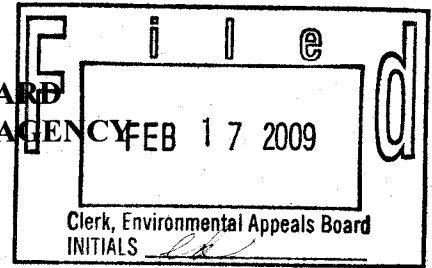


BEFORE THE ENVIRONMENTAL APPEALS BOARD  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C.



In re: )  
)

Desert Rock Energy Company, LLC )

PSD Permit No. AZP 04-01 )  
)

PSD Appeal Nos. 08-03, 08-04,  
08-05 & 08-06

**ORDER DENYING MOTION FOR EXTENSION OF TIME  
TO FILE NONPARTY BRIEF**

On January 22, 2009, the Environmental Appeals Board ("Board") granted review of a prevention of significant deterioration ("PSD") permit decision (number AZP 04-01) (the "Permit") issued by Region 9 ("Region") of the United States Environmental Protection Agency ("EPA" or "Agency") to Desert Rock Energy Company, LLC ("Desert Rock") on July 31, 2008. *See generally* Order Granting Review, Staying the Carbon Dioxide BACT Issue, and Granting Motions to File Amicus/Nonparty Briefs Motions to File Reply Briefs ("Order Granting Review"). The Board had received four petitions for review of the Permit pursuant to 40 C.F.R. § 124.19(a): one from Diné Care, Environmental Defense Fund, Grand Canyon Trust, Natural Resources Defense Council, San Juan Citizens Alliance, Sierra Club, and WildEarth Guardians (collectively "NGO Petitioners"); one from the State of New Mexico ("New Mexico"); one from the Center for Biological Diversity ("CBD"); and one from Ms. Leslie Glustrom.

In its Order Granting Review, the Board established February 13, 2009, as the date for

petitioners to file reply briefs to the responses from the Region, Desert Rock, and Diné Power Authority (“DPA”). *See* Order Granting Review at 7. The Board also set a deadline of Friday, March 6, 2009, for the Region, Desert Rock, and DPA to file surreply briefs. *Id.* In addition, the Board granted Navajo Nation’s motion requesting leave to file a nonparty brief. *Id.* at 6. The Board stated that Navajo Nation should file its brief no later than the date established for the filing of amicus briefs. *Id.* Amicus briefs were due “no later than twenty-one days from the date on which the Region publishes a public notice of this grant of review in compliance with the part 124 procedures.” *Id.* at 8.

On February 10, 2009, the Board received a motion from New Mexico requesting an additional one-week extension to file its reply – to February 20, 2009 – due to the fact that lead counsel for the State had undergone emergency surgery over the weekend and was unable to work for several days. N.M.’s Motion for Extension of Time to File Reply Brief at 1. The Board granted this motion on February 11, 2009. *See generally* Order Granting Motion for Extension of Time to File Reply Brief. In that same order, the Board extended the filing date for the surreply briefs from the Region, Desert Rock, and DPA until March 13, 2009. *Id.* at 2.

On February 11, 2009, the Board received from the NGO Petitioners a request for an extension of time to file their reply brief until February 13, 2009. Conservation Petitioners’ Motion for Extension of Time to File Reply Brief. As a basis, the NGO Petitioners cited the request from New Mexico and stated that similarly extending the date for the NGO Petitioners would “ensure consistency in the overall briefing schedule.” *Id.* at 2. Despite the fact that NGO Petitioners’ justification for an extension was thin, the Board granted that motion given that there would be no prejudice to any party since the date for filing surreplies had already been extended

and the requested extension for the NGO Petitioners would not affect the overall timing of the Board's action. Order Granting Motion for Extension of Time to File Reply Brief at 3 (Feb. 12, 2009).

On February 13, 2009, the Board received a motion for extension of time from the Navajo Nation. Motion for Extension of Time to File Non Party Brief ("Motion for Extension of Time"). In its motion, the Navajo Nation requests a seven-day extension of time to file its brief. Navajo Nation explains that on December 29, 2008, the Navajo Nation Department of Justice office had a main water line break that resulted in the collapse of the ceiling in a section of the building. *Id.* at 1. Thereafter, the Navajo Occupational and Safety and Health Administration sealed the building when asbestos was discovered. *Id.* The motion did not specify the date upon which the Navajo Nation believed its brief was currently due, nor did it specify the precise date for its proposed new deadline. The motion did state that "the Navajo Nation is requesting the same extension as granted to the State of New Mexico." *Id.* at 2.

Later that day, the Navajo Nation filed a document with the Board entitled Motion of the Navajo Nation to File Non Party Brief ("Motion and Brief"). The document includes arguments opposing the petitions for review and thus appears to be the Navajo Nation's nonparty brief. *See* Motion and Brief at 3-10. It appears from this filing that the Navajo Nation may have mistakenly believed its nonparty brief was due on February 13, 2009. As mentioned above, the Board's Order Granting Review established a deadline for the Navajo Nation nonparty brief that was no later than 21 days from the date the Region published a public notice of the Board's grant of review. According to the Region's website, that notice was published on February 12, 2009. *See*

<http://www.epa.gov/region09/air/permit/desert-rock/index.html>. Thus, the Navajo Nation's nonparty brief would be due no later than March 5, 2009.

Because it appears that the Navajo Nation may have misunderstood the deadline for its brief to be February 13, 2009, instead of March 5, 2009, which gives it twenty additional days to complete its brief, the Board hereby DENIES the Navajo Nation's Motion for Extension of Time. However, the Navajo Nation is free to file, by no later than March 5, 2009, a brief supplementing or superseding the Motion and Brief it has already filed. If the Navajo Nation believes it needs additional time beyond March 5, 2009, it may file a motion with the Board requesting an extension and providing a justification for such extension. The page limitations in the Board's Order Granting Review still apply.

So ordered.

ENVIRONMENTAL APPEALS BOARD



Edward E. Reich  
Environmental Appeals Judge

Date: February 17, 2009

**CERTIFICATE OF SERVICE**

I hereby certify that copies of the foregoing Order Denying Motion for Extension of Time to File Nonparty Brief in the matter of Desert Rock Energy Company, LLC, PSD Appeal Nos. 08-03, 08-04, 08-05, & 08-06 were sent to the following persons in the manner indicated:

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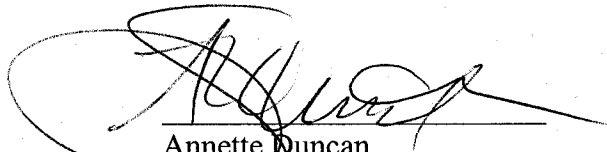
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