UNITED STATES COURT OF APPEALS FOR THE 10th CIRCUIT

Eastern Navajo Diné Against Uranium Mining, Southwest Research and Information Center, Marilyn Morris and Grace Sam	)	
Petitioners,	)	**Case File No. 07-9505**
v.	)	
United States Nuclear Regulatory Commission and the United States,	)	
Respondents.	)	

UNOPPOSED MOTION FOR EXTENSION OF TIME TO FILE PETITIONERS' OPENING BRIEF

Petitioners Eastern Navajo Diné Against Uranium Mining ("ENDAUM"), Southwest Research and Information Center ("SRIC"), Marilyn Morris, and Grace Sam hereby respectfully request an extension of time of 45 days from May 7, 2007 in which to file their opening brief pursuant to Federal Rules of Appellate Procedure 27 and Local Rule 27.4.

The Nuclear Regulatory Commission ("NRC"), United States Department of Justice ("DOJ") and Intervenor Hydro Resources, Inc. ("HRI") do not oppose Petitioners' request for a 45 day extension for filing their opening brief. Under Local Rule 27.3 (A)(1), the clerk is authorized to act for the court on this motion as it is one to extend time to file a pleading.

PROCEDURAL HISTORY

Petitioners timely filed a petition for review of various NRC orders in the HRI licensing proceeding on February 12, 2007. A certified index of the record was filed by the NRC on March 26, 2006. Under Federal Rule of Appellate Procedure Rule 31, Petitioner's brief is due on May 7, 40 days after the certified index of the record was filed. Petitioners request an extension of 45 days to file their opening brief for the reasons outlined below. No prior such motion has been filed.

It is not possible for Petitioners to file the opening brief by May 7, despite Petitioners exercising due diligence and giving priority to preparing the brief for the following reasons:

I. The case is so complex and the record so large that an adequate brief cannot reasonably be prepared by the current due date.

HRI applied for a source and byproduct materials license on April 13, 1988. The NRC issued a license on January 5, 1998. Petitioners requested a hearing on HRI's license application in December 1994 and amended their request after the Final Environmental Impact Statement was issued on February 29, 1997. The Atomic Safety and Licensing Board Presiding Officer granted ENDAUM, SRIC, Grace Sam, and Marilyn Morris standing as parties and admitted a number of their concerns for adjudication. In the Matter of Hydro Resources, Inc, LPB-98-9, 47 NRC 261, 266 (1998).

The case was litigated before the NRC from 1998 until 2006. Because this matter was litigated for over eight years before the NRC and documents were submitted for nearly 20 years, the administrative record in this appeal spans tens of thousands of pages. Additionally, much of the record consists of technical documents and testimony on such issues as aquifer hydrogeology, geochemistry, hydrology, and regulatory dose limits for airborne radiation, which require particularly careful review. Because of the size and nature of the record, an extension is warranted.

II. Given the size of the record and staffing issues, an extension is warranted.

The attorneys working on this case will suffer substantial hardship if they must comply with the current deadline. Petitioners have been represented by numerous different attorneys at the New Mexico Environmental Law Center ("NMELC") since the inception of this case. The NMELC is a 401(c)(3) non-profit organization. Three attorneys currently work at NMELC, one of whom is the executive director who does not primarily litigate.

Recently, a key litigator at litigator at NMELC resigned. Counsel in this matter, Eric Jantz and Sarah Piltch, have been assigned the former NMELC attorney's cases, including two cases which have each been in litigation for five years. Both of these cases are set for hearing before a state

administrative agency within the next two months. A hearing is scheduled in one of the cases on a complicated variance issue before the New Mexico Water Quality Control Commission, for May 22, 2007, two weeks after this brief is due. In the Matter of the Petition for Variance for the Lee Hill Leach Stockpile, WQCC 07- 02(V) ("Lee Hill Variance Petition"). A copy of the public notice for the Lee Hill Variance Petition hearing is attached hereto as "Exhibit A".

A hearing in the other case is currently scheduled for June 12-15, 2007. In the Matter of: Appeal of Supplemental Discharge Permit for Closure (DP-1341) for Phelps Dodge Tyrone, Inc., WQCC 03-12(A) and WQCC 03-13(A) (consolidated). The scheduling order in the Tyrone matter is attached hereto as "Exhibit B". NMELC attorneys are the only attorneys representing our clients in the cases described above and both involve substantial legal and technical issues.

III. Petitioners' attorneys' other cases present a scheduling conflict.

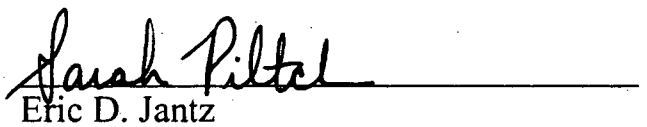
Moreover, the cases described above present a scheduling conflict for Petitioners' attorneys. Petitioners' attorney Eric Jantz made an oral motion to the New Mexico Water Quality Control Commission at its April 10, 2007 meeting to reschedule the May 22 Lee Hill Variance hearing, citing the briefing deadline for this appeal, but that motion was denied.

