

**UPDATE TO**  
**REQUEST FOR URGENT ACTION UNDER EARLY WARNING**  
**PROCEDURE**  
**TO THE**  
**COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION**  
**OF THE UNITED NATIONS**

**SUBMITTED BY THE WESTERN SHOSHONE NATIONAL COUNCIL,  
THE TIMBISHA SHOSHONE TRIBE, THE YOMBA SHOSHONE  
TRIBE, THE WINNEMUCCA INDIAN COLONY**

**IN RELATION TO THE UNITED STATES OF AMERICA**

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**PREPARED WITH THE ASSISTANCE OF**

**THE UNIVERSITY OF ARIZONA  
INDIGENOUS PEOPLES LAW AND POLICY PROGRAM**

**February 23, 2006**

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**I. INTRODUCTION AND SUMMARY**

This communication updates and calls upon the Committee on the Elimination of Racial Discrimination (hereinafter CERD or the Committee) to take note of serious and persistent patterns of racial discrimination by the United States against the Western Shoshone indigenous peoples through an Urgent Action Under its Early Warning Procedure. The authors of this communication are the Western Shoshone National Council, which is organized as the traditional governing body of the Western Shoshone Nation, and constituent Western Shoshone communities, including the Timbisha Shoshone Tribe, the Yomba Shoshone Tribe, and the Winnemucca Indian Colony, which are self-governing communities within the Nation.<sup>1</sup> This document reiterates and expands upon two previous requests for urgent action by the Western Shoshone people, submitted on July 1, 2000,<sup>2</sup> and July 29, 2005,<sup>3</sup> and a third request submitted by the Western Shoshone National Council on July 25, 2005.<sup>4</sup> This supplemental communication alerts the Committee to new and continued violations of the human rights of the Western Shoshone in an attempt to protect against immediate, widespread, and

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<sup>1</sup> The Te-Moak Tribe of Western Shoshone has also expressed its support for the Western Shoshone authors Request for Urgent Action Under Early Warning Procedure in its Resolution No: 06-TM-03 (February 1, 2006) (attached as appendix 1).

<sup>2</sup> See Amended Request for Urgent Action under Early Warning Procedure to the Committee on the Elimination of Racial Discrimination of the United Nations, July 1, 2000, submitted by the Western Shoshone People (Timbisha, Winnemucca and Yomba) (attached as appendix 1 in the Second Request for Urgent Action, *infra* note 3).

<sup>3</sup> See Second Request for Urgent Action under Early Warning Procedure to the Committee on the Elimination of Racial Discrimination of the United Nations, July 29, 2005, submitted by the Western Shoshone People (Timbisha, Winnemucca and Yomba).

<sup>4</sup> See Request for Urgent Action under Early Warning Procedure to the Committee on the Elimination of Racial Discrimination of the United Nations, Submitted July 25, 2005 by the Western Shoshone National Council. The Committee decided to treat this submission and the submission submitted by the Western Shoshone People, *supra* note 3, as one submission. For an explanation of the different perspectives provided by both documents see Letter to Secretariat from the 2005 Western Shoshone Delegation to the United States, August 9, 2005 (attached as appendix 2). This update is submitted by the authors of both of those documents.

irreparable harm caused by the persistent, destructive, and increasingly discriminatory policies and actions of the United States.

Of particular concern is the state's ongoing and open defiance of the findings of human rights bodies and its complete failure to respond to the concerns and recommendations of both the Inter-American Commission on Human Rights<sup>5</sup> and CERD.<sup>6</sup> The state's defiance is demonstrated by continued acts which destroy and contaminate Western Shoshone ancestral land and spiritually significant sites through mining activities and nuclear testing on traditional land. In addition, the state's plan to store nuclear waste, which will further denigrate spiritually and culturally significant sites, show no signs of slowing. Furthermore, ongoing harassment occurs through legislative attempts to privatize Western Shoshone land and continued military-style intimidation tactics on the part of the state to enforce collection notices in attempt to force distribution of alleged payment to finalize the "extinguishment" of Western Shoshone traditional land.

While threats by the state and multinational corporations, acting under the permission of the state, increase and intensify so does public concern for the Western Shoshone. From the time the urgent appeals were filed in July 2005, the non-governmental human rights organization Oxfam America sponsored a campaign to raise public awareness and support for this submission. Over 13,000 individuals and organizations from across the United States and the world have signed petitions in support of the Committee's adoption of the Western Shoshone as an urgent action.<sup>7</sup> This unprecedented public support should encourage the Committee to address the massive and persistent pattern of racial discrimination suffered by the Western Shoshone people.

Because there have been no effective political, judicial or legislative procedures for the Western Shoshone to challenge this persistent racial discrimination by the state, as demonstrated by the ongoing human rights violations expressed to the Committee in this communication, the authors call upon the Committee to act immediately by accepting the authors' petition as an urgent action.

## II. ADDITIONAL BACKGROUND ON THE STATE'S DISCRIMINATORY POLICY

The ongoing human rights violations against Western Shoshone people can be traced directly back to the fundamental principles upon which U.S. Indian law and policy are based. Current U.S. Indian law and policy are rooted in what is known as the "Marshall Trilogy" of U.S. Supreme Court decisions.<sup>8</sup> The central premise of Justice Marshall's

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<sup>5</sup> Mary and Carrie Dann, Case. 11.140 (United States), Inter-Am C.H.R. Report No. 75/02 (merits decision of Dec. 27, 2002) [hereinafter "Dann Case"] (attached as appendix 3 in the Second Request for Urgent Action, *supra* note 3).

<sup>6</sup> See Committee on the Elimination of Racial Discrimination, *Concluding Observations: United States of America*, UN Doc: A/56/18, paras. 380-407 (Aug. 2001) [hereinafter "CERD Concluding Observations"] (attached as appendix 2 in the Second Request for Urgent Action, *supra* note 3).

<sup>7</sup> A version of the Oxfam petition can be accessed on the organization's website, [http: www.oxfam.org](http://www.oxfam.org). Authors will present a copy of the petition to the Committee.

<sup>8</sup> The "Marshall Trilogy" is a set of three Supreme Court cases authored by Chief Justice Marshall which delineated the legal status of indigenous peoples in the United States. See *Johnson v. M'Intosh*, 21 U.S. (8 Wheat) 543 (1823); *Cherokee Nation v. Georgia*, 30 U.S. (5 Pet.) 1 (1831); *Worcester v. Georgia*, 31 U.S. (6 Pet.) 515 (1832).

formulation of the “doctrine of discovery” is that indigenous peoples are divested of certain natural rights by the mere arrival of Europeans because of an assumed European and Christian superiority.<sup>9</sup> These fundamental principles have given rise to the “doctrine of plenary power” which vests the U. S. Congress with complete and absolute power over Indian affairs. As will be demonstrated by the acts and omissions in this communication, this power is used by courts and policy makers alike to unilaterally rescind or otherwise limit the rights of the indigenous people living within the borders of the United States. The United States has failed to address and correct the injustices of its laws and policies with respect to indigenous peoples, and in particular with respect to the Western Shoshone. The lack of secure indigenous rights in the United States means that American Indians, Native Hawaiians and Alaska Natives continue to live under an uncertain and unstable regime of law and policy, which at times empowers them and at times deprives them of fundamental rights simply due to their status as indigenous peoples.<sup>10</sup> This lack of action, in direct opposition to recognized human rights standards, has a particularly harmful and immediate effect on the Western Shoshone people and further demonstrates the need for U.S. government officials, judges and politicians to receive training on international human rights law pertaining to indigenous peoples.

### **III. ONGOING THREATS TO WESTERN SHOSHONE SPIRITUALLY AND CULTURALLY SIGNIFICANT SITES WILL CAUSE IMMEDIATE AND IRREPARABLE HARM**

Ignoring the findings and recommendations of both the Inter-American Commission on Human Rights and CERD, the United States continues to violate its human rights obligations to the Western Shoshone people. All three branches of the U.S. government persist in their failure to abate ongoing harms against the Western Shoshone or to provide any form of redress for past harms. Within the past six months, the United States has approved the expansion of mining activities in the Mount Tenabo area in Crescent Valley and is aggressively moving forward with plans to store high level nuclear waste at Yucca Mountain. Both of these areas hold deep spiritual and cultural significance to the Western Shoshone and are at high risk of destruction by these activities. The Western Shoshone have taken legal action in the U.S. District Court of Nevada to attempt to halt

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<sup>9</sup> See Johnson, 21 U.S. at 591. This legal fiction that discovery of the new world by Europeans resulted in inherent limitations on indigenous sovereignty in favor of the European “discovering” nation traces its origins to a set of legal rules and principles originating in the Middle Ages and the Crusades to the Holy Lands. At that time, Christian princes were authorized by the Pope to undertake Holy Wars of conquest against the “heathen” and “infidel” peoples. It was under this same legal theory holding that non-Christian “savage” peoples were under the superior and absolute sovereignty and jurisdiction of the Pope that the *inter caetera divinai* (the papal bull) was performed in 1493 granting Spain the entire new world (did it grant Spain the entire new world? Or did it divide it?). For a thorough analysis of the ongoing affect of the papal bull, see Steven Newcomb and Birgill Kills Straight, *The Legacy of Fifteenth Century Vatican Papal Bulls and Indigenous Nations & Peoples*, Presented at the 2005 United Nations Permanent Forum on Indigenous Issues Panel: “Challenging the Doctrine of Discovery, Christianity, Papal Bulls, and Manifest Destiny” (May 2005), available at <http://ili.nativeweb.org>.

<sup>10</sup> The International Convention on the Elimination of All Forms of Racial Discrimination defines racial discrimination as “any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.” International Convention on the Elimination of All Forms of Racial Discrimination, G.A. res. 2106 (XX), Annex, 20 U.N. GAOR Supp. (No. 14) at 47, U.N. Doc. A/6014 (1966), 660 U.N.T.S. 195, entered into force Jan. 4, 1969.

these threatening activities. However, these actions have been dismissed or delayed by the courts on procedural and jurisdictional technicalities. After decades of unsuccessful attempts to present and resolve the issue of title to their land, these recent failed efforts to access the judiciary reaffirms that the Western Shoshone do not have a forum within the state to enforce the state's obligations under *The Treaty of Ruby Valley*<sup>11</sup> or to adjudicate the merits of their claims. In addition, the state also supports geothermal exploration on Western Shoshone land, which has persisted without the consultation with and despite protests from the Western Shoshone. Furthermore, the government is conducting nuclear tests using high level explosives on Western Shoshone land without any warning or consultation. All these actions, which threaten to contaminate Western Shoshone traditional land, and restrict access to or outright destroy sacred and spiritual sites, demonstrate the state's ongoing disregard for the cultural and physical survival of the Western Shoshone people.

### **1. Efforts to halt a nuclear waste depository at Yucca Mountain have failed.**

The United States' plan to store 77,000 tons of high level nuclear waste from across the United States and Europe in Yucca Mountain, a spiritually significant site to the Western Shoshone, is moving forward despite protest by the Western Shoshone. On February 12, 2002, the U.S. Department of Energy (hereinafter DOE) recommended to President Bush that he approve Yucca Mountain as a nuclear repository site.<sup>12</sup> The next day, President Bush endorsed the DOE's recommendation. On April 8 2002, the Governor of Nevada exercised his right under the Nuclear Waste Policy Act to veto the President's site recommendation.<sup>13</sup> The Governor's veto was overridden by the U.S. House of Representatives on May 8, 2002 and by the U.S. Senate on July 9, 2002. To put closure on this debate, on July 23, 2002, President Bush signed the Yucca Mountain Development Act paving the way for the Department of Energy to build and operate a repository at Yucca Mountain<sup>14</sup> Currently, the DOE is obtaining licenses to begin construction through applications submitted to the Nuclear Regulatory Commission, the administrative body that regulates activities involving nuclear energy in the United States.

The Western Shoshone people, with the assistance of non-governmental organizations and legal advisors, have pursued every possible avenue within the United States to stop this nuclear waste storage from going forward. In March of 2005, four individual Western Shoshone filed suit against the United States claiming that nuclear waste disposal is not one of the authorized uses for land set forth in *The Treaty of Ruby*

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<sup>11</sup> See Treaty of Ruby Valley 1863, 18 Stat. 689 (Treaty between the United States of American and Western Bands of Shoshone Indians, signed 1893, ratified by the U.S. in 1866, and proclaimed on October 21, 1869), in INDIAN AFFAIRS: LAWS AND TREATIES, VOL II (TREATIES), 851-853 (Charles J. Kappler compiler and ed.) (1904) (attached as appendix 7 in the Second Request for Urgent Action, *supra* note 3).

<sup>12</sup> Recommendation by the Secretary of Energy Regarding the Suitability of the Yucca mountain Site for a Repository Under the Nuclear Waste Policy Act of 1982 at 6 (February 12, 2002), available at [www.ocrm.doe.gov/ym/sr/sar.pdf](http://www.ocrm.doe.gov/ym/sr/sar.pdf).

<sup>13</sup> Nuclear Waste Policy Act of 1982, 42 U.S.C. 10134, Sec. 116(b)(2). See also Press Release, Nevada Governor Guinn's Office, Gov. Guinn Will Veto President Bush's Yucca Mountain Decision (February 15, 2002) (attached as appendix 3); Statement of Reasons Supporting the Governor of Nevada's Notice of Disapproval of the Proposed Yucca Mountain Project April 8, 2002 (on file with author).

<sup>14</sup> See Yucca Mountain development Act, Pub.L.No. 107-200, 116 Stat. 735.

*Valley*.<sup>15</sup> In December of 2005, the U.S. Court for the District of Nevada granted a motion to dismiss the lawsuit filed by the United States.<sup>16</sup> The Court held that sovereign immunity had not been waived by the United States, and that therefore the Court lacked subject matter jurisdiction and the claim could not be heard.<sup>17</sup> Additionally, the Court held that the claim was not ripe to be heard because the Nuclear Regulatory Commission had not granted all the licenses to begin construction of the repository, even though the U.S. Department of Energy, the U.S. Congress and the President of the United States had already approved construction of the site.<sup>18</sup> Highlighting the fact that damage has already occurred, the Western Shoshone plaintiffs proved at a hearing in April of 2005 that the state removed and exhumed sacred ancestral remains from the site, and that the state is presently preventing the Western Shoshone from using their traditional prayer sites at the sacred mountain.<sup>19</sup> The Western Shoshone plaintiffs requested that the Court reconsider its decision and asserted that permitting the United States to enter into treaties with Indian tribes without allowing the tribes the access to the courts to enforce those treaties, constitutes “a right without a remedy.”<sup>20</sup> In response, the Court affirmed its original decision and stated that there would need to be either a substantive statute waiving sovereign immunity or a final agency action by the Nuclear Regulatory Commission in order to hear the merits of their claim.<sup>21</sup>

After the efforts through the judiciary have come to a halt, the U.S. President’s office unveiled proposals that would further exacerbate harm against the Western Shoshone people. During a public announcement on February 6, 2006 from the Global Nuclear Energy Partnership, a committee formed by the Bush administration, Deputy Energy Secretary Clay Sell suggested using Yucca Mountain for a reprocessing facility for high-level radioactive waste.<sup>22</sup> The Bush administration has also offered to import high-level radioactive waste from other countries for disposal at Yucca Mountain.<sup>23</sup> Reprocessing at Yucca Mountain and increasing the amount of nuclear waste disposed at the site would release significant quantities of harmful radioactivity into the air, water, and soil.

