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

In re:	
Desert Rock Energy Company, LLC	PSD Appeal Nos. 08-03, 08-04, 08-05 & 08-06
PSD Permit No. AZP 04-01	

MOTION FOR EXTENSION OF TIME TO RESPOND TO PETITIONS AND SUPPLEMENTAL BRIEFS

Respondent, EPA Region 9, moves for a 30-day extension of time for the submission of responses to the Petitions for Review and Supplemental Briefs in this matter and the relevant portions of the administrative record. In support of this motion, Region 9 states the following:

1. On October 6, 2008, the Board issued an Order Scheduling Response Date which established November 3, 2008 as the deadline for Respondent EPA Region 9 and Intervenor Desert Rock Energy Company to submit responses to the Petitions for Review and Supplemental Briefs. The Board's order also required that Region 9 submit the relevant portions of the administrative record and the Certified Index of the entire administrative record by November 3, 2008.

2. On August 21, 2008, the Board issued an Order granting two of the four Petitioners in this case a 30-day extension of time to file supplemental briefs in support of their Petitions for Review, and also granting the permit applicant, Desert Rock Energy Company, leave to participate as an Intervenor in support of EPA Region 9. August 21

Order at 2. The Board observed in its Order that the NGO Petitioners[1] had requested additional time to file supplemental briefs because of "the number and complexity of issues, the volume of the relevant material, and the unavailability of their expert witnesses, among other things." The Board's order also noted that New Mexico requested extra time to "adequately analyze and brief issues raised in New Mexico's Petition." In granting the extension to Petitioners, the Board found "significant the fact that the petitioners in the present case must digest and address in their appellate briefs the relevant portions of the Region's 220-page response to comments and additional attachments amounting to hundreds of pages." Id. at 3.

3. The Board's August 21, 2008 Order also observed that Region 9 had acknowledged in its response to the Petitioners request for extension that this case "involves a large number of issues, many of which are complex, raised by public comments, and addressed at length in the response to comments." Id. at 4. Although Region 9 opposed a 45-day extension, it did not oppose a 30-day extension based on these circumstances. As grounds for opposing a 45-day extension, Region 9 suggested the possibility that Region 9 may also need to request additional time to respond to Petitioners Supplemental Briefs in light of the volume and complexity of issues. EPA offices also represented that they would not seek an extension of more than 30 days unless the Board granted Petitioners a 45-day extension or Petitioners' supplemental briefs presented an issue of first impression requiring extensive deliberation and coordination within the Agency.

[1] Dine Care, Environmental Defense Fund, Grand Canyon Trust, Natural Resources Defense Council, San Juan Citizens Alliance, Sierra Club, and WildEarth Guardians.

4. In accordance with the Board's Order of August 21, 2008, the NGO Petitioners and New Mexico submitted supplemental briefs on October 2, 2008. The NGO Petitioners brief is 295 pages long and raises at least 13 discrete issues for consideration by the Board. The New Mexico brief is 80 pages long and raises at least seven discrete issues, although many of these issues are the same as issues raised by NGO Petitioners.

4. On September 2, 2008, two additional Petitioners submitted Petitions for Review. Petitioner Center for Biological Diversity addressed one primary issue (also raised by two other Petitioners) in 31 pages of argument and Petitioner Leslie Glustrom addressed an additional unique issue in 38 pages. Neither of these two Petitioners requested the opportunity to file supplemental briefs.

5. In total, Petitioners have submitted nearly 450 pages of argument in support of granting review in this case. The NGO Petitioners brief alone is longer than the two Response to Comments documents prepared by Region 9 (the main 227-page Response to Comments document described in the Board's order and a 24-page Supplemental Response to Comments document).

6. Furthermore, on October 2, 2008, the National Parks Conservation Association filed a motion for leave to file a 17-page amicus brief. EPA Region 9 does not oppose this request, but only because the amicus brief seeks review on an issue addressed by a timely Petitioner and because the amicus brief was submitted by the deadline for the supplemental briefs established in the Board's order of August 21, 2008.

7. Given the volume of argument submitted by the four Petitioners (and one possible amicus) and the complexity of the issues raised, Region 9 requests an additional

30 days to adequately review and analyze the arguments of Petitioners and prepare a response thereto. Several parties have acknowledged the complexity of this case and the Board has granted a previous 30-day extension to two Petitioners on this basis.

8. As a courtesy and to ensure an orderly presentation of argument, Region 9 also requests that the Board permit all parties responding to the Petitions and Supplemental Briefs, including Intervenor Desert Rock Energy Company and any other party that may seek leave to participate in this matter, until December 3, 2008 to file their responses.

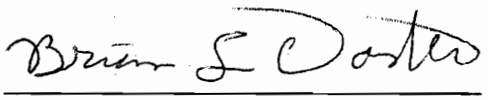
9. Region 9 does not seek an extension of time to file the Certified Index of the Administrative Record and will file this document by November 3, 2008 in accordance with the Board's order of October 6, 2008. However, Region 9 requests that a 30-day extension include an extension of time to submit the relevant portions of the administrative record supporting the responses on the grounds that such documents may not be completely identified until the responses are complete.

10. Counsel for Region 9 have conferred with Petitioner Leslie Glustrom and counsel for the NGO Petitioners, New Mexico, and Intervenor Desert Rock Energy Company. None of these parties opposes this motion for an extension of time to file responses to the Petitions and Supplemental Briefs. NGO Petitioners have also indicated that they do not oppose provided that Intervenor Desert Rock Energy Company and any other parties granted leave to submit responses are also required to submit responses on the same date as Region 9 as requested in this motion. Counsel for Region 9 was unable to reach counsel for Center for Biological Diversity to obtain this Petitioner's position.

WHEREFORE, Region 9 requests that the Board grant a 30-day extension of time (until December 3, 2008) for submitting responses to the Petitions for Review and Supplemental Briefs in this matter and that such extension apply to the responses of Region 9 and any other parties that have intervened (or seek to intervene) in defense of Region 9's permitting decision. Furthermore, Region 9 requests that this extension also include the same amount of additional time to submit the relevant portions of the administrative record supporting the responses.

Date: October 9, 2008

Respectfully submitted,



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CERTIFICATE OF SERVICE

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