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High-Level Waste Depository
Pre-hearing Conference

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Location: (telephone conference)

Date: Thursday, March 12, 2009

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Pages 1-62

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UNITED STATES OF AMERICA

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NUCLEAR REGULATORY COMMISSION

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ATOMIC SAFETY AND LICENSING BOARD PANEL

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PRE-HEARING CONFERENCE

In the Matter of:

U.S. DEPARTMENT OF ENERGY

Docket No. 63-001-HLW

(High-Level Waste

Repository)

Thursday, March 12, 2009

The above-entitled conference convened telephonically, pursuant to notice, at 1:00 p.m. Eastern Daylight Time.

BEFORE:

WILLIAM J. FROELICH, Administrative Judge, Chair

THOMAS S. MOORE, Administrative Judge

RICHARD E. WARDWELL, Administrative Judge

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

(1:05 p.m.)

CHAIRMAN FROEHLICH: Good afternoon for those on the East Coast. Good morning for those on the West. We will be on the record. I am Judge William Froehlich. I am Chairman of this Licensing Board, denominated CAB01 by the Chief Administrative Judge's order of January 16. And it's further authorized by his order of February 9th to conduct this pre-hearing conference. I am joined today by Judges Thomas S. Moore and Richard E. Wardwell as well as our law clerk Erica LaPlante.

This construction authorization Board is holding this telephone pre-hearing conference today in accordance with the provisions of 10 CFR section 2.1021 and our order of March 4th setting this day and this time for the pre-hearing conference.

Being mindful of the large number of participants we have on this teleconference today, counsel are pleased ask to speak in the order we just went through and reminded not to speak out of turn. In addition, please, counsel, I stress identify yourselves for the purposes of our court reporter.

All right. Our first item to discuss today concerns the process and schedule for joining or

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1 consolidated admitted contentions. If you will look
2 to the Board's March 4th order, we spoke of joining
3 contentions. And by that, we meant contentions which
4 logically should be grouped and heard at the same
5 time. By "consolidated," we meant contentions which,
6 although raised by different parties, are very similar
7 and should be combined.

8 Starting with Nevada, if I could, have you
9 reached any agreement or consensus with the other
10 parties concerning the process by which contentions
11 are to be joined or consolidated concerning the time
12 frames faced by the parties after our initial
13 contention admissibility decision?

14 MR. MALSCH: Yes. This is Martin Malsch
15 in the State of Nevada. We have not had discussions
16 with all of the parties. I have had a few very
17 preliminary discussions with some of the parties.

18 We do have an idea as to how it might
19 proceed, though. And that is that there is a little
20 bit of down time for the parties or there should be
21 anyway between, say, April 6 after the close of the
22 pre-hearing conferences scheduled for beginning on
23 March 31st, ending on May 11, and then beginning again
24 after June 1, after all the various appeal documents
25 might be filed.

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1 So we have some time, I think, to engage
2 in discussions among the parties to reach some sort of
3 agreement upon this. And I guess my suggestion would
4 be that a good date for a final agreement to be
5 reached would be sometime in early July, taking into
6 account the fact that the Board has already set a date
7 later on, on June 25, for the interest of governmental
8 participants to identify the contentions they wanted
9 to participate on. So that would need to be sort of
10 a part of this mix.

11 So my theory is that shortly after June
12 25, let's say 10 days, these discussion could be
13 brought to a close. And at that point we could advise
14 the Board about all of our discussions and conclusions
15 about joining in consolidation of contentions.

16 CHAIRMAN FROEHLICH: I fear my reaction to
17 that initially, counselor, is that that is a little
18 too long, a little too far out. Could I hear from any
19 of the other parties on any way we might be able to do
20 this a little bit more expeditiously, starting with
21 DOE?

22 MR. SILVERMAN: Yes, Your Honor. This is
23 Don Silverman. We did have a suggestion.

24 Our principal interest is I take it yours
25 is to make the process as efficient as possible and

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1 not to affect the schedule with respect to joint
2 sponsorship and consolidating.

3 One thing we were thinking about was
4 setting the time, basically having the discussions now
5 and through to about ten days after the pre-hearing
6 conference so that some sort of an agreement could be
7 reached perhaps ten days after the pre-hearing
8 conference while we are waiting for an order from the
9 Board, the first pre-hearing conference order.

10 We thought maybe to the extent there were
11 any parties that might disagree on a joinder issue or
12 a consolidation issue --

13 CHAIRMAN FROEHLICH: Counselor?

14 MR. SILVERMAN: Yes?

15 CHAIRMAN FROEHLICH: When you said,
16 "pre-hearing conference," are you referring to this
17 telephone pre-hearing conference or our oral argument
18 at the end of the month?

19 MR. SILVERMAN: The oral argument on March
20 31st, April 1st and 2nd.

21 CHAIRMAN FROEHLICH: Okay. Thank you.

22 MR. SILVERMAN: Our proposal would be we
23 use the time now and then ten days after April 1st, I
24 guess, it would be, April 12th and then for the
25 parties to try to reach agreement on joining

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1. contentions, at least with respect to consolidating
2. contentions, maybe even proffering a joint motion.

3. The Board might want to consider adding an
4. additional five days if any party wants to file any
5. sort of additional views or objections to any joint
6. motion that might be filed. And that would give the
7. Board a minimum of 15 days to reflect the results of
8. those discussions in the first pre-hearing conference
9. order.

10. But at the end of the day, our principal
11. concern is to see that this process just does not
12. adversely affect the schedule.

13. CHAIRMAN FROEHLICH: Does the NRC staff
14. have a view on this?

15. MS. YOUNG: Yes, Judge Froehlich. This is
16. Mitzi Young for the NRC staff.

17. The period suggested by DOE appears to be
18. reasonable. My fear is, however, that the ten days
19. after the oral argument may be too brief a time to
20. really reach agreement. So a slight modification of
21. that might be in order, but the general approach they
22. suggested appears reasonable.

23. CHAIRMAN FROEHLICH: Before I go back
24. through the remainder of the parties, I wonder if the
25. State of Nevada has a response to what has just been

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1 proposed by DOE and the staff.

2 MR. MALSCH: Yes, I do. This is Martin
3 Malsch again for the State of Nevada.

4 I think that the schedules by both DOE and
5 the staff are putting the cart before the horse
6 because they would have the parties unnecessarily
7 reach an agreement before the Board's May 11th
8 pre-hearing conference order on admission of
9 contentions. I don't think you could reach any
10 agreement on consolidation of the joinder until we
11 know which contentions are being admitted.

12 Moreover, really, there is not a whole lot
13 of time to address this issue between now and the
14 pre-hearing conference scheduled for the beginning on
15 March 31st because all the parties need to prepare for
16 that conference. And that could involve substantial
17 effort depending, of course, upon the order, which we
18 expect the Board to issue on what the topics for the
19 conference are.

20 So I think in one respect, it's jumping
21 the gun. And in another respect, it's accelerating
22 the schedule a bit too much considering the resources
23 of the parties.

