

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:

Thomas S. Moore, Chairman
Paul S. Ryerson
Richard E. Wardwell

In the Matter of

U.S. DEPARTMENT OF ENERGY

(High Level Waste Repository)

Docket No. 63-001-HLW

ASLBP No. 09-892-HLW-CAB04

July 2, 2009

ORDER
(Concerning Scheduling)

In its June 22, 2009 Notice, the Board expressed concern as to whether this matter can proceed in accordance with the schedule set forth in 10 C.F.R. Part 2, App. D. In particular, the Board is concerned whether the NRC Staff realistically expects, in light of fiscal realities, to issue its Safety Evaluation Report (SER) on or before April 23, 2010, as Appendix D requires.

Under Appendix D, discovery is scheduled to be completed 60 days after the SER is issued. Failure to issue the SER by the specified date would be highly disruptive, potentially affecting the appropriate pace and order of discovery as well as the schedule and structure for hearings.

Few non-NEPA contentions can be adjudicated before relevant portions of the SER are issued. It would be unfair and unproductive, therefore, to force the parties to complete most discovery in less than a year if the SER will not be issued until much later. Likewise, if the NRC Staff were to issue portions of the SER serially, over an extended time period, sound case management would suggest that discovery and hearings on related groups of contentions should proceed serially as well. This would, however, require the parties to allocate resources very differently. Rather than putting extraordinary effort into initial discovery, the parties would

have to prepare for a less intense level of discovery over a longer period of time. The parties would also likely be required to participate in hearings on some contentions while simultaneously conducting discovery relating to other contentions.

As stated in our June 22, 2009 Notice, the Board does not wish to see the parties expend substantial resources needlessly or inefficiently. Given the enormous demands that necessarily will be placed on all participants in “the most extensive proceeding in the agency’s history,”¹ the Board will not knowingly require the parties to undertake discovery in accordance with an illusory timetable.

The Commission has charged the Board with “the duty to conduct a fair and impartial hearing” and “to take appropriate action to control the prehearing and hearing process.”² The Board possesses “all the powers necessary to those ends.”³ Accordingly, the Board directs the highest ranking counsel of record for the NRC Staff in this proceeding, within 10 days hereof, to undertake or cause to be undertaken a reasonable investigation in good faith and advise the Board and all parties concerning (1) whether the NRC Staff continues to plan and budget resources so that the entire SER will be issued in accordance with the Appendix D schedule, and (2) if not, the NRC Staff’s best estimate of when the SER will be issued, including an estimate of which portions will be issued at what times (if it is expected that the SER will be issued serially). Such advice shall be in the form of either (1) a written representation by such counsel of record stating that counsel has made a reasonable investigation in good faith and that to the best of counsel’s knowledge, information, and belief the statements made are true, or (2) an affidavit or sworn declaration from an appropriate NRC official, such as the Director of the Office of Nuclear Material Safety and Safeguards, stating that the official has made a reasonable investigation in good faith and that to the best of the official’s knowledge, information, and belief the statements made are true.

¹ CLI-09-14, 69 NRC __, __ (slip op. at 2) (June 30, 2009).

² 10 C.F.R. § 2.319.

³ Id.

After receiving the NRC Staff's response, the Board will issue a further order convening a teleconference to address a Case Management Order. The Board requests that, in the interim, counsel for the Department of Energy (DOE) also undertake or cause to be undertaken a reasonable investigation in good faith whether there may be constraints upon DOE's ability to proceed in this matter, and be prepared to discuss any such constraints during the teleconference.

It is so ORDERED.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD

/RA/

Thomas S. Moore, Chairman, CAB-04
ADMINISTRATIVE JUDGE

Rockville, Maryland
July 2, 2009

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)
)
U.S. DEPARTMENT OF ENERGY)
)
(High-Level Waste Repository))
)

Docket No. 63-001-HLW

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing ORDER (CONCERNING SCHEDULING), dated July 2, 2009, have been served upon the following persons by Electronic Information Exchange.

