

# **EXHIBIT 9**

DINE' CITIZENS AGAINST RUINING OUR ENVIRONMENT  
SAN JUAN CITIZENS ALLIANCE  
ENVIRONMENTAL DEFENSE  
WESTERN RESOURCE ADVOCATES  
NATURAL RESOURCES DEFENSE COUNCIL  
SIERRA CLUB  
WILDEARTH GUARDIANS  
ENVIRONMENT COLORADO  
CLEAN AIR TASK FORCE  
GRAND CANYON TRUST

April 18, 2008

**BY ELECTRONIC MAIL**

Mr. Joseph Lapka  
Air Permitting  
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**RE: Transmission of January 12, 2008 Dine Care report entitled “Energy and Economic Alternatives to the Desert Rock Energy Project in support of November 13, 2006 comment letter**

Dear Mr. Lapka:

On November 13, 2006 the above-listed groups submitted a written comment letter regarding EPA Region 9’s draft Prevention of Significant Determination (“PSD”) permit for the proposed Desert Rock Energy Project. We also submitted Supplemental Comments on the proposed air permit on October 4, 2007, addressing in particular certain issues arising after the close of the comment period.<sup>1</sup> The purpose of today’s letter is to transmit a recent January 12, 2008 report by Dine Care entitled “Energy and Economic Alternatives to the Desert Rock Energy Project” which is attached hereto. The above-listed groups hereby incorporate by reference their previous comment letters, including but not limited to the November 13, 2006 and October 4, 2007 letters.

This supplemental comment letter and attachments are being submitted at this time based on the recent January 12, 2008 Dine Care report and EPA Region 9’s June

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<sup>1</sup> These issues included the legal implications of the Supreme Court’s decision in *Massachusetts v. EPA* and factual, legal, and policy implications of the Intergovernmental Panel on Climate Change’s Fourth Report.

2007 comments on the proposed White Pine Power Plant. Submission of this information now is timely because the Dine Care report was not issued in final form until January 12, 2008 and EPA's White Pine NEPA findings and determinations were not announced until June 2007--after the close of the comment period on the Desert Rock permit proceeding. See 40 C.F.R. § 124.13; *In re Encogen Cogeneration Facility*, 8 E.A.D. 244, 250 n.8 (EAB 1999) ("a petitioner may demonstrate that an issue was not reasonably ascertainable during the public comment period.").

We submitted a copy of EPA's comments on the White Pine NEPA review to the docket in this case in conjunction with our November 4, 2007 comments.<sup>2</sup> In addition, we submitted a draft version of the enclosed Dine Care report to the Bureau of Indian Affairs ("BIA") with our comments on the Draft Environmental Impact Statement for the Desert Rock Energy Facility. As we discussed at length in our October 4, 2007 comments on the draft PSD permit, EPA is required to coordinate its PSD permit review with BIA's development of an environmental impact statement, and must consider in its PSD permit analysis all information and analyses developed in connection with the environmental impact statement that are relevant to the proposed PSD permit, including public comments.

The Clean Air Act requires EPA to consider alternatives to the proposed project in the pre-construction review permitting program – especially where the issue of alternatives has been squarely raised in public comments, as it has in this case. Specifically, section 165(a)(2) directs the permitting authority to fully consider all written and oral presentations “on the air quality impact of such source, alternatives thereto, control technology requirements and other considerations.” 42 U.S.C. § 7475(a)(2) (emphasis added). This fact is confirmed by recent comments submitted by EPA Region 9 as part of the National Environmental Policy Act (“NEPA”) process for the White Pine Power Plant, which are attached hereto. In EPA Region 9's White Pine NEPA comment letter, EPA acknowledges that it must consider “all reasonable alternatives” to the proposed coal plant, such as energy efficiency and renewable resources. *See, EPA Region 9 White Pine comment letter, p. 4 of comments*. EPA must likewise take account of its own findings in considering “alternatives” to the Desert Rock Power Plant.

The January 12, 2008 Dine Care report provides a details evaluation of various alternatives to the Desert Rock Energy Project, such as solar energy and other renewable resources. *See attached*. The report finds that there are excellent wind, solar, gas, and energy efficiency resources available for development. *See, Report Chapter 6*. Development of these alternative resources would have less adverse environmental impact than the development of the Desert Rock Project, including significantly lower air pollutant emissions. *Id.* The report concludes that “the economic development of the

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<sup>2</sup> As we explained in our 2007 Supplemental Commentss:

[I]n its comments on the proposed Draft Environmental Impact Statement for White Pine Energy Station near Ely, Nevada, EPA Region 9 recently recommended that “carbon capture and sequestration and other means of capture and storage of carbon” be evaluated as a means of mitigating emissions from the proposed coal plant. See, EPA comments on White Pine DEIS at p. 14 attached hereto as Ex. 6.  
November 4, 2007 Supplemental Comments at 22.

Navajo Nation is better served by investing in clean, sustainable technologies.” *See, Report at p. 109.* The report goes on to state, “solar, wind, and natural gas projects are available, cost effective, and lucrative for the Navajo Nation.” *Id.*

Commenters, including the groups identified above, have already squarely raised the consideration of alternatives in this proceeding, thus EPA is already obligated to examine and consider alternatives in connection with this permit decision. The information presented in the attached Report specifically addresses the nature, scope and benefits of available alternatives, in a manner that is consistent with the type of analysis that EPA must undertake. Accordingly, this information is appropriate included in the Agency’s ongoing deliberations on this permit decision, and probative of important factual and policy considerations that are central to EPA’s analysis of alternatives.

In conclusion, we request that EPA Region 9 consider in detail the alternatives outlined in the January 12, 2008 Dine Care report as alternatives to the proposed Desert Rock coal plant. In view of these available alternatives, and in light of the other issues raised during the course of this permit proceeding, we believe that issuance of a final air permit for the proposed coal plant would be inappropriate.

Sincerely yours,

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Attachment

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