

**UNITED STATES COURT OF APPEALS FOR THE 10<sup>th</sup> CIRCUIT**

**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,**

**Hydro Resources, Inc.,**

**Intervenor.**

**Case File  
No. 07-9505**

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

Pursuant to Federal Rules of Appellate Procedure 27 and Local Rule 27.4, 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 eight days from June 6, 2007, or until June 14, 2007, in which to file their opening brief. While Petitioners have endeavored to complete their opening brief within the time allotted by the Court's briefing schedule, it has

become clear that due to the complexity of the case and the size of the record, it is not reasonably possible to complete the briefing by June 6.

The Nuclear Regulatory Commission ("NRC"), United States Department of Justice ("DOJ") and Intervenor Hydro Resources, Inc. ("HRI") do not oppose Petitioners' request.

### FACTUAL BACKGROUND

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, Petitioners' brief was originally due on May 7, 40 days after the certified index of the record was filed. Petitioners requested an extension of 45 days to file their opening brief on April 20, 2007. By order dated April 25, 2007 the Clerk of the Court partially granted Petitioners' motion, limiting the extension to 30 days. Petitioners' opening brief is currently due on June 6, 2007.

### DISCUSSION

Despite Petitioners' exercise of due diligence and giving priority to preparing the brief, it is not reasonably possible for Petitioners to file the opening brief by June 6, 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.

Petitioners respectfully submit that due to the size of the record and the complexity of this case, it is not reasonably possible to prepare an adequate opening brief within the period of time permitted by the Court's schedule. *See* Local Rule 27.4. The size of the record stems in large part from the extremely long duration of the administrative proceeding below, which stretched over a period of almost 20 years.<sup>1</sup> In addition, due to the size of the application, the amount of correspondence regarding the application, and the significant number of issues that were briefed in the administrative proceeding, the record of the administrative proceeding is very large, comprising many thousands of pages. Finally, much of the record consists of technical documents and testimony on such complex issues as aquifer hydrogeology, geochemistry, hydrology, and regulatory dose limits for airborne radiation. These issues require particularly careful review in the course of briefing this case. Given the size and technical nature of the record, an extension is warranted in order to allow the

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<sup>1</sup> HRI applied for a source and byproduct materials license on April 13, 1988; Petitioners submitted a hearing request to the NRC in December 1994 and amended it in 1997 after the NRC issued the Final Environmental Impact Statement; the hearing request was granted in 1998; and briefing of Petitioners' concerns in the NRC's adjudicatory proceeding took place between 1999 and 2006.

Petitioners sufficient time to review the record and distill the legal and factual issues briefed in a concise opening brief.

II. The Requested Extension is Within the 45 Days Originally Requested by Petitioners.

Although Petitioners now seek a second extension of time in which to file their opening brief, the additional time requested is within the 45 day extension period initially sought by Petitioners. Thus, Petitioners have not underestimated the amount of time needed to file their opening brief, but simply request a portion of the extension sought in their original motion. Indeed, Petitioners intend to file their opening brief in less time than originally requested.

CONCLUSION

For the reasons outlined above, Petitioners respectfully request an eight-day extension of time in which to file their opening brief, until June 14, 2007.

Dated: May 30, 2007

Respectfully submitted,



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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 30th day of May 2007:

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