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From: David S. [mailto:dahvidi@hotmail.com]
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TO:

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Secretary
U.S. Nuclear Regulatory Commission (NRC)
Washington, D.C. 20555-0001
ATTN: Rulemakings and Adjudications Staff

FROM:

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AFFILIATION:

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REGARDING:

Public Involvement in U.S. NRC Waste Confidence Rulemaking

Solicited Comments

Waste Confidence Generic Environmental Impact Statement,
Draft Report for Comment, September, 2013
Office of Nuclear Material Safety and Safeguards
(Waste Confidence DGEIS -- NUREG-2157)

AND

Proposed Revised Waste Confidence Rule (10 CFR 51.23)
September 13, 2013 (78 FR 56776)
RIN 3150-AJ20; Docket ID NRC-2012-0246
10 CFR Part 51: Waste Confidence--Continued Storage of Spent Nuclear Fuel

COMMENTS:

PREFACE:

Hello everyone. My name is **DAVID SCHONBERGER**, and I am a resident of Ann Arbor, Michigan. Thank you for the opportunity to submit these comments publicly on-the-record. These written comments are a revised and expanded version of previous comments which I submitted orally, and I intend these comments to supercede and supplant any and all previous comments. My previous comments include a three-minute oral statement on December 2, 2013 at an NRC public meeting in Perrysburg, Ohio and two three-minute oral statements on December 9, 2013 during an NRC national public telephone conference call (teleconference).

All of these comments are my own and not endorsed by any other individual or organization. I am representing myself and my own point-of-view as a concerned individual citizen and am not representing any particular group or organization with which I may be affiliated.

Full Disclosure: I am currently an active, participating individual member of the Alliance to Halt Fermi 3 (ATHF3) which is based in Southeast Michigan. I endorse the overall official positions and sentiments of ATHF3, NIRS (Nuclear Information and Resource Service), and Beyond Nuclear.

SUMMARY:

I do **NOT** support the proposed NRC Rule that is the subject of these comments, and I emphatically dispute the premises, assumptions and conclusions of the Waste Confidence DGEIS. Therefore, I declare my opposition to using the DGEIS: (a) to support and form the regulatory basis for promulgating the proposed revised Rule, and (b) to codify the DGEIS determinations and conclusions into the text of the proposed revised Rule.

I also have serious doubts and concerns about the integrity and independence of the NRC's administrative rulemaking process as well as concerns about NRC compliance with the intention and spirit of relevant federal laws governing the processes of regulatory agencies, including the National Environmental Policy Act (NEPA) and the Administrative Procedures Act (5 U.S.C. Chapters 5 through 8), as I have personally witnessed the "revolving door" operating between the nuclear industry, the regulatory agency and the pro-nuclear academic departments and institutions -- thus leading me to believe that the NRC is an "industry-captured," biased regulator with a reassuring front-end (website) and a structurally-compromised back-end.

Given the recent overwhelming rebuke of the NRC by the Federal Court of Appeals of the DC Circuit (New York v. NRC, June 2012), I believe that a thorough reexamination is warranted of the viability and sensibility of perpetuating a lawful existential role for nuclear fission in this society.

SUPPORTING DETAILS:

RECOMMENDED ACTION:

Delete, vacate, remove and withdraw all of the proposed revisions and all of the proposed conforming amendments and language changes to 10 CFR Part 51.

Reconsider, re-scope and reformulate a technically feasible and economically, politically and ethically viable alternative that fully and genuinely complies with the official Mission of the NRC embodied by the official slogan "Protecting People and the Environment."

In the meantime, the NRC should indefinitely extend the current moratorium on all major licensing actions and relicensing decisions. In good faith, the NRC should defer to the anticipated and pending legal challenges initiated through the Federal Court system by multiple states and organizations representing millions of U.S. persons, American citizens and residents.

Anything less than all of the above would be appallingly irresponsible.

PRIMARY JUSTIFYING REASON:

The DGEIS, which serves as the technical supporting basis and rationale for promulgating the proposed revised Rule, is fundamentally and fatally flawed, and its generic structure and presuppositions are inherently erroneous and absurd. Garbage in, garbage out.

