

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

Atomic Safety and Licensing Board

Before Administrative Judges:
Thomas S. Moore, Chairman
Paul S. Ryerson
Richard E. Wardwell

In the Matter of)	
)	Docket No. 63-001-HLW
)	
U.S. DEPARTMENT OF ENERGY)	ASLBP No. 09-892-HLW-CAB04
)	
(License Application for Geologic)	March 4, 2010
Repository at Yucca Mountain))	
)	
)	
)	
)	

PETITION OF AIKEN COUNTY, SOUTH CAROLINA, TO INTERVENE

Pursuant to the provisions of 10 C.F.R. § 2.309 pertaining to intervention and/or the provisions of 10 C.F.R. § 2.315 pertaining to participation by a non-party, Aiken County, South Carolina hereby petitions to intervene in this proceeding in opposition to the Department of Energy’s motion to withdraw, with prejudice, its application in this case. In the alternative, Aiken County seeks to stay this matter as contemplated by Rule 18, Federal Rules of Appellate Procedure, pending resolution of the petition Aiken County has filed with the United States Court of Appeals for the District of Columbia Circuit concerning the lawfulness of a Motion to Withdraw the license application. (Petition attached as Exhibit 1). The Court of Appeals has directed the Department of Energy to respond to the Petition by March 24 and has given Aiken County until April 5 to file its reply, if any. (Order attached as Exhibit 2). Aiken County earlier

requested by letter served with the court petition that the application not be withdrawn until the court proceeding has been resolved. (Letter attached as Exhibit 3).

BACKGROUND

Aiken County is a county within the State of South Carolina, as provided for under Article VII of the South Carolina Constitution. It is an independent governmental entity authorized to levy taxes, incur debt, and exercise eminent domain powers under Title 4 of the South Carolina Code of Laws. Aiken County has the responsibility to exercise its police powers for the health, safety and welfare of its citizens, and the procedural right to ensure, with regard to activities undertaken by the Federal Government within Aiken County, that the Federal Government observes procedures mandated by the law, the purpose of which is to protect the health, safety and welfare of the people of Aiken County. *See City of Dania Beach v. FAA*, 485 F.3d 1181, 1186-87 (D.C. Cir. 2007).

Aiken County is the location of the Savannah River Site (“SRS”), one of the DOE locations currently acting as a temporary storage facility for spent nuclear fuel and high-level radioactive waste. SRS covers over ten percent of the land in Aiken County. SRS Community Reuse Organization, *The Future of SRS: The Community Perspective* at 5, available online at www.srscro.org/downloads/SRRDI%20DOE%20Issues.doc. Further, Aiken County owns substantial real property in close proximity to SRS, as is set out in the Affidavit of Clay Killian, County Administrator for Aiken County, attached to Exhibit 1. Most of SRS is located in Aiken County, South Carolina.

Yucca Mountain is the site selected for the long-term disposal of these radioactive materials. DOE’s own analysis is that failure to go forward with Yucca Mountain could result in “widespread contamination at the 72 commercial and 5 DOE sites across the United States, with

resulting human health impacts.” See FEIS/DOE-250. The SRS site in Aiken County is one of the five referenced DOE sites.

RELIEF SOUGHT

Aiken County files this motion in response to the Department of Energy’s Motion to Withdraw of March 3rd, 2010. Aiken County hereby moves to intervene in these proceedings in the same manner as set forth in the Petition to Intervene of the State of South Carolina dated February 26, 2010, which this petition incorporates by reference. Aiken County does not, however, base its petition to intervene now on the Department of Energy’s *decision* to withdraw the application, but rather this petition is based on the actual *motion* to withdraw the application.¹ Additionally or alternatively, Aiken County seeks to appear in these proceedings pursuant to 10 C.F.R. §2.315(c) as an interested government body, with the below-signed as its designated representative.

Aiken County seeks denial of the Department of Energy’s motion to withdraw the permit application in this case, dissolution of the stay of the underlying licensing proceedings, and resumption of consideration of the Yucca Mountain license application.

In the alternative, Aiken County seeks a stay of consideration of the Department of Energy’s motion to withdraw the application until the resolution of Aiken County’s petition now before the Court of Appeals. Whether the Atomic Safety and Licensing Board has the legal authority to stay or terminate the license application itself are the very issues now before the court.

¹. Aiken County therefore does not incorporate by reference timeliness arguments made by the South Carolina Attorney General in its Petition to Intervene which are not required for this Petition.

