

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
ENVIRONMENTAL APPEALS BOARD

In the Matter of:)	
)	
TULALIP TRIBES OF WASHINGTON)	
WASTEWATER TREATMENT PLANT)	
NPDES Permit No. WA0024805)	Appeal Nos. NPDES 24-02 & 24-03
)	
&)	MOTION TO DISMISS
)	
LUMMI TRIBAL SEWER AND WATER)	
DISTRICT)	
)	
GOOSEBERRY POINT)	
WASTEWATER TREATMENT PLANT)	
NPDES Permit No. WA 0025666)	
)	
SANDY POINT WASTEWATER)	
TREATMENT PLANT)	
NPDES Permit No. WA 0025658)	

The United States Environmental Protection Agency, Region 10 (“Region”) respectfully requests that the Environmental Appeals Board (“Board”) dismiss the consolidated Petitions for Review of National Pollutant Discharge Elimination System (“NPDES”) Permit Nos. WA0024805, WA0025666, and WA0025658 (“Permits”) filed by Northwest Environmental Advocates (“NWEA”), in the above-captioned matters. The Board should do so because the Petitions have become moot following the withdrawal by the Region of the Permits.

DISCUSSION

On August 8, 2024, the Region issued NPDES Permits to the Tulalip Tribes of Washington Wastewater Treatment Plant (“Tulalip WWTP”), NPDES Permit No. WA0024805; Sandy Point Wastewater Treatment Plant (“Sandy Point WWTP”), NPDES Permit No. WA0025658; and Gooseberry Point Wastewater Treatment Plant (“Gooseberry Point WWTP”), NPDES Permit No. WA0025666. On September 7, 2024, NWEA filed a Petition for Review of the NPDES permit issued for the Tulalip WWTP which was assigned Appeal No. NPDES 24-02. On September 9, 2024, NWEA filed a Petition for Review of the NPDES permits issued for the Sandy Point WWTP and Gooseberry Point WWTP which was assigned Appeal No. NPDES 24-03. These matters were consolidated through a Board Order issued on September 24, 2024.

Under applicable regulations governing appeals to the Board, the Region has the authority to “withdraw the permit and prepare a new draft permit under § 124.6...” at any time prior to 30 days after the Region files its response to the Petitions. *See* 40 C.F.R. § 124.19(j); *In re Washington Aqueduct Water Treatment Plant*, NPDES Appeal No. 03-07, slip op. at 2 (EAB, December 15, 2003) (noting that an EPA regional office’s right to withdraw is absolute). The Region’s response brief is currently due on November 7, 2024. The Region has determined to withdraw the Permits in their entirety and has notified the Board and all interested parties of the same. *See* Exhibit 1. The Region intends to prepare new draft permits and will release the permits for public notice and comment. Until such time as the Region issues final permits, the previously issued permits will remain in effect.

CONCLUSION

The Region respectfully requests the Board to dismiss NWEA's Petitions on the grounds that they are moot.

DATED: November 6, 2024

Respectfully Submitted

/s/ Courtney Weber

Courtney Weber

Assistant Regional Counsel

EPA Region 10

1200 Sixth Avenue, Suite 155, 11-C07

Seattle, WA 98101

Tel: 206-553-1477

Email: weber.courtney@epa.gov

Attorney for EPA Region 10

Of Counsel:

Eleanor Garretson

Attorney Advisor

Water Law Office

Office of General Counsel

(202) 564-9636

CERTIFICATE OF SERVICE

I certify that the foregoing “Motion to Dismiss” was sent to the following persons, in the manner specified, on the date below:

By electronic filing to:

U.S. Environmental Protection Agency
Clerk of the Environmental Appeals Board
1200 Pennsylvania Ave., NW
Mail Code 1103M
Washington, DC 20460-0001

By electronic mail to:

James N. Saul
Wild & Scenic Law Center
3519 NE 15th Ave., #207
Portland, OR 97212
(503) 342-2839
jamie@wildandsceniclaw.org
Attorney for Petitioner Northwest Environmental Advocates

Philip Buri
Buri Funston Mumford, PLLC
1601 F Street
Bellingham, WA 98225
(360) 752-1500
Philip@BuriFunston.com
Attorney for Lummi Tribal Sewer and Water District

DATED: November 6, 2024

/s/ Courtney Weber

Courtney Weber
Assistant Regional Counsel
U.S. EPA, Region 10