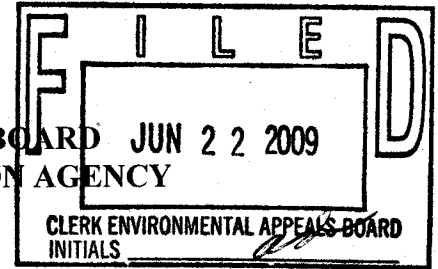


BEFORE THE ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.



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 GRANTING REGION 9'S MOTION FOR LEAVE TO FILE REPLY BRIEF

On April 27, 2009, United States EPA Region 9 ("Region") filed a motion with the Environmental Appeals Board ("Board") requesting a voluntary remand of the final prevention of significant deterioration ("PSD") permit (number AZP 04-01) ("the Permit") it had issued to Desert Rock Energy Company, LLC ("Desert Rock") on July 31, 2008. *See generally* EPA Region 9's Motion for Voluntary Remand ("Motion for Voluntary Remand"). Three participants in this matter – Desert Rock, Diné Power Authority ("DPA"), and the American Coalition for Clean Coal Electricity ("ACCCE") – filed briefs opposing the motion; Conservation Petitioners¹ filed a response in support of it.

The Board subsequently granted two motions – one from Conservation Petitioners, the other from the State of New Mexico – requesting leave to file reply briefs to the opposition briefs from Desert Rock, DPA, and ACCCE. *See* Order Granting Motion for Leave to File Reply Brief (June 16, 2009); Order Granting State of New Mexico's Motion for Leave to File Reply Brief

¹ "Conservation Petitioners" include both Petitioner Center for Biological Diversity as well as Petitioners Diné Care, Environmental Defense Fund, Grand Canyon Trust, Natural Resources Defense Council, San Juan Citizens Alliance, Sierra Club, and WildEarth Guardians.

and Establishing New Deadline for Reply Briefs (June 17, 2009). In the June 17, 2009 Order, the Board established June 29, 2009, as the deadline for filing such reply briefs. *See* Order Granting State of New Mexico's Motion for Leave to File Reply Brief and Establishing New Deadline for Reply Briefs at 3.

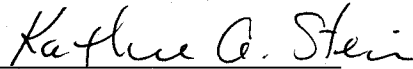
On June 22, 2009, the Board received a motion from the Region similarly requesting leave to respond to the opposition briefs. *See* EPA Region 9's Motion for Leave to File Reply. In its motion, the Region includes similar arguments to those presented by Conservation Petitioners and New Mexico in their motions, including the argument that Desert Rock's opposition brief raises "new issues that were not addressed in Region 9's motion." *Compare* State of New Mexico's Motion for Leave to File Reply in Support of EPA's Motion for Voluntary Remand at 2 *and* Conservation Petitioners' Motion for Leave to File Reply Brief at 4-5 *with* EPA Region 9's Motion for Leave to File Reply at 2. The Region requests that its reply also be due on or before June 29, 2009, and proposes to limit its reply to twenty pages. EPA Region 9's Motion for Leave to File Reply at 2, 3. The Region indicates that it has contacted counsel for Desert Rock and DPA and that, in light of the fact that the Board has granted several Petitioners the right to reply to the opposition briefs, Desert Rock and DPA counsel do not oppose the Region's motion. *Id.* at 3. The Region was unable to reach the attorneys for ACCCE. *Id.*

For the same reasons expressed in the Orders of June 16 and June 17, 2009, the Board hereby GRANTS Region 9's motion requesting leave to file a reply brief. The Region may file a reply brief no later than June 29, 2009, and such brief is limited to twenty pages. The same formatting restrictions apply to these reply briefs as outlined in the Board's May 5, 2009 Order.

See Revised Order Granting Motion for Extension of Time to Respond to Region's Motion for Voluntary Remand at 3.²

So ordered.

ENVIRONMENTAL APPEALS BOARD



Kathie A. Stein
Kathie A. Stein
Environmental Appeals Judge

Date: June 22, 2009

² The Board notes that it received a notice of appearance on June 19, 2009, from Vickie Patton, who is now appearing on behalf of the Environmental Defense Fund in place of Kevin Lynch. Additionally, Nicolas Persampieri recently filed a notice of withdrawal and Janette K. Brimmer was substituted in his place. The certificate of service reflects these changes.

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Order Granting Region 9's Motion for Leave to File Reply 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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Dated: JUN 22 2009


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