Petitioners do not argue that other litigation should receive priority here, but rather that no additional opportunities to request rescheduling are available in the Lee Hill Variance matter. Moreover, Zackeree Kelin, counsel for Grace Sam and Marilyn Morris has a full case load in addition to his work on this matter. Additionally, Mr. Kelin substituted as counsel for Grace Sam and Marilyn Morris at a late date and is therefore unfamiliar with the record and cannot take the lead on this appeal on behalf of all Petitioners.

For the reasons outlined above, Petitioners respectfully request a 45 day extension of time in which to file their opening brief, for a due date of June 22, 2007.

Dated: April 20, 2007

Respectfully submitted,



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Attorney for Petitioners Marilyn Morris and Grace Sam

NEW MEXICO WATER QUALITY CONTROL COMMISSION
NOTICE OF PUBLIC HEARING TO CONSIDER PROPOSED VARIANCE FROM 20.6.2.3109 NMAC: GROUND AND SURFACE WATER PROTECTION FOR LEE HILL OPERATIONS, CHINO MINES COMPANY

The New Mexico Water Quality Control Commission (Commission) will hold a public hearing on Tuesday, May 22, 2007, beginning at 9:00 a.m. and continuing thereafter as necessary, at the New Mexico State Capitol, Room 317, Old Santa Fe Trail and Paseo de Peralta, Santa Fe, on a proposed variance from certain provisions of 20.6.2.3109 NMAC: Ground and Surface Water Protection for the Lee Hill leaching and stockpiling operations conducted by the Chino Mines Company (Chino).

Chino filed the variance petition with the Commission on April 6, 2007, docketed as WQCC 07-02(V). The Lee Hill stockpile is located within the Chino Mine Santa Rita Pit, approximately five miles from Bayard, NM and approximately two miles from Hannover, NM. Chino proposes variance from 20.6.2.3109.C(1) and (2) NMAC and 20.6.2.3109.H(3) NMAC. A variance would allow a proposed ground water quality discharge permit to be issued by the New Mexico Environment Department (NMED) for the Lee Hill operations, which would include the leaching of ore and the stockpiling of waste rock within the Santa Rita Pit. NMED determined that Chino must seek a variance from the requirements of Section 20.6.2.3109.C(1) and (2) NMAC because ground water beneath the Lee Hill operations, within the Chino Santa Rita Pit, has a concentration of 10,000 milligrams per liter or less total dissolved solids and the discharge from Lee Hill will result in a concentration in excess of ground water quality standards of Section 20.6.2.3103 NMAC. NMED determined that Chino must seek a variance from the requirements of Section 20.6.2.3109.H(3) NMAC because the discharge from Lee Hill will result in a concentration in excess of the human-health based ground water quality standards of 20.6.2.3103.A NMAC. NMED has recommended that the variance petition be granted with conditions.

The hearing will be conducted in accordance with Section 74-6-4(G) of the Water Quality Act and 20.1.3 NMAC, Adjudicatory Procedures - Water Quality Control Commission.

The variance petition, NMED's recommendation, the hearing procedures and any other documents filed with the Commission related to the petition may be reviewed during regular business hours in the office of the Commission:

Joyce Medina, WQCC Administrator
Harold Runnels Building
1190 St. Francis Drive, N2150
Santa Fe, NM 87502
(505) 827-2425, Fax (505) 827-2836 or Joyce.Medina@state.nm.us.

Any person who intends to present technical evidence or testimony at the hearing must file a Statement of Intent to Present Technical Evidence with the WQCC Administrator by May 8, 2007 at 5:00 p.m. and should reference docket number WQCC 07-02(V). Technical evidence or testimony means scientific, engineering, economic or other specialized information. The

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Statement of Intent must include (a) the name of the person filing the statement, (b) whether the person supports or opposes the variance petition, (c) the name of each witness and their qualifications, (d) an estimate of the length of the direct testimony of each witness, (e) a list of exhibits to be offered into evidence at the hearing, and (f) a summary or outline of the anticipated direct testimony of each witness.

Any person who wishes to be treated as an interested participant and to cross-examine witnesses at the hearing must file an Entry of Appearance with the WQCC Administrator by May 8, 2007 at 5:00 p.m. and should reference docket number WQCC 07-02(V).

Oral public comment of a non-technical nature may be given at the hearing without prior notification. A member of the general public may submit a written non-technical statement for the record in lieu of giving oral testimony. Written public comments may be filed with the WQCC Administrator any time prior to the hearing or at hearing.

Any document filed for the Commission's review must be filed with the WQCC Administrator as an original plus 14 copies.

The Commission may deliberate and rule on the variance petition at the close of the hearing.

If you are an individual who requires assistance, a translator or an auxiliary aid to participate in any aspect of this process, please contact Judy Bentley, NMED Human Resources Bureau, 1190 St. Francis Drive, PO Box 26110, Santa Fe, NM, 87502, telephone 505-827-9872, by May 8, 2007. TDY users may access her number via the New Mexico Relay Network at 1-800-659-8331.

