

NO. 10-1050, 10-1052, 10-1069, 10-1082 *Consolidated*

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

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No. 10-1050

IN RE AIKEN COUNTY, Petitioner

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No. 10-1052

ROBERT L. FERGUSON, *et al.*, Petitioners,

v.

BARACK OBAMA, President of the United States, *et al.*, Respondents.

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No. 10-1069

STATE OF SOUTH CAROLINA, Petitioner,

v.

UNITED STATES DEPARTMENT OF ENERGY, *et al.*, Respondents.

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No. 10-1082

STATE OF WASHINGTON, Petitioner,

v.

UNITED STATES DEPARTMENT OF ENERGY, *et al.*, Respondents.

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**PETITIONERS' STATUS REPORT**

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Petitioners submit this status report pursuant to the Court's July 28, 2010, order granting a stay in this matter, vacating the previously imposed expedited briefing schedule, and requiring the parties to submit monthly reports regarding the status of related litigation before the Nuclear Regulatory Commission (NRC). In short, the status quo remains the same with respect to the NRC: the NRC has not issued any decision in the matter pending before it (or even indicated whether it will, in fact, review the merits of that matter). In contrast, the status quo with respect to the Yucca Mountain repository project itself continues to change: the Department of Energy (DOE) continues to aggressively dismantle the Yucca Mountain repository project.

The matter pending before the NRC involves only one issue: Whether the Department of Energy (DOE) has authority to withdraw the application it submitted to the NRC in 2008 to begin construction of a permanent repository for high level nuclear waste at Yucca Mountain. This issue is not fact-dependent and is purely an issue of law. Despite this, and despite the fact that all parties' briefing was submitted to the NRC by July 19, 2010 (pursuant to the NRC's order requiring an extremely accelerated briefing schedule), the NRC has to date not issued any decision, or even indicated whether it will take review of the matter. This inaction contrasts with a letter from the NRC's Secretary dated August 18, 2010, in which the Secretary assured members of Congress that it "is moving with

all due haste in arriving at a decision relative to review.” See Exhibit A to Petitioners’ August 27, 2010, Status Report.

In the meantime, despite the fact that the NRC’s Construction Authorization Board has denied its motion to withdraw its license application, DOE continues to dismantle the Yucca Mountain project. Petitioners have described DOE’s previous actions in this regard. Petitioners’ June 18, 2010, Joint Merits Brief at 15-16. These actions have nearly reached their culmination. In a letter dated September 20, 2010, DOE has indicated that as of September 30, 2010, the Office of Civilian Radioactive Waste Management (OCRWM), which is the office Congress created in the Nuclear Waste Policy Act to oversee the Yucca Mountain repository project, “will cease to exist.” Exhibit A; 42 U.S.C. § 10224(a).

RESPECTFULLY SUBMITTED this 27th day of September, 2010.

s/ Thomas R. Gottshall  
THOMAS R. GOTTSBALL  
ALEXANDER SHISSIAS  
S. ROSS SHEALY  
Haynsworth Sinkler Boyd, P.A.  
Post Office Box 11889  
Columbia, SC 29211-1889  
*Attorneys for Aiken County*

s/ Barry M. Hartman  
BARRY M. HARTMAN  
CHRISTOPHER R. NESTOR  
CHRISTOPHER R. TATE\*  
JOHN ENGLERT\*  
K&L Gates LLP  
1601 K Street, N.W.  
Washington, DC 20005-1600  
*\*not admitted*  
  
