1 UNITED STATES OF AMERICA

2 NUCLEAR REGULATORY COMMISSION

3 ATOMIC SAFETY AND LICENSING BOARD HEARING

4

5 In the Matter of

6 U.S. Department of Energy

7 High-Level Waste Repository

8 Docket No. 63-001-HLW

9 ASLBP No. 09-892-HLW-CAB04

10 January 27, 2010

11 9:00 a.m. PST

12 TRANSCRIPT OF PROCEEDINGS

13 Pre-Hearing Conference

14 Before the Administrative Judges

15

16 CAB04

17 Judge Thomas Moore, Chairman

18 Judge Paul S. Ryerson

19 Judge Richard E. Wardwell

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1 APPEARANCES

2 For Nuclear Regulatory Commission Staff:

3 Margaret Bupp, Esq.
Adam Gedelman, Esq.
4 Andrea Silvia, Esq.

5 For the Nuclear Energy Institute:

6 David Repka, Esq.
Rodney J. McCullum, Esq.
7

8 For the Department of Energy:

9 Michael Shebelskie, Esq.

10 For the State of Nevada:

11 Martin Malsch, Esq.
John W. Lawrence, Esq.
12 Charles Fitzpatrick, Esq.

13 For Nye County:
Jeffrey Van Niel
14 Robert Anderson

15 For Clark County:
Debra Roby
16 Bryce Loveland

17 For White Pine County:
Richard Sears
18 Mike Baughman

19 For Inyo County:
Greg James
20

21 For Four Nevada Counties:
Jennifer Gores
22

23 For Native Community Action Council
Rovianne Leigh
24

25 For Califorina Energy Commission:
Kevin Bell

1 APPEARNCES (Continued)

2 For Joint Iimbisha Shoshone Tribal Group:
Douglas Poland
3 Shane Elk

4 For Nye County: Mal Murphy

5 For Eureka County Diane Curran

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P R O C E E D I N G S

>> JUDGE MOORE: Good morning. I'm Judge Thomas Moore. On my left is Judge Richard Wardwell. On my right is Judge Paul Ryerson. Construction Authorization Board 4 has convened this case management conference this morning to discuss with the parties the matters raised by the licensing support network administrator's memorandum to the Board dated December 17th, 2009 and the Board's order of December 22nd, 2009.

The conference this morning is being recorded on the DDMS. It is also being web streamed for public viewing at the links published in our January 11th order as well as being broadcast on the agency's broadband network.

Because we have a number of counsel participating by telephone this morning, we will have to follow some special procedures. So that the court reporter can create an accurate transcript and the parties participating by telephone can follow the proceeding, it is imperative that all counsel identify themselves and the party they represent whenever they speak.

I would remind counsel sitting in the well that when they speak, they need to push the button

on the base of the microphone so the green light comes on and then when they are -- and to speak directly into the microphone, and then when they're finished speaking, you mute the mic by pressing the button again. I would remind all counsel that are participating by telephone conference, that when you are not speaking, please mute your mic so we have no interference here in the hearing room.

We will begin this morning by having those in the well identify themselves for the record. And then we will have those that are participating by telephone do the same thing. Let's begin with those on my left.

>> MR. SHEBELSKIE: Good morning, Your Honors. My name is Michael Shebelskie from Hunter Williams, representing the Department of Energy. With me at counsel table is Daniel Martin from the firm of CACI. He is a representative of the Department of Energy's automated litigation support contractor that assists us on TELESN issues.

>> MR. JAMES: Good morning, Your Honor. Greg James for the County of Inyo.

>> MR. VAN NIEL: Good morning, Your Honor. Jeff van Niel for NYE County.

>> MR. ANDERSEN: Good morning, Your Honor.

Robert Anderson for Makerman Centerfit on behalf of Nye County.

>> MS. ROBY: Good morning. Debra Roby on behalf of Clark County.

>> MS. SILVIA: Good morning. Andrea Silvia on behalf of NRC staff.

>> MR. LOVELAND: Bryce Loveland on behalf of Clark County.

>> MS. BUPP: Margaret Bupp on behalf of the NRC staff.

>> MR. GENDELMAN: Adam Gendelman for the NRC staff.

>> MR. REPKA: David Repka representing the Nuclear Energy Institute, and with me is Mr. Rodney McCullum of NEI.

>> MR. BAUGHMAN: Mike Baughman. I represent Lincoln and White Pine Counties.

>> JUDGE MOORE: I'm sorry, you are Mr. --

>> MR. BAUGHMAN: Baughman.

>> JUDGE MOORE: Baughman, and it's Lincoln and White Pine Counties?

>> MR. BAUGHMAN: That's correct, Your Honor.

>> MR. SEARS: I'm Richard Sears, Your Honor. Mr. Baughman is sitting with me on behalf of

1 White Pine. I'm counsel for White Pine.
2 >> JUDGE MOORE: Okay. Fine. My law clerk
3 informs me, Mr. Bauman -- am I pronouncing that
4 correctly?
5 >> MR. BAUGHMAN: It's Baughman, Your
6 Honor.
7 >> JUDGE MOORE: Baughman -- Mr. Baughman,
8 that you wish to speak for Lincoln County?
9 >> MR. BAUGHMAN: Yes, Your Honor.
10 >> JUDGE MOORE: I'm sorry. You will not
11 be able to do that. They are represented by counsel
12 and counsel is not here, as I understand it, and you
13 have informed us they are not available. So Lincoln
14 County will not be represented this morning.
15 >> MS. LEIGH: Thank you, Your Honor. Good
16 morning. Rovianne Leigh on behalf of the Native
17 Community Action Council.
18 >> MS. GORES: Jennifer Gores on behalf of
19 the four Nevada counties of Churchill, Esmeralda,
20 Lander and Mineral.
21 >> MR. FITZPATRICK: Good morning, Your
22 Honor, Charles Fitzpatrick for the State of Nevada.
23 At the table with me are Marty Malsch and John
24 Lawrence, also for the State of Nevada.
25 >> JUDGE MOORE: I will now call upon those

parties participating by telephone. California Energy Commission.

>> MR. BELL: Kevin Bell from the California Commission.

>> JUDGE MOORE: One moment, please, while we get the sound quality cleared up.

>> THE CLERK: Have him try again.

>> JUDGE MOORE: The Joint Timbisha Shoshone Tribal Group.

>> MR. POLAND: Good morning, Your Honor, Doug Poland with JTS.

>> MR. ELK: Good morning, Your Honor. Shane Elk also with JTS.

>> JUDGE MOORE: Nye County.

>> MR. MURPHY: Good morning. Mal Murphy on behalf of Nye County.

>> JUDGE MOORE: And Eureka County.

>> MS. CURRAN: Good morning, [inaudible]

>> JUDGE MOORE: Ms. Curran, could you repeat that, please?

>> MS. CURRAN: Oh, sure. Hold on. Hello. My receiver -- is that better?

>> JUDGE MOORE: Yes, thank you.

>> MS. CURRAN: I wanted to point out something I wasn't aware of before I started this

today, and that is I was hoping I could follow some visual queues from watching the web stream, and it's a couple minutes ahead of, or behind, the telephone conference. So I just wanted to point that out as a, kind of, a glitch in this whole process, but we certainly appreciate being able to participate remotely and use the webcasting.

>> JUDGE MOORE: We will. Yes, Miss Curran, the delay is built-in. We can't do anything about it.

>> MS. CURRAN: Yes, okay. Thanks.