ADDITIONAL DETAILS:

Perhaps the most insidious, alarming and disturbing aspect of the NRC's proposed Waste Confidence Rule is the inherent GENERIC design and application of the Rule, which is based on a fundamentally misguided GENERIC approach to the supporting Environmental Impact Statement. While it is indeed true that the labels "spent nuclear fuel" and "high-level radioactive waste" are relatively generic and simplistic terms, the practical, technical and logistically-unprecedented challenge of properly and responsibly managing such material, which remains distributed across numerous facilities throughout the continent, necessitates a structural and regulatory approach that is SITE-SPECIFIC and not generic in nature.

The NRC is evaluating Waste Confidence on a generic basis because the "NRC considers the continued storage of spent fuel a generic activity that is similar for all commercial nuclear power plants and storage facilities. Therefore, a generic analysis is an appropriate, effective, and efficient method of evaluating the environmental impacts of continued storage." (DGEIS, Executive Summary, p. xxiv). I certainly agree that the generic approach is an efficient regulatory concept; however, I disagree that the generic approach is appropriate and effective. As a matter of fact, the State of Michigan has recently proposed revising criteria and requirements for remediation and redevelopment of contaminated facilities (so-called "brownfields") in order to accommodate a GENERIC paradigm. The new regulations are expected and actually intended to be a game-changer for the corporate stakeholders, as new efficiencies and "less burdensome" rules are introduced into the system. (Regulatory Impact Statement and Cost-Benefit Analysis, "Cleanup Criteria Administrative Rules for Part 201 of NREPA," ORR Rule 2013-056 EQ, State of Michigan Department of Environmental Quality, Remediation and Redevelopment Division, 10/10/13).

Fundamentally, the NRC has failed to sufficiently demonstrate that the technical process of continued storage of spent nuclear fuel is a generic task rather than a case-by-case challenge which presents unique circumstances requiring site-specific evaluations and analyses in order to properly, appropriately and effectively mitigate risk.

Further, the NRC has failed to sufficiently demonstrate (a) that a generic environmental assessment "provides for the same level of environmental protection as the other [Rulemaking] alternatives" (DGEIS, Executive Summary, p. xxvi, lines 10 - 11) and (b) that the quality of a generic environmental assessment inherently meets or exceeds the quality, detail and comprehensiveness of a gold-standard professional site-specific investigation and report.

In fact, the NRC implicitly acknowledges that the primary benefits of a generic regulatory framework accrue predominantly to the private and corporate stakeholders. "The NRC's preliminary conclusion is to revise 10 CFR 51.23 because of the efficiencies that would be gained in reactor and spent fuel storage facility licensing reviews. Revising the Waste Confidence rule minimizes expenditures on site-specific reviews, [and it] limits the potential for lengthy project delays . . ." (DGEIS, Executive Summary, p. xxvi, lines 7 - 10). Indeed, according to the NRC's statements published in the *Federal Register* (78 FR 56803 - 56804, SUPPLEMENTARY INFORMATION: Section XII -- Regulatory Analysis), the "DGEIS [Chapter 7] contains an estimate that it could cost over \$24 million to address continued storage in site-specific proceedings[.]" and "[l]icensees and license applicants ultimately shoulder the majority of costs incurred { . . . }." The same paragraph in Section XII also notes that a "draft regulatory analysis has not been prepared for this proposed regulation because this regulation does not establish any requirements that would place a burden on licensees."

Well, \$24 million is certainly not "small money;" but, it is merely a "rounding error" in relative terms compared to the \$15+ BILLION price-tag on a new reactor facility such as the currently proposed Fermi 3 reactor in Michigan. In other words, the NRC's position is "penny wise and pound foolish," as the saying goes.

It seems to me that there is an irrational, CIRCULAR LOGIC being applied by the regulator. The NRC repeatedly emphasizes that the "Waste Confidence rulemaking is *not* a licensing action. It [(the rulemaking)] does not permit a nuclear power plant or any other facility to operate or store spent fuel. Every nuclear power plant or specifically licensed spent fuel storage facility must undergo an environmental review as part of its site-specific licensing process." (DGEIS, Executive Summary, p. xxvi). However, the point of the rulemaking is to apply the generic determinations of the DGEIS to individual licensing actions in order to help facilitate the approval of future license applications.

