

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:

ASLBP BOARD 09-876-HLW-CAB01 William J. Froehlich, Chairman Thomas S. Moore Richard E. Wardwell	ASLBP BOARD 09-877-HLW-CAB02 Michael M. Gibson, Chairman Alan S. Rosenthal Nicholas G. Trikouros	ASLBP BOARD 09-878-HLW-CAB03 Paul S. Ryerson, Chairman Michael C. Farrar Mark O. Barnett
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In the Matter of)
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U.S. DEPARTMENT OF ENERGY) **Docket No. 63-001-HLW**
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(High Level Waste Repository))

**THE DEPARTMENT OF ENERGY’S OPPOSITION TO MARCH 11, 2009 MOTION OF
TIMBISHA SHOSHONE TRIBE FOR CERTIFICATION OF
LICENSING SUPPORT NETWORK OUT OF TIME FOR GOOD CAUSE¹**

The Department of Energy (DOE) opposes the March 11, 2009 Motion of the Timbisha Shoshone Tribe (Tribe) for Certification of Licensing Support Network (LSN) Out of Time (the “Motion”), because:

1. The Tribe did not make a sincere attempt to consult with DOE prior to submitting the Motion, and it, therefore, should be rejected under 10 C.F.R. § 2.232(b);
2. The Tribe’s proffered certification is addressed to the wrong time period; and
3. The Tribe’s Motion fails to demonstrate LSN compliance as required under 10 C.F.R. §2.1012 even as of March 11, 2009.

The Tribe failed to file its LSN certification when it was due more than one year ago, on January 17, 2008. Under Subpart J, the primary question now is not whether the Tribe had “good cause”

¹ The Tribe filed an identical motion with the Pre-License Application Presiding Officer (PAPO) Board, ASLB Docket No. PAPO-00. The PAPO Board’s jurisdiction over new motions expired upon the appointment of a licensing board for the proceeding. *U.S. Dep’t of Energy* (High Level Waste Repository: Pre-Application Matters), CLI-04-20, 60 NRC 15, 18 (2004). The Tribe’s Motion is thus properly addressed in this proceeding.

for missing that deadline but whether the Tribe can demonstrate substantial and timely compliance with LSN requirements when it filed its Petition to Intervene. The Tribe's untimely and unsupported certification fails to make such a demonstration. The Tribe's Motion should, accordingly, be denied.

I. The Tribe Did Not Make A "Sincere" Effort To Confer.

The NRC's regulations governing motions require a potential movant to contact parties to the proceeding and make a "sincere effort" to resolve the issues raised in the motion. 10 C.F.R. §2.323(b). The Tribe's Motion contains a certification of compliance with this regulation, but the Tribe did not make a "sincere effort" as the following chronology demonstrates:

- In early December 2008, DOE contacted the Tribe, through counsel, regarding its intended Petition to discuss whether areas of resolution were feasible. The Tribe's counsel stated in that discussion that the Tribe planned to discuss with DOE in the near future a motion to file a late LSN certification. Although potential participants were required to make LSN certifications in January 2008, that call was the first time any tribal representative raised with DOE the issue of LSN certification.
- Not hearing from the Tribe's counsel, DOE's counsel called the Tribe's counsel on December 12, 2008 and again to follow up on December 16, 2008, and December 18, 2008. DOE's counsel offered to confer with the Tribe's counsel about the Tribe's LSN production effort to see if agreement could be reached before the Tribe filed its Petition. DOE offered to review the Tribe's LSN procedures and identify any issues of concern. The Tribe's counsel said that she would get back to DOE.

- DOE did not hear from the Tribe again before the Tribe filed its Petition. And though the Tribe states in its Motion that it was too busy to confer with DOE before filing its Petition, the Tribe did not contact DOE promptly after filing its Petition. The Tribe waited until the evening of Tuesday, January 13, 2009, to email to DOE's counsel what was marked as "Draft" LSN procedures for the Tribe. *See Exhibit 1.*

- The following Monday, January 19, 2009, DOE's counsel informed the Tribe's counsel that she had reviewed the Tribe's draft procedures and had several questions, but that she needed to confer with DOE first. She also relayed that she was uncertain when she could confer with DOE, since it was a federal holiday (Martin Luther King Day) and the inauguration was the next day. *See Exhibit 2.* After conferring with the client, DOE's counsel sent the Tribe's counsel an email at the end of that week, on the morning of January 23, 2008. The email (attached as Exhibit 3) identified the following substantive areas of concern about the Tribe's draft LSN procedures:

- timing of the Tribe's designation of a responsible LSN official;
- timing of the Tribe's adoption of procedures;
- identity of expected sources of the Tribe's documentary material (*e.g.*, Tribe staff, contractors, experts, consultants); timing of, audience for, and content of training;
- background regarding collection efforts;
- substantive content of LSN procedures, such as the procedures' focus on documents generated "in the future," the procedures' focus on category 1 or "supporting" materials, and the absence of document preservation procedures; and
- clarification regarding reference in procedures to documents already available on the internet and the Tribe's view of whether this equates to "readily available" documents.

- DOE proposed in the email that a conference call be scheduled to discuss DOE's issues.

- The Tribe never responded to DOE's email. Instead, nearly two months later, the Tribe filed its Motion in which it informed DOE for the first time of the Tribe's view that DOE's concerns are not "appropriate" and "excessive."

- The topics identified in DOE's January 23 email are neither inappropriate nor excessive. They concern specific LSN requirements under Subpart J and the PAPO Board's orders.

In summary, the Tribe did not make a sincere effort to resolve or even narrow this controversy with DOE. It ignored DOE's requests to confer before the Tribe filed its Petition. It remained silent after filing its Petition for the better part of a month. The Tribe then provided its draft procedures, but ignored DOE's questions and declined even to discuss the matter with DOE. The Tribe did not make a "sincere effort" to resolve the issues raised by its Motion when it would not talk to DOE. Because the Tribe failed to consult in good faith with DOE regarding the subject Motion, its Motion should be rejected under 10 C.F.R. § 2.232(b).

II. The Tribe's Proffered Certification Is Addressed to the Wrong Time Period.

The Tribe filed the Motion and proffered LSN certification concurrent with its March 11, 2009 Reply to NRC Staff and DOE Answers to Timbisha Shoshone Tribes' Motion to Intervene as a Full Party ("Reply"). In its Reply, the Tribe cites its Motion as support for its assertion that it "has substantially complied with the LSN requirements," Reply at 7, a requirement for being granted party status. The Tribe's proffered certification, however, ignores the relevant criteria for granting it that status.

Under 10 C.F.R. § 2.1012(b), the Tribe "may not be granted party status under §2.309 . . . if it cannot demonstrate substantial and timely compliance with the requirements of § 2.1003 *at the time* it requests participation in the HLW licensing proceeding under §2.309 or §2.315"

(emphasis added). The Tribe's proffered LSN certification does not purport to demonstrate its LSN compliance as of the date it filed its Petition to Intervene. Rather, it at most asserts compliance nearly three months thereafter in March 2009. Accordingly, the proffered LSN certification is irrelevant to the Tribe's Petition to Intervene or any showing it must make therein.

III. The Tribe's Motion Fails to Demonstrate LSN Compliance as Required Under 10 C.F.R. §2.1012 Even as of March 11, 2009.

The Tribe cites 10 C.F.R. §2.1012 in support of its general assertion that the regulations allow LSN compliance subsequent to filing a Petition for Intervention, but the Tribe entirely ignores the language of § 2.1012, which requires the Tribe to "demonstrate" (§ 2.1012(b)(1)) and make a "showing" (§ 2.1012(b)(2)) sufficient to provide a basis for the Presiding Officer to make a "finding" (§ 2.1012(c)). The Tribe instead provides an extensive justification for why it could not timely comply with LSN regulations prior to its Motion under a cited "good cause" standard in 10 C.F.R. §2.307. But the Tribe cites no authority for ignoring the standard set in 10 C.F.R. §2.1012 in favor of only a "good cause" standard. Even if the Tribe had "good cause" for why it could not timely comply with the initial certification requirement,² that "good cause" does not

² The Tribe suggests in its Motion that an internal tribal dispute prevented a timely LSN certification. While DOE lacks firsthand knowledge regarding the internal governance dispute within the Timbisha Shoshone, DOE notes that the submittals of the other tribal entity, Timbisha Yucca Mountain Oversight Program (Timbisha YMOP), indicate that dispute had no bearing on the Timbisha Shoshone's failure to make a timely LSN certification in January 2008. In particular, the affidavit of its representative, Joseph Kennedy, states that "the Timbisha spoke with one voice until late October 2008." Affidavit of Joseph Kennedy (March 3, 2009) at ¶ 11 [Attachment 1 to Amended Petition of the Timbisha Shoshone Yucca Mountain Oversight Program Non-Profit Corporation To Intervene As A Full Party (March 5, 2009)]. It was not until late October 2008, according to Kennedy, that the other group that filed the instant Motion began to act separately. *Id.* ¶ 13.

