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CORRESPONDENCE CONTROL TICKET

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ACTION OFFICE: OGC

AUTHOR: Mr. Thomas Gottshall
AFFILIATION: PA
ADDRESSEE: Gregory Jaczko
SUBJECT: Encloses Aiken County's Petition for Declaratory and Injunctive Relief and Writ of Mandamus regarding DOE application and NRC's position on the withdrawal of lic appl for the Yucca Mountain Project

ACTION: Information
DISTRIBUTION: Chairman, Comrs, EDO

LETTER DATE: 02/19/2010
ACKNOWLEDGED: No
SPECIAL HANDLING:

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DATE DUE: **DATE SIGNED:**

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COLUMBIA CHARLESTON FLORENCE GREENVILLE

Haynsworth
Sinkler Boyd, PA.

ATTORNEYS AND COUNSELORS AT LAW

1201 MAIN STREET, 22ND FLOOR (29201-3226)
POST OFFICE BOX 11889 (29211-1889)
COLUMBIA, SOUTH CAROLINA
TELEPHONE 803.779.3080
FACSIMILE 803.765.1243
WEBSITE www.hsblawfirm.com

THOMAS R. GOTTSHALL
DIRECT DIAL NUMBER 803-540-7857
EMAIL tgottshall@hsblawfirm.com

February 19, 2010

The Honorable Steven Chu
Secretary, US Department of Energy
1000 Independence Avenue, SW
Washington, DC 20585

US Department of Energy
1000 Independence Avenue, SW
Washington, DC 20585

Gregory B. Jaczko
Chairman
U.S. Nuclear Regulatory Commission
Mail Stop O-16G4
Washington, DC 20555-0001

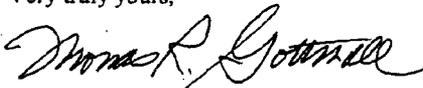
U.S. Nuclear Regulatory Commission
Atomic Safety and Licensing Board (ASLBP)
Mail Stop T-3F23
Washington, DC 20555-0001

Thomas Moore
U.S. Nuclear Regulatory Commission
Atomic Safety and Licensing Board (ASLBP)
Mail Stop T-3F23
Washington, DC 20555-0001

Dear All Opposing Counsel:

Enclosed please find Aiken County's Petition for Declaratory and Injunctive Relief and Writ of Mandamus with which you are hereby served. Aiken County has filed this action to prevent, the Department of Energy from withdrawing and the Nuclear Regulatory Committee from allowing the withdrawal of the license application for the Yucca Mountain Project. Aiken County respectfully requests that the application not be withdrawn until this matter is resolved. Please call me with any questions

Very truly yours,



Thomas R. Gottshall
TRG/shd
Columbia: 1319263 v.1

Paul Reyerson
U.S. Nuclear Regulatory Commission
Atomic Safety and Licensing Board (ASLBP)
Mail Stop T-3F23
Washington, DC 20555-0001

Richard Wardwell
U.S. Nuclear Regulatory Commission
Atomic Safety and Licensing Board (ASLBP)
Mail Stop T-3F23
Washington, DC 20555-0001

Channing D. Phillips
U.S. Attorney's Office
555 4th Street, NW
Washington DC 20530

Eric H. Holder, Esquire
US Attorney General
US Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

UNITED STATES COURT OF APPEALS FOR DISTRICT OF COLUMBIA CIRCUIT	
FILED	FEB 19 2010
CLERK	

FEB 19 2010

In The

RECEIVED United States Court of Appeals
For The District of Columbia Circuit

AIKEN COUNTY, 10-1050

Petitioner,

v.

STEVEN CHU, Secretary of the Department of Energy, in his Official Capacity; UNITED STATES DEPARTMENT OF ENERGY; GREGORY B. JACZKO, Chairman of the Nuclear Regulatory Commission, in his Official Capacity; UNITED STATES NUCLEAR REGULATORY COMMISSION; THOMAS MOORE, PAUL RYERSON and RICHARD WARDWELL, UNITED STATES NUCLEAR REGULATORY COMMISSION ATOMIC SAFETY AND LICENSING BOARD JUDGES, in their official Capacity; and the NRC ATOMIC SAFETY AND LICENSING BOARD,

Respondents.

IN RE: AIKEN COUNTY, PETITIONER

**PETITION FOR DECLARATORY AND
INJUNCTIVE RELIEF AND WRIT OF MANDAMUS**

Thomas R. Gottshall (D.S.C. No. 2406)
Alexander G. Shissias (D.S.C. No. 6881)
HAYNSWORTH SINKLER BOYD, P.A.
Post Office Box 11889
Columbia, South Carolina 29211
(803) 779-3080

Counsel for Petitioner

**UNITED STATES COURT OF APPEALS
DISTRICT OF COLUMBIA CIRCUIT**

In Re: Aiken County, Petitioner

Aiken County,

Petitioner,

vs.

Steven Chu, Secretary of the Department of Energy, in his Official Capacity; United States Department of Energy; Gregory B. Jaczko, Chairman of the Nuclear Regulatory Commission, in his Official Capacity; United States Nuclear Regulatory Commission; Thomas Moore, Paul Ryerson and Richard Wardwell, United States Nuclear Regulatory Commission Atomic Safety and Licensing Board Judges, in their official Capacity; and the NRC Atomic Safety and Licensing Board

Respondents.

**PETITION FOR DECLARATORY
AND INJUNCTIVE RELIEF AND WRIT
OF
MANDAMUS**

BACKGROUND

1. Petitioner, Aiken County, brings this petition seeking declaratory and injunctive relief and a writ of mandamus. Specifically, Aiken County seeks to enjoin the final decision of the Respondents, Steven Chu, Secretary of the Department of Energy, in his Official Capacity (the "Secretary of Energy") and the

Department of Energy, to file a motion with the judges of the NRC Atomic Safety and Licensing Board, under the Nuclear Regulatory Commission of which Gregory B. Jaczko is chairman, to withdraw the previously submitted application for Construction Authorization to construct a high-level waste geologic repository at Yucca Mountain in Nevada (the "License Application"). This application is presently under review by the NRC. Aiken County also brings this petition to challenge the Board's decision, made at the request of the United States Department of Energy ("DOE"), to stay review of the License Application pending the withdrawal of the License Application.

2. The DOE announced its intent to withdraw the License Application and to permanently terminate the licensing process by filing a motion with the NRC Atomic Safety and Licensing Board (the "Board"), seeking to stay the hearing process for the License Application. A copy of DOE's Motion to Stay Proceedings (the "Motion") is attached hereto as Exhibit A. In the Motion, DOE stated, "DOE intends to withdraw the pending application with prejudice ..." See Exhibit A.

3. In response to the Motion, on February 16, 2010, the Board issued an Order staying the review of the licensing process. A copy of the Order granting the stay of proceedings is attached hereto as Exhibit B.

4. These actions by the Respondents are in direct violation of the provisions of the Nuclear Waste Policy Act of 1982, as amended, 42 U.S.C.A. §§ 10101 *et seq.* (2005), (“NWPA”), which specifically requires that DOE seek a license for and develop the geologic repository at Yucca Mountain in Nevada (“Yucca Mountain Project”), and that the NRC act on the License Application.

5. The Secretary of Energy has breached his obligations under the NWPA by making the motion to stay pending his withdrawing the License Application with prejudice. 42 U.S.C.A. § 10134(b) requires that the Secretary submit such an application, and does not provide that the application can be withdrawn. Such a construction would eviscerate the intent of the statutory scheme, that being to develop and implement a long-term radioactive waste storage facility at Yucca Mountain, which project cannot begin until proper licensing is obtained.

6. The remaining Respondents have failed to act as required under 42 U.S.C.A. § 10134(d) by acquiescing in and granting the Department of Energy’s request that consideration of the already submitted License Application be stayed pending its withdrawal, rather than considering and issuing a final decision on the merits of said application. Under 42 U.S.C.A. § 10134(d), these parties have an obligation to review and rule on the License Application as submitted.

7. DOE's action also violates the National Environmental Policy Act, 42 U.S.C.A. §§ 4321, *et seq.* (2003), ("NEPA"), because withdrawing the License Application "with prejudice" will terminate the Yucca Mountain Project, even though DOE's Record of Decision ("ROD") on the project rejected any "No Action Alternative."

8. Aiken County seeks to set aside the DOE Motion and its decision to withdraw the License Application as arbitrary and capricious under the Administrative Procedure Act, 5 U.S.C.A. §706(2)(A) (2007) , ("APA"), and seeks to enjoin Respondents from withdrawing the License Application. Aiken County further seeks to enjoin the Respondents from taking any action that terminates or delays the Yucca Mountain Project License Application or the licensing process as mandated by NWPAA. Additionally, Aiken Country requests the Court issue a writ of mandamus directing the individual Respondents to properly fulfill their duties under NWPAA.

ISSUES PRESENTED

- Did the Secretary of Energy breach his obligations under the NWPAA by making the motion to stay the licensing procedures pending the withdrawal of the Licensing Application with prejudice when he was required to make such application pursuant to 42 U.S.C.A. § 10134(b)?

- Did the remaining Respondents fail to act as required under 42 U.S.C.A. § 10134(d) by acquiescing in and granting the DOE's Motion to stay review of the License Application pending the withdrawal of the DOE's License Application when they had a statutory mandate to consider and either accept or reject such application?
- Does the decision of the Secretary of Energy to withdraw the Licensing Application with prejudice violate NEPA?
- Are the actions of the Secretary of Energy arbitrary and capricious as a matter of law and violative of the APA?

JURISDICTION AND VENUE

9. This Court has jurisdiction over the subject matter of this action pursuant to NWPA section 119(a)(2), 42 U.S.C.A. § 10139(a), which provides the United States courts of appeals shall have original and exclusive jurisdiction over any civil action: "(A) for review of any final decision or action of the Secretary, the President, or the Commission under this subtitle [42 U.S.C.A. § 10131 *et seq.*]; (B) alleging the failure of the Secretary, the President, or the Commission to make any decision, or take any action, required under this subtitle [42 U.S.C.A. § 10131 *et seq.*]; (C) challenging the constitutionality of any decision made, or action taken, under any provision of this subtitle [42 U.S.C.A. § 10131 *et seq.*]... ."

10. Pursuant to 28 U.S.C.A. § 2201 (2006), this Court is further authorized to grant declaratory and injunctive relief in cases where a federal agency, such as the DOE and the NRC, has violated federal law. Furthermore the APA, 5 U.S.C.A. § 706(2), requires a reviewing court to set aside final agency action found to be not in accordance with the law, in excess of the agency's statutory authority, or not in observance of procedures required by law.

11. Venue is proper in this Court pursuant to the NWPA section 119(a)(2), 42 U.S.C.A. § 10139(a)(2), which provides: “[t]he venue of any proceeding under this section shall be in the judicial circuit in which the petitioner involved resides or has its principal office, or in the United States Court of Appeals for the District of Columbia.”

12. Plaintiff has standing to assert its challenge because Plaintiff has suffered a concrete and particularized injury-in-fact from the Respondents' violation of the NWPA and NEPA, and because Plaintiff faces imminent future harm as the direct result of the Respondents' refusal to comply with these Acts. Furthermore, Plaintiff's injury is redressable by the Court if the Court grants the relief Plaintiff seeks.

THE PARTIES

13. Plaintiff, Aiken County, is a County of the State of South Carolina, as provided for under Article VII of the South Carolina Constitution. Plaintiff is an

independent governmental entity authorized to levy taxes, incur debt, and exercise eminent domain powers under Title 4 of the South Carolina Code of Laws. Aiken County has the responsibility to exercise its police powers for the health, safety and welfare of its citizens, and the procedural right to ensure, with regard to activities undertaken by the Federal Government within Aiken County, that the Federal Government observes procedures mandated by the law, the purpose of which is to protect the health, safety and welfare of the people of Aiken County. *See City of Dania Beach v. FAA*, 485 F.3d 1181, 1186-87 (D.C. Cir. 2007). Aiken County is the location of the Savannah River Site (“SRS”), one of the DOE locations currently acting as a temporary storage facility for spent nuclear fuel and high-level radioactive waste. SRS covers over ten percent of the land in Aiken County. SRS Community Reuse Organization, *The Future of SRS: The Community Perspective* at 5, available online at www.srscro.org/downloads/SRRDI%20DOE%20Issues.doc. Further, Aiken County owns substantial real property in close proximity to SRS. *See* Affidavit of Clay Killian, County Administrator for Aiken County, attached hereto as Exhibit C. Most of SRS is located in Aiken County, South Carolina. Yucca Mountain is the site selected for the long-term disposal of these radioactive materials.

14. Defendant Secretary is responsible for administering DOE operations, specifically, undertaking the site selection and approval process for a repository.

15. Defendants Secretary and DOE are required by Congress to carry out the statutory mandates of the NWPA related to the site selection, characterization, design, and filing of an application for a license to construct and operate a repository for disposal of high-level radioactive waste and spent nuclear fuel at Yucca Mountain.

16. Defendant Gregory B. Jaczko, Chairman of the Nuclear Regulatory Commission, ("NRC") in his Official Capacity ("Chairman"), is responsible for administering the operations of the NRC.

17. Defendant NRC is the federal agency authorized by Congress under the NWPA to consider the license application for a nuclear repository and issue a final decision approving or disapproving the issuance of said license.