24 JUDGE MOORE: This is Judge Moore. Mr.
25 Malsch and Mr. Silverman, the grouping of contentions

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1 and the consolidation of contentions will have the
2 primary purpose for the next extended period, I am
3 assuming, in your thinking around how discovery will
4 be focused. Is that a safe assumption?

5 MR. MALSCH: This is Martin Malsch for
6 Nevada.

7 I mean, yes. I was assuming it serves the
8 purpose for both arranging and scheduling and maybe
9 simplifying discovery and, even more importantly, much
10 down the line, preparing for the hearing and actually
11 conducting the hearing.

12 MR. SILVERMAN: Judge Moore, Don
13 Silverman. I agree with Mr. Malsch on that. We were
14 reacting with our schedule to the Board's suggestion
15 that the parties consider trying to make some progress
16 on this issue, however, before the admissibility
17 decision is made at the first pre-hearing conference
18 order.

19 JUDGE MOORE: Do either of you or the
20 staff -- and I'm sure the Chairman will give you all
21 an opportunity to then comment -- see any utility in
22 trying to reach a tentative agreement on proffered
23 contentions that then can be eliminated once the
24 Board's issued decisions on the admissibility of
25 contentions and perhaps further amended by any action

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1 by the Commission on appeal?

2 MR. MALSCH: This is Martin Malsch again
3 for Nevada.

4 Let me address that first. I mean, in
5 some circumstances, that might have made sense, but in
6 the current circumstances, virtually everyone's
7 contentions were objected to by either DOE or the
8 staff.

9 And so we really can't presume to know,
10 really, what contentions will be admitted. I mean, we
11 have very high confidence. We have submitted very
12 high-quality contentions, but still, I mean, there is
13 a theoretical possibility to hold some of them could
14 get disallowed, if not ours, others. And that would
15 have a drastic effect on joinder and consolidation.

16 So I just don't see how it would be
17 terribly productive to have much discussion along
18 these lines until the Board's decision on May 11 and,
19 furthermore, if the principal purpose is to plan for
20 discovery and the hearing, we really have plenty of
21 time to do that. So I don't think my schedule would
22 really have much of an effect on the overall hearing
23 and discovery schedule.

24 MR. SILVERMAN: And, Your Honor, Don
25 Silverman.

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1 My reaction is a couple of things. One is
2 the contentions have now been out there for almost
3 three months. And even some of the parties, Nye
4 County and NEI, have already submitted papers
5 indicating joint sponsorship of some contentions.

6 There has been time already for the
7 participants to digest what is out there and be
8 thinking about which ones they might want to join in
9 with others.

10 And with respect to consolidation, I think
11 there has been time to consider the fact that there
12 are a number of contentions that are very, very
13 similar and that could be consolidated.

14 So, again, you know, bearing in mind the
15 Board's suggestion that we at least consider trying to
16 reach some agreement on these issues now, recognizing
17 that to the extent issues or contentions are not
18 admitted, that the list gets modified, that is a
19 productive use of time.

20 MS. YOUNG: Judge Froehlich?

21 CHAIRMAN FROEHLICH: Yes?

22 MS. YOUNG: May the staff be heard on
23 this?

24 CHAIRMAN FROEHLICH: Yes, please.

25 MS. YOUNG: The reason for the staff's

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1 comments previously in terms of suggesting a minor
2 adjustment to DOE's suggested schedule was, in part,
3 due to the reasons that Mr. Malsch mentioned earlier.
4 The parties will be consumed, if not dedicating a
5 significant amount of time to, preparing for the
6 argument in Vegas. So the time period to negotiate
7 consolidation and joining of contentions is pretty
8 much limited prior to the oral argument.

9 However, subsequent to the oral argument,
10 as a result of information disclosed during that
11 argument, I would assume that the parties could use
12 the benefit of hearing the Judges' comments to better
13 focus their discussions regarding which contentions
14 should be consolidated or joined. And, quite frankly,
15 we do have general categories, such as pre-closure,
16 post-closure, NEPA, things that have to do with QA.

17 So I think it's possible that we could
18 make considerable effort in terms of just restricting
19 our discussions to grouping and consolidation of
20 contentions after the oral argument and in advance of
21 the Board's May 11th deadline for issuing a
22 pre-hearing conference order under appendix D.

23 CHAIRMAN FROEHLICH: I would like to hear
24 from the other parties. And please remember to state
25 your name before you begin speaking. Caliente Hot

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1 Springs?

2 MR. HUSTON: Well, I think we agree with
3 the position that Nevada has taken. This is John
4 Huston.

5 CHAIRMAN FROEHLICH: Thank you.

6 And for California?

7 MR. HEMBACHER: This is Brian Hembacher.

8 I think we would support an approach more
9 near to Nevada. Our concern is we probably think that
10 each of our contentions is unique. Depending on what
11 happens and what the decision is on May 11th, we may
12 very well want to join in or consolidate with other
13 contentions. And I think we would need at least some
14 time after May 11th to be able to make that decision
15 and discuss it with other parties and to see what
16 could be worked out with DOE.

17 So we would support Nevada's position that
18 we really would need a deadline after May 11th.

19 CHAIRMAN FROEHLICH: Thank you.

20 Clark County?

21 MR. ROBBINS: Yes, Your Honor. This is
22 Alan Robbins with Jennings, Strouss on behalf of Clark
23 County.

24 We, too, fall in line much more with the
25 State of Nevada. I would remind everybody that there

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1 are really little more than two weeks left between now
2 and oral argument in any event. So, really, what we
3 are talking about is whether we start now or defer for
4 perhaps two weeks until after argument.

5 And, for the reasons stated by Mr. Malsch
6 and others in terms of the need for preparatory time
7 and the uncertainty about just what contentions we are
8 or are not dealing with, you put those two together.
9 And we see no reason to accelerate and interfere with
10 counsel and parties trying to prepare over the next
11 two weeks.

12 CHAIRMAN FROEHLICH: Thank you, Mr.
13 Robbins.

14 Eureka County?

15 MS. CURRAN: This is Diane Curran.

16 Eureka County agrees with the State of
17 Nevada, and it would just like to point out its
18 concern about having limited resources. We think our
19 resources would be better used by waiting until we
20 know what issues are admitted.

21 One of the important things that is going
22 to come out of the consolidation process is who are
23 going to be the lead intervenors on the issues, which
24 is something that is generally hard to figure out
25 until you know what has been admitted to the case.

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1 CHAIRMAN FROEHLICH: Thank you, counselor.
2 The four counties?

3 MR. LIST: This is Robert List.

4 I would say separated out. There is no
5 reason we could not begin some at least informal
6 discussions with other parties concerning at least
7 consolidation.

8 We have identified probably about ten of
9 our colleagues, I guess we would call them, other
10 parties, with whom we think we have some commonality
11 on certain specific issues, not necessarily agreeing
12 with every point or matter included in their
13 contentions.

14 But we can see some commonality in a
15 number of them and think that the consolidation is a
16 good thing. We think, as a practical matter, it is
17 probably impossible to organize and see prior to the
18 Las Vegas hearings, however.

