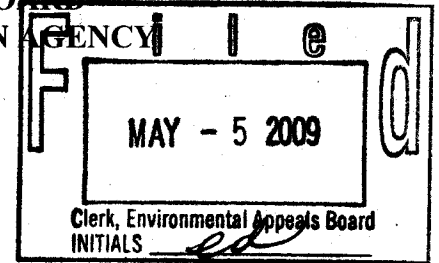


**BEFORE THE ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.**



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 RESPOND TO REGION'S MOTION FOR VOLUNTARY REMAND**

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 permit (number AZP 04-01) ("the Permit") it had issued to Desert Rock Energy Company, LLC ("Desert Rock") on July 31, 2008. *See* EPA Region 9's Motion for Voluntary Remand (Apr. 27, 2009) ("Region's Motion"). The Permit is the subject of four petitions for review currently before the Board pursuant to 40 C.F.R. § 124.19.¹ By Order dated April 28, 2009, the Board established a ten-day deadline, until May 8, 2009, for the filing of any responses to the Region's Motion. *See* Order Establishing Deadline for Responses to Region's Motion for Voluntary Remand (Apr. 28, 2009).

¹ Petitioners are: Diné Care, Environmental Defense Fund, Grand Canyon Trust, Natural Resources Defense Council, San Juan Citizens Alliance, Sierra Club, and WildEarth Guardians ("NGO Petitioners"); the State of New Mexico; Center for Biological Diversity; and Ms. Leslie Glustrom.

By motion filed with the Board on May 1, 2009, the permittee in this matter, Desert Rock Energy Company, LLC ("Desert Rock Energy"), and Diné Power Authority ("DPA") seek an additional 45-days, until June 11, 2009, to file a response to the Region's Motion. Joint Motion for Reconsideration of Order Establishing Deadline for Responses to Region's Motion for Voluntary Remand (May 1, 2009) ("Joint Motion"). In support of this extension, the Joint Motion states, in part, as follows: "Because EPA's Remand Motion is unprecedented, it raises a number of legal issues that go well beyond the Clean Air Act and the other environmental issues that Desert Rock Energy and DPA have been addressing in this case. Because it is also unexpected, we need [the additional time] to research and brief these issues for the Board." Joint Motion at 6. The Joint Motion represents that Desert Rock Energy has attempted to contact the other parties regarding their positions on the Joint Motion. According to Desert Rock Energy, the Region does not oppose the Joint Motion. *Id.* at 2. The Joint Motion states further that "[t]he State of New Mexico and the NGO Petitioners do oppose the motions. Leslie Glustrom opposes the Desert Rock Energy's request for a 45-day extension, but does not oppose a 30-day extension." *Id.* The NGO Petitioners, joined by the Center for Biological Diversity, have filed an opposition to the Joint Motion. Conservation Petitioners' Response to Desert Rock Energy Company's and Dine Power Authority's Joint Motion for Reconsideration of Order Establishing Deadline for Responses to Region's Motion for Voluntary Remand (May 4, 2009) ("NGO Opposition"). According to the NGO Opposition, "[t]he motion for extension should be denied because [it] has not shown good cause for the request and the request is unreasonable." *Id.* at 1.

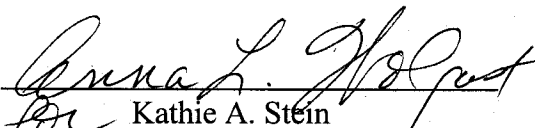
Upon consideration, we find that Desert Rock Energy has established good cause for the requested extension. While NGO Petitioners and the Center for Biological Diversity strongly oppose the 45-day extension, they have failed to establish that they would suffer any prejudice as a result of such an extension. Accordingly, Desert Rock Energy's response to the Region's Motion must now be filed with the Board no later than June 11, 2009.² Further, as well over 900 pages of legal argument already have been filed in this matter, Desert Rock Energy's response may not exceed 50 double-spaced pages.³

So ordered.

