

UNITED STATES COURT OF APPEALS
DISTRICT OF COLUMBIA CIRCUIT

333 Constitution Avenue, NW
Washington, DC 20001-2866
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DOCKETING STATEMENT

Administrative Agency Review Proceedings (To be completed by appellant/petitioner)

- 1. CASE NO. 20-1187, consolidated with 20-1225 2. DATE DOCKETED: June 4, 2020
3. CASE NAME (lead parties only) Beyond Nuclear v. U.S. Nuclear Regulatory Commission
4. TYPE OF CASE: [X] Review [] Appeal [] Enforcement [] Complaint [] Tax Court
5. IS THIS CASE REQUIRED BY STATUTE TO BE EXPEDITED? [] Yes [X] No
6. CASE INFORMATION:
a. Identify agency whose order is to be reviewed: U.S. Nuclear Regulatory Commission
b. Give agency docket or order number(s): NRC-72-1051
c. Give date(s) of order(s) 10/29/18 and 4/23/20
d. Has a request for rehearing or reconsideration been filed at the agency? [] Yes [X] No
e. Identify the basis of appellant's/petitioner's claim of standing. See D.C. Cir. Rule 15(c)(2): See Addendum.
f. Are any other cases involving the same underlying agency order pending in this Court or any other? [X] Yes [] No
g. Are any other caess, to counsel's knowledge, pending before the agency, this Court, another Circuit Court, or the Supreme Court which involve substantially the same issues as the instant case presents? [X] Yes [] No
h. Have the parties attempted to resolve the issues in this case through arbitration, mediation, or any other alternative for dispute resolution? [] Yes [X] No

Signature s/Diane Curran Date 07/09/20
Name of Party (Print) Beyond Nuclear
Name of Counsel for Appellant/Petitioner (Print) Diane Curran
Address Harmon, Curran, Spielberg & Eisenberg, L.L.P., 1725 DeSales St. N.W. Suite 500, Washington, D.C. 20036
E-Mail dcurran@harmoncurran.com Phone (240) 393-9285 Fax (404) 727-7851

ATTACH A CERTIFICATE OF SERVICE

Note: If counsel for any other party believes that the information submitted is inaccurate or incomplete, counsel may so advise the Clerk within 7 calendar days by letter, with copies to all other parties, specifically referring to the challenged statement. An original and three copies of such letter should be submitted.

**Addendum to Petitioner’s Docketing Statement for
Beyond Nuclear v. NRC, No. 20-1187 consolidated with No. 20-1225**

Question 6(e): “Identify the basis of appellant’s/petitioner’s claim of standing.”

To establish standing in a case brought under the Hobbs Act, 28 U.S.C. § 2344, a party filing suit in federal court must demonstrate both associational and prudential standing. *Nuclear Energy Inst., Inc. v. EPA*, 373 F.3d 1251, 1278 (D.C. Cir. 2004) (citing *Hunt v. Wash. State Apple Adver. Comm’n*, 432 U.S. 333, 343 (1977); *Reytblatt v. U.S. Nuclear Regulatory Comm’n*, 105 F.3d 715, 720 (D.C. Cir. 1997)). As demonstrated by the attached declarations of its members¹ and explained below, Petitioner Beyond Nuclear, Inc. (“Beyond Nuclear”) has both types of standing to challenge final orders of the Nuclear Regulatory Commission (“NRC”) in a licensing proceeding for the construction and operation of a nuclear waste (often described as “spent nuclear fuel”) storage facility in Lea County, New Mexico (the “Holtec facility”).

A. Associational Standing

Beyond Nuclear has associational standing to bring this petition for review as a representative of its members. See *Nuclear Energy Inst.*, 373 F.3d at 1265.

¹ See Declaration of Daniel C. Berry III (Ex. 1); Declaration of Elizabeth Berry (Ex. 2); Declaration of Jimi Gadzia (Ex. 3); Declaration of Gene Harbaugh (Ex. 4); Declaration of Nick King (Ex. 5); Declaration of Keli Hatley, (Ex. 6); and Declaration of Margo Smith (Ex. 7).

“An association has standing to bring suit on behalf of its members when: (1) ‘its members would otherwise have standing to sue in their own right;’ (2) ‘the interests it seeks to protect are germane to the organization’s purpose;’ and (3) ‘neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit.’” *Center for Sustainable Econ. v. Jewell*, 779 F.3d 588, 596 (D.C. Cir. 2015) (quoting *Hunt*, 432 U.S. at 343).

1. As demonstrated by the attached declarations, Beyond Nuclear’s members have standing to sue in their own right. Each demonstrates “the irreducible constitutional minimum” for standing: injury-in-fact, causation, and redressability. *Nuclear Energy Inst.*, 373 F.3d at 1265 (quoting *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560–61 (1992)). The injuries to Beyond Nuclear’s members arise from (i) their proximity to the significant quantity of radioactive material to be stored at the proposed Holtec facility, (ii) their exposure to normal and accidental doses of radiation during transportation of spent fuel to the facility, and (iii) the depression of their property values.

First, as demonstrated in the attached declarations, Beyond Nuclear establishes standing by virtue of its members’ proximity to a significant source of radiation. *See, e.g., Nuclear Energy Inst.*, 373 F.3d at 1266 (finding standing for an environmental organization to challenge nuclear waste disposal facility licensing because one of its members “lives adjacent to the land where the Government

plans to bury 70,000 metric tons of radioactive waste—a sufficient harm in and of itself”). Spent nuclear fuel is and will remain highly radioactive and dangerous to humans for hundreds of thousands of years. *Id.* at 1267. Here, Holtec proposes to store an astronomical quantity of this extremely dangerous and long-lived radioactive waste—up to 100,000 metric tons, more than twice the total amount of commercially generated spent nuclear fuel existing in the United States today and nearly fifty percent more than the amount found sufficient to satisfy the injury-in-fact requirement in *Nuclear Energy Inst.*—adjacent to where Beyond Nuclear’s members live, work, and own property.

Second, Beyond Nuclear establishes standing by virtue of the radiological injuries to its members who live, work, and travel on or along routes on which Holtec plans to transport spent nuclear fuel. As demonstrated in the attached declarations, these injuries include radiological exposure received during normal transportation operations, radiological exposure received during a transportation accident, and limitation on the right to travel. Such injuries from a proposed license activity need not be large to establish standing: even minor radiological exposure, within regulatory limits, can be sufficient. *Duke Power Co. v. Carolina Env’tl. Study Group*, 438 U.S. 59, 74 (1978) (“[T]he emission of non-natural radiation into appellees’ environment would also seem a direct and present injury, given our generalized concern about exposure to radiation and the apprehension flowing

from uncertainty about the health and genetic consequences of even small emissions like those concededly emitted by nuclear power plants.”).

Third, as demonstrated in the attached declarations, Beyond Nuclear establishes standing by virtue of the proposed facility’s adverse impacts to its members’ property values. *Kelley v. Selin*, 42 F.3d 1501, 1509–10 (6th Cir. 1995) (finding that spent fuel storage near petitioners “has the potential to interrupt enjoyment of their lakefront property and to diminish its value”).

Such injuries to the health, safety, and property interests of Beyond Nuclear’s members are directly traceable to the actions challenged here: NRC’s conduct of the Holtec licensing proceeding, and its determination that the Nuclear Waste Policy Act of 1982 (“NWPA”) and Administrative Procedure Act (“APA”) pose no legal obstacle to licensing the facility. These injuries would be redressed by requiring NRC to order the immediate dismissal of the licensing proceeding and denial of the Holtec license application.

2. The interests Beyond Nuclear seeks to protect are germane to its purposes: Beyond Nuclear is a nonprofit, nonpartisan membership organization that (a) aims to educate and activate the public about the connections between nuclear power and nuclear weapons and the need to abolish both to protect public health and safety, prevent environmental harms, and safeguard our future; and (b) advocates for an end to the production of nuclear waste and for securing the

existing reactor waste in hardened on-site storage until it can be permanently disposed of in a safe, sound, and suitable underground repository.

3. Finally, “neither the claim asserted nor the relief requested” requires participation in this lawsuit by an individual member of Beyond Nuclear. *Nuclear Energy Inst.*, 373 F.3d at 1265.

Therefore, because Beyond Nuclear satisfies the three-part test set forth in *Center for Sustainable Econ.*, 779 F.3d at 596, it has the associational standing required to bring a case in federal court under the Hobbs Act. *See also Nuclear Energy Inst.*, 373 at 1278-79.

B. Prudential Standing

To establish prudential standing, a party’s “grievance must arguably fall within the zone of interests protected or regulated by the statutory provision or constitutional guarantee invoked in the suit.” *Nuclear Energy Inst.*, 373 F.3d at 1266 (quoting *Bennett v. Spear*, 520 U.S. 154, 162 (1997)). Beyond Nuclear has prudential standing to bring this petition for review. By considering a license application that contemplates federal ownership of spent nuclear fuel in violation of the NWPA, and by concluding it could issue a license with such a provision, the NRC incurred upon the zone of interests protected by the NWPA and APA. *See id.*

Section 111 of the NWPA, 42 U.S.C. § 10131(b), prohibits transfer of title to spent nuclear fuel from private nuclear reactor licensees to the federal

government unless and until a federal repository is operational. It thereby protects the public “from the hazards posed by high-level radioactive waste and . . . spent nuclear fuel.” 42 U.S.C. §10131(b)(1), 42 U.S.C. § 10222(a)(5)(A). Section 706 of the APA, 5 U.S.C. §§ 706(2)(A) and (C), requires federal agencies to follow the law, thus protecting the public’s interest in government accountability. *Department of Homeland Security v. Regents of the University of California*, 140 S.Ct. 1891, 1905 (2020) (explaining that the APA “sets forth the procedures by which federal agencies are accountable to the public” (quoting *Franklin v. Massachusetts*, 505 U.S. 788, 796 (1992))).

Therefore, Beyond Nuclear has the prudential standing required to bring a case under the Hobbs Act in federal court. *See Nuclear Energy Inst.*, 373 F.3d at 1279-80.

Question 6(g): “Are there any other cases, to counsel’s knowledge, pending before the agency, this Court, another Circuit Court, or the Supreme Court which involve *substantially the same issues* as the instant case presents?”

Cases pending before the NRC: Sierra Club, and Fasken Land and Minerals, Ltd., and Permian Basin Land and Royalty Owners (“Fasken”) currently are participating in the same NRC licensing proceeding in which Beyond Nuclear received the final decision that is on appeal to this Court, *Holtec International* (Consolidated Interim Storage Facility) (Docket No. 72-1051). Sierra Club and Fasken each raised a claim substantially similar to Beyond Nuclear’s, *i.e.*, that the

license application violated the NWPA. The NRC Commissioners conclusively decided this NWPA claim against all parties in its Memorandum and Order CLI-20-04, dated April 23, 2020. *See slip op.* at 4-8. Because Sierra Club and Fasken have other claims pending before the NRC, however, no final decision has been rendered by the NRC in their administrative cases.

Sierra Club and Fasken have both moved to intervene in this case, for the purpose of participating in the briefing of Beyond Nuclear's NWPA and APA claims. Both Sierra Club and Fasken have represented to the Court that they will not seek to raise the NWPA and APA claims in any subsequent appeals to the Court. The Court has not yet ruled on the motions.

Cases pending before this Court: Don't Waste Michigan, *et al.*, also participated in the NRC proceeding licensing proceeding in which Beyond Nuclear received the final decision that is on appeal to this Court. It raised many issues, including an issue that is somewhat related to the one presented by Beyond Nuclear, *i.e.* that without contracts with the federal government to take title to the spent nuclear fuel in violation of the NWPA, Holtec cannot provide reasonable assurance that it has or will obtain the necessary funds to build, operate, and decommission the facility, as required by NRC regulations. The NRC issued a final decision against Don't Waste Michigan, *et al.* in CLI-20-04, but resolved their NWPA claim separately from the claims of Beyond Nuclear, Sierra Club, and

Fasken. Slip op. at 41-44. Don't Waste Michigan, *et al.* petitioned this Court for review in No. 20-1225. By order dated June 23, 2020, this court consolidated case No. 20-1187 with case No. 20-1225.

Cases pending before another Circuit Court: To Petitioner's knowledge, no similar cases are pending before another Circuit Court.

UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BEYOND NUCLEAR, INC.,)	
)	
Petitioner,)	
)	No. 20-1187,
v.)	consolidated with No. 20-1225
)	
UNITED STATES NUCLEAR)	
REGULATORY COMMISSION and the)	
UNITED STATES OF AMERICA.)	
)	
Respondents.)	
)	

DECLARATION OF DANIEL C. BERRY, III

Under penalty of perjury, I, Daniel C. Berry III, declare as follows:

1. My name is Daniel C. Berry III.
2. I am a member of Beyond Nuclear, Inc. ("Beyond Nuclear").
3. I live with my wife, Elizabeth Berry, in Township 21S, Range 33E, Section 2. My home is within 1.1 miles of the proposed Holtec Consolidated Interim Storage Facility (the "Facility").
4. I own and ranch the T Over V Ranch, which is approximately 40,000 acres of a mix of private land and Bureau of Land Management and state leases. The T Over V Ranch is located in Township 20S, Range 34E, Sections 22, 27, 28, 34, and 35, Township 21S, Range 31E, Sections 1 and 12, and Township 21S, Range 32E, Section 6, all within 3 to 15 miles of the Facility. The T Over V Ranch has multiple homesteads on it. I have included a map identifying the location of my residence and my land in relation to the Facility. See Attachment A. I inherited the T Over V Ranch from my family and grew up on this ranch and the surrounding area. My family has lived here since 1932, and I have lived here since I was born in 1947.

5. I frequently and regularly spend time within 15 miles of the Facility because I live and work in the area. I manage and work the T Over V Ranch with my wife and a number of ranch hands. Every day, we spend time all over our land, horseback riding, hiking, or riding ATVs in order to manage our cattle.
6. I also frequently and regularly spend time on the local roads near the Facility and transportation routes for the Facility. For instance, I regularly drive Highway 62/180 where it parallels the Burlington Northern Santa Fe Carlsbad Subdivision railroad that Holtec plans to use to transport spent nuclear fuel to the Facility. See **Attachment B**. Highway 62/180 is the only route I can take to travel to Carlsbad, the nearest major town to my home. I have to drive on this highway to access business and everyday necessities such as my bank and grocery store. When I am on this Highway, I have noticed rail cars traveling next to me. This Highway, and others nearby such as Highway 176, are so busy with truck traffic that I normally have to wait at the onramp to enter the Highway, which is approximately one mile from the Facility.
7. I am concerned about the risks to my property, my health and safety, and my environment posed by the construction and operation of the Facility, and by transportation of spent nuclear fuel to the Facility.
8. I am also concerned about the radiation risks to me and my family, including our health and safety, posed by living and working next to a facility housing such an enormous quantity of radioactive material. I am concerned that we may be exposed to unwanted radiation from the Facility in our daily lives just by conducting our regular work and recreation activities. I am also concerned that an accident involving spent nuclear fuel at the Facility will expose me, my family, and the homesteaders on the T Over V Ranch to radiation, and harm my property due to radiological contamination, thereby destroying my family's livelihood and way of life.
9. I am also concerned that I will not be able to avoid small doses of unwanted radiation from driving next to rail cars carrying shipments of spent nuclear fuel, including radiation from potential contamination on the outside of the casks, which will harm my health and safety. And I am concerned that I cannot avoid higher doses of unwanted radiation should Holtec transport the spent nuclear fuel by truck along Highway 62/180, Highway 176, and other roads in the area that I frequent. I spend time on these roads to accomplish routine tasks in and around my community. I am worried that I will not be able to perform my daily tasks and use the roads I have used for decades

without being exposed to unwanted radiation. I am especially concerned that I cannot avoid higher doses of unwanted radiation from the extended length of time I spend on a regular basis waiting to enter Highway 62/180 near the Facility and transportation routes.

10. I am also concerned about the risk of accidents. This is a congested area, and there are frequent wrecks on these highways. I am concerned about the radiation risks to me and my family from an accident or leak involving the transportation of spent nuclear fuel. I am especially concerned because I frequently spend extended amounts of time on these highways due to traffic and congestion.
11. I am also concerned with the impacts to my interest and right to travel near my home posed by Holtec's proposed transportation routes for spent nuclear fuel. In order to ensure myself and my family travel on the safest roads to avoid unwanted doses of radiation or potential accidents involving transportation of spent nuclear fuel, I would have to avoid highways and roads that are our primary routes to access business and everyday necessities.
12. I am also concerned about the impact the Facility will have on the value of my home and the T Over V Ranch. It is my understanding that property values near a nuclear facility can be reduced as early as when it receives its license to operate due to real or perceived risks of exposure to radiation releases from the nearby facility. It is also my understanding that property values continue to decrease once the facility is constructed and operating. I am worried that the licensing, construction, and operation of the Facility will reduce my property values and affect my family's financial security in the future.
13. I am also concerned that the licensing, construction, and operation of the Facility will impact the economic prosperity of Lea County, where I live, and Eddy County, where I own land. It is my understanding that the Permian Basin in Eddy and Lea counties in New Mexico and in Texas is the largest oil and gas producer in the United States and the second largest in the world. I am concerned that construction and operation of the Facility on top of the Permian Basin will impact the ability to continue drilling so successfully here and therefore have a negative effect on the economy. This could harm local businesses and the value of my property. I am also concerned that construction and operation of the Facility will limit the domestic production of oil and gas in the United States.

14. I believe that the Holtec license application is inadequate and illegal as written and that my interests will not be adequately represented in this action without the opportunity of Beyond Nuclear to intervene as a party in the NRC proceeding on my behalf.
15. Therefore, I previously authorized Beyond Nuclear to protect my interests by representing me in both (a) a motion to the NRC to dismiss Holtec's license application and (b) a petition to intervene in the NRC's licensing proceeding for the Facility. When the NRC denied Beyond Nuclear's motion to dismiss Holtec's license application, I authorized Beyond Nuclear to appeal that decision to this court. Now that NRC has denied Beyond Nuclear's petition to intervene, I authorize Beyond Nuclear to appeal that decision to this court.

[Remainder of page intentionally left blank.]

The declarant has caused this Declaration to be executed as of the date below.

Signed,

Daniel C Berry

Daniel C. Berry, III

Dated: 7/1/2020

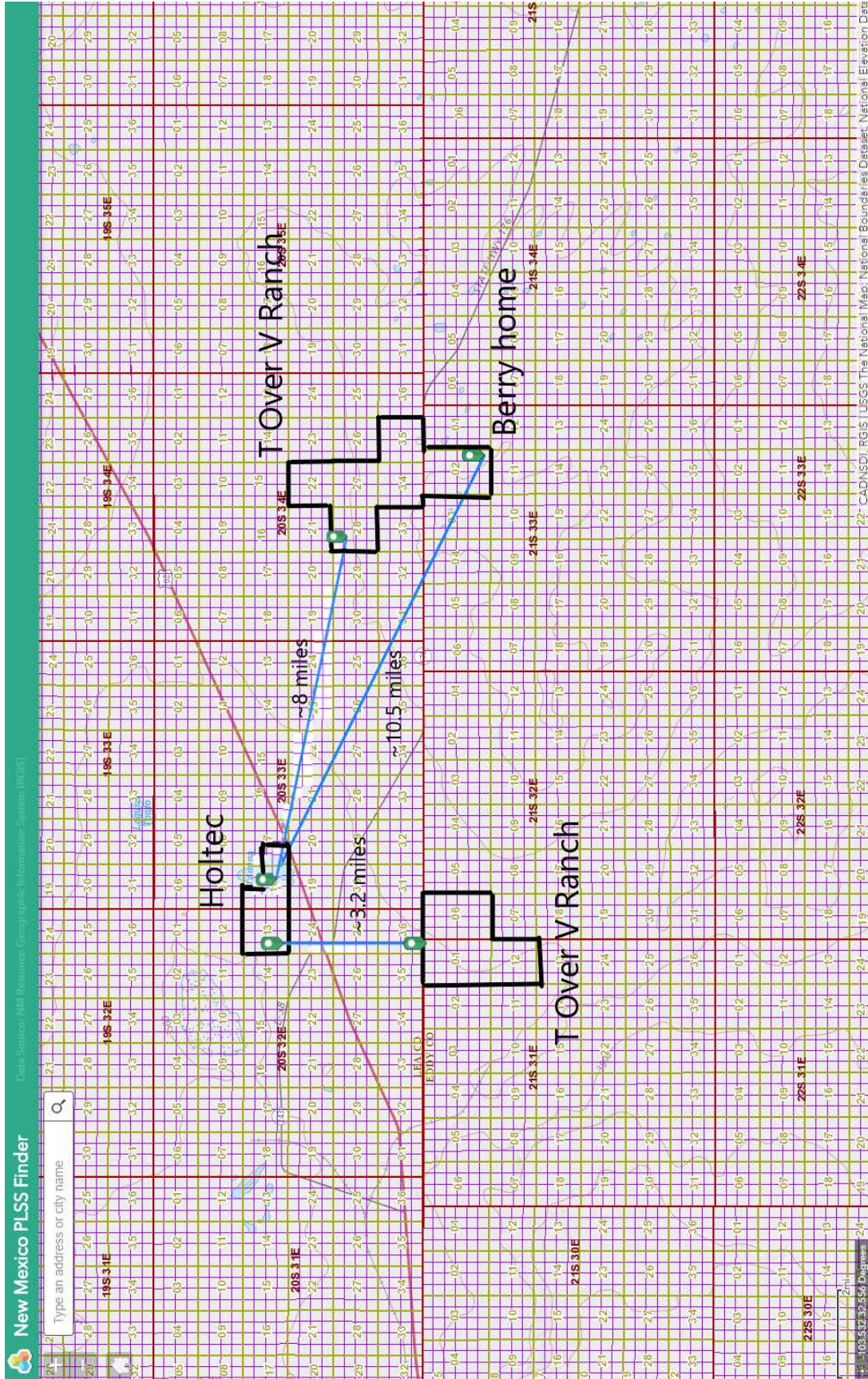
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Filed: 07/09/2020

Document #1850826

USCA Case #20-1187

Declaration of Daniel C. Berry III
Attachment A

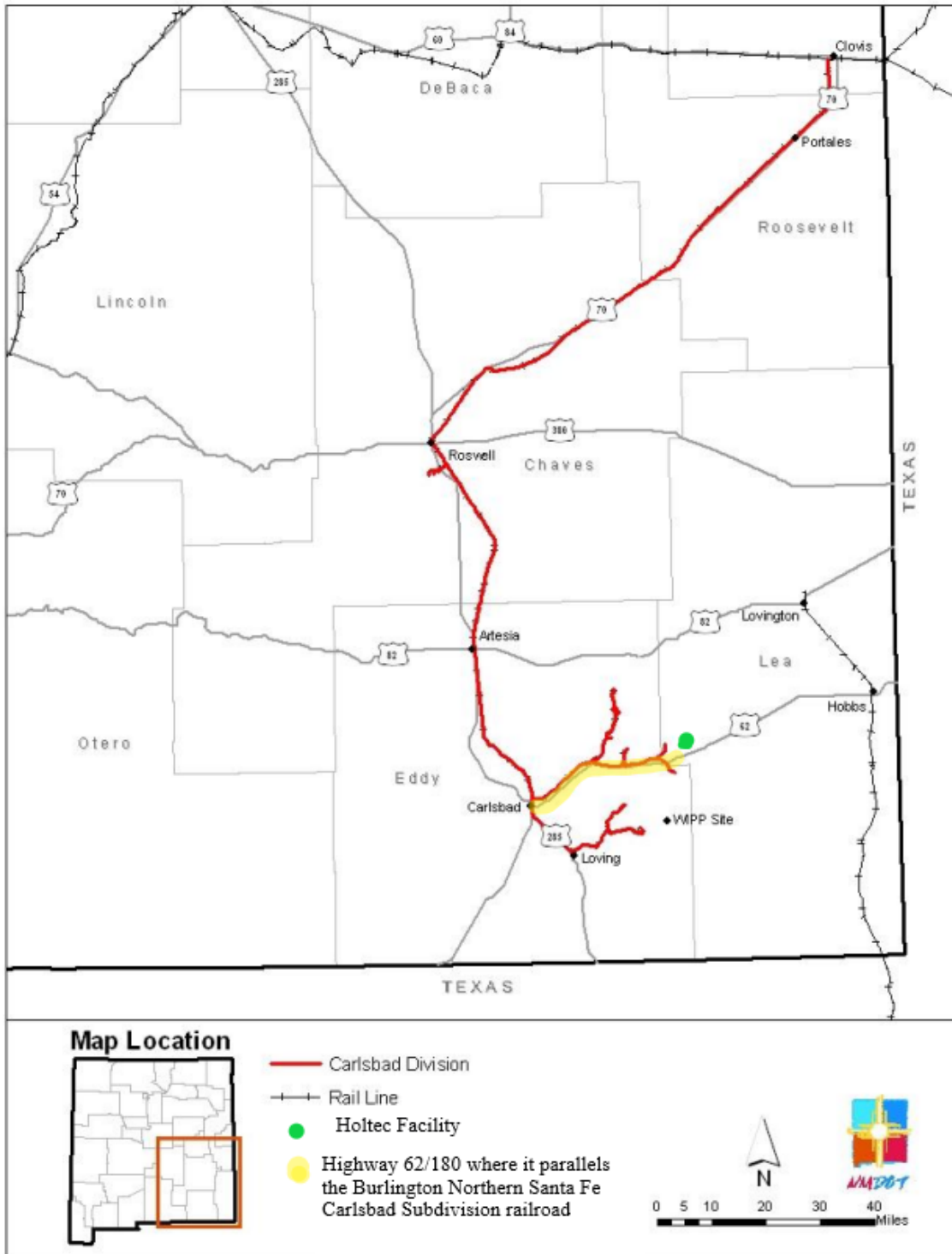


New Mexico PLS5 Finder
Data Source: Public Resources Geospatial Information Systems (GRIS)

