

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

DINE' CITIZENS AGAINST RUINING)	
THE ENVIRONMENT, ET AL)	
Petitioner,)	
v.)	
)	No. _____
U.S. ENVIRONMENTAL PROTECTION)	
AGENCY, REGION 9, ET AL)	
)	
Respondents)	

DECLARATION OF MIKE EISENFELD

I, Mike Eisenfeld, declare as follows:

1. The facts set forth in this declaration are based on my personal knowledge. If called as a witness in these proceedings, I could and would testify competently to these facts.

2. I am a member of San Juan Citizens Alliance, Center of Biological Diversity, Amigos Bravos, and Sierra Club—petitioners in this case. These organizations are non-profit environmental organizations dedicated to protecting and restoring the environment, wild places, wildlife, and wild rivers throughout the American West. I support the mission of these organizations personally and professionally.

3. I am a 22-year resident of Farmington, New Mexico. I live here with

my wife and two children. We intend to continue living in Farmington for the foreseeable future. We are engaged in the community and both work with nonprofit organizations. I work as the Energy and Climate Program Director for San Juan Citizens Alliance. As part of my work, I advocate for stronger pollution controls at the Four Corners Power Plant and work with others in the region, including members of the Navajo Nation, with the aim of convincing federal regulators to strengthen environmental oversight of the facility.

4. The San Juan River also flows through Farmington. My family and I enjoy floating numerous stretches of the San Juan River. I normally float several sections of the river each year. We have a raft and our friends have river boats as well. We float the San Juan River near Farmington, as well as on stretches downstream in Utah. We swim in the river when we float. We enjoy floating the river, but normally avoid the most polluted sections as we enjoy floating in areas that are more natural and that seem cleaner. We normally float the San Juan three times a year and intend to do so throughout the foreseeable future. We intend to float the river in June and July of this summer.

5. At least four or five times per year, my family and I take walks along the “River Walk” near Farmington that goes along the Animus River (a tributary of the San Juan River, part of the Colorado River System). I intend to walk along there several times this summer and look at the river.

6. I also regularly visit Morgan Lake, a man-made lake adjacent to the Four Corners power plant. The lake was built as a reservoir for use at the power plant. The power plant discharges pollution and heated water into the lake. The lake is also a recreation area, allowing fishing, boating, windsurfing, wading, and other recreational activities. The last time I visited the lake was in December 2017 and January 2018. I have visited the lake on numerous occasions and plan to visit it in the future.

7. I am very familiar with the coal-fired Four Corners Power Plant. Living in Farmington, I always see the Four Corners Power Plant. The plant is located only about 15 miles west of town just south of the San Juan River. It is a very large facility (one of the largest industrial facility in the region) consisting of two active coal-fired units. I can view it from near my home, which is located in the highlands north of Farmington. It is very visible from Highway 64, which travels east-west between Farmington and the town of Shiprock. It is impossible not to notice the power plant and its smokestacks (including one very tall smokestack). I often see pollution coming from the smokestacks of the power plant. They frequently leave a brownish to orange-ish and sometimes black plume that tarnishes the sky.

8. I am generally familiar with the Four Corners Power Plant and its workings. Because of my professional interests, I have become very familiar with

the facility and have become more aware of its impacts to communities, the land, the air, and water of the region, including harm to wildlife and fish.

9. I am aware that the power plant has not had a renewed water pollution discharge permit (NPDES Permit) since 2001. I am aware that NPDES Permits have a 5 year life and are supposed to be updated every 5 years. I am also familiar with the fact that EPA Region 9 is the federal government agency responsible for updating NPDES permits on the Navajo Nation, such that the NPDES permit for the Four Corners Power Plant.

10. Personally, I am very concerned about water pollution from the Four Corners Power Plant. For nearly the past 50 years, the power plant has disposed of, and continues to dispose, coal ash in surface impoundments located at the site. The federal government recently authorized the continued operation of the plant for another 30 years, thus requiring an expansion of the existing coal ash impoundments. These coal ash contaminated seepage is being released from these coal ash impoundments into the Chaco Creek watershed. This seepage has been ongoing for numerous years. Arizona Public Service, the operator of the plant has been forced to install a collection and pump system to capture the coal ash seepage. However, the coal ash seepage has never been regulated under the plant's NPDES permit. The draft renewal NPDES permit for the first time will begin imposes requirements to regulate this coal ash seepage. EPA's failure to take action on the

final NPDES permit delays regulation of these coal ash discharges into the Chaco Creek watershed and also prevents the petitioner organizations from challenging the adequacy of EPA's regulation of the discharges.

11. The Chaco Creek watershed is tributary to the San Juan River. I am concerned that the coal ash seepage may impact aquatic life and wildlife in the Chaco Creek watershed as well as in the San Juan River. I am concerned the coal ash seepage may adversely impact fish species listed under the Endangered Species Act that are present in the San Juan River, including the Colorado pikeminnow and razorback sucker, both endangered fish that live in the San Juan River of northwestern New Mexico. Critical habitat for these fish has also been designated on portions of the San Juan River, including portions of the San Juan River that flow near the Four Corners Power Plant.

