

Committee on Energy and Commerce
Subcommittee on Environment and Economy

NRC Repository Safety Division- Staff Perspective on Yucca License Review

June 24, 2011

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6	Email TO: Catherine Haney CC: Marvin Itzkowitz, Mitzi Young, Lawrence Kokajko, Jack Davis, Michael Weber, Bill Borchardt FROM: Aby Mohseni SUBJECT: RE: TER Volume 3	June 7, 2011
7	Memorandum TO: Chairman Jaczko, Commissioner Svinicki, Commissioner Apostolakis, Commissioner Magwood, Commissioner Ostendorff FROM: Aby Mohseni, Acting Director Office of Nuclear Material Safety and Safeguards SUBJECT: REQUEST FOR COMMISSION INTERVENTION	June 20, 2011

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March 30, 2010

MEMORANDUM TO: Chairman Jaczko
Commissioner Klein
Commissioner Svinicki

FROM: R. W. Borchardt */RA by Martin Virgilio for/*
Executive Director for Operations

SUBJECT: PLANS FOR THE HIGH-LEVEL WASTE
REPOSITORY PROGRAM

The purpose of this memorandum is to inform the Commission of the U.S. Nuclear Regulatory Commission (NRC) staff's plans for its repository licensing review and the status of the infrastructure for the associated adjudicatory proceeding, in light of recent developments, including the allocation of Fiscal Year (FY) 2010 funding. In announcing the Administration's budget for FY 2011, on February 1, 2010, the President directed the U.S. Department of Energy (DOE) to "discontinue its application to the NRC for a license to construct a high-level waste geologic repository at Yucca Mountain in 2010...." On March 3, 2010, DOE filed a motion with Construction Authorization Board 4 (CAB4) to withdraw its license application for the proposed geologic repository.

Background

On June 3, 2008, DOE submitted the Yucca Mountain Repository License Application to the NRC seeking authorization to construct a geologic repository at Yucca Mountain, NV. On September 8, 2008, the staff accepted DOE's application for docketing and review. In response to a notice of hearing published in the *Federal Register* on October 22, 2008, intervention petitions were filed. In May 2009, two interested governments, eight parties, and nearly 300 contentions were admitted to the proceeding. In August 2009, two additional parties were admitted after satisfying Licensing Support Network (LSN) requirements. The allocation of FY 2010 funding is depicted in the pie chart in Enclosure 1. Enclosure 2 provides a revised schedule of tentative completion dates for Safety Evaluation Report Volumes.

Licensing Proceedings

On February 1, 2010, DOE moved for an interim suspension of discovery as well as a stay of most aspects of the construction authorization proceeding through the disposition of an additional motion (which DOE said it would file within 30 days) seeking to withdraw, with prejudice, its license application. On February 2, 2010, CAB4 granted DOE's unopposed request for an interim suspension of discovery, pending disposition of DOE's motion to stay.

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301-492-3190

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On February 16, 2010, CAB4 granted DOE's motion to stay the proceeding, pending resolution of DOE's expected motion to withdraw its license application. On March 3, 2010, DOE filed a motion seeking to withdraw its license application, with prejudice. By order dated March 5, 2010, CAB4 indicated it will not rule on that motion until after it rules on intervention petitions filed by the State of South Carolina, the State of Washington, and Aiken County, SC. Since that order, additional intervention petitions have been filed by the National Association of Regulatory Utility Commissioners and by the Prairie Island Indian Community.

Licensing Review

As the staff informed the Commission in a March 27, 2009, memorandum and the Commissioner's assistants in a June 5, 2009, note, the resources appropriated in FY 2008 through FY 2010 were not enough for the Agency to adhere to the schedule outlined in Appendix D, "Schedule for the Proceeding on Consideration of Construction Authorization for a High-Level Waste Geologic Repository," to Title 10 of the *Code of Federal Regulations* (10 CFR) Part 2, "Rules of Practice for Domestic Licensing Proceedings and Issuance of Orders." Because of the reduced funding, the staff was obliged to slow its review of the license application and to develop its safety evaluation report (SER) in segments. On January 27, 2010, the staff informed CAB4 that it will complete SER Volumes 1 and 3 by no later than August and November 2010, respectively. The staff is continuing with its safety review and SER preparation at this time. However, in light of the President's FY 2011 budget, and assuming Congress provides no additional funding or direction to the contrary, staff will discontinue work on any remaining SER volumes once FY 2010 funds are exhausted and inform the Presiding officer in the proceeding of its actions. As of the end of February 2010, DOE had responded to all the staff's more than 600 requests for additional information. At this time, the staff has not identified a need for any additional information from DOE to complete the SER.

Knowledge Capture and Orderly Closure

For close to 30 years, as the United States has considered Yucca Mountain and other sites for deep geologic disposal of spent fuel and high-level waste (HLW), the NRC's HLW program has amassed a vast amount of information about, and experience with, the technical and regulatory issues associated with the potential licensing of a repository. The staff intends to preserve this knowledge as a resource for future use. In the event that the license review is terminated, the staff would document the current status of the license review in a NUREG document to capture much of the Yucca Mountain-specific technical and regulatory knowledge gained by the staff. Also, the staff will need to identify and retain other important technical and regulatory knowledge that could support future changes to the NRC's regulatory framework for HLW and spent fuel disposal. Much of this knowledge has been developed by the NRC staff and the Center for Nuclear Waste Regulatory Analyses (Center). The continued viability of the NRC's HLW Program, including the Center, is critical to maintain the core skills and range of expertise necessary for the NRC to implement future direction in the national program for HLW and spent nuclear fuel disposal. As much as possible, the staff will continue to retain this valuable source of skills and technical insight with fee-based funds and limited use of Nuclear Waste Fund monies.

Adjudicatory Hearing Infrastructure

The Atomic Safety and Licensing Board Panel (Panel) intends to maintain the infrastructure for the adjudicatory hearing associated with the HLW repository licensing proceeding, including the LSN, the Digital Data Management System (DDMS), and the Las Vegas Hearing Facility, until the Agency has completed the adjudicatory process regarding the DOE withdrawal request. If

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there is a final decision terminating the HLW repository licensing proceeding, and the Panel receives Commission direction that no further basis exists for maintaining any infrastructure related to the HLW repository licensing proceeding, the Panel anticipates that it will be able to remove DDMS components from the Las Vegas Hearing Facility and close the facility within 4 to 6 months. (Under the current lease, the Government must give the lessor at least 120 days notice of its intent to vacate.) Assuming adequate fee-based funding, the DDMS would remain functional within the Panel's Rockville, MD, hearing facility for use in the many combined license and other proceedings that the Panel will conduct over the next several years.

Whether the LSN should remain viable as a knowledge management tool once the HLW repository proceeding is terminated is one of the matters currently pending before CAB4. As noted by LSN Administrator Daniel Graser in his December 17, 2009, memorandum to CAB4, the LSN's principal function as the unified search index for the nearly four million documents in the HLW document collections for the various participants will be irrecoverably nullified if the DOE document collection (which constitutes 99 percent of the documentary material available via the LSN) is taken offline and archived. In the event of a non-appealable decision to permit DOE to remove its collection from the LSN and to discontinue the system, the Panel would require approximately 4 months from a final Commission determination to terminate the LSN to complete the decommissioning process.¹

Enclosures:

1. High-Level Waste Budget for Fiscal Year 2010 (Pie Chart)
2. Tentative Completion Dates for Safety Evaluation Report Volumes

¹ Although recent events, including the filing of several additional intervention petitions, suggest an increased level of adjudicatory activity over the coming months relative to the DOE withdrawal motion, the Panel anticipates that the Panel's current FY 2010 HLW funding should be adequate to cover those hearing-related activities. If, however, for any reason the DOE motion is not finally resolved before the Agency until late FY 2010 or the proceeding continues into FY 2011, the availability of sufficient FY 2011 resources for the Panel to complete these various infrastructure decommissioning activities will become increasingly problematic.

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Enclosures:

1. High-Level Waste Budget for Fiscal Year 2010 (Pie Chart)
2. Tentative Completion Dates for Safety Evaluation Report Volumes

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Date	3/9/10	3/10/10	3/11/10	3/11/10	3/11/10
Office	OGC	ASLBP	NMSS	EDO	
Date	MYoung by phone	JWhetstine by email	MWeber	RWBorhardt (MVirgilio for)	
Name	3/11/10	3/09/10	3/ 24/10	3/30/10	

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¹ Although recent events, including the filing of several additional intervention petitions, suggest an increased level of adjudicatory activity over the coming months relative to the DOE withdrawal motion, the Panel anticipates that the Panel's current FY 2010 HLW funding should be adequate to cover those hearing-related activities. (If, however, for any reason the DOE motion is not finally resolved before the Agency until late FY 2010 or the proceeding continues into FY 2011, the availability of sufficient FY 2011 resources for the Panel to complete these various infrastructure decommissioning activities will become increasingly problematic.)

