IN THE UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

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

UNOPPOSED MOTION FOR EXTENSION OF TIME
TO FILE 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 an extension of time to file the Federal Respondents' Brief in this case. Petitioners filed their corrected Opening Brief on July 3, 2007; thus, the Federal Respondents' Brief is currently due on August 6, 2007. The Federal Respondents respectfully request a 45-day extension of time to and including September 20, 2007, in which to file their brief. This is the Federal Respondents' first motion for an extension of time. 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 very recently. He must become familiar with the extensive record in this case and develop a response to the Petitioners' arguments within the briefing period.

2. 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. In addition, both the DOJ attorneys assigned to this case, John Arbab and Kathryn Kovacs, who have entered appearances in this case, have previously scheduled vacations for the period of August 11-18, 2007, and July 7-25, 2007, respectively. Their absence will significantly impact the DOJ's ability to review the NRC's brief.

3. Mr. Mullins is also lead counsel for the NRC in two additional cases being briefed this summer, *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 6, 2007; and *New Jersey Department of Environmental Protection v. U.S. Nuclear Regulatory Commission*, No. 07-1721 (3d Cir.), with Respondent's Brief currently due August 31, 2007. In both cases, Mr. Mullins is the only attorney assigned to the case in this Office, under the supervision of the NRC Solicitor.

4. 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 this summer. Preparation of multiple briefs within this short period of time will be extremely difficult and requires flexibility in scheduling the filing of briefs.

5. 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.

6. Petitioners sought, and were granted, two extensions of time which totaled 45 days to file their Opening Brief. We consented to the granting of those requests. The government seeks only equal time to prepare and file its brief.

7. Respondents just 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. The Respondents will need additional time to research these issues and determine whether to file an opposition to the Motion for Leave.

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 45 days, from August 6, 2007, to and including September 20, 2007, in which to file their brief in this case.

Respectfully submitted,

CHARLES E. MULLINS
Senior Attorney
Office of the General Counsel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555
(301) 415-1618

JOHN ARBAB
Attorney
Environment & Natural Resources Division
Appellate Section
U.S. Department of Justice
P.O. Box 23795- L'Enfant Plaza Station
Washington, D.C. 20026
(202) 514-4046

Dated: June 29, 2007.