

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Atomic Safety and Licensing Board

Before Administrative Judges:

ASLBP BOARD 09-892-HLW-CAB04 Thomas S. Moore, Chairman Paul S. Ryerson Richard E. Wardwell
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In the Matter of)	
)	
U.S. DEPARTMENT OF ENERGY)	Docket No. 63-001-HLW
)	
(High Level Waste Repository))	September 23, 2009
)	

**JOINT SUBMISSION OF
PROPOSED CASE MANAGEMENT ORDER #2**

At the Prehearing Conference conducted by Construction Authorization Board-04 (CAB-04) on September 14, 2009, the Board directed the parties to this proceeding to meet and confer in order to develop a proposed case management order for Phase I of this proceeding and to file the same with the Board on or before September 23, 2009. In accordance with the Board's direction, counsel for all the parties and both IGPs met on September 14-15, 2009, at the Las Vegas Hearing Facility (and by videoconference), secured additional direction from the Board on September 15, 2009, conferred by telephone and email extensively thereafter, and collectively participated in the development of proposed Case Management Order #2 (attached). The undersigned counsel has been authorized to represent to this Board that all the parties and both IGPs unanimously concur with proposed Case Management Order #2.

The parties respectfully request the Board to schedule discovery for Phase I of this proceeding to begin on or about October 1, 2009 (*see* Paragraph A of proposed Case Management Order #2). The parties also respectfully request the Board to reconsider its preliminary decision contained in its Memorandum and Order dated August 25, 2009 (slip op. at 3) regarding entry on land (*see* Paragraph C.4 of proposed Case Management Order #2). Finally, the parties respectfully request the Board to identify a telephone number (*see* Paragraph D of proposed Case Management Order #2) that could be utilized by counsel to contact the Board if necessary to resolve disputes that may arise during discovery for Phase I of this proceeding.

Respectfully submitted,

(signed electronically)

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Dated: September 23, 2009

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CASE MANAGEMENT ORDER #2

On June 19, 2009, the Chief Administrative Judge established Construction Authorization Board-04 (CAB-04) to preside over matters concerning discovery, Licensing Support Network (LSN) compliance, new or amended contentions, grouping or consolidation of contentions, scheduling, and case management matters relating to any of the foregoing in the proceeding involving the United States Department of Energy's (DOE's) application for construction authorization for a high-level waste repository at Yucca Mountain in Nye County, Nevada. On September 14 and 15, 2009, CAB-04 conducted a prehearing conference at the Las Vegas Hearing Facility to discuss four sets of documents that bear upon discovery, contention grouping and consolidation, scheduling, and case management in this proceeding: (1) the parties' initial filings in response to CAB-01's March 20, 2009 order regarding the first prehearing conference; (2) the U.S. Nuclear Regulatory Commission (NRC) Staff's answer to this Board's July 2, 2009 order concerning scheduling; (3) the parties' filings in response to this Board's July 21, 2009 order concerning serial case management; and (4) the parties' filings in response to this Board's

August 25, 2009 order concerning discovery and case management. Pursuant to the Commission's October 17, 2008 notice of hearing and 10 C.F.R. §§ 2.319(g), (q), and (r), this Board issues this Case Management Order setting forth requirements and procedures applicable to the proceeding.

A. Phase I Discovery

In light of the NRC Staff's plan to issue its Safety Evaluation Report (SER) serially and to schedule the issuance of SER Volume 1 in March 2010 and SER Volume 3 in September 2010, discovery in this proceeding will occur in separate phases. Phase I discovery is authorized to begin on _____ (although depositions cannot commence until February 16, 2010, but can be noticed earlier), and end on November 30, 2010 (or two months after the NRC Staff issues SER Volume 3, whichever is later), with regard to the following admitted contentions:

- All safety and miscellaneous contentions concerning issues that relate to either SER Volume 1 or 3;
- All environmental contentions (other than those involving DOE's additional groundwater analysis) concerning issues that relate in some manner to SER Volume 1 or 3; and
- All legal contentions that relate in some manner to SER Volume 1 or 3.

The Appendix to this Case Management Order identifies the specific contentions (safety, miscellaneous, environmental, and legal) that will be addressed in Phase I, and there shall be no discovery on or litigation of any other contentions that are not specifically identified as included in Phase I until a schedule is established for those contentions by this Board. In admitting any new contentions to this proceeding, the Board will identify whether they shall be included in Phase I. However, parties are free to move this Board, upon good cause shown, to initiate

discovery on contentions other than those identified in the Appendix to this Case Management Order where necessary to preserve evidence that may be lost if such discovery is otherwise delayed.

