Clerk of the Superior Court
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SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2019-000264-001 DT 03/25/2021

HONORABLE SIGMUND POPKO

CLERK OF THE COURT
J. Eaton
Deputy

SAN CARLOS APACHE TRIBE
ARIZONA MINING REFORM COALITION
CONCERNED CITIZENS AND RETIRED MINERS COALITION
CONCERNED CITIZENS AND RETIRED MINERS COALITION
SAVE TONTO NATIONAL FOREST

JUSTINE R JIMMIE
HOWARD M SHANKER

v.

STATE OF ARIZONA (001)
ARIZONA WATER QUALITY APPEALS BOARD (001)
RESOLUTION COPPER MINING L L C (001)
ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY (001)

JAMES TODD SKARDON
DENA ROSEN BENJAMIN
CHRISTOPHER D THOMAS
JEFFREY D CANTRELL

ALEXANDER B RITCHIE
JAMES N SAUL
KARLENE MARTORANA
MATTHEW L ROJAS
COMM. POPKO
OFFICE OF ADMINISTRATIVE HEARINGS
REMAND DESK-LCA-CCC

JRAD RULING – ADMINISTRATIVE DECISION AFFIRMED

Appellants, SAN CARLOS APACHE TRIBE and the ARIZONA MINING REFORM COALITION, seek judicial review of an administrative decision of Appellee, ARIZONA WATER QUALITY APPEALS BOARD. That Board upheld a decision of Appellee, ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY, to renew AZPDES Permit # AZ0020389

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(the "Permit") issued to Appellee-Intervenor, RESOLUTION COPPER, LLC.[1] This Court has jurisdiction pursuant to A.R.S. §§ 12-905(A) and 49-323. For the following reasons, this Court affirms.

FACTUAL BACKGROUND AND PROCEDURAL HISTORY[2]

Resolution Copper, LLC ("RC") owns and operates a copper mine site located in the mountains outside of Superior, Arizona. The relevant site is, to a very large extent, the same site as the previous Magma Copper Mine site. Active ore extraction took place on the site from about 1912 until about 1996. After that time, however, activity still took place on the site, including dewatering of at least one mine shaft. Dewatering was halted in 1998. In 2004, RC took operational control of the site. It restarted dewatering operations in 2009. It also proposed to actively mine copper ore from the "Resolution Deposit." Mining that deposit necessitates the construction of a new mine shaft ("Shaft # 10") as well as certain support structures such as a truck wash bay, a water treatment plant, a concentrator, and a tunnel connecting the east and west portions of the site.

It is undisputed that the various past and present owners/operators of the site have obtained the necessary pollutant discharge permits from either the EPA or ADEQ and that the site has been continually permitted ever since such permits were required.[3] RC last sought renewal of the Permit from ADEQ during July 2015. ADEQ renewed the Permit in January 2017.[4] Appellants appealed to the Board which referred the matter to the Office of Administrative Hearings for an evidentiary hearing. The hearing was held over the course of seven days during February 2018. The ALJ's recommended decision found for Appellees on all but one issue. As to the new source issue, the

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[1] The State of Arizona is also named as a party-appellee. In addition, two named appellants, the Concerned Citizens and Retired Miners Coalition and Save Tonto National Forest, were dismissed from this review proceeding by minute entry dated March 4, 2020. The Board appears in these review proceedings as a nominal party.

[2] Because the parties are familiar with the factual and procedural history of this case, it is not recounted in full detail here. This Court must "view the evidence in a light most favorable to upholding" the administrative decision. *Baca v. Arizona Dept. of Econ. Sec.*, 191 Ariz. 43, 46 (App. 1997).

[3] Just because a site is permitted to discharge pollutants, however, does not mean that pollutants were, in fact, discharged. There is evidence in the record that RC has not discharged any waste water into Queen Creek because a local irrigation district has been purchasing the water that would otherwise be discharged into Queen Creek. Of course, the fact that RC has refrained from discharging permitted waste water in the past is no guarantee that it will continue to do so in the future.

[4] The record shows that the Permit was first issued to Magma Copper Company by the EPA during 1975.

ALJ recommended that the Board remand the matter to ADEQ for the purpose of conducting a new source analysis pursuant to 40 C.F.R. § 122.29(b). The ALJ, however, did not conclude that RC's new constructs were, in fact, "new sources."

