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AUTHOR: Henry McMaster
AFFILIATION: VA
ADDRESSEE: Gregory Jaczko
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In The
United States Court of Appeals
For The Fourth Circuit

STATE OF SOUTH CAROLINA, EX REL. HENRY DARGAN MCMASTER,
ATTORNEY GENERAL,

Petitioner,

v.

THE UNITED STATES DEPARTMENT OF ENERGY; BARACK OBAMA,
PRESIDENT OF THE UNITED STATES, IN HIS OFFICIAL CAPACITY;
STEVEN CHU, SECRETARY OF ENERGY, IN HIS OFFICIAL CAPACITY; THE
NUCLEAR REGULATORY COMMISSION; AND GREGORY B. JACZKO,
CHAIRMAN OF THE NUCLEAR REGULATORY COMMISSION, IN HIS
OFFICIAL CAPACITY; 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 REVIEW AND
PETITION FOR WRIT OF MANDAMUS,
WRIT OF PROHIBITION, STAY, AND/OR
DECLARATORY AND INJUNCTIVE RELIEF

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U.S. COURT OF APPEALS
FOURTH CIRCUIT

Henry Dargan McMaster
John W. McIntosh
Robert D. Cook
Leigh Childs Cantey
OFFICE OF THE ATTORNEY GENERAL
OF SOUTH CAROLINA
Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-3970

William H. Davidson, II
Kenneth P. Woodington
DAVIDSON & LINDEMANN, P.A.
1611 Devonshire Drive, Second Floor
Post Office Box 8568
Columbia, South Carolina 29202
(803) 806-8222

Counsel for Petitioner

Counsel for Petitioner

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
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No. _____ Caption: State of South Carolina v. United States Department of Energy, et al.

Pursuant to FRAP 26.1 and Local Rule 26.1,

State of South Carolina who is Petitioner, makes the following disclosure:
(name of party/amicus) (appellant/appellee/amicus)

1. Is party/amicus a publicly held corporation or other publicly held entity? YES NO
2. Does party/amicus have any parent corporations? YES NO
If yes, identify all parent corporations, including grandparent and great-grandparent corporations:
3. Is 10% or more of the stock of a party/amicus owned by a publicly held corporation or other publicly held entity? YES NO
If yes, identify all such owners:
4. Is there any other publicly held corporation or other publicly held entity that has a direct financial interest in the outcome of the litigation (Local Rule 26.1(b))? YES NO
If yes, identify entity and nature of interest:
5. Is party a trade association? (amici curiae do not complete this question) YES NO
If yes, identify any publicly held member whose stock or equity value could be affected substantially by the outcome of the proceeding or whose claims the trade association is pursuing in a representative capacity, or state that there is no such member:
6. Does this case arise out of a bankruptcy proceeding? YES NO
If yes, identify any trustee and the members of any creditors' committee:

CERTIFICATE OF SERVICE

I certify that on _____ the foregoing document was served on all parties or their counsel of record through the CM/ECF system if they are registered users or, if they are not, by serving a true and correct copy at the addresses listed below:

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02-26-2010

(date)

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PETITION FOR REVIEW

The State of South Carolina, ex rel. Henry Dargan McMaster, Attorney General, hereby petitions this Court, pursuant to Section 119 of the Nuclear Waste Policy Act (“NWPA”), 42 U.S.C. § 10139(a)(1), as amended, Section 706 of the Administrative Procedure Act (“APA”), 5 U.S.C. § 706, and Rule 15(a) of the Federal Rules of Appellate Procedure, to review, remand, vacate, and/or defer the final action of the Secretary of Energy to abandon and not to proceed with plans to license and construct a repository for high level radioactive waste at Yucca Mountain, Nevada. This action became final and subject to review under the NWPA on or about January 29, 2010, or alternatively, on February 1, 2010. Documents reflecting the Respondents’ actions are attached as Exhibits A and B.

PETITION FOR MANDAMUS, PROHIBITION, AND/OR DECLARATORY AND INJUNCTIVE RELIEF

INTRODUCTION

1. In addition to, or in the alternative to, the Petition for Review set forth immediately above, Petitioner seeks relief by mandamus, prohibition, and/or declaratory and injunctive relief.¹ This Petition is filed pursuant to 42 U.S.C. § 10139(a), which, as discussed more fully herein, provide that Courts of Appeals

¹ In combining a Petition for Review and a petition for other relief in the same document, Petitioner is following the example of using a similar combined petition in *Wisconsin Elec. Power Co. v. U.S. Dept. of Energy*, 211 F.3d 646 (D.C. Cir. 2000).

“shall have original and exclusive jurisdiction” to review certain actions or inactions of the Secretary of Energy, the President, and the Nuclear Regulatory Commission and the Atomic Licensing and Safety Board, as alleged herein.

2. The State of South Carolina challenges the announced U.S. Department of Energy (DOE) decision to abandon the geologic repository to be developed at Yucca Mountain, Nye County, Nevada, and specifically, to withdraw the application for Construction Authorization presently under review by the U.S. Nuclear Regulatory Commission (NRC). DOE formally initiated the termination action on or about February 1, 2010 by filing a motion with the Nuclear Regulatory Commission, Atomic Safety and Licensing Board seeking to stay proceedings in the hearing process for the license application. In the motion, DOE has stated that “DOE intends to withdraw the pending application with prejudice. . . .” Exhibit B hereto.

3. DOE’s action violates the Nuclear Waste Policy Act of 1982, as amended (NWPA), which specifically requires that DOE seek a license for and develop the Yucca Mountain repository and that the NRC approve or disapprove the license application (as opposed to merely dismissing it). The Act does not provide that the application may be withdrawn solely at the behest of the Executive Branch.

4. This action by DOE also violates the National Environmental Policy Act (“NEPA”), 42 U.S.C. §§ 4321, et seq. by taking major federal action intended to

terminate the Yucca Mountain repository project in the absence of NEPA compliance. No valid reason has been offered for the action. The DOE motion would take the responsibility from the NRC, the agency charged with assuring the safety of the nuclear facilities it licenses, and deny the people of the South Carolina and other states the NRC determination of Yucca safety that Congress mandated in the NWPA. It would also mean that DOE, without an articulated or valid reason, is implementing the "No Action Alternative" which was specifically considered and discarded in DOE's Final Environmental Impact Statement (FEIS) (DOE/EIS-0250, February 2002).

