

UNITED STATES COURT OF APPEALS
DISTRICT OF COLUMBIA CIRCUIT

333 Constitution Avenue, NW
Washington, DC 20001-2866
Phone: 202-216-7000 | Facsimile: 202-219-8530

AGENCY DOCKETING STATEMENT

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

- 1. CASE NO. 21-1147 (Consolidated 20-1187) 2. DATE DOCKETED: 6/4/2020
3. CASE NAME (lead parties only) Beyond Nuclear, Inc. v. U.S. Nuclear Reg. Comm'n, et al
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 Reg. Comm'n,
b. Give agency docket or order number(s): NRC Orders CLI-20-04 and CLI-2107
c. Give date(s) of order(s): 4/23/20; 4/28/21
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): Please see attached
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 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? [] Yes [X] 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/ Allan Kanner Date 7/14/2023
Name of Counsel for Appellant/Petitioner
Address 701 Camp Street, New Orleans, Louisiana 70130
E-Mail a.kanner@kanner-law.com Phone (504) 524 - 5777 Fax (504) 524 - 5763

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.

ATTACHMENT TO PETITIONERS' DOCKETING STATEMENT

Fasken Land and Minerals, Ltd., et al. v. United States Nuclear Regulatory Commission, et al., Case No. 21-1147
(consolidated with Case Nos. 21-1187, 20-1225, and 21-1104)

6.e. Identify the Basis of Petitioners' Claim of Standing

Petitioners in Case No. 21-1147, Fasken Land and Minerals, Ltd. (“Fasken”) and Permian Basin Land and Royalty Owners (“PBLRO”), seek review of the United States Nuclear Regulatory Commission (“NRC”) Memorandum and Order CLI-20-04 and Memorandum and Order CLI-21-07 dismissing Petitioners’ contentions as inadmissible and denying Petitioners’ motions to reopen and depriving Petitioners of the opportunity for a proper hearing and meaningful participation in *In the Matter of Holtec International* (HI-STORE Consolidated Interim Storage Facility), NRC Docket No. 72-1051 on the grounds that the NRC abused its discretion, acted arbitrarily and capriciously, in excess of statutory jurisdiction, without reasoned decision making, contrary to the evidence before it, and contrary to law, including but not limited to, in violation of the Atomic Energy Act of 1954, 42 U.S.C. §§ 2011, *et seq.*, the Administrative Procedure Act, 5 U.S.C. § 706, (“APA”), the National Environmental Policy Act of 1969, 42 U.S.C. §§ 4321, *et seq.*, (“NEPA”) and/or NRC’s own siting evaluation and other regulations.

The Holtec site is situated in the middle of the Permian Basin, one of the most vital and productive petroleum resources for the nation's energy, security and independence. The Holtec site is subject to multiple land uses, atop valuable mineral resources, and is surrounded by extensive agricultural grazing land and past, present and reasonable future mineral extraction operations, including along the approximately five-mile-long proposed railroad spur that will transport every shipment of high-level radioactive nuclear waste and spent nuclear fuel to and from the Holtec site.

PBLRO is an association formed in response and opposition to the proposed consolidated interim storage facilities in Lea County, New Mexico and Andrews County, Texas. Petitioner Fasken is a member of PBLRO. Members of PBLRO are oil and gas producers, land and royalty owners and agricultural operations owners that have long-term economic, social and environmental interests throughout the Permian Basin. PBLRO's purpose is to advocate on behalf of oil and gas producers and land and royalty owners who have substantial business and personal economic interests that are jeopardized by the Holtec CISF.

Fasken and PBLRO members operate significant oil and gas operations, as well as agricultural operations on considerable acreage throughout Eddy County and Lea County, New Mexico. *See* Decl. Taylor at ¶¶ 3,6,7,10, 11; Decl. Berry at ¶ 6. Petitioners have mineral leases and grazing properties surrounding the Holtec

facility site and proposed railroad spur and support the development of industry infrastructure and support services throughout the Permian Basin region. As set forth in the Declaration of Tommy Taylor, Vice President of Fasken Land Management, LLC, the general partner of Petitioner Fasken, Fasken owns and/or leases property related to active oil and gas activities located approximately 2 miles from the Holtec site. *See* Decl. Taylor at ¶ 3; Decl. Pollock at ¶¶ 4, 12. Several PBLRO members live nearby and graze animals within 5 miles of the Holtec site. *See e.g.*, Decl. Berry at ¶ 1 (ranch extends to within 3 miles of Holtec site), *id.* at ¶ 8 (grazes animals within five miles and draw water from wells that are fed by shallow groundwater formations beneath the Holtec site).

Petitioners regularly utilize regional rail transportation and local state and federal highways for personal use and to support their industries with individuals and personnel frequently visiting the region for work-related purposes, including but not limited to, routine checks and maintenance on oil and gas production equipment and to monitor mineral and agricultural operations. *See* Decl. Taylor at ¶¶ 7-9, 22-24; Decl. Pollock ¶¶ 13, 14; Decl. Berry at ¶¶ 4, 8.

