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P-R-O-C-E-E-D-I-N-G-S

1:14 p.m.

CHAIRMAN HAWKENS: Thank you. I was only a few sentences into my introduction, but I'll start them over for the benefit of the listeners.

This is a teleconference on ASLBP Docket No. 10-895-01-ML. The purpose is to discuss convening oral arguments and challenges to the U.S. Army's application for a source material license to possess depleted uranium at two sites in Hawaii.

My name is Roy Hawkens. I'm Chairman of the three-member Licensing Board that will preside in this matter. The two fellow Judges joining me today are Judge Anthony Baratta who has a Doctorate in Nuclear Physics, and Judge Michael Kennedy who has a Doctorate in Nuclear Engineering.

We are participating in this teleconference from our hearing room in Rockville, Maryland. And with us in Chambers are the Board's law clerk, Ms. Katie Tucker, and a representative from the Commission's Office of Public Affairs, Mr. David McIntyre.

We're using two telephone lines today. One is dedicated to interested members of the public who wish to listen in to the proceeding. And the

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1 other line is dedicated to the participants.

2 And to both -- the individuals who are
3 listening as well as to the participants -- I regret
4 the delay in starting today. We at this end had
5 difficulties patching in as well. But I'm pleased
6 that everybody is patched in now.

7 We have three categories of participants.
8 First is the License Applicant, the United States
9 Army; second are individuals who wish to challenge the
10 license application and who have filed petitions that
11 appear to satisfy the filing requirements; and the
12 third category is the NRC staff.

13 And I'd ask the participants at this time
14 to please identify themselves for the record starting
15 with the U.S. Army.

16 LTC HERRING: Good afternoon, Your Honor.
17 My name is Lieutenant Colonel Kent Herring for the
18 Army. And I work at the U.S. Army's Environmental
19 Litigation Division in Arlington, Virginia.

20 CHAIRMAN HAWKENS: Thank you.

21 Let's go to the petitioners. Please
22 identify yourself for the record.

23 MS. LEONARDI: My name is Lwella Leonardi.
24 Am I am a petitioner?

25 CHAIRMAN HAWKENS: Thank you, Ms.

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1 Leonardi. Yes, you are.

2 MS. LEONARDI: Thank you.

3 MS. HARDEN: Cory Harden, also a
4 petitioner.

5 CHAIRMAN HAWKENS: Thank you, Ms. Harden.

6 MR. ALBERTINI: Jim Albertini, a
7 petitioner.

8 CHAIRMAN HAWKENS: Thank you, Mr.
9 Albertini.

10 MR. HARP: Hello, Your Honor. This is
11 Isaac Harp. I'm also a petitioner.

12 CHAIRMAN HAWKENS: Thank you, sir.

13 NRC staff?

14 MR. KLUKAN: Your Honor, this is Brett
15 Klukan for the NRC staff. I also have with me
16 Kimberly Sexton, Cathy Marco, John Clements and John
17 Hayes.

18 CHAIRMAN HAWKENS: Thank you.

19 As a reminder, if any of the participants
20 wish to speak, please identify yourself for the
21 benefit of the court reporter.

22 At the outset, I'd like to discuss briefly
23 the difference between this proceeding and public
24 hearings the NRC staff recently has held in Hawaii
25 because our law clerk, Ms. Tucker, has recently

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1 entertained a number of questions from members of the
2 public who are not familiar with the distinction
3 between the two types of hearings.

4 When the NRC staff reviews a license
5 application, it routinely will hold public hearings
6 soliciting oral and written views from the public. In
7 this case, it's the Board's understanding that the NRC
8 staff held public hearings in Oahu on August 24th and
9 25th, in Kona on August 26th, and in Hilo on August
10 27th.

11 The staff also has received a number of
12 written submissions from members of the public. The
13 oral and written views submitted by the public are
14 considered by the NRC staff, and they're retained as
15 part of the permanent record in the NRC's License
16 Application Review. They're part of the NRC docket.
17 Anybody may submit comments. And there are no limits
18 on the number of written comments a person may submit.

19 This proceeding in contrast is judicial in
20 nature. Its decision is subject to appellate review.
21 The Board's reviewing authority comes from and is
22 limited by the Atomic Energy Act and the regulations
23 in Title 10, Part 2 of the Code of Federal
24 Regulations.

25 Our task is first to determine whether

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1 petitioners have filed timely petitions that establish
2 standing and contain an admissible contention. If we
3 find that the petitioners have satisfied those
4 requirements, our task is then to resolve the admitted
5 contention.

6 Participation in this proceeding is
7 limited to the litigants who comply with our establish
8 rules. And these rules are designed to promote
9 fairness and efficiency in the adjudicative process.