Consistent with the requirements of 10 C.F.R. § 2.1018(b)(1), the parties are permitted to submit discovery requests on contentions identified in the Appendix to this Case Management Order but outside the scope of SER Volumes 1 and 3 during Phase I of this proceeding if necessary or appropriate to lead to the production of admissible evidence associated with the prosecution or defense of a contention that is within the scope of SER Volume 1 or 3. If contentions now subject to discovery in Phase I need to be adjudicated in later phases of this proceeding, the parties are free to move this Board to continue discovery on those contentions as necessary or appropriate beyond the close of discovery for Phase I.

The contentions identified in the Appendix also include legal contentions that will be addressed in Phase I, and with regard to those legal contentions, the affected parties shall jointly file with this Board an agreed upon legal question for each such contention on or before October 1, 2009. If the affected parties cannot reach agreement on the wording of the legal question, they shall submit to this Board, on or before _____, their respective proposed wording of the disputed legal question for a ruling by this Board, either adopting one or the other of the proposed submittals, or substituting its own statement of the legal issue. On either November 16, 2009, or 45 days after the disputed questions for all legal contentions that will be addressed in Phase I have been approved by the Board, initial briefs shall be filed on all such legal contentions by the affected parties. Reply briefs, which may be filed by any party, shall be filed no later than 30 days after initial briefs have been filed. No other filings shall be permitted.

Unless otherwise specified herein, all filings, notices, disclosures, and requests required by or permitted by this Case Management Order shall be made via the EIE. Informal communications between counsel for the parties need not be included on the EIE. All parties' obligations regarding the LSN remain in effect and are not affected by this Case Management Order

B. Contention Consolidation and Grouping

Within ten days after the start of discovery of Phase I, the party intervenors shall propose, either individually or in groups or collectively, those contentions that should be consolidated for Phase I and those contentions that should be grouped for Phase I. For those contentions that are to be consolidated for Phase I, a lead party should be proposed. *See Louisiana Energy Services, L.P. (National Enrichment Facility)*, LBP-04-14, 60 NRC 40, 71, *aff'd*, 60 NRC 629; *see also* 10 C.F.R. 2.309(f)(3). The party intervenors shall consider contentions in Phase I that focus on a common subject matter or rely upon the same witness as candidates for grouping. Unlike consolidated contentions for which a lead party is identified, each contention that is grouped with other similar contentions for Phase I remains distinct and unique, and thus, each party intervenor is permitted to advocate or defend each of those contentions and participate in the discovery process for each of those contentions notwithstanding the identified groupings. Discovery related to grouped contentions shall be coordinated as discussed in Sections C.2 and C.3, *infra*.

Within 30 days after the start of discovery of Phase I, any party may file any objection to any proposed consolidation or grouping or may propose alternate consolidation or grouping. Reply filings shall be permitted within ten days of objections. If no such objections or alternate proposals are filed, the initially identified groupings and consolidations of contentions shall be effective for Phase I. The Board will issue an Order setting forth the groupings or

consolidations. Any changes to any groupings or consolidations of contentions shall require leave of this Board for good cause shown.

C. Discovery Rules

1. Identification of Witnesses

Within ten days after the start of discovery of Phase I, each party (including NRC Staff, but only as to environmental contentions and subject to the caveats noted below) shall identify the witness(es) they intend to call at a hearing to provide testimony in support or defense of each contention subject to Phase I (hereinafter "Party Witnesses"). Every 60 days thereafter, each party (including NRC Staff, but only as to environmental contentions and subject to the caveats noted below) shall provide either an updated list of Party Witnesses or a certification that no additional Party Witnesses have been identified. No later than 120 days before discovery closes for Phase I, each party (including the NRC Staff, but only as to environmental contentions and subject to the caveats noted below) shall provide a final updated list of Party Witnesses, except as discussed below for "Other Witnesses." For each Party Witness that is identified, the following information shall be provided:

- Name, affiliation, address, curriculum vitae, a general statement of the subject matter(s) that will be addressed, and a listing of the specific contention(s) that will be addressed;
- All relevant publications authored by witness in the previous ten years; and
- All cases in which the witness has provided testimony at trial or by deposition in the previous four years.

