

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION  
ATOMIC SAFETY AND LICENSING BOARD  
Before Administrative Judges:  
Judge Thomas S. Moore, Chairman  
Judge Paul S. Ryerson  
Judge Richard E. Wardwell  
CASE MANAGEMENT CONFERENCE

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In the Matter of  
U.S. DEPARTMENT OF ENERGY

Docket No. 63-001-HLW

ASLBP No.  
09-892-HLW-CABO4

(High Level Waste Repository)

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June 4, 2010

***INTERIM DRAFT COPY***

1 APPEARANCES:

2 Department of Energy  
By: Michael Shebelskie, ESQ  
3 Ed Noonan, ESQ

4 State of Nevada

5 By: Martin G. Malsch, Esq.  
John Lawrence, Esq.  
6 Charles Fitzpatrick, Esq.

7 CLARK COUNTY  
By: Alan Robbins, Esq.  
8 Debra Roby, Esq.

9

10 NEI  
By: Michael A. Bauser, Esq.  
11 Rod McCullum, Esq.

12 Four Counties and White Pine County  
By:  
13 Richard Sears, Esq.

14 Nye County  
By: Jeff VanNiel  
15 Robert Anderson

16 NRC Staff  
By: Jessica Bielecki, Esq --  
17 Andrea Silvia, Esq.

18 NCAC  
By: Dan Martin, ESQ.

19 California  
20 By: Brian Hembacher, Esq.

21 Washington  
By: Andrew A. Fitz, Esq.  
22 Lee Overton, Esq.

23 South Carolina  
By: Kenneth P. Woodington, Esq.  
24

25 PIIC  
By: Don L. Keskey, Esq.

1 Phillip Mahowald, Esq --

2 APPEARANCES (Continued)

3 Aiken County  
4 By: Tom Gottshall, Esq.  
5 Ross Shealy, Esq.

6 Inyo County  
7 By: James Berger, Esq.

8 Joint Timbisha Shoshone Tribal Group  
9 By: Steven Heinzon, Esq.

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## P R O C E E D I N G S

1  
2 >>JUDGE MOORE: Please be seated. Good  
3 morning, I'm Judge Thomas Moore. On my left is Judge  
4 Richard Wardwell, and on my right is Judge Paul Ryerson.

5 The Construction Authorization Board 04 has  
6 convened this case management conference this morning to  
7 address the Department of Energy's plans for preserving  
8 the DOE licensing support document collection, in the  
9 event that's necessary.

10 And they have previously had two filings  
11 setting forth their plans on February 4th and  
12 February 19th. We'll also be addressing today, DOE's  
13 May 24th answers to a long series of questions that were  
14 attached to a Board order of April 21st, as well as the  
15 Staff's May 24th filing, and any party comments on DOE's  
16 previous filings will all be the subject of this  
17 morning's conference.

18 And the conference this morning is, again,  
19 being reported on the DDMS and broadcast on the agency's  
20 broadcast network, as well as being web-streamed on the  
21 site's put in our April 18th order.

22 And because we have several parties this  
23 morning that are participating by telephone conference,  
24 we'll have to follow some special procedures so that the  
25 court reporter can create an accurate record.

*INTERIM DRAFT COPY*

1           I would ask all counsel, when they speak, to  
2 first identify themselves and the party they represent so  
3 that those that are on the telephone conference will be  
4 able to follow the proceeding.

5           Also, I would remind all counsel in the well  
6 that when you speak, you must push the button on the  
7 microphone and it then becomes live, and when you're  
8 finished speaking, to push it again so that it is then  
9 muted and it will not interfere with the proceeding.

10           We -- I guess the good place to start this  
11 morning would be to have all counsel identify themselves  
12 for the record, starting with those in the well, and then  
13 we'll do the same thing for those that are on the  
14 telephone conference. And, please, first state your  
15 name, your affiliation, and who you represent.

16           We'll start with DOE.

17           >>MR. SHEBELSKIE: Good morning, Judge Moore,  
18 panel. Michael Shebelskie, Hunt & Williams, counsel for  
19 the Department of Energy.

20           >>MR. NOONAN: Good morning, Ed Noonan, Hunt  
21 and Williams, for the Department of Energy.

22           >>MR. FITZPATRICK: Charles Fitzpatrick,  
23 State of Nevada.

24           >>MR. LAWRENCE: John Lawrence, State of  
25 Nevada.

1 >>MR. MALSCH: Marty Malsch, also State of  
2 Nevada.

3 >>MS. SILVIA: Andrea Silvia, NRC Staff.

4 >>MS. BIELECKI: Jessica Bielecki, NRC staff.

5 >>MR. HEMBACHER: Brian Hembacher, State of  
6 California.

7 >>MR. BELL: Kevin Bell, State of California.

8 >>MR. JAMES: Greg James, County of Inyo.

9 >>MR. BERGER: Michael Berger, County of  
10 Inyo.

11 >>MS. ROBY: Debra Roby, Clark County.

12 >>MR. ROBBINS: Alan Robbins, Clark County.

13 >>MR. McCULLUM: Rob McCullum, Nuclear Energy  
14 Institute.

15 >>MR. BAUSER: Mike Bauser, counsel for  
16 Nuclear Energy Institute.

17 >>MS. GORES: Jennifer Gores with Armstrong  
18 Teasdale on behalf of the Four Nevada Counties.

19 >>MR. SEARS: Rich Sears, White Pine County.

20 >>MR. VanNIEL: Jeff VanNiel on behalf of Nye  
21 County, Ackerman, Senterfitt on behalf of Nye County.

22 >>MR. GOTTSHALL: Tom Gottshall for Aiken  
23 County, South Carolina.

24 >>MR. SHEALY: Ross Shealy for Aiken County,  
25 South Carolina.

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1 >>MR. KESKEY: Don Keskey on behalf of the  
2 Prairie Island Indian Community, from the Public Law  
3 Resource Center.

4 >>MR. WOODINGTON: Ken Woodington for  
5 South Carolina.

6 >>MR. OVERTON: Lee Overton, State of  
7 Washington.

8 >>MR. FITZ: Andy Fitz, Washington Attorney  
9 General's Office, State of Washington.

10 >>JUDGE MOORE: Thank you. If all counsel or  
11 other representatives that are participating by telephone  
12 conference would, at this time, identify yourself.

13 >>MR. HEINZEN: Steve Heinzen of Godfrey &  
14 Kahn on behalf of Joint Timbisha Shoshone Tribal Group.

15 >>JUDGE MOORE: Are there any other telephone  
16 participants this morning?

17 We will go ahead and proceed.

18 >>MR. BAUSER: Excuse me, Mr. Chairman, Mike  
19 Bauser, NEI.

20 >>JUDGE MOORE: Yes, Mr. Bauser?

21 >>MR. McCULLUM: If I might, Mr. Chairman, I  
22 would like to follow-up in response to a question you  
23 raised towards the end of yesterday's session concerning  
24 Senate language on the Senate report on the  
25 appropriations concerning suspension of the Nuclear Waste

1 Fund Fee.

2 >>JUDGE MOORE: Before I allow you to do  
3 that, I want to see if any counsel will object, because  
4 the oral argument was precluded yesterday.

5 If nobody has any objection, it might help  
6 the Board's -- since we're under a very tight time  
7 deadline in tracking things down.

8 What is your brief answer, Mr. Bauser?

9 >>MR. BAUSER: I believe, in response to the  
10 Chairman's observation concerning the Senate Report, the  
11 correction is appropriate. The Senate Report did express  
12 the Senate Appropriations Committee expectation that the  
13 Secretary of Energy suspend collection of the payments to  
14 the Waste Fund. And that was the -- that was the total  
15 expression in the Senate Report.

16 >>JUDGE MOORE: With two exceptions; plans  
17 for the preservation of the current parties, LSN  
18 collections were dealt with at that January 27th case  
19 management conference, and then Lincoln County's later  
20 May 14th filing.

21 Before we turn to the Staff and the DOE, LSN  
22 collections, I'd like to briefly address the collections  
23 of the new petitioners.

24 South Carolina?

25 >>MR. GOTTSHALL: Your Honor, I'd like to

1 address \*\* but I can step up, if you'd like. Yes, sir?

2 >>JUDGE MOORE: I would like to preface my  
3 questions of all the petitioners with what should be  
4 obvious. The Board has -- is wrestling with the problem  
5 you presented us with yesterday.

6 In the event that it's necessary is the way  
7 these questions -- is the premise to all these questions.  
8 So assume nothing; we're just trying to do housekeeping,  
9 in the event it needs to be done.

10 Previously, counsel, all the other  
11 petitioners -- I'm sorry, interveners, agreed to these  
12 conditions.

13 If your intervention petition is granted,  
14 will South Carolina commit to storing its LSN document  
15 collection text and header materials on a CD?

16 >>MR. GOTTSBALL: Yes, Your Honor. I  
17 apologize for my attire here this morning, because I  
18 didn't think I had any speaking role. But, yes, no  
19 problem with committing to that.

20 >>JUDGE MOORE: Will South Carolina commit to  
21 providing the LSN network administrator a CD copy of its  
22 LSN document collection?

23 >>MR. GOTTSBALL: Yes, sir.

24 >>JUDGE MOORE: And would South Carolina  
25 object to language, in an order directing it to provide

1 its LSN document collection to the licensing support  
2 network administrator in the event -- in the data format  
3 as mutually agreed upon by South Carolina and the  
4 Licensing Support network administrator.

5 >>MR. GOTTSHALL: As I understand the  
6 question we do not object to that.

7 >>JUDGE MOORE: Has Nye County joined us on  
8 the telephone link?

9 All right. Aiken county?

10 >>MR. SHEALY: Yes, Your Honor.

11 >>JUDGE MOORE: If your intervention petition  
12 is granted, will Aiken County commit to storing its LSN  
13 document collection and header and text material on a CD.

14

15 >>MR. SHEALY: Yes, Your Honor.

16 >>JUDGE MOORE: Will Aiken County commit to  
17 providing the Licensing Support Network Administrator a  
18 CD copy of its LSN document collection on the CD?

19 >>MR. SHEALY: Yes, Your Honor.

20 >>JUDGE MOORE: And would Aiken County object  
21 to language in an order directing it to provide the LSN  
22 document collection to the LSNA in the data format as  
23 mutually agreed upon by Aiken County and the LSNA.

24 >>MR. SHEALY: No, Your Honor, Aiken county  
25 would not object.

1 >>JUDGE MOORE: Thank you.

2 The State of Washington, instead of me  
3 running through it, you've now heard the questions twice,  
4 and you may well have read them from the record of the  
5 previous May 27th conference.

6 Will Aiken County -- I'm sorry. Will  
7 Washington agree to those same -- make the commitment to  
8 those same three questions that I just asked?

9 >>MR. FITZ: Yes, we can commit to all three  
10 questions.

11 >>JUDGE MOORE: And Prairie Island Indian  
12 Community?

13 >>MR. KESKEY: Yes, Your Honor, we will  
14 commit to all three of those conditions.

15 >>JUDGE MOORE: And finally NARC -- NARUC?  
16 They're not here? I'm sorry. I thought they were here  
17 this morning.

18 Before tackling the answers to our questions  
19 to DOE's answers to our questions, I have a couple of  
20 questions for the Staff. At the January 27th case  
21 management conference, the Staff informed us that there  
22 would be a two-month slippage in the SER schedule for  
23 Volumes 1 and III until November of this year.

24 In that regard, I'd like an update on where  
25 the Staff's SER process on Volumes 1 and III stands at

1 this point. In particular, is Volume 1 already  
2 completely drafted?

3 >>MS. BIELECKI: Your Honor, Jessica Bielecki  
4 for the NRC Staff. The schedule for Volume III has not  
5 changed. Volume 1 is in final review and concurrence.

6 >>JUDGE MOORE: I'm sorry. I can't -- slight  
7 hearing problem, I can't --

8 >>MS. BIELECKI: No problem. Is this better?

9 >>JUDGE MOORE: Yes.

10 >>MS. BIELECKI: Volume 1 -- as I said  
11 Volume III, the schedule has not changed, Volume 1 is  
12 currently in final review and concurrence.

13 >>JUDGE MOORE: How long will that process  
14 take?

15 >>MS. BIELECKI: It's hard to pick an exact  
16 date, but it would be on or before the August 2010  
17 deadline that we provided earlier.

18 >>JUDGE MOORE: Switching to Volume III, is  
19 Volume III already completely drafted?

20 >>MS. BIELECKI: I don't believe so,  
21 Your Honor. That would be also on or before August 2010.

22 >>JUDGE MOORE: No, I understand that, but  
23 what percentage of it at this point is drafted?

24 >>MS. BIELECKI: I'm not aware of the  
25 percentage, Your Honor.

1 >>JUDGE MOORE: Is it -- it's not awaiting  
2 final sign-off and concurrence by the director of NMSS  
3 and other appropriate officials that --

4 >>MS. BIELECKI: Not that I'm aware of, no.

5 >>JUDGE MOORE: But you still are planning to  
6 issue it in November?

7 >>MS. BIELECKI: On or before November; yes,  
8 Your Honor.

9 >>JUDGE MOORE: Is that a hell or high water  
10 commitment, or no?

11 >>MS. BIELECKI: We'll do our best. If the  
12 schedule changes, we'll inform the Board.

13 >>JUDGE MOORE: Let's turn to DOE's answers  
14 to our questions.

15 A. Well, I guess, let's turn to the Staff's  
16 answers to our questions first.

17 In your answer to our Question 1.5, the  
18 question was whether you had plans to seek a permanent  
19 designation for those records, and you said that you --  
20 the Staff was considering its options.

21 Two questions: Is one of those options  
22 whether to seek a permanent record des -- a record  
23 designation as permanent?

24 >>MS. BIELECKI: Yes, that is one of the  
25 options, Your Honor. The Staff --

1 >>JUDGE MOORE: And since you filed this on  
2 May 24th, has that option been further fleshed out?

3 >>MS. BIELECKI: No, Your Honor --

4 >>JUDGE MOORE: Okay.

5 >>MS. BIELECKI: The Staff has not completed  
6 it.

7 >>JUDGE MOORE: Thank you.

8 Mr. Shebelskie, once again we return.

9 >>>JUDGE WARDWELL: I have some questions  
10 for the Staff?

11 >>JUDGE MOORE: Oh, for the staff?

12 >>JUDGE WARDWELL: Yes.

13 >>JUDGE MOORE: Go ahead.

14 >>>JUDGE WARDWELL: In the affidavit of  
15 Ms. Janni (phn), Item No. 5 says "An approved disposition  
16 exists for the docket files for the disposal of  
17 high-level radioactive waste in the geologic  
18 repositories as permanent records in the NRC  
19 comprehensive records Disposition Schedule New Reg 0901.

20 Are these documents searchable and  
21 retrievable?

22 >>MS. BIELECKI: These are the documents that  
23 are in ADAMS. It specifies case files, and this includes  
24 the licensed application site characterization,  
25 environmental report, license amendments and all other

1 related documents that are currently in ADAMS.

2 But I would note that this is limited to  
3 these -- the schedule cannot be implemented until ten  
4 years after exploration or termination of a license,  
5 which is why in the affidavit Ms. Janni went on to  
6 explain that there is not a current schedule in the event  
7 the application is withdrawn.

8 >>>>JUDGE WARDWELL: But are these searchable  
9 and retrievable through ADAMS?

10 >>MS. BIELECKI: Through ADAMS.

11 >>>>JUDGE WARDWELL: Yes, they are.

12 Are you familiar with -- is it NARA or NARA?

13 >>MS. BIELECKI: I pronounce it NARA. I'm  
14 not sure if that's --

15 >>>>JUDGE WARDWELL: That's the most  
16 important question I'll probably ask today.

17 >>MS. BIELECKI: I'll defer.

18 >>>>JUDGE WARDWELL: I'll probably ask it  
19 both ways, so that will give everybody liberty to say it  
20 whichever way they want to.

21 But, anyhow, what is -- and if you're not  
22 familiar, that's fine, but I was curious on what would  
23 any other person do for any other collection that's under  
24 the auspices of NARA? How would they determine whether a  
25 document is of interest to them and then how would they

1 be able to retrieve it?

2 Do you have any idea of how that system works  
3 for any other agency, not necessarily us?

4 >>MS. BIELECKI: No, Your Honor.

5 >>>JUDGE WARDWELL: Okay. Thank you. I  
6 don't either. That's all I have for Staff.

7 >>JUDGE MOORE: Now, Mr. Shebelskie. Once  
8 again, all of this on the LSN started in June of 2004, if  
9 I remember correctly.

10 >>MR. SHEBELSKIE: Your observation,  
11 Your Honor, de jevu all over again, it flies again today.

12 >>JUDGE MOORE: In Mr. Malsch's response to  
13 your comments, or Nevada's responses to your comments, he  
14 indicated that Nevada had had conversations with you, and  
15 that was informing matters in his comments.

16 Your answers to our questions, I believe left  
17 unclear whether the PDF documents that would be created  
18 for each document file under your preservation plans, one  
19 was PDF, but was that PDF in searchable form?