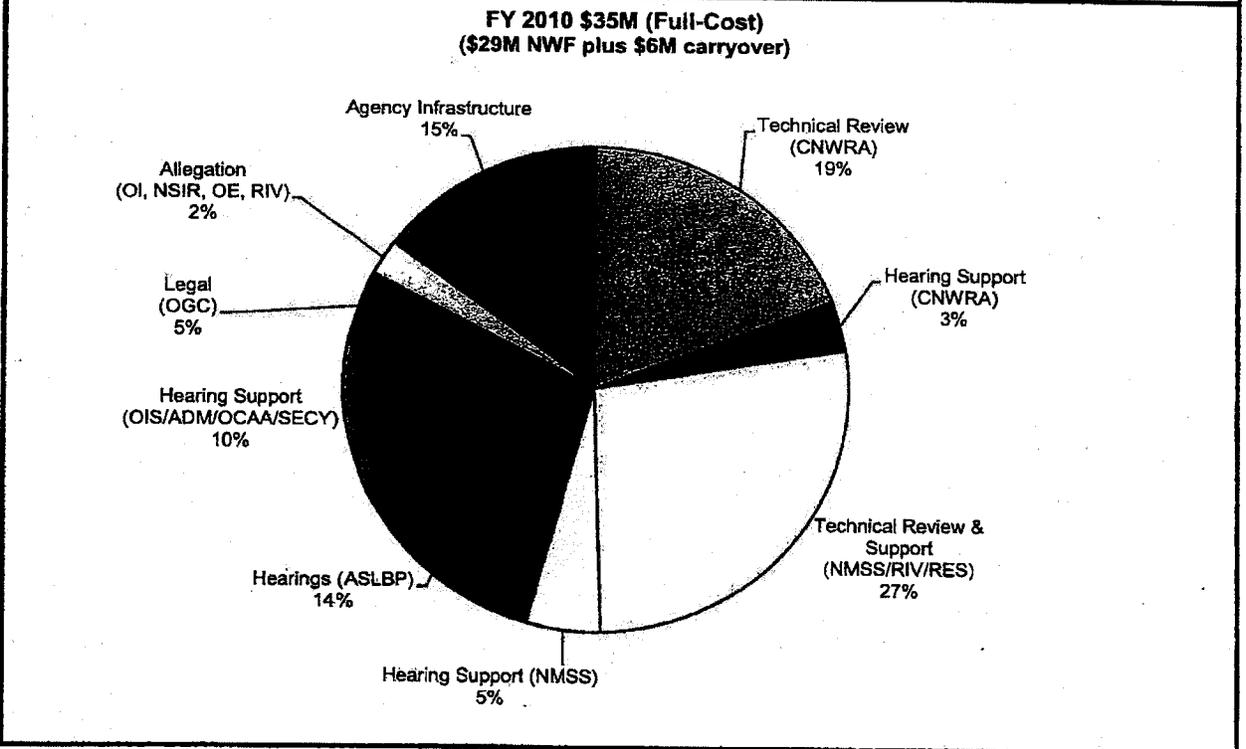
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Allocation of HLW Funding
 FY 2010 \$35M Full-Cost
 (\$29M NWF plus \$6M carryover)

HLW Offices	FY 2010 \$35M Full-Cost (\$29M NWF plus \$6M carryover)	
<i>Reserved Carryover</i>	945	3%
Technical Review (CNWRA)	6,676	19%
Hearing Support (CNWRA)	1,178	3%
Technical Review & Support (NMSS/RIV/RES)	9,506	27%
Hearing Support (NMSS)	1,677	5%
Hearings (ASLBP)	4,732	14%
Hearing Support (OIS/ADM/OCAA/SECY)	3,534	10%
Legal (OGC)	1,662	5%
Allegation (OI, NSIR, OE, RIV)	844	2%
Agency Infrastructure	5,200	15%
Total Program (Full-Cost)	35,009	100%



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ENCLOSURE 1

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TENTATIVE COMPLETION DATES FOR SAFETY EVALUATION REPORT VOLUMES
(Milestones to be completed no later than dates shown)

SER Volume Number	Volume 1 General Information	Volume 2* Preclosure	Volume 3* Postclosure	Volume 4* Administrative/ Programmatic	Volume 5* License Specifications
HLWRS Staff completes text and Executive Summary	04/23/2010	09/21/2010	06/14/2010	08/5/2010	09/30/2010
HLWRS Management and OGC Volume Review Complete	06/7/2010	11/3/2010	07/27/2010	09/17/2010	11/15/2010
Resolve Comments and Complete Review by Technical Editor	07/6/2010	12/03/2010	08/24/2010	10/18/2010	12/14/2010
OGC Complete Legal Review	07/20/2010	12/17/2010	09/08/2010	11/01/2010	01/13/2011
NMSS Director Review and Concurrence	07/27/2010	01/04/2011	09/22/2010	11/16/2010	01/27/2011
Final OGC Review Complete with "No Legal Objection"	08/03/2010	01/18/2011	10/06/2010	12/01/2010	02/10/2011
Publication of Final SER Volume	08/31/2010	03/01/2011	11/19/2010	01/14/2011	03/24/2011

*Work on these volumes will be discontinued once FY 2010 funds are exhausted

ENCLOSURE 2

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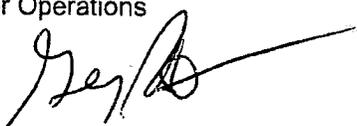
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June 11, 2010

MEMORANDUM TO: R. William Borchardt,
Executive Director for Operations

FROM: Gregory B. Jaczko
Chairman



SUBJECT: Schedule for HLW SER

I understand staff may be considering altering the schedule for publication of Volume 1 of the Yucca Mountain Safety Evaluation Report. I appreciate the work the staff has been doing on this project.

I believe it is in the best interests of the agency not to alter the schedule for the completion of SER volumes at this time, but instead to maintain the predictable schedule previously provided to the Commission in March, 2010 regarding plans for the High-Level Waste Repository Program. The agency's overall resources would be better utilized by maintaining the current schedule.

Therefore, the information in Volume 1 of the SER should be finalized and presented no earlier than August 2010, and subsequent volumes consistent with and not earlier than the schedule provided to the Commission in March, 2010.

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UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

October 4, 2010

MEMORANDUM TO: Office Directors and Regional Administrators

FROM: J. E. Dyer *J. E. Dyer*
Chief Financial Officer

R. W. Borchardt *R. W. Borchardt*
Executive Director for Operations

SUBJECT: GUIDANCE UNDER A FISCAL YEAR 2011 CONTINUING
RESOLUTION

On September 30, 2010, a Continuing Resolution (CR) through December 3, 2010, was signed into law. The purpose of this memorandum is to review and augment the earlier guidance on budget execution. The amount of funding available under a CR is determined by the annual CR legislation enacted by Congress. Funding availability is based on the previous fiscal year appropriated level augmented by unobligated carryover, as in past years. The NRC's FY 2011 budget request sustains agency's programs at approximately the same level as FY 2010, with the exception of the High-Level Waste Program. Therefore, offices should proceed to commit, obligate, and expend funds for ongoing activities to effectively use available resources during the CR.

Although the staff made improvements, we continue to emphasize the importance of effectively executing the agency budget by incrementally funding activities, as well as preparing and moving procurement packages through the acquisition process with "subject to availability of funds" language, when appropriate, to expedite the award process when sufficient funds become available. Additionally, to maintain maximum flexibility, priority for funds for existing contract support activities should be allocated only to those activities that do not have sufficient forward funding.

As highlighted in the earlier guidance provided by the Office of the Chief Financial Officer (OCFO), CR funding will be provided based on the offices' needs as identified in their Funds Utilization Plans (FUP) submitted on August 6, 2010. Based on the office's FUPs, agency funding needs exceeded the funds available in the first quarter. As a result, we plan to provide offices with 60 percent of the requested funding for the period of the CR. Offices should advise OCFO of any significant mission critical needs as a result of the constrained funding.

During the CR period, new work that was not authorized and funded in FY 2010 should not be started in FY 2011. Offices should contact the OCFO prior to funding any questionable

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Office Directors and RAs

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activities under the CR. In addition, contract awards for FY 2011 should be reflected in your Advance Procurement Plan (APP). It is important that offices processing contract documents consistent with their APPs/FUPs continue to focus on improved budget execution during the CR.

With respect to the High-Level Waste Program, the CR legislation does not include specific restrictions on spending funds. Therefore, the staff should continue its activities on the Yucca Mountain license application in accordance with the Commission's decisions on the FY 2011 budget using available Nuclear Waste Fund resources during the CR.

As we move forward, the OCFO will refine the CR plan and issue allowances for every CR period thereafter, until such time the agency receives its full appropriation/apportionment. After the agency receives its full-year appropriation/apportionment, this guidance will be rescinded and all normal budget execution operations will be resumed.

cc: PMDA/DRMA Directors

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MEMORANDUM TO THOSE ON THE ATTACHED LIST DATED: October 4, 2010

SUBJECT: GUIDANCE UNDER A FISCAL YEAR 2011 CONTINUING RESOLUTION

Edwin M. Hackett, Executive Director, Advisory Committee on Reactor Safeguards	<u>E-Mail Mail Stops</u> RidsAcrsAcnw_MailCTR Resource
E. Roy Hawkens, Chief Administrative Judge, Atomic Safety and Licensing Board Panel	RidsAsilbpManagement Resource
Stephen G. Burns, General Counsel	RidsOgcMailCenter Resource
Brooke D. Poole, Director, Office of Commission Appellate Adjudication	RidsOcaaMailCenter Resource
Hubert T. Bell, Inspector General	RidsOigMailCenter Resource
Margaret M. Doane, Director, Office of International Programs	RidsOipMailCenter Resource
Rebecca L. Schmidt, Director, Office of Congressional Affairs	RidsOcaMailCenter Resource
Eliot B. Brenner, Director, Office of Public Affairs	RidsOpaMail Resource
Annette Vietti-Cook, Secretary of the Commission	RidsSecyMailCenter Resource RidsSecyCorrespondenceMCTR Resource RidsEdoMailCenter Resource
Michael F. Weber, Deputy Executive Director for Materials, Waste, Research, State, Tribal, and Compliance Programs, OEDO	RidsEdoMailCenter Resource
Darren B. Ash, Deputy Executive Director for Corporate Management, OEDO	RidsEdoMailCenter Resource
Martin J. Virgilio, Deputy Executive Director for Reactor and Preparedness Programs, OEDO	RidsEdoMailCenter Resource
Nader L. Mamish, Assistant for Operations, OEDO	RidsEdoMailCenter Resource
Kathryn O. Greene, Director, Office of Administration	RidsAdmMailCenter Resource
Patrick D. Howard, Director, Computer Security Office	RidsCsoMailCenter Resource
Roy P. Zimmerman, Director, Office of Enforcement	RidsOeMailCenter Resource
Charles L. Miller, Director, Office of Federal and State Materials and Environmental Management Programs	RidsFsmeOd Resource
Cheryl L. McCrary, Director, Office of Investigations	RidsOiMailCenter Resource
Thomas M. Boyce, Director, Office of Information Services	RidsOis Resource
James F. McDermott, Director, Office of Human Resources	RidsHrMailCenter Resource
Michael R. Johnson, Director, Office of New Reactors	RidsNroOd Resource
Catherine Haney, Director, Office of Nuclear Material Safety and Safeguards	RidsNmssOd Resource
Eric J. Leeds, Director, Office of Nuclear Reactor Regulation	RidsNrrOd Resource
Brian W. Sheron, Director, Office of Nuclear Regulatory Research	RidsResOd Resource
Corenthis B. Kelley, Director, Office of Small Business and Civil Rights	RidsSbcrMailCenter Resource
James T. Wiggins, Director, Office of Nuclear Security and Incident Response	RidsNsirOd Resource
Marc L. Dapas, Acting Regional Administrator, Region I	RidsRgn1MailCenter Resource
Luis A. Reyes, Regional Administrator, Region II	RidsRgn2MailCenter Resource
Mark A. Satorius, Regional Administrator, Region III	RidsRgn3MailCenter Resource
Elmo E. Collins, Jr., Regional Administrator, Region IV	RidsRgn4MailCenter Resource

