



CDOS 7371, 92 Daily Journal DAR 11971; *Young Americans for Freedom v. Gorton*, 91 Wash 2d 204, 588 P2d 195 (Wash. 1978).

Simply put, all the Navajo Nation is attempting to do in its Amicus Brief, is to call this Court's attention to facts or law that may otherwise escape its consideration. The Navajo Nation is not attempting to raise new issues or frame existing issues, but rather to provide historical context by referencing previous court decisions concerning the very land or land in the immediate vicinity of the land directly involved in this matter. See Section I of Amicus Brief, pp. 7-8. This seems to strike at the heart of the purpose of an Amicus Brief. See *Neonatology Associates, P.A. v. C.I.R.* 293 F. 3d 128 (C.A. 3, 2002).

Section 3 raises no new issue, but simply calls this Courts attention to the undisputed fact that this case, at least with reference to Section 17, deals with Navajo Indian Country and, as a matter of law, the Nuclear Regulatory Commission has a fiduciary responsibility to the Navajo Nation.

Thus, this Court should grant the Navajo Nation's Motion for Leave to file an Amicus Brief.

**II. EVEN IF NAVAJO'S BRIEF ARGUABLY RAISES ISSUES NOT RAISED BY ENDAUM, THEY SHOULD STILL BE CONSIDERED SINCE ENDAUM WILL ADOPT THOSE MATTERS BY REFERENCE**

Prior to filing this Reply counsel for the Navajo Nation conferred with

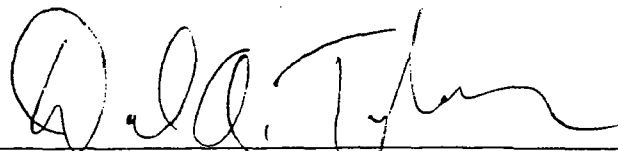
counsel for ENDAUM who indicated that ENDAUM would adopt by reference the matters set forth in the Navajo Nation Amicus Brief. This could hardly come as a shock or surprise to the government respondents. At page 5 of the Navajo Amicus brief the Nation "supports and concurs" with the position taken by ENDAUM. This would seem to take care of the objection raised by the government respondents. See *Wyoming Farm Bureau Federation et al. v. Babbitt et al.* 199 F.3d 1224, at 1230 fn 2.

### CONCLUSION

For all of the above reasons the Navajo Nation respectfully requests that this Court grant the Nation leave to file its Amicus Brief.

Respectfully submitted,

NAVAJO NATION DEPARTMENT OF JUSTICE  
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CERTIFICATE OF SERVICE

I hereby certify that on this 19<sup>th</sup> Day of July, 2007 a true and correct copy of the foregoing REPLY OF THE NAVAJO NATION TO FEDERAL RESPONDENTS' OPPOSITION TO MOTION FOR LEAVE TO FILE AS AMICUS CURIAE BY THE NAVAJO NATION was served via United States Mail, first-class postage prepaid, addressed as follows:

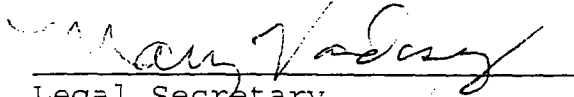
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