20 >>MR. SHEBELSKIE: Yes, Your Honor, and that  
21 was a question that counsel for Nevada and I conferred  
22 about after they submitted their filing to clarify, and  
23 we -- I explained the situation to them and, obviously,  
24 they couldn't speak to this, but Mr. Fitzpatrick  
25 indicated to me that what we were planning to do was

1 acceptable to the State of Nevada.

2 The answer is what we outlined in our  
3 proposal would be that the PDF images, the compiled PDF  
4 images that are created and stored by Legacy Management  
5 themselves would not be in a searchable PDF format.

6 Those PDFs would be created through that  
7 Get-Fetch document program that we have. As I  
8 understand, it does not have OCR text as a component of  
9 the PDF file.

10 We are, however, separately maintaining, in a  
11 combined directory structure with the PDFs, our existing  
12 text files that have the OCR optical character  
13 recognition searchability.

14 The reason we were doing that, Your Honor,  
15 was because our OCR text files that we created for the  
16 LSN document collection actually have a superior quality  
17 and searchability standards than what are generated  
18 through a standard PDF creation of a document.

19 So we had a higher fidelity OCR text file  
20 that we can maintain along with the PDF image that we  
21 will create. And what the State of Nevada was -- wanted  
22 to verify was that if they, for example, wanted to have a  
23 particular document searched for or have a search terms  
24 done for a group of documents, would that function  
25 continue to exist?

1           And the answer is yes. We, through Legacy  
2 Management, be able to conduct through a search index,  
3 word searches or search for a particular document by LSN  
4 session number, using our OCR text files, identify the  
5 document, and then produce, in electronic form, the  
6 corresponding PDF image that we created.

7           >>JUDGE MOORE: And that will all be in  
8 Morgantown, for purposes of my present question, the  
9 indefinite future?

10          >>MR. SHEBELSKIE: Following -- yes,  
11 following, though, the final termination of this  
12 proceeding. As long as --

13          >>JUDGE MOORE: No, I understand that. Once  
14 you go to Morgantown, so to speak.

15          >>MR. SHEBELSKIE: Yes, sir, with one  
16 possible exception. Our plan is to recommend to NARA  
17 that the LSN collection be retained for 100 years, and  
18 that would be maintained -- that would be a temporary  
19 record under Noversbe (phn), and that would be maintained  
20 at the Morgantown facility.

21           And I can't tell you what will happen 95  
22 years out from now, but I'm told there's no reason to  
23 think that location will change.

24          >>JUDGE MOORE: I hope you and I are not here  
25 in 3005 to have this discussion, Mr. Shebelskie. 3005.

1           Can you put in lay terms, before my technical  
2 colleagues -- perhaps before -- so that I freely admit  
3 the technological dinosaur that I am, fossilizes in front  
4 of you, I will have judge Wardwell ask these questions,  
5 so that they might be more precise.

6           >>>>JUDGE WARDWELL: Thank you for that  
7 compliment. I'm not sure they'll be any more precise at  
8 all. They may be more confusing, but I had a series of  
9 them that were organized in the same format that you  
10 answered, and I thought by incrementally progressing  
11 along the whole system, when that's a question that's  
12 down the pike, in my iteration of it, and I think  
13 everyone might understand better how it works now and  
14 then can relate our questions to is that the same or is  
15 it different in the future. And that's the only reason I  
16 counseled with him and suggested we just move along in  
17 the order that we had before.

18           So turning right to your submittal, which  
19 in -- of May 24th, which was extremely helpful. I mean,  
20 it was -- it really clarified lots of points, but I do  
21 have some further questions in my mind. And then, I  
22 think as part of this, we will even go through an LSN  
23 search just -- and you have in your response. And so  
24 we're going to do it here also, because it helps everyone  
25 understand how it works now, and then can better

1 interpret how it works in the future and see what is  
2 really needed for Yucca, if it differs for any other  
3 site, so that we are well aware of what we're dealing  
4 with here.

5 A general one, before we begin your first  
6 question, which really hasn't been touched upon. And I  
7 was curious on how physical materials, for instance, rock  
8 core, or something like that, is going to be preserved  
9 and archived?

10 >>MR. SHEBELSKIE: Yes, sir. Physical items,  
11 whether they be rock cores or the like, that qualify as  
12 documentary material are represented in the LSN by  
13 bibliographic header. So there'll be an XML file, a  
14 bibliographic header for Rock Sample X. Obviously, the  
15 rock sample can't physically be produced in imageable  
16 format in the LSN. So currently what happens if someone  
17 is doing a search and sees they that, they have to  
18 contact the LSN point of contact and make arrangements to  
19 come inspect the rock sample, which is stored at  
20 facilities here in the Las Vegas, basically.

21 Our disposition plan for the LSN collection,  
22 the SS-115 that we are preparing will include as part of  
23 that -- well, in conjunction with our archiving plan, we  
24 recognize that we would need to preserve the physical  
25 specimens that are represented by the headers in the LSN,

1 and we will retain those samples for the same duration as  
2 the LSN collection has been archived.

3 And so, in the future, if someone wanted  
4 access to those, if they were looking through the Legacy  
5 Management database and saw the header for a physical  
6 rock sample, they could make a request for it and access  
7 would be arranged.

8 >>>JUDGE WARDWELL: If you can remember to  
9 address that when we get to the part of talking about the  
10 Legacy Management and any potential that if NARA  
11 determines these to be permanent collections, how that  
12 might change or not. But don't answer it now, because  
13 we'll get -- again, I'll get confused. That's probably  
14 really why I stopped him, because I, you know, just --

15 >>MR. SHEBELSKIE: I'll take it  
16 incrementally.

17 >>>JUDGE WARDWELL: Just a hard scrabble --  
18 hard scrabble hick from upstate New York, so I need to go  
19 slow on this.

20 The dismantling of the Las Vegas facilities,  
21 how does that effect where this rock core is being  
22 stored? Is that something that isn't being dismantled?  
23 Is that going to be something that's going to be here for  
24 a while, or are there plans to ship any of -- any of the  
25 physical specimens to other locations?

1 >>MR. SHEBELSKIE: Your Honor, I am not  
2 aware -- what I am aware of is the closure arrangements,  
3 in general terms, for the office facilities out here in  
4 Las Vegas. The rock samples and the like, as I  
5 understand them, are in warehouse facilities. And I can  
6 check on a break. I actually don't know what the current  
7 disposition plans for those are. Obviously, they have to  
8 be stored somewhere. So if they're not maintained in the  
9 current location, an alternative storage place will be  
10 obtained for them?

11 >>>JUDGE WARDWELL: And you're committing to  
12 store that so they are retrievable throughout this whole  
13 process and into the archival --

14 >>MR. SHEBELSKIE: Yes, sir.

15 >>JUDGE WARDWELL: -- and beyond.

16 >>MR. SHEBELSKIE: Yes, sir.

17 >>>JUDGE WARDWELL: Thanks.

18 The next one deals with Question 1.3.4. I  
19 got a note from Judge Moore to put the mike in front of  
20 me directly. He's getting even with me for harassing him  
21 yesterday. I'm convinced my mike was in perfect  
22 position, and he's just doing that to harass me.

23 1.3.4 says "Discuss the current physical  
24 location and explain the types of storage media for each  
25 of the LSN components."

1                   And your answer goes on and says "The files  
2 that comprise the LSN are stored on the servers in the  
3 computer room of the DOE Hillshire facility in  
4 Las Vegas."

5                   And I guess now, as any, good time to just  
6 ask what's the status of that? Is that completely  
7 disbanded by now or is it in the process or hasn't it  
8 started or --

9                   >>MR. SHEBELSKIE: It's currently still  
10 there. Plans are in development, as we stated generally  
11 in our filing, that I believe sometime in July those  
12 facilities will be closed. So the transition between --  
13 from public access, will happen between now and certainly  
14 by the end of July, switching over to access to the  
15 facilities in Virginia.

16                   >>>JUDGE WARDWELL: Okay. Further on, at  
17 the very end of that sentence, it says that dealing with  
18 CACI also maintains backup tapes that contain -- you're  
19 talking about the facility in Virginia and you mentioned  
20 that CACI was the operator there, also maintains backup  
21 tapes that contains a complete copy of the LSN at the  
22 Iron Mountain offsite storage facility.

23                   Is that the West Virginia site.

24                   >>MR. SHEBELSKIE: Not the Morgantown site.

25                   >>JUDGE WARDWELL: Okay.

1 >>MR. SHEBELSKIE: \*\* , that's separate from  
2 that.

3 >>JUDGE WARDELL: Where is Iron Mountain?

4 >>MR. SHEBELSKIE: It's in Nevada.

5 >>>JUDGE WARDWELL: Okay.

6 >>MR. SHEBELSKIE: Your Honor, Iron Mountain  
7 is the name of a contractor, as opposed to a physical  
8 site.

9 >>>JUDGE WARDWELL: Oh, okay. Silly me.  
10 Iron Mountain offsite storage facility; I should have  
11 known. Thank you.

12 And CACI is C-A-C-I; is that correct?

13 >>MR. SHEBELSKIE: That's correct.

14 >>>JUDGE WARDWELL: That was for our court  
15 reporter. It's not the color of pants I'll surely put on  
16 this afternoon, if we get through this.

17 On Question 1.4.1 I asked what was the  
18 percentage of paper documents. 1.4 deals with native  
19 documents that were used to form DOE's collection. And  
20 the first one was what percentage are paper documents,  
21 and the answer was 19 percent. I just want to clarify to  
22 make sure I understand that correctly.

23 All of your, what is considered the native  
24 documents are electronic; you have no hard copies. Is  
25 that a fair assessment?

1 >>MR. SHEBELSKIE: CACI has a very small  
2 percentage of paper documents that we collected that they  
3 have kept, as opposed to returning to the provider of the  
4 documents.

5 So we do have electronic copies of 100  
6 percent of the documents in our LSN collection, of the  
7 paper documents. We retained the originals of a very  
8 small percentage.

9 >>>JUDGE WARDWELL: And this 19 percent  
10 refers to the percentage of the total collection that was  
11 part of this paper sweep that you went through and  
12 were -- or other original paper documents that were then  
13 converted to electronic and are now basically stored  
14 electronically?

15 >>MR. SHEBELSKIE: I'm not sure that's quite  
16 right, Your Honor. What the 19 percent represents is  
17 that of all the documents in our LSN collection, as it  
18 currently exists, 19 percent of them, in their native  
19 format in which we collected them, were in paper. And as  
20 I said --

21 >>>JUDGE WARDWELL: And that's the same  
22 thing for the 81 percent dealing with the RIS e-mail  
23 electronic files; is that correct?

24 >>MR. SHEBELSKIE: Yes. All of those  
25 documents we collected and maintained in electronic

1 format, as their native format.

2 >>JUDGE MOORE: And, in general, your  
3 intentions were to -- and your, not only intentions, what  
4 you actually did was to return the vast majority of any  
5 paper documents you did have to their original owner and  
6 are only keeping electronic copies as --

7 >>MR. SHEBELSKIE: Correct.

8 >>>JUDGE WARDWELL: -- being now native, if  
9 you will, using the old speak that we had.

10 >>MR. SHEBELSKIE: Correct.

11 >>>JUDGE WARDWELL: In Question 1.4.4, I  
12 queried whether there were any backups to the paper  
13 documents, and you said, yes, that in addition to the  
14 copy LSN maintains, a copy of the LSN document collection  
15 is maintained at the COPS facility, with CACI maintaining  
16 electronic copy of the paper documents included in the  
17 LSN.

18 So all these backups are in electronic  
19 format; is that correct?

20 >>MR. SHEBELSKIE: Yes, sir.

21 >>>JUDGE WARDWELL: And I think you also  
22 stated that while the motion to withdraw process  
23 continues onwards until there's a non-appealable  
24 decision, this backup will be maintained in a searchable,  
25 retrievable format.

1 >>MR. SHEBELSKIE: Correct. They will be  
2 maintained without alteration of their current format;  
3 yes, sir.

4 >>>JUDGE WARDWELL: Onto 1.5, talking about  
5 the databases and the data within those databases. 1.5.1  
6 lists a variety of databases. And in response to that,  
7 you responded that six of these databases remain  
8 currently active, and upon termination of the program,  
9 they'll be preserved in compliance with the requirements  
10 of the Federal Records Act and DOE regulations.

11 And I assume that these six databases are  
12 considered to be documentary material and can be  
13 retrieved at any point; is that correct?

14 >>MR. SHEBELSKIE: Yes and no, Your Honor.  
15 To the extent the information in any of these databases  
16 or earlier databases, as we were populating the LSN,  
17 qualified as documentary material, that information from  
18 the database was captured and copied and added to our LSN  
19 collection.

20 So, in that sense, the data in the LSN that  
21 qualifies as documentary material is redundant of what's  
22 in the database. And so the database itself, however,  
23 might have additional information that may or may not  
24 qualify as documentary material for some reason.

25 I'm not saying necessarily that's the case

1 for any of these six remaining databases, but it's --  
2 what we did, as we populated the LSN, is we made an  
3 individual investigation of each database, made an  
4 assessment of whether it's content qualified as  
5 documentary material. If it's entire content did, we  
6 replicated and made available through the LSN the entire  
7 contents of the database. If only part of the contents  
8 of the database qualified as documentary material, that  
9 portion of it became available in the LSN.

10 The -- so the databases do exist separate and  
11 distinct from our LSN collection in that sense, but  
12 they're overlapping, obviously.

13 Upon the termination -- well, each of these  
14 databases is subject to the Federal Records Act and  
15 existing DOE orders that require preservation of the  
16 databases for a period of 25 years following termination  
17 of the project. So these databases will be maintained,  
18 according to that requirement, separate and distinct from  
19 our LSN collection, which we're proposing to save for 100  
20 years.

21 I hope that clarifies or helps answer your  
22 question, Your Honor.

23 >>>JUDGE WARDWELL: Yeah, I think it does,  
24 but let me explore it this way then:

25 Can you elaborate on why the data and all the

1 data in these databases is not considered raw data under  
2 the meaning of 2.1018 (a)(1) (ii) and 1018 (a)(1) (iii)  
3 and 1020(a)?

4 >>MR. SHEBELSKIE: As I stated, Your Honor, I  
5 wasn't -- my comments were general in nature about the  
6 way we approach databases, and does not necessarily  
7 reflect the situation with these six specific databases.

8 It may well be, upon investigation, that all  
9 data in the entirety of these six databases are, in fact,  
10 replicated and included in the LSN. I can give you an  
11 example of something that might be in a database that  
12 wouldn't be transposed, necessarily, over to the LSN.

13 You might have a data set, the results, say,  
14 of a chemical analysis or something. That, obviously,  
15 would be captured from the database and put in the LSN.  
16 There might be associated, however, with data set, in our  
17 database, some administrative information that might just  
18 record when it was looked at by somebody or requested by  
19 somebody and checked out.

20 Some housekeeping information like that or  
21 the like, which would not necessarily be transposed and  
22 carried over to the LSN. That's just off the top of my  
23 head distinction of what might exist.

24 But, again, any data, I think, in the sense  
25 you're using it, be from experiments, test data,

1 analytical data and the like, that's in these databases  
2 were transposed copied and included in our LSN  
3 collection.

4 >>>JUDGE WARDWELL: How is that capturing  
5 taking place in the LSN again? How do you capture that  
6 data? And how do you -- how was the discrimination made  
7 between data that should go in and data that isn't? For  
8 instance, it might be very critical to know when a person  
9 happened to look at a set of data --

10 >>MR. SHEBELSKIE: Well, generally speaking,  
11 Your Honor, our projects have record procedures that  
12 require preservation of data information and recordation  
13 through our Records Processing Center, and we have a  
14 system of \*\* LATTFs in the technical data forms and then  
15 that information gets put into the Records Processing  
16 Center.

17 That was one way that we could identify if it  
18 was subject to processing and capture through our Records  
19 Processing Center, that data was collected across the  
20 Board, and then, additionally, we did an investigation  
21 into each database separately, just to see if there was  
22 anything else that was not being captured by project  
23 records that needed to be added.

24 I will assure you, we erred on the side of  
25 over-inclusion, and so we felt very comfortable that any

1 information in these databases could arguably qualify as  
2 documentary material was represented in the LSN.

3 And through the course of, obviously, a very  
4 contentious proceeding, where our LSN compliance was  
5 heavily scrutinized by Nevada and others, nobody ever  
6 questioned that.

7 >>>JUDGE WARDWELL: Okay. And those  
8 comments are limited strictly to the six databases that  
9 you presented under this question for 151.

10 >>MR. SHEBELSKIE: Well, actually, no,  
11 Your Honor, those comments I described apply to all of  
12 our databases. The six that we listed are the only  
13 one -- databases that are still active and available.

14 For example, here's what happened: The last  
15 database in the question of 1.5.1, the viability  
16 assessment database, that was a database that was  
17 established several years ago.

18 >>>JUDGE WARDWELL: I'm sorry, what database  
19 are you referring to?

20 >>MR. SHEBELSKIE: The Viability Assessment  
21 Database. It's the last one listed in the question. Not  
22 the answer, Your Honor.

23 >>>JUDGE WARDWELL: Oh, I'm sorry. Oh,  
24 gotcha, yes. There you are, yes.