10 To the extent we have teleconferences like
11 this or have oral arguments or evidentiary hearings,
12 the public may attend, listen and observe. But only
13 parties or their designated agents or representatives
14 may actively participate.

15 Let's now move to the purpose of this
16 teleconference.

17 In a December 3rd written notice, the
18 Board stated we wanted to discuss holding oral
19 arguments on standing and contention admissability.
20 The Board believes its understanding of the issues
21 would be enhanced by in person oral arguments as
22 opposed to a telephone argument. And we'd like to
23 hold an oral argument as soon as practicable, but we
24 think it would be problematic to attempt to schedule
25 it before the new year. And therefore, our view is

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1 that we should endeavor to schedule one in early
2 January.

3 Licensing Boards generally try to hold
4 arguments and hearings near the facility in question
5 for the convenience and accommodation of the local
6 members and the stakeholders.

7 This question is addressed to the
8 petitioners.

9 Do you object to us holding oral arguments
10 in Hawaii? Or would you prefer to hold it here in
11 Rockville, Maryland at our hearing facility in
12 January?

13 MS. LEONARDI: Sir, this is Lwella
14 Leonardi. I prefer that you hold the hearing here in
15 Hawaii.

16 CHAIRMAN HAWKENS: Thank you, Ms.
17 Leonardi.

18 MR. ALBERTINI: Jim Albertini. I think
19 since there are two sites, you need to have two places
20 -- one on the Island of Oahu and one on the Hawaii
21 Island.

22 And let me just state for the record in
23 the preliminary matter that I would like make for the
24 record that the extension of time in which to file
25 petitions to intervene is only proper when issued for

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1 all the potential filers, not just those that
2 requested the extension. I think we're dealing with
3 the matter now that several people have been denied
4 intervention status. And I think that's improper.
5 The extension of time should have been for everyone.

6 CHAIRMAN HAWKENS: Thank you, Mr.
7 Albertini. The issue of timeliness is one that is
8 under this Board's purview. And we will be resolving
9 that.

10 I believe Ms. Leonardi expressed no
11 objection to having an oral argument in Hawaii. Mr.
12 Albertini had no objection.

13 Mr. Harp and Ms. Harden, what are you
14 views?

15 MS. HARDEN: Yes. This is Cory Harden.

16 I support having it in Hawaii. However,
17 to complicate things, we have some expert witnesses.
18 One's on Maui, one's in Kona, one's in Canada, and
19 there's two others there in the states somewhere. I'm
20 not sure how though possibly a video conference would
21 be the best way to resolve that.

22 CHAIRMAN HAWKENS: Those are logistics
23 we'd have to consider. And then when they'd be
24 resolved is we determine where, when and how we'll be
25 having the oral arguments.

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1 Thank you. For your information however,
2 at oral arguments, it's an opportunity for the
3 Licensing Board to ask questions of the attorneys or
4 the individuals themselves. It's not what we call an
5 evidentiary hearing where there's testimony by expert
6 witnesses.

7 The purpose of the oral argument as I said
8 would be for this Board to determine whether the
9 petitioners had established standing as required by
10 the regulations and had proffered an admissible
11 contention under the standards established in the
12 regulations. And those are issues that would be
13 resolved based on questions asked by the Licensing
14 Board Members and based on answers provided by the
15 parties.

16 And if the petitioners did not have
17 counsel, it would be the petitioners themselves
18 responding to the questions posed by the Judges.

19 MS. HARDEN: Well, wouldn't the expert
20 witnesses have some bearing on whether the contentions
21 are considered admissible?

22 CHAIRMAN HAWKENS: No, ma'am, they would
23 not.

24 Whether they're admissible, that goes to
25 the legal sufficiency of the pleadings or the filings

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1 that you've already submitted. And as I say, they'd
2 be reviewed based on whether they comply with the
3 standard and the regulations for contention
4 admissibility.

5 MS. HARDEN: Well, it's kind of --

6 CHAIRMAN HAWKENS: If a contention is
7 admitted, then it's possible the case would proceed to
8 an evidentiary hearing, in which case expert witnesses
9 and their testimony would be entertained by the Board.

10 MS. HARDEN: They are more looking at the
11 law and whether the points we have brought up fall
12 under that law, is that correct?

13 CHAIRMAN HAWKENS: That's correct. In
14 other words, whether you have standing and whether
15 you've proffered and admissible contention.

16 MS. HARDEN: Okay.

17 MR. HARP: Good morning. This is Isaac
18 Harp.

19 I have no opposition to having the
20 hearings held in Hawaii. And like Mr. Albertini, I
21 would suggest you consider having one site on Oahu
22 since they're -- the Schofield site is on Oahu, and
23 one hearing here on the Island of Hawaii. Because two
24 of the plaintiffs are from the Hilo area on Hawaii
25 Island, I would think the Hilo area would be most

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1 convenient for the majority of the plaintiffs.