>> JUDGE MOORE: You should all be familiar with the LSNA's December 17th, 2009 memorandum to the Board pointing out the numerous problems with the LSN, should there be any long-term suspension or termination of this proceeding by actions of DOE such as seeking to withdraw its license application. In response to that memorandum, the Board, on December 22nd, directed all parties not to take any actions at this time that would prevent or hinder their ability to archive LSN documentary material in a readily accessible format such as PDF. The Board would like to thank those parties that accepted our invitation to comment in writing on the LSNA's memorandum.

1 Your comments were helpful and provide us
2 with a good starting point this morning. I think
3 it's appropriate to start by emphasizing that we are
4 discussing planning steps this morning to help
5 prepare for a hypothetical situation on how to
6 preserve each party's LSN document collection should
7 the need arise. The Board has not been advised by
8 counsel that DOE intends to withdraw it's
9 application or in anyway suspend its application.
10 Prudence, however, dictates that we heed the old
11 adage, forewarned is forearmed, and prepare should
12 such an event become a reality.
13 I think I would like to start with the
14 Staff this morning, because you gave us a great deal
15 of information in your written comments on the
16 LSNA's memorandum, and we have just a couple
17 questions that would be helpful to us.
18 In the second paragraph of your response,
19 you state, and I quote, "if necessary, the remaining
20 TIFF OCR pairs could be converted to PDF files at a
21 future date."
22 >> MS. BUPP: Yes, Your Honor.
23 >> JUDGE MOORE: Will the staff commit to
24 doing that?
25 >> MS. BUPP: Yes, Your Honor, I think we

can commit to doing that. It depends as to when you wish for us to commit to doing it later or --

>> JUDGE MOORE: If you will commit to doing it --

>> MS. BUPP: -- if necessary.

>> JUDGE MOORE: We, like others, aren't going anywhere and we can insure that if we put that in an order that it can -- it will be followed up on.

>> MS. BUPP: Okay.

>> JUDGE MOORE: May the Board take the Staff's other statements in its January 21st Comments as commitments as well?

>> MS. BUPP: Yes, Your Honor.

>> JUDGE MOORE: Can you confirm for me whether all the documents in the staff's LSN collection have been coded with the WM-11 docket code in the Adams system, because that is the moniker for the LSN documents in Adams?

>> MS. BUPP: I believe so, Your Honor, but I -- if you need a firm commitment on that, I'll have to get it to you at a later date.

>> JUDGE MOORE: We would appreciate that. And secondly, can you tell me whether those that carry the WM-11 docket designation have been designated as permanent agency records?

>> MS. BUPP: I believe the response to that is yes, but, again, I would have to get you a firm confirmation.

>> JUDGE MOORE: We would appreciate it. Finally, we recognize that this is not required by the agency's record system, but can the staff commit to putting the LSN accession number somewhere in the Adams bibliographic header?

>> MS. BUPP: I believe we can. I would have to confirm that there is actually space in the header for that, but I think we can. Your Honor, if that's your last question?

>> JUDGE MOORE: Yes, it is.

>> MS. BUPP: Okay. I just wanted to mention that the Staff has an update on its SAR schedule and I can give that now or at the close of the case management Order. I just wanted you to be aware that we'd like to give you that.

>> JUDGE MOORE: Let's do it at the end.

>> MS. BUPP: Okay.

>> JUDGE MOORE: Unless you are of the opinion it's going to change anything we're doing with regard to LSN document collection?

>> MS. BUPP: I don't think it should, no.

>> JUDGE MOORE: We will have to deal with

Lincoln County in writing. So let's -- Mr. Sears, you're with White Pine County. Your LSN document collection currently consists of approximately 98 documents, comprising 1,960 pages. In your January 21st comments on the LSNA's memorandum, you state, in effect, that White Pine County's LSN document collection, text and header materials could be stored on CDs and archived with the White Pine County recorder. Will White Pine County commit to doing that?

>> MR. SEARS: Yes, Your Honor.

>> JUDGE MOORE: Will you also commit to providing the LSNA a CD copy of your LSN collection?

>> MR. SEARS: Yes, Your Honor.

>> JUDGE MOORE: Now, in past orders, the Board is without objection from any party, have directed the parties to submit electronic files to generate such things as privilege logs to the LSNA, and the language we've used is in the data format and via the transfer media as mutually agreed upon by the party and the LSNA. Is -- do you have any objection to an order that contains language like that with regard to the commitments you have just made in providing the LSNA a copy?

>> MR. SEARS: No, Your Honor.

1 >> JUDGE MOORE: Thank you. Inyo County.
2 >> MR. JAMES: Yes, Your Honor.
3 >> JUDGE MOORE: Your document collection
4 currently consists of 391 documents comprising 7,820
5 pages. In your January 22nd comments on the
6 LSNA's memorandum, you state that Inyo County's LSN
7 collection will be maintained and readily available
8 in searchable form for as long as California law
9 requires. Will Inyo County commit to storing its LSN
10 document collection text and related header materials
11 on CDs?
12 >> MR. JAMES: Yes, Your Honor.
13 >> JUDGE MOORE: Will Inyo County commit to
14 providing the LSNA a copy, a CD copy of its LSN
15 collection?
16 >> MR. JAMES: Yes.
17 >> JUDGE MOORE: And would Inyo County
18 object to language in an order directing it to
19 provide its LSN collection to the LSNA in the data
20 format as mutually agreed upon by the county and
21 LSNA?
22 >> MR. JAMES: No objection.
23 >> JUDGE MOORE: Let's turn to the four
24 counties, Churchill, Esmeralda, Lander and Mineral.
25 >> MS. GORES: Yes, Your Honor.

1 >> JUDGE MOORE: Your collection, as I
2 understand it, currently consists of 203 documents,
3 comprising 4,060 pages. In your January 21st
4 comments on the LSNA's memorandum, you state the four
5 counties do not have any provisions or plans in place
6 for storing its LSN collection, stress the financial
7 constraints upon the counties, and indicate more
8 guidance would be helpful. With what's gone before,
9 will the four counties commit to storing its LSN
10 collection text and related headed material on CDs
11 and let me give you a bit of background.
12 With the size of these collections, we're
13 talking about one CD, and the cost is somewhere in
14 the neighborhood probably not exceeding $300.
15 >> MS. GORES: Yes, Your Honor. We can do
16 that.
17 >> JUDGE MOORE: Will the Four Counties
18 commit to providing the LSNA a CD copy of its LSN
19 collection?
20 >> MS. GORES: Yes, Your Honor.
21 >> JUDGE MOORE: Would the Four Counties
22 object to language in an order directing it to
23 provide its LSN collection to the LSNA in the data
24 format and by the transfer media as mutually agreed
25 upon by the counties in LSNA?

1 >> MS. GORES: No objection, Your Honor.
2 >> JUDGE MOORE: Let's turn to Eureka
3 County. Miss Curran. Miss Curran?
4 >> MS. CURRAN: I'm sorry. Yes.
5 >> JUDGE MOORE: Your LSN collection
6 currently consists of 58 documents comprising 1,160
7 pages. Will Eureka County commit to storing its LSN
8 collection text and related header material on CDs?
9 >> MS. CURRAN: Yes.
10 >> JUDGE MOORE: Will Eureka County commit
11 to providing the LSNA a copy of a CD -- a CD copy of
12 its LSN collection?
13 >> MS. CURRAN: Yes.
14 >> JUDGE MOORE: And would Eureka County
15 object to language in an order directing it to
16 provide its LSN collection to the LSNA in a data
17 format and via transfer media as mutually agreed upon
18 by the County and LSNA?
19 >> MS. CURRAN: Eureka County would have no
20 such objection to such an order.
21 >> JUDGE MOORE: Thank you, Miss Curran.
22 Let's turn to Nye County, Mr. Niel.
23 >> MR. VAN NIEL: Yes, Your Honor.
24 >> JUDGE MOORE: Your collection currently
25 consists of 2,267 documents comprising 45,340 pages.

