

No. 05-1419

Consolidated with 05-1420, 06-1087

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

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

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

9TH REPORT ON STATUS OF ACTION FILED TO CHALLENGE

DECISIONS OF THE DEPARTMENT OF THE INTERIOR

DENYING APPROVAL OF LEASE AND RIGHT-OF-WAY

TIM VOLLMANN
3301-R Coors Rd. NW #302
Albuquerque, NM 87120
Attorney for Skull Valley Band
of Goshute Indians

JAY E. SILBERG
PAUL A. GAUKLER
PILLSBURY WINTHROP SHAW
PITTMAN LLP
2300 N Street, N.W.
Washington, DC 20037
Attorneys for Private Fuel Storage

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.

A seventh status report was filed October 15, 2009. It reported *inter alia* that on August 7, 2009 defendants filed their response brief on the merits and 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.

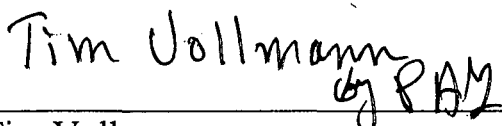
An eighth status report was filed February 12, 2010. It reported that Judge Ebel issued on January 29, 2010 a Notice of Hearing for March 22, 2010 on the merits and on defendants' motion to strike.

Pursuant to this Court's Order of June 26, 2007, Intervenors now file the following 9th 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.


NINTH STATUS REPORT

Since the 8th Report of February 12, 2010, the case has been submitted on the merits. On March 22, 2010, Judge Ebel heard oral argument in Salt Lake City, and on April 27, 2010, supplemental briefs were filed by the plaintiffs and the defendants. No further action on the case has occurred and the case is awaiting decision by the court on the merits.

Respectfully submitted,



Tim Vollmann
Attorney for Skull Valley Band of
Goshute Indians



Jay E. Silberg
Paul A. Gaukler
Pillsbury Winthrop Shaw Pittman LLP
Attorneys for Private Fuel
Storage, L.L.C.

**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 “9th 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 14th day of June 2010:

John F. Cordes, Jr., Esq.
Solicitor, Office of the General
Counsel
U.S. Nuclear Regulatory
Commission
Washington, DC 20555-0001

Attorney General of the United States
U.S. Department of Justice
950 Pennsylvania Avenue
Washington, DC 20530

Office of the Secretary
U.S. Nuclear Regulatory
Commission
Washington, DC 20555-0001

Tim Vollmann, Esq.
Skull Valley Band of Goshute Indians
3301-R Coors Road, N.W.
Suite 302
Albuquerque, NM 87120

Paul EchoHawk, Esq.
EchoHawk Law Offices
151 North 4th Avenue, Suite A
P.O. Box 6119
Pocatello, ID 83205-6119

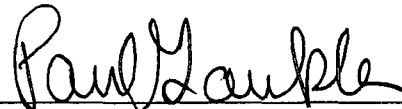
Roy T. Englert, Jr.
Robbins, Russell, Englert, Orseck &
Untereiner, LLP
1801 K Street, N.W., Suite 411
Washington, DC 20006

Martin G. Malsch
Attorney for Appellants
Egan, Fitzpatrick, Malsch & Cynkar,
PLLC
8300 Boone Boulevard, Suite 340
Vienna, VA 22182

Mark L. Shurtleff, Attorney General
Denise Chancellor, Asst. Attorney General
Fred G. Nelson, Asst. Attorney General
James R. Soper, Asst. Attorney General
Connie Nakahara, Special Asst. Attorney
General
Attorneys for the State of Utah
Utah Attorney General's Office
160 East 300 South, 5th Floor
P.O. Box 140873
Salt Lake City, UT 84114-0873

Michael A. Bauser
Nuclear Energy Institute
1776 I Street, N.W., Suite 400
Washington, DC 20006-3708
Amici Curiae

Dated: June 14, 2010


Paul A. Gaukler