5. Petitioner asks that the Court, temporarily and permanently, enjoin DOE from taking any further steps to withdraw the license application for the Yucca Mountain repository project, for the reasons set forth herein, and if necessary, issue a writ of mandamus requiring DOE to withdraw any motions already made that would seek to abandon the license application. Further, Petitioner seeks injunctive relief enjoining DOE other Executive Branch agencies or officials from taking any other action that terminates, interferes with, or delays the NRC Yucca Mountain repository project licensing process and that would constitute actions or inactions that contravene the requirement of the NWPA. Finally, if necessary, and subject to the posture of the Yucca Mountain license application at the time this matter is heard, Petitioner requests that the Court issue either a stay order, writ of mandamus

or prohibition, and/or an injunction, to the Nuclear Regulatory Commission to require that it not dismiss the Yucca Mountain license application, either with or without prejudice until the present Petition has been finally adjudicated.²

JURISDICTION

6. Jurisdiction is proper in this Court under Sec. 119(a)(1) of the NWPA, 42 U.S.C. § 10139(a)(1), which provides that

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. §§ 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. §§ 10131 et seq.];

(C) challenging the constitutionality of any decision made, or action taken, under any provision of this subtitle [42 U.S.C. §§ 10131 et seq.];

(D) for review of any environmental impact statement prepared pursuant to the National Environmental Policy Act of 1969 [42 U.S.C. §§ 4321 et seq.] with respect to any action under this subtitle [42 U.S.C. §§ 10131 et seq.], or as required under section 135(c)(1) [42 U.S.C. § 10155(c)(1)], or alleging a failure to prepare such statement with respect to any such action.

² The State of South Carolina, by Petition for Intervention that will probably be filed this same date, will seek, as a precaution, to intervene in the NRC proceeding in order to present to that tribunal many of the contentions being made in this Court.

7. Jurisdiction is also vested in this Court by the All Writs Act, 28 U.S.C. § 1651 and by Rules 15 and 21(c), F.R.A.P.

8. Pursuant to 28 U.S.C. § 2201, this Court is further authorized to grant declaratory and injunctive relief in cases where violations of federal law may occur as the result of actions by a federal agency, such as DOE and the NRC. Furthermore the APA, 5 U.S.C. § 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.

9. There is a present, actual, and justiciable controversy between the parties.

VENUE

10. Venue is proper in this Court pursuant to the 42 U.S.C. § 10139(a)(2), which provides "The 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." The State of South Carolina is located in this Circuit.

PARTIES AND STANDING

11. Petitioner is the State of South Carolina, on relation of Henry D. McMaster, its Attorney General.

12. Petitioner has standing to bring this action, because if the Yucca Mountain license application is abandoned, South Carolina would suffer a distinct and

palpable harm, constituting injury-in-fact within the zone of interests sought to be protected by the applicable statutes, particularly the Nuclear Waste Policy Act of 1982. The abandonment of the Yucca Mountain site would place South Carolina back on the list of candidate states for a high level nuclear waste or spent fuel storage or disposal facility of some kind, and more so than many other states, because South Carolina has the Savannah River Site (SRS) within its boundaries, as well as seven commercial reactors with onsite storage of spent nuclear fuel.

13. The NWPA provides for extensive participation by states in the site selection and characterization process, a process that would be reopened for the first time since 1987 if the application in this matter is permitted to be withdrawn. See e.g., 42 U.S.C. §§ 10131(a)(6) and 10134(a)(1)(F). The NWPA therefore places South Carolina firmly within the zone of interests to be protected if the nation's nuclear waste disposal efforts revert back to their pre-1987 status as a result of dismissal of the license application in this matter.

14. South Carolina would also suffer harm by the continuing delay of the opening of a repository, now already more than a decade behind schedule, including the continuing potential hazard of the onsite storage at the seven commercial reactors, the storage of foreign spent nuclear fuel at SRS, and the need to have emergency preparedness and transportation plans in place in connection with that spent fuel.

15. The aforementioned harms, and other harms to South Carolina discussed below, would be directly traceable to the actions of the Respondents with respect to the dismissal of the NRC licensing proceeding, and likewise would be redressable by a favorable decision on the issues presented by this Petition, because if South Carolina is successful with respect to those issues, the existing NRC proceeding for Yucca Mountain licensure would continue, and South Carolina would not be back on the list of potential disposal or storage sites.

16. In addition, the citizens of South Carolina, on information and belief, have paid approximately \$1.2 billion in fees levied pursuant to the NWPA for the development of a permanent storage site. Further, the citizens of South Carolina have a substantial interest in the proper and permanent disposal of spent fuel and/or high level nuclear waste now being temporarily stored in the state. The citizens of South Carolina also derive economic, health, safety, professional, recreational, conservation and aesthetic benefits from the existence of the natural environment of the region.

17. If the Yucca licensing proceeding is terminated, Petitioner and its citizens will also be damaged by the impact of such termination on various ongoing or planned activities in the State of South Carolina, and in other parts of the United States. Evidence of the potential environmental impact is the fact that DOE issued a Final Environmental Impact Statement with the conclusion that not building the

Yucca Mountain geologic repository could result in “widespread contamination at the seventy-two commercial and five DOE sites across the United States, with resulting human health impacts.” (DOE/EIS-0250, Section S.12). Exhibit D attached. The five DOE sites include the Savannah River Site near Aiken, South Carolina, which houses foreign spent fuel as well as defense high level nuclear waste. Further, there are one hundred nuclear power plants in operation in the United States, including seven in South Carolina, under licenses which invoke a Waste Confidence Ruling by the Nuclear Regulatory Commission – based on the fact that Yucca Mountain is being developed as a final resting place for spent nuclear fuel from the reactors.

18. This Court has held that the Governor of South Carolina (and by extension the State itself) is essentially a neighboring landowner to the Savannah River Site, whose property is at risk of environmental damage from the DOE’s activities at SRS. The State “therefore has a concrete interest that NEPA [and the NWPA] [were] designed to protect; as such, [the State] possesses the requisite standing to enforce [its] procedural rights under NEPA.” *Hodges v. Abraham*, 300 F.3d 432, 445 (4th Cir. 2002).

19. Respondents United States Department of Energy and Steven Chu are, respectively, an agency or instrumentality of the United States, and the Secretary of Energy. They are statutorily responsible under the NWPA for obtaining a

license for the Yucca Mountain repository, designing and constructing facilities pursuant to the license, and operating the facility to safeguard the environment of all Americans from the hazards of high-level radioactive waste and spent nuclear fuel.

20. Respondent Barack Obama is the President of the United States. On information and belief, Respondents DOE and Chu, in all matters relating to the claims set forth herein, are acting at the direction of Respondent Obama.

21. Respondent United States Nuclear Regulatory Commission is an agency or instrumentality of the United States, and is responsible for reviewing the DOE license application for the Yucca Mountain repository, and for approving or disapproving it. 42 U.S.C. § 10134(d).

22. Respondent Gregory B. Jaczko is the Chairman of the Nuclear Regulatory Commission, and is included as a Respondent in the event his presence is necessary for the obtaining of complete relief.

