

**UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION**

**BEFORE THE COMMISSION**

In the Matter of	)	Docket No. 63-001-HLW
	)	
U.S. DEPARTMENT OF ENERGY	)	ASLBP NO. 09-892-HLW-CAB04
	)	
(High-Level Waste Repository)	)	June 22, 2010
	)	
_____	)	

**LINCOLN COUNTY’S RESPONSE TO STATE OF  
NEVADA PETITION FOR RELIEF WITH RESPECT TO POSSIBLE  
ISSUANCE OF A PARTIAL SAFETY EVALUATION REPORT  
FOR YUCCA MOUNTAIN**

In a June 14, 2010 petition, the State of Nevada requested the Commission (“Petition”) to order an immediate suspension of NRC Staff’s (“Staff”) work on the Yucca Mountain related Safety evaluation Report (SER) Volume 3 until such time as the Commission issues a final decision on DOE’s March 3, 2009 motion to withdraw its license application. Lincoln County is responding to Nevada’s Petition with the opinion that the Commission should deny Nevada’s request for immediate suspension or termination of ongoing work by Staff on SER Volume 3. Further, Lincoln County believes the Commission should grant Nevada’s request that the Commission issue an order directing CAB-04 to develop a brief opinion on each of the ten pending legal issues raised by Nevada.

Lincoln County believes that the Commission has, over the years, with the support of competent staff, demonstrated an important ability to protect the public health and safety through its conduct of unbiased adjudications of complex technical and legal matters. Lincoln County fears that the relief preferred by Nevada would require the Commission to support keeping from the public Staff's evaluation of and conclusions regarding the whether the Yucca Mountain repository can be operated safely and in a manner which protects public health. If Lincoln County residents come to believe that the Commission has become subject to the same political decision-making that appears to be driving the DOE's efforts to terminate the Yucca Mountain project, Lincoln County is concerned that its residents may lose confidence in the ability of NRC to protect public health and safety. By suppressing important Staff evaluations and conclusions regarding the extent to which Yucca Mountain may or may not be able to operate safely, the Commission may lose the respect and confidence of the very public it seeks to protect. The request by Nevada that the Commission order the immediate suspension or termination of the Staff's SER work should be rejected.

Given the dependence of Lincoln County and its residents on the NRC to protect public health and safety through a process of adjudicating complex technical and legal information in a politically unbiased manner, the County believes that Nevada's assertion that the outcome of its legal contentions should be considered by Staff as it completes SER Volume 3 has merit. In fact, Lincoln County believes that Staff should consider the outcome of all legal contentions filed in this proceeding which have been briefed and are therefore ready for resolution as SER Volume 3 is completed. Lincoln County agrees with Nevada's request for the Commission to direct the presiding Atomic Safety and Licensing Board (CAB-04) to prepare a brief opinion on each of the ten pending legal issues raised by Nevada, and further believes that all legal contentions (not just

Nevada's) filed in this proceeding which have been briefed and are ready for ASLB resolution should be addressed if such an order is issued by the Commission.

Respectfully submitted,

Signed electronically by  
Bret O. Whipple  
Counsel for Lincoln County, Nevada  
1100 S. Tenth Street  
Las Vegas, Nevada  
bretwhipple@nomademail.com  
(702) 257-9500  
Fax: (702) 974-4008



Administrative Judge  
E-mail: [psr1@nrc.gov](mailto:psr1@nrc.gov)  
Richard E. Wardwell  
Administrative Judge  
E-mail: [rew@nrc.gov](mailto:rew@nrc.gov)

### **Parties Served**

Adams, Marta  
Anderson, Robert M.  
Baileys, Annie  
Barlow, Gregory  
Baughman, Mike  
Bauser, Michael  
Belete, Elene  
Bell, Kevin W.  
Berkey, Curtis  
Beutel, Theodore  
Bollwerk III, G. Paul  
Borrella, Edward  
Borski, Laurie  
Brooks, Felicia M.  
Bupp, Margaret  
Carter, Lorraine  
Cereghino, Stephen  
Choate, Zoie  
Colburn, Ross  
Cottingham, Anne  
Crosland, Martha S.  
Curran, Diane  
Damele, Ronald  
DiNunzio, Nicholas  
Dobie, Julie  
Dreher, Michael  
Dudley, Sherry  
Durbin, Susan  
Eredia, Sally  
Faglioni, Kelly L.

