

NEW MEXICO
ENVIRONMENTAL LAW CENTER

June 22, 2007

BY ELECTRONIC MAIL and FEDERAL EXPRESS

United States Court of Appeals for the 10th Circuit
Office of the Clerk
1823 Stout Street
Denver, Colorado 80257

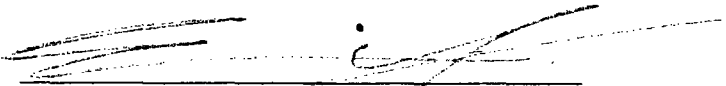
Re: Petitioners' Designation of Joint Appendix Documents, Case File No. 07-9505

Dear Sir or Madam:

Pursuant to Federal Rule of Appellate Procedure 30(c)(1), and this Court's order of May 11, 2007, please find enclosed for filing Petitioners' list of documents to be designated in the deferred joint appendix in the above matter.

If you have any questions, please feel free to contact me at (505) 989-9022.
Thank you for your attention to this matter.

Sincerely,

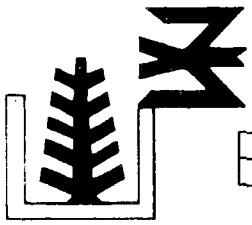

Eric D. Jantz
New Mexico Environmental Law Center
1405 Luisa Street, Suite 5
Santa Fe, New Mexico 87505
(505) 989-9022
Facsimile: (505) 989-3769

Attorneys for Petitioners ENDAUM and SRIC

Enclosures

Cc: Charles Mullins, Office of General Counsel, U.S. Nuclear Regulatory
Commission
John Arbab, Katheryn Kovacs, U.S. Department of Justice
Christopher Pugsley, Anthony Thompson, Thompson & Simmons
Mark Flink, Baker & Hostetler, LLP

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NEW MEXICO
ENVIRONMENTAL LAW CENTER

June 28, 2007

BY FIRST CLASS MAIL

United States Court of Appeals for the 10th Circuit
Office of the Clerk
1823 Stout Street
Denver, Colorado 80257

Re: Petitioners Errata to Petitioners' Uncited Preliminary Opening Brief in Case No. 07-9505

Dear Sir or Madam:

Please find enclosed for filing Petitioners' Errata to Petitioners' Uncited Preliminary Opening Brief in Case No. 07-9505, an Amended Certificate of Compliance and the related Certificate of Service.

Please file-stamp and return copies of the Petitioners' Errata and Amended Certificate of Compliance in the enclosed self-addressed stamped envelope.

If you have any questions, please feel free to contact me at (505) 989-9022. Thank you for your attention to this matter.

Sincerely,

Sarah Piltch

Eric Jantz

New Mexico Environmental Law Center

1405 Luisa Street, Suite 5

Santa Fe, New Mexico 87505

(505) 989-9022

Facsimile: (505) 989-3769

Attorneys for Petitioners ENDAUM and SRIC

Enclosures

Cc: Charles Mullins, Office of General Counsel, U.S. Nuclear Regulatory Commission

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John Arbab, Katheryn Kovacs, U.S. Department of Justice
Christopher Pugsley, Anthony Thompson, Thompson & Simmons
Mark Flink, Baker & Hostetler, LLP



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

OFFICE OF THE
GENERAL COUNSEL

June 29, 2007

FILED
United States Court of Appeals
Tenth Circuit

JUL 02 2007

ELISABETH A. SHUMAKER
Clerk

Elisabeth Shumaker, Clerk
United States Court of Appeals
for the 10th Circuit
Byron White U.S. Courthouse
1823 Stout Street
Denver, Colorado 80257

VIA FEDERAL EXPRESS

RE: *Eastern Navajo Dine' Against Uranium Mining, et al. v. U.S. Nuclear Regulatory Commission*, No. 07-9505.

Dear Ms. Shumaker:

Pursuant to Rule 27 of the Federal Rules of Appellate Procedure and Rule 27.4 of this Court, I hereby submit the Federal Respondents' Motion for Extension of Time for filing in the above-captioned case. Enclosed please find the original and four copies.

Could you please date-stamp the enclosed copy of this letter to indicate date of filing and kindly return it to me in the enclosed envelope, postage pre-paid, at your convenience.

Sincerely,

A handwritten signature in cursive script, appearing to read "Charles E. Mullins".

Charles E. Mullins
Senior Attorney
Office of the General Counsel
(301) 415-1606 (Voice)
(301) 415-3200 (fax)
cem@nrc.gov (Internet)

cc: Service List



**NAVAJO NATION DEPARTMENT OF JUSTICE
OFFICE OF THE ATTORNEY GENERAL**

Louis Denetsosie
Attorney General

Harrison Tsosie
Deputy Attorney General

July 2, 2007

Re: Eastern Navajo Dine Against Uranium Mining, Southwest Research and Information Center, Marilyn Morris and Grace Sam v. United States Nuclear Regulatory Commission and the United States Case No. 07-9595

Dear Sir or Madam,

Enclosed herewith is a copy of the above captioned matter of the Navajo Nation's Amicus Curiae of the Navajo Nation Filed in Support of Petitioners and Motion for Leave to File as Amicus Curiae and Brief in support of Appellants.