2 CHAIRMAN HAWKENS: Thank you, Mr. Harp.
3 And I appreciate your suggestion and Mr. Albertini's
4 suggestions that we hold an oral argument at two
5 sites. We will consider that. But there's a
6 possibility just for cost concerns and efficiencies
7 that we would simply hold it in one site.

8 If we were to hold it at one site, I think
9 because -- am I correct in saying that three of the
10 four petitioners reside on the Island of Hawaii?

11 MR. HARP: Correct.

12 CHAIRMAN HAWKENS: So my sense is that
13 because --

14 MS. LEONARDI: I live on Oahu.

15 CHAIRMAN HAWKENS: I understand that, Ms.
16 Leonardi.

17 MR. HARP: Your Honor, this is Mr. Harp
18 again.

19 Would it be possible to teleconference or
20 videoconference the hearing on Oahu so that they can
21 participate from there?

22 CHAIRMAN HAWKENS: When you say so that
23 they can, you recall that the only participant would
24 be Ms. Leonardi.

25 MR. HARP: Ms. Leonardi.

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1 CHAIRMAN HAWKENS: And that's something we
2 will look into and get back to you. I would think at
3 the very least we would want to patch her in if -- Ms.
4 Leonardi, if we were hold it on the Island of Hawaii
5 and if you were not able to travel to be there in
6 person, at the very least we'd be grateful if you
7 would participate by teleconference. But that's a
8 logistical matter we can address at a later time.

9 MS. HARDEN: This is Cory Harden with
10 another logistical matter.

11 CHAIRMAN HAWKENS: Yes?

12 MS. HARDEN: It's a disability
13 accommodation. Due to health problems, I could manage
14 the hearing for four hours in the morning with a half
15 hour break. And that's all I can do. And I am hoping
16 that we can work around that somehow. And I wonder if
17 you have some ideas at this point.

18 CHAIRMAN HAWKENS: I'm glad you brought
19 that to our attention, Ms. Harden.

20 It would be my goal to be able to complete
21 an argument within that four-hour morning period in
22 accommodation to you. And I think if the Board is
23 well prepared and the parties are well prepared, we'd
24 be able to address the questions and the Board's
25 concerns within that amount of time.

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1 MS. HARDEN: So the entire procedure would
2 probably take only about four hours?

3 CHAIRMAN HAWKENS: That would be our goal.

4 Now, can you explain to me? You said
5 during that four-hour period, you would want a half an
6 hour -- at least a half an hour recess or would you
7 want a half an hour recess after it before you'd be
8 ready if we needed to go into additional time?

9 MS. HARDEN: I need a half hour break
10 about two hours into it.

11 CHAIRMAN HAWKENS: I'm with you.

12 MS. HARDEN: Then I can't do anymore that
13 day after the four hours.

14 CHAIRMAN HAWKENS: All right. Thank you
15 for that information.

16 MS. HARDEN: Okay.

17 MS. LEONARDI: I wonder -- I want to say
18 something here, sir.

19 CHAIRMAN HAWKENS: And who's speaking?

20 MS. LEONARDI: This is Lwella Leonardi.

21 CHAIRMAN HAWKENS: Yes, Ms. Leonardi?

22 MS. LEONARDI: I just wanted to let the
23 other plaintiffs -- because I don't know who they are.
24 I've never met them. I know of them. But I just
25 wanted to make it clear who I am.

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1 My name is Lwella Leonardi. I live on
2 Hawaiian Homestead in Waianae.

3 I am -- I also grew up on Hawaiian
4 Homestead in Waimanalo. And I am 50 percent blood
5 blood quantum under the Hawaiian Homestead definition
6 of what is a native Hawaiian. I just wanted to make
7 it clear to the other plaintiffs who I am.

8 CHAIRMAN HAWKENS: All right. Thank you,
9 Ms. Leonardi.

10 Assuming the Board is going to hold
11 argument on the Island of Hawaii, we will investigate
12 suitable and available facilities.

13 But do the petitioners have any
14 recommendations they would like us to consider as far
15 as the location and facility for the oral argument?

16 MS. HARDEN: This is Cory Harden, and
17 someplace without air conditioning would be good,
18 again due to health problems. Failing that, an older
19 building is better. Perhaps I could send you some
20 suggested sites when I've had time to think about it.

21 MR. ALBERTINI: Albertini with the
22 suggestion that it be in Hilo supporting Mr. Harp's
23 position.

24 CHAIRMAN HAWKENS: Thank you. Any of the
25 other petitioners have any suggestions or

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1 recommendations as far as location and facility on the
2 Island of Hawaii?