23. Respondents Thomas Moore Paul Ryerson and Richard Wardwell, are Administrative Law Judges of the United States Nuclear Regulatory Commission Atomic Safety and Licensing Board, in their official Capacity; and they, together with Respondent NRC Atomic Safety and Licensing Board, are included as Respondents in the event their presence is necessary for the obtaining of complete relief.

LEGAL BACKGROUND

24. The Nuclear Waste Policy Act of 1982 (NWPAA), 42 U.S.C. §§ 10101, et seq., 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 NWPAA, the federal government protects the public from these hazards. See 42 U.S.C. § 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”).

25. The NWPAA expressly mandates that DOE shall site, license, construct, and operate a geologic repository for used nuclear fuel and other high-level radioactive waste.

26. In 1987, Congress adopted an amendment to the Nuclear Waste Policy Act that directed DOE to study only a site at Yucca Mountain, Nye County, Nevada as the site for a potential repository for geologic disposal of used nuclear fuel. *See* 42 U.S.C. § 10172.

27. Based on the comprehensive evaluation that ensued, extending through the 1980's until the early 2000's, Congress in 2002 approved, and the President signed, a Joint Resolution approving "the site at Yucca Mountain, Nevada, for a repository." Pub. L. No. 107-200, 116 Stat. 735 (2002).

28. From the outset, an extensive structure of processes was established by the NWPA, providing opportunities for other Government agencies, state governments, and Indian tribes to participate in decision-making, including siting of the repository. The processes so established include numerous requirements that DOE conduct environmental impact analyses for all major actions undertaken per the Act, and safety studies required by NRC licensing standards.

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

- DOE must submit an application for Construction Authorization to construct a high-level waste geologic repository at Yucca Mountain in Nevada. *See* 42 U.S.C. § 10134(b) ("... the Secretary shall submit to the Commission an application for a construction authorization for a repository at such site. . . .") (emphasis added).
- 42 U.S.C. § 10134(d) provides that "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.” (Emphases added.)

30. In June 2008, culminating 20 years and \$8-14 billion of effort by the government, DOE submitted a license application for a repository to the Nuclear Regulatory Commission. Currently, DOE’s Office of Civilian Radioactive Waste Management (OCRWM) is participating in licensing proceedings by answering requests for additional information from the NRC, updating the license application and related documents, and preparing for Atomic Safety Licensing Board hearings.

31. NEPA is the nation’s basic national charter for protection of the environment. 42 U.S.C. §§ 4321 et seq.; 40 C.F.R. § 1500.1(a). NEPA’s sweeping commitment is to “prevent or eliminate damage to the environment and biosphere by focusing government and public attention on the environmental effects of proposed agency action.” *Marsh v. Oregon Natural Resources Council*, 490 U.S. 360, 371 (1989) (citing 42 U.S.C. § 4321).

32. NEPA requires federal agencies to prepare an Environmental Impact Statement (“EIS”) for major federal actions that significantly affect the quality of the human environment. 42 U.S.C. § 4332(2)(C).

FACTS GIVING RISE TO PETITIONER'S CLAIMS

33. The commitment to selection of deep geologic repository(ies) for disposal of high level waste, the result of decades of scientific investigations, numerous reviews and recommendations from the US National Academies of Science, and similar investigations and reviews in other countries was made by the government of the United States of America through passage of the NWPA.

34. As required by the NWPA, DOE conducted far ranging, detailed, and carefully documented studies of potential repository sites at Yucca Mountain site and several other locations within the continental United States.

35. As a result of those studies and other factors, by amendment of the NWPA in 1987, Congress determined that, given appropriate findings and conclusions from directed technical investigations, analyses, and license applications, Yucca Mountain will be the site of the first repository in the United States to possess spent nuclear fuel and high-level waste – an essential environmental safeguard for the entire nation.

36. In accordance with the NWPA and subsequent decisions properly supported by extensive efforts to comply with both NWPA and NEPA, DOE has actively pursued development of the Yucca Mountain repository project, including issuance of a Final Environmental Impact Statement after extensive involvement of other Government agencies, state governments, and Indian tribes. It submitted, as

mandated by NWPA Sec. 114(b), an application for Construction Authorization to the Nuclear Regulatory Commission (NRC) in June 2008. The totality of DOE's efforts to design and license a safe and environmentally compatible repository for high level radioactive waste from U.S. Defense Programs and nuclear power plants have taken at least three decades and have cost the United States government and the citizens of this country a vast investment of intellectual talent and money, estimated to have been between \$8 billion and \$14 billion.

37. DOE's application for Construction Authorization (NRC Docket 63 – 001-HLW) is currently being processed by the NRC as mandated by NWPA Sec. 114(d), 42 U.S.C. § 10134(d). The process includes conduct of public hearings before NRC's Atomic Safety and Licensing Board (ASLB) in accordance with 10 C.F.R. Part 2.

38. On January 29, 2010, DOE issued a press release and held a press conference. Exhibit A, attached. The effect of both was to indicate clearly that the Administration no longer regarded nuclear waste storage at Yucca Mountain as an option.

39. On February 1, 2010, DOE filed a motion with the Commission seeking a stay in hearing activities, stating "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

[that DOE] intends to withdraw the pending application with prejudice. . . .”

Exhibit B.

40. In support of its motion, DOE cited only the unenacted, proposed, Obama Administration budget document for fiscal year 2011, which purports to direct DOE to “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”

41. On February 16, 2010, the ASLB granted a portion of DOE’s motion, suspending discovery between the parties, and granting DOE’s motion to stay the proceeding until the ASLB resolves DOE’s expected motion to withdraw its license application. Exhibit C.

42. Withdrawing and dismissing the license application for the Yucca Mountain repository with prejudice could effectively end the nation’s effort to develop that repository. Further, it would establish DOE’s action as implementing the “No Action Alternative” considered in the FEIS, which found that this alternative could result in “widespread contamination at the 72 commercial and 5 DOE sites across the United States, with resulting human health impacts.”

43. No substantial or valid reason has been yet offered for DOE’s action to stop the NRC from acting on the Yucca license application as mandated by the NWPA.

No legal authorization or justification has been offered for DOE and the NRC to refuse to process the license as mandated by the NWPA.

44. Congress will decide what resources to provide for the Yucca licensing process in the FY11 Congressional appropriations process. That decision is not one to be made by the Executive Branch as an emergency response to the President's recommended FY11 Budget. The President's Budget, which will likely be substantially changed by Congress, provided no resources to the OCRWM for Yucca licensing. An order from this Court effectively directing the Yucca Mountain licensing proceeding to continue would restore the constitutional framework by making Congress, rather than the Executive Branch, the decisionmaker with respect to appropriations for the development of the Yucca Mountain license application.