If there are any questions, please feel free to call me at (928) 871-6937.

Sincerely,

Marita Lee, Legal Secretary

/ml
Xc: Enclosures



OFFICE OF THE
GENERAL COUNSEL

UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

July 6, 2007

Elisabeth Shumaker, Clerk
United States Court of Appeals
for the 10th Circuit
Byron White U.S. Courthouse
1823 Stout Street
Denver, Colorado 80257

VIA FEDERAL EXPRESS

RE: *Eastern Navajo Dine' Against Uranium Mining, et al. v. U.S. Nuclear Regulatory Commission*, No. 07-9505.

Dear Ms. Shumaker:

Pursuant to Rule 27 of the Federal Rules of Appellate Procedure and Rule 27.4 of this Court, I hereby submit the Federal Respondents' Motion for Extension of Time for filing in the above-captioned case. Enclosed please find the original and four copies.

Could you please date-stamp the enclosed copy of this letter to indicate date of filing and kindly return it to me in the enclosed envelope, postage pre-paid, at your convenience.

Sincerely,

A handwritten signature in black ink that reads "Charles E. Mullins". The signature is written in a cursive style with a long horizontal line extending to the left.

Charles E. Mullins
Senior Attorney
Office of the General Counsel
(301) 415-1606 (Voice)
(301) 415-3200 (fax)
cem@nrc.gov (Internet)

cc: Service List



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

July 10, 2007

OFFICE OF THE
GENERAL COUNSEL

Elisabeth Shumaker, Clerk
United States Court of Appeals
for the 10th Circuit
Byron White U.S. Courthouse
1823 Stout Street
Denver, Colorado 80257

VIA FEDERAL EXPRESS

RE: *Eastern Navajo Dine' Against Uranium Mining, et al. v. U.S. Nuclear Regulatory Commission*, No. 07-9505.

Dear Ms. Shumaker:

Pursuant to Rule 27 of the Federal Rules of Appellate Procedure and Rule 27.4 of this Court, I hereby submit the Federal Respondents' Opposition To Motion For Leave To File As Amicus Curiae by the Navajo Nation for filing in the above-captioned case. Enclosed please find the original and four copies.

Could you please date-stamp the enclosed copy of this letter to indicate date of filing and kindly return it to me in the enclosed envelope, postage pre-paid, at your convenience.

Sincerely,

A handwritten signature in cursive script, appearing to read "Charles E. Mullins".

Charles E. Mullins
Senior Attorney
Office of the General Counsel
(301) 415-1606 (Voice)
(301) 415-3200 (fax)
cern@nrc.gov (Internet)

cc: Service List

501 JUL 11 10:10 AM '07
U.S. COURT OF APPEALS
10TH CIRCUIT
DENVER, CO

IN THE UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

U.S. COURT OF APPEALS
TENTH CIRCUIT
JUL 1 2007
RECEIVED

EASTERN NAVAJO DINE AGAINST URANIUM)
MINING, SOUTHWEST RESEARCH CENTER,)
MARILYN MORRIS, GRACE SAM,)
Petitioners,)
v.)
U.S. NUCLEAR REGULATORY COMMISSION)
and the UNITED STATES OF AMERICA,)
Respondents, and)
HYDRO RESOURCES, INC.,)
Intervenor.)

No. 07-9505

**FEDERAL RESPONDENTS' OPPOSITION
TO MOTION FOR LEAVE TO FILE AS *AMICUS CURIAE*
BY THE NAVAJO NATION**

Pursuant to Rules 27 and 29 of the Federal Rules of Appellate Procedure and Rules 27 and 29 of this Court, the Federal Respondents oppose the Motion for Leave to File as *Amicus Curiae* by the Navajo Nation to the extent that the tendered brief attempts to raise issues in violation of this Court's stated guidelines for an *amicus curiae* brief. In support of that position, the Federal Respondents state as follows:

1. This Court has clearly stated that while it may have the discretion to address issues raised only in *amicus* briefs, it will "exercise that discretion only in exceptional circumstances." *Tyler v. City of Manhattan*, 118 F.3d 1400, 1404 (10th Cir. 1997) (citations omitted). "Our review of the relevant case law

demonstrates that it is truly the exceptional case when an appellate court will reach out to decide issues advanced not by the parties but instead by *amicus*.” *Id.* (citations omitted). To do otherwise, would allow “an attempt by *amicus* to frame the issues on appeal, a prerogative more appropriately restricted to the litigants.” *Id.* at 1403. This Court has stated that it will not consider issues raised only by an *amicus* if “the parties did not adopt them by reference, they do not involve jurisdictional questions or touch on issues of federalism or comity we might consider *sua sponte*[] . . .” *Wyoming Farm Bureau Federation v. Babbitt* 199 F.3d 1224, 1230, n.2 (10th Cir. 2000). *Accord: Southwestern Growth Alliance v. EPA*, 121 F.3d 106, 121 (3d Cir. 1997) (stating the “general rule that an intervenor may argue only the issues raised by the principal parties and may not enlarge upon those issues.”) (citations omitted).

