

**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

**CONSERVATION PETITIONERS' MOTION
FOR EXTENSION OF TIME TO FILE REPLY BRIEF**

Petitioners Center for Biological Diversity (“CBD”), Dine Care, Environmental Defense Fund, Grand Canyon Trust, Natural Resources Defense Council, San Juan Citizens Alliance, Sierra Club, and WildEarth Guardians (collectively “Conservation Petitioners”) hereby move the Environmental Appeals Board (“Board”) for a 7-day extension of time to file their consolidated reply brief in support of their Petition in the above-captioned matter, from February 13, 2009 to February 20, 2009. Conservation Petitioners challenge the U.S. Environmental Protection Agency’s (“EPA’s”) July 31, 2008 decision to issue a Prevention of Significant Deterioration (“PSD”) preconstruction permit (“the Permit”) to Desert Rock Energy Company, LLC (“DREC”).

As grounds for this motion, Conservation Petitioners state:

1. On January 22, 2009, the Board issued an order that, among other things, granted review of the Permit, granted Petitioners’ motions to file reply briefs, and provided for surreply and amicus briefs. Under that order, the State of New Mexico’s and Conservation Petitioners’

reply briefs are both due February 13, 2009, and EPA, DREC and Dine Power Authority (“DPA”) may file surreplies no later than March 6, 2009.

2. On February 4, 2009, the Board issued an additional order granting Petitioner Leslie Glustrom’s motion for leave to file a Reply to the DREC and EPA briefs in this matter, and setting the same February 13, 2009 deadline for Ms. Glutrom’s reply brief as the Board set for New Mexico’s and Conservation Petitioners’ reply briefs.

3. On February 10, 2009, New Mexico filed a motion seeking a one-week extension of time to file, until February 20, 2009, to file its reply brief in this matter. In its motion, New Mexico notes that two of its counsel have experienced medical emergencies in the past week, and that the requested extension will both allow them to recuperate and complete work on the New Mexico reply brief with minimal disruption to the progress of the appeal.

4. Conservation Petitioners express support for New Mexico’s motion, and additionally respectfully submit that the deadline for their reply brief and the reply brief of Leslie Glustrom should also be extended to February 20, 2009, in order to ensure consistency in the overall briefing schedule.

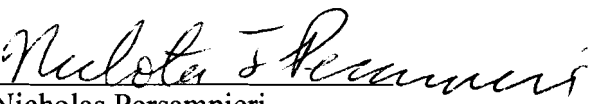
5. Counsel for Conservation Petitioners contacted counsel for EPA, DREC and DPA to request their concurrence in this motion. EPA does not oppose the motion, provided that the Board allows EPA a corresponding extension of 7 days to file its surreply. DREC and DPA oppose the motion.

6. Conservation Petitioners do not oppose EPA’s request for a corresponding extension for its surreply, and respectfully submit that consistency in the briefing schedule would be promoted by providing EPA, DREC and DPA a corresponding one week extension until March 13, 2009 to file surreplies.

7. If the Board grants New Mexico's request and provides EPA an extension until March 13, 2009 for its surreply, granting Conservation Petitioner's request would be unlikely to delay the Board's consideration of this matter. The final scheduled briefing is the filing of surreplies. Therefore, scheduled briefing would be completed on March 13, 2009 regardless of whether the Board provides Conservation Petitioners an additional week for their reply.

8. The minimal delay, if any, in the Board's consideration of this matter which would result from the extensions requested by New Mexico and Conservation Petitioners and a corresponding extension of the surreply deadlines would not prejudice any party to this proceeding. DREC cannot commence construction of the facility until after completion of proceedings on carbon dioxide that have been remanded to Region 9, a Maximum Achievable Control Technology Analysis for hazardous air pollutants, consultation under the Endangered Species Act, and a final environmental impact statement for the project.

Respectfully submitted this 11th day of February, 2009,


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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on February 11, 2009 he caused a copy of the foregoing to be served by mail on:

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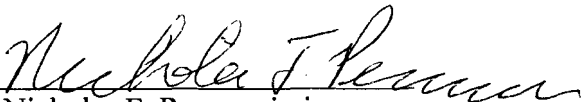
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