U.S. Nuclear Regulatory Commission
Atomic Safety and Licensing Board (ASLBP)
Mail Stop T-3F23
Washington, DC 20555-0001

CAB 01

William J. Froehlich, Chair
Administrative Judge
wjf1@nrc.gov

Thomas S. Moore
Administrative Judge
tsm2@nrc.gov

Richard E. Wardwell
Administrative Judge
rew@nrc.gov

CAB 02

Michael M. Gibson, Chair
Administrative Judge
mmg3@nrc.gov

Alan S. Rosenthal
Administrative Judge
axr@nrc.gov or rsnthl@verizon.net

Nicholas G. Trikouros
Administrative Judge
ngt@nrc.gov

CAB 03

Paul S. Ryerson, Chair
Administrative Judge
psr1@nrc.gov

Michael C. Farrar
Administrative Judge
mcf@nrc.gov

Mark O. Barnett
Administrative Judge
mob1@nrc.gov or mark.barnett@nrc.gov

ASLBP (continued)

CAB 04

Thomas S. Moore, Chair
Administrative Judge
tsm2@nrc.gov

Paul S. Ryerson
Administrative Judge
psr1@nrc.gov

Richard E. Wardwell
Administrative Judge
rew@nrc.gov

Anthony C. Eitrem, Esq., Chief Counsel
ace1@nrc.gov

Daniel J. Graser, LSN Administrator
djg2@nrc.gov

Lauren Bregman, Law Clerk
lrb1@nrc.gov

Zachary Kahn, Law Clerk
zxk1@nrc.gov

Emily Krause, Law Clerk
eik1@nrc.gov

Erica LaPlante, Law Clerk
eal1@nrc.gov

Matthew Rotman, Law Clerk
matthew.rotman@nrc.gov

Joseph Deucher
jhd@nrc.gov

Andrew Welkie
axw5@nrc.gov

Jack Whetstine
jgw@nrc.gov

Patricia Harich
patricia.harich@nrc.gov

Sara Culler
sara.culler@nrc.gov

U.S. DEPARTMENT OF ENERGY (High Level Waste Repository) Docket No. 63-001-HLW
ORDER (CONCERNING SCHEDULING)

U.S. Nuclear Regulatory Commission
Office of the Secretary of the Commission
Mail Stop O-16C1
Washington, DC 20555-0001
Hearing Docket
hearingdocket@nrc.gov

U.S. Department of Energy
Office of General Counsel
1000 Independence Avenue S.W.
Washington, DC 20585
Martha S. Crosland, Esq.
martha.crosland@hq.doe.gov
Nicholas P. DiNunzio, Esq.
nick.dinunzio@rw.doe.gov
James Bennett McRae
ben.mcrae@hq.doe.gov
Cyrus Nezhad, Esq.
cyrus.nezhad@hq.doe.gov
Christina C. Pak, Esq.
christina.pak@hq.doe.gov

U.S. Nuclear Regulatory Commission
Office of Commission Appellate Adjudication
Mail Stop O-16C1
Washington, DC 20555-0001
OCA Mail Center
ocaamail@nrc.gov

For U.S. Department of Energy
Office of Counsel, Naval Sea Systems Command
Nuclear Propulsion Program
1333 Isaac Hull Avenue, SE
Washington Navy Yard, Building 197
Washington, DC 20376
Frank A. Putzu, Esq.
frank.putzu@navy.mil

U.S. Nuclear Regulatory Commission
Office of the General Counsel
Mail Stop O-15D21
Washington, DC 20555-0001
Margaret J. Bupp, Esq.
mjb5@nrc.gov
Karin Francis, Paralegal
kxf4@nrc.gov
Adam Gendelman, Esq.
adam.gendelman@nrc.gov
Joseph S. Gilman, Paralegal
jsg1@nrc.gov
Daniel W. Lenehan, Esq.
dwl2@nrc.gov
Andrea L. Silvia, Esq.
alc1@nrc.gov
Mitzi A. Young, Esq.
may@nrc.gov
Marian L. Zabler, Esq.
mlz@nrc.gov
OGC Mail Center
OGCMailCenter@nrc.gov