Adding to the threat and urgency of this matter is a government-sponsored radioactive waste bill, soon to be introduced by U.S. Senator Pete Domenici from New Mexico, Chairman of the Senate Energy and Natural Resources Committee. The legislation would override any further impediments to the opening of the dump site at Yucca Mountain and allow expedited construction of surface facilities at the site without any

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<sup>15</sup> See Treaty of Ruby Valley 1863, *supra* note 11.

<sup>16</sup> See Western Shoshone National Council et al. v. United States of America et al., CV-S-05-0290-PMP (LRL) (Order) (D. Nevada, November 1, 2005).

<sup>17</sup> See *id.*

<sup>18</sup> See *id.*

<sup>19</sup> See Western Shoshone National Council et al. vs. United States et al., CV-S-05-0290-PMP (LRL) (Order) (D. Nevada, May 18, 2005).

<sup>20</sup> Western Shoshone National Council et al. vs. United States et al., CV-S-05-0209-PMP (LML) (Order) (D. Nevada, December 20, 2005).

<sup>21</sup> See *id.*

<sup>22</sup> See Press Briefing, U.S. Department of Energy Deputy Secretary Clay Sell, Announcing the Global Nuclear Energy Partnership (February 6, 2006) (attached as appendix 4).

<sup>23</sup> See Steve Tetreault, *Federal Budget: New Front For Yucca Argument* LAS VEGAS REVIEW JOURNAL, Feb. 9, 2006 (on file with author).

licensing requirements.<sup>24</sup> The momentum for the desecration of Yucca Mountain is gaining speed daily and requires immediate attention as Western Shoshone's efforts to protest have been fruitless in light of the political agenda of the current administration.

On February 23, 2006, the day this communication was filed, highly dangerous nuclear testing was conducted on Western Shoshone traditional land. Without any consultation or notice whatsoever to the Western Shoshone people, the United States and the United Kingdom jointly conducted an experiment named "Krakatau" using chemical high explosives to examine the behavior of plutonium.<sup>25</sup> In addition to restricting access of the Western Shoshone people to their traditional land, violating obligations under international law to effectively consult with them about using Western Shoshone land, and outright destroying the land base, it is feared that these tests contaminate underground water sources and will have lasting effects on Western Shoshone traditional land and resources. These human rights violations have been the focus of annual protests at this nuclear test site.

The United States has utterly failed to adhere to the recommendations by CERD in its August 2001 session and by the Inter-American Commission on Human Rights to address the rights and concerns of the Western Shoshone and state obligations under the *Treaty of Ruby Valley*. These recent court rulings and ongoing human rights violations which have occurred in the time since the Western Shoshone were last before CERD further demonstrate the United States' recalcitrance to comply with the standards they agreed upon when it signed, and subsequently ratified the Convention on the Elimination of Racial Discrimination.

## **2. Efforts to expand mining on Mount Tenabo have persisted and attempts to halt the mining have stalled.**

Since the Western Shoshone appeared before CERD in August of last year, the United States has allowed ongoing multinational gold mining activities in the area of Mount Tenabo and Horse Canyon. This includes detonation of explosives to further mining exploration and the blockage of access ways used by Western Shoshone to conduct food and spiritual activities.<sup>26</sup> As with the Yucca Mountain area, Western Shoshone have explored every possible access in the domestic legal arena to challenge and halt this destruction – to no avail. The mining activity in the area has instead increased in the time since the Western Shoshone last appeared before CERD in August 2005.

As briefed in previous filings, the areas of Mount Tenabo and Horse Canyon have long been used by the Western Shoshone for spiritual ceremonies and cultural purposes. There are burial sites in the area, several of which have already been evidenced by the United States agencies themselves. This area has also been documented as an important site for gathering medicinal and food plants, hunting and gathering and other cultural

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<sup>24</sup> See *Domenici to Promote Yucca Mt. Bill*, INSIDE ENERGY, EXTRA Jan. 9, 2006 (on file with author).

<sup>25</sup> Press Release, National Nuclear Security Administration, Krakatau Subcritical Experiment Conducted (February 23, 2006) (attached as appendix 5).

<sup>26</sup> See Adella Harding, *Blast Opens New Era at Cortez*, ELKO DAILY FREE PRESS, January 27, 2006 (attached as appendix 6). See also Photos depicting destruction of Western Shoshone territory and blockage of access road to Horse Canyon (Western Shoshone Defense Project)(attached as appendix 13).

purposes. Mining activities by Cortez Joint Venture/Cortez Gold Mines (Barrick Gold and Kennecott) have been approved by the state without effective consultation with the Western Shoshone or adequate consideration of the resulting harm that the mining will cause the Western Shoshone.<sup>27</sup> Because of this increased activity in this area, on May 9, 2005, the Western Shoshone Defense Project, the Te-Moak Tribe of Western Shoshone, and the Great Basin Mine Watch filed a lawsuit against the U.S. Bureau of Land Management challenging the approval of mining activities on Mount Tenabo and Horse Canyon.<sup>28</sup> Additional mining would result in irreversible and complete damage to Western Shoshone traditional, religious, cultural, and historical practices. The parties to this lawsuit are currently disputing procedural technicalities, which, like the Yucca Mountain lawsuit, threaten to prevent the Western Shoshone from arguing the merits of their claim. Meanwhile, the mining plans move forward through corporate actions and acquiescence by the executive branch of the state.

Since the filing of the lawsuit, the U.S. Department of Interior, Bureau of Land Management (hereinafter BLM), has announced plans by Cortez Gold Mines to further expand its open-pit gold mining and processing operation in the Cortez Hills Expansion Project.<sup>29</sup> In the state's public notice about this project, it reports that the "disturbance area" associated with this project would be 15,242 acres of land, an area covering Western Shoshone traditional land.<sup>30</sup> Cortez has also proposed expansion through its Underground Project, which would contribute to dewatering of the area and increase the already dangerously high levels of mercury caused by mining activities.<sup>31</sup> The environmental damage resulting from the cumulative effects of the mining activities will severely affect, if not outright destroy, Western Shoshone land, resources, and customary uses of their land and resources. With no sign of the mining industry slowing, urgent action is necessary to protect the Western Shoshone land and resources from further harm.<sup>32</sup>

With the previous track record in the U.S. courts as demonstrated in the Western Shoshone's long procedural history relating to the purported extinguishment of title to traditional lands<sup>33</sup> and recent failed attempts to halt ongoing threats to land, resources and cultural practices, this pending lawsuit is not expected to succeed. However, these ongoing resistance efforts aim to increase state awareness of Western Shoshone interests and to promote effective consultation about matters concerning Western Shoshone

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<sup>27</sup> See Second Request for Urgent Action under Early Warning Procedure to the Committee on the Elimination of Racial Discrimination of the United Nations, *supra* note 3.

<sup>28</sup> See Te-Moak Tribe of Western Shoshone Indians of Nevada, Great Basin Mine Watch, Western Shoshone Defense Project v. U.S. Department of Interior et al., Case No. 05-CV00279 (Complaint) (D. Nevada filed May 9, 2005) (on file with author).

<sup>29</sup> See Notice of Intent to Prepare an Environmental Impact Statement to Analyze the Proposed Amendment to the Pipeline/South Pipeline Plan of Operations (NVN-067575) for the Cortez Hills Expansion Project, Federal Register pp. 72308-72309, Vol. 70, No. 231, December 2, 2005.

<sup>30</sup> See *id.* at 72309.

<sup>31</sup> See Kirk Johnson, *Dried, Tainted Nevada May Be Legacy of Gold Rush*, THE NEW YORK TIMES, Dec. 30, 2005 (attached as appendix 7).

<sup>32</sup> See Sandy Shore, *Gold Prospective Picks Up*, Associated Press, February 11, 2006 (on file with author).

<sup>33</sup> See Dann Case, *supra* note 5, paras. 114-123.



traditional lands and resources, as required under article 5(c) of the Convention<sup>34</sup> and other human rights instruments.

### **3. Geothermal exploration poses new threats to spiritually and culturally significant hot springs.**

The United States has approved non-competitive geothermal leasing in the Elko district of northeastern Nevada, an activity that threatens to destroy sites that are used for Western Shoshone cultural, healing, and spiritual practices. In 2003, United States legislators from Nevada sponsored a bill, H.R. 2722, providing for increased geothermal energy production in Western Shoshone lands.<sup>35</sup> In 2005, that bill was amended and passed in the Energy Policy Act, containing a number of provisions that encourage development of geothermal resources on public lands.<sup>36</sup> True to the intent of that legislation, the state has issued three leases to Western Geothermal Partners covering an area of approximately 4,841 acres in central Nevada<sup>37</sup> and provided notice of nine additional leases in the Crescent Valley area.<sup>38</sup> The land covered by the leases is on the traditional territory of the Western Shoshone, specifically inhabited and used by the Yomba Tribe, the Timbisha Tribe, the Wells community and several Western Shoshone families, including the Dann Traditional Family. The parcels located in Crescent Valley are adjacent to hot springs traditionally significant to the Western Shoshone and especially the Dann Traditional Family, and hold cultural and spiritual importance to the Western Shoshone. The Western Shoshone have traditionally used and continue to use both springs for bathing, healing, and spiritual purposes.

Well aware of the cultural and spiritual significance of these sites, the U.S. Bureau of Land Management (BLM) in its own environmental impact report of the area noted:

Active geothermal areas are generally thought of as being locations in which water spirits reside. It is often stated that “water babies” reside in the hot springs, cold springs, marsh areas, and other aquatic locations. Stories associated with “water babies” and other water spirits have been told from generation to generation and play an important role in defining the culture of the Western Shoshone people. Also, it is often told that certain hot springs and cold spring locations possess healing properties, which provide for spiritual cleansing and elimination of certain ailments to those seeking relief.<sup>39</sup>

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<sup>34</sup> See International Convention on the Elimination of All Forms of Racial Discrimination, G.A. res. 2106 (XX), Annex, 20 U.N. GAOR Supp. (No. 14) at 47, U.N. Doc. A/6014 (1966), art.5, 660 U.N.T.S. 195, (entered into force Jan. 4, 1969).

<sup>35</sup> See proposed John Rishel Geothermal Steam Act Amendments of 2003 (“Geothermal Bill”), H.R. 2722 (U.S. House Bill) (attached as appendix 12 in the Second Request for Urgent Action, *supra* note 3).

<sup>36</sup> See John Rishel Geothermal Steam Act Amendments of 2005 (Energy Policy Act) Public Law No: 109-58 (attached as appendix 8).

<sup>37</sup> NVN-07778, NVN-07779, and NVN-07780, issued on January 31, 2005 by Gail Givens, the Assistant Field Manager for the Battle Mountain Field Office. See U.S. Bureau of Land Management, Decision Record, Finding of No Significant Impact, January 21, 2005 (attached as appendix 9).

<sup>38</sup> See Comments submitted to the Bureau of Land Management re: Geothermal Non-competitive Lease Sale, December, 2005 (attached as appendix 10).

<sup>39</sup> *Id.*

In spite of the awareness that these hot springs are sacred places which would be threatened by geothermal exploration activities, and also aware of the ongoing dispute over ownership of Western Shoshone traditional land, the BLM issued the leases and leasing decisions without the required government-to-government consultation with the affected Western Shoshone groups.<sup>40</sup> In fact, in the BLM's decision of record which found that the geothermal exploration leases would have no significant impact on the land and environment stated that "Native American consultation [was] unnecessary at [that] time."<sup>41</sup> This action blatantly contradicts the recommendation of this Committee to "ensure effective participation by indigenous communities in decisions affecting them, including those on their land rights"<sup>42</sup> and highlights the need for training of officials in all branches of the U.S. government on the rights of indigenous peoples under international law and the obligation of the state to protect those rights.

#### IV. LEGISLATIVE EFFORTS TO UNILATERALLY EXTINGUISH RIGHTS TO TRADITIONAL LANDS CONTINUE

As predicted by the Western Shoshone delegation to CERD in August 2005 and in direct opposition to the recommendations of the Inter-American Commission on Human Rights and CERD, the United States continues legislative attempts to distribute Western Shoshone land to resource development corporations and other non-indigenous actors. Since the time of the last communication to this Committee, the U.S. House of Representatives voted on and approved the amendment of a budget reconciliation bill to allow Western Shoshone lands within the boundaries of the *Treaty of Ruby Valley* to be privatized and sold to major mining corporations.<sup>43</sup> This bill, had it passed the Senate, would have allowed gold and other mining corporations to purchase "public lands" outright for \$1,000 per acre. Although the new legislation did not pass—due to a massive outcry by public citizens across the United States, U.S. Senator Gibbons has vowed to reintroduce the issue.<sup>44</sup> U.S. Congressman Rahall, the Senate Resources Committee ranking democrat said, "If enacted, this proposal would result in a blazing fire sale of federal lands to domestic and international corporate mining interests. This is the worst kind of sham reform of the Mining Law ever to be promoted in my tenure of Congress."<sup>45</sup> These unilateral legislative attempts highlight the United States' paternalistic policies towards indigenous peoples and the willingness of the state to blatantly and publicly act against indigenous peoples' interests.

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<sup>40</sup> See *id.*

<sup>41</sup> U.S. Bureau of Land Management, Decision Record, Finding of No Significant Impact, *supra* note 37.

<sup>42</sup> See CERD Concluding Observations, *supra* note 6 at para. 400.

<sup>43</sup> See Text of the "Pombo Proposal" (Post-mark up), *Recommendations for budget reconciliation*, as approved by the Committee on Resources on October 26, 2005 (on file with author).

<sup>44</sup> Janet Wilson and Bettina Boxall, *Revisions of Mining Law Put On Hold* DEATH VALLEY.US, December 14, 2005, available at <http://www.death-valley.us/article1410.html>.

<sup>45</sup> U.S. Rep. Nick J. Rahall, Extension of Remarks, An Assault on America's Public Lands: The Hardrock Mining Provisions of the Resources Committee's Budget Reconciliation Package, November 7, 2005 (attached as appendix 11).

#### **IV. INTERFERENCE WITH WESTERN SHOSHONE PROPERTY RIGHTS AND TRADITIONAL PRACTICES CONTINUES THROUGH MILITARY-STYLE ACTIONS BY THE UNITED STATES AND MULTI-NATIONAL CORPORATIONS.**

Western Shoshone individuals and communities have continued to be treated as “trespassers” on their own land and have been subjected to persistent surveillance by armed federal rangers. To this end, Western Shoshone have received additional collection requests from the U.S. Internal Revenue Service and private collection agencies demanding accumulated fines levied as a result of their livestock grazing on their traditional lands..<sup>46</sup> Since the last communication to this Committee, the state’s collection agency ordered a member of the Dann Traditional Family to pay \$5,695,610.33 in alleged debt and interest.<sup>47</sup> Equally as troubling as receiving a bill for over 5 million dollars, a group of Western Shoshone elders were recently barred access to a site where they traditionally gather medicinal plants and food for sustenance when the Placer Dome Mining Company blocked an access road restricting entry.<sup>48</sup> Through coercive actions such as this, which have not ceased in spite of protests by the Western Shoshone people and recommendations by international human rights bodies, and have in fact intensified, the Western Shoshone people have been continuously treated as trespassers and illegal homesteaders on their own land.