Petitioners have legitimate concerns regarding adverse health effects and impacts to their families, their employees and business operations, and the communities in the region generally, including the costs associated with medical care and treatment of any radiation-related conditions. *See, e.g.*, Decl. Taylor ¶¶ 2,

17-19, 25, 29; Decl. Pollock ¶¶ 14, 15; Decl. Berry ¶ 3. Petitioners likewise have concerns regarding the adverse financial impacts on property values and threats to ongoing extraction and mineral development, agricultural and ranching activities posed by the construction, operation and decommissioning of the Holtec project, including any delays or deterioration associated with shared use of the railroad lines. *See e.g.*, Decl. Taylor at ¶¶ 20-21, 23, 29 (“[e]ven the most minimal transportation incident involving spent nuclear fuel has the potential to interrupt or foreclose agricultural and ranching activities in the Permian Basin,” further explaining a transportation incident involving regional rails “would likely diminish or has the potential to eliminate the economic value of oil and gas assets belonging to Fasken and other members of PBLRO”); Decl. Pollock at ¶ 16; Decl. Berry at ¶ 10. These concerns pose not only imminent and particularized threats but also long-term threats.

Petitioners have demonstrated both associational standing and prudential standing through evidence in the administrative record and the attached declarations of Tommy Taylor, Stonnie Pollock and Daniel Berry. Indeed, Petitioners were found to satisfy the stringent standing requirements in the administrative proceedings below based on their close proximity to the proposed nuclear storage facility and through demonstrating that its members and employees would be adversely impacted by the Holtec CISF.

Petitioners have standing to bring the associated petition for review because they represent significant business interests and the interests of those that live, work, and travel in and around the Holtec CISF and where large shipments of high-level radioactive nuclear waste and spent nuclear fuel are proposed to be transported and stored. The attached declarations express reasonable and legitimate concerns regarding the risks and injuries the Holtec CISF poses. Further, these injuries to Petitioners' interests are directly tied to the agency's unlawful proceedings and determinations challenged here that violate the Atomic Energy Act, the APA, NEPA, and/or NRC's own regulations, which this court can redress in reversing and vacating the challenged NRC Orders.

6.f. Other Cases Involving the Same Underlying Agency Order(s) Pending in This Court or Any Other

- *Beyond Nuclear, Inc. v. N.R.C., et al.*, Case 20-1187, D.C. Cir.
- *Don't Waste Michigan, et al. v. N.R.C., et al.*, Case 20-1225, D.C. Cir.
- *Sierra Club v. N.R.C., et. al.*, Case 21-1104, D.C. Cir.

These cases are currently consolidated with Petitioners' case.

6.g. Other Cases Pending Before the Agency, This Court, Another Circuit Court, or Supreme Court Which Involve Substantially the Same Issues

Petitioners are not aware of any cases involving substantially the same issues.

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

BEYOND NUCLEAR, INC., *et al.*,

Petitioners,

v.

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

Respondents.

Case No. 20-1187

Consolidated with Case Nos.
21-1255, 21-1104, 21-1147

DECLARATION OF TOMMY TAYLOR

1. My name is Tommy E. Taylor and my business address is 6101 Holiday Hill Road, Midland, Texas 79707. I reside at 4100 Timberglen Circle, Midland, Texas 79707. I hold executive positions with Fasken Management, LLC, Fasken Land and Minerals, Ltd., and Fasken Oil and Ranch, Ltd. (together “Fasken”). My position with Fasken Management, LLC, the general partner of both Fasken Oil and Ranch, Ltd. and Fasken Land and Minerals, Ltd. is Senior Vice President. I am the Assistant General Manager and Director of Oil and Gas Development for Fasken Oil and Ranch, Ltd. I am authorized by Fasken to execute this declaration on its behalf and on behalf of the Permian Basin Coalition of Land and Royalty Owners and Oil & Gas Operators (PBLRO), of which Fasken is a member and of which I am an officer.

2. This declaration is in support of the Petition for Review of Fasken and PBLRO in the above-captioned docket. I have been and remain authorized to represent both

Fasken and the PBLRO in protecting their interests in an environment free from radiation hazards associated with CISFs and to protect the economic interests of Fasken and the PBLRO, to which Fasken belongs.

3. Fasken is engaged in ranching as well as oil and gas extraction and production activities in the Permian Basin including within the immediate vicinity of both the Holtec consolidated interim storage facility (CISF) in Lea County, New Mexico and the NRC licensed Interim Storage Partners, LLC (ISP) CISF in Andrews County, Texas. Approximately 2 to 3 miles from the proposed Holtec CISF, Fasken owns and/or leases property directly related to oil and gas activities, including the Baetz Federal lease. Fasken's acreage (over 2,000 acres) is located directly west and adjacent to the proposed Holtec CISF and currently has four producing wells on this acreage with multiple planned well locations from established drilling islands. It is important to note that within this acreage, we know of at least 20 old, abandoned wellbores ineffectively plugged as per industry standards. There are many of these wellbores, both known and unknown, in the vicinity of the Holtec site and throughout the region. Additionally, Fasken owns grazing property and operates significant agricultural operations in the Permian Basin nearby which consists of 160,000 acres – all downwind from the Holtec site. This property has been in the Fasken family for over one-hundred years.

4. PBLRO is an association with long-term economic, social, and environmental interests in the Permian Basin that formed in response to Holtec's and ISP's applications to construct and operate CISFs.

5. PBLRO presently has substantial land and mineral interests, and active leases throughout Eddy and Lea County, New Mexico, with a founding PBLRO member, Mr. Danny Berry, owning land used primarily for cattle operations, within three miles of the Holtec site and a residence within ten miles of the Holtec CISF site.¹

6. I am personally familiar with other members of PBLRO of which there are 65 founding members, with multiple ranchers engaged in agricultural activities and owning land in the area for over a century and at least three members being publicly traded corporations (two integrated and one large independent oil and gas operator), as well as numerous private companies involved in the extraction and production of oil and gas in the Permian Basin and in close proximity to the proposed transport of spent nuclear fuel and storage of spent nuclear fuel at the Holtec CISF. Today, the PBLRO membership numbers appear to be in the hundreds.

