

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

Atomic Safety and Licensing Board

Before Administrative Judges:

ASLBP BOARD 09-892-HLW-CAB04 Thomas S. Moore, Chairman Paul S. Ryerson Richard E. Wardwell
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In the Matter of)	
)	
U.S. DEPARTMENT OF ENERGY)	Docket No. 63-001-HLW
)	
(High Level Waste Repository))	April 25, 2011

**STATE OF NEVADA'S NOTICE DUCES TECUM OF THE INTENTION
TO TAKE THE ORAL DEPOSITION OF MICHAEL GROSS**

PLEASE TAKE NOTICE that, pursuant to 10 C.F.R. 2.1019, the State of Nevada will take the deposition of Michael Gross, at 8:00 a.m., on Wednesday, the 29th day of June, 2011. The deposition will be conducted at the Embassy Suites Hotel San Rafael-Marin County, 101 McInnis Parkway, San Rafael, CA 94903 (415.499.9222). Michael Gross works at Nuclear and Regulatory Services, LLC, which is located at 415 Riviera Drive, San Rafael, CA 94901-1530 (415.482.8200). The deposition shall be upon oral examination before, and transcribed by, a duly authorized court reporter. The deposition will be transmitted to the Secretary of the United States Nuclear Regulatory Commission for entry in the electronic docket for this proceeding and may be used in evidence therein. The witness will be examined on the following matters, including such information in relation thereto as is reasonably calculated to lead to the discovery of admissible evidence:

1. NEVADA-SAFETY-144
2. NEVADA-SAFETY-145

Michael Gross shall produce those documents and materials at the time of his deposition,

and ten days prior to his deposition, in the form and on the schedule prescribed in the attached Exhibit A which is incorporated herein for all purposes (10 C.F.R. 2.1019(i)). A copy of the transmittal letter associated with this notice to counsel for the Department of Energy is attached as Exhibit B.

Respectfully submitted,

(signed electronically)

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Dated: April 25, 2011

EXHIBIT A

10 C.F.R. Section 2.1019(i):

2.1019(i)(1) After receiving written notice of the deposition under paragraph (a) or paragraph (e) of this section, and ten days before the scheduled date of the deposition, the deponent shall submit an electronic index of all documents in his or her possession, relevant to the subject matter of the deposition, including the categories of documents set forth in paragraph (i)(2) of this section, to all parties and interested governmental participants. The index shall identify those records which have already been made available electronically. All documents that are not identical to documents already made available electronically, whether by reason of subsequent modification or by the addition of notations, shall be treated as separate documents.

(2) The following material is excluded from the initial requirements of § 2.1003 to be made available electronically, but is subject to derivative discovery under paragraph (i)(1) of this section— (i) Personal records; (ii) Travel vouchers; (iii) Speeches; (iv) Preliminary drafts; (v) Marginalia.

(3) Subject to paragraph (i)(6) of this section, any party or interested governmental participant may request from the deponent a paper copy of any or all of the documents on the index that have not already been provided electronically.

(4) Subject to paragraph (i)(6) of this section, the deponent shall bring a paper copy of all documents on the index that the deposing party or interested governmental participant requests that have not already been provided electronically to an oral deposition conducted pursuant to paragraph (a) of this section, or in the case of a deposition taken on written questions pursuant to paragraph (e) of this section, shall submit such documents with the certified deposition.

(5) Subject to paragraph (i)(6) of this section, a party or interested governmental participant may request that any or all documents on the index that have not already been provided electronically, and on which it intends to rely at hearing, be made electronically available by the deponent.

(6) The deposing party or interested governmental participant shall assume the responsibility for the obligations set forth in paragraphs (i)(1), (i)(3), (i)(4), and (i)(5) of this section when deposing someone other than a party or interested governmental participant.

Exhibit B

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April 25, 2011

Donald P. Irwin, Esq.
Hunton & Williams, L.L.P.
Riverside Plaza, East Tower
951 East Byrd Street
Richmond, VA 23219

Re: Docket No. 63-001

Dear Mr. Irwin,

I am attaching deposition notices for Kevin Coppersmith and Michael Gross, detailing depositions to be conducted, respectively, on June 28 and June 29, 2011, at the locations and times specified in the notices. They are being filed today.

During our “meet and confer” telephone calls over the past few weeks, we have indicated to you, and wish to reiterate, our view regarding proceeding with these and other depositions we have discussed. As you know, Nevada did not oppose your motion to temporarily stay this proceeding which you filed with the NRC licensing board (CAB) or the similar motion you filed with the NRC and continues to believe that the licensing proceeding, including discovery, should not go forward until the future of the Yucca Mountain program has been finally clarified in the courts and in Congress.

However, the CAB’s February 25th Order warning that discovery rights could be forfeited for failure to proceed leaves Nevada with little choice but to begin scheduling depositions, while incurring potentially large and unnecessary expenses in the process. We do so only reluctantly because Nevada cannot risk the waiver of its valuable discovery rights.

We continue to be willing to discuss alternate dates, or alternate times, or alternate locations, if the specified ones create a conflict for the witnesses. In addition, as was the case a

EGAN, FITZPATRICK, MALSCH & LAWRENCE, PLLC
Counselors at Law

April 25, 2011

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year ago when depositions were planned, we are willing to discuss the matter of documents required to be produced by the witnesses, in an effort to avoid unduly burdening them.

Sincerely,



Martin G. Malsch

cjf:sm
Enclosure

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

Atomic Safety and Licensing Board

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U.S. DEPARTMENT OF ENERGY)	Docket No. 63-001-HLW
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(High Level Waste Repository))	

CERTIFICATE OF SERVICE

I hereby certify that the foregoing *State of Nevada's Notice of Deposition* has been served upon the following persons by the Electronic Information Exchange:

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