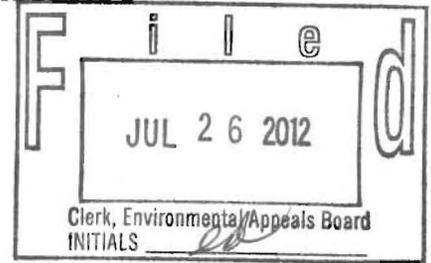


**BEFORE THE ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, DC**



_____)
In re:)
)
Bear Lake Properties, LLC) UIC Appeal No. 11-03
)
UIC Permit Nos. PAS2D215BWAR)
& PAS2D216BWAR)
_____)

ORDER DENYING MOTION FOR PARTIAL RECONSIDERATION

I. *BACKGROUND*

On June 8, 2011, U.S. Environmental Protection Agency Region 3 (the “Region”) issued two Underground Injection Control (“UIC”) permits to Bear Lake Properties, LLC (“Bear Lake”) authorizing construction and operation of two Class II injection wells. By petition filed with the Environmental Appeals Board (“Board”) on July 8, 2011, Mr. William A. Peiffer, Jr. and Mr. Paul T. Stroup (together “Petitioners”) sought EAB review of the permits pursuant to 40 C.F.R. § 124.19(a). On June 28, 2012, the Board issued an Order Denying Review in Part and Remanding in Part. *See In re Bear Lake Props., LLC*, UIC Appeal No. 11-03 (EAB June 28, 2012), 15 E.A.D. ____ (hereinafter “*Bear Lake Decision*”). Among other things, the Board denied review of Petitioners’ general assertion that the Region had clearly erred by failing to consider population growth and possible economic impacts of the injection wells. *See id.* at 18-19.

On July 9, 2012, Mr. Peiffer filed a motion for partial reconsideration of the *Bear Lake Decision*. See Petitioner's Motion For Partial Reconsideration (July 9, 2012) ("Motion"). The Motion states that reconsideration is warranted because the Board erred in holding that population growth and the potential economic impacts of the wells were outside the scope of Board review. Motion at 3. In support of this assertion, the Motion states that among the factors that must be considered in determining the "area of review"¹ surrounding the proposed wells are "population and ground-water use and dependence." *Id.* (citing 40 C.F.R. § 146.6(b)). The Region has filed a response to the Motion. See Region III's Response to Motion for Partial Reconsideration (July 17, 2012).

II. DISCUSSION

Motions for reconsideration are authorized by 40 C.F.R. part 124, which provides that the motion must be filed within ten (10) days after service of the final order and "must set forth the matters claimed to have been erroneously decided and the nature of the alleged errors." 40 C.F.R. § 124.19(g). As the Board has explained, "[r]econsideration is generally reserved for cases in which the Board is shown to have made a demonstrable error, such as a mistake of law or fact." *In re Russell City Energy Ctr.*, PSD Appeal Nos. 10-01 through 10-05, at 2 (EAB Dec. 17, 2010) (Order Denying Motion and Supplemental Motion for Reconsideration and/or Clarification and Stay) (quoting *In re Knauf Fiber Glass, GmbH*, PSD Appeal Nos. 98-3 through 98-20, at 3 (EAB Feb. 4, 1999) (Order on Motions for Reconsideration); *In re Shell Gulf of Mex.*,

¹ As the Board stated in the *Bear Lake Decision*, the "area of review" is defined as the area surrounding an injection well calculated according to the criteria set forth in 40 C.F.R. § 146.6. See *Bear Lake Decision* at 8.

OCS Appeal Nos. 10-01 through 10-04, at 7-8 (EAB Feb. 10, 2011) (Order on Motions for Reconsideration and/or Clarification) (same); *In re Steel Dynamics, Inc.*, PSD Appeal Nos. 99-4 & 99-5 (EAB July 13, 2000) (Order Denying IDEM's Motion for Reconsideration or Clarification and SDI's Motion for Reconsideration) (same). The filing of a motion for reconsideration "should not be regarded as an opportunity to reargue the case in a more convincing fashion" *Knauf* at 2-3 (quoting *In re S. Timber Prods., Inc.*, 3 E.A.D. 880, 889 (JO 1992)); *Russell City*, at 2; accord *Steel Dynamics*, at 5; *In re Haw. Elec. Light Co., Inc.*, PSD Appeal Nos. 97-15 through 97-22, at 6 (EAB Mar. 3, 1999) (Order Denying Motion for Reconsideration). "A party's failure to present its strongest case in the first instance does not entitle it to a second chance in the form of a motion to reconsider." *Haw. Elec. Light*, at 6; see also *Russell City*, at 2-3.

As stated above, the Motion in this case asserts that reconsideration is warranted because population and ground water use are factors to be considered in calculating the area of review under 40 C.F.R. § 146.6(d). Because this argument was not raised in the petition for review, however, the Board declines to consider the argument in a motion for reconsideration. Reconsideration is not an opportunity to argue a case in a more convincing fashion, nor does it serve as the occasion to tender new legal theories for the first time. See *Core Energy, LLC*, UIC Appeal No. 07-02, at 3 n. 1 (EAB Jan. 15, 2008) (Order Denying Motion for Reconsideration);

Knauf, at 2-3. Under these circumstances, Mr. Peiffer has failed to convince the Board that reconsideration is warranted. The Motion is therefore denied.

So ordered.²

Dated: July 26, 2012

ENVIRONMENTAL APPEALS BOARD

By: Kathie A. Stein
Kathie A. Stein
Environmental Appeals Judge

² The panel deciding this matter is comprised of Environmental Appeals Judges Catherine R. McCabe and Kathie A. Stein. See 40 C.F.R. § 1.25(e)(1).

CERTIFICATE OF SERVICE

I hereby certify that copies of the forgoing Order Denying Motion for Partial Reconsideration in the matter of Bear Lake Properties, LLC, UIC Appeal No. 11-03, were sent to the following persons in the manner indicated:

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Dated: JUL 26 2012


Annette Duncan
Secretary