

1

2

3

4

## UNITED STATES NUCLEAR REGULATORY COMMISSION

5

## BRIEFING ON URANIUM RECOVERY PROGRAM ACTIVITIES, PART 2

6

+ + + + +

7

THURSDAY

8

December 11, 2008

9

+ + + + +

10 The Commission convened at 1:30 p.m., the Honorable Dale E. Klein, Chairman  
11 presiding.

12

13 NUCLEAR REGULATORY COMMISSION

14

DALE E. KLEIN, CHAIRMAN

15

GREGORY B. JACZKO, COMMISSIONER

16

PETER B. LYONS, COMMISSIONER

17

KRISTINE L. SVINICKI, COMMISSIONER

18

19

20

21

22

1 PANEL 1: STAKEHOLDERS

2 STEPHEN ETSITTY, Executive Director, Navajo Nation

3 Environmental Protection Agency

4 LAURA WATCHEMPINO, Haaku Water Office

5 PETUUCHE GILBERT, Realty Officer, Pueblo of Acoma Realty and

6 Natural Resources Office

7 DONALD McKENZIE, Administrator, Land Quality Division, Wyoming

8 Department of Environmental Quality

9 MILTON BLUEHOUSE, JR., Environmental Justice and Tribal

10 Liaison, New Mexico Environment Department

11

12 PANEL 2: STAKEHOLDERS

13 BENJAMIN HOUSE, President, Eastern Navajo Allottee Association

14 KATIE SWEENEY, General Counsel, National Mining Association

15 MICHELLE REHMANN, Uranium Program Manager, International

16 Forum on Sustainable Options for Uranium Production (IFSOU) / Tetra Tec

17 JEFFREY FETTUS, Senior Project Attorney, Natural Resources

18 Defense Council

19

20

21

22

1 P-R-O-C-E-E-D-I-N-G

2 CHAIRMAN KLEIN: Good afternoon. As we said this morning I  
3 think this is uranium day. And so, we thank you for being here. We will continue  
4 with our afternoon and Stephen I guess we start with you. We'll start and hear  
5 from the Navajo Nation.

6 MR. ETSITTY: Thank you, Mr. Chairman, members of the Nuclear  
7 Regulatory Commission. On behalf of President Joe Shirley, Jr. and Vice  
8 President Ben Shelley from the Navajo Nation I want to express our gratitude for  
9 the opportunity to be a part of this meeting and for the opportunities to comment  
10 through the scoping process on the draft GEIS and the proposed draft GEIS as  
11 well.

12 My remarks are not going to stray very far from what we've already  
13 submitted in these formal comment processes and I look forward to the question  
14 and answer to provide you with maybe a little bit more information about our  
15 perspectives on the matter. So, I've prepared a few slides.

16 The Navajo Nation -- if you can start the slide presentation -- the Navajo  
17 Nation has the largest land base of all Federally recognized Indian Tribes. It's  
18 27,000 square miles or over 17 million acres.

19 The legacy of past mining has allowed us to characterize a lot of our current  
20 problems and we've been able to identify six primary regions where we have  
21 abandoned uranium mines.

22 This graphic that I have displayed up here is to give you a sense of the

1 scale of our challenges in dealing with the legacy issues. And that is where we  
2 start when we start taking a look at the prospects for renewed uranium recovery.  
3 We still have a lot of work.

4 We've got now 520 identified and some initial characterization work for  
5 abandoned uranium mines. That's down from earlier figures of over 1,300. We've  
6 been able to work with Federal agencies to address some of the sites, but we still  
7 have a long way to go.

8 One of the things that we've done also is to identify each of these  
9 abandoned uranium mines and provide through GEIS the mapping tool the  
10 provision of buffers around these sites of varying diameter: 1 mile, 4-mile, 15-mile  
11 radius.

12 If you were to simply take a 1-mile radius around each identified abandoned  
13 uranium mine that would equate to 520 sites and you take the 1-mile radius that  
14 equates to about 1 million acres. We're talking about this land that has not been  
15 addressed with complete remediation. And so, the land is not reusable. It's in a  
16 state that it's not useful and poses real risks to the environmental conditions on the  
17 land and to the people that live near these sites in some cases.

18 So, when you talk about the Navajo Nation being a large Tribe you take into  
19 account that we still have all of these sites; you look at the situation where a lot of  
20 this land, over 1 million acres conservatively speaking, simply out of use because  
21 it's too contaminated. It's almost like a taking. It hasn't been rectified yet.

22 And the experience that Dine' has expands almost 100 years with uranium,

1 vanadium and radium recovery within our four sacred mountains. And the results  
2 are still in front of us in terms of these problems with the legacy contamination of  
3 our resources and longstanding questions about the impact of long-term exposure  
4 and the risks to public health.

5 We're still searching for a lot of answers. And again, that is the context in  
6 which we approach all these matters now that we're talking about today, uranium  
7 recovery.

8 We also have developed our own capacity to be able to understand these  
9 situations. I'm the head of the Navajo Environmental Protection Agency. I have a  
10 staff of about 70 full-time employees. We're one of the largest environmental  
11 protection programs. We have a strong regulatory mission.

12 We're developing the ability to assume Federally delegated programs in the  
13 same manner that states have received from U.S. EPA. We have a drinking water  
14 program. We're the only Indian Tribe that has a primacy for the Safe Drinking  
15 Water Act for a drinking water program. And we just recently received primacy for  
16 an underground injection control program, which is primarily oriented and directed  
17 towards regulating oil and gas production on the Nation.

18 We're keenly aware of what we might need to develop in the area of Class  
19 3 capacity for dealing with injection or ISL or ISR technologies.

20 We're still at a point where we need to continue to develop our capacity to  
21 deal not only with being able to characterize these environmental conditions and to  
22 begin formulating adequate responses and fixing and cleaning up these areas, but

1 we're still at the ground level stages of being able to handle and deal with the  
2 nexus between contaminated lands and the exposure to people.

3 We still lack a lot of information when it comes to the health impacts of  
4 these types of exposures and risks. I think it was mentioned earlier, all of these  
5 situations and these contexts have led us to enact a law, which I think gives us  
6 time to continue to amass capability and examine and acquire more data to bring  
7 to bear on the issues and that's why we now have prohibited uranium mining and  
8 processing within the Navajo Nation. That is still the official position of the Nation.  
9 We've expressed that in our comments.

10 It was mentioned earlier also that another front that is happening is that the  
11 five Federal agencies that joined us in front of the Oversight and Government  
12 Reform Committee last fall have developed action plans. We feel that it's a good  
13 start. It's a five-year scope and we're concerned that the investments are  
14 inadequate at this point and time.

15 We're looking forward to NRC and the other four agencies doing a better  
16 job of putting forth a real concerted effort to help us with the legacy issues and  
17 getting us set to deal with the future.

18 The last thing I'd like to say about some of the comments that were made  
19 by the staff of NRC is that there have been recent developments where we've had  
20 meetings in Window Rock in our home Tribal capital and  
21 government-to-government relationships have been initiated.

22 It would have been nice to have had those a long time ago before decisions

1 were made on closing mines, such as the North East Church Rock mine site.

2 There's a lot of information that we need to share about simply issues like land  
3 status. Who has appropriate jurisdiction to deal with the issues?

4 I think it's time for us to really sit down and have the NRC Commissioners  
5 and career staff understand what the Navajo Nation is capable of doing for itself in  
6 terms of environmental protection and putting into place appropriate regulations,  
7 whether they be Federal regulations such as you were talking about earlier today,  
8 groundwater protection regulations or our own regulations, where we oftentimes  
9 have the ability to put in place stricter or more stringent regulatory structures than  
10 EPA.

11 As a sovereign entity we do have that right. We can either work within the  
12 Federal framework of Federal delegations or we can institute our own Tribal law  
13 and exercise our sovereignty in implementing our own Tribal law. I think that is  
14 important for the NRC to continue to come to Window Rock and continue to have  
15 meetings with not only Navajo Nation, but other Indian Tribes in the Southwest  
16 and in the Grants Uranium Belt Region that have better capability now to look at  
17 things from the technical perspectives, as well as understanding our cultural  
18 perspectives on the way we use our land, the way we find our land now what we  
19 try to do to restore and gain back an ability to use our lands as we see fit.

20 I would like to make myself available to answer your questions and then I'd  
21 like to yield to my counterparts from Acoma Pueblo.

22 CHAIRMAN KLEIN: Thank you very much. Laura?

1 MS. WATCHEMPINO: My name is Laura Watchempino and I'm  
2 Water Quality Specialist with the Haaku Water Office at Acoma, New Mexico. I  
3 thank you for the opportunity to bring our concerns to the table today.

4 I wanted to assist you with understanding the cultural divide that exists  
5 today and being able to look at the Tribal side, the Tribal view of something like  
6 uranium development in the Grants Mineral District.

7 We did enact a Tribal Council Resolution in protection of our sacred Mount  
8 Taylor to the north. All this uranium activity is scheduled to take place around the  
9 base of this mountain, whether it's to the West in the Ambrosia Lake area or to the  
10 east in other canyon areas. I don't know if they have my slides ready.

11 The first one is a resolution that was passed by the All Indian Pueblo  
12 Council in 2007. This resolution represents a consensus of the 19 Pueblos of New  
13 Mexico in defense of this sacred mountain.

14 We have unwritten laws in New Mexico, unwritten Tribal laws that strive to  
15 place our communities in harmony with the natural elements, with nature, with our  
16 surroundings. And because they're not written laws or essentially unwritten, it's  
17 hard sometimes to explain to the rest of the world that we try to live in harmony  
18 with the seasons, the times of the year.

19 And even the idea that I heard earlier this morning about the possibility that  
20 uranium mining could happen through all hours of the day and night and all  
21 seasons of the year is pretty alarming to me.

22 I think that if you really want to understand a little better you are going to



1 have to come to our home communities. You are going to have to sit down with  
2 our Tribal governments. At Acoma, you would sit down with the Tribal Council and  
3 I do invite you to come and meet with them. I believe we're trying to schedule a  
4 meeting for next year, early next year.

5 The Pueblo of Acoma has also written laws. We have the water quality --  
6 Pueblo of Acoma water quality standards that were originally enacted in 1998 and  
7 revised again in 2005. We are also concerned with other Federal laws like the  
8 1872 Mining Law that essentially opens up public lands for just about any purpose  
9 even if it is in conflict with the watersheds and the other areas surrounding our  
10 sacred mountain.

11 We are very concerned about the lack of background data in the area  
12 around Ambrosia Lake between the old uranium mining mills at Ambrosia Lake at  
13 Anaconda and that whole region needs to be characterized. It needs a  
14 groundwater characterization and I was pretty distressed to hear that there may  
15 not be funds to do that.

16 We need an updated groundwater model for the region. These are things  
17 that cost money, but in the absence of this basic information I don't think it would  
18 be very responsible to allow any new mining, especially any ISL recovery or a  
19 conventional mine or mill because of the lack of data.

20 Despite the fact that these sites have been around for 40 years and that  
21 cleanup is still continuing at the Homestake Superfund site it's not time to look at a  
22 new round of uranium development in this region.

1 I have a few photos, also, of the mountain so that you can see firsthand for  
2 those of you that haven't been to Acoma. I just wanted you to see the mountain. I  
3 think seeing it would help you to understand the importance of this geologic  
4 feature in our part of the country. It is so important to the watersheds that  
5 emanate from that mountain and you might even see a creek flowing in the  
6 foreground.

7 Most of the flows of these creeks around Acoma do come from that  
8 mountain and they're very small. We could probably jump over them. Many of  
9 them are not wider than this table or deeper than my ankle. But this is what we  
10 survive on and this is what Acoma has survived on for at least a millennium. And  
11 we are hoping to survive into the next millennium.

12 We are still living with the effects of the previous round of uranium mines  
13 and mills in the region. We've seen groundwater depletions. We've seen changes  
14 -- degradation of groundwater quality and we have health problems that we're still  
15 suffering from. My people are suffering disproportionately from kidney disease.  
16 We have liver disease and we have cancers, including lung cancers.