The foregoing information for Party Witnesses shall be provided even if similar information was previously provided, *e.g.*, as part of any Petition to Intervene, any Answer to

any Petition to Intervene, or any Response to any Answer to any Petition to Intervene. No party may object to the deposition of any Party Witness so long as the deposition is limited to matters relating to admitted contentions or the subject matter identified as that to be addressed by the Party Witness. If a party fails to produce a Party Witness for deposition, if noticed, by the time discovery closes for Phase I, that party shall be precluded from calling that Party Witness at the hearing.

Within 30 days after the start of discovery of Phase I, each party (including the NRC Staff, but only as to environmental contentions and subject to the caveats noted below) shall identify any witness that it intends to depose if that witness was not previously identified as a Party Witness (hereinafter "Other Witnesses"). Every 60 days thereafter, each party (including the NRC Staff, but only as to environmental contentions and subject to the caveats noted below) shall provide either an updated list of Other Witnesses or a certification that no additional Other Witnesses have been identified. No later than 120 days before discovery closes for Phase I, each party (including the NRC Staff, but only as to environmental contentions and subject to the caveats noted below) shall provide a final updated list of Other Witnesses. Any party may object to the deposition of any Other Witness identified by moving for a protective order within ten days from the date of the Notice of Deposition. Once an Other Witness has been deposed, any party may add that witness to their Party Witness list without the obligation to provide the information identified above and without regard to the 120-day final listing of Party Witnesses.

The NRC Staff is not required to respond to any discovery request or identify or produce any witness or potential witness pursuant to 10 C.F.R. § 2.709(a)(1) with respect to any matter related to any safety or miscellaneous contention subject to discovery during Phase I until ten days after the NRC Staff has issued the volume of the SER that related to that particular

contention. Within ten days after the issuance of a particular volume of the SER, the NRC Staff shall identify its Party Witnesses, and any Other Witnesses as necessary or appropriate, for that particular volume of the SER, and if less than 60 days remain for discovery, then any party (other than the NRC Staff) may notice their deposition without regard to the 60-day advance notice provision discussed in Section C.2, *infra*. With respect to those environmental contentions that are subject to discovery during Phase I, NRC Staff is required to respond to those discovery requests and to identify and produce witnesses or potential witnesses pursuant to 10 C.F.R. § 2.709(a)(1), but only with respect to the NRC Staff's September 5, 2008 Adoption Decision Report.

To the degree that any party needs to identify new, additional, or replacement Party Witnesses or Other Witnesses, that party shall identify such witnesses as soon as practicable after the circumstance arises that prompts the need to secure such a witness. In no event may any party identify a witness so late in the discovery process that it delays the close of discovery or unduly prejudices another party.

2. Depositions

No deposition of any witness shall occur in Phase I before February 16, 2010. If counsel for any party seeks to depose any witness, prior to noticing the deposition, such counsel must confer in good faith with counsel who will defend the witness on matters involving, at a minimum, the date, location, and anticipated duration of the proposed deposition. Unless otherwise agreed among all involved counsel and the witness, all depositions shall be scheduled with at least 60 days' prior notice. The preferred location for the deposition of a witness shall be that location that all counsel involved in the deposition and the witness mutually agree to be the

most convenient, but if there is no agreement, then the location shall be, at the discretion of the counsel defending the witness, one of the following locations:

- in the metropolitan area of the city where the witness resides (at a location convenient to the witness) provided that city is located within the continental United States;
- in the office of the counsel defending the witness; or
- at a location in Las Vegas, Nevada for witnesses residing west of the Mississippi River or in Washington, D.C. for witnesses (or Rockville, Maryland for NRC Staff witnesses) residing east of the Mississippi River.

The length of the deposition of any one witness should be limited to no more than one seven-hour day (with an additional hour off for lunch), unless counsel involved in taking and defending the deposition collectively agree that additional time is needed to fairly examine the witness (*e.g.*, where multiple parties will participate and examine the witness during the deposition or where the deponent will be testifying on matters involving several contentions or groups of contentions). If it is agreed that more than one day is required to fairly examine the witness, the deposition notice shall so state and estimate the amount of time required for the deposition. Absent agreement, the matter can be submitted to this Board for resolution. The party noticing the deposition shall be entitled to approximately five of the seven hours to examine the witness. The parties shall accord a high priority to avoiding multiple depositions of the same witness, while recognizing that some witnesses may have to be deposed more than once; however, in those situations where a second deposition of the same witness could occur, the counsel taking the deposition shall make a good-faith effort to avoid revisiting subject matter on which the witness already was deposed absent a showing of new information.