18. Defendants Thomas Moore, Paul Ryerson and Richard Wardwell, United States Nuclear Regulatory Commission Atomic Safety and Licensing Board Judges, in their official Capacity (collectively, "Judges"), have been selected by NRC to consider the License Application.

19. Defendant Board, under the NRC, is the tribunal responsible for considering the License Application.

FACTS AND GOVERNING LAW

20. The NWPA provides the essential environmental safeguards to protect the United States from the hazards associated with spent nuclear fuel and high-

level radioactive waste. Under the NWPA, the federal government protects the public from these hazards. *See* 42 U.S.C.A. § 10131(b) (“The purposes of this subtitle [42 U.S.C. §§ 10131 et seq.] are-- (1) to establish a schedule for the siting, construction, and operation of repositories that will provide a reasonable assurance that the public and the environment will be adequately protected from the hazards posed by high-level radioactive waste and such spent nuclear fuel as may be disposed of in a repository; (2) to establish the Federal responsibility, and a definite Federal policy, for the disposal of such waste and spent fuel”).

21. The NWPA mandates that the Secretary of Energy and DOE are to establish a schedule for the siting, construction, and operation of a geologic repository for used nuclear fuel and other high-level radioactive waste. *See* 42 U.S.C.A. § 10131.

22. In 1987, Congress adopted an amendment to the NWPA that directed DOE to study a site at Yucca Mountain, Nevada, as the site for a potential repository for geologic disposal of used nuclear fuel. *See* 42 U.S.C.A. § 10172. The NWPA provides a specific, extensive process that allows other Government agencies, state governments, and Indian tribes to participate in decision-making, including design and siting of the repository for the radioactive waste.

23. As this project constitutes major federal action with potentially significant environmental impacts, DOE is required to prepare an environmental

impact statement under NEPA, 42 U.S.C.A. § 4332 (2003) and 42 U.S.C. § 10134(a)(1)(D). In accordance with the NEPA and NWPA, DOE has actively pursued development of the Yucca Mountain Project, including issuance of a Final Environmental Impact Statement (“FEIS”) after extensive involvement of other Government agencies, state governments, and Indian tribes. *See* Department of Energy, Final Environmental Impact Statement for a Geologic Repository for the Disposal of Spent Nuclear Fuel and High-Level Radioactive Waste at Yucca Mountain, Nye County, Nevada, DOE/EIS-0250 Section S-12, pp. S-83-S-88 (2002) (“FEIS -250”), a portion of which is attached hereto as Exhibit D, and the entire FEIS 250 is located at <http://www.gc.energy.gov/NEPA/finalEIS-0250.htm>.

24. Under Pub. L. 107-200, passed July 23, 2002, the Yucca Mountain site received official site designation within the meaning of 42 U.S.C.A. § 10135.

25. The NWPA mandates the following additional actions be taken by DOE and NRC if and when site designation under 42 U.S.C.A. §10135 becomes effective, which it did on July 23, 2002:

- DOE must submit an application for Construction Authorization (the License Application) to construct a high-level waste geologic repository at Yucca Mountain in Nevada. *See* NWPA Sec. 114 (b) [42 U.S.C.A. § 10134(b)] (“...the Secretary **shall** submit to the

Commission an application for a construction authorization for a repository at such site ...”) (emphasis added).

- NWPA Sec. 114 (d) [42 U.S.C.A. § 10134(d)] provides “The Commission **shall** consider an application for a construction authorization for all or part of a repository in accordance with the laws applicable to such applications, except that the Commission **shall** issue a final decision approving or disapproving the issuance of a construction authorization not later than the expiration of 3 years after the date of the submission of such application.” ...” (emphasis added).

26. In June 2008, DOE submitted the License Application for a repository at Yucca Mountain to the NRC. DOE’s License Application was being reviewed by the NRC in accordance with the NWPA. This review process includes conduct of public hearings before the Board.

27. DOE’s Office of Civilian Radioactive Waste Management (“OCRWM”) began participating in the licensing proceedings by answering requests for additional information from the NRC, updating the license application and related documents, and preparing for the Board hearings.

28. The Board undertook extensive preliminary activities, until February 1, 2010. On February 1, 2010, DOE filed its Motion with the Board seeking a stay in hearings, stating “[t]he President directed that the Department of Energy

‘discontinue its application to the U.S. Nuclear Regulatory Commission for a license to construct a high-level waste geologic repository at Yucca Mountain in 2010’ Moreover, the budget specifies that ‘all funding for development of the Yucca Mountain facility will be eliminated’ for fiscal year 2011. . . . In accord with these determinations, DOE has advised the undersigned counsel that DOE intends to withdraw the pending application with prejudice.” *See* Motion, Exhibit A.

29. In response to the Motion, on February 16, 2010, the Board granted the Motion and issued an Order staying the review of the licensing process. *See* Order, Exhibit B.

REASONS WHY THE WRIT SHOULD ISSUE

I. Violation of NWPA

30. Respondents have failed to and refuse to fulfill their duties mandated by the NWPA.

31. The Secretary of Energy has breached his obligations under the NWPA by filing the Motion to stay pending withdrawal of the License Application with prejudice. 42 U.S.C.A. § 10134(b) requires that the Secretary submit such an application, and does not provide that the application can be withdrawn. Such a construction would eviscerate the intent of the statutory scheme, that being to develop and implement a long-term radioactive waste storage facility at Yucca Mountain.

32. The remaining Respondents have failed to act as required under 42 U.S.C.A. § 10134(d) by acquiescing in and granting the DOE's request that consideration of the License Application be stayed pending its withdrawal, rather than considering and issuing a final decision on the merits of said application. Under 42 U.S.C.A. § 10134(d), these parties have an obligation to review and rule on the application as submitted.

33. It is the NRC's duty, as well as the Board Judges' duty, to pursue the License Application, and in doing so, the Motion should have been rejected outright as unlawful and in violation of NWPA. Further, any future request to withdraw the License Application or otherwise prevent the NRC's review of the License Application must also be rejected.

34. Withdrawing the License Application for the Yucca Mountain Project will effectively end DOE's effort to develop the project and is directly contrary to the mandate of the NWPA.

35. The Motion included the statement "DOE intends to withdraw the pending application with prejudice" (emphasis added). *See* Exhibit A. DOE's attempts to withdraw the License Application "with prejudice" is an attempt by the Secretary of Energy and DOE to terminate the License Application in such a way so as to prevent it from being reconsidered in the future, effectively operating as an end run around the legislative mandates of the NWPA.

36. Respondent DOE has offered no opportunity for any member of the public or any non-governmental organization to provide information or comments on the environmental impact of their action to halt the Yucca Mountain Project licensing process mandated by the NWPA and NEPA. This constitutes an additional injury to Petitioner's procedural rights, namely, the right to have the executive branch observe procedures mandated by law. *City of Dania Beach v. FAA*, 485 F.3d 1181, 1186-87 (D.C. Cir. 2007).

37. Should Respondents' actions be allowed, Petitioner will be adversely affected and irreparably injured. Specifically, abandonment of the Licensing Application process effectively ends DOE's effort to develop the Yucca Mountain Project, and SRS, a facility which spans 10% of the land in Aiken County, may become a permanent repository for defense plutonium and other high-level nuclear waste in violation of long-standing federal assurances to the contrary.

38. By DOE's own analysis, this decision could result in "widespread contamination at the 72 commercial and 5 DOE sites across the United States, with resulting human health impacts." *See* FEIS-250, Exhibit D. The negative perception and potential for health risks associated with the presence of a "nuclear waste dump" in Aiken County will adversely affect future economic development and job creation efforts. SRS, in Aiken County, South Carolina, is one of the five referenced DOE sites.

39. Petitioner will suffer irreparable injury if Respondents are not compelled to perform their clear legal duty. Petitioner's injuries are actual, concrete injuries likely to be caused by the Respondents' violation of mandatory duties under the NWPA. These injuries would be redressed by the relief sought.

II. Violation of NEPA.

40. As part of the process of producing the FEIS mandated under NEPA and the NWPA, DOE was required to consider various alternatives to building the Yucca Mountain facility, and was required to solicit public comment and the comments of other federal agencies.

41. Among the alternatives being considered was the alternative of not building the Yucca Mountain facility at all; the so-called "No Action Alternative."

42. DOE's FEIS, issued in February of 2002, considered and rejected the No Action Alternative, concluding that "[t]here could be large public health and environmental consequences under the No-Action Alternative ... causing storage facilities and containers to deteriorate and radioactive contaminants from the spent nuclear fuel and high-level radioactive waste to enter the environment. In such circumstances, there would be widespread contamination at the 72 commercial and 5 DOE sites across the United States, with resulting human health impacts." *See* FEIS- 250, Exhibit D.

43. By making the decision to withdraw the License Application “with prejudice,” DOE unlawfully foreclosed any alternative that involves construction of the Yucca Mountain facility, thereby implementing the previously rejected No Action Alternative.

44. In altering the selected alternative from that originally selected in the FEIS, DOE did not attempt to reopen, reconsider, alter, or otherwise attempt to modify the FEIS, nor did it solicit public comment, or the input of other federal agencies as required by the NEPA process. Accordingly, Respondents’ actions are in violation of NEPA.

III. Violation of the U.S. Constitution (Separation of Powers)

45. The U.S. Constitution provides that “All legislative Powers herein granted shall be vested in a Congress,” U.S. CONST. art. I § 9, and “[t]he executive Power shall be vested in a President,” U.S. CONST. art. II § 1. The President takes an oath to faithfully execute his office and preserve the Constitution. The President and his administration, including respondent Secretary of Energy, must respect the separation of powers. The Administration’s decision not to execute the legislative mandates of the NWPA, now being carried out by the Secretary of Energy, is a violation of the separation of powers mandated by the U.S. Constitution.

IV. Violation of the APA

46. The APA, 5 U.S.C.A. § 701, *et seq.* (2007), entitles a party to seek judicial review of an agency action where a legal wrong is alleged and the party alleging the violation is adversely affected or aggrieved by the agency action.

47. Pursuant to 5 U.S.C.A. § 706 (2) (A), (D), a reviewing court shall hold unlawful and set aside an action found to be arbitrary, capricious, or otherwise not in accordance with the law. The APA authorizes a court to compel action which has been unlawfully withheld. 5 U.S.C.A. § 706(1).

48. As set forth above, Respondents have violated the APA by failing to allow participation by other agencies, state and local government and the public during decision-making relative to their actions and by deciding to withdraw the License Application “with prejudice,” effectively terminating the Yucca Mountain Project, all of which is contrary to their duties under NWPA.

RELIEF SOUGHT

WHEREFORE, Petitioner prays that this Court issue its Order:

a declaring that Respondents are in violation of the NWPA, NEPA, the Constitution of the United States, and the Administrative Procedures Act, by staying the licensing proceedings and deciding to withdraw the License Application for the Yucca Mountain Project;

b. granting injunctive relief and a writ of mandamus requiring that Respondent Board Judges strike their stay order suspending discovery in the Yucca Mountain Licensing proceedings and that the NRC process for a licensing decision continue in accordance with the NWPA and the laws and regulations applicable to such proceedings;

c. granting injunctive relief and a writ of mandamus requiring that Respondent DOE withdraw its motion currently before Board seeking a stay in Yucca Mountain Project licensing proceedings;

d. granting injunctive relief and a writ of mandamus enjoining Respondents DOE and Secretary of Energy from withdrawing the License Application;

e. granting injunctive relief and a writ of mandamus requiring Respondents to comply with NWPA by continuing the licensing process, as required by law, for the License Application for the Yucca Mountain Project;

f. award Petitioner reasonable costs, litigation expenses, and attorney fees associated with this litigation as provided by the Equal Access to Justice Act, 28 U.S.C.A. § 2412 (2006); and

g. granting such other and further relief as this Court deems just and proper.

Respectfully submitted,

HAYNSWORTH SINKLER BOYD, P.A.

By: 

Thomas R. Gottshall, D.S.C. # 2406

(DC Circuit Admission Requested)

tgottshall@hsblawfirm.com

Alexander G. Shissias, D.S.C. # 6881

(DC Circuit Admission Requested)

ashissias@hsblawfirm.com

P. O. Box 11889

Columbia, SC 29211-1889

(803) 779-3080

Attorneys for Petitioner Aiken County

February 19, 2010

ADDENDUM

**UNITED STATES COURT OF APPEALS
DISTRICT OF COLUMBIA CIRCUIT**

In Re: Aiken County, Petitioner

Aiken County,

Petitioner,

vs.

Steven Chu, Secretary of the
Department of Energy, in his
Official Capacity; United States
Department of Energy; Gregory B.
Jaczeko, Chairman of the Nuclear
Regulatory Commission, in his
Official Capacity; United States
Nuclear Regulatory Commission;
Thomas Moore, Paul Ryerson and
Richard Wardwell, United States
Nuclear Regulatory Commission
Atomic Safety and Licensing Board
Judges, in their official Capacity;
and the NRC Atomic Safety and
Licensing Board

Respondents.

**CERTIFICATE AS TO PARTIES,
RULINGS AND RELATED CASES**

This matter has been brought in the original jurisdiction of this Court pursuant to 42 U.S.C.A. § 10139(a) and relates to the final order of the NRC Atomic Safety and Licensing Board, attached to the Petition as Exhibit B, and the

Department of Energy's decision to withdraw the Yucca Mountain license application as shown in Exhibit A to the Petition.