25 >>MR. SHEBELSKIE: The Viability Assessment

1 Database.

2 >>>JUDGE WARDWELL: Yes.

3 >>MR. SHEBELSKIE: That database was created  
4 and used several years ago as part of the Department of  
5 Energy's initial viability assessment. And so, that was  
6 created and maintained for that process, then we moved to  
7 site characterization, then we moved to LA preparation,  
8 and the Viability Assessment Database no longer needed to  
9 exist at some point in time.

10 And when that happened, the data in that was  
11 transferred over into a later database, ultimately  
12 rolling up into this TDMS database structure that we  
13 have.

14 So, at various points in time, as the  
15 databases ceased to have functional needs for the  
16 program, the data was captured, preserved and transferred  
17 and incorporated into another database. That's why, for  
18 example, the Viability Assessment Database no longer  
19 exists.

20 When we were populating the LSN, going back  
21 starting several years ago now, started collecting  
22 database documents -- document -- information from  
23 databases that existed at that time, so we would have  
24 captured some of these databases, because they existed  
25 back in '04, for example, before the database was

1 discontinued and it rolled up into something else.

2 >>>JUDGE WARDWELL: So I'm an engineer 20  
3 years from now, working on another option for high level  
4 waste, and I happen to be looking over an old document I  
5 happen to have from 2004, and it references some  
6 information that's in this Viability Assessment Database.  
7 I say, boy, I'd like to see what that is. Would I  
8 eventually get pointed to the roll-up of where that is?

9 >>MR. SHEBELSKIE: Your Honor, yes. I  
10 believe the answer is the data set you're referring to is  
11 going to have a data tracking number associated with it,  
12 and that number survives.

13 >>>JUDGE WARDWELL: It will point you to  
14 where it gets -- so I could eventually follow the path to  
15 look at that -- .

16 >>MR. SHEBELSKIE: Yes, sir.

17 >>JUDGE WARDWELL: -- information.

18 That may answer a lot -- some of the  
19 questions I had in regards to other data -- many of the  
20 other databases. And so I'll ask in regards to a  
21 document entitled Concept of Operations for the yucca  
22 Mountain Project Technical Management System, July of  
23 '07, that was prepared by SANDIA, I believe.

24 Yes, it is. At least all their e-mail  
25 addresses are SANDIA, so I assume -- if it's not by

1 SANDIA, they have an office there in SANDIA, because they  
2 have an e-mail address SANDIA, so I assume it's prepared  
3 by them.

4 So it was a general review of document  
5 handling process that was done as part of your normal  
6 operations, I gather. But what's of interest is a couple  
7 of statements that are made in there. And one of them's  
8 on page XII, in the executive summary.

9 The top paragraph -- and I'll just read it  
10 out. It just says "The Technical Data Management System  
11 interfaces with at least seven under -- other  
12 applications to support the input of technical data by  
13 the authors, the creation and input of Metadata and the  
14 indexing information associated with the technical data  
15 and the search and access to the information by  
16 authorized users. And these are seven other databases  
17 beyond the six that you've talked about.

18 And then on XIII, recommendations for moving  
19 forward. This report says "We recommend that the current  
20 Technical Management Data System be replaced, and its  
21 replacement system must automatically track data items  
22 through the system from end to end, conclusions developed  
23 and published for the licensing system must be able to  
24 automatically verify how data was developed throughout  
25 the analysis and modeling process. And referential

1 integrity must be maintained by the database system to  
2 ensure consistency of the accuracy of the data.

3 That implied to me that there were seven  
4 other databases, at a minimum, beyond the six, that  
5 should be captured and maintained. If this -- you know,  
6 not that you have to adopt these recommendations, but  
7 certainly it says that's documentary material, seems to  
8 me, and would qualify under 1018 and 1020 of Chapter 2.

9 Do you have any idea of whether or not those  
10 seven databases are captured? And I don't know what they  
11 are, I haven't -- I didn't happen to capture them because  
12 I was -- didn't have enough time, if you want to know the  
13 truth, to explore it any further. And I was hoping you  
14 would say, yes, you would know, or if you didn't know,  
15 then you could get back to me and I wouldn't have to do  
16 the work.

17 >>MR. SHEBELSKIE: All right. The specific  
18 document you're referencing, I can't remember, but I  
19 think I can answer the question this way --

20 >>>JUDGE WARDWELL: If you want to know what  
21 it is, just -- I'll put it on the record, so if you want  
22 to refer back to it for whatever reason.

23 >>MR. SHEBELSKIE: Please.

24 >>>JUDGE WARDWELL: It is -- the number I  
25 have is DEN001592148.

1 >>MR. SHEBELSKIE: And the date of that,  
2 Your Honor?

3 >>>JUDGE WARDWELL: It is July of '07.

4 >>MR. SHEBELSKIE: All right. Your Honor,  
5 let me make a comment regarding that. Particularly in  
6 SANDIA became, in essence, the lead lab for the project.  
7 We worked very closely with SANDIA to trace back through  
8 the technical databases that we had, the technical data  
9 of management system, to make sure that all the data sets  
10 in the then extant technical data management systems were  
11 reflected in the Record Processing Center and  
12 correspondingly represented in the LSN.

13 So I can't, from memory, recall that document  
14 and the specific databases they're talking about, but I  
15 know we went through what was a multiple-year process of  
16 internally conducting, in essence, a review, maybe one  
17 could characterize it even as audit, to trace down and do  
18 a verification that data that is in the databases and  
19 referenced in our technical scientific reports,  
20 et cetera, were captured in the LSN.

21 And I remember going through cycles where we  
22 get reports from SANDIA, where they would find some that  
23 weren't, and then we would supplement the LSN collection.  
24 So I have a heightened rate of confidence sitting here  
25 today that whatever form or not those recommendations may

1 have been implemented in, SANDIA went through a very  
2 rigorous process to make sure all the data in the  
3 databases were reflected in the LSN.

4 >>>JUDGE WARDWELL: And for completeness,  
5 we'll say again that the six databases that you presented  
6 in your answer were merely the ones that are active, not  
7 the universe of those databases that have been captured  
8 by the LSN; is that correct?

9 >>MR. SHEBELSKIE: Correct.

10 >>>JUDGE WARDWELL: Lastly in this area,  
11 could you explain what is DOE's Technical Information  
12 Center; what it was set up for and what its holdings are  
13 and how are those holdings being archived, if there's a  
14 need to?

15 >>MR. SHEBELSKIE: Oh, my goodness.

16 >>>JUDGE WARDWELL: What the heck is it?  
17 And why does it seem to disappear recently, that you  
18 don't seem to hear much about it anymore? Or is it just  
19 because it's so big that you don't have to hear about it?

20 >>MR. SHEBELSKIE: I think it's really the  
21 latter, Your Honor.

22 It -- our database structures, the technical  
23 information center, in conjunction with our record  
24 processing center, is all part of the giant  
25 infrastructure we had to maintain project records during

1 the course of the project, that the integrity of our  
2 document management system, through our Technical  
3 Information Center and the Record Processing Center, is  
4 all maintained.

5 The Technical Information Center, if I  
6 recall, was a compilation of materials, some of which  
7 were created by DOE or its contractor, some of which  
8 weren't, which could be publicly available references  
9 that were collected at the same time. Copies of  
10 handbooks or standards manuals and things like that.

11 So basically think of it as a -- as a library  
12 of materials. Now, as we went through --

13 >>>JUDGE WARDWELL: So a library of  
14 copyrighted materials, things like that?

15 >>MR. SHEBELSKIE: It certainly did include  
16 copyrighted materials, as I said, as well as materials  
17 that DOE and its contractors developed.

18 As we went through and populated the LSN to  
19 do our recertification and whether it was '07 or '08, I  
20 forget now, we went through a similar exercise, like I  
21 said, with SANDIA to make sure that everything that was  
22 in the Technical Information Center that qualified as  
23 documentary material was included in the record  
24 processing center and made available to CACI for  
25 production on the LSN.

1           So, for example, we could have a technical  
2 report that DOE or its contractors created, a hard copy  
3 sitting there in our Technical Information Library. We  
4 wanted to verify that that document was in the Record  
5 Processing Center and, therefore, sent to CACI.

6           What we would not have included from the  
7 Technical Information Center Library would be the types  
8 of materials that the LSN regulations specifically  
9 excluded from production, which would not be report to  
10 studies prepared by DOE, but would be journal articles,  
11 published materials that are copyright protected and the  
12 like.

13                   >>>>JUDGE WARDWELL: Thank you.

14                   >>MR. SHEBELSKIE: They would not be -- those  
15 were not federal records because they're --

16                   >>>>JUDGE WARDWELL: Right. Thank you.

17           Nevada, would you like to comment on anything  
18 so far, in regards to the physical storage and the data  
19 and databases, as far as how you interpret and -- your  
20 comfort level with whether or not at least it's being  
21 captured presently by the LSN.

22                   >>MR. FITZPATRICK: Charles Fitzpatrick,  
23 State of Nevada.

24           Well, first, in response to the very last  
25 thing you've said; I think it's fair to say we've done

1 our best for the past six years, since 2004, to attempt  
2 to ensure that to the extent we could scrutinize it, that  
3 the necessary documentary material was being put on its  
4 LSN by DOE.

5 From time to time we had battles about it.  
6 And from time to time, those battles were resolved one  
7 way or the other. And when it was one way, additional  
8 materials were added. And when it was the other way,  
9 they were not.

10 But I think, generally, we're satisfied that,  
11 as it stands today, the LSN of DOE contains that which is  
12 defined in 10 CFR 2.1001 as documentary material, whether  
13 supportive of their license application or the not  
14 supportive of the license application, or studies and  
15 reports without regard to whether they do or do not  
16 support the license application, those are the  
17 documentary materials.

18 And so, you know, as to your question, as it  
19 stands now, I think we're as satisfied as we could be,  
20 and with the additional discussion we've had both off the  
21 record and on the record today about the preservation of  
22 non-documentary, I guess you could call it, materials  
23 such as core samples and physical materials, but  
24 represented by a header on the LSN, I think we're  
25 satisfied with respect to that.

1           The going forward, however, obviously, the  
2 question is what about the preservation comments in the  
3 few hundred questions that DOE answered on May 24? And I  
4 think the three principle conclusions that we draw from  
5 the myriad of questions are, number one -- and I like to  
6 refer to it as like three epics.

7           The first epic is that in which we live now.  
8 From now until termination of the licensing proceeding.  
9 And no one can, you know, tell you a date for that, but  
10 one way of guesstimating could be, after appeals to the  
11 Commission and appeals to the courts, it could be about  
12 18 months from now.

13           But, in any event, DOE has promised and  
14 committed to maintain intact and complete, with the  
15 current functionality, its entire LSN collection during  
16 that --

17           >>JUDGE WARDELL: Can I interrupt you  
18 quickly?

19           >>MR. FITZPATRICK: Sure.

20           >>>JUDGE WARDWELL: Because I'd like to hold  
21 off before you open up the big can of worms and  
22 everything goes exploding around.

23           >>MR. FITZPATRICK: Okay.

24           >>>JUDGE WARDWELL: My question was a very  
25 small subset of what you're talking about. All very good

1 to hear, and let's hear it in stages.

2 What I've heard you say now is the way the  
3 current LSN is, you're comfortable, to the best of your  
4 knowledge, that what's your -- what's needed to be in  
5 there is as good as you're going to get in what needs to  
6 be there?

7 >>MR. FITZPATRICK: That's correct, Your  
8 Honor.

9 >>>JUDGE WARDWELL: And mine was even less  
10 than that. I just wanted to make sure you're comfortable  
11 with how the physical specimens are handled within the  
12 current LSN and how the current databases and the data  
13 associated with those databases are, a very tiny subset  
14 of all the big picture.

15 And I gather that's inclusive of your answer  
16 today.

17 >>MR. FITZPATRICK: Right, Your Honor. To  
18 the extent --

19 >>>JUDGE WARDWELL: And I'll get back to you  
20 later when we get to that --

21 >>MR. FITZPATRICK: To the extent we've ever  
22 not been satisfied during this entire period, we've  
23 raised the issue until it finally resolved.

24 >>>JUDGE WARDWELL: Has been resolved --

25 >>MR. FITZPATRICK: And the answer is yes.

1 >>>JUDGE WARDWELL: And then that's your --

2 >>JUDGE MOORE: Mr. Shebelskie, in your  
3 response to Judge Wardwell's question concerning the  
4 question and your answer to 1.5.1, which is the listing  
5 of the technical data management systems subcomponents,  
6 you -- your answer was that some of them never existed,  
7 some of them were merged with other systems, and you list  
8 the six that are -- six that are still active.

9 Out of the list that was asked in the  
10 questions, can you tell us which ones never existed.

11 >>MR. SHEBELSKIE: Not that they never  
12 existed, Your Honor, but they ever never existed as a  
13 subcomponent of the TDMS. They were standalones  
14 databases.

15 >>JUDGE MOORE: Oh, thank you.

16 >>>JUDGE WARDWELL: Staff, do you have any  
17 comments or anything you'd like to offer, specifically in  
18 regards to just the physical specimens and the databases  
19 and data aspect of it at this point?

20 >>MS. BIELECKI: No, Your Honor, we have no  
21 comments.

22 >>>JUDGE WARDWELL: Rather than go around  
23 the room, why doesn't whoever's interested in -- of the  
24 other parties and interveners here, would like to make a  
25 comment or raise an issue at this point, kind of motion

1 so that I know that you are interested in doing such.

2 >>MR. VanNIEL: Jeff VanNiel on behalf of Nye  
3 County, Your Honor.

4 We filed a comment with respect to DOE's  
5 response to the questions, and we had limited our  
6 comments exclusively to the physical sample portion of  
7 what we had talked about this morning, and just wanted to  
8 say on the record that based on what I had, had a  
9 conversation off the record with Mr. Shebelskie this  
10 morning and his commitment to me both off the record and  
11 what he has responded to you on the record today with  
12 respect to how they're going to handle the physical  
13 samples, we're currently satisfied with the way they're  
14 handling that.

15 >>>JUDGE WARDWELL: Thank you. I appreciate  
16 that.

17 >>JUDGE MOORE: In that regard,  
18 Mr. Shebelskie, and perhaps Nye County; Nye County said  
19 some of the physical materials in DOE's possession belong  
20 to Nye County and it indicated others.

21 Is -- do you agree that that is the case?

22 >>MR. SHEBELSKIE: Your Honor, I -- as I told  
23 counsel, actually, I didn't know one way or the other  
24 that -- I offered, of course, to consult with Nye County  
25 counsel about our plans and any request that they would

1 like to make. I even offered perhaps they would like to  
2 store the physical materials for 100 years.

3 But I don't know the answer to the question.  
4 But I committed that we would consult with them and if  
5 there was some issue in that regard, obviously, I suspect  
6 the DOE and Nye County will certainly work that out.

7 >>JUDGE MOORE: Nye County, what physical  
8 materials -- were you speaking of core samples, or are  
9 there other materials?

10 >>MR. VanNIEL: Jeff VanNiel on behalf of Nye  
11 County, Your Honor. It's my understanding that most of  
12 what we're discussing now are the physical core samples,  
13 which Nye County would have actually done the drilling  
14 and the pulling of the samples, but that DOE QAed the  
15 materials and used them for the basis of some of their LA  
16 and, therefore, they were holding them in the warehouses  
17 currently.

18 >>>JUDGE WARDWELL: Are -- is it routine  
19 procedures to take a photographic record of all the core  
20 samples or any other -- any other specimen for that  
21 matter?

22 >>MR. SHEBELSKIE: As part of a QA process  
23 for the core sample?

24 >>>JUDGE WARDWELL: Yeah, I -- my past work,  
25 I've always done that. I photographed core samples, I

1 photographed lab samples, just so that -- because they  
2 aren't durable forever. There's no guarantee. There's  
3 no --

4 >>MR. SHEBELSKIE: Sure.

5 >>JUDGE WARDWELL: You know, you're not  
6 wrapping them in wax and preserving them forever. They  
7 will deteriorate.

8 >>MR. SHEBELSKIE: I'd have to check,  
9 Your Honor, to see, to be able to answer whether it's  
10 routine. I know there are photographs, I've seen  
11 photographs, I've seen them in the LSN collection.

12 Whether it is routine to say across the board  
13 in every instance a photograph exists of the core sample,  
14 I'd have to check.

15 >>>JUDGE WARDWELL: Anyone else? Let's  
16 trudge on this happy road of destiny. On 1.6 it says  
17 "What percentage of the content of DOE's LSN collection  
18 is site specific?"

19 And you basically dodge the question saying  
20 you had no idea.

21 I understand you don't keep records to do  
22 that, but you must have a feeling for what might be in  
23 it. And by that I mean, there's -- a lot of the  
24 information can be useful for other people moving forward  
25 on other options. I would think it might be a very high

1 percentage, just to, if nothing else, as a lesson is  
2 learned.

3 But even beyond that, anything dealing with  
4 titanium corrosion, for instance, you got to believe some  
5 type of metal like that might be used in the future.  
6 You've got a wealth of information there. You've got a  
7 wealth of information in my area of matrix suction of  
8 rock porous materials and how water flows through them,  
9 that would help someone get started in regards to  
10 relative diffusion coefficients and things like that.