So, the circular logic is clearly evident. True, the proposed Rule is not a licensing action or authorization for "continued storage," and, yes, site-specific reviews are still required as part of license applications; BUT, "the potential environmental impact of continued storage" would "not be considered in those proceedings -- due to the generic determination in 10 CFR 51.23(a)." (78 FR 56781 - 56782, Section III, A11). The generic determinations of the DGEIS which are codified in the proposed Rule are intended to fulfill the NEPA requirements for individual licensing decisions with regard to assessing foreseeable environmental impacts from "continued storage" of spent nuclear fuel. Therefore, it is reasonable to argue that the DGEIS is absolutely intended to be applied as a regulatory basis for supporting the expedited APPROVAL of all major relevant licensing applications in the future. In other words, the disingenuous and circular logic being applied by the NRC has all the appearances of a "con."

The NRC has attempted to rationalize its paradigm of generic assessments in the *Federal Register* (78 FR 56781, Section III, A9). Unfortunately, the NRC's argument is ludicrous and lacking in credibility despite the research studies cited. Apparently, the NRC fails to see the madness and circular logic involved in relying on (global disasters) "lessons learned and knowledge gained from operating experience" in order to understand the "environmental impacts of operation" of "spent nuclear fuel storage facilities" for "continued storage" of spent nuclear fuel beyond the licensed life for operation of a reactor. How naive for the NRC to suggest that "[c]hanges in the environment . . . are sufficiently gradual and predictable to be addressed generically." A staggering degree of hubris accompanied with astounding recklessness form the foundation of any attempt to rationalize or justify such determinations.

Therefore, on behalf of the public interest and consistent with the Mission of the regulating agency, there is no rational basis for continuing to pursue the mistaken historical tradition of applying generic rules and criteria in order to address specific and unique situations.

One subject of significant concern particularly to residents of Michigan and the Great Lakes Region is the issue of wet storage solutions for spent nuclear fuel, that is, actively managed pools. Appendix G "Spent Fuel Storage Facilities" (Pages G-1 to G-15) of the DGEIS specifically mentions Fermi, Unit 2 on Pages G-1 and G-4. The Fermi, Unit 2 nuclear fission reactor is located within a fifty-mile radius of Metro Detroit (MI), Ann Arbor (MI), Toledo (OH), Windsor (Ontario), and a large section of Lake Erie. Fermi, Unit 2's design is the notorious U.S. GE Mark 1 Boiling Water Reactor (BWR), and Appendix G notes that Fermi, Unit 2 has the largest spent fuel pool capacity of any operating BWR in the country -- hence, the potentially greater magnitude of consequences of severe leaks, fires, or other structural breaches of the pool. Why, then, does the NRC apply a generic analysis to "continued storage" in spent fuel pools for up to 60 (sixty) years after the end of the licensed operating life of a reactor? I submit that sixty years is a long time to live "on the edge."

So, with that specific concern in mind, my attention turns to Chapter 9.0 "List of Preparers" (Pages 9-1 to 9-5) of the DGEIS. "Tables 9-1 and 9-2 provide a listing of the NRC [staff] and CNWRA [Center for Nuclear Waste Regulatory Analyses] staff involved, their experience, and their role in preparing this draft GEIS." (Page 9-1, lines 6 - 7). There are three individuals listed as expert contributors whose function was to prepare the Waste Confidence DGEIS Sections pertaining specifically to "spent fuel pool fires." Presumably, Appendix F "Spent Fuel Pool Fires" was the result primarily of their work. I contend that, of these three individuals, NOT EVEN ONE of them is genuinely qualified to competently and adequately address the complexities of the issue.

Dr. Todd Mintz has a Ph.D. in Materials Science and Engineering, but, ominously, he has only ONE year of relevant experience, and he is not a trained Nuclear Engineer.

Mr. Donald Helton only has a Master's degree in Nuclear Engineering, and he is not a trained expert in Chemical or Materials Science or Civil or Environmental Engineering.

Finally, Mr. Michael Wentzel only has a Bachelor's degree, and his degree is in Microbiology -- which begs the question: How can he possibly be qualified to prepare an EIS analysis of spent fuel pool fires?