### **E-mail addresses**

[madams@ag.nv.gov](mailto:madams@ag.nv.gov)  
[Robert.andersen@akerman.com](mailto:Robert.andersen@akerman.com)  
[baileys@lcturbonet.com](mailto:baileys@lcturbonet.com)  
[lca@lcturbonet.com](mailto:lca@lcturbonet.com)  
[bigboff@aol.com](mailto:bigboff@aol.com)  
[mab@nei.org](mailto:mab@nei.org)  
[ebelete@jsslaw.com](mailto:ebelete@jsslaw.com)  
[kwbell@energy.state.ca.us](mailto:kwbell@energy.state.ca.us)  
[Curtis.berkey@abwwlaw.com](mailto:Curtis.berkey@abwwlaw.com)  
[tbeutel@eurekanv.org](mailto:tbeutel@eurekanv.org)  
[gpb@nrc.gov](mailto:gpb@nrc.gov)  
[Edward\\_borella@ymp.gov](mailto:Edward_borella@ymp.gov)  
[lborski@nuclearlawyer.com](mailto:lborski@nuclearlawyer.com)  
[fbrooks@ndnlaw.com](mailto:fbrooks@ndnlaw.com)  
[mjb5@nrc.gov](mailto:mjb5@nrc.gov)  
[lcarter@captionreporters.com](mailto:lcarter@captionreporters.com)  
[stephen\\_cereghino@ymp.gov](mailto:stephen_cereghino@ymp.gov)  
[zchoate@co.nye.nv.us](mailto:zchoate@co.nye.nv.us)  
[rcolburn@ndnlaw.com](mailto:rcolburn@ndnlaw.com)  
[awc@nei.org](mailto:awc@nei.org)  
[Martha.Crosland@hq.doe.gov](mailto:Martha.Crosland@hq.doe.gov)  
[dcurran@harmoncurran.com](mailto:dcurran@harmoncurran.com)  
[rdamele@eurekanv.org](mailto:rdamele@eurekanv.org)  
[Nicholas.DiNunzio@hq.doe.gov](mailto:Nicholas.DiNunzio@hq.doe.gov)  
[jdobie@gklaw.com](mailto:jdobie@gklaw.com)  
[Michael.dreher@nrc.gov](mailto:Michael.dreher@nrc.gov)  
[sdudley@co.nye.nv.us](mailto:sdudley@co.nye.nv.us)  
[susan.durbin@doj.ca.gov](mailto:susan.durbin@doj.ca.gov)  
[serdia@ndnlaw.com](mailto:serdia@ndnlaw.com)  
[kfaglioni@hunton.com](mailto:kfaglioni@hunton.com)

