

**IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

DINÉ CITIZENS AGAINST RUINING)	
OUR ENVIRONMENT, ET AL)	
)	
Petitioners,)	
)	
vs.)	Case No. _____
)	
UNITED STATES ENVIRONMENTAL)	
PROTECTION AGENCY, REGION 9, ET AL)	
)	
Respondents)	

DECLARATION OF TAYLOR MCKINNON

I, Taylor McKinnon, declare under penalty of perjury as follows:

1. I submit this declaration in support of the Center for Biological Diversity *et al.*'s Petition in the above-captioned matter, challenging the U.S. EPA Region 9's failure to take final action on an NPDES Permit application for the Four Corner's Power Plant pending since 2006. I have personal knowledge of each of the facts set forth below, and if called upon to do so, could and would testify regarding the following.

Organizational Interests

2. I am a member of the Center for Biological Diversity, Sierra Club, and San Juan Citizens Alliance. I have been a member of the Center for Biological Diversity since 2007, a member of Sierra Club since 2016, and a member of San Juan Citizens

Alliance since 2016. These organizations are non-profit corporations dedicated to the preservation, protection, and restoration of biodiversity and ecosystems. I am also an employee and member of the Center for Biological Diversity.

3. Sierra Club's main office is in Oakland, California. The Center for Biological Diversity's ("Center") main office is located in Tucson, Arizona. The Center has maintained a field office in Flagstaff, Arizona since 2007. The Center has an extensive history of working to protect ecosystems, rivers, lakes, air, climate, and biodiversity, including the San Juan River and its endangered species, including but not limited to the Colorado pikeminnow, razorback sucker, humpback chub and bonytail chub, from industrialization, pollution and other direct, indirect and cumulative impacts of coal mining, combustion and other energy development. Pollution, discharges, and operations at the Four Corners power plant has the potential to impact the San Juan River, Morgan Lake, Chaco Creek and other cause harm to endangered fish and other species.

Background and Expertise

4. I live in Flagstaff, Arizona. I have live in Flagstaff since I was 8 years old, with two or three years living in each of Prescott, Arizona, Cobb, California, Bluff, Utah, and Salida, Colorado. I attended and graduated from Flagstaff High School and from Prescott College with a degree in Environmental Studies.

5. I have a long history of public lands and wildlife advocacy. I am a public lands campaigner for the Center for Biological and have served in this position and other positions there on and off since 2007.

6. My career choice also reflects a strong interest in and knowledge of the management of wildlife, plants, rivers, and energy resources. With the exception of 2005-2007, when I was a natural history guide on the San Juan River, since 1999 I have worked for non-governmental conservation organizations whose missions involve protecting and restoring public lands and their native biological diversity. In 2013 and 2014 I was energy program director at Grand Canyon Trust. Grand Canyon Trust, like the Center for Biological Diversity, is a non-profit conservation organization focused on protecting land and species of the Colorado Plateau, including the San Juan River. My professional experience with the lands and species relevant to this lawsuit spans several years. For Center for Biological Diversity, for example, I reviewed and submitted formal comments on government documents relating to coal mining and combustion in the Four Corners region, including at Navajo Mine and Desert Rock Energy Project. I've reviewed dozens of peer-reviewed studies, government analyses and data sets relating to endangered fish of the Colorado River and management of their habitat. I've given several public presentations on the endangered fish and factors affecting their survival and recovery, including coal pollution. For Grand Canyon Trust, I worked on issues relating to the management of wildlife, water, and energy development on the Colorado Plateau, including fossil fuel development and its impacts on the endangered fish of the Colorado River Basin.

7. In addition to my professional interest in protection of the natural features of the Four Corners area, I have a long-standing personal interest and experience in the natural history of the San Juan River in particular, including its endangered fish. From

2005-2007 I co-owned, operated and guided river trips on the San Juan River at Wild Rivers Expeditions in Bluff, Utah. Natural history interpretation while guiding involved educating the public (passengers on the trips) about the San Juan River ecosystem and its endangered species, including its endangered fish. I believe that this education allows the public to appreciate these species and their ecology as I do, and that it enriches their lives, as mine is and has been, with a deeper and closer understanding and relationship to the web of life that, as a matter of individual, spiritual, or religious significance, contributes to one's happiness and existential satisfaction. Though my days as a commercial guide are over, I still sometimes serve as an interpreter on educational San Juan River trips for school children, and have done that as recently as 2011. Endangered species are a focal point of the educational program of those trips. I also continue to use the San Juan River as a private boater; as recently as July of 2013 I floated from Sand Island to Mexican Hat with several friends. Sharing with them my knowledge of the river, its ecology, and its biodiversity, including its endangered species, contributed to our enjoyment of the trip. Except for one instance, I have unsuccessfully looked for endangered fish in the San Juan, Green, and Colorado Rivers. I do so in the shallows of backwaters during floods, in eddies and pools during low, clear water, and in the mouths of side canyons where they are known to congregate and would be visible. In 2011 I photographed a humpback chub at the mouth of the Little Colorado River in Grand Canyon National Park; I would like to observe and photograph endangered fish on the San Juan River as well. In 2013 I visited the Ouray National Wildlife Refuge and Fish Hatchery. This is where the Department of the Interior raises all four of the endangered fish species of the Colorado River for its

stocking programs in the Upper Colorado River Basin. This hatchery is central to the survival and recovery of the endangered fish; absent hatchery fish placed in the wild, including in the San Juan River, those species are functionally extinct—unable to maintain self-sustaining populations on their own.

