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**MEETING TO DISCUSS ISSUES REGARDING THE PROPOSED BONANZA POWER PLANT SETTLEMENT AGREEMENT**

**November 6, 2015**

The Ute Indian Tribe of the Uintah and Ouray Reservation (the "Tribe") thanks the United States Environmental Protection Agency ("EPA") for its invitation to consult and coordinate with the EPA on the settlement agreement proposed in Appeal Nos. CAA 15-01; CAA 15-02 (the "Agreement"). For over 15 years, the Bonanza Power Plant (the "Plant"), owned and operated by Deseret Power Electric Cooperative ("Desert Power"), has been operating on land within the Ute Indian Tribe's Uintah and Ouray Reservation in Utah in violation of the Clean Air Act. It appears that through the Agreement, Deseret Power must finally curtail the pollution that spews from the Plant's smokestack onto our Reservation. For this reason, the Tribe generally supports the proposed settlement agreement by and between EPA Region 8, the Sierra Club, WildEarth Guardians, and Deseret Power.

However, the Tribe would like to see Deseret Power install the pollution control technologies by 2016. As previously expressed to the EPA in its comments of June 3, 2014, the Plant should be forced to comply with all applicable federal air permitting regimes and regulations for coal fired power plants. The Tribe has a unique and significant interest in the Plant's compliance due to the facility's location within the Reservation and its physical proximity to the membership of the Ute Indian Tribe. The Tribe already has reason to believe that the Plant poses a threat to the health and welfare of Tribal members. Through the Agreement, the Tribe asks that EPA remove any opportunity for Deseret Power to delay installation of pollution control technologies beyond 2016.

**<u>The Tribe Generally Supports the Pollution Control Limits in the Agreement</u>**

The Tribe supports the requirement that Deseret submit an application to EPA Region 8 for a Minor NSR Permit for the Bonanza Plant ("Application") pursuant to 40 C.F.R. part 49. However, we have concerns about some of the requested permit terms. First, we ask that EPA Region 8 ensure that Deseret install and operate low NOx burners and overfire air technology (LNB/OFA) no later than June 30, 2016, regardless of whether Region 8 issues a final Minor NSR Permit before December 31, 2015. Ensuring the prompt installation of LNB/OFA, will nearly halve NOx emissions from the Plant, bringing to no greater than 5,700 tons per year. The Tribe would like assurance from EPA that the December 31 deadline is realistic.

Should EPA miss this deadline, then the Plant will have until 2018 to install the LNB/OFA. Given that the Plant is the largest individual NOx producer in the Basin, such immediate reductions can protect the Tribe from enduring avoidable wintertime ozone episodes. The sooner the Plant installs the LNB/OFA and operates at a lower heat input rate, the better the Reservation's air quality will be. Should the Plant install and operate the LNB/OFA by June 30, 2016, then the 0.28 lbs/MMBTU heat input limit for NOx from Unit 1 will take effect the following year. Because this heat input limit will reduce coal consumption in year 2017-2018, the Tribe asks that the settlement agreement begin its coal consumption cap in 2018 rather than 2020.

The Tribe supports the lifetime limit on coal consumption at the Plant. Each year, the Plant burns around two million tons of coal without the Tribe's permission and on the Uintah and Ouray Reservation. By forcing the Plant to limit its coal consumption earlier, Deseret Power must make the Plant more efficient or face closing the facility. Either scenario will provide cleaner and healthier air for tribal members to breathe.

Despite the many benefits, the Agreement does not make up for past violations of the Clean Air Act. Since 2000, NOx emissions have increased between 365 and 1,124 tons per year. The Plant currently operates with no add-on controls for NOx and has the potential to emit 9,228 tons of NOx on an annual basis. Had Deseret Power obtained the appropriate PSD Permit, pollution control technologies would have reduced NOx emissions by 40%. Such a reduction in NOx emissions would have had an incredible impact on cleaning the air quality on the Reservation. Through the Agreement, EPA has the opportunity to make up for erroneously issuing the 2001 PSD Permit. The Agreement should include stricter compliance deadlines, and if Deseret Power fails to meet these requirements, Deseret Power should lose the privilege to operate on and pollute the Uintah and Ouray Reservation.