19 CHAIRMAN FROEHLICH: Thank you.

20 For Inyo County?

21 MR. JAMES: Yes. This is Greg James.

22 The County of Inyo is essentially in
23 agreement with the States of Nevada and California.

24 CHAIRMAN FROEHLICH: Lincoln? Lincoln
25 County?

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1 MR. WHIPPLE: Bret Whipple on behalf of
2 Lincoln.

3 As the status of an interested
4 governmental participant, we are going to defer to the
5 group decision at this time.

6 CHAIRMAN FROEHLICH: okay. For the Native
7 Community Action Council?

8 MR. BERKEY: Yes. Curtis Berkey,
9 Alexander, Berkey, Williams and Weathers.

10 We agree with the consensus that is
11 emerging here. And I would also like to point out
12 that it doesn't seem to make much sense for us to be
13 discussing joinder until we know whether our petition
14 to intervene has been granted.

15 Certainly it makes sense to wait we know
16 the question of admissibility has been determined. So
17 we agree with the general consensus.

18 CHAIRMAN FROEHLICH: For NEI, please?

19 MR. REPKA: This is Dave Repka.

20 NEI takes no position with respect to the
21 schedule but is ready and willing to work with
22 whatever schedule the Board determines to be
23 appropriate.

24 CHAIRMAN FROEHLICH: Thank you, counselor.

25 Nye County?

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1 MR. VanNIEL: Yes. Jeff VanNiel on behalf
2 of Nye County.

3 Realistically I think it becomes a much
4 easier and accelerated process if we wait until after
5 the 11th. However, depending on the degree of
6 granularity and detail with which the Board is going
7 to ask us to try and break this down, I think it is
8 possible to have initial and preliminary discussions
9 sometime after the March 31st, April 1st, April 2nd
10 oral arguments and before the Board actually releases
11 its order on May 11th.

12 I think we could start discussions then,
13 but realistically it becomes incredibly difficult to
14 try and parse who is going to be lead of what group of
15 contentions and how they are going to be consolidated
16 unless you actually know what has been admitted.

17 CHAIRMAN FROEHLICH: Thank you, counselor.

18 The Timbisha Shoshone Yucca Mountain
19 Oversight?

20 MR. POLAND: This is Doug Poland for the
21 oversight program.

22 We agree with the positions taken by the
23 States of Nevada and California and by the Native
24 Community Action Council.

25 CHAIRMAN FROEHLICH: Thank you.

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1 And for the tribe?

2 MS. HOUCK: This is Darcie Houck for the
3 Timbisha Shoshone Tribe.

4 We agree with the positions taken by
5 Nevada and California and the comments of both Eureka
6 and Nye County regarding resources as well as the
7 potential difficulties in sorting through the issues
8 until we know what is actually on the table.

9 CHAIRMAN FROEHLICH: Thank you, counselor.
10 White Pine County?

11 MR. SEARS: This is Sears on behalf of
12 White Pine County.

13 We agree with Nevada's position.

14 CHAIRMAN FROEHLICH: Thank you.

15 Are there any other parties to this call
16 who have not spoken and wish to be heard?

17 (No response.)

18 CHAIRMAN FROEHLICH: Hearing none, thank
19 you for your comments on this subject. We just
20 touched on it, but the March 4th order calling this
21 pre-hearing conference addressed the negotiation of a
22 schedule for the conduct of discovery pursuant to 10
23 CFR 2.1018 through 1020.

24 Before we can as a group discuss that
25 meaningfully, I would like to inquire of the NRC staff

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1 as to its plans on how and when the schedule might be
2 evolving on the issuance of the SER.

3 MS. YOUNG: This is Mitzi Young for the
4 NRC staff.

5 Staff is holding to the current schedule
6 under appendix D and awaiting guidance from the
7 Commission regarding the budget environment for any
8 changes to that schedule.

9 CHAIRMAN FROEHLICH: Counselor, are you
10 expecting guidance or is there a time frame in which
11 you can alert the parties and the Board as to the
12 schedule or any change in schedule from what is
13 reflected in schedule D?

14 MS. YOUNG: As soon as the staff knows --
15 this is Mitzi Young again -- we would be sure to
16 notify the Board and parties.

17 CHAIRMAN FROEHLICH: Okay. And,
18 counselor, do you have any idea at this point on when
19 the Commission might be giving guidance on this?

20 MS. YOUNG: Unfortunately not.

21 CHAIRMAN FROEHLICH: Thank you, counselor.

22 A second matter before us today is that we
23 would like to get a general idea or feel for the
24 parties' opinions prior to our issuance of the initial
25 contention admissibility decision regarding the

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1 setting of a discovery schedule.

2 Again, I would like to start with Nevada.
3 What do you anticipate a realistic schedule would look
4 like or how would we develop a schedule to be
5 implemented after the initial contention admissibility
6 decision is issued given the time constraints in this
7 proceeding?

8 MR. MALSCH: Yes. Thank you, Your Honor.
9 This is Martin Malsch again for Nevada.

10 We have a somewhat similar suggestion to
11 make with regard to this. Again, we're looking at
12 semi down times between the end of the pre-hearing
13 conference and May 11 and then beginning again around
14 June 1, after all the briefs are filed on possible
15 appeals, and up until and including folks on the June
16 25 date for interested governmental participants to
17 indicate what contentions they want to participate on.

18 So, again, we were going to suggest a date
19 of around July 11th. But our concept here is that all
20 the parties could get together and actually see if
21 they could work on and propose a full discovery plan,
22 which would include, you know, a sequence of events;
23 types of discovery; maybe limits, if any, on
24 depositions; the possibility of interrogatories, the
25 whole kind of thing which you see required in other

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1 cases under subpart G.

2 We think that would be a very worthwhile
3 endeavor. It might be necessary in any case. We also
4 think that it would be necessary and appropriate to
5 have a discovery master appointed so that disputes can
6 be resolved expeditiously.

7 Again, to do this, until we know pretty
8 much for sure how many contentions will be admitted
9 because discovery will be affected substantially by
10 how many contentions will be admitted. It makes a
11 great deal, whether we're talking about depositions on
12 250 contentions involving possibly 500 witnesses or
13 depositions involving 25 contentions and 70 witnesses.

14 So we can begin discussions before May 11,
15 but, really, they can't get terribly serious until a
16 time period after May 11. So, again, somewhat similar
17 to our suggestion before, we are suggesting that the
18 parties could get together and then propose a
19 discovery plan by around July 11th.

20 CHAIRMAN FROEHLICH: I would like to hear
21 from DOE in response to what you just heard from
22 counsel for Nevada.

23 MR. SILVERMAN: This is Don Silverman,
24 Your Honor.

25 We were generally in line with the notion

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1 that most of the discovery discussion, setting up the
2 ground rules and schedules and perhaps something on
3 the order of a plan, would be best completed after the
4 appeal briefs are filed and for the reasons stated,
5 that, at least at that point, we will know what the
6 Board has in mind in terms of admissible contentions.
7 Obviously the appeal process will not have run its
8 course.

9 We were going to propose -- we were
10 recognizing, though, that appendix D seems to
11 contemplate that the Board would issue some sort of a
12 discovery schedule in the first pre-hearing conference
13 order.