11 Like any other scientist, I throw out all  
12 these words and hope no one understands them, because  
13 sometimes I don't either, but it sounds impressive.

14 Anyhow, isn't it fair to say that there's a  
15 very large percentage of information there that is not  
16 useless, even if Yucca Mountain never goes any further?

17 >>MR. SHEBELSKIE: Your Honor, I think the  
18 Department would agree that even though a document may  
19 have been created for the purposes of either the site  
20 suitability or the license application, in the context of  
21 the Yucca Mountain proceeding, it has scientific value  
22 and that's why the Secretary or the Department has said  
23 it's going to preserve this information for scientific  
24 endeavors.

25 And we understood your question here about

1 site specific to be addressing that very concern, and  
2 that's why we did not try to distinguish that we would  
3 only save part of the LSN collection for the 100 years,  
4 but the entirety of it for that very reason.

5 >>>JUDGE WARDWELL: Thank you.

6 >>JUDGE MOORE: Obviously, there was a wealth  
7 of material that you determined was not within the  
8 definition of documentary material as defined in 10 CFR  
9 2.1001.

10 But if it relates to Yucca Mountain, what's  
11 DOE's disposition of those materials? And a number of  
12 other parties and petitioners have specifically raised  
13 that question, either in their responses to DOE's motion  
14 that we argued yesterday or in comments at various  
15 stages.

16 >>MR. SHEBELSKIE: Yes, sir, Your Honor.

17 All of the project records -- put aside for  
18 the moment the LSN collection. That will be treated  
19 specially, but all the other project records primarily  
20 are going to exist in one or two databases now, through  
21 the Record Processing Center, through our RIS collection,  
22 Record Information System, and our e-mail warehouse,  
23 where the OCROM e-mails, in their entirety, are stored.

24 And those are systems that are governed, as I  
25 said before, by the record retention requirements.

1 Generally speaking, they are 25 years from the  
2 termination of the project.

3 >>JUDGE MOORE: But they are in no way  
4 labeled Yucca Mountain related, so no one would ever know  
5 how to look at them or find anything in them?

6 >>MR. SHEBELSKIE: Well, I don't know if I  
7 quite agree with that, Judge Moore.

8 For example, the record process -- the Record  
9 Information System for OCROM, I think that title --  
10 that's the current name. I think that's how it's going  
11 to be preserved, and some people who wanted access to the  
12 broader records through the Record Information System  
13 can, through DOE, make request for that. I'd also  
14 comment --

15 >>JUDGE MOORE: How large a collection is  
16 that?

17 >>MR. SHEBELSKIE: Oh, in terms of either  
18 document numbers or terabytes of information.  
19 Recognizing that it includes the entirety of the RIS  
20 component of our LSN collection, plus other things. Now  
21 most of those other things are going to be the types of  
22 documents that aren't documentary material, so they'll  
23 have a lot of administrative information and the like.

24 It's a large collection, for sure, but we  
25 have produced on the LSN the lion's share of the Record

1 Information System.

2 >>JUDGE MOORE: So there's, speaking  
3 generically, not very much information that is directly  
4 relevant to Yucca Mountain that is not already captured?

5 >>MR. SHEBELSKIE: I agree, Your Honor, and I  
6 think anything of potential scientific interest is  
7 certainly captured.

8 >>JUDGE MOORE: Okay. Thank you.

9 >>>JUDGE WARDWELL: What I think I'd like to  
10 do now is go through a search so we can see how this  
11 works.

12 >>MR. SHEBELSKIE: Online?

13 >>>JUDGE WARDWELL: Would you like to do it?

14 >>MR. SHEBELSKIE: Online?

15 >>>JUDGE WARDWELL: Yes.

16 >>MR. SHEBELSKIE: No, sir.

17 >>>JUDGE WARDWELL: Well, we're going to.

18 And hopefully this will show up on your screen or  
19 screens. Yeah. Are you looking at something besides me  
20 on your screen, I hope?

21 >>MR. SHEBELSKIE: I am.

22 >>>JUDGE WARDWELL: Good. Does that look  
23 familiar?

24 >>MR. SHEBELSKIE: I'm afraid so.

25 >>>JUDGE WARDWELL: Well, you're probably --

1 you are a lot more of an expert at this than I am. I  
2 think this would be helpful to step through one. And  
3 you've done it on your reply, and that was helpful a lot,  
4 and I want to kind of do the same thing, because it does  
5 end up -- it helps me generate the specific questions as  
6 we talk about it.

7                   So let's go ahead and we'll use your same  
8 search example you did by refining your search to a very  
9 isolated term called "nuclear" and see what we come up  
10 with.

11                   And that's what we come up with, is a whole  
12 list of various documents. We'll scroll down until we  
13 find a DOE one, just so that we can harass you about it.

14                   That's some information and now someone looks  
15 at that abstract and says, oh, that's of interest, I'd  
16 like to look at it more. There's several ways to look at  
17 it, as you described.

18                   If -- let's start at the very beginning, one  
19 that you didn't do. I happened to click right on the  
20 underlying title. And so I gather that's the same as one  
21 of the other little clicks, little icons up in the  
22 corner. Yeah, any of these icons up in the corner do  
23 various functions. And I assume that's the same as the  
24 view document one?

25                   >>MR. SHEBELSKIE: Yes, sir.

1 >>>>JUDGE WARDWELL: Correct?

2 And what do we have here? You want to  
3 describe what we got here, and how this is ultimately  
4 going to generate a document for us, that we may  
5 ultimately want to get a hard copy of for ourselves, for  
6 instance?

7 >>MR. SHEBELSKIE: All right. I will  
8 endeavor to do my best, recognizing I'm a lawyer, not an  
9 IT person. What I understand we're looking at here is  
10 the OCR -- an OCR text generated -- from the OCR text of  
11 the document. That the search results are coming back  
12 through the index created on the LS -- the NRC's LSN  
13 portal. And what you see here is the OCR text of the  
14 document and the two icons that are on the first page  
15 there.

16 The one on the left, I believe if you click  
17 that you will get an image file, which will either be  
18 in -- comes from our JPEG or TIFF file, depending on what  
19 it is. Yes, there is an image.

20 And I believe you can scroll from page to  
21 page in the image file. Yes. Click to go on single  
22 page -- oh, you can click to go on a single one.

23 >>>>JUDGE WARDWELL: Yeah.

24 >>MR. SHEBELSKIE: If you want multiple  
25 pages, you click on the next icon. And then you have the

1 options to view this document in increments; in this  
2 application up to 20, but our software can generate a  
3 100-page batch at a single time for printing.

4 >>JUDGE WARDWELL: And so the image -- what  
5 we're looking at here now is that this particular  
6 document has 2,156 images; is that correct?

7 >>MR. SHEBELSKIE: Yes, sir.

8 >>JUDGE WARDWELL: And that is the entire  
9 document, as if a picture was taken of it from front page  
10 to back page.

11 >>MR. SHEBELSKIE: Yes, sir.

12 >>JUDGE WARDWELL: Everything inclusive. And  
13 all of these images are either TIFF and JPEG, is that  
14 correct?

15 >>MR. SHEBELSKIE: Yes, sir.

16 >>JUDGE WARDWELL: And so none of this is  
17 PDF?

18 >>MR. SHEBELSKIE: They're distorted, JPEG  
19 and PDF. I think when you click on the multiple images I  
20 think that converts it to a PDF.

21 >>JUDGE WARDWELL: I think it does also, and  
22 that's when that Fetch-Doc program kicks in?

23 >>MR. SHEBELSKIE: Yes, sir.

24 >>JUDGE WARDWELL: Up to this point the LSN  
25 did the search; is that correct? And where does the

1 search -- how does the search happen?

2 >>MR. SHEBELSKIE: As I understand it --

3 >>JUDGE WARDWELL: When we first did the

4 nuclear and said go find these documents, who was

5 responsible for making that -- of course, both are, but

6 where does the dividing line come?

7 >>MR. SHEBELSKIE: I believe, Your Honor,

8 that the searching, word searching, or by document

9 number, is done through an index that the NRC's LSN side

10 creates. You get your search results, as you saw, when

11 you then want to click on the image file, or text files,

12 through the icons, as I understand it in laymen's terms,

13 the LSN, the NRC's LSN portal reaches back to our

14 participant server and retrieves it, makes it available

15 to you, the viewer.

16 >>JUDGE WARDWELL: Can we go back to the LSN

17 search.

18 Now, let's go back to that -- yeah, click on

19 the title again, that's the page that I want, or that

20 equivalent one. Yes, this is the one.

21 It shows as a single sheet of images. Where

22 are those single -- where are those sheets that you'll

23 get as you click this single sheet here?

24 >>MR. SHEBELSKIE: You click that single

25 sheet there, Your Honor, you are pulling up the image

1 file for that specific page, and that image file is  
2 maintained on DOE's participant server.

3 >>JUDGE WARDWELL: Right. And the single  
4 page we're looking at is everything above the horizontal  
5 line there. This is the text that's in there, and that  
6 image would come up with that in there; is that correct?

7 >>MR. SHEBELSKIE: I believe so, yes, sir.  
8 Plus -- well, I think we saw in this example, for  
9 example, if there's a photograph or --

10 >>JUDGE WARDWELL: Right. Right. And any  
11 other non-text type of stuff, because it would be -- it  
12 is a picture of it.

13 >>MR. SHEBELSKIE: Yes, exactly.

14 >>JUDGE WARDWELL: And then we scroll down  
15 here, and that next single image would be that. Don't  
16 you see how someone thinks that what you've got stored is  
17 a bunch of single pages sitting in a drum somewhere, that  
18 the LSN is going after and capturing these little puppies  
19 and bringing them back, and that if you turn that over in  
20 some other future endeavor, that all you're turning over  
21 is a bucket of single pages?

22 >>MR. SHEBELSKIE: I hear what you're saying,  
23 Your Honor, that someone looking at that might perhaps  
24 come to that conclusion, but in talking at great length  
25 with our IT personnel, to make sure I understand this, I

1 think I can, with confidence, say that's not the case.

2           Image this, the directory structure for our  
3 LSN collection, that's on our participant web server,  
4 there is, in our server, we have a unique document number  
5 for every document in our LSN collection. We have a LSN  
6 participant number, LSN number.

7           >>JUDGE WARDWELL: And that's all the images  
8 that creates the entire document; is that correct?

9           >>MR. SHEBELSKIE: Under -- so we have a  
10 unique sub-folder for that LSN session number. Under  
11 that unique folder for that number is one file, that's  
12 the header file; another sub-subfile, that is the OCR  
13 text file; and then all the individual page images of  
14 that document, all stored together under that unique  
15 directory for that document.

16           >>JUDGE WARDWELL: So the LSN, when it asks  
17 for a document, will go out and find that header and then  
18 go out to the -- where the location of those particular  
19 sheets are and images, or --

20           >>MR. SHEBELSKIE: Well, they're all part of  
21 the same subdirectory, associated with that unique LSN  
22 session number for that document. So it doesn't -- it's  
23 not like the 2100 pages here are just scattered randomly  
24 throughout the LSN server or collection, they are stored  
25 in a hierarchy, where all the image files are together,

1 with the text file and the image file, and so, therefore,  
2 if you wanted to know, I think, another question asked,  
3 how would we know where one document starts and another  
4 document ends; you just look at the high directory  
5 structure, where you have a separate LSN number for each  
6 document, and that's your unique breakoff for each  
7 document.

8 >>JUDGE WARDWELL: I'm going to have to  
9 control myself by not getting in too deep here, because  
10 much of this is somewhat moot by the fact that you have  
11 converted to PDF now.

12 >>MR. SHEBELSKIE: Well, we will convert to  
13 PDF.

14 >>JUDGE WARDWELL: You have committed to. It  
15 may not be completed.

16 >>MR. SHEBELSKIE: Yes.

17 >>JUDGE WARDWELL: But the idea that the LSN  
18 search routine looks at your directory, and then has to  
19 go out and spider up a bunch of these various single  
20 sheets that may be scattered around at various locations  
21 is not correct. It only has to go to your one system --  
22 one set of --

23 >>MR. SHEBELSKIE: One directory.

24 >>JUDGE WARDWELL: One directory,  
25 subdirectory, probably, is the best word that I would

1 use, for the entire document, even as it exists now,  
2 prior to any PDF.

3 >>MR. SHEBELSKIE: Yes, sir.

4 >>JUDGE WARDWELL: If we could go back to the  
5 sheet again.

6 And then, if you click the -- let's go ahead  
7 and click several pages. That allows you to draw up more  
8 than the one by one that you have here, and as such --  
9 well, it shouldn't take -- it's probably just taking a  
10 little longer.

11 And let's go ahead and just take 20, but you  
12 said you could go up to a hundred here, or so, if you  
13 wanted to.

14 Now, it's been my experience that sometimes I  
15 click this, get images, and nothing happens. Has that  
16 been your experience or not?

17 >>MR. SHEBELSKIE: Oh, I found the system  
18 highly functional, Your Honor.

19 >>JUDGE WARDWELL: Okay. And now, these are  
20 the images converted to a PDF or certainly you can save  
21 it as that?

22 >>MR. SHEBELSKIE: Yes, Your Honor.

23 >>JUDGE WARDWELL: Okay. Could we go ahead,  
24 Andy, and try to save this and -- yeah, and it is listed  
25 as a PDF file. And let's save it and then pull it up in

1 PDF and see what we get first, whether it's -- and now  
2 see if that's searchable.

3 >>MR. SHEBELSKIE: I don't think that this  
4 particular PDF format is searchable.

5 >>JUDGE WARDWELL: Try this, Andy. Try to  
6 highlight it, because usually you get a notice that  
7 you're -- yeah. Other times when I've tried to do this,  
8 if I've tried to highlight it or underline something, it  
9 will give me a notice saying it can't be done, do you  
10 want to convert it. We don't have to go through that  
11 again.

12 I was just going to show the relative time it  
13 takes to convert it, if you want to, because when I've  
14 gotten something like this with Acrobat 9, it's been able  
15 to convert it to a search for one, and I just wanted to  
16 give the time, but you're saying that with your PDF files  
17 that you have, it will be searchable, using a parallel  
18 image of a text file, so that you'll know where those  
19 words are in it, and pull those -- will it pull it up  
20 strictly by the page numbers on a text file, or -- you've  
21 got a PDF file, as you're saying, and the way it's going  
22 to be searchable is, that isn't going to be a searchable  
23 PDF file, but sitting right with it is going to be the  
24 text file, that we'll look at just quickly, and then  
25 we'll be done with this exercise. And you're using that

1 to do your search; because one, I think you've already  
2 got that text file, and it saves you the time of  
3 converting, I'm sure, may have had something to do with  
4 it. But also, you're claiming this has a better  
5 searching and more definitive search capabilities.

6 But what do you get out of that search, if  
7 you do that? Will it be -- what will be retrieved, is  
8 probably what I'm interested in? You won't get back the  
9 document showing where all those -- where all the  
10 highlighting --

11 >>MR. SHEBELSKIE: The highlighting.

12 >>JUDGE WARDWELL: Yeah. And things like  
13 that. It will just tell you that it's in there, and I  
14 gather just pull up the text to talk about it.

15 >>MR. SHEBELSKIE: I believe that's right,  
16 Your Honor. I can verify whether that's the case or not.

17 >>JUDGE WARDWELL: Yeah. I think that would  
18 be worthwhile to verify that. We may try to show  
19 something similar to that. I'm not sure this is the way  
20 it will work when -- oh, you're going to show how to make  
21 this -- yeah, how to convert this to searchable. Okay.  
22 This will show how much time it takes. Yeah. Good.

23 I've been counting here, it takes about 2 to  
24 3 seconds a page to convert. And so that's the way to  
25 convert it. But that isn't what you were planning on

1 doing, but that's the length of time it would take to  
2 convert it to a searchable PDF file. So now, yeah, now  
3 we're able to highlight stuff.

4 And the way you're proposing it, you will end  
5 up searching through that text file, and then what does  
6 a -- the person whose been doing this search get back and  
7 retrieve from that process, or is that still to be  
8 defined?

9 >>MR. SHEBELSKIE: Well, I think in general  
10 terms.

11 >>JUDGE WARDWELL: I think your mike's off.

12 >>MR. SHEBELSKIE: I'm sorry, Your Honor.

13 >>JUDGE WARDWELL: No problem.

14 >>MR. SHEBELSKIE: I think in general terms,  
15 if someone were to make a request to Legacy Management  
16 after this proceeding for a -- not for a specific  
17 document, but for a group of documents that responded to  
18 a search term, they would be provided, in electronic  
19 format, with the OCR text and the compiled PDF images,  
20 the documents that are responsive to their search terms.

21 And then, if someone were to make such a  
22 request they'd have the responsive documents, then they  
23 could search them, or otherwise use them as was meant for  
24 their purposes.

25 >>JUDGE WARDWELL: Yeah. And that -- and

1 just to clarify again, this would only come into play  
2 after the non-appealable order?

3 >>MR. SHEBELSKIE: Yes, Your Honor.

