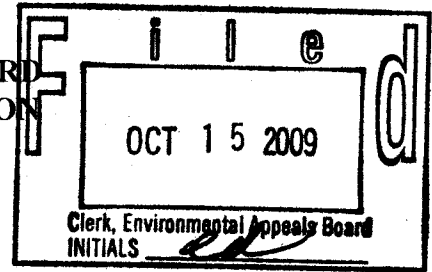


BEFORE THE ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION
WASHINGTON, D.C.



In re:)
)
San Jacinto River Authority)
)
NPDES Permit No. TX0054186)
)

NPDES Appeal No. 09-09

**ORDER EXTENDING DEADLINE FOR REGION 6
TO FILE RESPONSE TO SAN JACINTO RIVER AUTHORITY'S PETITION**

By motion dated October 9, 2009, the U.S. Environmental Protection Agency, Region 6 ("Region") requests that the Environmental Appeals Board ("Board") extend the deadline for the Region to file its response to the San Jacinto River Authority's ("SJRA") petition for review in the above-captioned matter. Respondent's Motion for Extension of Time to Submit a Response to Petitioner's Contentions (Oct. 9, 2009) ("Motion"). For the foregoing reasons, the Board grants a seven-week extension for the Region to file its response to the petition.

After SJRA filed its petition for review of NPDES permit number TX0054186 on August 24, 2009, the Clerk of the Board directed the Region to file a response to the petition no later than October 15, 2009. Letter from Eurika Durr, Clerk of the Board, Environmental Appeals Board, U.S. Environmental Protection Agency (Aug. 28, 2009). The Region now seeks a sixty-day extension of the deadline by which to file its response, through December 14, 2009, so that the Region may "fully evaluate SJRA's petition, including several hundred pages of exhibits of a highly technical nature, discuss the complex issues presented internally to identify issues for which a response should be coordinated, and if necessary, resolved with Headquarters offices, and to organize and index the administrative record which consists of upwards of an estimated 5,000 pages of documents." Motion at 1.

SJRA opposes the Motion in a response dated October 13, 2009. SJRA's Response to Motion for Extension of Time to Submit a Response by EPA Region VI (Oct. 13, 2009) ("SJRA Response"). According to SJRA, the Region has neither demonstrated good cause nor cited "special circumstances" to justify an extension. *Id.* at 1-2 (citing *AES Puerto Rico LP*, 8 E.A.D. 324, 329 (EAB 1999), *review denied sub nom. Sur Contra La Contaminación v. EPA*, 202 F.3d 443 (1st Cir. 2000)). In particular, SJRA asserts that the Board has previously determined that the specific reason that the Region cites for seeking the extension "does not in and of itself fall into the category of a special circumstance to merit a delay in the proceedings." *Id.* at 2 (citing *In re Town of Marshfield*, NPDES Appeal No. 07-03 (EAB Mar. 27, 2007) (Order Denying Review). Additionally, argues SJRA, it "would be prejudiced by such an extended delay of time * * *. The inordinate amount of time this process has endured has resulted in higher costs and expenses associated with such a protracted administrative process."¹ *Id.* at 4.

Given that the Region has articulated a reasonable rationale for the need for an extension of time, and that SJRA's opposition relies solely on a general allegation of prejudice, the Board grants an extension of seven weeks. Further, the cases cited by SJRA do not indicate a different result. SJRA cites Board cases for the proposition that filing deadlines may only be relaxed when, unlike here, "special circumstances exist." *Id.* at 2. The cases cited, however, are clearly distinguishable from the case at hand because they address whether filed petitions for review should be dismissed as untimely and do not address requests for extensions of time.²

¹ The permitting decision at issue in this case is a modification of a permit previously issued on September 28, 2007. SJRA Response at 3. SJRA sought Board review of the 2007 permit. *Id.* In March 2008, the Board dismissed SJRA's petition to review the 2007 permit, after the Region withdrew the contested portions. *Id.*

² *Town of Marshfield*, NPDES Appeal No. 07-03 at 8 (denying petition on timeliness grounds when Board received petition a month and a half after the filing date without an explanation for the delay, and the reason provided after the permitting authority challenged timeliness was that petitioner was required to "conduct legal and technical research in preparation for [the] appeal"); *In re Hillman Power Co.*, 10 E.A.D. 673, 680 n.4 (EAB 2002) (discussing order denying motions to dismiss petition as untimely when petitioner had not been

(continued...)

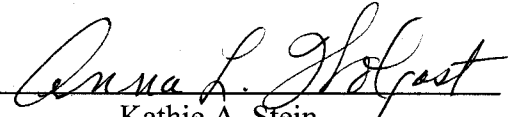
Accordingly, these cases provide no support for SJRA's motion.

For good cause shown, the Board hereby extends the deadline for the Region to file its response by seven weeks. On or before Thursday, December 3, 2009, the Region shall file³ with the Clerk of the Board and serve on all parties its response to SJRA's petition for review of NPDES permit number TX0054186 and include with the response relevant portions of the administrative record together with a certified index of the entire administrative record.

So ordered.

Dated: October 15, 2009

ENVIRONMENTAL APPEALS BOARD

By: 
Kathie A. Stein
for Environmental Appeals Judge

²(...continued)

served the final permit decision); *In re Avon Custom Mixing Servs., Inc.*, 10 E.A.D. 700, 703 n.6 (EAB 2002) (considering as timely petition received "approximately one month after it had been mailed by certified mail to the Board's mailing address" because delay appeared to be attributable to "rerouting of Washington D.C. mail in response to anthrax contamination concerns"); *In re AES Puerto Rico LP*, 8 E.A.D. 324, 329 (treating as timely petition received "one day after the deadline established by the Board due to aircraft problems experienced by * * * the overnight package delivery service selected by [the petitioner]").

³ A document is "filed" on the date it is received by the Clerk of the Board.

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Order Extending Deadline for Region 6 to File Response to San Jacinto River Authority's Petition in *San Jacinto River Authority*, NPDES Appeal No. 09-09, were sent to the following persons in the manner indicated:

By First Class U.S. Mail:

Lauren Kalisek
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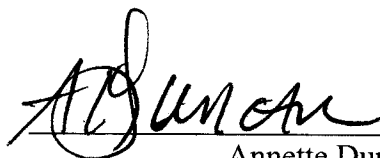
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Date: OCT 15 2009



Annette Duncan
Secretary