7. I am personally familiar with the agricultural use of the land within the vicinity of the Holtec CISF site. Members of the PBLRO live, work and travel along proposed transportation routes. Multiple ranchers graze their animals within three to five miles of the Holtec CISF and draw water from wells that are fed by shallow

¹ See Declaration of Daniel Berry at ¶ 1.

groundwater from formations that are present beneath and adjacent to the Holtec CISF.

8. Both my employment duties and personal reasons require me to travel to and spend time in the area of the Holtec CISF and proposed railroad spur. Fasken personnel, oil field and agricultural workers, and I generally use U.S. Highway 62/180, and State Roads 176 and 243 for travel purposes. All are either traversed by the rail line that will reportedly carry 10,000 canisters of spent nuclear fuel or are within close proximity to the Holtec site. At its closest point, U.S. Highway 62/180 is approximately one-half mile from the Holtec CISF site. Additionally, I am personally aware of other Fasken employees and PBLRO members who regularly and routinely travel for employment and personal reasons to the area and use U.S. Highway 62/180, as well as New Mexico State Road 243, which the proposed railroad spur will cross, in order to access Fasken and PBLRO owned and active oil and gas properties.

9. Fasken employees routinely check on Fasken's active oil and gas operations located within miles of the proposed railroad spur that will be used to transport every shipment of spent nuclear fuel to the Holtec CISF. Every single day, Fasken pumpers travel to our New Mexico operations to perform mandatory checks and maintenance on oil and gas production equipment and monitor well operations. This is the duty of a reasonably prudent operator and an inherent part of Fasken's business practices.

10. As the Director of Oil and Gas Development for Fasken Oil and Ranch, Ltd. and as a member of various trade organizations, I am personally familiar with ongoing oil and gas activities in the vicinity of the Holtec CISF and throughout the Permian Basin. Fasken has owned the land and minerals within the vicinity of the Holtec CISF and proposed rail spur for over a century and drilled its first well in the Permian Basin over 70 years ago. I am also thoroughly familiar with mineral extraction operations beneath and around the Holtec site and with federal and state oil and gas regulations, including those governing operations beneath and around the Holtec site.

11. I also have personal knowledge of the activities of other oil and gas entities, some of which are members or supporters of the PBLRO. I am aware of EarthStone's four new wells immediately adjacent to the Holtec site, of XTO's control of the minerals directly beneath the Holtec site, which they have not relinquished nor sold and of an operator that began drilling in the Permian Basin approximately 82 years ago and still has extensive interests within ten miles of the Holtec CISF. To this day, neither Fasken nor any member of PBLRO has relinquished control of their interests for the development of the Holtec CISF or proposed railroad spur.

12. There exists a pressing concern due to the extensive number of old wellbores in the area of the Holtec site. These wellbores are known to those of us in the oil and gas industry as posing a possible threat of collapse due to deficient plugging

techniques of the time. To the detriment of the State of New Mexico and to the owners and lessees of minerals nearby, including PBLRO members, the hazards of old wellbores is not fully and adequately acknowledged nor addressed at all with respect to the Holtec CISF site and proposed railroad spur.

13. The area around the Holtec site is under active mineral exploration and production. There are nearly two hundred active oil and gas wells currently producing within a 6-mile radius and at least eight, of which I am aware, presently active wells within one mile of the Holtec CISF project itself. There are oil companies with a right to seek access to the Holtec site's surface to accommodate their activities as well as over twenty wells that are currently being drilled but not yet completed within a six-mile radius of the site. There exists a renewed interest in exploring the Yates formation and other formations beneath the Holtec CISF with developments in processing techniques revealing new opportunities for exploration, as well as the potential for use of abandoned or plugged wellbores at the site all posing a real possibility for more mineral production in the area. Likewise, other opportunities exist in potential vertical wells within the confines of the Holtec CISF at shallow depths which would be much less costly for operators and with less mechanical risk than drilling deep targets elsewhere.

14. It is well-established and acknowledged that the Permian Basin is home to one of the most productive oil and gas hubs in the world. The Basin contains billions of

barrels of hydrocarbons and millions of acre-feet of groundwater. It is the largest and most important hydrocarbon producing basin in the United States. It produces 50% of domestic hydrocarbons and 5% of global oil (EIA, 2020). These hydrocarbon and groundwater resources ensure domestic energy needs and global security.

15. According to the July 6, 2023 report of the U.S. Energy Information Association (EIA), the counties to be most adversely affected by any incident at the Holtec site are also the two most productive counties in the State of New Mexico. The EIA reports that those two counties accounted for 29% of Permian Basin crude oil production in the first quarter of 2023, averaging 1.7 million barrels of oil per Together Eddy and Lea County accounted for over a quarter of the state's tax revenue in the third quarter of 2022.² And, in their May 2023 revenue estimates, the New Mexico Legislative Finance Committee found that about half of New Mexico's General Fund revenue was tied to oil and gas, which marked an increase from prior estimates that the oil and gas industry only accounted for about a half of the state's budget. The state's current and record setting \$9.6 billion budget has increased due to mineral extraction operations in the southeastern part of New Mexico's Permian Basin Region – the very location where Holtec intends to build and operate their CISF.

² Source: New Mexico Economic Development Department.

16. According to the Texas Railroad Commission, the Permian Basin accounts for approximately one-third of the nation's oil production (5.7 million barrels per day).