8. I have taken dozens, if not hundreds of San Juan River trips, and I plan to continue to do so in the future, perhaps as early as this fall, but certainly within the next year. While on those trips I will continue to study and observe the river's ecology, including its endangered species, and I will attempt to observe and photograph endangered fish in shallows, eddies, or clear pools during low water when the likelihood of being able to see them is greatest.

9. As a result of professional duties and personal curiosity about the San Juan River and its endangered fish, I have learned that pollution from coal mining and power plant operations contributes to the rarity of endangerment of fish that I would like to observe in the San Juan River. For example, the Department of Interior's draft biological opinion for the Desert Rock Energy Project included data and analysis showing that 64% of the Colorado Pikeminnow sampled in the San Juan River exhibited tissue concentrations of mercury exceeding thresholds for reproductive impairment. It also showed that razorback sucker are at risk of reproductive impairment in the San Juan River owing to selenium pollution. It showed both trends would worsen with additional coal pollution, because coal combustion, including the combustion of coal mined at Navajo Mine, contributes to deposition of mercury and selenium in the San Juan River, and to the poisoning, endangerment, and rarity of endangered fish. I am keenly aware of

these facts. I have also learned that the coal ash impoundments at the Four Corners Power Plant are leaking into the Chaco Creek watershed, which is a tributary of the San Juan River. I am concerned these coal ash seeps could exacerbate the pollution problem in the San Juan River and further harm the endangered species. The currently effective 2001 NPDES permit fails to require and monitoring or regulation of these coal ash seeps. EPA's draft permit would begin to regulate these seeps, however EPA has failed to finalize the permit. In addition, I am aware that the operation of the Four Corners power plant cooling water intake structure on the San Juan River has the significant potential to impinge, entrain, and otherwise harm or kill the endangered fish species in the river. Again, EPA's draft NPDES permit begins to regulate the intake structure, but EPA has failed to finalize the permit. Some of my concerns would be redressed by issuance of a final permit by EPA because, if consistent with draft permit, a final permit would begin to regulate these problems. In addition, I would be able to appeal any deficiencies in a final permit. EPA's failure to finalize a permit has denied me of this legal opportunity.

10. EPA Region 9's failure to take final action on the NPDES renewal permit application for the Four Corners Power Plant pending since 2006 also precludes the government, the public, and me from understanding the environmental impacts of operation of that plant on the environment. I am therefore concerned that the government's unlawful refusal to take final action on the permit may contribute to further poisoning, endangerment and rarity of its endangered species, all of which I care deeply about and whose further decline spiritual and mental well being.

11. I am also concerned that the government's failure to require monitoring, public analysis, or mitigation of pollution and operational impacts to endangered fish is furthering those species' decline, increasing their rarity, and is further foreclosing my ability to ever observe species as part of the San Juan River ecosystem.

12. The government's failure to require monitoring and public dissemination of information also forecloses my ability to tell others, such as those with whom I take San Juan River trips. This will cause me and others despair with regard to the future of the San Juan River ecosystem and its endangered species. To avoid such despair, I will likely talk less about the river and its endangered fish on future river trips, eroding the quantity and quality of discourse and interaction relating to natural history that would otherwise occur. This will erode my enjoyment of future river trips.

13. I am less willing to serve as a natural history interpreter for school children on river trips since learning of EPA's inaction. Despite invitations, I have declined participation on such trips because I find it difficult and uncomfortable to explain to school children that, in the face of known pollution and operational problems and species perilously close to extinction, their government is sidestepping environmental laws that, if followed, could help alleviate those problems. Children can have visceral reactions to the idea of extinction; explaining government indifference, negligence, or lawlessness in the face of extinction threats implies hopelessness about their future that I prefer not share. In this way, EPA's inaction also prevent me from sharing a more hopeful picture of species conservation and recovery, as I would enjoy doing and would be the case if EPA were to diligently and thoroughly implement environmental laws.

14. EPA's failure to take final action on the pending 2006 permit application means that I do not fully know what effect the power plant is having or will have on the San Juan River, its endangered and threatened species and their designated critical habitat. I have serious concerns that the government's violation of the law will have serious impacts to the San Juan River ecosystem and its endangered and threatened species at the landscape level. If EPA were to require monitoring of all pollution discharges and impacts caused by the intake structure it may determine that additional actions are necessary to protect the health of the San Juan River ecosystem, or with the survival and recovery of endangered species. For example, it might impose more stringent effluent limitations or require modifications to the intake structure to protect the San Juan River ecosystem. But because EPA is not requiring monitoring or public dissemination of this information in a final NPDES permit it cannot ensure against such pollution or harm to endangered species, and it has broken the law. This violation threatens my concrete interests in being able to observe and enjoy a healthy San Juan River ecosystem and endangered and threatened species in the wild.

15. My personal, recreational and conservation interests will be harmed if EPA continues to fail to take final action on the NPDES permit application pending since 2006. My ability to enjoy the San Juan River and experience threatened and endangered species will be adversely impacted as a result of EPA's inaction.

Pursuant to 28 U.S.C. § 1746, I DECLARE, under penalty of perjury, that the foregoing is true and correct.

Signed this 29th day of April, 2018, in Flagstaff, Arizona

A handwritten signature in black ink, appearing to read "Taylor McKinnon". The signature is fluid and cursive, with a large initial 'T' and 'M'.

Taylor McKinnon