

**BEFORE THE WATER QUALITY APPEALS BOARD
DEPARTMENT OF ADMINISTRATION
IN AND FOR THE STATE OF ARIZONA**

Center for Biological Diversity & Dr. Kevin
L. Gibson,

CASE NO. 21-002

Appellants,

v.

Arizona Department of
Environmental Quality,

**WATER QUALITY APPEALS BOARD
ORDER RE: DISMISSAL**

Respondent.

On May 13, 2021, the Water Quality Appeals Board (“Board”) met to discuss and vote on a Motion to Dismiss Due to Lack of Standing filed April 23, 2021 by the Arizona Department of Environmental Quality (ADEQ”). The Center for Biological Diversity & Dr. Kevin L. Gibson (“Appellants”) filed a response May 7, 2021. A reply was filed May 11, 2021. A Sur-Reply was filed by Appellants May 11, 2021.

At the meeting, after discussion by the Board, the Water Quality Appeals Board granted the Arizona Department of Environmental Quality’s Motion to Dismiss Due to Lack of Standing Required in A.R.S. § 49-323(A) docketed on April 23, 2021 for the following reasons:

1. The Board is empowered by A.R.S. 49-323(A) to hear and determine appeals from “any person who is adversely affected by the action or by any person who may with reasonable probability be adversely affected by the action and who has exercised any right to comment on the action as provided in § 41-1092.03.”

2. This matter arises from ADEQ's issuance of an Aquifer Protection Permit per §49-241, the purpose of which is to ensure that a facility that discharges causes no migration of pollutants directly to the aquifer or to the vadose zone.
3. The Board considered and discussed the evidence from ADEQ in the form of the Affidavit of Daniel Reeder and the Affidavits of Dr. Kevin L. Gibson and Taylor McKinnon submitted by the Appellants. The Appellants offered insufficient evidence to support a reasonable probability that Appellants may be adversely affected by the permit, nor were the remaining factors sufficiently related to the reasonable probability of migration of pollutants directly to the aquifer or vadose zone.
4. The Board found insufficient evidence of a reasonable probability that the Appellants will be adversely affected by the ADEQ permit action under A.R.S. § 49-323(A).

Therefore, for Good Cause, it is ORDERED this appeal matter is DISMISSED.

**NOTICE OF RIGHTS PURSUANT TO A.A.C. R2-17-124(C), A.R.S. § 423(B),
AND A.R.S. § 12-901**

This is a final administrative decision of the Water Quality Appeals Board, made according to A.R.S. § 49-323. You may file a motion for rehearing or review of this decision under R2-17-125. If you file a motion for rehearing or review, you shall file your motion within 30 days after service of this decision. You are not required to file a motion for rehearing or review before seeking judicial review. This decision may be reviewed by the Superior Court if you file a complaint in the manner prescribed in A.R.S. § 12-901, et seq.

DATED this 14th day of May, 2021.

WATER QUALITY APPEALS BOARD



Michele Van Quathem, Chair

A copy of the foregoing was sent by electronic mail
this 14th day of May, 2021

WATER QUALITY APPEALS BOARD:

Michele Van Quathem
Fred E. Brinker, P.E.
Keith Bowers

A copy was sent by electronic and U.S. mail this 14th day of May, 2021, to:

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