The Board acted consistently with the ALJ's recommendation. After hearing from the parties, the Board ordered ADEQ to submit the required new source analysis. In so doing, the Board authorized ADEQ to disregard certain factual findings and conclusions of law reached by the ALJ. ADEQ subsequently issued the required analysis, and the Board engaged in further review. After considering the new ADEQ analysis and hearing from the parties, the Board affirmed ADEQ's renewal of the Permit. Appellants timely sought judicial review.

SCOPE AND GENERAL STANDARDS OF REVIEW

The prescribed standard of review for judicial review of administrative decisions is a deferential one.

> The court shall affirm the agency action unless the court concludes that the agency's action is contrary to law, is not supported by substantial evidence, is arbitrary and capricious or is an abuse of discretion.

A.R.S. § 12-910(E). This Court does not substitute its judgment for that of the agency. *DeGroot v. Arizona Racing Comm'n*, 141 Ariz. 331, 336 (App. 1984) ("A trial court may not function as a "super agency" and substitute its own judgment for that of the agency where factual questions and agency expertise are involved.").

When an ALJ makes recommended findings of fact and conclusions of law, but an agency later rejects or modifies those recommendations, this Court's jurisdiction is limited to reviewing the final agency decision. *See Smith v. Arizona Long Term Care Sys.*, 207 Ariz. 217, 220, ¶ 15 (App. 2004). *See also* A.R.S. § 41-1092.08(B). Thus, in this case, this Court reviews the Board's final decision dated June 25, 2019. A.R.S. § 49-323(B) ("Final decisions of the board are subject to appeal to superior court pursuant to title 12, chapter 7, article 6.") (emphasis added) (footnote omitted).[5]

[5] The Board's rules permit it to incorporate by reference an ALJ's recommended findings of fact and conclusions of law. A.A.C. R2-17-125(D). Any such findings and conclusions so incorporated are part of the Board's final decision and subject to this Court's review.

ED_013248_00000951-00003

The Board's standard of review of ADEQ's decision to renew the Permit is similarly deferential.

> Decisions by the director shall be affirmed by the appeals board unless, considering the entire record before the board, it concludes that the director's decision is arbitrary, unreasonable, unlawful or based upon a technical judgment that is clearly invalid.

A.R.S. § 49-324(C).

ISSUES ON REVIEW

Appellants jointly argue that the Board's determination that RC's new constructs on the mine site were not "new sources" was reached contrary to law, arbitrarily or capriciously, and was not supported by substantial evidence. They also argue that the Board improperly allowed ADEQ to disregard certain of the ALJ's recommended findings of fact and conclusions of law. The Coalition separately argues that the Board improperly failed to award it its reasonable attorneys' fees and costs incurred during the administrative proceedings.

DISCUSSION

DEFERENCE TO ADMINISTRATIVE AGENCY LEGAL INTERPRETATIONS

It has long been Arizona law that a court is not bound by an administrative agency's legal interpretations. *See, e.g., Alvord v. State Tax Comm'n*, 69 Ariz. 287, 292 (1950). Nonetheless, courts have given weight to administrative legal interpretations. *Id. See also Di Giacinto v. Arizona State Ret. Sys.*, 242 Ariz. 283, 286, ¶ 9 (App. 2017) (giving "great weight" to an agency's interpretation of its own regulations); *Phelps Dodge Corp. v. Arizona Dept. of Water Res.*, 211 Ariz. 146, 153, ¶ 25 (App. 2005) (giving "considerable deference"). *See generally Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984). *But see Stambaugh v. Killian*, 242 Ariz. 508, 512, ¶ 25 (2017) (Bolick, J., concurring) (questioning whether deference to administrative legal interpretations erodes separation of powers principles).

The Arizona legislature has recently spoken on this issue. A statute now instructs that

> [i]n a proceeding brought by or against the regulated party, the court shall decide all questions of law, including the interpretation of a constitutional or statutory provision or a rule adopted by an agency, without deference to any previous determination that may have been made on the question by the agency.

ED_013248_00000951-00004

> Notwithstanding any other law, this subsection applies in any action for judicial review of any agency action that is authorized by law.

A.R.S. § 12-910(E) (as amended by Laws, 2018, ch. 180, § 1 (H.B. 2238)) (eff. 4/11/2018). ADEQ, however, argues that this provision does not apply because the underlying administrative proceeding was brought by Appellants against the state, ADEQ, and the Board but not the "regulated party" — RC. Respondent ADEQ Combined Answering Brief, filed 6/18/2020, at pp. 10–11. *See also* Combined Response Brief of Appellee Resolution Copper Mining, LLC, filed 6/19/2020, at pp. 4–6.