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CC: TO THOSE ON THE ATTACHED LIST DATED: October 4 2010

SUBJECT: GUIDANCE UNDER A FISCAL YEAR 2011 CONTINUING RESOLUTION

Name/Office

B. Gusack, NRO
B. Ficks, OIS
B. Holt, RGN III
J. Horn, HR
J. Dambly, ADM
J. Golder, FSME
J. Coleman, RGN II
M. Givvines, NRR
M. Muessle, RES
M. Hays, RGN IV
P. Baker, RGN I
S. Abraham, NSIR
T. Pulliam, NMSS

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RGN II
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RGN I
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EBB – C1 24

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UNITED STATES
NUCLEAR REGULATORY COMMISSION
 WASHINGTON, D.C. 20555-0001

February 4, 2011

MEMORANDUM TO: Chairman Jaczko
 Commissioner Svinicki
 Commissioner Apostolakis
 Commissioner Magwood
 Commissioner Ostendorff

FROM: Catherine Haney, Director *Catherine Haney*
 Office of Nuclear Material Safety and Safeguards

SUBJECT: UPDATE ON THE YUCCA MOUNTAIN PROGRAM

The purpose of this memorandum is to describe the status of the Yucca Mountain Program. Since October 1, 2010, the U.S. Nuclear Regulatory Commission (NRC) staff's activities have focused on the orderly closure of the NRC staff's safety review of the license application submitted by the U.S. Department of Energy (DOE) for authorization to construct a geologic repository at Yucca Mountain (YM), NV. This memorandum also describes the staff's plans to capture the knowledge it acquired during more than 3 decades of pre-licensing preparation and more than 2 years of licensing review activities.

Program Status and Termination of Safety Review

Effective on October 1, 2010, the staff ceased its safety review of the YM license application. Consequently, the staff is converting the remaining volumes of its safety evaluation report (SER) ("Volume 3: Review of Repository Safety after Permanent Closure," "Volume 2: Review of Repository Safety before Permanent Closure," and "Volume 4: Review of Administrative and Programmatic Requirements") into technical evaluation reports, which will be published as NUREG reports in the knowledge management series. These reports will document the staff's technical review activities and technical conclusions but will contain no staff findings of regulatory compliance.

Knowledge Capture and Orderly Closure of Supporting Licensing Proceedings

The NRC staff is archiving the institutional, regulatory, and technical knowledge amassed over nearly 3 decades as it evaluated YM and other potential sites for deep geologic disposal of spent fuel and high-level waste. The staff is evaluating and documenting the lessons learned from (1) the development and implementation of site-specific regulations and guidance documents for geologic disposal, (2) the conduct of a licensing proceeding under Subpart J,

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"Procedures Applicable to Proceedings for the Issuance of Licenses for the Receipt of High-Level Radioactive Waste at a Geologic Repository," of Title 10 of the *Code of Federal Regulations* (10 CFR) Part 2, "Rules of Practice for Domestic Licensing Proceedings and Issuance of Orders," and (3) the establishment and the operation of the Licensing Support Network (LSN). The staff will preserve this knowledge as a resource for future use. Associated with this, on October 1, 2010, the staff directed the Center for Nuclear Waste Regulatory Analyses (CNWRA) to stop its license application review activities. The staff redirected CNWRA to focus its YM-related efforts on the preservation of knowledge and records management. As the High Level Waste (HLW) repository knowledge management tasks are completed, CNWRA will transition to non-HLW Repository work using fee-based resources to evaluate the safety and environmental impacts of longer term storage of spent nuclear fuel and to support the staff's development of a longer term waste confidence rulemaking plan.

The NRC staff established priorities for activities it will undertake commensurate with available resources and closure of the licensing review. As part of this effort, the staff will document its technical review of the license application in technical evaluation reports (NUREGs). These reports will capture the scientific findings, knowledge, and experience of the staff's technical review, the development of requests for additional information, and an evaluation of the license application without stating the conclusion that would be needed to support a licensing decision. The first of these, documenting postclosure review activities, is planned for completion in the second quarter of fiscal year (FY) 2011. Resources permitting, reports on the staff's preclosure (Volume 2) and administrative (Volume 4) reviews will follow later in the third and fourth quarters of FY 2011.

During the first quarter of FY 2011, the staff established its process for developing the technical evaluation reports and began preparation of those reports. The staff is responding to a Freedom of Information Act request for access to staff drafts of SER Volumes 2 and 3. Technical staff members continued to provide input to the Office of the General Counsel on adjudicatory hearing-related matters to assist in responding to orders from the Construction Authorization Board 4 (CAB4 or the Board), including directives on case management and identification of witnesses. Departing and other senior technical staff members were interviewed on videotape for knowledge capture and as a future training resource. Personnel from the Office of Administration and the Atomic Safety and Licensing Board Panel (ASLBP or the Panel) initiated discussions with the General Services Administration and other government agencies about preparatory activities to close and decommission the Las Vegas Hearing Facility (LVHF), including its computer systems, physical infrastructure, and physical security infrastructure. During this period, the high-level waste core group continued discussions about the budget for orderly closure of the YM program to ensure coordination with preparation for renewal of the CNWRA contract and other contractual matters.

Hearing Process and Activities

CAB4 has continued to preside over the YM proceeding after denying the Department of Energy license application withdrawal motion in June 2010. The NRC staff, as required, has kept the Board informed of the status of the staff's application review activities. Specifically, on

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November 29, 2010, the staff informed CAB4 that it would not issue SER Volume 3 in November 2010 as previously planned, and that a revised schedule is indeterminate. On December 8, 2010, CAB4 ordered the staff to submit by December 22, 2010, a full explanation of its schedule change for the issuance of Volume 3 and directed the parties to confer and seek to reach agreement on a discovery status report by January 25, 2011. The staff replied on December 22, 2010, also indicating that the schedule for SER Volumes 4 and 2 was indeterminate. On December 14, 2010, CAB4 ruled on the Phase 1 legal issues and denied petitions for rule waivers. The Board also directed affected parties to submit a joint stipulation, or differing views, regarding the effects of the Board's Phase 1 legal issue rulings on admitted contentions by January 21, 2011. The major parties (including the NRC staff) timely responded and also filed differing views. In addition, DOE filed a January 21, 2011, motion seeking a suspension of the proceeding through May 20, 2011 and Nevada filed a January 20, 2011, motion seeking reconsideration of the rejection of a contention in its initial petition. CAB4 has not yet ruled on the suspension motion.

Absent contrary direction it is our understanding that the Panel plans to maintain the adjudicatory infrastructure for the repository licensing proceeding, including the Las Vegas Hearing Facility (LVHF), the Licensing Support Network (LSN), and the LVHF component of the Digital Data Management System (DDMS), until the end of FY 2011. At that time shut-down of the infrastructure would need to be accomplished to avoid the agency requiring Nuclear Waste Fund (NWF) money that has not been appropriated in order to complete the shut-down after FY 2011. We understand that ASLBP plans to send a memorandum in February that discusses this matter more fully and includes key action points for an orderly shutdown.

Resources

There are potential programmatic implications because of the limited NWF resources available to support all of the activities in this program. Currently, the Panel estimates that it will need \$2.7 million to support CAB4 and the adjudicatory infrastructure through the end of FY 2011. The staff estimates that \$18.0 million is needed to complete all high- and some medium-priority knowledge management and documentation activities associated with orderly closure of the NRC YM licensing program (Enclosure 1).

Assuming there are no additional activities regarding orderly closure or adjudication, the staff will apply \$10 million of FY 2011 NWF resources to these tasks, and will seek to reprogram \$2.0 (out of a total of \$7.1) million in prior-year NWF resources for salaries and benefits. The staff will convert \$2.1 million of the FY 2011 NWF contract funds into salaries and benefits. In addition, CNWRA will continue to expend the \$8.7 million of FY 2010 unliquidated obligations. The reprogramming effort is particularly important since FY 2011 resources alone are not sufficient to both carry out staff's planned knowledge capture and management activities and maintain the LVHF for an appreciable portion of FY 2011 while still being able to achieve orderly facility shutdown by the end of the fiscal year. Without the reprogramming of the \$2.0 million prior-year NWF resources, the staff will be unable to complete most of the medium priority knowledge management activities.

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The Commissioners

- 4 -

Coordination

The Office of the General Counsel has reviewed this paper and has no legal objection. The Office of the Chief Financial Officer has reviewed this paper for resource implications and has no objections.

Three staff members in NMSS filed non-concurrences on this memorandum (Enclosures 2-4). These non-concurrences are included in the interest of providing the Commission with alternative views.

This paper contains pre-decisional procurement and budget information and should be withheld from public disclosure.

