On July 2, 2009, Construction Authorization Board 04 (Board) issued an Order Concerning Scheduling in which it specifically requested that U.S. Department of Energy (DOE) counsel “undertake or cause to be undertaken a reasonable investigation in good faith whether there may be constraints upon DOE’s ability to proceed in this matter” and to prepare to discuss any such constraints during a teleconference. Because the Board, in its July 21, 2009 Order Concerning Serial Case Management, indicated that it no longer intends to convene a teleconference, the Board requested that DOE “submit a written report concerning these matters on or before August 17, 2009.”

Counsel has undertaken such an investigation and is aware of no constraints that would inhibit DOE’s ability to participate through Fiscal Year (FY) 2010, the last year for which the Administration has submitted a budget request to Congress. DOE currently has the funds for FY 2009 to proceed on the existing Appendix D schedule. The President’s budget for FY 2010
likewise requests sufficient funds to continue participation. Assuming Congress appropriates the amount requested in the budget, DOE is aware of no constraints on its ability to participate in this matter during FY 2010. In this regard, the House and Senate Appropriations Committees have approved FY 2010 appropriation bills that include funding amounts for Yucca that are approximately the same as the amount requested and that would be sufficient for DOE to proceed in this matter through FY 2010.

Respectfully submitted,

Signed (electronically) by Donald J. Silverman
Donald J. Silverman
Counsel for the U.S. Department of Energy
Morgan, Lewis & Bockius LLP
1111 Pennsylvania Avenue, N.W.
Washington, DC 20004

James Bennett McRae
Martha S. Crosland
U.S. Department of Energy
Office of the General Counsel
1000 Independence Avenue, SW
Washington, DC 20585

Dated in Washington, DC
this 17th day of August 2009
UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:

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

In the Matter of: )
U.S. Department of Energy ) August 17, 2009
) Docket No. 63-001
High Level Waste Repository )
Construction Authorization Application )

CERTIFICATE OF SERVICE

I hereby certify that copies of “U.S. Department of Energy’s Answer to the Board’s Request Concerning Constraints On DOE’s Ability To Continue To Participate In The Licensing Proceeding” have been served on the following persons this day through the Nuclear Regulatory Commission’s Electronic Information Exchange.
Lincoln County, Nevada, Nuclear Oversight Program

Connie Simkins, Coordinator
E-mail: jcciac@co.lincoln.nv.us

Counsel for Lincoln County, Nevada

Bret Whipple, Esq.
E-mail: bretwhipple@nomademail.com

Annie Bailey
E-mail: baileys@lcturbonet.com

Clark County (NV) Nuclear Waste Division

Phil Klevorick
E-mail: klevorick@co.clark.nv.us

Clark County, Nevada

Elizabeth A. Vibert, Deputy District Attorney
E-mail: Elizabeth.Vibert@ccdanv.com

Inyo County, California

Gregory L. James, Esq.
Attorney for the County of Inyo
E-mail: gljames@earthlink.net

Alisa Lembke
E-mail: alembke@invocounty.us

Esmeralda County Repository Oversight Program, Yucca Mountain Project

Edwin Mueller
E-mail: muellered@msn.com

Nuclear Waste Project Office

Steve Frishman, Tech. Policy Coordinator
E-mail: steve.frishman@gmail.com

Susan Lynch
E-mail: slynch1761@gmail.com
Armstrong Teasdale, LLP
Counsel for Churchill County, Lander County, Mineral County, and Esmeralda County

Robert F. List, Esq.
E-mail: rlist@armstrongteasdale.com
Jennifer A. Gores
E-mail: jgores@armstrongteasdale.com

Native Community Action Council
Ian Zabarte
E-mail: mrizabarte@gmail.com

Alexander, Berkey, Williams & Weathers LLP
For the Native Community Action Counsel
Curtis Berkey
E-mail: cberkey@abwwlaw.com
Rovianne Leigh
E-mail: rleigh@abwwlaw.com
Scott Williams
E-mail: swilliams@abwwlaw.com

California Department of Justice
Susan Durbin
Deputy Attorney General
E-mail: susan.durbin@doj.ca.gov
Michele Mercado
E-mail: michele.mercado@doj.ca.gov

Nye County
Zoie Choate, Secretary
E-mail: zchoate@co.nye.nv.us
Sherry Dudley, Administrative Technical Coordinator
E-mail: sdudley@co.nye.nv.us

California Department of Justice
Timothy E. Sullivan
Deputy Attorney General
E-mail: timothy.sullivan@doj.ca.gov
Brian Hembacher
Deputy Attorney General
E-mail: brian.hembacher@doj.ca.gov