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WATER QUALITY CONTROL COMMISSION

STATE OF NEW MEXICO
WATER QUALITY CONTROL COMMISSION

IN THE MATTER OF:	)	
APPEAL OF SUPPLEMENTAL DISCHARGE	)	Docket Nos.
PERMIT FOR CLOSURE (DP-1341) FOR	)	WQCC 03-12(A)
PHELPS DODGE TYRONE, INC.	)	WQCC 03-13(A)
	)	(Consolidated)
PHELPS DODGE TYRONE, INC.,	)	
	)	
Petitioner.	)	
	)	

SCHEDULING ORDER FOR REMAND PROCEEDINGS AND APPOINTMENT OF HEARING OFFICER

THIS MATTER is before the Water Quality Control Commission ("Commission") upon remand of the case from the Court of Appeals for further proceedings in accordance with the Court's July 19, 2006 decision captioned *Phelps Dodge Tyrone, Inc. v. New Mexico Water Quality Control Commission and New Mexico Environment Department* (No.25,027). Having heard and considered the parties' arguments during the January 9, 2007 Commission meeting, the Commission sets the matter for hearing according to the following schedule:

1. The Commission appoints Chairperson Cindy Padilla to serve as Hearing Officer for the **Prehearing Conference** and **Hearing** in this matter.

2. On March 30, 2007, from 9:00 a.m. to 3:00 p.m., the Hearing Officer shall hold a **Prehearing Conference** in the NMED 4th Floor Conference Room #4053, 1190 St. Francis Drive, Harold Runnels Building, Santa Fe, New Mexico. A party may request the Commission's Administrator to arrange for telephonic appearance, if possible.

3. Five business days before the **Prehearing Conference,** on March 23, 2007, each party shall submit to the Hearing Officer and serve on each party by facsimile (with

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hard copy following) or electronic mail (with hard copy following) a list of proposed criteria for "determining the place of withdrawal of water for present and foreseeable use."

4.. The scope of the **Prehearing Conference** shall be limited to: (a) oral presentation of the lists; (b) a comparison of the lists; (c) discussion of whether the parties can stipulate to any of the criteria on the lists; and (d) any other pre-hearing scheduling matters. The Hearing Officer does not have the authority to make a ruling on items in dispute.

5. On or before April 27, 2007, the Administrator, in coordination with the Department, shall prepare a Notice of Hearing in accordance with the Commission's Adjudicatory Rules, 20.1.3(B)(2) NMAC.

6. On or before May 12, 2007, the Administrator, in coordination with the Department, shall publish and serve a Notice of Hearing in accordance with the Commission's Adjudicatory Rules, 20.1.3(C)(2) NMAC.

7. On or before May 23, 2007, the parties shall file their statements of intent in accordance with Section 20.1.3.200(F) NMAC.

8. On or before May 23, 2007, the parties shall exchange all the exhibits they intend to offer into evidence at the hearing.

9. A hearing will be held on June 12, 2007, commencing at 9:00 a.m., and continuing through June 15, 2007, as necessary. The location shall be the New Mexico State Capitol Building, Room 317, in Santa Fe.

10. The scope of the **Hearing** will be limited to: (a) presentation of lists, including both those agreed up and in dispute; and (b) issues remanded back from the

Court of Appeals in *Phelps Dodge Tyrone, Inc. v. New Mexico Water Quality Control Commission and New Mexico Environment Department* (No.25,027).

11. The order of presentation of witnesses during the hearing shall be as follows:

a. Phelps Dodge Tyrone, Inc. shall present direct testimony of its witnesses, followed by cross-examination;

b. The New Mexico Environment Department ("Environment Department") shall present direct testimony of its witnesses, followed by cross-examination;

c. The Gila Resources Information Project shall present any rebuttal witnesses, followed by cross-examination;

d. Phelps Dodge Tyrone, Inc. shall present any rebuttal witnesses, followed by cross-examination;

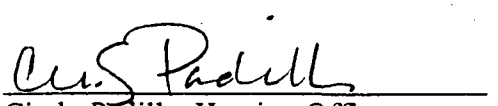
e. The Environment Department shall present any rebuttal witnesses, followed by cross-examination;

f. The Gila Resources Information Project shall present any rebuttal witnesses, followed by cross-examination.

g. Public comment will be allowed pursuant to Rule.

12. The Hearing Officer may enter a Post-Hearing Scheduling Order after the hearing, providing a schedule for oral closing arguments, and a schedule and page limits for written closing arguments and proposed findings of fact and conclusions of law.

IT IS SO ORDERED this 6th day of March, 2007.



Cindy Padilla, Hearing Officer

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CERTIFICATE OF SERVICE

I hereby certify that true and correct copies of Petitioners' Unopposed Motion For Extension Of Time To File Petitioners' Opening Brief in the above-captioned proceeding has been served on the following parties by U.S. Mail, first class this 20th day of April 2007:

Charles Mullins
Office of the General Counsel
U.S. Nuclear Regulatory Commission
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Katheryn E. Kovacs
United States Department of Justice
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By: Sarah Piltch