Enclosures:

1. Fiscal Year 2011 Resource Estimates
for the Orderly Closure of NRC Yucca
Mountain Licensing Activities
2. Non-Concurrence dated January 18, 2011
3. Non-Concurrence dated February 1, 2011
4. Non-Concurrence dated February 2, 2011

cc: SECY
EDO
OGC
OCA
OPA
CFO
ASLBP

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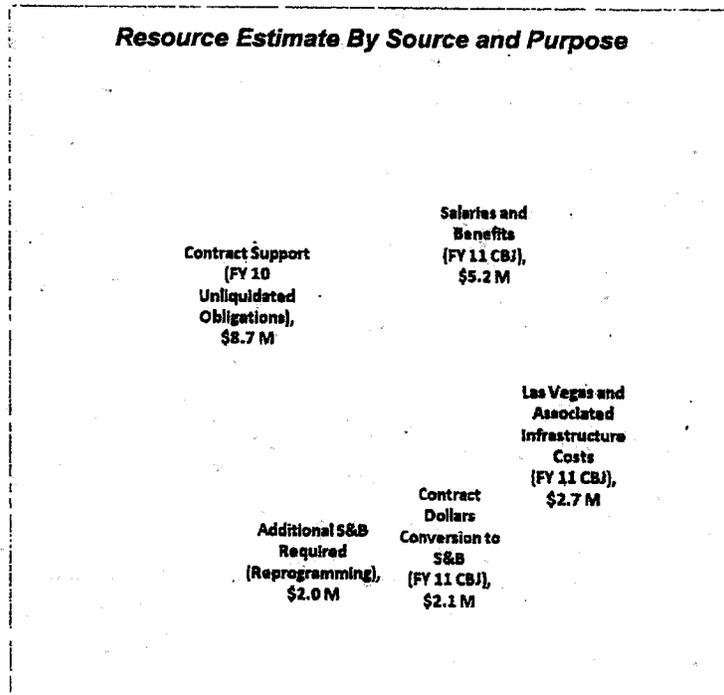
OFFICIAL USE ONLY – SENSITIVE INTERNAL INFORMATION

Fiscal Year 2011 Resource Estimate for the Orderly Closure of NRC Yucca Mountain Licensing Activities

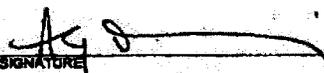
The \$20.7 million of Nuclear Waste Fund (NWF) monies in Fiscal Year (FY) 2011 is necessary for NRC's orderly closure of Yucca Mountain licensing activities. As the following table shows, \$2.7 million will be used to shut down the Las Vegas Hearing Facility along with its Digital Data Management system installation. \$18.0 million will be used for knowledge management and capture.

ACTIVITY	\$(K)
INFRASTRUCTURE	\$2,700
<ul style="list-style-type: none"> • Rent and maintenance of hearing facility in Las Vegas • Closure of hearing facility and removal of electronic systems 	
KNOWLEDGE MANAGEMENT AND DOCUMENTATION	\$18,000
<ul style="list-style-type: none"> • Completion of technical evaluation reports • Documents to be archived at National Archives; R&D samples archived • Knowledge Capture - videotaping interviews, workshop presentations, documents • Regulatory lessons learned • OGC and other office support for closure 	
TOTAL	\$20,700

The staff will use resources available from FY 2010 unliquidated obligations (\$8.7 million), FY 2011 President's Budget (\$10.0 million), and reprogramming prior year carryover (\$2.0 million). The chart below identifies the source of funding for each purpose.



Enclosure 1

NRC FORM 757 NRC MD 10,106 (2-2009)		U.S. NUCLEAR REGULATORY COMMISSION	
NON-CONCURRENCE PROCESS			
SECTION A - TO BE COMPLETED BY NON-CONCURRING INDIVIDUAL			
TITLE OF DOCUMENT Update on the Yucca Mountain Program		ADAMS ACCESSION NO. ML103146391	
DOCUMENT SPONSOR Catherine Haney		SPONSOR PHONE NO. 301-492-3554	
NAME OF NON-CONCURRING INDIVIDUAL Aby Mohseni		PHONE NO. 301-492-3182	
<input type="checkbox"/> DOCUMENT AUTHOR <input checked="" type="checkbox"/> DOCUMENT CONTRIBUTOR <input checked="" type="checkbox"/> DOCUMENT REVIEWER <input checked="" type="checkbox"/> ON CONCURRENCE			
TITLE Deputy Director		ORGANIZATION HLWRS/NMSS	
REASONS FOR NON-CONCURRENCE <p> Although the Commission Memorandum describes the current status of the program, it also addresses a path forward that seems to me to contain policy issues that require Commission direction or guidance. For example, whereas the application of Nuclear Waste Funds in FY 2011 was only authorized for orderly shutdown activities under a CR guidance and as specifically directed by the Chairman, the ongoing ASLB hearings require that those funds also support legal activities in ongoing Yucca Mountain licensing proceedings. If there are no constraints in using FY2011 or carryover NWF monies to support licensing activities, then it would be a policy issue to direct the staff to apply resources to orderly shutdown instead of completing and issuing the remaining SER volumes, especially since the Commission has not reversed the ASLBF's decision that denied DOE's motion to withdraw its application. The Memorandum also indicates that fee-based resources (rather than NWF) might be needed to shut down the Las Vegas Hearing Facility, which would be another policy issue, in my opinion. </p> <p> For the reasons above, I respectfully refuse to concur. </p>			
SIGNATURE 		<input type="checkbox"/> CONTINUED IN SECTION D	
DATE 1/18/2011			
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NRC FORM 757 (2-2009)

Use ADAMS Template NRC-006

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ENCLOSURE 2

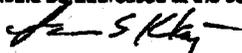
NRC FORM 757 NRC NO 10.120 (2-2002)		U.S. NUCLEAR REGULATORY COMMISSION	
NON-CONCURRENCE PROCESS			
TITLE OF DOCUMENT <i>Update on the Yucca Mountain Program</i>		ADAMS ACCESSION NO. ML103140391	
SECTION B - TO BE COMPLETED BY NON-CONCURRING INDIVIDUAL'S SUPERVISOR (THIS SECTION SHOULD ONLY BE COMPLETED IF SUPERVISOR IS DIFFERENT THAN DOCUMENT SPONSOR.)			
NAME <i>Larawan E. Kozlowski</i>			
TITLE <i>Director, Division of High-Level Waste Repository Safety</i>		PHONE NO. <i>Box -492-3158</i>	
ORGANIZATION <i>NMSS</i>			
COMMENTS FOR THE DOCUMENT SPONSOR TO CONSIDER <input type="checkbox"/> I HAVE NO COMMENTS <input checked="" type="checkbox"/> I HAVE THE FOLLOWING COMMENTS <i>See attached sheet.</i>			
		<input type="checkbox"/> CONTINUED IN SECTION D	
SIGNATURE <i>[Signature]</i>		DATE <i>10/20/11</i>	

Not For Public Disclosure

Re: Memorandum to the Commission entitled, "Update on the Yucca Mountain Program"

Given the unique nature of the NRC's High-Level Waste Program, its associated review of the DOE Yucca Mountain license application, and its attendant internal and external issues, it seems reasonable to expect that professional staff can differ in what constitutes a policy question suitable for Commission deliberation. Mr. Aby Mohseni, Deputy Director for the Licensing and Inspection Directorate in the Division of High-Level Waste Repository Safety, suggests that there are embedded in this memorandum at least two policy matters appropriate for the Commission to consider: (1) application of Nuclear Waste Funds for orderly closure while the licensing proceeding is still ongoing; and (2) use of fee-based resources to close the Las Vegas Hearing Facility and its associated infrastructure (such as LSN). The Commission itself has not yet decided on the ASLBP CAB-4 ruling (LBP-10-11), and there is enough complexity and uncertainty to suggest that the staff seek Commission direction on these issues rather than have the staff provide, in essence, a status report. While the Commission could make this memorandum a voting matter on its own once it is received, it seems more appropriate for Agency senior leadership to acknowledge it at the outset. I believe this is Mr. Mohseni's view.

Therefore, while either way could lead to the same outcome (i.e., Commission deliberation on orderly closure and funding), I tend to agree with Mr. Mohseni that the embedded policy matters should be addressed at the outset.



Lawrence E. Kokajko, Director
Division of High-Level Waste Repository Safety
Office of Nuclear Material Safety and Safeguards

18 January 2011

Not For Public Disclosure

Not For Public Disclosure

NRC FORM 757 NRC REG 16.100 (2-2009)		U.S. NUCLEAR REGULATORY COMMISSION	
NON-CONCURRENCE PROCESS			
TITLE OF DOCUMENT Update on the Yucca Mountain Program		ADAMS ACCESSION NO. ML163140391	
SECTION C - TO BE COMPLETED BY DOCUMENT SPONSOR			
NAME Catherine Haney			
TITLE Office Director		PHONE NO. 301-492-3554	
ORGANIZATION NMSS			
ACTIONS TAKEN TO ADDRESS NON-CONCURRENCE (This section should be revised, as necessary, to reflect the final outcome of the non-concurrence process, including a complete discussion of how individual concerns were addressed.)			
- See Attached -			
<input type="checkbox"/> CONTINUED IN SECTION D			
SIGNATURE - DOCUMENT SPONSOR <i>C Haney</i>	DATE 2-4-11	SIGNATURE - DOCUMENT SIGNER <i>C Haney</i>	DATE 2-4-11
NON-CONCURRING INDIVIDUAL (To be completed by document sponsor when process is complete, i.e., after document is signed):			
<input checked="" type="checkbox"/> CONCURS	<input type="checkbox"/> NON-CONCURS	<input type="checkbox"/> WANTS NCP FORM PUBLIC	<input checked="" type="checkbox"/> WANTS NCP FORM NON-PUBLIC
<input type="checkbox"/> WITHDRAWS NON-CONCURRENCE (i.e., discontinues process)			
NRC FORM 757 (2-2009)		Use ADAMS Template NRC-006	
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I carefully considered the concerns raised in Mr. Mohseni's non-concurrence on the memo titled, "Update on the Yucca Mountain Program." Prior to, and immediately after he filed the non-concurrence, Mr. Mohseni and I discussed his concerns with the memo. Since Mr. Mohseni filed his non-concurrence, the memorandum has been revised to reflect new resource information and recent discussion with the ASLBP regarding closure of the Las Vegas Hearing Facility (LVHF) and the associated infrastructure. Subsequent to this last revision, Mr. Mohseni was given the opportunity to revise his non-concurrence based on the revised memo. He chose not to revise his statement.