Dated:

May 5, 2009

ENVIRONMENTAL APPEALS BOARD

By: 
for Kathie A. Stein
Environmental Appeals Judge

² Documents are "filed" with the Board on the date they are *received*.

³ The Board cautions against using such devices as atypically small font size or margins or incorporating of additional argument by reference in meeting this page limit.

CERTIFICATE OF SERVICE

I hereby certify that copies of the forgoing Order Granting Motion for Extension of Time to Respond to Region's Motion for Voluntary Remand 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:

By Inter-Office Mail and FAX:

Brian L. Doster
Kristi M. Smith
Elliott Zenick
Air and Radiation Law Office
Office of General Counsel
Environmental Protection Agency
1200 Pennsylvania Ave., N.W.
Washington, DC 20460
Fax: (202) 564-5603

By Pouch Mail and FAX:

Deborah Jordan
Director, Air Division (AIR-3)
EPA Region 9
75 Hawthorne Street
San Francisco, CA 94105-3901
Fax: (415) 947-3579

Ann Lyons
Office of Regional Counsel
EPA Region 9
75 Hawthorne Street
San Francisco, CA 94105-3901
Fax: (415) 947-3570

By First Class Mail and FAX:

Seth T. Cohen
Assistant Attorney General
P.O. Drawer 1508
Santa Fe, NM 87504-1508
Fax: (505) 827-4440

Leslie Barnhart
Eric Ames
Special Assistant Attorneys General
New Mexico Environment Department
P.O. Box 26110
Santa Fe, NM 87502-6110
Fax: (505) 827-1628

Nicholas Persampieri
EarthJustice
1400 Glenarm Place, #300
Denver, CO 80202
Fax: (303) 623-8083

Anne Brewster Weeks
Clean Air Task Force
18 Tremont Street, Suite 530
Boston, MA 02108
Fax: (61 7) 624-0230

Patrice Simms
Natural Resources Defense Council
1200 New York Ave., NW, Suite 400
Washington, DC 20005
Fax: (202) 289-1060

Kevin Lynch
Environmental Defense Fund
Climate and Air Program
2334 N. Broadway
Boulder, CO 80304
Fax: (303) 440-8052

John Barth
P.O. Box 409
Hygiene, CO 80533
Fax: (303) 774-8899

Leslie Glustrom
4492 Burr Place
Boulder, CO 80303

Amy R. Atwood
Public Lands Program
Center for Biological Diversity
P.O. Box 11374
Portland, OR 97211-0374
Fax: (503) 283-5528

Jeffrey R. Holmstead
Richard Alonso
Bracewell & Giuliani LLP
2000 K Street, N.W.
Washington DC 20006
Fax: (202) 857-4812
Fax: (202) 857-4824

Stephanie Kodish
Clean Air Counsel
National Parks Conservation Association
706 Walnut Street, Suite 200
Knoxville, TN 37902

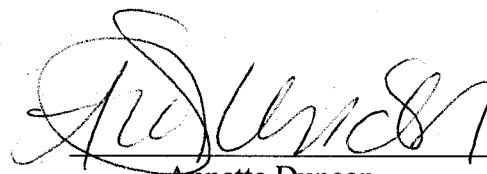
Douglas C. MacCourt
Michael J. Sandmire
AterWynne, LLP
1331 NW Lovejoy
Portland, OR 97209-2785
Fax: (503) 226-0079

Louis Denetsosie, Attorney General
D. Harrison Tsosie, Deputy Attorney General
Navajo Nation Department of Justice
P.O. Box 2010
Old Club Building
Window Rock, AZ 865 1 5
Fax: (928) 871-61 77

Kristen Welker-Hood, DSC MSN RN
Director of Environment and Health Progs.
Physicians for Social Responsibility
1875 Connecticut Ave., N.W.
Suite 1012
Washington, D.C. 20009
Fax: (202) 667-4201

Justin Lesky
Law Office of Justin Lesky
8210 La Miranda Place NE Suite 600
Albuquerque, NM 78109

Dated: **MAY -5** 2009



Annette Duncan