17. I understand that a radiation release from the Holtec CISF or during transportation of spent nuclear fuel through or near the Permian Basin or along the proposed rail spur may contaminate the areas in which Fasken and other members of the PBLRO have oil and gas property interests and/or extraction and production facilities. Such a release of radiation would cause contamination that would interfere with or preclude the continued production of oil and gas in the Permian Basin. A radiological contamination event has the potential to interrupt or foreclose further oil and gas extraction/production activities and thereby diminish or eliminate the economic value of the oil and gas assets of Fasken and other members of PBLRO.

18. Likewise, I understand a radiation release from the Holtec CISF or during transportation of spent nuclear fuel through or near the Permian Basin or along the proposed railroad spur may contaminate the areas in which Fasken and other members of PBLRO have land interests and agricultural or cattle operations and graze animals. A radiological contamination event also has the potential to interrupt agricultural and ranching operations and thereby diminish or eliminate the economic value of real property values and related assets of Fasken and other members of PBLRO.

19. I am concerned that radiological contamination also has potential human health effects that may cause death, radiation related ailments and/or genetic defects. This potential, in addition to the adverse impacts on human mortality and morbidity rates, also has substantial economic costs associated with medical care and treatment of radiation related conditions that affect Fasken, its employees and other members of PBLRO.

20. I understand that even the most minimal transportation incident, such as a derailment or collision involving spent nuclear fuel, would amount to a dangerous materials emergency that has the potential to interrupt or foreclose further oil and gas extraction/production activities within the area of the incident, as well as adversely affecting the recipients of oil commodities which are regularly transported by rail. A transportation incident involving any of the three rail lines, identified as proposed transportation routes for shipments of spent nuclear fuel in the Holtec final Environmental Impact Statement (EIS), the Burlington Northern Santa-Fe (BNSF) Railroad, the Union Pacific Railroad or the Texas-New Mexico Railroad, would likely diminish or has the potential to eliminate the economic value of oil and gas assets belonging to Fasken and other members of PBLRO.

21. Even the most minimal transportation incident involving spent nuclear fuel has the potential to interrupt or foreclose agricultural and ranching activities in the Permian Basin or delay agricultural shipments, thereby diminishing or eliminating

the economic value of the real property interests and assets of Fasken and other members of PBLRO.

22. Both Fasken and PBLRO regularly utilize rail transportation to support their industries and extensive and ongoing operations. Those named in the Holtec EIS, the BNSF Railroad, the Union Pacific Railroad and the Texas-Mexico Railroad, all serve the oil, gas, agricultural and ranching industries in the region of the Holtec CISF. The BNSF Railroad primarily serves potash, petroleum and agricultural industries and regularly transports gasoline, diesel fuel, fuel gases and explosives. According to Union Pacific, two of its four key operating segments are likewise the agricultural and energy industries. Union Pacific reported revenue from energy freight in 2019 as \$3.8 billion. It reports that railroads are the most efficient and cost-effective means of transportation of crude, frac sand, and petroleum by-products and transported 1.4 million carloads of energy freight shipments in 2019. In fiscal year 2019, agricultural commodities accounted for 18% of Union Pacific's shipments and energy freight accounted for 22%. The Texas-New Mexico Railroad extends from a Union Pacific connection at Monahans, Texas. It is one of two lines owned by Watco that primarily serve the Permian Basin. Watco reports oilfield commodities as its primary shipments on the Texas-New Mexico Railroad and agricultural commodities as primary on its Lubbock and Western Railways shipments.

23. With regard to energy freight, Fasken relies upon the rail lines of the Permian Basin primarily for transporting sand, acid, casing and tubing, cement, gel, and various liquid and dry chemical components that are used for blending associated products that are all necessary to drill and complete an oil well and bring it to production. PBLRO members utilize the Permian Basin rail lines primarily for materials similar to that of Fasken but also for water, additional frac chemicals, and acid. According to the Holtec EIS, the Holtec CISF would utilize the same rail lines which the oil and gas industry of the Permian Basin heavily relies upon. Any hazardous materials emergency upon the rails that interferes with energy freight poses a loss of millions of dollars per day affecting multiple operators in the Permian Basin, including Fasken and other members of PBLRO. Likewise, any deterioration of the existing rail lines as a result of transport of oversized railcars transporting spent nuclear fuel, dedicated single-use shipments of spent nuclear fuel or other infrastructure improvements necessary to accommodate shipments of spent nuclear fuel will cause substantial delays for industries throughout the Permian Basin. As an example, a typical Fasken horizontal multi-well drilling project cannot be completed until the staging of materials is achieved. Rail delays amount to potential lost production totals of approximately 5,800 barrels of oil per day and 3,500 million cubic feet of gas daily, per multi-well horizontal drilling pad. This equates to a loss of \$350,000 daily and \$10.6 million monthly in lost production from a single multi-

well pad. A delay on the rails that results in standby costs on a frac job amount to \$115,000 per day, per well and drilling rig operation standby costs amount to \$50,000 per day, per drilling rig. Additionally, leases are susceptible to termination under New Mexico's rules on nonproducing wells. In the event such a loss occurs, an operator such as Fasken, or one of the members of PBLRO, stands to lose a capital investment of \$12 to \$16 million per well. Possible remedies, including lease extensions, are onerous and expensive. As a representative of the industry, one must look to the risks posed by sharing the same rail lines that have primarily and historically been transporting oil commodities with spent nuclear fuel and high-level radioactive waste heading to two separate facilities located in the Permian Basin over the course of at least the next forty years (and likely longer).