17 When I attended the meeting on uranium recovery of the National Mining  
18 Association in Denver we were told that there were no health studies that had  
19 been done in our region. The only health studies that the Mining Association could  
20 cite to were health studies done in Canada and they have no relevance to our area  
21 of the country. We're a completely different high desert region. Water resources  
22 are very scarce, very precious, and they're so important to our cultures and our

1 way of life.

2 We depend on the rains coming at the right time of year and the right  
3 amount and we depend on snowmelt from that mountain to feed our rivers and  
4 springs. We very much have to be in harmony with those cycles of nature in order  
5 to survive. We're very aware of that.

6 Maybe we could finish with the photo slides. Here's one of the small creeks  
7 that flows through Acoma, and you can see that Mount Taylor is in the  
8 background.

9 And then the final slide is a map that I brought that illustrates Acoma's  
10 cultural use area. It might be difficult to see, but the dark magenta line around the  
11 mountain is defined as a traditional cultural property. We are in the process of  
12 working with the State of New Mexico to have that listed on the state register of  
13 historic places. There is also a United States Forest Service line that is a little bit  
14 broader and encompasses more around the edge of that pink TCP boundary.

15 Then there's a yellow broken line that runs almost across the top of the  
16 mountain. That signifies the edge, the northern edge of Acoma's cultural use  
17 area. Acoma is located south of the mountain, but we have an unbroken chain of  
18 use on that mountain for our traditional cultural practices, for gathering of plants,  
19 water, for use of the wildlife on that mountain that has continued unbroken since  
20 time in memorial.

21 We're very concerned with all the springs on that mountain. It may be  
22 difficult to see fault lines, but the black lines are fault lines and the majority of

1 springs on and around this mountain are fracture springs. So, the area can be  
2 characterized as full of fractures and faults. You can see all the black lines there  
3 around Ambrosia Lake and the cultural use area is also contained in there.

4 These are some of the concerns that I wanted to bring to your attention and  
5 for you to visually see that groundwater resources are very much endangered by  
6 new uranium development in this region, whether it be ISL, whether it be  
7 conventional mine or conventional mill all of which it looks like are planned in this  
8 region again according to the schedule that was passed out this morning.

9 The entire area is basically connected underground by a series of caverns  
10 from the previous uranium mining. And so, there's a lot of area for contaminated  
11 groundwater to easily move and just contaminate the entire region.

12 I know Mr. Camper cited the Southwest Hydrology article -- magazine. I do  
13 recommend that -- I can make this available. It's got a uranium mining issue that  
14 touches on a lot of the lack of background data and some of the problems with  
15 initiating a new round of uranium development in this region.

16 I wanted to give a few minutes of my time to my colleague Paduch Gilbert  
17 who works in the realty office at Acoma.

18 MR. GILBERT: Thank you, Mr. Klein and the Commissioners. I am  
19 Paduch Gilbert. I'm a realty officer for the Pueblo of Acoma Realty and Natural  
20 Resources Office. My comments really revolve around the international  
21 perspective based on the United Nations Declaration on the Rights of Indigenous  
22 Peoples, which was passed by the General Assembly in September of last year. It

1 is the most comprehensive universal document on the rights of indigenous  
2 peoples.

3 We urge -- of course, the United States voted against it along with Canada,  
4 Australia and New Zealand, but we urge that the United States and the Federal  
5 agencies like the NRC, the regulatory arms take into account the principles of the  
6 free, prior and informed consent. That's what I really want to focus on, the free,  
7 prior and informed consent of the developments that occur on the aboriginal lands  
8 and territories of indigenous peoples.

9 Some of these land areas are aboriginal lands like Laura described Mount  
10 Taylor and its environments right around it are all within this Acoma Cultural  
11 Province. So, anything that takes place within this Acoma Cultural Province we  
12 want to be knowledgeable about and have this principle of free, prior and informed  
13 consent utilized.

14 Free -- and I will go through each one -- free is defined as the absence of  
15 coercion and outside pressures including monetary inducements unless they're  
16 mutually agreed upon. It also must include the absence of any threats or  
17 retaliation as a result of the Acoma people or other indigenous people saying no.

18 Prior is defined as the process taking place with sufficient lead time to allow  
19 the information gathering and sharing process to take place according to the  
20 decision-making process that indigenous communities use.

21 Of course, it takes time as we all realize the amount of time that's, for  
22 example, at this hearing.

1           Informed is defined as having all relevant information reflected in our views  
2   and positions and this includes the input of tribal leadership, traditional elders with  
3   adequate time and resources to find and consider and disseminate all the  
4   information that's surrounding any projects, especially in regard to, we think,  
5   potential threats to health, environment, other traditional means of subsistence.  
6   As Laura mentioned water -- our concern for water.

7           Consent can be defined as a demonstration of clear and compelling  
8   agreement using a mechanism to reach this agreement again which is based on  
9   free, prior and informed consent. And in keeping with the structures and decisions  
10   of indigenous communities. Agreements must be reached with the full and  
11   effective participation of the authorized leaders of tribal communities.

12           The declaration is 46 articles and I'll give you the site for it. But I just want  
13   to read one article. "States shall establish and implement in conjunction with  
14   indigenous peoples concerned, a fair and independent, impartial, open and  
15   transparent process given the recognition to indigenous peoples' laws, traditions,  
16   customs and land tenure systems to recognize and adjudicate the rights of the  
17   indigenous people pertaining to their lands, territories and resources, including  
18   those which are traditionally owned or otherwise occupied or used. Indigenous  
19   peoples shall have the right to participate in this process."

20           I've been really encouraging other Federal agencies to reference this when  
21   they list it in their appendix -- the United Nations Declaration on the Rights of  
22   Indigenous Peoples. The website for this can be found -- you can actually see the

1 declaration -- is [www.ohchr.org](http://www.ohchr.org). That's a big website for the United Nations, but  
2 it's in there somewhere.

3 Thank you. That's what I wanted to really emphasize that portion of it.

4 Thank you, Chairman.

5 CHAIRMAN KLEIN: Thank you. Now, we'll hear from the state of  
6 Wyoming. Don?

7 MR. McKENZIE: Chairman, Commissioners. I appreciate the  
8 opportunity to be here with you today. While I realize you have a lot more on your  
9 plate than I initially noticed I do want you to know that in-situ uranium development  
10 in Wyoming and uranium recovery is a very big topic in Wyoming.

11 As a result of the renewed uranium development interest I have six items I'd  
12 like the NRC to consider. The first one is an NRC presence in Wyoming. The  
13 second is your environmental assessments. The third is groundwater restoration.  
14 Fourth are agency agreements. Fifth are your NRC rules, draft rules. And the last  
15 is primacy of your NRC program.

16 Regarding a local NRC office, I understand there used to be a regional  
17 NRC office. I understand from my gray-haired staff that it was popular and it was  
18 thought to be a very good idea.

19 So, today, with the level of uranium activity that's out there and a good part  
20 of that being in Wyoming I would certainly like you to be aware that that's one  
21 reason I would like to have an NRC presence in the Rockies, if not Wyoming.

22 You're at a bit of a disadvantage. The Wyoming BLM folks that we normally

1 deal with, we deal with them on other mining issues, so we know who those folks  
2 are and we do have some local agreements in place as far as what they do, what  
3 we do, when and why.

4 I have to say it hasn't always been obvious who the NRC contacts are for  
5 our program. In all fairness, I don't think it's been clear who the Wyoming contacts  
6 have been for your staff either.

7 I'd like to recognize Bill von Till for his efforts in trying to make that happen.  
8 Certainly the quarterly calls that Bill has set up has been very helpful to us and we  
9 appreciate that effort.

10 I've also recently talked with Patty Bubar and I think that's also going to be  
11 very helpful for us to identify who the players are, not just for my staff, but for the  
12 NRC staff.

13 While I think the quarterly calls are good, if we're going to see the level of  
14 activity that you're anticipating as well as what Wyoming is anticipating I really  
15 can't imagine running a program like yours from a distance. I really do think a  
16 physical presence will be necessary if we're looking at 20 facilities or more.

17 With respect to your Generic Environmental Impact Statement, I do  
18 appreciate the opportunity for Wyoming to be a participant and a cooperator in that  
19 process. I think by the time I came on board the schedule might have been a little  
20 tight. We did get the MOU signed. I was able to provide comments to the NRC.

21 I thank Greg Suber and Jim Park for their efforts to make sure that that  
22 happened. I particularly appreciate Jim's efforts in allowing me to participate in the



1 preliminary draft development. That's something that took a little bit of  
2 organization and skill to pull me in on the phone, but I do appreciate that  
3 opportunity.

4 I'd like to say that as we progress past your generic EIS, Wyoming would  
5 like to be a participant in the site specific environmental assessments. Our  
6 Governor feels quite strongly that this is in our best interest and I have to think it's  
7 also in the NRC's best interest as well. I think you want to know what we're  
8 thinking well before we come to the end of that process.

9 There was a lot of talk about groundwater restoration this morning. I'm very  
10 encouraged by NRC's commitment to continue to focus and have groundwater  
11 restoration protection on the radar. It certainly makes my second bullet a lot  
12 easier.

13 We've had so much focus on in-situ development that we frankly have a  
14 couple of historical sites that are not in-situ related, they're tailings facilities. It's  
15 good to hear a renewed commitment by the NRC to look at those facilities as well.

16 I have to tell you after being in Salt Lake City and attending a BLM meeting  
17 regarding uranium development it's truly music to my ears to hear talk of a draft  
18 MOU between the NRC and the BLM. It was very obvious at that meeting that we  
19 had a number of BLM folks on the ground that had all kinds of questions on how to  
20 interact with the NRC. So, I certainly commend your efforts on that as well as the  
21 commitments by BLM to finalize that document.

22 I would like to take that a step further. I truly think that the three players in

1 Wyoming, certainly the NRC, the BLM and the state. We really should be sitting  
2 down and talking about what we all do at different times. I don't think that's very  
3 clear.

4 I think there may have been some handshake arrangements maybe in the  
5 past. It's been quite a while ago since we've had development. I would really  
6 hope that during this period of development that we would take time to actually  
7 commit things to writing because I really don't want to see somebody in another 20  
8 years or 30 years doing the same thing we're doing here today, which is basically  
9 trying to figure out what people do, what their expectations are, how they see  
10 things working.

11 With respect to the NRC rules, I was asked to comment on this. When I  
12 asked, "Well, may I see a draft?" There was none. So, I put down a few bullets  
13 here, what I would normally say when I haven't had a chance to look at rules and  
14 perhaps today I'd be satisfied simply to have a chance to look at those draft rules  
15 when they come out. Certainly, my comments here on the slide reflect how I  
16 would approach a set of rules that I haven't had a chance to see.

17 I don't think I'll spend any more time on that unless you'd like me to,  
18 Mr. Chairman.

19 CHAIRMAN KLEIN: We can do that during the Q and A part.

20 MR. McKENZIE: Pardon?

21 CHAIRMAN KLEIN: We can cover that during the questions and  
22 answers.

1                   MR. McKENZIE: Very good. Thank you. With respect to primacy,  
2   you would think Wyoming would be an ideal state to start some discussion. We  
3   seem to do similar things, surface reclamation, maybe one of those; how we  
4   address spills might be another yet, and of course, groundwater restoration.

5                In looking at your program the only piece I see as problematic with taking  
6   primacy would be with regard to what I'm calling safety of the radiological aspects  
7   of your program. We just don't have a state agency that has that kind of function  
8   currently.

9                In spite of that I would be interested if there are any options that might be  
10   available as talking points between the NRC and the State of Wyoming as far as  
11   taking on maybe some of these redundancies that we're both working on. And  
12   that would be in the spirit of increasing our efficiencies at the NRC as well as at  
13   the state.