This Court concludes that A.R.S § 12-910(E), as amended in 2018, applies to this case. The clause at issue begins "in a proceeding brought by or against the regulated party, the court shall decide . . ." (emphasis added). The "proceeding" referred to in the statute means the judicial review proceeding in which the "court" must make determinations. That the underlying administrative hearing initially only involved Appellants and ADEQ as the permitting agency does not avoid the operation of the 2018 amendments.[6]

Moreover, the Permit at issue is held by RC, making it the real party in interest. ADEQ offers no explanation as to why it makes sense for a court to give deference to administrative legal interpretations when the real party in interest only becomes a named party by intervention but not when that same real party was a named party from the beginning of the administrative hearings.

Accordingly, and pursuant to A.R.S. § 12-910(E), this Court may not "defer" to ADEQ's legal interpretations of either the applicable statute or regulations. However, refraining from giving deference is not the same thing as refusing to give consideration. *See Thomas & King, Inc. v. City of Phoenix*, 208 Ariz. 203, 206, ¶ 8 (App. 2004) ("While we give the administrative interpretation of a statute or ordinance some weight, we need not defer to an agency's legal conclusions and may substitute our own.") (emphasis added). The legislature did not define "deference," but in legal parlance to "defer" or give "deference" to another entity carries the connotation that the entity's "action, proposal, opinion, or judgment should be presumptively accepted." "Deference," BLACK'S LAW DICTIONARY (11th ed. 2019). This Court may, therefore, give thoughtful consideration and the weight it believes due to an agency's interpretations of statutes and regulations with which it is charged with implementing while at the same time not harboring a belief that the agency's interpretation is entitled to a presumption of acceptance.

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[6] RC intervened in the appeals before the Board. Order Granting Motion to Intervene by Resolution Copper Mining, LLC, dated 2/13/2017.

NEW SOURCE ANALYSIS

Neither party was able to cite any case law with facts similar to those presented here and addressing the issue whether new constructs at a mine site constitute, either singly or cumulatively, a "new source" within the meaning of the applicable controlling regulations, 40 C.F.R. § 122.2 and § 122.29(b)(1–2).[7] Neither has this Court's research uncovered any published decision, federal or state, addressing a similar fact pattern. Thus, like the ALJ, the Board, and the parties, this Court must wrestle with the applicable statutes and regulations directly.

Appellees have consistently argued that RC's new constructs are not, by definition, new sources within the meaning of the regulations. After reviewing the applicable statutes and regulations, the record, and after considering the parties' respective arguments, this Court agrees with ADEQ.

> *New source* means any building, structure, facility, or installation from which there is or may be a "discharge of pollutants," the construction of which commenced:
>
> (a) After promulgation of standards of performance under section 306 of CWA <u>which are applicable to such source</u>, or
>
> (b) After proposal of standards of performance in accordance with section 306 of CWA which are applicable to such source, but only if the standards are promulgated in accordance with section 306 within 120 days of their proposal.

40 C.F.R. § 122.2 (italics in original) (underscoring added). The parties agree that in this case the section 306 "standards of performance" is a reference to the New Source Performance Standards ("NSPS") applicable to copper mines found in 40 C.F.R., Part 440, Subpart J. These NSPS became effective as of December 3, 1982. ADEQ 6 [NQB015289].

Another regulation reinforces the requirement that there must be a NSPS "independently applicable" to any putative new source. Otherwise, it is not a new source within the meaning of applicable regulations.

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[7] Many of the federal regulations at issue in this case have corresponding state regulations. *E.g.*, A.A.C. R18-9-A901(25) ("new source" definition); R18-9-A905(A)(1)(e) (incorporating by reference the July 1, 2003 version of 40 C.F.R. § 122.29). No party has suggested that resolution of this appeal turns on any difference between the text of a federal regulation and a corresponding state regulation. The parties have almost exclusively relied on citations to federal statutes and regulations. Accordingly, this Court does the same.

