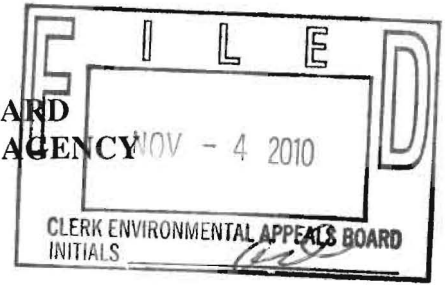


BEFORE THE ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.



_____)
In re:)
Peabody Western Coal Company,)
NPDES Permit No. NN0022179)
_____)

NPDES Appeal Nos. 10-15 & 10-16

**ORDER ACCEPTING SUPPLEMENTAL BRIEF FOR FILING
AND GRANTING PERMITTEE PERMISSION TO RESPOND TO PETITIONS**

On October 18, 2010, the Environmental Appeals Board received two petitions requesting that the Environmental Appeals Board grant review of a National Pollutant Discharge Elimination System (“NPDES”) permit, Permit No. NN002219, U.S. EPA Region 9 (the “Region”) issued to Peabody Western Coal Company (“Peabody”). The first petition was filed by Black Mesa Water Coalition, Dine C.A.R.E., To Nizhoni Ani, Center for Biological Diversity and Sierra Club (hereinafter “BMWC Petitioners”). The second petition was filed by Ben Nuvamsa and Californians for Renewable Energy (hereinafter “Nuvamsa Petitioners”). Also before the Board at this time is Peabody’s motion for leave to intervene and request for leave to respond to the petitions.

The BMWC Petitioners’ petition included a motion for a 30-day extension of time to file a supplemental brief in support of their petition. In essence, the BMWC Petitioners’ motion for additional time is premised on their belief that they do not have access to the full administrative record for the Region’s permitting decision. The Region filed a response opposing the requested 30-day extension of time. The Region asserts that the BMWC Petitioners do have access to the

full administrative record for the Region's permitting decision, although the Region acknowledges that on October 13, 2010, the Region sent an e-mail to the BMWC Petitioners' attorney stating that the BMWC Petitioners might not have received the full administrative record. Shortly after receiving the Region's response to the motion for extension of time, the BMWC Petitioners filed their Supplemental Brief in Support of Petition for Review, along with a reply to the Region's opposition. Among other things, the BMWC Petitioners suggest that it would be appropriate for the Region to be granted an extension of time to respond to the BMWC Petitioners' Supplemental Brief and petition.

Upon consideration, the Board hereby accepts for filing¹ the BMWC Petitioners' Supplemental Brief in Support of Petition for Review. The Board also grants Peabody leave to respond to both petitions for review and extends the Region's time for filing its response. Both the Region and Peabody shall file their responses and other documents on or before Monday, December 21, 2010.

So ordered.

Dated:

November 4, 2010

ENVIRONMENTAL APPEALS BOARD

By:

Anna L. Wolgast
Anna L. Wolgast
Environmental Appeals Judge

¹ The Board's decision to accept for filing the BMWC Petitioners' Supplemental Brief is not a ruling on the merits of any issues raised in the brief, including the BMWC Petitioners' purported reservation of a right to "raise additional issues" once the Region has certified the administrative record for its permitting decision. BMWC Petitioners' Supplemental Brief at 5. This order also does not constitute a ruling on the similar argument made in the BMWC Petitioners' reply in support of their motion for extension of time, or a ruling that the BMWC Petitioners have satisfied the threshold requirements necessary for the BMWC Petitioners to avoid denial of their petition and brief.

CERTIFICATE OF SERVICE

I hereby certify that copies of the forgoing Order Accepting Supplemental Brief for Filing and Granting Permittee Permission to Respond to Petitions in the matter of Peabody Western Coal Company, NPDES Appeal Nos. 10-15 & 10-16, were sent to the following persons in the manner indicated:

U.S. First Class Mail:

David L. Abney
Law Office of David L. Abney
4025 East Chandler Blvd. No. 70-A8
Phoenix, Az 85048

Brad A. Bartlett
Travis Stills
Energy Minerals Law Center
1911 Main Ave., Suite 238
Durango, Co 81301

Peter R. Duchesneau
Craig A. Moyer
Manatt, Phelps & Phillips, LLP
11355 West Olympic Blvd.
Los Angeles, CA 90064-1614

U.S. EPA Pouch Mail:

Samuel L. Brown
Assistant Regional Counsel
U.S. EPA, Region 9
75 Hawthorne Street (ORC-2)
San Francisco, CA 94105

Dated: NOV - 4 2010



Annette Duncan
Secretary