

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE TENTH CIRCUIT**

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EASTERN NAVAJO DINE AGAINST URANIUM	)	
MINING, SOUTHWEST RESEARCH CENTER,	)	
MARILYN MORRIS, and GRACE SAM,	)	
Petitioners,	)	
v.	)	No. 07-9505
	)	
U.S. NUCLEAR REGULATORY COMMISSION	)	
and the UNITED STATES OF AMERICA,	)	
Respondents, and	)	
HYDRO RESOURCES, INC.,	)	
Intervenor.	)	
	)	

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**UNOPPOSED MOTION FOR SECOND EXTENSION OF TIME  
TO FILE FEDERAL RESPONDENTS' BRIEF**

Pursuant to Rule 27 of the Federal Rules of Appellate Procedure and Local Rule 27.4, the U.S. Nuclear Regulatory Commission ("NRC") and the United States of America (jointly, "the Federal Respondents") respectfully request a second extension of time to file the Federal Respondents' Brief in this case. On July 23, 2007 this Court granted Federal Respondents an extension of time to and including September 5, 2007, to file their brief in this case. The Federal Respondents respectfully request an additional 15-day extension of time to and including September 20, 2007, in which to file their brief. This is the Federal Respondents' second motion for an extension of time, but only requests the additional time requested in their first motion but not granted in this Court's order

of July 23rd. Counsel for all parties in this case have graciously consented to the granting of this request.

1. This Petition for Review challenges an agency decision which was the culmination of a 10-year administrative proceeding, which created an exceptionally large record. In addition, the administrative proceeding was litigated by another section of the NRC's Office of General Counsel; thus, the NRC attorney with chief responsibility for litigating this case, Mr. Charles E. Mullins, was not counsel to the NRC Staff during the administrative proceeding and was not involved in the case until recently. He is still working to become familiar with the extensive and highly technical record in this case and to develop a response to the Petitioners' arguments.

2. In addition, the relevant NRC Staff who have technical expertise and experience in this case, including the Project Manager and the attorney who handled the case in the administrative proceeding, are taking vacations during the month of August. Their absence makes it extremely difficult to prepare the NRC's response to Petitioners' arguments.

3. While the NRC has independent litigating authority to respond to challenges to NRC Orders and licenses, the United States is a statutory party to the case. *See* 28 U.S.C. § 2348. Thus, the NRC's Brief must be coordinated with the

U.S. Department of Justice (“DOJ”), a process that necessarily takes extra time. John Arbab, who is lead counsel for the DOJ and who has entered an appearance in this case, has a previously scheduled vacation during August 11-18, 2007. His absence would significantly impact the DOJ’s ability to assist on the NRC’s brief, without an extension of time.

4. Mr. Mullins is also lead counsel for the NRC in two additional cases being briefed this summer. The first case is *State of New Jersey v. U.S. Nuclear Regulatory Commission*, Nos. 06-5140, 07-1559, and 07-1756 (3d Cir.) (Consolidated), with Respondents’ Brief currently due August 27, 2007 (having been once extended). The second is *New Jersey Department of Environmental Protection v. U.S. Nuclear Regulatory Commission*, No. 07-1721 (3d Cir.), in which Petitioner’s brief is due August 22 (as extended). Thus, the NRC’s brief in that case is currently due September 24, 2007. In both cases, Mr. Mullins is the only attorney assigned to the case in this Office, under the supervision of the NRC Solicitor.

5. The Legal Counsel Division within the NRC’s Office of the General Counsel (which contains the Solicitor and litigates on behalf of the agency) is an extremely small office, with only four litigating attorneys and a support staff of only two. The office currently has seven cases with briefs or substantive motions

due late this summer or early this fall. Preparation of multiple briefs within this short period of time will be extremely difficult and requires flexibility in scheduling the filing of briefs.

6. Mr. Mullins recently returned from a detail at the U.S. Department of Justice, Civil Division, Appellate Staff, where he filed several briefs on behalf of the United States. From time to time he is required to return to the Department of Justice to prepare oral arguments or supplemental pleadings in those cases. These absences also impact his ability to prepare for and brief this case.

7. Petitioners sought, and were granted, two extensions of time, which totaled 45 days to prepare and file their Opening Brief. We consented to the granting of those requests. The government seeks only equal time – a total extension of 45 days from the original due date – to prepare and file its brief.

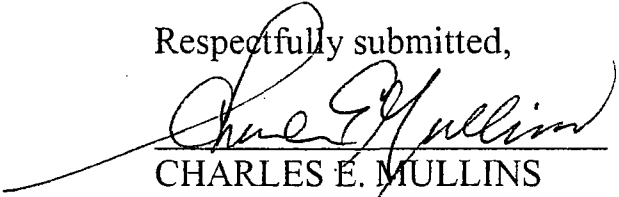
8. Respondents have also received a Motion for Leave to file an *Amicus Curiae* brief from the Navajo Nation, filed June 29, 2007, which was not expected and which raises significant issues not previously addressed in this proceeding. This Court referred that Motion and the Respondents' Opposition to the Merits Panel (without granting Federal Respondents' request for an additional 2,000 words in the in the length of Respondents' Brief to respond to the unexpected arguments raised in the tendered *amicus curiae* brief), meaning that Federal

Respondents must address the issues raised by the Navajo Nation. The Federal Respondents will need additional time to research these issues and answer them in their brief.

8. All parties have consented to our request for a 45-day extension of time.

For the foregoing reasons, the Federal Respondents respectfully request that this Court grant an extension of time of 15 days, from September 5, 2007, to and including September 20, 2007, in which the Federal Respondents may file their brief in this case.

Respectfully submitted,



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Dated: August 10, 2007

## CERTIFICATE OF SERVICE

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

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