

EGAN, FITZPATRICK, MALSCH & LAWRENCE, PLLC

Counselors at Law

www.nuclearlawyer.com
Joseph R. Egan (1954-2008)

Martin G. Malsch
1750 K Street, N.W. · Suite 350
Washington, D.C. 20006
Tel: 202.466.3106
Fax: 210.496.5011

Charles J. Fitzpatrick
1777 N.E. Loop 410 · Suite 600
San Antonio, TX 78217
Tel: 210.496.5001
Fax: 210.496.5011

John W. Lawrence
9200 Signal Avenue, N.E.
Albuquerque, NM 87122
Tel: 505.610.8564
Fax: 505.797.2950

November 18, 2010

ASLBP 09-892-HLW-CAB04
Thomas S. Moore, Chairman
Paul S. Ryerson
Richard E. Wardwell

Re: Docket No. 63-001-HLW
In the Matter of U.S. Department of Energy (High Level Waste Repository)
Nevada Status Inquiry

Dear Judges Moore, Ryerson and Wardwell:

The State of Nevada writes seeking clarification of the status of an important matter still pending before the Construction Authorization Board (CAB) – rulings on the eleven Phase 1 legal issues.

In its June 30, 2009 Memorandum and Order on the admission of contentions, CLI-09-14 at page 14, the Commission indicated that, “in the interest of moving forward expeditiously where possible in this proceeding,” the CAB should “provide a thorough and meaningful discussion of the legal issues and the bases for resolving them.” The CAB moved promptly to set the appropriate schedules for defining, briefing and arguing eleven Phase 1 legal issues. All of these legal issues were fully briefed and argued on January 26-27, 2010. They are still pending.

On February 16, 2010, the CAB issued an unopposed stay of the proceeding pending its disposition of the Department of Energy’s (DOE’s) (then) expected motion to withdraw its license application. That motion was filed on March 3, 2010. On April 23, 2010, in CLI-10-13, the Commission vacated the CAB’s further suspension order of April 6, 2010, and directed the Board to establish a briefing schedule and issue a decision on DOE’s motion to withdraw its license application. The Commission also (at page 5) said the Board should “continue case management and resolve all remaining issues promptly.” On June 29, 2010, in LBP-10-11, the Board denied DOE’s motion to withdraw and granted the pending intervention petitions of the states of Washington and South Carolina, the county of Aiken in South Carolina, the Prairie Island Indian Community, and the National Association of Regulatory Utility Commissioners, as

EGAN, FITZPATRICK, MALSCH & LAWRENCE, PLLC

November 18, 2010

Page 2

well as the amicus curiae filing by the Florida Public Service Commission. One contention of each new party was admitted (whether DOE lacks authority under the Nuclear Waste Policy Act to withdraw its application). See LBP-10-11 at page 47.

With the issuance of LBP-10-11, deciding DOE's motion to withdraw, the Board's February 16, 2010 stay of the proceeding expired according to its terms. No other stay is in effect. Accordingly, the parties have been filing the required LSN and updated witness reports with the CAB. However the eleven Phase 1 legal issues are still pending. It seems to Nevada that a decision on these issues is overdue.

The CAB may be waiting for a decision by the Commission regarding DOE's motion to withdraw its application. However, the Commission's instruction in CLI-10-13 that the Board should "continue case management and resolve all remaining issues promptly" would seem to include the eleven legal issues, especially now that the CAB has addressed what was obviously its first priority – deciding DOE's motion to withdraw. Accordingly, Nevada would appreciate the CAB advising it and the other parties of its schedule for deciding these eleven issues.

A table of significant filings and events related to the eleven legal issues is attached for your information.

Sincerely,

(electronically signed)