© 2019 USGS. The National Map, National Boundaries Dataset, National Elevation Data

Attachment B

Figure 2.12 SWRR Carlsbad Division



New Mexico Department of Transportation, *New Mexico State Rail Plan*, 2-23 (Mar. 27, 2014) (“Holtec Facility” and “Highway 62/180 where it parallels the Burlington Northern Santa Fe Carlsbad Subdivision railroad” added)

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

BEYOND NUCLEAR, INC.,

Petitioner,

v.

UNITED STATES NUCLEAR
REGULATORY COMMISSION and the
UNITED STATES OF AMERICA,

Respondents.

No. 20-1187,
consolidated with No. 20-1225

DECLARATION OF ELIZABETH BERRY

Under penalty of perjury, I, Elizabeth Berry, declare as follows:

1. My name is Elizabeth Berry.
2. I am a member of Beyond Nuclear, Inc. ("Beyond Nuclear").
3. I live with my husband, Daniel C. Berry III, in Township 21S, Range 33E, Section 2. My home is within 11 miles of the proposed Holtec Consolidated Interim Storage Facility (the "Facility").
4. I own and ranch the T Over V Ranch, which is approximately 40,000 acres of a mix of private land and Bureau of Land Management and state leases. The T Over V Ranch is located in Township 20S, Range 34E, Sections 22, 27, 28, 34, and 35, Township 21S, Range 31E, Sections 1 and 12, and Township 21S, Range 32E, Section 6, all within 3 to 15 miles of the Facility. The T Over V Ranch has multiple homesteads on it. I have included a map identifying the location of my residence and my land in relation to the Facility. See **Attachment A**.
5. I frequently and regularly spend time within 15 miles of the Facility because I live and work in the area. I manage and work the T Over V Ranch with my

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USCA Case #20-1187

husband and a number of ranch hands. Every day, we spend time all over our land, horseback riding, hiking, or riding ATVs in order to manage our cattle.

6. I also frequently and regularly spend time on the local roads near the Facility and transportation routes for the Facility. For instance, I regularly drive Highway 62/180 where it parallels the Burlington Northern Santa Fe Carlsbad Subdivision railroad that Holtec plans to use to transport spent nuclear fuel to the Facility. See Attachment "B". Highway 62/180 is the only route I can take to travel to Carlsbad, the nearest major town to my home. I have to drive on this highway to access business and everyday necessities such as my bank and grocery store. When I am on this Highway, I have noticed rail cars traveling next to me. This Highway, and others nearby such as Highway 176, are so busy with truck traffic that I normally have to wait at the onramp to enter the Highway, which is approximately one mile from the Facility.
7. I am concerned about the risks to my property, my health and safety, and my environment posed by the construction and operation of the Facility, and by transportation of spent nuclear fuel to the Facility.
8. I am also concerned about the radiation risks to me and my family, including our health and safety, posed by living and working next to a facility housing such an enormous quantity of radioactive material. I am concerned that we may be exposed to unwanted radiation from the Facility in our daily lives just by conducting our regular work and recreation activities. I am also concerned that an accident involving spent nuclear fuel at the Facility will expose me, my family, and the homesteaders on the T Over V Ranch to radiation, and harm my property due to radiological contamination, thereby destroying my family's livelihood and way of life.
9. I am also concerned that I will not be able to avoid small doses of unwanted radiation from driving next to rail cars carrying shipments of spent nuclear fuel, including radiation from potential contamination on the outside of the casks, which will harm my health and safety. And I am concerned that I cannot avoid higher doses of unwanted radiation should Holtec transport the spent nuclear fuel by truck along Highway 62/180, Highway 176, and other roads in the area that I frequent. I spend time on these roads to accomplish routine tasks in and around my community. I am worried that I will not be able to perform my daily tasks and use the roads I have used for decades without being exposed to unwanted radiation. I am especially concerned that

I cannot avoid higher doses of unwanted radiation from the extended length of time I spend on a regular basis waiting to enter Highway 62/180 near the Facility and transportation routes.

10. I am also concerned about the risk of accidents. This is a congested area, and there are frequent wrecks on these highways. I am concerned about the radiation risks to me and my family from an accident or leak involving the transportation of spent nuclear fuel. I am especially concerned because I frequently spend extended amounts of time on these highways due to traffic and congestion.
11. I am also concerned with the impacts to my interest and right to travel near my home posed by Holtec's proposed transportation routes for spent nuclear fuel. In order to ensure myself and my family travel on the safest roads to avoid unwanted doses of radiation or potential accidents involving transportation of spent nuclear fuel, I would have to avoid highways and roads that are our primary routes to access business and everyday necessities.
12. I am also concerned about the impact the Facility will have on the value of my home and the T Over V Ranch. It is my understanding that property values near a nuclear facility can be reduced as early as when it receives its license to operate due to real or perceived risks of exposure to radiation releases from the nearby facility. It is also my understanding that property values continue to decrease once the facility is constructed and operating. I am worried that the licensing, construction, and operation of the Facility will reduce my property values and affect my family's financial security in the future.
13. I am also concerned that the licensing, construction, and operation of the Facility will impact the economic prosperity of Lea County, where I live, and Eddy County, where I own land. It is my understanding that the Permian Basin in Eddy and Lea counties in New Mexico and in Texas is the largest oil and gas producer in the United States and the second largest in the world. I am concerned that construction and operation of the Facility on top of the Permian Basin will impact the ability to continue drilling so successfully here and therefore have a negative effect on the economy. This could harm local businesses and the value of my property. I am also concerned that construction and operation of the Facility will limit the domestic production of oil and gas in the United States.

14. I believe that the Holtec license application is inadequate and illegal as written and that my interests will not be adequately represented in this action without the opportunity of Beyond Nuclear to intervene as a party in the NRC proceeding on my behalf.
15. Therefore, I previously authorized Beyond Nuclear to protect my interests by representing me in both (a) a motion to the NRC to dismiss Holtec's license application and (b) a petition to intervene in the NRC's licensing proceeding for the Facility. When the NRC denied Beyond Nuclear's motion to dismiss Holtec's license application, I authorized Beyond Nuclear to appeal that decision to this court. Now that NRC has denied Beyond Nuclear's petition to intervene, I authorize Beyond Nuclear to appeal that decision to this court.

[Remainder of this page intentionally left blank.]

The declarant has caused this Declaration to be executed as of the date below.

Signed,

Elizabeth Berry

Elizabeth Berry

Dated: 7-1-2020

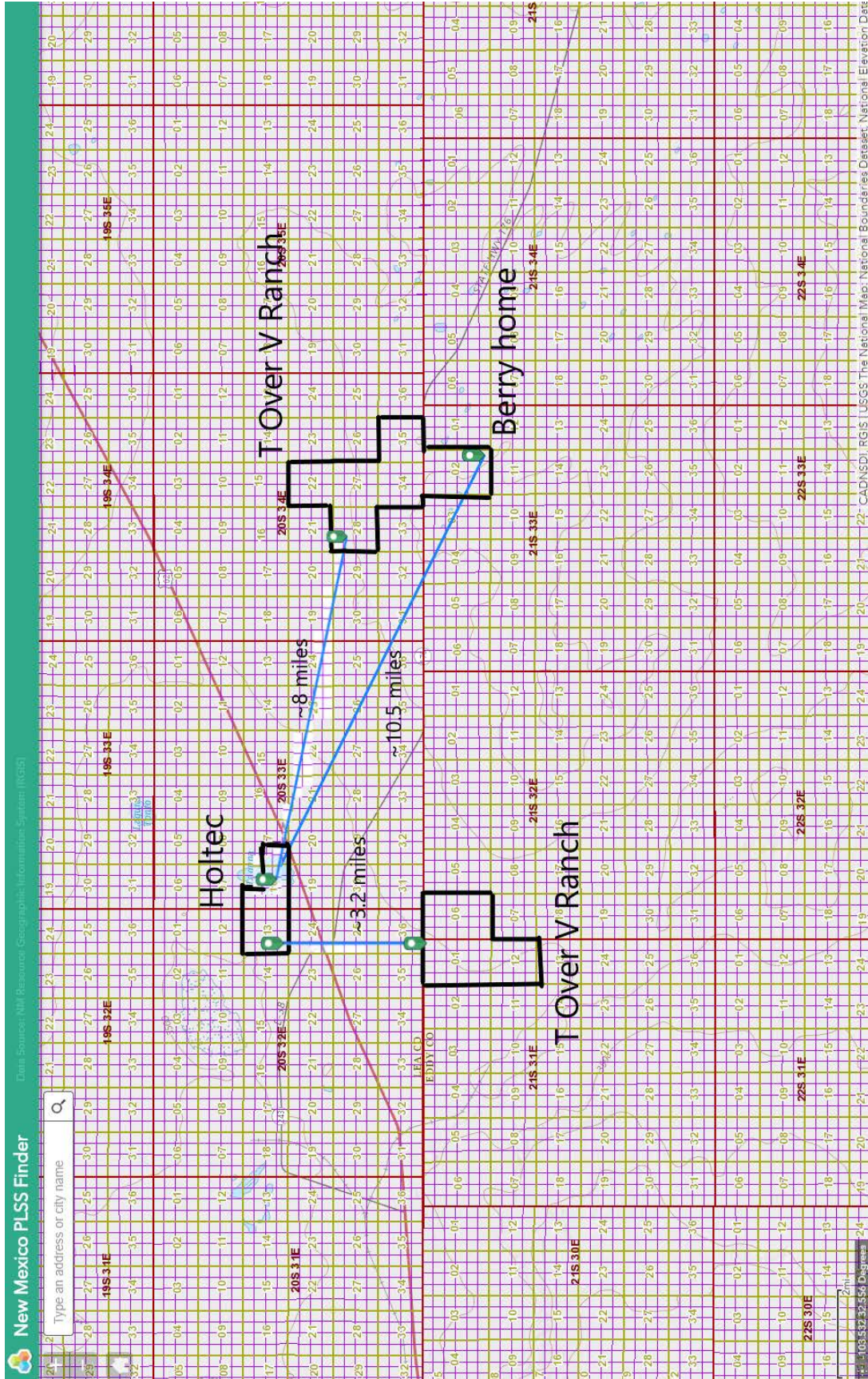
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Filed: 07/09/2020

