

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

IN THE MATTER OF:

DESERT ROCK ENERGY COMPANY, LLC

PSD PERMIT NO. AZP 04-01

PSD APPEAL NOS. 08-03 and 08-04

MOTION TO INTERVENE OR FILE NON PARTY BRIEF

Pursuant to 40 CFR Part 22.11(b), the Navajo Nation requests leave to either Intervene or file a Non Party Brief in the above captioned proceeding. The Navajo Nation maintains a government to government relationship with the United States pursuant to the Treaty of 1868, 15 Stat. 667, and is a federally recognized Indian tribe to receive funding and services from the various federal agencies.

The Navajo Nation has an interest in this proceeding because the permit at issue in this matter relates to a coal-fired power plant on land held by the United States Government in trust for the benefit of the Navajo people as a Nation. The Navajo Nation Council pursuant to Resolution CN-87-85 and CJA-2-96, codified at 21 Navajo Nation Code (NNC) § 201, *et seq.*, established Diné Power Authority (“Diné Power”) as a wholly owned enterprise of the Navajo Nation to participate in the development of a major coal-fired, mine mouth steam electric generating station. Diné Power is an instrumentality of the Navajo Nation, subject to the control of oversight authorities delegated by the Navajo Nation Council.

The Desert Rock Energy Project is an economic development project of the Navajo Nation, which is intended to utilize coal, water, lands and labor of the Navajo Nation. The Navajo Nation, Diné Power, along with the Navajo people who may receive jobs, income and other benefits from the project, are the ultimate beneficiary of the Desert Rock Energy Project.

Any decision or final order may as a practical matter impair the Navajo Nation's ability to protect those interests.

The relevance of the brief will address the concerns of the Navajo Nation as a sovereign Nation who bears the responsibility of ensuring the greatest benefits are derived from development of the Navajo people's natural resources and provide economic opportunities to all people within the Navajo Nation.

The Navajo Nation asserts that its interest as a sovereign Nation is not adequately represented by the existing parties. Pursuant to Title 2 of the Navajo Nation Code, only the Navajo Nation Council and the President are authorized to represent the position or interest of the Navajo Nation government.

The Navajo Nation, respectfully requests, that it be allowed either to Intervene or to file a Non Party Brief.

DATED this 8th day of January , 2009.

NAVAJO NATION
DEPARTMENT OF JUSTICE
P.O. Box 2010
Old Club Building
Window Rock, Arizona 86515

By: 

Louis Denetsosie
Attorney General
E-Mail: louisdenetsosie@yahoo.com
D. Harrison Tsosie
E-Mail: deputyag@hotmail.com
Tel: 928/871-6345; Fax: 928/871-6177

Attorneys for the Navajo Nation

CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing MOTION TO INTERVENE OR FILE NON

PARTY BRIEF on the following:

Jeffrey R. Holmstead
Richard Alonso
Bracewell & Giuliani LLP
2000 K Street, N.W.
Washington, D.C. 20006
Attorneys for Desert Rock Energy
Company, LLC

Nicholas Persampieri
Earthjustice
1400 Glenarm Place, Suite 300
Denver, CO 80202

Brian Doster
U.S. Environmental Protection Agency
Office of General Counsel
Air and Radiation Law Office
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Kevin Lynch
Environmental Defense Fund
Climate and Air Program
2334 N. Broadway
Boulder, CO 80304

John Barth
P.O. Box 409
Hygiene, CO 80533

Amy R. Atwood, Senior Attorney
Public Lands Program
Center for Biological Diversity
P.O. Box 11374
Portland, OR 97211-0347

Seth T. Cohen
Assistant Attorney General
Office of the Attorney General of
New Mexico
Water, Environment and Utilities Division
P.O. Drawer 1508
Santa Fe, NM 87504-1508

Ann Brewster Weeks
Clean Air Task Force
18 Tremont Street, Suite 530
Boston, MA 02108

Deborah Jordan
Director, Air Division (ATTN: AIR-3)
EPA Region 9
75 Hawthorne Street
San Francisco, CA 94105-3901

Patrice Simms
Natural Resources Defense Council
1200 New York Avenue NW, Suite 400
Washington, D.C. 20005

Leslie Barnhart
Eric Ames
Special Assistant Attorneys General
New Mexico Environment Dept.
P.O. Box 26110
Santa Fe, NM 87502-6110

Leslie Glustrom
4492 Burr Place
Boulder, CO 80303

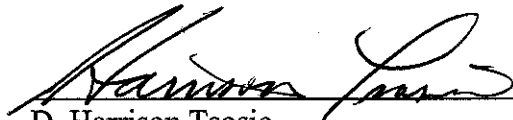
CERTIFICATE OF SERVICE

Mark Wenzler
Director, Clean Air and Climate
Programs
National Parks Conservation
Association
1300 19th Street NW, Suite 300
Washington DC 20036

Douglas C. MacCourt
Diné Power Authority
Ater Wynne LLP
222 SW Columbia, Suite 1800
Portland, Oregon 97201-6618

by mailing; hand delivery; facsimile a true and correct copy thereof to said parties on the date stated below.

DATED this 8th day of January, 2009



D. Harrison Tsosie
Attorneys for the Navajo Nation

CERTIFICATE OF SERVICE