Will Nye County commit to storing its LSN collection text and related header material on CDs?

>> MR. VAN NIEL: Yes, Your Honor.

>> JUDGE MOORE: Will Nye County commit to providing the LSNA a CD copy of the LSN collection?

>> MR. VAN NIEL: Yes, Your Honor.

>> JUDGE MOORE: And would Nye County object to language in an order directing it to provide its LSN collection to the LSNA in the data format and via transfer media as mutually agreed upon by the County and LSNA?

>> MR. VAN NIEL: We have no objection to that language, Your Honor.

>> JUDGE MOORE: Clark County.

>> MS. ROBY: Yes, Your Honor.

>> JUDGE MOORE: Your LSN collection consists of 86 documents comprising 1720,00 pages. Will Clark County commit to storing its LSN collection, text and related header material on CDs?

>> MS. ROBY: Yes, Your Honor.

>> JUDGE MOORE: And will Clark County commit to providing a CD copy of the LSN collection?

>> MS. ROBY: Yes, Your Honor.

>> JUDGE MOORE: And would Clark County

object to language in an order directing it to providing its LSN collection to the LSNA in the data format and via transfer media as mutually agreed upon for the County?

>> MS. ROBY: No objection, no objection, Your Honor.

>> JUDGE MOORE: The joint Timbisha Shoshone tribal group.

>> MR. HEINZEN: Yes, Your Honor. Steve Heinzen on behalf of KTS.

>> JUDGE MOORE: And your LSN collections together currently consist of approximately 88 documents comprising 1,760 pages. Will JTS commit to storing its LSN collection, text and related header material on CDs?

>> MR. HEINZEN: Yes, it will.

>> JUDGE MOORE: Will JTS commit to providing the LSNA a CD copy of its LSN collections?

>> MR. HEINZEN: Yes, it will.

>> JUDGE MOORE: And will JTS object to language in an order directing it to provide its LSN collection to the LSNA in the data format and via transfer media as mutually agreed upon by JTS and the LSNA?

>> MR. HEINZEN: No, it would not object.

>> JUDGE MOORE: Thank you, Counsel. The Native Community Action Council, NCAC.

>> MS. LEIGH: Yes, Your Honor.

>> JUDGE MOORE: Will NCAC commit to storing its LSN collection -- I should, in case you are not aware, you have three documents comprising 60 pages. Will NCAC commit to storing its collection, text and related header material on CDs?

>> MS. LEIGH: Yes, Your Honor.

>> JUDGE MOORE: And will NCAC commit to storing its LSN documents providing the LSNA a CD copy of the LSN collection?

>> MS. LEIGH: Yes.

>> JUDGE MOORE: And would NCAC object to language in an order directing it to provide the LSN collection to the LSNA in the data format and via transferred as mutually agreed upon in the LSNA?

>> MS. LEIGH: No objection, Your Honor.

>> JUDGE MOORE: Mr. Repka of NEI. Your collection currently consists of 795 documents, comprising 15,900 pages. Will NEI commit to storing its LSN collection, text and related header material on CDs?

>> MR. REPKA: Yes, we will.

>> JUDGE MOORE: Will NEI commit to

providing the LSNA a CD copy of its LSN collection?

>> MR. REPKA: Yes, we will.

>> JUDGE MOORE: And will NEI object to language in an order directing to provide to the LSNA in the data format and via transfer media as mutually agreed upon by NEI and the LSNA?

>> MR. REPKA: No objection, Your Honor.

>> JUDGE MOORE: That leaves the second largest collection, Nevada. Your collection currently consists of 5,446 documents comprising 108,920 pages. Will Nevada commit to storing -- your comments indicate that you were prepared to do it, but will Nevada commit to storing its LSN collection, text and related header material on CDs?

>> MR. FITZPATRICK: Your Honor, this is Charles Fitzpatrick, State of Nevada, with the preface that we have concerns about the premise for this hearing and the premise for this order that you are talking about issuing. With that said, we will certainly comply with that request and that order.

>> JUDGE MOORE: I am sure that there are great numbers that share those same concerns. This is housekeeping. If we can get this out of the way, then we will address those concerns. Will Nevada

commit to providing the LSNA a CD copy of its LSN collection?

>> MR. FITZPATRICK: Yes, Your Honor.

>> JUDGE MOORE: And, in your case, as well as the case of the several larger collections, the reason for the language in the order, you would probably be using DVDs, not CDs, simply because of the capacity matter, but I just wanted to clarify that.

Would Nevada object to language in an order directing it to provide its LSN collection to the LSNA in the data format and via transfer media as mutually agreed upon by Nevada and the LSNA?

>> MR. FITZPATRICK: We would have no objection to that, Your Honor. One suggestion would be that if that were to take place, some provision ought to also be made in order for the updates that are anticipated by the parties to their LSN collections.

>> JUDGE MOORE: That is one of the matters we need to discuss. According to the LSNA's memorandum to the Board, that takes care of 1.1 percent of the LSN collection.

Now, Mr. Shebelskie, I guess it's your turn for the rest of the day. In an attempt to keep

1 this as brief as possible, we'll give DOE an
2 opportunity to fully address the two questions
3 directed, essentially directed, to DOE in the LSNA's
4 memorandum of December 17th. But first, so
5 there is no mis-apprehension on the part of the
6 Board about the history, structure and technology
7 undergirding DOE's LSN collection; is the
8 description of the DOE LSN collection contained in
9 the LSNA's memorandum to the Board, accurate?
10 >> MR. SHEBELSKIE: Your Honor, Mike
11 Shebelskie on behalf of DOE, and the 98.9 percent of
12 the documents in the collection: Essentially, it is
13 correct. There is one point I would like to add, for
14 the record, in case the Board was confused about it.
15 The memo uses the expression, quote "on depos
16 release" to the infrastructure which documents are
17 stored, assembled on the LSN collection. If you have
18 a multiple-page document, in simple terms, each page
19 is stored as a separate file on the LSN and then we
20 do a search and retrieve that document.
21 The LSN infrastructure reassembles those
22 ten pages into a single package. The expression "on
23 the fly," I am told by our IT personnel, is a term
24 of art used in their field. It is not intended to
25 be a pejorative term. It's suggested as a Rube

1 Goldberg bandage approach. It is a highly
2 standardized and controlled process, despite what
3 a -- the appearance might seem.
4 >> JUDGE MOORE: This can come as a great
5 shock to you. I knew that.
6 >> MR. SHEBELSKIE: Thank you, Your Honor.
7 >> JUDGE MOORE: In addressing the two
8 questions in the LSNA's memorandum, the Board is well
9 aware of the administration's fiscal year 2011
10 budget, containing the specifics of DOE's fiscal year
11 2011 budget, is being printed by the GPO as we speak
12 and will not be publicly be released until Monday.
13 Therefore, in addressing fiscal year 2011, we
14 understand that DOE is not free today to provide us
15 with any specific dollar amounts, but there does not
16 appear to be any sound reason why DOE cannot inform
17 us of its fiscal year 2011 planning assumptions.
18 So would you please address fully question
19 A on page 2 of the LSNA's December 17th, 2009
20 memorandum, and putting that caveat into it, the
21 exact DOE budget and the allocations for operation
22 of its LSN collection that can be expected for the
23 remainder of fiscal year 2010, and its planning
24 assumptions in that regard for fiscal year 2011?
25 >> MR. SHEBELSKIE: Yes, sir. With respect