PARTIES:

1. Aiken County, South Carolina
2. Steven Chu, Secretary of the Department of Energy, in his Official Capacity
3. United States Department of Energy
4. Gregory B. Jaczko, Chairman of the Nuclear Regulatory Commission, in his Official Capacity
5. United States Nuclear Regulatory Commission
6. Thomas Moore, Paul Ryerson and Richard Wardwell, United States Nuclear Regulatory Commission Atomic Safety and Licensing Board Judges, in their official Capacity
7. NRC Atomic Safety and Licensing Board

RULING UNDER REVIEW

The final order of the NRC Atomic Safety and Licensing Board dated February 16, 2010, attached to the Petition as Exhibit B, in response to the Department of Energy's motion found in Exhibit A.

RELATED CASES

None known to Aiken County.

Respectfully submitted,

HAYNSWORTH SINKLER BOYD, P.A.

By: 

Thomas R. Gottshall, D.S.C. # 2406
(DC Circuit Admission Requested)

tgottshall@hsblawfirm.com

Alexander G. Shissias, D.S.C. # 6881
(DC Circuit Admission Requested)

ashissias@hsblawfirm.com

P. O. Box 11889

Columbia, SC 29211-1889

(803) 779-3080

Attorneys for Petitioner Aiken County

February 19, 2010

CIRCUIT RULE 26.1 DISCLOSURE STATEMENT

Appellate Court No: _____

Short Caption: In re: Aiken County, Petitioner

To enable the judges to determine whether recusal is necessary or appropriate, an attorney for a non-governmental party or amicus curiae, or a private attorney representing a government party, must furnish a disclosure statement providing the following information in compliance with Circuit Rule 26.1 and Fed. R. App. P. 26.1.

The Court prefers that the disclosure statement be filed immediately following docketing; but, the disclosure statement must be filed within 21 days of docketing or upon the filing of a motion, response, petition, or answer in this court, whichever occurs first. Attorneys are required to file an amended statement to reflect any material changes in the required information. The text of the statement must also be included in front of the table of contents of the party's main brief. Counsel is required to complete the entire statement and to use N/A for any information that is not applicable if this form is used.

PLEASE CHECK HERE IF ANY INFORMATION ON THIS FORM IS NEW OR REVISED AND INDICATE WHICH INFORMATION IS NEW OR REVISED.

(1) The full name of every party that the attorney represents in the case (if the party is a corporation, you must provide the corporate disclosure information required by Fed. R. App. P 26.1 by completing item #3):

Aiken County

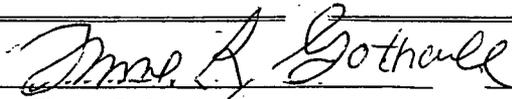
(2) The names of all law firms whose partners or associates have appeared for the party in the case (including proceedings in the district court or before an administrative agency) or are expected to appear for the party in this court:

Haynsworth Sinkler Boyd, PA

(3) If the party or amicus is a corporation:

i) Identify all its parent corporations, if any; and

ii) list any publicly held company that owns 10% or more of the party's or amicus' stock:

Attorney's Signature:  Date: 2/19/2010
Attorney's Printed Name: Thomas R. Gottshall

Please indicate if you are Counsel of Record for the above listed parties pursuant to Circuit Rule 3(d). Yes No

Address: PO Box 11889
Columbia, SC 29211

Phone Number: 803 540 7856 Fax Number: 803 765 1243

E-Mail Address: tgottshall@hsblawfirm.com

EXHIBIT A

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:
Thomas S. Moore, Chairman
Paul S. Ryerson
Richard E. Wardwell

In the Matter of)	Docket No. 63-001
U.S. DEPARTMENT OF ENERGY)	ASLBP No. 09-892-HLW-CAB04
(High-Level Waste Repository))	February 1, 2010

**U.S. DEPARTMENT OF ENERGY'S MOTION TO
STAY THE PROCEEDING**

Today, the President announced the Administration's budget for fiscal year 2011. In that budget, the President directed that the Department of Energy "discontinue its application to the U.S. Nuclear Regulatory Commission for a license to construct a high-level waste geologic repository at Yucca Mountain in 2010" *Budget of the U.S. Government, Fiscal Year 2011*, Appendix at 437 (available at <http://www.whitehouse.gov/omb/budget/fy2011/assets/doe.pdf>); *see id., Terminations, Reductions, and Savings* at 62 (available at <http://www.whitehouse.gov/omb/budget/fy2011/assets/trs.pdf>) (Attached). Moreover, the budget specifies that "all funding for development of the Yucca Mountain facility will be eliminated" for fiscal year 2011. *Id.*

In accord with these determinations, DOE has advised the undersigned counsel that DOE intends to withdraw the pending application with prejudice and to submit a separate Motion, pursuant to 10 C.F.R. § 2.107(a), within the next 30 days, to determine the terms and conditions,

if any, of that withdrawal. To avoid the unnecessary expenditure of resources by the Board, the NRC Staff, and all other parties to this proceeding, DOE hereby requests that the Board stay proceedings (with one exception discussed below) in this matter through the disposition by the Board of any DOE motion under Section 2.107 filed within the next 30-days. *See Duke Energy Corp.* (Catawba Nuclear Station, Units 1 and 2), unpublished Commission Order (Jan. 30, 2004) and *Yankee Atomic Elec. Co.* (Yankee Nuclear Power Station), 1966 WL 627, 640 (N.R.C.) (Oct. 2, 1996) (Commission granting “housekeeping” stay to accommodate time for future Staff filings and parties’ responsive filings); *see generally Nat’l Audubon Soc’y, Inc. v. Watt*, 678 F.2d 299, 307 (D.C. Cir. 1982) (discussing parties’ agreement “to a stay of the proceedings ‘to conserve judicial resources’ . . . [T]he need for a stay was premised, in large part, on a new policy toward federal water projects adopted by an incoming Administration”).

The one exception that DOE proposes to this stay of proceedings would apply to DOE’s submission addressing the Board’s questions at the January 27, 2010 Case Management Conference, as well as the other parties’ written responses to that filing. DOE intends to adhere to its commitment to make that filing. That document, and other parties’ responses, may provide information relevant to the winding up of this proceeding.¹

Finally, DOE notes that Answers to this Motion are due in 10 days, but depositions are scheduled to begin approximately two weeks from today, and the electronic indexes associated with derivative discovery for those depositions under 10 C.F.R. § 2.1019 are due next week. In order to preserve the resources of the parties, DOE requests that the Board issue as soon as possible an interim Order suspending discovery pending its resolution of this Motion.

¹ In accordance with this Board’s Order of December 22, 2009, that parties “not take any actions at this time that would prevent or hinder their ability to archive LSN documentary material in a readily accessible format,” DOE will preserve and maintain its LSN collection pending further instruction.

DOE counsel has made a sincere attempt to confer with counsel for the other parties prior to filing this Motion, per 10 C.F.R. § 2.323(b), including holding a telephone conference to which counsel for each party was invited. As a result of that consultation, the following parties concur with this Motion: State of Nevada, State of California, Nuclear Energy Institute, Clark County, Nye County, Inyo County, and Eureka County.

The following parties take no position as of the time of this filing: the NRC Staff, JTS, NCAC, and the "Four Counties" (*i.e.*, Nevada Counties of Mineral, Lander, Churchill, and Esmeralda).

White Pine County opposes the Motion.

Respectfully submitted,

Signed (electronically) by Donald J. Silverman

Donald J. Silverman

Alex S. Polonsky

Counsel for the U.S. Department of Energy

Morgan, Lewis & Bockius LLP

1111 Pennsylvania Avenue, N.W.

Washington, DC 20004

Scott Blake Harris

Sean Lev

James Bennett McRae

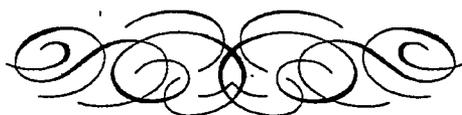
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Office of the General Counsel

1000 Independence Avenue, SW

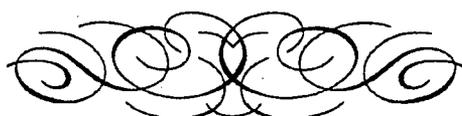
Washington, DC 20585

Dated in Washington, DC
this 1st day of February



Appendix

Budget of the U. S. Government



Fiscal Year 2011



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THE BUDGET DOCUMENTS

Budget of the United States Government, Fiscal Year 2011 contains the Budget Message of the President, information on the President's priorities, budget overviews organized by agency, and summary tables.

Analytical Perspectives, Budget of the United States Government, Fiscal Year 2011 contains analyses that are designed to highlight specified subject areas or provide other significant presentations of budget data that place the budget in perspective. This volume includes economic and accounting analyses; information on Federal receipts and collections; analyses of Federal spending; information on Federal borrowing and debt; baseline or current services estimates; and other technical presentations.

The *Analytical Perspectives* volume also contains supplemental material with several detailed tables, including tables showing the budget by agency and account and by function, subfunction, and program, that is available on the Internet and as a CD-ROM in the printed document.

Historical Tables, Budget of the United States Government, Fiscal Year 2011 provides data on budget receipts, outlays, surpluses or deficits, Federal debt, and Federal employment over an extended time period, generally from 1940 or earlier to 2011 or 2015.

To the extent feasible, the data have been adjusted to provide consistency with the 2011 Budget and to provide comparability over time.

Appendix, Budget of the United States Government, Fiscal Year 2011 contains detailed information on the various appropriations and funds that constitute the budget and is designed primarily for the use of the Appropriations Committees. The *Appendix* contains more detailed financial information on individual

programs and appropriation accounts than any of the other budget documents. It includes for each agency: the proposed text of appropriations language; budget schedules for each account; legislative proposals; explanations of the work to be performed and the funds needed; and proposed general provisions applicable to the appropriations of entire agencies or group of agencies. Information is also provided on certain activities whose transactions are not part of the budget totals.

AUTOMATED SOURCES OF BUDGET INFORMATION

The information contained in these documents is available in electronic format from the following sources:

Internet. All budget documents, including documents that are released at a future date, spreadsheets of many of the budget tables, and a public use budget database are available for downloading in several formats from the Internet at www.budget.gov/budget. Links to documents and materials from budgets of prior years are also provided.

Budget CD-ROM. The CD-ROM contains all of the budget documents in fully indexed PDF format along with the software required for viewing the documents. The CD-ROM has many of the budget tables in spreadsheet format and also contains the materials that are included on the separate *Analytical Perspectives* CD-ROM.

For more information on access to electronic versions of the budget documents (except CD-ROMs), call (202) 512-1530 in the D.C. area or toll-free (888) 293-6498. To purchase the budget CD-ROM or printed documents call (202) 512-1800.

GENERAL NOTES

1. All years referenced to are fiscal years, unless otherwise noted.
2. Detail in this document may not add to the totals due to rounding.

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PAYMENTS TO STATES UNDER FEDERAL POWER ACT—Continued
Program and Financing—Continued

Identification code 89-5105-4-2-806	2009 actual	2010 est.	2011 est.
23.95 Total new obligations	-3	-3	-3
New budget authority (gross), detail:			
Mandatory:			
60.20 Appropriation (special fund)	3	3	3
Change in obligated balances:			
73.10 Total new obligations	3	3	3
73.20 Total outlays (gross)	-3	-3	-3
Outlays (gross), detail:			
86.97 Outlays from new mandatory authority	3	3	3
Net budget authority and outlays:			
89.00 Budget authority	3	3	3
90.00 Outlays	3	3	3

The States are paid 37.5 percent of the receipts from licenses for occupancy and use of national forests and public lands within their boundaries issued by the Federal Energy Regulatory Commission (16 U.S.C. 810).

NORTHEAST HOME HEATING OIL RESERVE

For necessary expenses for Northeast Home Heating Oil Reserve storage, operation, and management activities pursuant to the Energy Policy and Conservation Act, \$11,300,000, to remain available until expended. (Energy and Water Development and Related Agencies Appropriations Act, 2010.)

Program and Financing (in millions of dollars)

Identification code 89-5369-0-2-274	2009 actual	2010 est.	2011 est.
Obligations by program activity:			
00.01 NEHOR	10	11	11
10.00 Total new obligations (object class 25.2)	10	11	11
Budgetary resources available for obligation:			
21.40 Unobligated balance carried forward, start of year	1	1	1
22.00 New budget authority (gross)	10	11	11
23.90 Total budgetary resources available for obligation	11	12	12
23.95 Total new obligations	-10	-11	-11
24.40 Unobligated balance carried forward, end of year	1	1	1
New budget authority (gross), detail:			
Discretionary:			
40.00 Appropriation	10	11	11
Change in obligated balances:			
72.40 Obligated balance, start of year	9	10	10
73.10 Total new obligations	10	11	11
73.20 Total outlays (gross)	-9	-11	-12
74.40 Obligated balance, end of year	10	10	9
Outlays (gross), detail:			
86.90 Outlays from new discretionary authority	9	9	9
86.93 Outlays from discretionary balances	9	2	3
87.00 Total outlays (gross)	9	11	12
Net budget authority and outlays:			
89.00 Budget authority	10	11	11
90.00 Outlays	9	11	12

The Northeast Home Heating Oil Reserve provides an emergency supply of home heating oil supply for the Northeast States during times of inventory shortages and significant threats to

immediate further supply. Two million barrels of heating oil will provide supplemental emergency supply over a 10-day delivery period, the time required for ships to carry heating oil from the Gulf Coast to New York Harbor.