U.S. Department of Energy
Office of General Counsel
1551 Hillshire Drive
Las Vegas, NV 89134-6321
Jocelyn M. Gutierrez, Esq.
jocelyn.gutierrez@ymp.gov
George W. Hellstrom, Esq.
george.hellstrom@ymp.gov
Josephine L. Sommer, Paralegal
josephine.sommer@ymp.gov

U.S. DEPARTMENT OF ENERGY (High Level Waste Repository) Docket No. 63-001-HLW
ORDER (CONCERNING SCHEDULING)

For U.S. Department of Energy
USA-Repository Services
Yucca Mountain Project Licensing Group
1160 N. Town Center Drive, Suite 240
Las Vegas, NV 89144
Stephen J. Cereghino, Licensing/Nucl Safety
stephen_cereghino@ymp.gov
Jeffrey Kriner, Regulatory Programs
jeffrey_kriner@ymp.gov

For U.S. Department of Energy
USA-Repository Services
Yucca Mountain Project Licensing Group
6000 Executive Boulevard, Suite 608
North Bethesda, MD 20852
Edward Borella, Sr Staff, Licensing/Nuclear Safety
edward_borella@ymp.gov
Danny R. Howard, Sr. Licensing Engineer
danny_howard@ymp.gov

For U.S. Department of Energy
Talisman International, LLC
1000 Potomac St., NW, Suite 300
Washington, DC 20007
Patricia Larimore, Senior Paralegal
plarimore@talisman-intl.com

Counsel for U.S. Department of Energy
Morgan, Lewis & Bockius LLP
1111 Pennsylvania Ave., NW
Washington, DC 20004
Clifford W. Cooper, Paralegal
ccooper@morganlewis.com
Lewis M. Csedrik, Esq.
lcshedrik@morganlewis.com
Jay M. Gutierrez, Esq.
jgutierrez@morganlewis.com
Charles B. Moldenhauer, Esq.
cmoldenhauer@morganlewis.com
Brian P. Oldham, Esq.
boldham@morganlewis.com
Thomas D. Poindexter, Esq.
tpoindexter@morganlewis.com
Alex S. Polonsky, Esq.
apolonsky@morganlewis.com
Thomas A. Schmutz, Esq.
tschmutz@morganlewis.com
Donald J. Silverman, Esq.
dsilverman@morganlewis.com
Shannon Staton, Legal Secretary
ssstaton@morganlewis.com
Annette M. White, Esq.
Annette.white@morganlewis.com
Paul J. Zaffuts, Esq.
pzaffuts@morganlewis.com

Counsel for U.S. Department of Energy
Hunton & Williams LLP
Riverfront Plaza, East Tower
951 East Byrd Street
Richmond, VA 23219
Kelly L. Faglioni, Esq.
kfaglioni@hunton.com
Donald P. Irwin, Esq.
dirwin@hunton.com
Stephanie Meharg, Paralegal
smeharg@hunton.com
Michael R. Shebelskie, Esq.
mshebelskie@hunton.com
Belinda A. Wright, Sr. Professional Assistant
bwright@hunton.com

U.S. DEPARTMENT OF ENERGY (High Level Waste Repository) Docket No. 63-001-HLW
ORDER (CONCERNING SCHEDULING)

Counsel for State of Nevada
Egan, Fitzpatrick, Malsch & Lawrence, PLLC
1750 K Street, NW, Suite 350
Washington, DC 20006
Martin G. Malsch, Esq.
mmalsch@nuclearlawyer.com
Susan Montesi:
smontesi@nuclearlawyer.com