#### **V. CONCLUSION AND REQUEST**

These examples demonstrate the increased hostility and discrimination by the United States as the Western Shoshone attempt to seek redress for violations of *The Treaty of Ruby Valley* and other international human rights treaties, including the Convention on the Elimination of All Forms of Racial Discrimination. All three branches of the U.S. government persist in failing to abate the ongoing harms against the Western Shoshone or to provide any form of redress for past harms. In addition, within the past six months since the time of the last communication to this Committee, plans to dispose nuclear waste have increased, an aggressive expansion of mining exploration by private corporations has occurred, and support for geothermal exploration on Western Shoshone land has amplified, and most recently nuclear testing was conducted on Western Shoshone land, all without the consultation with and despite protests from the Western Shoshone. All the while, intimidation tactics against Western Shoshone people persist through continual surveillance and the imposition of enormous trespassing fines. By refusing to recognize Western Shoshone rights to their lands and natural resources, the United States undermines its obligations under *The Treaty of Ruby Valley* and international human rights law.

Without effective political, judicial or legislative procedures for the Western Shoshone to challenge this racial discrimination by the state, the authors call on this Committee to respond immediately before any further harm occurs. The authors reiterate their request that this Committee take note of the intolerable situation that the Western Shoshone have

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<sup>46</sup> See Letter to Carrie Dann from Pioneer Credit Recovery, Inc., June 24, 2005 (attached as appendix 12).

<sup>47</sup> See *id.*

<sup>48</sup> Interview with Bernice Lalo, Western Shoshone elder, February 14, 2005 (on file with author). See also Photos depicting destruction of Western Shoshone territory and blockage of access road to Horse Canyon (Western Shoshone Defense Project) (attached as appendix 13).

continued to endure; of the United States' inaction regarding the Committee's recommendations; its overall disregard and defiance of international law and institutions; and the concern expressed by over 13,000 individuals and organizations across the world, through the adoption of an urgent action against the state. The Western Shoshone also respectfully request that the Committee to call upon the United States:

- (a) to require training for its judicial, legislative and executive branches by experts on the rights of indigenous peoples under international law;
- (b) to suspend all plans to build a nuclear waste storage facility in Yucca Mountain and future nuclear testing on Western Shoshone land due to the high degree of risk associated with these activities, the lack of clear uncontested title of the United States over the proposed site area, and the environmental damage to Western Shoshone land and resources caused by dangerous nuclear-energy related activities, which are disproportionately located on or near indigenous lands – thus further accentuating the discriminatory treatment towards the Western Shoshone and other indigenous peoples in the United States;
- (c) to ensure that mining, geothermal exploration and other “development” activities in Western Shoshone traditional land does not further threaten spiritual, cultural and environmental health;
- (d) to refrain from prosecuting Western Shoshone people for hunting, fishing and gathering when they do so according to custom and tradition;
- (e) to rescind all notices of trespass and impoundment of livestock against members, tribes, or associations of the Western Shoshone people, and to refrain from any further issuance of such notices or action until a negotiated settlement ensuring Western Shoshone land rights has been achieved; and
- (f) to open discussions with the leaders of the Western Shoshone people with a view to finding solutions acceptable to them and which would comply with the United States' obligations under the Convention on the Elimination of All Forms of Racial Discrimination.

In addition:

- (g) to comply with the recommendations of the Inter-American Commission of Human Rights to respect the rights of the Western Shoshone to equality before the law, to a fair trial and to property, protected under articles II, XVIII and XXIII of the American Declaration of the Rights and Duties of Man; to provide them with an effective remedy to their claims to property rights on their ancestral lands through adoption of legislative or other measures; and to review its laws, procedures and practices so that indigenous property rights are determined according to the principles in the American Declaration.

## LIST OF APPENDICES

1. Te-Moak Tribe of Western Shoshone Resolution No: 06-TM-03 (February 1, 2006).
2. Letter to Secretariat from the 2005 Western Shoshone Delegation to the United States, August 9, 2005.
3. Press Release, Nevada Governor Guinn's Office, Gov. Guinn Will Veto President Bush's Yucca Mountain decision (February 15, 2002).
4. Press Briefing, U.S. Department of Energy Deputy Secretary Clay Sell, Announcing the Global Nuclear Energy Partnership (February 6, 2006).
5. Press Release, National Nuclear Security Administration, Krakatau Subcritical Experiment Conducted (February 23, 2006).
6. Adella Harding, *Blast Opens New Era at Cortez* ELKO DAILY FREE PRESS, January 27, 2006.
7. Kirk Johnson, *Dried, Tainted Nevada May Be Legacy of Gold Rush*, THE NEW YORK TIMES, Dec. 30, 2005.
8. John Rishel Geothermal Steam Act Amendments of 2005 (Energy Policy Act) Public Law No: 109-58.
9. U.S. Bureau of Land Management, Decision Record, Finding of No Significant Impact, January 21, 2005.
10. Comments submitted to the Bureau of Land Management re: Geothermal Non-competitive Lease Sale, December, 2005.
11. U.S. Rep. Nick J. Rahall, Extension of Remarks, An Assault on America's Public Lands: The Hardrock Mining Provisions of the Resources Committee's Budget Reconciliation Package, November 7, 2005.
12. Letter to Carrie Dann from Pioneer Credit Recovery, Inc., June 24, 2005.
13. Photos depicting destruction of Western Shoshone territory and blockage of access road to Horse Canyon (Western Shoshone Defense Project).

# **APPENDIX 1**

**TE-MOAK TRIBE OF WESTERN SHOSHONE**

525 Sunset Street • Elko, Nevada 89801  
775-738-9251 • Fax 775-738-2345

**RESOLUTION OF THE GOVERNING BODY  
OF THE  
TE-MOAK TRIBE OF WESTERN SHOSHONE INDIANS OF NEVADA**

**RESOLUTION NO: 06-TM-03**

**BE IT RESOLVED BY THE TRIBAL COUNCIL OF THE TE-MOAK TRIBE OF WESTERN SHOSHONE INDIANS OF NEVADA, THAT**

**WHEREAS**, this organization is a recognized Indian Organization as defined under the Indian Reorganization Act of 1934, as amended, and exercises rights of home rule and is responsible for the promotion of the economic and social welfare and well being of its members; and

**WHEREAS**, the Western Shoshone National including members and ancestors of members of the Te-Moak Tribe of Western Shoshone Indians of Nevada have lived in relationship with their traditional homelands for unknown succession of ages, even to this day Western Shoshone culture, spiritually, governance and economy are inextricably connected with these lands; and

**WHEREAS**, the Tribal Council of the Te-Moak Tribe of Western Shoshone Indians of Nevada upholds and stands on the 1863 Treaty of Ruby Valley as a binding contract between two nations. The Treaty of Ruby Valley was not a treaty of cession, but instead merely allowed the United States licenses and use of right-of-way within the territory. The Treaty is still in effect and the Western Shoshone Territory is 60 million acres covering parts of the States of Idaho, Utah, Nevada and California; and

**WHEREAS**, the 1863 Ruby Valley Treaty is upheld in the U.S. Constitution, Article VI, Clause 2 that states "*This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the Supreme Law of the Land;*" and

**WHEREAS**, the United States is currently engaged in or allowing activities which deny the Western Shoshone people continued occupation of their ancestral lands and threaten their cultural and spiritual survival, social fabric, economy and environment; including in particular the threat of privatization of Western Shoshone Lands to multinational gold corporations, the expansion of open pit cyanide heap leach gold mining and the disposal of nuclear waste on Western Shoshone Lands; and

**WHEREAS**, the United States Government has been found by the Inter-American Commission of Human Rights to be in violation of Western Shoshone rights to property, to due process and to equality under the law; and

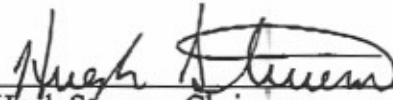
**WHEREAS**, Western Shoshone Leaders, including leaders of the Te-Moak Tribe, have called upon the United States to respect the land and resource rights of the Western Shoshone; and

**WHEREAS**, the United States has ratified the United Nations Convention on the Elimination of Racial Discrimination and is therefore obligated to ensure that its domestic laws and policies are in compliance with internationally recognized standard of human rights; and

**NOW, THEREFORE BE IT RESOLVED**, that the Te-Moak Tribe of Western Shoshone Indians of Nevada approves the filing of the second Urgent Action Request to the United Nations Committee on the Elimination of Racial Discrimination under its Early Warning Procedure to seek assistance from the Committee to address this long standing dispute with the United States before land privatization, mining expansion or nuclear waste disposal proceeds any further on Western Shoshone Lands.

#### **C-E-R-T-I-F-I-C-A-T-I-O-N**

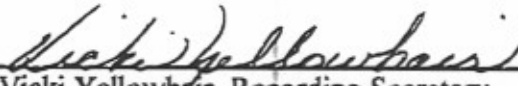
I, the undersigned, as Chairman of the Te-Moak Tribal Council, do hereby certify that the Tribal Council is composed of ten (10) members, of whom 9 were present at the meeting which constituted a quorum held **February 1, 2006**, and that the foregoing resolution was adopted at such meeting by a vote of 5 **FOR**, 4 **AGAINST** and 0 **ABSTENTION** pursuant to the authority of Article 4, Section 3 of the Constitution of the Te-Moak Tribe of Western Shoshone Indians of Nevada.

  
\_\_\_\_\_  
Hugh Stevens, Chairman  
Te-Moak Tribe of Western Shoshone

INVALID IF NO SEAL APPEARS BELOW:



**ATTEST:**

  
\_\_\_\_\_  
Vicki Yellowhair, Recording Secretary  
Te-Moak Tribal Council



## **APPENDIX 2**

URGENT ACTION UNDER EARLY WARNING MEASURES  
(Western Shoshone/United States)

9 August 2005  
(VIA HAND DELIVERY)  
Ms. Nathalie Prouvez, Secretariat  
Committee on the Elimination of Racial Discrimination

Dear Nathalie:

Following is a response to the Committee's questions after Monday's briefing session.

First, regarding the submission of two documents, one from the Western Shoshone National Council, the traditional governing body of the Western Shoshone Nation and the other from individual communities of Western Shoshone People (Timbisha, Winnemucca and Yomba). We understand that according to CERD's procedure, the Committee will address the submissions as one.

These requests can be understood to provide separate perspectives on the same issue, one from a national voice and the other from the voices of specific communities. The request from the National Council provides a thorough overview of the historical backdrop to the current situation faced by the Western Shoshone Nation and its people, a critique of the United States legal and administrative systems, as well as an analysis of contemporary international law with respect to the Western Shoshone people. Correspondingly, the submission on behalf of the communities speaks to specific violations against individuals and to specific areas of land that provide evidence of persistent and ongoing patterns of racial discrimination against the Western Shoshone people on the part of the United States of America. It is suggested that these submissions be read together to provide a full history, legal analysis and evidential basis for the critical situation faced by the Western Shoshone Nation and its people.

*Early Warning Procedure.* Second, in response to the question regarding whether it is appropriate for CERD to invoke the Early Warning Procedure we provide the following.

In 2001, CERD noted among other concerns specific to the Western Shoshone in its Recommendations and Conclusions of the U.S. Report the "persistence of the discriminatory effects ... and destructive policies with regard to Native Americans." In the time since CERD expressed its concerns, the situation has become even more grave. Evidence of the severity of this situation includes:

- Military style seizures of hundreds of Western Shoshone livestock, causing severe economic hardship,
- Transfer of alleged "trespass fines" for Western Shoshone use of Treaty recognized ancestral lands to the U.S. Internal Revenue Service and private collection agencies,
- Reinvigorated federal efforts to open a nationwide nuclear waste repository on Western Shoshone land,
- Passage of legislation allowing for distribution of highly controversial monies set aside by the Indian Claims Commission for alleged extinguishment of Western Shoshone land on the theory of "gradual encroachment,"
- U.S. rejection of Western Shoshone requests for good faith negotiations regarding lands and resources,
- U.S. rejection of Western Shoshone concerns regarding federal and transnational corporate use of lands and resources, and

- Official statements and legislative efforts to privatize Western Shoshone lands for transfer to multinational extractive industries and energy developers.

In sum, the stage has been set for the United States to take its final measures of enforcing the collection notices through eviction or imprisonment and forcibly distributing the alleged payment for “extinguishment,” thereby opening the lands for one of the largest indigenous land thefts in modern history.

The actions being taken against the Western Shoshone stem from the conceptual foundation of U.S. Federal Indian law. By the U.S.’ own admission before CERD in 2001, it continues to rely on legal analyses based on the “doctrine of discovery,” a racist and discriminatory concept used to justify colonialism. Through application of this foundation, the U.S. denies Western Shoshone the ability to even argue their title issues in the domestic courts or to gain legislative relief due to the theory of “gradual encroachment.” This theory has been applied against the Western Shoshone solely due to their status as an Indigenous People. Although CERD members asked the U.S. to respond to their concerns regarding the U.S. position on unilateral treaty abrogation, the U.S. has never provided that response.

By refusing to recognize Western Shoshone rights to their lands and natural resources, the United States undermines Western Shoshone ability to govern their own activities including rights to hunt, fish and gather in their own ways, and to pray and perform ceremonies on their Treaty recognized ancestral lands. This behavior also severely undermines Western Shoshone ability to govern economic activities on their lands which has resulted in severe environmental destruction and the denial of fair compensation.

These actions demonstrate a serious, massive and persistent pattern of racial discrimination against the Western Shoshone Nation and its people.

Additionally, the admitted, discriminatory nature of U.S. law demonstrates that for indigenous peoples there are no adequate procedures, judicially or legislatively, to challenge racial discrimination in the United States.

Finally, CERD’s listed criteria for invoking the Early Warning Procedure are not exhaustive. It is entirely proper for CERD to invoke the Early Warning Procedure based on the U.S.’ open defiance of the findings of other international human rights bodies and its complete failure to respond to the concerns of this Committee except with the escalation of aggressive violations against the Western Shoshone Nation and its people.

Thank you for your attention to this matter. Please do not hesitate to contact us now should you have questions or need additional information.

