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

In the Matter of  
U.S. Department of Energy  
High-Level Waste Repository  
Docket No. 63-001-HLW  
ASLBP No. 09-892-HLW-CAB04

January 27, 2010  
9:00 a.m. PST

TRANSCRIPT OF PROCEEDINGS  
Pre-Hearing Conference  
Before the Administrative Judges

CAB04  
Judge Thomas Moore, Chairman  
Judge Paul S. Ryerson  
Judge Richard E. Wardwell

## 1 APPEARANCES

2 For Nuclear Regulatory Commission Staff:

3 Margaret Bupp, Esq.

4 Adam Gedelman, Esq.

5 Andrea Silvia, Esq.

6 For the Nuclear Energy Institute:

7 David Repka, Esq.

8 Rodney J. McCullum, Esq.

9 For the Department of Energy:

10 Michael Shebelskie, Esq.

11 For the State of Nevada:

12 Martin Malsch, Esq.

13 John W. Lawrence, Esq.

14 Charles Fitzpatrick, Esq.

15 For Nye County:

16 Jeffrey Van Niel

17 Robert Anderson

18 For Clark County:

19 Debra Roby

20 Bryce Loveland

21 For White Pine County:

22 Richard Sears

23 Mike Baughman

24 For Inyo County:

25 Greg James

26 For Four Nevada Counties:

27 Jennifer Gores

28 For Native Community Action Council

29 Rovicianne Leigh

30 For California Energy Commission:

31 Kevin Bell

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APPEARANCES (Continued)

For Joint Iimbisha Shoshone Tribal Group:  
Douglas Poland  
Shane Elk

For Nye County: Mal Murphy

For Eureka County Diane Curran

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

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

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

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

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

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

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

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

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

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

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

1 Robert Anderson for Makerman Centerfit on behalf of  
2 Nye County.

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

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

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

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

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

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

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

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

19 >> MR. BAUGHMAN: Baughman.

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

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

24 >> MR. SEARS: I'm Richard Sears, Your  
25 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

1 parties participating by telephone. California  
2 Energy Commission.

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

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

7 >> THE CLERK: Have him try again.

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

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

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

14 >> JUDGE MOORE: Nye County.

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

17 >> JUDGE MOORE: And Eureka County.

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

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

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

23 >> JUDGE MOORE: Yes, thank you.

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

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

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

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

12 >> JUDGE MOORE: You should all be familiar  
13 with the LSNA's December 17th, 2009 memorandum to  
14 the Board pointing out the numerous problems with the  
15 LSN, should there be any long-term suspension or  
16 termination of this proceeding by actions of DOE such  
17 as seeking to withdraw its license application. In  
18 response to that memorandum, the Board, on  
19 December 22nd, directed all parties not to take  
20 any actions at this time that would prevent or hinder  
21 their ability to archive LSN documentary material in  
22 a readily accessible format such as PDF. The Board  
23 would like to thank those parties that accepted our  
24 invitation to comment in writing on the LSNA's  
25 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

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

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

5 >> MS. BUPP: -- if necessary.

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

9 >> MS. BUPP: Okay.

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

13 >> MS. BUPP: Yes, Your Honor.

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

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

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

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

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

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

13 >> JUDGE MOORE: Yes, it is.

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

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

20 >> MS. BUPP: Okay.

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

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

25 >> JUDGE MOORE: We will have to deal with

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

11 >> MR. SEARS: Yes, Your Honor.

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

14 >> MR. SEARS: Yes, Your Honor.

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

25 >> 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.

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

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

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

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

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

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

14 >> JUDGE MOORE: Clark County.

15 >> MS. ROBY: Yes, Your Honor.

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

21 >> MS. ROBY: Yes, Your Honor.

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

24 >> MS. ROBY: Yes, Your Honor.

25 >> JUDGE MOORE: And would Clark County

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

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

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

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

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

16 >> MR. HEINZEN: Yes, it will.

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

19 >> MR. HEINZEN: Yes, it will.

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

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

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

3 >> MS. LEIGH: Yes, Your Honor.

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

9 >> MS. LEIGH: Yes, Your Honor.

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

13 >> MS. LEIGH: Yes.

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

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

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

24 >> MR. REPKA: Yes, we will.

25 >> JUDGE MOORE: Will NEI commit to

1 providing the LSNA a CD copy of its LSN collection?

2 >> MR. REPKA: Yes, we will.

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

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

8 >> JUDGE MOORE: That leaves the second  
9 largest collection, Nevada. Your collection  
10 currently consists of 5,446 documents comprising  
11 108,920 pages. Will Nevada commit to storing --  
12 your comments indicate that you were prepared to do  
13 it, but will Nevada commit to storing its LSN  
14 collection, text and related header material on  
15 CDs?

