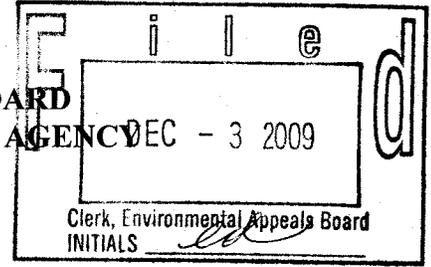


**BEFORE THE ENVIRONMENTAL APPEALS BOARD  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C.**



In re: )  
)  
Peabody Western Coal Company )  
Black Mesa Complex )  
)  
Permit No. NN0022179 )  
)

NPDES Appeal No. 09-10

**ORDER DISMISSING PETITION FOR REVIEW WITH PREJUDICE**

On August 5, 2009, U.S. Environmental Protection Agency Region 9 ("Region") issued to Peabody Western Coal Company ("Peabody") a National Pollutant Discharge Elimination System ("NPDES") permit renewal, number NN0022179 ("Permit"), for Peabody's Black Mesa Complex facility. On September 9, 2009, the Black Mesa Water Coalition, Diné C.A.R.E., To Nizhoni Ani, C-Aquifer for Diné, and Center for Biological Diversity ("Petitioners") filed a petition for review as well as a motion for an extension of time to submit a brief in support of the petition. After the Board granted a 45-day extension, Petitioners filed a supplemental brief on October 23, 2009, requesting that the Board remand the permit to the Region with instructions to address several alleged deficiencies.

Pursuant to its authority under 40 C.F.R. section 124.19(d) to withdraw a permit prior to the Board rendering a decision to grant or deny review, the Region filed a notice withdrawing the Permit on December 1, 2009. The Region stated that in addition to preparing a new draft permit under 40 C.F.R. section 124.6, it will also prepare a new fact sheet, provide appropriate notice and opportunity for public comment, and that it intends to hold public hearings on Navajo and Hopi lands.

Upon consideration, the Board hereby dismisses the above-captioned matter with prejudice. Section 124.19(d) states that “[t]he new draft permit shall proceed through the same process of public comment and opportunity for a public hearing as would apply to any other draft permit subject to this part.” This dismissal is not a determination on the merits of any arguments raised in the petition, and thus does not preclude Petitioners from raising those arguments in its public comments submitted to the Region regarding the forthcoming draft permit.

So ordered.

**ENVIRONMENTAL APPEALS BOARD**

Dated: December 3, 2009

By: Anna L. Wolgast  
Anna L. Wolgast  
Environmental Appeals Judge

## CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Order Dismissing Petitions for Review with Prejudice in the matter of Peabody Black Mesa, NPDES Appeal No. 09-10, were sent to the following persons in the manner indicated:

### Facsimile and EPA Pouch Mail

Alexis Strauss  
Director, Water Division  
EPA Region IX  
75 Hawthorne St., WTR-1  
San Francisco, CA 94105  
Phone: (415) 972-3572  
Fax: (415) 947-3549

Julia Jackson  
Assistant Regional Counsel  
EPA Region IX  
75 Hawthorne St.  
San Francisco, CA 94105  
Phone: (415) 972-3948  
Fax: (415) 947-3571

### Facsimile and First Class Mail Postage Prepaid

Brad A. Bartlett  
Travis Stills  
Energy Minerals Law Center  
1911 Main Ave., Suite 238  
Durango, CO 81301  
Phone: (970) 247-9334  
Fax: (970) 382-0316

Amy R. Atwood  
Center for Biological Diversity  
P.O. Box 11374  
Portland, OR 97211-0374  
Phone: (503) 283-5474  
Fax: (503) 283-5528

Dated: DEC 3 2009



Annette Duncan  
Secretary