Sincerely,  
2005 Western Shoshone Delegation to the United Nations

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Bernice Lalo

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Steven Brady

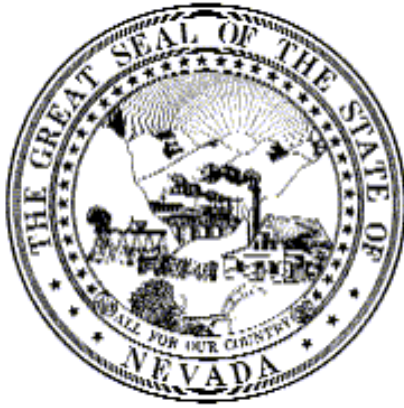
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Joe Kennedy

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Thomas Wasson

## **APPENDIX 3**



# From the office of Governor Kenny Guinn

FOR IMMEDIATE RELEASE

DATE: February 15, 2002  
CONTACT: Greg Bortolin  
CARSON CITY: 775-684-5670  
LAS VEGAS: 702-486-2500  
CELL: 775-230-3302  
FAX: 775-684-7198 [EMAIL: Bortolin@gov.state.nv.us](mailto:Bortolin@gov.state.nv.us)

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## Gov. Guinn will veto President Bush's Yucca Mountain decision

CARSON CITY - Gov. Kenny Guinn announced today he will exercise his Notice of Disapproval to the U.S. Congress (the Governor's Veto) upon hearing President George W. Bush's decision to recommend Yucca Mountain as a nuclear repository.

"I am outraged, as are the citizens of Nevada, that this decision would go forward with so many unanswered questions," Gov. Guinn said. "As I mentioned to the President, I believe that we deserve a scientific response to the nearly 300 critical questions the Nuclear Regulatory Commission has stated must be resolved before going forward with Yucca Mountain."

"As a state we are solidly united to continue our fight against Yucca Mountain becoming the nation's nuclear dump. We will exhaust every option and press our legal case to the limit. The Nevada Legislature, cities, counties and now the private sector have raised \$5.4 million toward our fight."

DOE has failed to prove that nuclear waste will not leak into the water table. The General Accounting Office and the Nuclear Waste Technical Review Board also support this view. DOE has not completed the site characterization in compliance with the law. Nearly 300 key scientific studies in nine critical areas identified by the Nuclear Regulatory Commission are incomplete.

Only today did DOE deliver to the Governor, the final Environmental Impact Statement. This does not comport with the intent of the Nuclear Waste Policy Act in which the Governor, prior to the recommendation, is to be provided all decision documents in order to conduct "meaningful review."

"Receiving the final EIS just hours before the Presidential decision hardly provides me and the State of Nevada meaningful review," Gov. Guinn said. "Once again, this is an outrage."

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Last Updated 08/2003

## **APPENDIX 4**



United States Department of Energy  
**Office of Public Affairs**  
*Washington, D.C. 20585*

**News Media Contact(s):**  
Craig Stevens, 202/586-4940

**For Immediate Release**  
February 6, 2006

## **Announcing the Global Nuclear Energy Partnership**

*Press Briefing by Deputy Secretary of Energy Clay Sell*

SEC. BODMAN: Hello again. Thank you all for being here as we will be discussing the Global Nuclear Energy Partnership that we alluded to in the other room.

GNEP is part of the President's Advanced Energy Initiative, the one that he announced last Tuesday evening in the State of the Union. If we are successful in implementing GNEP, we will be able to increase energy security, both here in the United States and abroad; we'll be able to encourage clean economic development around the world; and we'll be able to improve the environment.

The idea is that GNEP will leverage new technology to effectively and safely recycle spent nuclear fuel without producing separated plutonium. That's the whole idea behind it. By doing so we will extract more energy from nuclear fuel, reduce the amount of waste that requires permanent disposal, and greatly reduce the risk of nuclear proliferation. If we can make GNEP a reality, we can make the world a better, cleaner and safer place to live.

We're very pleased with the President's request of \$250 million, which is an initial investment in what we believe will be a very ambitious plan to accelerate the development of nuclear technologies. GNEP, like other aspects of the President's Advanced Energy Initiative and the American Competitiveness Initiative, is based on the idea that scientific discovery will ultimately hold the answers to the questions that the world is facing today, and in particular, the questions that we in the energy department are facing today.

Deputy Secretary Sell is going to walk you through the details of the GNEP policy, but before he does, I want to thank the many people here at this department who have worked so hard on this initiative, both here in the headquarters building as well as in our laboratories. These include the Deputy Secretary himself, who I asked to undertake the leadership in this area of looking at the questions related to the development of a nuclear initiative when he came on board about 10 months ago, 11 months ago.

They also include Under Secretary Dave Garman and Linton Brooks, both of them, and I want to thank them for their participation in this; Ray Orbach, who is here, who is the Director of the Office of Science; and the Acting Director of the Office of Nuclear Energy, Shane Johnson; as well as the Acting Assistant Secretary of the Civilian Radioactive Waste Management Program, Paul Golan. These people and their teams have provided quite extraordinary insight and direction, and they have worked really day and night to develop a program that we all believe has the potential to change the world – we believe that.

I would also say, before introducing the Deputy – and that the Deputy Secretary, by tradition in the government is – looks after the day-to-day operations and is in effect the chief operating officer of the department. And I have chosen to associate with that job the person who is the chief budgeting officer that makes the tough decisions, and he has worked very closely with Susan Grant and her folks in the CFO's office, and in my judgment, he's done a first-class job.

Clay?

CLAY SELL: Thank you very much, Mr. Secretary, for your opening remarks and your very kind remarks.

I'm pleased today to finally gather together today with you and discuss the Global Nuclear Energy Partnership. And the Global Nuclear Energy Partnership at its core is a way that we anticipate dramatically expanding nuclear power here in the United States, but also in the world in a way which effectively addressed two of the great concerns that have historically been associated with nuclear power here in the United States, but also in the world, in a way which effectively addresses two of the great concerns that have historically been associated with nuclear power. Those are what do you do with the waste and what about the proliferation of technologies that can lead to the bomb. We think the Global Nuclear Energy Partnership effectively addresses both of those great questions in a way which will enhance the expansion of nuclear power worldwide. Those are the policy goals.

I want to spend a little time on this next chart and step back and really focus on the problem that we are contemplating. In the next 50 years, world energy demand is expected to double, and not only is it expected to double, it is our great desire that it double. Large segments of the world today are still coming up the development curve, and those countries need great increases in the amount of power in order to come up the curve, and we're going to have a lot more people in 2050.

Now if we try to manage that increased energy growth on the backs of fossil fuels, we will have a very significant greenhouse gas concern and a very significant pollution concern, and it is our view here in the Department of Energy that we need all alternatives to address this. We need a great expansion of renewables, we need a great expansion of biomass, we need a great expansion of clean coal technology, but we must – anyone that fairly looks at this question whether you're from the energy side of the debate or the environmental side of the debate concludes that nuclear power must play a significant role in meeting this dramatic growth in energy demand.



I'd like to make a point about nuclear. The world has recognized that nuclear power must play a significant role in meeting this demand. There are over 130 nuclear power reactors either under construction, in the planning stage or under consideration around the globe. Now when I started briefing this slide a few months ago, the United States was nowhere on this list. Now, fortunately, due to the provisions that the president signed into law in the Energy Policy Act last summer, there is now talk and consideration of new nuclear power plants, even here in the United States.

But the point of this slide is nuclear power is going to go on without us. We can either be a part of it or we can observe, and it's our view that from a non-proliferation standpoint, from an economic – U.S. economic standpoint, we are in a much stronger position to shape the future if we are part of it and if we are building it.

MR.: (Off mike.)

MR. SELL: Yes, the green bar – on the bottom this is 5, 10, 15, 20. The green bars are reactors under construction. The blue bar is reactors planned or approved for construction, and the yellow bar is reactors formally under consideration in each of these various countries.

And so really the initiative began with us thinking forward to the year 2050, a world with perhaps 1,000 nuclear reactors in it, and thinking about what are the technologies, what are the policies, what are the international regimes we would want to have in place when we get there, and that is the origin, and that's what we seek to address in the Global Nuclear Energy Partnership.

The provisions of GNEP are consistent, quite frankly, with the policies that were laid out in the President's National Energy Policy five years ago. It was a – I recall – I was working on the Hill at the time. I recall what a dramatic thing it was when the President called for an expansion of nuclear power five years ago, and that he advocated developing advanced reprocessing/recycling technologies. Now it is accepted, really, that the world must have a great expansion of nuclear power, and the United States must have an expansion of nuclear power. And as that realization has set in, our thinking as to what policies and technologies we need have also evolved.

As the Secretary indicated, GNEP is going to start with \$250 million budget in fiscal year '07. We do have some monies in fiscal year '06 that we think we can dedicate towards it to get moving on it, and this budget is expected to increase dramatically in the coming years, and most notably in the three years remaining in this administration.

The benefits of – if we can in fact expand nuclear power in concert with the way we think about the Global Nuclear Energy Partnership, we think the benefits are substantial. It will allow us in the United States to dramatically reduce America's dependence on fossil fuels: certainly coal; certainly natural gas, which we are increasing our imports of and plan to dramatically increase our imports of, but in the future as we think about a transportation sector more dependent on the electricity sector, through hybrid vehicles or through hydrogen fuel cells, nuclear power and the electricity power generation sector will have a growing impact on the transportation side as well.

And I would also add, to the extent we dramatically expand nuclear power worldwide, that can significantly reduce world demand for oil. Many countries around the world generate a significant amount of their electricity with fuel oil and, in fact, much of the increased demand and growth out of China over the last few years has been driven by their greater use of diesel generation in that country. So to the extent we can replace diesel and fuel oil generation for electricity with nuclear power, that can significantly affect and reduce the growth in demand for oil worldwide.

The impact – the second point, the impact of nuclear power on greenhouse gases, is not questioned. It is the only large, mature technology capable of baseload generation of electricity that does not emit any greenhouse gases.

To the extent – on the third point, to the extent we can recycle used nuclear fuel, the secretary indicated in the earlier press conference it dramatically minimizes the amount of waste that we ultimately have to dispose of.

On the fourth point, we think there are significant non-proliferation benefits to the Global Nuclear Energy Partnership, which I will elaborate on later in the presentation.

The fifth point – through recycling and utilization of the actinide fuel and fast reactors, we are able to get much greater efficiency from nuclear fuel. Today in our policy we burn spent nuclear – we burn nuclear fuel once and then it goes for ultimate disposition, and when it goes – under current policy, when it goes in Yucca Mountain, it will still have over 90 percent of its energy value to it.

Under the Global Nuclear Energy Partnership and advance recycling technologies, we can utilize a great – much greater percentage of the energy value in fuel. And then if we are able to do that, we will dramatically reduce the volume and radiotoxicity of the material that ultimately has to be disposed of, and instead of having to build many Yucca Mountain-like facilities over the course of this century, we think we can dramatically grow nuclear power and dispose of all of the waste that would be generated in one Yucca Mountain facility, and we would not have to face the prospect of building a second, third, fourth, fifth or sixth throughout the century.

I want to focus on one of the key – the benefits of GNEP here and the key program elements are in developing the technology and in facilitating a regime of the future that allows for fuel leasing. And there's really – there's a key non-proliferation benefit that I want to focus on, that is today much of the world has gone on. The other major nuclear economies have continued with reprocessing. The United States stopped reprocessing in 1970. We stopped reprocessing because the technology of that day separated plutonium, and that presents a significant proliferation concern, but the rest of the world – France, Japan, Russia, the United Kingdom – went on and continued to develop these reprocessing technologies, and we now have over 200 metric tons of separated civil plutonium around the globe today.

It is our goal to develop, in partnership with these other nations, technologies that will allow for the recycling of spent fuel but not separate plutonium, and in the process of developing those technologies

and coupling them with fast reactors that can burn down the spent fuel. We hope to develop an international regime that will allow for fuel leasing so that fuel can be leased to a country interested in building a reactor and taking fuel, but then the fuel can be taken back to the fuel cycle country.

I'm going to tick through a number of the key elements here, kind of stepping back and going through the seven elements of GNEP. Certainly the first part of it is to expand the use of nuclear power, consistent with the provisions in the Energy Policy Act, Nuclear Power 2010, and the other provisions that have been passed. We're confident that a number of current-generation or next-generation reactors will be built in the United States. I've talked about the goal – the importance of minimizing the nuclear waste. I've talked about the advanced recycling demonstration. That's a key part of what we're going to try to accomplish in the next few years. The technologies on this will be – there are two key technologies that we're looking at – one called UREX Plus – which, instead of separating out pure plutonium combines the plutonium with other actinides and some portion of uranium so that it is not attractive or usable as weapons material. And the other technology is dry reprocessing, or pyroprocessing, which uses a slightly different technology.

And of course, in addition to the recycling piece we will couple that with fast reactors. We've built a number of fast reactors in this country over the years. Japan, France, Russia have also developed fast reactors. The key will be developing a fast reactor which can burn the actinide-based fuel and reduce that down, and we hope to demonstrate that technology over the course of the next 10 years. Once again, that will allow a system of reliable fuel services, which is elaborated – I can elaborate somewhat on with this chart.

It is our hope to develop this technology in partnership with a number – with the other great nuclear economies of the world. Two weeks ago the Undersecretary of State for Nonproliferation Bob Joseph and I visited the other capitals of the leading nuclear economies. We went to London, Paris, Moscow, Beijing, Tokyo. We also stopped to see Dr. ElBaradei in Vienna to lay out our vision of reordering the global nuclear enterprise. And it would be our hope to work in partnership with these other countries to develop these advanced recycling technologies to a state where they could be deployed in the existing countries that have the full elements of the fuel cycle. And once those advanced technologies are deployed, that will lead us to a situation where we can sell reactors to other countries that are interested in the benefits of nuclear power, lease that fuel to those countries, and then take it back for recycling and for waste disposition.

Now, the value in that – we have found that it is unproductive often to talk in terms of rights, and what rights do the countries have to develop the fuel cycle? Well, what we're hoping to do is develop commercially attractive incentives so that a country interested in bringing the benefits of nuclear power to their economy can purchase a reactor and then lease fuel and not have to worry about making their own investments in the fuel cycle. So the goal here and the reason we think this can work from a nonproliferation standpoint is that we are seeking to provide commercially attractive incentives for countries to lease fuel rather than make investments in their own fuel cycle.

It is also a key element of this initiative that we would cooperate with existing fuel cycle states or any

other country in the development of small-scale reactors. And we think there is a great opportunity here to enhance our nuclear cooperation with many countries on developing reactors of a size and with the nonproliferation benefits that would be appropriate for the developing world. It would be of a smaller scale appropriate for smaller grids.

Another key aspect of the initiative is enhanced nuclear safeguards and ensuring that we install best practices on handling nuclear material and in building the advanced fuel cycle of facilities. And so what are the next steps? We're going to continue to work to expand nuclear power here in the United States by implementing the provisions in the Energy Policy Act and making progress on Yucca Mountain as quickly as possible. It is our goal, with the GNEP initiative, to raise the level of debate and to make progress more quickly on Yucca Mountain than we have in the past. And as part of this we will be sending for a legislative package in the coming weeks that will make a number of legislative changes to the Nuclear Waste Policy Act that will allow us to make progress much more quickly on Yucca Mountain. We hope to join in partnership and broaden our consultation with other countries to develop the advanced recycling technologies and we hope to continue to build on the – build the global consensus for this GNEP vision, and that is that we need a world with a dramatic expansion of nuclear power. We must recycle in order to manage the waste. We should recycle in a way that does not separate plutonium, and we should develop a fuel-leasing regime that ensures we do not see a greater proliferation of the key aspects of the fuel cycle which worry us the most, which are the enrichment technology and the reprocessing technology.