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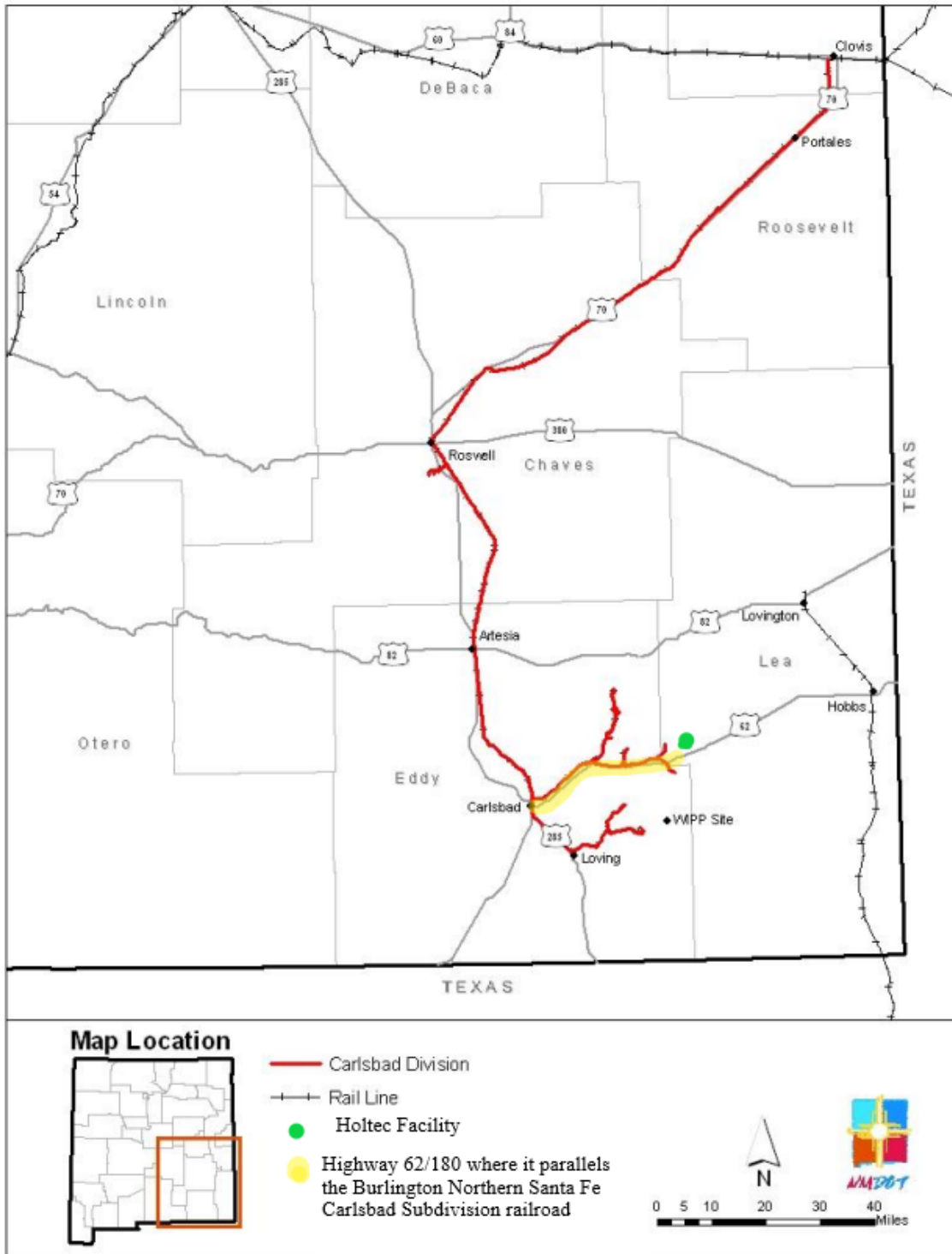
USCA Case #20-1187

Attachment A



Attachment B

Figure 2.12 SWRR Carlsbad Division



New Mexico Department of Transportation, *New Mexico State Rail Plan*, 2-23 (Mar. 27, 2014) (“Holtec Facility” and “Highway 62/180 where it parallels the Burlington Northern Santa Fe Carlsbad Subdivision railroad” added)

UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

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BEYOND NUCLEAR, INC.,)	
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Petitioner,)	No. 20-1187,
)	consolidated with No. 20-1225
v.)	
)	
UNITED STATES NUCLEAR)	
REGULATORY COMMISSION and the)	
UNITED STATES OF AMERICA,)	
)	
Respondents.)	
)	

DECLARATION OF JIMI GADZIA

Under penalty of perjury, I, Jimi Gadzia, declare as follows:

1. My name is Jimi Gadzia. I live at 1604 East Berrendo Road, Roswell, New Mexico 88201.
2. I am a member of Beyond Nuclear, Inc. (“Beyond Nuclear”).
3. My home is located within 900 yards of the Burlington Northern Santa Fe Carlsbad Subdivision railroad that, as I understand, Holtec International (“Holtec”) will use to transport spent nuclear fuel to the Holtec Consolidated Interim Storage Facility (the “Facility”). I have attached a map identifying the location of my house and the railroad. See **Attachment A**.
4. I also am a partial owner of seven federal mineral leases for oil and gas through the Graham Family Investments LLC. My mineral leases are located in Eddy County in portions of Township 18S, Range 31E, Sections 19, 20, 21, 23, 24, 25, 26, 27, 28, 29, 30, 33, 34, 35, within 10 to 16 miles of the Facility. I have included a map identifying the approximate location of my mineral rights and the Facility. See **Attachment B**.

5. I also own a pecan farm located at 70 Avenida de Vista, Roswell, New Mexico, 88201, approximately 6 miles from the Burlington Northern Santa Fe Carlsbad Subdivision railroad that, as I understand, Holtec will use to transport spent nuclear fuel to the Facility. I have included a map identifying the location of my pecan farm and the railroad. See **Attachment C**.
6. I drive regularly in Roswell on my normal business. In doing so, it is impossible not to drive parallel to and across the Burlington Northern Santa Fe Carlsbad Subdivision railroad that Holtec will use to transport spent nuclear fuel to the Facility. For example, approximately every other day I cross the railroad in Roswell both near Atkinson Avenue and 19th Street and again at College Boulevard and North Grand Avenue or at 3rd Street and North Railroad Avenue. The railroad here parallels Main Street at a distance of about 1,000 feet for approximately a mile. I also occasionally but regularly drive on County Road 102, which parallels, at a distance of approximately 70 feet, the railroad line north of Roswell, New Mexico that Holtec will have to use to ship spent nuclear fuel to the Facility.
7. I am concerned about risks to my health and safety, property rights, and my environment posed by licensing, operation, and construction of the Facility, by normal and accidental radiation releases during operation of the Facility, and by transportation of spent nuclear fuel to and from the Facility.
8. I am concerned that an accident or leak at the Facility will affect my health and safety. I understand that the nuclear waste proposed to be stored at the Facility may be there for a long time, and there is no guarantee that it will remain safe. I understand that spent nuclear fuel remains highly radioactive and dangerous to humans for hundreds of thousands of years, and that the fuel stored at the Facility will be stored at or just below ground level rather than permanently disposed of in a deep, underground geologic repository.
9. I am concerned about my health and safety, and my interest and right to travel. Because I live close to the transportation route for spent nuclear fuel and regularly drive on roads in the area, I cannot avoid small doses of unwanted radiation from each shipment of spent nuclear fuel during normal operations, including radiation from potential contamination on the outside of the casks. These transportation routes intersect with and run parallel to my primary and regular routes. I am worried it will be impossible for me to go about my everyday tasks, such as driving on the roads in my own community, without being exposed to unwanted radiation. I am also concerned my travel interests and rights will be impacted by not knowing

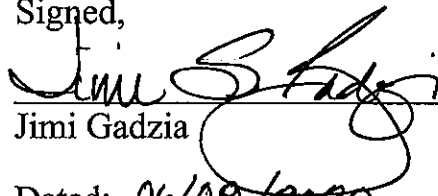
which roads are the safest to travel on to avoid these unwanted doses of radiation and avoid potential accidents with trains carrying spent nuclear fuel.

10. I am concerned that the added traffic associated with construction and operation of the Facility and the transport of these materials may create dangerous situations. The roads are already in bad shape and at capacity because of the oil and gas boom. I am worried that an accident involving the transportation of the spent fuel will impact my health and safety.
11. I am also concerned that a railroad accident may impact my livelihood and way of life by directly impacting my pecans. In addition, I am concerned that New Mexico will become known as the nuclear waste state and no one will want to buy my pecans because of a real or perceived fear that they are poisoned or contaminated.
12. I am also concerned about the impact the transportation of spent nuclear fuel on railroads near my home will have on my home's property value. It is my understanding that property values along spent nuclear fuel transportation routes can be reduced due to real or perceived risks from the transportation.
13. I am also concerned that an accident involving spent nuclear fuel at the Facility will harm the value of my mineral rights or make them functionally inaccessible due to radiological contamination.
14. Finally, I am concerned that Holtec's license application is inadequate and illegal as written and that my interests will not be adequately represented in this action without the opportunity for Beyond Nuclear to intervene as a party in the NRC proceeding on my behalf.
15. Therefore, I previously authorized Beyond Nuclear to protect my interests by representing me in both (a) a motion to the NRC to dismiss Holtec's license application and (b) a petition to intervene in the NRC's licensing proceeding for the Facility. When the NRC denied Beyond Nuclear's motion to dismiss Holtec's license application, I authorized Beyond Nuclear to appeal that decision to this court. Now that NRC has denied Beyond Nuclear's petition to intervene, I authorize Beyond Nuclear to appeal that decision to this court.

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The declarant has caused this Declaration to be executed as of the date below.

