

August 2009

High-level Waste Hearings Summary Table

The following table summarizes

- Electronic Hearing Docket Notices for August 2009.

(Note: full text documents located [here](#):

Replies and answers [here](#)

Request for Additional Information table (RAI's) [here](#)

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First are the orders, next are the motions and pleadings filed for the month of August.

High-Level Waste hearing

ORDERS Electronic Hearing Docket Board Orders for August (CAB01, CAB02, CAB03)

Date	August 25	August 25	August 26
	<p>MEMORANDUM AND ORDER (Concerning Further Prehearing Conference) The Board will convene a further prehearing conference, at the NRC Las Vegas Hearing Facility, on Monday, September 14, 2009 at 9:00 a.m. PDT. If required, the conference may continue through Tuesday, September 15, 2009. The Board intends to issue a Case Management Order shortly thereafter.</p> <p>Presently before the Board are three sets of documents that bear upon case management: (1) the parties' initial filings in response to CAB-01's March 20, 2009 memorandum and order regarding the first prehearing conference; (2) the NRC Staff's answer to this Board's July 2, 2009 order concerning scheduling; and (3) the parties' filings in response to this Board's July 21, 2009 order concerning serial case management. In essence, the first set of filings addressed anticipated discovery and related issues; the second filing disclosed a new schedule for the NRC Staff's issuance of its Safety Evaluation Report (SER); and the third set of filings consists primarily of the parties' responses to the Board's questions pertaining to the impact of the new schedule. Continued</p>	<p>ORDER (Granting Motion to Participate by Videoconference and Request for Webcasting) The Board hereby grants Eureka County's motion for leave to participate by videoconference and request for webcasting. Further details, including logistics pertaining to the videoconference and a URL by which the public can access the webcast, will be provided in a subsequent order. It is so ORDERED.</p>	<p>ORDER (Granting Joint Motion for Extension of Time in Part) Accordingly, new or amended contentions relating to the DOE Analysis shall be deemed timely if filed, in accordance with CAB Case Management Order #1, within 30 days after the NRC Staff publicly announces or otherwise advises the parties how it will proceed with respect to the DOE Analysis. This ruling is without prejudice to the right of any party subsequently to seek a further extension, for good cause shown.</p>
Date	August 27	August 27	Continued
	<p>ORDER (Granting Party Status to the Joint Timbisha Shoshone Tribal Group) JTS filed subsequent LSN certification showing substantial compliance as well as timely LSN supplemental certifications.....this Board now grants JTS's intervention petition and admits JTS as a party to this proceeding. Pursuant to 10 C.F.R. § 2.1012(b)(2), JTS's admission as a party "is conditioned on accepting the status of the proceeding at the time of admission."</p>	<p>ORDER (Granting Party Status to the Native Community Action Council) On May 11, 2009, CAB-02 ruled that the Native Community Action Council (NCA) would have been admitted as a party to this proceeding, except for its failure to demonstrate substantial and timely compliance with Licensing Support Network (LSN) requirements.¹ The Board further ruled that NCA might be admitted as a party upon a showing of subsequent compliance. (Continued next column)</p>	<p>The Board based its ruling on "NCA's admission in its reply that it 'may possess some documents not in the record, and within the scope of the regulation.'"² The Board acknowledged, however, that NCA had filed a new Certification of LSN compliance on May 5, 2009,³ which would be appropriately addressed after time had expired for other parties to respond. NCA has now certified compliance with LSN requirements. No party has objected to NCA's demonstration of subsequent LSN compliance. Accordingly, this Board now grants NCA's intervention petition and admits NCA as a party to this proceeding. Pursuant to 10 C.F.R. § 2.1012(b)(2), NCA's admission as a party "is conditioned on accepting the status of the proceeding at the time of admission."</p>