24. With regard to agricultural freight, Fasken and PBLRO members frequently utilize the Permian Basin rails for the shipment of agricultural products and raw materials. According to the West Texas Region Freight Study, the overall tonnage of rail freight in the Texas region of the Permian Basin is projected to more than double from 2005 to 2025. Agricultural products are projected to increase 151% due to the growth in corn grain, ethanol plants, feed supplements, dairy and cotton from our area. The study also reports an increase of 161% in chemical and petroleum commodities and 151% increase in food commodities and 149% in shipments of raw materials.

25. The proposed rail spur and single connecting main line rail proposed in the Holtec EIS for the transport of spent nuclear fuel traverses through rural, remote areas. Although the rail lines in the Permian Basin are a major means of transportation, they are situated in desert-like areas served mostly by volunteer fire departments or areas lacking emergency responder resources. In consulting crane operators regarding the Holtec and ISP CISFs, there are real logistical problems in situating a crane capable of resetting a spent nuclear fuel transport cask and rail car in some of the more remote areas of the Permian Basin. This is particularly true for Holtec's exceptionally heavy HI-STAR 190 transportation cask intended for the transport of spent nuclear fuel to the Holtec CISF. A single hazardous materials emergency would not only have a detrimental effect upon the oil and agricultural industries of the Permian Basin but would also overwhelm our first responders and healthcare facilities which are not equipped to cope with the challenges of a release, exposure or disaster nor are the small, rural communities adjacent to the rail track equipped to respond to an incident on any scale.

26. The recent increase in derailments across the nation aptly demonstrate the significance and seriousness of railroad safety concerns in the context of transporting hazardous materials and the utmost importance of the training and funding of first responders. Indeed, the recent derailment of tank cars carrying vinyl chloride in Palestine, Ohio revealed the horrific aftermaths of an inadequate emergency

response. These safety concerns become grave concerns in the context of oversized rail lines carrying high-level radioactive nuclear waste as well as extensive shipments of oil, gas and volatile potash commodities, and further implicate substantial economic and security concerns when the rail lines are in the Permian Basin.

27. Not including derailments, the Permian Basin region has also experienced a highly significant increase in rail related crashes in recent years. In fact, the Midland-Odessa Transportation Alliance (MOTRAN) reports that from 2016-2018, there were 158 rail related crashes in the Texas Department of Transportation Odessa District with just over half of those accidents occurring in Midland and Ector Counties. This is the very area through which the spent nuclear fuel would be transported via rail. MOTRAN reports that during that same period, other Permian Basin counties also experienced drastic increases: Ector County saw a 55% increase, Reeves saw a 266% increase, and Ward County saw a 700% increase in rail related crashes.

28. According to the Holtec EIS, the proposed Holtec railroad spur will extend west of the CISF site and cross over State Highway NM 243 less than one mile north of U.S. Highway 62/180. Incidents at highway-rail grade crossings are one of the leading causes of railroad-related crashes, deaths and injuries, accounting for

approximately 30% of all rail related fatalities.³ Where the Holtec CISF is located in Lea County, New Mexico there is a disproportionately high risk of fatal crashes, including along U.S. Highway 62/180.

29. I am personally familiar with oil and gas activity in the vicinity of the Holtec CISF and of the approximately 120 individual persons required to facilitate the completion of each individual oil and gas well in the vicinity of the Holtec CISF. The potential harm to those individuals in the oil and gas industry, the potential harm to the ranchers and livestock, the potential impacts upon agriculture and, especially, upon human mortality and morbidity rates, and the economic costs associated with medical care and treatment of radiation related conditions would also adversely impact Fasken and other members of PBLRO, as well as their employees and families.

30. Given Fasken's work throughout the Permian Basin and familiarity with those in governance of the States of New Mexico and Texas, I have firsthand knowledge of the overwhelming opposition of the majority of the communities and elected representatives throughout New Mexico, as well as Texas, and of their shared health, safety, economic and environmental concerns in response to the egregious siting of

³ U.S. Senate Committee on Commerce, Science and Transportation, *Railroad Crossing Congestion and Its Impacts on Safety and Efficiency*, (March 2021).

Under penalty of perjury, the above is true and correct to the best of my knowledge and understanding.

Tommy E. Taylor
Tommy E. Taylor

7/14/2023
Date

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

BEYOND NUCLEAR, INC., *et al.*,

Petitioners,

v.

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

Respondents.

Case No. 20-1187

Consolidated with Case Nos.
21-1255, 21-1104, 21-1147

DECLARATION OF STONNIE POLLOCK

1. My name is Stonnie Pollock and my business address is 6101 Holiday Hill Road, Midland, Texas 79707. I work for Fasken Management, LLC, which is the general partner of Fasken Oil and Ranch Ltd. and Fasken Land and Minerals, Ltd. I am a degreed geologist and geoscientist and have been working as such for Fasken since 2003. Presently my position is Exploration Manager.

2. I am duly authorized to execute this declaration on behalf of Fasken.

3. I have personal knowledge of the information as stated herein.

4. Fasken presently has land and mineral interests within two miles of the Holtec International (Holtec) consolidated interim storage facility (CISF) located in Lea County, New Mexico. Fasken is a member of the Permian Basin Land and Royalty Owners (PBLRO). PBLRO presently has land and mineral interests throughout Lea County and adjacent Eddy County, New Mexico, with several PBLRO members

holding land and minerals within 5 miles of the Holtec CISF, the nearest is adjacent to Holtec CISF.