1 to the current fiscal year, fiscal year 2010, the DOE
2 budget, as we reported back last September, has
3 adequate funds allocated to support the licensing
4 proceeding 42010 based on our expectations of what
5 will occur this year.
6 That includes adequate funds to continue
7 to maintain our LSN collection and to continue to
8 comply with our LSN supplemental obligation. In
9 terms of dollar amounts in the current fiscal budget
10 for LSN activities, I think the best number I can
11 give you is the sum allocated to our automated
12 litigation support contractor and its related
13 activities, and that sum is between $8
14 and $9 million for the fiscal year and, obviously,
15 some of it has been consumed so far, and the
16 balance, though, we believe is sufficient for us to
17 comply with our LSN obligations for this fiscal
18 year. Your Honor, with respect to the fiscal year
19 2011, it is not able to comment on anything.
20 Our client has not been able to advise us
21 of the sums to be expected for the litigation
22 support activities for 2011. Obviously, if the
23 proceeding continues in 2011, that will determine
24 what the sums are.
25 I'm just not in a position to provide

anything right now, Your Honor.

>> JUDGE MOORE: You have none of the planning assumptions that went into the budget?

>> MR. SHEBELSKIE: I do not, Your Honor. And I'm told that until the President releases his budget next -- next month, next week, that we wouldn't be in a position to know really what number to use.

>> JUDGE MOORE: The Board will expect, very quickly after that budget is made public, that you provide us with DOE's take on that. If the budget is released Monday, Thursday of next week, since -- it's already known, it's just not public. So there is no reason why gashing of teeth has to occur because it's being printed.

>> MR. SHEBELSKIE: I think your suggestion is fair and reasonable, and we will provide a written submittal next Thursday on the President's announcement.

>> JUDGE MOORE: I have a number of questions about 2010 that I'd like to quickly run through to give the backgrounds that will be helpful then in knowing where we're going in 2011. Where are the document computer servers housed in DOE, the LSN collection located?

>> MR. SHEBELSKIE: The servers are located at DOE servers here in Las Vegas.

>> JUDGE MOORE: Is the computer center operated by DOE employees, by contractors, or by both?

>> MR. SHEBELSKIE: The servers can support -- and support for the servers are provided by our automated litigation support contractor, CACI. They obviously work under contract and supervision with the Federal government through a contract with the Department of Justice and so their responsibility, County responsibilities with the Department of Justice, and then, obviously, a work and -- they work in oversights with the Department of Energy lawyers and outside counsel.

>> JUDGE MOORE: Who is the current official responsible for managing DOE's LSN computer operations?

>> MR. SHEBELSKIE: The LSN responsible official at DOE is currently Steve Gomberg, but he is being detailed to a different division at DOE. We're in transition now. And the new official will be -- is Jeff Williams. I believe that will be effected in February.

>> JUDGE MOORE: What organizational -- DOE

organizational unit does this individual report to?

>> MR. SHEBELSKIE: The Office of Civilian Radioactive Waste Management, OCRWM.

>> JUDGE MOORE: Is it fully funded for 2010?

>> MR. SHEBELSKIE: Yes, all the activities are as I stated.

>> JUDGE MOORE: Is the office?

>> MR. SHEBELSKIE: Oh, I believe so. Consistent with what we said back in that term.

>> JUDGE MOORE: And you probably can't answer in light of your previous, but it's one to put on your list. Does DOE have any plans to altar this organizational structure for fiscal year 2011?

>> MR. SHEBELSKIE: I'm not currently aware of it in terms of organizational restructuring, but I will inquire and include that in the middle of next week.

>> JUDGE MOORE: Who is the current DOE official responsible for providing electronic files of documenting material as required by 10 CFR Section 2.1009?

>> MR. SHEBELSKIE: The same individuals, currently Mr. Gomberg and Jeff Williams.

>> JUDGE MOORE: And so, he's in the same

organizational unit with the same reporting structure?

>> MR. SHEBELSKIE: Yes, sir.

>> JUDGE MOORE: Is some subset of the DOE LSN document collection already in DOE's official agency record system in portable document format, that is PDF, in complete document structure form?

>> MR. SHEBELSKIE: Our collect -- yes, for first part, I know.

>> JUDGE MOORE: That's the subpart?

>> MR. SHEBELSKIE: Yes.

>> JUDGE MOORE: Then you have to tell me the percentage.

>> MR. SHEBELSKIE: Percentage. Our collection consists of four major components. The largest group is the documents from our record processing center or RPC. That is, in essence, our official recordkeeping database for the Office of Civilian Radioactive Waste Management.

>> JUDGE MOORE: All right. Are their documents in PDF?

>> MR. SHEBELSKIE: That's what I need to inquire. Some of them are, some of them are not.

>> JUDGE MOORE: Do you have a number or a percentage?

1 >> MR. SHEBELSKIE: I don't, but I can
2 inquire into that. But that is a separate database
3 that is subject to separate federal recordkeeping
4 compliance, so they are in requirement with federal
5 law, whatever they require.
6 >> JUDGE MOORE: But they are a part of
7 your LSN collection?
8 >> MR. SHEBELSKIE: We populate our LSN
9 collection to put the documents on our LSN servers.
10 We review the documents that go to the record
11 processing center, is if -- what goes to the record
12 processing center is documenting processing material,
13 we create an electronic copy file of that document,
14 or, excuse me, and then put it into our LSN server.
15 >> JUDGE MOORE: What format?
16 >> MR. SHEBELSKIE: Most of the documents
17 in our LSN collection, in the subset and across the
18 other subsets, are in PDF format.
19 >> JUDGE MOORE: Small substance? That's
20 the conversion on the fly to PDF when they're
21 delivered to the requester to the LSN?
22 >> MR. SHEBELSKIE: Yes, although, that was
23 the way the LSN was set up many years ago, to handle
24 that.
25 >> JUDGE MOORE: And you're gonna, on that

subset, you're gonna check the percentage?

>> MR. SHEBELSKIE: Yes, sir, we will.

>> JUDGE MOORE: Is there any reason why DOE cannot archive that subset in PDF format?

>> MR. SHEBELSKIE: Technologically, I suppose it can be done. The reason we can't commit to that, Your Honor, is the vast number of documents involved. The extent is very large. We precisely haven't scoped out the cost of that because there are so many variables in play here. But it's fair to say it would be in a seven-figure number, for sure. And without an allocation in the budget to undertake that conversion, I don't think we can commit to that, Your Honor.

>> JUDGE MOORE: Before going to the other three parts, the percentage that are in this sub, the first subset in PDF format, in the official records system, are they in any way linked to the LSN succession numbers?

>> MR. SHEBELSKIE: I do not believe in our record processing center we necessarily do, but we did make an effort, at one point a couple years ago, to go back and try to link them up, so I can't tell you with 100 percent certainty, but in large measure, yes.

