

**UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION  
BEFORE THE ATOMIC SAFETY LICENSING BOARD**

IN THE MATTER OF  
INTERIM STORAGE  
PARTNERS LLC

(Consolidated Interim Storage Facility)

Docket No. 72-1050

July 6, 2020

**FASKEN LAND AND MINERALS, LTD.'S AND PERMIAN BASIN LAND AND  
ROYALTY OWNERS MOTION TO REOPEN THE RECORD**

Now comes Fasken Oil and Ranch Ltd. (“Fasken”) and Permian Basin Land and Royalty Owners (“PBLRO”) (collectively “Joint Petitioners” or “Petitioners”),<sup>1</sup> by and through undersigned counsel, who respectfully move the Atomic Safety Licensing Board (“ASLB”) and/or the United States Nuclear Regulatory Commission (“NRC”) to reopen the record in the above-captioned matter and in support of same states as follows:

1. In June of 2018, Interim Storage Partners LLC (“ISP”) submitted a revised license application and the NRC published a Federal Register Notice that permitted interested members of the public to request a hearing and petition to intervene.<sup>2</sup>

2. On October 29, 2018, Petitioners submitted a timely hearing request and four contentions relating to ISP proposed consolidated interim storage facility (“CISF”) in Andrews Texas.<sup>3</sup> After hearing, in LBP-19-07, the Board denied Petitioners hearing request, finding Petitioners had demonstrated standing but not proffered an admissible contention.<sup>4</sup>

3. Subsequently, Petitioners along with other interested parties filed an appeal of LBP-19-07, which is pending before the Commission.<sup>5</sup>

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<sup>1</sup> Fasken is a founding member of the Permian Basin Coalition of Land and Royalty Owners and Operators (“PBLRO”).

<sup>2</sup> See Letter from Jeffery Isakson, ISP, to Document Control Desk, NRC, *Submittal of License Application Revision 2 and Request to Restart Review of Application for Approval of the WCS CISF*, Docket 72- 1050 (June 8, 2018) (ML18166A003). Letter from Jeffery Isakson, ISP, to Document Control Desk, NRC (July 19, 2018) (ML18206A482) (updated submittal); Interim Storage Partner’s Waste Control Specialists Consolidated Interim Storage Facility, Revised License Application; Opportunity to Request a Hearing and to Petition for Leave to Intervene; Order Imposing Procedures, 83 Fed. Reg. 44,070, 44,070–75 (Aug. 29, 2018), corrected, 83 Fed. Reg. 44,680 (Aug. 31, 2018) (correcting the deadline date for petitioners to request a hearing to October 29, 2018). The Secretary of the Commission later extended this deadline to November 13, 2018. Order of the Secretary (Oct. 25, 2018) (ML18298A335) at 2 (unpublished).

<sup>3</sup> *Petition of Permian Basin Land and Royalty Organization and Fasken Land and Minerals for Intervention and Request for Hearing* (Oct. 29, 2018) (ML18302A412).

<sup>4</sup> See ASLB “Memorandum and Order” LBP-19-07 (August 23, 2019) (ADAMS Accession No. ML19235A165).

<sup>5</sup> See e.g. Fasken And PBLRO’s Brief on Appeal of LBP-19-07 (Sept. 17, 2019) (ML19260J386).

4. On January 21, 2020, Fasken then filed a motion for leave to file amended Contention No. 4, relating to groundwater and subsurface properties, concurrently with a motion to reopen the record.<sup>6</sup> A decision and order has not yet been filed relating to same.

5. On May 22, 2020 the Secretary of the Commission issued an Order stating “Petitions to intervene, hearing requests, and motions to admit contentions challenging the ISP draft environmental impact statement” (“ISP DEIS”) will be deemed timely if filed on or before July 6, 2020.”<sup>7</sup>

6. It is unclear if Petitioners are required to file another motion to reopen the record under the circumstances, but out of an abundance file the foregoing Motion to Reopen the Record (“Motion to Reopen”) concurrently with the attached Affidavit of A. Kanner and Petitioners’ Motion for Leave to File New Contention No. 5 (“Motion for Leave”),.