45. In addition to actions to terminate the Yucca Mountain repository project by staying licensing activities and withdrawing the license application, DOE is currently taking other actions to terminate the project. Such actions include inappropriately reducing funding for and effectively disassembling the Office of Civilian Radioactive Waste Management, the arm of DOE specifically established to manage development of the Yucca Mountain repository project.

46. DOE has not properly analyzed the environmental impact of taking the No Action Alternative, has not revised the previously published EIS, and has not

consulted with any other Government agency, state government, or the public with regard to analysis of environmental impact of its actions.

FIRST CLAIM FOR RELIEF

(VIOLATION OF THE NUCLEAR WASTE POLICY ACT)

47. Petitioner realleges and incorporates by reference all preceding paragraphs.

48. DOE's decision (as directed by Respondents Obama and Chu) to withdraw the Yucca Mountain license application is in violation of NWPA, 42 U.S.C. § 10134(b), which requires that DOE pursue the license application until at least such time as the Commission approves or disapproves it on its merits.

SECOND CLAIM FOR RELIEF

(LACK OF STATUTORY AUTHORITY TO WITHDRAW APPLICATION)

49. Petitioner realleges and incorporates by reference all preceding paragraphs.

50. In view of the definite command of the NWPA that DOE pursue the license application, Respondents DOE, Obama and Chu lack statutory authority, or other legal authority, to withdraw the application. The NWPA makes no provision for the withdrawal of the application by the Secretary.

THIRD CLAIM FOR RELIEF

(VIOLATION OF THE DOCTRINE OF SEPARATION OF POWERS)

51. Petitioner realleges and incorporates by reference all preceding paragraphs.

52. The U.S. Constitution provides that “All legislative Powers herein granted shall be vested in a Congress” (Art. I, Sec. 1), and the executive Power shall be vested in a President” (Art. II, Sec. 1). Under these provisions, the President and his administration, including the Secretary of Energy, must respect the separation of powers. The Administration’s decision not to execute the mandates of the NWPA is a violation of the separation of powers, because that decision would have the effect of a failure to take actions mandated by an Act of Congress, and would also be a failure to faithfully execute the law, as required by Article II, § 3 of the Constitution.

FOURTH CLAIM FOR RELIEF

(LACK OF STATUTORY AUTHORITY OF THE COMMISSION TO DISMISS THE APPLICATION WITH PREJUDICE)

53. Petitioner realleges and incorporates by reference all preceding paragraphs.

54. The Commission is required by the NWPA to consider, and then to approve or disapprove, the license application. There is no provision for the Commission to dismiss the application or decide anything other than the merits of the application.

55. The Commission therefore is without statutory authority to dismiss the application with prejudice without considering its merits.

FIFTH CLAIM FOR RELIEF

(VIOLATION OF THE NATIONAL ENVIRONMENTAL POLICY ACT AND THE APA)

56. Petitioner realleges and incorporates by reference all preceding paragraphs.

57. When a proposed action involves potentially significant environmental impacts, the agency must act in accordance with NEPA.

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

59. Among the alternatives being considered was the alternative of not building the Yucca Mountain facility at all, that is, the so-called "No Action Alternative."

60. 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.

61. 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.

62. DOE's actions to terminate the Yucca Mountain licensing proceeding without reconsidering environmental impacts and alternatives violates NEPA and its implementing regulations, and is arbitrary and capricious within the meaning of the APA. 5 U.S.C. §§ 702, 706(2).

SIXTH CLAIM FOR RELIEF

(DOE ACTED ARBITRARILY AND CAPRICIOUSLY AND NOT IN ACCORDANCE WITH LAW)

63. Petitioner realleges and incorporates by reference all preceding paragraphs.

64. The Administrative Procedures Act, 5 U.S.C. § 701, et seq., 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. Pursuant to 5 U.S.C. § 706(2)(A), (D), a reviewing court shall hold unlawful and set aside an agency action found to be arbitrary, capricious, or otherwise not in accordance with the law. The APA authorizes a court to compel agency action which has been unlawfully withheld. 5 U.S.C. § 706(1). DOE acted illegally for all the reasons set forth above.

65. DOE acted illegally and violated the APA by failing to prepare an EIS or revised EIS that would properly disclose and evaluate significant environmental effects.

66. DOE acted illegally and 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.

67. DOE acted illegally and violated the APA by attempting to terminate the Yucca Mountain repository which is contrary to its duties under NWPA.

68. In addition, on information and belief, DOE's action is without valid or demonstrated scientific basis, and is therefore also arbitrary and capricious for that reason.

SEVENTH CLAIM FOR RELIEF

(MANDAMUS, PROHIBITION, STAY, AND/OR INJUNCTION)

69. Petitioner realleges and incorporates by reference all preceding paragraphs.

70. The action of Respondents DOE, Obama and Chu in withdrawing the Yucca Mountain license application, and in taking other actions in an effort to render licensure of the Yucca Mountain facility impossible, are acts that threaten irreparable harm to Petitioner and its citizens, and for which Petitioner has no adequate remedy at law.

71. Likewise, the possibility that the Commission could dismiss the Yucca Mountain license application with prejudice, threatens irreparable harm to Petitioner and its citizens, and for which Petitioner has no adequate remedy at law.

72. Based on the facts set forth above, the Petitioner is entitled to one or more of the following remedies:

- a. Preliminary and permanent injunctions prohibiting DOE from filing a motion to withdraw the Yucca Mountain license application.
- b. A writ of mandamus directing DOE to withdraw its February 1, 2010 motion and any later motions filed with the Commission that seek withdrawal of the Yucca Mountain license application.
- c. A writ of mandamus, and/or a mandatory injunction, requiring DOE to continue proceeding with the Yucca Mountain license application.
- d. If it becomes necessary, a stay of the Commission or ASLB proceeding or a writ of prohibition preventing ASLB or the Commission from acting on any motion that DOE might file to withdraw the Yucca Mountain license application.

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests that this Court grant the following relief:

1. Order, declare and adjudge that any action by Respondents in seeking withdrawal or granting dismissal of the Commission (ASLB) proceeding would be in violation of the NWPA, the Constitution, the APA, and NEPA.

2. Order, declare and adjudge that the Respondents DOE and Chu are in violation of the NWPA, U.S. Constitution, the APA, and NEPA by failing to conduct mandatory environmental impact analysis and provide for participation by the public and other public agencies during decision-making relative to termination of the Yucca Mountain project and/or withdrawal of the application for Construction Authorization;

3. Order, declare and adjudge that Respondents Obama, DOE and Chu are in violation of the NWPA and the U.S. Constitution, by unlawfully seeking to terminate the Yucca Mountain project and seeking to dismantle DOE's Office of Civilian Radioactive Waste Management without Congressional appropriations approval;

4. Enjoin Respondents DOE, Chu and Obama from filing any motion before the Commission or ASLB that would seek to withdraw the license application with prejudice.