Counsel for State of Nevada
Egan, Fitzpatrick, Malsch & Lawrence, PLLC
12500 San Pedro Avenue, Suite 555
San Antonio, TX 78216
Laurie Borski, Paralegal
lborski@nuclearlawyer.com
Charles J. Fitzpatrick, Esq.
cfitzpatrick@nuclearlawyer.com
John W. Lawrence, Esq.
jlawrence@nuclearlawyer.com

Nevada Agency for Nuclear Projects
Nuclear Waste Project Office
1761 East College Parkway, Suite 118
Carson City, NV 89706
Steve Frishman, Tech. Policy Coordinator
steve.frishman@gmail.com
Susan Lynch, Administrator of Technical Prgms
szeeee@nuc.state.nv.us

Bureau of Government Affairs
Nevada Attorney General
100 N. Carson Street
Carson City, NV 89701
Marta Adams, Chief Deputy Attorney General
madams@ag.nv.gov

Counsel for Lincoln County, Nevada
1100 S. Tenth Street
Las Vegas, NV 89017
Annie Bailey, Legal Assistant
baileys@lcturbonet.com
Bret Whipple, Esq.
bretwhipple@nomademail.com

Lincoln County District Attorney
P. O. Box 60
Pioche, NV 89403
Gregory Barlow, Esq.
lcta@lcturbonet.com

Lincoln County Nuclear Oversight Program
P.O. Box 1068
Caliente, NV 89008
Connie Simkins, Coordinator
jcciac@co.lincoln.nv.us

For Lincoln County, Nevada
Intertech Services Corporation
PO Box 2008
Carson City, NV 89702
Mike Baughman, Consultant
bigboff@aol.com

Counsel for Nye County, Nevada
Ackerman Senterfitt
801 Pennsylvania Avenue, NW, #600
Washington, DC 20004
Robert Andersen, Esq.
robert.andersen@akerman.com

Counsel for Nye County, Nevada
530 Farrington Court
Las Vegas, NV 89123
Jeffrey VanNiel, Esq.
nbrjdn@gmail.com

U.S. DEPARTMENT OF ENERGY (High Level Waste Repository) Docket No. 63-001-HLW
ORDER (CONCERNING SCHEDULING)

Nye County Regulatory/Licensing Advisor
18160 Cottonwood Rd. #265
Sunriver, OR 97707
Malachy Murphy, Esq.
mmurphy@chamberscable.com

Nye County Nuclear Waste Repository Project
Office (NWRPO)
1210 E. Basin Road, #6
Pahrump, NV 89060
Zoie Choate, Secretary
zchoate@co.nye.nv.us
Sherry Dudley, Admin. Technical Coordinator
sdudley@co.nye.nv.us

Clark County, Nevada
500 S. Grand Central Parkway
Las Vegas, NV 98155
Phil Klevorick, Sr. Mgmt Analyst
klevorick@co.clark.nv.us
Elizabeth A. Vibert, Deputy District Attorney
Elizabeth.Vibert@ccdανv.com

Counsel for Clark County, Nevada
Jennings, Strouss & Salmon
8330 W. Sahara Avenue, #290
Las Vegas, NV 89117
Bryce Loveland, Esq.
bloveland@jsslaw.com

Counsel for Clark County, Nevada
Jennings, Strouss & Salmon
1700 Pennsylvania Avenue, NW, Suite 500
Washington, DC 20006-4725
Elene Belte, Legal Secretary
ebelete@jsslaw.com
Alan I. Robbins, Esq.
arobbins@jsslaw.com
Debra D. Roby, Esq.
droby@jsslaw.com

Eureka County, Nevada
Office of the District Attorney
701 S. Main Street, Box 190
Eureka, NV 89316-0190
Theodore Beutel, District Attorney
tbeutel.ecda@eurekanv.org