Four-year contracts for the storage, operation and maintenance of the reserve were awarded in August 2007 to Hess Corp (for 1,000,000 barrels in New York harbor) to Morgan Stanley (for 750,000 barrels in New Haven, CT), and to Hess Corp (for 250,000 barrels in Groton, CT). A sale of 35,000 barrels was conducted at the time to offset storage costs. The Department repurchased 19,253 barrels of the oil in 2008. Purchase of the remainder, 15,427 barrels of oil, is scheduled for 2010. New storage contracts are planned for award in late 2011.

[NUCLEAR WASTE DISPOSAL]

[For nuclear waste disposal activities to carry out the purposes of the Nuclear Waste Policy Act of 1982, Public Law 97-425, as amended (the "NWP"), \$98,400,000, to remain available until expended, and to be derived from the Nuclear Waste Fund: *Provided*, That of the funds made available in this Act for nuclear waste disposal and defense nuclear waste disposal activities, 2.54 percent shall be provided to the Office of the Attorney General of the State of Nevada solely for expenditures, other than salaries and expenses of State employees, to conduct scientific oversight responsibilities and participate in licensing activities pursuant to the NWP: *Provided further*, That notwithstanding the lack of a written agreement with the State of Nevada under section 117(c) of the NWP, 0.51 percent shall be provided to Nye County, Nevada, for on-site oversight activities under section 117(d) of the NWP: *Provided further*, That of the funds made available in this Act for nuclear waste disposal and defense nuclear waste disposal activities, 4.57 percent shall be provided to affected units of local government, as defined in the NWP, to conduct appropriate activities and participate in licensing activities under Section 116(c) of the NWP: *Provided further*, That of the amounts provided to affected units of local government, 7.5 percent of the funds provided for the affected units of local government shall be made available to affected units of local government in California with the balance made available to affected units of local government in Nevada for distribution as determined by the Nevada affected units of local government: *Provided further*, That of the funds made available in this Act for nuclear waste disposal and defense nuclear waste disposal activities, 0.25 percent shall be provided to the affected federally-recognized Indian tribes, as defined in the NWP, solely for expenditures, other than salaries and expenses of tribal employees, to conduct appropriate activities and participate in licensing activities under section 118(b) of the NWP: *Provided further*, That notwithstanding the provisions of chapters 65 and 75 of title 31, United States Code, the Department shall have no monitoring, auditing or other oversight rights or responsibilities over amounts provided to affected units of local government: *Provided further*, That the funds for the State of Nevada shall be made available solely to the Office of the Attorney General by direct payment and to units of local government by direct payment: *Provided further*, That 4.57 percent of the funds made available in this Act for nuclear waste disposal and defense nuclear waste disposal activities shall be provided to Nye County, Nevada, as payment equal to taxes under section 116(c)(3) of the NWP: *Provided further*, That within 90 days of the completion of each Federal fiscal year, the Office of the Attorney General of the State of Nevada, each affected federally-recognized Indian tribe, and each of the affected units of local government shall provide certification to the Department of Energy that all funds expended from such payments have been expended for activities authorized by the NWP and this Act: *Provided further*, That failure to provide such certification shall cause such entity to be prohibited from any further funding provided for similar activities: *Provided further*, That none of the funds herein appropriated may be: (1) used directly or indirectly to influence legislative action, except for normal and recognized executive-legislative communications, on any matter pending before Congress or a State legislature or for lobbying activity as provided in 18 U.S.C. 1913; (2) used for litigation expenses; or (3) used to support multi-State efforts or other coalition building activities inconsistent with the restrictions contained in this Act: *Provided further*, That all proceeds and recoveries

realized by the Secretary in carrying out activities authorized by the NWPA, including but not limited to, any proceeds from the sale of assets, shall be available without further appropriation and shall remain available until expended: *Provided further*, That of the funds made available in this Act for Nuclear Waste Disposal, \$5,000,000 shall be provided to create a Blue Ribbon Commission to consider all alternatives for nuclear waste disposal: *Provided further*, That no funds provided in this Act or any previous Act may be used to pursue repayment or collection of funds provided in any fiscal year to affected units of local government for oversight activities that had been previously approved by the Department of Energy, or to withhold payment of any such funds.] (*Energy and Water Development and Related Agencies Appropriations Act, 2010.*)

Special and Trust Fund Receipts (in millions of dollars)

Identification code 89-5227-0-2-271	2009 actual	2010 est.	2011 est.
01.00 Balance, start of year	20,494	22,162	24,028
01.99 Balance, start of year	20,494	22,162	24,028
Receipts:			
02.20 Nuclear Waste Disposal Fund	770	773	779
02.40 Earnings on Investments, Nuclear Waste Disposal Fund	1,096	1,224	1,323
02.99 Total receipts and collections	1,866	1,997	2,102
04.00 Total, Balances and collections	22,360	24,159	26,130
Appropriations:			
05.00 Nuclear Waste Disposal	-145	-98	
05.01 Salaries and Expenses	-49	-29	-10
05.02 Salaries and Expenses	-4	-4	-2
05.99 Total appropriations	-198	-131	-12
07.99 Balance, end of year	22,162	24,028	26,118

Program and Financing (in millions of dollars)

Identification code 89-5227-0-2-271	2009 actual	2010 est.	2011 est.
Obligations by program activity:			
00.01 Repository	76	44	
00.02 Program Directive	63	70	
10.00 Total new obligations	139	114	
Budgetary resources available for obligation:			
21.40 Unobligated balance carried forward, start of year	10	16	
22.00 New budget authority (gross)	145	98	
23.90 Total budgetary resources available for obligation	155	114	
23.95 Total new obligations	-139	-114	
24.40 Unobligated balance carried forward, end of year	16		
New budget authority (gross), detail:			
Discretionary:			
40.20 Appropriation (special fund)	145	98	
Change in obligated balances:			
72.40 Obligated balance, start of year	87	62	33
73.10 Total new obligations	139	114	
73.20 Total outlays (gross)	-164	-143	
74.40 Obligated balance, end of year	62	33	33
Outlays (gross), detail:			
86.90 Outlays from new discretionary authority	93	98	
86.93 Outlays from discretionary balances	71	45	
87.00 Total outlays (gross)	164	143	
Net budget authority and outlays:			
89.00 Budget authority	145	98	
90.00 Outlays	164	143	
Memorandum (non-add) entries:			
92.01 Total investments, start of year: Federal securities: Par value	42,570	44,643	46,529
92.02 Total investments, end of year: Federal securities: Par value	44,643	46,529	48,631

The Nuclear Waste Disposal Account was established as part of the Nuclear Waste Policy Act of 1982 (P.L. 97-425), as

amended, to provide funding to implement Federal policy for disposal of commercial spent nuclear fuel and high-level radioactive waste. The Administration has determined that developing a repository at Yucca Mountain, Nevada, is not a workable option and that the Nation needs a different solution for nuclear waste disposal. As a result, the Department will discontinue its application to the U.S. Nuclear Regulatory Commission for a license to construct a high-level waste geologic repository at Yucca Mountain in 2010 and establish a Blue Ribbon Commission to develop a new strategy for nuclear waste management and disposal. All funding for development of the Yucca Mountain facility will be eliminated, such as further land acquisition, transportation access, and additional engineering. Ongoing responsibilities under the Act, including administration of the Nuclear Waste Fund and the Standard Contract, will continue under the Office of Nuclear Energy, which will lead future waste management activities. Residual responsibilities for site remediation will be assumed by NNSA and the Office of Environmental Management.

Object Classification (in millions of dollars)

Identification code 89-5227-0-2-271	2009 actual	2010 est.	2011 est.
Direct obligations:			
Personnel compensation:			
11.1 Full-time permanent	26	25	
11.3 Other than full-time permanent	1	1	
11.5 Other personnel compensation	1	1	
11.9 Total personnel compensation	28	27	
12.1 Civilian personnel benefits	6	5	
21.0 Travel and transportation of persons	1	1	
23.2 Racial payments to others	3	3	
25.1 Advisory and assistance services	31	6	
25.2 Other services	37	16	
25.3 Other purchases of goods and services from Government accounts	3	5	
25.4 Operation and maintenance of facilities	9	25	
41.0 Grants, subsidies, and contributions	26	26	
99.9 Total new obligations	139	114	

Employment Summary

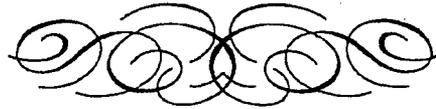
Identification code 89-5227-0-2-271	2009 actual	2010 est.	2011 est.
Direct:			
1001 Civilian full-time equivalent employment	243	243	

URANIUM ENRICHMENT DECONTAMINATION AND DECOMMISSIONING FUND

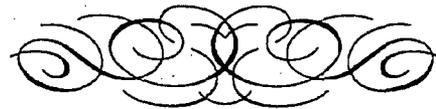
For necessary expenses in carrying out uranium enrichment facility decontamination and decommissioning, remedial actions, and other activities of title II of the Atomic Energy Act of 1954, and title X, subtitle A, of the Energy Policy Act of 1992, [\$573,850,000] \$708,498,000, to be derived from the Uranium Enrichment Decontamination and Decommissioning Fund, to remain available until expended. (*Energy and Water Development and Related Agencies Appropriations Act, 2010.*)

Special and Trust Fund Receipts (in millions of dollars)

Identification code 89-5231-0-2-271	2009 actual	2010 est.	2011 est.
01.00 Balance, start of year	4,453	4,536	4,649
01.99 Balance, start of year	4,453	4,536	4,649
Receipts:			
02.20 Domestic Utility Fees, Decontamination and Decommissioning Fund			200
02.40 Earnings on Investments, Decontamination and Decommissioning Fund	156	224	228
02.41 General Fund Payment - Defense, Decontamination and Decommissioning Fund	463	463	497
02.99 Total receipts and collections	619	687	925
04.00 Total, Balances and collections	5,072	5,223	5,574



Terminations, Reductions, and Savings



Budget of the U.S. Government
Fiscal Year 2011



Office of Management and Budget
www.budget.gov

GENERAL NOTES

1. All years referenced for budget data are fiscal years unless otherwise noted. All years referenced for economic data are calendar years unless otherwise noted.
2. Detail in this document may not add to the totals due to rounding.
3. Web address: *http://www.budget.gov*.

TERMINATION: YUCCA MOUNTAIN NUCLEAR WASTE REPOSITORY*Department of Energy*

The Administration has determined that Yucca Mountain, Nevada, is not a workable option for a nuclear waste repository and will discontinue the Department of Energy's program to construct a repository at the mountain in 2010. The Department will carry out its responsibilities under the Nuclear Waste Policy Act within the Office of Nuclear Energy as the Administration develops a new nuclear waste management strategy.

Funding Summary
(in millions of dollars)

	2010 Enacted	2011 Request	2011 Change from 2010
Budget Authority.....	197	0	-197

Justification

The Nuclear Waste Disposal Account was established as part of the Nuclear Waste Policy Act of 1982 (Public Law 97-425), as amended, to provide funding to implement Federal policy for disposal of commercial spent nuclear fuel and high-level radioactive waste. The Administration has determined that developing a repository at Yucca Mountain is not a workable option and that the Nation needs a better solution for nuclear waste disposal. The President has made clear that the Nation needs a better solution than the proposed Yucca Mountain repository, saying that such a solution must be based on sound science and capable of securing broad support, including support from those who live in areas that might be affected by the solution.

In 2010 the Department will discontinue its application to the Nuclear Regulatory Commission (NRC) for a license to construct a high-level waste geologic repository at Yucca Mountain, Nevada. Secretary of Energy Chu has announced that he will establish a Blue Ribbon Commission to help inform the Administration as it develops a new strategy for nuclear waste management and disposal.

In the interim, all funding for development of the facility will be eliminated, such as further land acquisition, transportation access, and additional engineering. While a new strategy is developed, ongoing responsibilities under the Act, including administration of the Nuclear Waste Fund and the Standard Contract, will continue within the Office of Nuclear Energy, which will lead all future waste management activities, including research on alternative waste management and disposal pathways, such as deep borehole disposal, salt disposal, and geologic disposal sites. Residual responsibilities for site remediation will be assumed by the Office of Environmental Management and responsibilities for security at the site will be assumed by the National Nuclear Security Administration.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:

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

In the Matter of)	Docket No. 63-001
U.S. DEPARTMENT OF ENERGY)	ASLBP No. 09-892-HLW-CAB04
(High-Level Waste Repository))	February 1, 2010

CERTIFICATE OF SERVICE

I hereby certify that copies of the "U.S. DEPARTMENT OF ENERGY'S MOTION TO STAY THE PROCEEDING" have been served on the following persons on this 1st day of February 2010 through the Nuclear Regulatory Commission's Electronic Information Exchange.

