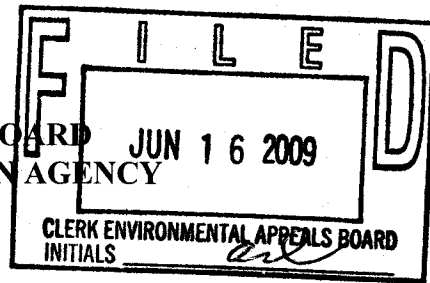


BEFORE THE ENVIRONMENTAL APPEALS BOARD  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C.



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 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”). The Permit is the subject of four petitions for review currently before the Board pursuant to 40 C.F.R. § 124.19.<sup>1</sup> The Board instructed the other current participants in the above-captioned permit appeal who wished to respond to the Region’s Motion for Voluntary Remand to do so 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). Desert Rock, Diné Power Authority (“DPA”), and the

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<sup>1</sup> The following parties filed petitions in this matter: Diné Care, Environmental Defense Fund, Grand Canyon Trust, Natural Resources Defense Council, San Juan Citizens Alliance, Sierra Club, and WildEarth Guardians; the State of New Mexico; Center for Biological Diversity; and Ms. Leslie Glustrom. In addition to the four Petitioners and the Region, the following entities have filed responses, amicus curiae, and/or nonparty briefs in the matter: the Navajo Nation, Desert Rock, the National Parks Conservation Association, the Diné Power Authority, the New Mexico Building and Construction Trades Council, Physicians for Social Responsibility, and the American Coalition for Clean Coal Electricity.

American Coalition for Clean Coal Electricity (“ACCCE”) all filed briefs opposing the motion; Conservation Petitioners<sup>2</sup> filed a response in support of it.

On June 15, 2009, the Board received a motion from Conservation Petitioners requesting leave to file a consolidated reply to Desert Rock’s and ACCCE’s opposition briefs.

Conservation Petitioners request that they be granted one week, until June 23, 2009, in which to file their reply. Petitioners’ Motion for Leave to File Reply Brief at 1. Conservation Petitioners argue that the opposition briefs “raise arguments that Conservation Petitioners could not anticipate and respond to in their response in support of EPA’s Motion.” *Id.* They also point out that ACCCE’s opposition brief was ACCCE’s first substantive filing in this matter and thus they “have had no opportunity to respond to ACCCE’s arguments.” *Id.* Conservation Petitioners also aver that their reply would be “targeted at the specific issues and arguments that [they] did not have the opportunity to address in the June 11 response because they had not yet been raised.” *Id.* at 4. Finally, Conservation Petitioners argue that allowing them a short time to make a targeted reply will not prejudice the other participants. *Id.* at 5. Conservation Petitioners indicate that they have contacted counsel for EPA, Desert Rock, DPA, and ACCCE and that, while EPA does not oppose their motion, Desert Rock, DPA, and ACCCE do oppose it. *Id.*

Based upon the foregoing and for good cause shown, the Board hereby GRANTS Conservation Petitioners’ motion requesting leave to file a targeted reply brief. Notably, the Board originally established a ten-day deadline for filing responses to the Region’s Motion for Voluntary Remand. *See* Order Establishing Deadline for Responses to Region’s Motion for

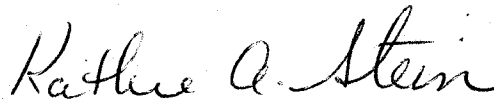
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<sup>2</sup> “Conservation Petitioners” include both Petitioner Center for Biological Diversity as well as Petitioners Diné Care, Environmental Defense Fund, Grand Canyon Trust, Natural Resources Defense Council, San Juan Citizens Alliance, Sierra Club, and WildEarth Guardians.

Voluntary Remand at 2 (Apr. 28, 2009). Desert Rock and DPA, however, subsequently requested an extension of time (forty-five days) in which to file their opposition briefs to the Region's Motion for Voluntary Remand, which the Board granted. *See* Revised Order Granting Motion for Extension of Time to Respond to Region's Motion for Voluntary Remand at 3 (May 5, 2009). Consequently, the Board does not believe granting Conservation Petitioners a seven-day period in which to file a reply brief will unduly delay this proceeding. Conservation Petitioners therefore may file a targeted reply brief no later than June 23, 2009. Because Conservation Petitioners' response brief supporting the Region's Motion was thirteen pages, Conservation Petitioners reply brief may be no longer than thirty-seven pages.<sup>3</sup> The same formatting restrictions apply to this reply 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.

So ordered.

ENVIRONMENTAL APPEALS BOARD



Kathie A. Stein  
Environmental Appeals Judge

Date: June 16, 2009

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<sup>3</sup> The total page limit, therefore, will be fifty pages, the page limit the Board established in its May 5 Order.

## CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Order Granting 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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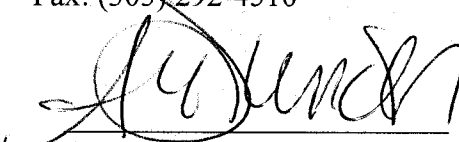
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