3 MR. HARP: This is Isaac Harp. I -- I
4 really don't have any suggestions. I live in Waimea
5 about 50 miles away from Hilo. So I would leave it to
6 Cory Harden and Jim Albertini to recommend sites in
7 Hilo.

8 CHAIRMAN HAWKENS: All right.

9 MS. LEONARDI: Those of us who are on Oahu
10 were willing to fly over. We would like to hold it at
11 Edith Kanakaole Stadium.

12 CHAIRMAN HAWKENS: Could you repeat that,
13 Ms. Leonardi?

14 MS. LEONARDI: We would like to hold this
15 hearing at Edith Kanakaole Stadium.

16 CHAIRMAN HAWKENS: Thank you. When you
17 call it a stadium, I'm thinking of an NFL or college
18 football stadium. Can you describe what the stadium
19 is like?

20 MS. LEONARDI: They logistically
21 accommodate in conference rooms.

22 CHAIRMAN HAWKENS: All right. The Board's
23 law clerk Ms. Tucker will be in communication with all
24 four petitioners as well as the Army and the NRC
25 staff. And she'll be asking you to follow up these

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1 suggestions in writing by email so we can follow them
2 up.

3 MR. HARP: This is Mr. Harp, Your Honor.

4 I was wondering would we be allowed to
5 videotape the hearing?

6 CHAIRMAN HAWKENS: The answer to that is
7 probably yes, and that's a logistical matter we can
8 address later. But so long as the cameras are not
9 obtrusive, so long as they're in the back and do not
10 move around, so long as artificial lighting is not
11 required, we generally allow arguments and hearings to
12 be filmed. But that as I say is a logistical matter
13 we can address a little bit later.

14 MR. HARP: Thank you, sir.

15 CHAIRMAN HAWKENS: Having already given
16 the petitioners the opportunity to recommend venues
17 for the oral arguments, let me ask both the Army and
18 the staff if they have any suggestions or
19 recommendations.

20 LTC HERRING: Your Honor, this is Ken
21 Herring for the Army. I don't have any specific
22 recommendations. But what I can do is get with the
23 folks out in Hawaii in the Army to see if there's any
24 facility they're aware of, and if so I can send it to
25 Ms. Tucker.

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1 CHAIRMAN HAWKENS: That'd be terrific.
2 And if you can specially on any facility in Hilo,
3 making any recommendations there in accommodation to
4 Ms. Harden, that would be terrific.

5 LTC HERRING: Yes, sir.

6 CHAIRMAN HAWKENS: NRC staff, any
7 suggestions on this point?

8 MR. KLUKAN: Your Honor, this is Brett
9 Klukan.

10 We don't really have any recommendations.
11 I think the public meeting was held in an elementary
12 school cafeteria which we could further you details on
13 if you wanted to pursue that on the Island of Hawaii.
14 But aside from that, we don't have any
15 recommendations.

16 CHAIRMAN HAWKENS: All right. Thank you.

17 One of the participants a few days ago
18 asked if the Board would be providing written
19 questions in advance of any oral argument so that the
20 petitioners could be prepared in advance. And the
21 answer to that is yes, we will provide all the parties
22 with written questions, or at least identify topics of
23 interest that the Board would like the parties to
24 concentrate on and that will be really the focus of
25 our inquiries at the oral argument.

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1 JUDGE BARATTA: This is Judge Baratta
2 here.

3 The types of things that we've talked
4 about here relative to this deal with the exact
5 boundaries of the two sites. We don't have that
6 information.

7 I noticed in I think it's the ASR report,
8 there are some coordinates given for the likely spots
9 where the depleted uranium might be found or had been
10 found, and a map annotated with that information would
11 be useful as would for the intervenors, the
12 petitioners, their exact location relative to the site
13 -- something where your actual residence is as opposed
14 to your mailing address. There could be quite a
15 difference in a post office box versus the actual
16 residence. And there are a number of questions
17 regarding the topography of the area and such that all
18 go to issues that would be of interest relevant to
19 standing at this point.

20 MR. ALBERTINI: Judge, Albertini here.

21 Since none of the intervenors are
22 attorneys, and we're having these hearings coming up,
23 I think we need some clarification in preparation on
24 two points: what demonstrates standing and what are
25 admissible contentions. And a third point would be I

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1 noticed in one of the emails that procedure rules are
2 cited as 10 CFR Part 2. And it said this is available
3 on line. We're not in the beltway of Washington.
4 We're out here in the rain forest. High speed
5 internet isn't available. We need a little guidance
6 on this on how we can even find 10 CFR Part 2. A
7 website address is something when material is sent to
8 us so we can prepare in a reasonable manner to address
9 the questions that you want answered.

