

643 Fed.Appx. 799 (Mem)

This case was not selected for publication in West's Federal Reporter. See Fed. Rule of Appellate Procedure 32.1 generally governing citation of judicial decisions issued on or after Jan. 1, 2007. See also U.S.Ct. of App. 10th Cir. Rule 32.1. United States Court of Appeals, Tenth Circuit.

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. [The Navajo Transitional Energy Company, LLC](#), Intervenor Defendant–Appellant, and The Navajo Nation, Intervenor Defendant.

No. 15–1126.

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March 30, 2016.

Attorneys and Law Firms

[Shiloh Silvan Hernandez](#), Helena, MT, [Erik Schlenker–Goodrich](#), [Kyle J. Tisdell](#), Taos, NM, for Plaintiffs–Appellees.

Peter McVeigh, [David C. Shilton](#), United States Department of Justice, Washington, DC, Defendants.

[Paul E. Frye](#), Esq., [William Gregory Kelly](#), Frye Law Firm, P.C., Albuquerque, NM, for Intervenor Defendant.

[Paul Spruhan](#), Navajo Nation Department of Justice, Window Rock, AZ, for Intervenor Defendant.

Before [KELLY](#), [MATHESON](#), and [MORITZ](#), Circuit Judges.*

ORDER AND JUDGMENT **

[PAUL J. KELLY, JR.](#) Circuit Judge.

A recitation of the facts in this case is unnecessary, as the parties are familiar with them. Both parties agree we lack jurisdiction to hear this appeal, though for different reasons. The Intervenor Defendant–Appellant maintains that this case is constitutionally moot. The Plaintiffs–Appellees argue instead that we cannot reach the mootness issue because the district court's remand was not a final decision, *see* 28 U.S.C. § 1291, nor had the practical effect of an injunction, *see* 28 U.S.C. § 1292(a)(1). We are not so constrained and may dismiss on any jurisdictional ground. *Cf. Ruhrgas AG v. Marathon Oil Co.*, 526 U.S. 574, 578, 119 S.Ct. 1563, 143 L.Ed.2d 760 (1999); *Boyce v. Ashcroft*, 268 F.3d 953, 955 (10th Cir.2001) (“Although the court may have discretion to decide subject matter jurisdiction before reaching the issue of mootness, however, we find no reason to do so in this case. The matter is unquestionably moot. The court therefore vacates its judgment and remands to the district court with directions to vacate its judgment as moot.”).

Pending this appeal, the Office of Surface Mining Reclamation and Enforcement, in accordance with the district court's remand, issued a Revised Environmental Assessment and Finding of No New Significant Impact as well as re-approved the permit revision. Aplt. Notice of Supp. Auth. Because this case now lacks a live case or controversy, we lack subject matter jurisdiction. *New Mexico ex rel. Richardson v. Bureau of Land Mgmt.*, 565 F.3d 683, 701 (10th Cir.2009). Therefore, we dismiss the appeal as constitutionally moot and vacate the district court's March 2, 2015 opinion and order (Doc. 79), its

April 6, 2015 remedies order (Doc. 83), and its Final Judgment (Doc. 86).

All Citations

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Footnotes

- * After examining the briefs and the appellate record, this three-judge panel has determined unanimously that oral argument would not be of material assistance in the determination of this appeal. See [Fed. R.App. P. 34\(a\)](#); [10th Cir. R. 34.1\(G\)](#). The cause is therefore ordered submitted without oral argument.
- ** This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R.App. P. 32.1 and 10th Cir. R. 32.1.

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