With respect to the LSN, the Timbisha YMOP states that Kennedy "had contracted with experts, attorneys, and an administrator for the Tribe's LSN documents in early 2008." Reply of the Timbisha Shoshone Yucca Mountain Oversight Program Non-Profit Corporation In Support Of Its Petition To Intervene As A Full Party (February 24, 2009) at 20. Kennedy is said to have "worked with these individuals for a lengthy period of time" before October 2008. *Id.*

provide a basis for the Presiding Officer to make a “finding” of the Tribe’s LSN compliance as of March 11, 2009.

The Tribe’s attempt to demonstrate LSN compliance consists of nothing more than a bare certification, a representation that it has retained an LSN “consultant,” and the conclusory assertion that DOE’s issues -- which it failed to identify -- do not seem “appropriate” and are “excessive.” This demonstration is deficient. The Tribe’s own LSN procedures and Motion, moreover, indicate that the Tribe did not make a substantial, good faith effort to establish, provide training on, and implement the procedures required by 10 C.F.R. § 2.1009 in a timely fashion.

In the first place, the Tribe’s certification is facially inadequate. The certification states that the Tribe has adopted the procedures required by Subpart J. The certification makes no mention, however, of the training that Subpart J also requires. A facially inadequate certification does not demonstrate compliance. *U.S. Dept. of Energy* (High Level Waste Repository: Pre-Application Matters), LBP-04-20, 60 N.R.C. 300, 336-39 (2004).

Equally important, the Tribe provides no information about its procedures, and assuming its procedures are the same as the draft the Tribe provided DOE last January, the Tribe’s procedures are inadequate. Those draft procedures are attached hereto at Exhibit 1. The heart of

The reports of the LSN Administrator bear this out. Tribal representatives reportedly contacted the LSN Administrator in July 2007 “requesting information on how to participate in the LSN and how to get added to the service list for the HLW EHD.” SECY-08-0011, Licensing Support Network Administrator Semiannual Report (January 25, 2008) at 7. Tribal representatives again met with the LSN Administrator in May 2008. SECY-08-0104, Licensing Support Network Administrator Semiannual Report (July 23, 2008) at 4. As described by the LSN Administrator, in that meeting he provided information about “the technical aspects of establishing an LSN document collection and the technical assistance afforded by the LSN staff.” *Id.* Contrary to the suggestion in the Tribe’s Motion, therefore, it appears that the “split” in the tribal government, *see* Motion at 3, cannot account for the Timbisha Shoshone’s failure to make an LSN certification in January 2008.

the procedures (aside from recitation of purpose, history, quoting from regulations and statutes, and addressing electronic format issues) is in § 4 and Policy 1. In § 4 the Tribe's "staff, contractors, experts and consultants who work on the Yucca Mountain Licensing Proceeding" are directed "to ensure that documents generated or received *in the future*, including emails, are screened to identify those that qualify as documentary material. They are further directed to ensure that all such documentary material is submitted to the official LSN Coordinator for the [T]ribe and in a timely manner produced on the LSN" (emphasis added). In Policy 1, the Tribe states that it will "use due-diligence in locating and making available *supporting* documents material, *which is referenced in our [Tribe] LSN Document Collection*" (emphasis added).

The serious deficiencies in those procedures are apparent. One is their focus on "supporting" documentary material. This is an incorrect, narrow view of documentary material that fails to capture in good faith all the documents the Tribe must make available. *See* 10 C.F.R. § 2.1001 (definition of "documentary material"). The Tribe's apparent inattention to all categories of documentary material is further underscored in its Motion. Arguing that its attempt to belatedly comply with LSN requirements caused no prejudice, the Tribe posits that "all documents *referenced by* the Tribe are either generally publicly available documents, or documents listed on other (potential) parties certified LSNs" (emphasis added). The Tribe's argument reveals that it either fails to understand or fails to take seriously the regulation's much broader definition of "documentary material," which includes not only "referenced" materials, but all supporting and non-supporting information and relevant reports and studies. The NRC recently cautioned against just such a *laissez faire* attitude toward LSN compliance:

The LSN functions as a mechanism for early collection of all extant documents that normally would be collected later through traditional discovery, and we remind potential parties that we expect full compliance with our LSN requirements as set out in Part 2, Subpart J, or our regulations. The LSN is

intended to ‘provide potential participants with the opportunity to frame focused and meaningful contentions and to avoid the delay potentially associated with document discovery, by requiring parties and potential parties to the proceeding to make all of their Subpart J-defined documentary material available through the LSN . . .’ “[We expect] all participants to make a *good faith effort* to have made available all documentary material. . . .” [W]e expect the presiding officer to impose appropriate sanctions for any failure to fully comply with our LSN requirements.

U.S. Dept. of Energy (High Level Waste Repository: Pre-Application Matters), CLI-08-22 at 4-5 (Sept. 8, 2008)(unpublished) (footnotes omitted).

Another deficiency in the Tribe’s procedures is their direction to ensure that only “documents generated or received *in the future*” are submitted to the official LSN Coordinator for production on the LSN.” The PAPO Board made exceedingly clear that the obligation under the LSN regulations is “to gather all relevant and extant documents.” *U.S. Dept. of Energy* (High Level Waste Repository: Pre-Application Matters), LBP-04-20, 60 N.R.C. 300, 326 (2004). A participant’s procedures must be an “advance plan for gathering the right documents,” and the “procedures are to precede the implementation and the certification is to assure that the procedures were implemented.” *U.S. Dept. of Energy* (High Level Waste Repository: Pre-Application Matters), LBP-04-20, 60 N.R.C. 300, 338 (2004).

The Tribe does not explain when it adopted its procedures. The Tribe’s confusing reference to documents generated “in the future,” when combined with the lack of clarity regarding when the Tribe adopted and implemented its procedures, thus prevent a conclusion -- absent a further showing the Tribe has so far refused to make -- that the Tribe has “in good faith” established and implemented compliant procedures.

The Tribe appears to misapprehend its LSN requirements in other respects as well. For example, the Tribe’s LSN procedures and its Motion reveal a fundamental misinterpretation of the “exclusions” from the requirement to make documentary material electronically available on

the LSN contained in 10 C.F.R. § 2.1005. The Tribe's LSN procedures § 4.1 suggests compliance by creating a "link to any document which already exists on the World Wide Web." The Tribe's Motion explains that the "documents referenced" in its Petition are "generally publicly available documents," without explaining the way in which such asserted availability qualifies for exclusion under Section 2.1005 (excluding, e.g., "Reference books and text books" and "Readily available references, such as journal articles and proceedings, which may be subject to copyright"). A document's availability on the internet does not authorize its exclusion, as the PAPO Board has made clear. *See U.S. Dept. of Energy* (High Level Waste Repository: Pre-Application Matters), LBP-04-20, 60 N.R.C. 300, 329, 332 (2004) (rejecting claim that making files "publicly available on the Internet" does not alone make them "available" on the LSN and emphasizing the importance of the LSN's role in ensuring the "integrity and stability" of documents as well as their accessibility "via the single, consistent central LSN site search engine").

The Tribe's LSN procedures also fail to address the preservation of documents, the training of pertinent personnel, or the requirement to make monthly supplements and certifications, a requirement that the Tribe has been ignoring.

Further, there is nothing about the extent or nature of the Tribe's LSN collection to alleviate concerns about the deficiencies in the Tribe's LSN procedures. Based on DOE's review, the Tribe's LSN collection contains 42 bibliographic headers. However, 32 of those headers identify the same document—a Final Legislative EIS for the Timbisha Shoshone Homeland that the Department of Interior issued in 2000. It appears that the Tribe divided that EIS into 32 files on the LSN, meaning that the Tribe's LSN collection actually consists of just 11 documents. Nine of these documents are dated either 1999, 2000 or 2001. One is dated June

2007. The final one is dated January 2008. There are no documents authored by or sent to any of three experts providing affidavits in support of the Tribe's proposed contentions.

When combined with the deficiencies in the Tribe's LSN procedures, the Tribe's LSN collection provides little comfort that the required documents will be forthcoming on a timely and good faith basis throughout the course of the licensing proceeding. If The Tribe wants to be a party to the licensing proceeding, it must comply with the rules established for the licensing proceeding. Fairness requires that all potential parties in the licensing proceeding comply in good faith with the requirements of Subpart J. The Tribe has not yet made a demonstration that it is prepared to do so.