MOTIONS AND PLEADINGS

Date	August 5	August 10	August 11
	<p>NOTIFICATION OF CHANGE OF COMMITMENT FOR SUPPLEMENTING THE FINAL ENVIRONMENTAL IMPACT STATEMENT Reference: Ltr, Boyle to Kokajko, dtd 10/3/08 (Notification of Plan for Supplementing the Final Environmental Impact Statement [FEIS])</p> <p>DOE has decided not to complete the Environmental Impact Statement but rather has used the material prepared for the Supplement to develop the enclosed <i>Analysis of Postclosure Groundwater Impacts for a Geologic Repository for the Disposal of Spent Nuclear Fuel and High-Level Radioactive Waste at Yucca Mountain, Nye County, Nevada</i> (Analysis of Postclosure Groundwater Impacts).</p>	<p>STATE OF NEVADA'S MOTION TO COMPEL PRODUCTION OF DOCUMENTS ASSERTED AS PRIVILEGED BY NRC STAFF</p> <p>The State of Nevada motioned to Compel requesting production by NRC Staff ("Staff") of all 29 documents listed by Staff in its privilege log filed on July 30, 2009, in this proceeding. This Motion is timely filed within ten days of Staff's filing of its privilege log. In accordance with the provisions of 10 C.F.R. 2.323(b), 10 C.F.R. 2.705, and paragraphs II.K. and III.F. of the PAPO Board's Revised Second Case Management Order (July 6, 2007), counsel for Nevada and Staff conferred in good faith with respect to the issues asserted in this Motion on Wednesday, August 5, 2009. Despite the good-faith effort on the part of both parties to resolve the issues, that effort was unsuccessful. In the course of that conference, no prior disclosure of the documents at issue was disclosed by the privilege claimant; there is a single, not multiple, claim of privilege at issue (i.e., the deliberative-process privilege); and neither the requester nor the privilege claimant asserted that the dispute raises a controlling issue of law.</p>	<p>EUREKA COUNTY'S MOTION FOR LEAVE TO PARTICIPATE BY VIDEOCONFERENCE IN SEPTEMBER 14-15 PREHEARING CONFERENCE AND REQUEST FOR WEBCASTING OF PREHEARING CONFERENCE</p> <p>Eureka County requested the Construction Authorization Boards ("CABs") to permit it to participate in the tentatively-scheduled September 14-15 prehearing conference in Las Vegas by remote video connection from the U.S. Nuclear Regulatory Commission's ("NRC's") Rockville, Maryland headquarters. In addition, the County requested that the CABs provide for webcasting of the prehearing conference to the general public.</p>
Date	August 11	August 13	August 13
	<p>ANSWER OF CLARK COUNTY, NEVADA TO EUREKA COUNTY, NEVADA'S MOTION FOR LEAVE TO PARTICIPATE BY VIDEOCONFERENCE</p> <p>On August 11, 2009 Counsel for Eureka County filed a motion seeking leave to participate in the September 14-15, 2009 pre-hearing conference via videoconference from the Rockville, Maryland facility. Clark County has no objection to Eureka County's motion. Clark County also has consistently supported broadcasting the proceedings to the public via live web-streaming. Clark County therefore supports Eureka County's request for live webstreaming of the September 14-15, 2009 pre-hearing conference to enable interested members of the public who may be unable to attend in person to view the conference in real time.</p>	<p>ANSWER OF THE FOUR NEVADA COUNTIES OF CHURCHILL, ESERALDA, LANDER AND MINERAL TO EUREKA COUNTY, NEVADA'S MOTION FOR LEAVE TO PARTICIPATE BY VIDEOCONFERENCE AND REQUEST FOR WEBCASTING</p> <p>The Four Nevada Counties have no objection to Eureka County's motion to participate via video conference. In addition, Counsel for Eureka County requested webcasting of the prehearing conference. The Four Counties support Eureka County's request for webcasting of the pre-hearing conference.</p>	<p>NRC STAFF ANSWER TO EUREKA COUNTY'S MOTION FOR LEAVE TO PARTICIPATE BY VIDEOCONFERENCE AND REQUEST FOR WEBCASTING OF PREHEARING CONFERENCE</p> <p>The NRC Staff does not object to the Motion, provided that webcasting is limited to public proceedings and sufficient agency resources, including the Atomic Safety and Licensing Board Panel's (ASLBP's) hearing room, are available to support webcasting and videoconferencing.</p>