Martin G. Malsch
mmalsch@nuclearlawyer.com

MGM:lb
Enclosure

Table of Significant Filings and Events Related to Legal Issues

DATE OF FILING	NATURE OF FILING
December 19, 2008	Nevada petitions to intervene, identifying 19 legal contentions
January 16, 2009	DOE answers Nevada's petition, challenging all legal contentions
February 9, 2009	NRC Staff answers Nevada's petition, challenging all legal contentions
February 24, 2009	Nevada separately replies to answers filed by DOE and NRC Staff
May 11, 2009	Board issues LBP-09-06, admitting 28 legal contentions from Nevada (designating some contentions as legal notwithstanding how they were pled)
May 21, 2009	NRC Staff appeals admissibility of legal contentions to Commission
May 29, 2009	Nevada opposes NRC Staff's appeal of LBP-09-06
June 30, 2009	Commission issues CLI-09-14, affirming admissibility of legal contentions
July 21, 2009	Board issues Serial Case Management Order seeking information on relationship of legal contentions to NRC Staff SER Volumes
August 17, 2009	DOE responds to Board Order of July 21 st
August 21, 2009	Nevada responds to Board Order of July 21 st
September 30, 2009	Board issues Case Management Order #2, requiring parties to identify a legal question for each of the 11 legal contentions to be addressed in Phase I
October 6, 2009	Nevada (10 legal contentions), NEI (1 legal contention) and DOE jointly respond to CMO#2; Nevada and DOE also separately respond on 1 issue
October 13, 2009	NRC Staff comments on October 6 th separate responses by DOE and Nevada
October 23, 2009	Board issues Order scheduling 11 Phase I legal issues for briefing
December 7, 2009	Nevada, NEI, DOE and NRC Staff file opening briefs on Phase I legal issues
December 9, 2009	Board issues LBP-09-29, admitting another Nevada legal contention
December 22, 2009	NRC Staff responds to Board questions from LBP-09-29
December 30, 2009	Nevada replies to NRC Staff response to Board questions from LBP-09-29
January 6, 2010	Nevada, NEI, DOE and NRC Staff file reply briefs on Phase I legal issues
January 26-27, 2010	Board conducts oral argument of briefs on Phase I legal issues
February 16, 2010	Board stays proceeding until it resolves DOE's expected withdrawal motion
March 3, 2010	DOE files motion to withdraw its Yucca Mountain license application
May 17, 2010	Nevada answers DOE's motion to withdraw
June 3, 2010	Board conducts oral argument on DOE's motion to withdraw
June 29, 2010	Board issues LBP-10-11 denying DOE's motion to withdraw
June 30, 2010	Commission Secretary schedules briefs on LBP-10-11
July 9, 2010	Nevada (and other parties) file briefs with Commission on LBP-10-11
July 19, 2010	Nevada (and other parties) file reply briefs with Commission on LBP-10-11

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Atomic Safety and Licensing Board

In the Matter of)
)
U.S. DEPARTMENT OF ENERGY) Docket No. 63-001-HLW
)
(High Level Waste Repository))

CERTIFICATE OF SERVICE

I hereby certify that the foregoing *The State of Nevada's Status Inquiry* has been served upon the following persons by the Electronic Information Exchange:

U.S. Nuclear Regulatory Commission
Atomic Safety and Licensing Board Panel

CAB 01

wjf1@nrc.gov

tsm2@nrc.gov

rew@nrc.gov

CAB 02

mmg3@nrc.gov

axr@nrc.gov

NGT@NRC.GOV

CAB 03

psr1@nrc.gov

mcf@nrc.gov

mob1@nrc.gov

mark.barnett@nrc.gov

CAB 04

tsm2@nrc.gov

psr1@nrc.gov

rew@nrc.gov

U.S. Nuclear Regulatory Commission
Atomic Safety and Licensing Board Panel

ace1@nrc.gov

djg2@nrc.gov

lrb1@nrc.gov

sara.culler@nrc.gov

jhd@nrc.gov

patricia.harich@nrc.gov

zxk1@nrc.gov

eal1@nrc.gov

matthew.rotman@nrc.gov

axw5@nrc.gov

jgw@nrc.gov

U.S. Nuclear Regulatory Commission
Office of the Secretary of the Commission

hearingdocket@nrc.gov

alb@nrc.gov

atb1@nrc.gov

elj@nrc.gov

esn@nrc.gov

rll@nrc.gov

U.S. Nuclear Regulatory Commission
Office of Comm Appellate Adjudication

ocaamail@nrc.gov

U.S. Nuclear Regulatory Commission
Office of the General Counsel

may@nrc.gov

mlz@nrc.gov

alc1@nrc.gov

dwl2@nrc.gov

Adam.Gendelman@nrc.gov

jsg1@nrc.gov

kfx4@nrc.gov

Michael.dreher@nrc.gov

Jessica.Bielecki@nrc.gov

Elva.BowdenBerry@nrc.gov

OGCMailCenter@nrc.gov

Hunton & Williams LLP

kfaglioni@hunton.com

dirwin@hunton.com

mshebelskie@hunton.com
pslayton@hunton.com

U.S. Department Of Energy
 Office of General Counsel
george.hellstrom@ymp.gov
martha.crosland@hq.doe.gov
nick.dinunziok@rw.doe.gov
ben.mcrae@hq.doe.gov
christina.pak@hq.doe.gov
scott.harris@hq.doe.gov
sean.lev@hq.doe.gov

U.S. Department of Energy
 Office of Counsel
 Naval Sea Systems Command
frank.putzu@navy.mil

U.S. Department of Energy
 USA Repository Services LLC
 Yucca Mountain Project Licensing Group
jeffrey_kriner@ymp.gov
stephen_cereghino@ymp.gov

U.S. Department of Energy
 USA Repository Services LLC
 Yucca Mountain Project Licensing Group
edward_borella@ymp.gov

U.S. Department of Energy
 Office of Civilian Radioactive Waste Mgmt
 Office of Repository Development
timothy_gunter@ymp.gov