2. In this case, the tendered Navajo Nation *amicus* brief presents issues that are not raised by the Petitioners in their opening brief. Specifically, the Navajo Nation *amicus* raises three “arguments”: (1) a recitation of the history of uranium mining in the Church Rock area, implying that the NRC has authority over that mining and stating – without any citation to authority or argument – that by issuing the license challenged in this case “the NRC fails to meet the mandate that Congress has assigned to it – namely, to protect the public health and safety[.]”

Brief at 9; (2) a discussion of the possible impacts of the NRC decisions (a) to consider the waste from previous mining activities as background radiation and (b) to require a surety for the flushing of the aquifer with nine pore volumes of water when decommissioning the mine, Brief at 9-13; and (3) an argument that the NRC “violated its trust responsibility to the Navajo Nation,” Brief at 13, because it did not engage in appropriate consultation with the Navajo Tribe, Brief at 13-16.

3. The Federal Respondents agree that the Petitioners raised the basic issues addressed in the second argument; thus, we will address those arguments in our brief. But as explained below, the Navajo Nation’s other arguments are impermissible.

4. The Petitioners did not raise the issues addressed by the Navajo Nation in Arguments 1 and 3. Thus, the Navajo Nation should not be heard to raise those issues. *Tyler v. City of Manhattan, supra*; *Wyoming Farm Bureau Federation v. Babbitt, supra*.

CONCLUSION

For the foregoing reasons, this Court should not grant the Motion for Leave to File an *amicus* brief by the Navajo Nation. In the alternative, this Court should strike the first and third arguments in the Navajo Nation brief because they do not address matters raised by the Petitioners. If this Court should exercise its discretion to accept the *amicus* as tendered, this Court should grant the Respondents an additional 3,000 words to respond to the new and unanticipated arguments raised by the Navajo Nation.

Respectfully submitted,



CHARLES E. MULLINS

Senior Attorney

Office of the General Counsel

U.S. Nuclear Regulatory Commission

Washington, D.C. 20555

(301) 415-1618



JOHN ARBAB

Attorney

Environment & Natural Resources Division

Appellate Section

U.S. Department of Justice

P.O. Box 23795- L'Enfant Plaza Station

Washington, D.C. 20026

(202) 514-4046

Dated: July 10, 2007

CERTIFICATE OF SERVICE

I certify under penalty of perjury that on this day I filed the Federal Respondents' Unopposed Motion for Extension of Time by sending the original and four copies to the Court and by serving two copies on the counsel listed below:

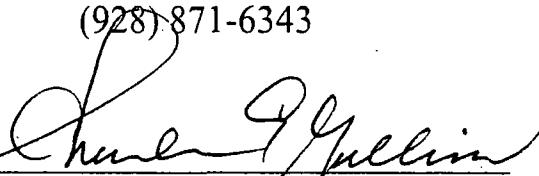
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Charles E. Mullins
Senior Attorney
Office of the General Counsel
U.S. Nuclear Regulatory Commission

Dated: July 10, 2007.

1. Mullins
2. Lit File



NAVAJO NATION DEPARTMENT OF JUSTICE
OFFICE OF THE ATTORNEY GENERAL

LOUIS DENETSOSIE
ATTORNEY GENERAL

HARRISON TSOSIE
DEPUTY ATTORNEY GENERAL

July 18, 2007

VIA FEDERAL EXPRESS

Elisabeth Shumaker, Clerk
United States Court of Appeals for the 10th Circuit
Byron White U.S. Courthouse
1823 Stout Street
Denver, CO 80257

RE: *Eastern Navajo Diné Against Uranium Mining, et al. V. U.S. Nuclear Regulatory Commission, No. 07-9505*

Dear Ms. Shumaker:

I hereby submit the **Reply of the Navajo Nation to Federal Respondents' Opposition to Motion for Leave to File as Amicus Curiae by the Navajo Nation** for filing in the above-captioned case. Enclosed please find the original and four copies.

Could you please date-stamp the enclosed copy of this letter to indicate date of filing and kindly return it to me in the enclosed envelope, postage pre-paid, at your convenience.