5. In the alternative, if any of the Executive Branch Respondents (DOE, Chu or Obama) have already filed a motion to withdraw the Yucca license application by the time the Court hears the issues presented in this Petition:

- a. Issue a writ of mandamus or a mandatory injunction directed to the Executive Branch Respondents, ordering that they withdraw the motion until final adjudication of the issues presented herein, and/or

- b. Issue a stay order or writ of prohibition directed to the Commission and/or the ASLB and their officials, staying action on the motion to withdraw until final adjudication of the issues presented herein.
6. Direct by injunctive relief that Respondents comply with NWPA by developing the Yucca Mountain repository project, including pursuit of the NRC licensing process prescribed by 10 C.F.R. Part 2 and by maintaining the Office of Civilian Radioactive Waste Management as authorized and funded by the Congress.
7. Order NRC to comply with NWPA by continuing the licensing process for DOE's application for Construction Authorization for the Yucca Mountain repository as prescribed the NWPA.
8. 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. § 2412-11. Such other and further relief as this Court deems just and proper.

Respectfully submitted,

HENRY DARGAN McMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

ROBERT D. COOK
Assistant Deputy Attorney General

LEIGH CHILDS CANTEY
Assistant Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
T: (803) 734-3970

-AND-

DAVIDSON & LINDEMANN, P.A.

BY: *Kenneth P. Woodington*
William H. Davidson, II
Kenneth P. Woodington
1611 Devonshire Drive, Second Floor
Post Office Box 8568
Columbia, South Carolina 29202
T: (803) 806-8222
F: (803) 806-8855
E-Mail: w davidson@dml-law.com
k woodington@dml-law.com

Counsel for Petitioner

February 26, 2010

EXHIBIT A

DOE Press Release

January 29, 2010



U.S. DEPARTMENT OF ENERGY

News Media Contact(s):
(202) 586-4940

For Immediate Release
January 29, 2010

Secretary Chu Announces Blue Ribbon Commission on America's Nuclear Future

The Commission, led by Lee Hamilton and Brent Scowcroft, will provide recommendations on managing used fuel and nuclear waste

Washington, D.C. – As part of the Obama Administration's commitment to restarting America's nuclear industry, U.S. Secretary of Energy Steven Chu today announced the formation of a Blue Ribbon Commission on America's Nuclear Future to provide recommendations for developing a safe, long-term solution to managing the Nation's used nuclear fuel and nuclear waste. The Commission is being co-chaired by former Congressman Lee Hamilton and former National Security Advisor Brent Scowcroft.

In light of the Administration's decision not to proceed with the Yucca Mountain nuclear waste repository, President Obama has directed Secretary Chu to establish the Commission to conduct a comprehensive review of policies for managing the back end of the nuclear fuel cycle. The Commission will provide advice and make recommendations on issues including alternatives for the storage, processing, and disposal of civilian and defense spent nuclear fuel and nuclear waste.

"Nuclear energy provides clean, safe, reliable power and has an important role to play as we build a low-carbon future. The Administration is committed to promoting nuclear power in the United States and developing a safe, long-term solution for the management of used nuclear fuel and nuclear waste. The work of the Blue Ribbon Commission will be invaluable to this process. I want to thank Congressman Hamilton and General Scowcroft for leading the Commission and I look forward to receiving their recommendations," said Secretary Chu.

"As the world moves to tackle climate change and diversify our national energy portfolio, nuclear energy will play a vital role," said Carol Browner, Assistant to the President for Energy and Climate Change. "Today, the Obama Administration has taken an important step. With the creation of the Blue Ribbon Commission, we are bringing together leading experts from around the country to ensure a safe and sustainable nuclear energy future."

"Finding an acceptable long-term solution to our used nuclear fuel and nuclear waste storage needs is vital to the economic, environmental and security interests of the United States," said Congressman Hamilton. "This will be a thorough, comprehensive review based on the best available science. I'm looking forward to working with the many distinguished experts on this panel to achieve a consensus on the best path forward."

"As the United States responds to climate change and moves forward with a long overdue expansion of nuclear energy, we also need to work together to find a responsible, long-term strategy to deal with the leftover fuel and nuclear waste," said General Scowcroft. "I'm pleased to be part of that effort along with Congressman Hamilton and such an impressive group of scientific and industry experts."

The Commission is made up of 15 members who have a range of expertise and experience in nuclear issues, including scientists, industry representatives, and respected former elected officials. The Commission's co-chairs have a record of tackling tough challenges in a thoughtful, comprehensive manner and building consensus among an array of interests.

The Commission will produce an interim report within 18 months and a final report within 24 months.

The members of the Blue Ribbon Commission are:

- **Lee Hamilton, Co-Chair**

Lee Hamilton represented Indiana's 9th congressional district from January 1965-January 1999. During his time in Congress, Hamilton served as the ranking member of the House Committee on Foreign Affairs, and chaired the Permanent Select Committee on Intelligence. He is currently president and director of the Woodrow Wilson International Center for Scholars, and director of The Center on Congress at Indiana University.

He is a member of the President's Intelligence Advisory Board and the President's Homeland Security Advisory Council. Previously, Hamilton served as Vice Chairman of the National Commission on Terrorist Attacks Upon the United States (the 9/11 Commission).

- **Brent Scowcroft, Co-Chair**

Brent Scowcroft is President of The Scowcroft Group, an international business advisory firm. He has served as the National Security Advisor to both Presidents Gerald Ford and George H.W. Bush. From 1982 to 1989, he was Vice Chairman of Kissinger Associates, Inc., an international consulting firm.

Scowcroft served in the military for 29 years, and concluded at the rank of Lieutenant General following service as the Deputy National Security Advisor. Out of uniform, he continued in a public policy capacity by serving on the President's Advisory Committee on Arms Control, the Commission on Strategic Forces, and the President's Special Review Board, also known as the Tower Commission.

- **Mark Ayers, President, Building and Construction Trades Department, AFL-CIO**
- **Vicky Bailey, Former Commissioner, Federal Energy Regulatory Commission; Former IN PUC Commissioner; Former Department of Energy Assistant Secretary for Policy and International Affairs**
- **Albert Carnesale, Chancellor Emeritus and Professor, UCLA**
- **Pete V. Domenici, Senior Fellow, Bipartisan Policy Center; former U.S. Senator (R-NM)**
- **Susan Eisenhower, President, Eisenhower Group, Inc.**
- **Chuck Hagel, Former U.S. Senator (R-NE)**
- **Jonathan Lash, President, World Resources Institute**
- **Allison Macfarlane, Associate Professor of Environmental Science and Policy, George Mason University**
- **Richard A. Meserve, President, Carnegie Institution for Science, and former Chairman, U.S. Nuclear Regulatory Commission**
- **Ernie Moniz, Professor of Physics and Cecil & Ida Green Distinguished Professor, Massachusetts Institute of Technology**
- **Per Peterson, Professor and Chair, Department of Nuclear Engineering, University of California - Berkeley**
- **John Rowe, Chairman and Chief Executive Officer, Exelon Corporation**
- **Phil Sharp, President, Resources for the Future**

U.S. Department of Energy, Office of Public Affairs, Washington, D.C.