14 And if that is a need, a requirement, or
15 a desired goal, we could perhaps just set before that
16 time, try to agree on a major milestone schedule with
17 maybe four or five major milestones, such as
18 commencing the discovery process, a date for that, a
19 date for non-deposition discovery to commence, --
20 preceding depositions would be our preference -- a
21 date for depositions to start and a termination date,
22 which is really for discovery, which is driven by
23 appendix D.

24 But, short of that, you know, I think we
25 do agree with Mr. Malsch that until we know the number

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1 of contentions that are admitted, it is hard to
2 develop a more detailed plan and schedule.

3 JUDGE MOORE: This is Judge Moore.

4 Mr. Malsch, Mr. Silverman, and Ms. Young,
5 am I correct in assuming that should the Commission
6 decide on a different path for issuing the SER than is
7 currently set forth in appendix D; that is, having
8 issued serially over a different length of time, if we
9 were to assume that, am I correct in assuming that it
10 would have a direct impact on how you all would
11 approach a discovery schedule?

12 MR. MALSCH: Yes. This is Martin Malsch
13 for Nevada first.

14 It's hard to say. I mean, insofar as we
15 will be conducting discovery against the staff, it
16 would make a difference, although, without knowing in
17 advance what the serial components would consist of,
18 it would be pretty hard to plan.

19 So it would have some effect. It's just
20 hard to discuss and imagine what that would be in the
21 abstract.

22 JUDGE MOORE: Mr. Silverman?

23 MR. SILVERMAN: I am sorry. I was on
24 mute. Don Silverman.

25 Not sure I see a significant impact there

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1 on the discovery schedule. You know, most of the
2 discovery under appendix D is supposed to be completed
3 before the SER is issued at this point in time. But
4 I'm not sure I see a major impact on the discovery
5 schedule.

6 JUDGE MOORE: Ms. Young?

7 MS. YOUNG: This is Mitzi Young. I
8 believe on appendix D discovery continues from the
9 date the pre-hearing conference border ruling on
10 contentions is issued through about 60 days after the
11 safety evaluation is completed. And that schedule did
12 assume one document would be issued.

13 If the Board is correct and it is an
14 assumption that there could be an SER issued in
15 segments, that could accelerate the schedule for
16 discovery on and even hearings on issues related to
17 any particular segments of an SER that were issued.

18 In this case, we have got two different
19 major categories of contentions that would be subject
20 to discovery. And I think right now we can set a
21 discovery schedule related to NEPA contentions because
22 there are EIS documents that have already been
23 published. They have made adoption determinations,
24 and the parties have challenged those determinations.

25 So when we are talking about discovery, I

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1 think we have to be careful to understand that there
2 are certain things that this proceeding can go forward
3 on and there may be other things we have to wait more
4 definitive information regarding schedule for
5 documents related to the safety evaluation.

6 JUDGE MOORE: Ms. Young, I believe you
7 were in attendance at the May 2008 APAPO conference in
8 Las Vegas. If memory serves, I thought there was a
9 general consensus among all the parties that the NEPA
10 contentions that had a safety contention counterpart
11 should be grouped together and heard together.

12 Am I mistaken in my recollection, Ms.
13 Young?

14 MS. YOUNG: Well, you are mistaken in your
15 recollection that I attended the conference, but there
16 is a co-counsel here who could address perhaps exactly
17 what was stated during that pre-hearing conference.
18 It's Daniel Lenehan.

19 MR. LENEHAN: Thank you, Your Honor. This
20 is Daniel Lenehan.

21 My recollection is that that was discussed
22 but that no final decision was made on that subject.
23 The subject matter was discussed. It was discussed
24 quite extensively. But it was not finally resolved.

25 JUDGE MOORE: Mr. Silverman, do you have

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1 a recollection of whether there was a general
2 consensus that those pairings made sense for if there
3 were NEPA contentions with the counterpart safety
4 contentions?

5 MR. SILVERMAN: Your Honor, I apologize.
6 This is Don Silverman. I do not recollect the
7 specifics of that at this time.

8 JUDGE MOORE: Mr. Malsch? How good is
9 your recollection? Obviously there is a transcript,
10 and it can be consulted. But I am just curious if my
11 memory is playing tricks on me here.

12 MR. MALSCH: Yes. Thank you, Judge Moore.
13 This is Martin Malsch for Nevada.

14 You know, I can't remember precisely. And
15 that's perhaps because I think it made such logical
16 sense. I may be confusing compelling logic with the
17 existence of a consensus.

18 JUDGE MOORE: Well, I am pleased that at
19 my advanced age, there are others that obviously have
20 similar memory problems. Thank you.

21 CHAIRMAN FROEHLICH: At this point I would
22 like to know if any of the other parties would like to
23 be heard on the timing of discovery in this cast,
24 starting with Caliente Hot Springs.

25 MR. HUSTON: This is John Huston for

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1 Caliente Hot Springs.

2 We are comfortable with the discussion,
3 especially from Nevada's viewpoint.

4 CHAIRMAN FROEHLICH: Thank you.
5 California?

6 MR. HEMBACHER: This is Brian Hembacher.
7 I think we would agree with Nevada that to have a
8 serious discussion about a discovery schedule, we
9 really do need to wait and find out what contentions
10 are admitted, whether we are dealing with hundreds or
11 maybe dozens.

12 And just in terms of the number of
13 depositions that would be required we wouldn't think
14 would be very heavily affected by which contentions
15 stay on the play field.

16 So we would support Nevada's approach.

17 CHAIRMAN FROEHLICH: Clark County?

18 MR. ROBBINS: This is Alan Robbins on
19 behalf of Clark County. We, likewise, agree with the
20 view expressed by Mr. Malsch on behalf of the State of
21 Nevada.

22 CHAIRMAN FROEHLICH: Thank you.

23 For Eureka County?

24 MS. CURRAN: This is Diane Curran.

25 Eureka County agrees that it would be best

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1 to await the admission of contention.

2 CHAIRMAN FROEHLICH: Okay. The four
3 counties?

4 MR. LIST: This is Robert List on behalf
5 of the four counties.

6 We would also agree that the specific
7 schedule would have to be deferred until after the
8 order is given. I would also comment, however, in
9 response to Judge Moore's discussion that I think it
10 does make sense to and would be logical to hear the
11 paired NEPA and SE issue matters in one time frame or
12 to discover them, to deck the discovery on them
13 together.

14 It also might make sense to do the other
15 NEPA non-paired contentions in coordination with one
16 another, as opposed to the SE discovery in here.

17 CHAIRMAN FROEHLICH: Okay. Inyo County?

18 MR. JAMES: Yes, County of Inyo is in
19 agreement with the consensus that there should be a
20 wait for the admissibility determination before
21 discovery plan gets out.

22 CHAIRMAN FROEHLICH: Thank you.

23 Lincoln?

24 MR. WHIPPLE: Yes. Bret Whipple on behalf
25 of Lincoln County. We support Nevada's position and

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1 believe it is appropriate to wait.

