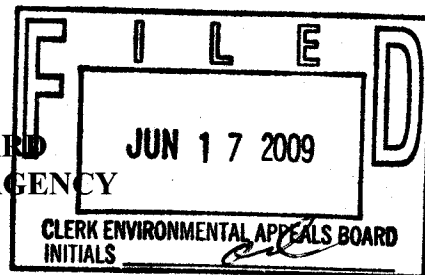


BEFORE THE ENVIRONMENTAL APPEALS BOARD  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C.



\_\_\_\_\_)  
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 STATE OF NEW MEXICO'S MOTION FOR LEAVE TO FILE  
REPLY BRIEF AND ESTABLISHING NEW DEADLINE FOR REPLY BRIEFS**

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"). The Board instructed all other participants in this matter who wished to file a response to the Region's Motion for Voluntary Remand to file such response by June 11, 2009. *See Revised Order Granting Motion for Extension of Time to Respond to Region's Motion for Voluntary Remand at 3 (May 5, 2009).* Three participants in this matter – Desert Rock, Diné Power Authority ("DPA"), and the American Coalition for Clean Coal Electricity ("ACCCE") – all filed briefs opposing the motion; Conservation Petitioners<sup>1</sup> filed a response in support of it.

\_\_\_\_\_  
<sup>1</sup> "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.

On June 16, 2009, the Environmental Appeals Board (“Board”) granted a motion submitted by Conservation Petitioners in which they had requested leave to file a consolidated reply to the opposition briefs from Desert Rock and ACCCE. Order Granting Motion for Leave to File Reply Brief. In the Order, the Board instructed Conservation Petitioners to file their targeted reply brief no later than June 23, 2009, the date Petitioners had requested in their motion.

Shortly after issuing the June 16 Order, the Board received a similar request from another petitioner, the State of New Mexico. In its motion requesting leave to file a reply brief, New Mexico includes similar arguments to those presented in Conservation Petitioners’ motion, including the argument that Desert Rock’s opposition brief raises “novel arguments that New Mexico has not previously” addressed in this proceeding. *Compare* State of New Mexico’s Motion for Leave to File Reply in Support of EPA’s Motion for Voluntary Remand at 2 *with* Conservation Petitioners’ Motion for Leave to File Reply Brief at 4-5. New Mexico requests that its reply be due on or before July 2, 2009, and proposes to limit its reply to twenty pages. State of New Mexico’s Motion for Leave to File Reply in Support of EPA’s Motion for Voluntary Remand at 2. New Mexico indicates that it has contacted counsel for EPA, Desert Rock, and DPA and that, while EPA does not oppose its motion, Desert Rock and DPA oppose it. *Id.*

For the same reasons expressed in the Order of June 16, 2009, the Board hereby GRANTS New Mexico’s motion requesting leave to file a reply brief. Although New Mexico requests that it be given three weeks in which to file its reply, the Board believes that it is appropriate to limit this time period to ten days from today’s date. While it is true that not all arguments raised by Desert Rock, DPA, and/or ACCCE could not have been foreseen by New

Mexico in this case, the State could have filed a response to the Region's motion within the response deadline addressing some of Desert Rock, DPA's, and ACCCE's arguments, as did Conservation Petitioners. Accordingly, New Mexico may file a reply brief no later than June 29, 2009. Moreover, New Mexico's reply brief is limited to twenty pages. Because the Board has granted New Mexico ten days in which to file a reply brief, the Board similarly extends the deadline for Conservation Petitioners' reply brief. 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.* In light of the extensive briefing, following the filing of reply briefs on June 29, 2009, no surreplies will be permitted.

So ordered.

ENVIRONMENTAL APPEALS BOARD



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Kathie A. Stein  
Environmental Appeals Judge

Date: June 17, 2009

**CERTIFICATE OF SERVICE**

I hereby certify that copies of the foregoing Order Granting State of New Mexico's Motion for Leave to File Reply Brief and Establishing New Deadline for Reply Briefs 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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