Many DGEIS Preparers have twenty or more (20 +) years of relevant experience, but, unfortunately, all of the listed experts who prepared the analysis of spent fuel pool fires dramatically fail this seniority test. Thus, it seems to me that a travesty is occurring in plain sight, and I am taking this opportunity to clearly express my grave concern. I suppose the NRC could argue that if the three individuals put their heads together, they would equal 1 (one) qualified individual. However, I would respectfully rebut that.

Although the Preparers do indeed cite many research studies and References to support their analysis and conclusions, an Environmental Impact Statement is mandated, at least in spirit (by NEPA), to be an original and independent, fresh assessment which necessarily requires a thorough and comprehensive scoping process and a gold-standard, rigorous investigation, NOT an anemic, "B-team," copy-and-paste approach. It is no wonder, then, that the NRC's Waste Confidence Rule has been unanimously rebuked by the U.S. Federal Court of Appeals of the DC Circuit (New York v. NRC, June 2012); and, going forward, the NRC should certainly expect further legal challenges stemming from multiple states acting through the Federal Court system.

ADDITIONAL ISSUES FOR PUBLIC COMMENT:

(PER NRC SPECIFIC REQUEST AND SOLICITATION)

COMMENTS:

Issue #1:

Recommended Action:

Remove any and all specific Policy Statements regarding the timeline for mined geologic repository availability from the proposed revised text of the Waste Confidence Rule (10 CFR 51.23, Paragraph (a), Section (2)).

Reasons:

First, the NRC acknowledges that such statements (which have historically been "included" in "Waste Confidence proceedings since 1984") are "not necessary to the environmental review or for fulfilling the NRC's NEPA obligations," and the NRC has failed to make a compelling and convincing argument that the continuation of historical tradition is either justified on its own merits or appropriate in this case.

Furthermore, I believe that it is more than a little duplicitous, deceptive and disingenuous -- possibly bordering on rogue -- for the NRC to brazenly include, inside an official CFR Rule, Policy Statements and language revisions which are beyond the scope and authority of the Agency to guarantee, implement, administer or enforce. I contend that such proposed language is an agency overreach and out-of-bounds of the force-of-law by definition, as the NRC itself admits that its own proclamations are independently and wholly unenforceable. The NRC concedes that "national policy decisions" as well as various "societal and political factors," all of which are "outside" the NRC's "control," "can significantly influence the actual timing of the availability of [a] mined geologic repository."

Issue #2:

Recommended Action:

Remove any and all specific Policy Statements regarding the safety of spent nuclear fuel storage from the proposed revised text of the Waste Confidence Rule (10 CFR 51.23, Paragraph (a), Section (2)).

Reasons:

First, similarly as with Issue #1 above, the NRC acknowledges that such statements (which have historically been "included" in "Waste Confidence proceedings since 1984") are "not necessary to the environmental review or for fulfilling the NRC's NEPA obligations," and the NRC has failed to make a compelling and convincing argument that the continuation of historical tradition is either justified on its own merits or appropriate in this case.

Furthermore, I believe that such proposed Policy Statements and language revisions represent the embodiment of hubris and bravado applied to a subject that calls for extreme caution and risk aversion, given the gravity of the potential consequences of both reasonably-foreseeable and unforeseeable occurrences. I believe that recent global events have demonstrated that it is not possible to effectively extrapolate safety calculations for the consideration of every possible circumstance or for an indefinite timeframe.

Finally, I believe that the proposed Policy Statements regarding the safety of spent nuclear fuel storage are entirely unrelated and unnecessary to the intended purpose of the proposed Rule, that is, to improve the efficiency of the NRC's licensing process by serving and enabling the facilitation and expedition of major licensing decisions through the application of generic criteria. Ironically, the NRC appears to agree and fully concur with this assessment. Perhaps institutional complacency or inertia can explain the incongruity.

Issue #3:

I believe that it is a good idea to streamline the Federal Register to remove redundancies and anachronisms. Conversely, I also believe that the NRC should increase and maximize redundancies in the "real world." In other words, generally speaking, the NRC should NOT be in the business of eliminating redundancies. Redundancies should be augmented, and cost-benefit analyses should more effectively prioritize public interests over private profits.

Issue #4:

I believe the term "Waste Confidence Rule" is a poor choice of words and should be changed. It is an inelegant and anachronistic nomenclature from the 1980's based on predictions and assumptions which have proved to be erroneous and absurd, thus subjecting the proposed Rule to well-deserved mockery, derision and ridicule.

