

FILED

United States Court of Appeals  
Tenth Circuit

UNITED STATES COURT OF APPEALS

April 16, 2015

FOR THE TENTH CIRCUIT

Elisabeth A. Shumaker  
Clerk of Court

DINE CITIZENS AGAINST RUINING  
OUR ENVIRONMENT; SAN JUAN  
CITIZENS ALLIANCE; SIERRA CLUB;  
CENTER FOR BIOLOGICAL  
DIVERSITY; AMIGOS BRAVOS,

Plaintiffs - Appellees,

v.

UNITED STATES OFFICE OF  
SURFACE MINING RECLAMATION  
AND ENFORCEMENT, an agency  
within the U.S. Department of the  
Interior; SALLY JEWELL, in her official  
capacity as Secretary of the Interior;  
AL KLEIN, in his official capacity as  
Regional Director of the U.S. Offices of  
Surface Mining Reclamation and  
Enforcement, Western Region; BOB  
POSTLE, in his official capacity as  
Manager of the Program Support  
Division for the Western Region of the  
Office of Surface Mining Reclamation  
and Enforcement; RICK WILLIAMSON,  
in his official capacity as Manager of the  
Indian Programs Branch of the Western  
Region of the Office of Surface Mining  
Reclamation and Enforcement;  
MYCHAL YELLOWMAN, in his  
official capacity as Navajo Mine Team  
Leader in the Office of Surface Mining  
Reclamation and Enforcement,

Defendants,

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No. 15-1126  
(D.C. No. 1:12-CV-01275-JLK)  
(D. Colo.)

THE NAVAJO TRANSITIONAL  
ENERGY COMPANY, LLC,

Intervenor Defendant - Appellant,

and

THE NAVAJO NATION,

Intervenor Defendant.

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**ORDER**

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Before **PHILLIPS** and **MORITZ**, Circuit Judges.

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Intervenor Defendant-Appellant Navajo Transitional Energy Company, LLC (“NTEC”) has filed a motion for emergency stay. The Supreme Court has explained: “A stay is not a matter of right, even if irreparable injury might otherwise result. It is instead an exercise of judicial discretion, and the propriety of its issue is dependent upon the circumstances of the particular case.” *Nken v. Holder*, 556 U.S. 418, 433 (2009) (internal quotation marks, citations, and brackets omitted). When reviewing a stay motion, we consider:

(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies.

*Id.* at 434 (internal quotation marks omitted). “The party requesting a stay bears the burden of showing that the circumstances justify an exercise of [this court’s]

discretion.” *Id.* at 433-34. NTEC has failed to make the requisite showing.

Accordingly, we deny the motion for emergency stay.

Entered for the Court

A handwritten signature in cursive script, reading "Elisabeth A. Shumaker", is written over a light blue dotted grid background.

ELISABETH A. SHUMAKER, Clerk