*Attorneys for Robert L. Ferguson,  
William Lampson, and Gary Petersen*

HENRY DARGAN MCMASTER\*  
Attorney General for the State of  
South Carolina

JOHN W. MCINTOSH\*

ROBERT D. COOK\*

LEIGH CHILDS CANTEY\*

Post Office Box 11549

Columbia, SC 29211

*\*not admitted*

*s/ Kenneth P. Woodington*

WILLIAM HENRY DAVIDSON, II

KENNETH PAUL WOODINGTON

Davidson, Morrison & Lindemann

1611 Devonshire Dr., 2nd Floor

Post Office Box 8568

Columbia, SC 29202-8568

*Attorneys for the State of  
South Carolina*

*s/ James B. Ramsay*

JAMES BRADFORD RAMSAY

ROBIN J. LUNT

National Assoc. of Regulatory Utility

Commissioners

1101 Vermont Ave. N.W., Suite 200

Washington, DC 20005

*Attorneys for Intervenor-Petitioner  
NARUC*

ROBERT M. MCKENNA\*  
Attorney General

*s/ Andrew A. Fitz*

ANDREW A. FITZ

TODD R. BOWERS

State of Washington

Office of the Attorney General

Post Office Box 40117

Olympia, WA 98504-0117

*\*not admitted*

*Attorneys for State of Washington*



**Department of Energy**

Washington, DC 20585

September 20, 2010

**ATTN: Document Control Desk**

Director, Office of Nuclear Safety and Safeguards

U.S. Nuclear Regulatory Commission

EBB-2B2

11545 Rockville Pike

Rockville, MD 20852-2738

**POINT-OF-CONTACT FOR YUCCA MOUNTAIN REPOSITORY LICENSE APPLICATION  
(LA) FOR CONSTRUCTION AUTHORIZATION**

Our transmittal letter for the subject application dated June 3, 2008, specified the Director, Regulatory Authority Office, Office of Civilian Radioactive Waste Management, as the point-of-contact for any questions regarding NRC staff review and acceptance of the application.

Because of the Administration's decision not to pursue development of a repository at Yucca Mountain, the Office of Civilian Radioactive Waste Management will cease to exist as of September 30, 2010. Any future correspondence or questions regarding the license application should be directed to the Department of Energy's outside counsel at the following address:

Michael R. Shebelskie, Esq.

Hunton & Williams LLP

Riverfront Plaza, East Tower

951 East Byrd Street

Richmond, VA 23219

Telephone: (804) 788-8716

Facsimile: (804) 788-8218

Email: [mshbelskie@hunton.com](mailto:mshbelskie@hunton.com)

Sincerely,

David K. Zabransky

Acting Principal Deputy Director

Office of Civilian Radioactive

Waste Management

cc:

J. C. Chen, NRC, Rockville, MD

J. R. Davis, NRC, Rockville, MD



R. K. Johnson, NRC, Rockville, MD  
A. S. Mohseni, NRC, Rockville, MD  
J. D. Parrott, NRC, Las Vegas, NV  
D. B. Spitzberg, NRC, Arlington, TX  
N. K. Stablein, NRC, Rockville, MD  
L. M. Willoughby, NRC, Las Vegas, NV  
W. C. Patrick, CNWRA, San Antonio, TX  
B. Sagar, CNWRA, San Antonio, TX  
B. Street, CNWRA, San Antonio, TX  
R. McCullum, NEI, Washington, DC  
B. J. Garrick, NWTRB, Arlington, VA  
B. Breslow, State of Nevada, Carson City, NV  
A. Kalt, Churchill County, Fallon, NV  
I. Navis, Clark County, Las Vegas, NV  
E. Mueller, Esmeralda County, Goldfield, NV  
R. Damele, Eureka County, Eureka, NV  
A. Lembke, Inyo County, Independence, CA  
C. Chapin, Lander County, Battle Mountain, NV  
C. Simpkins, Lincoln County, Pioche, NV  
L. Mathias, Mineral County, Hawthorne, NV  
D. Lacy, Nye County, Pahrump, NV  
J. Kennedy, Timbisha Shoshone Tribe, Death Valley, CA  
M. Simon, White Pine County, Ely, NV  
B. Byron, California Energy Commission, Sacramento, CA

bcc:

D. Barr, RW-5.2.2

S. Bokhari, RW-5.2.3

W. Boyle, RW-5.2

M. Crosland, GC-52

T. Gunter, GC-5.2.1

J. Gutierrez, GC-51

J. Hollrith, RW-7

N. Hunemuller, RW-5.2.1

C. Macaluso, RW-5.2.3

J. B. McRae, GC-52

J. Williams, RW-5.2.3

D. Irwin, Hunton & Williams, Richmond, VA

J. Gutierrez, Morgan, Lewis & Bockius, LLP, Washington, DC

T. C. Poindexter, Morgan, Lewis & Bockius, LLP, Washington, DC

D. J. Silverman, Morgan, Lewis & Bockius, LLP, Washington, DC

J. M. McKenzie, U.S. Department of the Navy, Washington, DC

OTM-RAD Records Coordinator, NV

OTM-RAD Library

**CERTIFICATE OF SERVICE**

I hereby certify that on the 27th day of September 2010, a copy of the foregoing Petitioners' Status Report was filed electronically using the CM/ECF system, which will provide service on the following parties:

