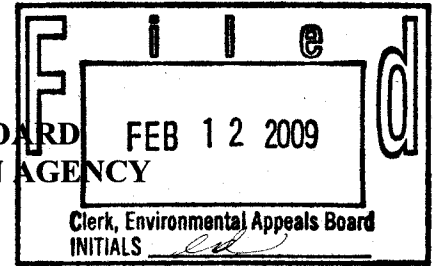


BEFORE THE ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.



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 EXTENSION OF TIME
TO FILE REPLY BRIEF**

On January 22, 2009, the Environmental Appeals Board (“Board”) granted review of a prevention of significant deterioration (“PSD”) permit decision (number AZP 04-01) (the “Permit”) issued by Region 9 (“Region”) of the United States Environmental Protection Agency (“EPA” or “Agency”) to Desert Rock Energy Company, LLC (“Desert Rock”) on July 31, 2008. *See generally* Order Granting Review, Staying the Carbon Dioxide BACT Issue, and Granting Motions to File Amicus/Nonparty Briefs Motions to File Reply Briefs (“Order Granting Review”). The Board had received four petitions for review of the Permit pursuant to 40 C.F.R. § 124.19(a): one from Diné Care, Environmental Defense Fund, Grand Canyon Trust, Natural Resources Defense Council, San Juan Citizens Alliance, Sierra Club, and WildEarth Guardians (collectively “NGO Petitioners”); one from the State of New Mexico (“New Mexico”); one from the Center for Biological Diversity (“CBD”); and from Ms. Leslie Glustrom.

In the Order Granting Review, the Board established February 13, 2009, as the date for petitioners filing reply briefs to the responses from the Region, Desert Rock, and Diné Power Authority (“DPA”). *See* Order Granting Review at 6.

On February 10, 2009, the Board received a motion from New Mexico requesting an additional one-week extension due to the fact that lead counsel for the State underwent emergency surgery and is unable to work for several days. N.M.’s Motion for Extension of Time to File Reply Brief at 1. In addition, the State’s other primary counsel also underwent a medical procedure several days ago. *Id.* at 2. The Board granted this motion on February 11, 2009. Order Granting Motion for Extension of Time To File Reply Brief. In that same order, the Board extended the filing date for the surreply briefs from the Region, Desert Rock, and DPA until March 13, 2009. *Id.*

On February 11, the Board received from the NGO Petitioners a request for an extension of time to file their reply brief until February 13, 2009. Conservation Petitioners’ Motion for Extension of Time to File Reply Brief. As a basis, the NGO Petitioners cite the request from New Mexico, and state that similarly extending the date for the NGO Petitioners would “ensure consistency in the overall briefing schedule.” *Id.* At 2.¹

The Motion indicates that the Region does not oppose the extension provided that it is afforded an additional 7 days, until March 13, 2009, to file a surreply, which the Board has already done.. Desert Rock and DPA oppose the motion.

¹ The motion also requests that the deadline be similarly extended for petitioner Leslie Glustrom. Conservation Petitioners’ Motion for Extension of Time to File Reply Brief at 2. Since Ms. Glustrom has not requested an extension, the Board is not granting an extension to her at this time.

While the justification for the extension is thin, given that there will be no prejudice to any party since the date for filing surreplies has been extended and given that an extension of time to file the NGO reply brief will not affect the overall timing of Board action, the Board hereby GRANTS the NGO's motion. Accordingly, the NGO's reply brief is due on or before Friday, February 20, 2009. The page limitations in the Board's Order Granting Review still apply.

So ordered.

ENVIRONMENTAL APPEALS BOARD

A handwritten signature in black ink, appearing to read 'Edward E. Reich', written over a horizontal line.

Edward E. Reich
Environmental Appeals Judge

Date: February 12, 2009

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Order Granting Motion for Extension of Time 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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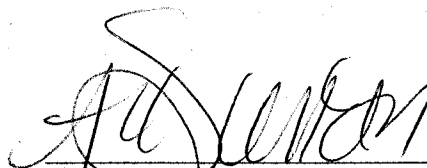
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Dated: FEB 12 2009


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