1 >> JUDGE MOORE: Let's, then, address as
2 you just have with one-quarter, the other
3 three-quarters.
4 >> MR. SHEBELSKIE: The next largest
5 collection or subcomponent of our collection is what
6 we call an e-mail collection. This would be e-mails
7 and attachments to e-mails in our collection. Those
8 documents are not stored necessarily by any means in
9 the official record processing center. Rather, they
10 are back -- we have a backup system that we created
11 several years ago to preserve the backup tapes and
12 the new e-mails going forward in our collection. So
13 we have in sort of, layman's terms, a warehouse of
14 the e-mail traffic from the e-mail servers. That is
15 currently maintained in an archived system, and
16 certainly this fiscal year, it is being maintained.
17 >> JUDGE MOORE: And what format are those
18 documents stored?
19 >> MR. SHEBELSKIE: I'm told they are in
20 typical e-mail format, not PDF then, but the initial
21 TST, I understand about.
22 >> JUDGE MOORE: Let's move onto your third
23 category.
24 >> MR. SHEBELSKIE: I'll lump the third and
25 fourth together because they present the same issues.

1 >> JUDGE MOORE: And they're all stored
2 similarly?
3 >> MR. SHEBELSKIE: Yes, in our system. We
4 have a group of smaller percentage of documents that
5 were paper copies that we found not in the record
6 processing center, in people's offices, that sort of
7 thing. Then, of course, electronic files, again, not
8 from the record processing center but on people's
9 laptops and things like that.
10 We collected those documents. We have
11 them stored in their original paper and electronic
12 copies filed with our automated litigation support
13 contractor. They took the process of taking the
14 paper files, converting them into the electronic
15 images we needed to populate the LSN with them.
16 Like electronic files, they have copies, they do
17 whatever conversion was necessary to populate them
18 in the LSN time. So, certainly we have them with
19 CACI, stored in the PDF files that we needed for the
20 LSN. We have both the text with them, of course,
21 but we do not have PDFs for them, because there
22 was no need for us to handle PDFs with them.
23 >> JUDGE MOORE: And the last three
24 categories where you might want to bring the three
25 in, three and four together, what percentage of your

1 collection was that?
2 >> MR. SHEBELSKIE: Bear with me just a
3 moment, Your Honor. We'll get back to you with the
4 specs on Thursday, but rough order of magnitude, the
5 paper documents and the electronic documents, I would
6 suspect, collectively, are probably not single digit
7 percentages.
8 >> JUDGE MOORE: Now, let's go to the
9 second category, what percentage?
10 >> MR. SHEBELSKIE: E-mails. E-mails are
11 probably a good 25 to 40 percent of our collection,
12 e-mails with their attachments.
13 >> JUDGE MOORE: And, excuse me, is that in
14 regards to -- is there a difference as to whether or
15 not it's the number of items or the size of the
16 files?
17 >> MR. SHEBELSKIE: The percentage that I
18 was given, Your Honor, was just based on the
19 percentage of documents, not a page count or megabyte
20 comparison.
21 >> JUDGE MOORE: For those documents
22 in -- that are a part of the agency's official
23 records system, what's the record retention schedule
24 for those?
25 >> MR. SHEBELSKIE: Simply put, a very long

1 time, Your Honor, because they are governed by the
2 federal record retention requirements which are
3 measured. There are various categories, some of
4 which go out, I believe, to 20 or 30 or more years
5 for certain documents, but it's, it's an extended
6 period of time. Again, I will double check, but the
7 answer varies based on the category of document. But
8 I think the record -- we're not talking a short-term
9 retention obligation here. It's the full year.
10 >> JUDGE MOORE: And from your description
11 of the collection, I'm assuming that your first
12 category has the longest retention schedule?
13 >> MR. SHEBELSKIE: Yes, sir. Absolutely.
14 >> JUDGE MOORE: And is it life of the
15 Republic?
16 >> MR. SHEBELSKIE: I would like to think
17 the life of the Republic is much longer than that,
18 but, yes, I think it's long --
19 >> JUDGE MOORE: I thought it worked the
20 other way, Mr. Shebelski, but --
21 >> MR. SHEBELSKIE: I think for any
22 relevant time frame we have in mind, we already
23 covered that.
24 >> JUDGE MOORE: Is TIF an acceptable
25 format for submission of agency records to NARA?

>> MR. SHEBELSKIE: I believe so, Your Honor. I am told that there are archived documents in compliance with those national archive requirements that had been maintained for the past 20-plus years. They are in stable robust form in which to preserve the archive such documents and that it would be appropriate to both technologically and legally to maintain an archived collection in TIF format.

>> JUDGE MOORE: Does DOE currently have any plans to archive its LSN document collection?

>> MR. SHEBELSKIE: We have -- separate from our official record system, but the LSN collection of servers, that we discussed.

>> JUDGE MOORE: Under the structure, history and technology that is set forth in the LSNA's memorandum to the Board, that that functionality captures your document collection. So when I request a document, I get it, and I get it in PDF format. Because of the complexity and the numerous steps that are involved in this technology that admittedly pushing better than 20 years, if DOE, hypothetically speaking, were to shut the system down, because you have the platform on which it's built, the hardware on which it's currently

1 operating, and all of the various storage media, and
2 a custom code lengthy computer program that grabs
3 individual pages because they're not in a -- they're
4 not in a document structured format, if anywhere
5 along the line, we remove a piece of the puzzle,
6 three years hence, when you go to turn it back on,
7 for example, and one of those circuit boards in one
8 of those servers is gone, they don't even make those
9 anymore, the system doesn't work and those documents
10 can't be retrieved, I believe, if I'm reading the
11 LSNA'S memorandum correctly. Therefore, archiving
12 that strikes me as being roughly akin to tossing it
13 into the waste basket because of the almost
14 intolerable number of things that can go wrong when
15 you put it back together. The age of the system and
16 the people that wrote that computer program, I would
17 be shocked and amazed to find if any of them are
18 still employees, but ought to be well retired by now.
19 >> MR. SHEBELSKIE: Your Honor, I think I
20 will answer your question this way: Today, we have
21 not developed any contingency plans to archive the
22 system because up to and through today, we are
23 continuing to support our LSN obligation in the
24 ongoing proceeding and, obviously, we will fully
25 comply, continue to comply with maintaining our

collection for the life of the proceeding and whatever the regulations require us to do to support that effort.

Your Honor, your question poses, I think, a hypothetical that if there were a circumstance where proceeding with -- they are terminated, you needed the ability in the future to preserve the ability to re-access the LS -- the existing LSN collection from a technological perspective, Your Honor is correct, it would, at least at present, be more feasible or better to maintain, not to go in a lights-out mode with the server, but to keep it up and running, if the objective were to preserve the ability to re-access those documents at some point in the future.

>> JUDGE MOORE: But -- archiving without access, unless I'm wildly mistaken, is essentially like lighting a match to it. If it can't be retrieved, what good does it do to archive it?

>> MR. SHEBELSKIE: Well, the other alternative, what you're suggesting is there was no anticipated need, reasonably, for licensing purposes, to preserve the ability to reconnect this collection in the hypothetical, then a decision would have to be made by DOE what to do with its LSN collection.