Mr. Mohseni believes there are at least two policy issues embedded in the memorandum:

1. Application of Nuclear Waste Funds for orderly closure instead of supporting hearing and licensing activities, including issuance of the remaining SER volumes.
2. Use of fee-based resources to close the Las Vegas Hearing Facility and its associated infrastructure (such as LSN).

The purpose of the memorandum to the Commission is to describe the status of the Yucca Mountain Program and staff's plans to capture the knowledge it acquired during pre-licensing preparation and licensing review activities. The memo was not intended to raise policy issues or topics that have previously been discussed and resolved at the Commission level.

The application of Nuclear Waste Funds (NWF) for orderly closure instead of completing and issuing the remaining SER volumes has been well vetted with the Commission. I am not aware of any new information that would warrant raising it as a policy matter in this memorandum. For example, in a October 6, 2010, memorandum to Chairman Jaczko and Commissioners Svinicki, Magwood, and Apostolakis (COMWCO-10-002), Commissioner Ostendorff stated that use of FY 2011 Continuing resolution funds "is a significant policy matter that I believe warrants the Commission's attention, and which requires that the Commission give direction to the staff to avoid confusion on the Commission's intent for operation under the Continuing Resolution." He went on to propose that "...Staff continue to follow the pre-established schedule for the SER and issue the remaining SER Volumes accordingly." This matter was subsequently closed by Annette Vietti-Cook's October 14, 2010, memorandum to Commissioner Ostendorff that stated, "A majority of the Commission declined to participate on this matter. In the absence of a quorum, your proposal is not approved."

Use of funds to support continued review of the Yucca Mountain application was the topic of several Congressional letters. In an October 27, 2010, letter to the Honorable Jim Sensenbrenner (ML102980673) Chairman Jaczko responded to Congressman Sensenbrenner's concerns about reports regarding the NRC's review of DOE's Yucca Mountain application. The response to Question 1 (quoted below) also indicates that the Commission has already considered Mr. Mohseni's first issue.

"Question 1. On what legal authority are you grounding your decision to terminate review of the license application based on a budget request, rather than existing law?"

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O Answer - Neither the text of the Fiscal Year (FY) 2010 Energy and Water Development and Related Agencies Appropriations Act and its underlying committee reports, nor the Fiscal Year 2011 Continuing Resolution provide the Commission with express direction on how it is to expend its appropriations from the Nuclear Waste Fund for Yucca Mountain activities. In the absence of an express direction, the approach the NRC is following is consistent with the terms of the Continuing Resolution, the Commission's Fiscal Year 2011 budget request, the general principles of appropriations law, and past U.S. Nuclear Regulatory Commission (NRC) practice. The Commission declined to revisit this decision in voting earlier this month."

I am mindful that there are limited resources available to complete orderly closure activities during FY2011 while the NRC hearing activities and Federal court litigation is ongoing. As of December 28, 2010, 1.8 FTE has been expended by the ASLBP and OGC to support the ongoing ASLBP hearing and litigation in the U.S. Court of Appeals for the District of Columbia. (As a reference point, NMSS has expended 9.0 FTE.) Expenditure of FY2011 HLW funds, in this manner, has been supported by OEDO, OGC, ASLBP, and CFO, and has not been viewed to be a matter of policy although these offices and I recognize that use of the funds to support NRC hearings should be closely monitored because they could consume NWF resources that are currently needed for orderly closure in FY 2011. In addition, because there are no HLW funds in FY 2012, depletion of NWF money would bring the administrative hearing process to a halt in FY 2011.

In response to Mr. Mohseni's second concern that the memorandum contains an embedded policy issue regarding use of fee-based resources to close the Las Vegas Hearing Facility and its associated infrastructure, the memorandum has been revised to reflect several recent discussions with CFO, ASLBP, NMSS, and OGC. Originally, the memorandum stated that the Atomic Safety and Licensing Board "Panel plans to maintain the adjudicatory infrastructure for the repository licensing proceeding, including the LSN, the LVHF, and the LVHF component of the Digital Data Management System (DDMS), until the Panel receives direction from the Commission to implement the closure of that infrastructure." The memorandum previously notes that "since no Nuclear Waste Fund (NWF) resources are available in FY 2012, starting on October 1, 2011, fee-based funds will be needed to support the LVHF and its infrastructure." The revised memorandum no longer raises the issue of using fee based funds to close the Las Vegas Hearing Facility or other YM hearing infrastructure. This change was made to clearly inform the Commission that orderly closure would be accomplished this fiscal year with available NWF money. Therefore, Mr. Mohseni's second issue is no longer raised by the memorandum.

Catherine Haney
2-3-11

Not For Public Disclosure

NRC FORM 757 APR 2010 10.150 (2-2009)		U.S. NUCLEAR REGULATORY COMMISSION	
NON-CONCURRENCE PROCESS			
SECTION A - TO BE COMPLETED BY NON-CONCURRING INDIVIDUAL			
TITLE OF DOCUMENT Update on the Yucca Mountain Program		ADAMS ACCESSION NO. ML103140391	
DOCUMENT SPONSOR Catherine Haney		SPONSOR PHONE NO. 301-492-3554	
NAME OF NON-CONCURRING INDIVIDUAL Janet P. Kotra		PHONE NO. 301-492-3190	
<input checked="" type="checkbox"/> DOCUMENT AUTHOR <input type="checkbox"/> DOCUMENT CONTRIBUTOR <input type="checkbox"/> DOCUMENT REVIEWER <input checked="" type="checkbox"/> ON CONCURRENCE			
TITLE Senior Project Manager		ORGANIZATION NMSS/NMSS/PMSS	
REASONS FOR NON-CONCURRENCE <p> I have prepared and revised copious variations of this memorandum. When, on June 14, 2010, the Chairman ordered the Director of NMSS to postpone issuance of Safety Evaluation Report Volumes 1 and 3, HLWRS and NMSS managers became concerned the entire Commission may not be fully aware of the policy, legal and budgetary consequences of such redirection. Some believed that a diligent staff, struggling to honor conflicting obligations, needed programmatic and policy guidance from the entire Commission armed with a fair assessment of the facts. I was given to understand the memorandum was not to refer to any of the related policy issues, a decision with which I disagreed. Later, in September, it became clear that, rather than postpone issuance of individual SER volumes, the Chairman's intent was to terminate the staff's safety review altogether. Using the continuing resolution as justification, the Chairman, through OEDO and the CFO, told staff that all work on the SER must stop, including Volume 3 on post closure safety, which was already complete, and undergoing management review. Written guidance to this effect appeared later, in an October 4, 2010 memorandum. The Chairman later met with the Yucca Mountain Team on October 12, 2010. He explained that the decision to shut down the staff's review of the application was his alone and that staff should move to orderly closure of NRC's Yucca Mountain program. This, despite the fact that, then, as now, the Nuclear Waste Policy Act remains in effect, the hearing process continues, and the Commission has yet to issue a decision on whether DOE may legally withdraw the application. Over time, repeated rounds of comment (formal and otherwise) from OEDO, the CFO and the General Counsel were incorporated. Time and again these comments diluted or contradicted the direct language offered by NMSS and ASLEP staff. Both staff sought to outline policy, programmatic and budgetary difficulties faced by their offices as they tried to cover the costs of both shutting down a complex and valuable national program and infrastructure while still supporting an ongoing hearing process. This now long-suffering memorandum is characterized as a "status report." Throughout its tortured evolution, I continued to make countless changes during a most unorthodox process, despite growing reservations, so long as the description of the program's history and status remained reasonably accurate. At this juncture, I can no longer support this memorandum. I believe </p>			
<input checked="" type="checkbox"/> CONTINUED IN SECTION D			
SIGNATURE <i>Janet Phelan Kotra</i>		DATE 2/1/2011	

NRC FORM 757
NRC MD 10.100
(3-2009)

U.S. NUCLEAR REGULATORY COMMISSION

NON-CONCURRENCE PROCESS

TITLE OF DOCUMENT

Update on the Yucca Mountain Program

ADAMS ACCESSION NO.

ML103148391

SECTION D: CONTINUATION PAGE

CONTINUATION OF SECTION

A B C

that, in its present form, this memorandum appears to imply that the NMSS staff voluntarily, or, worse still, on its own volition, sought to terminate NRC staff's independent review of the Yucca Mountain License application and end staff's support for a full and impartial hearing process for that application. It has been my experience that members of the NMSS staff, who have conducted a fair, independent and technically sound safety review, and who worked earnestly to prepare the required Safety Evaluation Report, stood down from that duty only with enormous reluctance. As currently drafted, this memorandum makes no reference to the facts surrounding the Chairman's termination of the NRC staff's review of the Yucca Mountain License application. Absent this crucial context, a reader is left with the mistaken impression that this termination and the "orderly shutdown" of the NRC staff's licensing review and hearing process was staff's preferred and well-considered course of action, initiated by the NRC's technical staff. Nothing could be farther from the truth. Furthermore, absent proper context, the reader would also conclude that NMSS staff prepared this memorandum to inform a passive Commission about "staff's" course of action, after the fact, to alert the heretofore uninvolved Commission about problems and difficulties to which "staff's" course have led. For these reasons, I must respectfully withdraw my concurrence of December 2, 2010.

NRC FORM 757
NRC MD 10.15B
(3-2009)

U.S. NUCLEAR REGULATORY COMMISSION

NON-CONCURRENCE PROCESS

TITLE OF DOCUMENT
Update on the Yucca Mountain Program

ADAMS ACCESSION NO.
ML103140391

SECTION B - TO BE COMPLETED BY NON-CONCURRING INDIVIDUAL'S SUPERVISOR
(THIS SECTION SHOULD ONLY BE COMPLETED IF SUPERVISOR IS DIFFERENT THAN DOCUMENT SPONSOR.)

NAME
King Stablein

TITLE
Chief, Projects Branch B, Division of High-Level Radioactive Safety

PHONE NO.
301-492-3199

ORGANIZATION
NMSS

COMMENTS FOR THE DOCUMENT SPONSOR TO CONSIDER

- I HAVE NO COMMENTS
- I HAVE THE FOLLOWING COMMENTS

I agree wholeheartedly with Dr. Kotra's comments and agree specifically that this status report lacks the necessary context and information to adequately characterize the confusion, chaos, and anguish occasioned by the Chairman's unilateral decision to disrupt the orderly process of SER development.

