

No. 21-60743

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**In the United States Court of Appeals  
for the Fifth Circuit**

STATE OF TEXAS; GREG ABBOTT, GOVERNOR OF THE STATE OF  
TEXAS; TEXAS COMMISSION ON ENVIRONMENTAL QUALITY;  
FASKEN LAND AND MINERALS, LIMITED; PERMIAN BASIN LAND AND  
ROYALTY OWNERS,  
*Petitioners,*

v.

NUCLEAR REGULATORY COMMISSION; UNITED STATES OF  
AMERICA,  
*Respondents.*

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On Petition for Review of Action by the  
Nuclear Regulatory Commission

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**JOINT UNOPPOSED MOTION TO EXTEND  
TIME TO FILE OPENING BRIEFS**

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In accordance with Federal Rule of Appellate Procedure 27 and Fifth Circuit Rule 31.4, State Petitioners Greg Abbott, Governor of the State of Texas, the Texas Commission on Environmental Quality, and the State of Texas file this motion to extend time to file their opening brief on the merits. Petitioners Fasken Land and Minerals, Limited, and Permian Basin Land and Royalty Owners (“Fasken Petitioners”) join in this motion such that their opening brief deadline will be consistent with

the briefing deadline for State Petitioners. Respondents Nuclear Regulatory Commission and the United States are unopposed to this motion, as is Intervenor Interim Storage Partners, LLC.

1. This is a complex appeal of an agency determination that will require significant review of the underlying administrative record and comprehensive briefing on the merits.

2. On September 23, 2021, State Petitioners filed their petition for review of the order entered by the U.S. Nuclear Regulatory Commission in Docket No. 72-1050 on September 13, 2021: *Interim Storage Partners, LLC; WCS Consolidated Interim Storage Facility; Issuance of Materials License and Record of Decision*, 86 Fed. Reg. 51,926 (Sept. 17, 2021) (issuing Materials License No. SNM-2515).

3. Respondents filed a motion to dismiss the petition for review for lack of jurisdiction, to which State Petitioners responded. On November 19, the Court carried the motion with the case and entered a briefing schedule. Under that schedule, State Petitioners' opening brief is currently due on December 29, 2021.

4. State Petitioners respectfully seek a 40-day extension of time to file their opening brief. The requested 40-day extension of time is necessary because of undersigned counsel's obligations on multiple matters that have prevented and will prevent counsel from drafting an opening brief that is thorough and helpful to the Court, including:

- drafting Appellant's motion for stay pending appeal and reply in support of the stay pending appeal in *E. T. v. Paxton*, No. 21-51083 (5th Cir.) (filed on November 23 and November 26, 2021);

- drafting Appellant’s reply brief in *Amawi v. Paxton*, No. 21-50360 (5th Cir.) (filed on November 29, 2021);
- drafting Appellants’ response to a motion to dismiss filed in *Gutierrez v. Saenz*, No. 21-70006 (5th Cir.) (due on December 13, 2021);
- drafting a petition for review in the Texas Supreme Court arising from *Abbott v. City of San Antonio*, No. 04-21-342-CV (Fourth Court of Appeals) (due on December 27, 2021); and
- drafting the State of Texas’s brief on the merits in *Ysleta del Sur Pueblo v. State of Texas*, No. 20-493 (Supreme Court of the United States) (due on January 10, 2022).

5. In addition to these conflicts, the upcoming holidays and the closure of the Office of the Solicitor General during the holidays will make it difficult to finalize and file State Petitioners’ brief within the current deadlines.

6. This extension is sought in the interest of justice, not for delay, and no party will be prejudiced if this unopposed request for an extension is granted.

7. Separately, Fasken Petitioners filed a petition for review on November 12, 2021, which also challenged the Nuclear Regulatory Commission’s order issuing Materials License No. SNM-2515. This Court has since consolidated the petitions for review under one cause number. Fasken Petitioners’ opening brief is due on December 28, 2021.

8. Fasken Petitioners join in this motion to extend time so that the parties will proceed on a uniform briefing schedule, which will serve the interests of judicial economy and preserve the resources of the Court and the parties.

For the foregoing reasons, State Petitioners and Fasken Petitioners jointly respectfully request that the deadlines to file their opening briefs be extended to Monday, February 7, 2022.

## CONCLUSION

Petitioners' deadlines to file their opening briefs should be extended to Monday, February 7, 2022.

Respectfully submitted.

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**CERTIFICATE OF CONFERENCE**

On December 2, 2021, the parties conferred regarding this motion, and counsel for Federal Respondents and Intervenor are unopposed to the relief requested.

/s/ Michael R. Abrams  
MICHAEL R. ABRAMS

**CERTIFICATE OF SERVICE**

On December 6, 2021, this response was served via CM/ECF on all registered counsel and transmitted to the Clerk of the Court. Counsel further certifies that: (1) any required privacy redactions have been made in compliance with Fifth Circuit Rule 25.2.13; (2) the electronic submission is an exact copy of the paper document in compliance with Fifth Circuit Rule 25.2.1; and (3) the document has been scanned with the most recent version of Symantec Endpoint Protection and is free of viruses.

/s/ Michael R. Abrams  
MICHAEL R. ABRAMS

**CERTIFICATE OF COMPLIANCE**

This document complies with: (1) the type-volume limitation of Federal Rule of Appellate Procedure 27(d)(2)(A) because it contains 619 words, excluding exempted text; and (2) the typeface requirements of Rule 32(a)(5) and the type-style requirements of Rule 32(a)(6) because it has been prepared in a proportionally spaced typeface (14-point Equity) using Microsoft Word (the same program used to calculate the word count).

/s/ Michael R. Abrams  
MICHAEL R. ABRAMS