

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

**STATE OF NEW MEXICO'S MOTION FOR EXTENSION OF TIME  
TO FILE REPLY BRIEF**

Petitioner the State of New Mexico ("New Mexico") respectfully moves the Environmental Appeals Board ("Board") for a 7-day extension of time (from February 13, 2009 until February 20, 2009) to file its reply brief in support of its Petition in the above-captioned matter. New Mexico's Petition challenges the Environmental Protection Agency's ("EPA") decision of July 31, 2008 to issue a Prevention of Significant Deterioration ("PSD") permit ("Permit") to Desert Rock Energy Company, LLC ("DREC"). As grounds for this motion, New Mexico states as follows:

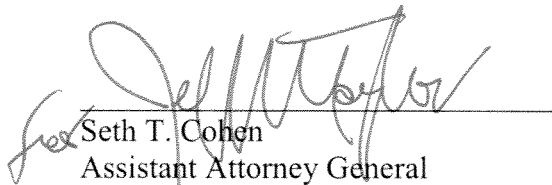
1. On January 22, 2009, the Board granted review of the Permit and simultaneously granted petitioners until February 13, 2009 to file reply briefs.
2. On the evening of February 7, Assistant Attorney General Seth T. Cohen, lead attorney for the State of New Mexico, underwent an emergency appendectomy. He was released from the hospital on Sunday, February 8<sup>th</sup>. Because of his medical condition and his ongoing recovery from surgery, Mr. Cohen has been unable to do further work on New Mexico's reply brief and will be unable to do so for several days.

3. Coincidentally, Mr. Eric Ames, Mr. Cohen's co-counsel at the New Mexico Environment Department underwent a surgical procedure on February 9, 2009. This procedure was scheduled prior to the Board's setting of the reply deadline and, because of its urgent nature, could not be rescheduled.
4. Mr. Cohen's absence from work at this time poses an additional administrative complication. Because the New Mexico Attorney General's office is in charge of this appeal, and the filings originate out of that office, it is difficult to complete the reply brief through the New Mexico Environment Department, which is a wholly separate state agency.
5. For the foregoing reasons, New Mexico respectfully requests that the Board extend the deadline for filing its reply brief until February 20, 2009. This one-week extension would allow counsel for New Mexico to complete work on the reply brief with minimal disruption to the progress of this appeal.
6. Counsel for New Mexico has conferred with opposing counsel regarding this motion. Counsel for DREC does not oppose this motion. Counsel for EPA also does not oppose this motion. Counsel for EPA, however, indicated its preference that its deadline for filing a surreply be commensurately extended. Counsel for New Mexico also conferred with counsel for the Dine Power Authority, but did not receive a final answer before, in the interest of getting this matter before the Board immediately, New Mexico filed this motion.

Date: February 10, 2009

Respectfully submitted,

GARY K. KING, ATTORNEY GENERAL  
STATE OF NEW MEXICO

A handwritten signature in dark ink, appearing to read 'Seth T. Cohen', is written over a horizontal line. To the left of the signature, the word 'Fax' is written vertically.

Seth T. Cohen  
Assistant Attorney General  
P.O. Drawer 1508  
Santa Fe, New Mexico 87504-1508  
Phone: (505) 827-6087 Fax: (505) 827-4440  
Leslie Barnhart  
Eric Ames  
Special Assistant Attorneys General  
New Mexico Environment Department  
P.O. Box 26110  
Santa Fe, New Mexico 87502-6110  
Phone: (505) 827-0293

Attorneys for Petitioner, State of New Mexico

## CERTIFICATE OF SERVICE

The undersigned hereby certifies that on February 10, 2009 he caused a copy of the foregoing *State of New Mexico's Motion for Extension of Time to File Reply Brief* to be served by U.S. mail and electronic mail on:

Ann Lyons  
Office of the Regional Counsel  
EPA Region 9  
75 Hawthorne Street  
San Francisco, CA 94105-3901

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

Jeffrey R. Holmstead  
Richard Alonso  
Bracewell & Giuliani, LLP  
2000 K. Street, NW  
Washington, D.C.

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

Nicholas Persampieri  
EarthJustice  
1400 Glenarm Place, #300  
Denver, CO 80202

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

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

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

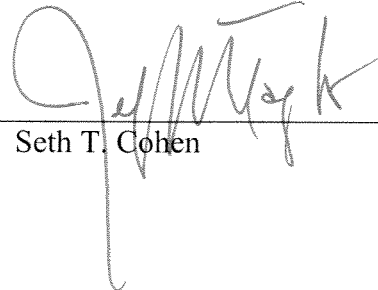
Amy R. Atwood  
Public Lands Program  
Center for Biological Diversity  
P.O. Box 11374  
Portland, Oregon 97211-0374

Leslie Glustrom  
4492 Burr Place  
Boulder, CO 80303

Stephanie Kodish  
National Parks Conservation  
Association  
706 Walnut St., Suite 200  
Knoxville, TN 37902

Douglas C. MacCourt  
Michael J. Sandmire  
AterWynne, LLP  
1331 NW Lovdjoy, Suite 900  
Portland, OR 97209-2785

Louis Denetsosie  
D. Harrison Tsosie  
Navajo Nation Dept. of Justice  
P.O. Box 2010  
Old Club Building  
Window Rock, Arizona 86515



---

Seth T. Cohen