My nonconcurrency comments will amplify some of the points made by Dr. Kotra.

CONTINUED IN SECTION D

SIGNATURE
King Stablein

DATE
2/2/11

Not For Public Disclosure

NRC FORM 757
NRC MD 10.15B
(3-2009)

U.S. NUCLEAR REGULATORY COMMISSION

NON-CONCURRENCE PROCESS

TITLE OF DOCUMENT

Update on the Yucca Mountain Program

ADAMS ACCESSION NO.

ML103140391

SECTION C - TO BE COMPLETED BY DOCUMENT SPONSOR

NAME

Catherine Haney

TITLE

Office Director

PHONE NO.

301-492-3554

ORGANIZATION

NMSS

ACTIONS TAKEN TO ADDRESS NON-CONCURRENCE (This section should be revised, as necessary, to reflect the final outcome of the non-concurrence process, including a complete discussion of how individual concerns were addressed.)

- see attached -

CONTINUED IN SECTION D

SIGNATURE - DOCUMENT SPONSOR

Catherine Haney

DATE

2-4-11

SIGNATURE - DOCUMENT SIGNER

Catherine Haney

DATE

2-4-11

NON-CONCURRING INDIVIDUAL (To be completed by document sponsor when process is complete, i.e., after document is signed):

CONCURS

NON-CONCURS

WITHDRAWS NON-CONCURRENCE (i.e., discontinues process)

WANTS NCP FORM PUBLIC

WANTS NCP FORM NON-PUBLIC

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I carefully considered the concerns raised in Dr. Kotra's non-concurrence on the memo titled, "Update on the Yucca Mountain Program." Over the last several months, I have met with Dr. Kotra to discuss her concerns on transitioning the Yucca Mountain Program towards closure. Most recently, I met with Dr. Kotra on January 31, 2011, to discuss the concerns she planned to raise with the most recent version of the memorandum. Based on these discussions and my review of her non concurrence, I do not believe that changes are needed to the memorandum.

Dr. Kotra notes in her opening statement that she has "prepared and revised copious variation of this memorandum". She also states that "over time, the memo has been revised to dilute or contradict "the direct language offered by NMSS and ASLBP staffs. Both staffs sought to outline policy, programmatic and budgetary difficulties faced by their offices as they tried to cover the costs of both shutting down and complex and valuable national program and infrastructure while still supporting an ongoing hearing process." Dr. Kotra states that "In its present form, this memorandum appears to imply that the NMSS staff voluntarily, or, worse still, on its own volition, sought to terminate NRC staff's independent review of the Yucca Mountain License application and end staff's support for a full and impartial hearing process for the application. . . . As currently drafted this memorandum makes no reference to the facts surrounding the chairman's termination of the NRC staff's review of the Yucca Mountain license application."

Dr. Kotra is correct in her statement that there have been many iterations of this memorandum. This was due to the evolving nature of the program and the information that I felt needed to be conveyed to the Commission. Dr. Kotra states that she "was given to understand the memorandum was not to refer to any of the related policy issues, a decision with which I disagreed." Over time, the purpose of the paper evolved. The purpose of the Commission memorandum is to describe the status of the Yucca Mountain Program and staff's plans to capture the knowledge it acquired during pre-licensing preparation and licensing review activities. Potential policy issues associated with the closure of the Yucca Mountain project had been decided at the Commission level (reference my response to Mr. Mohseni's non concurrence on this same memo). I am not aware of any new information regarding program closure that would warrant raising it as a policy matter in this memorandum nor did I believe it necessary to raise any facts surrounding the termination of staff's review in this status paper. I also disagree with her suggestion that the paper fails to outline programmatic and budgetary difficulties. The resources section of the memorandum informs the Commission of programmatic implications due to the limited NWF resources, noting that estimates are contingent upon "no additional activities regarding closure or adjudication" and that FY2011 resources are not sufficient for knowledge capture and LVHF maintenance activities. Lastly, I do not agree with Dr. Kotra's statement that the "memorandum appears to imply that the NMSS staff voluntarily, or worse still, on its own volition, sought to terminate NRC staff's independent review of the Yucca Mountain License application and end staff's support for a full and impartial hearing process for the application. The memorandum was not intended to document or revisit past decisions on the Project.

Catherine Dancy

2-3-11

Not For Public Disclosure

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NRC FORM 757
NRC MD 10.139
(3-2009)

U.S. NUCLEAR REGULATORY COMMISSION

NON-CONCURRENCE PROCESS

SECTION A - TO BE COMPLETED BY NON-CONCURRING INDIVIDUAL

TITLE OF DOCUMENT
UPDATE ON THE YUCCA MOUNTAIN PROGRAM

ADAMS ACCESSION NO.
ML103140391

DOCUMENT SPONSOR

Catherine Haney

SPONSOR PHONE NO.
301-492-3554

NAME OF NON-CONCURRING INDIVIDUAL

King Stabilein

PHONE NO.
301-492-3199

DOCUMENT AUTHOR DOCUMENT CONTRIBUTOR DOCUMENT REVIEWER ON CONCURRENCE

TITLE
Branch Chief

ORGANIZATION
NMSS/HLWRS

REASONS FOR NON-CONCURRENCE

Please see attached document.

CONTINUED IN SECTION D

SIGNATURE
King Stabilein

DATE
2/2/11

Not For Public Disclosure

Reasons for King Stablein's Nonconurrence on Memorandum to the Commission entitled "Update on the Yucca Mountain Project"

As Dr. Kotra's direct supervisor, I have witnessed her efforts to prepare and revise this memorandum over the past few months, and we have engaged in continual discussions about whether or not we could support the contents as they twisted and turned to accommodate the many agendas that were influencing the direction of the memo. We grew more and more uncomfortable as we came to understand that neither the context for the current state of the Yucca Mountain program nor the policy issues affecting the program were intended to be part of the final product. I have come to conclude that the memo does not provide the Commission with important information regarding the program, but rather, appears to suggest that the staff has taken the initiative to go in the direction of closure of the program and has had no difficulty in carrying out certain steps to achieve closure by September 30, 2011. In her non-concurrence, Dr. Kotra has skillfully illuminated many fundamental issues with the memo, and I fully support what she has written. In addition, I want to add some thoughts of my own.

Until the Chairman unilaterally brought development of the SER to a halt as of September 30, 2010, the High-Level Waste Repository Safety (HLWRS) staff was on track to deliver all five volumes of the SER in the first part of FY 2011. Volume 3, the key postclosure volume, was virtually complete and could have been issued by the November 2010 date that staff had given to ASLB. When the Chairman met with the HLWRS staff on October 12, 2010, it was pointed out to him that allowing the staff to finish the SER volumes would be by far the most efficient and effective use of Nuclear Waste Fund resources and at the same time would give the Nation the benefit of an independent regulator's evaluation of the Yucca Mountain application. He made it clear during this meeting that, although he recognized that he could choose that path, his view was that it would look more political to publish the SER volumes with findings than to issue them as Technical Evaluation Reports (TERs). Despite his audience's incredulity regarding this position, the Chairman said that the decision was solely his and that he chose to derail the SER development process while directing the staff to begin orderly shutdown of the Yucca Mountain program.

This decision has had profound effects on the Yucca Mountain program, none of which are reflected in the subject status report. As a supervisor in this program, I am keenly aware of the agony experienced by the HLWRS staff as they dutifully followed the Chairman's direction. Many of the staff have worked on the Yucca Mountain program for two decades or longer. To not be allowed to finish the SER, the culmination of those years of precicensing and licensing activity, because of what appears to be the arbitrary decision of one person, was wrenching for the staff. The staff was not aware of any substantive discussion and airing of issues at the Commission level, as would be expected for a decision of this magnitude regarding a program that has existed for 30 years. It felt to the staff as if the Chairman had casually dismissed the staff's sacrifices and effort of those many years without even bothering to engage his fellow Commissioners in the manner that Commission decisions are usually handled. The staff would

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have greatly appreciated, given the importance of this decision, an opportunity to share its views with the entire Commission. There is no recognition in this status update of the staff's frustration over the direction of the program or of the staff's lack of opportunity to present its views, concerns, and insights to the Commission before a final decision was made.

There is also no recognition in this memorandum of the difficulties staff has had to endure because of the lack of a Commission decision regarding whether or not DOE can withdraw its license application. The staff has been caught in a bind which it felt itself incapable of escaping as it attempts to follow the Chairman's direction to carry out orderly closure of the program. Confronted with the reality that there is still an active application before ASLB, certain activities in the staff's Orderly Closure Plan were considered by staff to require that the Commission allow DOE to withdraw its application before staff could carry out those activities. One example is the disposition in the National Archives of the documents that have been needed during the licensing process. The staff, many of whom have been in this program for 20 years or more, are acutely aware of the NWPA and the argument that ASLB crafted in rejecting DOE's request to withdraw its application. Staff should not be put in a situation where the direction from the Chairman appears to be in direct conflict with the NWPA and the fact of an active license application. Absent policy decisions from the Commission, staff has struggled on a daily basis to figure out how to cope with this bizarre situation in a manner which would enable staff to maintain its integrity.

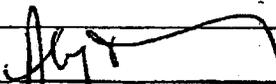
For these reasons, as well as those expressed so eloquently by Dr. Kotra in her nonconcurrency, I respectfully decline to concur on this status update memo.