CONCLUSION

At this stage of the proceeding, 10 C.F.R. §2.1012 places the burden on the Tribe to make a demonstration or showing sufficient for a "finding" that it has substantially and timely complied with the provisions of Subpart J, including Section 2.1003 and Section 2.1009. Its bare "certification" to the contrary is neither relevant to its Petition to Intervene nor buttressed with concrete evidence to support its burden of proof as the moving party on this issue.

Respectfully submitted,

U.S. DEPARTMENT OF ENERGY

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March 23, 2009

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In the Matter of)
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U.S. DEPARTMENT OF ENERGY) Docket No. 63-001-HLW
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(High Level Waste Repository))

THE DEPARTMENT OF ENERGY'S OPPOSITION TO MARCH 11, 2009 MOTION OF
TIMBISHA SHOSHONE TRIBE FOR CERTIFICATION OF LICENSING SUPPORT
NETWORK OUT OF TIME FOR GOOD CAUSE
CERTIFICATE OF SERVICE

I certify that copies of the foregoing the **THE DEPARTMENT OF ENERGY'S
OPPOSITION TO MARCH 11, 2009 MOTION OF TIMBISHA SHOSHONE TRIBE FOR
CERTIFICATION OF LICENSING SUPPORT NETWORK OUT OF TIME FOR GOOD
CAUSE** in the above-captioned proceeding have been served on the following persons on March
23, 2009 through the Electronic Information Exchange.

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EXHIBIT 1

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From: Darcie Houck [dhouck@ndnlaw.com]
Sent: Tuesday, January 13, 2009 10:33 PM
To: Faglioni, Kelly
Subject: RE: Contact information
Attachments: Timbisha-PolicyProcedures-2008 Final Draft.doc

Please see attached draft policies and procedures. Are you available either tomorrow 1PM CA time or sometime in the morning on Thursday to discuss?

Darcie L. Houck, Attorney at Law
Fredericks Peebles & Morgan LLP
916-441-2700
916-441-2067 (FAX)

THE INFORMATION CONTAINED IN THIS TRANSMISSION IS ATTORNEY COMMUNICATION AND PRIVILEGED. IT IS INTENDED ONLY FOR THE USE OF THE ADDRESSEE. IF YOU RECEIVE THIS COMMUNICATION AND ARE NOT THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT THE COPYING OR DISTRIBUTION OF THIS COMMUNICATION IS PROHIBITED. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE IMMEDIATELY NOTIFY US BY TELEPHONE AT THE NUMBER ABOVE AND DESTROY THE ORIGINAL MESSAGE. THANK YOU.

From: Faglioni, Kelly [mailto:kfaglioni@hunton.com]
Sent: Tuesday, January 13, 2009 1:07 PM
To: Darcie Houck
Subject: Contact information

	Home vCard Bio
	<p>Kelly Faglioni Partner kfaglioni@hunton.com</p> <p>Hunton & Williams LLP Riverfront Plaza, East Tower 951 East Byrd Street Richmond, VA 23219 Phone: (804) 788-7334 Fax: (804) 343-4520 www.hunton.com</p>

From: Faglioni, Kelly
Sent: Tuesday, December 16, 2008 1:25 PM
To: 'dhouck@ndnlaw.com'
Cc: Shebelskie, Michael; Noonan, Edward
Subject: Timbisha Shoshone Tribes LSN procedures

Darcie --

3/23/2009

I am just following up on our conversation of Friday to see if you received this email and contact information and to see if you have determined whether you can share the Timbisha Shoshone Tribe's LSN procedures with DOE at this time?

Thanks. I look forward to hearing from you.

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From: Faglioni, Kelly
Sent: Friday, December 12, 2008 1:50 PM
To: 'dhouck@ndnlaw.com'
Cc: Shebelskie, Michael; Noonan, Edward; Faglioni, Kelly
Subject: Email contact information

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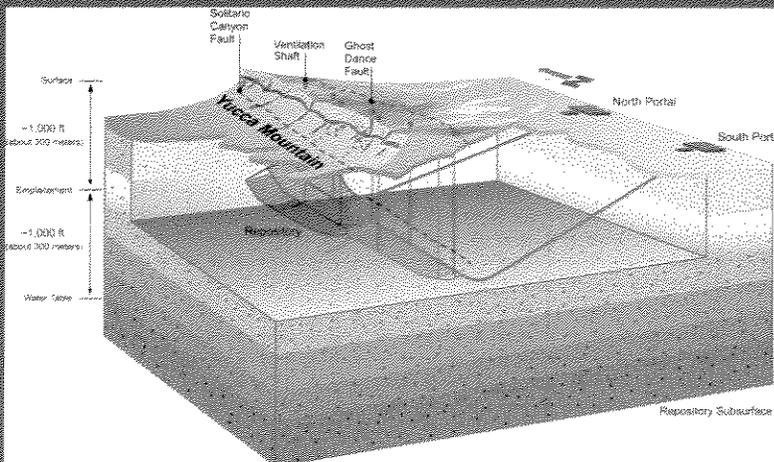
2008 UPDATE

Timbisha Shoshone Tribe Repository Oversight Program LSN Policy and Procedures

Author: NWOP Consulting Inc.

This document details the 2008 Timbisha Shoshone Tribe Repository Oversight Programs License Support Network (LSN) Policy and Procedures required as a part of the certification to participate in the probable Nuclear Regulatory hearings for a high-level radioactive waste repository to be located at Yucca Mountain, Nevada.

2008



Cutaway image of Yucca Mountain, its rock layers, and the planned network of repository tunnels.

P.O. BOX 206, DEATH VALLEY, CA92328-0206

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1.0 Introduction

The Nuclear Regulatory Commission's (NRC) Licensing Support Network (LSN) responds to a congressional mandate that if the Department of Energy (DOE) submits a license application for construction authorization for a high-level radioactive waste repository at Yucca Mountain, the NRC must reach a determination on the application in a three-year time frame. The NRC is replacing the classic "discovery" exchanges among parties with electronic access to discovery materials prior to the docketing of a license application. Subpart J was revised in 1998 to adopt the License Network System, a World Wide Web (www) approach to connecting each interested party's documentary collections within a design standard to ensure exchange of data between the LSN and interested parties.

2.0 Purpose

The purpose of this document is to set forth the basis for the initial certification that (1) Timbisha Shoshone Tribe (TST) established with the NRC by implementing the procedures as outlined in the NRC's Regulatory Guide 3.69 - Topical Guidelines for the Licensing Support System regulations and requirements (10 CFR 2.1003), and (2) to the best of the certifying official's knowledge, the documentary material specified in 10 CFR 2.1003 has been identified and made electronically available.

3.0 Process

The LSN web portal is not a central repository, but the central source for discovery information for the proceedings. Therefore, the TST has established a site where relevant data is stored and made available to the LSN web spider software to access. We have used HTTP links and pointers to enable searches by their WebCrawler to serve up requests made by users.

On June 3rd The DOE submitted their License Application to construct and build a nuclear repository at Yucca Mountain 90 miles North of Las Vegas, Nevada. Receipt of the application initiated the NRC review along two concurrent processes. The first process is the technical licensing review by the NRC staff, to assess the technical merits of the repository design and make a decision whether to issue a construction authorization for the repository. The second process is the adjudicatory hearings before one or more of the NRC's Atomic Safety and Licensing Boards, which will hear challenges by a number of parties to the technical and legal aspects of the DOE application. Based on the results of the licensing review and the hearings, the Commission will determine – solely on the technical merits – whether to authorize construction of the Yucca Mountain repository.

On September 9th, a letter to DOE was sent by the NRC Announcing the Docketing of the Yucca Mountain License Application and NRC Staff's Position on EIS Adoption.

On October 22, 2008 the Publication of Federal Register Notice announced the opportunity for hearings.

Under the procedural rules governing the Yucca Mountain proceeding, potential parties will have 30 days from publication of the notice to file petitions for a hearing. That time has been extended to December 22, 2008.

To promote fairness to all potential parties, transparency for all interested members of the public, and efficiency in the hearing process, the NRC created a Web-based Licensing

Support Network. The LSN is capable of containing up to 50 million pages of material designated by the parties as relevant to the proceeding, some of which is expected to be entered into evidence during the Yucca Mountain hearings. These documents are available for anyone to access at <http://www.lsnnet.gov>.