2 CHAIRMAN FROEHLICH: Okay. The Native
3 Community Action Council?

4 MR. BERKEY: Curtis Berkey for the Native
5 Community Action Council.

6 We agree with Nevada and the consensus
7 here.

8 CHAIRMAN FROEHLICH: Okay. NEI?

9 MR. REPKA: Yes. This is Dave Repka for
10 NEI.

11 We generally agree with what Nevada
12 proposed. In particular, we think the idea for a
13 special master to be appointed is a good point. So we
14 would support that as well.

15 CHAIRMAN FROEHLICH: Thank you.

16 Nye County?

17 MR. VanNIEL: Jeff VanNiel on behalf of
18 Nye County, Your Honor.

19 We are basically going to agree for the
20 most part with what Mr. Malsch and Nevada said as far
21 as waiting after May 11th. However, I am not so sure
22 that we can't get more accomplished before July 11th
23 than Mr. Malsch believes.

24 But I think it is going to make the
25 process a lot quicker to have an idea of what is going

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1 to be admitted and not admitted, although I do believe
2 that with respect to some of the NEPA and the
3 transportation and other EIS-related matters,
4 scheduling can be a little quicker.

5 CHAIRMAN FROEHLICH: Thank you.

6 The oversight board?

7 MR. POLAND: This is Doug Poland for the
8 Timbisha oversight program.

9 We agree with the comments from the State
10 of Nevada and the State of California:

11 CHAIRMAN FROEHLICH: Thank you.

12 And for the tribe?

13 MS. HOUCK: This is Darcie Houck for the
14 Timbisha Shoshone Tribe.

15 We also agree with the statements of
16 Nevada and California.

17 CHAIRMAN FROEHLICH: Okay. White Pine
18 County?

19 MR. SEARS: This is Sears. White Pine
20 County agrees with Malsch and List.

21 CHAIRMAN FROEHLICH: Thank you.

22 All right. Turning now to the questions
23 that were posed for DOE and the NRC staff, as outlined
24 in our March 4th order, could I ask, please, counsel
25 for DOE to explain the significant differences, if

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1 any, between the June 3rd license application,
2 revision 0, and the updated version, revision 1, which
3 was filed recently, I believe February 19th?

4 MR. POLONSKY: Yes, Your Honor. This is
5 Alex Polonsky for the Department of Energy.

6 There are no significant differences. In
7 fact, the transmittal letter from the DOE to the NRC
8 submitting the license application updates states that
9 changes made to this revision were determined not to
10 be significant.

11 CHAIRMAN FROEHLICH: And, Mr. Polonsky,
12 can you explain how DOE complied with 10 CFR 63.22
13 with respect to the license application revision?

14 MR. POLONSKY: Yes, Your Honor. 63.22 has
15 subparts A through E. A requires a filing with the
16 director in triplicate on paper and optical storage
17 media. That was done.

18 63.22(b) requires submitting an additional
19 30 copies on paper and optical storage media. That
20 was done. And additional three copies were provided
21 as courtesies copies to the Board.

22 63.22(c) requires distributing the updated
23 application "as directed by the Board." The January
24 15th order of the Chief of the Atomic Safety Licensing
25 Board Panel required DOE to distribute the LA update

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1 essentially in the same manner as it had distributed
2 the June 3rd initial application. And DOE did that
3 with certain, I'll say, additions, as opposed to
4 exceptions.

5 The LA update was distributed to all of
6 the same NRC recipients in the same quantities as
7 before with the exception of the three courtesy copies
8 I mentioned for the tabs. It was distributed to all
9 the same affected units of local government and Nevada
10 state offices and agencies, but we did add recipients
11 who had filed petitions to intervene, essentially
12 those who have come forward and are participating in
13 the adjudicatory process but who were not part of the
14 initial June 3rd distribution list; for example, the
15 State of California, NEI, and CAC.

16 We have also complied with the
17 requirements to update the application timing-wise
18 from notification of the appointment of the ASLB.
19 That is why we distributed the application or
20 submitted it, the update, on February 19th.

21 There is a requirement also to provide an
22 update to the 2009 supplemental IS. The transmittal
23 letter states that that is not complete at this time
24 but will be submitted later this year.

25 63.22(d) requires making copies available

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1 at appropriate substation. The February 19th letter
2 identifies those public repositories, which housed the
3 original application, those repositories now have a
4 copy of the L.A. update.

5 And 63.22(e) requires a certification of
6 the revisions reflected in the updated LA. And that
7 certification is contained within the transmittal
8 letter.

9 If counsel and the parties are trying to
10 identify where the changes are, there is an enclosure,
11 enclosure number 4, to the transmittal letter, which
12 contains two tables, which essentially are a crosswalk
13 or a Rosetta stone that can guide you by change, by LA
14 page number what changes were done to the LA.

15 So we are not delving into the paper of
16 the LA update itself. You can look at those two
17 tables and get a very full grasp of what changes were
18 made.

19 CHAIRMAN FROEHLICH: Can DOE represent
20 that it complied with the directions of the Chief
21 Administrative Judge's order that DOE maintain the
22 section-numbering sequences from the June 3rd
23 application to the maximum extent practicable and that
24 DOE shall clearly identify in all section heading
25 labels the sections that have been revised by marking

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1 the changed text with bar indicators?

2 MR. POLONSKY: Yes, Your Honor. This is
3 Mr. Polonsky again.

4 No section numbers that existed in the
5 June 3rd LA were changed by the update. The section
6 number sequence did not change. There, in fact, is a
7 list of affected sections at the beginning of the LA
8 update, which shows whether a particular section, both
9 of the general information and the safety analysis
10 report, are read zero; in other words, they contain no
11 change, or whether they are now rev. 1, which
12 indicates that they have some changes.

13 If you go to those affected pages that are
14 identified in the table 1 in enclosure 4, those pages
15 have change bars in the margin with the new updated
16 text, the superseded text, removed. And the header of
17 each page reflects that it is rev. 1 and not rev. 0.
18 I believe that answers the Board's question.

19 CHAIRMAN FROEHLICH: Thank you.

20 JUDGE MOORE: This is Judge Moore, Mr.
21 Polonsky.

22 Are those bar indicators done in a way
23 that in the electronic media filings of the rev. 1
24 application they will show up?

25 MR. POLONSKY: Your Honor, my

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1 understanding is that they are identical in both the
2 paper and the electronic optical media, that the
3 changed bars are there.

4 JUDGE MOORE: Thank you.

5 CHAIRMAN FROEHLICH: Now turning to the
6 NRC staff, can you tell me, please, when the updated
7 version, rev. 1 of the DOE license application, will
8 be placed on ADAMS? And also will it be made
9 available on the electronic hearing docket?

10 MS. YOUNG: This is Mitzi Young for the
11 NRC staff.

12 We expect that an ADAMS version of the
13 license application will be available within the next
14 couple of weeks. In terms of the electronic hearing
15 docket, that is the repository for filings in the
16 proceeding. And my understanding is the license
17 application has not been filed in the proceeding or
18 the staff does put things on the electronic hearing
19 docket in the other means by serving something on the
20 Board and the Commission. And it is done through
21 automatic processing, the same way it is done for
22 other filings of the parties.