Fitzpatrick, Charles J.	<a href="mailto:cfitzpatrick@nuclearlawyer.com">cfitzpatrick@nuclearlawyer.com</a>
Francis, Karin	<a href="mailto:kxf4@nrc.gov">kxf4@nrc.gov</a>
Fraser, Matthew	<a href="mailto:mfraser@harmoncurran.com">mfraser@harmoncurran.com</a>
Frishman, Steve	<a href="mailto:steve.frishman@gmail.com">steve.frishman@gmail.com</a>
Gendelman, Adam S.	<a href="mailto:Adam.Gendelman@nrc.gov">Adam.Gendelman@nrc.gov</a>
Gibson, Michael M.	<a href="mailto:mmg3@nrc.gov">mmg3@nrc.gov</a>
Giitter, Rebecca	<a href="mailto:rll@nrc.gov">rll@nrc.gov</a>
Gilman, Joseph	<a href="mailto:jsgl@nrc.gov">jsgl@nrc.gov</a>
Ginsberg, Ellen C.	<a href="mailto:ecg@nei.org">ecg@nei.org</a>
Golshan, K.G.	<a href="mailto:kg.golshan@nrc.gov">kg.golshan@nrc.gov</a>
Gores, Jennifer a.	<a href="mailto:jgores@armstrongteasdale.com">jgores@armstrongteasdale.com</a>
Gutierrez, Jocelyn	<a href="mailto:Jocelyn.Gutierrez@ymp.gov">Jocelyn.Gutierrez@ymp.gov</a>
Hanna, Robert S.	<a href="mailto:rshanna@bsglaw.net">rshanna@bsglaw.net</a>
Harrington, Arthur J.	<a href="mailto:aharring@gklaw.com">aharring@gklaw.com</a>
Hawkins, E. Roy	<a href="mailto:erh@nrc.gov">erh@nrc.gov</a>
Hearing Docket	<a href="mailto:hearingdocket@nrc.gov">hearingdocket@nrc.gov</a>
Heinzen, Steven A.	<a href="mailto:sheinzen@gklaw.com">sheinzen@gklaw.com</a>
Hambacher, Brian	<a href="mailto:brian.hembacher@doi.ca.gov">brian.hembacher@doi.ca.gov</a>
Horin, William	<a href="mailto:whorin@winston.com">whorin@winston.com</a>
Houck, Darcie L.	<a href="mailto:dhouck@ndnlaw.com">dhouck@ndnlaw.com</a>
Irwin, Donald P.	<a href="mailto:dirwin@hunton.com">dirwin@hunton.com</a>
James, Gregory L.	<a href="mailto:gljames@earthlink.net">gljames@earthlink.net</a>
Johnson, Abigail	<a href="mailto:eurekanrc@gmail.com">eurekanrc@gmail.com</a>
Kahn, Zachary	<a href="mailto:zxkl@nrc.gov">zxkl@nrc.gov</a>
Klevorick, Phil	<a href="mailto:klevorick@co.clark.nv.us">klevorick@co.clark.nv.us</a>
Kriner, Jeffrey	<a href="mailto:Jeffrey_Kriner@ymp.gov">Jeffrey_Kriner@ymp.gov</a>
LaPlante, Erica	<a href="mailto:eall@nrc.gov">eall@nrc.gov</a>
Larimore, Patricia	<a href="mailto:plarimore@talisman-intl.com">plarimore@talisman-intl.com</a>
Lawrence, John W.	<a href="mailto:jlawrence@nuclearlawyer.com">jlawrence@nuclearlawyer.com</a>
Leigh, Rovicianne	<a href="mailto:rleigh@abbwlaw.com">rleigh@abbwlaw.com</a>
Lembke, alias	<a href="mailto:alembke@inyocounty.us">alembke@inyocounty.us</a>
Lewis, Linda	<a href="mailto:linda.lewis@nrc.gov">linda.lewis@nrc.gov</a>
List, Robert F.	<a href="mailto:rlist@armstrongteasdale.com">rlist@armstrongteasdale.com</a>
Loveland, Bryce	<a href="mailto:bloveland@jsslaw.com">bloveland@jsslaw.com</a>
Lynch, Susan	<a href="mailto:slynch1761@gmail.com">slynch1761@gmail.com</a>
Maerten, Daniel	<a href="mailto:Daniel.Maerten@caci.com">Daniel.Maerten@caci.com</a>
Malsch, Martin G.	<a href="mailto:mmalsch@nuclearlawyer.com">mmalsch@nuclearlawyer.com</a>
Martin, Circe	<a href="mailto:ogcmailcenter@nrc.gov">ogcmailcenter@nrc.gov</a>
Mathias, Linda	<a href="mailto:yuccainfo@mineralcountynv.org">yuccainfo@mineralcountynv.org</a>
McRae, Ben	<a href="mailto:Ben.McRae@hq.doe.gov">Ben.McRae@hq.doe.gov</a>

