

EXHIBIT B

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. 1:11-cv-00243-REB-CBS

CENTER FOR BIOLOGICAL DIVERSITY, *et al.*,

Plaintiffs,

v.

JOSEPH PIZARCHIK, *et al.*,

Defendants, and

BHP NAVAJO COAL COMPANY

Intervenor-Defendant

**DECLARATION OF NAVAJO NATION PRESIDENT BEN SHELLY IN SUPPORT OF
THE NAVAJO NATION'S MOTIONS TO INTERVENE AND DISMISS**

I, BEN SHELLY, PRESIDENT OF THE NAVAJO NATION, declare the following:

1. My name is Ben Shelly.
2. I am the President of the Navajo Nation ("Nation"). As the President, I am the head of the Nation's Executive Branch, which is one of the Nation's three branches of government—the other two being the Legislative Branch (or the Navajo Nation Council) and the Judicial Branch. My office contains eleven Divisions, Departments, and Agencies, which I appoint the Directors and oversee the administration of. Of these eleven, the Division of Economic Development,

Division of Community Development, Navajo Environmental Protection Agency, and Division of Natural Resources are within my administration.

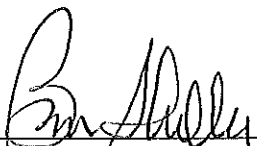
3. The BHP Navajo Coal Company (“BNCC”) conducts its mining operations at the Navajo Mine—which is located entirely within the Nation’s boundaries—pursuant to a mining lease originally entered into between the Nation and BNCC’s predecessor, Utah Construction Company, on July 26, 1957, which was approved by the Secretary of the Interior on October 21, 1957. The Nation and BNCC’s predecessor subsequently amended this coal mining lease four times—October 18, 1957, October 24, 1961, March 29, 1965, and April 25, 1985—with all amendments approved by the Secretary of the Interior.
4. I am aware that on September 7, 2010, the United States Federal Government’s Office of Surface Mining Reclamation and Enforcement and the Department of the Interior renewed the BNCC’s federal permit No. NM-0003F (“Permit”), and that the Permit would allow the BNCC to continue conducting mining and related operation for an additional five years.
5. I am aware that the Navajo Nation is filing a Motion to Intervene in this action only for the limited purpose of filing a Motion to Dismiss as a necessary party to this litigation that cannot be joined due to its sovereign immunity.
6. I have conferred with the Directors of the Division of Economic Development, Division of Community Development, Navajo Environmental Protection Agency, and Division of Natural Resources, and all of them have conveyed to me that the

Nation's substantial direct and indirect economic interests would be injured if the BNCC's operation were hindered or shut down.

7. The Nation collects tens of millions of dollars in revenues from the BNCC's operation each year, which the Nation uses to provide essential government services. Furthermore, the BNCC's operation employs nearly 500 people, and the vast majority of these persons are members of the Nation. With the information these Directors have conveyed to me, I conclude that the Nation's economic interests may be injured by the disposition of this matter.
8. Because this action's disposition could result in the loss of the Nation's and its members' incomes, I support the Nation's limited intervention only to file a motion to dismiss this action. Although the Nation is a necessary and indispensable party to this action, the Nation does not waive its sovereign immunity from suit and cannot be joined here. To waive the Nation's sovereign immunity from suit would subvert many of the Nation's important interests associated with sovereign immunity. Accordingly, I support the Nation's limited intervention in this action only to file a motion to dismiss for failure to join the Nation.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on June 8, 2011.



Ben Shelly, President
The Navajo Nation