

Power Plant/Clean Water Act: Citizen Groups U.S. EPA Environmental Appeals Board Challenge to NPDES Permit



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The Sierra Club and other organizations filed a November 1st Petition for Review (“Petition”) before the United States Environmental Protection Agency (“EPA”) Environmental Appeals Board (“EAB”) challenging a Clean Water Act National Pollution Discharge Elimination System (“NPDES”) permit renewal issued by EPA Region IX for the Arizona Public Service Company (“APS”) for the Four Corners Power Plant (“Four Corners”).

The other organizations joining the Petition include:

- Dine’ Citizens Against Ruining the Environment
- San Juan Citizens Alliance
- Amogos Bravos
- Center for Biological Diversity

The Four Corners Power Plant is stated to discharge into Morgan Lake and is located on the Navajo Nation near Farmington, New Mexico.

The Petition argues the permit renewal attempts to revise history by stating that Morgan Lake is not a water of the United States and that the power plant’s cooling system is a closed cycle system. This is argued to be illegal backsliding to relieve Four Corners of the Clean Water Act requirements to regulate discharges of pollutant into Morgan Lake as waters of the United States. This is characterized as a revisionist position that should not be given deference by EAB because of “longstanding EPA regulatory positions for the power plant.”

Another basis for challenge is described as an “environmental justice” concern. This is deemed to be a concern because the Navajo Transitional Energy Committee purchased a share in the power plant. The company is organized under the laws of the Navajo Nation. The Navajo Nation is the sole shareholder of the company.

The Petition argues that the corporate utility companies forced the Navajo Nation to contract away its right to regulate any environmental aspect of the Four corners plant (including an NPDES permit). As a result of the contractual waiver, it is argued that the reservation could not regulate the power plant and therefore it fell to EPA to do so. EPA is argued to have allowed the prior NPDES permit to be un-renewed for over 13 years after it expired.

Several issues that were submitted to EAB include:

1. EPA erred by concluding that Morgan Lake is not a “water of the United States” subject to the requirements of the CWA.
2. EPA erred by not imposing effluent limitations on the discharge of pollutants from the FCPP into Morgan Lake.
3. EPA erred by failing to promulgate water quality standards for Morgan Lake and No Name Wash.
4. EPA erred in finding the discharges from the FCPP do not present a “reasonable potential” for violation of a water quality standard.
5. EPA erred by not complying with the requirements of the new ELGs.
6. EPA erred by not properly regulating discharges into the Chaco River watershed from the coal ash ponds.
7. EPA erred by failing to undertake an impairment analysis required by Section 303(d) of the CWA.
8. EPA’s 401 Certification is arbitrary and capricious.
9. EPA must require that NTEC waive sovereign immunity.
10. EPA erred by concluding that “[t]he Permittee currently operates a closed-cycle recirculating system.”

A copy of the Petition can be downloaded [here](#).