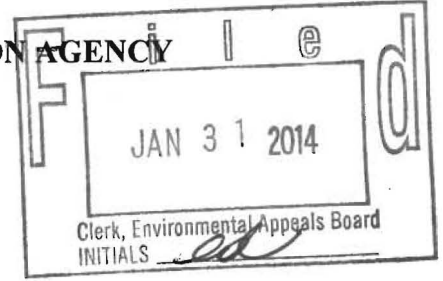


**ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.**



_____)
In re:)
)
Joint Base Lewis-McChord)
Municipal Separate Storm Sewer System)
)
NPDES Permit No. WAS-026638)
_____)

NPDES Appeal No. 13-09

**SECOND ORDER GRANTING MOTION TO PARTICIPATE AS AMICUS
AND EXTENDING TIME TO FILE AMICUS BRIEF**

By motion filed on January 22, 2014, the State of Washington, Department of Ecology (“Ecology”) requests leave to participate as amicus curiae in the above-captioned matter. *See* Unopposed Motion for Leave to Participate as Amicus and Extension of Time to April 15, 2014 (“Motion”). Because the Environmental Appeals Board (“Board”) has stayed proceedings in this matter until March 31, 2014, while the parties participate in the Board’s Alternative Dispute Resolution (“ADR”) Program, Ecology requests until April 15, 2014, fifteen days after expiration of the stay, to file its amicus brief. The Motion states that Ecology has a unique interest in this matter because many of the challenged permit conditions were incorporated into the permit pursuant to conditions specified in Ecology’s Clean Water Act (“CWA”) section 401 certification. *See* Motion at 2; CWA § 401, 13 U.S.C. § 1341. “Ecology has a unique interest in participating in this matter in order to explain the requirements of Washington state law, how the challenged conditions from Ecology’s 401 certification are necessary to insure that stormwater discharges from [the permitted facility] meet the requirements of state law, and why [the

petitioner] is precluded from challenging Ecology's 401 certification before the Board." Motion at 2-3.

Upon consideration, Ecology's request to file an amicus brief is granted. However, Ecology's amicus brief must be filed with the Board no later than March 7, 2014.¹ This will allow the Board to proceed in an expeditious manner should the ADR process fail to resolve this matter.

By order dated January 13, 2014, the Board granted a motion filed by American Rivers, Puget Soundkeeper Alliance, Washington Environmental Counsel, and National Resources Defense Council (collectively "Conservation Amici") to participate as amicus curiae and to file a joint amicus brief with the Board no later than January 30, 2014. *See* Order Granting Motion to Participate as Amicus. By Motion filed with the Board on January 23, 2014, Conservation Amici "requests that whatever deadline is set for [Ecology] be applied to [Conservation Amici] as well." Motion to Join in Extension of Time at 1. The Motion is granted. Conservation Amici must now file their joint brief no later than March 7, 2014.

Finally, by motion filed with the Board on January 30, 2014, the Leading Builders of America, NAIOP-the Commercial Real Estate Development Association, the National Association of Home Builders, the National Multifamily Housing Council, and the Real Estate Roundtable (collectively "Property Builders and Owners") request leave to participate as amici and to file a joint amicus brief on April 15, 2014. *See* Unopposed Motion for Leave to Participate as Amicus Curiae and Extension of Time to April 15, 2014. The motion states that

The Amici and their members have a long-standing interest in the Clean Water Act's and EPA's National Pollutant Discharge Elimination System (NPDES)

¹ Documents are "filed" with the Environmental Appeals Board on the date they are received. 40 C.F.R. § 124.19(i).

stormwater permitting program for constructing and managing newly and redeveloped properties, including properties contained within municipal separate storm sewer systems (MS4s), and have participated extensively in EPA's National Stormwater Rulemaking. The concerns the Amici have raised with EPA Headquarters regarding controls on newly and redeveloped properties are equally and directly applicable to EPA Region 10's mandates now included within the Joint Base Lewis-McChord (JBLM) MS4 permit being appealed here.

Id. at 2. Upon consideration, the Property Builders and Owners' motion is granted. However, the joint amicus brief must be filed with the Board no later than March 7, 2014. As stated above, this will allow the Board to proceed in an expeditious manner should the ADR process fail to resolve this matter.

So ordered.

ENVIRONMENTAL APPEALS BOARD

Dated: January 31, 2014

By: Kathleen A. Steen for Catherine R. McCabe
Catherine R. McCabe
Environmental Appeals Judge

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Second Order Granting Motion to Participate as Amicus and Extension of Time to File Amicus Brief in the matter of Joint Base Lewis-McChord Municipal Separate Storm Sewer System, NPDES Appeal No. 13-09, were sent to the following persons in the manner indicated:

By First Class U.S. Mail:

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Dated: JAN 31 2014



Annette Duncan
Secretary