Unofficial Transcript
DOE Press Conference
January 29, 2010

Blue Ribbon Press Conference, January 29, 2010

2:00-2:14	Congressman Hamilton	"I think we have a great team in place, to fully examine this difficult multifaceted issue, and to put together a plan based on today's science and technology."
-----------	----------------------	--

3:27	Questioner	"Hello, this is for Secretary Chu. Is this panel going to look at all at how this new generation of nuclear plants will be financed?"
3:43-4:14	Sec'y Chu	"Uh, no. This panel is [unintelligible] to look at what will happen in terms of the science and technology going forward. And to give it, to anticipate what's going to be happening, and to give us a plan going forward, as we said, on ultimately, figuring out how to deal with the used fuel and, eventually the nuclear waste."

6:10	Questioner	"Thank you very much for holding this, ah, call. The previous administration had a science-based, engineering-based approach that involved various kinds of recycling that didn't seem to go very far. Could you say where perhaps they might have gone wrong or what's different in your approach?"
6:30-7:17	Sec'y Chu	"...As we said, we're asking this commission to step back and take a very broad view of what we know today and what we expect to be learning in the coming decades, and rather than, uh, comment on anything else or criticize anything else, we're not here to do that. We're actually here to say, based on what we know today and based on what we anticipate knowing, we're gonna plot the best plan forward."

8:04	Questioner	"I just was wondering to what extent will the site at Yucca Mountain still be considered as part of the mix, as I remember when the legislation was established setting up the commission, there was some interest in including Yucca Mountain as part of the mix of alternatives that the commission would be looking at. Thank you."
8:33	Congressman Hamilton	"I think Secretary Chu has made it quite clear that the nuclear waste storage at Yucca Mountain is not an option, and that the Blue Ribbon Commission will be looking at better alternatives for the back end of the fuel cycle."
8:49	Carol Browner	"As the president has said many times, we're done with Yucca, we need to be about looking at alternatives."

9:07	Questioner	"I was just wondering, I know this question has been asked a number of times but I'll try it again. What's the reason that yucca Mountain is not an option for this administration, and what scientific reviews were done by the Administration to reach that judgment?"
9:23	Carol Browner	"we work for the president, we take our directions from the president, the president has been clear that Yucca Mountain was not an option and now we're going to go out and figure out what the options are going forward."
9:35	Cong. Hamilton	"I think it's been made clear to me that the science has advanced dramatically since Yucca site was chosen, and my recollection is that site was chosen 20 years ago or so. And we're gonna try to pull together the current information and research to develop a plan for the back end of the fuel cycle.
10:11	Gen. Scowcroft	"We're trying to look forward now, not looking back, and we have no preconceived notions and we'll look at all science has to offer us to deal with this issue."

10:30	Questioner	"I'm just curious exactly how the commission will be set up. Will it report directly to the executive branch or to Congress?"
10:40	Sec'y Chu	"This is a FACA commission on a presidential order directed to me, the Secretary of Energy to form this commission. This commission will make recommendations to me which I will take both to the President and to Congress."

EXHIBIT B

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

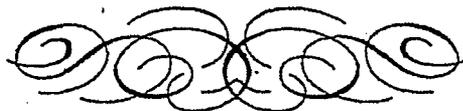
U.S. Department of Energy

Office of the General Counsel

1000 Independence Avenue, SW

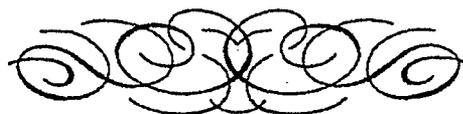
Washington, DC 20585

Dated in Washington, DC
this 1st day of February



Appendix

Budget of the U. S. Government



Fiscal Year 2011



Office of Management and Budget
www.budget.gov

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.

U.S. GOVERNMENT PRINTING OFFICE
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PAYMENTS TO STATES UNDER FEDERAL POWER ACT—Continued
Program and Financing—Continued

Identification code 15-5105-0-2-825	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:			
72.10 Total new obligations	3	3	3
73.20 Total outlays (gross)	-3	-3	-3
Outlays (gross), detail:			
85.97 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 15-5319-0-2-374	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 obligations:			
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:			
85.90 Outlays from new discretionary authority		9	9
86.53 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 "NWPAA"), \$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 NWPAA: *Provided further*, That notwithstanding the lack of a written agreement with the State of Nevada under section 117(c) of the NWPAA, 0.51 percent shall be provided to Nye County, Nevada, for on-site oversight activities under section 117(d) of the NWPAA: *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 NWPAA, to conduct appropriate activities and participate in licensing activities under Section 116(c) of the NWPAA: *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 NWPAA, 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 NWPAA: *Provided further*, That notwithstanding the provisions of chapters 65 and 76 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 NWPAA: *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 NWPAA 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 85-5227-0-2-271	2009 actual	2010 est.	2011 est.
01.00 Balance, start of year	20,454	22,162	24,028
01.99 Balance, start of year	20,454	22,162	24,028
Receipts:			
02.20 Nuclear Waste Disposal Fund	770	773	779
02.40 Earnings on investments, Nuclear Waste Disposal Fund	1,055	1,224	1,323
02.99 Total receipts and collections	1,825	1,997	2,102
04.00 Total: Balances and collections	22,279	24,159	26,130
Appropriations:			
05.00 Nuclear Waste Disposal	-145	-98	-
05.01 Salaries and Expenses	-49	-79	-10
05.02 Salaries and Expenses	-1	-4	-2
05.99 Total appropriations	-195	-181	-12
07.99 Balance, end of year	22,162	24,028	26,118

Program and Financing (in millions of dollars)

Identification code 85-5227-0-2-271	2009 actual	2010 est.	2011 est.
Obligations by program activity:			
00.01 Repository	76	44	-
00.02 Program Direction	53	70	-
10.00 Total new obligations	129	114	-
Budgetary resources available for obligations:			
21.40 Unobligated balance carried forward, start of year	10	16	-
22.00 New budget authority (gross)	145	98	-
23.30 Total budgetary resources available for obligation	155	114	-
23.35 Total new obligations	-129	-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 to obligated balances:			
72.40 Obligated balance, start of year	87	62	33
73.10 Total new obligations	129	114	-
73.20 Total outlays (gross)	-164	-143	-
74.40 Obligated balance, end of year	62	33	33
Outlays (gross), detail:			
86.30 Outlays from new discretionary authority	93	58	-
86.33 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 85-5227-0-2-271	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 Recital 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	1	5	-
25.4 Operation and maintenance of facilities	9	25	-
41.0 Grants, subsidies, and contributions	26	26	-
99.9 Total new obligations	129	114	-