Nye County (NV) Regulatory/Licensing Adv.
Malachy Murphy, Esq.
E-mail: mrmurphy@chamberscable.com
Jeffrey D. VanNiel (Nye County, NV)
E-mail: nbrjdvn@gmail.com

California Energy Commission
Kevin W. Bell
Senior Staff Counsel
E-mail: kwbell@energy.state.ca.us

Akerman Senterfitt (Nye County, NV)
Robert M. Andersen
E-mail: robert.andersen@akerman.com
Nuclear Energy Institute

Michael A. Bauser, Esq.
Associate General Counsel
E-mail: mab@nei.org
Ellen C. Ginsberg, Esq.
E-mail: ecg@nei.org
Anne Cottingham
E-mail: awc@nei.org

Winston & Strawn
Counsel for the Nuclear Energy Institute

David A. Repka
E-mail: drepka@winston.com
Carlos L. Sisco
E-mail: csisco@winston.com
William Horin
E-mail: whorin@winston.com
Rachel Miras-Wilson
E-mail: rwilson@winston.com

Pillsbury Winthrop Shaw Pittman, LLP
Counsel for Nuclear Energy Institute, Inc.

Jay E. Silberg Esq.
E-mail: jay.silberg@pillsburylaw.com
Timothy J. Walsh, Esq.
E-mail: timothy.walsh@pillsburylaw.com
Maria Webb
E-mail: maria.webb@pillsburylaw.com

Fredericks & Peebles, LLP
Counsel for Timbisha Shoshone Tribe

Felicia M. Brooks
E-mail: fbrooks@ndnlaw.com
Ross Colburn
E-mail: rcolburn@ndnlaw.com
Sally Eredia
E-mail: seredia@ndnlaw.com
Darcie L. Houck, Esq.
E-mail: dhouck@ndnlaw.com
Brian Niegemann
E-mail: bniegemann@ndnlaw.com
John M. Peebles
E-mail: jpeebles@ndnlaw.com
Robert Rhoan
E-mail: rrhoan@ndnlaw.com

Timbisha Shoshone Yucca Mountain Oversight Program Non-Profit Corporation

Tameka Vazquez
E-mail: purpose_driven12@yahoo.com

Godfrey & Kahn, S.C.
For Timbisha Shoshone Yucca Mountain Oversight Program

Julie Dobie
E-mail: jdobie@gklaw.com
Steven A. Heinzen
E-mail: sheinzen@gklaw.com
Arthur J. Harrington
E-mail: aharrington@gklaw.com
Douglas M. Poland
E-mail: dpoland@gklaw.com
Jacqueline Schwartz
E-mail: jschwartz@gklaw.com
Hanna Renfro
E-mail: hrenfro@gklaw.com
Gregory Barlow  
E-mail: leda@lcturbonet.com  
White Pine County  
White Pine County Dist. Attorney’s Office  
Richard Sears, District Attorney  
E-mail: rwsears@wpcda.org  
White Pine County Nuclear Waste Project Office  
Mike Simon  
E-mail: wpncwst1@mwpower.net  
Intertech Services Corporation  
For White Pine County  
Mike Baughman  
E-mail: bigboff@aol.com  

Jason Pitts  
E-mail: jayson@idtservices.com  
Eureka County, Nevada  
Office of the District Attorney  
Theodore Beutel  
E-mail: tbeutel.ecda@eurekanv.org  
Eureka County Public Works  
Ronald Damele  
E-mail: rdamele@eurekanv.org  
Nuclear Waste Advisory for Eureka Co.  
Abigail Johnson  
E-mail: eurekanrc@gmail.com  
Harmon, Curran, Speilberg & Eisenberg  
for Eureka County, Nevada  
Diane Curran  
E-mail: dcurran@harmoncurran.com  
Matthew Fraser  
E-mail: mfraser@harmoncurran.com  
NWOP Consulting, Inc.  
Loreen Pitchford, LSN Coordinator  
For Eureka County  
E-mail: lpitchford@comcast.net  

Lorraine Carter  
E-mail: lcarter@captionreporters.com  

Linda Mathias  
E-mail: yuccainfo@mineralcountynv.org  
Alan Robbins  
E-mail: arobbins@jsslaw.com  
Bryce Loveland  
E-mail: bloveland@jsslaw.com  
Debra Roby  
E-mail: droby@jsslaw.com  
Elene Belete  
E-mail: ebelete@jsslaw.com  

(electronically signed by) Donald J. Silverman  
Donald J. Silverman