

**ALABAMA SURFACE MINING COMMISSION
DIVISION OF HEARINGS AND APPEALS**

**THE WATER WORKS BOARD OF
THE CITY OF BIRMINGHAM,**)
)
)
Petitioner;)
)
**ALABAMA SURFACE MINING
COMMISSION,**)
)
Respondent;)
)
SHEPHERD BEND LLC,)
)
Applicant/ Permittee/ Respondent.)

Permit No. P-3945-64-15-S

License No. L-786

A.S.M.C.-D.H.
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INSTRUMENT FILE

PETITION FOR REVIEW OF THE DIVISION AND APPEALS DECISION

COMES NOW, the Petitioner, The Water Works Board of the City of Birmingham (the “BWVB”) and files this Petition, pursuant to Ala. Admin Code 880-X-5A-3(a)(1), regarding Permit No. P-3945-64-15-S (the “Permit”) issued to Shepherd Bend LLC and the Order upholding the Permit issued on March 5, 2013. As grounds for this Petition, the Water Works Board states as follows:

1. The BWVB is an Alabama public corporation created pursuant to Ala. Code § 11-50-230, *et. seq.* (1975). As such, the BWVB supplies potable water to approximately 600,000 Alabama citizens. In addition, the BWVB supplies raw water for many of Alabama’s largest industrial customers. One of the sources of water supply for the BWVB is the Warrior River. The BWVB owns and operates a water intake along the banks of the Warrior River adjacent to the area proposed for surface mining by Shepherd Bend. This intake is referred to as the Mulberry Intake. The Mulberry Intake is rated to withdraw between 65 and 85 million gallons of water per day (“MGD”) from the Warrior River. Water withdrawn from the Warrior River is pumped to the western part of the Birmingham area to be treated by the BWVB’s

Western Filter Plant. The Western Filter Plant can treat up to 60 MGD. Water from the Western Filter Plant is then distributed to the BWWB's service area west of U.S. Interstate 65 as far north as the Towns of Kimberly and Warrior, the Cities of Gardendale, Fultondale, parts of the Cities of Homewood, Hoover and Vestavia as well as downtown Birmingham. Customers that use the potable water produced by the Western Filter Plant include individual residences, hospitals, kidney dialysis facilities and other businesses. In all, approximately 200,000 Alabama citizens drink water withdrawn from the Warrior River by the Mulberry Intake and treated by the Western Filter Plant. The section of the Warrior River adjacent to the Mulberry Intake is classified by the Alabama Department of Environmental Management ("ADEM") as "public water supply" ("PWS"). The BWWB is using this section of the Warrior River as a supply of water for domestic, agriculture, industrial or other legitimate use.

2. On March 5, 2013, the Division of Hearings and Appeals ("DHA") issued an Order holding that the Permit satisfies the requirements of law and was properly issued. In reaching this holding, the DHA held that no evidence had been submitted that surface coal mining operations conducted according to the terms of the Permit as approved would cause material damage to the hydrologic balance or adversely impact operations of the BWWB.

3. The holding of the DHA is erroneous for the following reasons:


- a. The cumulative hydrologic impact assessment ("CHIA") that the Alabama Surface Mining Commission ("ASMC") allegedly performed, was wholly inadequate since it was missing major components of the analysis, was fraught with errors and was based on invalid information; and
- b. There was uncontroverted evidence presented by the BWWB that the mining contaminants identified by the BWWB as a concern do now exist

and may cause material damage to the operational performance of the BWWB's Mulberry Intake.

- c. The ASMC failed to require toxic-forming potential of the disturbed materials be assessed and presented with the geologic background information.
 - d. Shepherd Bend failed to provide complete engineering design information as required and those engineering designs that were provided indicate that treatment systems are not the best technology currently available.
 - e. The operation plan presented by Shepherd Bend and approved by the ASMC is vague and lacks the detail needed to ensure regulatory performance standards are met.
 - f. The groundwater monitoring plan is insufficient for locating and tracking groundwater contaminants.
 - g. The surface water monitoring plan is insufficient.
4. This Petition is supported by the Brief that is attached hereto.

WHEREFORE, based upon the preceding, the BWWB requests the Commission to:

- a. Grant this Petition for Review;
- b. Overturn the Order issued by the DHA on March 2, 2013; and
- c. Revoke the Permit.



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THE FOREGOING TO BE SERVED ON THE FOLLOWING:

By Hand Delivery:

Division of Hearings and Appeals
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cc: Office of Director, Alabama Service Mining Commission

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CERTIFICATE OF SERVICE

I do hereby certify that I have this day, March 29, 2013, served a copy of the above and foregoing on the following attorneys of record by email and placing a copy of same in the United States Mail, postage prepaid and properly addressed to the following:

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