14              My last slide is "Think Globally and Act Locally". Certainly, NRC has a  
15   unique perspective of the overall picture of uranium development in the country.  
16   But you also are tasked with doing things on the ground.

17              The items that I've just talked about are what I think would help make that  
18   better. I think your presence in Wyoming would be a very good idea. I think our  
19   continued cooperation on NEPA's inspections, restoration issues, closures would  
20   be very good. I think maintaining our joint commitment for groundwater protection  
21   and restoration is a good idea.

22              I would really like to see our processes be transparent. I think this is good

1 for our respective staffs. I think it's good for industry and I certainly think it's good  
2 for the public and the residents of Wyoming.

3 I would continue to like to consider flexibility. This would be with respect to  
4 rules and guidance. And I'm always looking for opportunities that would allow us  
5 to be more efficient and reduce the number of redundancies that our programs  
6 have. Thank you.

7 CHAIRMAN KLEIN: Thank you very much, Don. Milton, we'll hear  
8 from the State of New Mexico.

9 MR. BLUEHOUSE: Thank you, Chairman Klein. Good afternoon,  
10 Commissioner Lyons, members of the Commission. It certainly is an honor and a  
11 pleasure to be here on behalf of Deputy Secretary John Goldstein who sends his  
12 regards. He is currently dealing with state budgetary issues as you may be well  
13 aware of nationally our major issues.

14 The New Mexico Environment Department appreciates the Nuclear  
15 Regulatory Commission's request for in-situ for state input on the NRC draft  
16 Generic Environmental Impact Statement for in-situ leach uranium recovery  
17 facilities.

18 New Mexico Governor Bill Richardson and NMED Secretary Ron Curry  
19 hope that this willingness on the part of the NRC to seek state input will continue  
20 on to an agreement whereby the NRC conducts individual environmental impact  
21 statements for specific license applications in the State of New Mexico.

22 The resulting environmental degradation and public health impacts from

1 nearly half a century of uranium mining in New Mexico led Governor Bill  
2 Richardson to request on July 31st, 2007 that the NRC "not attempt to limit the  
3 public's right to review and comment upon individual environmental impact  
4 statements for specific license applications."

5 Governor Richardson's concern was echoed on October 6th, 2008 by  
6 NMED Secretary Ron Curry, who noted that given the unique environmental,  
7 cultural, geographical, historical, economic and regional aspects of New Mexico  
8 the GEIS is contrary to the goals and purposes of the National Environmental  
9 Policy Act for the NRC to use the GEIS approach in this instance.

10 The request for the NRC to conduct site specific EIS for ISL uranium mining  
11 recovery operation applications is based on following reasons.

12 First, given that the State of New Mexico relies on groundwater for 90% of  
13 the state's drinking water supply all groundwater in the arid southwest state of  
14 New Mexico is protectable and could be potential drinking water supply if it  
15 contains less than 10,000 mg/l total dissolved solids.

16 In New Mexico, impact significant levels during the operation, restoration  
17 and decommissioning would be large because the Westwater Canyon Aquifer is a  
18 potential drinking water source and because very few if any ISL sites have been  
19 restored to pre-operational conditions. An impact significant level of "large" will  
20 result in finding of significant impact under the NEPA evaluation.

21 Second, the integrity of the aquitards in isolating or bearing aquifers from  
22 other aquifers may be jeopardized within the Grants Uranium District from

1 thousands of exploration holes, which may not have been properly abandoned and  
2 from mine workings that connect large sub-service areas within the district. All of  
3 which may provide a conduit for vertical excursions.

4 Each application will require a site specific review to determine if the  
5 integrity of the aquitard in any given location and whether it would result -- that  
6 may result in a finding of significant impact under NEPA evaluation, if any.

7 Third, given that New Mexico is a large state in which we have people of  
8 color and low-income communities any proposed ISL uranium mining recovery  
9 operations will pose environmental justice issues that the NRC GEIS process  
10 cannot adequately address.

11 The unique cultural and environmental justice issues will require full  
12 environmental justice analysis to be undertaken with each application. The site  
13 specific information will be needed which may change the conclusions of the GEIS  
14 that people of color and low income populations in the area may receive  
15 disproportionately high and adverse environmental and health impacts from the  
16 ISL uranium recovery facilities.

17 Further, the State of New Mexico is committed to full public participation in  
18 its permitting processes in which each permit is evaluated on a case by case  
19 basis. And this was reference earlier in a statement by one of the Bureau Chiefs  
20 from the NRC that in New Mexico communities are very passionate in a debate  
21 over uranium mining in their communities.

22 It also should be noted that members of the Multi-cultural Alliance for Safe

1 Environment who wanted to be here today are not here and I think that  
2 stakeholder input from those communities is very important as well because they  
3 tend to bear the greatest burden of these activities in their communities.

4 Additionally, the NRC GEIS approach to ISL uranium mining recovery is  
5 contrary to the Federal government's government-to-government relationship with  
6 Federally recognized Tribes as illustrated in President Bush's support of Executive  
7 Order 13175. No one has the consultation and coordination with Indian Tribal  
8 government's executive order.

9 Some 35 sovereign Native American Nations claim cultural affiliations with  
10 historical properties in New Mexico and these include archaeological sites,  
11 landscapes, traditional cultural properties, and sacred sites such as what Ms.  
12 Laura Watchempino had mentioned earlier.

13 The impacts on New Mexico's Indian Tribes, Pueblos and Nations will  
14 undoubtedly result in a finding of significant impact in a NEPA evaluation. In this  
15 context the NRC is urged to adopt a full EIS review for uranium mining recovery  
16 operation applications for specific sites within New Mexico.

17 And on a side note regarding the draft GEIS on page 9-2 Section 9, line 36  
18 stated that "the NRC will conduct Tribal consultation with the Navajo Nation for  
19 potential cultural and resource impacts."

20 While the NRC should be, I think, thanked and has done a really great job  
21 in outreach to the Navajo Nation there are also other Tribes and the draft GEIS  
22 fails to list other Tribal governments such as Acoma Pueblo, Zuni Pueblo, Hopi

1 and Laguna Pueblo.

2 Finally, uranium mining recovery regulations in the State of New Mexico are  
3 not prescriptive. In other words, ISL uranium recovery operations are determined  
4 on a site by site basis and fall under the NMED Ground Water Quality Bureaus  
5 discharge permitting authority and under NMED's Ground Injection Control  
6 Primacy from U.S. EPA. Here we're talking about Class 3 and Class 1 UIC  
7 permits.

8 Because of the lack of historical data that ISL uranium recovery operations  
9 are unable to restore groundwater resources to background conditions it is  
10 important that individual EIS be conducted for ISL uranium recovery sites.

11 On ending, Governor Bill Richardson and New Mexico Environment  
12 Department Secretary Ron Curry respectfully request that the NRC conduct  
13 in-depth site specific environmental impact analysis for ISL uranium mining  
14 recovery facilities and operations in the State of New Mexico and for the NRC to  
15 pursue robust public participation from all impacted New Mexicans and their  
16 communities.

17 Thank you for the opportunity to present.

18 CHAIRMAN KLEIN: Thank you. Well, thank all of you for your  
19 presentations and we will now begin our questions beginning with Commissioner  
20 Jaczko.

21 COMMISSIONER JACZKO: Thank you, Mr. Chairman. Mr.  
22 Bluehouse, maybe I could start with you. I don't know if you were here this



1 morning and had an opportunity to hear some of the discussion on the GEIS. I  
2 thought maybe I would just ask -- as you referenced in your remarks your interest  
3 in site specific environmental reviews in New Mexico.

4 If some of that has been changed by some of the discussion you heard I  
5 think I would try and summarize, I think, as a commitment from the staff that we  
6 will follow, obviously, the NEPA process as it's laid out and do environmental  
7 assessments.

8 I think as Larry Camper said kind of more extensive environmental  
9 assessments and maybe not in other cases. Again, that leads us to finding of no  
10 significant impact that would be the case, but if it doesn't then obviously we would  
11 do supplemental environmental impact statements for those sites.

12 Does that provide you with better information or is that new information or  
13 do you think that would change the views that you've expressed from the governor  
14 and others in New Mexico?

15 MR. BLUEHOUSE: Three things come to mind. First of all, yes, the  
16 additional information was helpful for me to report back to the Deputy Secretary  
17 and Secretary of the Department I represent to inform them that there are going to  
18 be additional types of research and review conducted in addition to what's been  
19 laid out in the GEIS.

20 The second point had been referenced in a letter of October 6th to the  
21 NRC. I'd like to quote that specifically so that we can get a better understanding of  
22 the Department and the Governor's position with regard to GEIS.

1           In the comments of the letter -- this is from Secretary Ron Curry to the  
2   NRC. "The GEIS is often used as a tool in its hearing process to serve as a  
3   master document whereby subsequent site specific environmental reviews only  
4   amount to an environmental assessment with heavy reliance on the 'generic  
5   document'. This means that instead of performing a comprehensive in-depth  
6   environmental review at each specific site in New Mexico for each license  
7   application, the NRC would only conduct an environmental assessment and rely  
8   on the GEIS for a large portion of its site specific analysis."

9           And the third thing that I would like to say is that we do look forward to  
10   meeting with NRC staff in future meetings to further clarify the issues and  
11   determine what process should be next. But again, the Secretary looks forward to  
12   discussions that hopefully will lead to an agreement.

13           COMMISSIONER JACZKO: Are you familiar with the meetings we  
14   did have? I asked this question of the staff and I guess I'll perhaps ask a similar  
15   question to you. Did you or someone attend any of the meetings we had in New  
16   Mexico? I don't know if you thought we covered enough of the locations. Do you  
17   think we missed locations that would have been useful locations as part of the  
18   GEIS process?

19           MR. BLUEHOUSE: I'm aware of the meetings that had occurred. I  
20   do believe that it was a staff member from the Ground Water Quality Bureau that  
21   had attended some of those meetings. As referenced earlier, these meetings go  
22   under a lot of participation and a lot of input from community members.

1 COMMISSIONER JACZKO: In general, I guess I'm wondering more  
2 did we get all the right communities, do you think?

3 MR. BLUEHOUSE: I think that more can be done, more outreach.  
4 Particularly in the discussion that the Commission had earlier regarding -- I believe  
5 the word was "confusion" regarding information being presented.

6 Certainly, we welcome even more public input and outreach from the NRC  
7 in these communities to provide information and really let people know just what  
8 exactly will be undertaken.

9 COMMISSIONER JACZKO: Thank you. I had a question for Mr.  
10 Etsitty -- if I said your name right. You mentioned that you had 70 full-time  
11 employees in your agency. I guess I'm wondering how many of those have  
12 expertise in radiological areas, if any, health physicists or others with those kinds  
13 of backgrounds?

14 MR. ETSITTY: I have with me the manager of our Superfund  
15 program who's been working in partnership with U.S. EPA since the '80s. She's  
16 got 25 years of experience in the Superfund program area. She has a staff of six  
17 people and at least two of those folks have technical backgrounds. We have a  
18 chemist and a health physicist.

19 COMMISSIONER JACZKO: That's good. I think that's good to hear  
20 and I ask the question not necessarily to make that you didn't have more to see if  
21 there are ways that we can be helpful if you have limitations on staffing and  
22 resources that obviously with our interactions that we can help support in the

1 technical areas where you may be limited in some of those areas.

2 I'm wondering if you could comment a little bit -- you mentioned the 520  
3 sites in the Navajo Nation. Were any of those in-situ recovery sites or are those all  
4 traditional mining?

5 MR. ETSITTY: Those were all traditional mining. We do have a pilot  
6 project, though, that is still existing in our community of Crown Point. That's the  
7 only ISL facility that was ever initiated within Navajo Indian country, but most of the  
8 other sites are all conventional.

9 COMMISSIONER JACZKO: Is your sense -- I think as I understood  
10 from the information you provided that there has been a moratorium placed on  
11 new mining and milling activities? Is it intended to cover in-situ as well or is it  
12 restricted to or intended to reflect more conventional mining?