CAB 04

Atomic Safety and Licensing Board Panel

Thomas S. Moore, Chair

E-mail: tsm2@nrc.gov

Paul S. Ryerson

E-mail: psr1@nrc.gov

Richard E. Wardwell

E-mail: rew@nrc.gov

Parties Served

Adams, Marta
Andersen, Robert M.
Bailey, Annie
Barlow, Gregory
Baughman, Mike
Bauser, Michael A.
Belete, Elene
Bell, Kevin W.
Berkey, Curtis
Beutel, Theodore
Bollwerk III, G. Paul
Borski, Laurie
Brooks, Felicia M.
Bupp, Margaret

E-mail Addresses

madams@ag.nv.gov
robert.andersen@akerman.com
baileys@lcturbonet.com
lcda@lcturbonet.com
bigboff@aol.com
mab@nei.org
ebelete@jsslaw.com
kwbell@energy.state.ca.us
curtis.berkey@abwwlaw.com
tbeutel@eureka nv.org
gpb@nrc.gov
lborski@nuclearlawyer.com
fbrooks@ndnlaw.com
mjb5@nrc.gov

Carter, Lorraine	lcarter@captionreporters.com
Cereghino, Stephen	stephen_cereghino@ymp.gov
Choate, Zoie	zchoate@co.nye.nv.us
Colburn, Ross	rcolburn@ndnlaw.com
Cottingham, Anne	awc@nei.org
Crosland, Martha S.	Martha.Crosland@hq.doe.gov
Curran, Diane	dcurran@harmoncurran.com
Damele, Ronald	rdamele@eurekanv.org
Dinunzio, Nicholas	Nicholas.Dinunzio@hq.doe.gov
Dobie, Julie	jdobie@gklaw.com
Dreher, Michael	michael.dreher@nrc.gov
Dudley, Sherry	sdudley@co.nye.nv.us
Durbin, Susan	susan.durbin@doj.ca.gov
Elk, Shane	sthinelk@ndnlaw.com
Eredia, Sally	seredia@ndnlaw.com
Faglioni, Kelly L.	kfaglioni@hunton.com
Fitzpatrick, Charles J.	cfitzpatrick@nuclearlawyer.com
Francis, Karin	kxf4@nrc.gov
Fraser, Matthew	mfraser@harmoncurran.com
Frishman, Steve	steve.frishman@gmail.com
Giitter, Rebecca	rll@nrc.gov
Gilman, Joseph	jsg1@nrc.gov
Ginsberg, Ellen C.	ecg@nei.org
Golshan, K. G.	kg.golshan@nrc.gov
Gores, Jennifer A.	jgores@armstrongteasdale.com
Graser, Daniel J.	djg2@nrc.gov
Gutierrez, Jocelyn	Jocelyn.Gutierrez@ymp.gov
Hanna, Robert S.	rshanna@bsglaw.net
Harrington, Arthur J.	aharring@gklaw.com
Harris, Scott Blake	Scott.Harris@hq.doe.gov
Hawkins, E. Roy	erh@nrc.gov
Hearing Docket	hearingdocket@nrc.gov
Heinzen, Steven A.	sheinzen@gklaw.com
Hembacher, Brian	brian.hembacher@doj.ca.gov
Horin, William	whorin@winston.com
Houck, Darcie L.	dhouck@ndnlaw.com
Irwin, Donald P.	dirwin@hunton.com
James, Gregory L. Esq.	gjames@earthlink.net
Johnson, Abigail	eurekanrc@gmail.com
Kahn, Zachary	zxk1@nrc.gov
Klevorick, Phil	klevorick@co.clark.nv.us
Larimore, Patricia	plarimore@talisman-intl.com
Lawrence, John W.	jlawrence@nuclearlawyer.com
Leigh, Rovianna	rleigh@abbwlaw.com
Lembke, Alisa	alembke@invocounty.us
Lenahan, Daniel	daniel.lenahan@nrc.gov
Lev, Sean	sean.lev@hq.doe.gov
Lewis, Linda	linda.lewis@nrc.gov
List, Robert F.	rlist@armstrongteasdale.com

Loveland, Bryce
Lynch, Susan
Maerten, Daniel
Malsch, Martin G.
Martin, Circe
Martinez, Melanie
Mathias, Linda
McRae, Ben
Meharg, Stephanie
Mercado, Michele
Miras-Wilson, Rachel
Montesi, Susan
Moore, Thomas S.
Mueller, Edwin
Murphy, Malachy
Nezhad, Cyrus
Niegemann, Brian
OCAA Mail Center
Pak, Christina
Peebles, John M.
Peterson, William
Pitchford, Loreen, LSN Coordinator
Pitts, Jason
Poland, Douglas M.
Putzu, Frank
Renfro, Hanna
Repka, David A.
Rhoan, Robert
Robbins, Alan
Roby, Debra
Rosenthal, Alan S.
Rotman, Matthew
Ryan, Tom
Ryerson, Paul S.
Schwartz, Jacqueline
Sears, Richard
Shebelskie, Michael R.
Silberg, Jay E.
Silvia, Andrea L.
Simkins, Connie
Simon, Mike
Sisco, Carlos L.
Sommer, Josephine
Sullivan, Timothy E.
Tucker, Katherine
VanNiel, Jeffrey D.
Vazquez, Tameka
Vibert, Elizabeth A.
Walsh, Timothy J.

bloveland@jsslaw.com
slynch1761@gmail.com
Daniel.Maerten@caci.com
mmalsch@nuclearlawyer.com
ogcmailcenter@nrc.gov
wpnucwst2@mwpower.net
yuccainfo@mineralcountynv.org
Ben.McRae@hq.doe.gov
smeharg@hunton.com
michele.mercado@doj.ca.gov
rwilson@winston.com
smontesi@nuclearlawyer.com
tsm2@nrc.gov
muellered@msn.com
mrmurphy@chamberscable.com
Cyrus.Nezhad@hq.doe.gov
bniegemann@ndnlaw.com
OCAAEMAIL@nrc.gov
Christina.Pak@hq.doe.gov
ipeebles@ndnlaw.com
paengineer@juno.com
lpitchford@comcast.net
jayson@idtservices.com
dpoland@gklaw.com
frank.putzu@navy.mil
hrenfro@gklaw.com
drepka@winston.com
rrhoan@ndnlaw.com
arobbins@jsslaw.com
droby@jsslaw.com
rsnthl@nrc.gov; axr@nrc.gov
matthew.rotman@nrc.gov
Tom.Ryan@nrc.gov
psrl@nrc.gov
jschwartz@gklaw.com
rwsears@wpcda.org
mshebelskie@hunton.com
jay.silberg@pillsburylaw.com
alc1@nrc.gov
jcciac@co.lincoln.nv.us
wpnucast1@mwpower.net
csisco@winston.com
Josephine.Sommer@ymp.gov
timothy.sullivan@doj.ca.gov
Katie.Tucker@nrc.gov
nbrjdv@gmail.com
purpose_driven@yahoo.com
VibertE@co.clark.nv.us
timothy.walsh@pillsburylaw.com

Wardwell, Richard E.
Webb, Maria
Whipple, Bret
Williams, Scott
Wright, Belinda A.
Young, Mitzi A.
Zabarte, Ian
Zobler, Marian L.

rew@nrc.gov
maria.webb@pillsburylaw.com
bretwhipple@lcturbonet.com
swilliams@abbwlaw.com
bwright@hunton.com
may@nrc.gov
mrizabarte@gmail.com
mlz@nrc.gov

Signed (electronically) by Donald J. Silverman
Donald J. Silverman

DB1/64315202.1

EXHIBIT B

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

Before Administrative Judges:

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

In the Matter of

U.S. DEPARTMENT OF ENERGY

(High Level Waste Repository)

Docket No. 63-001-HLW

ASLBP No. 09-892-HLW-CAB04

February 16, 2010

ORDER
(Granting Stay of Proceeding)

On February 1, 2010, the Department of Energy (DOE) moved for an interim suspension of discovery as well as a stay of most aspects of this construction authorization proceeding through the disposition of a further motion (which DOE stated that it will file within the next 30 days) seeking to withdraw its license application. DOE clarified that it was not requesting to stay "DOE's submission addressing the Board's questions at the January 27, 2010 Case Management Conference, as well as the other parties' written responses to that filing."¹ On February 2, 2010, the Board granted DOE's unopposed request for an interim suspension of discovery, pending disposition of DOE's motion to stay.²

DOE's motion to stay is supported by nearly all parties.³ No party or interested governmental participant has filed a timely opposition. Therefore, to avoid potentially unnecessary expenditure of resources, but with the exception noted below, the Board grants

¹ U.S. Department of Energy's Motion to Stay the Proceeding (Feb. 1, 2010) at 2 [hereinafter DOE Motion].

² CAB Order (Granting Interim Suspension of Discovery) (Feb. 2, 2010) (unpublished).

³ DOE Motion at 3; White Pine County Notice of Non Opposition to DOE's Motion to Stay (Feb. 1, 2010); NRC Staff Response to U.S. Department of Energy Motion to Stay the Proceeding (Feb. 2, 2010).

DOE's motion to stay the proceeding until the Board resolves DOE's expected motion to withdraw its license application. The grant of this stay shall not in any way affect the Board's future actions regarding the preservation and archiving of the Licensing Support Network document collections of the parties and interested governmental participants. The Board expects to set a schedule for further filings in that regard after DOE submits a status report on its archiving plan, as promised no later than February 19, 2010.⁴

It is so ORDERED.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD

/RA/

Thomas S. Moore, Chairman
ADMINISTRATIVE JUDGE

Rockville, Maryland
February 16, 2010

⁴ The Department of Energy's Answers to the Board's Questions at the January 27, 2010 Case Management Conference (Feb. 4, 2010) at 4.

**U.S. DEPARTMENT OF ENERGY (High Level Waste Repository) Docket No. 63-001-HLW
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U.S. Department of Energy
Office of General Counsel
1000 Independence Avenue S.W.
Washington, DC 20585
Martha S. Crosland, Esq.
martha.crosland@hq.doe.gov
Nicholas P. DiNunzio, Esq.
nick.dinunzio@rw.doe.gov
Scott Blake Harris, Esq.
scott.harris@hq.doe.gov
Sean A. Lev, Esq.
sean.lev@hq.doe.gov
James Bennett McRae
ben.mcrae@hq.doe.gov
Cyrus Nezhad, Esq.
cyrus.nezhad@hq.doe.gov
Christina C. Pak, Esq.
christina.pak@hq.doe.gov

Office of General Counsel
1551 Hillshire Drive
Las Vegas, NV 89134-6321
Jocelyn M. Gutierrez, Esq.
jocelyn.gutierrez@ymp.gov
Josephine L. Sommer, Paralegal
josephine.sommer@ymp.gov

U.S. Department of Energy
Office of Counsel, Naval Sea Systems Command
Nuclear Propulsion Program
1333 Isaac Hull Avenue, SE, Building 197
Washington, DC 20376
Frank A. Putzu, Esq.
frank.putzu@navy.mil

For U.S. Department of Energy
USA-Repository Services LLC
Yucca Mountain Project Licensing Group
1160 N. Town Center Drive, Suite 240
Las Vegas, NV 89144
Stephen J. Cereghino, Licensing/Nucl Safety
stephen_cereghino@ymp.gov

For U.S. Department of Energy
Talisman International, LLC
1000 Potomac St., NW, Suite 300
Washington, DC 20007
Patricia Larimore, Senior Paralegal
plarimore@talisman-intl.com

U.S. DEPARTMENT OF ENERGY (High Level Waste Repository) Docket No. 63-001-HLW
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Counsel for U.S. Department of Energy
Morgan, Lewis & Bockius LLP
1111 Pennsylvania Ave., NW
Washington, DC 20004
Clifford W. Cooper, Paralegal
ccooper@morganlewis.com
Lewis M. Csedrik, Esq.
lcsedrik@morganlewis.com
Jay M. Gutierrez, Esq.
jgutierrez@morganlewis.com
Raphael P. Kuyler, Esq.
rkuyler@morganlewis.com
Charles B. Moldenhauer, Esq.
cmoldenhauer@morganlewis.com
Thomas D. Poindexter, Esq.
tpoindexter@morganlewis.com
Alex S. Polonsky, Esq.
apolonsky@morganlewis.com
Thomas A. Schmutz, Esq.
tschmutz@morganlewis.com
Donald J. Silverman, Esq.
dsilverman@morganlewis.com
Shannon Staton, Legal Secretary
ssstaton@morganlewis.com
Annette M. White, Esq.
Annette.white@morganlewis.com
Paul J. Zaffuts, Esq.
pzaffuts@morganlewis.com

Counsel for State of Nevada
Egan, Fitzpatrick, Malsch & Lawrence, PLLC
1750 K Street, NW, Suite 350
Washington, DC 20006
Martin G. Malsch, Esq.
mmalsch@nuclearlawyer.com
Susan Montesi:
smontesi@nuclearlawyer.com

Egan, Fitzpatrick, Malsch & Lawrence, PLLC
12500 San Pedro Avenue, Suite 555
San Antonio, TX 78216
Laurie Borski, Paralegal
lborski@nuclearlawyer.com
Charles J. Fitzpatrick, Esq.
cfitzpatrick@nuclearlawyer.com
John W. Lawrence, Esq.
jlawrence@nuclearlawyer.com

