

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

In re:)	
)	
Desert Rock Energy Company, LLC)	PSD Appeal Nos. 08-03, 08-04,
)	08-05 & 08-06
PSD Permit No. AZP 04-01)	
)	

**EPA REGION 9'S MOTION FOR AN EXTENSION OF TIME
TO FILE SURREPLY BRIEF**

Respondent, EPA Region 9, moves for a 45-day extension of time (until April 27, 2009) to submit a surreply brief in this matter. The Region requests this additional time in order to afford EPA officials appointed since the recent Presidential inauguration an adequate opportunity to consider the issues raised in this appeal and the positions previously advocated by EPA offices in briefs to the EAB. In support of this motion, Region 9 states the following.

1. On January 22, 2009, the Board issued an order granting review in this matter. In this order, the Board established a schedule under which the parties were directed to file reply briefs by February 13, 2009 and surreply briefs on March 6, 2009. The Board extended these deadlines to February 20 and March 13, respectively, by orders dated February 11 and 12.

2. Region 9 filed its Response Brief in this appeal on January 8, 2009. The Response Brief addressed numerous issues raised by the Petitioners. Several issues addressed in the Response Brief are based on policy positions held by EPA offices at the time of Region 9's final permit decision and the filing of the Region's Response Brief.

3. On January 26, 2009, Lisa P. Jackson was sworn in as the Agency's Administrator after the inauguration of President Barack H. Obama on January 20, 2009. Since that time, the Administrator and her advisers have been reviewing many of the Agency's policies under the Clean Air Act and other statutes.

4. Staff from Region 9, the Office of General Counsel, and the Office of Air and Radiation have apprised several EPA officials appointed since the Presidential inauguration of the issues raised in this appeal. EPA staff in these offices had previously anticipated that they would be able to complete the ongoing review of these issues with the Agency's current leadership in time to file a response to the Reply Briefs by March 13, 2009, but this process has taken longer than initially expected.

5. In order to ensure that the positions previously advocated by EPA attorneys on behalf of Region 9 in this matter have the support of the Agency's current leadership before the submission of an additional EPA brief in this matter, Region 9 requests an additional 45 days to file a surreply brief. The unique circumstances of the transition from one Presidential Administration to the next in the midst of this proceeding warrant affording Region 9 this additional time.

6. An additional 45 days is justified because of the volume and complexity of the issues in this case. Collectively, the Parties have submitted nearly 1000 pages of argument in this case. Several parties have acknowledged the complexity of this case, and the Board has granted previous extensions in this matter on this basis.

7. Furthermore, as of this date, the President has not nominated a Regional Administrator for Region 9 or General Counsel and the nominee for Assistant Administrator for the Office of Air and Radiation has not been confirmed. Thus, an

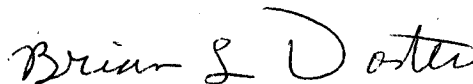
additional 45 days would enable more time for Administration officials to consider these matters before EPA offices submit an additional brief.

8. Counsel for Region 9 have attempted to contact counsel for each of the Petitioners and Intervenors in this appeal to determine their positions on this request for an extension. Intervenor Desert Rock Energy Company (DREC) does not oppose a 7-day extension of time provided that DREC is allowed the same amount of additional time as EPA to submit a surreply. However, DREC opposes granting EPA a 45-day extension of time. Petitioner State of New Mexico does not oppose granting Region 9 an extension of 45 days, but opposes granting other parties an extension. The Conservation Petitioners do not oppose Region 9's request for extension. Region 9 was unable to determine the positions of Petitioner Leslie Glustrom and Intervenor Dine Power Authority before filing this motion.

WHEREFORE, for the reasons set forth above, Region 9 requests an additional 45 days to file a surreply brief in this matter.

Date: March 12, 2009

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that copies of the attached Notice of Withdrawal of Permit were served on the following persons by U.S. Mail and electronic mail:

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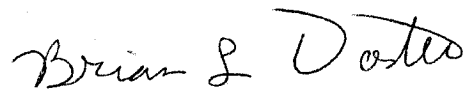
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Dated: March 12, 2009



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