Respectfully submitted,

HAYNSWORTH SINKLER BOYD, P.A.



By: _____
Thomas R. Gottshall, D.S.C. # 2406

tgottshall@hsblawfirm.com
P. O. Box 11889
Columbia, SC 29211-1889
(803) 779-3080

Attorneys for Petitioner Aiken County

March 4, 2010

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)
)
U.S. DEPARTMENT OF ENERGY)
)
(High-Level Waste Repository))
)

Docket No. 63-001-HLW
ASLBP No. 09-892-HLW-CAB04

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing **Petition of Aiken County, South Carolina, To Intervene**, dated March 4, 2010, have been served upon the following persons by Electronic Information Exchange.

U.S. Nuclear Regulatory Commission
Atomic Safety and Licensing Board (ASLBP)
Mail Stop T-3F23
Washington, DC 20555-0001

Construction Authorization Board (CAB) 04

Thomas S. Moore, Chair
Administrative Judge
tsm2@nrc.gov

Paul S. Ryerson
Administrative Judge
psr1@nrc.gov

Richard E. Wardwell
Administrative Judge
rew@nrc.gov

Anthony C. Eitreim, Esq., Chief Counsel
ace1@nrc.gov
Daniel J. Graser, LSN Administrator
djg2@nrc.gov
Zachary Kahn, Law Clerk
zxc1@nrc.gov
Matthew Rotman, Law Clerk
matthew.rotman@nrc.gov
Katherine Tucker, Law Clerk
katie.tucker@nrc.gov
Joseph Deucher
jhd@nrc.gov
Andrew Welkie
axw5@nrc.gov
Jack Whetstine
jgw@nrc.gov
Patricia Harich
patricia.harich@nrc.gov
Sara Culler
sara.culler@nrc.gov

U.S. Nuclear Regulatory Commission
Office of the General Counsel
Mail Stop O-15D21
Washington, DC 20555-0001
Margaret J. Bupp, Esq.
mjb5@nrc.gov
Michael G. Dreher, Esq.
michael.dreher@nrc.gov
Karin Francis, Paralegal
kxf4@nrc.gov
Joseph S. Gilman, Paralegal
jsg1@nrc.gov
Daniel W. Lenehan, Esq.
daniel.lenehan@nrc.gov
Andrea L. Silvia, Esq.
alc1@nrc.gov
Mitzi A. Young, Esq.
may@nrc.gov
Marian L. Zabler, Esq.
mlz@nrc.gov
OGC Mail Center
OGCMailCenter@nrc.gov

U.S. Nuclear Regulatory Commission
Office of Commission Appellate Adjudication
Mail Stop O-16C1
Washington, DC 20555-0001
OCAA Mail Center
ocaamail@nrc.gov

U.S. Nuclear Regulatory Commission
Office of the Secretary of the Commission
Mail Stop O-16C1
Washington, DC 20555-0001
Hearing Docket
hearingdocket@nrc.gov

U.S. Department of Energy
Office of General Counsel
1000 Independence Avenue S.W.
Washington, DC 20585
Martha S. Crosland, Esq.

U.S. Department of Energy
Office of Counsel, Naval Sea Systems Command
Nuclear Propulsion Program
1333 Isaac Hull Avenue, SE, Building 197
Washington, DC 20376

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

martha.crosland@hq.doe.gov
Nicholas P. DiNunzio, Esq.
nick.dinunzio@rw.doe.gov
Scott Blake Harris, Esq.
scott.harris@hq.doe.gov
Sean A. Lev, Esq.
sean.lev@hq.doe.gov
James Bennett McRae
ben.mcrae@hq.doe.gov
Cyrus Nezhad, Esq.
cyrus.nezhad@hq.doe.gov
Christina C. Pak, Esq.
christina.pak@hq.doe.gov

Office of General Counsel
1551 Hillshire Drive
Las Vegas, NV 89134-6321
Jocelyn M. Gutierrez, Esq.
jocelyn.gutierrez@ymp.gov
Josephine L. Sommer, Paralegal
josephine.sommer@ymp.gov

