

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

In re:

Wulf Cattle Depot

NPDES Permit No. SD-0034606

NPDES Appeal No. 21-01

UNOPPOSED MOTION TO STAY PROCEEDINGS

Wulf Cattle Depot (“Petitioner”) filed a Notice of Appeal and Unopposed Motion for Extension of Time to File Appeal Brief in the above-captioned appeal on February 19, 2021. On February 23, 2021, the EAB issued an order granting Petitioner a 30-day extension, until March 31, 2021, to submit a brief and adjusting the other due dates for submissions in the proceeding accordingly. The U.S. Environmental Protection Agency Region 8 (“Region”) hereby moves the Environmental Appeals Board (“Board”) to stay the proceedings in this matter for 60 days to allow the parties and the Standing Rock Sioux Tribe to discuss resolution of the appeal.

Petitioner operates a Concentrated Animal Feeding Operation in the town of McLaughlin, South Dakota, within the exterior boundary of the Standing Rock Sioux Reservation. Because the Standing Rock Sioux Tribe (“Tribe”) has not obtained treatment as a State for purposes of Section 402 of the Clean Water Act, the Region is the NPDES permit issuing authority on the Reservation. During the public notice process for the draft permit, the Tribe provided several comments to the Region, and the Region made several changes to the permit in response. When the Region received Petitioner’s Notice of Appeal, the Region contacted the Tribe to inform it of the appeal and to initiate consultation on a government-to-government basis. Since that initial contact, the Region and the Tribal leadership have begun consultation, and the Tribe has

indicated a strong interest in the permit appeal. The Region has also discussed the permit appeal with counsel for Petitioner to better understand the concerns underlying the operator's decision to appeal. As a result of the initial Tribal consultation and the discussions with counsel for Petitioner, the Region believes it may be possible to reach a mutually agreeable resolution of the permit appeal before briefing or oral argument. The Region has consulted with the Office of General Counsel and the Office of Water in reaching this conclusion.

A stay of the proceedings will allow the Region, Petitioner and the Tribe sufficient time for fulsome, good-faith discussions of possible paths to resolution. If a mutually agreeable resolution is identified, the requested stay will also give the Region and Petitioner the time to complete any necessary procedural steps to effectuate the resolution. If a mutually agreeable resolution is not obtained, a stay will nonetheless promote judicial efficiency by allowing the parties and the Tribe to clarify the claims to be resolved and to potentially narrow the range of issues for the Board to decide. Petitioner will not be prejudiced by a stay because the contested permit conditions are already stayed during the pendency of the appeal. Though not yet a party, the Tribe will not be prejudiced by a stay because the time for it to file a notice of appearance under 40 C.F.R. § 124.19(b)(4) would also be stayed.

For these reasons, the Region respectfully requests that the Board grant a stay of all proceedings in this matter for 60 days. Pursuant to 40 C.F.R. § 124.19(f)(2), Region 8 counsel contacted Petitioner's outside counsel to ascertain whether Petitioner would concur or object to this motion. Petitioner's counsel represented that Petitioner does not oppose this motion.

STATEMENT OF COMPLIANCE WITH WORD LIMITATIONS

The undersigned attorney hereby certifies that the Region's Unopposed Motion to Stay Proceedings in NPDES Appeal No. 21-01 contains fewer than 7000 words, as required by 40 C.F.R. § 124.19(f)(5).

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Unopposed Motion to Stay Proceedings in the matter of *In re: Wulf Cattle Depot*, NPDES Appeal No. 21-01, were served by email on the following persons, this 23rd day of March, 2021:

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Date: March 23, 2021