10 CHAIRMAN HAWKENS: Mr. Albertini, our law
11 clerk Ms. Clerk will email the participants and copy
12 the other parties with a site where you can access 10
13 CFR Part 2. She'll also identify the particular
14 sections that deal with standing and those that deal
15 with contention admissibility.

16 MR. ALBERTINI: All right. Thank you.

17 CHAIRMAN HAWKENS: You're welcome.

18 The Board is looking at sometime during
19 the week of January 11th to hold this oral argument.

20 Let me start with asking the petitioners
21 do they anticipate that at least one day during this
22 week they would be available to attend an oral
23 argument?

24 MR. ALBERTINI: Albertini should be
25 available.

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1 CHAIRMAN HAWKENS: Thank you.

2 MS. LEONARDI: Lwella Leonardi will be
3 available.

4 CHAIRMAN HAWKENS: Thank you, Ms.
5 Leonardi.

6 MS. HARDEN: This is Cory Harden. That
7 looks okay.

8 CHAIRMAN HAWKENS: Thank you, Ms. Harden.

9 MR. HARP: Isaac Harp. Fine with me.

10 CHAIRMAN HAWKENS: Good. Thank you.

11 Army -- Colonel Herring, would you be
12 available that week?

13 LTC HERRING: Yes, Your Honor.

14 CHAIRMAN HAWKENS: All right. NRC staff,
15 are you willing to ride the circuit that week?

16 MR. KLUKAN: Yes, Your Honor. This is
17 Brett Klukan.

18 CHAIRMAN HAWKENS: All right. Thank you,
19 Mr. Klukan.

20 MR. HARP: This is Mr. Harp.

21 Regarding our location relative to the
22 site, I live -- I'm not exactly sure -- approximately
23 ten to 15 miles away from the Pohakuloa Training Area.
24 And I was quite concerned after learning of the
25 depleted uranium in the area.

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1 And immediately following the public
2 hearings that were held in Hilo by the NRC that there
3 was artillery shelling going on, and we can feel the
4 ground shaking where I live and that's many miles
5 away. And I'm concerned with the potential of the
6 depleted uranium in Pohakuloa becoming aerosolized and
7 becoming airborne and affecting the folks down wind
8 from the area. I was wondering if there was any way
9 we could place some kind of a recess on the live-fire
10 training in Pohakuloa and Schofield until the matter
11 is resolved.

12 CHAIRMAN HAWKENS: We understand that
13 request, and the Board will take it under advisement,
14 Mr. Harp.

15 MR. HARP: Thank you.

16 CHAIRMAN HAWKENS: At this point, do the
17 petitioners have anything else they wish to discuss?
18 Ms. Tucker will be working with you as well as with
19 the Army and the OGC staff to come up with a day that
20 is suitable for everybody as well as a facility that's
21 suitable and available for the oral argument.

22 MR. ALBERTINI: Albertini.

23 CHAIRMAN HAWKENS: Petitioners, do you
24 have any questions or anything else to add?

25 MR. ALBERTINI: Yes. Albertini.

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1 So this day of the hearing is to determine
2 whether standing and what contentions are admissible.
3 We don't have to have witnesses available at this
4 point?

5 CHAIRMAN HAWKENS: That's correct. That
6 is correct, Mr. Albertini.

7 MR. ALBERTINI: What time frame after this
8 hearing during the week of January 11th might
9 witnesses be needed?

10 CHAIRMAN HAWKENS: That can't be
11 determined at this point. Let me answer it this way.
12 If none of the petitioners for example were to
13 establish standing or establish that they have
14 proffered an admissible contention, that would be the
15 end of the proceeding before this Board.

16 If on the other hand, one or more of the
17 petitioners had established standing and have admitted
18 -- or proffered at least one admissible contention,
19 this Board would issue a decision stating that the
20 request for hearing had been granted. And at that
21 point, we would await the NRC staff's review of
22 environmental matters, its completion of a safety
23 evaluation report. And it would be a number of months
24 after that before we would go forth with an
25 evidentiary hearing.

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1 At this point, let me ask the NRC staff
2 does it have estimated dates on when the environmental
3 report and its safety evaluation report would be
4 complete in this matter?

5 MR. KLUKAN: Your Honor, this is Brett
6 Klukan. If you permit one moment to conference with
7 John Hayes, our project manager.

8 CHAIRMAN HAWKENS: Thank you.

9 MR. HARP: This is Isaac Harp.

10 CHAIRMAN HAWKENS: One second, Mr. Harp.
11 We're waiting an answer from the OGC staff.

12 MR. KLUKAN: Your Honor, this is Brett
13 Klukan again.

14 I've conferenced with our project
15 management and they said best estimate would be August
16 and September of 2010 for both the environmental
17 review document and the Safety Evaluation Report.

