

2. On January 14, 2010, the EAB mailed a letter to NNEPA directing NNEPA to file a Response to PWCC's petition. The parties filed several joint motions with the Board for extensions of time for NNEPA to file its Response so that the parties could discuss settlement of the issues raised in PWCC's petition, and these motions were granted. The present date for NNEPA to file its response is July 6, 2010.

3. During the period February through May 2010, the parties attempted to negotiate a settlement, but were unable to resolve all their differences concerning the permit.

4. As a result of the parties' negotiations, however, NNEPA determined that certain clarifications and corrections should be made to the permit conditions that PWCC contested in its Petition for Review. Thus, on May 28, 2010 NNEPA filed a Motion for Voluntary Remand so that it might reopen and revise these permit conditions.

5. On June 3, 2010, PWCC filed a Motion for Order Requesting EPA to File a Brief addressing the issues in its Petition for Review and additional matters. On June 10, 2010, PWCC filed a Response objecting to NNEPA's Motion for Voluntary Remand ("PWCC Response").

6. On June 16, 2010, NNEPA responded to PWCC's Motion for Order Requesting EPA to file a Brief, asking the Board to deny PWCC's request for EPA briefing because it was premature. NNEPA requested that the EAB first rule on the Motion for Voluntary Remand before requesting EPA to brief matters that may not ultimately be at issue. On the same day, NNEPA informed the EAB that it intended to file a Motion for Leave to File a Reply to the PWCC Response.

7. On June 24, 2010, the United States Environmental Protection Agency ("EPA") filed an *amicus* brief requesting a stay of proceedings until November 15, 2010 or, in the

alternative, that the EAB grant NNEPA's Motion for Voluntary Remand to allow NNEPA time to reopen and revise the permit ("EPA Amicus Brief").

8. The requested stay through November 15, 2010 contemplates that NNEPA would propose revisions to the permit on or around August 1, and thereafter commence a simultaneous 30-day public comment period and 45-day EPA Region IX review period which would end on or around September 15, 2010.² NNEPA would then need 30 days to consider comments and issue a final revised permit along with a response to comments. While this time-line brings the projected date of completion to October 15, EPA added an extra 30 days in the event there is a need to extend the comment period or hold a public hearing, resulting in a date of November 15, 2010.

9. If the Board grants the stay, NNEPA requests that the time to file its Response be extended until sufficiently after November 15, 2010 to allow NNEPA to prepare the Response.

10. If the Board instead remands the permit to NNEPA, NNEPA requests the Board to adjust the relevant deadlines accordingly, again allowing NNEPA a reasonable period in which to prepare and file its Response.

11. If the Board denies both the Motion for Stay and the Motion for Voluntary Remand, NNEPA requests that the Board extend the time for NNEPA to file its Response until a reasonable period after that denial to allow NNEPA time to prepare its Response.

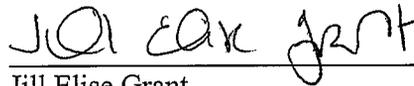
12. EPA has an interest in this appeal because the appeal concerns a federally delegated Clean Air Act Title V operating permit, issued pursuant to 40 C.F.R. Part 71. EPA supports this Motion for an Extension of Time.

²The Delegation Agreement between NNEPA and USEPA allows 45 days for USEPA to review and potentially object to a proposed Title V permit. *See* Deleg. Agr. IV (3) (attached as Ex. B. to Pet. for Review); *see also* 40 C.F.R. § 71.10(g)(1).

13. The undersigned attorney for NNEPA spoke with John Cline, Counsel for PWCC, regarding PWCC's position on this Motion for an Extension of Time, but has not yet heard whether PWCC will support or oppose this Motion.

WHEREFORE, Respondent Navajo Nation EPA, with the concurrence of EPA, respectfully requests an extension of time to file its Response to the Petition for Review.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of this **MOTION OF NAVAJO NATION EPA FOR EXTENSION OF TIME TO FILE RESPONSE TO PEABODY WESTERN COAL COMPANY'S PETITION FOR REVIEW** was served via first class mail, postage prepaid, on this 24th day of June 2010, upon:

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