Employment Summary

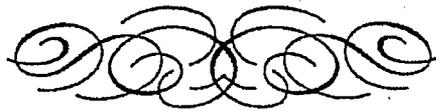
Identification code 85-5227-0-2-271	2009 actual	2010 est.	2011 est.
Direct:			
100 Civilian full-time equivalent employment	743	743	-

URANIUM ENRICHMENT DECONTAMINATION AND DECOMMISSIONING FUND

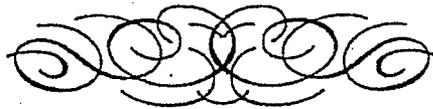
For necessary expenses in carrying out uranium enrichment facility decontamination and decommissioning, remedial actions, and other activities of title II of the Atomic Energy Act of 1954, and title X, subtitle A, of the Energy Policy Act of 1992, [\$573,850,000] \$708,498,000, to be derived from the 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 85-5231-0-2-271	2009 actual	2010 est.	2011 est.
01.00 Balance, start of year	4,453	4,536	4,549
01.99 Balance, start of year	4,453	4,536	4,549
Receipts:			
02.20 Domestic USGBy Fees, Decontamination and Decommissioning Fund	-	-	200
02.40 Earnings on investments, Decontamination and Decommissioning Fund	156	274	728
02.41 General Fund Payment - Decontamination and Decommissioning Fund	463	652	497
02.99 Total receipts and collections	619	637	525
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*.

Office of Management and Budget
Washington, D.C. 2010

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@eurekanv.org
gpb@nrc.gov
lborski@nuclearlawyer.com
fbrooks@ndnlaw.com
mjb5@nrc.gov

Carter, Lorraine
Cereghino, Stephen
Choate, Zoie
Colburn, Ross
Cottingham, Anne
Crosland, Martha S.
Curran, Diane
Damele, Ronald
Dinunzio, Nicholas
Dobie, Julie
Dreher, Michael
Dudley, Sherry
Durbin, Susan
Elk, Shane
Eredia, Sally
Faglioni, Kelly L.
Fitzpatrick, Charles J.
Francis, Karin
Fraser, Matthew
Frishman, Steve
Giitter, Rebecca
Gilman, Joseph
Ginsberg, Ellen C.
Golshan, K. G.
Gores, Jennifer A.
Graser, Daniel J.
Gutierrez, Jocelyn
Hanna, Robert S.
Harrington, Arthur J.
Harris, Scott Blake
Hawkens, E. Roy
Hearing Docket
Heinzen, Steven A.
Hembacher, Brian
Horin, William
Houck, Darcie L.
Irwin, Donald P.
James, Gregory L. Esq.
Johnson, Abigail
Kahn, Zachary
Klevorick, Phil
Larimore, Patricia
Lawrence, John W.
Leigh, Rovianne
Lembke, Alisa
Lenehan, Daniel
Lev, Sean
Lewis, Linda
List, Robert F.

lcarter@captionreporters.com
stephen_cereghino@ymp.gov
zchoate@co.nve.nv.us
rcolburn@ndnlaw.com
awc@nei.org
Martha.Crosland@hq.doe.gov
dcurran@harmoncurran.com
rdamele@eurekanv.org
Nicholas.Dinunzio@hq.doe.gov
jdobie@gklaw.com
michael.dreher@nrc.gov
sdudley@co.nve.nv.us
susan.durbin@doj.ca.gov
sthineik@ndnlaw.com
seredia@ndnlaw.com
kfaglioni@hunton.com
cfitzpatrick@nuclearlawyer.com
kxf4@nrc.gov
mfraser@harmoncurran.com
steve.frishman@gmail.com
rll@nrc.gov
isgl@nrc.gov
ecg@nei.org
kg.golshan@nrc.gov
jgores@armstrongteasdale.com
djg2@nrc.gov
Jocelyn.Gutierrez@ymp.gov
rshanna@bsglaw.net
aharring@gklaw.com
Scott.Harris@hq.doe.gov
erh@nrc.gov
hearingdocket@nrc.gov
sheinzen@gklaw.com
brian.hembacher@doj.ca.gov
whorin@winston.com
dhouck@ndnlaw.com
dirwin@hunton.com
glijames@earthlink.net
eurekanrc@gmail.com
zxkl@nrc.gov
klevorick@co.clark.nv.us
plarimore@talisman-intl.com
jlawrence@nuclearlawyer.com
rleigh@abbwlaw.com
alembke@inyocounty.us
daniel.lenehan@nrc.gov
sean.lev@hq.doe.gov
linda.lewis@nrc.gov
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
smeaharg@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
jpeebles@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
psr1@nrc.gov
jschwartz@gklaw.com
rwsears@wpcda.org
mshebelskie@hunton.com
jay.silberg@pillsburylaw.com
alc1@nrc.gov
icciac@co.lincoln.nv.us
wpnucast1@mwpower.net
csisco@winston.com
Josephine.Sommer@ymp.gov
timothy.sullivan@doj.ca.gov
Katie.Tucker@nrc.gov
nbrjdn@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 C

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.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)

U.S. DEPARTMENT OF ENERGY)

(High-Level Waste Repository))

Docket No. 63-001-HLW
ASLBP No. 09-892-HLW-CAB04

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing ORDER (Granting Stay of Proceeding), dated February 16, 2010, have been served upon the following persons by Electronic Information Exchange.

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

Construction Authorization Board (CAB) 04

Thomas S. Moore, Chair
Administrative Judge
ism2@nrc.gov

Paul S. Ryerson
Administrative Judge
psr1@nrc.gov

Richard E. Wardwell
Administrative Judge
rew@nrc.gov

Anthony C. Eitreim, Esq., Chief Counsel
ace1@nrc.gov

Daniel J. Graser, LSN Administrator
dig2@nrc.gov

Zachary Kahn, Law Clerk
zxk1@nrc.gov

Matthew Rotman, Law Clerk
matthew.rotman@nrc.gov

Katherine Tucker, Law Clerk
katie.tucker@nrc.gov

Joseph Deucher
jhd@nrc.gov

Andrew Welkie
axw5@nrc.gov

Jack Whetstone
jqw@nrc.gov

Patricia Harich
patricia.harich@nrc.gov

Sara Culler
sara.culler@nrc.gov

U.S. Nuclear Regulatory Commission
Office of the General Counsel
Mail Stop O-15D21
Washington, DC 20555-0001
Margaret J. Bupp, Esq.
mjb5@nrc.gov

