

manatt
manatt | phelps | phillips**Fax Transmission**

Manatt, Phelps & Phillips, LLP
11355 West Olympic Boulevard, Los Angeles, California 90064-1614
Telephone: 310.312.4000 Fax: 310.312.4224

#400

DEC 13 0:22

Client/Matter: 40813-060

Time in:

Fax Number:

Confirmation Number:

To: Clerk of the Board,
Environmental Appeals Board
U.S. Environmental Protection Agency
Washington, D.C.

(202) 233-0121

(202) 233-0122

From:

Peter R. Duchesneau

Date:

December 13, 2010

Pages including cover:

6

If you do not receive all of the pages, please call (310) 312-4203 as soon as possible. Thank you.

Sender's Comments:

In re: Peabody Western Coal Company, Black Mesa Complex
NPDES Permit No. NN 0022179
NPDES Appeal Nos.: 10-15 and 10-16

**PEABODY WESTERN COAL COMPANY'S MOTION FOR
EXTENSION OF TIME TO RESPOND TO PETITIONS FOR REVIEW**

300170853.1

This message is intended only for the use of the individual or entity to which it is addressed, and may contain information that is privileged, confidential and exempt from disclosure under applicable law. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please notify us immediately by telephone and return the original message to us at the above address via the U.S. postal service. Thank you.

Operator Use Only

Operator's Name

Comments:

Total Pages: 4

Time transmission completed:
p.m.

a.m.

Received 12-13-2010 20:28

From-3103126089

To-USEPA ENVIRONMENTAL

Page 001

manatt

manatt | phelps | phillips

Peter Duchesneau
 Manatt, Phelps & Phillips, LLP
 Direct Dial: (310) 312-4209
 E-mail: pduchesneau@manatt.com

December 3, 2010

Client-Matter 2013-080

20 DEC 14 AM 8:47
 U.S. E.P.A.
 RECEIVED
 ENVIR. APPEALS BOARD

VIA FACSIMILE AND FEDEX

U.S. Environmental Protection Agency
 Clerk of the Board, Environmental Appeals Board
 1341 "G" Street, N.W., Suite 600
 Washington D.C. 20005

Re. In re: Peabody Western Coal Company, Black Mesa Complex,
NPDES Permit No. NN 0022179
NPDES Appeal Nos.: 10-15 and 10-16

Dear Sir or Madame:

Enclosed for filing in the above-referenced matter is the original and five copies of Peabody Western Coal Company's Motion for Extension of Time to Respond to Petitions for Review, which was also faxed filed on December 13, 2010.

Please do not hesitate to contact me if you have any questions.

Sincerely,

Peter Duchesneau

Enclosure

cc: Counsel of Record

300188319.1

11355 West Olympic Boulevard, Los Angeles, California 90084-1614 Telephone: 310.312.4000 Fax: 310.312.4224

Albany | Los Angeles | New York | Orange County | Palo Alto | Sacramento | San Francisco | Washington, D.C.

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

In re:

Peabody Western Coal Company,
Black Mesa Complex

NPDES Permit No. NN 0022179

NPDES Appeal Nos.: 10-15 and 10-16

ENVIR. APPEALS BOARD

2010 DEC 14 AM 8:47

RECEIVED
U.S. E.P.A.

**PEABODY WESTERN COAL COMPANY'S MOTION
FOR EXTENSION OF TIME TO RESPOND TO PETITIONS FOR REVIEW**

Peabody Western Coal Company ("Peabody") hereby respectfully moves for an extension of time (until January 14, 2011) in the above-captioned matter to respond to the petitions of Black Mesa Water Coalition, Diné C.A.R.E., To Nizhoni Ani, Center for Biological Diversity and Sierra Club, NPDES Appeal No. 10-15, (the "EMLC Petition") and Californians for Renewable Energy (CARE) and former Hopi Tribal Chairman Ben Nuvamsa, NPDES Appeal No. 10-16, (the "CARE Petition") (collectively, the "Petitions"). Peabody seeks an extension consistent with the request by the U.S. Environmental Protection Agency, Region 9 (the "Region") pursuant to its Motion For Extension of Time to File Response to Petitioners' Petitions for Review, filed earlier today, December 13, 2010.

