

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

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

CENTER FOR BIOLOGICAL DIVERSITY,
DINE CITIZENS AGAINST RUINING
OUR ENVIRONMENT,
SAN JUAN CITIZENS ALLIANCE,

Plaintiffs,

v.

JOSEPH PIZARCHIK, in his official
capacity as Director, Office of Surface
Mining Reclamation and Enforcement,
WESTERN REGION OFFICE OF
SURFACE MINING RECLAMATION
AND ENFORCEMENT, a federal agency
within the U.S. Department of Interior,
KEN SALAZAR, in his official capacity
as U.S. Secretary of Interior,

Defendants, and

BHP NAVAJO COAL COMPANY

Defendant-Intervenor

**FEDERAL DEFENDANTS' RESPONSE TO THE NAVAJO NATION'S AMENDED
MOTION TO DISMISS**

Defendants Joseph Pizarchik, in his official capacity as Director, Office of
Surface Mining Reclamation and Enforcement; Ken Salazar, in his official capacity as
Secretary of the United States Department of the Interior; and the Western Region
Office of Surface Mining Reclamation and Enforcement, a federal agency within the

United States Department of the Interior, (collectively “Federal Defendants”) hereby provide their response to the Navajo Nation’s Amended Motion to Dismiss (doc #47). Federal Defendants take no formal position on the ultimate question of whether the Court should grant the Navajo Nation’s motion to dismiss.

Federal Defendants recognize that the threshold issue for the Court to consider in applying Fed. R. Civ. P. 19 is whether the Navajo Nation is a required party pursuant to Rule 19(a)(1)(B)(i). On that question, this Court recently found the Navajo Nation a required party under Rule 19(a) in a case challenging Federal Defendants’ compliance with the National Environmental Policy Act (NEPA) in approving, *inter alia*, the 2004 renewal of the same Surface Mining Control and Reclamation Act (SMCRA) permit for the same coal mine at issue in this case. Dine Citizens Against Ruining Our Environment v. Klein, 676 F.Supp.2d 1198, 1216 (D. Colo. 2009) (Dine C.A.R.E.). In Dine C.A.R.E., the Court found that the “financial and other benefits the Tribe receives in connection with the Navajo Mine render it a required party to this action challenging the process by which the government authorized continued and expanded operations there.” Dine C.A.R.E., 676 F.Supp.2d at 1216. Further, the Tenth Circuit has previously found the Navajo Nation to be a necessary party in a similar case, and rejected the argument that the federal government would adequately represent the Navajo Nation’s financial interest in a mining lease. Manygoats v. Kleppe, 558 F.2d 556, 558 (10th Cir. 1977) (tribal members challenged Interior Department’s NEPA compliance in connection with its approval of a mining lease.)

As to the equitable factors which the Court must consider in undertaking its analysis under Rule 19(b), Federal Defendants note that the Tribe's motion raises important issues, particularly the applicability of the Supreme Court's decision in Republic of the Philippines v. Pimentel, 553 U.S. 851 (2008), and there is the potential for significant impact to the Tribe's interests resulting from the Court's resolution of this motion.

Respectfully submitted this 5th day of August, 2011,

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/s/ John H. Martin
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Certificate of Service

I hereby certify that on August 5, 2011, I electronically filed the foregoing Response with the Clerk of the Court via the CM/ECF system, which will send notification of such to the following attorneys of record:

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