimate the peak ground acceleration at the UNC Mill Site (MWH, 2015) currently creates a gap for one criterion of the Environmental Report.” Comment- The calculation was previously performed in the original mill site reclamation plan “Technical Evaluation Report, September 10, 1997, Docket No. 40-8907, License No. SUA-1473, United Nuclear Corporation (UNC), Church Rock Mill and Tailings Site” and the peak ground acceleration data is available for the design of the new disposal cell. What will this new calculation include different than the older one?</p>	<p>After reviewing the referenced <i>Technical Evaluation Report</i>, we do not anticipate that a new deterministic seismic hazard analysis will result in a significant change to the peak ground acceleration calculated for the site in the referenced document. The calculation included in “Technical Evaluation Report, September 10, 1997, Docket No. 40-8907, License No. SUA-1473, United Nuclear Corporation (UNC), Church Rock Mill and Tailings Site” will be used for the peak ground acceleration and the seismic design. The text has been updated to reference this report (NRC, 1997a) as the source for the calculation, and the second bullet in Section 2.3 regarding a gap in seismicity data has been removed. In addition, NRC (1997a) has been added to Appendix A as a data source for NUREG-1748 Chapter 6.3.3.</p>	Change
20	8		DOE	<p>“...it may be necessary to further characterize the borrow area soils to examine calcium carbonate concentrations and their potential impacts on vegetation establishment.” Comment-The data gap should include the need to provide the edaphic properties of borrow material to be used for the final cover soils. The edaphic properties need to be collated with the plant species used in revegetation. (Edaphic properties were supposed to be collected as part of the 2013 Predesign Sampling Plans but have yet to be presented to the design group.)</p>	<p>We have revised the data gap to include the “<i>evaluation of physical and chemical properties of the borrow area soils to be used for the final cover.</i>” A work plan describing the approach for collecting soil samples, including proposed analyses for physical and chemical properties, will be prepared and submitted for agency review as a separate document from this Data Gap Report. Therefore, we acknowledge this comment and will consider it in preparing the Environmental Data Collection Work Plan.</p>	Change

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21	9		DOE	The ARAR discussion focuses only on Storm Water Management and Pollution Prevention Plans. Comment- the section does not include discussion on meeting the applicable floodplain and wetland requirements, Sections 401 and 404, respectively of the CWA. This is important in light of EPA's recently expanded definition of regulated waters.	The following text has been added to last paragraph in Section 2.4.1 to address the requirements under 33 CFR parts 320-330 and 40 CFR 230: <i>"No areas of disturbance or removal action activities are proposed within a waterway that could be determined to be within the boundaries of a jurisdictional waterway or feature (Figure 2)."</i> For clarity regarding the definition of regulated waters, we note that two federal courts have preliminarily halted the enforceability of the "Clean Water Rule" promulgated jointly by the US EPA and the US Army Corps of Engineers (the Corps) since the comment was submitted. As a result, the US EPA and the Corps have confirmed that they have "resumed nationwide use of the agencies' prior regulations defining the term 'waters of the United States.'" As a result, the definition remains unchanged.	Change
22	13		DOE	"A gap exists with regard to potential air emissions from the Proposed Action. Once pre-final (95%) design is completed, then sufficient details about potential airborne release sources... will be available to complete this inventory and compare the results to applicable standards." Comment- We believe there is sufficient information based on volumes of contaminated material to be removed and types of equipment that could be used to develop the estimates now. A pre-final (95%) design will not normally dictate the types of equipment a contractor will use to perform the work.	The text <i>"pre-final (95%)"</i> on page 13, line 30 and page 15 line 31 was replaced with <i>"preliminary (30%)."</i>	Change
23	15 & 16		DOE	Discussion does not include meeting the requirements of meeting 40CFR61 Subpart h, as identified in Appendix A. Comment- An air monitoring plan that includes radioparticulates such as potential beta and gamma emitters and radon to demonstrate protectiveness AND compliance with 40CFR61, Subpart H should be added.	As identified in the 2013 ROD, requirements under 40 CFR §§ 61.192 and 61.222(a) and (b) would be applicable during long-term stewardship after closure. As stated in the report, license termination and title transfer would be future decisions, in addition to the Proposed Action analyzed in this report, and would be considered by the NRC as part of an application for a license amendment. Therefore, this ARAR is not considered as part of this review, but would be applicable and considered in the future.	No change
24	20		DOE	"A gap exists related to describing current levels of exposure to radioactive materials at the NECR Mine Site expressed in terms of dosage." Comment- Since gamma exposure rates are known for the surface of the NECR Mine site and for the materials to be handled, it would appear the dosage to the worker and public can be estimated based on potential durations of exposure. Is this gap just a statement that the calculation is not done, though the information is there?	This gap is indeed a statement that the calculation has not been done, but the information to do the calculation is available. The following language was added to the first bullet in Section 2.12 to clarify that the calculation has not been completed: <i>"Data exists with respect to radiation levels as measured in counts per minute, and an estimated dosage rate will need to be calculated based on potential durations of exposure."</i>	Change

