

JUN 17 2009

No. 05-1419

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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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6<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 Intervenors 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..

Pursuant to this Court's Order of June 26, 2007, Intervenors now file the following 6<sup>th</sup> Report on behalf of the parties, in which the State of Utah, the Nuclear Regulatory Commission, and the United States of America join.<sup>1</sup>

### **SIXTH STATUS REPORT**

Since the 5<sup>th</sup> Report, on February 17, 2009, Judge Ebel entered an Order and Opinion, dated March 2, 2009, regarding the two pending motions. He granted in part and denied in part plaintiffs' motion to permit the introduction of certain extra-record evidence, and granted in part and denied in part the defendants' motion for a protective order. He further ordered the defendants to respond within 30 days to that portion of plaintiffs' discovery requests permitted by the court. Judge Ebel also set a schedule for briefing the merits; he directed plaintiffs to file their brief within 60 days of being served with the defendants' responses to plaintiffs' discovery requests, directed the defendants to file their response brief within 60 days of being served with plaintiffs' brief, and allowed plaintiffs to file a

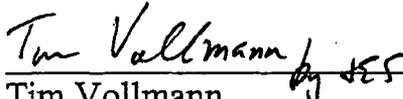
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<sup>1</sup> Counsel for Intervenors was unable to reach counsel for Ohngo Gaudadeh Devia ("OGD") to confirm whether OGD joins in this report.

reply brief within 30 days of being served with the defendants' response  
brief.

The defendants served plaintiffs with responses to their discovery  
requests on March 30, 2009. Plaintiffs filed their opening brief on the merits  
on June 1, 2009. Accordingly, the defendants' response brief is due by July  
31, 2009. No further action on the case has occurred.

Respectfully submitted,

  
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**UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

OHNGO GAUDADEH DEVIA, et al.,	)	
Petitioners,	)	
	)	
v.	)	No. 05-1419, 05-1420
	)	06-1087
UNITED STATES NUCLEAR	)	(consolidated)
REGULATORY COMMISSION and the	)	
	)	
UNITED STATES OF AMERICA,	)	
Respondents.	)	
	)	

**CERTIFICATE OF SERVICE**

I hereby certify that true copies of the foregoing “6<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” were served upon the following by United States mail, first class, postage prepaid, on the 17<sup>th</sup> day of June 2009:

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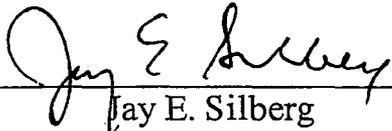
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