4 >>JUDGE WARDWELL: Up to that point,  
5 everything we've done in the searching, just as we did  
6 here, we could get the PDF and you could convert them to  
7 a searchable PDF, can be done.

8 >>MR. SHEBELSKIE: Yes, Your Honor.

9 >>JUDGE WARDWELL: Can we go back to the  
10 search now, and just go ahead and call up a sample text  
11 file, Andy. And show people how you're doing it. The  
12 four icons off to the right, do you want to explain what  
13 each one of those are rather than have me do it?

14 >>MR. SHEBELSKIE: Well, one is a -- will  
15 pull up the --

16 >>JUDGE WARDWELL: Don't do these, Andy, just  
17 describe them for the record.

18 >>MR. SHEBELSKIE: One pulls up the  
19 bibliographic header.

20 >>JUDGE WARDWELL: That would be a good one  
21 to pull up. Let's pull that up right now. Because we've  
22 talked about this header, and that's the header that is  
23 the kingpin of this thing. This is the way to get to it.  
24 And after this, everything else is right in that same  
25 location of the entire document, all the images and a

1 separate text file; is that correct?

2 >>MR. SHEBELSKIE: Yes, sir. All right. So  
3 that's the information coded for this document in the  
4 header format, as dictated by the subpart general  
5 regulations.

6 >>JUDGE WARDWELL: And the LSN session number  
7 is the one of interest?

8 >>MR. SHEBELSKIE: Yes, sir, that's how we  
9 organize the documents on our directory. Whoops, I'm  
10 sorry, I stand corrected. Ours are organized by the  
11 participant session number.

12 >>JUDGE WARDWELL: Okay.

13 >>MR. SHEBELSKIE: Because we get that number  
14 before we get the LSN session number. All right. And  
15 that file will be maintained and archived as part of the  
16 Legacy Management program.

17 Then another icon will pull up the OCR text  
18 of that particular document, the one on the right. And  
19 the OCR text is there with the highlighted search terms.

20 >>JUDGE WARDWELL: And -- but that is one  
21 page of it, correct?

22 >>MR. SHEBELSKIE: Well, no, no. It's the  
23 full document. You'll see the -- on the right hand, the  
24 cursor is in the middle of the column, but the OCR text  
25 file, Your Honor, should be the entire optical scan text

1 of this entire document.

2 >>JUDGE WARDWELL: So rather than go one by  
3 one we can scroll down and see these?

4 >>MR. SHEBELSKIE: You can scroll down or you  
5 see up at the top, Your Honor, you're on page 209 of 215  
6 and you click --

7 >>JUDGE WARDWELL: But as you do that -- go  
8 ahead and do that, Andy. Yeah, take some time.

9 >>MR. SHEBELSKIE: Right. Or you can scroll.

10 >>JUDGE WARDWELL: Or not. The point is this  
11 text file is of no real use -- is of limited use if  
12 you're trying to read and understand what the document  
13 is. It does give you a flavor for how often your search  
14 terms were found, where they're found, to give you an  
15 idea whether you want to do something more to find the  
16 full document. Is that a fair assessment of this text  
17 file?

18 >>MR. SHEBELSKIE: Yes. I think the text  
19 file, obviously, is the tool for locating the document,  
20 to help you pinpoint where the document -- the search  
21 terms are, but if you're going to do a read, particularly  
22 of a longer document, I mean I find it obviously easier  
23 to read the image file.

24 >>JUDGE WARDWELL: And plus there's liable to  
25 be some other diagrams or photographs or pictures or

1 tables, or something, that aren't -- like tables don't  
2 get converted very well here, sometimes they end up with  
3 sets of numbers that are scattered all over the place.

4 >>MR. SHEBELSKIE: Yes, sir.

5 >>JUDGE WARDWELL: So this is not where you  
6 want to be to really understand the document. It's a  
7 tool. Is that fair?

8 >>MR. SHEBELSKIE: Yes, sir, I agree with  
9 that.

10 >>JUDGE WARDWELL: Is that a fair assumption?

11 >>MR. SHEBELSKIE: And that's why that we are  
12 saving the image files as well.

13 >>JUDGE WARDWELL: Is there anything else you  
14 want to bring up about the LSN and how it's run, and  
15 which is doing which, and...

16 >>MR. SHEBELSKIE: No, Your Honor. I mean,  
17 obviously, if there's a question that you have, I'll be  
18 glad to try to answer it. Well, I would make an  
19 observation, perhaps, looking towards the future, because  
20 I think some of the Board's questions concern whether or  
21 not the precise functionality of the LSN should be  
22 preserved for a hundred years, or whatever.

23 I think, as underscored by the LSN  
24 administrator's answers to the Board's questions, in the  
25 hypothetical of trying to resurrect an LSN in the future,

1 whether it be for another site, for example, and you  
2 wanted to use these documents, technology will change,  
3 platforms will change, and probably what we have here on  
4 the LSN today will be outdated, you know, 10 years,  
5 certainly 50 years from now.

6           And so, really trying to preserve immediate  
7 functionality with LSN portal is probably not, we think,  
8 necessary to preserve the scientific data, as long as we  
9 are preserving the directory structure, with the  
10 bibliographic headers, text files, and our PDF files, as  
11 we discussed, and then in the future, if it ever needs to  
12 become available to the general public, through an  
13 Internet source like we have now, that will have to be  
14 adapted to whatever is the most practical, efficient  
15 technology available is.

16           >>JUDGE WARDWELL: On page 13, below your  
17 exhibit of a text file, with a highlighted nuclear on  
18 there, you said this window displays a page of the text  
19 from the NRC's LSN database.

20           Is it better to say it was generated by the  
21 NRC's server or -- I don't understand that statement, can  
22 you explain that more?

23           I had thought that text file was your -- came  
24 from your -- resides on your server somewhere and the LSN  
25 merely pulled it out.

1 >>MR. SHEBELSKIE: Your Honor, it's more  
2 accurate to say the text files are on our servers.

3 >>JUDGE WARDWELL: And not anything to do  
4 with an LSN database. LSN meaning just the LSN that the  
5 NRC's responsible for?

6 >>MR. SHEBELSKIE: Yeah.

7 >>JUDGE WARDWELL: That's the software  
8 that --

9 >>MR. SHEBELSKIE: I think that's right,  
10 Your Honor.

11 >>JUDGE WARDWELL: -- that drives the  
12 searches.

13 >>JUDGE MOORE: Mr. Shebelskie, so your  
14 response that Judge Wardwell just read, would you amend  
15 that so it would be NRC's LSN database and NR -- I'm  
16 sorry, DOE's LSN database, and NRC would change to DOE as  
17 well, or no?

18 >>MR. SHEBELSKIE: Well, Your Honor, let me  
19 check on a break with CACI, just to verify, so I can be  
20 sure I'm technically precise. In fact, if you'd give me  
21 a moment.

22 Okay, Your Honor, I have the distinction.  
23 What we did write here is correct, but looking at  
24 context -- what you see on page 13 are the search  
25 results. You input a search, you get a search result.

1 Those search -- this is pulling up the data that's on the  
2 NRC's LSN portal from the spidering or indexing process.

3 When you pull up the results, click on the  
4 title of the document, like Judge Wardwell did earlier,  
5 you have that OCR text that we were looking at, that is  
6 pulling up the OCR index files -- text files, from our  
7 server. That's what's shown on page 16 of our answer.

8 >>JUDGE WARDWELL: So that isn't one page of  
9 the text file?

10 >>MR. SHEBELSKIE: What you see on page 13?

11 >>JUDGE WARDWELL: Right. I mean, I don't --  
12 I never -- that is a result of the search, but that's the  
13 same thing we were looking at when we clicked on the text  
14 file.

15 >>MR. SHEBELSKIE: It is a text -- it is a --  
16 it is text of the document. It's been generated, though,  
17 on the NRC side through the indexing process. So this is  
18 come -- getting back to your search results.

19 >>JUDGE WARDWELL: But it's pulling out all  
20 the words from your server, is that correct? NRC doesn't  
21 have a database with those words in it anywhere.

22 >>MR. SHEBELSKIE: It does. It does,  
23 Your Honor. When we provide the document for the first  
24 time in the LSN, the NRC side of the house creates the  
25 index from the OCR text, and it preserves that on the NRC

1 databases. So the NRC system has this data here, the  
2 text of the document, across which you do your searches  
3 and get your search results. When you pull up the icon  
4 for the text document, or click on the title of the  
5 document to get the text, that then reaches back and  
6 pulls up the text files from our server, which is giving  
7 you the same information, but, in essence, is coming from  
8 a different source.

9 So on the NRC system they do have, I believe,  
10 the complete text spider, in text format, all the text of  
11 our imageable documents.

12 >>JUDGE WARDWELL: Okay. I want to see how I  
13 can get to the same page. I don't -- I don't -- this  
14 page we got to by clicking on the text -- yeah, the view  
15 content page.

16 You're welcome to get another chair, if you  
17 want to, and introduce yourself. We're not at an oral  
18 argument or anything. So feel free to gather around.  
19 Sounds -- you look like you may have a bit to offer in  
20 this discussion.

21 >>>MR. MARTIN: Your Honor, I'm Dan Martin  
22 from CACI.

23 >>JUDGE WARDWELL: Pull the mic closer, and  
24 you got to hear yourself echo a little bit and then you  
25 know you're coming across.

1 >>>>MR. MARTIN: Your Honor, I'm Dan Martin  
2 from CACI.

3 >>JUDGE WARDWELL: Okay. Great. This page,  
4 we got by clicking the view content, which is a text file  
5 from your service; is that correct?

6 >>>>MR. MARTIN: What you're looking at on  
7 this page is a copy of the text that is contained in the  
8 index that the NRC created when they spider our  
9 collection. So what you're looking at is all of the text  
10 that they captured during that spidering process, so that  
11 when you do a search in their index, you can find a  
12 document.

13 >>JUDGE WARDWELL: And did that spidering  
14 take place once and permanently stored on the database on  
15 the LSN index or does it take place every time a new  
16 search is implemented?

17 >>>>MR. MARTIN: No, it's a one time process  
18 that they do when the documents are loaded.

19 >>JUDGE WARDWELL: So every time we click on  
20 the view document icon, it's going into the view content,  
21 that's going into the LSN database; is what you're  
22 saying?

23 >>>>MR. MARTIN: Yeah, the NRC's computer.

24 >>JUDGE MOORE: So you could have your system  
25 completely off, and I'd still retrieve that; is what

1 you're saying?

2 >>MR. MARTIN: That's correct.

3 >>JUDGE MOORE: Is a hundred00 percent of  
4 when it goes back to retrieve off the DOE server  
5 maintained and retained on the LSN server?

6 It's less than a hundred00 percent; is it  
7 not?

8 >>MR. MARTIN: What's on the NRC server, I  
9 believe, is less than a hundred00 percent. It's a result  
10 of the autonomy spidering process.

11 >>JUDGE WARDWELL: What the heck does that  
12 mean. I watched my language, didn't I?

13 >>MR. MARTIN: Autonomy is a tool that the  
14 NRC uses to create the index of our data. And the  
15 spidering, or crawling process, is how that tool creates  
16 an index that makes the data searchable.

17 >>JUDGE WARDWELL: And so it's done once and  
18 then it's stored on our system. So we basically have a  
19 text file of every one of your documents on our servers,  
20 is that what you're saying, or close to it?

21 >>MR. MARTIN: It's usually not described as  
22 such. It's usually described as an index of the data,  
23 and I think technically there's a difference between the  
24 index and the text image, the text that you see when you  
25 click on the -- when you click on the button to view in

1 browser and you're looking at the actual text.

2 >>JUDGE WARDWELL: So it's the view in  
3 browser that pulls up the text file?

4 >>MR. MARTIN: Correct. And that's where it  
5 reaches back to the DOE server in order to pull up...

6 >>JUDGE WARDWELL: And my assistant has been  
7 preempted by other tasks, and where -- it's the view  
8 browser button that pulls up the viewable text, correct?

9 >>>MR. MARTIN: Correct.

10 >>JUDGE WARDWELL: Can we do that, Andy, the  
11 view browser. Which one is that? It's that one. It's  
12 view document. That's view images.

13 >>MR. MARTIN: Yeah, view document.

14 >>JUDGE WARDWELL: View document, okay.

15 Yeah. I see. Yeah.

16 >>MR. MARTIN: And there you're looking at  
17 the text.

18 >>JUDGE WARDWELL: But, if your document  
19 happened to be a PDF file, and I clicked view document,  
20 it would come out as a PDF file, would it not, not this  
21 system?

22 >>MR. MARTIN: No.

23 >>JUDGE WARDWELL: If you stored it on your  
24 LSN as a PDF file.

25 >>MR. MARTIN: But the documents on the DOE's

1 LSN collection are all in the TIFF JPEG format.

2 >>JUDGE WARDWELL: None of them are in the  
3 PDF format.

4 >>>MR. MARTIN: Correct.

5 >>JUDGE WARDWELL: I thought I had pulled out  
6 one of yours but it must have been someone else's.

7 >>>MR. MARTIN: The other parties do have  
8 documents.

9 >>JUDGE WARDWELL: So when you do it with  
10 someone else's document, if you didn't realize it was a  
11 DOE document, and you pushed view document, you will see  
12 a PDF file.

13 >>MR. MARTIN: That's correct.

14 >>JUDGE WARDWELL: That's good to get that  
15 clarified, maybe, I don't know if it was important, but  
16 it might be later, on in regards to something.

17 When we go to the process of using Fetch-Doc  
18 to convert to a PDF file, as we've already done, the  
19 software is recompiling the document using whatever  
20 number of pages you have and actually then converting it  
21 to a PDF file. It is pulling out the various images and  
22 converting it to a PDF file; is that correct?

23 >>MR. MARTIN: Yes.

24 >>JUDGE WARDWELL: And as we saw, it  
25 generally isn't searchable, but you can convert it to a

1 searchable one. You can save it as a PDF file and  
2 convert it to searchable --

3 >>MR. MARTIN: Yes.

4 >>JUDGE WARDWELL: If you wish, as it  
5 currently stands.

6 On 2.4, in regards to DOE's custom software  
7 required to locate and reformulate data, you talk about  
8 the Fetch-Doc, and you mention at the very bottom of that  
9 paragraph of the answer to just the 2.4, question that  
10 Fetch-Doc does not reformulate a document because the  
11 document is already formulated, i.e, the pages of the  
12 document are assembled in a proper sequence within that  
13 particular document's directory. And you're saying that  
14 document directory is really keyed by that session  
15 number; is that correct, that's how you get to that  
16 document directory?

17 >>MR. SHEBELSKIE: Yes, sir.

18 >>JUDGE WARDWELL: And the search -- do you,  
19 as DOE, have a separate search engine that exists  
20 exclusive and separate from the LSN search engine?  
21 Because it was really the LSN search engine that's doing  
22 the searching and finding these documents, correct?.

23 >>MR. SHEBELSKIE: We don't. When I need to  
24 find a document on the LSN, I do exactly what you do?

25 >>JUDGE WARDWELL: So if we decommission our

1 LSN, you're out of luck also right now?

2 >>MR. SHEBELSKIE: Unless we create a  
3 separate portal to replace it.

4 >>JUDGE WARDWELL: Right. But as it stands  
5 right now.

6 >>MR. SHEBELSKIE: Well, CACI maintains our  
7 servers, and so they can -- at LSN portal were taken  
8 down, access the servers.

9 >>JUDGE WARDWELL: But you'd have to create  
10 some and tie them together into some type of search  
11 engine, but you have a -- and the database or the  
12 directory structure that you would have would still be  
13 under the same LSN session number --

14 >>MR. SHEBELSKIE: Yes, sir.

15 >>JUDGE WARDWELL: -- and then you just  
16 create some software mechanism to create the same  
17 searchable efforts that is now presently on the LSN?

18 >>MR. SHEBELSKIE: Yes, sir.

19 >>JUDGE WARDWELL: I got about 10 more  
20 questions on this one section, and maybe it would be a  
21 good time to break.

22 2.5, the question is, what is the status of  
23 the project facilities of Nevada, what effect, if any, do  
24 they have on the shut-down activities, have on the  
25 retention of future archiving of DOE's LSN; and I think I

1 brought that up earlier, but, July is what you said is  
2 the shut-down schedule for the facilities out here.

3 >>MR. SHEBELSKIE: Yes, sir, and we will  
4 transition public access to our LSN servers before the  
5 shut down -- that shut down occurs.

6 >>JUDGE WARDWELL: And when that all gets  
7 transferred, and I assume they'll be alive -- there'll be  
8 an overlap where they're alive for a while as you  
9 transferred everything over to the COPS, do you call it  
10 COPS or C-O-P-S?

11 >>MR. SHEBELSKIE: I do, yes.

12 >>JUDGE WARDWELL: COPS facility, to assure  
13 that you didn't shut this off before it is functioning  
14 off of COPS?

15 >>MR. SHEBELSKIE: I understand it is  
16 instantaneous switch over. It is seamless to the public.  
17 We've done it once or twice before, had to do  
18 maintenance, and nobody could detect the switch over?

