

**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:	)	September 28, 2009
	)	
U.S. Department of Energy	)	
	)	Docket No. 63-001
(High Level Waste Repository	)	
Construction Authorization Application)	)	
	)	

**JOINT MOTION BY THE COUNTY OF INYO AND THE JOINT TIMBISHA  
SHOSHONE TRIBAL GROUP TO REMOVE THREE GROUNDWATER-BASED  
CONTENTIONS FROM DISCOVERY DURING PHASE I**

**INTRODUCTION**

Pursuant to 10 C.F.R. § 2.323, the County of Inyo and the Joint Timbisha Shoshone Tribal Group request that the Construction Authorization Board (CAB04) withdraw two groundwater-based safety contentions (INY-SAFETY-001 and INY-SAFETY-002) and one groundwater-based NEPA contention (JTS-NEPA-004) from discovery during Phase I and to order that such contentions be litigated together with the other groundwater-based NEPA contentions in the next phase of these proceedings.

**DISCUSSION**

On August 26, 2006, the Board granted 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*” until 30 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. During the pre-hearing conference on September 14, 2009, NRC Staff announced that it would prepare a supplemental analysis of postclosure groundwater impacts, but that the preparation of the supplemental analysis would not commence until after federal fiscal year 2010. In response to the announcement by the NRC Staff, the Board clarified that the earliest that new or amended contentions need be filed will be at some point in federal fiscal year 2011. (Transcript of Pre-Hearing Conference, page 164, lines 10 to 25 and page 165, lines 1 to 13.)

On September 23, 2009, a document titled “Joint Submission of Proposed Case Management Order #2” was filed with the Board. The proposed order provides on page 2 that Phase I discovery will commence on “[A]ll safety and miscellaneous contentions concerning issues that relate to either SER Volume 1 or 3” (first bullet) and on “[A]ll environmental contentions (other than those involving DOE’s additional groundwater analysis) that relate in some manner to SER Volume 1 or 3” (second bullet).

Although the proposed order requests that discovery on environmental contentions involving the additional groundwater analysis be deferred, page 1 of the Appendix to the proposed order shows that discovery on JTS-NEPA-004 will proceed in Phase I. JTS-NEPA-004 is a groundwater-based contention. (The allegations in JTS-NEPA-004 are very similar to those in INY-SAFETY-001.)

A primary purpose for deferring discovery on groundwater-based NEPA contentions is that the supplemental groundwater analysis to be released by NRC Staff may give rise to amendments of existing contentions or to the filing of new groundwater-

based contentions. Consequently, as requested in the proposed order, it is logical to postpone discovery on the groundwater based NEPA contentions until after the release of the supplemental analysis. For that reason, discovery on JTS-NEPA-004 should be deferred to the next phase of these proceedings.

Under the proposed order, discovery on groundwater-based NEPA contentions is postponed until the next phase of the proceedings, but discovery on groundwater-based safety contentions will commence in Phase 1. If discovery proceeds on the groundwater-based safety contentions in Phase I, discovery on the County's groundwater-based NEPA contentions will effectively be forced to take place during Phase I because Inyo County's groundwater based safety contentions and the County's groundwater-based NEPA contentions are almost identical.

The supplemental groundwater analysis that will be released by the NRC Staff is equally relevant to groundwater-based safety contentions. For the same reasons that the Board is being requested to defer discovery on groundwater-based NEPA contentions, this motion requests that the Board also defer discovery on groundwater-based safety contentions until after release of the supplemental groundwater analysis.

Pursuant to 10 C.F.R. § 2.323(b), on September 24 and 25, 2009, the undersigned counsel, via email, contacted counsel for DOE, the other parties in this proceeding, and Lincoln and Eureka Counties as Interested Governmental Participants to resolve the issues raised by this motion. All counsel have indicated that they have no objection to the motion.

**CONCLUSION**

For the reasons discussed above, it is requested that the joint motion to withdraw two groundwater-based safety contentions (INY-SAFETY-001 and INY-SAFETY-002) and one groundwater-based NEPA contention (JTS-NEPA-004) from discovery during Phase I and to order that such contentions be litigated together with the other groundwater-based NEPA contentions in the next phase of these proceedings be granted.

Respectfully submitted,

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Dated at Bishop, California  
this 28th day of September, 2009

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

I hereby certify that on September 24 and 25, 2009, I contacted counsel for all parties and Lincoln and Eureka Counties (as Interested Governmental Participants). The initial contact was via email with a follow-up contact via email. No party or Interested Governmental Participant opposed the motion.

*/Electronically Signed by/*

Greg James  
September 28, 2009

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARDS

In the Matter of	)	Docket No.	63-001-HLW
	)		
U.S. DEPARTMENT OF ENERGY	)	ASLBP Nos.	09-876-HLW-CAB01
	)		09-877-HLW-CAB02
(High-Level Waste Repository)	)		09-878-HLW-CAB03
	)		09-892-HLW-CAB04

CERTIFICATE OF SERVICE

I hereby certify that copies of the “**JOINT MOTION BY THE COUNTY OF INYO AND THE JOINT TIMBISHA SHOSHONE TRIBAL GROUP TO REMOVE THREE GROUNDWATER-BASED CONTENTIONS FROM DISCOVERY DURING PHASE I**” in the above-captioned proceeding have been served on the following persons this 28th day of September, 2009, by Electronic Information Exchange.

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**CAB 04**

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**CAB 03**

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