The hearing process established by the NRC for the Yucca Mountain construction authorization proceeding requires DOE to certify that its documents related to the Yucca Mountain application were available on the LSN at least six months before they submitting the application (which was on June 3rd, 2008). Others wishing to participate must also certify the availability of their relevant documents on the LSN no later than ninety days after DOE's certification. DOE and the State of Nevada have challenged the other's certification. These challenges are currently before the Commission for decision.

The Timbisha Shoshone Tribe is preparing their document collection with which they intend to petition the court for acceptance for a certification (December 4th, 2008). The TST will file with the NRC's Pre-Application Presiding Officer Board (PAPO) as soon as possible. The TST will file supplemental LSN certifications by Order, dated July 2005, as modified by orders dated February 9, 2006 and July 6, 2007,¹ when the Pre-License Application Presiding Officer (PAPO) Board required that "after a Licensing Support Network (LSN) participant's initial certification of its LSN collection, and after the Department of Energy (DOE) certifies its LSN document collection, each LSN participant shall, on or before the first of each month, certify on a monthly basis that it has duly supplemented its LSN collection with any additional documentary material discovered or created after the time of its initial certification." And the TST will continue to follow the orders as set forth above and accordingly, the official, responsible for the administration of the Staff's efforts to identify and make available supplementary documentary material via the LSN, will follow the rules that guide the supplementation of the TST's LSN collection.

4.0 Procedures

The TST has established policies and procedures as required by the NRC Title 10 - Energy, Chapter I, Part 2 - Rules of Practice for Domestic Licensing Proceedings and Issuance of Orders, Subpart J--Procedures Applicable to Proceedings for the Issuance of Licenses for the Receipt of High-Level Radioactive Waste at a Geologic Repository and has met all guidelines to certify with the PAPO as follows.

The TST procedure involving LSN documents has been established, completed and adopted by the TST and is as follows:

The TST staff, contractors, experts and consultants who work on the Yucca Mountain Licensing Proceeding are under direction to ensure that documents generated or received in the future, including emails, are screened to identify those that qualify as documentary material. They are further directed to ensure that all such documentary material is submitted to the official LSN Coordinator for the tribe and in a timely manner produced on the LSN.

¹ See Second Case Management Order (Pre-License Application Phase Document Discovery and Dispute Resolution) (July 8, 2005), at 21-22; Order (Suspending Monthly Supplementation Requirement) (Feb. 9, 2006); Revised Second Case Management Order (Pre-License Application Phase Document Discovery and Dispute Resolution) (July 6, 2007), at 21.

The TST LSN Coordinator will follow NRC LSN guideline Part 2—Rules of Practice for Domestic Licensing Proceedings and Issuance of Orders, Subpart J--Procedures Applicable to Proceedings for the Issuance of Licenses for the Receipt of High-Level Radioactive Waste at a Geologic Repository. <http://www.nrc.gov/reading-rm/doc-collections/cfr/part002/>

(Note) If these guidelines change the TST will update this Policy and Procedures Manual and will follow those guidelines as set forth by the NRC.

4.1 Actions Completed

- Designated an official for administering the TST's License System Network (LSN) responsibilities. The TST has designated this responsibility to the official LSN coordinator for the tribe. (Loreen Pitchford).
- Designated the technical point of contact for various functions including who will act as webmasters for our LSN site, who is responsible for the website help desk, and who should be contacted for loss of server and related problems (Loreen Pitchford). Point of contact has been submitted to Dan Graser, NRC's LSN Administrator.
- Adopted and established policy to implement the requirements of Section 2.1003 of the LSN Rule. We have also made our documentary material available in electronic format in accordance with this ruling.
- The TST, using due-diligence has made every effort to locate and make available backup information which is referenced in our document collection and has duly recorded our efforts using the form titled "**Log of research used in an effort to locate Timbisha Shoshone Tribe's reference material and bibliographies for the LSN collection.**" A copy of the form is attached to this document .
- At this time the TST do not have documents that are not provided in electronic form, but if those documents become part of the TST collection, we will make available (for inspection and copying) any document not provided in electronic form and will produce those documents following the NRC guidelines.
- The TST has uploaded and made available on the LSN those documents which have been located or has created a link to any document which already exists on the World Wide Web.
- The TST has complied with all standards for presentation of documentary materials established by the NRC LSNA as follows.
 - Textual material has been formatted to comply with the ISO/IEC 8859091 character set and be in one of the following acceptable formats: ASCII, native word processing (Word, WordPerfect), PDF Normal, or HTML.
 - Image files have been formatted as TIFF CCITT G4 for bi-tonal images or PNG (Portable Network Graphics) per [<http://www.w3.org/TR/REC-png-multi.html>] format for grey-scale or color images, or PDF (Portable Document Format--Image). TIFF, PDF, or PNG images will be stored at 300 dpi (dots per inch) or greater, grey scale images at 150 dpi or greater with eight bits of tonal depth, and color images at 150 dpi or greater with 24

bits of color depth. Images found on Timbisha Shoshone Tribe's machines will be stored as single image-per-page to facilitate retrieval of no more than a single page, or alternatively, images may be stored in an image-per-document format if software is incorporated in the web server that allows image-per-page representation and delivery.

- The TST has complied with all operational and functional standards regarding our LSN website operation and maintenance as established by the NRC LSNA and the License System Network Administrator Review Panel (LSNARP) TWG.
- The TST is maintaining and has published data to our LSN website as required by NRC's LSN operation and functionality guidelines.
- The TST will cooperate in the NRC's LSNA review of corrected, changed, or deleted documents on our LSN website.
- The TST will cooperate in the advisory review process established by the NRC under Section 2.101 1(d) of the LSN Rule.
- The TST has not included in our document collection those documents that fall under the NRC LSN Guidelines, Part 2—Subpart J--Procedures Applicable to Proceedings for the Issuance of Licenses for the Receipt of High-Level Radioactive Waste at a Geologic Repository **§2.1005 Exclusions (Attachment 2)**.

4.2 Security of Website

The TST Nuclear Waste Oversight Program has established protocol and security guidelines for the TST LSN website having firewall ports closed and the Web in SSL per NRC guidelines.

The TST has adopted GoDaddy's Internet's security policy for the Tribes Nuclear Waste Oversight Program's LSN website. In addition, the TST uses a secure host which requires login password and code and continues a virus scan and firewall operation on the host server.

- The TST has struggled to be certified as having "affected status" to facilitate the oversight of the proposed Yucca Mountain Nuclear Waste Repository. The Timbisha Shoshone Tribe's reservation lands and special use lands are located within both Esmeralda and Inyo Counties and, thus are potentially impacted since they are both contiguous to Nye County, which is the situs county for Yucca Mountain. The Department of the Interior, in accordance with section 2(2)(B) of the Nuclear Waste Policy Act (NWPA), certified the Timbisha Shoshone Tribe as an "affected Indian tribe" on June 29th stating "the tribe may be substantially and adversely affected by the proposed geologic repository at Yucca Mountain, Nevada." Along with this delay in receiving affected status the tribe also has been delayed in receiving funding to facilitate the oversight as stated in the NWPA. Given the short amount of time to prepare the TST has only a few documents to submit to the LSN. Therefore, demonstrated substantial and timely compliance with participation in the licensing proceedings in accordance with the requirements of Section 2.1003 of the LSN Rule has been brief. However, documents which can be located at this time have been transmitted

in the filings in the adjudicatory proceeding on the license applications electronically according to established requirements.

- In addition the TST certifying official (Loreen Pitchford) will certify to the PAPO that the procedures specified in the LSN Rules have been implemented and that, to the best of her knowledge, the documentary material specified in the LSN Rule has been identified and made electronically available. The initial certification has been delayed due to the prolonged effort to receive affected status and funding issues.

4.3 Management of Electronic Information

The TST has followed the electronic document production and the electronic docket rulings and provisions per NRC's 10 C.F.R. Part 2--Rules of Practice for Domestic Licensing Proceedings and Issuance of Orders, Subpart J--Procedures Applicable to Proceedings for the Issuance of Licenses for the Receipt of High-Level Radioactive Waste at a Geologic Repository, **§ 2.1011 Management of electronic information (Attachment 4)** specifically:

- Has obtained the computer system necessary to comply with the requirements for electronic document production and service of those documents.
- We have met our responsibility for obtaining a web host (GoDaddy) who maintains other computer systems which also comply with the requirements for electronic document production.
- The TST has made textual (or, where non-text, image) versions of their documents available on a web accessible server which is able to be canvassed by web indexing software (i.e., a "robot", "spider", "crawler") and Timbisha Shoshone Tribe's current system has made both data files and log files accessible to this software.
- The TST has made bibliographic header data available in structured data containing the bibliographic header and is available in a standard database readable (e.g., XML (Extensible Markup Language <http://www.w3.org/xml/>), comma delimited, or comma separated value (.csv)) file language.
- The TST textual materials are formatted to comply with the ISO/IEC 8859091 character set and are an LSN ruling acceptable format: a native word processing (Word, WordPerfect), PDF Normal, or HTML.
- The TST's image files are formatted PDF (Portable Document Format--Image) and are stored at 300 dpi (dots per inch) or greater, grey scale images at 150 dpi or greater with eight bits of tonal depth, and color images at 150 dpi or greater with 24 bits of color depth. Images found on TST's machines are stored as single image-per-page to facilitate retrieval of no more than a single page, or alternatively, an image-per-document format if operator software is incorporated in the web server which is calling the files to allow image-per-page representation and delivery.
- The TST has programmatically linked via hyperlink the bibliographic header record with the text or image file it represents. The TST system affords the LSN software enough information to allow a text or image file to be identified to the bibliographic data that describes it.

