

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

JOINT MOTION OF PETITIONERS, RESPONDENTS, AND
INTERVENORS TO CONTINUE TO HOLD CASE IN ABEYANCE AND
TO RESET SCHEDULE FOR STATUS REPORTS

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BACKGROUND

This Court's Order of June 26, 2007 requires the parties, including Petitioners the State of Utah and Ohngo Gaudadeh Devia and Intervenors Skull Valley Band of Goshute Indians ("the Band") and Private Fuel Storage, L.L.C. ("PFS"), to file motions to govern future proceedings in this case within 30 days of the disposition of any action challenging either the denial of lease approval by the Bureau of Indian Affairs or the denial of a right-of-way by the Bureau of Land Management. On July 26, 2010, the United States District Court for the District of Utah disposed of an action challenging both the lease denial and the right-of-way denial. *Skull Valley Band of Goshute Indians v. Davis*, ---- F.Supp.2d ----, 2010 WL 2990781 (D. Utah July 26, 2010). The court vacated both denials and remanded the right-of-way application and the lease to the United States Department of the Interior for further consideration consistent with the court's decision.

Because the Utah district court vacated and remanded, without directing the agency on remand either to grant or to deny the applications, the status of PFS's project remains subject to administrative uncertainty not within the control of this Court. In addition, the time for the Department of the Interior to appeal the decision has not yet run, and the Department of the

Interior and the Department of Justice are currently considering whether to appeal. This Court found this case unripe and decided to hold it in abeyance on the ground that, at the time, it was "speculative whether the project will ever be able to proceed." See *Ohngo Gaudadeh Devia v. NRC*, 492 F.3d 421, 422 (D.C. Cir. 2007). Because, as discussed above, this remains the case even after the Utah district court's decision, all Petitioners, Respondents, and Intervenors agree that this case should remain in abeyance at the present time. The Band, PFS, Petitioner the State of Utah, Petitioner Ohngo Gaudadeh Devia, Respondent the Nuclear Regulatory Commission, and Respondent the United States of America all join in this Motion.

Petitioners, Respondents, and Intervenors may or may not ultimately agree on what event, if any, should trigger this Court's review and cause this case no longer to be held in abeyance. Should they disagree, they will put the issue before this Court by one or more appropriate motions and responses. For now, however, there is no disagreement, and all parties agree that this matter should remain in abeyance.

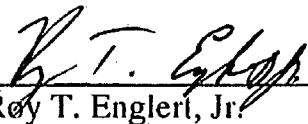
This Court's Order of June 26, 2007 also directed the parties to issue a report within 120 days from the date of the Order, and every 120 days thereafter, on the status of any action challenging the Department of

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; the second on February 21, 2008; the third on June 20, 2008; the fourth on October 20, 2008; the fifth on February 17, 2009; the sixth on June 17, 2009; the seventh on October 15, 2009; the eighth on February 12, 2010; and the ninth and most recent on June 14, 2010. Each reported on the status of the lawsuit in Utah federal district court that has now culminated in the remand to the Department of the Interior. Because this Motion has the effect of reporting on the disposition of that lawsuit, the parties respectfully submit that the due dates of further status reports should occur at 120-day intervals (or such longer intervals of time as the Court may set) from the date of this Motion, thus making the tenth status report due Thursday, December 23, 2010. If further events or actions by the Department of the Interior or by any court make it appropriate (in the view of any party) to seek action by this Court, the parties will proceed by appropriate motions and (if necessary) responses.

CONCLUSION

The Court should enter an Order (1) holding this case in abeyance until further Order of the Court and (2) directing the parties to file status reports on December 23, 2010, and every 120 days (or such longer intervals of time as the Court may set) thereafter until this case is no longer held in abeyance.

Respectfully submitted,



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

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Petitioners,)	
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v.)	No. 05-1419, 05-1420
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UNITED STATES NUCLEAR)	(consolidated)
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UNITED STATES OF AMERICA,)	
Respondents.)	

CERTIFICATE OF SERVICE

I hereby certify that true copies of the foregoing "JOINT MOTION OF PETITIONERS, RESPONDENTS, AND INTERVENORS TO CONTINUE TO HOLD CASE IN ABEYANCE AND TO RESET SCHEDULE FOR STATUS REPORTS" was served upon the following by United States mail, first class, postage prepaid, on the 25th day of August 2010:

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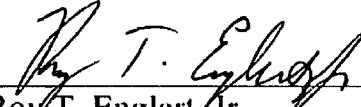
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Dated: August 25, 2010



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