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> (b) *Criteria for new source determination.*
>
> (1) Except as otherwise provided in an applicable [NSPS], a source is a "new source" if it meets the definition of "new source" in § 122.2, and
>
> (i) It is constructed at a site at which no other source is located; or
>
> (ii) It totally replaces the process or production equipment that causes the discharge of pollutants at an existing source; or
>
> (iii) Its processes are substantially independent of an existing source at the same site. In determining whether these processes are substantially independent, the Director shall consider such factors as the extent to which the new facility is integrated with the existing plant; and the extent to which the new facility is engaged in the same general type of activity as the existing source.
>
> (2) A source meeting the requirements of paragraphs (b)(1) (i), (ii), or (iii) of this section is a new source only if a new source performance standard is independently applicable to it. If there is no such independently applicable standard, the source is a new discharger. See § 122.2.

40 C.F.R. § 122.29(b)(1–2) (italics in original) (underscoring added).

When analyzing whether something is a new source within the meaning of these regulations, it is crucial to understand why the distinction between existing sources and new sources was first recognized.

> The distinction between existing and new sources is not based on special concerns arising from the new addition of pollutants to a water body. Rather, Congress recognized that the ability to use the [improved] pollution control equipment differed between existing and new sources.

Jeffrey M. Gaba, *New Sources, New Growth and the Clean Water Act*, 55 ALA. L. REV. 651, 656 (2004). *See also* 49 Fed. Reg. 38043 (Sept. 26, 1984) [AMRC 000332] ("This [existing source–new source] distinction is based on the concept that new facilities have the opportunity to install the best and most efficient production processes and wastewater treatment technologies.").

On the facts of this case, however, the reason behind the distinction between the two types of sources does not apply because that reason has already been fulfilled. There was testimony at the administrative hearing that even had RC's new constructs been deemed new sources within the

ED_013248_00000951-00007

meaning of the applicable regulations, the effluent discharge limits allowed under the Permit would not have changed. In other words, the Permit already requires compliance with the most stringent effluent discharge limits required by law. Transcript, 02/05/2018, at pp. 60:1–61:1; 147:22–148:3. *See also* Combined Response Brief of Appellee Resolution Copper Mining, LLC, filed 06/19/2020, at p. 1:13–2:19 (arguing that the Permit already requires compliance with the most stringent effluent discharge limits). Appellants have not challenged this assertion.

Given this fact, then, it appears that Appellants' motivation for opposing the Permit is not to require compliance with more stringent effluent discharge requirements, but to stop issuance of the Permit altogether as part of an effort to halt mining at the site. Queen Creek is an "impaired" waterway, and federal law apparently makes it extremely difficult, if not impossible, for a new source to obtain a permit to discharge effluent into impaired waterways. *See generally Friends of Pinto Creek v. EPA*, 504 F.3d 1007, 1011–1012 (9th Cir. 2007) (discussing 40 C.F.R. § 122.4(i) and its proscription of discharges into bodies of water that fail to meet applicable water quality standards). Thus, the Court is mindful that Appellants are taking a distinction between existing sources and new sources that was created in one context and seeking to apply it in an entirely different context.

An independently applicable NSPS is an essential part of the definition of "new source." Without such an NSPS there can be no "new source." A review of Subpart J reveals, however, that the applicable effluent limitations operate on "mines," "mills," or both. 40 C.F.R. § 440.100. "Mine" is defined extremely broadly and includes all of the equipment that is involved extracting ore and working with it. *Id.* § 440.132(g). More specifically, the NSPS applicable to copper mines applies to "mine drainage from mines." *Id.* § 440.104. "'Mine drainage' means any water drained, pumped, or siphoned from a mine." *Id.* § 440.132(h). Thus, Subpart J operates on the mine as a whole and the effluent discharges from it and not to any particular construct associated with the mine.

This reading of the regulations is supported by a case cited by the parties that addresses the meaning of a new source in the context of electric power generation. In *Mahelona v. Hawaiian Elec. Co., Inc.*, 418 F. Supp. 1328 (D. Haw. 1976), an electric company sought to continue its discharge of cooling water into the ocean. To do so it needed an NPDES permit.[8] One issue before the court was whether the electric company's cooling water discharge facility was a "new source" for NPDES purposes. The court noted that while the cooling water discharge facility met the

[8] The cooling water was considered a regulated "pollutant" under applicable law.

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"literal" definition of "source," it was not a "new source" as defined by law, in part, because there were no federal "regulations applicable solely to" the cooling water discharge facilities. *Id.* at 1335.[9] Instead, the court looked to what was generating the effluent in the first instance, the steam electric generating plants. *Id.* (citing 40 C.F.R. Part 423). Likewise, and as did the Board, this Court looks at the mine as a whole as the operative unit for the new source analysis.

