

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

**09-892-HLW-CAB04
Thomas S. Moore, Chairman
Paul S. Ryerson
Richard E. Wardwell**

In the Matter of:)	August 14, 2009
)	
U.S. Department of Energy)	
)	Docket No. 63-001
(High Level Waste Repository)	
Construction Authorization Application))	
)	

**JOINT MOTION BY THE COUNTY OF INYO, THE STATE OF NEVADA, THE
STATE OF CALIFORNIA, NYE COUNTY, THE JOINT TIMBISHA SHOSHONE
TRIBAL GROUP AND THE NATIVE COMMUNITY ACTION COUNCIL FOR
AN EXTENSION OF TIME TO FILE NEW OR AMENDED CONTENTIONS**

INTRODUCTION

Pursuant to 10 C.F.R. § 2.323, the County of Inyo, the State of Nevada, the State of California, Nye County, the Joint Timbisha Shoshone Tribal Group, and the Native Community Action Council request that the Construction Authorization Board (CAB04) grant an extension of time to the parties to file new or amended contentions that are based upon the Department of Energy's ("DOE") "*Analysis of Postclosure Groundwater Impacts for a Geologic Repository for the Disposal of Spent Nuclear Fuel and High Level Radioactive Waste at Yucca Mountain, Nye County, Nevada*" ("Analysis of Postclosure Groundwater Impacts"), which was recently released.

DISCUSSION

Pursuant to Section 114(f) the Nuclear Waste Policy Act, DOE prepared environmental impacts statements (EISs) to evaluate the potential environmental impacts associated with the construction, operation and permanent closure of a high-level radioactive waste geologic repository at Yucca Mountain, Nevada. The U.S. Nuclear Regulatory Commission (“NRC”) Staff conducted a review to determine whether it was practicable to adopt the EISs in accordance with criteria stated in 10 C.F.R. § 51.109(c). On September 5, 2008, based upon its review, the NRC Staff concluded that DOE’s 2002 EIS and DOE’s 2008 Repository Supplemental EIS did not adequately characterize the potential impact of the proposed action on groundwater and from surface discharges. Accordingly, the NRC Staff found that further supplementation was needed to ensure the EISs are adequate. In its determination, NRC Staff stated that if DOE were to develop the supplement, DOE would follow its own requirements and procedures; but, if NRC Staff were to prepare the supplement, the supplement would be prepared in accordance with NRC regulations in 10 C.F.R., part 51 and with NUREG-1748.

On October 24, 2008, DOE announced its intent to “...prepare a Supplemental to the ‘Final Environmental Impact Statement for the Geologic Repository for the Disposal of Spent Nuclear Fuel and High Level Radioactive Waste at Yucca Mountain, Nye County, Nevada (DOE/EIS-0250F, February 2002) (Yucca Mountain Final EIS), and the Final Supplemental Environmental Impact Statement for the Geologic Repository for the Disposal of Spent Nuclear Fuel and High Level Radioactive Waste at Yucca Mountain, Nye County, Nevada (DOE/EIS-0250F-S1 July 2008) (Repository SEIS).’”

DOE also announced on October 24, 2008, that a Draft Supplement would be available in the spring of 2009, that its availability would be announced in the Federal Register, there would be a public comment period on the document, that DOE would conduct a public hearing during the comment period, and that DOE would respond to comments on the Draft Supplement in preparing the final supplement by the fall of 2009.

By letter dated July 30, 2009, DOE informed the NRC Staff that “DOE has decided not to complete the Supplement, but rather has used the material prepared for the Supplement to develop the enclosed *Analysis of Postclosure Groundwater Impacts for a Geologic Repository for the Disposal of Spent Nuclear Fuel and High Level Radioactive Waste at Yucca Mountain, Nye County, Nevada* (Analysis of Postclosure Groundwater Impacts).” By letter dated August 5, 2009, DOE’s counsel provided DOE’s July 30, 2009 letter and the Analysis of Postclosure Groundwater Impacts to this Board and to counsel for the parties.

