

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

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

**ORDER ESTABLISHING RESPONSE AND REPLY DEADLINES TO REGION’S
 MOTION TO PARTIALLY DISMISS PETITION FOR REVIEW AND REVISE
 BRIEFING SCHEDULE**

On October 9, 2018, the Environmental Appeals Board (“Board”) received from U.S. Environmental Protection Agency Region 9 (“Region”) 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”) in the above-captioned matter. *See* Region IX’s Motion to Partially Dismiss Petition for Review; Motion to Establish Revised Briefing Schedule (Oct. 9, 2018) (“Motion”).

The Region explains that, pursuant to its authority under 40 C.F.R. § 124.19(j) to withdraw all or part of a permit and prepare a new draft permit addressing the withdrawn portion(s) at any time prior to thirty (30) days after filing the response to a petition, it has withdrawn and will revise specific provisions of the contested permit, as appropriate, in a new draft permit. Motion at 1. In addition, the Region requests that the Board revise the briefing schedule to allow the Board to consider the issues in the petition for review and Petitioners’ challenges, if any, to a modified permit in a single proceeding. Specifically, the Region requests that the Board grant: (1) the Region an extension of time to file a comprehensive response to the petition for review no later

than April 19, 2019; (2) the Permittee an extension of time to file its notice of appearance¹ and a response brief no later than April 19, 2019; and, (3) the Petitioner an extension of time to file a reply brief, if any, no later than May 20, 2019. Motion at 4. Arizona Public Service Co. (“APS”) filed a response in support of the Region’s motion on October 10, 2018. *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).

The Region’s motion states that Petitioners oppose the Region’s proposed revised briefing schedule. *See* Motion at 4. In addition, Petitioners’ counsel previously indicated that he will be out of the country from October 18 through November 2, 2018. *See* Region IX’s Supplement to its Unopposed Motion for Extension of Time to File Responses and Replies at 2 (Aug. 9, 2018) (dkt. #5). Given these circumstances, the Board ORDERS Petitioners to file a response to the Region’s motion no later than **October 17, 2018**. The Region and APS should file any reply briefs no later than **October 22, 2018**. The current briefing schedule, under which the Region’s response to the petition for review would be due no later than October 19, 2018, is STAYED pending resolution of the Region’s current motion before the Board.

So ordered.

ENVIRONMENTAL APPEALS BOARD

Dated: October 11, 2018

By: 
Mary Beth Ward
Environmental Appeals Judge

¹ The Board received APS’s notice of appearance on October 10, 2018. *See* Notice of Appearance by Arizona Public Service Company (Oct. 10, 2018).

CERTIFICATE OF SERVICE

I certify that copies of the foregoing *Order Establishing Response and Reply Deadlines to Region's Motion to Partially Dismiss Petition for Review and Revise Briefing Schedule* in the matter of Arizona Public Service Co., NPDES Appeal No. 18-02, were sent to the following persons in the manner indicated:

By E-mail:

John Barth
Attorney at Law
P.O. Box 409
Hygiene, CO 80533
(303) 774-8868
barthlawoffice@gmail.com
Attorney for Petitioners

Kerry McGrath
Hunton Andrews Kurth LLP
2200 Pennsylvania Avenue, NW
Washington, DC 20037
(202) 955-1519
KMcGrath@HuntonAK.com
Attorney for Arizona Public Service Co.

Thomas M. Hagler
Office of Regional Counsel
EPA Region 9 (MC ORC-2)
75 Hawthorne Street
San Francisco, CA 94105
(415) 972-3945
hagler.tom@epa.gov
Attorney for EPA Region 9

Brent A. Rosser
Hunton Andrews Kurth LLP
Bank of America Plaza, Suite 3500
101 South Tryon Street
Charlotte, NC 28280
(704) 378-4707
BRosser@HuntonAK.com
Attorney for Arizona Public Service Co.

Elise O'Dea
Water Law Office
EPA Office of General Counsel
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460
(202) 564-4201
odea.elise@epa.gov
Of Counsel for EPA Region 9

Dated: October 11, 2018



Eurika Durr
Clerk of the Board