Sincerely,

A handwritten signature in black ink, appearing to read "D.A. Taylor", with a long horizontal flourish extending to the right.

David A. Taylor,
Attorney
Natural Resources Unit

THOMPSON & SIMMONS, PLLC.

1225 19th Street, N.W., Suite 300
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Waterbury, Connecticut 06702

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July 24, 2007

CHRISTOPHER S. PUGSLEY
cpugsley@athompsonlaw.com
Admitted in MD

**BY ELECTRONIC MAIL, U.S. FIRST CLASS MAIL
AND FEDERAL EXPRESS**

U. S. Court of Appeals 10th Circuit
Clerk of the Court
1823 Stout Street
Denver, CO 80257

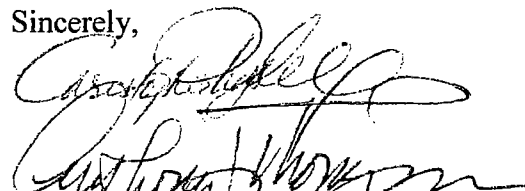
Re: In the Matter of: Hydro Resources, Inc.
Case File No. 07-9505

Dear Sir or Madam:

Please find attached for filing Hydro Resources, Inc.'s Motion for Clarification and Extension of Time in the above-captioned matter. Copies of the enclosed have been served on the parties indicated on the enclosed certificate of service. Additionally, please return a file-stamped copy in the self-addressed, postage prepaid envelope attached herewith.

If you have any questions, please feel free to contact me at (202) 496-0780.
Thank you for your time and consideration in this matter.

Sincerely,



Anthony J. Thompson, Esq.
Christopher S. Pugsley, Esq.
Thompson & Simmons, PLLC.
Counsel of Record to HRI

Enclosures



OFFICE OF THE
GENERAL COUNSEL

UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

August 10, 2007

Elisabeth Shumaker, Clerk
United States Court of Appeals
for the 10th Circuit
Byron White U.S. Courthouse
1823 Stout Street
Denver, Colorado 80257

VIA FEDERAL EXPRESS

RE: *Eastern Navajo Dine' Against Uranium Mining, et al. v. U.S. Nuclear Regulatory Commission*, No. 07-9505.

Dear Ms. Shumaker:

Pursuant to Rule 27 of the Federal Rules of Appellate Procedure and Rule 27.4 of this Court, I hereby submit the Federal Respondents' "Unopposed Motion For Second Extension of Time to File Federal Respondents' Brief" for filing in the above-captioned case. Enclosed please find the original and four copies.

Could you please date-stamp the enclosed copy of this letter to indicate date of filing and kindly return it to me in the enclosed envelope, postage pre-paid, at your convenience.

Sincerely,

Charles E. Mullins
Senior Attorney
Office of the General Counsel
(301) 415-1606 (Voice)
(301) 415-3200 (fax)
cem@nrc.gov (Internet)

cc: Service List

FILED
United States Court of Appeals
Tenth Circuit

AUG 13 2007

ELISABETH A. SHUMAKER
Clerk

THOMPSON & SIMMONS, PLLC.

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CHARLES T. SIMMONS
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August 14, 2007

CHRISTOPHER S. PUGSLEY
cpugsley@athompsonlaw.com
Admitted in MD

**BY ELECTRONIC MAIL, U.S. FIRST CLASS MAIL
AND FEDERAL EXPRESS**

U. S. Court of Appeals 10th Circuit
Clerk of the Court
1823 Stout Street
Denver, CO 80257

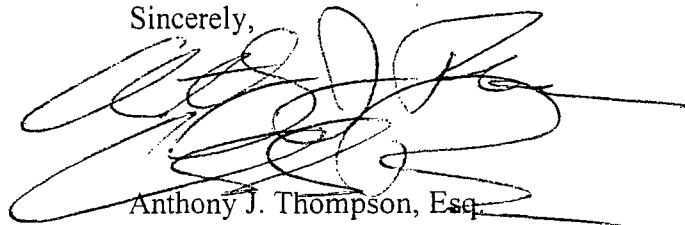
Re: In the Matter of: Hydro Resources, Inc.
Case File No. 07-9505

Dear Sir or Madam:

Please find attached for filing Hydro Resources, Inc.'s Motion for Clarification and Extension of Time in the above-captioned matter. Copies of the enclosed have been served on the parties indicated on the enclosed certificate of service. Additionally, please return a file-stamped copy in the self-addressed, postage prepaid envelope attached herewith.

If you have any questions, please feel free to contact me at (202) 496-0780.
Thank you for your time and consideration in this matter.

Sincerely,



Anthony J. Thompson, Esq.
Christopher S. Pugsley, Esq.
Thompson & Simmons, PLLC.
Counsel of Record to HRI

Enclosures