

UNITED STATES COURT OF APPEALS
DISTRICT OF COLUMBIA CIRCUIT

No. 11-1271

In re: AIKEN COUNTY, et al., Petitioners,

U.S. NUCLEAR REGULATORY COMMISSION, et al., Respondents.

NOTICE OF UNDERLYING DECISION IN CASE

On July 29, 2011, Petitioners filed this action seeking a Writ of Mandamus from this Court directing the U.S. Nuclear Regulatory Commission to take several specified actions. The Petition seeks, *inter alia*, an order from this Court directing the Commission “to issue its final decision regarding review of the June 29, 2010” order issued by the NRC’s Atomic Safety and Licensing Board (“Licensing Board”) “within 30 days.” *See* Petition at 29. The Licensing Board order had denied a Motion filed by the U.S. Department of Energy, seeking to withdraw the Application to construct a high-level waste repository at Yucca Mountain, Nevada.

On September 9th, 2011, the Commission issued a decision stating that it “finds itself evenly divided on whether to take the affirmative action of overturning or upholding the Board’s decision.” *U.S. Department of Energy* (High-Level Waste Repository), CLI-11-07, 74 NRC __ (2011), Slip Op. at 1. The Commission also noted that “[c]onsistent with budgetary limitations, the Board has taken action to preserve information associated with this adjudication.” *Id.* (footnote omitted).

- 2 -

Finally, the Commission ordered the Licensing Board “to, by the close of the current fiscal year, complete all necessary and appropriate case management activities, including disposal of all matters currently pending before it and comprehensively documenting the full history of the adjudicatory proceeding.” *Id.* at 1-2.

A copy of the Commission’s decision is attached.

Respectfully submitted,

___s/Charles E. Mullins___
Senior Attorney
Office of the General Counsel
U.S. Nuclear Regulatory Commission
(301) 415-1618

Dated: September 9, 2011

Attachment: Commission Order

Filed by EC/CMF

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

COMMISSIONERS:

Gregory B. Jaczko, Chairman
Kristine L. Svinicki
George Apostolakis
William D. Magwood, IV
William C. Ostendorff

In the Matter of

U.S. DEPARTMENT OF ENERGY

(High-Level Waste Repository)

Docket No. 63-001-HLW

CLI-11-07

MEMORANDUM AND ORDER

On June 30, 2010, the participants were invited to submit briefs as to whether the Commission should review, and reverse or uphold, the Board's decision denying the Department of Energy's motion to withdraw its construction authorization application with prejudice.¹ Upon consideration of all filings in this matter, the Commission finds itself evenly divided on whether to take the affirmative action of overturning or upholding the Board's decision.

Consistent with budgetary limitations, the Board has taken action to preserve information associated with this adjudication.² In furtherance of this, we hereby exercise our inherent supervisory authority to direct the Board to, by the close of the current fiscal year, complete all

¹ See LBP-10-11, 71 NRC ___ (June 29, 2010) (slip op.); Order (June 30, 2010) (unpublished).

² See generally Memorandum of Daniel J. Graser, Licensing Support Network Administrator (LSNA), to the Administrative Judges, "Shutdown of the Licensing Support Network" (July 26, 2011); Order (Concerning LSNA July 26, 2011 Memorandum) (July 28, 2011) (unpublished).

necessary and appropriate case management activities, including disposal of all matters currently pending before it and comprehensively documenting the full history of the adjudicatory proceeding.

IT IS SO ORDERED.³

For the Commission

[NRC SEAL]

/RA/

Annette L. Vietti-Cook
Secretary of the Commission

Dated at Rockville, Maryland,
this 9th day of September, 2011.

³ Commissioner Apostolakis has recused himself from this adjudication and, therefore, did not participate in this matter. See Notice of Recusal (July 15, 2010).

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 **COMMISSION MEMORANDUM AND ORDER (DOE HLW Repository, Review of LBP-10-11) (CLI-11-07)**, dated September 9, 2011, 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 04 (CAB04)

Thomas S. Moore, Chair
Administrative Judge
thomas.moore@nrc.gov

Paul S. Ryerson
Administrative Judge
paul.ryerson@nrc.gov

Richard E. Wardwell
Administrative Judge
richard.wardwell@nrc.gov

Anthony C. Eitrem, Esq., Chief Counsel
ace1@nrc.gov
Joshua A. Kirstein, Law Clerk
josh.kirstein@nrc.gov
Daniel J. Graser, LSN Administrator
djg2@nrc.gov