1 There would be lots of hypotheticals, variables that
2 come into play in it, depending on why you are
3 archiving it, what duration are you talking about,
4 what funds allocates to do that. That's why we
5 really aren't in a position to commit one way or the
6 other what would happen in that hypothetical in the
7 future.
8 >> JUDGE MOORE: Mr. Shebelskie,
9 unfortunately, we're only human and we read the trade
10 process as well. Has DOE, has DOE made any request,
11 or does DOE have any plans currently under way, to
12 request from OMB, the reprogramming of fiscal year
13 2010 funds away from any activity needed to support
14 licensing?
15 >> MR. SHEBELSKIE: I am not aware of any,
16 Your Honor. I have not been advised of any by my
17 client. If the President makes any change in that
18 next week, we will include that in what we report on
19 Thursday.
20 >> JUDGE MOORE: Have you made inquiry?
21 >> MR. SHEBELSKIE: Yes, Sir.
22 >> JUDGE MOORE: And so that we're clear,
23 currently, in fiscal year 2010 funds and program
24 plans, there is no, nothing specifically identified
25 for archiving LSN documents and related material

other than any archiving that takes place as part of routine system backup and recovery tape generation?

>> MR. SHEBELSKIE: Our LSN bucket for fiscal year 2010 was -- has been modeled along. What we're doing now is to continue to maintain and continue to populate our collection to support the licensing proceeding.

>> JUDGE MOORE: You've already taken question B off the table -- B off the table by saying you are not in a position to be able to answer it. But because you are going to be responding to us, we would be interested in knowing whether DOE is preparing an archiving plan for its LSN collection in a format that is readily retrievable, what the principle components or features of that archiving plan would be, what the format of the, the archiving the documents would be for its LSN collection that is not currently in PDF format, and whether DOE has -- would have any plans about sharing its archiving plans with the LSNA or the Licensing Support Network Advisory Review Committee, and of course all of the where, hows and whys and the dollars and that would come with all of that, and how long it would take to complete.

And the reason the Board makes inquiry is

1 because 2.1007, if I am remembering correctly,
2 provides, in effect, that conditions may be attached
3 once a notice of hearing is issued to any withdrawal
4 of an application. And as set forth in our
5 December 22nd order, it would seem only prudent
6 that these collections be archived in a readily
7 accessible format, so because none of us do know the
8 future and for that very reason contingency plans
9 for that need to take place. And -- and I believe,
10 as expressed in that order calling that provision to
11 all the parties' attention, that is something that
12 we would obviously want to hear all the parties on
13 and entertain seriously. I think we need to move on
14 quickly to the question that was raised by
15 Mr. Fitzpatrick.
16 There will be continuing monthly
17 supplementation as long as licensing continues and
18 at this point we were only dealing with a
19 hypothetical prior to this, we are in reality here
20 in spite of what some of you may think. And that
21 will obviously change minutely the numbers of
22 documents in everyone's collection. It will -- it
23 cannot possibly, over the short haul, have any real
24 dollar impacts on any party other than DOE and not
25 likely that because your monthly average of

1 documents has been trailing as often is quite small.
2 So the status today is not going to be dramatically
3 different from a future status, at least for the
4 immediate future.
5 In the eventuality that the information
6 you provide us next week, after the President's
7 budget is released and the situation dramatically
8 changes, we will then not be confronting the
9 hypothetical, we will then have to deal directly
10 with it, and I would like now to entertain all of
11 the parties' views on what the best way to do that
12 is; respond to Board questions or comment on DOE's
13 comments, have a case management conference where we
14 hash it out. I would be interested in hearing all
15 the parties on what your view is should the
16 hypothetical not be a hypothetical, how best to
17 proceed. Let's start with you, Mr. Shebelskie,
18 since you had the floor.
19 >> MR. SHEBELSKIE: Well, Your Honor, next
20 Thursday, we will report to the Board on any changes
21 that might be appropriate to comment on and what may
22 or may not be in the budget. In connection with that
23 submittal, and it may, we can give any preliminary ^
24 report based on any elements next week. Given the
25 technical issues that we've discussed with archiving

collections that were what needs to be discussed at that time, the details of the nuts and bolts of the archiving and calls were something I think we could do a preliminary scope on. I think it would probably need to be some more?

A discussion, detailed discussions among informed I.T. people and our fundamental support staff along with the LSN administrator staff. They could have some discussion and we could report back further with a more detailed plan in that circumstance with that proposal, because obviously what we can do in those circumstance would depend upon what our budget cases are. So -- submittal to the Board with specifics, that people can then comment on, I guess.

>> JUDGE MOORE: Let's just go right down the list. Nye County, do you have a view on how we should proceed?

>> MR. VAN NIEL: Jeff Van Niel for Nye County, Your Honor. At this point, obviously we'd like to see what is presented. I'm not sure we feel case management hearing or a presentation is required. I think we could resolve most, if not all, of these issues on written submissions and questions from the Board.

>> JUDGE MOORE: Fine. Clark County.

>> MS. ROBY: Thank you, Your Honor. Again, Clark County would first like to see the written submission. It may be useful to have a case management conference, but not knowing what is going to be in that submission, it's difficult to tell, but providing written responses in advance of a case management conference would be useful. But I think this kind of form is, kind of, useful.

>> JUDGE MOORE: NRC staff.

>> >> MS. BUPP: Margaret Bupp for the staff.

>> JUDGE MOORE: You are in the envious position of having covered all of your bases already, so --

>> >> MS. BUPP: Yes. I think for this particular conference, it was very useful to allow the parties to submit written submissions in advance. I think if we were to find that a conference was necessary, allowing written submissions would be helpful, and, at that time, the Staff could also provide written confirmation to the three questions that the Board had about our collection, that we can't give a 100 percent confirmation on today.

>> JUDGE MOORE: NEI.

>> MR. REPKA: David Repka for the Nuclear Energy Institute. I think we're very content to proceed in the first instance with written comments.

>> JUDGE MOORE: White Pine County.

>> MR. SEARS: We agree with NEI.

>> JUDGE MOORE: NCAC.

>> MS. LEIGH: Thank you, Your Honor. Rovianne Leigh on behalf of NCAC. NCAC does have limited resources but also has a very large interest in ensuring these documents are preserved. So certainly, we would welcome the opportunity to submit written comments and participate in a conference if the Board so desires.

>> JUDGE MOORE: Inyo County.

>> MR. JAMES: Yes, Inyo County, Greg James. We concur with all the other previous suggestions.

>> JUDGE MOORE: Mr. Fitzpatrick.

>> MR. FITZPATRICK: Charles Fitzpatrick, State of Nevada. This is not being impudent, but you preferenced this question to everybody, if the hypothetical becomes a reality, what is the hypothetical? Is it a zero budget, is it a withdrawal of the application? What is the hypothetical that we are addressing?

1 >> JUDGE MOORE: It's essentially all of
2 the above.
3 >> MR. FITZPATRICK: Well, because the
4 answer to that --
5 >> JUDGE MOORE: Because I have no idea of
6 what DOE's fiscal '11 budget is. Mr. Shebelskie does
7 not either.
8 >> MR. FITZPATRICK: I, I --
9 >> JUDGE MOORE: If Congress does not
10 appropriate, well, that's wrong. That is just a
11 budget request. Congress will have to appropriate
12 and time will determine, whether or not Congress goes
13 along with DOE's budget requests.
14 >> MR. FITZPATRICK: That was the reason
15 for the question, Your Honor, because I suggest that
16 this is -- this hearing and placing undue weight on a
17 response by Mr. Shebelskie, which, however, he should
18 be made to respond, but would be inappropriate
19 because what's coming out is only a Presidential
20 recommendation to Congress, and as we know from
21 previous years, there may not be known what the
22 Congressional budget is until perhaps after the
23 elections, because it's, kind of, axiomatic that some
24 Congressmen -- I think it happened last year as far
25 as when the budget was finalized, but in an election

year, some Congressmen are reluctant to add to spending money until after the election is over.