23 It is my understanding that the license
24 application as required by 210-03(b) has been made
25 electronically available by DOE on its licensing

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2 CHAIRMAN FROEHLICH: Thank you. Thank
3 you, counselor.

4 MR. MALSCH: Your Honor, this is Martin
5 Malsch of Nevada. Could I make just a few brief
6 comments upon this?

7 CHAIRMAN FROEHLICH: Sure. Surely, sir.

8 MR. MALSCH: Just, first of all, a comment
9 about significance. DOE apparently has a process for
10 determining significance which involves three
11 categories: amendments or changes which are
12 negligible, amendments or changes which have minimal
13 significance, and then amendments or changes which
14 have significance. So there is some judgment involved
15 in making this determination, as I guess should be
16 obvious.

17 But maybe more to the point, I know DOE is
18 working on or has completed a document that describes
19 how these determinations were made and the criteria.
20 And the Board might be interested in receiving a copy
21 of that document since it would elucidate exactly what
22 is meant by the statement that there are no
23 significant changes.

24 Secondly, I would just like to point out
25 that, in addition to changing, updating the license

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1 application, they also made changes to 36 primary
2 reference documents.

3 Now, we found in drafting contentions that
4 in many cases it is really impossible to adequately
5 view the license application without also looking at
6 the references.

7 And, yet, I don't know if the change
8 references have the same kind of bar designations.
9 For example, if a 500-page reference goes from rev. 0
10 to rev. 1, it is really difficult for parties like
11 Nevada to figure out what to change without actually
12 having bar marker indications or something similar.

13 I think in response to a staff question,
14 DOE may be working on a document that may be better
15 explaining this. And, again, this may be another
16 document that the Board might be interested in
17 receiving.

18 CHAIRMAN FROEHLICH: I would ask, then, at
19 this stage if DOE could respond to two of the points
20 that were just made, one made by staff counsel as to
21 the public availability of the rev. 1; and, secondly,
22 if there is, as Mr. Malsch just suggested, any kind of
23 reference or bar markers in the 36 primary reference
24 documents that are referred to.

25 MR. POLONSKY: This is Mr. Polonsky, Your

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1 Honor.

2 CHAIRMAN FROEHLICH: Thank you.

3 MR. POLONSKY: As for availability, yes,
4 we can confirm that the LA update is available on the
5 LSN for members of the public. But I omitted before
6 in my statement that each of the petitioners who are
7 participating on this call, essentially those entities
8 who are most interested, all receive their own hard
9 copy and I believe also a copy on optical storage
10 media.

11 So they all have a copy not only of the
12 update itself but each of these tables that I referred
13 to that are helpful user guide to guide you through
14 what exact changes were made and quantity. There was
15 a description of the change. And it is very easy to
16 figure out why the change was made.

17 As for the significance of the documents,
18 there is no requirement in the rules or regulations to
19 identify significance. And if you were to look
20 through the tables, tables 1 and 2 from enclosure 4,
21 it would be very clear to you why the change is made,
22 then I guess everyone is going to make their own
23 interpretation as to why the change is made, but the
24 description is there.

25 As for the 36 primary references that may

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1 have had changes, Mr. Malsch is aware of a meeting
2 between the NRC and the Department of Energy that was
3 held shortly after the submittal of the update, in
4 which the staff asked for and DOE was preparing a
5 similar table to that that is enclosed in enclosure 4,
6 which would walk through what the reference document
7 is, what the page number of that reference document
8 is, what the change is.

9 And I believe that that table will be
10 submitted today or in the very near future to the NRC.
11 And that will be available to all the petitioners as
12 well.

13 JUDGE MOORE: Mr. Polonsky, this is Judge
14 Moore.

15 If history is any guide, I suspect that
16 there will be a large number of license amendment
17 applications over the coming months and years.

18 If that proves to be the case and if with
19 those license applications there are corresponding
20 changes to supporting reference documents, does DOE
21 have the ready capability to use bar markers the way
22 they have marked the current rev. 1 changes to the
23 application, to do that with the reference documents?

24 MR. POLONSKY: DOE obviously has the
25 capability to do it this time. I would have to check

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1 with my client to see if that is the intent to do that
2 in any future updates, the schedule for which and the
3 periodicity for which have not been determined.

4 JUDGE MOORE: I'm sorry, Mr. Polonsky.
5 This is a telephone conference. And the distinctions
6 of one's words are not always easily discerned. Would
7 you repeat that answer, please?

8 MR. POLONSKY: Yes, Your Honor. And I
9 actually have some clarification as well. For the LA
10 updates, any additional updates, there will be change
11 bars in the margin for any future updates.

12 For the 36 references, I don't know
13 whether there will be change bars, but, as I mentioned
14 for this particular change to the 36 references, we
15 are supplying a table to the NRC staff that will be
16 available for everyone to understand the specific page
17 and the rationale for the change.

18 What I meant by that we do not know what
19 the timing is or periodicity of updates is I read into
20 your question a suggestion that there would many
21 updates and/or amendments. And DOE has not made any
22 determination at this time on timing or periodicity of
23 updates. That was, I believe, conveyed to the staff
24 during the post-update submittal.

25 JUDGE MOORE: Thank you, Mr. Polonsky. I

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1 was merely going on history.

2 CHAIRMAN FROEHLICH: Moving along, the
3 Board had requested from the parties suggestions for
4 additional items to be discussed at this telephone
5 pre-hearing conference. We received pleadings from
6 NEI, DOE, and the State of Nevada. I would like to
7 address some of the issues that were raised in those
8 pleadings at this point.

9 DOE and several participants had suggested
10 that the Board take as part of our oral argument broad
11 issues first and then move from broad issues to more
12 specific contentions. And this is indeed the approach
13 we will take, and we will provide the parties with
14 further information on the format of the oral argument
15 in an order to be issued shortly.

16 You will note that as the Board approaches
17 this, that things that are referred to as broad issues
18 may be referred to as over-arching issues in our
19 order.

20 The State of Nevada in their filing with
21 the Board on the 10th of March made reference to and
22 said that "Apparent conflict regarding due date for
23 contentions from petitioners which address DOE LA
24 updates between January 15th, 2009 order and the
25 January 29th CAB case management order." I would like

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1 to ask counsel for Nevada at this point if you could
2 elaborate a bit on the "apparent conflict" you allude
3 to in your pleadings.

4 MR. MALSCH: Yes, Your Honor. This is
5 Martin Malsch from Nevada. I would be happy to do
6 that.

7 The January 29th order provided that all
8 new or amended contentions based upon new and material
9 information would be due 30 days after the new and
10 material information first becomes available. And
11 this would be notwithstanding the ten-day period in
12 2.323.

13 This could be read to include new or
14 material information in the license application, in
15 which case something would be due within 30 days after
16 the last update, which I think would be the 23rd of
17 March.