Counsel for U.S. Department of Energy
Morgan, Lewis & Bockius LLP
1111 Pennsylvania Ave., NW
Washington, DC 20004
Clifford W. Cooper, Paralegal
ccooper@morganlewis.com
Lewis M. Csedrik, Esq.
lcsedrik@morganlewis.com
Jay M. Gutierrez, Esq.
jgutierrez@morganlewis.com
Raphael P. Kuyler, Esq.
rkuyler@morganlewis.com
Charles B. Moldenhauer, Esq.
cmoldenhauer@morganlewis.com
Thomas D. Poindexter, Esq.
tpoindexter@morganlewis.com
Alex S. Polonsky, Esq.
apolonsky@morganlewis.com
Thomas A. Schmutz, Esq.
tschmutz@morganlewis.com
Donald J. Silverman, Esq.
dsilverman@morganlewis.com
Shannon Staton, Legal Secretary
sstaton@morganlewis.com
Annette M. White, Esq.
Annette.white@morganlewis.com
Paul J. Zaffuts, Esq.
pzaffuts@morganlewis.com

Frank A. Putzu, Esq.
frank.putzu@navy.mil

For U.S. Department of Energy
USA-Repository Services LLC
Yucca Mountain Project Licensing Group
1160 N. Town Center Drive, Suite 240
Las Vegas, NV 89144
Stephen J. Cereghino, Licensing/Nucl Safety
stephen_cereghino@ymp.gov

For U.S. Department of Energy
Talisman International, LLC
1000 Potomac St., NW, Suite 300
Washington, DC 20007
Patricia Larimore, Senior Paralegal
plarimore@talisman-intl.com

Counsel for U.S. Department of Energy
Hunton & Williams LLP
Riverfront Plaza, East Tower
951 East Byrd Street
Richmond, VA 23219
Kelly L. Faglioni, Esq.
kfaglioni@hunton.com
Donald P. Irwin, Esq.
dirwin@hunton.com
Stephanie Meharg, Paralegal
smeharg@hunton.com
Michael R. Shebelskie, Esq.
mshebelskie@hunton.com
Belinda A. Wright, Sr. Professional Assistant
bwright@hunton.com

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

Counsel for State of Nevada
Egan, Fitzpatrick, Malsch & Lawrence, PLLC
1750 K Street, NW, Suite 350
Washington, DC 20006
Martin G. Malsch, Esq.
mmalsch@nuclearlawyer.com
Susan Montesi:
smontesi@nuclearlawyer.com

Egan, Fitzpatrick, Malsch & Lawrence, PLLC
12500 San Pedro Avenue, Suite 555
San Antonio, TX 78216
Laurie Borski, Paralegal
lborski@nuclearlawyer.com
Charles J. Fitzpatrick, Esq.
cfitzpatrick@nuclearlawyer.com
John W. Lawrence, Esq.
jlawrence@nuclearlawyer.com

Counsel for Lincoln County, Nevada
Whipple Law Firm
1100 S. Tenth Street
Las Vegas, NV 89017
Annie Bailey, Legal Assistant
baileys@lcturbonet.com
Adam L. Gill, Esq.
adam.whipplelaw@yahoo.com
Eric Hinckley, Law Clerk
erichinckley@yahoo.com
Bret Whipple, Esq.
bretwhipple@nomademail.com

Lincoln County Nuclear Oversight Program
P.O. Box 1068
Caliente, NV 89008
Connie Simkins, Coordinator
jcciac@co.lincoln.nv.us

Counsel for Nye County, Nevada
Ackerman Senterfitt
801 Pennsylvania Avenue, NW, #600
Washington, DC 20004
Robert Andersen, Esq.
robert.andersen@akerman.com

Nye County Regulatory/Licensing Advisor
18160 Cottonwood Rd. #265

Bureau of Government Affairs
Nevada Attorney General
100 N. Carson Street
Carson City, NV 89701
Marta Adams, Chief Deputy Attorney General
madams@ag.nv.gov

Nevada Agency for Nuclear Projects
Nuclear Waste Project Office
1761 East College Parkway, Suite 118
Carson City, NV 89706
Steve Frishman, Tech. Policy Coordinator
steve.frishman@gmail.com
Susan Lynch, Administrator of Technical Prgms
szzee@nuc.state.nv.us

Lincoln County District Attorney
P. O. Box 60
Pioche, NV 89403
Gregory Barlow, Esq.
lcta@lcturbonet.com

For Lincoln County, Nevada
Intertech Services Corporation
PO Box 2008
Carson City, NV 89702
Mike Baughman, Consultant
mikebaughman@charter.net

Counsel for Nye County, Nevada
Jeffrey VanNiel, Esq.
530 Farrington Court
Las Vegas, NV 89123
nbrjdv@gmail.com

Nye Co. Nuclear Waste Repository Project Office
2101 E. Calvada Boulevard, Suite 100

