

UNITED STATES COURT OF APPEALS FOR THE 10th CIRCUIT

FILED
United States Court of Appeals
Tenth Circuit
FEB 12 2007
ELISABETH A. SHUMAKER
Clerk

Eastern Navajo Diné Against Uranium Mining,
Southwest Research and Information Center,
Marilyn Morris and Grace Sam

Petitioners,

v.

United States Nuclear Regulatory Commission and
the United States,

Respondents.

Case File

No. _____

07-9505

PETITION FOR REVIEW

Pursuant to Federal Rule of Appellate Procedure 15 and 28 U.S.C. §§
2342 - 2344, Petitioners Eastern Navajo Diné Against Uranium Mining
("ENDAUM"), Southwest Research and Information Center ("SRIC"),
Marilyn Morris, and Grace Sam hereby petition this Court to review final
orders of the United States Nuclear Regulatory Commission ("NRC") in the
proceeding for the issuance of a source and byproduct materials license to
Hydro Resources, Inc. ("HRI"). The final agency action of which the
Petitioners seek review authorizes the issuance of a materials license to HRI
to mine uranium in Crownpoint and Church Rock, New Mexico.

Petitioners seek review of the following orders issued by the NRC in support of its licensing decision:

LBP-99-10, 49 NRC 145 (1999), Atomic Safety and Licensing Board Partial Initial Decision on Performance Based Licensing (Attachment 1);

CLI-99-22, 50 NRC 3 (1999) Commission Order affirming LBP-99-10 (Attachment 2)

LBP-99-13, 49 NRC 233 (1999), Atomic Safety and Licensing Board Partial Initial Decision on Financial Assurance for Decommissioning (Attachment 3);

CLI-00-8, 51 NRC 227 (2000), Commission Order affirming LBP-99-13 (Attachment 4)

LBP-99-30, 50 NRC 77 (1999), Atomic Safety and Licensing Board Partial Initial Decision on Groundwater and National Environmental Policy Act ("NEPA") Issues (Attachment 5):

CLI-00-12, 52 NRC 1 (2000), Commission Order denying review of LBP-99-30 with respect to groundwater issues (Attachment 6);

CLI-01-4, 53 NRC 31 (2001) Commission Order denying review of LBP-99-30 with respect to NEPA issues (Attachment 7);

LBP-04-3, 59 NRC 84 (2004), Atomic Safety and Licensing Board
Partial Initial Decision on Groundwater Restoration and Surety Estimates
(Attachment 8);

CLI-04-33, 60 NRC 581 (2004), Commission Order affirming LBP-
04-3 (Attachment 9);

LBP-05-17, 62 NRC 77 (2005) Atomic Safety and Licensing Board
Partial Initial Decision on Groundwater Protection, Restoration and Surety
Estimates (Attachment 10);

CLI-06-1, 63 NRC 1 (2006), Commission Order denying review of
LBP-05-17 (Attachment 11);

LBP-06-1, 63 NRC 41 (2006), Atomic Safety and Licensing Board
Partial Initial Decision on Radiological Air Emissions (Attachment 12);

CLI-06-14, 63NRC 510 (2006), Commission Order affirming LBP-
06-1(Attachment 13);

LBP-06-19, 64 NRC 53 (2006), Atomic Safety and Licensing Board
Partial Initial Decision on National Environmental Policy Act issues
(Attachment 14);

CLI-06-29 (2006), Commission Order denying review of LBP-06-19
(Attachment 15).

These decisions were rendered final in CLI-06-29, which was issued by the Commission on December 14, 2006. This petition is timely filed pursuant to 28 U.S.C. § 2344 as it is filed within 60 days of the final agency action.

To date, no court has upheld the validity of these orders.

This Court has jurisdiction pursuant to the Hobbs Act, 28 U.S.C. § 2342(4); the Atomic Energy Act, 42 U.S.C. § 2239(b); and the Administrative Procedure Act, 5 U.S.C. §§ 702.

Venue is asserted pursuant to 28 U.S.C. § 2343. Petitioner ENDAUM is a 501(c)(3) non-profit corporation incorporated under the laws of the Navajo Nation and maintains its principal office in Crownpoint, New Mexico within the Navajo Nation. Petitioner SRIC is a 501(c)(3) non-profit corporation incorporated under the laws of New Mexico and maintains its principal office in Albuquerque, New Mexico. Petitioners Marilyn Morris and Grace Sam are residents of Pinedale, New Mexico.

Petitioners seek relief on the grounds that the NRC's orders with respect to the adequacy of HRI's control of radioactive emissions and establishment of a decommissioning surety violate the Atomic Energy Act, 42 U.S.C. § 2011, *et. seq.*, and NRC implementing regulations in 10 C.F.R. Parts 20, 40 and 51. The NRC's orders also violate the National

Environmental Policy Act, 42 U.S.C. § 4332 *et. seq.* and its implementing regulations. Finally, the NRC's orders violate the Administrative Procedures Act 5 U.S.C. § 706, because they are arbitrary, capricious, contrary to law and unsupported by substantial evidence.

Petitioners request that the Court reverse the NRC's orders and revoke the license issued to HRI by the NRC. In the alternative, Petitioners request that the Court remand the NRC's licensing decision to NRC for further proceedings consistent with the Atomic Energy Act and NEPA.

Dated: 2/9/07

Respectfully submitted,


Eric D. Jantz

Sarah Piltch

New Mexico Environmental Law Center

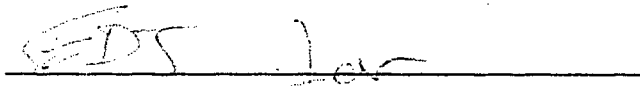
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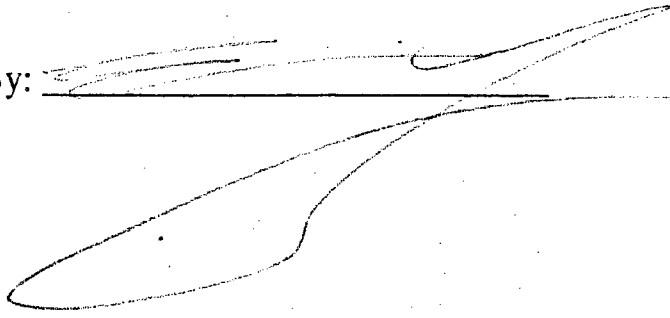
CERTIFICATE OF SERVICE

I hereby certify that true and correct copies of Eastern Navajo Diné Against Uranium Mining's, Southwest Research and Information Center's, Grace Sam's and Marilyn Morris's Petition for Review in the above-captioned proceeding have been served on the following parties to the Nuclear Regulatory Commission proceeding by U.S. Mail, first class this 9th day of February 2007:

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By:

A handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke extending to the right.