

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

	)	
In re:	)	
	)	NPDES Appeal No. 18-02
Arizona Public Service Co.	)	
	)	
NPDES Permit No. NN0000019	)	
	)	

**ORDER DIRECTING PARTIES TO PROVIDE FURTHER CLARIFICATION**

On October 9, 2018, the U.S. Environmental Protection Agency (“EPA” or “Agency”) Region 9 (“Region”) filed a motion to partially dismiss the Petition for Review filed by Dine’ Citizens Against Ruining the Environment, San Juan Citizens Alliance, Amigos Bravos, Center for Biological Diversity, and Sierra Club (collectively, “Petitioners”). *See* Region IX’s Motion to Partially Dismiss Petition for Review; Motion to Establish Revised Briefing Schedule (Oct. 9, 2018). As the Region notes in its motion, Petitioners’ “Petition rais[ed] nine issues for review by the [Environmental Appeals Board (“Board”)].” *Id.* at 2.

In its motion, the Region explained that pursuant to its authority under 40 C.F.R. § 124.19(j), it had withdrawn two provisions of the contested permit (Sections I.A.5 addressing Internal Outfall 01E and Section I.B.3 addressing cooling water requirements) and would revise them, as appropriate, in a new draft permit. Based on that withdrawal, the Region requested dismissal of “Petitioners’ claims as to those provisions” as moot. *Id.* at 3. The Region further requested an extension of time until April 19, 2019, for the Region and the Permittee to file responses, and an extension of time for the Petitioners to file any reply until May 20, 2019, to address the remaining issues and Petitioners’ challenges, if any, to a modified permit in a single

proceeding. *Id.* at 4. On October 10, Permittee Arizona Public Service Company (“APS”) filed a response in support of the Region’s motion. *See* Arizona Public Service Company’s Response to Region IX’s Motion to Partially Dismiss Petition for Review; Motion to Establish Revised Briefing Schedule (Oct. 10, 2018).

Pursuant to the Board’s subsequent order on October 11, 2018, Petitioners filed their response to the Region’s motion on October 17, 2018, opposing the requested relief, and the Region and Permittee filed their replies on October 22, 2018.

Upon review of the parties’ responses and replies to the Region’s motion, the Board requires clarification from all parties before it can rule on the Region’s motion. The parties have not addressed which of the nine issues raised in the Petition should be dismissed as moot based on the notice of withdrawal of Permit Sections I.A.5 and I.B.3. Nor have the parties addressed how, if at all, the withdrawal of Permit Sections I.A.5 and I.B.3 could affect the Board’s consideration on the merits of the remaining issues, or how, if at all, a Board decision on the merits of the remaining issues could affect the Region’s consideration of Permit Sections I.A.5 and I.B.3. Accordingly, the Board directs the parties to file supplemental briefs answering the following questions:

- (1) Which of the Petitioners’ nine issues (listed in the Petition at pages 16-17) do the parties believe are mooted, in whole or in part, by the Region’s notice of withdrawal of the two permit provisions (Sections I.A.5 and I.B.3)?
- (2) To what extent, if at all, do the parties anticipate that modification of Permit Sections I.A.5 and I.B.3 would moot, narrow, or impact how the Board would decide the remaining issues Petitioners raise on appeal?

(3) To what extent, if at all, do the parties anticipate that a Board decision on the remaining issues Petitioners raise on appeal would moot, narrow, or impact how the Region would address issues relating to Permit Sections I.A.5 and I.B.3? and

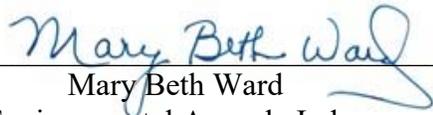
(4) What reasonably expeditious briefing schedule would the parties propose for the remaining issues should the Board decline to defer briefing and instead require briefing now on the remaining issues in this appeal?

Supplemental briefs are due on or before **November 2, 2018**. The parties are encouraged to confer in advance to narrow any issues of disagreement in answering the questions set forth above. The current briefing schedule continues to be STAYED pending resolution of the Region's current motion before the Board.

So ordered.

**ENVIRONMENTAL APPEALS BOARD**

Dated: October 25, 2018

By:   
Mary Beth Ward  
Environmental Appeals Judge

**CERTIFICATE OF SERVICE**

I certify that copies of the foregoing *Order Directing Parties to Provide Further Clarification* in the matter of Arizona Public Service Co., NPDES Appeal No. 18-02, were sent to the following persons in the manner indicated:

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Dated:           October 25, 2018          

  
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Eurika Durr  
Clerk of the Board