|                             |   |
|-----------------------------|---|
| Avila, Aaron Peter          | <u><a href="mailto:aaron.avila@usdoj.gov">aaron.avila@usdoj.gov</a></u><br><u><a href="mailto:efile_app.enrd@usdoj.gov">efile_app.enrd@usdoj.gov</a></u><br><u><a href="mailto:aaronpavila@yahoo.com">aaronpavila@yahoo.com</a></u>     |
| Bauser, Michael Alan        | <u><a href="mailto:mab@nei.org">mab@nei.org</a></u>   |
| Bowers, Todd R.             | <u><a href="mailto:toddb@atg.wa.gov">toddb@atg.wa.gov</a></u>   |
| Brabender, Allen Michael    | <u><a href="mailto:allen.brabender@usdoj.gov">allen.brabender@usdoj.gov</a></u><br><u><a href="mailto:efile_app.enrd@usdoj.gov">efile_app.enrd@usdoj.gov</a></u>  |
| Cordes, John F., Jr.        | <u><a href="mailto:John.Cordes@nrc.gov">John.Cordes@nrc.gov</a></u>   |
| Durkee, Ellen J.            | <u><a href="mailto:ellen.durkee@usdoj.gov">ellen.durkee@usdoj.gov</a></u>   |
| Fitz, Andrew Arthur         | <u><a href="mailto:andyf@atg.wa.gov">andyf@atg.wa.gov</a></u><br><u><a href="mailto:dianam@atg.wa.gov">dianam@atg.wa.gov</a></u><br><u><a href="mailto:ecyolyef@atg.wa.gov">ecyolyef@atg.wa.gov</a></u>                                 |
| Fitzpatrick, Charles J.     | <u><a href="mailto:cfitzpatrick@nuclearlawyer.com">cfitzpatrick@nuclearlawyer.com</a></u><br><u><a href="mailto:smontesi@nuclearlawyer.com">smontesi@nuclearlawyer.com</a></u>  |
| Gottshall, Thomas Rush      | <u><a href="mailto:tgottshall@hsblawfirm.com">tgottshall@hsblawfirm.com</a></u><br><u><a href="mailto:lgantt@hsblawfirm.com">lgantt@hsblawfirm.com</a></u><br><u><a href="mailto:bvaldes@hsblawfirm.com">bvaldes@hsblawfirm.com</a></u> |
| Hartman, Barry M.           | <u><a href="mailto:barry.hartman@klgates.com">barry.hartman@klgates.com</a></u><br><u><a href="mailto:klgateseservice@klgates.com">klgateseservice@klgates.com</a></u>  |
| Jones, Lisa Elizabeth       | <u><a href="mailto:lisa.jones@usdoj.gov">lisa.jones@usdoj.gov</a></u><br><u><a href="mailto:efile_app.enrd@usdoj.gov">efile_app.enrd@usdoj.gov</a></u>  |
| Lawrence, John W.           | <u><a href="mailto:jlawrence@nuclearlawyer.com">jlawrence@nuclearlawyer.com</a></u><br><u><a href="mailto:lborski@nuclearlawyer.com">lborski@nuclearlawyer.com</a></u>  |
| Lunt, Robin Kimlin Jensen   | <u><a href="mailto:rlunt@naruc.org">rlunt@naruc.org</a></u>   |
| Malsch, Martin Guilbert     | <u><a href="mailto:mmalsch@nuclearlawyer.com">mmalsch@nuclearlawyer.com</a></u><br><u><a href="mailto:cfitzpatrick@nuclearlawyer.com">cfitzpatrick@nuclearlawyer.com</a></u>  |
| Ramsay, James Bradford      | <u><a href="mailto:jramsay@naruc.org">jramsay@naruc.org</a></u>   |
| Shealy, Samuel Ross Beheler | <u><a href="mailto:rshealy@hsblawfirm.com">rshealy@hsblawfirm.com</a></u>   |

|                            |  |
|----------------------------|--|
| Shissias, Alexander George | <a href="mailto:ashissias@hsblawfirm.com">ashissias@hsblawfirm.com</a> ,<br><a href="mailto:efoster@hsblawfirm.com">efoster@hsblawfirm.com</a>   |
| Woodington, Kenneth Paul   | <a href="mailto:kwoodington@dml-law.com">kwoodington@dml-law.com</a><br><a href="mailto:sstafford@dml-law.com">sstafford@dml-law.com</a><br><a href="mailto:jangus@dml-law.com">jangus@dml-law.com</a> |

I herby certify that service of the same was made on the following parties by

first class United States mail:

Mr. Kilbourne, James Conwell  
U.S. Department of Justice  
Environment & Natural Resources Division  
PO Box 23795, L'Enfant Plaza Station  
Washington, DC 20026-3795

Davidson, William Henry, II  
Davidson Morrison & Lindemann, PA  
1611 Devonshire Drive, Second Floor  
PO Box 8568  
Columbia, SC 29202-8568

Ms. Cottingham, Anne Williams  
Nuclear Energy Institute  
1776 Eye Street, NW  
Washington, DC 20006-3708

s/ Andrew A. Fitz  
ANDREW A. FITZ  
TODD R. BOWERS  
State of Washington  
Office of the Attorney General  
Post Office Box 40117  
Olympia, WA 98504-0117