Pursuant to 10 C.F.R. § 2.1018(d), the depositions in this proceeding may proceed in any order that the counsel for the parties collectively agree in good faith is appropriate for that particular contention, group of contentions, or witness. Counsel for the parties should endeavor in good faith to sequence depositions on groups of contentions in a single window of time during the period of discovery.

Generally only one counsel for each party should examine or defend a witness in a deposition; however, more than one counsel may examine or defend a witness (although not simultaneously) in a deposition under the following circumstances:

- if a witness will be opining on more than one contention or group of contentions that necessitates the use of more than one attorney, although such issues shall be examined and defended sequentially; or
- if the deposition extends over more than one day and counsel availability is or becomes problematic (*e.g.*, a witness from outside the United States is only available on specific dates, some of which conflict with the schedule of a single counsel examining or defending the witness).

In those circumstances in which more than one party expects to examine a witness in a deposition and their interests appear to be aligned, examining counsel should confer prior to the deposition to attempt to avoid or minimize repetitive questioning and unduly extend the time required to complete the deposition. The first counsel examining the witness will, to the extent feasible, conduct the majority of the deposition, and additional counsel examining the witness will limit their examination to questions not already addressed.

With the exceptions of responses that would require the public disclosure of privileged information, classified information, or information otherwise protected from public disclosure by

a Rule, a Case Management Order, or a Protective Order by the NRC or its Presiding Officers, or where limited by order of the CAB or the Commission, the witness shall not be permitted, or instructed by counsel defending the witness, not to answer questions posed. It shall not be permissible for counsel defending a witness to instruct the witness not to answer, or for the witness to refuse to answer a question on grounds including, but not limited to, that the question is outside the scope of this proceeding, is not material to this proceeding, or does not relate to a genuine dispute or issue involved in this proceeding. Upon ten days' advance notice (not through the EIE) to all counsel involved in a deposition, counsel for a party may participate in a deposition, including questioning a witness, by telephone or video conference, and any costs associated with such participation shall be borne by the counsel so participating.

For Party Witnesses and for those Other Witnesses currently employed by or currently acting as a contractor for the defending party, the cost associated with producing such witnesses, as well as the cost for time spent and expenses incurred by such witnesses in preparing for their examination, in attending the deposition, or in reviewing and if needed correcting the transcript of their examination shall be borne by the party defending the witness. For all remaining Other Witnesses, the party noticing the deposition shall be responsible for the costs specified in 10 C.F.R. § 2.1019(g). The party noticing a deposition shall also be responsible for the following costs:

- charges associated with the venue where the deposition is conducted unless the witness is produced in the office of the counsel defending the deposition, or as otherwise agreed by counsel noticing the deposition and counsel representing the witness;
- the use of a court reporter to record the deposition by stenographic means;

- the use of the videographer to videotape the deposition but only if the videographer is requested by counsel noticing the deposition (otherwise the party requesting the videographer shall be responsible for such costs);
- the production of the transcript of the deposition and associated exhibits, and any necessary corrections; and
- the filing of the transcript and associated exhibits as required by 10 C.F.R. § 2.1019(d).

Once the deposition transcript becomes available, it shall be submitted immediately to the counsel defending the witness, who shall forward the same to the witness for review and any correction. Review and any correction of the transcript shall be made within 20 days of the transcript becoming available. The procedural requirements of 10 C.F.R. § 2.1019(d) shall be followed.

3. Requests for Admission

Pursuant to 10 C.F.R. §§ 2.1018 and 2.708, each party may, without leave of this Board, file a request for admission as to either (i) the genuineness and authenticity of any relevant document, or (ii) the truth of any specified relevant matter of fact. Responses are required within 14 days. However, absent an agreement between the parties or leave of this Board in response to a motion for relief, no party may file requests for admission more than once for each group of contentions (with a limit of no more than five requests for any one contention), and no more than four sets of requests for admission may be filed by any party in any one calendar month.