So in conclusion, we think the U.S. and the world are faced with a set of challenges related to energy supply, nuclear proliferation and global climate change. And the global nuclear energy partnership, we think, uniquely addresses these challenges to meet the rapidly growing energy demand, reduce carbon emissions, enable the clean development of the world, and avoid proliferation.

And so with that I'll take your questions.

Q: Andrei Sitov from TASS, the Russian News Agency. You mentioned you went to Moscow. Could you tell us what the response was from the Russian side? Generally speaking, how does this initiative correlate with the recent proposal from President Putin for basically the same thing?

MR. SELL: We think it's consistent. In our meetings in Moscow, as well as our meetings elsewhere, the vision, the goals, were all very well received – in some cases enthusiastically received. But as is the case between partners, there are different perspectives and different angles and there are many details to be worked out, and quite frankly, many more consultations to occur with those countries that we've been to as well as other countries. But the ideas were very well received in all of the capitals.

Q: One of the details that you probably mean is this reprocessing thing. Do you mean to take back nuclear waste for reprocessing in this country?

MR. SELL: What we mean to do is develop the technologies that allow us to effectively deal with waste on the backend. If we can do that – and, sir, it's our view that those technologies should be in existing

fuel cycle states. If we can do that there is certainly – you know, if you look at the existing fuel cycle states, that’s almost 70 percent of the nuclear reactors in the world. And so certainly those countries have a significant incentive and economic reasons to make investments in the full elements of the fuel cycle, including in ultimate repository.

But what we really want to do is develop the technologies that allow us to deal with the waste. And whether the final waste is ultimately disposed of in a repository in a fuel cycle country, or whether it is ultimately disposed of in a repository elsewhere, the nonproliferation goals have been met.

Yes, sir.

Q: (Inaudible.) My question is aimed at what you’re going to be doing with this waste. From what I understand, when you separate it, over 90 percent is depleted uranium. Is this then going to be put back into a fast reactor or re-enriched and then put into a fast reactor to create more energy, or does it need to be disposed of?

MR. SELL: Either way. It could be re-enriched or it could be disposed of, but if it’s disposed of I believe that it would be disposed of as low-level waste. And so the cost of doing something – the cost of that is substantially less, but it certainly – we contemplate that it could be re-enriched, and the market may drive it to be re-enriched in the future.

Q: Just one quick follow up. So would this depleted uranium – if you’re not going to dispose of it, it would need to be put somewhere as a temporary basis. Is that right? I mean, how would we set up some – would there have to be a new sort of schematic to deal with that?

MR. SELL: To deal with the depleted uranium?

Q: With the depleted uranium, the storage of it.

MR. SELL: Yes.

Yes?

Q: Hi. Dan Whitten with Inside Energy. Looking at the legislation, would it expand the capacity of Yucca Mountain – would your legislative proposal expand the capacity of Yucca Mountain, and do you envision retrieving the waste from Yucca Mountain for reprocessing, or would it be stored somehow above ground? And then finally, is there anything related to GNEP authorization in the legislation, or is that separate?

MR. SELL: That was several questions. I’ll try to get them all.

Q: Sorry about that.

MR. SELL: As far as what we intend to do over the next few years, specifically as it relates to GNEP, we will work with the Congress on that, but it is our view that we have sufficient authority under the Atomic Energy Act to proceed. As to Yucca Mountain, it is our great desire, and it is in the nation's interest, and it is the interest in facilitating a nuclear renaissance, which we greatly need, that we get Yucca Mountain licensed and that we get it opened. And once we get it opened, then we can start moving spent fuel there. And we would certainly contemplate it as possible that fuel could move there and then be recycled, or it is possible that we would build recycling centers – and I think there will be significant interest from various states in building these centers in which spent fuel would be staged there temporarily while it is in the process to be recycled and before it ultimately goes to Yucca Mountain for disposition.

Q: Matt Wald, New York Times. Do you have a target price in mind for uranium and a target year at which point it makes sense to use something besides virgin newly enriched uranium – would make sense to use actinides or something else instead, or are you putting some dollar value on the kilos of waste that don't go into Yucca?

MR. SELL: We think, from a – the scale of what we are proposing to undertake is massive, and this is still a technology development and demonstration program. And so there is significant uncertainty about the cost of it. But a few things we are confident in. One, the cost of disposing of once-through spent fuel in Yucca Mountain is significant. It is very significant when you contemplate what we will do in order to license a facility for a million years, which is what is contemplated. The spent fuel going into Yucca Mountain will not have its peak dose until approximately year 1 million. And so, in order to license a facility with material like that in it, we are going to have to spend a tremendous amount of money and build massive packaging materials in order to ensure that that is possible.

So one of the benefits of disposing of recycled waste is that it's much more stable, it has a much lower radiotoxicity, and therefore it is a simpler and more straightforward proposition to ultimately dispose of it, and that will result in significant cost savings on Yucca Mountain, or the multiple Yucca Mountains that would have to be built over the coming years.

Secondly, there are significant, we believe, nonproliferation benefits in recycling and burning down spent fuel. And we start from the view that economics, the environment, clean development, and concerns about greenhouse gases are going to drive the world to many, many more nuclear power plants, and that is going to present a significant proliferation challenge if we have not thought through and presented a well organized way to address it, and the way we think is appropriate to address it is by recycling that spent fuel in a way that does not separate plutonium, and building an international regime that allows for fuel leasing and take back to eliminate concerns about proliferation.

So the nonproliferation benefit of what we are talking about is quite substantial, and it's also quite difficult to quantify, but we are seeking to develop these technologies, we are seeking to lessen the amount of uncertainty as to what it would cost to build these facilities on a commercial scale, and ultimately we hope to be in a position to make a judgment about the commercial viability of this approach in the coming years.

Q: Very quick follow up. You are implying that the 1 mil per kilowatt hour won't pay for Yucca. Is that right? I mean, you have the money in hand from commercial sources to pay for waste disposal.

MR. SELL: Each year under the Nuclear Waste Policy Act the Secretary is called upon to make a judgment as to whether the 1 mil fee is sufficient. And certainly it is my view that in the coming years, if we do not develop a better way, we may come to the conclusion that it's not sufficient.

Yes?

Q: Thank you. Just a brief clarification. I am – (unintelligible) – from Kyoto News Japanese Wire Service. You mentioned that you have visited United Kingdom, France and Russia, China and Japan to discuss this partnership. Are these all the countries you plan to working on this partnership?

MR. SELL: No. This was just the initial round of consultations, and we expect to have many more consultations and with many other countries, but the countries that we've been to certainly today represent the most advanced – the countries that have made the most significant investments in the commercial fuel cycle.

Q: Sorry, just a brief – would you name one or two other countries you are going to work on?

MR. SELL: We would contemplate in the future that once India has met the nonproliferation commitments that it has made and that were memorialized in the joint statement between our two heads of state last summer, that they would be a great candidate for participation as well. But we also anticipate that there are many countries that have significant technologies, particularly as far as reactors, that we would look forward to participating with.

MR. : In part this is voluntary. We're going to see who's interested.

Q: I'm John Fialka with the Wall Street Journal. Could you describe to me what this separated fuel does to the problem of making a nuclear weapon? You have now mixed up the actinides with the fuel. Does that make it impossible to make a nuclear weapon?

MR. SELL: It makes it dramatically more difficult because the radiotoxicity of the material and the quantity of the material, and we believe if we – we only contemplate deploying these technologies on a commercial scale in existing fuel cycle countries. And we contemplate doing that with the most sophisticated of safeguard arrangements. And it is the ability to have these advanced recycling technologies, and most importantly the ability to dispose of the actinides, which offer the great nonproliferation benefit over the coming decades.

Yes, sir.

Q: Tom Doggett with Reuters. To be clear, so when you recycle this fuel and you're going to loan it to

other countries for fuel for their reactors, if they give it back, if we had it working today, this program, would we have these worries we do now about Iran, if indeed they wanted to have a nuclear program for electricity production? Would we loan this to future countries like Iran to make sure they don't develop a nuclear weapon? Will this avoid that?

MR. SELL: All countries that are signators to the Nonproliferation Treaty, like Iran, have the right to develop the fuel cycle for commercial nuclear purposes. It is our concern that that right – and we've seen it in history – has been used as a cover to develop a clandestine weapons program. As far as GNEP we have found the discussion of rights to be unhelpful. But what we hope to do is provide commercial, attractive – or commercially attractive opportunities for countries that are genuinely interested in bringing the benefits of nuclear power to their country, to buy a reactor, build it, and then lease fuel and return that fuel to a fuel-cycle state for ultimate recycling, and we think we can offer that on terms that would be very attractive commercially, and in exchange that country would agree to suspend any investments in the fuel cycle, and we think that can be a very workable framework going forward to greatly discourage the proliferation of the fuel cycle.

Yes, ma'am.

Q: I am Suzanne Struglinski with the Deseret Morning News, serves Salt Lake City. In December, several companies dropped out of the private fuel storage program. I was wondering if the administration presented this plan to them at that point and if you could talk a little bit more about what the industry and how they are involved at this point and what their opinions are on the waste storage ideas that you are talking about.

MR. SELL: We did not present this plan to industry, but certainly last year we saw a significant up tick under the leadership of Chairman Hobson in the House. I had discussion of advanced recycling. And so certainly that prospect has been out there, but I don't know of any direct link between our initiative and what has transpired with PFS. It is our view I would say that Yucca Mountain is the right answer and PFS is not.

Yes, ma'am.

Q: You have talked about this program as a technology development effort at this point. What about the implementation? And do you have any target dates for when GNEP would be a viable program for implementation or is it something that could be done in stages with other countries with the technologies such as -(inaudible)- or reprocessing or what not to begin implementing right away.

MR. SELL: As far as the technologies it is our goal to work in partnership with our nations to develop these technologies and to demonstrate them on an engineering scale. The reprocessing technologies, the recycling technologies that we have talked about have only been demonstrated at a laboratory scale, and so we need to demonstrate those on an engineering scale, and make judgments, and understand them better so that each of the involved countries can make a judgment on commercialization. We would hope to demonstrate those technologies over the next five to 10 years and then be in a position to make



judgments on the next round of investments thereafter.

Q: To follow up on that, is it too soon – is it too soon at this point to be talking about whether the United States is contemplating the building of new nuclear power plants or are these recycling facilities that you talked about in certain states, where those would go, how you would negotiate with states to build them. Is all that too far down the road?

MR. SELL: As far as new nuclear power plants, that is an issue that is before us now, and there are a number of states that are interested; there are a number of potential applications to the nuclear regulatory commission for new plants, and that is something that is quite exciting and quite encouraging.

As far as the recycling and fast reactor piece, we are still in the mode of demonstrating the technology and future decisions on siting will be exactly that, decisions of the future.

Yes, sir.

Q: Martin Schneider with Weapons Complex Monitor. You mentioned about plans for a significant increase in the investment in GNEP. Do you have plans money wise at least what the requests are going to be in this administration going forward in the out years, '08, '09.

MR. SELL: We have an understanding and one of the – the scale of what we are proposing is substantial, and the level of R&D and demonstration funding that would be required of this country is significant. That was discussed at length on an interagency basis as we developed this proposal with OMB and they are aware and committed to a level of investment, which will get us where we need to be.

We hope to do this and we seek to do this on a partnership basis with significant foreign contributions as well but we would contemplate that the budget would increase substantially or could increase substantially over the next few years, and there is agreement within the administration to do that.

Q: Is that more or less a billion dollars?

MR. SELL: I am going to go with my answer the way I said a while ago.

Q: (Off mike) – Financial Times. Has any thought been given to who would decide what countries could be eligible for the renting on this fuel? For example, Beijing might be more interested in working out something with a place like North Korea than Washington might feel more comfortable with that? Would it be determined by the United States? Would it be something that would be done in conjunction with other partners of the IAEA play into this at all? How would it work out?

MR. SELL: We expect that that IAEA will play some role in this. Certainly the proposal is attractive to user nations only if they can have some sense of energy security, and energy security comes from a diversity of potential suppliers. And so certainly that is a key element of this, and that is why we contemplated early on developing these technologies in the existing major nuclear economies including

China, including Russia, so that there would be a diversity of potential fuel cycle nations that could supply on a commercial basis to user nations.

Yes.

Q: Yeah, hi. Steve Tetreault, Las Vegas Review Journal. I want to make sure I understood. Does this plan envision that GNEP fuel at the end would be disposed at Yucca Mountain, and if so, does that necessitate any further design changes or legislative changes to accept this type of fuel?

MR. SELL: If ultimately a – we do contemplate. You did understand correctly that we contemplate disposing of the ultimate disposition, the ultimate waste in Yucca Mountain. We think it is absolutely the right place and it is the place that we should do it. Certainly the design requirements for disposing of once through spent nuclear fuel are dramatically different than the design requirements for the product that would ultimately be disposed because the product after recycling is a substantially lower radio toxicity. It is in a stable glass form. And so the packaging that would be association with it and the design requirements associated with disposing of it would change.

Paul, would you like to elaborate on that? This is Paul Golan from our Office of Civilian Radioactive Waste Management.

PAUL GOLAN: Sure. And today we contemplate putting reprocessed waste in Yucca Mountain, the glass that was manufactured at Savannah River at West Valley and the glass that will be manufactured at Hanford. So it is already contemplated as part of our waste acceptance criteria – also the spent nuclear fuel from the Navy and from the commercial sites are and our designed case right now is to accommodate all of that fuel certainly as this moves forward. We are just going to keep our eye on that but we are going forward with all of the things that currently Yucca Mountain is envisioned to accept today.

Q: This is one of the current designs?

MR. GOLAN: This would fall under the umbrella of the current design.

Q: How about fuel that has been foreign and back?

MR. GOLAN: The only fuel that we have in our current inventory today is university fuel that went out in the '50s and '60s that the United States is accepting today, and it's U.S.-origin fuel, and so that is included in our waste acceptance criteria, but it's a very small fraction of the total fuel that is envisioned at Yucca.

Q: What about fuel that has been used overseas and that is coming back for disposal? Is that getting ahead?

MR. SELL: I think it is an open question in my mind when we think about the vision, and this is still –

this is a vision as to how the world we would like to see in 50 years and it is dependent on a number of things, the development of the technology, international agreements, and other things, and it is an open question in that vision as to where the ultimate waste material would go. It is certainly possible that it could stay in a country where it is recycled and burned down, but it is also possible that it could go back to the user nation as well. But once that material has been recycled and burned down, it does not present the proliferation risk that spent fuel does today.

Q: Dan Horner from McGraw-Hill Nuclear Publications. A couple points of clarification: Since you're talking about fuel supply in the context of this initiative I gather you are talking about supplying mixed oxide fuel rather than low enriched uranium fuel, and if you could talk about that a little bit and all of that. And secondly, the \$250 million for this year, how much of that is new money and how much of that is existing programs that are now just being grouped for better cohesion under the rubric of GNEP? Thanks.

