

**BEFORE THE ENVIRONMENTAL APPEALS BOARD  
U.S. ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C.**

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In Re NPDES Permit Renewal:	)	
Peabody Black Mesa NPDES Permit No.	)	NPDES Appeal No. 09-10
NN0022179: Black Mesa Mine Complex	)	
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**UNOPPOSED MOTION TO INCLUDE ALL COMMENTERS AS APPELLANTS**

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Petitioners Black Mesa Water Coalition, Diné C.A.R.E., To Nizhoni Ani, C-Aquifer for Diné, and Center for Biological Diversity (hereinafter "Appellants") by and through the undersigned counsel hereby submits this motion to request that all persons who commented on U.S. Environmental Protection Agency's ("EPA's") NPDES Permit Renewal for the Black Mesa Project: Peabody Black Mesa NPDES Permit No. NN0022179 ("NPDES") be included as Appellants in this matter. Cause for this motion is as follows:

(1) Black Mesa Water Coalition, Diné C.A.R.E., Dine Hataalii Association, Inc., To Nizhoni Ani, C-Aquifer for Diné, Sierra Club, and Center for Biological Diversity, through counsel, timely submitted comments on EPA's NPDES permit. *See*, Appellants Comment Letter (attached as Exhibit ("Ex.") 1 to Appellants' Petition for Review ).

(2) Due to the limited amount of time provided by regulation to file the present appeal (*i.e.* 30 days), Dine Hataalii Association, Inc. and the Sierra Club did not have sufficient time to join the present appeal.

(3) Diné Hataalii Association (“DHA”) is an all Navajo organization that has 24 board members, two from each of the six Navajo agencies. Many DHA members do not speak English and do not have access to electronic mail or facsimile and, in some instances, the U.S. Postal Service. DHA comments on matters of Navajo custom and is renowned and prominent Diné (Navajo) men and women who act and speak with authority and authenticity on matters of traditional healing and Navajo custom. DHA has attended and participated in the discussions surrounding the protection of the Black Mesa life-of-mine issues and raised concerns related to the interconnectedness of land, water, air, and global warming issues and the deliberate destruction and desecration of Navajo natural resources by outside corporate interests. DHA members live around or near and are directly impacted by pollution discharges from the Black Mesa Mine Complex.

(4) Sierra Club has 1.3 million members and supporter who work for a safe and healthy community in which to live, smart energy solutions to combat global warming and an enduring legacy for America's wild places. Since 1892, the Sierra Club has been working to protect communities, wild places, and the planet itself. Sierra Club is the oldest, largest, and most influential grassroots environmental organization in the United States. A national board of directors sets national policy and state chapters organize executive committees of local leaders to set local policies. In Arizona, Sierra Club has over 11,000 members with over 150 members living on or around Black Mesa. It has been a priority of the Sierra Club nationally and locally to support Navajo and Hopi communities in their efforts to protect the N Aquifer and stop irresponsible coal mining. The Sierra Club has worked since 2000 specifically on issues surrounding the Black Mesa and Kayenta Mines.

(5) Dine Hataalii Association, Inc. and the Sierra Club do not intend to expand the issues on appeal and will be represented by undersigned counsel for Appellants.

(6) Inclusion of Dine Hataalii Association, Inc. and the Sierra Club as Appellants would not prejudice EPA or interfere or disrupt proceedings before the Board.

(7) Not including Dine Hataalii Association, Inc. and the Sierra Club would deny these organizations and their membership the ability to adequately participate in EPA decisionmaking—*i.e.*, decisions that directly and irreparably impact these organizations and their interests.

For the reasons set forth herein, Appellants respectfully request that Dine Hataalii Association, Inc. and the Sierra Club be included as Appellants in this matter.

Counsel for Appellants conferred with counsel for Respondent EPA to determine Respondent's position on this motion. Counsel for EPA indicated that EPA does not oppose this motion.

RESPECTFULLY SUBMITTED on Thursday, October 22, 2009.



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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on October 22, 2009, she caused a copy of  
the foregoing to be served by first-class and electronic mail on:

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