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ENV. APPEALS BOARD

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January 7, 2009

VIA UPS OVERNIGHT

Ms. Eurika Durr  
Clerk of the Board  
Environmental Appeals Board  
1341 G Street, N.W., Suite 600  
Washington D.C. 20005

**Re: In re Desert Rock Energy Co.  
PSD Appeal Nos. 08-03, 08-04, 08-05, & 08-06**

Dear Ms. Durr:

Enclosed is one (1) original and five (5) copies of each the following documents:

- 1) Diné Power Authority's Opposition to Petitions for Review, Supplemental Briefs, and New Mexico's Motion to Supplement the Record on Appeal or, in the Alternative for Remand and Reopening of the Public Comment Period; and
- 2) Notice of Change of Address.

Please file the originals and return the file-stamped copies to me in the enclosed, self-addressed, stamped envelope. Thank you.

Sincerely,



Michael J. Sandmire  
Attorney for Diné Power Authority

Enclosures

546151/1/MJS/100334-0002

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ENVIRONMENTAL APPEALS BOARD

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, 08-04,  
08-05, and 08-06**

**DINÉ POWER AUTHORITY'S OPPOSITION TO PETITIONS FOR REVIEW,  
SUPPLEMENTAL BRIEFS, AND NEW MEXICO'S MOTION  
TO SUPPLEMENT THE RECORD  
ON APPEAL OR, IN THE ALTERNATIVE FOR REMAND  
AND REOPENING OF THE PUBLIC COMMENT PERIOD**

Diné Power Authority ("Diné Power") respectfully opposes the Petitions for Review (of the Region's issuance of PSD permit AZP 04-01), the related Supplemental Briefs, and New Mexico's Motion to Supplement the Record on Appeal or, in the Alternative for Remand and Reopening of the Public Comment Period ("New Mexico's Motion").

Diné Power was established by the Navajo Nation Council pursuant to Resolution CN-87-85 and CJA-2-96, codified at 21 Navajo Nation Code (NNC) § 201, *et seq.*, as an enterprise of the Navajo Nation. Diné Power is an instrumentality of the Navajo Nation, subject to the control of oversight authorities delegated by the Navajo Nation Council. Pursuant to this authority, the Navajo Nation Council authorized and approved Diné Power to develop the Desert Rock project for the social, economic and cultural well-being of the Navajo people.

The underlying 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 Nation. The United States Government through two treaties, 9 Stat. 574 (1849) and 15 Stat. 667 (1868), established a relationship with the Navajo Nation coupled with numerous responsibilities including supporting

the Navajo Nation's sovereignty and self-governance. As the Navajo Nation's primary authority to develop energy projects, Diné Power is a sponsor and co-developer of the plant on Navajo trust land along with Desert Rock Energy Company, LLC ("Desert Rock"). In addition, Diné Power was a co-plaintiff with Desert Rock in a recent action pursuant to section 304(a) of the Clean Air Act ("CAA"), 42 U.S.C. § 7604(a), which resulted in EPA issuing the permit. *See Desert Rock Energy Company, LLC, et al. v. U.S. Environmental Protection Agency, et al.*, U.S. District Court for the Southern District of Texas, Houston Division, Civil Action No. 4:08-CV-872. The Navajo Nation through Diné Power, along with the Navajo people who may receive jobs, income and other benefits from the project, is the ultimate beneficiary of the Desert Rock project.

The Navajo Nation, working through Diné Power, has been seeking to improve and protect the economic well-being of the Navajo Nation and its people by responsibly developing energy resources within its borders. In 2002, Diné Power approached Desert Rock's predecessors to propose and initiate the development, on tribal land, of a new power plant that would be operated primarily by Navajo workers, and would be powered by coal owned by the Navajo Nation and mined on tribal land. In 2006, the Navajo Nation Council, the legislative branch of the Navajo government, approved the project lease, water supply and tax agreements in one of the largest supermajority votes on record for that body. It is difficult to over-estimate the importance of the Desert Rock project to the Navajo economy, and the impact of the project's delay to the independence and lives of the Navajo people.