18 But again, the staff -- its review of the
19 environmental information is ongoing. It has not made
20 a conclusion yet of whether an EIS will be necessary.

21 CHAIRMAN HAWKENS: I understand. Thank
22 you.

23 Mr. Harp, was it you who wished to say
24 something?

25 MR. HARP: Yes, sir.

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1 CHAIRMAN HAWKENS: Go ahead.

2 MR. HARP: I was wondering if it were
3 possible for -- I guess it would be the Army since
4 they are applying for the permit -- to provide us with
5 the documentation on how they acquired use of these
6 lands. I have a couple of Executive Orders and a
7 lease from the State of Hawaii and an Executive Order
8 by the United States President, and the so-called
9 president of Hawaii I guess at the time, or governor.

10 And I don't believe those documents are
11 legitimate because under U.S. Public Law 103-150, the
12 United States Congress included language in there
13 which stated that native Hawaiians such as myself and
14 Ms. Leonardi did not relinquish our claims to our
15 sovereignty or to our sovereign land. And I believe
16 some of the lands in question are those sovereign
17 lands that the State has leased to the military. And
18 if the President of the United States has by Executive
19 Order taken, I would like to see some documentation on
20 lawful title to these lands. And I believe the burden
21 should be placed on the Army to provide those
22 documents.

23 CHAIRMAN HAWKENS: Mr. Harp, it's a
24 fascinating issue. But I have to tell you that this
25 Board is a Board of limited jurisdiction. As I

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1 indicated earlier, the limits on the scope of the
2 issues we can review are established by the Atomic
3 Energy Act, by our regulations and by what was in the
4 *Federal Register* Notice for Opportunity of Hearing.
5 And our authority does not extend to whether the Army
6 has legitimate title to that land. To the extent
7 that's an issue you want litigated, you will have to
8 go to a different reviewing body than this Licensing
9 Board.

10 MR. HARP: Would the Board be able to
11 request a participation of a representative of the
12 State Department listen in on these hearings?

13 CHAIRMAN HAWKENS: No, we would not be
14 able to do that either. To the extent any petitioner
15 wishes to extend an invitation and that invitation is
16 accepted, anybody is welcome to attend an oral
17 argument or any hearing that's held by this Board.

18 MR. HARP: Thank you.

19 JUDGE BARATTA: This is Judge Baratta.
20 Our basic charter deals with health and
21 safety in this particular case. So I think that's
22 basically what the Atomic Energy Act charges this
23 Board with relative to this application.

24 CHAIRMAN HAWKENS: Do any of the other
25 petitioners have any other questions or observations?

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1 MS. HARDEN: Yes. This is Cory Harden.
2 At the January proceeding, can we present
3 additional information that we did not present
4 earlier?

5 CHAIRMAN HAWKENS: Ms. Harden, you can
6 present additional information to the extent that it's
7 a logical extension of anything you've already
8 presented.

9 To the extent that you wish to present new
10 and materially different information, you would have
11 to demonstrate under the regulations. And our law
12 clerk Ms. Tucker will also give you a specific site to
13 the governing regulation. But you'll have to
14 demonstrate that any new and materially different
15 information should be considered by the Board. And
16 the burden would be on the proponent of that
17 information to show why it should be considered by the
18 Board. All right?

19 MS. HARDEN: All right.

20 Let's see. And then I'm thinking about
21 the amount of information that exists and the four
22 hours and wondering how that will all fit in and
23 wondering a little about the format of the proceeding.
24 Could you fill me in?

25 CHAIRMAN HAWKENS: Well, we will provide

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1 additional information in writing on that to you.
2 When we indicate the questions that we consider most
3 significant and the areas of concern that we wish the
4 parties to address, I think that will help you and
5 we'll indicate the amount of time we anticipate each
6 of the parties will be making their presentations as
7 well.

8 MR. ALBERTINI: Albertini here.

9 It would have been helpful if we had all
10 this information ahead of this conference call, then
11 we'd have something to discuss in more detail. But to
12 say that we have the conference call now and then
13 you're going to send us information about that meeting
14 the week of January 11th, the cart seems to be before
15 the horse.

16 CHAIRMAN HAWKENS: Well, the purpose of
17 this as we indicated in the notice was to discuss the
18 scheduling of an argument. We've discussed that.
19 We've established when it's going to be.

20 Now we're going to march forward, tie up
21 logistical matters and at the same time, we'll be
22 providing the parties with the topics they should be
23 prepared to address at that oral argument.

24 MS. LEONARDI: Lwella Leonardi here.

25 I am concerned about the particular

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1 subject that we are discussing, and that is depleted
2 uranium.