19 >>JUDGE WARDWELL: And that retrieval system  
20 will be the same one, because basically the retrieval  
21 system is from the LSN.

22 >>MR. SHEBELSKIE: Yes, sir, it is a complete  
23 replication of the services we have here in Las Vegas.

24 >>JUDGE WARDWELL: On 2.6, in response to  
25 that, you say the only consequence of the shut-down

1 procedures will be that DOE will not have a standby set  
2 of servers with a duplicate of the LSN document  
3 collection already loaded.

4 Does that mean that you don't have, really,  
5 in essence, a hot backup system that you now have,  
6 currently have? It'd be fair to say you have a hot  
7 backup system now, and there are COPS, and you got it  
8 here, you say you transparently do it instantaneously, if  
9 the LSN facility -- if your document collection here in  
10 Nevada pooches, or there's a catastrophic electrical  
11 failure, boom, you're off in Arlington.

12 >>MR. SHEBELSKIE: That's right, Your Honor.

13 >>JUDGE WARDWELL: So it is a hot backup  
14 system.

15 >>MR. SHEBELSKIE: In that sense, yes.

16 >>JUDGE WARDWELL: And that won't exist once  
17 this gets commissioned; is that fair to say?

18 >>MR. SHEBELSKIE: That is correct. As we go  
19 on to state in our answer: "Given the extreme  
20 unlikelihood of the catastrophic scenario, obviously  
21 nothing like that has happened in the several years we've  
22 been operating on the LSN, and the duration of the time  
23 period we anticipate for termination of this proceeding.  
24 And then, of course, the availability of magnetic backup  
25 tape stored at a secure, separate location. We could

1 reconstruct our LSN collection in fairly short order, if  
2 there were a catastrophe at the COPS center."

3 >>JUDGE WARDWELL: And what is that short  
4 order?

5 >>MR. SHEBELSKIE: I was told as we were  
6 working on this, in the order of the magnitude of three  
7 weeks, or less than that CACI says, but three weeks they  
8 gave me as an upper bound.

9 >>JUDGE WARDWELL: In response to 8.a hundred  
10 yes, under -- in 2.8, Question 2.8 says "As long as the  
11 LSN is operational and organization's contractor will be  
12 available to resolve any ongoing document integrity  
13 issues on the LSN. And we have a person right here, a  
14 real live body.

15 Your response was, OCRWM will continue to  
16 function until July of 2010. In response to 8.a hundred,  
17 I believe you said it was -- they would be terminated in  
18 a fiscal year of 2010. I just wanted to clarify -- have  
19 you clarify which is correct.

20 >>MR. SHEBELSKIE: Yes. In answer to 2.8 we  
21 were specifically referencing the function of maintaining  
22 the LSN collection, as opposed, I think, to the office,  
23 OCRWM office, in its entirety, and all its different  
24 functions. That's how I understood the distinction.

25 In other words, Your Honor, around the time

1 we're switching over to the COPS center, in that time  
2 period, the Office of Legacy Management will assume  
3 responsibility at DOE for the maintenance of to the LSN  
4 collection, even if OCRWM, all its functioning have not  
5 been worked out.

6 >>JUDGE WARDWELL: So in July, Legacy  
7 Management will take over from OCRWM those functions  
8 associated with LSN. That's why I use July here, but, in  
9 essence, there will still be some residuals of OCRWM in  
10 existence through to the end of the fiscal year.

11 >>MR. SHEBELSKIE: That was my understanding,  
12 and that was the distinction we were drawing with this  
13 answer.

14 >>JUDGE WARDWELL: Now, let's get to the --  
15 sort out a little bit of where -- who is this Office of  
16 Legacy Management? Where do they reside? What type of  
17 expertise do they have to do the functions that OCRWM was  
18 doing? How does it relate to the Office of Nuclear  
19 Energy? How does it relate to what OGC is going to do in  
20 all of this, because I get confused. What gets what out  
21 of this. Because it seems like you have different  
22 players involved in taking over functions that were  
23 originally handled by OCRWM are now divided up between  
24 the Legacy Management, the OGC, and the Office of Nuclear  
25 Energy? Can you clarify the whole interactions?

1 >>MR. SHEBELSKIE: I will try, Your Honor.

2 The current situation, I think, I would depict as  
3 follows.

4 You have the Office of Civilian Radioactive  
5 Waste Management or OCRWM, that is the project office for  
6 the Yucca Mountain project, and the Department's LSN  
7 responsible official is within OCRWM. He doesn't work in  
8 isolation, the Department currently uses the services of  
9 CACI as the automated litigation support contractor, and  
10 that's through a contract that CACI has with The  
11 Department of Justice, and The Department of Justice, a  
12 representative is assigned and works with OCRWM.

13 You also have DOE's in-house lawyers at the  
14 Office of General Counsel, who, amongst other  
15 responsibilities, is a group that's assigned to work on  
16 the LSN issues, along with the OCRWM official and CACI  
17 and the Justice Department official.

18 I think, in simplest terms, all we're really  
19 doing is keeping intact the Office of General Counsel  
20 participation, the participation of CACI, the litigation  
21 support contractor, in conjunction with The Department of  
22 Justice, and taking the LSN responsible official function  
23 from OCRWM and assigning that to an official within the  
24 Office of Legacy Management.

25 >>JUDGE WARDWELL: Where's the Office of

1 Legacy Management?

2 >>MR. SHEBELSKIE: Where is it? I believe it  
3 is headquartered in Washington, D.C. along with -- same  
4 place where the Office of Civilian Radioactive Waste  
5 Management is headquartered, or in the D.C. Metro area.  
6 Might actually be outside of Maryland.

7 They have facility, storage facilities, the  
8 principal one we're concerned with is here is in  
9 Morgantown, West Virginia, but the administrative  
10 offices, I believe, are in the D.C. Metro area.

11 Office of Legacy Management, their expertise,  
12 their mission is, of course, the maintenance and  
13 preservation of archived records, exactly the mission  
14 that is the primary one we're concerned with here, which  
15 is the maintenance of DOE's LSN collection, its  
16 preservation, and its public availability through the a  
17 hundred00 year term.

18 >>JUDGE WARDWELL: And that expertise is in  
19 D.C., not in Morgantown, just more of the hardware is in  
20 Morgantown, when it goes there?

21 >>MR. SHEBELSKIE: Well, expertise, I believe  
22 the administrative headquarter -- off the administrative  
23 headquarters, if that's the right term for the office, is  
24 in the D.C. Metro area, in the records center in West  
25 Virginia. I mean, obviously the people who work there

1 are -- have expertise in IT management and preservation  
2 of documents. So the -- I think expertise, as you're  
3 using it, is in both locations.

4 >>JUDGE WARDWELL: Where does the Office of  
5 Nuclear Energy come into effect? That was mentioned in  
6 regards to some -- picking up some of the load, I  
7 thought, in some of the responses.

8 >>MR. SHEBELSKIE: Yes, Your Honor, back in  
9 January, February, when we were beginning this phase of  
10 the process, that was obviously very preliminary. The  
11 budget request had just been announced, and DOE, as we  
12 stated at the time, we were still in the very beginning  
13 processes of developing a transition plan, for want of a  
14 better term.

15 And as we stated there, that additionally the  
16 expectation was the Office of Nuclear Energy would  
17 maintain this responsibility, but we said that it might  
18 go to someone else, and as we worked the issues over the  
19 ensuing months, I think the Department's come to work  
20 through and realize that the Office of Legacy Management,  
21 that really does preserve document collections over the  
22 long term for DOE, is really the office best suited to  
23 maintain the LSN collection -- because, essentially,  
24 we'll be going into a largely static state, I think, on  
25 the LSN, in the foreseeable future, and, then, of course

1 in the a hundred00 year period, that's where it would go,  
2 in any event, so it makes sense to go ahead and  
3 transition that responsibility now to the Office of  
4 Legacy Management, so that they can be involved from the  
5 get-go with this.

6 >>JUDGE WARDWELL: Are you able to represent  
7 now that the expertise that was originally available  
8 through OCRWM, in overseeing a function of the LSN, and  
9 providing service when there are problems associated,  
10 will be achieved and available in the Office of Legacy  
11 Management?

12 >>MR. SHEBELSKIE: In the Office of Legacy  
13 Management?

14 >>JUDGE WARDWELL: Right.

15 >>MR. SHEBELSKIE: Yes, sir, I can.

16 >>JUDGE WARDWELL: Okay. I think we're up to  
17 three, and this is probably a good time to break. I  
18 thought I would let them collect their ideas and start  
19 with that.

20 >>JUDGE MOORE: I just have one question. In  
21 my reading of the Nuclear Waste Policy Act, there's a  
22 chapter that creates the Office of Civilian Radioactive  
23 Waste Management, specifically. It didn't exist prior to  
24 the Nuclear Waste Policy Act. How can it be disemboweled  
25 if it is created by Congress in the act. What's the

1 process one goes through at DOE to make it disappear and  
2 divide all its functions elsewhere?

3 >>MR. SHEBELSKIE: Your Honor, I'm not trying  
4 to evade your question. I honestly can't answer the  
5 question because that's not something that I'm involved  
6 with.

7 >>JUDGE MOORE: Okay. Was there any  
8 congressional litigation that specifically undid what  
9 Congress originally did?

10 >>MR. SHEBELSKIE: Your Honor, I'm really not  
11 in a position to address that. I would say that the  
12 responsibility for the LSN collection, I don't think, is  
13 addressed in the Nuclear Waste Policy Act, so I would  
14 believe that -- a transfer of that function within DOE to  
15 the Office of Legacy Management, I don't think,  
16 implicates the concern that you have.

17 >>JUDGE MOORE: But OCRWM is going away, is  
18 it not?

19 >>MR. SHEBELSKIE: That is my understanding,  
20 Your Honor.

21 >>JUDGE MOORE: Okay. Thank you. We'll take  
22 a brief 10 minute recess.

23 (Recess taken)

24 >>JUDGE MOORE: Please be seated.

25 >>JUDGE WARDWELL: Judge Moore, do you have

1 something or do you want me to charge ahead? I'm over  
2 here. You all set to go?

3 What about classified documents, how are  
4 those handled?

5 >>MR. SHEBELSKIE: Classified documents are  
6 not part of the LSN.

7 >>JUDGE WARDWELL: Got it.

8 >>MR. SHEBELSKIE: So our LSN collection does  
9 not contain any classified documents.

10 >>JUDGE WARDWELL: How will they be  
11 preserved?

12 >>MR. SHEBELSKIE: The classified information  
13 that pertains to the proceeding has been --

14 >>MR. HEINZEN: Can I ask you a  
15 very quick question, can you tell me --

16 >>JUDGE MOORE: Excuse me, who's speaking,  
17 please?

18 >>MR. FITZ: It is somebody on the telephone.

19 >>JUDGE MOORE: On the telephone. Who's on  
20 the telephone conference, please?

21 >>MR. HEINZEN: Hello, this is Steve Heinzen  
22 of Godfrey & Kahn, on behalf of the joint Timbisha  
23 Shoshone.

24 >>JUDGE MOORE: Okay. We were apparently  
25 picking up a side conversation, if you would mute the

1 telephone, except when you're speaking, it would be  
2 helpful.

3 MR. HEINZEN: Absolutely. I'm sorry about  
4 that. Thank you.

5 >>JUDGE MOORE: Thank you.

6 Mr. Shebelskie, you were in the midst of  
7 telling us about classified documents. Now, there is one  
8 whole volume of the application that is the classified  
9 material.

10 >>MR. SHEBELSKIE: Yes, sir.

11 >>JUDGE MOORE: And, of course, the  
12 regulations require that application to have been, not  
13 only filed with the NRC, it is specifically enumerated in  
14 the LSN sections, as one of the documents that is a  
15 foundational document.

16 So those documents that are part -- actually  
17 part of the application, have to exist in some form, I  
18 would think, as part of all of this.

19 And secondly, as I understand it, there's --  
20 may well be others that, because of the defense -- I'm  
21 trying to think of the name of the Office of Nuclear --  
22 the Navy --

23 >>MR. SHEBELSKIE: Office of Nuclear  
24 Propulsion.

25 >>JUDGE MOORE: Naval Nuclear Propulsion.

1 There's a -- as I've understood it, some subset of  
2 documents from them, in addition to, perhaps, what's  
3 already in the application itself, that may be in play.  
4 Those, I guess, are what we're talking about.

5 >>MR. SHEBELSKIE: And that's what I  
6 understood, Your Honor. That in -- with the benefit of  
7 that, that classified information will be maintained  
8 consistent with Department of Defense and Department of  
9 Energy Regulations and Requirements. I was able to  
10 consult with counsel for the Navy Nuclear Propulsion  
11 Program, who advises me what those requirements are  
12 something that we're not authorized to address in this  
13 forum. But if the Board has some concern about that --

14 >>JUDGE MOORE: Well --

15 >>MR. SHEBELSKIE: We're all trying to --

16 >>JUDGE MOORE: They all have a bibliographic  
17 header, and they're privileged. So that's the  
18 identification of them in the LSN; is it not?

19 >>MR. SHEBELSKIE: There might be some  
20 reference to the volume of the LA in the LSN, Your Honor  
21 but I believe all the classified information is not part  
22 of the LSN, even in header format. I think what you're  
23 referring to is that subset of documents maintained by  
24 the Navy Nuclear Propulsion Program might be the  
25 reference materials in the classified chapter of the LA.

1 >>JUDGE MOORE: But -- well, I will leave it  
2 to Judge Wardwell to figure it out.

3 >>JUDGE WARDWELL: How are we to assure that  
4 those will be available in the future, for anyone who has  
5 the appropriate clearance to review those documents? Is  
6 there --

7 >>MR. SHEBELSKIE: Your Honor, I think all I  
8 can say at this time is that there are Department of  
9 Defense and DOE regulations requirements that direct the  
10 retention for such information, and those materials will  
11 be maintained, obviously, consistent with those  
12 obligations.

13 >>JUDGE WARDWELL: Let's move on, then. I'm  
14 up to section 4, starting with your archiving plans.  
15 Kind of covered where we're at today and where we'll go  
16 over the next couple of years, while this motion to  
17 withdraw is sorted out.

18 And now moving on to the future, and in  
19 response to Question 4.a hundred, you say that the  
20 individual pages that make up the documents in the  
21 collection are not unnumbered, but rather they are stored  
22 in a directory and will be so maintained in this  
23 directory.

24 And I understand that, but there is currently  
25 no search engine for that directory, outside of the LSN;

1 is that correct, or not?

2 >>MR. SHEBELSKIE: That is correct.

3 >>JUDGE WARDWELL: And will -- are there  
4 plans to develop such a search engine for that, when it  
5 is now being archived, either as a permanent or temporary  
6 file, really doesn't matter?

7 >>MR. SHEBELSKIE: That will be done -- yes,  
8 sir, that will be done through the Office of Legacy  
9 Management, loading the data onto servers, basically, and  
10 creating a search engine for that collection.

11 >>JUDGE WARDWELL: And are you able to  
12 represent now that it will function in a manner  
13 consistent to the way the LSN is managed in regards to  
14 being able to search and then retrieve documents?

15 >>MR. SHEBELSKIE: I can tell you that that  
16 is our plan and intent, yes, sir.

17 >>JUDGE WARDWELL: And right now, of course,  
18 there's a -- it is -- it is fair to say it is early to  
19 speculate what software would be used or how that would  
20 be achieved, that's future stuff?

21 >>MR. SHEBELSKIE: Yes, sir.

22 >>JUDGE WARDWELL: And the answer to Question  
23 4.2.2, the requirements for converting the documents to a  
24 searchable format, you respond "The header and text files  
25 in the LSNDP are currently in a searchable format. The

1 Legacy Management will use its replacement index utility  
2 to search for documents using those same files, no files  
3 will be needed to be converted for that purpose.

4 What is this replacement index utility?

5 >>MR. SHEBELSKIE: Your Honor, that is the  
6 replacement search index function that we were just  
7 talking about.

8 >>JUDGE WARDWELL: That's just another word  
9 for that, but it currently doesn't exist, or hasn't been  
10 selected, is a better way to say it, or defined, or  
11 whatever else.

12 >>MR. SHEBELSKIE: Correct. What we're  
13 conveying here is that the header files, the existing  
14 header files and our existing text files are in a  
15 searchable format, just as they are searchable now in the  
16 LSN, and the Office of Legacy Management will create a  
17 index or spidering-type function to replace what the  
18 NRC's LSN portal now does.

19 >>JUDGE WARDWELL: In the event the  
20 collection is deemed as permanent, and it does get  
21 transferred to NARA, will this same search engine exist?  
22 Will that go with it?

23 >>MR. SHEBELSKIE: It is my understanding  
24 that it will. And in addition, let me confirm something,  
25 Your Honor.

1           It is our understanding that even in that  
2 scenario, Legacy Management will also maintain a copy  
3 itself for the a hundred00 year period.

4           >>JUDGE WARDWELL: With that searchable  
5 engine.

6           How will an individual get access to the  
7 searchable engine, do you anticipate? Will it be a  
8 web-based type of thing?