To facilitate data exchange, the TST's has adhered to hardware and software standards, including, but not limited to:

- Network access is at least HTTP/1.1 [<http://www.faqs.org/rfcs/rfc2068.html>] over TCP (Transmission Control Protocol, [<http://www.faqs.org/rfcs/rfc793.html>]) over IP (Internet Protocol, [<http://www.faqs.org/rfcs/rfc791.html>]).
- Our associated server names with IP addresses have the DNS (Domain Name System), [<http://www.faqs.org/rfcs/rfc1034.html>] and [<http://www.faqs.org/rfcs/rfc1035.html>].
- Web page construction is HTML [<http://www.w3.org/TR/REC-html40/>] per LSN NRC ruling.
- Electronic mail (e-mail) exchange between e-mail servers is SMTP (Simple Mail Transport Protocol, [<http://www.faqs.org/rfcs/rfc821.html>]).
- Format of an electronic mail message is [<http://www.faqs.org/rfcs/rfc822.html>] optionally extended by MIME (Multipurpose Internet Mail Extensions) per [<http://www.faqs.org/rfcs/rfc2045.html>] to accommodate multipurpose e-mail.
- The Licensing Support Network shall be coordinated by the TST's LSN Coordinator, due to the length of time to receive certification for affected status the tribe were unable to assign this task until December of 2008.
- Has identified any problems regarding the integrity of documentary material certified in accordance with § 2.1009(b) by the TST to be in the LSN.
- Will provide periodic reports to the Commission on the status of the TST's LSN functionality and operability as requested.

The TST will follow the NRC's Petition for Rulemaking § 2.802. **(See Attachment 5 – Petition for Rulemaking)**

4.4 Acceptance of the TST's LSN Administrator Responsibilities

The TST's LSN Coordinator has completed the following tasks and will continue to follow the guidelines and policies as set forth in this document.

- Identified technical and policy issues related to implementation of the LSN for NRC's LSN Advisory Review Panel and Commission consideration;
- Addressed and will continue to address any consensus advice of the NRC LSN Advisory Review Panel, and
- Identified any problems experienced by TST regarding LSN availability, including the availability of individual TST data, and will provided a recommendation to resolve any such problems to the ASLB staff (PAPO) relative to the resolution of any disputes regarding LSN availability, including disputes on the availability of an individual TST data.

- Continues to work with the ASLB staff with any issues identified to be related to the availability and access to TST's LSN document collection.

Signature
Loreen Pitchford
Dated:

Title: Timbisha Shoshone Tribe's LSN
Coordinator

Certification

Policies

Policy 1- Availability of document material:

Memorandum of Understanding

Document material is described by NRC as follows:

- (1) Any information upon which a party, potential party, or interested governmental participant intends to rely and/or to cite in support of its position in the proceeding for a construction authorization for a high-level radioactive waste repository at a geologic repository operations area pursuant to parts 60 or 63 of this chapter, a license to receive and possess high-level radioactive waste at a geologic repository operations area pursuant to parts 60 or 63 of this chapter;
- (2) Any information that is known to, and in the possession of, or developed by the party that is relevant to, but does not support, that information or that party's position; and
- (3) All reports and studies, prepared by or on behalf of the potential party, interested governmental participant, or party, including all related "circulated drafts," relevant to both the license application and the issues set forth in the Topical Guidelines in Regulatory Guide 3.69, regardless of whether they will be relied upon and/or cited by a party. The scope of documentary material shall be guided by the topical guidelines in the applicable NRC Regulatory Guide.

The TST will use due-diligence in locating and making available supporting documents material, which is referenced in our TST LSN Document Collection. The form "**Log of research used in an effort to locate Timbisha Shoshone Tribe's reference material and bibliographies for the LSN collection**" (attached) will be used in documenting our efforts in locating particular references and data backup used in support of our position in the proceedings for a construction authorization for a high-level radioactive waste repository proposed at Yucca Mountain. It is our policy that after applying a conscientious effort in the process to find referenced material and/or data and it is found not to exist or is unavailable the attached log form describing our efforts will stand in its place and will be located in the TST LSN Document Collection binder.

Attachments

Attachment 1

When the DOE submitted their LSN certification on June 3rd, the Pre-hearing Presiding Officer Board re-implemented the monthly LSN supplemental certification requirement. The TST will duly supplement their LSN documentation as necessary and will submit a LSN supplemental certification to the PAPO Board via electronic submittals each month. The electronic submittal is such as to secure that certain information pertaining to licensing actions, associated hearings, and other regulatory matters being transmitted to the agency electronically are digitally signed and secure via certification and unaltered during transmission.

Attachment 2 - Exclusions

NRC LSN Guidelines, Part 2—Subpart J--Procedures Applicable to Proceedings for the Issuance of Licenses for the Receipt of High-Level Radioactive Waste at a Geologic Repository § 2.1005 Exclusions.

The following material is excluded from the requirement to provide electronic access, either pursuant to § 2.1003, or through derivative discovery pursuant to § 2.1019(i)--

- (a) Official notice materials;
- (b) Reference books and text books;
- (c) Material pertaining exclusively to administration, such as material related to budgets, financial management, personnel, office space, general distribution memoranda, or procurement, except for the scope of work on a procurement related to repository siting, construction, or operation, or to the transportation of spent nuclear fuel or high-level waste;
- (d) Press clippings and press releases;
- (e) Junk mail;
- (f) References cited in contractor reports that are readily available;
- (g) Classified material subject to subpart I of this part;
- (h) Readily available references, such as journal articles and proceedings, which may be subject to copyright.
- (i) Correspondence between a potential party, interested governmental participant, or party and the Congress of the United States.

[63 FR 71738, Dec. 30, 1998; 69 FR 32848, June 14, 2004] - <http://lsnnet.gov/>

Attachment 3 – Availability of Material

NRC LSN Guidelines, Part 2—Subpart J--Procedures Applicable to Proceedings for the Issuance of Licenses for the Receipt of High-Level Radioactive Waste at a Geologic Repository § 2.1003 Availability of material.

(a) Subject to the exclusions in § 2.1005 and paragraphs (b), (c), and (e) of this section, DOE shall make available, no later than six months in advance of submitting its license application for a geologic repository, the NRC shall make available no later than thirty days after the DOE certification of compliance under § 2.1009(b), and each other potential party, interested governmental participant or party shall (has) make (made) available no later than ninety days after the DOE certification of compliance under § 2.1009(b)—

(1) An electronic file including bibliographic header for all documentary material (including circulated drafts but excluding preliminary drafts) generated by, or at the direction of, or acquired by, a potential party, interested governmental participant or party; provided, however, that an electronic file need not be provided for acquired documentary material that has already been made available by the potential party, interested governmental participant or party that originally created the documentary material. Concurrent with the production of the electronic files will be an authentication statement for posting on the LSN Web site that indicates where an authenticated image copy of the documents can be obtained.

(e) Each potential party, interested governmental participant or party shall continue to supplement its documentary material made available to other participants via the LSN with any additional material created after the time of its initial certification in accordance with paragraph (a)(1) through (a)(4) of this section until the discovery period in the proceeding has concluded.

Attachment 4 – NRC Petition for Rulemaking

NRC LSN Guidelines, Part 2—Subpart H--Procedures Applicable to Proceedings for the Issuance of Licenses for the Receipt of High-Level Radioactive Waste at a Geologic Repository § 2.802 Petition for Rulemaking.

