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Clerk, Environmental Appeals Board				

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

In re: Arizona Public Service Co.

NPDES Appeal No. 18-02

NPDES Permit No. NN0000019

## **ORDER DISMISSING PETITION FOR REVIEW AS MOOT**

On December 19, 2018, the U.S. Environmental Protection Agency Region 9 ("Region") filed a notice of permit withdrawal and a motion to dismiss as moot the Petition for Review filed by Dine' Citizens Against Ruining the Environment, San Juan Citizens Alliance, Amigos Bravos, Center for Biological Diversity, and Sierra Club (collectively, "Petitioners"). *See* Notice of Withdrawal Pursuant to 40 C.F.R. § 124.19(j) (Dec. 19, 2018); Region IX's Motion to Dismiss (Dec. 19, 2018) ("Motion"). The Region stated that the permittee, Arizona Public Service Company ("APS"), did not oppose the Region's motion to dismiss, and that the Petitioners expressed no position at that time. Motion at 3.

On January 31, 2019, the Environmental Appeals Board ("Board") issued an order granting Petitioners and APS leave to file a response, if any, to the Region's motion dismiss no later than February 7, 2019. Order Regarding Response to Region's Motion to Dismiss (Jan. 31, 2019). The Board did not receive a response from either the Petitioners or APS.

In its motion, the Region stated that the Petition for Review is moot because the Region has withdrawn the entire Permit pursuant to 40 C.F.R. § 124.19(j). Motion at 1, 2. Section 124.19(j) allows a permit issuer to unilaterally withdraw a permit at any time prior to thirty days after filing the response to a petition and re-issue a new draft permit, so long as it contemporaneously notifies the Board and interested parties of the withdrawal and reissuance. *In re Savoy Energy, L.P.*, 17 E.A.D. 200, 202-03 (EAB 2016). In this instance, the Region withdrew the permit prior to filing its response and notified the Board and parties that it had done so and would prepare a new draft permit in accordance with 40 C.F.R. § 124.6. Thus, the Region's withdrawal of the permit comports with the requirements set forth in 40 C.F.R. § 124.19(j).

Pursuant to 40 C.F.R. § 124.19(j), the Petition for Review is hereby dismissed. This dismissal has no effect on the Petitioners' right to submit comments on subsequent draft permit revisions or modifications pursuant to 40 C.F.R. § 124.11, or to petition the Board for review pursuant to 40 C.F.R. § 124.19 of any future EPA action with respect to NPDES Permit No. NN0000019.

So ordered.<sup>1</sup>

## **ENVIRONMENTAL APPEALS BOARD**

Dated: February 12, 2019

By:

Mary Beth Ward Environmental Appeals Judge

<sup>&</sup>lt;sup>1</sup> The three-member panel deciding this matter is composed of Environmental Appeals Judges Mary Kay Lynch, Kathie A. Stein, and Mary Beth Ward.

#### **CERTIFICATE OF SERVICE**

I certify that copies of the foregoing *Order Dismissing Petition for Review as Moot* in the matter of Arizona Public Service Co., NPDES Appeal No. 18-02, were sent to the following persons in the manner indicated:

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Dated: February 12, 2019

Annette Duncan Administrative Professional