Date	August 14	August 17	August 17
	<p>JOINT MOTION BY THE COUNTY OF INYO, THE STATE OF NEVADA, THE STATE OF CALIFORNIA, NYE COUNTY, THE JOINT TIMBISHA SHOSHONE TRIBAL GROUP AND THE NATIVE COMMUNITY ACTION COUNCIL FOR AN EXTENSION OF TIME TO FILE NEW OR AMENDED CONTENTIONS</p> <p>Above mentioned parties requested that the Construction Authorization Board grant an extension of time to the parties to file new or amended contentions that are based upon the Department of Energy's ("DOE") "<i>Analysis of Postclosure Groundwater Impacts for a Geologic Repository for the Disposal of Spent Nuclear Fuel and High Level Radioactive Waste at Yucca Mountain, Nye County, Nevada</i>" ("<i>Analysis of Postclosure Groundwater Impacts</i>"), which was recently released.</p>	<p>JOINT RESPONSE TO JULY 21, 2009 ORDER (CONCERNING SERIAL CASE MANAGEMENT)</p> <p>On July 21, 2009, Construction Authorization Board #4 (CAB 04) issued an Order directing, among other things, that the parties consult and seek agreement on responses to six questions related to serial case management. The parties have consulted and are submitting this Joint Response to the Board's six questions.</p> <p>Response here.</p>	<p>NOTICE BY THE STATE OF NEVADA REGARDING DOE'S JOINT RESPONSE TO JULY 21, 2009 ORDER</p> <p>The U.S. Department of Energy ("DOE") filed a pleading entitled "Joint Response to July 21, 2009 Order" that erroneously represented to the Board that "the parties" were jointly submitting the response. The pleading fails to identify which "parties" are supportive of the pleading and thus creates the incorrect impression that all parties are supportive of the pleading. In addition, the pleading incorrectly indicates that the State of Nevada will be filing its differing views only with regard to Board Question 1, when in fact the State of Nevada has differing views from DOE's responses to other questions posed by the Board as well. The State of Nevada is filing this Notice to clarify those misrepresentations.</p> <p>Response found here</p>
Date	August 17	August 17	August 19
	<p>NRC STAFF ANSWER TO THE STATE OF NEVADA'S MOTION TO COMPEL PRODUCTION OF DOCUMENTS ASSERTED AS PRIVILEGED BY NRC STAFF INTRODUCTION</p> <p>The NRC staff filed an answer to the "State of Nevada's Motion to Compel Production of Documents Asserted as Privileged by NRC Staff," dated August 10, 2009 (Motion). The Staff opposes Nevada's motion because the Staff's assertion of the deliberative process privilege was appropriate and timely as to each of the 29 documents Nevada seeks. Found here</p>	<p>U.S. DEPARTMENT OF ENERGY'S ANSWER TO THE BOARD'S REQUEST CONCERNING CONSTRAINTS ON DOE'S ABILITY TO CONTINUE TO PARTICIPATE IN THE LICENSING PROCEEDING</p> <p>On July 2, 2009, Construction Authorization Board 04 (Board) issued an Order Concerning Scheduling in which it specifically requested that U.S. Department of Energy (DOE) counsel "undertake or cause to be undertaken a reasonable investigation in good faith whether there may be constraints upon DOE's ability to proceed in this matter" and to prepare to discuss any such constraints during a teleconference. Because the Board, in its July 21, 2009 Order Concerning Serial Case Management, indicated that it no longer intends to convene a teleconference, the Board requested that DOE "submit a written report concerning these matters on or before August 17, 2009."</p> <p>Counsel has undertaken such an investigation and is aware of no constraints that would inhibit DOE's ability to participate through Fiscal Year (FY) 2010, the last year for which the Administration has submitted a budget request to Congress. DOE currently has the funds for FY 2009 to proceed on the existing Appendix D schedule. The President's budget for FY 2010 likewise requests sufficient funds to continue participation. Assuming Congress appropriates the amount requested in the</p>	<p>NRC STAFF MOTION FOR LEAVE TO CORRECT ITS JULY 30, 2009 DELIBERATIVE PROCESS PRIVILEGE LOG SUPPLEMENT INTRODUCTION</p> <p>Pursuant to 10 C.F.R. § 2.323 and the Pre-License Application Presiding Office (PAPO) Board's "Fifth Case Management Order," dated November 1, 2007 (Fifth CMO) (unpublished), as adopted by "Case Management Order #1," dated January 29, 2009, at 2 (unpublished), the NRC staff (Staff) hereby moves for leave to file corrections to the supplement to its deliberative process privilege log found in the July 30, 2009 NRC Staff Certification of Licensing Support Network [LSN] Supplementa-tion (Privilege Log). Good cause exists for this motion because the Staff seeks to correct minor errors and clarify ambiguities in the Privilege Log that were identified after receipt of the State of Nevada's recent motion to compel. Therefore, the instant motion should be granted.</p>