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25	1	10 thru 12	NRC	The Report states that its purpose is to identify data gaps that will be addressed, in part, “for preparing an Environmental Report [ER] for submittal to the U.S. Nuclear Regulatory Commission (NRC) as part of an anticipated application to amend source material license No. SUA-1475.” As UNC notes, the ER will be part of the overall license amendment application to NRC. For this reason, UNC should be aware of the need to address NRC safety and technical requirements as they pertain to the design of the tailings impoundment, and that necessarily there will be crossover items and issues between the amendment application and the ER. Examples of crossover items and issues include the deterministic seismic hazard analysis and the design relative to the probable maximum flood (PMF) and the probable maximum precipitation (PMP). UNC should assess the potential for data gaps as they relate to impoundment design where linked to potential impacts to the environment.	UNC is aware of the need to address NRC safety and technical requirements pertaining to the design and has done so in the Design Work Plan for the examples provided in the comment. As stated in the Design Work Plan, the PMP will be determined for the site using Hydrometeorological Report 49 (Hansen et al.,1984). The PMP rainfall will be applied to the appropriate watersheds within the facility area, and a HEC-HMS Model (Version 4.1,USACE, 2015) will be used to calculate PMF runoff volumes and flowrates.	No change
26	ES-i	7 thru 10	NRC	The Report states (p. ES-i, lines 7-10) that “The scope of the report is limited only to the Proposed Action, defined as the Removal Action selected in the 2011 Action Memorandum (EPA Region 9, 2011) and the 2013 Record of Decision (EPA Region 6, 2013a), ...” For the purposes of NEPA and compliance with 10 CFR 51.45, UNC will need to assess the potential impacts of reasonable alternatives to the Proposed Action, and to present those potential impacts in a comparative manner. Focusing solely on the Proposed Action may not identify all data gaps as they relate to the reasonable alternatives. It is suggested that this issue be explicitly identified in the Report as a data gap, and to the extent that data gaps can be identified more specifically for the reasonable alternatives, the Report should do so.	The following text has been added to Section 1.3: <i>“The Proposed Action evaluated in this Report was selected by the US EPA in the 2013 Record of Decision (2013a). To comply with NEPA and with 10 CFR § 51.45 (3), the Environmental Report will discuss alternatives to the Proposed Action and, to the extent practicable, present impacts of the Proposed Action and reasonable alternatives in comparative form. As part of preparing the Environmental Report, UNC will work closely with the EPA, NRC, and project stakeholders to develop an appropriate purpose and need statement and a range of reasonable alternatives that accomplish the Proposed Action in another manner. UNC expects that many of the five (5) alternatives that were developed and analyzed as part of the Engineering Evaluation/Cost Analysis will be useful as part of preparing an Environmental Report for NRC consideration. As a result, a gap in environmental information required to describe the environment and analyze impacts in the Environmental Report may exist, depending on the range of reasonable alternatives developed as part of that future process.”</i>	Change
27	ES-i	23 & 24, 26 & 27	NRC	“These sources [of information] were then compared to ... the NRC guidance for preparing an Environmental Report (NUREG-1748).” As stated, NUREG-1748 is guidance to staff in its preparation of environmental review documents, and as such, the expressed content is not a requirement of applicants although it can be used as guidance for them. The Report should cite to NRC’s regulations governing the content of environmental reports, found at 10 CFR 51.45, to ensure that these regulations are addressed by UNC and that any associated data gaps are identified in the Report. UNC should also use NUREG-1748.	Line 28 has been changed to the following: <i>“...Environmental Report according to NRC guidelines (NUREG-1748) in compliance with 10 CFR 51.45.”</i>	Change

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28	2	30-32	NRC	“the related NECR Site Consolidation Areas and the UNC Site Tailings Disposal Area will temporarily be treated as one Site for the purpose of evaluating the environmental impacts of disposing NECR mine wastes at the UNC Site.” As identified by UNC, the NECR mine site and the UNC site are to be treated holistically for the purposes of environmental impact analysis, given that work at the NECR mine site is connected to the placement of the mine spoils on the UNC Site. It is recommended that UNC document, as needed, data gaps related to the NECR mine site, both in terms of describing the environment and also the potential impacts to that environment.	UNC agrees that potential impacts to the environment are a critical component of the Environmental Report to be prepared for NRC consideration. The potential impacts to the environment as a result of the proposed action, no-action alternative, and other reasonable alternatives will be addressed in the Environmental Report. With that need in mind, this review was completed to evaluate the adequacy of environmental data to provide an appropriate level of detail about environmental resources that will support the impacts analysis. Gaps in environmental data were identified where resources could not be described well enough so that the impacts upon them could be distinguished depending on the action or alternative.	No change