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

Sunriver, OR 97707
Malachy Murphy, Esq.
mrmurphy@chamberscable.com

Pahrump, NV 89048
Zoie Choate, Secretary
zchoate@co.nye.nv.us
Sherry Dudley, Admin. Technical Coordinator
sdudley@co.nye.nv.us

Clark County, Nevada
500 S. Grand Central Parkway
Las Vegas, NV 98155
Phil Klevorick, Sr. Mgmt Analyst
klevorick@co.clark.nv.us
Elizabeth A. Vibert, Deputy District Attorney
Elizabeth.Vibert@ccdavn.com

Counsel for Clark County, Nevada
Jennings, Strouss & Salmon
8330 W. Sahara Avenue, #290
Las Vegas, NV 89117
Bryce Loveland, Esq.
bloveland@jsslaw.com

Counsel for Clark County, Nevada
Jennings, Strouss & Salmon
1700 Pennsylvania Avenue, NW, Suite 500
Washington, DC 20006-4725
Elene Belte, Legal Secretary
ebelete@jsslaw.com
Alan I. Robbins, Esq.
arobbins@jsslaw.com
Debra D. Roby, Esq.
droby@jsslaw.com

Eureka County, Nevada
Office of the District Attorney
701 S. Main Street, Box 190
Eureka, NV 89316-0190
Theodore Beutel, District Attorney
tbeutel.ecda@eurekanv.org

Counsel for Eureka County, Nevada
Harmon, Curran, Speilberg & Eisenberg, LLP
1726 M. Street N.W., Suite 600
Washington, DC 20036
Diane Curran, Esq.
dcurran@harmoncurran.com
Matthew Fraser, Law Clerk
mfraser@harmoncurran.com

Eureka County Public Works
PO Box 714
Eureka, NV 89316
Ronald Damele, Director
rdamele@eurekanv.org

Nuclear Waste Advisory for Eureka
County, Nevada
1983 Maison Way
Carson City, NV 89703
Abigail Johnson, Consultant
eurekanrc@gmail.com

For Eureka County, Nevada
NWOP Consulting, Inc.
1705 Wildcat Lane
Ogden, UT 84403
Loreen Pitchford, Consultant
lpitchford@comcast.net

Counsel for Churchill, Esmeralda, Lander,
and Mineral Counties, Nevada
Armstrong Teasdale, LLP
1975 Village Center Circle, Suite 140
Las Vegas, NV 89134-6237
Jennifer A. Gores, Esq.
jgores@armstrongteasdale.com

Esmeralda County Repository Oversight Program-
Yucca Mountain Project
PO Box 490
Goldfield, NV 89013
Edwin Mueller, Director
muellered@msn.com

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

Robert F. List, Esq.
rlist@armstrongteasdale.com

Mineral County Nuclear Projects Office
P.O. Box 1600
Hawthorne, NV 89415
Linda Mathias, Director
yuccainfo@mineralcountynv.org

White Pine County, Nevada
Office of the District Attorney
801 Clark Street, #3
Ely, NV 89301
Richard Sears, District Attorney
rwsears@wpcda.org

For White Pine County, Nevada
Intertech Services Corporation
PO Box 2008
Carson City, NV 89702
Mike Baughman, Consultant
bigboff@aol.com

Inyo County Yucca Mountain Repository
Assessment Office
P. O. Box 367
Independence, CA 93526-0367
Alisa M. Lembke, Project Analyst
alembke@inyocounty.us

California Energy Commission
1516 Ninth Street
Sacramento, CA 95814
Kevin, W. Bell, Senior Staff Counsel
kwbell@energy.state.ca.us

For City of Caliente, Lincoln County, and
White Pine County, Nevada
P.O. Box 126
Caliente, NV 89008
Jason Pitts, LSN Administrator
jayson@idtservices.com

White Pine County Nuclear Waste Project Office
959 Campton Street
Ely, NV 89301
Mike Simon, Director
wpnucwst1@mwpower.net
Melanie Martinez, Sr. Management Assistant
wpnucwst2@mwpower.net

Counsel for Inyo County, California
Greg James, Attorney at Law
710 Autumn Leaves Circle
Bishop, CA 93514
E-Mail: gjames@earthlink.net

Counsel for Inyo County, California
Law Office of Michael Berger
479 El Sueno Road
Santa Barbara, CA 93110
Michael Berger, Esq.
michael@lawofficeofmichaelberger.com
Robert Hanna, Esq.
robert@lawofficeofmichaelberger.com

