

UNITED STATES COURT OF APPEALS  
FOR THE TENTH CIRCUIT

**DOCKETING STATEMENT**

Case Name: Eastern Navajo Diné Against Uranium Mining, et. al. v. U.S. Nuclear  
Regulatory Commission and the United States

Appeal No. (if available) : 07-9505

Court/Agency Appeal From: United States Nuclear Regulatory Commission

Court/Agency Docket No.: 40-8968-ML District Judge: \_\_\_\_\_

Party or Parties filing Notice of Appeal/Petition: Eastern Navajo Diné Against Uranium  
Mining, Southwest Research and Information Center, Grace Sam, Marilyn Morris

**1. TIMELINESS OF APPEAL OR PETITION FOR REVIEW**

**1. APPEAL FROM DISTRICT COURT**

1. Date notice of appeal filed: \_\_\_\_\_

1. Was a motion filed for an extension of time to file the notice of appeal? If so, give the filing date of the motion, the date of any order disposing of the motion, and the deadline for filing notice of appeal:

\_\_\_\_\_  
\_\_\_\_\_

2. Is the United States or an officer or an agency of the United States a party to this appeal? \_\_\_\_\_

2. Authority fixing time limit for filing notice of appeal:

Fed. R. App. 4 (a)(1)(A) _____	Fed. R. App. 4(a)(6) _____
Fed. R. App. 4 (a)(1)(B) _____	Fed. R. App. 4(b)(1) _____
Fed. R. App. 4 (a)(2) _____	Fed. R. App. 4(b)(3) _____
Fed. R. App. 4 (a)(3) _____	Fed. R. App. 4(b)(4) _____
Fed. R. App. 4 (a)(4) _____	Fed. R. App. 4(c) _____
Fed. R. App. 4 (a)(5) _____	

Other: \_\_\_\_\_

3. Date final judgment or order to be reviewed was filed and **entered** on the district court docket: \_\_\_\_\_
4. Does the judgment or order to be reviewed dispose of **all** claims by and against **all** parties? *See* Fed. R. Civ. P. 54(b).  
\_\_\_\_\_

**(If the order being appealed is not final, please answer the following questions in this section.)**

1. If not, did district court direct entry of judgment in accordance with Fed. R. Civ. P. 54(b)? When was this done?  
\_\_\_\_\_
  2. If the judgment or order is not a final disposition, is it appealable under 28 U.S.C. § 1292(a)? \_\_\_\_\_
  3. If none of the above applies, what is the **specific** statutory basis for determining that the judgment or order is appealable? \_\_\_\_\_
5. Tolling Motions. *See* Fed. R. App. P. 4(a)(4)(A); 4(b)(3)(A).
1. Give the filing date of any motion under Fed. R. Civ. P. 50(b), 52(b), 59, 60, including any motion for reconsideration, and in a criminal appeal any motion for judgment of acquittal, for arrest of judgment or for new trial, filed in the district court:  
\_\_\_\_\_
  2. Has an order been entered by the district court disposing of that motion, and, if so, when? \_\_\_\_\_  
\_\_\_\_\_
6. Bankruptcy Appeals. (To be completed only in appeals from a judgment, order or decree of a district court in a bankruptcy case or from an order of the Bankruptcy Appellate Panel.)

Are there assets of the debtor subject to administration by a district or bankruptcy court? \_\_\_\_\_

Please state the approximate amount of such assets, if known.  
\_\_\_\_\_  
\_\_\_\_\_

2. **REVIEW OF AGENCY ORDER** (To be completed only in connection with petitions for review or applications for enforcement filed directly with the Court of Appeals.)

1. Date petition for review was filed: February 12, 2007
2. Date of the order to be reviewed: December 14, 2006
3. Specify the statute or other authority granting the court of appeals jurisdiction to review the order: Hobbs Act, 28 U.S.C. § 2342(4); Atomic Energy Act, 42 U.S.C. § 2239(b); Administrative Procedure Act, 5 U.S.C. §§ 702.

Specify the time limit for filing the petition (cite specific statutory section or other authority): 60 days pursuant to 28 U.S.C. § 2344

3. **APPEAL OF TAX COURT DECISION**

1. Date notice of appeal was filed: \_\_\_\_\_  
(If notice was filed by mail, attach proof of postmark.)
2. Time limit for filing notice of appeal: \_\_\_\_\_
3. Date of entry of decision appealed: \_\_\_\_\_
4. Was a timely motion to vacate or revise a decision made under the Tax Court's Rules of Practice, and if so, when? *See* Fed. R. App. P. 13(a) \_\_\_\_\_

**2. LIST ALL RELATED OR PRIOR RELATED APPEALS IN THIS COURT WITH APPROPRIATE CITATION(S). If none, please so state.**

HRI, Inc v. EPA, 198 F.3d 1224 (10<sup>th</sup> Cir. 2000); Hydro Resources, Inc. v. United States Environmental Protection Agency, Case File No. 07-9506

**3. GIVE A BRIEF DESCRIPTION OF NATURE OF ACTION AND RESULT BELOW.**

The action below was an administrative adjudication before the U.S. Nuclear Regulatory Commission to determine the validity of a source and byproduct materials license issued to Hydro Resources, Inc. by the NRC pursuant to the Atomic Energy Act and its implementing regulations. The NRC upheld the validity of Hydro Resources, Inc.'s license.