18 On the other hand, the January 15 order
19 say that specifically contentions and replies and
20 answers should all be based upon the June 3rd version
21 of the license application but that after the Board
22 has issued their pre-hearing conference order on May
23 11, then the parties may, notwithstanding the 10-day
24 period in 2.323, file a pleading addressing relevant
25 matters introduced by LA updates and supplements and

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1 the like.

2 And so that suggested to us that in terms
3 of the most recent update, no new contentions or
4 amended contentions would be required to be filed
5 until something after May 11. And that was the basis
6 for our concern, how to reconcile the 1/29 order and
7 the 1/15 order.

8 CHAIRMAN FROEHLICH: Okay. Thank you,
9 counselor. We will take that under advisement.

10 Judge Moore?

11 JUDGE MOORE: Mr. Silverman, when did the
12 Department of Energy file rev. 1?

13 MR. POLONSKY: Your Honor, this is Mr.
14 Polonsky.

15 The transmittal letter is dated February
16 19th. I believe it was hand-delivered on February
17 20th.

18 JUDGE MOORE: Mr. Malsch, you just
19 mentioned a March 23rd date.

20 MR. MALSCH: We were running 30 days from
21 the 20th, the 19th. I may have calculated wrong, but
22 I guess the question would be whether a 30-day period
23 is even running now since consistent with the order of
24 January 15, which contemplated that the many
25 contentions wouldn't be due until after that point,

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1 which would mean that the 30-day period hasn't begun
2 to run yet.

3 CHAIRMAN FROEHLICH: Does the Department
4 of Energy wish to be heard on the date issue and the
5 30 days that counselor Malsch referred to?

6 MR. SILVERMAN: This is Mr. Silverman,
7 Your Honor.

8 We defer to the Board on this issue.

9 CHAIRMAN FROEHLICH: Thank you.

10 Nevada also raised in the pleading filed
11 with the Board documents or the utilization of the
12 DDMS system for oral arguments at the end of the
13 month. I would like to advise the parties that the
14 DDMS will be utilized for oral argument and in our
15 upcoming order setting out the terms. We will address
16 that in some greater detail.

17 I guess that addresses also the pleading
18 filed by NEI on DDMS. And, just for NEI's
19 clarification, no party is required to use the system,
20 but it will be available to all parties at the oral
21 argument as well as it will be used by the Board.

22 At this point are there any issues that
23 any party wishes to raise at this first pre-hearing
24 conference?

25 MR. MALSCH: Your Honor, this is Martin

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1 Malsch with Nevada.

2 CHAIRMAN FROEHLICH: Yes?

3 MR. MALSCH: We had raised one additional
4 question. We could perhaps address this in connection
5 with a discovery plan, but we had mentioned the
6 apparent restriction on the availability of
7 interrogatories in 2.101(a) in contrast to the fact
8 that under subpart G, they're generally available.

9 I don't know if the Board actually has to
10 address this now, but it would be helpful for purposes
11 of discovery planning to know whether or not
12 interrogatories are generally available or only
13 available at the order of the Licensing Board.

14 JUDGE MOORE: Mr. Malsch, this is Judge
15 Moore.

16 I am assuming the reason why this would
17 enter into planning for discovery schedule -- and,
18 DOE, correct me if I misspeak here -- that there would
19 be, then, the need, Mr. Malsch, for a number of
20 motions essentially asking the Board's leave if the
21 parties can't negotiate agreement to file
22 interrogatories or deposition and written questions.

23 I am guessing that if contention petitions
24 and answers are any guide, that every single one of
25 those motions would be opposed. And that would be a

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1 time-consuming process. And that is why you are
2 raising the question for scheduling.

3 MR. MALSCH: Judge Moore, this is Martin
4 Malsch again.

5 Yes, that is why we are raising the
6 question. If they are generally available unless
7 objected to under standard objections, that is one
8 thing. But if they are not available at all except
9 for the existence of limited circumstances, then that
10 would affect the planning, any discovery plan that we
11 might try to develop.

12 Frankly, I think laboratories are of very
13 limited value anyway, but still it would be useful to
14 know for purposes of planning whether or not they are
15 generally available.

16 MR. SILVERMAN: Your Honor, this is Mr.
17 Silverman for DOE. May I respond?

18 CHAIRMAN FROEHLICH: Yes, please.

19 MR. SILVERMAN: Thank you.

20 Judge Moore is correct to some degree that
21 motions filed and opposed, that does take time. But,
22 very similarly, interrogatories and responses to
23 interrogatories, if permitted without any
24 restrictions, takes a potentially very significant
25 amount of time and resources of the parties.

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1 And the regulation that is most specific
2 to this proceeding, 10 CFR 2.1018(a)(2), which you
3 cite, is very clear that it expects the parties to try
4 to work these things out cooperatively and voluntarily
5 and get information provided informally without the
6 need for an interrogatory process except in unusual
7 circumstances.

8 I think, frankly, while we disagreed on
9 and off on a lot of substance up until now, we have
10 agreed on a fair amount of process. So I don't think
11 the Board should assume that we would not be able to
12 work cooperatively together on these types of
13 procedural issues.

14 And I believe that the rule under subpart
15 J takes precedence.

16 CHAIRMAN FROEHLICH: All right. Thank
17 you.

18 Ten CFR 2.1018(a)(2), I guess, says what
19 it says. And at this point, I don't think the Board
20 will address it any further.

21 Are there any other issues that any party
22 wishes to raise at this time?

23 MR. BERKEY: Your Honor, Curtis Berkey for
24 the Native Community Action Council. Just a point of
25 clarification.

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1 CHAIRMAN FROEHLICH: Okay.

2 MR. BERKEY: The pre-hearing order to come
3 out of today's conference, will that address oral
4 argument of the NCAC's petition to intervene?

5 CHAIRMAN FROEHLICH: The one that was just
6 filed on the 11th?

7 MR. BERKEY: I'm sorry. The order with
8 regard to the oral argument on March 31st, April 1st,
9 and 2nd, I understand there is going to be an order
10 clarifying or elaborating on the process to be
11 followed there. I just wanted to clarify that the
12 counsel's petition to intervene will be addressed in
13 that order.

14 JUDGE MOORE: Counselor, this is Judge
15 Moore.

16 I am sorry. I don't understand your
17 question. I believe the Chairman indicated that an
18 order would issue in the not-distant future setting
19 the terms and conditions of that oral argument.

20 Your question goes to whether that order
21 will address substantively the merits of your client's
22 petition?

23 MR. BERKEY: No, Your Honor. Curtis
24 Berkey for the NCAC. No, Your Honor, that was not my
25 question. The question simply was that it will

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1 provide an opportunity for oral argument on the
2 petition at that oral argument, just to clarify that
3 point.

4 JUDGE MOORE: If I am understanding your
5 question, I think all such -- the answer to your
6 question will be provided in that order. I think it
7 will be clear how the boards will entertain all of the
8 pleadings in front of us for that oral argument.