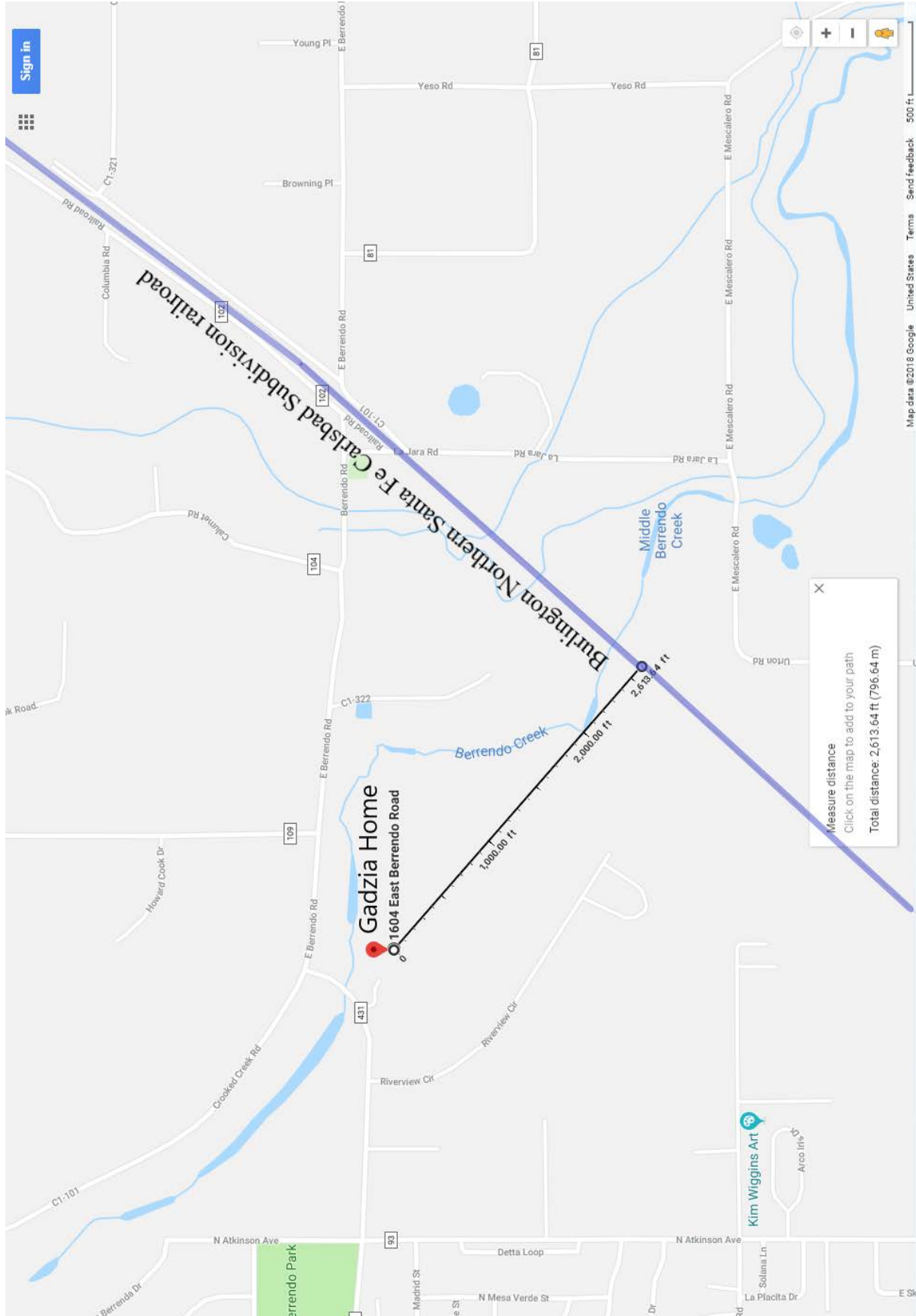
Signed,



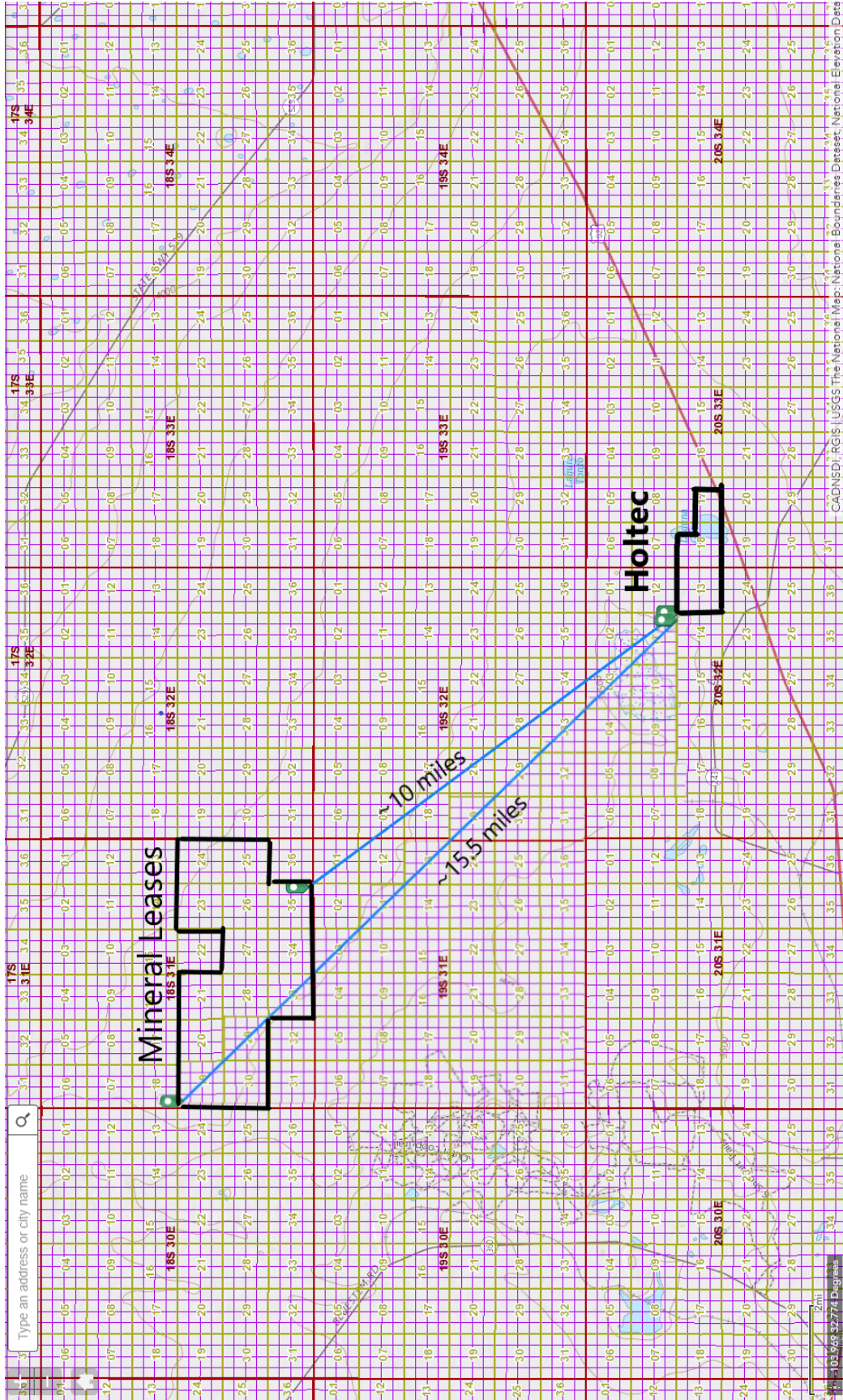
Jimi Gadzia

Dated: 06/08/2020

Attachment A



Attachment B

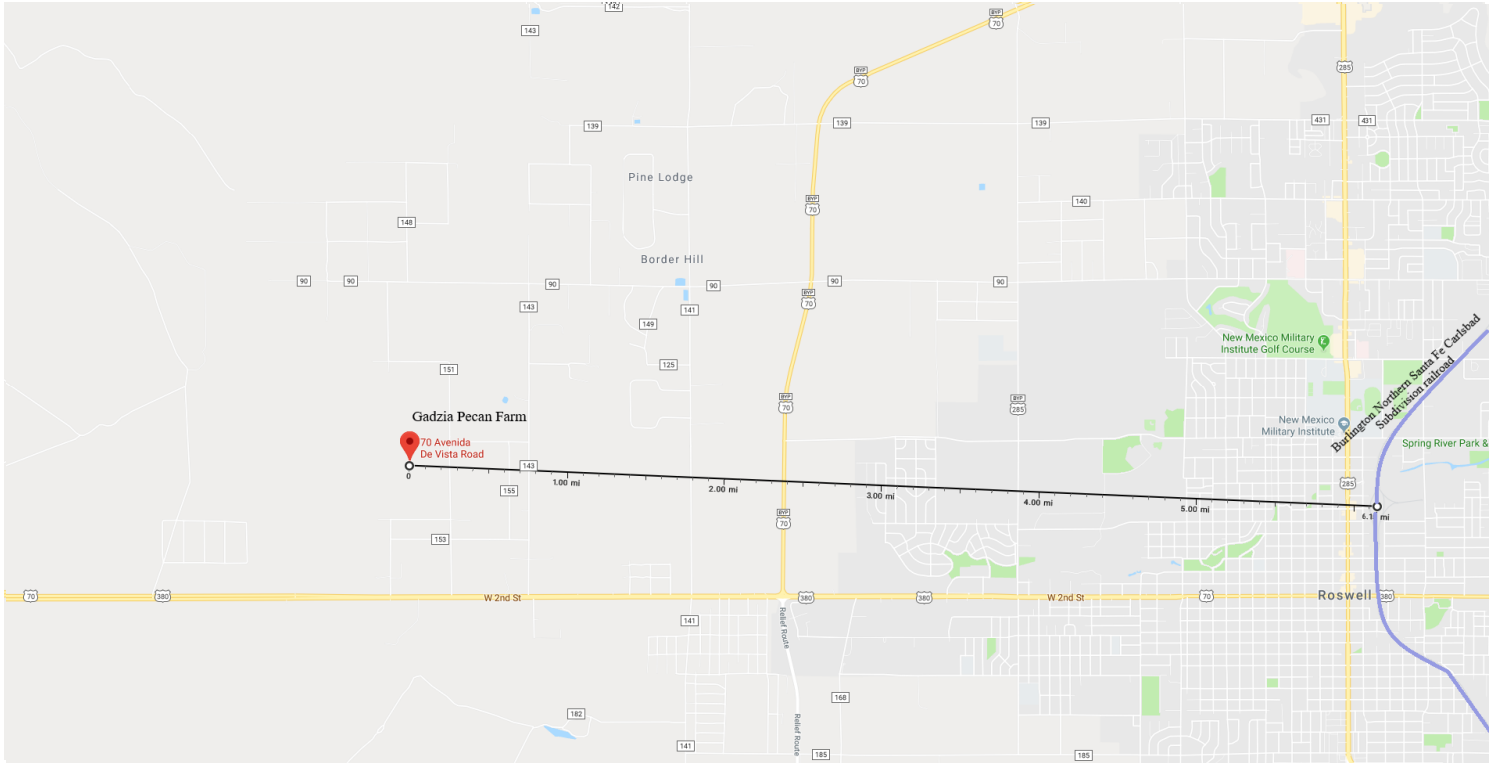




70 Avenida De Vista Rd

Declaration of Jimi Gadzia

Attachment C



Map data ©2018 Google 2000 ft



70 Avenida De Vista Rd

Roswell, NM 88201



C94F+FH Roswell, New Mexico

Measure distance

Total distance: 6.15 mi (9.90 km)

UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

)	
BEYOND NUCLEAR, INC.,)	
)	
Petitioner,)	No. 20-1187,
)	consolidated with No. 20-1225
v.)	
)	
UNITED STATES NUCLEAR)	
REGULATORY COMMISSION and the)	
UNITED STATES OF AMERICA,)	
)	
Respondents.)	
)	

DECLARATION OF GENE HARBAUGH

Under penalty of perjury, I, Gene Harbaugh, declare as follows:

1. I am a member of Beyond Nuclear, Inc. (“Beyond Nuclear”).
2. I live at 601 East Orchard Lane, Carlsbad, New Mexico 88220. My home lies within 250 yards of the Burlington Northern Santa Fe Carlsbad Subdivision railroad and 500 yards of a railyard on which, as I understand, Holtec International (“Holtec”) proposes to transport spent nuclear fuel to the Holtec Consolidated Interim Storage Facility (the “Facility”). I have attached a map identifying the location of my house, the railroad, and the railyard. See **Attachment A**.
3. I am concerned about risks to my health and safety, my environment, and my property value posed by normal and accidental radiation releases during transportation of spent fuel to and from the Facility.
4. Because I live close to the transportation route and regularly drive on roads in the area, I cannot avoid small doses of unwanted radiation from each shipment of spent nuclear fuel during normal operations, including radiation from potential contamination on the outside of the casks, which will harm

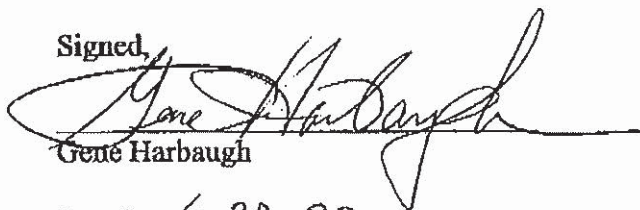
my health and safety. I am especially concerned with any trains carrying spent nuclear fuel that will wait at the railyard near my home for extended periods of time, exposing me to higher levels of unwanted and unavoidable doses of radiation. I am also concerned my travel interests and rights will be impacted by not knowing which roads are the safest to travel on to avoid these unwanted doses of radiation and avoid potential accidents with trains carrying spent nuclear fuel.

5. I am also concerned that a rail accident of a spent nuclear fuel shipment may occur along this route of rail and harm my health and safety, and my environment (including my property). I believe there is a higher likelihood of an accident occurring near my property than elsewhere because of a combination of two factors: it is my understanding that (i) these railroads are already overburdened from the oil and gas boom in the area and are thus more susceptible to accident, and (ii) every shipment of spent nuclear fuel being sent to the Facility will have to pass along this rail corridor and the likelihood of accident increases in correlation with the number of shipments.
6. I am also concerned about the impact the transportation of spent nuclear fuel on these railroads will have on my property value. It is my understanding that property values along spent nuclear fuel transportation routes can be reduced due to real or perceived risks from the transportation.
7. Finally, I am concerned that Holtec's license application is inadequate and illegal as written and that my interests will not be adequately represented in this action without the opportunity for Beyond Nuclear to intervene as a party in the NRC proceeding on my behalf.
8. Therefore, I previously authorized Beyond Nuclear to protect my interests by representing me in both (a) a motion to the NRC to dismiss Holtec's license application and (b) a petition to intervene in the NRC's licensing proceeding for the Facility. When the NRC denied Beyond Nuclear's motion to dismiss Holtec's license application, I authorized Beyond Nuclear to appeal that decision to this court. Now that NRC has denied Beyond Nuclear's petition to intervene, I authorize Beyond Nuclear to appeal that decision to this court.