Counsel for U.S. Department of Energy
Hunton & Williams LLP
Riverfront Plaza, East Tower
951 East Byrd Street
Richmond, VA 23219
Kelly L. Faglioni, Esq.
kfaglioni@hunton.com
Donald P. Irwin, Esq.
dirwin@hunton.com
Stephanie Meharg, Paralegal
smeharg@hunton.com
Michael R. Shebelskie, Esq.
mshebelskie@hunton.com
Belinda A. Wright, Sr. Professional Assistant
bwright@hunton.com

Bureau of Government Affairs
Nevada Attorney General
100 N. Carson Street
Carson City, NV 89701
Marta Adams, Chief Deputy Attorney General
madams@ag.nv.gov

Nevada Agency for Nuclear Projects
Nuclear Waste Project Office
1761 East College Parkway, Suite 118
Carson City, NV 89706
Steve Frishman, Tech. Policy Coordinator
steve.frishman@gmail.com
Susan Lynch, Administrator of Technical Prgms
szeeee@nuc.state.nv.us

U.S. DEPARTMENT OF ENERGY (High Level Waste Repository) Docket No. 63-001-HLW
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Counsel for Lincoln County, Nevada
Whipple Law Firm
1100 S. Tenth Street
Las Vegas, NV 89017
Annie Bailey, Legal Assistant
baileys@lcturbonet.com
Adam L. Gill, Esq.
adam.whipplelaw@yahoo.com
Eric Hinckley, Law Clerk
erichinckley@yahoo.com
Bret Whipple, Esq.
bretwhipple@nomademail.com

Lincoln County District Attorney
P. O. Box 60
Pioche, NV 89403
Gregory Barlow, Esq.
lca@lcturbonet.com

Lincoln County Nuclear Oversight Program
P.O. Box 1068
Caliente, NV 89008
Connie Simkins, Coordinator
jcciac@co.lincoln.nv.us

For Lincoln County, Nevada
Intertech Services Corporation
PO Box 2008
Carson City, NV 89702
Mike Baughman, Consultant
mikebaughman@charter.net

Counsel for Nye County, Nevada
Ackerman Senterfitt
801 Pennsylvania Avenue, NW, #600
Washington, DC 20004
Robert Andersen, Esq.
robert.andersen@akerman.com

Counsel for Nye County, Nevada
Jeffrey VanNiel, Esq.
530 Farrington Court
Las Vegas, NV 89123
nbridvn@gmail.com

Nye County Regulatory/Licensing Advisor
18160 Cottonwood Rd. #265
Sunriver, OR 97707
Malachy Murphy, Esq.
mrmurphy@chamberscable.com

Nye Co. Nuclear Waste Repository Project Office
2101 E. Calvada Boulevard, Suite 100
Pahrump, NV 89048
Zoie Choate, Secretary
zchoate@co.nye.nv.us
Sherry Dudley, Admin. Technical Coordinator
sdudley@co.nye.nv.us

Clark County, Nevada
500 S. Grand Central Parkway
Las Vegas, NV 98155
Phil Klevatorick, Sr. Mgmt Analyst
klevatorick@co.clark.nv.us
Elizabeth A. Vibert, Deputy District Attorney
Elizabeth.Vibert@ccdavn.com

Counsel for Clark County, Nevada
Jennings, Strouss & Salmon
8330 W. Sahara Avenue, #290
Las Vegas, NV 89117
Bryce Loveland, Esq.
bloveland@jsslaw.com

U.S. DEPARTMENT OF ENERGY (High Level Waste Repository) Docket No. 63-001-HLW
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Counsel for Clark County, Nevada
Jennings, Strouss & Salmon
1700 Pennsylvania Avenue, NW, Suite 500
Washington, DC 20006-4725
Elene Belte, Legal Secretary
ebelete@jsslaw.com
Alan I. Robbins, Esq.
arobbins@jsslaw.com
Debra D. Roby, Esq.
droby@jsslaw.com

Eureka County, Nevada
Office of the District Attorney
701 S. Main Street, Box 190
Eureka, NV 89316-0190
Theodore Beutel, District Attorney
tbeutel.ecda@eurekanv.org

Counsel for Eureka County, Nevada
Harmon, Curran, Speilberg & Eisenberg, LLP
1726 M. Street N.W., Suite 600
Washington, DC 20036
Diane Curran, Esq.
dcurran@harmoncurran.com
Matthew Fraser, Law Clerk
mfraser@harmoncurran.com

Eureka County Public Works
PO Box 714
Eureka, NV 89316
Ronald Damele, Director
rdamele@eurekanv.org

Nuclear Waste Advisory for Eureka
County, Nevada
1983 Maison Way
Carson City, NV 89703
Abigail Johnson, Consultant
eurekanrc@gmail.com

For Eureka County, Nevada
NWOP Consulting, Inc.
1705 Wildcat Lane
Ogden, UT 84403
Loreen Pitchford, Consultant
lpitchford@comcast.net

Counsel for Churchill, Esmeralda, Lander,
and Mineral Counties, Nevada
Armstrong Teasdale, LLP
1975 Village Center Circle, Suite 140
Las Vegas, NV 89134-6237
Jennifer A. Gores, Esq.
jgores@armstrongteasdale.com
Robert F. List, Esq.
rlist@armstrongteasdale.com

Esmeralda County Repository Oversight Program-
Yucca Mountain Project
PO Box 490
Goldfield, NV 89013
Edwin Mueller, Director
muellered@msn.com

Mineral County Nuclear Projects Office
P.O. Box 1600
Hawthorne, NV 89415
Linda Mathias, Director
yuccainfo@mineralcountynv.org

For City of Caliente, Lincoln County, and
White Pine County, Nevada
P.O. Box 126
Caliente, NV 89008
Jason Pitts, LSN Administrator
jayson@idtservices.com

U.S. DEPARTMENT OF ENERGY (High Level Waste Repository) Docket No. 63-001-HLW
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White Pine County, Nevada
Office of the District Attorney
801 Clark Street, #3
Ely, NV 89301
Richard Sears, District Attorney
rwsears@wpcda.org

White Pine County Nuclear Waste Project Office
959 Campton Street
Ely, NV 89301
Mike Simon, Director
wpnucwst1@mwpower.net
Melanie Martinez, Sr. Management Assistant
wpnucwst2@mwpower.net

For White Pine County, Nevada
Intertech Services Corporation
PO Box 2008
Carson City, NV 89702
Mike Baughman, Consultant
bigboff@aol.com

Counsel for Inyo County, California
Greg James, Attorney at Law
710 Autumn Leaves Circle
Bishop, CA 93514
E-Mail: glijames@earthlink.net

Inyo County Yucca Mountain Repository
Assessment Office
P. O. Box 367
Independence, CA 93526-0367
Alisa M. Lembke, Project Analyst
alembke@inyocounty.us

Counsel for Inyo County, California
Law Office of Michael Berger
479 El Sueno Road
Santa Barbara, CA 93110
Michael Berger, Esq.
michael@lawofficeofmichaelberger.com
Robert Hanna, Esq.
robert@lawofficeofmichaelberger.com

California Energy Commission
1516 Ninth Street
Sacramento, CA 95814
Kevin, W. Bell, Senior Staff Counsel
kwbell@energy.state.ca.us

California Department of Justice
Office of the Attorney General
1300 I Street, P.O. Box 944255
Sacramento, CA 94244-2550
Susan Durbin, Deputy Attorney General
susan.durbin@doj.ca.gov
Michele Mercado, Analyst
michele.Mercado@doj.ca.gov

Office of the Attorney General
1515 Clay Street, 20th Floor, P.O. Box 70550
Oakland, CA 94612-0550
Timothy E. Sullivan, Deputy Attorney General
timothy.Sullivan@doj.ca.gov

Office of the Attorney General
300 S. Spring Street, Suite 1702
Los Angeles, CA 90013
Brian Hembacher, Deputy Attorney General
brian.hembacher@doj.ca.gov

U.S. DEPARTMENT OF ENERGY (High Level Waste Repository) Docket No. 63-001-HLW
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Nuclear Energy Institute
Office of the General Counsel
1776 I Street, NW Suite 400
Washington, DC 20006-3708
Michael A. Bauser, Esq.
mab@nei.org
Anne W. Cottingham, Esq.
awc@nei.org
Ellen C. Ginsberg, Esq.
ecg@nei.org

Counsel for Nuclear Energy Institute
Pillsbury Winthrop Shaw Pittman LLP
2300 N Street, N.W.
Washington, DC 20037-1122
Jay E. Silberg, Esq.
jay.silberg@pillsburylaw.com
Timothy J.V. Walsh, Esq.
timothy.walsh@pillsburylaw.com
Maria D. Webb, Senior Energy Legal Analyst
maria.webb@pillsburylaw.com

Counsel for Nuclear Energy Institute
Winston & Strawn LLP
1700 K Street, N.W.
Washington, DC 20006-3817
William A. Horin, Esq.
whorin@winston.com
Rachel Miras-Wilson, Esq.
rwilson@winston.com
David A. Repka, Esq.
drepka@winston.com
Carlos L. Sisco, Senior Paralegal
csisco@winston.com

Native Community Action Council
P.O. Box 140
Baker, NV 89311
Ian Zabarte, Member of Board of Directors
mrizabarte@gmail.com

Counsel for Native Community Action Council
Alexander, Berkey, Williams & Weathers LLP
2030 Addison Street, Suite 410
Berkeley, CA 94704
Curtis G. Berkey, Esq.
cberkey@abwwlaw.com
Rovianne A. Leigh, Esq.
leigh@abwwlaw.com
Scott W. Williams, Esq.
swilliams@abwwlaw.com

U.S. DEPARTMENT OF ENERGY (High Level Waste Repository) Docket No. 63-001-HLW
ORDER (Granting Stay of Proceeding)

Counsel for Joint Timbisha Shoshone Tribal Group
Fredericks, Peebles, & Morgan LLP
1001 Second St.
Sacramento, CA 95814
Felicia M. Brooks, Data Administrator
fbrooks@ndnlaw.com
Ross D. Colburn, Law Clerk
rcolburn@ndnlaw.com
Sally Eredia, Legal Secretary
seredia@ndnlaw.com
Darcie L. Houck, Esq.
dhouck@ndnlaw.com
Brian Niegemann, Office Manager
bniegemann@ndnlaw.com
John M. Peebles, Esq.
jpeebles@ndnlaw.com
Robert Rhoan, Esq.
rrhoan@ndnlaw.com

Fredericks, Peebles, & Morgan LLP
3610 North 163rd Plaza
Omaha, NE 68116
Shane Thin Elk, Esq.
sthinelk@ndnlaw.com

Counsel for Joint Timbisha Shoshone Tribal Group
Godfrey & Kahn, S.C.
One East Main Street, Suite 500
P. O. Box 2719
Madison, WI 53701-2719
Julie Dobie, Legal Secretary
jdobie@gklaw.com
Steven A. Heinzen, Esq.
sheinzen@gklaw.com
Douglas M. Poland, Esq.
dpoland@gklaw.com
Hannah L. Renfro, Esq.
hrenfro@gklaw.com
Jacqueline Schwartz, Paralegal
jschwartz@gklaw.com

Godfrey & Kahn, S.C.
780 N. Water Street
Milwaukee, WI 53202
Arthur J. Harrington, Esq.
aharrington@gklaw.com

For Joint Timbisha Shoshone Tribal Group
3560 Savoy Boulevard
Pahrump, NV 89601
Joe Kennedy, Executive Director
joekennedy08@live.com
Tameka Vazquez, Bookkeeper
purpose_driven12@yahoo.com

[Original Signed by Linda D. Lewis]
Office of the Secretary of the Commission

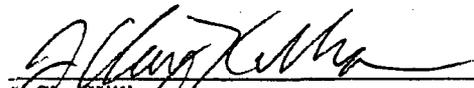
Dated at Rockville, Maryland
this 16th day of February 2010

EXHIBIT C

AFFIDAVIT OF J. CLAY KILLIAN
AIKEN COUNTY ADMINISTRATOR

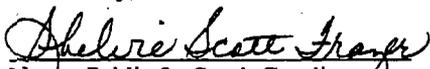
Comes now the affiant, J. Clay Killian, who hereby states:

1. I am the Administrator for Aiken County, South Carolina.
2. Aiken County owns fourteen parcels of improved and unimproved real estate located in close proximity to the Savannah River Site ("SRS"). These parcels include industrial facilities, public parks, office buildings, as well as unimproved parcels. A listing of these properties is hereby attached.
3. The locations of all of these parcels have been plotted by the Aiken County Department of Public Works, and all of them are within 10.52 miles of SRS. Most significantly, the Savannah River Research Center, owned by Aiken County is located contiguous to SRS, and houses the Center for Hydrogen Research, a multi-million dollar facility studying new products and services for the emerging hydrogen economy.
4. The Savannah River Research Campus comprises 391 acres and has an assessed value of \$18,700,000. The Campus is the location for the Center for Hydrogen Research, a facility comprising 60,000 square feet which was especially designed and constructed by Aiken County for hydrogen production, storage and infrastructure research. The Center is designed to co-locate, in the same laboratory complex, hydrogen research programs being conducted by the Savannah River National Laboratory with programs sponsored by industry and academia. Lessees in the Research Center currently include Toyota and the Savannah River National Laboratory. Leases with Clemson University, the University of South Carolina, and South Carolina State University are in the process of negotiation and are not yet completed.
5. The assessed value for these fourteen parcels totals \$589,990,045, according to records kept by the Aiken County Assessor's Office from 2006.