		budget, DOE is aware of no constraints on its ability to participate in this matter during FY 2010. In this regard, the House and Senate Appropriations Committees have approved FY 2010 appropriation bills that include funding amounts for Yucca that are approximately the same as the amount requested and that would be sufficient for DOE to proceed in this matter through FY 2010.	
Date	August 21	August 24	August 24
	<p>RESPONSE OF THE STATE OF NEVADA TO JULY 21, 2009 ORDER (CONCERNING SERIAL CASE MANAGEMENT)</p> <p>On July 21, 2009, Construction Authorization Board-04 ("Board") issued an Order Concerning Serial Case Management ("Order") directing the parties in this proceeding to consult and seek agreement on responses to six questions and to file a joint response on or before August 17, 2009. The Board also noted, "In the event one or more parties cannot agree, any differing views shall be filed within five (5) days of the majority filing. DOE took the lead in this regard, prepared a draft response to the six questions, and sought agreement from the parties on those responses. On August 17, 2009, DOE filed a Joint Response to the Order ("DOE's Joint Response").</p> <p>Pursuant to the Board's Order and consistent with the intent of 10 C.F.R. § 2.323(b), the State of Nevada offered written comments on DOE's proposed response and also offered oral explanations for the positions contained within those comments. Many of the comments offered by the State of Nevada were adopted by DOE, including changes to the text of the proposed response and the accompanying spreadsheets that provided the detailed information responsive to the Board's questions. However, a significant number of comments offered by the State of Nevada were not accepted. In addition, the manner in which the differences and disagreements were to be presented in the proposed response was not sufficient to fully address the State of Nevada's underlying issues. Accordingly, the State of Nevada declined to join in DOE's filing and chooses instead to file its differing views in this pleading as permitted by the Order. Continued</p>	<p>COMMENT ON JOINT RESPONSE TO CAB'S JULY 21, 2009 ORDER</p> <p>..... Although the Staff joined in the majority opinion presented in the Joint Response, consistent with the Order permitting the filing of additional views, the Staff hereby submits a comment on one item in the response and identifies one typographical error.</p> <p>First, in Spreadsheet #3 (Answer to Board Questions 4, 5, and 6), appended to the Joint Response, NCA-NEPA-001 is identified as relating to neither a safety issue nor any groundwater impact issue identified in the NRC Staff's September 5, 2008 Adoption Determination Report.³ It is the Staff's understanding that this accurately reflects the belief of the original proponents of the contention, the Native Community Action Council. However, the Staff believes that SER Volume 3 may contain information that is relevant to the contention, and, therefore, that it would be prudent to consider the expected completion date of Volume 3 when setting the schedule for NCA-NEPA-001.</p> <p>In addition, the Staff notes NEV-SAFETY-196 is identified in Spreadsheet #1 (Answer to Board Question 1) as related to SER Volume 1, but in Spreadsheet #2 (Answer to Board Question 2) as related to SER Volume 4. Based on the parties' negotiations, the Staff believes that the listing of NEV-SAFETY-196 is accurate in Spreadsheet #1, and the reference to SER Volume 4 in Spreadsheet #2 is a typographical error.</p>	<p>DEPARTMENT OF ENERGY'S RESPONSE TO NOTICE OF STATE OF NEVADA REGARDING DOE'S JOINT RESPONSE TO JULY 21, 2009 ORDER</p> <p>On August 17, 2009 the State of Nevada served a Notice regarding the "Joint Response to the July 21, 2009 Order" (Joint Response). In its Notice, Nevada suggests that the Department of Energy (DOE) intentionally misrepresented that Nevada joined in the Joint Response. That suggestion is inaccurate and without basis. The Joint Response nowhere claims that Nevada joins in the Joint Response. In fact, the Joint Response clearly states "[t]he State of Nevada disagrees with the SER Volume designation for about 25 contentions, as indicated in Spreadsheet 1, and will be filing its own differing views in accordance with the Board's July 21st Order." The Joint Response also notes Nevada's disagreement with the designation of contentions as "legal issues." See Joint Response, n. 1. DOE used the term Joint Response because, as directed by the Board, DOE conferred with all the parties in preparing the response, and the Joint Response sets forth the parties' respective positions as stated during that consultation, noting areas where the parties agreed as well as the areas where Nevada and other parties had disagreements.</p> <p>In short, the Joint Response was an effort to apprise the Board, in one document, of the positions of the parties including areas of disagreement. There was no intent to misrepresent Nevada's position or any other party's position on the questions posed by the Board.</p>