(a) Any interested person may petition the Commission to issue amend or rescind any regulation. The petition should be addressed to the Secretary, Attention: Rulemakings and Adjudications Staff, and sent either by mail addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; by facsimile; by hand delivery to the NRC's offices at 11555 Rockville Pike, Rockville, Maryland; or, where practicable, by electronic submission, for example, via Electronic Information Exchange, e-mail, or CD-ROM. Electronic submissions must be made in a manner that enables the NRC to receive, read, authenticate, distribute, and archive the submission, and process and retrieve it a single page at a time. Detailed guidance on making electronic submissions can be obtained by visiting the NRC's Web site at <http://www.nrc.gov/site-help/eie.html>, by calling (301) 415-6030, by e-mail to EIE@nrc.gov, or by writing the Office of Information Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001. The guidance discusses, among other topics, the formats the NRC can accept, the use of electronic signatures, and the treatment of nonpublic information.

(b) A prospective petitioner may consult with the NRC before filing a petition for rulemaking by writing to the Chief, Rules and Directives Branch, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001. A prospective petitioner also may telephone the Rules and Directives Branch on (301) 415-7163, or toll free on (800) 368-5642, or send e-mail to NRCREP@nrc.gov.

(1) In any consultation prior to the filing of a petition for rulemaking, the assistance that may be provided by the NRC staff is limited to --

(i) Describing the procedure and process for filing and responding to a petition for rulemaking;

(ii) Clarifying an existing NRC regulation and the basis for the regulation; and

(iii) Assisting the prospective petitioner to clarify a potential petition so that the Commission is able to understand the nature of the issues of concern to the petitioner.

(2) In any consultation prior to the filing of a petition for rulemaking, in providing the assistance permitted in paragraph (b)(1) of this section, the NRC staff will not draft or develop text or alternative approaches to address matters in the prospective petition for rulemaking.

(c) Each petition filed under this section shall:

(1) Set forth a general solution to the problem or the substance or text of any proposed regulation or amendment, or specify the regulation which is to be revoked or amended;

(2) State clearly and concisely the petitioner's grounds for and interest in the action requested;

(3) Include a statement in support of the petition which shall set forth the specific issues involved, the petitioner's views or arguments with respect to those issues, relevant

technical, scientific or other data involved which is reasonably available to the petitioner, and such other pertinent information as the petitioner deems necessary to support the action sought. In support of its petition, petitioner should note any specific cases of which petitioner is aware where the current rule is unduly burdensome, deficient, or needs to be strengthened.

(d) The petitioner may request the Commission to suspend all or any part of any licensing proceeding to which the petitioner is a party pending disposition of the petition for rulemaking.

(e) If it is determined that the petition includes the information required by paragraph (c) of this section and is complete, the Director, Division of Administrative Services, Office of Administration, or designee, will assign a docket number to the petition, will cause the petition to be formally docketed, and will make a copy of the docketed petition available at the NRC Web site, <http://www.nrc.gov>. Public comment may be requested by publication of a notice of the docketing of the petition in the Federal Register, or, in appropriate cases, may be invited for the first time upon publication in the Federal Register of a proposed rule developed in response to the petition. Publication will be limited by the requirements of Section 181 of the Atomic Energy Act of 1954, as amended, and may be limited by order of the Commission.

(f) If it is determined by the Executive Director for Operations that the petition does not include the information required by paragraph (c) of this section and is incomplete, the petitioner will be notified of that determination and the respects in which the petition is deficient and will be accorded an opportunity to submit additional data. Ordinarily this determination will be made within 30 days from the date of receipt of the petition by the Office of the Secretary of the Commission. If the petitioner does not submit additional data to correct the deficiency within 90 days from the date of notification to the petitioner that the petition is incomplete, the petition may be returned to the petitioner without prejudice to the right of the petitioner to file a new petition.

(g) The Director, Division of Administrative Services, Office of Administration, will prepare on a semiannual basis a summary of petitions for rulemaking before the Commission, including the status of each petition. A copy of the report will be available for public inspection and copying at the NRC Web site, <http://www.nrc.gov>, and/or at the NRC Public Document Room.

Copied from NRC's website: at <http://nrc.gov/reading-rm/doc-collection>

Attachment 5 – Management of Electronic Information

NRC LSN Guidelines, Part 2—Subpart J--Procedures Applicable to Proceedings for the Issuance of Licenses for the Receipt of High-Level Radioactive Waste at a Geologic Repository § 2.1011 Management of electronic information.

(a) Electronic document production and the electronic docket are subject to the provisions of this subpart.

(b)(1) The NRC, DOE, parties, and potential parties participating in accordance with the provision of this subpart shall be responsible for obtaining the computer system necessary to comply with the requirements for electronic document production and service.

(2) The NRC, DOE, parties, and potential parties participating in accordance with the provision of this subpart shall comply with the following standards in the design of the computer systems necessary to comply with the requirements for electronic document production and service:

(i) The participants shall make textual (or, where non-text, image) versions of their documents available on a web accessible server which is able to be canvassed by web indexing software (i.e., a "robot", "spider", "crawler") and the participant system must make both data files and log files accessible to this software.

(ii) The participants shall make bibliographic header data available in an HTTP (Hypertext Transfer Protocol) accessible, ODBC (Open Database Connectivity) and SQL (Structured Query Language)-compliant (ANSI IX3.135091992/ISO 9075091992) database management system (DBMS). Alternatively, the structured data containing the bibliographic header may be made available in a standard database readable (e.g., XML (Extensible Markup Language <http://www.w3.org/xml/>), comma delimited, or comma separated value (.csv)) file.

(iii) Textual material must be formatted to comply with the ISO/IEC 8859091 character set and be in one of the following acceptable formats: ASCII, native word processing (Word, WordPerfect), PDF Normal, or HTML.

(iv) Image files must be formatted as TIFF CCITT G4 for bi-tonal images or PNG (Portable Network Graphics) per [<http://www.w3.org/TR/REC-png-multi.html>] format for grey-scale or color images, or PDF (Portable Document Format--Image). TIFF, PDF, or PNG images will be stored at 300 dpi (dots per inch) or greater, grey scale images at 150 dpi or greater with eight bits of tonal depth, and color images at 150 dpi or greater with 24 bits of color depth. Images found on participant machines will be stored as single image-per-page to facilitate retrieval of no more than a single page, or alternatively, images may be stored in an image-per-document format if software is incorporated in the web server that allows image-per-page representation and delivery.

(v) The participants shall programmatically link, preferably via hyperlink or some other automated process, the bibliographic header record with the text or image file it represents. Each participant's system must afford the LSN software enough information to allow a text or image file to be identified to the bibliographic data that describes it.

(vi) To facilitate data exchange, participants shall adhere to hardware and software standards, including, but not limited to:

(A) Network access must be HTTP/1.1 [<http://www.faqs.org/rfcs/rfc2068.html>] over TCP (Transmission Control Protocol, [<http://www.faqs.org/rfcs/rfc793.html>]) over IP (Internet Protocol, [<http://www.faqs.org/rfcs/rfc791.html>]).

(B) Associating server names with IP addresses must follow the DNS (Domain Name System), [<http://www.faqs.org/rfcs/rfc1034.html>] and [<http://www.faqs.org/rfcs/rfc1035.html>].

(C) Web page construction must be HTML [<http://www.w3.org/TR/REC-html40/>].

(D) Electronic mail (e-mail) exchange between e-mail servers must be SMTP (Simple Mail Transport Protocol, [<http://www.faqs.org/rfcs/rfc821.html>]).

(E) Format of an electronic mail message must be per [<http://www.faqs.org/rfcs/rfc822.html>] optionally extended by MIME (Multipurpose Internet Mail Extensions) per [<http://www.faqs.org/rfcs/rfc2045.html>] to accommodate multipurpose e-mail.

(c) The Licensing Support Network shall be coordinated by the LSN Administrator, who shall be designated before the start of the pre-license application phase. The LSN Administrator shall have the responsibility to--

(1) Identify technical and policy issues related to implementation of the LSN for LSN Advisory Review Panel and Commission consideration;

(2) Address the consensus advice of the LSN Advisory Review Panel under paragraph (e)(1) of this section that is consistent with the requirements of this subpart;

(3) Identify any problems experienced by participants regarding LSN availability, including the availability of individual participant's data, and provide a recommendation to resolve any such problems to the participant(s) and the Pre-License Application Presiding Officer relative to the resolution of any disputes regarding LSN availability, including disputes on the availability of an individual participant's data;

(4) Identify any problems regarding the integrity of documentary material certified in accordance with § 2.1009(b) by the participants to be in the LSN, and provide a recommendation to resolve any such problems to the participant(s) and the Pre-License Application Presiding Officer relative to the resolution of any disputes regarding the integrity of documentary material;

(5) Provide periodic reports to the Commission on the status of LSN functionality and operability.