3 Who is responsible for calculating and
4 survey and measurable findings of the depleted uranium
5 in a particular source -- in a particular source spot,
6 or one, for example, in a plume? And secondly, for
7 depleted uranium to have been removed from point A and
8 taken to point B in soil?

9 CHAIRMAN HAWKENS: At the end of the day,
10 the Department of the Army is responsible for
11 satisfying the NRC staff that the measures it has and
12 will take are safe and appropriate and compliant with
13 our regulations. If we after the oral argument
14 determine that one of the petitioners has established
15 standing and admitted -- or proffered an admissible
16 contention, the Board then will determine whether that
17 contention has merit -- that is whether you are
18 correct in arguing that the process the Army's going
19 through is inadequate and not adequately safe.

20 MS. LEONARDI: Sir, will I be able to have
21 a conversation or a debate -- or I'm not sure how to
22 say this -- to be sure that I understand that what the
23 military is saying to me is an -- can we agree or
24 verify?

25 CHAIRMAN HAWKENS: The purpose of this

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1 argument is not for you to engage anybody in debate.
2 The purpose is for this Board to ask the parties
3 questions to make the determination of whether the
4 proceeding will go forward or whether the proceeding
5 will end. And again, the two main issues at the end
6 of the day will be whether a petitioner has
7 established standing and has proffered an admissible
8 contention.

9 Again, the purpose of the argument, we've
10 read everything the parties have submitted. And we'll
11 be familiar with that. But there still will be
12 questions in our minds where certain facts are not
13 clear, certain theories are not clear, and we will
14 alert the parties to that before the argument in
15 writing so that you'll be aware of where the gaps are
16 in our mind.

17 But again, the purpose of the argument is
18 for the Board to make its decision, not for the
19 parties to put on evidence or to engage one another in
20 debate.

21 MS. LEONARDI: Okay. I just wanted to be
22 sure that I was clear about the behavior. Thank you.

23 CHAIRMAN HAWKENS: I understand.

24 Lieutenant Colonel Herring, do you have
25 anything -- any questions or observations at this

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1 point?

2 MS. LEONARDI: Sir? I have one more
3 question.

4 CHAIRMAN HAWKENS: Okay. Who's talking?

5 MS. LEONARDI: Today is the day that we
6 are going to determine whether there's going to be a
7 hearing in January?

8 CHAIRMAN HAWKENS: No. Our law clerk will
9 be in touch with you. It will be a day during the
10 week of January 11. And we'll let you know that
11 promptly.

12 Lieutenant Colonel Herring, do you have
13 anything to add at this point?

14 LTC HERRING: No, Your Honor, I don't.

15 CHAIRMAN HAWKENS: Mr. Klukan?

16 MR. KLUKAN: No, Your Honor.

17 CHAIRMAN HAWKENS: Judge Baratta, do you
18 have any questions or observations?

19 JUDGE BARATTA: Not at this point.

20 CHAIRMAN HAWKENS: Judge Kennedy?

21 JUDGE KENNEDY: This is Judge Kennedy. I
22 have nothing to add.

23 MR. HARP: Your Honor, this is Isaac Harp.
24 I have one more comment, please?

25 CHAIRMAN HAWKENS: Yes, Mr. Harp?

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1 MR. HARP: I want the Board to understand
2 that I personally am primarily concerned about safety
3 issues as far as humans go with the potential of
4 becoming I guess`polluted with airborne particles of
5 depleted uranium. And I'm also concerned that the
6 Pohakuloa Training Area sits over one -- our primary
7 water table on the island. And I'm afraid of depleted
8 uranium leaching into our water supply for the island.
9 And I'm concerned for the safety of the overall
10 environment of Hawaii itself.

11 And the reason I brought up the land title
12 issues is because when NRC came to Hawaii and held the
13 two public hearings on the Island of Hawaii, NRC staff
14 was asking the question if they ever heard of a permit
15 being denied. And they stated no. So I felt that
16 perhaps the folks like myself and Ms. Leonardi who
17 have not relinquished our sovereign claim to these
18 lands, we might put ourself in a position to help the
19 NRC deny the permit if necessary.

20 I just want to clarify that our primary
21 concerns are for the safety of not only humans but the
22 environment overall. Thank you.

23 CHAIRMAN HAWKENS: Thank you very much,
24 Mr. Harp. I appreciate the clarification.

25 MR. ALBERTINI: Albertini here.

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1 With all due respect, we're here on the
2 Island of Hawaii with this military base in the center
3 of our island where they fire nearly 15 million rounds
4 a year in an area that's been confirmed to have
5 depleted uranium contamination. I have personally
6 been at the State Park adjacent to that base
7 protesting the military expansion of that area when
8 our radiation monitor spiked at 75 counts per minute.
9 Yet we're here fighting for our lives to see if we
10 have standing to contend this issue.