MR. SELL: Let me address your first question. We did not contemplate a MOX fuel cycle as part of GNEP and I want to be clear on that. This issue came up when we were in Paris. The French have moved forward with commercial reprocessing using the PUREX, which separates plutonium and then burning that plutonium in light water reactors in a MOX fuel cycle. We do not concur in their – (audio break, tape change) – use of an actinide-based fuel so plutonium and other actinides to be burned in a fast reactor, what we call the advanced burner reactor. That is the GNEP vision that will allow for a significant burn down in reduction of the world actinide inventory.

Q: I'm sorry, if I could just clarify that. So what we're talking about – having the separation facilities and the fast reactors only in a limited number of countries, not to the countries that are being supplied or are you envisioning fast reactors in the recipient countries of the fuel supply as well?

MR. SELL: We would anticipate – I mean, certainly there are some small reactor technologies that may involve fast spectrum technology. But as it relates to the recycling facilities and the burn down of the actinide-based, plutonium-based fuel in fast reactors, we contemplate that all occurring within fuel cycle nations, not the user nations. We anticipate the sale of many, many more light-water reactors all around the globe to user nations as well as to fuel cycle states in the decades to come.

Q: (Off mike) – question about the \$250 million?

MR. SELL: Oh, how much of that is new. Shane, can you address that?

MR. JOHNSON: Yes, in our current fiscal year 2006 we have an appropriation of 80 million for advanced real cycle initiative. The GNEP program, which is an acceleration of our advanced real cycle is the 250. So do the math here – about \$170 million of due money.

MR. SELL: Yes.

Q: I'm Ben Grove, Las Vegas Sun. Can you outline what Yucca Mountain-related items there are in the

legislation, the DOE is proposing.

MR. SELL: The legislation that we're working to send forward would address a number of issues associated with the project including providing a secure funding stream for the project; it would – what are the other key elements of it, Paul? Do you want to talk about that?

MR. GOLAN: There is a couple of things. First is the funding stream. The second large aspect of that is land withdrawal, and we have to permanently withdraw 147,000 acres of land as a condition for getting a license to receive and possess on the nuclear regulatory commission. I think that is what I am prepared to talk about today on that as we have to get clearance from our office and management and budget before we can talk much more.

Q: (Off mike.)

MR. GOLAN: It is the 147,000 acres that surround the Yucca Mountain repository area. So part of that is BLM land; part of that is Department of Energy land today, and part of that is Air Force land. So it would be the area surrounding the Yucca Mountain repository.

Q: (Off mike.)

MR. GOLAN: No we don't.

ANNE KOLTON: One more question.

Q: I don't know – have you had any discussions with Congress yet as of the – Jeff Thompson of CQ. Had you had any discussions with Congress yet? I mean, as of last week there had no official briefings and there are already some eyebrows raising about the appropriations moving forward.

MR. SELL: We have had a number of discussions with key congressional leaders and others.

MS. KOLTON: Okay, one more question.

Q: That is all right.

Q: Yeah, I just wondered where you expect your most significant proposition – (off mike).

MS. KOLTON: I'm sorry, we are going to take the question from the gentleman in the back.

Q: David Kestenbaum, Nation, al Public Radio. It is my understanding that reprocessed fuel can be used in a bomb, that it is not the best stuff to work with but you can still make a nice kiloton explosive. So to be clear, you're saying that reprocessed fuel will not be sent to other countries to be used as fuels in reactors there?

MR. SELL: Let me – the premise of your question, which is reprocessed fuel can be used in a bomb – using existing technology, PUREX-based technology, it results in separated plutonium.

Q: But even the stuff that comes out of UREX (sp) Plus?

MR. SELL: The stuff that comes out of UREX Plus provides significant non-proliferation benefits from the – from its radiotoxicity, its handle-ability, as well as the quantity that would have to be utilized. And all of these advanced recycling facilities would only be built as we contemplate in existing fuel cycle states. The most important thing from a non-proliferation standpoint is the burn down of that material to your question would occur in these burner reactors in the fuel cycle states and that would not be exported or we would not contemplate that that would be exported to other what we call user nations.

Q: What was wrong with GNEI as a name for this as I understand was the original working title? G-N-E-I.

MR. SELL: We have working titles then the communicators take over. (Laughter.)

Q: Not something that should be kept in a bottle? Is that one of the advantages of GNEP?

MR. SELL: I guess. We do not intend to keep GNEP in a bottle. (Laughter.)

Q: Thank you very much.

MS. KOLTON: Great. Thank you very much, everybody.

***NOTE: For more information on the Global Nuclear Energy Partnership, including a copy of Deputy Secretary Sell's slide presentation, please visit <http://www.gnep.energy.gov/>.***

**Location:** U.S. Department of Energy

**U.S. Department of Energy, Office of Public Affairs, Washington, D.C.**

## **APPENDIX 5**



## *Nevada Site Office News*

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**For Immediate Release:**

February 23, 2006

### **Krakatau Subcritical Experiment Conducted**

**Krakatau**, a joint United States/United Kingdom subcritical experiment, was successfully conducted at 12:00 p.m. on February 23, 2006, at the Nevada Test Site. The experiment was conducted in the U1a complex. The Atomic Weapons Establishment of the United Kingdom and Los Alamos National Laboratory conducted the experiment to gather scientific data that provides crucial information to maintain the safety and reliability of each nation's nuclear weapons without having to conduct underground nuclear tests.

Krakatau was the 22<sup>nd</sup> subcritical experiment to date. The previous subcritical experiment, **Armando**, was conducted on May 25, 2004. The last joint US/UK subcritical experiment was **Vito**, conducted on February 14, 2002. **Krakatau** was a follow-on to the **Vito** experiment.

Subcritical experiments examine the behavior of plutonium as it is strongly shocked by forces produced by chemical high explosives. Subcritical experiments produce essential scientific data and technical information used to help maintain the safety and reliability of the nuclear weapons stockpile. The experiments are subcritical; that is, no critical mass is formed and no self-sustaining nuclear chain reaction can occur; thus, there is no nuclear explosion.

The Nevada Test Site's U1a Complex is located 85 miles northwest of Las Vegas. The U1a Complex is designed to contain these experiments in a safe and secure environment in an underground laboratory of horizontal tunnels with small excavated experimental alcoves mined at the base of a vertical shaft, approximately 960 feet beneath the surface.

## **APPENDIX 6**



# ELKO DAILY FREE PRESS

THURSDAY FEBRUARY 23, 2006 Last modified: Friday, January 27, 2006 3:57 PM PST

## Blast opens new era at Cortez

By **ADELLA HARDING - Staff Writer**

CRESCENT VALLEY - A blast rumbled through the old F Canyon Pit Thursday morning, signaling the beginning of a new era at Cortez Gold Mines.

The explosion loosened rock and dirt at two portals so Small Mine Development can begin drifting at Cortez's first underground exploration project.

"This enters us into a whole new era, after 35 years of open pit mining," said Cortez General Manager Gary Halverson.

"We're really excited about this," said Jody Micheletti as she watched the blast from a viewing point above the portals. She is contracts manager at Cortez and has been working on the project more than six months.

Cortez is developing the underground exploration project in conjunction with its planned Cortez Hills surface mine, and the underground project could become a mine later.

"We're at the point now where we can start advancing the underground drift toward the ore body," Halverson said.

The blast marked a major turning point for Cortez, which also has a new joint venture partner and operator, Barrick Gold Corp. Kennecott Minerals owns 40 percent of Cortez, and Barrick owns 60 percent now that it has acquired Placer Dome Inc.

Halverson said Cortez chose the mined-out F Canyon Pit as the best location to set up the infrastructure for the project.

The old pit, roughly eight miles from the Pipeline mill, was mined out in the early 1990s.

The underground drifting will turn to the east and head toward the Cortez Hills gold deposit, said Lou Myers, project superintendent for SMD, which has contracted with Cortez to develop the project.

"We like building mines," he said.

The west portal is for exploration drifting and the other portal is for future production, if Cortez decides to turn the project into a gold mine, and the two drifts will be 72 feet apart.



*Small Mine Development sets off the first blast at the new Cortez Gold Mines underground exploration project Thursday, marking the beginning of a new era. SMD blasted two portals at the same time. The one on the right will be the exploration portal, and the other will be the mining portal, should Cortez decide to turn the exploration project into a mine later. (Adella Harding/Elko Daily Free Press)*

Al Oliver, the project superintendent for Barrick, said he expects a mine that will be long-term, and the current work is simply phase I of a planned five-phase project.

"It's a very good project for the whole area," he said.

Gordon Sobering, the senior underground mine engineer for Barrick, said there will be a little more than 7,000 feet of exploration decline and another 6,000 feet of a mining decline, if Cortez gets the OK to do both.

Myers said SMD has 21 people at the Cortez underground project, and Micheletti said her team has eight Barrick people who are working on the underground project.

They also are planning for nine miles of pipeline for dewatering at the underground project, and for an overhead power line to the site. Myers said the project is above the water table, but there will be dewatering for the open pit.

Myers said his team expects to drift about 15 feet a day, and SMD can go faster if it can do both drifts simultaneously.

Before the blast, SMD and a subcontractor removed 140,000 cubic yards of material to prepare the site. The dirt was used as backfill in the old pit.

U.S. Bureau of Land Management issued a permit for Cortez to get started and is working on a record of decision after completing an environmental assessment of the project.

"It should be completed in the next month," Halverson said.

BLM also is working on an environmental impact statement for Cortez Hills, which will be the surface operation to mine the Cortez Hills and Pediment gold deposits.

Halverson also commented on the Barrick-Placer merger, reporting Barrick sent people to the mine Monday morning to welcome Cortez.

"There is a great opportunity to gain synergies," he said.

At the same time, employees naturally are apprehensive, but the mining industry is "always evolving," Halverson said. "Barrick has a 100-day integration plan."

He also said that from a mining perspective, it's business as usual at Cortez Gold Mines operations in Crescent Valley. "It's safety first and protection of the environment and making sure we are focused on the job."

-- CLOSE WINDOW --

## **APPENDIX 7**

December 30, 2005

The Cost of Gold | Water Worries

# Drier, Tainted Nevada May Be Legacy of Gold Rush

By [KIRK JOHNSON](#)

ELKO, Nev. - Just outside the chasm of North America's biggest open-pit gold mine there is an immense oasis in the middle of the [Nevada](#) desert. It is an idyllic and isolated spot where migratory birds often alight for a stopover. But hardly anything is natural about it.

This is water pumped from the ground by Barrick Gold of Toronto to keep its vast Goldstrike mine from flooding, as the gold company, the world's third largest, carves a canyon 1,600 feet below the level of northern Nevada's aquifer.

Nearly 10 million gallons a day draining away in the driest state in the nation - and the fastest growing one, propelled by the demographic rocket of Las Vegas - is just one of the many strange byproducts of Nevada's tangled love affair with gold.

An extensive review of government documents and court records, and scores of interviews with scientists and present and former mine industry workers and regulators, show that an absence of federal guidelines, of the sort that are commonplace for coal or oil, allowed gold wide latitude to operate here in the rural fastness of the desert, perhaps more than any other American industry.

The costs - to Nevada, its neighbors and even to the rest of the country - are only now coming into focus as diminishing ores foreshadow gold mining's eventual demise and a more urbanized West begins to express concerns over water shortages and mining's other legacies.

Barrick says the effects of its pumping will last at most a few decades. But government scientists estimate it could take 200 years or more to replenish the groundwater that it and neighboring mine companies have removed, with little public attention or debate, as they meet soaring consumer demand for jewelry and gold's price tops \$500 an ounce.

Goldstrike, meantime, may have only 10 years left, Barrick says, and most of the state's 20 or so other major mines are not expected to last much longer. When they are gone, the vast pits they leave behind

will create a deficit in the aquifer equivalent to 20 to 25 years of the total flow of Nevada's longest river, the Humboldt, according to state figures tallied by independent scientists. That is three times as much water as New York City stores in its entire upstate reservoir system. "When they stop pumping, what you're going to hear is a huge sucking sound," said Robert Glennon, a law professor at the University of Arizona who has written on water issues in the West. "The impact on the Humboldt River will be catastrophic."

That is not all. Nevada's gold mines will bequeath more toxic mercury waste in their mountainous rock piles than any other industry, about 86 percent of the nation's total in 2003, according to the most recent figures from the Environmental Protection Agency. They already generate more than 3 percent of the airborne mercury pollution, the agency says, equivalent to 25 or more average coal-fired power plants.

At the same time, as of May, according to state figures, about \$200 million in cleanup costs were simple promises to pay from the corporate miners of a notoriously boom-and-bust industry. Along with the modern superscale mining methods that were largely devised here beginning in the 1980's, such trade-offs have helped make Nevada the third-largest gold producer in the world, behind South Africa and Australia.

But mining experts, legal scholars and historians say that prosperity was also built on the basis of a law drafted in the age of the horse and buggy - the General Mining Law of 1872 - which declares mining the best use of public land, gives miners access to that land for bargain-basement prices, and makes no mention of a cleanup.

Mining industry officials vigorously defend the statute and say that the absence of federal guidelines - far from making things less strict - gave rise to an even tighter regulatory framework because other laws filled the breach, from endangered species protection to air and water rules.

"We just can't see a way to write a mining law that would appropriately regulate all of these different things and work any better," said Carol Raulston, a spokeswoman for the National Mining Association, the industry's trade group.

But here in Nevada, where four-fifths of the nation's gold is produced, the vacuum of antiquated law has been gold's defining feature and the handmaiden to its rise, current and former regulators say, allowing for special treatment of a favorite-son industry on a landscape of bleak extremes that few big environmental groups have risen to defend.

"If you look at the gold industry today, most of it is Nevada, and Nevada is mostly not prized by environmentalists," said John D. Leshy, who was the top lawyer for the Department of the Interior in the Clinton administration. "Nevada is being written off as a sacrifice area for gold."

In an ever-more urban West, the day of reckoning is fast approaching, people like Mr. Leshy say. The new West, embodied by postindustrial Las Vegas, will inherit the landscape that gold leaves behind.

The glittering, energy-guzzling city is already probing north to satisfy its water needs, with a \$2 billion pipeline that will be the biggest groundwater project in American history if approved and built over the next 15 years.

Water experts say the scientific studies for the plan are only now likely to reveal just how Nevada's aquifer system really works, and how it was affected by the mines.

But, they warn, the 383 billion gallons of water pumped so far from the Goldstrike mine alone - enough to fill one of the midsize Finger Lakes of upstate New York - may have already imposed its stamp on the region's future.

### **Mercury's Taint Tied to Mines**

Michael DuBois, an analyst with the Idaho State Department of Environmental Quality, was assigned this year to figure out why the Salmon Falls Creek Reservoir, on the Nevada border, had mercury levels 10 times higher than any body of water ever tested in the state.