13 MR. ETSITTY: It's intended to cover ISL, ISR as well as  
14 conventional, yes.

15 COMMISSIONER JACZKO: Great. Appreciate that. I'm sorry; did  
16 you want to add something else?

17 MR. ETSITTY: No. The language is not specific in detailing specific  
18 technologies or going down a list or providing a list, but it's broad.

19 COMMISSIONER JACZKO: It's intended to cover both. Okay.  
20 Thank you.

21 CHAIRMAN KLEIN: Commissioner Lyons?

22 COMMISSIONER LYONS: Well, certainly I want to thank the four of

1     you for being here. These were all informative discussions. Milton, I appreciate  
2     that you said you would be taking some comments back to Ron Curry and please  
3     give him my regards from our past interactions.

4             I hope it is well understood, as Commissioner Jaczko said and as was  
5     discussed this morning, that there's no intent here that the GEIS precludes a site  
6     specific EIS in cases where that's to be needed. Nor does it preclude or attempt  
7     to limit public participation; that there will be many opportunities for public  
8     participation in addition to the GEIS. I hope that information can help to perhaps  
9     set at ease some of the concerns that have been expressed.

10            Don, a question I wanted to ask. I saw some recent press articles about a  
11     new program starting at the University of Wyoming to develop expertise in in-situ  
12     mining. I'm just curious if that's in any way affiliated with your office or if there's  
13     any -- I'm just curious how that will fold in to the overall challenges that Wyoming  
14     will face with a very strong interest in ISL. Are you familiar with that program?

15            MR. McKENZIE: I am familiar with it and I will be involved in that  
16     shortly. That's something that's developed with some oversight from my director,  
17     but I will be a part of that process and I would be able to report back to you later.

18            COMMISSIONER LYONS: It certainly sounded like it would be a  
19     very, very interesting program and provide probably very important information,  
20     not only to Wyoming, but to any state that might consider the ISL type of  
21     approach.

22            I would be interested and I'm sure our staff would be interested in knowing

1     how that program develops and what sort of outcomes may result from it.

2                   MR. McKENZIE: I can do that if I just know where to pass that  
3     information along.

4                   COMMISSIONER LYONS: Certainly, you'll continue to be in contact  
5     with the staff -- our staff in this area and they could certainly get the information  
6     back to the Commission. It certainly struck me as a very positive step.

7                   For both Laura and Stephen given my decades in Las Alamos I've certainly  
8     had many opportunities to visit your areas. I've been in Acoma many times;  
9     countless times on the Navajo reservation. I very much appreciated your  
10    comments and appreciated the pictures of Mount Taylor, which is indeed a very,  
11    very impressive sight no matter which way it's being viewed from. I tended to view  
12    it from some of the areas around Las Alamos, but you can still see Mount Taylor  
13    from some of the higher peaks there.

14                  I was curious, Laura. You referred to the Mount Taylor, I think you said,  
15    cultural area. Is that a legal -- in the framework of our legal system is that  
16    recognized in some formal way or does that come under the unwritten laws that  
17    you were describing?

18                  MS. WATCHEMPINO: I think the traditional cultural properties are a  
19    legal concept and not only in the laws of the United States, but internationally as  
20    well. My colleague Paduch alluded to that. Some of the inalienable rights of all  
21    peoples including indigenous peoples are to be involved in the decisions involving  
22    their cultural properties.

1 COMMISSIONER LYONS: So, from what I think you said you do  
2 believe that that is a formal legal designation?

3 MS. WATCHEMPINO: Yes. It will be -- the final delineation of this  
4 area around the mountain within the State of New Mexico is not final yet. We're in  
5 the process of -- it's actually the Pueblos of Acoma, Laguna, Hopi, Zuni and  
6 Navajo Nation that are involved in getting this designation and additional  
7 protection for the mountain. It's all the Tribes in the Southwest look to this  
8 mountain as a very special place that needs to be protected, including the  
9 Apaches.

10 COMMISSIONER LYONS: And Stephen, perhaps just a quick  
11 question following up on one of the questions that Commissioner Jaczko asked.  
12 You described, and he asked you, about the recent legislation and whether that  
13 was intended to cover ISL and ISR. You said yes.

14 I was just curious if there has been discussion that you're aware of within  
15 your EPA or elsewhere within the Navajo Community on the differences and the  
16 different impacts between conventional mining and ISL?

17 MR. ETSITTY: Well, internally we've had our own series of briefings  
18 about the technology and all the potential impacts and how in particular ISL or ISR  
19 would be managed. That's where we're familiar.

20 We've been open to hearing the types of briefings that show the strengths  
21 of the management that would be over it and we've also listened to people that are  
22 critical in terms of what would happen in the irreversible changes to underground

1 chemistry in the water with the use of things like lixivants and other chemical  
2 processes that would be altering and potentially creating threats for nearby ground  
3 water resources. We've listened to both sides.

4 COMMISSIONER LYONS: I'm not sure who, perhaps our Chairman,  
5 asked our colleagues from EPA today whether they were aware of instances  
6 where there had been specific environmental damage from ISL operations. I'm  
7 curious if in your work you're aware of places where there has been documented  
8 damage?

9 MR. ETSITTY: In my own office we've not documented anything, but  
10 we do have anecdotal evidence of people living in the Crown Point region. They  
11 provided different testimony to different public forums about the pilot efforts that  
12 were initiated some years ago and that the goal of restoring the groundwater still  
13 has not been met. I'm not sure if those are official results, but we listen to what  
14 comes from the communities from both sides; those that are pro and in support of  
15 uranium recovery and we listen to those that have arguments against it.

16 Like I said, in my office we have not done anything to officially confirm  
17 whether or not there has been a real problem at the Crown Point site.

18 COMMISSIONER LYONS: That would be very interesting for you  
19 and I think for us to know and just in general to the extent that there are carefully  
20 documented studies that would show such issues. I personally find them very,  
21 very interesting and I gather from the comments from EPA this morning they would  
22 find it interesting, too, if there are such studies.



1 MR. ETSITTY: We suffer from the lack of resource investments that  
2 the states have enjoyed in their partnership with EPA and other Federal agencies  
3 in getting control over contaminated sites.

4 I'd have to echo my colleagues' concerns about the remaining and  
5 unknown impacts from the conventional facilities as well with a network of tunnels  
6 and other underground intrusions that may provide pathways to shallow and  
7 deeper aquifers. We just don't know.

8 We've never been given the resources to fully examine these issues. We  
9 think we've started to uncover some of the low hanging fruit with some of the  
10 larger abandoned uranium mines, but we have exploratory mines going back to  
11 the 1920's that in many instances we don't have maps to locate them anymore,  
12 but we know they're still out there.

13 COMMISSIONER LYONS: Thank you.

14 CHAIRMAN KLEIN: Commissioner Svinicki?

15 COMMISSIONER SVINICKI: Thank you. I'd like to join my fellow  
16 Commissioners in thanking all of you for being here today and accepting this  
17 opportunity to participate. I think it's a value to me to hear directly from you about  
18 your government's approaches and your government entities.

19 And also I think what's important is the cultural framework that you've  
20 invited us to understand that really underlies the approaches that you take. I think  
21 it's really valuable for us to hear that directly from you. So, I appreciate you being  
22 here today.

1           We've had a lot of good discussion and some of the questions I was going  
2   to ask have been covered. But I might return, Don, to one thing that you had  
3   mentioned, a suggestion that it might be helpful given the level of activity in  
4   Wyoming to have some sort of NRC presence.

5           When you mentioned that what comes to my mind is often in smaller  
6   communities in the West you'll find in an office building one suite where a number  
7   of Federal agencies are able to have a presence through a shared resource;  
8   something like extension offices or something. Is that notionally what you were  
9   thinking of?

10           MR. McKENZIE: It would certainly be possible in Cheyenne.

11           COMMISSIONER SVINICKI: Did you mention that there had been --  
12   was it an NRC presence in Wyoming or in the region?

13           MR. McKENZIE: I understood it was in Denver.

14           COMMISSIONER SVINICKI: Okay. Thank you. That's helpful. I  
15   certainly think that's an interesting concept if there's going to be a real surge in  
16   activity. So, I appreciate also your comment about trying to manage some of  
17   these activities long distance is also very challenging. I pledge to do some more  
18   thinking about that. Thank you. Thank you, Mr. Chairman.

19           CHAIRMAN KLEIN: Just as a side note my executive assistant is  
20   from Wyoming and he's volunteered to come out and open up an office in  
21   Wyoming.

22           In terms of, Don, some questions that came up this morning. When I was

1 out in Wyoming and looked at some of the ISR activities and we talked about the  
2 winter conditions, that if you're going to do some activities you need to do some  
3 prep work when the conditions are favorable.

4 MR. McKENZIE: Absolutely.

5 CHAIRMAN KLEIN: What's your opinion? Do you find that  
6 acceptable? How would you want that to be done from a state's perspective?

7 In other words, if they do any preparation work would you want that cleared  
8 through your office? How would you want to see that happen?

9 MR. McKENZIE: Let me make sure I understand when you say  
10 "preparation". You're talking about not a baseline gathering exercise. You're  
11 talking about actually doing work prior to receiving a license from NRC, for  
12 example, as well as from our department which would be a permit.

13 It's really going to depend on what they're trying to accomplish. We issue  
14 expiration authorizations and those often can accommodate things regarding  
15 Class 1, Class 3 UIC injection wells. I know I have the authority under rule to  
16 approve the construction of the UIC Class 3 at least up until a point of they're  
17 ready to turn water to those. We have to have a permit in place at that time, but  
18 there are a number of things that can be done outside of our permit. I don't know  
19 if that addresses the NRC types of concerns.

20 CHAIRMAN KLEIN: What I was told by some of the individuals  
21 obviously when winter sets in it's pretty difficult to put in potential roads to do some  
22 site preparation for an ultimate activity.

1 Obviously, a lot of that work would have to be done at a company's own risk  
2 in the event the permit wasn't granted, but I was just curious. It sounds like you  
3 have processes in place to handle that if the industry lays out a good plan.

4 MR. McKENZIE: At least a portion of what we've been talking about.  
5 Actually, the seasons -- that's just a part of being in the state. It's rare to find  
6 someone that doesn't anticipate that. There's quite a beginning that's well outside  
7 of our permitting process or application review process and people tend to start  
8 very early as far as collecting information as well as planning on timing.

9 CHAIRMAN KLEIN: When I was there I was amazed at the number  
10 of oil and gas activities that was occurring in Casper. It's a very dynamic process.  
11 Have you seen any decrease in the oil and gas side due to the recent drop in price  
12 of oil?

13 MR. McKENZIE: I think we've had some slowing with respect to our  
14 coal bed methane. I don't know how much of the state you had a chance to see.  
15 Certainly, our Pinedale area and Sublette County development continues there.  
16 Production in Wyoming is still occurring.

17 CHAIRMAN KLEIN: It was very dynamic. I was impressed with all  
18 the activity.

19 MR. McKENZIE: There's a lot going on right now.

20 CHAIRMAN KLEIN: Well, I have a question, Stephen, for you. In  
21 terms of the past mining that's occurred on the Navajo land; over what period for  
22 the uranium did that occur?

1 MR. ETSITTY: Based on the background reading that I've done and  
2 some of the records that we do have within the Nation, I believe that the initial  
3 explorations began in the 1930's and after World War II was when the boom really  
4 began. It went all the way up until the mid-1960s.

5 CHAIRMAN KLEIN: Are some of those conventional mines still in  
6 operation or have they all been shut down?

7 MR. ETSITTY: They're all either shut down and abandoned or  
8 dormant. We do have some companies that are still manning facilities at some  
9 locations, not on Tribal land, but within the checkerboard area where we have  
10 alternating land status; state lands and Federal lands and private lands and  
11 Navajo Nation lands and Allottee lands.

