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April 28, 2009

Ms. Eurika Durr
U.S. Environmental Protection Agency
Clerk of the Board
Environmental Appeals Board
Colorado Building
1341 G Street, N.W. Suite 600
Washington, DC 20005

Re: Intent to File a Response and to Seek Discovery *In re: Desert Rock Energy Company, LLC, PSD Permit No. AZP 04-01, PSD Appeal Nos. 08-03, 08-04, 08-05 & 08-06*

Dear Ms. Durr:

Through this letter, Desert Rock Energy Company, LLC (Desert Rock) notifies the Board that it intends to respond to the EPA Region 9's MOTION FOR VOLUNTARY REMAND filed on April 27, 2009 in the above referenced matter. In accordance with the Board's Practice Manual, we will file the response on or before May 13, 2009, unless the Board establishes a different deadline. We respectfully request that the Board consider our response before ruling on the pending motion.

We also want to alert the Board that Desert Rock may seek discovery regarding EPA's actions in this case and its communications with parties that are opposing the permit at issue in this proceeding. As noted in EPA's Region 9's motion, an important consideration in a case such as this one is whether there are "unusual circumstances verging on bad faith." EPA Region 9's Motion for Voluntary Remand at 8 (April 27, 2009) (quoting *SKF USA Inc. v. U.S.*, 254 F3d 1022 (Fed. Cir. 2001)). We have reason to believe that such circumstances may exist in this case.

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We recognize that discovery is only allowed at the Board's discretion and in unusual circumstances. *See In re Tennessee Valley Authority*, 9 E.A.D. 357 (Sept. 15, 2000). Again, however, we believe that such circumstances exist in this case. Desert Rock also intends to file a Motion to Compel Retention of Documents to request that the Board issue an order directing EPA to retain all documents and other records, including electronic records, telephone logs, calendar entries, and notes that relate in any way to EPA's decision to seek a voluntary remand of the permit at issue in this proceeding.

If you have any questions, please feel free to contact me at 202-828-5852.

Very truly yours,

Bracewell & Giuliani LLP



Jeffrey R. Holmstead

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Intent to File a Response in the matter of Desert Rock Energy Company, LLC, PSD Permit No. AZP 04-01 were served by United States First Class Mail on the following persons, this 28th day of April 2009:

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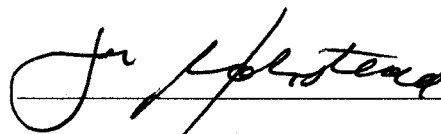
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