Pursuant to sections B.1 and B.2 of CAB Case Management Order #1 (January 29, 2009), the parties have 30 days from the date that new information becomes available to file a motion to file new or amended contentions. Since DOE’s release of the Analysis of Postclosure Groundwater Impacts could be considered “new information,” it could be argued that the parties are required to file a motion to file new or amended contentions by the end of this month or shortly thereafter. However, it is unclear how NRC will proceed with respect to DOE’s Analysis of Postclosure Groundwater Impacts. There are several options for how NRC Staff might proceed, but a logical option would be for NRC Staff to announce that DOE’s Analysis is unacceptable since it was not prepared in compliance with DOE’s October 28, 2008 Notice of Intent (or in compliance with the National

Environment Policy Act) and, that pursuant to the procedures of part 51 and NUREG-1748, NRC Staff will prepare a draft supplement for public comment and then a final supplement, both of which would include an independent NRC Staff evaluation of the groundwater impacts taking DOE's evaluation into account.

The parties should not be required to file new or amended contentions until NRC has announced how it will proceed. If no extension of time is granted, some of the parties may be compelled to prepare new or amended contentions that are based upon DOE's July 30 and July 31 letters and its Analysis of Postclosure Groundwater Impacts. Thereafter, if NRC were to determine that a draft and a final supplement will be prepared, some of the parties might be compelled to prepare yet another set of amended contentions once a final supplement is issued. Thus, the absence of an extension of time would subject the Petitioners to significant and unnecessary expenditures of time and money.

Accordingly, good cause exists to grant the parties an extension of time to file new or amended contentions which are based upon new analysis of postclosure groundwater impacts until 60 days after NRC Staff formally announces or otherwise advises the parties how it will proceed with respect to DOE's Analysis of Postclosure Groundwater Impacts. Nothing in this motion should be construed as precluding a party from filing a future motion for an extension of time or for other relief.

Pursuant to 10 C.F.R. § 2.323(b), on August 9, 2009, the undersigned counsel, via email, contacted counsel for DOE, the other parties in this proceeding, and Lincoln and Eureka Counties (Interested Governmental Participants) ("IGPs") to resolve the issues raised by this motion. The State of Nevada, the State of California, Nye County, Nevada, the Joint Timbisha Shoshone Tribal Group, and the Native Community Action Council

stated that they would join the motion as moving parties. Following the exchange of several emails and telephone conversations, on August 13, 2009, DOE said that it has no objection to the granting of the motion. The NRC Staff has stated that it has no position on the motion, but the NRC Staff reserves the right to file a response to the motion. All other counsel have indicated that they have no objection to the filing of the motion.

CONCLUSION

For the reasons discussed above, the joint motion for an extension of time for the parties to file a motion to file new or amended contentions which are based upon DOE's Analysis of Postclosure Groundwater Impacts should be granted. New or amended contentions would be due 60 days after NRC Staff formally announces or otherwise advises the parties how it will proceed with respect to DOE's Analysis of Postclosure Groundwater Impacts. The granting of this motion should not be construed as precluding a party from filing a future motion for an extension of time or for other relief.

Respectfully submitted,

/Signed electronically by/

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Dated at Bishop, California
this 14th day of August, 2009

**CERTIFICATE OF COUNSEL
PURSUANT TO 10 C.F.R. § 2.323(b)**

I hereby certify that on August 9-13, 2009, I contacted counsel for all parties and Lincoln and Eureka Counties (IGPs). The initial contact was via email with follow-up contacts via email and telephone. The State of Nevada, the State of California, Nye County, Nevada, the Joint Timbisha Shoshone Tribal Group, and the Native Community Action Council stated that they would join the motion as moving parties. No party opposed the motion. Counsel for the NRC Staff stated that the Staff would not take a position on the motion, but would reserve the right to file a response. Counsel for the DOE stated that DOE has no objection to the granting of the motion.

/Electronically Signed by/

Greg James

August 14, 2009