7. 10 C.F.R. § 2.326 sets forth the requirements for reopening the record: (1) a motion to reopen the record must be timely; (2) the motion must address a significant safety or environmental issue; and (3) the motion must demonstrate that a materially different result would be or would have been likely had the newly proffered evidence been considered initially.

8. NRC regulations do not expressly define a time period under 10 C.F.R. § 2.309(c)(1) that is considered “timely,” however, the Commission has found 30 to 60 days to be a “reasonable deadline for proposing new or amended contentions.”<sup>8</sup> Petitioners timely filed initial contentions within a reasonable time as noted in the NRC Staff Answers.

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<sup>6</sup> See *Fasken Oil and Ranch and Permian Basin Land and Royalty Owners Motion for Leave to Reopen and Incorporate Contention Filed August 1, 2019* (Sept. 3, 2019); *Fasken and PBLRO’s Withdrawal of Their “Motion for Leave to Reopen and Incorporate Contention Filed August 1, 2019”* (Sept. 12, 2019).

<sup>7</sup> Commission “Order (Granting Motion for Extension of Time to File)” Docket No. 72-105 (May 22, 2020) (ADAMS Accession No. ML20098F515).

<sup>8</sup> See *In the Matter of Entergy Nuclear Generation Company and Entergy Nuclear Operations, Inc.* (Pilgrim Nuclear Power Station), CLI-12-21, 76 N.R.C. 491, 491 (2012) (noting that “although ‘timely’ is not expressly defined by months or days in [NRC] regulations. . . typically [] 30 to 60 days from the initiating event [is considered] a reasonable

9. Petitioners' new Contention No. 5 should similarly be considered timely. The information forming the basis for new Contention No. 5 was not available prior to publication of the ISP DEIS. As discussed in Petitioners' Motion for Leave, the investigation and analyses of cumulative environmental, socioeconomic and transportation impacts for the proposed ISP CISF contain material omissions and improperly rely on speculation, inaccurate, insufficient and/or speculative data and information, rendering the recently developed conclusions invalid. Furthermore, the reliance on such faulty information and the conclusions drawn are inconsistent with and significantly vary in material respects from information contained in ISP's license application documents.

10. Pursuant to the May 22, 2020 Order by the Secretary of the Commission "[p]etitions to intervene, hearing requests, and motions to admit contentions challenging the [ISP] DEIS will be deemed timely if filed on or before July 6, 2020."<sup>9</sup> The foregoing Motion for Leave to admit new Contention No. 5 to address information and conclusions only recently published in the ISP DEIS, and filed on July 6, 2020 is thus timely.

11. At the foundation of Petitioners' new Contention No. 5 are statements made in the ISP DEIS that contain material omissions, inadequacies and inconsistencies when compared to ISP's licensing application documents, and which give rise to unaddressed technical and integration issues that the NRC must resolve to conduct a proper independent review as to the cumulative environmental, transportation, and socioeconomic impacts of the proposed project and to ensure that spent nuclear fuel ("SNF") and high-level radioactive nuclear waste can be safely

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deadline for proposing new or amended contentions."); *Shaw AREVA MOX Services* (Mixed Oxide Fuel Fabrication Facility), 67 N.R.C. 460, 493 (2008) (30 days held as presumptive time frame for timeliness of late-filed contentions).  
<sup>9</sup> Commission "Order (Granting Motion for Extension of Time to File)" Docket No. 72-1050 (May 22, 2020).

transported to and stored at the proposed ISP site over the lifetime of the project.<sup>10</sup> This new information and the unresolved issues it brings to light must be noticed, appropriately analyzed and fully disclosed in the ISP DEIS and final EIS and resolutions and risk-mitigation strategies delineated and implemented within the ISP SAR, as they implicate important legal issues, safety risks and environmental impacts relating to the transportation, construction, operation and decommissioning of the proposed ISP CISF project.