Date	August 24	August 24	August 26
	<p>NRC STAFF ANSWER TO JOINT MOTION FOR AN EXTENSION OF TIME TO FILE NEW OR AMENDED CONTENTIONS</p> <p>The NRC staff asserts the Movants have not demonstrated the good cause required for an extension of time in which to file new or amended contentions on DOE's Analysis.</p> <p>The Motion should be denied, and if not denied, any extension should be limited to 30 days.</p>	<p>STATE OF NEVADA'S MOTION FOR LEAVE TO FILE NEW CONTENTION BASED ON NEWLY AVAILABLE INFORMATION</p> <p>Nevada's contention is based two DOE documents (LSN# DEN001614752 and DEN001614731), both of which were first made publicly available on the Licensing Support Network ("LSN") on July 31, 2009.</p> <p>The document with accession number DEN001614731 discloses that DOE conducted Secondary Ion Mass Spectrometry (SIMS) analysis of five-year Alloy-22 corrosion coupons and that it received "an unexpected test result," relating to varying oxide thicknesses on parts of the sample coupons, a result that will "require additional investigation." The document with accession number DEN001614752 discloses that the inspection of Alloy-22 components exposed for 9.5 years in the Long-Term Corrosion Testing Facility (LTCTF) revealed that a subset of the coupons have a visually observable residue on the sample surfaces which "may be an unexpected organic compound." It was determined by DOE or its contractor that the substance was not representative of salt deposits that are typically found on coupons removed from the LTCTF. Forty out of 132 coupons were found to have such residue, whose composition has not yet been determined, and according to DOE, "therefore, it is not known if the residue is . . . a contaminant." The time and extent of aqueous contamination of Alloy-22 are undefined as a consequence of the information revealed by DOE in these two new documents. The actual causes of contamination are uncertain. The source documents are new. Their findings are new. And the deficiencies in DOE's Alloy-22 corrosion testing suggested by these documents are new and materially different from that which was previously available.</p>	<p>STATE OF NEVADA'S ANSWER IN OPPOSITION TO NRC STAFF'S MOTION FOR LEAVE TO CORRECT ITS JULY 30, 2009 DELIBERATIVE-PROCESS PRIVILEGE LOG SUPPLEMENT</p> <p>State of Nevada states "NRC Staff began by filing a deficient privilege log on July 30, 2009 (fraught with the inadequacies detailed in Nevada's pending Motion to Compel filed August 10, 2009). Staff ended the period filing its Motion for Leave on August 19, 2009, asking for concurrence by the parties and leave of the Board, while concealing the proposed privilege log corrections from both. Staff spent the intervening 20 days contradicting itself, reversing its field, repeatedly violating the Licensing Board's orders regarding privilege logs, and repeatedly violating the Commission's regulations requiring pre-motion consultation.</p> <p>Continued</p>
Date	August 28		
	<p>STATE OF NEVADA'S NOTICE OF FILING NON-DISCLOSURE DECLARATION</p> <p>State of Nevada filed the Non-Disclosure Declaration with respect to its treatment of documents it may receive from DOE's Employee Concerns Program (ECP).</p>		