4. Entry Upon Land for Inspection

The parties may make an entry upon land for inspection as authorized by 10 C.F.R. §§ 2.1018(a)(1)(ii) and 2.1020. The parties will provide courtesy copies of any request for entry

upon land for inspection to all counsel. Any party may respond to a request for an entry upon land for inspection within ten days after the service of the request.

5. Document Production

Pursuant to 10 C.F.R. §§ 2.1018(a)(1)(i) and 2.1003, the production of documents from any party is limited to that which exists on the LSN with the following three exceptions:

- under 10 C.F.R. § 2.1018(a)(1)(iii), document access or production is required (if specifically requested) where only bibliographic header information has been provided for nonprivileged, nonimageable documentary material (*see* 10 C.F.R. § 2.1003(a));
- under 10 C.F.R. § 2.1019(i), if requested, paper copies of additional documents in the possession of any deponent relevant to the subject matter of the deposition shall be brought to the deposition if not already electronically available; and
- additional document production is permitted in accordance with an applicable NRC regulation or an applicable Case Management Order. *See, e.g., U.S. Dep't of Energy, (High Level Waste Repository: Pre-Application Matters), ASLBP No. 04-829-01-PAPO, Revised Second Case Management Order (Pre-License Phase Document Discovery and Dispute Resolution) dated July 6, 2007, slip op. at 14-15, and Third Case Management Order dated August 30, 2007, slip op. at 7.*

None of the foregoing documents need be placed on the EIE. Subpoenas for the production of documents from non-parties may be issued pursuant to 10 C.F.R. § 2.1018(f)(3).

6. Interrogatories

Pursuant to 10 C.F.R. § 2.1018(a)(2), interrogatories are not permitted without leave of this Board upon a showing that the parties have engaged in informal, but unsuccessful, good-

faith efforts to resolve a dispute in a timely fashion concerning the production of information. The Board encourages the parties to take advantage of informal requests for information of the type typically made in NRC adjudications and encourages the parties to be forthcoming in responding to those informal requests and producing information voluntarily. Neither the informal requests nor the information produced need be placed on the EIE; however, both informal requests and responses should be provided to counsel for all parties via email messages. If good-faith efforts to resolve disputes are not successful, this Board is willing to entertain formal requests for leave to serve interrogatories.

D. Dispute Resolution

All parties are hereby advised that the Board expects counsel to cooperate with each other in all aspects of the management of this unusually complex proceeding, to extend professional courtesy to all parties, counsel, witnesses, and staff, and in general to be guided by principles of good faith. The Board interprets counsels' remarks during the prehearing conference of September 14 and 15, 2009, as a commitment to abide by these principles.

Counsel for the parties shall engage in good-faith negotiations to resolve any disputes between them that may arise. In the event that counsel for the parties are unable to resolve their disputes following good-faith negotiations, counsel for the parties to the dispute shall contact the Board telephonically to resolve the dispute. In that regard, all counsel for the parties to the dispute are directed to call _____ between 9:00 a.m. and 8:00 p.m., Eastern Time, Monday through Friday, to identify the dispute for resolution. The Board will immediately resolve the dispute or promptly schedule another conference call to do so.