Once it begins operating, the facility will provide approximately one-third of the annual operating budget for the Navajo Nation. Presently, about 50 percent of the Navajo Nation

members are unemployed, and, according to the census 2000, 43 percent of Navajo individuals were living below the poverty level. Every month that the Desert Rock project is delayed, the Navajo Nation loses approximately \$5 million per month, with critical programs continuing to suffer, including health care, housing, education, law enforcement, all areas where the Navajo Nation ranks among the worst in the United States. The Desert Rock project will fund programs that will literally save lives on the Navajo Nation, and it does so in an environmentally responsible way.

The Desert Rock project will create between 2,000 and 3,000 construction jobs at development. In addition to significant additional service jobs and a wide range of secondary employment, upon commencement of operations, the Desert Rock facility will train and employ more than 200 individuals; the related coal-mining operation will employ in excess of 200 individuals. Every month the project is delayed, these family-wage jobs and the benefits and opportunities these jobs bring to Navajo families are not realized by the people who need them the most.

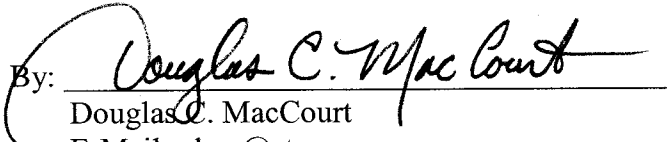
The Navajo Nation, the largest sovereign Indian Nation in the United States, along with Diné Power, has worked cooperatively with EPA on the Desert Rock project for nearly six years. This work, when completed, will result in the cleanest coal-fired plant in the United States, using highly-efficient supercritical boiler technology with the most advanced pollution controls. Further delay in this process will inhibit the growth and independence of the Navajo Nation.

Diné Power adopts the points and authorities set forth in its co-developer, Desert Rock's, opposition filed concurrently herewith and in Desert Rock's opposition to New Mexico's Motion, filed December 3, 2008. For the foregoing reasons, and in its capacity as co-developer

and ultimate beneficiary of the plant, Diné Power respectfully requests an order approving EPA's PSD permit issued to Desert Rock, and denying New Mexico's motion.

DATED this 7th day of January 2009.

**ATER WYNNE LLP**  
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Attorneys for Diné Power Authority

## CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing DINÉ POWER AUTHORITY'S  
OPPOSITION TO PETITIONS FOR REVIEW, SUPPLEMENTAL BRIEFS, AND NEW  
MEXICO'S MOTION TO SUPPLEMENT THE RECORD ON APPEAL OR, IN THE  
ALTERNATIVE FOR REMAND AND REOPENING OF THE PUBLIC COMMENT PERIOD  
BY United States First Class Mail and electronic mail on the following persons, this 7 day of  
January, 2009:

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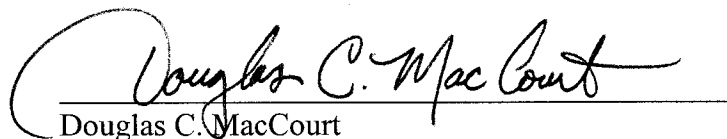
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08-05 and 08-06**

**NOTICE OF CHANGE OF ADDRESS**

**TO: Environmental Appeals Board, U.S. Environmental Protection Agency  
and**

All Parties of Record:

Please take notice that as of December 15, 2008, the address for Diné Power Authority's attorneys, Douglas C. MacCourt and Michael J. Sandmire, was changed to:


Ater Wynne LLP  
1331 NW Lovejoy  
Suite 900  
Portland, OR 97209-2785

Telephone numbers, facsimile numbers and e-mail addresses will remain the same.

DATED this 7th day of January, 2009.

**ATER WYNNE LLP**  
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By: \_\_\_\_\_



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Attorneys for Diné Power Authority



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I hereby certify that I served the foregoing NOTICE OF CHANGE OF ADDRESS on the following via electronic mail and U.S. First Class Mail on the following persons, this 7<sup>th</sup> day of January 2009:

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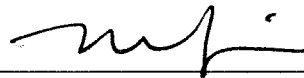
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Attorney for Diné Power Authority

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