**EPA's Environmental Justice Obligations to the Ute Indian Tribe**

While the Agreement will result in cleaner air throughout the Uinta Basin, the Tribe would like to know how EPA protected unique tribal interests in settlement discussions. Since the construction of the Plant, the Ute Indian Tribe has suffered disproportionate human health and environmental harm as a result of the coal plant. These effects were only exacerbated by Deseret Power's noncompliance with the Clean Air Act. While we understand that the parties negotiated this position to provide for cleaner air and to reduce the impact of the Plant on climate change, we do not believe that either the Sierra Club or WildEarth Guardians negotiated with the unique interests of the Ute Indian Tribe in mind. Therefore, we are providing a brief overview of EPA's duty to prevent environmental injustices to populations such as the Tribe.

President Clinton issued Executive Order No. 12,898, *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations*, to address problems of environmental injustice in existing federal laws and regulations. The Executive Order states:

> To the greatest extent practicable and permitted by law … each Federal agency shall make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations in the United States . . . .

59 Fed. Reg. 7629.

Fair treatment means that no population should be forced to shoulder a disproportionate share of exposure to negative effects of pollution due to lack of political or economic strength. Yet, this is exactly what is happening to the Ute Indian Tribe. Members of the Ute Indian Tribe have lived for decades in close proximity to the emissions from the Plant, which has fueled the Reservation's growing air pollution problems. Each year, the plant emits more than 3.5 million of tons of air pollution from a 600-foot smokestack, including approximately one third of the NOx in the Uintah Basin. As you know, NOx combines with Volatile Organic Compounds ("VOCs") to form ozone. Recorded ground level ozone concentrations in the Basin are higher than those recorded in Los Angeles. Ground level ozone is a major health concern on the Reservation, triggering asthma attacks, scarring the lungs of children, sending tribal elders to the emergency room, and even causing premature death. We are requesting that EPA explain to the Tribe how these concerns were raised and addressed in the settlement negotiations.

We would like to remind EPA of its trust responsibility to the Ute Indian Tribe and the impacts of its action on tribal sovereignty and trust resources. Under the federal trust responsibility, the United States is expected to meet exacting fiduciary standards in carrying out responsibilities affecting Indian tribes and treaty rights. *Seminole Nation v. United States,* 316 U.S. 286, 296-97 (1942). The United States must protect the interests being threatened here, including the threat to the Ute Indian Tribe's homeland, sovereignty, economic integrity, and resources. *See, e.g., Oneida Indian Nation v. County of Oneida,* 414 U.S. 661, 667 (1974); *Mescalero Apache Tribe v. Jones,* 411 U.S. 145, 152 (1973). With each passing day that the Plant operations in noncompliance with the Clean Air Act, the Tribe's sovereignty, homeland, health, and economic opportunities will continue to be compromised.

Finally, we have repeatedly requested—and have been repeatedly promised—that EPA will provide to the Tribe draft rules, regulations, and permits impacting the Uintah and Ouray Reservation prior to its release to the general public. EPA has not lived up to this promise as the Tribe continually receives notice of proposed rules and permits through the Federal Register. Once again, we request that EPA provide the Tribe with the advance notice it deserves and has been promised. The Tribe also welcomes any opportunity to participate on a government-to-government basis.

**Conclusion**

The Ute Indian Tribe supports the Agreement as it will finally force Deseret Power to install the pollution control technologies it should have installed in 2001. Requiring installation of the LNB/OFA in 2016 and commencement of a coal consumption cap in 2018 are a great step

toward bringing the Plant into compliance with federal requirements. The Tribe continues to maintain the position that EPA must hold Deseret Power accountable for its inexcusable history of repeated violations at the expense of the Ute Indian Tribe. Therefore, before giving its final approval to the Agreement, the Tribe respectfully requests that EPA provide proof that Region 8 can issue a final Minor NSR Permit before December 31, 2015.