**4. ISSUES RAISED ON APPEAL.**

Issue 1: Did the Nuclear Regulatory Commission violate the Atomic Energy Act and its implementing regulations by issuing a source and byproduct materials license permitting Hydro Resources, Inc. to operate under a "Performance Based Licensing" scheme?

Issue 2: Did the Nuclear Regulatory Commission violate the Atomic Energy Act and its implementing regulations by permitting Hydro Resources, Inc. to calculate the radioactive air impacts of its proposed operations without considering radiation from existing contamination at its proposed mine sites?

Issue 3: Did the Nuclear Regulatory Commission violate the National Environmental Policy Act by improperly characterizing existing radioactive contamination that would affect the Crownpoint Uranium Project?

Issue 4: Did the Nuclear Regulatory Commission violate the Atomic Energy Act and its

implementing regulations by failing to require Hydro Resources, Inc. to remediate groundwater to standards that protect human health and safety?

Issue 5: Did the Nuclear Regulatory Commission violate the Atomic Energy Act and its implementing regulations by permitting Hydro Resources, Inc. to calculate a surety bond based on groundwater remediation standards that fail to protect public health and safety?

5. **ADDITIONAL INFORMATION IN CRIMINAL APPEALS.**

1. Does this appeal involve review under 18. U.S.C. § 3742(a) or (b) of the sentence imposed? \_\_\_\_\_
2. If the answer to question in A is yes, does the defendant also challenge the judgment of conviction? \_\_\_\_\_
3. Describe the sentence imposed. \_\_\_\_\_  
\_\_\_\_\_
4. Was the sentence imposed after a plea of guilty? \_\_\_\_\_
5. Is defendant on probation or at liberty pending appeal? \_\_\_\_\_

**NOTE:** In the event expedited review is requested, the defendant shall consider whether a transcript of any portion of the trial court proceedings is necessary for the appeal. Necessary transcripts must be ordered at the time of appeal by completing and delivering the transcript order form to the clerk of the district court when a notice of appeal is filed. Defendant/appellant must refrain from ordering any unnecessary transcript as this will delay the appeal. If the court orders this appeal expedited, it will set a schedule for preparation of necessary transcripts, for designation and preparation of the record on appeal, and for filing briefs. If issues other than sentencing are raised by this appeal, the court will decide whether bifurcation is desirable.

6. **INDICATE WHETHER ORAL ARGUMENT IS DESIRED IN THIS APPEAL.** If so, please state why.

Oral argument is desired in this appeal because the unique interaction between the statutory requirements of the Atomic Energy Act and the National Environmental Policy Act as applied to the same set of facts presented by the NRC's issuance of a source and byproduct materials license to HRI.

7. **ATTORNEY FILING DOCKETING STATEMENT:**

Name: Eric D. Jantz Telephone: (505) 989-9022

Firm: New Mexico Enviromental Law Center

Address: 1405 Luisa Street, Suite 5, Santa Fe, New Mexico 87505

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**PLEASE IDENTIFY ON WHOSE BEHALF THE DOCKETING STATEMENT IS FILED:**

- A. ☐ Appellant
- ☒ Petitioner
- ☐ Cross-Appellant

**B. PLEASE IDENTIFY WHETHER THE FILING COUNSEL IS**

- ☒ Retained Attorney
- ☐ Court-Appointed
- ☐ Employed by a government entity  
(please specify \_\_\_\_\_)
- ☐ Employed by the Office of the Federal Public Defender.

Signature

Date

2/23/07

☒ Attorney at Law

**NOTE:** A copy of the court or agency docket sheet, the final judgment or order appealed from, any pertinent findings and conclusions, opinions, or orders, any motion filed under Fed. R. Civ. P. 50(b), 52(b), 59, or 60, including any motion for reconsideration, for judgment of acquittal, for arrest of judgment, or for new trial, and the dispositive order(s), any motion for extension of time to file notice of appeal and the dispositive order, and the notice of appeal or petition for review **must be attached to all copies of the Docketing Statement**, except as otherwise provided in Section I of the instructions.

The original and four copies of this Docketing Statement must be filed.

This Docketing Statement must be accompanied by proof of service.

The following Certificate of Service may be used.



## 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**

## CERTIFICATE OF SERVICE

I hereby certify that true and correct copies of Petitioners' Docketing Statement in the above-captioned proceeding has been served on the following parties by U.S. Mail, first class this 23<sup>rd</sup> day of February 2007:

Charles Mullins  
Office of the General Counsel  
U.S. Nuclear Regulatory Commission  
11555 Rockville Pike  
Rockville, Maryland 20852

The Honorable Alberto Gonzales  
Attorney General of the United States  
United States Department of Justice  
Room 4400  
950 Pennsylvania Avenue, NW  
Washington, D.C. 20530-0001

By: \_\_\_\_\_