Meharg, Stephanie	<a href="mailto:sneharg@hunton.com">sneharg@hunton.com</a>
Mercado, Michele	<a href="mailto:Michele.mercado@doj.ca.gov">Michele.mercado@doj.ca.gov</a>
Miras-Wilson, Rachel	<a href="mailto:rwilson@winston.com">rwilson@winston.com</a>
Montesi, Susan	<a href="mailto:smontesi@nuclearlawyer.com">smontesi@nuclearlawyer.com</a>
Moore, Thomas S.	<a href="mailto:tsm2@nrc.gov">tsm2@nrc.gov</a>
Mueller, Edwin	<a href="mailto:muellered@msn.com">muellered@msn.com</a>
Murphy, Malachy	<a href="mailto:mrmurphy@chamberscable.com">mrmurphy@chamberscable.com</a>
Nezhad, Cyrus	<a href="mailto:Cyrus.Nezhad@hq.doe.gov">Cyrus.Nezhad@hq.doe.gov</a>
Niegemann, Brian	<a href="mailto:bniegemann@ndnlaw.com">bniegemann@ndnlaw.com</a>
OCAA Mail Center	<a href="mailto:OCAAMAL@nrc.gov">OCAAMAL@nrc.gov</a>
Pak, Christina	<a href="mailto:Christina.Pak@hq.doe.gov">Christina.Pak@hq.doe.gov</a>
Peebles, John M.	<a href="mailto:jpeebles@ndnlaw.com">jpeebles@ndnlaw.com</a>
Peterson, William	<a href="mailto:paengineer@juno.com">paengineer@juno.com</a>
Pitchford, Loreen, LSN Coordinator	<a href="mailto:lpitchford@comcast.net">lpitchford@comcast.net</a>
Pitts, Jayson	<a href="mailto:jayson@idtservices.com">jayson@idtservices.com</a>
Poland, Douglas M.	<a href="mailto:dpoland@gklaw.com">dpoland@gklaw.com</a>
Putzu, Frank	<a href="mailto:frank.putzu@navy.mil">frank.putzu@navy.mil</a>
Renfro, Hanna	<a href="mailto:hrenfro@gklaw.com">hrenfro@gklaw.com</a>
Repka, David A.	<a href="mailto:drepka@winston.com">drepka@winston.com</a>
Rhoan, Robert	<a href="mailto:rrhoan@ndnlaw.com">rrhoan@ndnlaw.com</a>
Robbins, Alan	<a href="mailto:arobbins@jsslaw.com">arobbins@jsslaw.com</a>
Roby, Debra	<a href="mailto:droby@jsslaw.com">droby@jsslaw.com</a>
Rosenthal, Alan S	<a href="mailto:rsnthl@nrc.gov">rsnthl@nrc.gov</a> ; <a href="mailto:axr@nrc.gov">axr@nrc.gov</a>
Rotman, Matthew	<a href="mailto:matthew.rotman@nrc.gov">matthew.rotman@nrc.gov</a>
Ryan, Tom	<a href="mailto:Tom.Ryan@nrc.gov">Tom.Ryan@nrc.gov</a>
Ryerson, Paul S.	<a href="mailto:psrl@nrc.gov">psrl@nrc.gov</a>
Schwartz, Jacqueline	<a href="mailto:jschwartz@gklaw.com">jschwartz@gklaw.com</a>
Sears, Richard	<a href="mailto:rswears@wpeda.org">rswears@wpeda.org</a>
Shebelskie, Michael R.	<a href="mailto:mshebelskie@hunton.com">mshebelskie@hunton.com</a>
Silberg, Jay E.	<a href="mailto:jay.silberg@pillsburylaw.com">jay.silberg@pillsburylaw.com</a>
Silvia, Andrea L.	<a href="mailto:alcl@nrc.gov">alcl@nrc.gov</a>
Simkins, Connie	<a href="mailto:jcciac@co.lincoln.nv.us">jcciac@co.lincoln.nv.us</a>
Simon, Mike	<a href="mailto:wpnucast1@mwpower.net">wpnucast1@mwpower.net</a>
Sisco, Carlos L.	<a href="mailto:csisco@winston.com">csisco@winston.com</a>
Sommer, Josephine	<a href="mailto:Josephine.Sommer@ymp.gov">Josephine.Sommer@ymp.gov</a>
Sullivan, Timothy E.	<a href="mailto:timothy.sullivan@doj.ca.gov">timothy.sullivan@doj.ca.gov</a>
Tucker, Katherine	<a href="mailto:Katie.Tucker@nrc.gov">Katie.Tucker@nrc.gov</a>
VanNiel, Jeffrey D.	<a href="mailto:nbrjdn@gmail.com">nbrjdn@gmail.com</a>
Vazquez, Tameka	<a href="mailto:purpose_driven@yahoo.com">purpose_driven@yahoo.com</a>
Vibert, Elizabeth A.	<a href="mailto:VibertE@co.clark.nv.us">VibertE@co.clark.nv.us</a>

Walsh, Timothy J.  
Wardell, Richard E.  
Webb, Maria  
Whipple, Bret  
Williams, Scott  
Wright, Belinda a.  
Young, Mitzi A.  
Zabarte, Ian  
Zobler, Marian L.

[timothy.walsh@pillburylaw.com](mailto:timothy.walsh@pillburylaw.com)  
[rew@nrc.gov](mailto:rew@nrc.gov)  
[maria.webb@pillsburylaw.com](mailto:maria.webb@pillsburylaw.com)  
[bretwhipple@nomademail.com](mailto:bretwhipple@nomademail.com)  
[swilliams@abbwlaw.com](mailto:swilliams@abbwlaw.com)  
[bwright@hunton.com](mailto:bwright@hunton.com)  
[may@nrc.gov](mailto:may@nrc.gov)  
[mrizabarte@gmail.com](mailto:mrizabarte@gmail.com)  
[mlz@nrc.gov](mailto:mlz@nrc.gov)

/S/

Bret Whipple, Esq.

Counsel for Lincoln County, Nevada