

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

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

**REGION IX’s SUPPLEMENT TO ITS UNOPPOSED MOTION FOR EXTENSION OF
TIME TO FILE RESPONSES AND REPLIES**

The United States Environmental Protection Agency (“EPA”) Region 9 (“Region”) respectfully files this Supplement to its Unopposed Motion for Extension of Time to File Responses and Replies (“Unopposed Motion”). The Region filed its Unopposed Motion with the Environmental Appeals Board (“EAB” or “Board”) on August 1, 2018. The Unopposed Motion requested that the Board grant the Region an extension of time to October 19, 2018, to file a response to a Petition for Review (“Petition”) of National Pollutant Discharge Elimination System (“NPDES”) Permit No. NN0000019 filed by Dine’ Citizens Against Ruining the Environment (“Dine’ CARE”), San Juan Citizens Alliance (“SJCA”), Amigos Bravos, Center for Biological Diversity (“the Center”), and Sierra Club (collectively, “Petitioners”). In addition, the Unopposed Motion requested an extension of time for Arizona Public Service (“APS”), the permittee of the NPDES Permit at issue, to file its notice of appearance and response on or before

October 19, 2018, and an extension of time for Petitioners to reply on or before December 14, 2018.

In response to the Unopposed Motion, the Board issued an Order on August 2, 2018. The Order requests that “the Region, in consultation with Petitioners and APS, supplement its filing to assist in the Board’s evaluation of the motion for extensions of time to file the responses and reply. The supplemental filing should: (1) state whether EPA’s Office of General Counsel and Office of Water concur with the proposed briefing schedule; and (2) explain why the extension of time for the response briefs necessitates an additional six weeks beyond what the regulation provides for Petitioners to file their reply brief.”

EPA Region 9 initiated consultation with EPA’s Office of General Counsel on July 18, 2018, immediately after receiving an informal copy of the Petition. Consultations between EPA Region 9 and EPA’s Office of Water were initiated shortly thereafter, but in no event later than July 23, 2018. EPA Region 9 will be continuing to consult and coordinate with the Office of General Counsel and the Office of Water regarding the positions of the Agency. The Office of General Counsel and the Office of Water have specifically concurred with the dates agreed to by the parties and proposed in the Unopposed Motion.

In addition, Mr. John Barth, Counsel for Petitioners, has represented to the parties that he is the only attorney handling this appeal for Petitioners, and that he has numerous prior work and personal obligations between October 18 and December 14, 2018. Mr. Barth will be out of the country between October 18 and November 2, 2018, and will be unable to work on the reply during that time period. The Thanksgiving holiday falls on November 22, 2018, and Mr. Barth has family obligations through November 25, 2018. Mr. Barth also expects a federal district court decision in one of his cases on or about October 23, 2018, that will need his attention when

he returns to the United States from overseas, as well as previously scheduled work commitments in Portland, Oregon on December 5 and 6, 2018. Mr. Barth anticipates that he will need extensive time to reply. Petitioners' Petition is 58 pages in length and contains approximately 9 major arguments with numerous sub-arguments. Petitioners expect that the Permittee and EPA will each file a lengthy response brief addressing each of the arguments in Petitioners' Petition. As such, Mr. Barth anticipates needing extensive time to research and reply. Petitioners have not previously requested any extensions of time in this case and filed their Petition for Review within the allotted time frame. Accordingly, Petitioners believe it is appropriate that the Board grant EPA's unopposed request for Petitioners to reply on or before December 14, 2018.

EPA has conferred with counsel for APS and the Petitioners about this Supplement to the Unopposed Motion, and all parties continue to agree to the extension requests outlined in the Unopposed Motion.

Date: August 9, 2018

Respectfully submitted,

/s/Thomas M. Hagler

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CERTIFICATE OF SERVICE

I hereby certify that I caused a copy of the attached **REGION IX'S SUPPLEMENT TO ITS MOTION FOR EXTENSION OF TIME TO FILE RESPONSES** to be served by electronic mail upon the persons listed below.

Dated: August 9, 2018

/S/ Thomas M. Hagler

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