5. In my capacity as Fasken's Exploration Manager my duties primarily include geological evaluation, analysis, and interpretation of oil and gas prospects, plays, and reservoirs, including in the Permian Basin. I also conduct geohydrological evaluation and assessment of aquifers. I have knowledge of, interpret, analyze and evaluate geological and geohydrological characteristics in the vicinity of the Holtec site.

6. I have reviewed current and former oil and gas drilling activity within the Holtec site area which demonstrates the area is still under active exploration and active production. Within a 6-mile radius of the site, there have been a total of 618 wellbores drilled. Presently 188 are active oil wells still in production. There are 23 drilled-uncompleted (DUC'S) and 46 permitted wells yet to be drilled. Of the 618 wells, 161 are abandoned oil wells and 121 have been identified as dry wells. There are 34 gas wells and 26 abandoned gas wells. Currently there are 30 water injection wells for enhanced oil recovery and 9 saltwater disposal wells. There are a total of 15 abandoned injection wells and 11 abandoned saltwater disposal wells. Within a 6-mile radius of the site, 53 wells were drilled between 1937 – 1966 and 30 were permanently plugged and abandoned. Of the dry and abandoned wells, 83 of these were drilled before 1967. Within a 50-mile radius of the site, there have been 70,365

wellbores drilled, including 29,088 oil wells, 6,276 gas wells and 8,387 dry wells. There are 1,411 DUCs and 3,767 permitted wells yet to be drilled within a 50-mile radius.

7. Because drilling an oil well is expensive and petroleum companies that drilled dry holes often did not permanently plug the wells due to funds expended. These well bores would be temporarily abandoned in order to save them for future opportunities that may arise for additional exploration and production.

8. Current oil and gas extraction procedures include high pressure pumping of a mixture of water and proppant (sand) into an active wellbore from the surface to the subsurface hydrocarbon reservoir. This is the practice of hydraulic fracturing. These active wells have large volumes, pumped at high pressures and rates that can collapse wellbore casings of proximal existing wellbores. Potential casing collapses could cause surface disruptions of existing wellbores that are not properly abandoned.

9. For older well bores, records are often incomplete and there may be little or no information to determine the adequacy of subsurface construction or whether the well(s) have been properly plugged and abandoned. Comprehensive investigations, more definitive well searches and on-the-ground verification are needed for the abandoned well bores near the Holtec site in order to obtain sufficient information to determine their potential for unstable geological characteristics, casing corrosion, and other environmental and safety risks. Indeed, the integrity of abandoned wells

and also the presence of any orphan wells located on or near the Holtec site cannot go unanalyzed.

10. As part of my employment with Fasken, I am familiar with, interpret and ensure compliance with federal and state laws regulating oil and gas extraction activities. I have knowledge pertaining to both the U.S. Bureau of Land Management's and the New Mexico Oil Conservation Commission's regulations concerning use of drill islands and setback distances in the area surrounding the Holtec site. Mineral extraction activities below and adjacent to the Holtec site are currently proceeding within existing regulations, in the absence of any drilling depth restrictions, and have increased in the past three years and are likely to continue to increase in the reasonable future. Additionally, oil and gas operations at shallow depths through vertical drilling within the Holtec CISF project area are feasible and any prohibition of same would amount to a taking, rendering the selected CISF location not only unreasonable but unlawful.

11. The Holtec CISF site is located in a region underlain by shallow groundwater, in the presence of Permian aged halite formations and easily dissolved evaporite mineral formations, as well as known fractured formations leading to serious potential for subsurface instability, subsidence, ground movement issues and sinkhole development. For example, there is historical evidence of extensive sinkhole formations in the Permian Basin Region, including sinkholes and karst

features north and east of Carlsbad, New Mexico near the Holtec site. The presence of slickensides and moisture in the Chilne Formation in the geotechnical borings from beneath the Holtec CISF project area are further suggestive of karst processes and heightened risks subsurface instability. Additionally, the unanalyzed casing integrity of the abandoned and plugged wells and the identified plugged saltwater disposal well located in the northeast of the proposed CISF project area and unknown future of potash mining operations in the region may compound these risks.

12. Fasken currently owns and/or leases property directly related to oil and gas activities, including the Baetz Federal lease, located approximately 2 miles west and adjacent to the Holtec site with four active and producing wells. Fasken has at least 5 future planned well locations from established drilling islands for the acreage it owns and/or leases west of the Holtec site less than one mile from the proposed Holtec railroad spur that will carry every shipment of spent nuclear fuel and high-level radioactive nuclear waste to the Holtec CISF.

13. In assessing Fasken's mineral interests and as part of my responsibilities at Fasken, as well as for personal reasons, I frequently travel in the vicinity of the Holtec CISF along regional transportation infrastructure. I typically travel along U.S. Highway 62/180, which is approximately one-half mile from the Holtec CISF site. I am personally aware of Fasken employees who regularly and routinely travel

for employment and personal reasons to the area and use U.S. Highway 62/180, as well as New Mexico State Road 243, which the proposed railroad spur will cross over, in order to access Fasken owned and active oil and gas properties. Fasken employees travel along regional infrastructures to perform routine checks and maintenance on oil and gas production equipment and to monitor well operations.

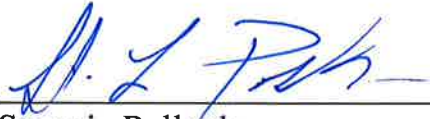
14. Given the number of active oil and gas wells, tank batteries, gas plants and other petroleum production facilities within the reasonable vicinity of the Holtec site, each requiring frequent and regular visits from personnel for maintenance and monitoring, I have concerns for Fasken's employees, who by the very nature of their profession will be in close proximity to the Holtec CISF and proposed railroad spur and be exposed to doses of radiation.

