Regional Haze/Second Implementation Period: National Parks Conservation Association/Colorado Attorney General Challenge U.S. Environmental Protection Agency's Disapproval of Regional Haze Plan



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The National Parks Conservation Association and Sierra Club (collectively, "NPCA") and the Colorado Attorney General ("AG") filed separate Petitions before the United States Court of Appeals for the 10th Circuit challenging the United States Environmental Protection Agency's ("EPA") disapproval of Colorado's Regional Haze Plan for the Second Implementation Period.

EPA's disapproval was published in the Federal Register on January 26, 2026. See 91 Fed. Reg. 3048.

Congress sought to address visibility of mandatory Class I federal areas in which an impairment results from manmade air pollution. Section 169A requires that certain sources contributing to visibility impairment install BART. The states are responsible for determining the appropriate BART controls for certain stationary sources. EPA reviews the State's Implementation Plan ("SIP") submissions for consistency with the relevant regulation.

The Regional Haze Rule requires that states submit SIPs to manage visibility impairing air pollutants affecting mandatory Class I federal areas to demonstrate progress toward the national visibility goal under the Clean Air Act.

EPA had previously stated in 2025 that it was seeking input regarding how it can "meaningfully revise the RHR to streamline regulatory requirements impacting states' visibility improvement obligations under the CAA."

EPA's January 26th disapproval addressed the SIP revisions submitted in 2022 by the State of Colorado for the Second Implementation Period. EPA stated that it was disapproving the Colorado SIP revision because it can only approve it if all the applicable requirements of the Clean Air Act are met. The federal agency stated in part that:

… We find that Colorado's 2022 regional haze SIP revision does not meet the requirements of CAA section 110(a)(2)(E)(i) because Colorado did not provide necessary assurances that the unconsented source closure of Nixon Unit 1 at the Ray D. Nixon Power Plant would not result in a taking pursuant to the U.S. Constitution. After Colorado submitted its 2022 regional haze SIP revision to EPA, Nixon Unit 1 informed

the State that it would not consent to closure and raised concerns about the lawfulness of forcing a closure and the impacts of such a closure on electricity supply in the State.

The Colorado AG in the news release accompanying the Petition states that EPA's decision to disapprove the Colorado Regional Haze State Implementation Plan is:

… based on policy objections to closing coal plants and it is another example of the Trump administration intruding on state authority without any basis in law.

NPCA argued in part that Colorado's Regional Haze plan:

... complied with EPA's long-standing policy on how states can incorporate voluntary source closures.

A copy of the NPCA and AG Petitions can be found here.