Counsel for Eureka County, Nevada
Harmon, Curran, Spielberg & Eisenberg, LLP
1726 M. Street N.W., Suite 600
Washington, DC 20036
Diane Curran, Esq.
dcurran@harmoncurran.com
Matthew Fraser, Law Clerk
mfraser@harmoncurran.com

Eureka County Public Works
PO Box 714
Eureka, NV 89316
Ronald Damele, Director
rdamele@eurekanv.org

Nuclear Waste Advisory for Eureka
County, Nevada
1983 Maison Way
Carson City, NV 89703
Abigail Johnson, Consultant
eurekanrc@gmail.com

For Eureka County, Nevada
NWOP Consulting, Inc.
1705 Wildcat Lane
Ogden, UT 84403
Loreen Pitchford, Consultant
lpitchford@comcast.net

U.S. DEPARTMENT OF ENERGY (High Level Waste Repository) Docket No. 63-001-HLW
ORDER (CONCERNING SCHEDULING)

Counsel for Churchill, Esmeralda, Lander,
and Mineral Counties, Nevada
Armstrong Teasdale, LLP
1975 Village Center Circle, Suite 140
Las Vegas, NV 89134-6237
Jennifer A. Gores, Esq.
jgores@armstrongteasdale.com
Robert F. List, Esq.
rlist@armstrongteasdale.com

Esmeralda County Repository Oversight Program-
Yucca Mountain Project
PO Box 490
Goldfield, NV 89013
Edwin Mueller, Director
muellered@msn.com

Mineral County Nuclear Projects Office
P.O. Box 1600
Hawthorne, NV 89415
Linda Mathias, Director
yuccainfo@mineralcountynv.org

For City of Caliente, Lincoln County, and
White Pine County, Nevada
P.O. Box 126
Caliente, NV 89008
Jason Pitts, LSN Administrator
jayson@idtservices.com

White Pine County, Nevada
Office of the District Attorney
801 Clark Street, #3
Ely, NV 89301
Richard Sears, District Attorney
rwsears@wpcda.org

White Pine County Nuclear Waste Project Office
959 Campton Street
Ely, NV 89301
Mike Simon, Director
wpnucwst1@mwpower.net

For White Pine County, Nevada
Intertech Services Corporation
PO Box 2008
Carson City, NV 89702
Mike Baughman, Consultant
bigboff@aol.com

Counsel for Caliente Hot Springs Resort LLC
John H. Huston, Attorney at Law
6772 Running Colors Avenue
Las Vegas, NV 89131
John H. Huston, Esq.
johnhhuston@gmail.com

Counsel for Inyo County, California
Berger, Silverman & Gephart
233 E. Carrillo Street, Suite B
Santa Barbara, CA 93101
Michael Berger, Esq.
mberger@bsglaw.net
Robert Hanna, Esq.
rshanna@bsglaw.net

Counsel for Inyo County, California
Greg James, Attorney at Law
710 Autumn Leaves Circle
Bishop, CA 93514
E-Mail: gjames@earthlink.net

Inyo County Yucca Mountain Repository
Assessment Office
P. O. Box 367
Independence, CA 93526-0367
Alisa M. Lembke, Project Analyst
alembke@inyocounty.us

U.S. DEPARTMENT OF ENERGY (High Level Waste Repository) Docket No. 63-001-HLW
ORDER (CONCERNING SCHEDULING)

California Department of Justice
Office of the Attorney General
1300 I Street, P.O. Box 944255
Sacramento, CA 94244-2550
Susan Durbin, Deputy Attorney General
susan.durbin@doj.ca.gov
Michele Mercado, Analyst
michele.Mercado@doj.ca.gov

California Department of Justice
Office of the Attorney General
1515 Clay Street, 20th Floor, P.O. Box 70550
Oakland, CA 94612-0550
Timothy E. Sullivan, Deputy Attorney General
timothy.Sullivan@doj.ca.gov

California Department of Justice
300 S. Spring Street, Suite 1702
Los Angeles, CA 90013
Brian Hembacher, Deputy Attorney General
brian.hembacher@doj.ca.gov

