

No. 11-2141

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IN THE UNITED STATES COURT OF APPEALS  
FOR THE TENTH CIRCUIT

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LOS ALAMOS STUDY GROUP,  
*Plaintiff-Appellant,*

v.

UNITED STATES DEPARTMENT OF ENERGY;  
STEVEN CHU, in his official capacity as Secretary, Department of Energy;  
NATIONAL NUCLEAR SECURITY ADMINISTRATION;  
THOMAS PAUL D'AGOSTINO, in his official capacity as Administrator,  
National Nuclear Security Administration,  
*Defendants-Appellees.*

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On Appeal from the U.S. District Court  
for the District of New Mexico (Judith C. Herrera, J.)

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**FEDERAL DEFENDANTS-APPELLEES' UNOPPOSED MOTION FOR  
A 30-DAY EXTENSION OF TIME TO FILE ANSWERING BRIEF**

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Pursuant to Fed. R. App. P. 26(b) and 10th Cir. Local R. 27.4, United States Department of Energy, et al. (collectively “DOE”) respectfully move for an additional 30 days in which to file their Answering Brief, up to and including November 2, 2011. The Answering Brief is currently due on October 3, 2011. This is the first extension of time sought by the DOE on this appeal. The DOE has consulted with Counsel for Plaintiff-Appellant the Los Alamos Study Group, Dulcinea Hanuschak, and she does not oppose this motion for an extension of time. The reasons for this requested extension are set forth below.

Additional time to respond to the Opening Brief is needed because the lead counsel for the DOE, Robert P. Stockman, is also counsel in several other cases that have required and which continue to require his immediate attention. It will not be possible for Mr. Stockman to file the DOE’s Answering Brief by October 3, 2011, despite his exercise of due diligence to meet that deadline. Counsel’s pressing professional responsibilities and the reasons for granting this motion are as follows:

1. Mr. Stockman is the lead appellate counsel for the United States in *Oenga v. United States*, Fed. Cir. 2011-5074,-5077,-5078. In that case, the Court of Federal Claims entered a \$4,924,000.00 judgment for the Plaintiffs against the United States. Plaintiffs have appealed and Mr. Stockman is responsible for preparing a draft of the Environment and Natural Resources Division’s

memorandum to the Solicitor General recommending whether the United States should appeal. *See* 28 C.F.R. § 0.20(b). Mr. Stockman is also responsible for preparing the United States' Opening Brief, should the Solicitor General determine that the United States will appeal. In addition, the parties are currently involved in a very time-consuming mediation process. Mr. Stockman has now taken the lead in the mediation discussions, and Mr. Stockman has devoted, and will have to continue to devote, significant time to that process. The United States has filed one Joint Motion for an extension of time of the briefing schedule in that case to accommodate the mediation process. The United States plans to file second joint motion for an extension of time soon, but the United States does not know whether the Federal Circuit will grant that motion.

2. Mr. Stockman is the lead appellate counsel for the United States in *PAPCO, Inc. v. United States, et al*, W.D. Pa. 08-253. In that case, the district court granted summary judgment in a Quiet Title Act ("QTA") suit regarding the ownership of sandstone located within the Allegheny National Forest ("ANF") on August 30, 2011. A Notice of Appeal would currently be due on October 28, 2011. Mr. Stockman is responsible for preparing a draft of the Environment and Natural Resources Division's memorandum to the Solicitor General recommending whether the United States should appeal. *See* 28 C.F.R. § 0.20(b).

Mr. Stockman is also responsible for preparing the United States' Opening Brief, should the Solicitor General determine that the United States will appeal.

3. In addition, Mr. Stockman is also lead appellate counsel for the U.S. Forest Service and other Federal-Defendants (collectively "Forest Service") in *Minard Run Oil Co. v. U.S. Forest Service*, 3d Cir. 10-1265, and Mr. Stockman is providing assistance to lead counsel in the district court case in the Western District of Pennsylvania, 1:09-cv-00125. The district court has issued a preliminary injunction which enjoins the Forest Service from requiring the completion of environmental review under the National Environmental Policy Act ("NEPA") before permitting private oil and gas operators to drill within the ANF. *See* W.D. Penn. 1:09-cv-00125, Docket 42. One of the litigants in that suit has filed a motion to show cause why the U.S. Forest Service should not be held in contempt in the district court, and the Forest Service's response is currently due on September 25, 2011. The effects and meaning of the injunction are highly contentious, and new issues arise day-by-day as the Forest Service interacts with various operators.

4. Mr. Stockman is also providing substantial assistance to the lead counsel for the United States in *United States v. Mednansky*, 9th Cir. 11-55728. Mr. Stockman is taking the lead on drafting a motion to dismiss that appeal as moot because of recent changed circumstances on the ground. On September 12,

2011, counsel for the Mednansky filed a late Opening Brief in that appeal. As a result, the United States' Response Brief is currently due on October 11, 2011, and the late filing of the Opening Brief has made it difficult for Mr. Stockman to reduce the conflict between that duty and his other professional obligations. Moreover, the Plaintiffs have renewed their request for a stay of the district court's order pending appeal.

5. Mr. Stockman is also the lead appellate counsel for the federal defendants in *Wild Fish Conservancy v. Kenneth Salazar, et al.*, 9th Cir. 11-55728. The parties are currently involved in a time-consuming mediation process. Mr. Stockman has devoted, and will have to continue to devote, significant time to that process.

The requested extension will also help accommodate the review period required for approval of the DOE's Answering Brief by the relevant officials within the DOE and the Assistant Attorney General, Environment and Natural Resources Division, United States Department of Justice.

Finally, the Appellate Section of the Environment and Natural Resources Division is modest in size given its responsibilities to the various Courts of Appeals, the Division, and the Solicitor General's office. Two attorneys have recently departed the Section, one other is dealing with serious medical issues, and two are on paternity leave during this briefing period. Moreover, reassignment to a

new appellate attorney at this stage would only increase the need for an extension of time because that attorney would need time to learn the relevant facts and law.

For these reasons, the DOE respectfully requests that the Court grant the motion for an extension of time.

Respectfully submitted,

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September 16, 2010  
90-1-4-13225

## **CERTIFICATE OF DIGITAL SUBMISSIONS**

I submit that this motion has been submitted in PDF format to the Tenth Circuit's Electronic Case Filing System; that all required privacy redactions have been made; and that the digital submission has been scanned for viruses with the Microsoft Forefront Client Security 1.111.2389.0 program (last updated September 15, 2011) and, according to the program, the document is free of viruses.

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## CERTIFICATE OF SERVICE

Pursuant to Fed. R. App. P. 25(c) and Tenth Circuit Rule 25.3, I hereby certify that on this date, September 16, 2011, I caused the foregoing Motion to be filed upon the Court through the use of the Tenth Circuit CM/ECF electronic filing system, and thus also served counsel of record. The resulting service is consistent with the Service Method Report:

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