

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,

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.

ORDER

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

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", written over a light blue dotted grid background.

ELISABETH A. SHUMAKER, Clerk