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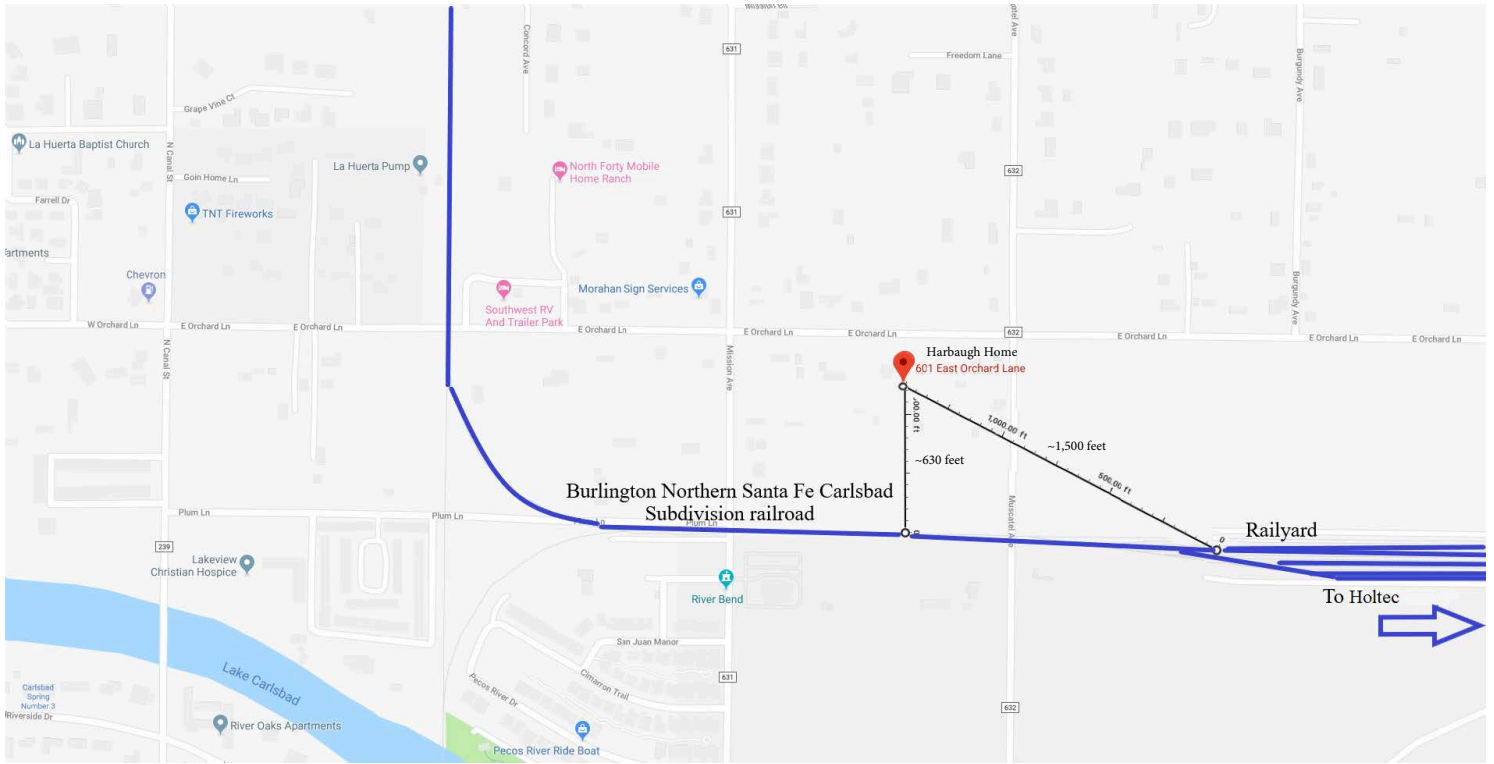
The declarant has caused this Declaration to be executed as of the date below.

Signed,

A handwritten signature in black ink, appearing to read "Gene Harbaugh", written over a horizontal line. The signature is cursive and somewhat stylized.

Gene Harbaugh

Dated: 6-20-20

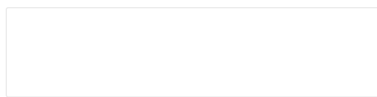


Map data ©2018 Google 200 ft



601 E Orchard Ln
Carlsbad, NM 88220

CQRJ+RH Carlsbad North, New Mexico



my health and safety. I am especially concerned with any trains carrying spent nuclear fuel that will wait at the railyard for extended periods of time, exposing me to higher levels of unwanted and unavoidable doses of radiation, including radiation from potential contamination on the outside of the casks. I am also concerned my travel interests and rights will be impacted by not knowing which roads are the safest to travel on to avoid these unwanted doses of radiation and avoid potential accidents with trains carrying spent nuclear fuel.

5. I am also concerned that a rail accident of a spent nuclear fuel shipment may occur along this route of rail and harm my health and safety, and my environment (including my property). I believe there is a higher likelihood of an accident occurring near my property than elsewhere because of a combination of two factors: it is my understanding that (i) these railroads are already overburdened from the oil and gas boom in the area and are thus more susceptible to accident, and (ii) every shipment of spent nuclear fuel being sent to the Facility will have to pass along this rail corridor and the likelihood of accident increases in correlation with the number of shipments.
6. I am also concerned about the impact the transportation of spent nuclear fuel on these railroads will have on my property value, especially if any shipments wait at the railyard near my home. It is my understanding that property values along spent nuclear fuel transportation routes can be reduced due to real or perceived risks from the transportation.
7. Finally, I am concerned that Holtec's license application is inadequate and illegal as written, and that my interests will not be adequately represented in this action without the opportunity for Beyond Nuclear to intervene as a party in the NRC proceeding on my behalf.
8. Therefore, I previously authorized Beyond Nuclear to protect my interests by representing me in both (a) a motion to the NRC to dismiss Holtec's license application and (b) a petition to intervene in the NRC's licensing proceeding for the Facility. When the NRC denied Beyond Nuclear's motion to dismiss Holtec's license application, I authorized Beyond Nuclear to appeal that decision to this court. Now that NRC has denied Beyond Nuclear's petition to intervene, I authorize Beyond Nuclear to appeal that decision to this court.

The declarant has caused this Declaration to be executed as of the date below.

Signed

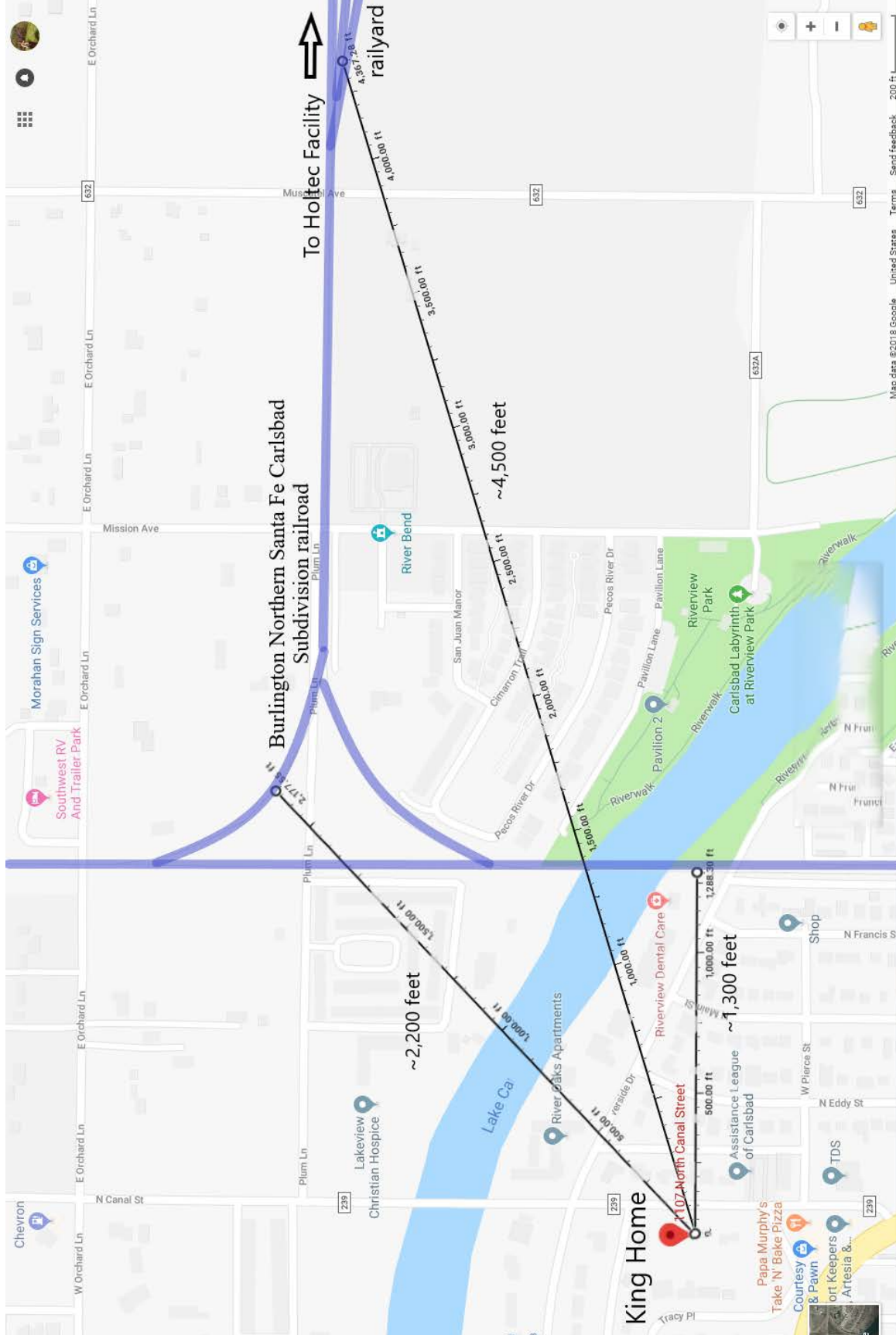


Nick King

Dated:

June 18, 2020

Attachment A



UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BEYOND NUCLEAR, INC.,)	
)	
Petitioner,)	No. 20-1187,
)	consolidated with No. 20-1225
v.)	
)	
UNITED STATES NUCLEAR)	
REGULATORY COMMISSION and the)	
UNITED STATES OF AMERICA,)	
)	
Respondents.)	
)	

DECLARATION OF KELI HATLEY

Under penalty of perjury, I, Keli Hatley, declare as follows:

1. My name is Keli Hatley.
2. I am a member of Beyond Nuclear, Inc. ("Beyond Nuclear").
3. I live with my husband and two children, ages 11 and 14, at 307 Laguna Road, Hobbs, New Mexico, 88240, located on the Smith Ranch, which lies one mile from the Holtec Consolidated Interim Storage Facility (the "Facility"). I have attached a map identifying the location of my home and the Facility. See **Attachment A**.
4. My family and I all frequently and regularly spend time within 5 miles of the Facility because we live, recreate, and work on the Smith Ranch. The Facility will lie in the center of the Smith Ranch.
5. Every day my family and I spend time horseback riding to manage our cattle. As my cattle currently range on the land where the Facility will be built, I am currently able to enter this land. Once the Facility is built, I will be able to travel along its fence line.
6. My family and I also spend almost every afternoon at my sister Stefanie Logan's house, which is located at 111 Goathead Road, Hobbs, New Mexico, 88240. My sister's house is a little over two miles from the Facility and is also located on the Smith Ranch. I have attached a map identifying the location of my sister's home. See **Attachment A**.
7. It is my understanding that construction of the Facility will require moving a

section of Laguna Road/County Road 55. I drive on this section of the road daily to get to my sister's house and to access the main Highway 62/180. See **Attachment A.**