King Stablein 2/3/11

King Stablein, Chief
Projects Management Branch B
Division of High-Level Waste Repository Safety
Office of Nuclear Material Safety and Safeguards

Not For Public Disclosure

Not For Public Disclosure

NRC FORM 757 NRC MD 10.150 (3-2009)		U.S. NUCLEAR REGULATORY COMMISSION	
NON-CONCURRENCE PROCESS			
TITLE OF DOCUMENT		ADAMS ACCESSION NO.	
SECTION B - TO BE COMPLETED BY NON-CONCURRING INDIVIDUAL'S SUPERVISOR (THIS SECTION SHOULD ONLY BE COMPLETED IF SUPERVISOR IS DIFFERENT THAN DOCUMENT SPONSOR.)			
NAME Aby Mohseni			
TITLE Deputy Director		PHONE NO. 301-492-3181	
ORGANIZATION NRC/NMSS/DHLWRS			
COMMENTS FOR THE DOCUMENT SPONSOR TO CONSIDER <input type="checkbox"/> I HAVE NO COMMENTS <input checked="" type="checkbox"/> I HAVE THE FOLLOWING COMMENTS			
<p>As Dr. King Stablein's supervisor, I agree with his characterization of the program and the shortcomings of the memorandum. I would furthermore point to the inconsistency of the NRC Solicitor's characterization of the status of the program as being suspended due to the Continuing Resolution, implying a temporary and reversible status. In an email to a staff inquiry, the Solicitor agreed with the following characterization:</p> <p>"In December 2010, the U.S. Court of Appeals lifted a prior order that had held four lawsuits against DOE in abeyance. The Court's December order set the lawsuits for full briefing and for oral argument. All briefs now have been filed, and the Court is scheduled to hear oral argument on March 22, 2011. The lawsuits against DOE claim that DOE has no authority to withdraw the Yucca Mountain license application, and that Congress must specifically authorize such action. As the appeals court proceeding has moved forward, and in view of NRC's limited budget resources under the current Continuing Resolution, NRC has suspended review of the Yucca Mountain license application, and NRC has stated it has no schedule for completion of the review."</p> <p>This statement is inconsistent with the orderly closure activities outlined in the memorandum, including the termination of the Las Vegas Hearing Facility in FY 2011.</p>			
SIGNATURE 		<input type="checkbox"/> CONTINUED IN SECTION D	
		DATE 2/3/2011	
SEND THIS PAGE TO DOCUMENT SPONSOR			

Not For Public Disclosure

NRC FORM 757
NRC MD 10.158
(3-2009)

U.S. NUCLEAR REGULATORY COMMISSION

NON-CONCURRENCE PROCESS

TITLE OF DOCUMENT

Update on the Yucca Mountain Program

ADAMS ACCESSION NO.

ML103140391

SECTION C - TO BE COMPLETED BY DOCUMENT SPONSOR

NAME

Catherine Haney

TITLE

Office Director

PHONE NO.

301-492-3554

ORGANIZATION

NMSS

ACTIONS TAKEN TO ADDRESS NON-CONCURRENCE (This section should be revised, as necessary, to reflect the final outcome of the non-concurrence process, including a complete discussion of how individual concerns were addressed.)

- see attached -

CONTINUED IN SECTION D.

SIGNATURE - DOCUMENT SPONSOR

Catherine Haney

DATE

2-4-11

SIGNATURE - DOCUMENT SIGNER

Catherine Haney

DATE

2-4-11

NON-CONCURRING INDIVIDUAL (To be completed by document sponsor when process is complete, i.e., after document is signed):

CONCURS

NON-CONCURS

WITHDRAWS NON-CONCURRENCE (i.e., discontinues process)

WANTS NCP FORM PUBLIC

WANTS NCP FORM NON-PUBLIC

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I carefully considered the concerns raised in Dr. Stablein's non-concurrence on the memo titled, "Update on the Yucca Mountain Program." On February 2, 2011, prior to him filing the non-concurrence, I met with Dr. Stablein to discuss his concerns with the memorandum. Based on this discussion and my review of his non concurrence, I do not believe that changes are needed to the memorandum.

Dr. Stablein notes several items that are omitted from or not recognized in the memorandum. They are as follow:

- Important information regarding the program
- The "profound effects" of the decision to transition the Yucca Mountain Program to closure are reflected in the subject status report.
- ". . . staff's frustration over the direction of the program or of the staff's lack of opportunity to present its views, concerns, and insights to the Commission before a final decision was made."
- ". . . difficulties staff has had to endure because of the lack of a Commission decision regarding whether or not DOE can withdraw its license application."

Dr. Stablein further states that the paper "appears to suggest that the staff has taken the initiative to go in the direction of closure of the program and has had no difficulty in carrying out certain steps to achieve closure by September 30, 2011."

Mr. Mohseni, Dr. Stablein's supervisor, in his comments on Dr. Stablein's non concurrence states that he agrees with Dr. Stablein's characterization of the program and the shortcomings of the memorandum. In addition, Mr. Mohseni identifies perceived inconsistency with the orderly closure activities outlined in the memorandum, including the termination of the Las Vegas hearing Facility in FY 2011 and comments by the NRC Solicitor on a draft IAEA document that imply a temporary and reversible status (reference Mr. Mohseni's comments on Dr. Stablein's non concurrence).

I have reviewed the list of items that Dr. Stablein believes were omitted from or not recognized in the memorandum and his statement that the paper "appears to suggest that the staff has taken the initiative to go in the direction of closure of the program and has had no difficulty in carrying out certain steps to achieve closure by September 30, 2011." I believe that they all fall outside of the scope of the memorandum or are not needed. The purpose of the Commission memorandum is to describe the status of the Yucca Mountain Program and staff's plans to capture the knowledge it acquired during pre-licensing preparation and licensing review activities.

I have also been informed by the NRC Solicitor that his comments on an interim draft of an IAEA document were not meant to suggest a temporary "suspension" of YM due to budget constraints. The term was drafted by others and his focus was on accurately characterizing the status of Federal court litigation. He understands that the staff is engaged in orderly closure activities. As directed, our FY 2011 activities are focused on the orderly closure of the Program and not on completion of the Safety Evaluation Reports. As stated by the Chairman in

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an October 27, 2010, letter to the Honorable Jim Sensenbrenner (ML 102980673), "the approach the NRC is following is consistent with the terms and the Continuing Resolution, the Commission's Fiscal 2011 budget request, the general principles of appropriations law, and past U.S. Nuclear Regulatory Commission (NRC) practice." The approach described in the memorandum is endorsed by the OEDO, CFO, and OGC and the memorandum describes the resource limitations on completing activities in FY2011.

Catherine Haney
2-3-11

Not For Public Disclosure

[REDACTED]

From: Mohseni, Aby
Sent: Thursday, March 17, 2011 3:25 PM
To: Young, Mitzi
Cc: BowdenBerry, Elva; Lenehan, Daniel; Bielecki, Jessica; Itzkowitz, Marvin; Kokajko, Lawrence; Stabilein, King; Davis, Jack
Subject: RE: Reversible SER 3

Mitzi and team,

Thank you all for your support. We appreciate your team's efforts to respond to a whole host of demands and keeping your customers satisfied.

Perhaps someday we can look back and find this period rewarding as difficult as it is for all of us.

Thank you,
Aby

-----Original Message-----

From: Young, Mitzi
Sent: Wednesday, March 16, 2011 7:18 PM
To: Mohseni, Aby
Cc: BowdenBerry, Elva; Lenehan, Daniel; Bielecki, Jessica; Itzkowitz, Marvin
Subject: Reversible SER 3

OGC has completed its review and has NLO to ch 12 with noted revisions.

This completes OGC's review of the individual chptrs that comprise this doc. We have not seen the compiled doc as was done for vol 1, but have NLO provided that it only includes publicly available references if the doc were published.

Sent from an NRC Blackberry
Mitzi Young
[REDACTED]

NOT FOR PUBLIC DISCLOSURE

From: Mohseni, Aby
Sent: Tuesday, June 07, 2011 6:21 PM
To: Haney, Catherine
Cc: Itzkowitz, Marvin; Young, Mitzi; Kokajko, Lawrence; Davis, Jack; Weber, Michael; Borchardt, Bill
Subject: RE: TER Volume 3

Cathy,

I respectfully disagree with your June 6, 2011, decision not to approve the Technical Evaluation Report (TER) Postclosure Volume, as written, for publication and public distribution. I also disagree with the need to revise the TER. Therefore, I request your reconsideration and permission to publish the TER as soon as possible. Failing that, I request that the matter be referred to the Commission.

The basis for my disagreement and request that the issue be referred to the Commission is as follows:

- 1) You refer to the TER as draft. It is not draft; it is final and it was completed on or around March 31, 2011. It has gone through the process for signature by me as the acting Director of HLWRS in accordance with current practice. In addition, we received a "no legal objection" from OGC. It was then presented to you as a matter of courtesy because of the sensitivities surrounding activities associated with Yucca Mountain. You asked us to delay publication until you had discussed with your executive management.
- 2) As you stated in your March 9, 2011, affidavit, we developed the document based on the technical insights gained in the development of draft SER Volume 3 and associated documents. We removed references to the regulations and worked closely with OGC to reference the Yucca Mountain Review Plan (YMRP) appropriately and to ensure adherence to our agency requirements.
- 3) Your affidavit is related to an SER, an official NRC licensing document. The TER is a knowledge management document and contains multiple disclaimers that, according to OGC, could not be confused with an SER and could not be relied upon for licensing.
- 4) The TER reflects the knowledge acquired in preparation for and during the review of the Yucca Mountain License Application, using a risk informed, performance based approach. To that end, the reference to YMRP was viewed by the technical staff and by OGC as an integral part of the scope of the technical evaluation.
- 5) Lawrence, Jack Davis and I were present in your office on April 4, 2011, when Mike Weber called you to convey concerns about the references to YMRP in the TER. You indicated to Mike that consistent with the direction provided, we had developed a knowledge management document, and that you would not feel comfortable trying to change the technical content of a staff knowledge management document. To give you assurance that Mike's concerns were adequately addressed, we called Marv Itzkowitz (OGC) in your presence, and he confirmed that Mike's concerns were not shared by OGC. Nonetheless, we developed an additional section called "Note to Reader" which further highlighted the distinction between an SER and a TER to allay the concerns

conveyed by Mike. You indicated that when you asked for Mike's views on the Note, he said that you needed to talk to the Chairman.