Furthermore, the provenance of the proposed Rule is unusual in that it has emerged in response to and as a direct result of the unanimous decision of a Federal Court of Appeals, which vacated and remanded the previous incarnation of the so-called NRC Waste Confidence Rule. Another unusual aspect of the genesis of the current proposed Rule is described in the *Federal Register* (78 FR 56782, Section III, A12): "Preparation and reliance upon a GEIS is a fundamental departure from the approach used in past Waste Confidence proceedings. . . . Because a GEIS [Appendix B] is being issued, [the historical five "Findings"] are no longer necessary." Thus, as there is no separate Waste Confidence Decision document, I believe that the title (name) of the proposed Rule should be changed in order to reflect the evolving rulemaking process.

In the Executive Summary of the DGEIS (p. xxiii), the NRC explains that the term "**Waste Confidence** applies to the storage of spent fuel *after* the end of the licensed life for operations of a nuclear reactor and *before* final disposal in a permanent repository. This timeframe is referred to as "*continued storage*" throughout this draft GEIS." I contend that there are two fundamental contradictions embedded in that language. First, there can be no genuine "confidence" until such time as "continued storage" has a defined and available endpoint with no ambiguity or open-endedness. Second, there can be no genuine "confidence" until such time as the NRC initiates regulatory action to require licensees to expedite the transfer of spent nuclear fuel from active wet storage (pools) to passively-safe dry storage systems with the ultimate goal of a complete phase-out of any nuclear reactor located in or near a seismically-active zone and any nuclear reactor of the U.S. GE Mark I and II BWR design, such as Fermi, Unit 2 in Southeast Michigan. Such regulatory actions would be very politically viable in the wake of the ongoing, horrific tragedy of Fukushima Dai-ichi and would demonstrate that a reexamination of bogus generic reactor and storage design criteria could realistically initiate at the NRC headquarters without the pretext of pressure, intervention or imposition from exogenous quarters.

In conclusion, I hereby unequivocally cast a "No Confidence" vote on the current version of the proposed Waste Confidence Rule, and I strongly agree with the NRC's critics who correctly characterize the proposed Rule as a "con" and as a "false assurance" based on a foundation of "hubris, fantasy and delusion."

Plain Writing:

The actual proposed changes/amendments to the Rule text (10 CFR Part 51) -- as stated on 78 FR 56804 - 56805, PART 51, Blocks 1 - 6 -- belong on 78 FR 56776 immediately preceding the SUPPLEMENTARY INFORMATION section of the document. The present organizing order is unclear, ineffective and confusing because, ordinarily, supplementary information is intentionally and appropriately placed BEHIND (after) essential information, not in front of (before) it.

Furthermore, the lack of clarity and efficiency is exacerbated by the omission on 78 FR 56776 of any indication of page number for locating the actual proposed changes/amendments to the Rule text. Note that the Table of

Contents (78 FR 56776 - 56777) is only applicable to the SUPPLEMENTARY INFORMATION section of the document.

Draft Generic Environmental Impact Statement (DGEIS):

Pertinent comments exist throughout this document.

CITATIONS:

- 1) 78 FR 56783, SUPPLEMENTARY INFORMATION: Section III, Discussion, A21 -- What should I consider as I prepare to submit my comments to the NRC?
- 2) 78 FR 56799, SUPPLEMENTARY INFORMATION: Section IV -- Additional Issues for Public Comment, Issues 1 - 4.
- 3) 78 FR 56803, SUPPLEMENTARY INFORMATION: Section VIII -- Plain Writing.
- 4) 78 FR 56803, SUPPLEMENTARY INFORMATION: Section X -- Draft Environmental Impact Statement: Availability.

APPENDIX:

This Section contains miscellaneous comments and sentiments which the NRC may deem outside the scope and purpose of this inquiry. Nevertheless, I submit these comments with the sincere hope that the NRC staff will read and thoughtfully consider my perspective.