But in any event, what comes out next Monday and what comes out from DOE next Thursday may bear little relation to ultimately what occurs. So, with that in mind, I certainly think that at this stage, it would be sufficient to see what DOE says and to ask for written input from the other parties. But I made a comment earlier about being skeptical about the premise for this whole hearing and your order, and frankly, again, not to be impudent, but we're responding and you're responding to rumors and media accounts. And I submit that if White Pine County or, you know, NCAC was rumored by the media to be pulling out of this proceeding, we wouldn't be here today. We wouldn't be, you know, jumping over ourselves to try to decide what to do to protect the party who is withdrawing and the other parties from that eventuality.

And I suggest that if DOE, as I believe I heard, has no plans at present to change anything to protect its LSN, I don't believe it's appropriate for the Cab to jump in and require DOE to protect itself and the other parties to protect themselves; likewise, in the eventuality that DOE may pull out.

1 Because if DOE were to pull out, DOE's position if
2 Nevada pulled out, would be that's fine, Nevada's
3 intentions are struck, bye-bye. And of course, if
4 any party, I mean, they attempted to raise the LSN
5 compliance issue to bar seven parties, JTS and NCAC
6 were precluded from becoming parties, even though
7 they had admissible contentions, because their LSN
8 compliance was not complete.
9 And so, as DOE's pointed out many times,
10 DOE -- LSN compliance is equally required of all
11 parties, and so, a failure by any party then, big or
12 small, to comply with those obligations should
13 result in its exclusion from the proceeding and --
14 >> JUDGE MOORE: We understand your
15 position in that regard, but Mr. Fitzpatrick, perhaps
16 we have been around too long, but this is because of
17 the enormous investment in time and resources both by
18 the AS LVP and the LSN, which is under our
19 supervision, if you will, and the resources that the
20 parties have had to expend in complying with those
21 LSN requirements, and the requirements that the Board
22 has imposed on them.
23 I believe that recognizing that the
24 hypothetical could become a reality, whether it
25 does, I am in no position, or is anyone else in a

position, to so state, but, we will have taken the first steps to protecting, to the best we can, that LSN asset at this point in time. And that's the sole purpose we're here. We recognize, as I started this, that this is hypothetical, but being forewarned is being forearmed. And events often can overtake one -- events can overtake one without time to deal with things properly and with proper reflection, and we want to avoid that problem. So, if we see -- I see, and I can't speak for my colleagues -- any problem with seeing what Mr. Shebelskie says and because that is -- reflects DOE's plans. Whether or not it reflects the Congress' plans is entirely another matter, but that, in the real world, is an important piece of information to have.

>> MR. FITZPATRICK: We agree with the last thing you said, Your Honor, we look forward to the submission and having time to munch on it and then respond.

>> JUDGE MOORE: Four Counties.

>> MS. GORES: Yes, Your Honor, we would support the opportunity to make written comments and then have a case management conference if there are any details that need to be resolved.

>> JUDGE MOORE: California Energy Commission.

>> MR. BELL: California agrees with the previous comments. We welcome the opportunity to participate in hearings as ordered by the Board.

>> JUDGE MOORE: The joint Timbisha Shoshone Tribal Group.

>> MR. POLAND: Your Honor, Doug Poland for JTS. We agree with the comments made by California.

>> JUDGE MOORE: And Eureka County, Ms. Curran.

>> MS. CURRAN: Thank you, Judge Moore. I had a question or a concern about something that I think may have come up in your discussion with Mr. Shebelskie.

I had been assuming that you were, you were thinking of this collection as something that was essentially frozen in time at whatever point the case might end or the money might go away. And Eureka County would have a concern about needing to update its collection to basically be prepared to jump back into a case later on.

I think that would be -- we would want a chance to respond to that in particular. I'm not sure whether you were actually assuming that or not,

but that would be a concern. And I agree that it would -- we would like a chance to respond to the DOE's submission in writing and possibly in a case management conference.

>> JUDGE MOORE: And I take it, Ms. Curran, that you have no reluctance to so state in your comments?

>> MS. CURRAN: I'm sorry. I didn't understand your comment, your question.

>> JUDGE MOORE: I take it you would have no reluctance to share that view in your written comments as well?

>> MS. CURRAN: Oh, right, that's correct.

>> JUDGE MOORE: Thank you. Do any of the parties have any other matters relating to the LSN that they wish to put before us?

>> MR. BELL: Your Honor, Kevin Bell, California Energy Commission, State of California. We weren't queried as to your earlier request of the parties to comment on the Board's orders and California would have no objection.

>> JUDGE MOORE: I apologize. And thank you, Mr. Bell. What we would like to do is to take a brief 15-minute recess and -- one moment, Mr. Fitzpatrick -- come back into session as the case

management conference, so that the Board has a moment to converse, and we will entertain the Staff's update on its SCR schedule at that point as well as if during that time any of the parties, singularly or collectively, have any matters, we will then take them up.

Mr. Fitzpatrick, you wish to be recognized?

>> MR. FITZPATRICK: Your Honor, Charles Fitzpatrick, State of Nevada. One clarification that I'd request with respect to the assignment given Mr. Shebelskie, I'm not certain -- I'm certain of the first part that the request applies to the efforts planned, contingency plans of DOE to preserve its LSN collection, again, in accessible form. What I'm not certain of is if there is also a requirement, which could be a separate requirement, that independent of the LSN, that DOE be required to preserve the scientific engineering data that's contained on the LSN, whether in an accessible format or not.

And let me explain the reason. We have been told by the media that Secretary Chu has asked for at least some money in 2011 to preserve, to wrap up things and to preserve the critical knowledge and data, and Mr. Grazer referred in his memo to you to

the valuable scientific and engineering data. And I think we've all heard or read media accounts in the past of the reason to continue the proceeding in the face of the not-an-option phraseology is because of learning about the science of underground geologic disposal for possible future use. With all that in mind, I think it's just as important that DOE preserve the information and the data gleaned by this 20 years of studying this site and spending $10 billion dollars, whether or not it proceeds in this licensing, and whether or not it captures it on an LSN archives and LSN retrievable as such. In other words, the data must not be lost, period, whether it's preserved in LSN or otherwise.

>> JUDGE MOORE: Isn't it a difference without a distinction, though?

>> MR. FITZPATRICK: I don't know that it's a difference without a distinction, because, I think one, one question that's clearly before, clearly raised in this question is, how would DOE plan to be able to have information LSN accessible under certain conditions of reduced participation?

>> JUDGE MOORE: If the LSN collection is preserved in a retrievable -- readily retrievable format, does that not accomplish the very thing

you've asked?

>> MR. FITZPATRICK: It accomplishes it for the time being, but if you were to order subsequently, you know, for instance, the denial of a license application with prejudice, the preservation of some documents in an LSN form -- LSN format might turn out to have been temporary, but the preservation of that data and information forever would be of importance for the future scientific world. I think both things should be addressed.

>> JUDGE MOORE: I am sure that you will be able to express those comments in writing in response to the information that Mr. Shebelskie will be providing us as well as if the future need arises, that we need to solicit additional information. That would appear to be a legitimate topic for us to address.

>> MR. FITZPATRICK: Thank you.

>> JUDGE MOORE: We will take a recess and re-convene at 10:30 and briefly, then we will then recess again and then resume oral arguments. Thank you.

