

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

In re Buckley Air Force Base
Municipal Separate Storm Sewer System

NPDES Appeal No. 13-07

NPDES Permit Number
CO-R042003

MOTION FOR LEAVE TO PARTICIPATE AS NON-PARTY AMICI

Conservation Law Foundation (“CLF”) and Natural Resources Defense Council (“NRDC”) respectfully request leave to participate in the above-captioned appeal as non-party *amici* through the filing of a single *amicus* brief in reply to the Petition of the United States Department of the Air Force (“Petitioner”) and other *amicus* briefs as warranted.

This appeal concerns a Municipal Separate Storm Sewer System (“MS4”) National Pollutant Discharge Elimination System (“NPDES”) permit issued by the Environmental Protection Agency (“EPA”) Region 8 for a federal facility, Buckley Air Force Base (“Buckley”). The parties to this motion have extensive experience with MS4 permitting matters and a strong interest in the standards for MS4 permits written by EPA. More particularly:

CLF is a non-profit, member-supported environmental advocacy organization working to protect New England’s environment for the benefit of all people. CLF has brought or participated in numerous enforcement actions and permitting actions related to stormwater and MS4 discharges across New England. In addition, EPA is the primary NPDES permitting authority in two of the six New England states, Massachusetts and New Hampshire.

NRDC is a non-profit, member-supported environmental advocacy organization dedicated to protecting public health and the environment throughout the United States through litigation, lobbying, and public education. NRDC's 330,000 members use and enjoy waters that are adversely impacted by MS4 discharges. As a result, NRDC has a long history of involvement in stormwater- and MS4-related advocacy, including but not limited to: a defense of post-construction stormwater management standards in a West Virginia MS4 permit; challenges to inadequate requirements in MS4 permits in New York and the District of Columbia; citizen suits to enforce MS4 permit requirements in California; a petition to EPA Regions 1, 3, and 9 to require permits for existing stormwater sources in impaired watersheds; and comments urging strong nationwide post-construction standards in response to EPA's 2009 advanced notice of proposed rulemaking to amend its national stormwater regulations.

The parties to this motion have a long-standing interest in the MS4 permitting program. The relief requested by the Petitioner in this appeal, including but not limited to a finding that EPA cannot require an MS4 permittee to implement post-construction stormwater control measures in a manner which maintains pre-development hydrology, would adversely affect the interests of NRDC's Colorado members and the interests of CLF and NRDC's members residing in other jurisdictions where EPA is the NPDES permitting authority, including Massachusetts, New Hampshire, and the District of Columbia. Moreover, a ruling that federal law does not authorize the inclusion of strong post-construction standards in MS4 permits could set a harmful precedent for stormwater management requirements in all jurisdictions nationwide.

While the parties to this motion share a common interest with EPA in defending and upholding the challenged provisions of the Buckley MS4 permit, they represent individual

members whose use and enjoyment of water bodies in jurisdictions where EPA is the NPDES permitting authority are adversely affected by stormwater runoff from regulated MS4s, and whose interests are not adequately represented by, and are not nearly identical to, government agencies whose interests encompass institutional interests not shared by CLF and NRDC and their respective members. CLF and NRDC request leave to participate as *amici* to protect the interests of their members, and believe that the perspective of their organizations would be relevant to the Board's deliberations.


Granting this motion will not expand the issues raised in this appeal or delay the Board's decision; nor will it prejudice the existing parties to this appeal.

WHEREFORE, the parties to this motion respectfully request that the Board enter an order granting them leave:

- A. To file an *amicus* brief in response to Petitioner's Petition for Review; and
- B. To participate in any further briefing as non-party *amici*.

Respectfully submitted,

Date: 12/17/2013



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Certificate of Service

I hereby certify that copies of the foregoing Motion for Extension of Time in the matter of Buckley Air Force Base Municipal Separate Storm Sewer System, NPDES Appeal No. 13-07, were served:

Via the EAB's E-Filing System to:


Clerk of the Board
United States Environmental Protection Agency
Environmental Appeals Board
Colorado Building
1341 G Street NW, Suite 600
Washington, DC 20005

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