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EPA Seeks to Reconsider Desert Rock Air Permit

The U.S. Environmental Protection Agency on Monday asked an appeals board to give the EPA a chance to reconsider the air permit approved last summer for the coal-fired Desert Rock Energy Facility in northwest New Mexico. The project has created a rift between environmentalists concerned about pollution and Navajo leaders who want to create jobs for Indians living in poverty.

The EPA issued an air permit last July for the 1,500 MW project that Sithe Global Power and the Diné Power Authority, an enterprise of the Navajo Nation, plan southwest of Farmington, N.M. New Mexico and environmental groups appealed the permit to the EPA Environmental Appeals Board.

The appeals board in March allowed EPA Region 9 to file a brief so new EPA officials appointed by President Barack Obama's administration would have an "adequate opportunity to consider the issues raised in this appeal."

In the motion Monday, EPA Region 9—which serves Nevada, Arizona, California, Hawaii and Indian tribal nations—asked the board to pull the entire case and remand it to the agency for further review.

Navajo Nation President Joe Shirley Jr. said he was disappointed. "I'm just hurt in many ways as leader of this big nation. We're not getting cooperation we're needing to move this project along," Shirley told Region 9's acting administrator, Laura Yoshi, in a teleconference. "Every day this project is delayed, we are losing our Navajo children to poverty and lack of opportunity," Shirley said.

The project would employ an average of 1,500 workers over four years of construction and 400 permanent workers when Desert Rock is completed. Shirley said he wanted a meeting with President Obama, "sooner rather than later," and suggested the federal government again was not being "honest and truthful in dealings with Native America."

"EPA's motion came as a complete surprise," said Jeff Holmstead, a partner with law firm Bracewell & Giuliani, which represents the Desert Rock developers. Holmstead is former director of the EPA air program. New officials at EPA show "little regard for due process or basic notions of fairness," Holmstead said. "I've never seen any administration try to change policies and rules retroactively."

The project developers submitted the application five years ago. The EPA was required to make a decision on the permit within a year, but the "process dragged on for several years," Holmstead said. "We are well into the appeals process, and now EPA wants the Navajo Nation and its partners to go back and start over again under different rules," he said.

Senior attorney Amy Atwood of the Center for Biological Diversity took the opposite perspective: "We're elated. Desert Rock is a horrible project. Hopefully, it will be the death knell for the project

going forward." In any event, she said the remand is "a serious setback for the power plant."

New Mexico Gov. Bill Richardson applauded the decision: "It's a significant victory in our ongoing fight to protect the quality of our air. I am pleased that the Obama administration is taking action to reverse the disastrous environmental policies of the Bush administration."

EPA Administrator Lisa Jackson said she wanted Region 9 to reconsider several aspects of the permitting decision. The motion mentions concerns about the size of dust particles allowed in emissions, the EPA's failure to consider integrated gasification combined-cycle technology in assessing "best available control technology" and the EPA's issuance of the permit before it completed a consultation with the U.S. Fish and Wildlife Service.

When Region 9 issued the Desert Rock air permit, the then-administrator had ordered officials not to consider IGCC technology as part of best available control analysis. Jackson does not want to preclude evaluation of IGCC, the motion said.

The motion mentions Fish and Wildlife Service concerns that mercury emissions might affect the endangered Colorado pikeminnow. Atwood said her organization also is worried about the razorback sucker, another ancient and endangered fish found in the Colorado River.

The appeals board may grant or deny the motion. In a letter Tuesday, Holmstead said developers "may seek discovery regarding EPA's actions in this case and its communications with parties that are opposing the permit." The developers, he said, "have reason to believe" there may have been "unusual circumstances verging on bad faith" [J. E.].