It is so ORDERED.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD

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

Paul S. Ryerson, CAB-04
ADMINISTRATIVE JUDGE

Richard E. Wardwell, CAB-04
ADMINISTRATIVE JUDGE

Rockville, Maryland
September __, 2009

Appendix to Case Management Order

Contention Label	Contention Name	SER Volume
NEV-SAFETY-196	Description of Security Measures	1
CLK-SAFETY-002	The DOE's Failure to Analyze Missile Testing	3
CLK-SAFETY-003	The DOE Miscalculates Basaltic Magma Melting Depth	3
CLK-SAFETY-004	The DOE Ignores the Time Span of Basaltic Volcanism	3
CLK-SAFETY-005	The DOE Improperly Focuses on Upper Crustal Extension Patterns	3
CLK-SAFETY-006	The DOE Improperly Excludes the Death Valley Volcanic Field and Greenwater Range from Volcanism Calculations	3
CLK-SAFETY-007	The DOE Improperly Estimates Igneous Event Probability for 10,000 Years and 1,000,000 Years	3
CLK-SAFETY-008	The DOE Ignores 11-Million Year Volcanism Data and Instead Relies on Only 5-Million Year Volcanism Data	3
CLK-SAFETY-009	The DOE Fails to Consider Alternative Igneous Event Conceptual Models	3
CLK-SAFETY-010	The DOE Ignores Igneous Event Data Evaluated Since 1996 in the Total System Performance Analysis	3
CLK-SAFETY-011	The DOE Lacks Sufficient Geophysical Data to Support Its Volcanic Model	3
INY-NEPA-006	Failure to Adequately Describe and Analyze the Volcanic Field in the Greenwater Range in and Adjacent to Death Valley National Park Thus Failing to Assess the Potential Environmental Impacts Resulting from Igneous Activity that Could Disrupt the Repository	3
INY-SAFETY-001	Failure to Adequately Describe and Analyze the Flow Path in the Lower Carbonate Aquifer through Which Contaminants May Migrate and Adversely Impact Areas Within The County of Inyo	3
INY-SAFETY-002	Failure to Adequately Describe and Analyze the Impact of the Repository in Combination with a Continuation of Existing Levels of Groundwater Pumping on the Potential Migration of Contaminants from the Proposed Repository	3
INY-SAFETY-003	Failure to Adequately Describe and Analyze the Volcanic Field in the Greenwater Range in and Adjacent to Death Valley National Park	3
JTS-NEPA-003	Repository Thermal Effects	3
JTS-NEPA-004	Saturated Zone Flow Model	3
JTS-NEPA-005	Infiltration Flux	3
JTS-NEPA-008	Future Climate	3
NEI-SAFETY-005	Excessive Conservatism in the Post-Closure Criticality Analysis	3
NEI-SAFETY-006	Drip Shields Are Not Necessary	3
NEV-NEPA-018	Overlap between NEPA and AEA	3
NEV-SAFETY-009	Increasing CO2 Levels on Future Climate Projections	3
NEV-SAFETY-010	Consideration of Forcing Functions on Future Climate Projections	3
NEV-SAFETY-011	Human-Induced Climate Changes on Prediction of the Next Glacial Period	3
NEV-SAFETY-012	Projections of Future Wetter Climate Conditions	3
NEV-SAFETY-013	Future Climate Projections Need to Include Extreme Precipitation Events	3
NEV-SAFETY-014	Precipitation Model	3
NEV-SAFETY-015	Alternative Precipitation Models and Weather Variables	3
NEV-SAFETY-016	Qualification of Climate and Infiltration Models	3
NEV-SAFETY-017	Calibration and Simulation of Precipitation Model	3
NEV-SAFETY-018	Use of Climate Data from the Analog Sites	3
NEV-SAFETY-019	Future Infiltration Projections Need to Include Reduced Vegetation Cover	3
NEV-SAFETY-020	Net Infiltration Alternative Conceptual Model	3
NEV-SAFETY-021	Infiltration Model and Changes in Soil and Rock Properties	3
NEV-SAFETY-022	Net Infiltration Model Water Balance	3
NEV-SAFETY-023	Evaluation of Alternative Net Infiltration Models	3
NEV-SAFETY-024	Precipitation Data in Net Infiltration Model	3
NEV-SAFETY-025	Site-Specific Data in Net Infiltration Model	3
NEV-SAFETY-026	Soil Properties Data in Net Infiltration Model	3
NEV-SAFETY-027	Rock Properties Data in Net Infiltration Model	3
NEV-SAFETY-028	Net Infiltration Model Rock Properties Uncertainty Analysis	3
NEV-SAFETY-029	Spatial Variability of Soils and Vegetation in Net Infiltration Model	3
NEV-SAFETY-030	Temporal Variability in Precipitation in Net Infiltration Model	3
NEV-SAFETY-031	Calibration of Net Infiltration Model	3
NEV-SAFETY-032	Use of Initial Conditions in Net Infiltration Model	3

