

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

	)	
In re:	)	
	)	NPDES Appeal No. 19-06
Arizona Public Service Co.	)	
	)	
NPDES Permit No. NN0000019	)	
	)	

**ORDER GRANTING MOTION TO STRIKE AND NOTICE OF  
 SERVICE BY E-MAIL**

On December 30, 2019, the Dine’ Citizens Against Ruining the Environment, the San Juan Citizens Alliance, Amigos Bravos, the Center for Biological Diversity, and the Sierra Club (collectively “Petitioners”) filed a motion with the Environmental Appeals Board (“Board”) to strike a document from the administrative record. *See* Petitioners’ Unopposed Motion to Strike Administrative Record Document #30 (Dec. 30, 2019) (“Motion”). Previously, U.S. Environmental Protection Agency, Region 9 (“Region”) included in the certified index to the administrative record a document dated December 10, 2019 and entitled “Email from Jeffrey Allmon, Pinnacle West to Dustin Minor Re: Water Balance at APS FCPP and Morgan Lake.” Petitioners move to strike this document because the document’s date is more than two months after the Region issued the final permit at issue in this matter on September 30, 2019 and thus, Petitioners maintain, the document could not have been considered by the Region at the time it issued the final permit. Motion at 1. Petitioners represent that the Region does not oppose Petitioners’ Motion and Arizona Public Service Company takes no position on Petitioners’ request to strike this document from the administrative record.


The regulations governing administrative records for final permits provide that the administrative record “shall be complete on the date the final permit is issued.” 40 C.F.R. § 124.18(c). By not opposing Petitioners’ Motion, the Region has provided the Board no explanation as to why Administrative Record Document #30, which post-dates the Region’s issuance of the final permit on September 30, 2019, is properly included in the administrative record for the permit at issue here. Based on the foregoing, the Board **GRANTS** Petitioners’ motion to strike Document #30 from the administrative record. The Board further **ORDERS** that the Region file a corrected certified index to the administrative record on or before **Thursday, January 16, 2020.**

Pursuant to 40 C.F.R. § 124.19(i)(3)(iii), the Board may also use e-mail (Clerk\_EAB@epa.gov) to serve orders and decisions in this matter at the addresses provided by the parties. Subsequent to this order, all future orders and decisions in this matter will be served via e-mail at the addresses noted on the accompanying certificate of service. Parties shall promptly file a notice in this matter informing the Board and the other parties if their e-mail address changes.

So ordered.

Dated: January 9, 2020

**ENVIRONMENTAL APPEALS BOARD**

By:   
\_\_\_\_\_  
Aaron P. Avila  
Environmental Appeals Judge

## CERTIFICATE OF SERVICE

I certify that copies of the foregoing *Order Granting Motion to Strike and Notice of Service by E-mail* in the matter of Arizona Public Service Company, NPDES Appeal No. 19-06, were sent to the following persons in the manner indicated:

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Dated: January 9, 2020

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