This Court has considered Appellants' contrary readings and interpretations of the regulations. It concludes that the above reading is the one consistent with legislative intent, especially in light of the fact that the Permit already requires compliance with the most stringent effluent discharge standards. Accordingly, the Board's determination that there was no "new source" within the meaning of the applicable regulations was not unlawful, arbitrary or capricious, an abuse of discretion, or lacking in a substantial basis.[10]

BOARD REMAND TO ADEQ

As noted above, after receiving the ALJ's recommended decision, the Board held further proceedings. At the conclusion of those proceedings, the Board remanded the matter to ADEQ for the purpose of "conducting a new source analysis as required by 40 C.F.R. § 122.29(b)." Board Order, dated 11/19/2018, at p. 1 [WQAB 35].[11] In so doing, and after receiving written submissions from the parties, it permitted ADEQ to disregard certain of the ALJ's recommendations so ADEQ could perform a new source analysis without being restricted by them. Appellants now object that the Board's action in this regard is grounds for overturning the Board's final decision and vacating the Permit.

First, this Court concludes that it lacks jurisdiction to review the Board's November 19, 2018 order. This Court may only review the Board's "final" decisions. A.R.S. § 49-323(B). *See also* A.R.S. §§ 12-901(2), -902, -905(A). The November 19 order remanded the matter to ADEQ

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[9] In addition, the court further ruled that, under the facts of that case, the cooling water discharge facility was not even a "source" under the statutory definition, let alone a "new source." *Mahelona*, 418 F. Supp. at 1335.

[10] ADEQ is required to notify EPA when it issues or renews AZPDES permits, and the EPA plays a monitoring role over state-issued discharge permits notwithstanding its delegation of permit authority to a state. *See* Combined Response Brief of Appellee Resolution Copper Mining, LLC, filed 6/19/2020, at p. 5:17–27 (discussing various federal statutes and regulations). While federal oversight does not relieve this Court of its obligation to correctly interpret the law, EPA is empowered to step in and take action if it believed the Permit is inappropriate. *See id.*

[11] Indeed, it was the ALJ's recommendation that ADEQ be required to perform a more complete new source analysis. ALJ Decision, dated 10/15/2018, Conclusion of Law ¶ 71.

for further analysis which the Board would then consider in making its final decision. Thus, the November 19 order itself was not a final decision subject to judicial review under the Administrative Review Act. *See Arizona Physicians IPA, Inc. v. Western Arizona Reg'l Med. Ctr.*, 228 Ariz. 112, 114, ¶¶ 10–11 (App. 2011). If a party believed that the November 18 order contained terms in excess of the Board's authority, that party should have sought review by way of special action. *See id.* at 114, ¶ 12. *See also Johnson Utilities LLC v. Arizona Corp. Comm'n*, 1 CA-CV 18-0170, 2019 WL 190295, at ¶ 15 (mem. dec.) (Ariz. App. Jan. 15, 2019) (noting that agency interlocutory orders "are generally only reviewable through discretionary special action review").[12]

Second, even if this Court had jurisdiction to review the Board's remand order, it would find that Appellants have waived this issue. The Board issued the remand order to ADEQ on November 19, 2018. ADEQ submitted the required new source analysis on February 15, 2019 [WQAB 40]. It was only after that submission, on March 8, 2019 (109 days later), that Appellants first objected to the Board's remand procedure of requiring ADEQ to submit the new source analysis and allowing ADEQ to disregard specified recommendations.[13] If Appellants believed the Board engaged in an improper procedure, Appellants should have objected within a reasonable time after the Board's November 19 order. They should not have refrained from objecting by waiting to see if ADEQ's supplemental new source analysis would have benefitted them in some fashion. *See* A.A.C. R2-17-126(A) (requiring motions to rehear or review be filed within 30 days of decision complained of).[14] For this reason also, this Court does not address the issue.[15]

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[12] Cited for persuasive value only pursuant to Rule 111(c)(1)(C), Rules of the Supreme Court of Arizona.

[13] Although Appellants did argue that ADEQ should only be allowed to disregard one of the ALJ's recommended conclusions of law, Appellants did not argue to the Board that it was arbitrary to allow ADEQ to ignore any recommendations until after ADEQ submitted the supplemental new source analysis. *Cf.* Appellants' Joint Statement Regarding Specific Conclusions of Law the Water Quality Appeals Board Should Reject, dated November 13, 2018 [WQAB 33] *with* Coalition Appellants' Motion to Review and Reconsider the Board's November 19, 2018 Order, dated 03/08/2019 [WQAB 42].

