

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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In the Matter of	)	March 27, 2009
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U.S. DEPARTMENT OF ENERGY	)	Docket No. 63-001
	)	
(High Level Waste Repository	)	
Construction Authorization Application)	)	
	)	

**CALIENTE HOT SPRING RESORT LLC's MOTION TO DISMISS U.S. DEPARTMENT
OF ENERGY's LICENSE APPLICATION**

Caliente Hot Springs Resort LLC (CHS) respectfully moves the Commission to dismiss the License Application (LA) filed by the U.S. Department of Energy (DOE) herein.

As basis for this Motion, CHS shows the Commission, and asks the Commission to take notice of, the recent statements of the President of the United States to the effect that "Yucca Mountain is dead" and the March 17, 2009 testimony of the Secretary of DOE (Secretary) before the Energy & Natural Resources Committee, U.S. Senate (Committee), wherein the Secretary admitted that the Obama Administration, which includes DOE, has decided not to proceed with Yucca Mountain for the purposes and as stated in the LA.

As further basis for this motion, CHS shows the Commission that, in his testimony, the Secretary intimated that Yucca Mountain, its design, potential safety, environmental studies, or all of them, are defective. In support of such statement, CHS requests that the Commission take special notice of the Secretary's claim under oath, in response to the question, "What is wrong with Yucca Mountain?" he answered, "I think we can do a better job."

DOE already should have filed a motion with the Commission to withdraw the LA because the Administration, including DOE, has made the decision, which the Secretary confirmed in his testimony on March 17, 2009 before the Committee, that the Administration, including DOE, has decided that it will not construct and operate Yucca Mountain as stated in the LA.

The LA is therefore without foundation and is speculative. The LA is wasteful of the staff time and funds of the Commission and the CAB's, wasteful of public funds and treasury of the United States of America, and now comprises an unlawful taking of the time and funds of private persons and other public agencies that are constrained to appear before the Commission to be heard to oppose or support the speculative LA, in whole or in part.

If the Commission should have any doubt, the Commission should set a hearing, at its earliest opportunity, and call the Secretary to testify and confirm his earlier testimony to the Committee to the effect that the Administration, including DOE, has, in fact, abandoned plans to construct and operate Yucca Mountain as stated and claimed in the LA.

If the Commission should desire or require a brief in support of this motion as to the effect of abandonment of intent on the part of an applicant, here DOE, to construct and operate in accordance with the terms and provisions of a license application, as in this matter, then CHS will provide a brief as CHS's counsel's time and resources permit.

With respect, CHS states that both the DOE and the NRC staff should have filed previously, and should file immediately, their own motions to withdraw or for dismissal, as the case may be, the LA, pursuant to their official, fiduciary and ethical responsibilities, for the reasons stated above.

Respectfully submitted,
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NUCLEAR REGULATORY COMMISSION**

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