9           >>MR. SHEBELSKIE: Not over the Internet, is  
10 my understanding, but through the process that is  
11 available now to anyone who is requesting a document from  
12 the Office of Legacy Management. They can contact the  
13 Office of Legacy Management, including through the  
14 records center in Morgantown and make the request.

15          >>JUDGE WARDWELL: And that's fine if you  
16 know the document you want, but you may not even know the  
17 document exists that you want. How will you be able to  
18 search and find and determine that, yes, this is the  
19 document you want?

20          >>MR. SHEBELSKIE: Well, as I said, you can  
21 either make a request for a specific document or you  
22 could make a request for documents responsive to search  
23 terms.

24          >>JUDGE WARDWELL: I see. Is that how NARA  
25 works, or can you fill me in on how that process might be

1 different, if or when it gets transferred, if it was  
2 deemed a permanent collection?

3 >>MR. SHEBELSKIE: I don't -- no, I can't  
4 answer that, Your Honor. And that's why I believe, and I  
5 will double-check to confirm this, that that's why legacy  
6 management was going to create a system and maintain it,  
7 a search function.

8 >>JUDGE WARDWELL: For this a hundred00 year  
9 period?

10 >>MR. SHEBELSKIE: For this a hundred00 year  
11 period.

12 >>JUDGE WARDWELL: Regardless of whether it  
13 is temporary or permanent?

14 >>MR. SHEBELSKIE: Certainly, if it is  
15 temporary, they will do it.

16 >>JUDGE WARDWELL: But you're still going to  
17 do it, even if it is permanent?

18 >>MR. SHEBELSKIE: That's my understanding.  
19 But we will double-check that and report back to the  
20 Board, if it is different.

21 >>JUDGE WARDWELL: Do that.

22 >>MR. SHEBELSKIE: All right.

23 >>JUDGE WARDWELL: I think that's of  
24 interest. Section 4 -- Question 4.11, what would be the  
25 difference in the steps, cost, and schedule if NARA

1 decision was reached in a hundred, 2, 5, or 10 years  
2 after DOE's collection had been taken off line. You  
3 mentioned earlier on that you were going to take your  
4 collection off line. And when would you anticipate doing  
5 that?

6 >>MR. SHEBELSKIE: Taking DOE's collection  
7 off line?

8 >>JUDGE WARDWELL: Yes. After -- as soon as  
9 the non-appealable order -- I mean, as soon as, but well  
10 you can't do it instantaneous, I know, but your goal  
11 would really basically be to take it off as soon as  
12 non-appealable orders.

13 >>MR. SHEBELSKIE: Well, not before then  
14 obviously and in an ordinarily fashion thereafter.

15 >>JUDGE WARDWELL: But no one could expect it  
16 to exist online --

17 >>MR. SHEBELSKIE: That's correct.

18 >>JUDGE WARDWELL: -- after the  
19 non-appealable order is finally reached.

20 >>MR. SHEBELSKIE: That's right. The actual  
21 length of time to transition away will depend on when it  
22 happens, what circumstances, where we are in the budget  
23 cycle, things like that.

24 >>JUDGE WARDWELL: So here we are offline,  
25 and it is now being handled by Legacy Management, and

1 anyone who wants some information will have to either  
2 request a search through them or a specific document  
3 through them, to be able to retrieve this; is that  
4 correct.

5 >>MR. SHEBELSKIE: Yes, sir, Your Honor.

6 >>JUDGE WARDWELL: How will they get that,  
7 then; will it basically be transferred electronically  
8 from them or --

9 >>MR. SHEBELSKIE: I would, generally  
10 speaking, think that the -- since the documents exist in  
11 electronic format, the copies requested would be provided  
12 in electronic format as well, subject to agreement by the  
13 requester to pay for the copy.

14 >>JUDGE WARDWELL: Does Legacy Management  
15 have a regular process by which they dust off the  
16 documents and make sure every -- the retrieval system  
17 still works, and you can get something? Because in your  
18 response to this question you state that DOE would not  
19 expect there to be any differences in the stated  
20 scenarios because of the preservation steps Legacy  
21 Management will take, as discussed above.

22 And that answer was in response to the  
23 question that said, "Do you anticipate any difficulties  
24 associated with whether or not, all of a sudden, Yucca  
25 Mountain came back to life again, and you had to

1 reinstitute this, and it took place a hundred, 2, 5, or  
2 10 years after the collection had been taken off line,  
3 and I know the model I have in my mind is just my history  
4 in dealing with trying to retrieve my own records of  
5 things that are less than 10 years old.

6 I have difficulties with the current software  
7 reading the things. It is a real challenge, sometimes,  
8 to pull out an old document that I've made in a  
9 relatively short period of time, oftentimes as short as  
10 five years. If I've got a five-year-old disk of  
11 something, it is a challenge to get that report back out  
12 again.

13 Why wouldn't the same scenario take place  
14 with you in your collection?

15 >>MR. SHEBELSKIE: Well, speaking in just  
16 general terms, first, as I understand Question 4.a  
17 hundred.a hundred, it related to the transition between  
18 LM and NARA.

19 >>JUDGE WARDWELL: Right. Correct.

20 >>MR. SHEBELSKIE: In the event NARA were to  
21 make a determination these are permanent records. Again,  
22 that backdrop, and as we understand NARA's current -- I  
23 don't know if I would say requirement, but standards, or  
24 whatever, for the document retention for permanent  
25 records, the formats that we have, the existing LSN

1 collection are compatible with the exception of possibly  
2 compressed TIFFs and the JPEG files, and, again, speaking  
3 only in the general way, without intending to give  
4 specifics about what LM might do, and I would have to  
5 caveat that, and I would have to supplement that,  
6 Your Honor, if you want some more details about the  
7 regular maintenance that LM would do.

8           Obviously, there would be some degree of  
9 periodic maintenance of the Office of Legacy Management  
10 does to maintain these records, to make sure they are  
11 available for the time period, for their retention  
12 period.

13           No, I can't tell you whether it is every six  
14 months, or things like that, but obviously there's  
15 something that's done in that respect.

16           >>JUDGE WARDWELL: And where this is leading  
17 to is just what you're saying in this transfer to NARA.  
18 You know, you weren't able to comment on how -- well,  
19 maybe you are. Maybe I didn't ask the question  
20 correctly, so I'll ask it again.

21           Do you have any familiarity with how a person  
22 would go about retrieving any document from NARA,  
23 exclusive of DOE's collection? Just there's a -- they're  
24 interested in a document and how would they go about  
25 getting it from NARA?

1 >>MR. SHEBELSKIE: No, sir, I really can't  
2 comment on that, just because I have a lack of  
3 information on that. And, of course, if the record were  
4 deemed permanent and transferred to NARA, as part of the  
5 legal title, they, then, legally control the means to  
6 that.

7 And so I don't think anything I could say in  
8 any event would be dispositive of how NARA would proceed  
9 in the future.

10 >>JUDGE WARDWELL: Under the image I have of  
11 this, I can see why a TIFF format might be acceptable to  
12 NARA, and why NARA may not be particularly interested in  
13 how the documents are received. They're more custodians  
14 of the documents. And when anyone's interested in  
15 retrieving one, they say, fine, they're in all those  
16 boxes, go find it.

17 That seems to be what might be the case, as I  
18 piece things together, and if it isn't, fine. But if it  
19 is that, I mean, they're not -- I don't believe they're a  
20 library, are they? They don't have a card catalog of  
21 things, and issues like that, do they?

22 >>MR. SHEBELSKIE: Your Honor, we stated in  
23 our response that, based on discussions, to date, with  
24 NARA, we understand that NARA could use and maintain the  
25 search -- replacement search index that LM is going to be

1 creating.

2 Now, again, this is based upon consultation  
3 at this point in time, which we can all have available to  
4 us.

5 So our indications aren't the dire situation  
6 I think you're concerned about.

7 >>JUDGE WARDWELL: And you're able to  
8 represent that you would be as concerned about the dire  
9 representation that I made of what NARA may do -- have  
10 done with previous documents, in regards to this  
11 particular collection, and the need to potentially  
12 retrieve some of this valuable information, and your  
13 commitment to be able to have this scientific information  
14 available to the public for future endeavors associated  
15 with high level waste disposal options?

16 >>MR. SHEBELSKIE: As I said, DOE has  
17 expressed the view to make this information available,  
18 that's why we have outlined what we're planning to do for  
19 the Office of Legacy Management. We think the a  
20 hundred00 year time period right now is an appropriate  
21 period for that, and that's why our contemplation was  
22 that the Office of Legacy Management would maintain these  
23 documents for the a hundred00 years, with that search  
24 capability.

25 Our indications and our consultations, in

1 discussion with NARA, to date, leads us to believe that  
2 in the event there were permanent -- the records were  
3 classified as permanent records, that comparable function  
4 could be maintained.

5 But as I said we -- I've made a note here to  
6 double-check whether Office of Legacy Management was  
7 planning on keeping a parallel collection, in any event,  
8 but I will follow up with the Board on that.

9 >>JUDGE WARDWELL: Yes. Do that. I think  
10 that would be important to know.

11 Under 4.15, explain how DOE archiving plans  
12 meet DOE's objective of preserving the core scientific  
13 knowledge from the Yucca project.

14 And in your second paragraph you say OCRWM  
15 personnel and contract staff, as well as those of other  
16 agencies that support the OCRWM program, have also been  
17 directed that they must continue to preserve documents  
18 that relate to Yucca Mountain, including documents  
19 concerning science of -- the science of storage or the  
20 disposal of high level waste and spent nuclear fuel, even  
21 if they are permitted to dispose of such documents under  
22 applicable retention schedules.

23 Who did this direction? They have also been  
24 directed that they must continue to preserve the  
25 documents? Who was telling you this and under what

1 authority, and what's the result of that?

2 >>MR. SHEBELSKIE: Oh, well, that was a  
3 direction from OCRWM to its personnel and contractors to  
4 preserve all the documents.

5 >>JUDGE WARDWELL: I see.

6 >>MR. SHEBELSKIE: Litigation speaks for like  
7 a document freeze, until we could make sure that we had  
8 identified, and had proper disposition plans for all  
9 documents and federal records. So we didn't want here,  
10 in the immediate term, anything to be lost, until we  
11 could get considered analysis to what needs to be saved.  
12 So that's an ongoing process. You asked what the result  
13 of it; it is in progress now.

14 >>JUDGE WARDWELL: Gotcha. Now, later on in  
15 that paragraph you talk about the potential use of the  
16 Waste Technical Review Board. Any updates on that, or  
17 could you explain that more in detail of what your  
18 interactions with them are?

19 >>MR. SHEBELSKIE: No, not much further. We  
20 have been in communication -- the Department has been in  
21 communication with the Board, as reflected here. It is  
22 my understanding as of to date the Board has not  
23 committed to provide the oversight, but that's an ongoing  
24 discussion.

25 >>JUDGE WARDWELL: Sorry, as I go through

1 these I'm reading my questions, so most of them we've  
2 answered. Most of them deal with how does NARA behave  
3 now. How do you get a document from them. I'm up to now  
4 7.6 on page 47. And I think the first question was, in  
5 7.5, you're stating that Legacy Management hasn't  
6 finalized an estimate of the cost to archive the LSN in  
7 order to preserve it, after there is a final  
8 non-appealable order terminating the proceeding.and it  
9 says that DOE will ensure that they have the necessary  
10 funds.

11 Don't you have an order of magnitude estimate  
12 of the cost? I mean, you must -- give us some  
13 perspective here, if you can.

14 >>MR. SHEBELSKIE: I really can't,  
15 Your Honor, because it's my understanding when we  
16 prepared these answers, and it hasn't changed, that  
17 Office of Legacy Management is still working up plans and  
18 projections like that. But DOE's made this commitment,  
19 and it intends to honor it.

20 Obviously funds have to be appropriated by  
21 Congress, but requests can be made, and Congress will  
22 have to give them money.

23 >>JUDGE WARDWELL: Is there a budget item for  
24 this in the physical year 11 budget currently being  
25 reviewed?

1 >>MR. SHEBELSKIE: I don't know, Your Honor.

2 I don't -- I don't know, but I'll check on that.

3 >>JUDGE WARDWELL: Yes, please do.

4 Moving on to 8.7, dealing with Freedom of  
5 Information Act matters. Question 8.7.2 -- 8.7.a hundred  
6 said who was the FOYA officer for Nuclear Energy, and  
7 that's John Montgomery, and I gather he'll really be  
8 in -- as you say, he's Legacy Management's point of  
9 contact, and that's where this is really residing now as  
10 opposed to Nuclear Energy, correct?

11 >>MR. SHEBELSKIE: Correct.

12 >>JUDGE WARDWELL: And 872 says, "What steps  
13 have been taken to transfer institutional knowledge of  
14 the program activities, its records, its issues, and  
15 historical to FOYA requests on high level waste issues?"

16 And your answer was "This will be facilitated  
17 by the continuing involvement of OGC in the FOYA office.  
18 I guess I'd like the answer addressed a little bit more  
19 than that. It didn't seem like it was answering the  
20 question. It just said, well, it is facilitated by this.

21 Is there a way to transfer -- is that all  
22 that exists now under the current situation is all -- are  
23 all FOYA requests strictly handled out of DOE's OGC  
24 office, and will that continue in the future the same way  
25 it is now.

1 Is that what you're saying by that answer?

2 >>MR. SHEBELSKIE: In essence, yes.

3 >>JUDGE WARDWELL: Thank you.

4 And likewise, with 8.8, you mention  
5 Mr. Montgomery, again, will serve as a point of contact  
6 for any privileged documents, et cetera. And is it  
7 fair -- will you be able to represent that he will  
8 interact with the same personnel at OGC, or any other  
9 associated offices, that now currently takes place for  
10 any privileged documents?

11 >>MR. SHEBELSKIE: The same offices and  
12 functions, yes. Obviously, personnel come and go.

13 >>JUDGE WARDWELL: Those are -- those are the  
14 questions I have. Would any of the parties like to  
15 respond, and I'll start with the State of Nevada, to see  
16 if they would like to add any comments, or raise some  
17 issues that still reside in their concerns.

18 >>>MR. FITZPATRICK: Your Honor, Charles  
19 Fitzpatrick for the State of Nevada. As Mr. Shebelskie  
20 mentioned, we've not only gotten their answers, but had  
21 several interchanges to clarify things for us. And we're  
22 satisfied on three points: They'll maintain their LSN  
23 functionality intact for the 18 months, or whatever it  
24 is, until the termination of this; at some future date,  
25 should there ever be a need to do so, they'll work with

1 NRC staff in reconstructing an LSN type situation,  
2 environment, by keeping all of the documents intact that  
3 are presently in their LSN. And in the interim, between  
4 those two potential dates, a party seeking documents from  
5 DOE will be in the same position a party would expect to  
6 be, where there's no licensing proceeding in place, and  
7 when the relationship between, say, Nevada and DOE is  
8 that of private citizen and federal agency, in other  
9 words, they can ask by FOYA request, and we will.

10 >>JUDGE WARDWELL: Do you think that's  
11 sufficient in regards to addressing the wealth of  
12 information that's available and applicable for other  
13 endeavors, other options associated with high level  
14 waste? You've got an credible scientific body of  
15 information, and is that -- why do you feel that's  
16 sufficient in regards to the ability to easily retrieve  
17 this information and apply it to other options, that this  
18 information would very likely apply directly?

19 >>>MR. FITZPATRICK: If you're speaking of  
20 the first time frame, we have the full access. We've  
21 always had. If you're talking about the third  
22 hypothetical time frame, we'd have the same access we've  
23 always had. If you're talking about the interim, where  
24 there's no licensing proceeding in place, I don't see  
25 where we would be entitled to access information, other

1 than by whatever device; currently an example is the FOYA  
2 request, to obtain documents in the possession of DOE.

3 Without the existence of a licensing  
4 proceeding, there's no reason for an LSN database.  
5 There's no such thing as documentary material a hundred,  
6 2, and 3. Those terms have become meaningless. And so,  
7 what's in existence is DOE's document collection, which  
8 its promised to keep for a hundred00 years, and which  
9 Nevada can ask for by document name, or by category, or  
10 by subject matter.

11 And if you're speaking about documents not on  
12 the LSN, I certainly don't think that we, or the Board,  
13 has the authority to demand that DOE do anything -- I  
14 mean, the laws governing this proceeding define  
15 documentary material as the documents that must be  
16 accounted for by DOE. We believe they are doing that.  
17 And so I would think that there's no basis for demanding  
18 accountability for other documents, beyond those that are  
19 documentary material.

20 >>JUDGE WARDWELL: Let's not worry about the  
21 basis for now, let's instead explore the abilities to  
22 practically retrieve this wealth of information, should  
23 this license be withdrawn, or the proceeding terminated,  
24 in any fashion, for future applications.

25 >>MR. FITZPATRICK: For example --

1 >>JUDGE WARDWELL: For example, it is five  
2 years from now, and I happen to be working on this.  
3 Let's say it takes five, ten years before any real effort  
4 is made to start to specifically implement a designated  
5 option for high level waste disposal, and things are  
6 cranking up and I now want to retrieve some of these  
7 documents, don't you think there's an obligation to  
8 provide a system that makes it somewhat reasonable in  
9 regards to achieving this, short of FOYA requests?