California Department of Justice
Office of the Attorney General
1300 I Street, P.O. Box 944255
Sacramento, CA 94244-2550
Susan Durbin, Deputy Attorney General
susan.durbin@doj.ca.gov
Michele Mercado, Analyst
michele.Mercado@doj.ca.gov

Office of the Attorney General
1515 Clay Street, 20th Floor, P.O. Box 70550
Oakland, CA 94612-0550
Timothy E. Sullivan, Deputy Attorney General

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

timothy.Sullivan@doj.ca.gov

Office of the Attorney General
300 S. Spring Street, Suite 1702
Los Angeles, CA 90013
Brian Hembacher, Deputy Attorney General
brian.hembacher@doj.ca.gov

Nuclear Energy Institute
Office of the General Counsel
1776 I Street, NW Suite 400
Washington, DC 20006-3708
Michael A. Bauser, Esq.
mab@nei.org
Anne W. Cottingham, Esq.
awc@nei.org
Ellen C. Ginsberg, Esq.
ecg@nei.org

Counsel for Nuclear Energy Institute
Pillsbury Winthrop Shaw Pittman LLP
2300 N Street, N.W.
Washington, DC 20037-1122
Jay E. Silberg, Esq.
jay.silberg@pillsburylaw.com
Timothy J.V. Walsh, Esq.
timothy.walsh@pillsburylaw.com
Maria D. Webb, Senior Energy Legal Analyst
maria.webb@pillsburylaw.com

Counsel for Nuclear Energy Institute
Winston & Strawn LLP
1700 K Street, N.W.
Washington, DC 20006-3817
William A. Horin, Esq.
whorin@winston.com
Rachel Miras-Wilson, Esq.
rwilson@winston.com
David A. Repka, Esq.
drepka@winston.com
Carlos L. Sisco, Senior Paralegal
csisco@winston.com

Native Community Action Council
P.O. Box 140
Baker, NV 89311
Ian Zabarte, Member of Board of Directors
mrizabarte@gmail.com

Counsel for Native Community Action Council
Alexander, Berkey, Williams & Weathers LLP
2030 Addison Street, Suite 410
Berkeley, CA 94704
Curtis G. Berkey, Esq.
cberkey@abwwlaw.com
Rovianne A. Leigh, Esq.
rleigh@abwwlaw.com
Scott W. Williams, Esq.
swilliams@abwwlaw.com

Counsel for Joint Timbisha Shoshone Tribal Group
Fredericks, Peebles, & Morgan LLP
1001 Second St.
Sacramento, CA 95814
Felicia M. Brooks, Data Administrator
fbrooks@ndnlaw.com
Ross D. Colburn, Law Clerk

Counsel for Joint Timbisha Shoshone Tribal Group
Godfrey & Kahn, S.C.
One East Main Street, Suite 500
P. O. Box 2719
Madison, WI 53701-2719
Julie Dobie, Legal Secretary
jdobie@gklaw.com

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

rcolburn@ndnlaw.com
Sally Eredia, Legal Secretary
seredia@ndnlaw.com
Darcie L. Houck, Esq.
dhouck@ndnlaw.com
Brian Niegemann, Office Manager
bniegemann@ndnlaw.com
John M. Peebles, Esq.
jpeebles@ndnlaw.com
Robert Rhoan, Esq.
rrhoan@ndnlaw.com

Fredericks, Peebles, & Morgan LLP
3610 North 163rd Plaza
Omaha, NE 68116
Shane Thin Elk, Esq.
sthinelk@ndnlaw.com

Steven A. Heinzen, Esq.
sheinzen@gklaw.com
Douglas M. Poland, Esq.
dpoland@gklaw.com
Hannah L. Renfro, Esq.
hrenfro@gklaw.com
Jacqueline Schwartz, Paralegal
jschwartz@gklaw.com

Godfrey & Kahn, S.C.
780 N. Water Street
Milwaukee, WI 53202
Arthur J. Harrington, Esq.
aharrington@gklaw.com

For Joint Timbisha Shoshone Tribal Group
3560 Savoy Boulevard
Pahrump, NV 89601
Joe Kennedy, Executive Director
joekennedy08@live.com
Tameka Vazquez, Bookkeeper
purpose_driven12@yahoo.com



Thomas R. Gottshall
HAYNSWORTH SINKLER BOYD, P.A.
tgottshall@hsblawfirm.com
P. O. Box 11889
Columbia, SC 29211-1889
(803) 779-3080
Attorneys for Petitioner Aiken County

this 4th day of March 2010