U.S. Nuclear Regulatory Commission
Office of the General Counsel
Mail Stop O-15D21
Washington, DC 20555-0001
Jessica Bielecki, Esq.
jessica.bielecki@nrc.gov
Elva Bowden Berry, Esq.
elva.bowdenberry@nrc.gov
Joseph S. Gilman, Paralegal
joseph.gilman@nrc.gov
Christopher Hair, Esq.
christopher.hair@nrc.gov
Daniel W. Lenehan, Esq.
daniel.lenehan@nrc.gov
Megan A. Wright, Esq.
megan.wright@nrc.gov
Mitzi A. Young, Esq.
may@nrc.gov
OGC Mail Center
OGCMailCenter@nrc.gov

U.S. Nuclear Regulatory Commission
Office of Commission Appellate Adjudication
Mail Stop O-7H4M
Washington, DC 20555-0001
OCAAMail Center
ocaamail@nrc.gov

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

U.S. DEPARTMENT OF ENERGY (High Level Waste Repository) Docket No. 63-001-HLW
COMMISSION MEMORANDUM AND ORDER (DOE HLW Repository, Review of LBP-10-11) (CLI-11-07)

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

Counsel for U.S. Department of Energy
Morgan, Lewis & Bockius LLP
1111 Pennsylvania Ave., NW
Washington, DC 20004
Lewis M. Csedrik, Esq.
lcshedrik@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
Paul J. Zaffuts, Esq.
pzaffuts@morganlewis.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
Edward P. Noonan, Esq.
enoonan@hunton.com
Michael R. Shebelskie, Esq.
mshebelskie@hunton.com
Jason Wool, Esq.
jwool@hunton.com
Belinda A. Wright, Sr. Professional Assistant
bwright@hunton.com

U.S. DEPARTMENT OF ENERGY (High Level Waste Repository) Docket No. 63-001-HLW
COMMISSION MEMORANDUM AND ORDER (DOE HLW Repository, Review of LBP-10-11) (CLI-11-07)

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

Counsel for State of Nevada
Egan, Fitzpatrick, Malsch & Lawrence, PLLC
1777 N.E. Loop 410, Suite 600
San Antonio, TX 78217
Charles J. Fitzpatrick, Esq.
cfitzpatrick@nuclearlawyer.com
John W. Lawrence, Esq.
jlawrence@nuclearlawyer.com
Laurie Borski, Paralegal
lborski@nuclearlawyer.com

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

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

Counsel for Nye County, Nevada
Ackerman Senterfitt
801 Pennsylvania Avenue, NW, #600
Washington, DC 20004
Robert Andersen, Esq.
robert.andersen@akerman.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, Administrative Technical Coordinator
zchoate@co.nye.nv.us
Celeste Sandoval, Quality Assurance Records Spec.
csandoval@co.nye.nv.us

Counsel for Lincoln County, Nevada
Whipple Law Firm
1100 S. Tenth Street
Las Vegas, NV 89017
Annie Bailey, Legal Assistant
baileys@lcturbonet.com
Adam L. Gill, Esq.
adam.whipplelaw@yahoo.com
Eric Hinckley, Law Clerk
erichinckley@yahoo.com
Bret Whipple, Esq.
bretwhipple@nomademail.com

Lincoln County District Attorney
P. O. Box 60
Pioche, NV 89403
Gregory Barlow, Esq.
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
Interftech Services Corporation
PO Box 2008
Carson City, NV 89702
Mike Baughman, Consultant
mikebaughman@charter.net

U.S. DEPARTMENT OF ENERGY (High Level Waste Repository) Docket No. 63-001-HLW
COMMISSION MEMORANDUM AND ORDER (DOE HLW Repository, Review of LBP-10-11) (CLI-11-07)

Clark County, Nevada
500 S. Grand Central Parkway
Las Vegas, NV 98155
Phil Klevorick, Sr. Mgmt Analyst
klevorick@clarkcountynv.gov
Elizabeth A. Vibert, Deputy District Attorney
Elizabeth.Vibert@ccdavn.com

Counsel for Clark County, Nevada
Jennings, Strouss & Salmon
1350 I Street, N.W., Suite 810
Washington, DC 20005-3305
Alan I. Robbins, Esq.
arobbins@jsslaw.com
Debra D. Roby, Esq.
droby@jsslaw.com
Alan J. Rukin, Esq.
arukin@jsslaw.com

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

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

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

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

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

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

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

Kolesar & Leatham
1975 Village Center Circle, Suite 140
Las Vegas, NV 89134
Robert F. List, Esq.
rlist@klnevada.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 Lincoln and White Pine County, Nevada
Jason Pitts, LSN Administrator
P.O. Box 126
Caliente, NV 89008
jayson@idtservices.com