8. I use Highway 62/180 between my home and Carlsbad where it parallels the Burlington Northern Santa Fe Carlsbad Subdivision railroad that Holtec plans to use to transport spent nuclear fuel to the Facility. See **Attachment B.** I use this Highway approximately twice a month to attend rodeos, visit Artesia, and reach the second ranch that is located in Eddy County. When I am driving on the highways and roads near the Facility, I notice rail cars near me.
9. I am concerned about the risks to my home, my health and safety, the health and safety of my family, and my environment posed by the construction and operation of the Facility, and by transportation of spent nuclear fuel to the Facility.
10. I am concerned about the radiation risks to me and my family posed by living and ranching next to a facility housing such an enormous inventory of radioactive material as the Facility. I am especially concerned how the Facility could impact my young children. I am also concerned that an accident involving spent nuclear fuel at the Facility will harm my family and home due to radiological exposure.
11. I am also concerned that transportation of spent nuclear fuel to the Facility by rail or by truck could hit the ranch's cattle, harming or killing them.
12. I am also concerned that the additional traffic from the Facility will harm myself or my family, especially because I have young family members who will soon be learning to drive on these roads. The roads in this area are already dangerous because they are overused by the oil and gas industry and are not kept up. It is my understanding that there have already been multiple vehicular deaths in the area and that the Holtec application projects 2.9 deaths from transportation of spent nuclear fuel to the Facility.
13. I am also concerned that I will not be able to avoid small doses of unwanted radiation from driving next to rail cars carrying shipments of spent nuclear fuel, including radiation from potential contamination on the outside of the casks, which will harm my health and safety. I am also concerned that I cannot avoid higher doses of unwanted radiation should Holtec transport the spent nuclear fuel by truck along Highway 62/180, Highway 176/243, and other roads in the area that I frequent.
14. I am also concerned my sons cannot avoid doses of unwanted radiation.
15. I am also concerned with the impacts to my interest and right to travel near my home posed by Holtec's proposed transportation routes for spent nuclear fuel. We will not be able to avoid highways and roads that are involved with transporting spent nuclear fuel to the Facility in order to ensure myself and my family travel on the safest roads to avoid unwanted doses of radiation or potential accidents involving the transportation of spent nuclear fuel because these highways and roads are our primary routes to access town.
16. I believe that the Holtec application is inadequate and illegal as written and

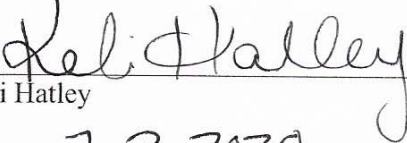
that my interests will not be adequately represented in this action without the opportunity for Beyond Nuclear to intervene in the NRC proceeding as a party on my behalf.

17. Therefore, I previously authorized Beyond Nuclear to protect my interests by representing me in both (a) a motion to the NRC to dismiss Holtec's license application and (b) a petition to intervene in the NRC's licensing proceeding for the Facility. Now that NRC has denied Beyond Nuclear's petition to intervene, I authorize Beyond Nuclear to appeal that decision to this court.

[Remainder of this page intentionally left blank.]

The declarant has caused this Declaration to be executed as of the date below.

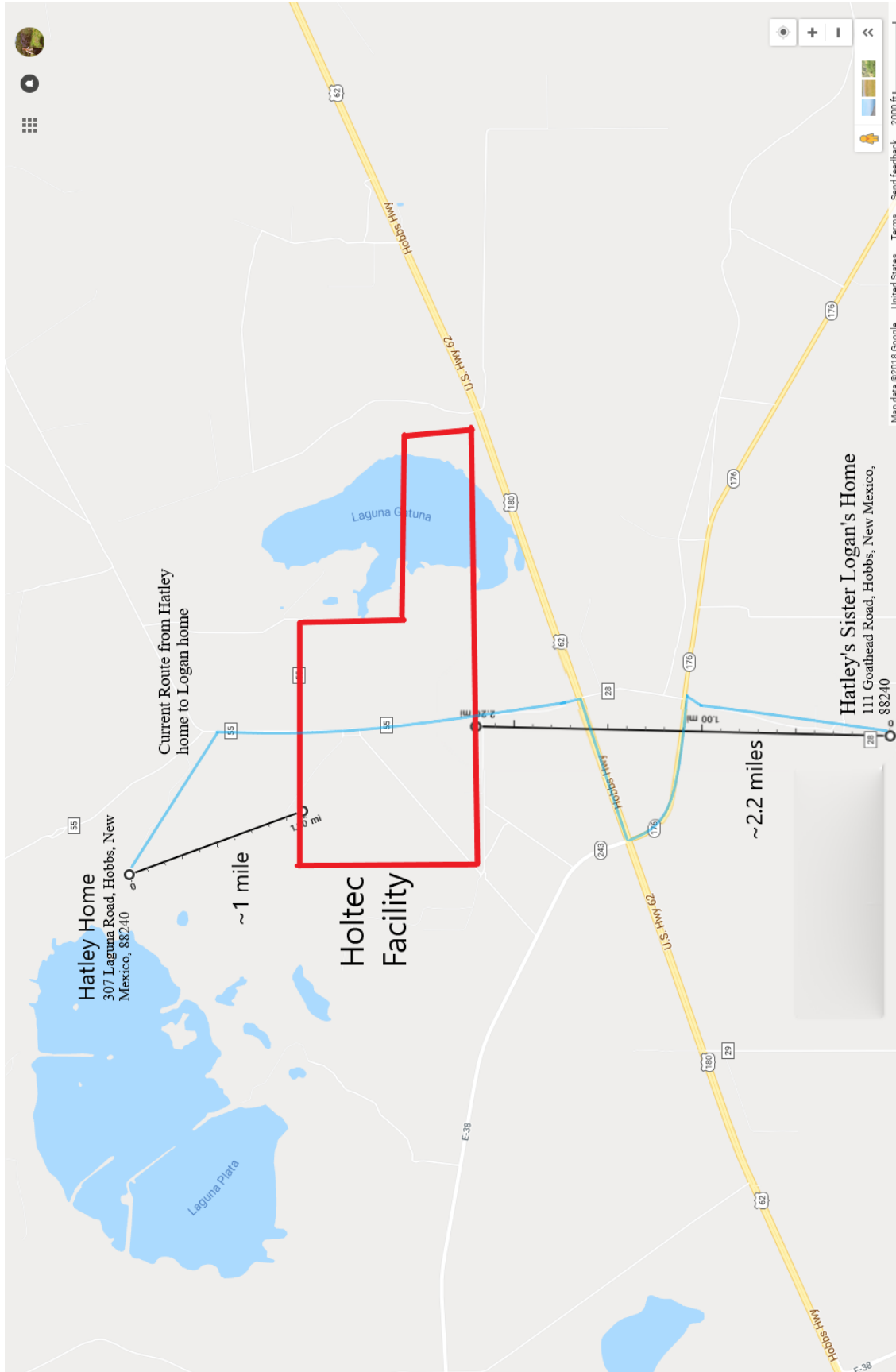
Signed,


Keli Hatley

Dated:

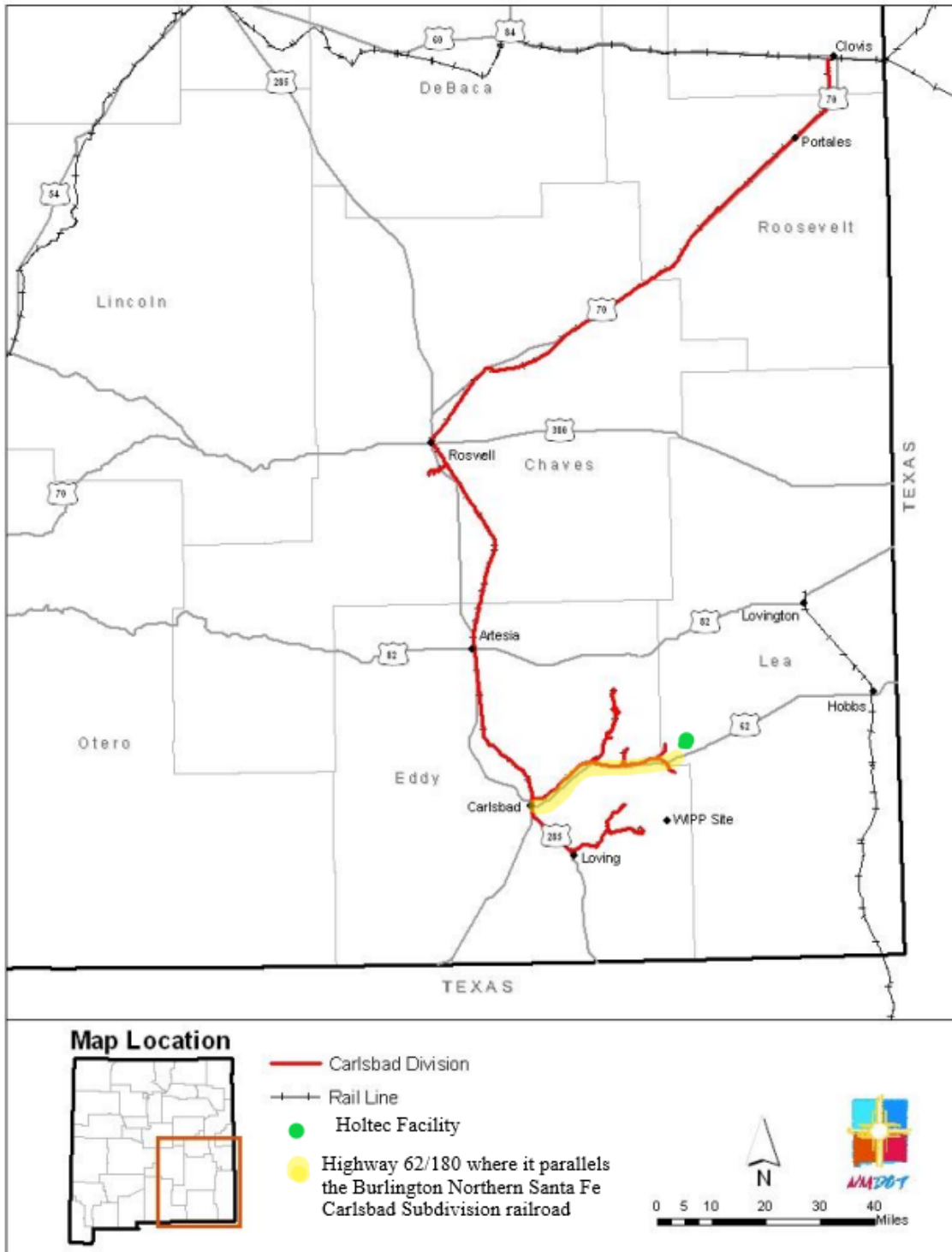
7-3-2020

Attachment A



Attachment B

Figure 2.12 SWRR Carlsbad Division



New Mexico Department of Transportation, *New Mexico State Rail Plan*, 2-23 (Mar. 27, 2014) (“Holtec Facility” and “Highway 62/180 where it parallels the Burlington Northern Santa Fe Carlsbad Subdivision railroad” added)

UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

)	
BEYOND NUCLEAR, INC.,)	
)	
Petitioner,)	No. 20-1187,
)	consolidated with No. 20-1225
v.)	
)	
UNITED STATES NUCLEAR)	
REGULATORY COMMISSION and the)	
UNITED STATES OF AMERICA,)	
)	
Respondents.)	
)	

DECLARATION OF MARGO SMITH

Under penalty of perjury, I, Margo Smith, declare as follows:

1. I am a member of Beyond Nuclear, Inc. (“Beyond Nuclear”).
2. I live with my husband, daughter, and grandchild at 258 Smith Ranch Road, Hobbs, New Mexico, 88240, located on the Smith Ranch and approximately seven miles from the Holtec Consolidated Interim Storage Facility (the “Facility”). I have attached a map identifying the location of my home and the Facility. See **Attachment A**.
3. My family is comprised of fourteen members, including my three daughters, four grandsons ages 3, 10, 15, and 16, sons-in-law, and mother-in-law. My family and I all frequently and regularly spend time within 7 miles of the Facility because we live, recreate, and work on the Smith Ranch. The Facility will lie in the center of the Smith Ranch.
4. Every day my family and I spend time managing our cattle. As my cattle currently range on the land where the Facility will be built, I am currently able to enter this land. Once the Facility is built, I will be able to travel along its fence line.