Appendix to Case Management Order

Contention Label	Contention Name	SER Volume
NEV-SAFETY-033	Approach to Estimating Percolation	3
NEV-SAFETY-034	Representation of Storm Duration for Net Infiltration Modeling	3
NEV-SAFETY-035	Episodic Nature of Infiltration Fluxes in Net Infiltration Analysis	3
NEV-SAFETY-036	Corroboration of Model Results in Post-Model Validation of Net Infiltration Simulations	3
NEV-SAFETY-037	Net Infiltration Model Methodology	3
NEV-SAFETY-038	Parameter Correlations in Net Infiltration Model	3
NEV-SAFETY-039	Temperature Lapse Rate Verification	3
NEV-SAFETY-040	Parameter Uncertainty Treatment in Net Infiltration Model	3
NEV-SAFETY-041	Erosion FEP Screening	3
NEV-SAFETY-042	Validation of Unsaturated Zone Flow Model by Simulation of Natural Chloride Distribution in Pore Waters	3
NEV-SAFETY-043	Validation of Unsaturated Zone Flow Model by Carbon-14 Contents, Strontium Isotope Compositions and Calcite Mineral Precipitate Abundances	3
NEV-SAFETY-044	Flow in the Unsaturated Zone from Episodic Infiltration	3
NEV-SAFETY-045	Effects of Episodic Flow	3
NEV-SAFETY-046	Extreme Events Undefined	3
NEV-SAFETY-047	Physical Basis of Site Scale Unsaturated Zone Flow	3
NEV-SAFETY-048	Multi-Scale Thermal-Hydrologic Model	3
NEV-SAFETY-049	Models of Fluid Movement in the Unsaturated Zone	3
NEV-SAFETY-050	Alternative Discrete Fracture Flow Models	3
NEV-SAFETY-051	Potential Convective Self Organization of 2-Phase Flow	3
NEV-SAFETY-052	EBS and Near-Field Modeling Approach	3
NEV-SAFETY-053	Application of the Fracture Matrix Dual Continuum Model to All Unsaturated Zone Flow Processes	3
NEV-SAFETY-054	Constitutive Relationships in the Yucca Mountain Infiltration, Thermo-Hydrologic, and TSPA Models	3
NEV-SAFETY-055	Data for the Chemistry of Pore Waters in the Topopah Springs (TSw) Formation	3
NEV-SAFETY-056	Geochemical Interactions and Evolution in the Unsaturated Zone, Including Thermo-Chemical Alteration of TSw Host Rock	3
NEV-SAFETY-057	Data for Near-Field Chemistry Models	3
NEV-SAFETY-058	Groundwater Samples in the Unsaturated Zone Sorption Tests	3
NEV-SAFETY-059	Groundwater Compositions Assumed	3
NEV-SAFETY-060	Empirical Site-Specific Data and the Near-Field Chemistry Model	3
NEV-SAFETY-061	Ambient Seepage into Emplacement Drifts	3
NEV-SAFETY-062	Thermal Seepage into Emplacement Drifts	3
NEV-SAFETY-063	Effect of Rock Bolts on Ambient Seepage	3
NEV-SAFETY-064	Effect of Rock Bolts on Thermal Seepage	3
NEV-SAFETY-065	Structural Control of Seepage in the Emplacement Drift	3
NEV-SAFETY-066	Attenuation of Seepage into Naturally Fractured Drift Walls	3
NEV-SAFETY-067	Evaluation of Uncertainties in Estimated Chemical Properties, Especially pH Values, of Evaporated Drift Brines	3
NEV-SAFETY-068	In-Drift Condensation on Mineral Dust	3
NEV-SAFETY-069	Coupled Seepage and Dust Deliquescence	3
NEV-SAFETY-070	THC Evolution of Near-Field Pre-Seepage Unsaturated Zone Water	3
NEV-SAFETY-071	Microbially Induced Water Chemistry Changes in the Incubator Zone	3
NEV-SAFETY-072	Characterization of Dust Sources	3
NEV-SAFETY-073	In-Drift Organic Contribution by Ventilation or Unsaturated Zone Water	3
NEV-SAFETY-074	Impact of Microbial Activity	3
NEV-SAFETY-075	Microbially Influenced Corrosion Model	3
NEV-SAFETY-076	Microbial Denitrification	3
NEV-SAFETY-077	Corrosion from Rock Bolt Seepage	3
NEV-SAFETY-078	Static Corrosion Tests on Alloy 22	3
NEV-SAFETY-079	Static General Corrosion Test Solutions	3
NEV-SAFETY-080	Localized Corrosion, Chloride Bearing Mineral Deposits and Hot Wall Effects	3
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**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

Atomic Safety and Licensing Board

In the Matter of)	
)	
U.S. DEPARTMENT OF ENERGY)	Docket No. 63-001-HLW
)	
(High Level Waste Repository))	September 23, 2009

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Proposed Case Management Order has been served upon the following persons by the Electronic Information Exchange:

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