J. Clay Killian
Administrator
County of Aiken, South Carolina
February 17, 2010

Sworn to before me this 17th day
of February, 2010



Notary Public for South Carolina

My Commission expires 7-27-2019

SCHEDULE OF AIKEN COUNTY PROPERTY CLOSE TO SAVANNAH RIVER SITE								
TPN	OLD TPN	SITUS	PROPERTY USE	DISTANCE FROM SRS	LAND SIZE	IMPROV.	ASSET(\$)	REMARKS
026-03-03-001	00-039-0-02-094	300 URQUHART DRIVE	INDUSTRIAL	10.20 miles	35.95	YES	\$180,000,000	URQUHART SCE&G POWER PLANT
026-14-01-020	00-039-0-02-095	300 URQUHART DRIVE	INDUSTRIAL	10.50 miles	0.29	YES	INCLUDED ABOVE	URQUHART SCE&G POWER PLANT
026-14-04-003	60-002-0-07-001	URQUHART DRIVE	INDUSTRIAL	10.52 miles	0.17	YES	INCLUDED ABOVE	URQUHART SCE&G POWER PLANT
027-07-02-001	00-041-0-04-096	226 OLD JACKSON HWY.	INDUSTRIAL	9.27 miles	28.87	YES	\$391,133,245	KIMBERLY CLARK INDUSTRIAL PLANT
027-11-01-001		227 OLD JACKSON HWY.	INDUSTRIAL	9.21 miles	25.65	YES	INCLUDED ABOVE	KIMBERLY CLARK INDUSTRIAL PLANT
028-11-12-001	60-001-0-08-001	URQUHART DRIVE	PARK	10.13 miles	1.10	YES	\$27,000	PLAYGROUND AND PARK
039-19-01-001	00-061-0-01-010	SPANN HAMMOND ROAD	PARK	8.18 miles	21.00	YES	\$34,800	SPANN HAMMOND PARK
039-19-01-006	00-081-0-01-093	WATERS ROAD	CEMETERY	7.97 miles	1.00	NONE	NO VALUE	CEMETERY
040-07-02-002	00-062-0-01-253	HAMMOND ROAD	DORMANT	7.74 miles	3.01	NONE	\$13,545	NATURAL WOODED PARCEL
055-16-02-003	00-086-0-01-194	WILLISTON ROAD	PARK	5.39 miles	3.99	YES	\$32,955	SPIDER WEBB PARK
077-12-32-001	40-005-0-02-007	317 MAIN STREET	DORMANT	0.83 miles	0.82	YES	UNKNOWN	FORMER CAMPBELLS SERVICE STATION
127-00-01-001	00-164-0-01-047	WILLISTON ROAD	RESEARCH CAMPUS	Adjacent	391.00	YES	\$18,700,000	CORPORATE RESEARCH CENTER
141-17-12-008	50-011-0-03-016	716 OLD WHISKEY ROAD	DORMANT	2.75 miles	0.02	NONE	\$500	NATURALLY WOODED LOT
142-05-18-014	50-012-0-08-012	WHISKEY ROAD	OFFICE	2.10 miles	1.10	YES	\$48,000	AIKEN COUNTY MAGISTRATE OFFICE
					TOTAL		\$589,990,045	
NOTE:								
THE DOLLAR AMOUNTS IN ASSETS WERE OBTAINED FROM AIKEN COUNTY FINANCE DEPT., PUBLIC WORKS DEPT. AND ASSESSOR'S OFFICE FILES. THESE DOLLAR FIGURES ARE NOT INTENDED OR TO BE CONSTRUED AS MARKET VALUES OF THESE PARCELS.								

EXHIBIT D

suitability guidelines established by DOE. DOE is also subject to environmental protection and transportation requirements such as those set by the Clean Air Act; Clean Water Act; Hazardous Material Transportation Act; Emergency Planning and Community Right-to-Know Act of 1986; Comprehensive Environmental Response, Compensation, and Liability Act; Resource Conservation and Recovery Act; National Historic Preservation Act; Archaeological Resources Protection Act; Endangered Species Act; Nuclear Regulatory Commission regulations applicable to the transportation of radioactive materials; U.S. Department of Transportation regulations governing the transportation of hazardous materials; and applicable Nevada State statutes and regulations. In accordance with several statutes, DOE would need several new permits, licenses, and approvals from both Federal and State agencies to construct, operate and monitor, and eventually close the proposed Yucca Mountain Repository.

Under the authority of the Atomic Energy Act, DOE is responsible for establishing a comprehensive health, safety, and environmental program for its activities and facilities. The Department has established a framework for managing its facilities through the promulgation of regulations and the issuance of DOE Orders. In general, DOE Orders set forth policies, programs, and procedures for implementing policies. Many DOE Orders contain specific requirements in the areas of radiation protection, nuclear safety and safeguards, and security of nuclear material. Because the Nuclear Regulatory Commission is authorized to license the proposed Yucca Mountain repository, DOE issued Order 250.1 exempting such a repository from compliance with provisions of DOE Orders that overlap or duplicate Nuclear Regulatory Commission licensing requirements.

DOE has interacted with agencies authorized to issue permits, licenses, and other regulatory approvals, as well as those responsible for protecting such significant resources as endangered species, wetlands, or historic properties. DOE also has coordinated with the affected units of local government, U.S. Nuclear Regulatory Commission, U.S. Air Force, U.S. Navy, U.S. Department of Agriculture, U.S. Department of Transportation, U.S. Environmental Protection Agency, Department of the Interior including its Bureaus (U.S. Fish and Wildlife Service, National Park Service, and Bureau of Land Management), the Council on Environmental Quality, Nevada Department of Transportation, and Native American tribes. In addition, DOE provided a copy of the Draft EIS and Supplement to the Draft EIS to these agencies and entities.

S.12 Conclusions

S.12.1 MAJOR CONCLUSIONS OF THE EIS

In general, the Proposed Action would cause small, short-term public health impacts due primarily to the transportation of spent nuclear fuel and high-level radioactive waste from the existing commercial and DOE sites to the proposed repository. The specific impacts at the repository site would be very small as indicated in Table S-1. The transportation impacts would be associated mainly with nonradiological traffic fatalities and very low radiological doses to members of the public from the routine transportation of radioactive materials.

The EIS analysis demonstrated that the long-term performance of the proposed repository over 10,000 years would result in a mean peak annual dose of 0.00002 millirem to a reasonably maximally exposed individual hypothetically located 18 kilometers (11 miles) from the repository. The analysis of a human intrusion event occurring at 30,000 years indicated a mean peak annual dose of 0.002 millirem to the reasonably maximally exposed individual at the same location.

As a result of this evaluation, DOE does not expect the repository to result in impacts to public health beyond those that could result from the prescribed radiation exposure and activity concentration limits in 40 CFR Part 197 and 10 CFR Part 63 during the 10,000-year period after closure.

IMPACTS FROM THE PROPOSED ACTION

Nonradiological hazards

- 2 to 3 worker fatalities from repository construction, operation and monitoring, and closure
- 2 to 4 worker fatalities from traffic accidents while commuting to and from the repository
- 6 to 14 traffic fatalities associated with the transportation of construction materials and public involved in accidents with commuters
- 3 to 5 traffic fatalities associated with the shipment of spent nuclear fuel and high-level radioactive waste
- 2 to 3 fatalities in the general population due to latent effects of vehicle emissions (transportation of spent nuclear fuel and high-level radioactive waste, construction materials, and commuters)

Radiological

- 4 to 7 latent cancer fatalities to workers at the repository
- 3 to 12 latent cancer fatalities to workers during the loading and transport of spent nuclear fuel and high-level radioactive waste
- 0.5 to 2 latent cancer fatalities in the general population from releases of naturally occurring radon from the repository
- 0.6 to 2.5 latent cancer fatalities in the general population from loading and transport of spent nuclear fuel and high-level radioactive waste
- Essentially zero long-term latent cancer fatalities within 10,000 years associated with the repository performance

These values represent the range of impacts for all operating modes, transportation scenarios, and implementing alternatives.

Under the No-Action Alternative, latent cancer fatalities would be unlikely in the short term in either the worker or public populations. These short-term impacts would be very similar to those associated with the Proposed Action. In addition, under the No-Action Alternative there would be no impacts associated with the transportation of spent nuclear fuel and high-level radioactive waste to the proposed repository. However, the obligation to store these materials continually in a safe configuration would become the responsibility of future generations.

There could be large public health and environmental consequences under the No-Action Alternative if there were no effective institutional control, causing storage facilities and containers to deteriorate and radioactive contaminants from the spent nuclear fuel and high-level radioactive waste to enter the environment. In such circumstances, there would be widespread contamination at the 72 commercial and 5 DOE sites across the United States, with resulting human health impacts.

Table S-1 compares the potential impacts associated with the Proposed Action to those associated with the No-Action Alternative.

S.12.2 DISTINCTIONS BETWEEN IMPACTS OF THE PROPOSED ACTION AND NO-ACTION ALTERNATIVE

The analysis of the potential short-term environmental impacts associated with the Proposed Action and with the two No-Action scenarios revealed that the impacts would be small and related to health and safety and to socioeconomics.

Table S-1. Impacts associated with the Proposed Action and No-Action Alternative.* (page 1 of 4).

Resource area	Flexible design potential operating modes—range of impacts			No-Action Alternative		
	Short-term (through closure)		Long-term (after closure, to 10,000 years)	Short-term (100 years)	Long-term (100 to 10,000 years)	
	Repository	Transportation		Scenario 1	Scenario 2	
<i>Land use and ownership</i>	Small; the flexible design range of disturbed land is from 4.3 km ² to about 6.0 km ² of the 600 km ² that comprise the analyzed withdrawal area	Small to moderate; 0 to about 20 km ² of land disturbed for new transportation routes; Air Force identified Nellis Air Force Range conflicts for some routes; some routes pass close to or through Wilderness Study Areas; some corridors could directly impact Native Americans and Indian reservations; and one corridor could conflict with the Ivanpah Airport construction and operation	Small; potential for limited access into the area; the only surface features remaining would be markers	Small; storage would continue at existing sites	Small; storage would continue at existing sites	Large; potential contamination of 0.04 to 0.4 km ² surrounding each of the 72 commercial and 5 DOE sites
<i>Air quality</i>	Small; releases and exposures well below regulatory limits (less than 6 percent of limits)	Small; releases and exposures below regulatory limits; pollutants from vehicle traffic and trains would be small in comparison to other national vehicle and train traffic; Clean Air Act General Conformity Requirements might apply in Clark County Nevada	Very small, 5.3 × 10 ⁻¹⁰ latent cancer fatalities peak effect	Small; releases and exposures well below regulatory limits	Small; releases and exposures well below regulatory limits	Small; degraded facilities would preclude large atmospheric releases
<i>Hydrology (groundwater and surface water)</i>	Groundwater—small; water demand (230 to 290 acre-feet per year) well below lowest estimate of the groundwater basin's perennial yield (580 acre-feet)	Small; withdrawal of up to 710 acre-feet from multiple wells and hydrographic areas over about 4 years	Small amounts of contamination of groundwater in Amargosa Valley during the first 10,000 years. Contamination is several hundred thousand times less than the groundwater protection standard in 40 CFR 197	Small; usage would be small in comparison to other site use	Small; usage would be small in comparison to other site use	Large; potential for radiological contamination of groundwater around 72 commercial and 5 DOE sites
	Surface water—small; new land disturbance of 2.8 to 4.5 square kilometers would result in minor changes to runoff and infiltration rates; floodplain assessment concluded impacts would be small	Small; minor changes to runoff and infiltration rates; all rail corridors pass through areas of identified 100-year flood zones; additional floodplain assessments would be performed in the future as necessary	Small; minor changes to runoff and infiltration rates	Small; minor changes to runoff and infiltration rates	Small; minor changes to runoff and infiltration rates	Small; minor changes to runoff and infiltration rates

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Summary

Table S-1. Impacts associated with the Proposed Action and No-Action Alternative.^a (page 2 of 4).