15. The Holtec CISF site is located within the Permian Basin, which produces the largest volume of oil and gas in North America. The Permian Basin region encompasses southeastern New Mexico and a relatively large region in Texas and has a population of more than half-a-million people.

16. The Holtec CISF represents a threat to Fasken: personnel, private property, real property, mineral and water interests, oil and gas leases and agricultural interests. It also represents a threat to numerous communities throughout New Mexico and Texas, including the most prolific oil producing counties. A radiological event within any of these counties, including Eddy County and Lea County in the

vicinity of the Holtec CISO, could be devastating to the nation's oil and gas industry and would decimate the economies of New Mexico.

Under penalty of perjury, the above is true and correct to the best of my knowledge and understanding.



Stonnie Pollock
Exploration Manager
Fasken Oil and Ranch, Ltd.

7-14-2023

Date

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

BEYOND NUCLEAR, INC., *et al.*,

Petitioners,

v.

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

Respondents.

Case No. 20-1187

Consolidated with Case Nos.
21-1225, 21-1104, 21-1147

DECLARATION OF DANIEL BERRY

1. My name is Daniel “Danny” Berry, and I reside in Eunice, New Mexico on land that my family has worked for generations. My wife, Libby, and I share a home approximately 10 miles east of the proposed Holtec waste site, and my ranch stretches out to within 3 miles of the Holtec site.

2. I was born in Lovington, New Mexico seventy-five years ago and have lived in southeastern New Mexico my entire life. Our family business, Berry Ranchlands, LLP, is involved in agricultural activities – primarily grazing cattle – and we provide water and other services for use in association with oil and gas activities.

3. This declaration is in support of the Petition for Review of Fasken and PBLRO in the above-captioned docket. I have been and remain a member of the Permian Basin Coalition of Land and Royalty Owners and Operators and execute this declaration in order to protect the interests of myself, my family, and friends, and it

is my opinion that Holtec International's (Holtec) license application is inadequate and illegal as written. In order to assure that the Holtec licensing decision in this matter adequately protects the interests of myself and other PBLRO members in an environment free from radiation hazards associated with CISFs and to protect the economic interests of the PBLRO, to which I belong, I am in support of Fasken and PBLRO's appeal of those decisions to this Court.

4. My daily activities put me and my family within the immediate vicinity of the Holtec consolidated interim storage facility (CISF) in Lea County, New Mexico and within ten miles of the rail line that will carry approximately ten thousand casks of spent nuclear fuel.

5. Our coalition, the PBLRO, is an association with long-term economic, social, and environmental interests in the Permian Basin. It formed in response to Holtec's and ISP's applications to construct and operate CISFs.

6. I, and other members of the PBLRO, presently have substantial land and other interests throughout Eddy and Lea Counties in New Mexico.

7. I am personally familiar with several other families that are also in opposition to the Holtec CISF and that are in close proximity to the proposed transport of spent nuclear fuel and storage of spent nuclear fuel at the Holtec CISF.

8. I am personally familiar with the agricultural use of the land and production and use of groundwater within the vicinity of the Holtec CISF site. My family and I

live, work, and travel along proposed transportation routes, graze our animals within five miles of the Holtec CISF, and draw water from wells that are fed by shallow groundwater formations that are present beneath the Holtec CISF.

9. Neither I, nor any member of my family, have relinquished control of any personal or business interests for the development of the Holtec CISF or proposed railroad spur.

10. It is well-established and acknowledged that the Permian Basin is the most productive oil and gas resource in the United States. Any interruption of production would hamper my livelihood and harm the State of Texas and the nation as a whole. This region is also known as one of the most significant sources of beef in America. My primary business is agricultural, therefore the presence of radionuclides within the vicinity of my cattle grazing is harmful to my livelihood and diminishes the economic value of my property and interests. Should any contaminants be detected in the vicinity of the Holtec CISF, my property and my business would be devastated.

11. I agree with and echo the statements of the New Mexico Cattle Growers' Association in a letter to New Mexico's governor on May 15, 2019, which states: "the membership of the New Mexico Cattle Growers' Association (NMCGA), with members in all 33 of the state's counties as well as 19 other states . . . believes that a nuclear waste storage would have unknown impacts on agricultural production, the

primary economic engine for the surrounding area of the proposed site. NMCGA also has concerns for the local communities' safety and the negative perception associated with a nuclear waste storage facility being located within their counties and communities.”

{Signature Page Follows}

Under penalty of perjury, the above is true and correct to the best of my knowledge and understanding.

Daniel Berry

Daniel "Danny" Berry
Berry Ranchlands, LLP

7-13-2023

Date

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

BEYOND NUCLEAR, INC., et al.

Petitioners,

v.

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

Respondents.