U.S. Department of Energy
 OCRWM
eric.knox@hq.doe.gov
dong.kim@rw.doe.gov

Morgan, Lewis, Bockius LLP
lcsedrik@morganlewis.com
jguiterrez@morganlewis.com
cmoldenhauer@morganlewis.com
boldham@morganlewis.com
tpoindexter@morganlewis.com
apolonsky@morganlewis.com
tschmutz@morganlewis.com

dsilverman@morganlewis.com
c@morganlewis.com
pzaffuts@morganlewis.com
ccooper@morganlewis.com
sstaton@morganlewis.com
rkuyler@morganlewis.com

Carter Ledyard & Milburn, LLP
 Counsel for Lincoln County
neuman@clm.com

Churchill, Esmeralda, Eureka, Mineral
 and Lander Counties
lpitchford@comcast.net

Armstrong Teasdale LLP
rlist@armstrongteasdale.com

City of Las Vegas
mplaster@LasVegasNevada.gov

Clark County Nuclear Waste Division
iln@co.clark.nv.us
evt@co.clark.nv.us
klevorick@co.clark.nv.us

Nuclear Waste Project Office
breslow@nuc.state.nv.us
steve.fr@hotmail.com

Eureka County and Lander County
 Harmon, Curran, Speilberg & Eisenberg
dcurran@harmoncurran.com

Nevada Nuclear Waste Task Force
judyntwf@aol.com

Talisman International, LLC
plarimore@talisman-intl.com

White Pine County
 City of Caliente
 Lincoln County
jayson@idtservices.com

Nuclear Energy Institute
mab@nei.org

awc@nei.org
ecg@nei.org
rxm@nei.org
spk@nei.org
jay.silberg@pillsburylaw.com
timothy.walsh@pillsburylaw.com

White Pine County
 City of Caliente
 Lincoln County
jayson@idservices.com

Nuclear Information and Resource Service
nirnet@nirs.org

Beyond Nuclear
kevin@beyondnuclear.org

Abigail Johnson
abbyj@gbis.com

National Congress of American Indians
robert_holden@ncai.org

Churchill County (NV)
comptroller@churchillcounty.org

Inyo County Water Department
mgaffney@inyoyucca.org

Inyo County Planning Director
pcecil@inyocounty.us

Gregory L. James
 County of Inyo
gljames@earthlink.net

Robert S. Hanna
rshanna@bsglaw.net

Michael C. Berger
mberger@bsglaw.net

Environmental Protection Agency
clark.ray@epa.gov

Nuclear Waste Technical Review Board
dory@nwtrb.gov

Intertech Services Corporation
bigboff@aol.com

Nye County Department of Natural
 Resources & Federal Facilities
dswanson@nyecounty.net

Lincoln County Nuclear Oversight Prgm
jcciac@co.lincoln.nv.us
 Nye County Regulatory/Licensing Adv.
mrmurphy@chamberscable.com

Nye County Nuclear Waste Repository Project
 Office (NWRPO)
zchoate@co.nye.nv.us
sdudley@co.nye.nv.us

Mineral County Board of Commissioners
yuccainfo@mineralcountynv.org

State of Nevada
madams@ag.state.nv.us

White Pine County (NV) Nuclear
 Waste Project Office
wpnucwst1@mwpower.net

Fredericks & Peebles, L.L.P.
dhouck@ndnlaw.com
jpeebles@ndnlaw.com
chairman@timbisha.org
dvdurbarbara@netscape.com
sthinelk@ndnlaw.com

California Department of Justice
susan.durbin@doj.ca.gov
brian.hembacher@doj.ca.gov
timothy.sullivan@doj.ca.gov

Public Citizen Litigation Group
 1600 20th Street, N.W.
 Washington, D.C. 20009

California Energy Commission
kwbell@energy.state.ca.us

Jeffrey D. VanNiel
nbrjdv@gmail.com

Carter Ledyard & Milburn LLP
strell@clm.com

Jennings, Strouss & Salmon, PLC
arobbins@jsslaw.com
droby@jsslaw.com

Godfrey & Kahn, S.C.
sheinzen@gklaw.com
dpoland@gklaw.com
aharring@gklaw.com

Gregory Barlow
lca@lcturbonet.com

Connie Simkins
jcciac@co.lincoln.nv.us

Bret O. Whipple
bretwhipple@nomademail.com

Richard Sears
rwsears@wpcda.org

Alexander, Berkey, Williams & Weathers
cberkey@abwwlaw.com
swilliams@abwwlaw.com
rleigh@abwwlaw.com

Davidson & Lindemann, P.A.
kwoodington@dml-law.com

Attorney General, State of Washington
leo1@atg.wa.gov
michaeld@atg.wa.gov
andyf@atg.wa.gov
JonaT@atg.wa.gov

Haynsworth Sinkler Boyd, PA
tgottshall@hsblawfirm.com
rshealy@hsblawfirm.com

National Association of Regulatory
 Utility Commissioners
jramsay@naruc.org
rlunt@naruc.org

Prairie Island Indian Community
pmahowald@piic.org

Public Law Resource Center PLLC
donkeskey@publiclawresourcecenter.com

Todd R. Bowers
toddb@atg.wa.gov

(signed electronically)
 Laurie Borski, Paralegal