12. In my work at the San Juan Citizens Alliance, I have spent many hours reviewing an October 15, 2009 U.S. Fish and Wildlife Service assessment (a draft Biological Opinion prepared under the Endangered Species Act) of the impacts of the proposed Desert Rock coal-fired power plant to the pikeminnow and sucker and their habitats in the San Juan River. This assessment found that mercury and selenium released from a number of activities in the region, including air pollution from the operation of the Four Corners Power Plant, is being deposited on the land and within the water of the region, jeopardizing the

continued existence of and adversely affecting the pikeminnow and sucker and their designated critical habitat in the San Juan River. At the time the 2009 U.S. Fish and Wildlife Service assessment was prepared, the agency concluded that the construction of a proposed coal-fired power plant in the area would jeopardize the continued existence of the Colorado pikeminnow and razorback sucker and adversely modify their critical habitat. Their conclusion was based on the fact that the species and their critical habitat are faring poorly in the San Juan River. Additional coal ash seepage from the Four Corners Power Plant could additionally adversely impact these endangered fish species. I want EPA to finalize its Four Corner Power Plant NPDES permit and to regulate the coal ash seepage into the Chaco Creek watershed.

13. I am also aware that the Four Corners Power Plant operates a cooling water system that pulls large volumes of water from the San Juan River to cool the power plant's boilers. Part of this system includes a cooling water intake structure, which is the plumbing system that pulls water from the San Juan River. These intake structures are known to have an adverse impact on aquatic life and the endangered fish species can become impinged on the screens covering the intake structure or entrained in the cooling system if they bypass the screens. Arizona Public Service has never publicly released data on the impact to endangered fish species resulting from operation of the intake structure. EPA's draft permit will,

for the first time, begin to regulate the intake structure and require the collection and dissemination of data on the impact to aquatic species. I want EPA to issue a final NPDES permit for this regulation and data collection becomes mandatory and so I can plan my review of the data upon its public release.

14. I derive scientific, recreational, conservation, educational, and aesthetic benefits from the existence and observation of native fish in the Colorado River System, and I rely on federal agencies' compliance with the Clean Water Act to protect water resources and endangered fish such as the Colorado pikeminnow and razorback sucker.

15. I know that the Colorado pikeminnow was once so prevalent in the Colorado River Basin that farmers would take them out of irrigation ditches with pitchforks to use as fertilizer for their fields. Now the species exists in only a handful of sites throughout the Colorado River system. Although the razorback sucker was once prevalent throughout the Colorado River Basin, some biologists now estimate that approximately 500 razorback suckers exist in the wild.

16. I enjoy looking for and viewing all species of fish in the San Juan River. When I am rafting in the San Juan River or taking a walk by the river in Farmington, I often look for fish, including the Colorado pikeminnow and razorback sucker. Unfortunately, their diminished numbers makes them very hard to find. I will continue to recreate in and around the San Juan River and its

tributaries, and will continue to look for fish, including the Colorado pikeminnow and razorback sucker. I hope to point out one of these fish to my children in the future. My enjoyment of the Colorado River System would be increased if the Colorado pikeminnow and razorback impacts from the Four Corners Power Plant were publicly disclosed and regulated by an updated final NPDES permit.

17. The EPA's failure to a final NPDES permit allows unregulated pollution to discharged into the environment and fails to protect endangered fish species in the San Juan River. The power plant's affect on the Colorado pikeminnow and razorback sucker and their critical habitat in accordance with the Endangered Species Act worries me. The Colorado pikeminnow and razorback sucker are indicators of healthy southwestern rivers, like the San Juan. Since they were once abundant in the Colorado River Basin, their diminished numbers in the San Juan River causes me concern that the river is now not healthy and clean. The EPA's failure to address how the water pollution and the intake structure may affect the Colorado pikeminnow and razorback sucker and their critical habitat, means that the EPA is leaving the San Juan River at risk from further degradation, including extended water contamination that not only may affect the fish, but also affect my health and the health of my family as we recreate on the San Juan River. I have physical contact with the San Juan River and Morgan Lake when I recreate in these areas. I want to ensure that pollution discharges into Morgan Lake and the

Chaco Creek watershed, and the cooling water intake structure, are properly regulated and that permits are regularly updated to protect my personal health, the health of my family, and the health of the endangered species living in the river.

18. The EPA's failure to comply with the Clean Water Act therefore harms me because it will lead to continued water contamination and diminished recreational enjoyment of the San Juan River. I worry about how continued pollution discharges and the intake structure is harming the San Juan River, where I enjoy recreating, and harming endangered fish that I care about.

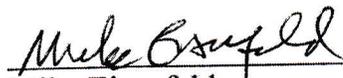
19. Given my use of the San Juan River and Morgan Lake, I have a direct personal interest in having EPA take final action on APS's 2006 water pollution discharge permit application. I care about the health of the San Juan River and the fish that live there. I also care about the water quality in Morgan Lake. My concerns described herein would be eased if EPA were to issue a final permit regulating the pollution discharges from the Four Corners Power Plant and the intake structure. Issuance of a final permit would also allow a legal challenge of any deficiencies, which has been denied for over 12 years by EPA's failure to take action on a final permit. If the EPA was required to comply with the Clean Water Act my concerns would be eased.

20. If EPA were to issue a final permit to require monitoring of the coal ash discharges into Chaco Creek and impacts to endangered species from the

intake structure, I would have more information about the impacts from the Four Corners Plan on such species. This information would help ensure that the federal government is doing everything it can to protect and recover endangered fish in the Colorado River Basin, redressing injuries described herein. In other words, if the EPA complied with the Clean Water Act, my recreational and aesthetic enjoyment of the San Juan River and the region would be significantly enhanced, concerns over the impacts of the Four Corners Power Plant to my health and the health of my family would be diminished, and I would feel more at ease living in Farmington and raising my family.

Pursuant to 28 U.S.C. § 1746 I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed in Farmington, New Mexico on May 2 2018.


Mike Eisenfeld