

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
ATOMIC SAFETY AND LICENSING BOARD**

In the Matter of:

U.S. Department of Energy

(High-Level Waste Repository)

Docket No. 63-001

ASLBP No: 09-892-HLW-CAB-04

**NATIVE COMMUNITY ACTION COUNCIL'S ANSWER
TO THE DEPARTMENT OF ENERGY'S MOTION
TO WITHDRAW ITS LICENSE APPLICATION**

I. INTRODUCTION

The Native Community Action Council (NCAC) supports the Department of Energy's (DOE's) Motion to Withdraw its License Application with prejudice. The NCAC hereby formally joins and supports the State of Nevada's Answer to the Department of Energy's Motion to Withdraw its License Application, filed on May 17, 2010. On behalf of the unique interests of its members, the NCAC additionally provides a brief overview of the specific harm that it would endure should the DOE's Motion to Withdraw with prejudice not be granted.

II. THE NCAC AND ITS MEMBERS WOULD BE HARMED IF THE DOE'S MOTION TO WITHDRAW WITH PREJUDICE IS NOT GRANTED

The NCAC and its members have, with their own time and extremely limited resources, worked to educate the public and the participants in these proceedings about the unique threat that the Yucca Mountain Repository would pose to Western Shoshone and Southern Paiute

people, their culture, and their way of life. This threat includes irreparable harm to their Tribal land, culture, customs, traditions, religion, and subsistence-based practices. A dismissal without prejudice would create an unknown, and indeterminable, risk that the license application may be re-filed at some point in the future. The NCAC simply does not have the resources to ensure, should a dismissal without prejudice be granted, that it can secure legal counsel to protect its interests in any future proceedings; preserve the testimony of its Tribal elders; continue to monitor the risk that Yucca Mountain will be selected as an option for the storage of nuclear waste in the future; or comply with ongoing, burdensome LSN requirements. A dismissal without prejudice would therefore unfairly burden the NCAC and its members.

The NCAC is a non-profit organization established by Western Shoshone and Southern Paiute people who are gravely concerned about the adverse impacts the proposed Yucca Mountain Repository would have on Indian people and their ancestral lands, culture, religion and way of life. The NCAC was formed to address the risks of radioactive contamination, including the adverse health consequences, that would disproportionately burden Native American people living in the areas surrounding the proposed Yucca Mountain Repository. The NCAC addresses this unique burden by gathering and distributing research findings to tribal stakeholders and others that specifically evaluate the differences in human health impacts to Native American communities based on cultural and lifestyle differences. Additionally, the NCAC seeks to educate the public about the threat that such contamination would pose to their ancestral Tribal lands and the cultural traditions and customs that are inextricably tied to them.

For Western Shoshone and Southern Paiute people, the land is sacred. Any harm to the land, including wildlife, plants and water, is harmful to Tribal cultural, spiritual, and religious practices. Storing nuclear waste in Yucca Mountain would be harmful to the land, and would

therefore be harmful to the cultural, spiritual and religious practices of NCAC's members. NCAC's members, as Indian people, believe it is their responsibility to care for the land and to protect it for future generations.

The Yucca Mountain Repository, if licensed, would contribute to the massive degradation of Tribal lands and Tribal cultural practices. NCAC's members face a direct threat of harm from the risk that the repository will be constructed and operated in the future: adverse health consequences and illness would be vastly more significant in this small, vulnerable Indian population that is dependent on the land and its resources for its very survival. Without the lands and resources surrounding Yucca Mountain, NCAC's members, their Tribal culture and their way of life would cease to exist.

The NCAC simply does not have the resources to address the risks posed by the proposed repository for an undetermined time into the future. Should a dismissal without prejudice be granted, NCAC would be faced with an unacceptable and continuing burden: monitoring the risk that Yucca Mountain will be pursued as a nuclear waste repository in the future and simultaneously taking steps to protect its members against that risk. To guard against this risk, NCAC would, among other things, need to preserve the testimony of its Tribal elders. Many of the NCAC's board members and constituents are elderly people whose unique testimony is at risk of being lost forever as the years pass. These Tribal elders live in remote locations, generally without ready access to the internet or telephone. Unless their testimony is preserved, it would be even more difficult to protect ancestral Tribal lands and Tribal culture from the distinct possibility of irreparable harm in the future. Requiring NCAC to bear the costs of preserving this testimony places an unfair burden on its members and, especially, its Tribal elders.

III. CONCLUSION

For the reasons stated in Nevada's Answer, as supplemented above, the NCAC submits that DOE's Motion to Withdraw its License Application should be granted with prejudice, and with no further terms or conditions. This will help ensure that finality is afforded to these proceedings, in accordance with the applicant's request. Dismissing with prejudice will additionally help ensure that the NCAC is not forced to preserve the testimony of its Tribal elders or indefinitely expend its limited resources and time by continuing to engage in monitoring, education and fundraising efforts.

The DOE has requested to move forward by identifying and evaluating alternative and improved solutions to store nuclear waste. The NCAC agrees that identifying a long-term solution to the storage of nuclear waste – a solution that does not irreparably harm Tribal land, culture, customs, and the health and welfare of Indian people – is long overdue. Dismissing the DOE'S License Application with prejudice promotes that goal.

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Respectfully submitted,

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