5. I drive on Highway 62/180 at least two times a week to visit my daughters, Keli Hatley and Stephanie Logan. My daughter Keli Hatley lives at 307 Laguna Road, Hobbs, New Mexico, 88240, a mile from the Facility. My daughter Stephanie Logan lives at 111 Goathead Road, Hobbs, New Mexico, 88240, a little over two miles from the Facility. From Highway 62/180, I take Laguna Road/County Road 55 to get to Keli's house, and it is my understanding that the construction of the Facility will require moving a section of this road.
6. I also regularly use Highway 62/180 between my home and Carlsbad where it parallels the Burlington Northern Santa Fe Carlsbad Subdivision railroad that Holtec plans to use to transport spent nuclear fuel to the Facility. See **Attachment B**. I use this Highway regularly to go grocery shopping, and to attend and participate in rodeos in Carlsbad. I also drive from Highway 62/180 to Highway 360 to visit Artesia. Highway 360 intersects with the railroad that Holtec plans to use to transport spent nuclear fuel to the Facility. When I am driving on these highways and roads, I notice rail cars near me.
7. I am concerned about the risks to my home, my health and safety, the health and safety of my family, and my environment posed by the construction and operation of the Facility, and by transportation of spent nuclear fuel to the Facility.
8. I am concerned about the radiation risks to me and my family posed by living next to a facility housing such an enormous inventory of radioactive material as the Facility. I am especially concerned how the Facility could impact my children and young grandchildren. I am also concerned that an accident involving spent nuclear fuel at the Facility will harm my family and home due to radiological exposure.
9. I am also concerned about the impact the Facility will have on the value of my home and the Smith Ranch because I am concerned that the Facility will deter people from wanting to live in this area. It is my understanding that property values near a nuclear facility can be reduced as early as when it receives its license to operate due to real or perceived risks of exposure to radiation releases from the nearby facility. It is also my understanding that property values may continue to decrease as the facility is constructed and operating.

10. I am also concerned that if no solution is found to the problem of nuclear waste, it may wind up at the Facility indefinitely and cause severe economic impacts to the Smith Ranch and my local economy due to our proximity to the nation's de facto permanent nuclear waste dump.
11. I am also concerned that the additional traffic from the Facility will harm myself or my family, especially because I have young family members who are currently driven to school on these roads, and who will soon be learning to drive on these roads. The roads in this area are already dangerous because they are overused by the oil and gas industry and were not constructed to withstand the amount of traffic that the industry entails. The roads contain many potholes and are extremely narrow. For example, I have been in an accident in which a passing vehicle's mirror and my car's mirror hit each other because of how narrow the road is. It is my understanding that there have already been multiple vehicular deaths in the area and that the Holtec application projects 2.9 deaths from transportation of spent nuclear fuel to the Facility. It is my understanding that the oil and gas industry have proposed the installation of helicopter pads for medical evacuations related to industry operations, as well as 600-800 "man camps" to house workers, which will only exacerbate the traffic and worsen road conditions.
12. I am also concerned that my family and I will not be able to avoid small doses of unwanted radiation from driving next to rail cars carrying shipments of spent nuclear fuel, including radiation from potential contamination on the outside of the casks, which will harm our health and safety. I am also concerned that we cannot avoid higher doses of unwanted radiation should Holtec transport the spent nuclear fuel by truck along Highway 62/180, Highway 176/243, and other roads in the area that we frequent.
13. I am also concerned my grandsons cannot avoid doses of unwanted radiation from passing next to the Facility while being bused to and from school.
14. I am also concerned with the impacts to my interest and right to travel near my home posed by Holtec's proposed transportation routes for spent nuclear fuel. We will not be able to avoid highways and roads that are involved with transporting spent nuclear fuel to the Facility in order to ensure myself and my family travel on the safest roads to avoid unwanted doses of radiation or potential accidents involving the transportation of spent nuclear fuel because

these highways and roads are our primary routes to access work, school, and recreational activities.

15. Finally, I am concerned that Holtec's license application is inadequate and illegal as written, and that my interests will not be adequately represented in this action without the opportunity for Beyond Nuclear to intervene as a party in the NRC proceeding on my behalf.
16. Therefore, I previously authorized Beyond Nuclear to protect my interests by representing me in both (a) a motion to the NRC to dismiss Holtec's license application and (b) a petition to intervene in the NRC's licensing proceeding for the Facility. When the NRC denied Beyond Nuclear's motion to dismiss Holtec's license application, I authorized Beyond Nuclear to appeal that decision to this court. Now that NRC has denied Beyond Nuclear's petition to intervene, I authorize Beyond Nuclear to appeal that decision to this court.

[Remainder of this page intentionally left blank.]

The declarant has caused this Declaration to be executed as of the date below.

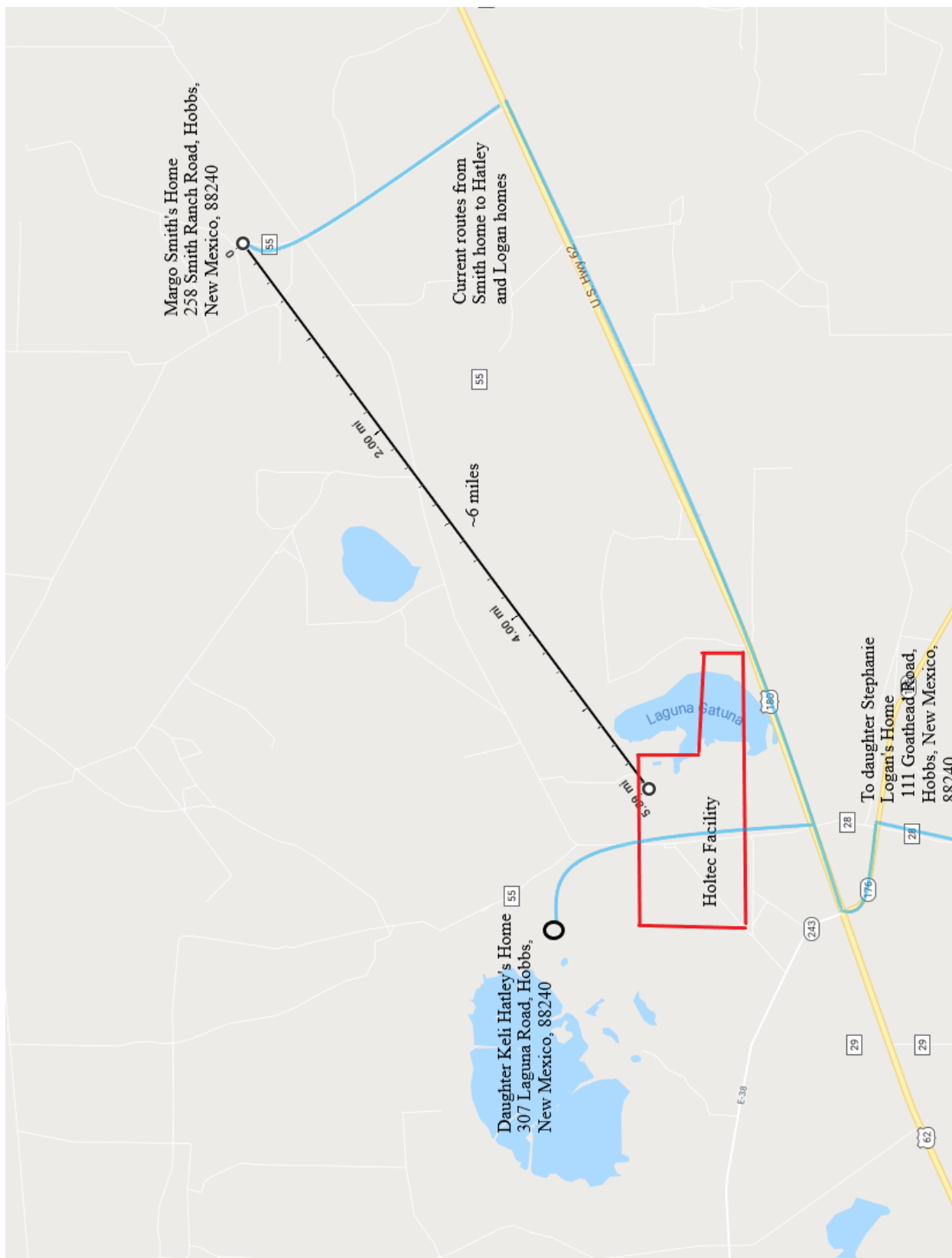
Signed,

Margo Smith
Margo Smith

Dated: 7-7-2020

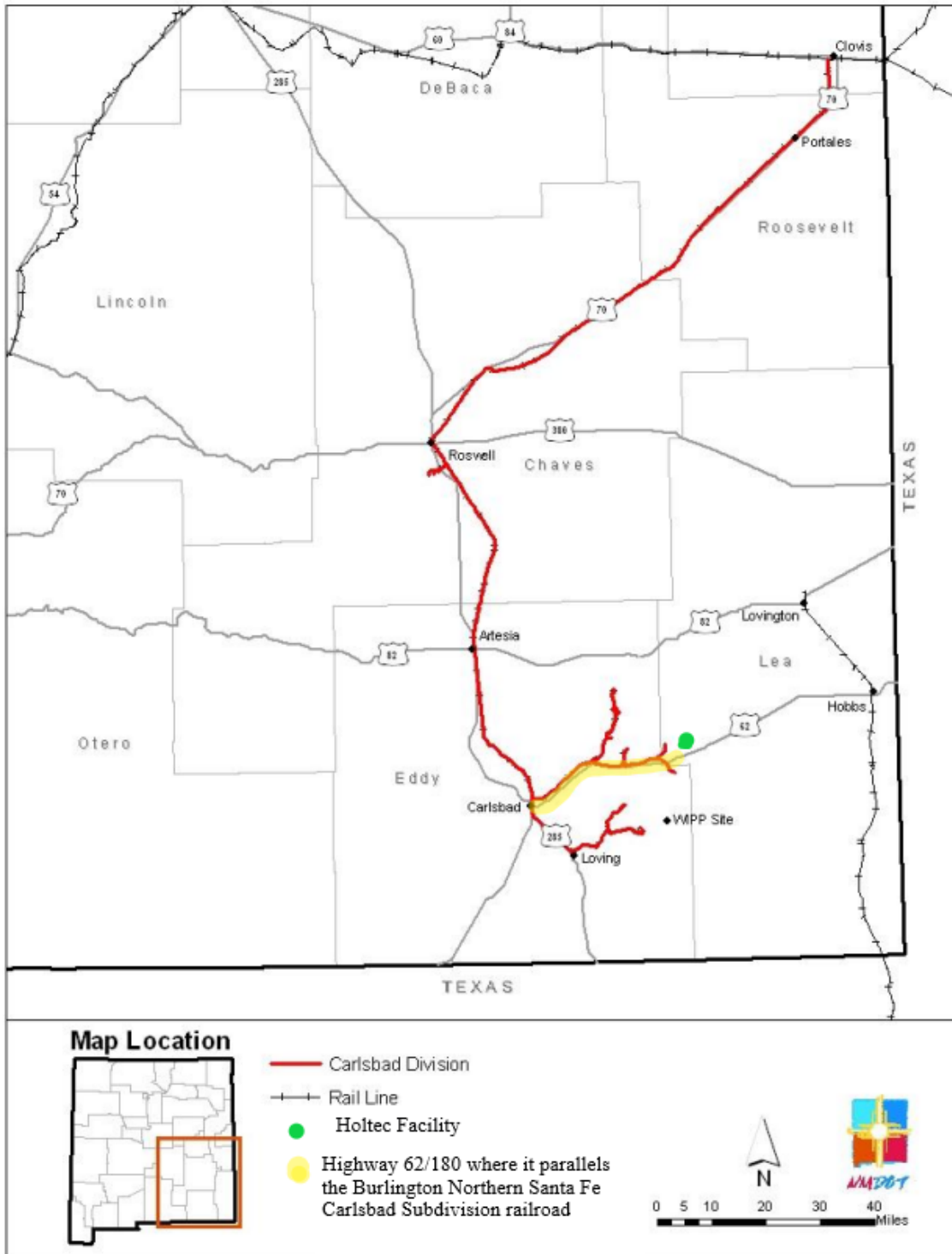
Declaration of Margo Smith

Attachment A



Attachment B

Figure 2.12 SWRR Carlsbad Division



New Mexico Department of Transportation, *New Mexico State Rail Plan*, 2-23 (Mar. 27, 2014) (“Holtec Facility” and “Highway 62/180 where it parallels the Burlington Northern Santa Fe Carlsbad Subdivision railroad” added)