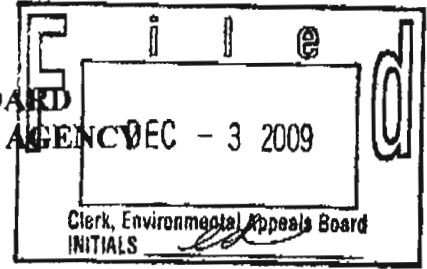


BEFORE THE ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.



In re:)
)
Peabody Western Coal Company)
Black Mesa Complex)
)
Permit No. NN0022179)
)

NPDES Appeal No. 09-10

ORDER DISMISSING PETITION FOR REVIEW WITH PREJUDICE

On August 5, 2009, U.S. Environmental Protection Agency Region 9 ("Region") issued to Peabody Western Coal Company ("Peabody") a National Pollutant Discharge Elimination System ("NPDES") permit renewal, number NN0022179 ("Permit"), for Peabody's Black Mesa Complex facility. On September 9, 2009, the Black Mesa Water Coalition, Diné C.A.R.E., To Nizhoni Ani, C-Aquifer for Diné, and Center for Biological Diversity ("Petitioners") filed a petition for review as well as a motion for an extension of time to submit a brief in support of the petition. After the Board granted a 45-day extension, Petitioners filed a supplemental brief on October 23, 2009, requesting that the Board remand the permit to the Region with instructions to address several alleged deficiencies.

Pursuant to its authority under 40 C.F.R. section 124.19(d) to withdraw a permit prior to the Board rendering a decision to grant or deny review, the Region filed a notice withdrawing the Permit on December 1, 2009. The Region stated that in addition to preparing a new draft permit under 40 C.F.R. section 124.6, it will also prepare a new fact sheet, provide appropriate notice and opportunity for public comment, and that it intends to hold public hearings on Navajo and Hopi lands.

Upon consideration, the Board hereby dismisses the above-captioned matter with prejudice. Section 124.19(d) states that "[t]he new draft permit shall proceed through the same process of public comment and opportunity for a public hearing as would apply to any other draft permit subject to this part." This dismissal is not a determination on the merits of any arguments raised in the petition, and thus does not preclude Petitioners from raising those arguments in its public comments submitted to the Region regarding the forthcoming draft permit.

So ordered.

ENVIRONMENTAL APPEALS BOARD

Dated: December 3, 2009

By: Anna L. Wolgast
Anna L. Wolgast
Environmental Appeals Judge

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Order Dismissing Petitions for Review with Prejudice in the matter of Peabody Black Mesa, NPDES Appeal No. 09-10, were sent to the following persons in the manner indicated:

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Dated: DEC 3 2009



Annette Duncan
Secretary