12 We do have some companies that are still viable and still have their rights  
13 to mine, but their facilities are largely dormant. But for the most part the 520,  
14 they're abandoned. And many of them have no viable potentially responsible  
15 party that we can locate.

16 CHAIRMAN KLEIN: Thanks. Well, regarding New Mexico. I think  
17 just to comment on what Commissioner Jaczko and Commissioner Lyons both  
18 indicated. If you would just continue to reinforce the fact that a GEIS does not  
19 mean that we don't look at individual sites. I think that's a gap that we need to  
20 continue to convey so that everyone understands that it is still site specific work  
21 will be looked at.

22 MR. BLUEHOUSE: It certainly will, Chairman Klein. I'd point to a

1 question raised earlier. There are legal rights that you attach to the term "cultural"  
2 underneath the Native American Religious Freedom Act as well as state  
3 designation within Mexico regarding the Mount Taylor mountain itself. Thank you.

4 CHAIRMAN KLEIN: Any questions?

5 MS. WATCHEMPINO: Chairman, I have a statement that I didn't  
6 know if any of you realized that the average annual precipitation in New Mexico in  
7 our region is anywhere from 10 to 12 inches a year.

8 So, I really want to emphasize the fact that our water resources are very,  
9 very precious and the fact that we already do have significant groundwater  
10 depletions from this historic uranium mining and milling in our region. So, we are  
11 just grasping onto the last bits of water that we have that is not contaminated.

12 As Mr. Bluehouse stated every aquifer in New Mexico is a potential drinking  
13 water source for our state because of the scarcity of the groundwater and surface  
14 water. And the fact that our region is being treated to alternate concentration limits  
15 I think is another important concern that we have that I don't think anybody today  
16 has mentioned an ISL facility that has been returned to MCL. I don't think one  
17 exists and I think it's not possible.

18 I think Mr. Von Till stated in other presentations that it was probably not  
19 very possible to bring any groundwater back to those 30 parameters that were  
20 being tested. So, we are just not willing to sacrifice that resource again in the  
21 future.

22 CHAIRMAN KLEIN: Well, thank all of you for your presentations and

1 I'm sure that this will be a continuing dialogue and thanks again for your  
2 participation. We'll move to the next afternoon panel. Thank you very much.

3

4

## PANEL 2

5

6 CHAIRMAN KLEIN: Good afternoon and welcome to what has been  
7 obviously a long discussion on uranium and we look forward to your comments  
8 and presentations. I understand that my directions were to start with Benjamin  
9 and then we will work from my left to my right. So, we look forward to hearing your  
10 comments.

11 MR. HOUSE: Thank you. I want to thank the Commission for the  
12 opportunity to speak today. I have one Allottee member with me who came with  
13 me last night. Danny Charley, would you stand? One of the Allottee that has  
14 uranium on his land.

15 My name is Benjamin House. I'm the President of the Eastern Navajo  
16 Allottee Association. I represent hundreds of families who have for generations  
17 owned their own land outside the boundaries of the Navajo Nation.

18 We are in favor of new uranium operations in Grants Mineral Belt and we  
19 believe that the in-situ method of mining uranium is environmentally responsible.

20 Our country needs to become energy independent and the region of New  
21 Mexico that is my home is desperately in need of economic development.  
22 Uranium mining will meet both of those goals. American needs some new

1 uranium mines to fuel and grow a nuclear reactors domestically and globally.

2 More nuclear power is needed to supply clean and inexpensive electric power.

3 New Mexico is fortunate to have large uranium resources that when

4 developed will provide jobs and bring positive economic benefits to our

5 community. The return of the uranium industry will also have a ripple effect

6 throughout western New Mexico. The jobs associated with uranium mining are

7 high paying. They will keep our sons and daughters from moving from our

8 communities.

9 I want to thank the NRC for drafting the Generic Environmental Impact

10 Statement. The documents will be helpful in determining the potential

11 environmental impacts at in-situ recovery facilities.

12 The GEIS shows that uranium mining will have a small footprint in McKinley

13 County. This county in northwest New Mexico is where most future ISR projects

14 will be located. In this county 85% of the land is used for agricultural purposes

15 and 83% of that land is under livestock grazing. Coal and uranium activities use

16 less than 1% of the land in McKinley County.

17 The GEIS also shows that uranium bearing aquifers exist in northwest New

18 Mexico. These uranium bearing aquifers are not fit for drinking. This is the case

19 whether these uranium bearing aquifers are mined or not.

20 The GEIS has also done a good job of gathering data of ISR operations

21 over the past 30 years and during that time there has not been a major

22 environmental accident at any ISR site in the United States.



1           Again, I want to thank the NRC for the opportunity to address this very  
2   important issue to the Eastern Navajo Allottee Association. We support the NRC  
3   and their efforts with the GEIS. Thank you very much.

4           CHAIRMAN KLEIN: Thank you very much for your comments and  
5   for your colleague also appearing here today. Katie?

6           MS. SWEENEY: Hi, I'm Katie Sweeney, General Counsel for  
7   National Mining Association. I appreciate the opportunity to be here today, and  
8   yes, it has been a long day, but I think the presentations have all been extremely  
9   interesting. I think you've had a lot of good speakers here today and I want to  
10   thank them as well.

11          You're always lucky, I think, when you are one of the last people to go  
12   because a lot's been covered so I can flip through some of these slides pretty  
13   quickly.

14          The most important statement I want to make is that the National Mining  
15   Association strongly supports the Generic Environmental Impact Statement that  
16   NRC is preparing. We think that this is necessary to avoid redundant refuse. It  
17   promotes efficient use of not only NRC's resources but the licensee's resources as  
18   well. And we think that the GEIS will assure adequate protection of health, safety  
19   and the environment.

20          We've been pretty involved in this process. We submitted very extensive  
21   comments not just on the draft GEIS, but during the scoping period we submitted, I  
22   think it was about 775 pages of comments on the draft generic environmental

1 report providing some of the data that Ben was just talking about on the 30 years  
2 of experience with in-situ recovery in the United States because a lot of NMA's  
3 members are the people who have been around that long and have been with  
4 companies that have been established and working in the in-situ recovery field.

5 We certainly agree with NRCs draft GEIS conclusion that the majority of  
6 impacts associated with in-situ recovery are small. If you could go to my second  
7 slide; the next one.

8 Just to give you an idea of what some of these facilities look like. These  
9 are a couple pictures of typical well-fields. I wanted to reiterate -- and I know it's  
10 been said a lot of times here today -- the GEIS and we believe the GEIS never  
11 was intended to prevent the public from participating. Not intended to prevent  
12 individual site specific analysis.

13 As we submitted in our comments, obviously, NRC is required by law and  
14 by NEPA to look at any environmental impacts that aren't covered in the Generic  
15 Environmental Impact Statement and proceed from there.

16 We think there are so many benefits to the use of a GEIS and we'd like  
17 those not to be undermined by other issues NRC is addressing. We're very happy  
18 to hear that NRC seems to be on track with its deadline for the GEIS. Obviously,  
19 we think it should be expedited as quickly as can be done.

20 Another issue that's pretty much already been covered quite a bit today is  
21 the pre-construction activities and while NMA may not necessarily agree that NRC  
22 cannot allow under current regulations certain pre-construction activities we're

1 certainly pleased to hear that everybody is still looking for a solution on this one,  
2 whether it be a rulemaking or an exemption. It does seem to be a way that would  
3 address the concerns, for example, in Wyoming where you have a very small  
4 window for construction.

5 Another issue that could undermine the benefits of the GEIS if it's not  
6 addressed is coordination among state, Federal agencies and NRC. Obviously,  
7 this has been talked about quite a bit today, but it will help coordinate -- the  
8 coordination will help avoid duplication and waste of resources and time.

9 So, we were pleased to hear that BLM is trying to get a draft available by  
10 February and also it was very interesting to hear the State of Wyoming's thoughts  
11 on having the states be included in that process, at least at some juncture.

12 Another issue is the use of performance based licensing. Performance  
13 based licensing is something the Commission has done as a risk informed  
14 approach to regulation. It's something that has been around in in-situ recovery  
15 area for quite a while. As a matter of fact, it sort of came up after the Denver  
16 office. The uranium recovery field office in Denver was closed and people were  
17 afraid that the institutional knowledge was gone, so there were a lot of meetings  
18 between NRC and the industry and other interested stakeholders about how to  
19 make sure that there wasn't a long period where the staff had to come back up to  
20 speed on issues and to try to look for ways to have a more efficient regulatory  
21 process.

22 And one of the first results of that transition oversight process was

1 performance based licensing at in-situ recovery facilities and the first issue that  
2 that performance based licensed -- the first one that was issued addressed was  
3 approval of well-fields.

4 What we're hearing now is some of the new applicants are coming in and  
5 they're having to -- in their applications NRC is saying that they want to look at all  
6 the well-field packages. The state's look at the well-field packages already and  
7 that current licensees can actually approve through a performance based license  
8 condition the well-field process.

9 We think that approach should be continued. It's an efficient approach. We  
10 do understand that there may be concerns; may be that there's licensees that may  
11 not have that expertise, but I think that if you show in your application that you  
12 have that expertise within the company that's submitting the license that they  
13 should be allowed to use that performance based process.

14 We've also talked a lot today about the NRC rulemaking for groundwater  
15 protection at in-situ recovery facilities. I think this issue first came up about 13  
16 years ago and we've been trying to work on something ever since.

17 Originally, it was sort of broader in scope and how do you defer to the  
18 states some of the regulation of groundwater? Because the states, like the State  
19 of Wyoming, have a lot of experience in that area and a lot of the NRC regulations  
20 actually are based on the State of Wyoming regulations.

21 We thought we were very close to this being finalized and headed in the  
22 right direction. We had spoken to NRC and EPA at the end of last year because

1     there did seem to be a couple issues of contention. We talked with the EPA about  
2     how we agree that there aren't any generally applicable UMTRCA standards. I  
3     thought that everybody was kind of on the same page and looking at the same  
4     approach.

5             So, it was interesting to hear a lot today about how that's not the case. I  
6     guess from that perspective it would be nice to actually see some of the draft stuff  
7     early versus later to know that there is a problem and that the rulemaking is being  
8     delayed again.

9             I guess on the issue of -- we haven't had a chance really to look into the  
10    stability timeframe, but I would think that legally that is a generally applicable  
11    standard that would require EPA concurrence, but more of an implementation  
12    issue that NRC has the flexibility to address. But that's something I obviously want  
13    to do some more research on, but that was sort of our initial thinking.

14            Just to go back to a couple of points on the GEIS. In addition to the  
15    perception that you're not allowed to do -- the public won't have the opportunity to  
16    comment on individual projects there are a couple other misconceptions that we  
17    saw just looking through some of the comments on the draft GEIS that we think  
18    that the staff has really done a lot to address, but it appears to be one of those  
19    other issues where perhaps more needs to be done because there's a lot of  
20    interested stakeholders that don't seem to get where NRC is coming from.

21            And one of these issues is radiation risks. I think people hear uranium, they  
22    think radiation. It's a scary thought. I think that the staff in the draft tries to

1 address that issue and they do it well, but there still seems to be a lot of  
2 misperception that uranium recovery through in-situ poses a big a radiation risk.

3 And another issue is protection of groundwater resources. I'd just like to  
4 echo what a few of the other people have said today, which is there really isn't any  
5 documented evidence of environmental problems from in-situ recovery. We  
6 certainly have looked through the data that our members have collected and  
7 haven't found any issues.

8 And then just to kind of put things into perspective, my last couple of slides,  
9 I just want to talk about the demand for uranium. I think that if you look at the  
10 demand for uranium and you look at the price right now. It has been going up over  
11 the last five weeks. It's gone up 25%. I think that that shows that regardless of  
12 the current economic downturn that you will continue to see applications coming  
13 into NRC because the demand is there.

