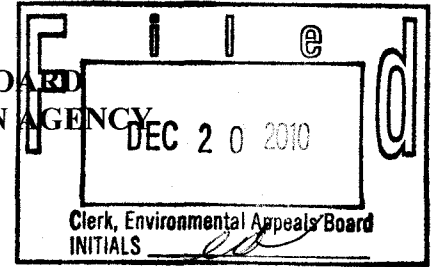


BEFORE THE ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.



In re:)

BP America Production Co.,)
Florida River Compression Facility)

Permit No. V-SU-0022-05.00)

CAA Appeal No. 10-04

ORDER GRANTING, IN PART, MOTION FOR EXTENSION OF TIME

By motion filed December 15, 2010, U.S. Environmental Protection Agency (“EPA”) Region 8 (“Region”) requests a sixty-day extension of time to file its response, including the relevant parts of the administrative record, to a petition for review filed by WildEarth Guardians on November 18, 2010. *See* Motion for Extension of Time (“Motion”) at 1. The petition challenges the permit issued by the Region to BP America Production Company (“BP”) for its Florida River Compression Facility, which is located on the Southern Ute Indian Reservation in La Plata County, Colorado. The Environmental Appeals Board (“Board”) had requested the Region file these documents by January 10, 2011. *Id.* at 1. WildEarth Guardians (“WildEarth”) has filed a partial opposition to the Region’s motion. WildEarth objects to a 60-day extension, but is amenable to a 30-day extension. Partial Opposition for Extension of Time (“Opposition”) at 3.

The Region seeks additional time for several reasons. The Region first explains that the same technical staff and two of the counsel are simultaneously preparing the Administrator’s Order responding to a petition filed by WildEarth “that raises source determination issues similar to those raised in this matter.” Motion at 1. According to the Region, this other matter is also the subject of litigation pending in federal district court. *Id.* The district court has stayed the case

until February 2, 2011, pending the preparation of the Order by the Region. *Id.* at 1-2.

Apparently, if the Region does not respond to the petition by February 2, 2011, the Agency is “required to answer or otherwise respond to the Complaint on or before February 16, 2011.” *Id.*

The Region also states that the Region’s “Air Program is under numerous court-ordered or settlement deadlines in the next two years that are a result of other previous [WildEarth] lawsuits.” *Id.* at 2. The Region also seeks additional time so that “the Region can fully coordinate its response to the issues in this Petition with several EPA Headquarters’ Offices.” *Id.* at 2. The Region claims that coordination is currently underway, “but previously scheduled holiday leave for the necessary staff and management both in the Region and Headquarters will necessitate additional time beyond the January 10, 2011 response deadline provided by the Board’s letter.”¹ *Id.* at 3

The Region states that it has discussed its request with BP, and BP does not object to the sixty-day extension. *Id.* at 3. The Region notes that a 30-day extension, to which WildEarth Guardian has agreed, “would require the Agency to respond to the pending Petition by February 9, just seven days after the deadline for issuing an order” in the matter pending in district court. *Id.*

WildEarth opposes the longer extension because it believes it would be unfair to continue to delay this permit matter. *See* Opposition at 1. WildEarth asserts that the Region “delayed taking legally required final action on the Title V Permit at issue in this case for three and a half

¹ The Board notes that a 30-day extension would require the Region to respond to the Petition before the February 16, 2011 deadline for filing a Complaint.

years,”² and now “requests even more delay.” *Id.* WildEarth further asserts that “if EPA had issued the Title V Permit for Florida River in accordance with its statutory deadline, a Petition for Review would have been filed in 2007.” *Id.* at 5. WildEarth believes that only a 30-day extension is merited because of the Region’s workload, its scheduled staff leave over the holidays, and its need to coordinate with the Headquarters. *Id.* at 3.

The Board agrees that those three factors merit an extension of time in this case. In light of the fact that the some of the issues raised in the present case may be addressed in either the Administrator’s Order or the Complaint that are due to be filed in the federal court litigation in early to mid February, the Board believes it appropriate to require the Region’s response be due within a reasonable time after those deadlines pass. Forty-five days should provide sufficient time for these events to occur and for the Region to thereafter respond to the Petition. Accordingly, for good cause shown, the Region’s motion for extension of time to file its response and the relevant parts of the administrative record is hereby **GRANTED in part**. The Region is directed to file its response and the relevant portions of the administrative record on or before **Thursday, February 24, 2011**. The Board also requests the Region to file a certified index of the administrative record at that time.

So ordered.

ENVIRONMENTAL APPEALS BOARD

Dated: December 20, 2010

By: Kathie A. Stein
Kathie A. Stein
Environmental Appeals Judge

² According to WildEarth Guardians, the Title V permit renewal application was deemed complete on January 19, 2006.

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing **Order Granting, In Part, Motion for Extension of Time** in the matter of *BP America Production Company, Florida River Compression Facility*, CAA Appeal No. 10-04, were sent to the following persons in the manner indicated:

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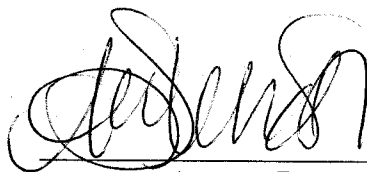
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DEC 20 2010
Date: _____



Annette Duncan
Secretary