Re: Scoping Process and DGEIS review

To the best of my knowledge, the vast majority of participants who attended or spoke at the NRC's public comment meetings, sessions, forums and national teleconference agreed that the NRC has "stacked the deck" to prevent an honest, holistic and comprehensive debate and discussion of the DGEIS. Note the brilliantly devious and clever evasion on page xxvi, lines 12 - 25 of the DGEIS Executive Summary. Throughout the process, the NRC has narrowed the scope and parameters of discussion to such a degree that any reasonable and serious alternative to the NRC's proposal is automatically and summarily dismissed, rejected and disallowed for further consideration, thus cutting off debate and effectively giving the NRC's proposal a "rubber stamp" of approval. Nevertheless, the overwhelming reaction of the public proves that Abe Lincoln was entirely correct when he famously stated: ". . . you cannot fool all of the people all of the time."

Re: NEPA

Addressing possible "accidents and acts of sabotage during continued storage of spent nuclear fuel," the NRC considered risks and "potential consequences" in the DGEIS. However, "[a]s with all NEPA analyses, the DGEIS analyzed reasonably-foreseeable events and did not consider worst-case scenarios." (78 FR 56783, Section III, A17). "Given that NEPA does not require consideration of [assumed to be] remote and speculative [occurrences and] issues, this [such] analysis has not been included in the DGEIS," with respect to the continuation of regulatory "institutional controls" during "continued storage" of spent nuclear fuel after the end of the licensed life for operations of a nuclear reactor. (78 FR 56788, Section III, B10). These points get to the "heart of the matter" of misguided risk calculations and naive assumptions embedded throughout the DGEIS; the present interpretation of NEPA obligations forms the Achilles heel of the current nuclear regulatory regime.

Re: "externalities"

The U.S. Supreme Court recently heard oral arguments in a case pertaining to regulations under the Clean Air Act -- the Cross-State Air Pollution Rule of 2011, also known as the "good neighbor rule," generally applied to

emissions from coal-fired power plants. (www.marketplace.org, Dan Weissmann, 12/9/13; David Weinberg, 12/9/13.). It is possible that the Court's pending decision could have implications for the nuclear power industry, given that releases of dangerous emissions into the environment are "routine." (Beyond Nuclear). Perhaps the NRC could consider taking proactive steps to reduce the toxic footprint of the industry which it is supposed to regulate.

Re: "shift in consciousness"

I currently live in Ann Arbor, Michigan -- home of the University of Michigan Department of Nuclear Engineering, which, much like the NRC, desperately needs a fundamental shift in consciousness and an existential redefinition of mission and purpose. It is abundantly clear to me that our whole society needs a new perspective as we proceed with determining how to meet our electricity needs. With a renewed ecological connection and sense of humility, gratitude and reverence for the web of life on Earth, we would certainly see nuclear energy in a different way. We would notice and care that there are much safer, cleaner, more efficient and more economical ways to meet our energy needs than the egregiously irresponsible and highly unethical, so-called "nuclear option." In fact, energy production is a clear example of the disproportionality and unsustainability of resorting to the "nuclear option." One unequivocal conclusion from my review of the NRC's Waste Confidence DGEIS is that the financial cost of indefinite "continued storage" of spent nuclear fuel is UNPREDICTABLE and UNKNOWABLE, a category and degree of "confidence" that is even worse than "uncertain and open-ended." In fact, the potentially ASTRONOMICAL cost over the long-run makes the business model of the nuclear industry entirely and absolutely absurd. The "elephant in the room" is the obvious fact that the "nuclear energy business plan" is not economically viable as an unsubsidized, independent commercial enterprise.

Furthermore, significant advances in energy efficiency technologies (accomplished with relatively limited investment resources), renewable energy systems, and innovations in energy transmission, storage and distribution make it completely unnecessary and strategically-flawed to continue to pursue nuclear fission as a part of our energy portfolio. It is a travesty that anyone would perceive nuclear power as a solution to global climate change, and even the so-called "baseload" argument for pursuing nuclear power is now outdated. Therefore, the so-called "all of the above" strategy for energy sourcing represents a grave and historic mistake and an undeserved gift to the nuclear industry -- a gift that is grossly inconsistent with the most recent and best available science as well as best-practices rules of accounting and long-term planning. Ominously, on a national level, the best thinking seems to have been disregarded for the sake of political expediency. Thus, my "active hope" (read Joanna Macy) is that a People's Movement will emerge from a grassroots process of listening to each other, and, together, we will act responsibly and forthrightly for the sake of the future of all life on this planet.

Thank you for your attention to these comments.

END OF COMMENTS

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