14 If you look at what's been going on globally, some areas where we rely a  
15 lot -- as the United States we rely a lot on them for imports of uranium. There's  
16 been supply disruptions in Kazakhstan because of sulfuric acid shortages, in  
17 Canada at Cigar Lake because of disruptions there; and at Ranger in Australia.

18 So, if you look at the forecast even for this year it's been downgraded by  
19 over 10 million pounds, but there's more and more reactors being planned. I think  
20 that there are 20 on NRC's list, if I'm correct with that one. There are 35 new  
21 plants globally under construction.

22 If you look at the existing stockpiles they've been dwindling. And with the

1     doubt that Russia is going to continue to supply uranium through the treaty that's  
2     due to expire in 2013, I think you'll see that there's even more of a gap between  
3     supply and demand. And obviously, it's important to get that uranium from the  
4     United States if we can.

5             Right now, obviously, we're not getting too much. We import probably 85%  
6     to 90%, but we have some of the largest reserves. At current prices DOE  
7     forecasts that we have almost 900 million pounds of uranium reserves. That's a  
8     lot. That's a lot that could boost our energy security here.

9             And just to echo a little bit about what the gentleman from New Mexico was  
10    saying is that this is an opportunity to create jobs and infrastructure at a time when  
11    we could really use those jobs. I know that obviously we don't want to create jobs  
12    if the NRC and the other agencies aren't there to help protect the health, safety  
13    and the environment, but we don't see that there have been environmental issues  
14    associated with in-situ recovery.

15            It's an opportunity to build some infrastructure. Mining jobs are some of the  
16    highest paying jobs in the United States and this would be a good opportunity to  
17    move some things along.

18            I just put down this study that's a real recent study from New Mexico State  
19    University that just kind of analyzes from the economic side the potential benefits.

20            Anyway, I thank you for the opportunity.

21                   CHAIRMAN KLEIN: Thank you, Katie. Michelle?

22                   MS. REHMANN: Good afternoon, Chairman Klein. Good afternoon,

1 Commissioners and thank you also for inviting me this afternoon. My name is  
2 Michelle Rehmann. My presentation today concerns the genesis development  
3 and plans of a network that is called the International Forum on Sustainable  
4 Options for Uranium Production or lovingly called IFSOUP. Could I have my first  
5 slide, please?

6 First, I would like to just take a quick moment to put uranium recovery  
7 sustainability in context and what we mean by this. Sustainability is a forward  
8 thinking optimization of three indicators. Economic, social and environmental  
9 factors are optimized so that resources that are accessed today will also be  
10 available for use by future generations.

11 Specifically in the context of uranium recovery, we know that we're mining  
12 the mineral resource and therefore that same resource will not be available for  
13 future generations. That's just the mineral resource we're impacting.

14 Nevertheless, we endeavor to practice sustainable operations and we do so  
15 by ensuring that the projects have a net positive result to the local economic,  
16 social and environmental conditions by preventing generation of new legacy sites  
17 that would negatively impact future generations. Slide 2, please.

18 IFSOUP originated in the fall of 2007 during discussions among uranium  
19 recovery regulatory and industry specialists when we were meeting in Brugge,  
20 Belgium and it was recognized that there were many concerns about past  
21 practices and a great deal to be learned also from those past practices to avoid  
22 development of future legacy sites.



1           We recognize that it would be vital for members of industry, government  
2   and NGOs to join in meaningful discussions to build safe sustainable uranium  
3   production operations.

4           Beginning with the first IFSOUP meeting, which was held during the  
5   February 2008 WM Conference in Phoenix we continue to seek opportunities to  
6   arrange meetings, workshops and venues to bring these groups together for  
7   meaningful and productive discussions. Slide 3, please.

8           This is a listing of the initial participants in our meeting a year ago March.  
9   Listed in here is the IIRRM, the International Institute for Indigenous Resource  
10   Management. This is a group whose membership includes many Tribes both in  
11   the U.S. and internationally who have interest in uranium mining, but also in other  
12   types of resource development.

13          Talisman International -- I see my friend John Greaves in the audience  
14   who's also a member of our Secretariat now. So, we have a very broad  
15   constituency and it's continuing to grow since the inaugural meeting. It includes,  
16   as I mentioned, industry, agencies, and NGOs.

17          I had someone find this picture for me because I liked it. It defines one of  
18   the objectives; the key objective of IFSOUP. The objectives described in inviting  
19   our delegates to our inaugural and subsequent IFSOUP meetings have been to  
20   build on past experiences and avoid generating new legacy sites and to set a new  
21   paradigm for how we communicate in order to create sustainable operations.

22          So, just as mining operations have certainly evolved over the past 30 plus

1 years and improved and grown, the concept here with IFSOUP is to step away  
2 from the past practice of just government and industry determining what might be  
3 best for communities and then bringing the message down to them from the hill as  
4 it were and hoping everything goes all right, but rather to involve the stakeholders  
5 in the discussions from the very beginning.

6 We seek to build a network of experts who would be the solution holders in  
7 different areas so that they can be readily accessed by those needing advice, such  
8 as the problem holders.

9 We want to serve as an international forum to discuss and exchange  
10 experience on development and implementation of sustainable uranium mining  
11 and processing recovery operations and facilitate technology transfer for the  
12 adoption of sustainable operations. And we do this by promoting stakeholder  
13 participation in planning and development phases. Next slide, please.

14 We also provide assistance to companies and institutions that are  
15 committed to implementation of sustainable mining operations, provide  
16 multi-sector living workshops, panels and special topics, short courses in specific  
17 areas and we hold those meetings within a variety of venues including cooperating  
18 meetings and conferences. I'll touch on those briefly.

19 These objectives encompass approaches that we believe IFSOUP needs to  
20 take in order to cooperate with and complement efforts that the IAEA, NRC and  
21 other similar agencies are taking to ensure that uranium recovery can become  
22 more sustainable.

1           On slide 6, these are the topics of the first IFSOUP meeting. I won't go into  
2   them all in depth, but there's just a listing of them and we've continued to explore  
3   these and expand on them in further subsequent IFSOUP meetings. Slide 7,  
4   please.

5           Particularly for this meeting I wanted to list regulatory leadership in  
6   sustainability practices. To expand on this, sustainable development of uranium  
7   projects means that the projects are developed and operated in ways that don't  
8   leave problems for future generations of the type we've heard about today.

9           The role of the regulatory community is vital both to incorporate sustainable  
10   practices that will ensure project's success and instill public confidence. These  
11   practices are incorporated in the context of economic, social and environmental  
12   issues as I mentioned.

13          Economic issues include practices that support the affected community by  
14   development of economic opportunity during and after the project life. This  
15   requirement includes sound financial practices by the company which in turn  
16   require clearer, predictable and reliable governance by the regulatory community  
17   in order for the company to attract investors and maintain public confidence.

18          Social issues include strong and respected regulation of the project to  
19   ensure that the project will not disturb the local social values of the community.

20          Finally, environmental protection is an essential issue for sustainable  
21   uranium recovery projects. The regulatory community has the primary role to  
22   ensure that the project will be operated in an environmentally safe manner and

1 public health protected. Slide 8, please.

2 Our findings to date are that good examples do exist of sustainable uranium  
3 operations. Sustainability is being built into operations and being retrofit into some  
4 operations and being built into new ones that are in the planning stages today.  
5 The challenge is to disseminate this information.

6 We found through our meetings that there's a need for further discussion of  
7 ISL technical issues, that they're still largely misunderstood, for example, the  
8 matter of what's in lixiviant. People don't realize how benign it might be in some  
9 cases.

10 So, there's communication constraints and there's also a need for further  
11 discussion of the specific needs of indigenous persons as we've heard this  
12 afternoon.

13 To facilitate Tribal member participation at the recent NMA/NRC workshop  
14 IFSOUP was able to coordinate with the International Institute for Indigenous  
15 Resource Management and with donor companies who contributed funds in order  
16 to enable Tribal delegates, actual representatives of the Navajo, Spokane, Oglala  
17 Sioux and Acoma Tribes to travel to the workshop and receive housing and  
18 registration for the workshop to attend a pre-workshop and have a sustainability  
19 discussion at which many of the NRC members sat in.

20 And there were also company representatives at this meeting with the  
21 opportunity to sit around a table about this size and listen to the Tribes thoughts on  
22 what would sustainable uranium recovery look like. We thought it was a very

1 productive discussion.

2           Then those same members were able to stay for the two-day NMA/NRC  
3 workshop and learn quite a bit about what was going on in the industry. W found it  
4 very productive and it was the first time that that many Tribal members had been  
5 able to come to an NMA/NRC workshop.

6           We've had a very busy first year as you can see on slide number 10. Since  
7 our initial discussions in the fall of 2007, IFSOUP has grown to a network of over  
8 150 individuals and is continuing to generate interest and involvement as it  
9 reaches out to more stakeholder groups.

10           We do have a website and we've developed a secretariat of organizers and  
11 stakeholders. We've held meetings in Phoenix, Arizona, two meetings in Denver,  
12 one meeting in Beijing, China in conjunction with a large international mining  
13 conference, and one in Vail, Colorado. Slide 11, please.

14           Our meetings to date have been arranged under the leadership of a loosely  
15 structured secretariat of interested volunteers. IFSOUP, we believe, fulfills a  
16 unique niche. It's not an industry organization. It's not a regulatory organization,  
17 nor is it an NGO. Rather it constitutes a network of interested parties working  
18 toward a common goal of safe sustainable development of uranium recovery  
19 projects.

20           By inviting these groups to the table we feel that we can help to facilitate  
21 development of trust between these groups and better communication. However,  
22 we found that for the NMA/NRC workshop we were challenged by soliciting funds

1 to support tribal delegations to come to that network shop, not because the  
2 companies weren't willing to participate, but we do have a very loosely structured  
3 organization.

4 So, we are currently recognizing that we need some form of organization to  
5 raise the funding necessary to support our operations and initiatives and enable  
6 the network to better serve its goals.

7 We're in the process of creating a non-profit entity, which we believe is  
8 appropriate to enable IFSOUP to both retain its autonomy while pursuing grants  
9 and other donations necessary to achieve our goals.

10 Again, I thank you for this opportunity to present and will be happy to  
11 address questions later. Thank you.

12 CHAIRMAN KLEIN: Thanks, Michelle. Now we'll turn to Jeffrey.

13 MR. FETTUS: Thank you, Commissioner -- Mr. Chairman. Thank  
14 you very much for having me here today. You've had a very long day and as  
15 everyone else in the room, I certainly agree with Katie on that. So, I won't read my  
16 statement into the record or go through it. You have it before you and I'd like to  
17 make sure it's part of the record. And I'll just talk to you on a few brief points that  
18 you've heard here today, rather than go through another presentation.

19 But before I do that I want to do a couple preliminary issues first. It seems  
20 I'm inordinately outnumbered here. I'm the only environmental advocate as far as  
21 I understand in the room. Unfortunately, I'm missing several superb regional and  
22 grassroots advocates who could have been here today and hopefully in future

1 opportunities will be invited to participate because there are terrific advocates in  
2 Wyoming, New Mexico, Colorado, Utah, Texas, Nebraska who certainly represent  
3 important voices for this complicated issue beside the national environment  
4 groups, but thank you again for having us today and I encourage you to reach  
5 broadly in the future.

6 Second, three quick issues and I want to respond in no particular order.  
7 So, we'll move to your questions, then, for all of us.

8 First, starting with the draft GEIS. We submitted detailed comments on  
9 November 7th and probably according to your staff excruciatingly detailed  
10 comments. We meant those to be as constructive as possible because we think  
11 the NRC staff has an extraordinarily heavy lift. Let me echo the EPA today where  
12 they said we need more data.

13 I didn't come prepared for an evidentiary hearing today. I've actually been  
14 on a long leave of absence and I'm just back. But we've seen enormous  
15 environmental damage from unfortunately the little that we know from ISL mining.  
16 Whether or not that long-term environmental damage is in aquifers that could be  
17 used for future drinking water sources, well, in some senses we'll never know  
18 because the damage has been done.

