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VIA EMAIL & U.S. MAIL

July 31, 2012

James E. Martin
Regional Administrator
U.S. Environmental Protection Agency
Region XII
1595 Wynkoop Street
Denver, CO 80202-1129

Re: Request for Formal Consultation Regarding Clean Air Act Violations at the Bonanza Power Plant

Dear Mr. Martin,

As you are aware, it is the Environmental Protection Agency's ("EPA") policy to consult with the Ute Indian Tribe on a government-to-government basis when EPA's actions may affect tribal interests. The Ute Indian Tribe along with WildEarth Guardians recently provided notice of their intent to sue Deseret Generation and Transmission Cooperative ("DG& T"), doing business as Deseret Power, over tens of thousands of violations of the Clean Air Act (the "CAA" or "Act") at its Bonanza coal-fired power plant near Vernal, Utah. Pursuant to the time and notice requirements of the citizen suit provisions of the Act, sixty days has lapsed and the Ute Indian Tribe now intends to file suit to bring the Bonanza into compliance with the Act.

Before filing suit, the Ute Indian Tribe would like to formally invoke the consultation process with the EPA to ascertain and coordinate its efforts to bring the Bonanza Plant into compliance with the Act. As means of facilitating this consultation, we wish to express our concern over what we see as failed regulatory oversight by EPA at the Bonanza Plant for well over a decade. As set out in our notice letter, there are numerous alleged violations of the CAA falling into three specific categories: (1) violations associated with modifications to the plant made in 2000 that failed to comply with the CAA's prevention of significant determination ("PSD") program; (2) violations of the plant's existing PSD permit; and (3) violations of federal limitations on opacity contained in the New Source Performance Standards ("NSPS").

The first, and most significant, of the alleged claims involves construction at the Bonanza plant in approximately 2000 as part of a project to increase the capacity of the facility and to extend its life. Under the federal PSD program, certain physical modifications of major sources of pollutants that are known to be adverse to human health—like particulate matter ("PM10"), nitrogen oxides ("NOx"), and sulfur oxides ("SOx")—are required to go through a special permitting process. This process, known as PSD, is intended to ensure that increases in air pollution are offset by the facility through various regulatory means, primarily the installation of air pollution controls known as Best Available Control Technology ("BACT").

With regards to Bonanza, the record is quite clear that the 2000 modifications resulted in actual, significant increases of air pollution that not only exceeded regulatory limits, but pose a real threat to human health and the environment. Emissions of NOx increased somewhere between 365 and 1124 tons per year. Similarly, emissions of SOx increased at upwards of 1,171 tons per year and the emissions of PM10 increased upwards of 686 tons per year. These increases are quite large and undoubtedly present an increased risk of harm to human health, such as respiratory illnesses like asthma and lung disease, cardiovascular illness, and possibly even brain cancer. The impacts on health are particularly hard on children and the elderly living on tribal lands.

The second set of alleged claims involve the violation of the existing PSD permit for Bonanza, which was issued in 1981 by EPA. This permit limited both the maximum heat input rate for the plant as well as the maximum emissions of NOx. While Deseret will likely argue what the exact limitations are in its existing permit, even when looked at in the light most favorably to the company, there are at least 23,413 exceedances of the heat input rate limitation and 315 exceedances of the NOx limit in the past 5 years.

The final set of alleged violations involve excess capacity from the plant's 600 foot high emissions stack. Under federal NSPS the facility's opacity emission level—that is the density of the smoke emitted from its operations—is generally limited to 20%, except in certain defined situations. These excepted situations primarily involved startup, shutdown, and qualifying malfunctions. In addition, the facility is allowed to exceed 20% opacity, but not exceed 27% opacity, for one 6 minute period in an hour. Even taking these exceptions into account, the plant has violated the 20% opacity limit on 540 occasions in the past 5 years; 431 of these occasions also exceeded the 27% imitation.

On Monday, July 9, 2012, WildEarth and the Tribe's General Counsel, Fredericks Peebles & Morgan LLP ("FPM) met with enforcement representatives of the Environmental Protection Agency ("EPA") to discuss their efforts towards bringing the Bonanza Plant into compliance with the CAA. Representatives of the EPA were reluctant to share any of their communications regarding the Bonanza Plant but pledged to work cooperatively with the Tribe to ensure that the Bonanza Plant is brought into compliance with the CAA.

Although the EPA was reluctant to share any details of its enforcement efforts, the representatives did share that they were aware of problems at the Bonanza Plant and that they have taken steps to investigate. In 2008, the EPA submitted a request for

information to Deseret regarding operations at the Bonanza Plant. And since 2008, the agency's enforcement staff has inspected the facility. The Ute Indian Tribe would like to have access to the information obtained by the EPA during these investigations. In the meantime, EPA informed FPM that they could not share whether it intends to enforce the CAA in light of the findings of its investigations. FPM has also learned that EPA is also processing a CAA operating permit for the Bonanza Plant. This permit will govern how the plant is operated in future years.

The Ute Indian Tribe would like to formally consult with EPA enforcement staff so that they can share information with the Tribe. We would like to set up a meeting for Thursday, August 9, 2012. We sincerely hope that EPA would consult with the Ute Indian Tribe so that it could provide input in the development of the permit in accordance with EPA's consultation policy.

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Irene C. Cuch, Chairwoman
Ute Indian Tribe of the Uintah and Ouray Reservation

CC: Business Committee