29	General	General	NRC	As discussed in 10 CFR 51.45 and in Section 6.4 of NUREG-1748, licensees/applicants must address in their ERs the impacts to the environment from the Proposed Action and from reasonable alternatives. It appears that UNC’s data gap analysis has focused primarily on gaps related to a description of the natural environment (see Appendix A to the Report, which cites to Section 6.3 only in NUREG-1748). It is recommended that UNC also document potential data gaps as they relate to identifying potential impacts to the environment.	Impacts to the environment will be addressed by UNC as part of preparing the ER for NRC consideration. At the NRC's request, UNC has explicitly addressed the gap in data associated with identifying potential impacts of the proposed action and alternatives. Please refer to the response to NRC comment number 2 above related to ES-I, lines 7-10. The comment is correct in identifying the focus on the description of the natural environment according to Section 6.3 of NUREG-1748. Again, please refer to the language included as part of the response to NRC comment number 2 above related to ES-I, lines 7-10, which addresses potential impacts to the environment.	No change
30	4	14-19	NRC	“Additional areas of disturbance ... have not yet been identified, though they are likely to be identified in the design process. ... Instead, an evaluation of gaps in environmental data will be made as appropriate for new areas of disturbance identified during the design process in coordination with the EPA and NRC.” Given the likelihood of data gaps to be identified, UNC should explore the potential for generic data gaps based on knowledge of similar gaps and analysis for known disturbance.	Gaps in environmental data associated with known disturbance areas will certainly guide recommendations for how to best address gaps if additional areas are indeed identified. If no additional areas of disturbance were identified, then speculation about gaps in environmental data would provide information of questionable value.	No change
31	General	General	NRC	In addition to analyzing potential impacts to the environmental resource areas identified in NUREG-1748, UNC will also need to assess the cumulative impacts of its Proposed Action. Cumulative impacts are defined in the Council on Environmental Quality’s regulations as “The impact on the environment which results from the incremental impact of the [proposed] action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time.” (40 CFR 1508.7).” Data gaps related to cumulative impacts should be identified in the Report, as appropriate.	The following language was added to Page 4, Section 1.3: <i>“A description and an analysis of cumulative impacts, which result from the incremental impact of the proposed action when added to other past, present, and reasonably foreseeable future actions, will be required as part of preparing the Environmental Report for NRC consideration. Though information regarding past, present, and reasonably foreseeable future actions will be collected by UNC during the design and environmental data collection process, those efforts are separate and in addition to the gaps in environmental data evaluated in this report.”</i>	Change

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32	16 to 18	25 24	NRC	[A]ddresses data gaps related to Historic and Cultural Resources. Figure 5 of the Reports shows the extent of previous archaeological and historical surveys of the NECR mine site and the UNC Site. Among the identified surveys is the survey discussed in UNC’s 1975 ER for the original licensing of the UNC Site milling activities. NRC understands that standards for historical surveys were updated in 2004, and that as a result, surveys conducted prior to that time may not be sufficient for present day federal agency consultations under Section 106 of the National Historic Preservation Act. Additionally, the surveys shown in Figure 5 may not cover all areas of potential disturbance or areas affected by noise or dust, or visually by planned and proposed Project activities. For these reasons, it is recommended that UNC address the adequacy and spatial completeness of the existing archaeological and historical surveys for the Proposed Action and reasonable alternatives in the data gap analysis.	Figure 5 does show the extent of an archaeological survey completed in 1975 as part of the applicants original ER, along with the boundary of proposed disturbance. It is important to note that all previously undisturbed areas within Section 2, T16N, R16W that are proposed as areas for future disturbance have each been surveyed after the year 2004. The exception is the tailings storage facility, which was constructed following a full pedestrian survey, as described in Section 2.8 of this report. At the location of the tailings storage facility, UNC is proposing to disturb areas only within the boundary of the previously disturbed area associated with the facility. As part of identifying historic properties under 36 CFR §800.4, we understand that NRC will, in consultation with the State Historic Preservation Officer, review existing information, seek information from individuals likely to have knowledge, and gather information from Indian tribes to assist in identifying properties. If environmental data gaps are identified during this consultation process, then they will be addressed once identified. We also note the adequacy and spatial completeness of data for noise, dust, and visual resources are addressed in sections 2.7, 2.6, and 2.9 of this report.	No change
33	Fig. 1-3 & 5		INTERA	Fix PLSS Section line in T 17N R16W that is not displayed properly north of Sections 34, 35, 36, and 31.	INTERA replaced the PLSS divisions with a data set that corrected errors associated with the dataset used in the Draft document. The new dataset now matches PLSS boundaries displayed on the USGS 7.5-minute quadrangle for the Project Area as well as other project maps generated by federal agencies and by UNC for the project. This change was made for Figures 2, 3, and 5.	Change