The more Mr. DuBois and other scientists looked, the more they became convinced that airborne mercury, which has been linked to impaired neurological development in fetuses, infants and children, was coming north from Nevada's gold mines. "There are things crossing state lines here that don't know anything about political boundaries," he said this summer on a visit to the reservoir, where prominent warning signs had been posted about consumption of fish.

In November, under pressure from Idaho, Nevada said it would begin regulating mercury from the mines, which had been operating under a voluntary system since 2001. "We were moving in this direction anyway, but we ramped it up," said Colleen Cripps, a deputy administrator at the Nevada Division of Environmental Protection.

But how the huge mercury output from the mines was missed or barely regulated for so long is just as big an issue for neighboring states that may have to live with the consequences for many years to come.

Mercury persists in the environment, as it accumulates in the tissues of fish and birds that pick it up from water sources. Nobody knows just how much has come from the mines over time because the Environmental Protection Agency did not even require it to be reported until 1998.

Before then, simple reassurances were regulation enough. In a 1997 agency report on mercury, gold was left off the list as a source because, the report's authors said, an "industry representative" had told them mercury was not a problem.

State officials insist that the voluntary efforts worked, and that the four companies taking part in the plan, including Barrick, cut emissions by 82 percent. But gaps in Nevada's patchwork regulation

persisted.

In 2001, Barrick built a \$330 million "roaster," which heats ore for gold extraction and in the process also frees other metals, like mercury. But because it built the machine on private land, no state or federal law required an analysis of the environmental impact.

The roaster was subsequently identified by the E.P.A. as a main mercury source. The mine, the agency says, now accounts for about 1 percent of the nation's total airborne mercury output.

Barrick's vice president for the environment, Richie D. Haddock, said that the location of the roaster was driven by proximity to the pit, and by the fact that the land beneath contained no valuable ore. The roaster, he added, was also built with the most modern technology. There was no effort to avoid scrutiny, he said.

But no scrutiny was the effect, and such regulatory gaps have become part of doing business, numerous legal scholars and present and former regulators say.

"The fact that the 1872 mining law had no environmental provisions was significant, because it means that those rules had to emerge from other places," said James McElfish, a senior lawyer at the Environmental Law Institute, a nonpartisan research group in Washington that advocates sustainable development and environmental protection. "The upshot of this is that it's a process of experimentation and diffuse authority and no one is really leading the way."

Industry officials, while acknowledging that gold mines have emitted significant levels of mercury, say that where the mercury actually came to earth is a much harder question. What has been found in places like Salmon Falls Creek, they say, could just as easily have come from a coal-burning plant in China, or a natural source.

But local regulators like Mr. DuBois and Michael L. Abbott, an advisory scientist at the Idaho National Laboratory, part of the Department of Energy, are not convinced. After studying the wind patterns and deposition rates this summer and fall near Salmon Falls Creek, Mr. Abbott said he believed that mercury from Nevada's gold mines was still coming north.

"Where do they think it's going to go," Mr. Abbott said, "outer space?"

## **Uncertain Prospects for Water**

Large-scale open-pit mining takes a lot of water, millions of gallons, mostly to dilute the cyanide that miners use to soak their ore and separate its microscopic bits of gold. Even so, mines like Goldstrike pump out so much water that company officials say they can use only a relatively small amount - less than 10 percent of what is displaced.

About half the rest goes into settling ponds where it is expected to sink back into the aquifer, company records show. About one quarter is used for irrigation. About 6 percent is sent to "sand dune drainage/evaporation."

The rest has engorged the Humboldt River since the 1980's. Though Barrick has not discharged any of its water to the river since 1999, other mines remain in full pump and drain mode.

That pumping could change both the quantity and quality of the groundwater, and even the shape of the aquifer, said Glenn Miller, a professor of environmental science at the University of Nevada, Reno. "I think it may never be quite the same hydrologic system," he said. "There is simply no data to suggest that these changes aren't going to be permanent."

Officials at Barrick strongly disagree. Mr. Haddock, the environmental vice president, said in a written response that geological faults would confine the effects of de-watering near the mine.

Barrick, he said, has tried to make Goldstrike a model for its mines around the world. "A great deal of Barrick's culture developed at Goldstrike," he wrote, "and we try to export that culture throughout the company," which is set to take over Placer Dome and become the No. 1 gold miner.

Permanent impacts are not supposed to happen under a strict interpretation of the state water law, said Professor Glennon at the University of Arizona.

An exception was made for gold. In the 1980's as mine pumping surged, the state decided that modern mining, however different in its scale and scope, was still just a "temporary" use of water, as it had been in the days of the prospector and his mule.

"The policy, if there was a policy, is that Nevada has always been a mining state, and as long as we could keep the impact within reason, it should be allowed," said Peter G. Morros, who made many of those decisions as the state engineer - Nevada's top water resource officer - from 1981 to 1990.

But the real story of gold's impact on Nevada's waters will emerge only in coming decades when the pumps are turned off, scientists say. That is when the 40-odd pits - from monsters like Goldstrike's Betze-Post to smaller mines like Newmont's Lone Tree - will start to fill with water that the mine companies no longer displace.

The lakes will store an estimated 500 billion gallons or more, according to estimates by Dr. Miller at the University of Nevada and other scientists. The Betze-Post, the center of Barrick's operations, is expected to become the largest artificial lake located wholly in the state, holding about 114 billion gallons - or more than 100 times the size of the Central Park reservoir in New York.

The result will be, if not the biggest water storage project in the West, then certainly the strangest. Some of the lakes are expected to be poisonous, laced with arsenic and selenium. Others may have metal and



acid concentrations toxic to fish but safe for humans. Some will be relatively benign.

Mining companies say the water quality in the aquifer will dictate the outcome, not mining.

One thing is certain: in the hot desert sun, the water will constantly evaporate. And for every gallon of evaporation, the lakes will draw another gallon from the aquifer beneath them. Most will take decades, if not centuries, to fill. They will be like huge desert sponges, sucking from the aquifer eternally.

The Betze-Post pit, which Barrick expects to lose 74,000 gallons of water every hour to evaporation, will have good water quality, said Mr. Haddock, the environmental vice president, because of the aquifer's purity and the high volume of limestone that will act as a buffering agent.

Other scientists say it is not that simple.

The mine pits will fill with water that filters through surrounding rock, much of it disturbed by mining and thus potentially prone to acid generation. Rock with sulfide in it, once it contacts air and water, produces sulfuric acid.

"After the pits fill, after complete recovery, there is a possibility that water could be affected by acid drainage," said Russell W. Plume, a hydrologist at the United States Geological Survey, a federal government research agency.

In the meantime, Nevada law is already trying to come to grips with the postmine landscape. One pit mine, called Sleeper, which was operated until 1996 by a company called Amax Gold and is now closed, is already filling with water and losing about 257 million gallons a year to evaporation.

That lost water has to be accounted for somewhere in the state's water ledgers, said Hugh Ricci, the state engineer. The same will hold true for every other pit lake.

In Sleeper's case, because Nevada rules require water allocations for beneficial uses only, Mr. Ricci's predecessor came up with a novel legal interpretation. He declared that the pit lake would be used for recreation, and that its evaporation would therefore be a "recreational use."

## **Millions of People, Inches of Rain**

By 2020, Las Vegas, the go-go city of the sands, is expected to have three million people living in an area that gets perhaps four inches of rain a year.

Some ecologists and water experts have argued for years that big desert cities, whether Phoenix or Las Vegas, will one day face their comeuppance as water becomes too costly or scarce, and that all the region's cities will one day need to tap the West's rural water. But the stakes for Nevada, planners and legal scholars say, could be even higher because of what happened under gold's regime. Then the

consequences of the water no one wanted may come back.

"There will a redivision of water from rural to urban use," said Hal Rothman, a professor of history at the University of Nevada, Las Vegas. "The question is not whether that's going to happen - it's the terms under which it's going to happen."

By then, the mines around Elko are likely to be played out. The Las Vegas pipeline, assuming it is built, will be drawing the first of up to 58 billion gallons a year - enough for 20 percent of the city's projected population.

Those two pincer trends - urbanization from one side, mine closure from the other - raise the greatest uncertainties for tiny Elko, a town of just 16,000, that may be the nation's last gold boomtown.

"If the basin is drained, then this becomes like the Owens Valley in California," said Warren Russell, an Elko County Commissioner. The Owens Valley, near Death Valley National Park, was drained in the 1930's - the incident made famous by the movie "Chinatown" - as Los Angeles locked in water resources.

For now, Las Vegas water officials say they have no designs on any water farther north than their pipeline, which will end 100 miles or so south of Elko. But everyone cautions that a return of the drought that gripped the region in recent years - or a victory in court by the Western Shoshone Indians, who claim vast tracts of Nevada that they say were stolen in the 1800's - could change every calculation.

The general manager of the Las Vegas-based Southern Nevada Water Authority, Patricia Mulroy, said in an interview that her motto was never to say never - to rule out tapping the waters of northern Nevada would be folly.

The state and the region should be looking at mine country now, she said, and thinking about storage and prevention of evaporation. "We need a viable place to store that water," she said. "Having said that, we're not talking to any mining company."

Mr. Ricci, the state engineer, said water transfers from mine country would require a new application, like the one Las Vegas is going through now, but none have been filed.

Many mine companies, meanwhile, have followed Barrick's lead in buying ranch lands across the state - most of which have water rights that could one day be sold, though a spokesman for Barrick said the company had no intention of going into the water business from the 110,000 acres it currently owns.

But Dean A. Rhoads, a rancher and state senator who lives near the Goldstrike mine, has been watching closely. He counts at least 20 ranches - some of them tens of thousands of acres - that have gone into mining company hands.

Water pipelines, legal experts say, can be laid across private land in Nevada without the fuss of an

environmental impact statement, just like Barrick's ore-roaster.

"Water, and what happens next in these rural areas, is the most crucial issue that I've faced in 25 years in the legislature," said Mr. Rhoads, a Republican. "A lot of my neighbors are shaking in their boots."

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## **APPENDIX 8**

This subtitle may be cited as the '**John Rishel Geothermal Steam Act Amendments of 2005**'.

## **SEC. 222. COMPETITIVE LEASE SALE REQUIREMENTS.**

Section 4 of the Geothermal Steam Act of 1970 (30 U.S.C. 1003) is amended to read as follows:

### **`SEC. 4. LEASING PROCEDURES.**

`(a) Nominations- The Secretary shall accept nominations of land to be leased at any time from qualified companies and individuals under this Act.

`(b) Competitive Lease Sale Required-

`(1) IN GENERAL- Except as otherwise specifically provided by this Act, all land to be leased that is not subject to leasing under subsection (c) shall be leased as provided in this subsection to the highest responsible qualified bidder, as determined by the Secretary.

`(2) COMPETITIVE LEASE SALES- The Secretary shall hold a competitive lease sale at least once every 2 years for land in a State that has nominations pending under subsection (a) if the land is otherwise available for leasing.

`(3) LANDS SUBJECT TO MINING CLAIMS- Lands that are subject to a mining claim for which a plan of operations has been approved by the relevant Federal land management agency may be available for noncompetitive leasing under this section to the mining claim holder.

`(c) Noncompetitive Leasing- The Secretary shall make available for a period of 2 years for noncompetitive leasing any tract for which a competitive lease sale is held, but for which the Secretary does not receive any bids in a competitive lease sale.

`(d) Pending Lease Applications-

`(1) IN GENERAL- It shall be a priority for the Secretary, and for the Secretary of Agriculture with respect to National Forest Systems land, to ensure timely completion of administrative actions, including amendments to applicable forest plans and resource management plans, necessary to process applications for geothermal leasing pending on the date of enactment of this subsection. All future forest plans and resource management plans for areas with high geothermal resource potential shall consider geothermal leasing and development.

`(2) ADMINISTRATION- An application described in paragraph (1) and any lease issued pursuant to the application--

`(A) except as provided in subparagraph (B), shall be subject to this section as in effect on the day before the date of enactment of this paragraph; or

`(B) at the election of the applicant, shall be subject to this section as in effect on the effective date of this paragraph.

`(e) Leases Sold as a Block- If information is available to the Secretary indicating a geothermal resource that could be produced as 1 unit can reasonably be expected to underlie more than 1 parcel to be offered in a competitive lease sale, the parcels for such a resource may be offered for bidding as a block in the competitive lease sale.'

## **SEC. 223. DIRECT USE.**

(a) Fees for Direct Use- Section 5 of the Geothermal Steam Act of 1970 (30 U.S.C. 1004) is amended--

- (1) in subsection (c), by redesignating paragraphs (1) and (2) as subparagraphs (A) and (B), respectively;
- (2) by redesignating subsections (a) through (d) as paragraphs (1) through (4), respectively;
- (3) by inserting `(a) In General- ' after `SEC. 5.'; and
- (4) by adding at the end the following:

`(b) Direct Use-

`(1) IN GENERAL- Notwithstanding subsection (a)(1), the Secretary shall establish a schedule of fees, in lieu of royalties for geothermal resources, that a lessee or its affiliate--

- `(A) uses for a purpose other than the commercial generation of electricity; and
- `(B) does not sell.

`(2) SCHEDULE OF FEES- The schedule of fees--

- `(A) may be based on the quantity or thermal content, or both, of geothermal resources used;
- `(B) shall ensure a fair return to the United States for use of the resource; and
- `(C) shall encourage development of the resource.

`(3) STATE, TRIBAL, OR LOCAL GOVERNMENTS- If a State, tribal, or local government is the lessee and uses geothermal resources without sale and for public purposes other than commercial generation of electricity, the Secretary shall charge only a nominal fee for use of the resource.

`(4) FINAL REGULATION- In issuing any final regulation establishing a schedule of fees under this subsection, the Secretary shall seek--

- `(A) to provide lessees with a simplified administrative system;
- `(B) to facilitate development of direct use of geothermal resources; and
- `(C) to contribute to sustainable economic development opportunities in the area.'

(b) Leasing for Direct Use- Section 4 of the Geothermal Steam Act of 1970 (30 U.S.C. 1003) (as amended by section 222) is further amended by adding at the end the following:

`(f) Leasing for Direct Use of Geothermal Resources- Notwithstanding subsection (b), the Secretary may identify areas in which the land to be leased under this Act

exclusively for direct use of geothermal resources, without sale for purposes other than commercial generation of electricity, may be leased to any qualified applicant that first applies for such a lease under regulations issued by the Secretary, if the Secretary--

- `(1) publishes a notice of the land proposed for leasing not later than 90 days before the date of the issuance of the lease;

- `(2) does not receive during the 90-day period beginning on the date of the publication any nomination to include the land concerned in the next competitive lease sale; and

- `(3) determines there is no competitive interest in the geothermal resources in the land to be leased.

`(g) Area Subject to Lease for Direct Use-

- `(1) IN GENERAL- Subject to paragraph (2), a geothermal lease for the direct use of geothermal resources shall cover not more than the quantity of acreage determined by the Secretary to be reasonably necessary for the proposed use.

- `(2) LIMITATIONS- The quantity of acreage covered by the lease shall not exceed the limitations established under section 7.'.