No. 20-1187,
Consolidated with Nos.
20-1225, 21-1104, 21-1147

PETITIONERS' NON-BINDING STATEMENT OF ISSUES

Petitioners in Case No. 21-1147, Fasken Land and Minerals, Ltd. and Permian Basin Land and Royalty Owners, hereby submit the following non-binding statement of issues for review:

- Whether the United States Nuclear Regulatory Commission (“NRC”) acted arbitrarily, capriciously, in abuse of its discretion or otherwise not in accordance with the law, including but not limited to, in violation of the Administrative Procedures Act, 5 U.S.C. §§ 706(2)(A) and (C), (“APA”), the National Environmental Policy Act, 42 U.S.C. §§ 4321 *et seq.*, (“NEPA”), the Atomic Energy Act, 42 U.S.C. §§ 2011, *et seq.*, and/or NRC’s own regulations, when it denied Petitioners’ motions to reopen and deprived Petitioners of the required opportunity for a hearing in CLI-20-04 (issued on

April 23, 2020) and CLI 21-07 (issued on April 28, 2021) based on the following non-exhaustive list of findings:

- (a) that the site-selection process and location for Holtec International's ("Holtec") consolidated interim storage facility for high-level radioactive nuclear waste and spent nuclear fuel was reasonable: (i) without having accurate or comprehensive knowledge of the land use rights or applicable land use regulations at the proposed site; (ii) without any legal authority to restrict surface access or mineral extraction operations beneath or in the vicinity of the Holtec facility for security or safety purposes over the lifetime of the project; (iii) atop valuable mineral resources in the middle of the nation's most productive oil hub, surrounded by extensive mineral extraction operations, contrary to the NRC's acknowledged industry and international recommendations for "adequately controlled single-use land area"; and (iv) in disregard of regional expertise and opposing viewpoints of the New Mexico Environmental Department as to the geological unsuitability of the proposed site and the New Mexico Land Office's confirmation as to the lack of any approved agreements restricting mineral extraction drilling depths or operations beneath or surrounding the proposed site;

- (b) that the Holtec consolidated interim storage facility project would have “no impact” on oil and gas development while concurrently representing that any surface drilling within the Holtec facility area would be restricted for the lifetime of the project and without any authority to restrict or proscribe mineral extraction operations or interfere with superior surface land use rights at and surrounding the Holtec site;
- (c) that information contained in the Holtec draft Environmental Impact Statement was accurate, reliable and independently investigated, when the NRC: (i) relied solely on the self-serving assertions of applicant’s responses to requests for additional information that it was “currently in discussions” regarding agreements to retire or relinquish mineral rights beneath and surrounding the proposed Holtec project site; (ii) failed to consult the New Mexico Land Office regarding the status of alleged agreements restricting and/or proscribing mineral extraction operations beneath and surrounding the Holtec site to verify Holtec’s responses; and (iii) when contrary evidence was presented to the NRC in Petitioners’ Contention No. 2 months earlier documenting the New Mexico Land Commissioner’s serious concerns “about the misrepresentations Holtec made to the NRC about purported agreements and restrictions regarding mineral leasing at the Site that do not exist and may very well never

- exist,” which further confirmed the absence of any approved agreements to relinquish or restrict mineral rights;
- (d) that the appropriate radius for assessing cumulative land use impacts should be reduced from 50-miles to 6-miles, when the proposed railroad spur for the Holtec facility, admittedly a “connected action” for purposes of the NRC’s NEPA analysis, spans approximately 4 miles west of the facility site through extensive mineral extraction operations and cattle grazing land;
- (e) acknowledging the potential for casing corrosion and improperly plugged and abandoned wells to cause catastrophic subsidence and sinkholes in the region of the Holtec site while failing to require any inspection, investigation or assessment of: (i) the identified 17 plugged and abandoned wells at the Holtec property; (ii) at least 30 wells perforated in a 6-mile radius at depths shallower than 3,050 feet between 1937 – 1966 that were plugged before 1967 statewide plugging enactments without assurances of proper plugging to ensure for adequate subsurface construction or that the wells pose no threat of potential subsidence or contamination issues; or (iii) at least 174 abandoned oil and gas wells within 6-miles of the site that likewise may have unstable characteristics; and

(f) that there is no need to analyze the impacts or safety risks to the Holtec facility from reasonable future oil and gas operations drilling at shallow depths or revisiting vertically drilled wells or developing new vertically drilled wells or horizontal drilling beneath and surrounding the Holtec site.

- Whether information provided to the NRC by Holtec and/or information required by statute or by the NRC's regulations was "complete and accurate in all material respects" or in violation of 10 C.F.R. § 72.11.
- Whether the NRC's publication of incomplete, inaccurate and inconsistent information as to land use rights, land use restrictions and past, present and reasonable future mineral extraction operations beneath and surrounding the Holtec project site in its draft Holtec Environmental Impact Statement, while awaiting the applicant's responses to the NRC's requests for additional information relating to the same, inadequately disclosed to the public the land use impacts and related safety risks for the Holtec facility and infrastructure and precluded meaningful participation in violation of NEPA, the APA and/or NRC's regulations mandating transparency in the decision-making process.
- Whether it was "inimical to the common defense and security" or an endangerment to public health and safety, in violation of the Atomic Energy Act and/or NRC's own siting evaluation regulations, 10 C.F.R. §§ 72.40(a)(2), (13),

(14) and 72.90 – 72.108, for the NRC to approve the Holtec site location in the middle of the Permian Basin based on the aforementioned non-exhaustive list of disputed findings and unanalyzed land use issues with potential for substantial subsidence, catastrophic sinkholes, seismicity and/or terrorist safety risks to the Holtec facility and/or infrastructure.

The foregoing is a preliminary listing of issues that Petitioners may raise. Petitioners respectfully reserve the right to modify the list of issues addressed in its brief, as well as to address these and other issues in more detail in future pleadings.

Dated: July 14, 2023

Respectfully submitted by:

KANNER & WHITELEY, LLC

/s/ Allan Kanner _____

Allan Kanner, Esq.

Annemieke M. Tennis, Esq.

701 Camp Street

New Orleans, Louisiana 70130

(504) 524 - 5777

a.kanner@kanner-law.com

a.tennis@kanner-law.com

*Counsel for Petitioners Fasken and Permian
Basin Land and Royalty Owners*