(6) Evaluate LSN participant compliance with the basic design standards in paragraph (b)(2) of this section, and provide for individual variances from the design standards to accommodate changes in technology or problems identified during initial operability testing of the individual documentary collection websites or the "central LSN site".

(7) Issue guidance for LSN participants on how best to comply with the design standards in paragraph (b)(2) of this section.

(d) The Secretary of the Commission shall reconstitute the LSS Advisory Review Panel as the LSN Advisory Review Panel, composed of the interests currently represented on the LSS Advisory Review Panel. The Secretary of the Commission shall have the authority to appoint additional representatives to the LSN Advisory Review Panel consistent with the requirements of the Federal Advisory Committee Act, 5 U.S.C. app. I, giving particular consideration to potential parties, parties, and interested governmental participants who were not members of the NRC HLW Licensing Support System Advisory Review Panel.

(e)(1) The LSN Advisory Review Panel shall provide advice to--

(i) NRC on the fundamental issues of the type of computer system necessary to access the Licensing Support Network effectively under paragraph (b) of this section; and

(ii) The Secretary of the Commission on the operation and maintenance of the electronic docket established for the HLW geologic repository licensing proceeding under the Commission's Rules of Practice (10 CFR part 2).

(iii) The LSN Administrator on solutions to improve the functioning of the LSN;

(2) The responsibilities of the LSN Advisory Review Panel shall include advice on--

(i) Format standards for providing electronic access to the documentary material certified by each participant to be made available in the LSN to the other parties, interested governmental participants, or potential parties;

(ii) The procedures and standards for the electronic transmission of filings, orders, and decisions during both the pre-license application phase and the high-level waste licensing proceeding;

(iii) Other duties as specified in this subpart or as directed by the Secretary of the Commission.

[63 FR 71738, Dec. 30, 1998 as amended at 66 FR 29466, May 31, 2001] -
<http://lsnnet.gov/>

Attachment 6 - Glossary of Terms

Note: This information was copied from the NRC's website on February 16, 2006 except for the clarification NRC's LSN Administrator and of Timbisha Shoshone Tribe 's LSN Administrator- updated information should be included as appendices to this document as it occurs:

Please see website at: <http://www.nrc.gov/reading-rm/doc-collections/cfr/part002/part002-1001.html>

§ 2.1001 Definitions.

Bibliographic header means the minimum series of descriptive fields that a potential party, interested governmental participant, or party must submit with a document or other material.

Circulated draft means a non final document circulated for supervisory concurrence or signature in which the original author or others in the concurrence process have non-concurred. A "circulated draft" meeting the above criterion includes a draft of a document that eventually becomes a final document, and a draft of a document that does not become a final document due to either a decision not to finalize the document or the passage of a substantial period of time in which no action has been taken on the document.

Complex document means a document that consists (entirely or in part) of electronic files having substantial portions that are neither textual nor image in nature, and graphic or other Binary Large Objects that exceed 50 megabytes and cannot logically be divided. For example, specialized submissions may include runtime executable software, viewer or printer executables, dynamic link library (.dll) files, large data sets associated with an executable, and actual software code for analytical programs that a party may intend to introduce into the proceeding.

Document means any written, printed, recorded, magnetic, graphic matter, or other documentary material, regardless of form or characteristic.

Documentary material means:

- (1) Any information upon which a party, potential party, or interested governmental participant intends to rely and/or to cite in support of its position in the proceeding for a construction authorization for a high-level radioactive waste repository at a geologic repository operations area pursuant to parts 60 or 63 of this chapter, a license to receive and possess high-level radioactive waste at a geologic repository operations area pursuant to parts 60 or 63 of this chapter;
- (2) Any information that is known to, and in the possession of, or developed by the party that is relevant to, but does not support, that information or that party's position; and
- (3) All reports and studies, prepared by or on behalf of the potential party, interested governmental participant, or party, including all related "circulated drafts," relevant to both the license application and the issues set forth in the Topical Guidelines in Regulatory Guide 3.69, regardless of whether they will be relied upon and/or cited by a party. The scope of documentary material shall be guided by the topical guidelines in the applicable NRC Regulatory Guide.

DOE means the U.S. Department of Energy or its duly authorized representatives.

Electronic docket means the NRC information system that receives, distributes, stores, and retrieves the Commission's adjudicatory docket materials.

Image means a visual likeness of a document, presented on a paper copy, microform, or a bit-map on optical or magnetic media.

Interested governmental participant means any person admitted under § 2.315(c) of this part to the proceeding on an application for a construction authorization for a high-level radioactive waste repository at a geologic repository operations area under parts 60 or 63 of this chapter, and an application for a license to receive and possess high level radioactive waste at a geologic repository operations area under parts 60 and 63 of this chapter.

Large document means a document that consists of electronic files that are larger than 50 megabytes.

Licensing Support Network means the combined system that makes documentary material available electronically to parties, potential parties, and interested governmental participants to a proceeding for a construction authorization for a high-level radioactive waste repository at a geologic repository operations area, and an application for a license to receive and possess high level radioactive waste at a geologic repository operations area under parts 60 and 63 of this chapter.

NRC LSN Administrator means the person within the U.S. Nuclear Regulatory Commission responsible for coordinating access to and the integrity of data available on the Licensing Support Network. The LSN Administrator shall not be in any organizational unit that either represents the U.S. Nuclear Regulatory Commission staff as a party to the high-level waste repository licensing proceeding or is a part of the management chain reporting to the Director, Office of Nuclear Material Safety and Safeguards. For the purposes of this subpart, the organizational unit within the NRC selected to be the LSN Administrator shall not be considered to be a party to the proceeding.

Timbisha Shoshone Tribe LSN Coordinator means the person designated by Timbisha Shoshone Tribe to carry out the responsibilities as set forth in the Tribe's LSN Policy and Procedures manual.

Marginalia means handwritten, printed, or other types of notations added to a document excluding underlining and highlighting.

NRC means the U.S. Nuclear Regulatory Commission or its duly authorized representatives.

Party for the purpose of this subpart means the DOE, the NRC staff, the host State, any affected unit of local government as defined in Section 2 of the Nuclear Waste Policy Act of 1982, as amended (42 U.S.C. 10101), any affected Indian Tribe as defined in section 2 of the Nuclear Waste Policy Act of 1982, as amended (42 U.S.C. 10101), and a person admitted under § 2.309 to the proceeding on an application for construction authorization for a high-level radioactive waste repository at a geologic repository operations area under parts 60 or 63 of this chapter, and an application for a license to receive and possess high level radioactive waste at a geologic repository operations area under parts 60 and 63 of this chapter; provided that a host State, affected unit of local government, or

affected Indian Tribe files a list of contentions in accordance with the provisions of § 2.309.

Personal record means a document in the possession of an individual associated with a party, interested governmental participant, or potential party that was not required to be created or retained by the party, interested governmental participant, or potential party, and can be retained or discarded at the possessor's sole discretion, or documents of a personal nature that are not associated with any business of the party, interested governmental participant, or potential party.

Potential party means any person who, during the period before the issuance of the first pre-hearing conference order under § 2.1021(d), is given access to the Licensing Support Network and who consents to comply with the regulations set forth in subpart J of this part, including the authority of the Pre-License Application Presiding Officer designated pursuant to § 2.1010.

Pre-license application electronic docket means the NRC's electronic information system that receives, distributes, stores, and maintains NRC pre-license application docket materials during the pre-license application phase.

Pre-license application phase means the time period before a construction authorization for a high-level radioactive waste repository at a geologic repository operations area under parts 60 or 63 of this chapter is docketed under § 2.101(f)(3), and the time period before a license application to receive and possess high-level radioactive waste at a geologic repository operations area under parts 60 or 63 is docketed under § 2.101(f)(3).

Preliminary draft means any non final document that is not a circulated draft.

Presiding Officer means one or more members of the Commission, or an atomic safety and licensing board, or a named officer who has been delegated final authority in the matter, designated in the notice of hearing to preside.

Searchable full text means the electronic indexed entry of a document that allows the identification of specific words or groups of words within a text file.

Simple document means a document that consists of electronic files that are 50 megabytes or less.

Topical Guidelines means the set of topics set forth in Regulatory Guide 3.69, Topical Guidelines for the Licensing Support System, which are intended to serve as guidance on the scope of "documentary material".

EXHIBIT 2

Faglioni, Kelly

From: Faglioni, Kelly
Sent: Monday, January 19, 2009 6:12 PM
To: 'Darcie Houck'
Subject: Timbisha Shoshone Tribe's LSN procedures

Darcie -- I just wanted to let you know that I have reviewed the Timbisha Shoshone Tribe's LSN procedures you sent to me. I have forwarded them along with my thoughts on them to DOE so that I may confer with my client about the next steps. I know, however, that DOE is closed today and tomorrow (for the inauguration). So I do not expect to be able to confer with my client until Wednesday at the very earliest. I just wanted to keep you posted on status here for your planning purposes.