10 Do you find that very workable?

11 >>MR. FITZPATRICK: Well, I'm not going to  
12 say FOYA requests are easy, because I've been involved  
13 with FOYA requests for the last several years, and they  
14 are certainly fraught with difficulty, exemptions from  
15 production, delays in production.

16 However, that's why, in our comments, we did  
17 propose, and I think DOE is agreeable, that just as you  
18 asked each of the other parties, and the remaining  
19 parties you asked today, and the previous ones on  
20 January 27th, if they would make their complete LSN  
21 collections available on CDs or other electronic media,  
22 on request to the LSN and other parties.

23 And our suggestion and our filing was that,  
24 since those documents are all available to them, the ones  
25 on the LSN -- I mean, they're available on the worldwide

1 web. They don't suffer from the FOYA restrictions of  
2 nine exemptions or time delays in response.

3 And so our proposal was that, since they're  
4 all available to everyone today, that they be made  
5 electronically available to any party who requests that  
6 they -- the complete collection, the complete LSN  
7 collection be made available to any party who requests  
8 it, and indicates their willingness to pay for it.

9 And, you know, we've looked up the -- this  
10 gentleman knows a lot more about it, I'm sure, but the  
11 electronic media that would be available, and today it  
12 turns out that there's media as small as a novel in size  
13 that could hold four terabytes in information, so that I  
14 think it is fair to say that each of the parties could  
15 provide its LSN collections to the LSN administrator,  
16 which they've already been asked to do and agreed to do,  
17 or to any of the other parties, upon request, and upon  
18 commitment to pay for the cost of so doing. That would  
19 put it in the hands of, arguably, you, Nevada, everything  
20 that's on their LSN database today, during this interim.  
21 So that's the proposal that we've made to answer the  
22 question about this availability during this interim.

23 >>JUDGE RYERSON: Yes. Is that -- I mean,  
24 that is not a commitment that is in DOE's May 24 filing.

25 >>>MR. FITZPATRICK: No. That wasn't raised

1 in the questions at all.

2 >>JUDGE RYERSON: That's not raised in your  
3 June a hundred response.

4 >>>MR. FITZPATRICK: Right. The general  
5 question of -- was raised on January 27th to every  
6 party --

7 >>JUDGE RYERSON: Right.

8 >>>MR. FITZPATRICK: -- and then to the  
9 remaining ones today of, would you put it on electronic  
10 media and make it available to the LSN administrator, and  
11 you know what the responses have been.

12 Our proposal over and about that was, since  
13 it is available on the worldwide web, without FOYA  
14 restrictions now, and since it is going to be put on  
15 electronic media and made available to the LSN  
16 administrator, it could easily be ordered that DOE, or  
17 any party, make available to any other party who requests  
18 it and offers to pay for it, a complete copy of their LSN  
19 documentation.

20 >>JUDGE RYERSON: And you discussed this with  
21 DOE, and maybe I should be asking Mr. Shebelskie, but  
22 what is the status of that issue?

23 >>MR. SHEBELSKIE: Yes, Your Honor, Mike  
24 Shebelskie for DOE. We did confer about that issue after  
25 Nevada filed its comments that Mr. Fitzpatrick is

1 referring to, and we are agreeable to that. We think it  
2 makes sense to do it once the transition occurs to LM,  
3 and they create their replacement search index and  
4 compile PDF files. At that point, if Nevada, or anybody  
5 else, wants a complete copy, is willing to pay for it,  
6 we'll provide it.

7 >>JUDGE MOORE: Has there been any estimate  
8 made on what the cost would be and what the media would  
9 be, or medium?

10 >>>MR. FITZPATRICK: We've taken a look at  
11 the media, mediums, and the cost of that portion of it  
12 and determined that it is very inexpensive, probably less  
13 than \$1,000 total for DOE's entire collection. That  
14 would leave the issue of the labor cost involved in  
15 making the transfer from the present to the new, and, no,  
16 we haven't gotten any estimates from DOE, but our IT  
17 people tell us that that's something that can be done  
18 where you hook up A and B, and you don't have to, you  
19 know, be there for every minute of the transfer, you  
20 know, you go back eight hours later and it is full or  
21 something.

22 >>JUDGE MOORE: Mr. Shebelskie, if DOE is  
23 willing to do that, what would be the search engine that  
24 would make that database work?

25 >>MR. SHEBELSKIE: Well, that's the thing,

1 Your Honor, whoever's requesting these documents, this  
2 complete collection on electronic media, my  
3 understanding, CDs would not be the most efficient way?

4 >>JUDGE MOORE: Well, unless it is a large  
5 truck.

6 >>MR. SHEBELSKIE: Right, exactly. That the  
7 requester would have to have hardware to separate the  
8 tapes, and --

9 >>JUDGE MOORE: -- as well as software.

10 >>MR. SHEBELSKIE: As well as software. But,  
11 again, the files from LM would be maintained in the  
12 formats of -- existing formats of the HDML, XML, TIFF,  
13 JPEG and PDF. And so it would require, as I understand  
14 it, you need proprietary software to operate.

15 LM is not yet --

16 >>JUDGE MOORE: In other words, off the shelf  
17 software, Microsoft products would work, presumably?

18 >>MR. SHEBELSKIE: No unique proprietary  
19 software by DOE. LM has not yet created a search  
20 engine --

21 >>JUDGE MOORE: I understand that.

22 >>MR. SHEBELSKIE: -- subject to that. But  
23 the basic premise, basic request from Nevada was, once  
24 you set that all up in LM, and they wanted to pay for a  
25 complete copy of the four terra bites of data would you

1 provide it and they pay for the cost of it, the answer is  
2 yes.

3 >>JUDGE MOORE: And that would include your  
4 Legacy Management's index of that material?

5 >>MR. SHEBELSKIE: That's my understanding,  
6 Your Honor.

7 And, Your Honor, just to be clear, this is  
8 for the non-privileged, non-restricted access to the  
9 documents.

10 >>JUDGE MOORE: If not, we wasted an awful  
11 lot of time.

12 >>JUDGE WARDWELL: Any other parties or  
13 intervenors like to comment? Staff, would you like to?

14 >>JUDGE MOORE: Do all parties here concur  
15 that that is an acceptable approach to DOE's LSN document  
16 collection?

17 MS. BIELECKI: Your Honor, I'd comment on  
18 another topic. Earlier Nevada had indicated that --

19 >>JUDGE WARDWELL: Can you hold off for just  
20 a minute, make sure we finish this point.

21 >>JUDGE MOORE: This is another. It is a  
22 non-LSN DOE document collection topic.

23 MS. BIELECKI: It was pertaining to a comment  
24 about all parties committing to putting their collections  
25 on a CD. I just wanted to point out --

1 >>JUDGE MOORE: The Staff has ADAMS.

2 MS. BIELECKI: Right. I just wanted to  
3 clarify. Thanks.

4 >>JUDGE MOORE: No problem. And that's a  
5 little bit like, for those in the audience doing the  
6 New York Times Sunday crossword puzzle, but it  
7 nevertheless is there.

8 Counsel.

9 MR. ROBBINS: Alan Robbins on behalf of Clark  
10 County. This was touched on briefly in response to 7.5  
11 and 7.6. DOE basically states that it is funded through  
12 2010 and says it will do -- what are the exact words --  
13 will ensure that the LM has the necessary funds to  
14 maintain the LSN functionality until all appeals are  
15 exhausted.

16 But the question is -- or questions are, one,  
17 how can DOE do that? The most they can do, I think, is  
18 ask or recommend. They can't guarantee that they get  
19 funding. Or if they can, we'd like to know how they  
20 would do that.

21 And second, we need to consider, then, what  
22 are the consequences if they're not successful in their  
23 efforts to ensure funding, because you then have an  
24 unfunded and presumably unexecuted plan that was  
25 agreeable in concept, but now is not working.

1 >>JUDGE MOORE: Anytime you're dealing with a  
2 government department, doesn't that problem always exist?

3 MR. ROBBINS: Yes, sir, except --

4 >>JUDGE MOORE: I mean, even if you get a  
5 judgment against the United States under the Federal  
6 Torts Claim Act, it is only if Congress has funded the  
7 Justice Department -- well, it is administered by the  
8 Justice Department's fund for paying such judgments. If  
9 Congress doesn't pay the judgments, they go unpaid.

10 Is that not essentially the same situation  
11 that every government department is in, as far as the  
12 future goes?

13 MR. ROBBINS: I think in this context,  
14 Your Honor, only in part. And what I mean by that is, to  
15 the extent that the desire is to maintain the science,  
16 for example, for public access down the road, for other  
17 purposes beyond the Yucca Mountain licensing application,  
18 then I would say the answer is yes. That's just life.

19 However, of course, yesterday was spent  
20 discussing DOE's motion to dismiss, not only whether that  
21 should be granted, but if so, whether it should be  
22 granted with prejudice or not, and what are the  
23 consequences to parties in various contexts.

24 And so here we have a different situation  
25 than the norm, and is that to the extent that decisions

1 relative to that motion are made that presume a  
2 continuation of access to the documents, then, you know,  
3 to the extent a ruling is based on that assumption and  
4 that assumption later fails to materialize, now,  
5 potentially, an underpinning of such a ruling -- or the  
6 ruling -- a foundational peg of the ruling, potentially,  
7 has been taken away by lack of funding, and, therefore,  
8 the paradigm on which that ruling was premised may no  
9 longer exist, the question of whether you would have  
10 issued the same ruling, had you known that. So one way  
11 to do that is to anticipate that possibility in the  
12 ruling.

13 Now, I'm speaking a little bit in  
14 generalities because I don't want to overstep bounds of  
15 today, which are talking about documentary matters, and  
16 reopen yesterday's argument. But at the same time, I  
17 have to allude to it because I think that's very much a  
18 reason why in this context it is not just the normal risk  
19 of life, we're dealing with the Federal Government.

20 >>JUDGE MOORE: Thank you.

21 Any other comments? We will take a ten  
22 minute recess. And we need to put our heads together and  
23 reconvene at 12:10 to proceed.

24 >>MR. SHEBELSKIE: Your Honor, Mike  
25 Shebelskie.

1 >>JUDGE MOORE: Yes, Mr. Shebelskie.

2 >>MR. SHEBELSKIE: I wanted to raise this  
3 before you broke in case it prompted any further  
4 follow-up.

5 >>JUDGE MOORE: Well, I'm already broken but  
6 go ahead.

7 >>MR. SHEBELSKIE: I did during the last.

8 >>JUDGE WARDWELL: You're about ten years  
9 late, at least.

10 >>MR. SHEBELSKIE: I had some follow-up  
11 information about core samples, physical samples that we  
12 discussed earlier.

13 >>JUDGE MOORE: Please.

14 >>MR. SHEBELSKIE: And it may not be that  
15 every core sample is represented by a separate header in  
16 the LSN, as opposed to photographs, data from the core  
17 sample, strip charts, and the like. I didn't want to  
18 have anything taken out of context, and I was assuring  
19 that every core sample was represented by a bibliographic  
20 header, and, therefore, what the disposition plan would  
21 be, but I've made a record to do further inquiry and  
22 report back to the Board promptly on that, and what our  
23 plans would be -- if there are other core samples, where  
24 they are, and what DOE is planning to do with them. And  
25 I consulted with Nye County about this.

1 >>JUDGE MOORE: And these would be material  
2 that are not physical manifestations of things that are  
3 not already in the LSN, through a bibliographic header,  
4 or a bibliographic header of a collection of something?

5 >>MR. SHEBELSKIE: Well, I think any data  
6 generated, using the core samples, as I understand it, is  
7 in the LSN. It is just a question of whether there's a  
8 separate bibliographic header for the physical items.

9 >>JUDGE MOORE: But the physical item itself  
10 sits on a shelf somewhere and is locatable through that  
11 bibliographic header of the documentary material, at  
12 least as I understand the LSN regulations, if some party  
13 made a request, DOE would have to make arrangements to  
14 find it in the dust bin?

15 >>MR. SHEBELSKIE: The regulations require  
16 access as means of discovery to physical things. I just  
17 wanted to say -- I wanted to inquire further about the  
18 status of that.

19 >>>MR. FITZPATRICK: Your Honor, one last --  
20 Charles Fitzpatrick, State of Nevada. We somewhat  
21 addressed Mr. Robbins concerns for Clark County in our  
22 comments, which you have probably seen, but they ended  
23 with the suggestion that, if for any reason DOE failed to  
24 meet the commitments that it has made in its May 24 --  
25 and that probably would include a failure of funding,

1 that in the -- you know, long shot event of a new LA for  
2 an exact same Yucca Mountain repository, that it not be  
3 docketed or be rejected if the commitments have not been  
4 lived up to and the documents have been destroyed. So  
5 that's a partial answer, perhaps, to Clark County's  
6 question.

7 >>JUDGE MOORE: Okay. Does any other party  
8 have anything? We will recess until 12:10.

9 (Short recess taken.)

10 >>JUDGE MOORE: Please be seated.

11 If counsel has nothing further for us  
12 regarding DOE's LSN document collection.

13 Mr. Shebelskie.

14 >>MR. SHEBELSKIE: Your Honor, Mike  
15 Shebelskie. I have a statement to read regarding the  
16 classified information. I was authorized by counsel for  
17 the Navy Nuclear Propulsion Program to make the following  
18 statement.

19 "The Navy Nuclear Propulsion Program commits  
20 to maintaining all LA related classified material for the  
21 same time period that DOE will preserve its LSN document  
22 collection.

23 The Navy Nuclear Propulsion Program will  
24 continue to store that material in the same manner as it  
25 has been to support the LA to date." If the Board seeks

1 further information, we can answer that in a more  
2 appropriate form.

3 >>JUDGE MOORE: Thank you.

4 I want to make this very clear. Absolutely  
5 no inference should be read into the fact that we are  
6 about to order the parties to take an action. We, as you  
7 may know from the orders that have been issued, are on a  
8 very tight timeline to decide the matter that you all  
9 have placed in front of us. Therefore, no inference, one  
10 way or another, in any way, shape, or form should be read  
11 into the fact that we're instructing the parties to take  
12 this action.

13 The parties and petitioners and DOE shall  
14 confer and agree upon a complete set of proposed  
15 conditions regarding DOE's LSN document collection.

16 It appears, through the process of DOE's  
17 representations and answers to the Board's questions,  
18 from the January 27th case management conference, DOE's  
19 written filings of February 4th, February 19th, and  
20 February 24th, 2010, along with DOE's responses at  
21 today's conference, there remain no significant  
22 disagreements among the parties, interested government  
23 participants, and petitioners, regarding DOE's  
24 representations and commitments, regarding DOE's LSN  
25 document collection.

1           The agreed upon proposed conditions,  
2 therefore, should spell out those representations and  
3 commitments and avoid incorporation by reference to  
4 preclude, or at least minimize, the likelihood of future  
5 misunderstandings or misapprehensions of the various  
6 representations and commitments that have been made to  
7 date by DOE, regarding DOE's actions, and plans, to  
8 preserve its LSN collection.

9           Nevada should take the lead in this  
10 undertaking, and such proposed conditions shall be filed  
11 by June 18th, 2010. If there are any disagreements  
12 between DOE and the parties, IBGs and petitioners,  
13 alternative conditions, that include DOE's proposed  
14 conditions and the proposed conditions of the parties,  
15 IPGs and petitioners should be included.

16           It is so ordered.

17           Do any parties have any questions about that?

18           >>MR. LAWRENCE: John Lawrence, State of  
19 Nevada. When you said alternate or disagreements that  
20 may arise with regard to these terms and conditions  
21 should be filed at the same time, you're saying they  
22 should be filed --

23           >>JUDGE MOORE: Alternative conditions that  
24 recognize the two sides of the disagreement. DOE will --  
25 we expect none because there appear to be none. And we

1 would hope that there are none. But in an abundance of  
2 caution, we want DOE to lay out its view, and the  
3 parties, petitioners, IPGs -- IGPs, to lay out their view  
4 in what would be a proposed condition about any area of  
5 disagreement, of which there should be none,  
6 Mr. Lawrence.

7 >>MR. LAWRENCE: On June 18th?

8 >>JUDGE MOORE: Correct.

9 >>MR. LAWRENCE: Same date.

10 >>JUDGE MOORE: If there are no further  
11 questions, I would like to thank you for all your  
12 cooperation and participation in this endeavor. As I  
13 say, please do not read anything into it, but if the  
14 eventuality arise, the conditions are necessary under the  
15 timeline we've been instructed to operate, very frankly,  
16 it is questionable whether we can sort it all out and go  
17 back and forth with the parties and the things that we  
18 would only be comfortable with in doing. So unless  
19 someone else has further issues to bring before us, we  
20 will stand adjourned.

21 And if -- again, please don't read any  
22 inference into this. This is the last time this Board  
23 convenes and meets here in Las Vegas. It has been our  
24 pleasure, and my pleasure, having gone back way too many  
25 years in this matter, to have the privilege of presiding

1 over this, with your help and cooperation. So, thank you  
2 very much and we stand adjourned.

3 (Whereupon, the proceedings were  
4 adjourned)

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