11 And you folks are all in -- I know you're
12 not here on the Island of Hawaii. And yet you're
13 determining whether we have standing. So from a
14 citizen's point of view, the issue is stacked against
15 us. And it's not a good feeling.

16 CHAIRMAN HAWKENS: Thank you for your
17 views, Mr. Albertini.

18 This Board is constrained to determine
19 whether you have standing and whether you submit an
20 admissible contention. But in doing that, we will be
21 objective. We will read all the pleadings that you
22 submit -- have read them. And we will be very
23 interested in your replies to our questions on these
24 matters.

25 And I do thank you though for expressing

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1 your views on that.

2 JUDGE BARATTA: Mr. Albertini, this is
3 Judge Baratta.

4 One question that I will have for you --
5 and you don't need to address this now -- but I would
6 like for you to indicate on a map the areas that you
7 frequent in that park, and also the frequency with
8 which you go there. That would be helpful in January
9 when we meet if you would be prepared to answer that
10 question.

11 CHAIRMAN HAWKENS: Anything else from the
12 petitioners before we close?

13 MS. LEONARDI: Sir, I'm a resident of
14 Waianae Valley. And one can google map where these
15 contaminants are in my valley.

16 I have been inundated with this dust -- a
17 uranium dust airborne for almost on a daily basis. I
18 have seen it with my own eyes everyday for
19 approximately ten years.

20 I just wanted to assert that.

21 CHAIRMAN HAWKENS: Thank you. And that's
22 clear from the pleadings that have been submitted by
23 all the petitioners. And you will have the
24 opportunity to re-assert that at the oral argument,
25 Ms. Leonard.

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1 MS. LEONARDI: Thank you.

2 MR. HARP: This is Isaac Harp. One final
3 comment. Sorry for interrupting again.

4 CHAIRMAN HAWKENS: That's all right.
5 You'll have the final comment.

6 MR. HARP: I would just like the Board to
7 know that the folks living downwind of Pohakuloa in
8 the area known as Kona have the highest rates per
9 capita of cancer in Hawaii. And it's so far
10 unexplained why the rates of cancer are so high in
11 Kona.

12 Thank you.

13 CHAIRMAN HAWKENS: All right.

14 MS. LEONARDI: Sir, we also have that
15 problem. Sorry for interrupting. This is Lwella
16 Leonard.

17 We also have that problem almost in every
18 home that is in the Hawaiian Homestead in Waianae.
19 And this Saturday, I will be going to a funeral on
20 Saturday in Maili Beach Park for a woman that's
21 married with children, and she's 48-years-old. And
22 she died of a lung problem.

23 CHAIRMAN HAWKENS: I'm saddened. The
24 Board is saddened to hear the death of your friend,
25 Ms. Leonard. Thank you.

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1 And with that, we will close this
2 teleconference. And the parties can be assured that
3 the Board's law clerk will be in touch with you and
4 providing you with further information regarding the
5 scheduling and logistics for the oral argument.

6 Also, one point. The petitioners have
7 requested to be exempt from the e-filing rule. That
8 request is before the Board. For the time being, the
9 petitioners to the extent the Board asks them to file
10 anything, we will request that they serve all the
11 parties by email and send first class mail -- both by
12 email and by first class mail. The Army, the NRC and
13 this Board will serve by e-filing. And we will also
14 send email copies of our filings to the petitioners.

15 Any questions?

16 MR. HARP: Your Honor, should we -- this
17 is Mr. Harp.

18 Should we send you first class mail of the
19 issues we have already submitted? Or should we begin
20 that at this point?

21 CHAIRMAN HAWKENS: At this point, you need
22 not do anything, Mr. Harp. And I anticipate you
23 probably will not have to be filing anything before
24 the oral argument because your submissions -- we have
25 copies of all of them. And as I say, in response to

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1 I think it was Ms. Harden's question earlier, unless
2 a party can justify filing new and materially
3 different information after the required filing date,
4 they're not permitted to do so.

5 So as I say, your submissions are before
6 us. And I would not anticipate the need to file
7 anything more.

8 MR. HARP: Thank you very much. And happy
9 holidays to us all.

10 And could we all get copies of the
11 transcript of this teleconference, please?

12 CHAIRMAN HAWKENS: After it is described,
13 it will within about a week or ten days be available
14 on the NRC's website. And our law clerk will also
15 provide you information on how to access that.

16 MR. HARP: Thank you very much.

17 MS. LEONARDI: Lwella Leonardi here.

18 Mele Kalikimaka -- and thank you.

19 CHAIRMAN HAWKENS: Thank you very much.

20 (Whereupon, at 2:05 p.m., the hearing was
21 adjourned.)

22

23

24

25