From: Darcie Houck [mailto:dhouck@ndnlaw.com]
Sent: Tuesday, January 13, 2009 10:33 PM
To: Faglioni, Kelly
Subject: RE: Contact information

Please see attached draft policies and procedures. Are you available either tomorrow 1PM CA time or sometime in the morning on Thursday to discuss?

Darcie L. Houck, Attorney at Law
Fredericks Peebles & Morgan LLP
916-441-2700
916-441-2067 (FAX)

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From: Faglioni, Kelly [mailto:kfgaglioni@hunton.com]
Sent: Tuesday, January 13, 2009 1:07 PM

3/23/2009

To: Darcie Houck
Subject: Contact information

[Home](#) [VCard](#) [Bio](#)

	<p>Kelly Faglioni Partner kfaglioni@hunton.com</p> <p>Hunton & Williams LLP Riverfront Plaza, East Tower 951 East Byrd Street Richmond, VA 23219 Phone: (804) 788-7334 Fax: (804) 343-4520 www.hunton.com</p>
---	--

From: Faglioni, Kelly
Sent: Tuesday, December 16, 2008 1:25 PM
To: 'dhouck@ndnlaw.com'
Cc: Shebelskie, Michael; Noonan, Edward
Subject: Timbisha Shoshone Tribes LSN procedures

Darcie --

I am just following up on our conversation of Friday to see if you received this email and contact information and to see if you have determined whether you can share the Timbisha Shoshone Tribe's LSN procedures with DOE at this time?

Thanks. I look forward to hearing from you.

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	<p>Kelly Faglioni Partner kfaglioni@hunton.com</p> <p>Hunton & Williams LLP Riverfront Plaza, East Tower 951 East Byrd Street Richmond, VA 23219 Phone: (804) 788-7334 Fax: (804) 343-4520 www.hunton.com</p>
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From: Faglioni, Kelly
Sent: Friday, December 12, 2008 1:50 PM
To: 'dhouck@ndnlaw.com'
Cc: Shebelskie, Michael; Noonan, Edward; Faglioni, Kelly
Subject: Email contact information

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Kelly Faglioni
Partner
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Richmond, VA 23219
Phone: (804) 788-7334
Fax: (804) 343-4520
www.hunton.com

EXHIBIT 3

Faglioni, Kelly

From: Faglioni, Kelly
Sent: Friday, January 23, 2009 11:06 AM
To: 'Darcie Houck'
Subject: Timbisha Shoshone Tribe LSN Procedures
Attachments: PROPOSED NEGOTIATING POINTS FOR TIMBISHA.DOC

Darcie:

I am following up on our communications about DOE's position on your anticipated motion for a late LSN certification because you mentioned your Friday timetable. DOE is not yet in a position at this time to say that DOE does not oppose your request for a late LSN certification. I say this not to prejudge the ultimate outcome or suggest what action you do or do not take today - it is only information for your planning purposes.

That said, I attach for your review an outline of substantive discussion topics representing initial potential concerns about the LSN procedures you provided. Perhaps we can pick a date and time for next week to talk through these topics. I am hopeful that we will be able to work through them (as we did with the State of California). Assuming that we do resolve our substantive questions about your procedures, and because the regulations appear to permit a party to come into compliance at any time, I hope we can work toward a goal of having DOE agree that your client has come into compliance with its LSN obligations. But that agreement may have to come after your filing in light of the schedule on which you wish to file.

Please do not confuse what position DOE takes relative to your LSN certification and what position DOE takes in response to your Petition to Intervene. As I mentioned when we talked, and as is evident in DOE's responses to the various Petitions to Intervene, DOE is taking the consistent position that a petitioner must demonstrate at the time it seeks to intervene that it has complied with LSN requirements. DOE must continue to reconcile the position it takes relative to the Timbisha Shoshone Tribe petition with the position it takes as to other petitioners. I am sure the NRC will have the opportunity to address the consequence of coming into full LSN compliance after a petition to intervene has been filed. But I want to make clear that DOE's willingness to work toward an agreement that your client has come into LSN compliance leaves open the question of whether full party status will be granted and contentions admitted.

I hope this makes clear where we are at this time. I look forward to working through the LSN compliance issues with you and hope that we can find a mutually agreeable time to talk next week.

On a related note, there is an open issue whether the PAPO Board has jurisdiction to entertain new matters now that ASLBs have been appointed in the licensing proceeding. There is some ambiguity because of the apparently limited jurisdiction the new ASLBs have. DOE has not developed a position on this yet, but I wanted to alert you to this in case you want to file in both dockets.

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Kelly Faglioni
Partner
kfaglioni@hunton.com



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To: Faglioni, Kelly
Subject: RE: Contact information

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916-441-2700
916-441-2067 (FAX)

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Sent: Tuesday, January 13, 2009 1:07 PM
To: Darcie Houck
Subject: Contact information

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From: Faglioni, Kelly
Sent: Friday, December 12, 2008 1:50 PM
To: 'dhouck@ndnlaw.com'
Cc: Shebelskie, Michael; Noonan, Edward; Faglioni, Kelly
Subject: Email contact information

[Home](#) [VCard](#) [Bio](#)

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	Hunton & Williams LLP Riverfront Plaza, East Tower 951 East Byrd Street Richmond, VA 23219 Phone: (804) 788-7334 Fax: (804) 343-4520 www.hunton.com

**DISCUSSION POINTS RELATIVE TO THE TIMBISHA SHOSHONE TRIBE'S LSN
COMPLIANCE**

1. When was Loreen Pitchford designated as responsible official for the Timbisha Shoshone Tribe (TST)?
2. When were procedures adopted?
3. Can you identify paid or volunteer persons (whether TST staff, contractors, expert, or consultant) responsible for TST's substantive positions regarding (i) land ownership, (ii) water rights, (iii) evaluation under NEPA (alternative to geologic repository, dose, water flow, thermal effects, climate, and socioeconomic impacts) (Johnson & Mifflin?), and (iv) transportation issues (Dilger)?
4. When and how was training on the procedures provided to staff, contractors, experts, or consultants? Any guidance or training materials distributed?
5. What steps were taken to collect past/existing documentary material from those identified above? What direction was provided to them, when, and by whom? (See reference below to "in the future").
6. See TST LSN Procedures § 4 ("The TST staff, contractors, experts and consultants who work on the Yucca Mountain Licensing Proceeding are under direction to ensure that documents generated or received *in the future*, including emails, are screened to identify those that qualify as documentary materials. They are further directed to ensure that all such documentary material is submitted to the official LSN Coordinator for the TST and in a timely manner produced on the LSN") and Policy 1 ("The TST will use due-diligence in locating and making available supporting documents material, which is referenced in our TST LSN Document Collection. The form "Log of research used in an effort to locate Timbisha Shoshone Tribe's reference material and bibliographies for the LSN collection" (attached) will be used in documenting our efforts in locating particular references and data backup used in support of our position in the proceedings for a construction authorization for a high-level radioactive waste repository proposed at Yucca Mountain. It is our policy that after applying a conscientious effort in the process to find referenced material and/or data and it is found not to exist or is unavailable the attached log form describing our efforts will stand in its place and will be located in the TST LSN Document Collection binder."). Areas of concern:
 - All potentially LSN-relevant documents (including emails) need to be preserved. Applicable document destruction policies must be suspended. This is not addressed in the procedures.

- Criteria for LSN-Relevance (includes all Class 1 (supporting information), Class 2 (non-supporting information) and Class 3 (reports and studies)). Procedures reference only use of diligence to locate only supporting materials. This raises questions about sufficiency of procedure to identify categories 2 (non-supporting information) and 3 (reports and studies) for preservation and production and inclusion on the LSN.
 - If the TST cannot determine the LSN-relevance of a document now, is there a process for re-review of the document at an appropriate time?
 - Clarify who is making the determination of whether a document qualifies as documentary material. It appears that TST staff, contractors, experts and consultants are asked to make this determination and then submit the documents to the LSN Coordinator (Loreen Pitchford).
 - Reference in Procedures § 4.1 to creating a “link to any document which already exists on the World Wide Web.” What does this mean? Where does the link exist? Is TST suggesting that this link is only a matter of convenience for documents that are excludable under definition of documentary material (because they are “readily available”)?
7. Application of procedures against contentions. Can we see copies of the log entries in the TST LSN Document Collection binder?