

Attorney General of New Mexico

GARY K. KING
Attorney General

RECEIVED
U.S. E.P.A.

2009 JUN 16 PM 3:31

ENVIR. APPEALS BOARD

Albert J. Lama
Chief Deputy Attorney General

DATE: June 16, 2009

TO: Clerk of the Board, Environmental Appeals Board

TELEPHONE NO. (202) 233-0122

FACSIMILE NO. (202) 233-0121

FROM: Seth T. Cohen

TELEPHONE NO. (505) 827-6087

FAX (505) 827-4440

TOTAL NUMBER OF PAGES, INCLUDING THIS PAGE: 5

Dear Ms. Durr:

Please find attached State of New Mexico's Motion for Leave to File Reply in Support of EPA's Motion for Voluntary Remand for filing with the Board today. An original, signed copy of this notice is being sent via overnight mail to the Board this afternoon. Please contact our office if you have any questions or have difficulty with the transmission.

Yours truly,

Seth T. Cohen
(505) 827-6087
scohen@nmag.gov

THE INFORMATION CONTAINED IN THIS FACSIMILE MESSAGE IS ATTORNEY PRIVILEGED AND CONFIDENTIAL INFORMATION INTENDED ONLY FOR THE USE OF THE INDIVIDUAL OR ENTITY NAMED ABOVE. IF THE READER OF THIS MESSAGE IS NOT THE INTENDED RECIPIENT, OR THE EMPLOYEE OR AGENT RESPONSIBLE TO DELIVER IT TO THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION, DISTRIBUTION OR COPYING OF THIS COMMUNICATION IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE IMMEDIATELY NOTIFY US BY TELEPHONE AND RETURN THE ORIGINAL MESSAGE TO US AT THE FOLLOWING ADDRESS VIA THE U.S. POSTAL SERVICE. THANK YOU.

Water, Environment & Utilities Division
(505) 827-6000

P.O. Drawer 1508

Santa Fe, NM 87504-1508
Fax (505) 827-4440

2. On June 11, 2009, Diné Power Authority, the American Coalition for Clean Coal Electricity, and the Desert Rock Energy Company ("DREC") submitted separate responses opposing EPA's Motion for Voluntary Remand. DREC's opposition brief, in particular, asserted novel arguments that New Mexico has not previously been addressed in this matter. Specifically, DREC argues that:

- Because the Board granted review of this appeal on January 22, 2009, the rules and case law prohibit a remand of the permit unless and until there is a decision on the merits by the Board;
- The grounds for EPA's remand request are frivolous or in bad faith; and
- A remand of the permit at this stage of the proceedings would violate the Fifth Amendment.

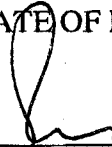
3. New Mexico now requests the opportunity to submit a reply in support of EPA's Motion in order to address these and other issues raised in the responses. New Mexico believes its reply would assist the Board in its resolution of this matter. New Mexico proposes to submit its reply on or before July 2, 2009, which is three weeks after the filing of the responses. Three weeks would allow New Mexico adequate time to review and reply to the responses without unduly delaying these proceedings. Further, New Mexico proposes to limit its reply to 20 pages.

4. Counsel for New Mexico conferred with counsel for EPA, DREC and DPA regarding this Motion. DREC and DPA oppose this Motion. EPA does not oppose the filing of reply, but had not formulated a position on the proposed timing or page length for the reply as of the filing of this Motion.

Based on the foregoing, New Mexico respectfully requests that the Board grant New Mexico leave to file a reply brief of no more than 20 pages on or before July 2, 2009.

Respectfully submitted on this 16th Day of June, 2009.

GARY K. KING, ATTORNEY GENERAL
STATE OF NEW MEXICO



Seth T. Cohen
Assistant Attorney General
P.O. Drawer 1508
Santa Fe, New Mexico 87504-1508
Phone: (505) 827-6087 Fax: (505) 827-4440

Leslie Barnhart
Eric Ames
Special Assistant Attorneys General
New Mexico Environment Department
P.O. Box 26110
Santa Fe, New Mexico 87502-6110
Phone: (505) 827-0293

Attorneys for Petitioner, State of New Mexico

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on June 16, 2009 he caused a copy of the foregoing State of New Mexico's *Motion for Leave to File a Reply in Support of EPA's Motion for Voluntary Remand* to be served by U.S. mail and electronic mail on:

Ann Lyons
Office of the Regional Counsel
EPA Region 9
75 Hawthorne Street
San Francisco, CA 94105-3901

Brian L. Doster
U.S. Environmental Protection Agency
Office of General Counsel
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Jeffrey R. Holmstead
Richard Alonso
Bracewell & Giuliani, LLP
2000 K. Street, NW
Washington, D.C.

John Barth
P.O. Box 409
Hygiene, CO 80533

Janette K. Brimmer
EarthJustice
705 Second Avenue, Suite 203
Seattle, WA 98104

Kevin Lynch
Environmental Defense Fund
Climate and Air Program
2334 N. Broadway
Boulder, CO 80304

Patrice Simms
Natural Resources Defense Council
1200 New York Ave., NW, Suite 400
Washington, D.C. 20005

Ann Brewster Weeks
Clean Air Task Force
18 Tremont Street, Suite 530
Boston, MA 02108

Leslie Glustrom
4492 Burr Place
Boulder, CO 80303

Amy R. Atwood
Public Lands Program
Center for Biological Diversity
P.O. Box 11374
Portland, Oregon 97211-0374

Stephanie Kodish
National Parks Conservation Association
706 Walnut St., Suite 200
Knoxville, TN 37902

Kristen Welker-Hood
Environmental Health Programs
Physicians for Social Responsibility
1875 Connecticut Ave., N.W., Suite 1012
Washington, DC 20009

Douglas C. MacCourt
Michael J. Sandmire
AterWynne, LLP
1331 NW Lovejoy, Suite 900
Portland, OR 97209-2785

Louis Denetsosie
D. Harrison Tsosie
Navajo Nation Dept. of Justice
P.O. Box 2010
Old Club Building
Window Rock, Arizona 86515

Justin Lesky
Law Office of Justin Lesky
8210 Mirada Place NE, Suite 600
Albuquerque, NM 87109

Marian C. Larsen
Paul M. Seby
Moye White LLP
1400 16th Street #600
Denver, CO 80202


Seth T. Cohen