9 MR. BERKEY: Thank you, Your Honor.

10 CHAIRMAN FROEHLICH: Were there any other
11 issues from any other party at this point?

12 MR. REPKA: Yes. This is Dave Repka for
13 NEI.

14 CHAIRMAN FROEHLICH: Yes, sir?

15 MR. REPKA: We had a second issue in our
16 March 9th, 2009 filing related to this pending motion
17 to strike.

18 CHAIRMAN FROEHLICH: Yes. Yes, counsel.
19 The Board is aware of it, and we will address that in
20 due course.

21 MR. REPKA: I think our primary question
22 was just whether that would be an issue for oral
23 argument or not.

24 CHAIRMAN FROEHLICH: The Board at the
25 conclusion of this pre-hearing conference will get

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1 together and prepare our order. I am not in a
2 position to state at this time what that order will
3 contain. I'm sorry, counsel.

4 MR. REPKA: That's fine. Thank you.

5 MS. YOUNG: Hi. This is Mitzi Young for
6 the NRC staff.

7 CHAIRMAN FROEHLICH: Yes?

8 MS. YOUNG: Will the discussion of the
9 DDMS accessibility also inform the parties of the need
10 to have a pass code or a password to access that in
11 the hearing room?

12 JUDGE MOORE: Ms. Young, are you
13 suggesting that you haven't taken DDMS training?

14 MS. YOUNG: No. I am just suggesting that
15 the parties may or may not be aware that they need a
16 password to access the system in the hearing room.

17 JUDGE MOORE: I think the reality, for
18 efficiency's sake, is that the clerk of court will be
19 operating the system on behalf of the parties. But
20 having gone through four or it may even be five years
21 now on the PAPO board and the APAPO board and the
22 enumerable opportunities and notices and urgings that
23 all participants partake in the DDMS training so that
24 they would have the system available to them, I am
25 hoping, Ms. Young, that all of that did not go for

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1 naught and that all of these parties representing
2 petitioners and parties have taken advantage of the
3 many opportunities over the past many years to get
4 that training.

5 If they haven't, I would suggest that they
6 contact the DDMS, the LSN administrator, and make
7 arrangements to do that.

8 MS. YOUNG: I believe they have to contact
9 the DDMS webmaster. And my understanding, Judge
10 Moore, is that those passwords expire after a period
11 of time. So it could be people who took the training
12 previously and had a password no longer have access to
13 the system.

14 JUDGE MOORE: Well, they need to contact
15 the webmaster and go through the process to get new
16 ones if they have allowed their passwords to expire.

17 MS. YOUNG: Nothing further from the
18 staff.

19 CHAIRMAN FROEHLICH: Is there anything
20 further from the Department of Energy? Mr. Silverman
21 or Mr. Polonsky, anything further from DOE?

22 MR. SILVERMAN: This is Mr. Silverman.
23 No, Your Honor.

24 CHAIRMAN FROEHLICH: Thank you.

25 MR. SILVERMAN: Thank you.

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1 CHAIRMAN FROEHLICH: For the State of
2 Nevada?

3 MR. MALSCH: Your Honor, this is Martin
4 Malsch in Nevada. No, nothing further from Nevada.

5 CHAIRMAN FROEHLICH: Thank you.
6 Caliente Hot Springs?

7 MR. HUSTON: No, Your Honor, nothing
8 further. This is John Huston.

9 CHAIRMAN FROEHLICH: Thank you.
10 California?

11 MR. HEMBACHER: This is Brian Hembacher.
12 Nothing further, Your Honor.

13 CHAIRMAN FROEHLICH: Clark County?

14 MR. ROBBINS: This is Alan Robbins. No,
15 sir. Thank you.

16 CHAIRMAN FROEHLICH: Thank you,
17 Eureka County?

18 MS. CURRAN: This is Diane Curran.
19 Nothing further from Eureka.

20 CHAIRMAN FROEHLICH: Thank you.
21 The four counties?

22 MR. LIST: Yes. Robert List. Nothing
23 further. And thank you, Your Honor, for this
24 opportunity.

25 CHAIRMAN FROEHLICH: Inyo County?

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1 MR. JAMES: Greg James. Nothing further
2 from Inyo County.

3 CHAIRMAN FROEHLICH: Thank you.
4 Lincoln County?

5 MR. WHIPPLE: Bret Whipple. Nothing
6 further. Thank you.

7 CHAIRMAN FROEHLICH: NCAC?

8 MR. BERKEY: Curtis Berkey. Nothing
9 further, Your Honor. Thank you.

10 CHAIRMAN FROEHLICH: Thank you.

11 For NEI?

12 MR. REPKA: Dave Repka for NEI.

13 One other question for clarification.

14 Will there be any webstreaming or call-in number for
15 the oral argument?

16 CHAIRMAN FROEHLICH: The Board is working
17 on those issues at this time and will include
18 information as to those two issues in a forthcoming
19 order.

20 MR. REPKA: Thank you.

21 CHAIRMAN FROEHLICH: Thank you, Mr. Repka.

22 Nye County?

23 MR. VanNIEL: Jeff VanNiel for Nye County.

24 Nothing further. Thank you, Your Honor.

25 CHAIRMAN FROEHLICH: For the oversight

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1 program?

2 MR. POLAND: Doug Poland for he oversight
3 program. Nothing further, Your Honor.

4 CHAIRMAN FROEHLICH: For the tribe?

5 MS. HOUCK: Darcie Houck for the Timbisha
6 Shoshone Tribe. Nothing further, Your Honor. Thank
7 you.

8 CHAIRMAN FROEHLICH: Thank you.
9 For White Pine County?

10 MR. SEARS: This is Sears. Thank you,
11 Your Honor. Nothing further.

12 CHAIRMAN FROEHLICH: I have two final
13 items before we conclude for the day. Copies of this
14 transcript of this pre-hearing conference are
15 available for purchase from Neal Gross, our reporter,
16 and can be requested by phone at (202) 234-4433.

17 Also, the Board will issue an order
18 summarizing today's pre-hearing conference very, very
19 shortly.

20 Now, as just a personal courtesy to Judge
21 Michael Farrar of CAB03, he asked me to mention that
22 in one of the initial Board orders issued, we
23 incorrectly put his middle initial as "J." That is
24 incorrect. Judge Farrar's middle initial is C. And
25 if you could check your future filings to correct his

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1 middle initial, I know he would appreciate it.

2 In conclusion, I would like to thank the
3 parties for taking the time to participate in this
4 teleconference. The Board understands the burdensome
5 nature of this proceeding and the difficulty of
6 holding a telephone conference with over 60 parties
7 and numerous more participants.

8 We would like to encourage the parties to
9 work together to resolve any disputes that may arise.
10 An order addressing issue terms sand further logistics
11 will be sent out shortly in order to aid you in your
12 preparation for the oral argument scheduled for March
13 31st, April 1st, April 2nd at our Las Vegas hearing
14 facility.

15 I thank you all. We are adjourned.

16 (Whereupon, the foregoing matter was
17 concluded at 2:12 p.m.)

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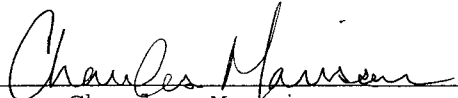
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Name of Proceeding: Pre-hearing Conference

Docket Number: 63-001-hlw

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