[14] The rule technically only applies to the Board's final decisions, but Appellants cited the rule as support for their motion to reconsider. Coalition Appellants' Motion to Review and Reconsider the Board's November 19, 2018 Order, dated 03/08/2019, at p. 2:3. *See also* ADEQ's Response in Opposition to the Coalition Appellants' Motion to Review and Reconsider the Board's November 19, 2018 Order, dated 03/25/2019, at pp. 2–3 (arguing untimeliness of Appellant's motion).

[15] To the extent Appellants assert that the Board failed to comply with A.R.S. § 41-1092.08(B) by failing to notify the state legislature's presiding officers of its rejection of certain of the ALJ's conclusions of law, this Court notes that the Board made such a notification by letter dated August 19, 2019 [WQAB 60]. The statute does not set any deadline

THE BOARD'S DECISION RE ATTORNEYS' FEES AND COSTS

Lastly, the Coalition challenges the Board's denial of its attorneys' fees and costs incurred during the administrative hearings before the OAH and the Board. Prior to the Board's final decision of June 25, 2019, the Coalition filed its application for attorneys' fees and costs. The Coalition cited A.R.S. § 41-1007 as the statutory authority for its request [WQAB 38]. ADEQ responded in opposition [WQAB 39]. In its final administrative decision, the Board denied the Coalition's application.

This Court reviews the Board's decision on this issue applying the same standard of review found in A.R.S. § 12-910(E) ("The court shall affirm the agency action unless the court concludes that the agency's action is contrary to law, is not supported by substantial evidence, is arbitrary and capricious or is an abuse of discretion.").

Under the statute, fees and costs may only be awarded if both the following are true:

1. The agency's position was not substantially justified.

2. The [applicant] prevails as to the most significant issue or set of issues unless the reason that the person prevailed is due to an intervening change in the law.

A.R.S. § 41-1007(A). ADEQ and the Coalition, unsurprisingly, take opposing views with respect to each of the two requirements.

Because both requirements must be true, this Court must affirm the Board's decision even if only one requirement is not met. A.R.S. § 12-910(E). The record shows that ADEQ's position from the beginning of the permit renewal process was that RC's new constructs at the mine site were not, by definition, "new sources" because there were no NSPS independently applicable to them. As explained above, this Court agrees with that reading of the applicable regulations. In light of that agreement, this Court cannot also agree that ADEQ's "position was not substantially justified." Accordingly, the Board's decision denying an award of attorneys' fees and costs pursuant to A.R.S. § 41-1007 is affirmed.

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by which an agency must notify the presiding officers nor does it provide any consequence for an agency's failure to seasonably notify the presiding officers. Had the Board not issued its August 19 letter, a remand for that purpose may have been the appropriate remedy. *See Ruben v. Arizona Med. Bd.*, 1 CA-CV 18-0079, 2019 WL 471031, at ¶ 30 (mem. dec.) (Ariz. App. Feb. 7, 2019) (cited for persuasive value pursuant to Rule 111(c)(1)(C), Rules of the Supreme Court of Arizona.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2019-000264-001 DT 03/25/2021

CONCLUSION & ORDERS

This Court is not unaware of the controversy created by the proposed resumption of mining at the old Magma Mine site. Portions of the population are concerned about environmental degradation generally and harm that would come to land held sacred by local tribes. Other portions welcome the resumption because of the economic benefits and jobs it would bring to the area. The Court is not insensitive to these competing values. As a private citizen and human being, this judicial officer may very well have views on the subject. The Court's decision, however, must be based, not on any such personal views, but, rather, on a dispassionate analysis of the law as best this Court can understand it in light of the record and the parties' briefs.

IT IS THEREFORE ORDERED affirming the Board's Final Administrative Decision dated June 25, 2019 in its cause numbers 17-001 and 17-002.

IT IS ALSO ORDERED remanding this matter to the Board and/or ADEQ for further proceedings, if any.

IT IS ALSO ORDERED that no further matters remain pending and this ruling constitutes this Court's final decision for purposes of Rule 13, Rules of Procedure for Judicial Review of Administrative Decisions, and Rule 54(c), Arizona Rules of Civil Procedure.

IT IS ALSO ORDERED signing this ruling as a formal order of the Court.

/s/ Sigmund G. Popko
THE HON. SIGMUND G. POPKO
Judicial Officer of the Superior Court

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