

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

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

STATUS REPORT

Respectfully, Region 6 of the United States Environmental Protection Agency (“Region 6”) and Petitioner Lee Ranch Coal Company (“LRCC”) (collectively, the “Parties”) jointly file this second Status Report with regard to settlement in the above-captioned proceeding.

I.
BACKGROUND

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 (“SCP”) under the Western Alkaline Coal Mining (“WACM”) Rule, as set forth in Part I.A(6) of the Permit (collectively, the “Contested Conditions”). After a five-month stay to allow the Parties to explore settlement, the Environmental Appeals Board (“Board”) lifted the stay and Region 6 responded to the Petition, including seeking to terminate the Permit. Thereafter, LRCC filed a

reply and the Board set oral argument with regard to the permit termination sought by the Region.

After reaching the terms of a settlement, on August 14, 2015, the Parties filed a Joint Motion to Stay the Proceedings to allow the Parties time to execute the agreement and effectuate its terms. On August 20, 2015, the Board granted the motion and canceled the scheduled oral argument. The Board stayed the matter until December 14, 2015, and ordered that the Parties submit joint status reports no later than October 14, 2015, and December 14, 2015.

II. **STATUS**

As reported in the previous status report, on August 21, 2015, the Settlement Agreement was fully executed by the Parties. On September 17, 2015, Region 6 proposed a draft permit for public comment to address the Contested Conditions, with a comment period open until October 19, 2015.

On October 9, 2015, after reviewing the proposed draft permit for public comment, LRCC informed Region 6 of its belief that EPA's draft permit modification impermissibly deviated from the terms of the Settlement Agreement. Since then, the Parties have conferred and have been working toward a resolution of this issue. Region 6 extended the public comment period for the draft permit until November 9, 2015. Region 6 intends to take final action on the draft permit by December 18, 2015.

Since the parties are still in the process of conferring on additional terms of the revised permit, which has not been finalized as of this time, the Parties propose submitting a status report

by January 15, 2016, if the parties do not earlier notify or move before the Board with regard to the revised permit and the fulfillment of the terms of the Settlement Agreement.

Date: December 14, 2015

Respectfully Submitted,

MANATT, PHELPS & PHILLIPS, LLP

U.S. EPA REGION 6

/s/ Peter Duchesneau

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CERTIFICATE OF SERVICE

I, Peter R. Duchesneau, hereby certify that on this 14th of December, 2015, I served a copy of the foregoing Status Report on the parties identified below by U.S. mail.

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