Michael G. Dreher, Esq.
michael.dreher@nrc.gov
Karin Francis, Paralegal
kxf4@nrc.gov

Joseph S. Gilman, Paralegal
jsq1@nrc.gov

Daniel W. Lenehan, Esq.
daniel.lenehan@nrc.gov

Andrea L. Silvia, Esq.
alc1@nrc.gov

Mitzi A. Young, Esq.
mav@nrc.gov

Marian L. Zabler, Esq.
mlz@nrc.gov

OGC Mail Center
OGCMailCenter@nrc.gov

U.S. Nuclear Regulatory Commission
Office of Commission Appellate Adjudication
Mail Stop O-16C1
Washington, DC 20555-0001
OCAA Mail Center
ocaa@mail@nrc.gov

U.S. Nuclear Regulatory Commission
Office of the Secretary of the Commission
Mail Stop O-16C1
Washington, DC 20555-0001
Hearing Docket
hearindocket@nrc.gov

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

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@vmp.gov
Josephine L. Sommer, Paralegal
josephine.sommer@vmp.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@vmp.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
ORDER (Granting Stay of Proceeding)

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.
lcshedrik@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
sstaton@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
szeee@nuc.state.nv.us

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

Counsel for Lincoln County, Nevada
Whipple Law Firm
1100 S. Tenth Street
Las Vegas, NV 89017
Annie Bailey, Legal Assistant
bailevs@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.
lcda@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 Klevorick, Sr. Mgmt Analyst
klevorick@co.clark.nv.us
Elizabeth A. Vibert, Deputy District Attorney
Elizabeth.Vibert@ccdavn.com

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

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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@ldiservices.com

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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: gjames@earthlink.net

Inyo County Yucca Mountain Repository
Assessment Office
P. O. Box 367
Independence, CA 93526-0367
Alisa M. Lambke, Project Analyst
alambke@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.
rleigh@abwwlaw.com
Scott W. Williams, Esq.
swilliams@abwwlaw.com

**U.S. DEPARTMENT OF ENERGY (High Level Waste Repository) Docket No. 63-001-HLW
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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.
rhoan@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@qklaw.com
Steven A. Heinzen, Esq.
sheinzen@qklaw.com
Douglas M. Poland, Esq.
dpoland@qklaw.com
Hannah L. Renfro, Esq.
hrenfro@qklaw.com
Jacqueline Schwartz, Paralegal
jschwartz@qklaw.com

Godfrey & Kahn, S.C.
780 N. Water Street
Milwaukee, WI 53202
Arthur J. Harrington, Esq.
aharrington@qklaw.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 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.^a (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 Inyoport 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 ⁻¹⁶ 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 disturbances 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; color 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.* (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>						
<i>Public</i>						
<i>Radiological^a</i>						
MEI (probability of an LCF)	1.6x10 ⁻⁴ to 3.1x10 ⁻³	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 ⁻⁴	1.3x10 ⁻⁴	(c)
Population (LCFs)	0.46 to 2.0	0.61 to 2.5	2x10 ⁻⁶ to 3x10 ⁻⁶	0.41	3	3,300 ^b
Nonradiological (fatalities due to emissions)	Small; exposures well below regulatory limits	1.6 to 2.8 ^c	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 (100 years)	Long-term (100 to 10,000 years)	
	Repository	Transportation		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
<i>Accidents</i>						
<i>Public</i>						
Radiological						
MEL (probability of an LCF)	2.9×10^{-11} 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^{-2}	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
<i>Noise/Ground Vibration</i>						
	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
<i>Aesthetics</i>						
	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; conflicts with visual resource management goals for Wilson Pass Option of the Jean full 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
<i>Utilities, energy, materials, and site services</i>						
	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
<i>Management of site-generated waste and hazardous materials</i>						
	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

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Summary

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

Resource area	Flexible design potential operating modes - ranges 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, socioeconomics, 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

RECORD NO. 10- _____

**IN THE
UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

State of South Carolina, ex rel. Henry Dargan McMaster, Attorney General,

Petitioner,

v.

The United States Department of Energy; Barack Obama, President of the United States, in his official capacity; Steven Chu, Secretary of Energy, in his official capacity; The Nuclear Regulatory Commission; and Gregory B. Jaczko, Chairman of the Nuclear Regulatory Commission, in his official capacity, 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.

LIST OF RESPONDENTS

The Honorable Barack Obama
President of the United States of America
1600 Pennsylvania Avenue, NW
Washington, DC 20500

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

Richard Wardwell
U.S. Nuclear Regulatory Commission
Atomic Safety and Licensing Board (ASLBP)
Mail Stop T-3 F23
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NRC Atomic Safety and Licensing Board
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Respondents.

CERTIFICATE OF FILING AND SERVICE

I hereby certify that on this 26th day of February, 2010, I filed with the Clerk's Office of the United States Court of Appeals for the Fourth Circuit, via hand delivery, an original and four copies of the foregoing *Petition for Review and Petition for Mandamus, etc.*, and further certify that I served, via U.S. Mail, return receipt requested, a true copy of the same upon counsel listed below:

The Honorable Barack Obama
President of the United States of America
1600 Pennsylvania Avenue, NW
Washington, DC 20500

Robert Bauer, Esquire
White House Counsel
The White House
1600 Pennsylvania Avenue, NW
Washington, DC 20500

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

Scott Blake Harris, Esquire
General Counsel
Office of General Counsel
U.S. Department of Energy
1000 Independence Avenue, S.W.
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-3 F23
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 Ryerson
U.S. Nuclear Regulatory Commission
Atomic Safety and Licensing Board (ASLBP)
Mail Stop T-3 F23
Washington, DC 20555-0001

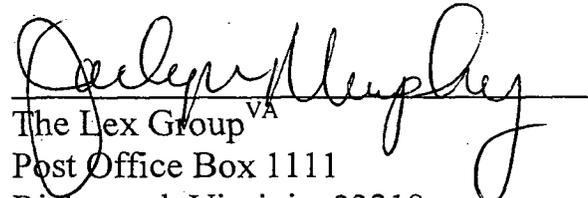
Richard Wardwell
U.S. Nuclear Regulatory Commission
Atomic Safety and Licensing Board (ASLBP)
Mail Stop T-3 F23
Washington, DC 20555-0001

NRC Atomic Safety and Licensing Board
Atomic Safety and Licensing Board (ASLBP)
Mail Stop T-3 F23
Washington, DC 20555-0001

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

Kevin F. McDonald, Esquire
Acting U.S. Attorney
1441 Main Street, Suite 500
Columbia, South Carolina 29201

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


The Lex Group^{VA}
Post Office Box 1111
Richmond, Virginia 23218
(804) 644-4419