

No. 05-1419

Consolidated with 05-1420, 06-1087

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UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

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OHNGO GAUDADEH DEVIA,  
Petitioner

v.

NUCLEAR REGULATORY COMMISSION and  
UNITED STATES OF AMERICA,  
Respondents

PRIVATE FUEL STORAGE, L.L.C. and  
SKULL VALLEY BAND OF GOSHUTE INDIANS,  
Intervenors

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On Petitions for Review of Orders and a License of the  
Nuclear Regulatory Commission

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7<sup>TH</sup> REPORT ON STATUS OF ACTION FILED TO CHALLENGE

DECISIONS OF THE DEPARTMENT OF THE INTERIOR

DENYING APPROVAL OF LEASE AND RIGHT-OF-WAY

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## **BACKGROUND**

This Court's Order of June 26, 2007 requires the parties, including the Intervenor Skull Valley Band of Goshute Indians ("the Band") and Private Fuel Storage, L.L.C. ("PFS"), to file a report within 120 days from the date of the Order, and every 120 days thereafter, on the status of any action challenging the Department of Interior's denial of either the lease between the Band and PFS or the requested right-of-way across public land regarding the facility at issue in this case. The first such report was filed on October 24, 2007, reporting that the Band and PFS filed suit on July 17, 2007, in the U.S. District Court for the District of Utah ("Utah District Court") against officials of the U.S. Department of the Interior, challenging the two adverse Interior decisions of September 7, 2006. Skull Valley Band, et al. v. Cason, et al., No. 2:07-cv-526 TC (hereinafter, the "Utah action").

A second status report was filed February 21, 2008. It reported *inter alia* that the administrative record for the Utah action had been filed and served on February 1 and February 8, 2008 and that a schedule had been established for the plaintiffs to file any discovery requests and/or a motion to supplement the administrative record by February 29, 2008.

A third status report was filed June 20, 2008. It reported *inter alia* that plaintiffs in the Utah action (the Band and PFS) on March 11, 2008, filed a motion to permit the introduction of certain extra-record evidence and also served on the defendants written interrogatories and requests for admissions. It also reported that on April 1, 2008, the defendants filed a motion requesting the entry of a protective order with respect to plaintiffs' discovery requests.

A fourth status report was filed October 20, 2008. It reported *inter alia* that a new judge, Senior Circuit Judge David M. Ebel, was appointed to preside over the Utah action, and that on September 22, 2008, Judge Ebel issued an order scheduling a hearing for December 2, 2008, on the plaintiffs' motion to permit the introduction of certain extra-record evidence and on the defendants' motion requesting the entry of a protective order with respect to the plaintiffs' discovery requests.

A fifth status report was filed February 17, 2009. It reported *inter alia* that Senior Circuit Judge David M. Ebel heard oral argument in Salt Lake City on December 2, 2008, on the plaintiffs' motion to permit the introduction of certain extra-record evidence and on the defendants' motion

requesting the entry of a protective order with respect to the plaintiffs' discovery requests.

A sixth status report was filed June 17, 2009. It reported *inter alia* that Judge Ebel entered an Order and Opinion, dated March 2, 2009, granting in part and denying in part plaintiffs' motion to permit the introduction of certain extra-record evidence, and granting in part and denying in part the defendants' motion for a protective order. He further established schedules for the defendants to respond to that portion of plaintiffs' discovery requests permitted by the court and for briefing the merits. Pursuant to those schedules, the defendants served plaintiffs with responses to their discovery requests on March 30, 2009 and plaintiffs filed their opening brief on the merits on June 1, 2009.

Pursuant to this Court's Order of June 26, 2007, Intervenors now file the following 7<sup>th</sup> Report on behalf of the parties . The other parties, the State of Utah, Ohngo Gaudadeh Devia, the Nuclear Regulatory Commission, and the United States of America, join in this report.

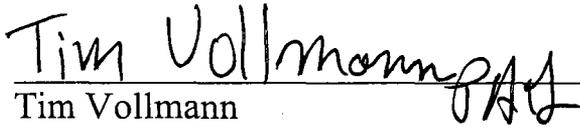
### **SEVENTH STATUS REPORT**

Since the 6<sup>th</sup> Report, on June 17, 2009, defendants filed their response brief on the merits on August 7, 2009. Defendants also filed a motion to

strike two exhibits attached to plaintiffs' opening brief. Plaintiffs responded to defendants' motion to strike on August 21, 2009, and defendants filed their reply in support of their motion to strike on September 2, 2009. Plaintiffs filed their reply brief on the merits on September 9, 2009.

No further action on the case has occurred. The parties anticipate that Judge Ebel will set oral argument for sometime this fall. He has not yet ruled on defendants' motion to strike.

Respectfully submitted,

  
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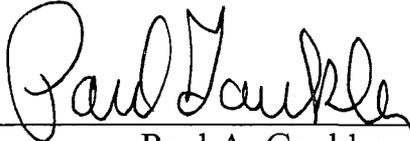
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Dated: October 15, 2009

  
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