19 At most of the sites that we're familiar with, none of those sites have ever  
20 been restored to pre-mining water quality. Whether or not that pre-mining water  
21 quality would have supported uses, whether it's livestock or human uses, that's an  
22 evidentiary question that basically I echo EPA here again. We need more data.

1           That gets to the second point that I wanted to bring up which was the point  
2   of my written statement today which is we have an opportunity with the  
3   rulemaking, which we haven't seen and I presume only the Federal government  
4   folks have actually seen, to put the horse in front of the cart.

5           This has been a splintered and complicated mess of regulatory oversight.  
6   Just as you have worried about redundant or dual regulation, we have suffered for  
7   years watching the application of regulations that were meant for conventional  
8   milling and mining be applied to something that they were not designed for. I'm  
9   sure industry struggled with this, but so has the environmental community.

10          And so, the opportunity of a rulemaking to stop, step back, and actually go  
11   through an involved process -- and yes, it will probably take a lot of time to do it  
12   right, but to actually provide some rational coherence for how, when, or if we go  
13   forward with any new uranium mines that can avoid the tragic history of the past.

14          Again, that I don't feel the need to repeat here, but I again commend you in  
15   an earlier statement today the representative from the Acoma Pueblo I thought  
16   made it very clear, one, the tragic past of uranium today and two, this is something  
17   that all the Commissioners I know with your backgrounds are very well aware of, in  
18   the West whiskey is for drinking and water is for fighting. The profoundness of  
19   what this means for so many communities can't be overstated, which gets to my  
20   next point.

21          This is specifically for you, Chairman Klein. I don't believe there's been any  
22   misunderstanding or bafflement on the part of the public regarding the draft GEIS



1 not allowing for future environmental review.

2 If there's any bafflement it's actually the concept that a finding of no  
3 significant impact could be issued for an ISL mine, especially with the potential for  
4 significant groundwater impacts.

5 The majority of us who work on a range of issues, not just uranium  
6 recovery, see EAs in many contexts. While I am comforted to some extent by  
7 Larry's earlier statement today that these will be really big EAs, if it's an EA.

8 I would encourage the NRC to not go down the road of trying to create a  
9 new category of NEPA that's an EA plus. That would not be a good idea. EAs  
10 that lead into findings of no significant impacts are very often marginal or rather  
11 obvious documents where there's obviously going to be no finding -- where there's  
12 obviously going to be a FONSI that could issue.

13 It's baffling to many Western water professionals that that could even be  
14 considered in the instance of this kind of mine. So, I wanted to clarify that point;  
15 that the idea of the NRC talking about resource savings and then talking about  
16 even the potential for EAs that's where the, shall we say, discomfort comes from.  
17 It's not a confusion over potential future options.

18 I think there will be significant push back from regional areas if there are  
19 EAs -- I would strongly encourage EAs moving right into EISs with all of these  
20 sites.

21 Finally, regarding the rule. I'm trying to be brief so we can move on.

22 Regarding the rule the sooner you bring the public into the rulemaking, I think, the

1 better.

2 As we noted in our statements today and what I just noted a couple  
3 moments ago, it's our assessment and especially our efforts on Chapter 2 of the  
4 draft GEIS where we really aggressively tried to say this is what you need to  
5 present. This is the kind of information that needs to be scrutinized.

6 So, it's not just an enormous amount more in terms of data and in terms of  
7 understanding the past history. It's also analysis of that data, NEPA's hard look  
8 review. An enormous amount of work needs to go back into that hard look review  
9 and that data.

10 That's going to -- all that need that the draft GEIS is right now running on an  
11 entirely separate track from a rulemaking, that to me seems to be at some level  
12 nonsensical because the controversies that will certainly ensue or the  
13 disagreements -- and we'll hopefully get good data where the National Mining  
14 Association and NRDC can all sit down and agree and say "Yes, this is good data  
15 where we think this is a fair assessment."

16 That's going to come into the rulemaking, too, and it's going to come into  
17 the draft GEIS process. You might as well meld the two together. So, don't put  
18 the cart before the horse and start going down the road with the draft GEIS before  
19 you go down the road with a rule that you want to make into a coherent process  
20 later that you're then going to apply to future licensee applicants.

21 In the efforts of being constructive I meant that to respond today. There's a  
22 whole host of things I could respond to and I may try and take the opportunity to

1 ask if I could write subsequently to a few of the other things I heard today and  
2 submit it to you separately in writing and, of course, to your staff. I'll follow any  
3 direction on how you want to do that.

4 CHAIRMAN KLEIN: We are always open for additional  
5 communication. We are a very open agency. Thank you very much. Thanks all  
6 of you for your presentations. Now we'll begin our questions with Commissioner  
7 Jaczko.

8 COMMISSIONER JACZKO: Thank you, Mr. Chairman. I do, I  
9 guess, probably want to clarify something Katie, I think, that you had said that  
10 there may be unanimous agreement about solving the problem of the Limited  
11 Work Authorization. I do want to clarify. When I suggested rulemaking would be  
12 the right way to do it, I wasn't suggesting and necessarily supporting doing a  
13 rulemaking.

14 I'm not sure that there really is a problem there that the most important  
15 thing for us to solve in this case. I certainly don't support the use of exemptions, I  
16 think, to do this. If a rulemaking is proposed it's certainly something I'd look at, but  
17 I think that's the right way to go forward as far as the process to address the issue.

18 One of the points -- and Jeff maybe you could comment on this a little bit.  
19 Some of the differences between -- one of the points, I think, that stuck out was  
20 the gentleman from the State of New Mexico indicated that an EA tiering off of a  
21 GEIS may in fact lose some level of specificity. I don't know if that's something  
22 that you might want to comment on your thoughts about that area. Is that an issue

1 that you see of concern?

2 MR. FETTUS: It's a potential looming problem and I appreciate the  
3 question, Commissioner. As a NEPA lawyer, occasionally that can become a  
4 problem and occasionally it can actually -- if the underlying EIS that the second  
5 work is tiering off of is very, very good then that can actually be a very useful  
6 document.

7 If the underlying EIS isn't worth the paper it's printed on and then you have  
8 a supplemental EIS that tiers off of that, then you have a problem. That's why I  
9 strongly encourage you and that's why we wrote what we hope were constructive  
10 and detailed comments for the staff to get the initial idea of a programmatic  
11 process right because right now we don't think it's remotely close.

12 Whether or not you have a supplemental EIS that's effective, helpful and  
13 really thoroughly vets the issues and gives the NEPA analysis a hard look that's  
14 required by law is, of course, going to depend on the underlying EIS.

15 Sure, that's a question I could more easily answer after the close of the  
16 initial larger programmatic EIS, whether or not something tiered off of it could be  
17 useful.

18 I could probably point you to a few EISs that were probably relatively useful  
19 as far as tiering. Then I could point you to a whole bunch of them that we didn't  
20 think were useful. Maybe not in this context, but certainly in other environmental  
21 contexts.

22 COMMISSIONER JACZKO: I appreciate those comments. I think in

1 many ways I guess what I'm taking from most of this is what's going to be most  
2 important is what the content is of the documents and the work that we put into it.

3 I think as I said earlier NEPA is a process. We don't have any flexibility in  
4 the process, so we have to follow a process. I guess what most importantly is that  
5 we do that process well. That's something I think as we go through the comments  
6 we'll have an opportunity then to address comments from you and from others  
7 who have submitted comments and we can begin to look at GEIS and see if it's  
8 satisfying the needs that I think that we're looking for.

9 This is an issue that I think is one of the aspects of the rulemaking that  
10 we're considering and that's the use of alternate concentration limits. We've heard  
11 various different things today about remediation of ISL sites and whether or not  
12 we've been able to better then cleaning up to something greater even than the  
13 maximum contaminant levels. Certainly not to, I think, initial well-field conditions.

14 I don't know if anybody wants to comment on that about the use of ACLs  
15 and whether ACLs are at kind of a primary level or whether we find as I think this  
16 has been NRC practice which is that ACLs come as kind of the third option after  
17 we would try background. Anybody who wants to comment on that?

18 MS. SWEENEY: That is the standard that we would anticipate would  
19 be coming in from EPA would be background or an MCL whichever is higher  
20 and/or an ACL if you can't.

21 COMMISSIONER JACZKO: If you can't meet the first two, then you  
22 would go to the ACL? Okay.

1 MR. FETTUS: That's going to be an issue of enormous concern  
2 from our perspective. I'm only speaking for NRDC here, but I can probably guess  
3 the other environmental groups are going to think the same thing.

4 The other environmental groups are going to probably share my opinion  
5 that that will be an issue of enormous concern and how that ACL, one, if it's even  
6 appropriate or two, how that's going to be set and then arrived at. It's going to be  
7 an issue of enormous contention.

8 MS. SWEENEY: There's a long list in the regulations of things that  
9 you have to do before you an ACL can be granted.

10 COMMISSIONER JACZKO: We don't have a regulation in front of  
11 us. I don't want to get into a discussion or argument here about regulation that  
12 quite frankly only a very few people in this room have actually seen. Those were  
13 the questions I had. Thank you.

14 CHAIRMAN KLEIN: Commissioner Lyons?

15 COMMISSIONER LYONS: Well, certainly thank each of you for  
16 participating. Michelle, I was very interested in your discussion of IFSOUP.  
17 Certainly, the objectives that you're describing struck me as very, very positive. I  
18 can't help thinking that I hope the acronym rolls off the tongue better in some other  
19 language. It's an international body, so I hope there's some language where it is a  
20 little better. A question.

21 I asked Don McKenzie about this new program being formed at the  
22 University of Wyoming and I know virtually nothing about it. Just a very small

1 press release on it. It did strike me that the formation of an educational program  
2 based, I gather, largely on ISL, ISR types of approaches could be very, very  
3 interesting from your perspective of trying to work towards sustainability.

4 I'm just curious if there's been any contact yet between IFSOUP and this  
5 University of Wyoming program or if there will be?

6 MS. REHMANN: Not with that university and I'll tell you that IFSOUP  
7 was developed -- the name was developed by a colleague of mine at IAEA who's  
8 from Brazil. So, I guess to a Brazilian it sounds just fine. In Portuguese maybe it  
9 means something good.

10 Roberto Villas-Boas also of Brazil is a member of our secretariat and he's a  
11 professor in Brazil. I have two other professors now involved with IFSOUP; one is  
12 Dirk van Zyl from the University of British Columbia and also Dr. Deborah Shields  
13 from the University at Fort Collins. She's a mineral economist and has worked on  
14 sustainability indicators for the mining industry in general, but also is working with  
15 uranium now.

16 We are interested in working with universities as much as possible and  
17 holding informational IFSOUP meetings in areas where uranium exploitation and  
18 development would take place. I'd like to take that as a note and put that on my  
19 to-do list as we get incorporated and see what we can do.

20 The plan would be to hold some meetings at various universities and we'll  
21 include that one and see what kind of other synergisms may exist. Thank you.

22 COMMISSIONER LYONS: It struck me it could be a very good

1 match. A question, Katie, for you. Maybe to expand a little bit more on some of  
2 the concerns on redundancy and we talk about dual regulation. But frankly, after  
3 this morning and afternoon I think we're way past dual regulation. I don't know if  
4 we're up to triple or quadruple.

5 But at least in my mind a lot of the rationale for trying to move ahead with  
6 NRC and EPA and some sort of coordinated way for rulemaking and to try and  
7 move ahead with MOUs, including BLM, all that to me is in the interest of trying to  
8 minimize redundancy and multiple levels of regulation.

9 I just wondered if you'd want to comment any more about some of the  
10 issues or frustrations that those multiple levels have raised?

11 MS. SWEENEY: I have heard over the years many stories from my  
12 member companies about submitting similar documents to the state, to NRC,  
13 perhaps to BLM depending on what other permits they need, to EPA. Then having  
14 to wait once you submit those for approvals from all the different agencies when  
15 they're looking at the same information and the same data.

