

Minor, Dustin

From: Minor, Dustin
Sent: Friday, December 27, 2019 1:32 PM
To: John Barth
Cc: Hagler, Tom; McGrath, Kerry L.; lbachtel@huntonak.com; ODea, Elise
Subject: RE: [SPAM-Sender] Re: Consult on Motion to Strike Document from AR

John,

EPA does not oppose your motion to strike AR # 30. If you file it, EPA may file a Motion to Strike your Exhibit 66.

Dustin Minor, Assistant Regional Counsel
(415)972-3888

From: John Barth <barthlawoffice@gmail.com>
Sent: Friday, December 27, 2019 7:03 AM
To: Minor, Dustin <Minor.Dustin@epa.gov>
Cc: Hagler, Tom <Hagler.Tom@epa.gov>; McGrath, Kerry L. <KMcGrath@hunton.com>; lbachtel@huntonak.com
Subject: [SPAM-Sender] Re: Consult on Motion to Strike Document from AR

No I will not withdraw Exhibit 66. Please state your position on my motion to strike.

Sent from my iPhone

On Dec 26, 2019, at 4:49 PM, Minor, Dustin <Minor.Dustin@epa.gov> wrote:

Counsel,

I need to consult internally within EPA regarding John Barth's request regarding AR # 30, but I have a question for John that would be helpful for those discussions (which I will attempt to have tomorrow if people are available).

The rest of the email is directed to John.

Would you be willing to withdraw Attachment # 66 and the reference to it in your Petition for Review in exchange for EPA's removing AR # 30?

As noted in our Response Brief, Attachment # 66 was not referred to in your comments and is not properly before the Board.

However, since you raised an APS Report in Attachment # 66 for the first time as part of your Petition, EPA consulted with APS, to understand the APS Report. AR # 30 is EPA's documenting that communication to support EPA's response to the Petition.

If I am mistaken and you did refer to this report before in your comments, please respond and let me know what page of your comments addressed it.

Thank you.
Dusty

Dustin Minor, Assistant Regional Counsel
U.S. EPA Region 9
(415)972-3888

From: John Barth <barthlawoffice@gmail.com>
Sent: Thursday, December 26, 2019 10:19 AM
To: Minor, Dustin <Minor.Dustin@epa.gov>; Hagler, Tom <Hagler.Tom@epa.gov>; McGrath, Kerry L. <KMcGrath@hunton.com>; lbachtel@huntonak.com
Subject: Consult on Motion to Strike Document from AR

Counsel

I am writing to consult regarding a motion to strike AR #30 from EPA's administrative record in the Four Corners NPDES EAB appeal. AR #30 is an email between counsel for EPA and APS dated December 10, 2019. The email post- dates EPA's final permit decision by several months and was not relied upon by EPA in its response to comments. Therefore, the document is not properly in the AR. I will not file the Motion to Strike if EPA agrees to file a voluntary withdrawal of the document with the EAB prior to 1/2/2020. Please state your position by COB Friday 12/27/2019. Thank you.

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John Barth
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