12. As further discussed in Petitioners' Motion for Leave and the attached expert Declaration(s), the ISP DEIS relies on speculative representative transportation routes, unfounded assumptions as to responsibility for infrastructure improvements and emergency responses and further disregards regional geologic characteristics and competing industry uses for transportation, painting a distorted picture of the socioeconomic costs and benefits for the proposed ISP CISF project. Such deficiencies taint not only the cumulative impact analyses, but also the evaluation and comparisons to the No-Action Alternative and cannot reasonably form the basis for a proper analysis of environmental impacts or safety risks under NEPA or NRC regulations, including but not limited to, proper assessment of siting evaluation factors. The ISP DEIS misleads the NRC and leaves the public and communities in the dark as to actual transportation routes, safety risks and environmental impacts and potential legal issues involving liabilities and responsibilities for risk in transporting the nuclear waste across the nation via rails, barges and/or heavy-haul trucks. The ISP DEIS further understates the ramifications of regional geologic characteristics, potential for

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<sup>10</sup> Consistent with 10 C.F.R. § 51.23(c), the ISP DEIS “serves as the *site-specific review*” conducted for the construction, operation and decommissioning of the proposed CISF for the period of its proposed license term. See ISP DEIS at 1-6. The initial proposed license term is for a period of 40 years, but ISP has indicated that it intends to seek to renew the license and anticipates that SNF would be stored at the proposed CISF site for 60 to 100 years. *Id.* at 9-16. The NRC Staff’s cumulative impact analyses in the ISP DEIS alleges to have “considered these expansion phases in its impact analysis. . .and carries forth those impacts into the description of cumulative impacts. . . so as to conduct a bounded analysis for the proposed CISF project.” *Id.* at 5-11.

seismic events, subsidence and sinkholes, as well as competing industry operations will have on such transportation infrastructure and the cumulative impacts of the proposed CISF site and regional activities will have on the environment and surrounding populations.

13. Indeed, these are important safety and environmental issues that also influence the evaluation of the socioeconomics of the proposed ISP CISF project. As discussed in Petitioners' Motion for Leave, these issues relate to ISP's safety structures and components, the analysis of natural and man-induced events and siting evaluation factors required by NRC regulations. Under NRC and NEPA regulations, this information must be considered in an independent review and a evaluation by the NRC and must be made available for public comment and to allow interested parties to participate in the proceedings.

WHEREFORE, Petitioners respectfully request that the record be opened in this case, pursuant to 10 C.F.R. § 2.326, the rulings of the Commission and in further support of Petitioners' Motion for Leave to File New Contention No. 5.

Dated: July 6, 2020

Respectfully submitted,

/signed electronically by/  
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**AFFIDAVIT OF ALLAN KANNER**

Allan Kanner, under oath, declares as follows:

1. I am an attorney with the law firm of Kanner & Whiteley, LLC in this proceeding. I personally prepared Petitioners Motion for Leave to File new Contention No. 5. In preparing Contention No. 5, I reviewed the ISP ER and ISP DEIS that form the basis of new Contention No. 5, as well as the Declaration(s), submitted in conjunction with new Contention No. 5.
2. This affidavit is submitted to comply with the requirements of 10 C.F.R. § 2.326(b) in support of Petitioners Motion to Reopen the Record. The criteria in 10 C.F.R. § 2.326(a) are satisfied and incorporates all facts, arguments, references and Declaration(s) from Petitioners concurrently filed Motion for Leave to File Contention No. 5.
3. The information forming the basis of new Contention No. 5 was not available prior to publication of the ISP DEIS. As discussed in Petitioners Motion for Leave to File New Contention No. 5 (“Motion for Leave”). Pursuant to the May 22, 2020 Order by the Secretary of the Commission “[p]etitions to intervene, hearing requests, and motions to admit contentions challenging the [ISP] DEIS will be deemed timely if filed on or before July 6, 2020.”<sup>11</sup> The foregoing Motion for Leave to admit new Contention No. 5 to address information and conclusions only recently published in the ISP DEIS, and filed on July 6, 2020 is thus timely
4. By its very nature, information in the ISP DEIS implicates significant environmental, socioeconomic, transportation and safety related issues. Tommy Taylor, a petroleum engineer with 34 years of oil and gas property interests, extraction and production experience and agricultural use of the land in the region, reviewed the ISP DEIS and issued a Declaration discussing the serious and significant implications as to the inaccuracies of the ISP DEIS as they relate to industry use of transportation infrastructure, the risk of transportation incidents as they relate to economic value of oil and gas assets and foreclosure of agricultural and ranching activities and regional industry operations and geologic characteristics. Mr. Taylor’s Declaration is attached to the Petitioners’ Motion for Leave filed concurrently with the foregoing Motion to Reopen. Mr. Taylor concludes that the ISP DEIS:

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<sup>11</sup> Commission “Order (Granting Motion for Extension of Time to File)” Docket No. 72-1050 (May 22, 2020).



- Erroneously and inconsistently depicts oil and gas and agricultural utilization of transportation infrastructure near the proposed ISP CISF, presenting a misleading cumulative transportation impacts analysis;
  - Relies on speculative information and representative transportation routes which improperly ignore ongoing oil, gas, agricultural and ranching operations and utilization of transportation infrastructure in the region of interest and along rail lines in the Permian Basin;
  - Further fails to acknowledge the potential for radiological contamination to individuals working on oil, gas, agricultural and ranching operations in the vicinity of the proposed CISF and along the rail lines subject to background radiation exposure and potential accidents; and
  - Willfully ignores and/or materially omits regional geological characteristics and interdependent industry operations that may significantly impact potential for seismicity, subsidence and sinkholes.
5. ISP's application misleads the NRC and the public regarding the potential safety and impacts of transportation of nuclear waste to the proposed CISF site, and further misrepresent the socioeconomic costs and benefits of the proposed project by presenting inconsistent information as to title of the nuclear waste, responsibility for infrastructure improvements and emergency responses. Moreover, the cumulative impacts analyses fail to account for regional ion operations, geologic characteristics and the cumulative impacts the proposed CISF site and regional activities will have on the environment, land use, and surrounding populations.
6. As detailed in the concurrently filed Motion for Leave, not only do the above-mentioned items implicate important safety, socioeconomic, transportation and environmental issues, they are required under NRC and NEPA regulations. Misleading, incomplete, speculative, inaccurate and inconsistent information cannot form the basis for a proper review of cumulative impact analyses, siting evaluation factors or the preliminary recommendations in connection with an NRC licensing application.
- a. Petitioners dispute the following material facts, statements and conclusions and have provided evidence to the contrary in their Motion for Leave (incorporated herein by reference):

- i. The proposed project is projected to have a SMALL incremental effect for traffic-related impacts and cumulative transportation impact;
- ii. the regional benefits for the proposed CISF project result in a net benefit;
- iii. the proposed project is projected to have a SMALL incremental effect when added to past, present and reasonably foreseeable future actions / land use;
- iv. the status of past, present and future oil and gas and mining extraction operations in the area; and
- v. the interdependent factors that influence possible subsidence, sinkholes, and seismicity.

Dated: July 6, 2020

/signed electronically by/

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**CERTIFICATE OF SERVICE**

Pursuant to 10 C.F.R. § 2.305, I Allan Kanner certify that, on this 6<sup>th</sup> day of July, 2020, true and correct copies of Fasken Land and Minerals, Ltd.'s and Permian Basin Land and Royalty Owners Motion to Reopen the Record were served upon the Electronic Information Exchange (the NRC's E-Filing System) in the above-captioned proceeding.

/signed electronically by/

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