California Energy Commission
1516 Ninth Street
Sacramento, CA 95814
Kevin W. Bell, Senior Staff Counsel
kwbell@energy.state.ca.us

Nuclear Energy Institute
Office of the General Counsel
1776 I Street, NW Suite 400
Washington, DC 20006-3708
Michael A. Bauser, Esq.
mab@nei.org
Anne W. Cottingham, Esq.
awc@nei.org
Ellen C. Ginsberg, Esq.
ecg@nei.org

Counsel for Nuclear Energy Institute
Pillsbury Winthrop Shaw Pittman LLP
2300 N Street, N.W.
Washington, DC 20037-1122
Jay E. Silberg, Esq.
jay.silberg@pillsburylaw.com
Timothy J.V. Walsh, Esq.
timothy.walsh@pillsburylaw.com
Maria D. Webb, Senior Energy Legal Analyst
maria.webb@pillsburylaw.com

Counsel for Nuclear Energy Institute
Winston & Strawn LLP
1700 K Street, N.W.
Washington, DC 20006-3817
William A. Horin, Esq.
whorin@winston.com
Rachel Miras-Wilson, Esq.
rwilson@winston.com
David A. Repka, Esq.
drepka@winston.com
Carlos L. Sisco, Senior Paralegal
csisco@winston.com

Native Community Action Council
P.O. Box 140
Baker, NV 89311
Ian Zabarte, Member of Board of Directors
mrizabarte@gmail.com

Counsel for Native Community Action Council
Alexander, Berkey, Williams & Weathers LLP
2030 Addison Street, Suite 410
Berkeley, CA 94704
Curtis G. Berkey, Esq.
cberkey@abwwlaw.com
Rovianne A. Leigh, Esq.
rleigh@abwwlaw.com
Scott W. Williams, Esq.
swilliams@abwwlaw.com

U.S. DEPARTMENT OF ENERGY (High Level Waste Repository) Docket No. 63-001-HLW
ORDER (CONCERNING SCHEDULING)

For Joint Timbisha Shoshone Tribal Group
3560 Savoy Boulevard
Pahrump, NV 89601
Joe Kennedy, Executive Director
joekennedy08@live.com
Tameka Vazquez, Bookkeeper
purpose_driven12@yahoo.com

Counsel for Joint Timbisha Shoshone Tribal Group
Fredericks, Peebles, & Morgan LLP
1001 Second St.
Sacramento, CA 95814
Felicia M. Brooks, Data Administrator
fbrooks@ndnlaw.com
Ross D. Colburn, Law Clerk
rcolburn@ndnlaw.com
Sally Eredia, Legal Secretary
seredia@ndnlaw.com
Darcie L. Houck, Esq.
dhouck@ndnlaw.com
Brian Niegemann, Office Manager
bniegemann@ndnlaw.com
John M. Peebles, Esq.
jpeebles@ndnlaw.com
Robert Rhoan, Esq.
rrhoan@ndnlaw.com

Counsel for Joint Timbisha Shoshone Tribal Group
Godfrey & Kahn, S.C.
One East Main Street, Suite 500
P. O. Box 2719
Madison, WI 53701-2719
Julie Dobie, Legal Secretary
jdobie@gklaw.com
Steven A. Heinzen, Esq.
sheinzen@gklaw.com
Douglas M. Poland, Esq.
dpoland@gklaw.com
Hannah L. Renfro, Esq.
hrenfro@gklaw.com
Jacqueline Schwartz, Paralegal
jschwartz@gklaw.com

Counsel for Joint Timbisha Shoshone Tribal Group
Godfrey & Kahn, S.C.
780 N. Water Street
Milwaukee, WI 53202
Arthur J. Harrington, Esq.
aharrington@gklaw.com

[Original Signed by Nancy Greathead]
Office of the Secretary of the Commission

Dated at Rockville, Maryland
this 2nd day of July 2009