U.S. DEPARTMENT OF ENERGY (High Level Waste Repository) Docket No. 63-001-HLW
COMMISSION MEMORANDUM AND ORDER (DOE HLW Repository, Review of LBP-10-11) (CLI-11-07)

For White Pine County, Nevada
Kelly Brown, District Attorney
801 Clark Street, Suite 3
Ely, NV 89301
kbrown@mwpower.net

White Pine Co. Nuclear Waste Project Ofc
959 Campton Street
Ely, NV 89301
Mike Simon, Director
wpnucwst1@mwpower.net
Melanie Martinez, Sr. Mgmt. Asst.
wpnucwst2@mwpower.net

Counsel for Inyo County, California
Gregory L. James, Attorney at Law
712 Owens Gorge Road
HC 79, Box
Mammoth Lakes, CA 93546
E-Mail: gjames@earthlink.net

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

Inyo Co Yucca Mtn Repository Assessment Ofc
P. O. Box 367
Independence, CA 93526-0367
Cathreen Richards, Associate Planner
crichards@inyocounty.us

Counsel for State of Washington
Office of the Attorney General
P. O. Box 40117
Olympia, WA 98504-0117
Todd R. Bowers, Esq.
toddb@atg.wa.gov
Andrew A. Fitz, Esq.
andyf@atg.wa.gov
Michael L. Dunning, Esq.
michaeld@atg.wa.gov
H. Lee Overton, Esq.
leo1@atg.wa.gov
Diana MacDonald
dianam@atg.wa.gov

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, PO Box 944255
Sacramento, CA 94244-2550
Susan Durbin, Deputy Attorney General
susan.durbin@doj.ca.gov
Michele Mercado, Analyst
michele.Mercado@doj.ca.gov

California Department of Justice
Office of the Attorney General
1515 Clay Street, 20th Fl, PO Box 70550
Oakland, CA 94612-0550
Timothy E. Sullivan, Deputy Attorney General
timothy.Sullivan@doj.ca.gov

California Department of Justice
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

Counsel for State of South Carolina
Davidson & Lindemann, P.A.
1611 Devonshire Drive
P.O. Box 8568
Columbia, SC 29202
Kenneth P. Woodington, Esq.
kwoodington@dml-law.com

Counsel for Aiken County, SC
Haynsworth Sinkler Boyd, PA
1201 Main Street, Suite 2200
P. O. Box 11889
Columbia, SC 29211-1889
Thomas R. Gottshall, Esq.
tgottshall@hsblawfirm.com
Ross Shealy, Esq.
rshealy@hsblawfirm.com

U.S. DEPARTMENT OF ENERGY (High Level Waste Repository) Docket No. 63-001-HLW
COMMISSION MEMORANDUM AND ORDER (DOE HLW Repository, Review of LBP-10-11) (CLI-11-07)

Florida Public Service Commission
Office of the General Counsel
2540 Shumard Oak Boulevard
Tallahassee, FL 32303
Cynthia Miller, Esq.
cmiller@psc.state.fl.us

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

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

Counsel for Prairie Island Indian Community
Public Law Resource Center PLLC
505 N. Capitol Avenue
Lansing, MI 48933
Don L. Keskey, Esq.
donkeskey@publiclawresourcecenter.com

Prairie Island Indian Community Legal Department
5636 Sturgeon Lake Road
Welch, MN 55089
Philip R. Mahowald, Esq.
pmahowald@piic.org

Nuclear Energy Institute
Office of the General Counsel
1776 I Street, NW Suite 400
Washington, DC 20006-3708
Jerry Bonanno, Esq.
jxb@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

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

Counsel for National Association of Regulatory
Utility Commissioners (NARUC)
1101 Vermont Avenue, Suite 200
Washington, DC 20005
James Ramsay, Esq.
jramsay@naruc.org
Robin Lunt, Esq.
rlunt@naruc.org
Deana Dennis, Legal Assistant
ddennis@naruc.org

U.S. DEPARTMENT OF ENERGY (High Level Waste Repository) Docket No. 63-001-HLW
COMMISSION MEMORANDUM AND ORDER (DOE HLW Repository, Review of LBP-10-11) (CLI-11-07)

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

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

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

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

For Joint Timbisha Shoshone Tribal Group
Indian Village Road, P.O. Box 206
Death Valley, CA 92328-0206
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 9th day of September 2011