- 6) I believe the availability of the TER to the public is beneficial from a scientific, technical assessment and evaluation standpoint and should be made publicly available immediately. It will also enhance NRC's credibility with respect to openness and transparency. Interested stakeholders include the Congress, Blue Ribbon Commission, EPA, DOE, industry, as well as our international counterparts.
- 7) Your third point about adding a disclaimer to the executive summary is reasonable. While there are disclaimers already, there is no harm in adding another one.
- 8) Since you make reference to the draft SER Volume 3, it should be stated for the record that it is complete in content, with OGC's "no legal objection" and no open issues, and available for issuance upon your signature and accompanying minor formatting and logistical preparation.
- 9) As you know, there are several ongoing investigations regarding NRC's activities and decision-making regarding Yucca Mountain licensing and closure. To avoid another potential issue concerning the integrity of the process, I request that you either provide your permission to issue the TER or take the matter of issuance of the TER to the full Commission for their direction.

In reaching this decision, I have conferred with the available Branch Chiefs and Deputy Director. Thank you for the opportunity to consider my response.

Aby

From: Haney, Catherine
Sent: Monday, June 06, 2011 4:13 PM
To: Mohseni, Aby
Cc: Itzkowitz, Marvin; Young, Mitzi; Kokajko, Lawrence; Davis, Jack; Weber, Michael; Borchardt, Bill
Subject: TER Volume 3

Aby.

I have reviewed certain sections of the staff's draft "Technical Evaluation Report on the Content of the U.S. Department of Energy's Yucca Mountain License Application; Postclosure Volume: Repository Safety After Permanent Closure" (TER Postclosure Volume) and do not approve the document, as written, for publication and public distribution unless the draft document is revised.

1. Consistent with our original intent to make the TER a public document and a desire to be consistent with statements made by the Chairman that the document would not contain

any "findings," any references to a finding or conclusion against the YMRP need to be removed. In its current form, the draft Postclosure SER (Volume 3) and the TER Postclosure Volume are too similar. Findings against the Yucca Mountain Review Plan (YMRP) and a regulatory finding are virtually indistinguishable to stakeholders. I believe this to be especially true in light of the Commission's review and approval of the publication of the YMRP in 2002. To issue the TER for public distribution, as currently written, in my opinion would be inconsistent with my affidavit to the Licensing Board signed March 3, 2011 and Agency (Darren Ash and mine) statements related to the Heritage Foundation's FOIA request for an unredacted version of SER Volume 3. TER content should be consistent with the overall objective of the TER, which is to preserve the knowledge gained in preparation for and during the review of the Yucca Mountain license application, including the status of the review at the time of termination in early October 2010, independent review work completed, open issues at the time of termination, and plans for completing the review if it had continued. Much of the content of the TER remains the same, but it needs to be re-focused consistent with the TER's objective.

2. The note to reader is no longer needed with the changes noted under #1.
3. The following text be included in the executive summary -- "No licensing decision regarding a construction authorization for Yucca Mountain can be made until the NRC staff finishes its technical review and the preparation of the SER, the NRC's Construction Authorization Board adjudicate contentions admitted in the licensing proceeding, and the Commission concludes its supervisory review of contested and uncontested issues."

Cathy

NOT FOR PUBLIC DISCLOSURE

MEMORANDUM TO: Chairman Jaczko
Commissioner Svinicki
Commissioner Apostolakis
Commissioner Magwood
Commissioner Ostendorff

June 20, 2011

FROM: Aby Mohseni, Acting Director
Division of High Level Waste Repository Safety
Office of Nuclear Materials Safety and Safeguards

SUBJECT: REQUEST FOR COMMISSION INTERVENTION

The purpose of this memorandum is to describe the environment in which the Division of High Level Waste Repository Safety (HLWRS) is working and to request Commission intervention. As you know, and as the recent report issued by Office of the Inspector General (OIG) has revealed, Yucca Mountain activities in the agency and within HLWRS have been the center of much attention. The information suppression and manipulation at the Commission level, as described in the OIG report, permeate the activities of this Division and adversely impact the NRC as an independent licensing organization. However, the OIG report fails to capture the scale of the threat posed by political influence over our staff and our mission.

From my vantage point, the NRC senior leadership contributes to the problem by suppressing information that needs to reach the full Commission as statutorily required. In my view, it is not acceptable for senior managers to use "The Chairman's office made me do it" as an excuse for not keeping the Commission fully and currently informed. It is also unacceptable for senior managers to further propagate the manipulation and suppression of information down to the Division and staff level.

While the OIG documented misleading information and intimidation, it did not document the complementary issue, which has been a pattern of rewarding senior managers for supporting and contributing to politicized decisions. In this Division alone, I have witnessed the suppression and manipulation of programmatic and budgetary information to meet a politicized agenda, depriving the full Commission of the broad range of information, including programmatic options, needed by the Commission to fully discharge its responsibilities.

I ask the Commission to intervene to redirect this Agency to perform its mission instead of advancing political agendas.

Recommendations for Intervention

- 1) Provide immediate oversight of Yucca Mountain activities by performing the following:
 - a. Determine the appropriateness of issuing the Postclosure Technical Evaluation Report (see enclosure).

- b. Authorize the use of prior year Nuclear Waste Fund carryover (about \$6M and 3-4 FTEs) in FY 2012 to complete, in a timely manner, the remaining orderly closure activities and depriving some senior managers to run out the clock. That is, of course, if the full Commission agrees to close down the program.
 - c. Direct the staff to brief the Commissioners or the Commissioners' Technical Assistants periodically on the status of our activities, with the exception of legal proceedings.
- 2) Create a new position and appoint a senior manager to ensure that the Commission is fully and currently informed on all matters that the staff believes have a policy implication. This trusted and respected senior manager should not report to any of the current Offices that report to the Chairman alone. This senior manager could also serve as the Agency ombudsman with the requisite level of objectivity, erring on the side of informing the full Commission.

It is unfortunate that it has come to this. I reach out to you because of the current unhealthy environment and the sense of vulnerability that is being felt by some of the senior managers. While colleagues caution me of potential retribution in this chilled environment, I find myself in a difficult position as the last barrier to a total failure of the organization, and I have no choice but to bring this information and request to the Commission.

Enclosure:
As stated

CC: Bill Borchardt
Mike Weber
Cathy Haney
Lawrence Kokajko
SECY

ENCLOSURE

MEMORANDUM TO: The Commission

FROM: Aby Mohseni, Acting Director
Division of High Level Waste Repository Safety
Office of Nuclear Materials Safety and Safeguards

SUBJECT: REQUEST PUBLIC RELEASE OF THE TECHNICAL
EVALUATION REPORT – POSTCLOSURE VOLUME

The purpose of this memorandum is to fully and currently inform you of the direction that my Division has received on June 6, 2011, with respect to issuance of the Technical Evaluation Report (TER) on the Content of the U.S. Department of Energy's Yucca Mountain Repository License Application; Postclosure Volume: Repository Safety After Permanent Closure.

On June 6, I was informed that additional redactions would be needed to release the TER. I respectfully disagreed with the decision not to release the TER, as written and approved, for publication and public distribution. I also disagreed with the need to revise the TER. Attached is my e-mail fully explaining my basis for challenging this policy decision.

As the final signature authority, I signed the completed Postclosure TER on or about March 31st, in accordance with our process, and OGC has provided their "no legal objection." The TER is part of knowledge capture activities that NRC staff has developed to document their review of technical information supplied by DOE. It does not contain regulatory compliance findings, license conditions or commitments. Issuance of this report represents a concerted effort to manage and preserve the scientific and engineering knowledge and experience gained by the staff in the more than 30 years spent preparing for, and conducting its review.

I believe the availability of the TER to the public is beneficial, as it will enhance NRC's credibility with respect to openness and transparency. Barring or delaying the release of this technical assessment amounts to further suppression of information and its timely use by interested stakeholders include the Congress, Blue Ribbon Commission, EPA, DOE, industry, and our international counterparts. Its release has already been delayed over two months. It should be made publicly available immediately.

I have attempted unsuccessfully to resolve this policy matter at the staff level, by meeting with Cathy Haney on June 7th, Mike Weber on June 13th, Bill Borchardt on June 14th, and subsequently with Cathy Haney, Mike Weber, and Bill Borchardt on June 17th. Today, Mike Weber offered a path forward which would entail 'some fairly modest revisions to the abstract, executive summary, and conclusions'. He further indicated that Cathy would provide those changes. Cathy plans to discuss those points to me tomorrow, June 21. Since the changes would affect staff conclusions, I am not hopeful this path will reach a constructive conclusion. Therefore, I request the Commission's permission to publish the TER as soon as possible.

From: Mohseni, Aby
Sent: Tuesday, June 07, 2011 6:21 PM
To: Haney, Catherine
Cc: Itzkowitz, Marvin; Young, Mitzi; Kokajko, Lawrence; Davis, Jack; Weber, Michael; Borchardt, Bill
Subject: RE: TER Volume 3

Cathy,

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Aby

From: Haney, Catherine
Sent: Monday, June 06, 2011 4:13 PM
To: Mohseni, Aby
Cc: Itzkowitz, Marvin; Young, Mitzi; Kokajko, Lawrence; Davis, Jack; Weber, Michael; Borchardt, Bill
Subject: TER Volume 3

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removed. In its current form, the draft Postclosure **SER** (Volume 3) and the **TER** Postclosure Volume are too similar. Findings against the Yucca Mountain Review Plan (YMRP) and a regulatory finding are virtually indistinguishable to stakeholders. I believe this to be especially true in light of the Commission's review and approval of the publication of the YMRP in 2002. To issue the TER for public distribution, as currently written, in my opinion would be inconsistent with my affidavit to the Licensing Board signed March 3, 2011 and Agency (Darren Ash and mine) statements related to the Heritage Foundation's FOIA request for an unredacted version of SER Volume 3. TER content should be consistent with the overall objective of the TER, which is to preserve the knowledge gained in preparation for and during the review of the Yucca Mountain license application, including the status of the review at the time of termination in early October 2010, independent review work completed, open issues at the time of termination, and plans for completing the review if it had continued. Much of the content of the TER remains the same, but it needs to be refocused consistent with the TER's objective.

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Cathy