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

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

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

3 >> MR. FITZPATRICK: Yes, Your Honor.

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

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

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

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

24 Now, Mr. Shebelskie, I guess it's your  
25 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

1 anything right now, Your Honor.

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

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

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

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

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

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

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

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

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

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

25 >> JUDGE MOORE: What organizational -- DOE

1 organizational unit does this individual report to?

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

4 >> JUDGE MOORE: Is it fully funded for  
5 2010?

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

8 >> JUDGE MOORE: Is the office?

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

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

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

19 >> JUDGE MOORE: Who is the current DOE  
20 official responsible for providing electronic files  
21 of documenting material as required by 10 CFR Section  
22 2.1009?

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

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

1 organizational unit with the same reporting  
2 structure?

3 >> MR. SHEBELSKIE: Yes, sir.

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

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

10 >> JUDGE MOORE: That's the subpart?

11 >> MR. SHEBELSKIE: Yes.

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

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

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

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

24 >> JUDGE MOORE: Do you have a number or a  
25 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

1 subset, you're gonna check the percentage?

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

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

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

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

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

1 >> MR. SHEBELSKIE: I believe so, Your  
2 Honor. I am told that there are archived documents  
3 in compliance with those national archive  
4 requirements that had been maintained for the past  
5 20-plus years. They are in stable robust form in  
6 which to preserve the archive such documents and that  
7 it would be appropriate to both technologically and  
8 legally to maintain an archived collection in TIF  
9 format.

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

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

15 >> JUDGE MOORE: Under the structure,  
16 history and technology that is set forth in the  
17 LSNA's memorandum to the Board, that that  
18 functionality captures your document collection. So  
19 when I request a document, I get it, and I get it in  
20 PDF format. Because of the complexity and the  
21 numerous steps that are involved in this technology  
22 that admittedly pushing better than 20 years, if DOE,  
23 hypothetically speaking, were to shut the system  
24 down, because you have the platform on which it's  
25 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

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

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

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

20           >> MR. SHEBELSKIE: Well, the other  
21 alternative, what you're suggesting is there was no  
22 anticipated need, reasonably, for licensing purposes,  
23 to preserve the ability to reconnect this collection  
24 in the hypothetical, then a decision would have to be  
25 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

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

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

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

25 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

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

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

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

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

1 >> JUDGE MOORE: Fine. Clark County.

2 >> MS. ROBY: Thank you, Your Honor.

3 Again, Clark County would first like to see the  
4 written submission. It may be useful to have a case  
5 management conference, but not knowing what is going  
6 to be in that submission, it's difficult to tell, but  
7 providing written responses in advance of a case  
8 management conference would be useful. But I think  
9 this kind of form is, kind of, useful.

10 >> JUDGE MOORE: NRC staff.

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

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

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

25 >> JUDGE MOORE: NEI.

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

4 >> JUDGE MOORE: White Pine County.

5 >> MR. SEARS: We agree with NEI.

6 >> JUDGE MOORE: NCAC.

7 >> MS. LEIGH: Thank you, Your Honor.

8 Rovicianne Leigh on behalf of NCAC. NCAC does have  
9 limited resources but also has a very large interest  
10 in ensuring these documents are preserved. So  
11 certainly, we would welcome the opportunity to submit  
12 written comments and participate in a conference if  
13 the Board so desires.

14 >> JUDGE MOORE: Inyo County.

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

18 >> JUDGE MOORE: Mr. Fitzpatrick.

19 >> MR. FITZPATRICK: Charles Fitzpatrick,  
20 State of Nevada. This is not being impudent, but you  
21 preferenced this question to everybody, if the  
22 hypothetical becomes a reality, what is the  
23 hypothetical? Is it a zero budget, is it a  
24 withdrawal of the application? What is the  
25 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

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

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

20           And I suggest that if DOE, as I believe I  
21 heard, has no plans at present to change anything to  
22 protect its LSN, I don't believe it's appropriate  
23 for the Cab to jump in and require DOE to protect  
24 itself and the other parties to protect themselves;  
25 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

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

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

21 >> JUDGE MOORE: Four Counties.

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

1 >> JUDGE MOORE: California Energy  
2 Commission.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7 Mr. Fitzpatrick, you wish to be  
8 recognized?

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

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

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

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

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

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

1 you've asked?

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

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

18 >> MR. FITZPATRICK: Thank you.

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

23 \*Whereupon a short recess was taken)

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

1 schedule for us?

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

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

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

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

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

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

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

19 The documents that are the smallest  
20 component of the paper, electronic files, we'd have  
21 to consider that as well, because I suspect they may  
22 or may not be considered federal records by being  
23 put into CACI's possession for this proceeding.  
24 Therefore it is subject to their own requirements  
25 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 WALDWELL: 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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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.

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