On October 18, 2010, the CARE Petitioners and EMLC Petitioners filed their respective petitions. Pursuant to 40 C.F.R. § 124.19(a), Petitioners filed appeals with regard to the September 16, 2010 renewal by U.S. Environmental Protection Agency ("EPA"), Region IX, of Peabody's National Pollutant Discharge Elimination System ("NPDES") Permit (No. NN

0022179). Concurrently with its petition, the EMLC Petitioners filed a motion for an extension of time to file a supplemental brief. Thereafter, on November 1, 2010, the EMLC Petitioners filed a supplemental brief with the EAB.

On November 2, 2010, Peabody sought leave to file a response to the petitions. On November 4, 2010, the EAB accepted the EMLC Petitioners' supplemental brief and granted Peabody leave to file a response to the petitions. *EAB Order Accepting Supplemental Brief for Filing and Granting Permittee Permission to Respond to Petitions*, at 1-2 (November 4, 2010).

The EAB Order also provided that "[b]oth the Region and Peabody shall file their responses and other documents on or before Monday, December 21, 2010." November 4, 2010 Order at 2.

On December 13, 2010, counsel for Peabody contacted via telephone, counsel for the EMLC Petitioners, Brad Bartlett with the Energy Minerals Law Center, and counsel for the CARE Petitioners, David Abney. Both petitioners' counsel indicated that they would not oppose Peabody's motion for an extension of time. Counsel for Peabody also spoke with Ann Nutt, counsel for Region 9. Counsel for Region 9 indicated that the Region would not oppose Peabody's extension request. (Earlier today, Peabody informed counsel for Region 9 that it would not oppose Region 9's extension request.)

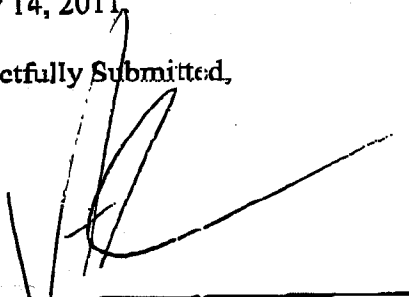
In light of Region 9's request for an extension, the complexity of responding to two separate petitions and a supplemental brief, Peabody's travel schedule prior to the current response date, the upcoming holidays, and that Peabody has not received nor requested any previous extensions, Peabody believes it is appropriate and within the discretionary authority of the EAB to grant an extension until January 14, 2011.¹ Moreover, given the lack of opposition

¹ U.S. EPA, Environmental Appeals Board, Practice Manual at 43-44 (Sept. 2010).

and prejudice to Petitioners and Region 9's request, judicial economy would be served by having a consistent response schedule.

For the reasons set forth above, Peabody respectfully requests that the EAB grant an extension of the time to file its response on January 14, 2011.

Respectfully Submitted,



12/13/2010 Dated: December 13, 2010

By:

Peter R. Duchesneau, CA Bar No. CA 168917
Craig A. Moyer, CA Bar No. CA 094187
Manatt, Phelps & Phillips, LLP
11355 West Olympic Boulevard
Los Angeles, CA 90064-1614
Telephone: (310) 312-4209
Fax: (310) 312-4224
pduchesneau@manatt.com

Counsel for Peabody Western Coal Company.

300188145.1

CERTIFICATE OF SERVICE

I the undersigned hereby certified that on December 13, 2010, I caused a copy of the foregoing Motion for Extension of Time to Response to Petitions for Review to be served by facsimile and Federal Express:

U.S. Environmental Protection Agency
Environmental Appeals Board
Clerk of the Board, Environmental Appeals Board
1341 "G" Street, N.W., Suite 600
Washington D.C. 20005
Phone: (202) 233-0122
Fax: (202) 233-0121

And by electronic mail to:

Brad A. Bartlett, CO Atty #32816
Energy Minerals Law Center
191 Main Avenue, Suite 238
Durango, CO 81301
Phone (970) 247-9334
Fax (970) 382-0316
e-mail: brad.bartlett@frontier.net

Travis Stills, CO Atty #27509
Energy Minerals Law Center
191 Main Avenue, Suite 238
Durango, CO 81301
Phone (970) 247-9334
Fax (970) 382-0316
e-mail: stills@frontier.net

David L. Abney, AZ Atty # 009001
Law Office of David L. Abney
4025 East Chandler Blvd., No. 70-A8
Phoenix, AZ 85048
Phone (480) 734-8652
e-mail: abneymaturin@aol.com

Samuel L. Brown
Assistant Regional Counsel
EPA Region IX
Phone (415) 972-3923
e-mail: Brown.Samuel@epamail.epa.gov


Peter R. Duchesneau