

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

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In re:	)	
	)	NPDES APPEAL No. 14-04
Lee Ranch Coal Company,	)	
El Segundo Mine	)	
	)	
NPDES Permit No. NM0030996	)	
_____	)	

**JOINT MOTION TO STAY PROCEEDINGS**

Respectfully, the United States Environmental Protection Agency Region 6 and Headquarters (“EPA”) and Petitioner Lee Ranch Coal Company (“LRCC”) (collectively, the “Parties”) jointly move that the Environmental Appeals Board (“Board”) stay the above-captioned proceeding. The Parties have reached the terms of a settlement, which is pending execution, and seek to stay these proceedings until the conditions of the settlement have been fulfilled or as otherwise provided under the settlement or in the discretion of the Board.

**I.  
BACKGROUND/CASE HISTORY**

On November 3, 2014, pursuant to 40 C.F.R. § 124.19(a), LRCC filed a petition for review of National Pollution Discharge Elimination System (“NPDES”) Permit No. NM0030996 (the “Permit”), which was issued by Region 6 on September 30, 2014 (the “Petition”). Two permit conditions are at issue in the Petition: (1) the total dissolved solids effluent limitation, as set forth in Part I.A(5) of the Permit, and (2) the sediment control plan under the Western Alkaline Coal Mining Rule, as set forth in Part I.A(6) of the Permit (collectively, the “Contested

Conditions”). In accordance with 40 C.F.R. § 124.16, the Parties previously agreed that the Contested Conditions would be stayed pending the resolution of the Petition.

On November 28, 2014, the Board granted the Parties’ Joint Motion to Stay the Proceedings until February 27, 2015, to allow the Parties to undertake settlement negotiations. On February 27, 2015, the Parties filed a joint request to continue the stay, which was granted by the Board on March 11, 2015, until April 15, 2015. On April 15, 2015, the Parties filed a Joint Third Status Report informing the Board that they had reached an impasse and were unable to resolve the matter and requested that the stay be lifted. On April 20, 2015, the Board issued an order lifting the stay and scheduled response and reply brief due dates.

On May 6, 2015, EPA served a notice of termination and/or withdrawal of the Permit (the “Notice of Termination”) and, among other things, moved before the Board to dismiss the Petition as moot. Thereafter, on May 20, 2015, Petitioner served an objection to the Notice of Termination and, on May 21, 2015, Petitioner filed a response to the motion to dismiss by EPA.

On June 24, 2015, the Board issued an Order Scheduling Oral Argument for July 21, 2015, and specified six questions regarding NPDES permitting, withdrawal, and termination processes that the Board wanted addressed by the Parties at the oral argument, among other things. On July 15, 2015, EPA filed a motion to stay the proceedings, which was objected to by LRCC on July 16, 2015. On July 17, 2015, the Board issued its Order Denying Region’s Motion to Stay the Proceeding, Postponing Oral Argument, and Scheduling Status Conference. On July 21, 2015, the Board held a status conference and, only July 23, 2015, issued an order scheduling oral argument for September 1, 2015.

## **II.** **SETTLEMENT**

Today, August 14, 2015, the Parties reached the terms of a settlement, including as to the language and form of a settlement agreement (the “Settlement Agreement”). The Settlement Agreement will now be distributed for execution by the Parties. However, the Parties desire to

immediately provide notice to the Board that the terms of a settlement have been reached and to seek a stay of these proceedings as soon as possible.

In general, the basic terms of the settlement include the following:

- The Parties agree to jointly seek a stay of these proceedings upon reaching the settlement.
- In light of LRCC's objection to the Notice of Termination, among other things, EPA rescinds its Notice of Termination and agrees that the Permit has not been terminated, is not void, and continues subject to the Petition proceedings (including the stay of the Challenged Conditions) and of the Settlement Agreement.
- Within 30 days of a stay being granted by the Board, EPA will publish notice of a draft modification to the Permit to replace the Challenged Conditions with revised conditions negotiated between the Parties, which are included as an attachment to the Settlement Agreement, allowing for public comment in accordance with the procedures required by regulations, including 40 C.F.R. part 124.
- After the close of the public comment period, if EPA issues a final modified Permit with the conditions set forth in the attachment to the settlement agreement or modifies the Permit in a form otherwise acceptable to Petitioner, Petitioner will move to dismiss the Petition within five business days after EPA takes final action.

### **III.** **REQUESTED RELIEF AND GROUNDS FOR RELIEF**

The resolution of the Petition through settlement conserves resources of the Board and the Parties and promotes judicial efficiency and economy. Reaching terms through the contemplated settlement on complex, novel issues through a collaborative, arm's length

resolution allows for the Parties to effectively and efficiently meet the objectives and requirements of the NPDES program.

A stay of these proceedings is requested to allow for the terms of the settlement to be accomplished, including for the public comment process on the proposed modified permit to occur as provided for under the terms of the settlement. To keep the Board apprised of the status of the settlement, the Parties propose to file joint status reports with the Board on or before October 14, 2015 and December 14, 2015. In the event that the settlement has not been completed by December 14, 2015, the Parties will advise the Board as to the anticipated timeframe or issues with regard to effectuating the completion of the settlement.

If EPA issues a final modified permit with the conditions set forth in the attachment to the settlement agreement or modifies the Permit in a form otherwise acceptable to Petitioner, Petitioner will move to dismiss the Petition within five business days after EPA takes final action. In the event that the terms of the settlement are not fulfilled, LRCC may seek to lift the stay.

#### **IV.** **CONCLUSION**

For the reasons set forth above, the Parties respectively request that the Board order:

- 1) A stay of the above-captioned proceeding until the Petition is dismissed pursuant to the terms of the settlement, the stay is lifted pursuant to the request of LRCC in accordance with the terms of the settlement, or the stay is lifted in the discretion of the Board; and

- 2) The Parties to file joint status reports with the Board by October 14, 2015 and December 14, 2015.

Date: August 14, 2015

Respectfully Submitted,

MANATT, PHELPS & PHILLIPS, LLP

/s/ Peter Duchesneau

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**CERTIFICATE OF SERVICE**

I, Peter R. Duchesneau, hereby certify that on this 14th of August, 2015, I served a copy of the foregoing Joint Motion to Stay Proceedings on the parties identified below by email.

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