16 For example, NRC basically looked at the State of Wyoming's in-situ rules  
17 and took a lot of that further and used that in guidance in their approach to  
18 regulating in-situ recovery. Yet you still have to get both the state and NRC to  
19 approve the well-fields. There's a lot of time and resources when it's the same  
20 regulation or the same regulatory standards are in place and having to wait for two  
21 decision-makers or more.

22 So, obviously, we're in favor of coordination whenever possible. Tiering we



1 think is a great approach. Tiering from anything that actually provides useful  
2 information to do your NEPA analysis.

3 Obviously, there is additional NEPA analysis required, but tiering is  
4 something that the Council of Environmental Quality recommends when possible  
5 to reduce just these kind of redundancies.

6 COMMISSIONER LYONS: Well, it's certainly my hope that out of  
7 this process and out of the series of meetings today we will have advanced  
8 towards the goal of a more efficient process that does meet all the different needs  
9 we've heard expressed today, but does it in a more efficient way.

10 MS. SWEENEY: Right, while still protecting public health, safety and  
11 the environment.

12 COMMISSIONER LYONS: That's very much what I meant by  
13 protecting the different interests we've heard today.

14 MR. FETTUS: Commissioner Lyons, could I speak to that briefly?  
15 There was no maximum contaminant limit for uranium until 1999 set by EPA,  
16 which was finally set a compromise standard of 30 micrograms per liter. It took  
17 until 1999.

18 So, some of the regulatory splintering that has happened over the years  
19 was in part because agencies were given regulatory responsibilities by Congress  
20 and then in many ways for a whole host of reasons that are complicated and not  
21 worth unearthing here today either were not able to provide regulatory guidance in  
22 light of those statutory responsibilities. This has been a long time coming.

1           So, yes, there are regulatory redundancies, but some of those things it's not  
2 simply a burden to industry. It's also been a burden to the public.

3           COMMISSIONER LYONS: I'm sure it's been a burden to everyone  
4 involved. Thank you for the comment. I hope that the overall process that we're  
5 embarked on that we've certainly heard discussed today from many different  
6 perspectives, I hope we will lead to a more unified approach. Thank you,  
7 Mr. Chairman.

8           CHAIRMAN KLEIN: Commissioner Svinicki?

9           COMMISSIONER SVINICKI: Thank you. Thank everyone for the  
10 presentations. I want to start off by thanking Mr. House and Mr. Charley, though,  
11 for traveling as part of this community of interest as resource holders. I appreciate  
12 your presence here today and the statement that you made. I thank, Mr. Charley,  
13 has the statement that was entered into the record as well. So, thank you both.

14           Ms. Sweeney, I want to return to something. I'm a little bit worried that in  
15 the last round of questions there was a truncated answer by you that I want to be  
16 sure that if there was any misunderstanding that we correct it.

17           There was a discussion about background and then maximum contaminant  
18 levels and alternate concentration levels. You made reference to a table of limits.  
19 And I think your answer got truncated by a discussion that there is a draft rule that  
20 only a few of us have seen.

21           You were referring to existing regulations, were you not? You have not  
22 seen the interagency? I just want to create -- as a matter of fact I think you made

1 a plea that you would like to see it sooner rather than later, so I don't want anyone  
2 to have the impression that you saw the draft because you have not. Could you  
3 clarify that?

4 MS. SWEENEY: I have not seen the draft. I was only speaking  
5 about how we in our discussions with EPA and NRC and what we've heard in  
6 public fora that we would anticipate that EPA is recommending to NRC that NRC  
7 take the 40 CFR Part 192 standards for groundwater which is the background  
8 MCL or ACL.

9 COMMISSIONER SVINICKI: Okay. Thank you. I think we ended  
10 that discussion on an odd note so I just wanted to clarify that.

11 Michelle, I wanted to return -- I listened very keenly to your presentation as  
12 Commissioner Lyons was mentioning. I think when we think "sustainable" I think  
13 agriculture and other things. When we're talking about a mineral resource it's an  
14 interesting concept.

15 So, I was listening closely and I noticed you mentioned a code of practice  
16 and you talked about adequate financial planning not to leave legacy sites. Are  
17 you talking sustainable at a higher kind of overall industry level because site by  
18 site it is obviously a mineral resource that's extracted? Sustainable, I think we  
19 think something that can grow again and again.

20 Can you maybe -- I don't -- if you covered it, maybe I just wasn't hearing it,  
21 but if you could return to that. Is there another run you could take it to help me  
22 understand?

1 MS. REHMANN: I'll try another run at it. There are various ways of  
2 defining sustainability, but they all rely on these three key components and that's  
3 taking into consideration indicators of economic, social and environmental  
4 conditions for the site.

5 The other primary definition in sustainability is that the current generation  
6 using the resource will not impact it such that it's not available for future  
7 generations. Clearly, in mining a mineral resource that -- you're mining it and  
8 therefore it's not available for future generations. So, it's a bit of a difficult way --  
9 it's a little difficult to apply sustainability to the mining industry.

10 However, it has been done and is being done. Conoco is a notable  
11 example of that. They've built a very strong sustainability program and are trying  
12 to lead the industry of existing facilities that are working in sustainable manners.

13 They do this by involving the local communities to build not only the  
14 economic base of the project, but to build the communities, build the infrastructure  
15 so that when the mine is depleted there something else for the community to go to.

16 There's also an environment that's in tact that they can use. They still have  
17 usable water. They still have ample water. The economic, social and  
18 environmental are all considered together and it doesn't impact the social and  
19 cultural values of the community so that in the future they still have their same  
20 social structure or an enhanced one.

21 There's a net positive output from the project over time. This has been  
22 done in a number of cases [inaudible] is a notable example of this. I was recently

1 at a forum in Argentina where that was used as an example of really turning a very  
2 bad situation into a very positive one.

3 Today, with new uranium operators there's companies that are looking at  
4 building conventional operations, who are looking at building sustainability at the  
5 very front of their programs. I think that's what we'll see more of. Just as uranium  
6 mining has changed over the past 30 years, so has the view to sustainability.

7 Larry Camper made a great remark at the last NMA/NRC workshop. He  
8 said, "Look, folks, this isn't the '50s. You're not going to operate exactly the same  
9 and you're not going to run your projects exactly the same as you did then either."

10 Expectations are different now. It used to be that when government and  
11 industry got together and brought that message down from the mountain people  
12 were ecstatic and they had jobs and that was great. It's not good enough today to  
13 bring that message and people don't seem to have that level of trust in our  
14 industries or even in our government sometimes that they used to have.

15 So, this three phased approach is a different one that's being used and is  
16 more of the standard of what we're seeing certainly internationally. It's one that  
17 AREVA has been using for a very long time and quite successfully. So, that's  
18 what we're trying to build and serve as a neutral party to bring the parties together  
19 in order to do that.

20 COMMISSIONER SVINICKI: The code of practice that's referred to  
21 in your slide is that an IFSOUP? In your collaborative process are you developing  
22 that or is that in existence already?

1 MS. REHMANN: No, there are international codes that have already  
2 been developed. Dr. Van Zyl, for example, in British Columbia was involved with  
3 one of those. There's specific results that have come out as to what sustainability  
4 looks like for various industries, but also for the mining industry.

5 We are using those as patterns for the sustainability goals, but then again  
6 each company -- it's not as simple as defining what sustainability looks like across  
7 the industry. There's going to be different things that make sense for the different  
8 communities and economic situations.

9 COMMISSIONER SVINICKI: Thank you. Thank you, Mr. Chairman.

10 CHAIRMAN KLEIN: Well, just for clarification on the number of  
11 reactors in the U.S. we have received 17 applications for 26 reactors. Now, that's  
12 different from 26 being under construction, but that's the number.

13 In terms of -- you commented on the fact that the spot market has  
14 increased. I absolutely agree. If you look at the worldwide demand we're getting  
15 a lot of currently uranium from blended down surplus weapons from the Russian  
16 program. So, there's certainly some dynamics in that area.

17 But this morning trying to look at what the actual demand is going to be for  
18 ISRs have you seen any trend in the lack of capital available for some of these  
19 ISRs that would potentially slow down?

20 MS. SWEENEY: I think that the mining industry and the uranium  
21 recovery industry are undergoing some of the same capital issues that the rest of  
22 the world is operating under right now, but there are a number of these companies

1 that already had a certain amount of investment in hand to get them to a certain  
2 point in their project.

3 I think there's a lot of companies that are in that category. So, while there  
4 may be some impact in the future, I don't think that it's currently having an  
5 enormous impact. I also think that perhaps if it does have an impact in the future  
6 that NRC would probably still get the same number of applications as  
7 consolidation happens within the industry and the best projects go forward.

8 CHAIRMAN KLEIN: Thanks. On your comment about the confusion  
9 on GEIS versus environmental issues there is confusion. I've gotten letters from  
10 that, including from New Mexico, where the implication was if you do a GEIS then  
11 you don't do an environmental issue. That's why there's been so much discussion  
12 today about the issue. There is confusion out there and our attempt is to clarify  
13 that; that there will be environmental assessments done at sites. Whether it's EIS  
14 or an EA there is confusion.

15 Geoffrey, you made a comment that there was significant damage from  
16 ISLs. Could you give me an example in the U.S. of environmental damage from  
17 uranium?

18 MR. FETTUS: Actually, I'd very much like to see that in any future  
19 version of a draft GEIS if there is such a thing in the next round. I hope it's  
20 another draft version rather than a final. I'd like to see some examination of  
21 Kingsville Dome or the Rosita site in Texas or some of the history of the Powder  
22 River Basin and what's actually happened at those sites and perhaps our

1 Wyoming folks.

2 Once again, I didn't come prepared today for an evidentiary hearing, but --  
3 Highland's Ranch. We are in the midst at NRDC in collecting an enormous  
4 amount of data.

5 By the way, I'd like to thank -- and I meant to do this earlier -- I don't know  
6 where the Wyoming gentleman is, but I'd like to thank his WyDEQ staff who was  
7 very helpful to some folks that we had go -- the librarian, I guess, would be the  
8 proper term -- and just try to collect some data on what's happened at individual  
9 well-fields.

10 CHAIRMAN KLEIN: I was just trying to clarify. When you say  
11 there's significant damage done from ISLs is this based on your preliminary  
12 assessment?

13 MR. FETTUS: Yes, this is based on us looking at actual well-field  
14 data. We have a hydrologist looking at this now. Unfortunately, this has been a  
15 compressed time frame for us partly because of my leave of absence. But when  
16 groundwater gets degraded from its pre-mining water quality, to us that's a  
17 significant environmental impact especially in the West.

18 CHAIRMAN KLEIN: I wasn't asking for evidentiary type answers. I  
19 was just looking at a clarification of the statement that damage had been done. I  
20 was just curious.

21 MR. FETTUS: We'd also like the NRC actually to be looking at the  
22 issue of what has happened and if the NRC can look at numbers of well-fields and



1 say these were all restored to its pre-mining water quality or better even. Here's  
2 the data. Here's what we found. Here's what we looked at. Thus far, we haven't  
3 seen that. That certainly wasn't in the draft GEIS.

4 CHAIRMAN KLEIN: I think what would help me is if you do have  
5 evidence of damage from ISRs we'd like to see that.

6 MR. FETTUS: Absolutely. We're going to be putting together as  
7 much of a report as we can. Whether or not it will be in the time frame that will --  
8 we'll go as fast as we can. We're having the same budget problems that  
9 government and industry are as well.

10 CHAIRMAN KLEIN: And so are we with the continuing resolution.  
11 Any other comments or questions?

12 Well, I'd like to again thank all of our speakers; certainly, thank this last  
13 panel for their presentation. And I'd certainly like to give a special thanks for the  
14 Native American groups that have come a long way because we do want to hear  
15 from all groups and certainly from the Native Tribes that are there.

16 So, thank all of you for your participation and the meeting is adjourned.

17 (Whereupon, the meeting was adjourned.)

18