



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

NOV - 5 2010

Nancy J. Marvel, Regional Counsel
Office of Regional Counsel
U.S. EPA, Region 9
75 Hawthorne Street
San Francisco, CA 94105

ENVIRONMENTAL APPEALS BOARD

Re: Peabody Black Mesa
Permit Number: NN0022179
Appeal Numbers: NPDES 10-15; NPDES 10-16

Dear Ms. Marvel:

Please be advised that the enclosed letter dated October 20, 2010, requesting your staff to prepare a response to the above captioned Appeal Numbers NPDES 10-15 and NPDES 10-16, was inadvertently addressed and mailed to Peter Ornstein, Acting Regional Counsel, Region 8. Corrections have been made and all future documents will be mailed to EPA, Region 9, San Francisco, CA.

Sorry for the inconvenience. If you have any questions, please let me know.

Sincerely,

A handwritten signature in cursive script, appearing to read "Eurika Durr".

Eurika Durr
Clerk of the Board

cc: Brad A. Bartlett, Attorney
Travis Stills, Attorney
Energy Minerals Law Center
1911 Main Ave., Suite 238
Durango, CO 81301

David L. Abney, Esq.
Law Office of David L. Abney
4025 East Chandler Boulevard, NO. 70-A8
Phoenix, AZ 85048

Deborah Jordan, Director
Air Division
U.S. EPA, Region 9
75 Hawthorne Street
San Francisco, CA 94105



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

October 20, 2010

ENVIRONMENTAL APPEALS BOARD

Peter Ornstein, Acting Regional Counsel
Office of Regional Counsel
U.S. EPA, Region 8
901 N. 5th Street
Kansas City, KS 66101

Re: Peabody Black Mesa
Permit Number: NN0022179
Appeal Number: NPDES 10-15; NPDES 10-16

Dear Mr. Ornstein:

This is to advise you that the Environmental Appeals Board received on October 18, 2010, two Petitions for Review filed by Brad A. Bartlett and Travis Stills, Attorneys, Energy Minerals Law Center, on behalf of Black Mesa Water Coalition, Dine C.A.R.E, To Nizhoni Ani, Center for Biological Diversity and Sierra Club (NPDES 10-15), and David L. Abney, Attorney, Law Office of David L. Abney, on behalf of Californians for Renewable Energy and former Hopi Tribal Chairman Ben Nuvamsa (NPDES 10-16), asking the Environmental Appeals Board to review the permit determination issued by the United States Environmental Protection Agency, Region 8 in this case.

A copy of the Petitions can be found on the Board's website at http://yosemite.epa.gov/oa/EAB_Web_Docket.nsf/f22b4b245fab46c6852570e6004df1bd/1f668186962f1a5c852577c2004d6b20!OpenDocument, listing all the documents filed in the case. If you have any difficulty accessing this document, please let me know.

To assist the Environmental Appeals Board in deciding whether the matters raised by Petitioners should be reviewed, please have your staff prepare a response that addresses the Petitioners' contentions and whether Petitioners have satisfied the requirements for obtaining review under 40 C.F.R. § 124.19(a) and file such response no later than December 6, 2010. Include relevant portions of the administrative record with the response, together with a certified index of the entire administrative record. Filing may be accomplished electronically pursuant to the Board's Order of January 28, 2010.¹ Alternatively, filing may be accomplished by filing a

¹ The Board has issued an Order authorizing the electronic filing of documents in cases involving permit appeals. See Order Authorizing Electronic Filing in Proceedings Before the Environmental Appeals Board Not Governed by 40 C.F.R. Part 22 (Jan. 28, 2010), available at <http://www.epa.gov/eab>

paper original (signed in blue ink) and two copies of these materials with the Board (at the address shown below) by the date specified above. A copy must be sent to Petitioners, and a certificate of service showing the date and method of service should be included with the filing.

All documents, including the materials due December 6, 2010, must reference the appeal number. **IMPORTANT:** In addition, any envelope or other packaging containing documents sent to the Environmental Appeals Board's mailing address or hand-delivery address, as prescribed below, must bear a complete and accurate return address in the upper left hand corner. The envelope or packaging must also clearly state the case name and appeal number in the lower left hand corner.

All documents that are sent through the U.S. Postal Service, Express Mail, hand-delivered, via courier must include the name of the organization, address, facsimile number, telephone number, and an email address, if available².

Documents that are sent through the U.S. Postal Service (except by Express Mail) MUST be addressed to the Environmental Appeals Board's mailing address which is:

U.S. Environmental Protection Agency
Clerk of the Board
Environmental Appeals Board 1103B
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460-0001

(click "Standing Orders" on sidebar). Instructions on registration and document filing are available by using the "Electronic Filing" link on the Board's website. Documents containing confidential business information should not be filed electronically as the Board considers business confidentiality claims waived when a document is electronically filed. *Id.* at 5-6. Please note that if a party, or its attorney or other representative, electronically files any document, such as a notice of appeal, brief, or motion, that exceeds fifty (50) pages in length, inclusive of the certificate of service, table of contents, and table of authorities, but exclusive of exhibits or attachments, it must also send one paper copy of that document to the Board by U.S. Mail, hand, courier, or commercial delivery service within one business day of the date of the electronic filing. *See id.* at 4-5. Such paper copy must be accompanied by a signed certification stating that it is identical to the electronically filed document. *Id.* at 5. If the combined page length of all of the exhibits or attachments submitted in support of a brief or motion exceeds fifty (50) pages, the requirement to submit a paper copy, and its timing, applies to the entire set of exhibits or attachments. *Id.* Anyone electronically filing exhibits or attachments in support of a brief, motion, or other document should submit them separately from the associated brief or motion. *Id.* at 3.

² Mail sent to the Environmental Protection Agency via the U.S. Postal Service may be delayed by a random sterilization procedure applied to mail delivered to the federal government. Parties are encouraged to utilize the Board's e-filing system or non-U.S. Postal Service carriers and the Board's hand-delivery address when filing pleadings with the Board. Additional information regarding mail delivery to the Board is available on the Environmental Appeals Board website (www.epa.gov/eab) at the Clerk of the Board or Frequently Asked Questions links.

Documents that are sent to the Environmental Appeals Board's hand-delivery address (below) through the U.S. Postal Service (except by Express Mail) will be returned to the sender and shall not be considered as filed.

Documents that are hand-carried in person, delivered via courier, mailed by Express Mail, or delivered by a non-U.S. Postal Service carrier (e.g., Federal Express or UPS) MUST be delivered to:

U.S. Environmental Protection Agency
Clerk of the Board
Environmental Appeals Board
1341 G Street, N.W. Suite 600
Washington, D.C. 20005

Documents that are hand-carried may be delivered to the Clerk of the Board from 8:30 a.m. to 12:00 p.m. and 1:00 p.m. to 4:30 p.m., Monday through Friday (excluding federal holidays). Documents filed electronically may be filed at any time up to 11:59 p.m. Eastern Time on the day the document is required to be filed with the Board.

A copy of this letter is being sent to the Petitioners as notification of these filing requirements.

Thank you for your attention to these matters.

Sincerely,



Eurika Durr
Clerk of the Board

cc: Brad A. Bartlett, Attorney
Travis Stills, Attorney
Energy Minerals Law Center
1911 Main Ave., Suite 238
Durango, CO 81301

David L. Abney, Esq.
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4025 East Chandler Boulevard, NO. 70-A8
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