*Whereupon a short recess was taken)

>> JUDGE MOORE: Please be seated. Ms. Bupp, I believe you have an update on the Staff's SCR

schedule for us?

>> MS. BUPP: Yes, Your Honor, I have an update on the schedule of completion for Volumes 1 and III. At this time, it appears Volume 1 will be complete in August and Volume III will be complete in November, both 2010.

>> JUDGE MOORE: If memory serves, the deposition schedule and our order were established on a different set of dates around the SCRs. Does this impact how all that discovery needs to be done?

>> MS. BUPP: I believe, Your Honor, and, of course, the other parties are free to weigh in, but from the Staff's perspective, it would delay the start of discovery against the Staff and it would delay the close of discovery because, obviously, discovery against the Staff on SCR Volume III, which is where the bulk of the contentions in Phase 1 are, couldn't begin until two months after the date we had originally assumed discovery would begin. And so that would obviously extend the time period for discovery.

>> JUDGE MOORE: Okay. Before we go down that path, we have a couple of LSN matters.

>> JUDGE WARDWELL: Mr. Shebelskie, I was hoping you might be able to shed some light on this,

and if you can't, just include it on your list of bullet items for Thursday's dissertation. And that deals with the fact that you mentioned four different components of your record system -- of your records that are on the LSN. And the records system itself is one, and I think I recognize that is a permanent type of collection. I was interested if you could shed some light on what the retention schedule is for those other three and, likewise, whether or not those are in a format that are considered to be of permanent record material.

>> MR. SHEBELSKIE: Your Honor, Mike Shebelskie, DOE. I will have to add that to the list. The e-mail will be provided on Thursday. The e-mail collection is preserved in a separate repository that we maintain, and that will be subject to a different retention requirement than documents in the record processing center collection.

The documents that are the smallest component of the paper, electronic files, we'd have to consider that as well, because I suspect they may or may not be considered federal records by being put into CACI's possession for this proceeding. Therefore it is subject to their own requirements but it would vary. So I really don't know that. We

1 will include that on Thursday.
2 >> JUDGE WALDWELL: You mentioned the other
3 two that I thought of. What was your fourth one? I
4 couldn't remember the fourth one. It was the middle
5 one between the e-mails and your current records, I
6 believe.
7 >> MR. SHEBELSKIE: The paper files and
8 then electronic files.
9 >> JUDGE WALDWELL: Oh, those are the two.
10 And in regards to what I call the sweep ones of both
11 the hard copies and electronic copies, I assume those
12 are also potentially from other agencies that do work
13 for other contractors that do work for DOE, the
14 federal agencies, other organizations also; is that
15 correct, or is only DOE participants, do you know?
16 >> MR. SHEBELSKIE: It's across the board,
17 really, DOE contractors and some other agency
18 records. And there can be duplicates in these
19 collections.
20 >> JUDGE WARDWELL: Thank you.
21 >> JUDGE RYERSON: I suppose that the
22 change in the time of the SCR will necessitate some
23 change in the case management order, the outstanding
24 case management order.
25 Ms. Bupp, was the original date for SCR

1 III, the third volume, which I think is the
2 principal SCR in this phase, was that September?
3 >> MS. BUPP: Yes, Your Honor, it was
4 September.
5 >> JUDGE MOORE: Okay. So we're talking
6 about a two month delay. Based on September, the
7 case management order, I think this was proposed
8 actually by the parties has a discovery cutoff of
9 November 30, so if we were to extend that simply two
10 months, that would be January 31st, 2011.
11 December may not be the best time for taking
12 depositions, but just to throw out, is there a -- is
13 there a sense in the room whether we should just
14 extend that two months?
15 I think that would be the only change in
16 the case management order. Let's start -- Nevada, I
17 suspect, you will be taking many depositions, what's
18 your view?
19 >> MR. FITZPATRICK: Charles Fitzpatrick,
20 State of Nevada. We had discussed that as soon as
21 Ms. Bupp spoke and we think that's probably a logical
22 consequence, a two-month extension.
23 >> JUDGE RYERSON: I could go all the way
24 around the room, but if anyone thinks extending that
25 simply a portion of two months doesn't make sense,

1 speak now or forever hold your peace. We will just
2 issue an order modifying the case management order.
3 I believe -- I haven't checked it thoroughly, but I
4 believe that's the only change that would be
5 required. We'll have the cutoff then on January 31,
6 2011, the discovery cut off with the phase 1
7 contention. Hearing no objection, we'll do an order
8 to that effect.
9 >> JUDGE MOORE: Are there any other
10 matters in light of the Staff's new SCR schedule, as
11 well as anything ongoing that you wish to bring
12 before us before we adjourn the case management
13 conference and resume the last two issues for oral
14 argument?
15 Yes, Mr. Fitzpatrick.
16 >> MR. FITZPATRICK: Charles Fitzpatrick,
17 State of Nevada. I don't know if this fits in here.
18 I think it does, but would you address whether in
19 view of the written filings and all, we can stop
20 reserving the 23 and the 24, February dates?
21 >> JUDGE MOORE: Yes, just one moment. I
22 think it's prudent to go ahead and hold those dates.
23 We will be seeing something from Mr. Shebelskie on
24 Thursday. We will be issuing an order for responsive
25 times, and the timing would, I believe, work out, if

1 we did need another case management conference, that
2 might be since everyone has already preserved those
3 dates, that might be a logical time to do it. If
4 after we see all the material -- we will release them
5 upon seeing the material, if it's not necessary.
6 >> MR. FITZPATRICK: Your Honor, with all
7 due respect, I mean that's fine, and everyone will
8 have to reserve, it's just that I reiterate my prior
9 suggestion that no matter what happens on February 4
10 or February 1, it's very hypothetical, and --
11 >> JUDGE MOORE: We understand that. We
12 understand that and, indeed, we can certainly release
13 one of those days since we don't have oral arguments
14 attached to it, at least none that we know at this
15 point. We'll -- let's go ahead and release
16 Wednesday, February 24.
17 >> MR. FITZPATRICK: Yes, sir.
18 >> JUDGE MOORE: And as soon as we see the
19 materials, the Board will be in a position to know
20 whether the case management conference and receive
21 the parties' comments and their suggestions, we'll be
22 in a position and we will do that immediately upon
23 receiving all that material, and we will get an order
24 out to you early next week, setting a schedule for
25 responding.

1 >> MR. FITZPATRICK: Thank you, Your Honor.
2 >> JUDGE MOORE: I thank you all for your
3 participation. Again, the current situation is
4 hypothetical, but we do think it demands some
5 contingency planning and that was the purpose and
6 function of this.
7 So we will now adjourn the case management
8 conference in ten minutes, so that the Staff can
9 rearrange the room. We will resume with -- take up
10 issue 10 and oral argument. Thank you very much.
11 We greatly appreciate your participation and your
12 comments, and we now stand adjourned. Thank you.
13 (Adjourned: 10:40 a.m)
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CERTIFICATE OF REPORTER

This is to certify that the attached proceedings before the United States Nuclear Regulatory Commission in the matter of U. S. Department of Energy High-Level Waste Repository, Docket No. 63-001, ASLBP No. 09-892-HLW CAB04 on January 27, 2010, Las Vegas, Nevada, was held as herein appears and that this is the Original Transcript thereof for the file at the U.S. Nuclear Regulatory Commission taken by Caption Reporters Inc., and that the transcript is a true and accurate record of the foregoing proceedings.

Lorraine Carter, RPR
Official Court Reporter