Resource area	Flexible design potential operating modes—range of impacts				No-Action Alternative	
	Short-term (through closure)		Long-term (after closure, to 10,000 years)	Short-term (100 years)	Long-term (100 to 10,000 years)	
	Repository	Transportation			Scenario 1	Scenario 2
<i>Biological resources and soils</i>	Small to moderate; loss of about 4.3 km ² to 6.0 km ² of desert soil, habitat, and vegetation; adverse impacts to individual threatened desert tortoises (not the species as a whole); reasonable and prudent measures to minimize impacts; impacts to other plants and animals and habitat small; wetlands assessment concluded impacts would be small	Small to moderate; loss of 0 to 20 km ² of desert soil, habitat, and vegetation for heavy-haul routes and rail corridors; adverse impacts to individual threatened desert tortoises (not the species as a whole); reasonable and prudent measures to minimize impacts; impacts to other plants and animals and habitat small; additional wetlands assessments would be performed in the future as necessary prior to any construction	Small; slight increase in temperature of surface soil directly over the repository for 10,000 years resulting in a potential temporary shift in plant and animal communities in this small area (about 8 km ²)	Small; storage would continue at existing sites	Small; storage would continue at existing sites	Large; potential adverse impacts at each of the 77 sites from subsurface contamination of 0.04 to 0.4 km ²
<i>Cultural resources</i>	Small to moderate; repository development would disturb up to about 4.5 km ² of previously undisturbed land; mitigation measures would avoid or minimize damage to and illicit collecting at archaeological sites; programs in place to minimize impacts; opposing Native American viewpoint	Small to moderate; loss of 0 to 20 km ² of land disturbed for new transportation routes; mitigation measures would avoid or minimize damage to and illicit collecting at archaeological sites; programs in place to minimize impacts; opposing Native American viewpoint	Small; potential for limited access into the area; opposing Native American viewpoint	Small; storage would continue at existing sites; limited potential of disturbing sites	Small; storage would continue at existing sites; limited potential of disturbing sites	Small; no construction or operation activities; no impacts
<i>Socioeconomics</i>	Small; estimated peak total employment of 3,400 occurring in 2006 would result in less than a 1 percent increase in composite regional employment; therefore, impacts would be small. Estimated peak direct employment for the repository during construction would be approximately 1,900 in 2006.	Small; employment increases would range from less than 1 percent to 4.9 percent (use of intermodal transfer station in Lincoln County) of employment in affected counties	Small; no workers, no impact	Small; population and employment changes would be small compared to totals in the regions	Small; population and employment changes would be small compared to totals in the regions	Small; no workers; no impacts
<i>Occupational and public health and safety</i>						
Public						
Radiological ^b						
MEI (probability of an LCF)	1.6x10 ⁻⁹ to 3.1x10 ⁻⁹	1.4x10 ⁻⁴ to 1.2x10 ⁻³	4x10 ⁻¹⁰ to 4x10 ⁻⁹ at the boundary of the controlled area (approximately 18 km south of the repository)	4.3x10 ⁻⁶	1.3x10 ⁻⁶	(e)
Population (LCFs)	0.46 to 2.0	0.61 to 2.5	2x10 ⁻⁴ to 3x10 ⁻⁴	0.41	3	3,300 ^c
Nonradiological (fatalities due to emissions)	Small; exposures well below regulatory limits	1.6 to 2.8 ^d	Small; exposures well below regulatory limits or guidelines	Small; exposures well below regulatory limits or guidelines	Small; exposures well below regulatory limits or guidelines	Moderate to large; substantial increases in releases of hazardous substances in the spent nuclear fuel and high-level radioactive waste and exposures to the public

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Summary

Table S-1. Impacts associated with the Proposed Action and No-Action Alternative.* (page 3 of 4).

Resource area	Flexible design potential operating modes—range of impacts			No-Action Alternative		
	Short-term (through closure)		Long-term (after closure, to 10,000 years)	Short-term	Long-term (100 to 10,000 years)	
	Repository	Transportation		(100 years)	Scenario 1	Scenario 2
<i>Occupational and public health and safety (continued)</i>						
Workers (involved and noninvolved)						
Radiological (LCFs)	4.0 to 6.8	3.2 to 11.7	No workers, no impacts	16	10	No workers, no impacts
Nonradiological fatalities (includes commuting traffic fatalities)	2.0 to 3.3	12 to 23 ^b	No workers, no impacts	9	1,080	No workers, no impacts
Accidents						
Public						
Radiological						
MEI (probability of an LCF)	2.9×10^{-13} to 1.9×10^{-9}	0.0015 to 0.015	Not applicable	No impacts	No impacts	Not applicable
Population (LCFs)	1.4×10^{11} to 1.1×10^{12}	0.55 to 5	Not applicable	No impacts	No impacts	3 to 13
Workers	Large; for some unlikely accident scenarios workers would likely be severely injured or killed	Large; for some unlikely accident scenarios workers would likely be severely injured or killed	No workers, no impacts	Large; for some unlikely accident scenarios workers would likely be severely injured or killed	Large; for some unlikely accident scenarios workers would likely be severely injured or killed	Small; no workers; no impacts
Noise/Ground Vibration						
	Small; impacts to public would be low due to large distances to residences; workers exposed to elevated noise levels—controls and protection used as necessary	Small to moderate; transient and not excessive, less noise than 90 dBA; ground vibration infrequent and less than 88 dBV at 25 m	Small; no activities, therefore, no noise or ground vibration	Small; transient and not excessive, less than 90 dBA	Small; transient and not excessive, less than 90 dBA	Small; no activities, therefore, no noise
Aesthetics						
	Small; low adverse impacts to aesthetic or visual resources in the area. There may be increase in lighting impacts due to lighting associated with the ventilation system	Small; possible temporary and transient; conflict with visual resource management goals for Wilson Pass Option of the Jean rail corridor; and discernible impacts from the Caliente Intermodal transfer facility near Kershaw-Ryan State Park.	Small; only surface features remaining would be markers	Small; storage would continue at existing sites; expansion as needed	Small; storage would continue at existing sites; expansion as needed	Small; aesthetic value decreases as facilities degrade
Utilities, energy, materials, and site services						
	Small; use of materials would be very small in comparison to amounts used in the region; electric power delivery system to the Yucca Mountain site would have to be enhanced	Small; use of materials and energy would be small in comparison to amounts used nationally	Small; no use of materials or energy	Small; materials and energy use would be small compared to total site use	Small; materials and energy use would be small compared to total site use	Small; no use of materials or energy
Management of site-generated waste and hazardous materials						
	Small; radioactive and hazardous waste generated would be a few percent of existing offsite capacity; other wastes would be managed onsite	Small; waste generated would be a fraction of existing offsite capacity	Small; no waste generated or hazardous materials used	Small; waste generated and materials used would be small compared to total site generation and use	Small; waste generated and materials used would be small compared to total site generation and use	Small; no waste generated or hazardous materials used

Table S-1. Impacts associated with the Proposed Action and No-Action Alternative.^a (page 4 of 4).

Resource area	Flexible design potential operating modes – range of impacts			No-Action Alternative		
	Short-term (through closure)		Long-term (after closure, to 10,000 years)	Short-term (100 years)	Long-term (100 to 10,000 years)	
	Repository	Transportation			Scenario 1	Scenario 2
<i>Environmental justice</i>	Small; no disproportionately high and adverse impacts to minority or low-income populations; opposing Native American viewpoint	Small; no disproportionately high and adverse impacts to minority or low-income populations; opposing Native American viewpoint	Small; no disproportionately high and adverse impacts to minority or low-income populations; opposing Native American viewpoint	Small; no disproportionately high and adverse impacts to minority or low-income populations	Small; no disproportionately high and adverse impacts to minority or low-income populations	Large; potential for disproportionately high and adverse impacts to minority or low-income populations

- a. Ranges might differ from simple addition of the minimum and maximum values listed for the constituent phases because these values might not correspond between different phases. For example, a scenario that maximizes impacts during construction could result in minimal impacts during operations.
- b. km² = square kilometers; to convert to acres, multiply by 247.1.
- c. To convert acre-feet to cubic meters, multiply by 1233.49.
- d. LCF = latent cancer fatality; MEI = maximally exposed individual.
- e. With no effective institutional controls, the maximally exposed individual could receive a fatal dose of radiation within a few weeks to months. Death would be caused by acute direct radiation exposure.
- f. Downstream exposed population of approximately 3.9 billion over 10,000 years.
- g. Nonradiological fatalities due to exhaust emissions health effects from spent nuclear fuel and high-level radioactive waste transportation, including loadout; exhaust emissions health effects from commuter and materials transportation for repository construction, operation, and closure; and rail line or heavy-haul truck/intermodal transfer station construction, maintenance, and operation.
- h. Nonradiological traffic fatalities from spent nuclear fuel and high-level radioactive waste transportation and commuter traffic fatalities. As many as 10 to 17 of these fatalities could be members of the public.
- i. dBA = *A-weighted decibels*, a common sound measurement. *A-weighting* accounts for the fact that the human ear responds more effectively to some pitches than to others. Higher pitches receive less weighting than lower ones.

For the Proposed Action, using DOE's preferred transportation mode (mostly rail), about 24 to 38 latent cancer fatalities and nonradiological fatalities would be associated with the transportation of spent nuclear fuel and high-level radioactive waste and the construction, operation and monitoring, and closure of the repository at Yucca Mountain. Depending on the transportation mode, transportation impacts of the Proposed Action would result in about 4 latent cancer fatalities and 14 to 23 nonradiological fatalities. Construction and operation of the repository would result in 4 to 8 latent cancer fatalities and 2 to 3 nonradiological fatalities, depending on the repository operating mode.

In comparison, there would be about 25 latent cancer fatalities and nonradiological fatalities from the No-Action Alternative (both scenarios) during the first 100 years. For both scenarios, there would be about 7 nonradiological fatalities from commuting and shipping construction materials and about 16 latent cancer fatalities and 2 nonradiological fatalities from construction and operations.

Short-term socioeconomic impacts would occur in the Yucca Mountain region and at the existing storage locations under the Proposed Action; impacts under the No-Action Alternative would occur only in the Yucca Mountain region. Under the Proposed Action, there would be nearly 2,700 new jobs in the three-county area around Yucca Mountain (Clark, Lincoln, and Nye Counties). In addition, under the Proposed Action there would be lost jobs at each of the sites across the United States as spent nuclear fuel and high-level radioactive waste was removed. Under the No-Action Alternative, there would be a loss of about 4,700 direct and indirect jobs in the three-county area around Yucca Mountain once reclamation was completed. There would be no short-term socioeconomic impacts at the storage sites under the No-Action Alternative.

The potential long-term (postclosure to 10,000 years) environmental impacts of the Proposed Action and No-Action Scenario 1 (continued institutional control) would also be small. Under the Proposed Action, there would be virtually no latent cancer fatalities (much less than 1) over 10,000 years. In addition, there would be a potential for very small impacts to vegetation and animals over the repository area as soil surface temperatures increased. Under the No-Action Scenario 1, there would be about 13 latent cancer fatalities and about 1,100 nonradiological fatalities associated with the construction and replacement of storage facilities, monitoring of facilities, worker commuting, and transportation of construction materials. Small impacts to other resources (for example, socioeconomic, biological resources, utilities and services) would occur.

There would be differences in the potential long-term environmental impacts under No-Action Scenario 2 (no institutional control after 100 years) compared to No-Action Scenario 1. Under No-Action Scenario 2, there would be about 3,300 latent cancer fatalities over 10,000 years as storage facilities across the United States degraded and radionuclides from spent nuclear fuel and high-level radioactive waste reached and contaminated the environment. There would be no fatalities associated with transportation, construction, or operation because those activities would not occur after the presumed loss of institutional control.

S.12.3 AREAS OF CONTROVERSY

The Department acknowledges that areas of controversy exist regarding the Proposed Action and the analyses in this EIS. Areas of controversy were identified during the public interaction processes. Many of these are not resolvable because they reflect either differing points of view or irreducible uncertainties in predicting the future. However, the Department has considered these areas in the development of this Final EIS. Other issues raised by the public are summarized in Section S.4.2.4.

Native American Viewpoint

Disagreement exists about the nature of the repository as it might impact elements of the natural and cultural environment that are of concern to Native American tribes.

CERTIFICATE OF FILING AND SERVICE

I hereby certify that on this 19th day of February, 2010, I filed with the Clerk's Office of the United States Court of Appeals for the District of Columbia Circuit, via hand delivery, an original and four copies of the foregoing *Petition for Writ of Mandamus*, and further certify that I served, via certified U.S. mail, return receipt requested, a true copy of the same upon counsel listed below:

The Honorable Steven Chu
Secretary, U.S. Department of Energy
1000 Independence Avenue, SW
Washington, DC 20585

U.S. Department of Energy
1000 Independence Avenue, SW
Washington, DC 20585

Gregory B. Jaczko
Chairman
U.S. Nuclear Regulatory Commission
Mail Stop 0-16G4
Washington, DC 20555-0001

U.S. Nuclear Regulatory Commission
Atomic Safety and Licensing Board (ASLBP)
Mail Stop T-3F23
Washington, DC 20555-0001

Thomas Moore
U.S. Nuclear Regulatory Commission
Atomic Safety and Licensing Board (ASLBP)
Mail Stop T-3 F23
Washington, DC 20555-0001

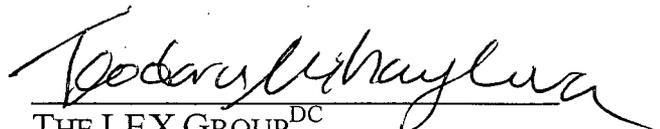
Paul Reyerson
U.S. Nuclear Regulatory Commission
Atomic Safety and Licensing Board (ASLBP)
Mail Stop T-3F23
Washington, DC 20555-0001

Richard Wardwell
U.S. Nuclear Regulatory Commission
Atomic Safety and Licensing Board (ASLBP)
Mail Stop T-3F23
Washington, DC 20555-0001

Channing D. Phillips
U.S. Attorney's Office
555 4th Street, NW
Washington DC 20530

Eric H. Holder, Esquire
US Attorney General
US Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

The necessary filing and service were performed in accordance with the instructions given to me by counsel in this case.



THE LEX GROUP^{DC}
1750 K Street, N.W., Suite 475
Washington, D.C. 20006
(202) 955-0001