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Groups file lawsuit over concerns with coal operations

By Elizabeth Piazza

FARMINGTON — A group of conservation and citizen organizations is suing the federal government for failing to protect the San Juan River ecosystem.

San Juan Citizens Alliance, Diné Citizens Against Ruining Our Environment and the Center for Biological Diversity are teaming together in a lawsuit filed Monday against the U.S. Department of the Interior's Office of Surface Mining for failing to comply with the Endangered Species Act when it approved the continuation and expansion of surface coal mining operations of BHP Billiton's Navajo Mine, according to court records.

Specifically, the groups allege that the Office of Surface Mining and its director, Joseph Pizarchik, failed to consult with the U.S. Fish and Wildlife Service, sidestepping the required consultation process prior to obtaining permits, and in doing so violated the Endangered Species Act.

Officials from the Office of Surface Mining's western regional office did not return calls for comment Tuesday.



The act requires the government agency to "ensure that a permit for a continued surface coal mine operation and expansion does not jeopardize the continued existence of endangered or threatened species," according to court records.

"When they approve things like the expansion of the mine, those are triggers for consultation and some of the issues include the dumping of tons of coal combustion waste," Mike Eisenfeld, staff organizer for San Juan Citizens Alliance said. "The issues are deep and it's complex, but we believe the Office of Surface Mining here has abrogated their responsibilities for evaluating and just approving the mine's permit."

The permit, issued in September, extends the surface coal mining operation for an additional five years.

Officials believe the toxins, including mercury and selenium, from the backfilling of tens of thousands of tons of coal combustion waste at the mine near the Chaco Wash, miles from the San Juan River, have seeped into the water supply.

"The statutes are put in place to make sure before these companies obtain permits, that the agency and industry are taking measures to protect threatened and endangered species," Brad Bartlett, attorney for the Energy Minerals Law Center, which is representing the group.

The lawsuit references a draft biological assessment developed by the U.S. Fish and Wildlife Service for the Desert Rock Energy Project, which showed that 64 percent of the Colorado pikeminnow — just one of the endangered fish that exists in the San Juan River — currently exceeds mercury thresholds, Taylor McKinnon, Public Lands Campaigns Director for the Center for Biological Diversity said.

"They are required to undertake an analysis to ensure their mining operations don't harm those endangered species," McKinnon said. "They are not complying with those regulations."

The fish in the river already are "impaired from mercury and selenium contamination from the regional coal facilities," McKinnon said.

BHP Billiton officials, in a release issued late Tuesday, said the company has undertaken the necessary steps to protect the environment and

comply with the law.

"BHP Billiton Navajo Mine's activities are not contributing to surface water pollution or jeopardizing endangered fish species in the San Juan River," company officials stated.

The conservation groups claims, however, that the government agency has turned a blind eye for decades and allowed the plants to operate without taking the appropriate protective measures.

"The endangered fish are a bellwether for the health of the river, for water quality and for the health of the whole San Juan River Basin ecosystem," McKinnon said. "The jig is up for these guys. OSM and the BHP have been running this mine for decades without undertaking the necessary environmental compliance and the jig is up."