(c) Application of New Lease Terms- The schedule of fees established under the amendment made by subsection (a)(4) shall apply with respect to payments under a lease converted under this subsection that are due and owing, and have been paid, on or after July 16, 2003. This subsection shall not require the refund of royalties paid to a State under section 20 of the Geothermal Steam Act of 1970 (30 U.S.C. 1019) prior to the date of enactment of this Act.

## **SEC. 224. ROYALTIES AND NEAR-TERM PRODUCTION INCENTIVES.**

(a) Royalty- Section 5 of the Geothermal Steam Act of 1970 (30 U.S.C. 1004) is further amended--

- (1) in subsection (a) by striking paragraph (1) and inserting the following:

- `(1) a royalty on electricity produced using geothermal resources, other than direct use of geothermal resources, that shall be--

- `(A) not less than 1 percent and not more than 2.5 percent of the gross proceeds from the sale of electricity produced from such resources during the first 10 years of production under the lease; and

- `(B) not less than 2 and not more than 5 percent of the gross proceeds from the sale of electricity produced from such resources during each year after such 10-year period;'; and

- (2) by adding at the end the following:

`(c) Final Regulation Establishing Royalty Rates- In issuing any final regulation establishing royalty rates under this section, the Secretary shall seek--

- `(1) to provide lessees a simplified administrative system;

- `(2) to encourage new development; and

`(3) to achieve the same level of royalty revenues over a 10-year period as the regulation in effect on the date of enactment of this subsection.

`(d) Credits for In-Kind Payments of Electricity- The Secretary may provide to a lessee a credit against royalties owed under this Act, in an amount equal to the value of electricity provided under contract to a State or county government that is entitled to a portion of such royalties under section 20 of this Act, section 35 of the Mineral Leasing Act (30 U.S.C. 191), except as otherwise provided by this section, or section 6 of the Mineral Leasing Act for Acquired Lands (30 U.S.C. 355), if--

`(1) the Secretary has approved in advance the contract between the lessee and the State or county government for such in-kind payments;

`(2) the contract establishes a specific methodology to determine the value of such credits; and

`(3) the maximum credit will be equal to the royalty value owed to the State or county that is a party to the contract and the electricity received will serve as the royalty payment from the Federal Government to that entity.'

(b) Disposal of Moneys From Sales, Bonuses, Royalties, and Rents- Section 20 of the Geothermal Steam Act of 1970 (30 U.S.C. 1019) is amended to read as follows:

## **`SEC. 20. DISPOSAL OF MONEYS FROM SALES, BONUSES, RENTALS, AND ROYALTIES.**

`(a) In General- Except with respect to lands in the State of Alaska, all monies received by the United States from sales, bonuses, rentals, and royalties under this Act shall be paid into the Treasury of the United States. Of amounts deposited under this subsection, subject to the provisions of subsection (b) of section 35 of the Mineral Leasing Act (30 U.S.C. 191(b)) and section 5(a)(2) of this Act--

`(1) 50 percent shall be paid to the State within the boundaries of which the leased lands or geothermal resources are or were located; and

`(2) 25 percent shall be paid to the county within the boundaries of which the leased lands or geothermal resources are or were located.

`(b) Use of Payments- Amounts paid to a State or county under subsection (a) shall be used consistent with the terms of section 35 of the Mineral Leasing Act (30 U.S.C. 191).'

(c) Near-Term Production Incentive for Existing Leases-

(1) IN GENERAL- Notwithstanding section 5(a) of the Geothermal Steam Act of 1970, the royalty required to be paid shall be 50 percent of the amount of the royalty otherwise required, on any lease issued before the date of enactment of this Act that does not convert to new royalty terms under subsection (e)--

(A) with respect to commercial production of energy from a facility that begins such production in the 6-year period beginning on the date of enactment of this Act; or

(B) on qualified expansion geothermal energy.



(2) 4-YEAR APPLICATION- Paragraph (1) applies only to new commercial production of energy from a facility in the first 4 years of such production.

(d) Definition of Qualified Expansion Geothermal Energy- In this section, the term 'qualified expansion geothermal energy' means geothermal energy produced from a generation facility for which--

(1) the production is increased by more than 10 percent as a result of expansion of the facility carried out in the 6-year period beginning on the date of enactment of this Act; and

(2) such production increase is greater than 10 percent of the average production by the facility during the 5-year period preceding the expansion of the facility (as such average is adjusted to reflect any trend in changes in production during that period).

(e) Royalty Under Existing Leases-

(1) IN GENERAL- Any lessee under a lease issued under the Geothermal Steam Act of 1970 (30 U.S.C. 1001 et seq.) before the date of enactment of this Act may, within the time period specified in paragraph (2), submit to the Secretary of the Interior a request to modify the terms of the lease relating to payment of royalties to provide--

(A) in the case of a lease that meets the requirements of subsection (b) of section 5 of the Geothermal Steam Act of 1970 (30 U.S.C. 1004) (as amended by section 223), that royalties be based on the schedule of fees established under that section; and

(B) in the case of any other lease, that royalties be computed on a percentage of the gross proceeds from the sale of electricity, at a royalty rate that is expected to yield total royalty payments equivalent to payments that would have been received for comparable production under the royalty rate in effect for the lease before the date of enactment of this subsection.

(2) TIMING- A request for a modification under paragraph (1) shall be submitted to the Secretary of the Interior by the date that is not later than--

(A) in the case of a lease for direct use, 18 months after the effective date of the schedule of fees established by the Secretary of the Interior under section 5 of the Geothermal Steam Act of 1970 (30 U.S.C. 1004); or

(B) in the case of any other lease, 18 months after the effective date of the final regulation issued under subsection (a).

(3) APPLICATION OF MODIFICATION- If the lessee requests modification of a lease under paragraph (1)--

(A) the Secretary of the Interior shall, within 180 days after the receipt of the request for modification, modify the lease to comply with--

(i) in the case of a lease for direct use, the schedule of fees established by the Secretary under section 5 of the Geothermal Steam Act of 1970 (30 U.S.C. 1004); or

- (ii) in the case of any other lease, the royalty for the lease established under paragraph (1)(B); and
- (B) the modification shall apply to any use of geothermal resources to which subsection (a) applies that occurs after the date of the modification.
- (4) CONSULTATION- The Secretary of the Interior shall consult with the State and local governments affected by any proposed changes in lease royalty terms under this subsection.

## **SEC. 225. COORDINATION OF GEOTHERMAL LEASING AND PERMITTING ON FEDERAL LANDS.**

- (a) In General- Not later than 180 days after the date of enactment of this section, the Secretary of the Interior and the Secretary of Agriculture shall enter into and submit to Congress a memorandum of understanding in accordance with this section, the Geothermal Steam Act of 1970 (as amended by this Act), and other applicable laws, regarding coordination of leasing and permitting for geothermal development of public lands and National Forest System lands under their respective jurisdictions.
- (b) Lease and Permit Applications- The memorandum of understanding shall--
  - (1) establish an administrative procedure for processing geothermal lease applications, including lines of authority, steps in application processing, and time limits for application procession;
  - (2) establish a 5-year program for geothermal leasing of lands in the National Forest System, and a process for updating that program every 5 years; and
  - (3) establish a program for reducing the backlog of geothermal lease application pending on January 1, 2005, by 90 percent within the 5-year period beginning on the date of enactment of this Act, including, as necessary, by issuing leases, rejecting lease applications for failure to comply with the provisions of the regulations under which they were filed, or determining that an original applicant (or the applicant's assigns, heirs, or estate) is no longer interested in pursuing the lease application.
- (c) Data Retrieval System- The memorandum of understanding shall establish a joint data retrieval system that is capable of tracking lease and permit applications and providing to the applicant information as to their status within the Departments of the Interior and Agriculture, including an estimate of the time required for administrative action.

## **SEC. 226. ASSESSMENT OF GEOTHERMAL ENERGY POTENTIAL.**

Not later than 3 years after the date of enactment of this Act and thereafter as the availability of data and developments in technology warrants, the Secretary of the Interior, acting through the Director of the United States Geological Survey and in cooperation with the States, shall--

- (1) update the Assessment of Geothermal Resources made during 1978;  
and
- (2) submit to Congress the updated assessment.

## **SEC. 227. COOPERATIVE OR UNIT PLANS.**

Section 18 of the Geothermal Steam Act of 1970 (30 U.S.C. 1017) is amended to read as follows:

## **`SEC. 18. UNIT AND COMMUNITIZATION AGREEMENTS.**

### **`(a) Adoption of Units by Lessees-**

`(1) IN GENERAL- For the purpose of more properly conserving the natural resources of any geothermal reservoir, field, or like area, or any part thereof (whether or not any part of the geothermal reservoir, field, or like area, is subject to any cooperative plan of development or operation (referred to in this section as a `unit agreement')), lessees thereof and their representatives may unite with each other, or jointly or separately with others, in collectively adopting and operating under a unit agreement for the reservoir, field, or like area, or any part thereof, including direct use resources, if determined and certified by the Secretary to be necessary or advisable in the public interest.

`(2) MAJORITY INTEREST OF SINGLE LEASES- A majority interest of owners of any single lease shall have the authority to commit the lease to a unit agreement.

`(3) INITIATIVE OF SECRETARY- The Secretary may also initiate the formation of a unit agreement, or require an existing Federal lease to commit to a unit agreement, if in the public interest.

### **`(4) MODIFICATION OF LEASE REQUIREMENTS BY SECRETARY-**

`(A) IN GENERAL- The Secretary may, in the discretion of the Secretary and with the consent of the holders of leases involved, establish, alter, change, or revoke rates of operations (including drilling, operations, production, and other requirements) of the leases and make conditions with respect to the leases, with the consent of the lessees, in connection with the creation and operation of any such unit agreement as the Secretary may consider necessary or advisable to secure the protection of the public interest.

`(B) UNLIKE TERMS OR RATES- Leases with unlike lease terms or royalty rates shall not be required to be modified to be in the same unit.

### **`(b) Requirement of Plans Under New Leases- The Secretary may--**

`(1) provide that geothermal leases issued under this Act shall contain a provision requiring the lessee to operate under a unit agreement; and

`(2) prescribe the unit agreement under which the lessee shall operate, which shall adequately protect the rights of all parties in interest, including the United States.

`(c) Modification of Rate of Prospecting, Development, and Production- The Secretary may require that any unit agreement authorized by this section that applies to land owned by the United States contain a provision under which authority is vested in the Secretary, or any person, committee, or State or Federal officer or agency as may be designated in the unit agreement to alter or modify, from time to time, the rate of prospecting and development and the quantity and rate of production under the unit agreement.

`(d) Exclusion From Determination of Holding or Control- Any land that is subject to a unit agreement approved or prescribed by the Secretary under this section shall not be considered in determining holdings or control under section 7.

`(e) Pooling of Certain Land- If separate tracts of land cannot be independently developed and operated to use geothermal resources pursuant to any section of this Act--

`(1) the land, or a portion of the land, may be pooled with other land, whether or not owned by the United States, for purposes of development and operation under a communitization agreement providing for an apportionment of production or royalties among the separate tracts of land comprising the production unit, if the pooling is determined by the Secretary to be in the public interest; and

`(2) operation or production pursuant to the communitization agreement shall be treated as operation or production with respect to each tract of land that is subject to the communitization agreement.

`(f) Unit Agreement Review-

`(1) IN GENERAL- Not later than 5 years after the date of approval of any unit agreement and at least every 5 years thereafter, the Secretary shall--

`(A) review each unit agreement; and

`(B) after notice and opportunity for comment, eliminate from inclusion in the unit agreement any land that the Secretary determines is not reasonably necessary for unit operations under the unit agreement.

`(2) BASIS FOR ELIMINATION- The elimination shall--

`(A) be based on scientific evidence; and

`(B) occur only if the elimination is determined by the Secretary to be for the purpose of conserving and properly managing the geothermal resource.

`(3) EXTENSION- Any land eliminated under this subsection shall be eligible for an extension under section 6(g) if the land meets the requirements for the extension.

`(g) Drilling or Development Contracts-

`(1) IN GENERAL- The Secretary may, on such conditions as the Secretary may prescribe, approve drilling or development contracts made by one or more lessees of geothermal leases, with one or more persons, associations, or corporations if, in the discretion of the Secretary, the

conservation of natural resources or the public convenience or necessity may require or the interests of the United States may be best served by the approval.

`(2) HOLDINGS OR CONTROL- Each lease operated under an approved drilling or development contract, and interest under the contract, shall be excepted in determining holdings or control under section 7.

`(h) Coordination With State Governments- The Secretary shall coordinate unitization and pooling activities with appropriate State agencies.'.

## **SEC. 228. ROYALTY ON BYPRODUCTS.**

Section 5 of the Geothermal Steam Act of 1970 (30 U.S.C. 1004) (as amended by section 223(a)) is further amended in subsection (a) by striking paragraph (2) and inserting the following:

`(2) a royalty on any byproduct that is a mineral specified in the first section of the Mineral Leasing Act (30 U.S.C. 181), and that is derived from production under the lease, at the rate of the royalty that applies under that Act to production of the mineral under a lease under that Act;'

## **SEC. 229. AUTHORITIES OF SECRETARY TO READJUST TERMS, CONDITIONS, RENTALS, AND ROYALTIES.**

Section 8(b) of the Geothermal Steam Act of 1970 (30 U.S.C. 1006) is amended in the second sentence by striking `period, and in no event' and all that follows through the end of the sentence and inserting `period'.

## **SEC. 230. CREDITING OF RENTAL TOWARD ROYALTY.**

Section 5 of the Geothermal Steam Act of 1970 (30 U.S.C. 1004) (as amended by sections 223 and 224) is further amended--

- (1) in subsection (a)(2) by inserting `and' after the semicolon at the end;
- (2) in subsection (a)(3) by striking `; and' and inserting a period;
- (3) by striking paragraph (4) of subsection (a); and
- (4) by adding at the end the following:

`(e) Crediting of Rental Toward Royalty- Any annual rental under this section that is paid with respect to a lease before the first day of the year for which the annual rental is owed shall be credited to the amount of royalty that is required to be paid under the lease for that year.'.

## **SEC. 231. LEASE DURATION AND WORK COMMITMENT REQUIREMENTS.**

Section 6 of the Geothermal Steam Act of 1970 (30 U.S.C. 1005) is amended--

- (1) by striking so much as precedes subsection (c), and striking subsections (e), (g), (h), (i), and (j);

- (2) by redesignating subsections (c), (d), and (f) in order as subsections (g), (h), and (i); and
- (3) by inserting before subsection (g), as so redesignated, the following:

## **`SEC. 6. LEASE TERM AND WORK COMMITMENT REQUIREMENTS.**

### **`(a) In General-**

`(1) PRIMARY TERM- A geothermal lease shall be for a primary term of 10 years.

`(2) INITIAL EXTENSION- The Secretary shall extend the primary term of a geothermal lease for 5 years if, for each year after the 10th year of the lease--

`(A) the Secretary determined under subsection (b) that the lessee satisfied the work commitment requirements that applied to the lease for that year; or

`(B) the lessee paid in annual payments accordance with subsection (c).

`(3) ADDITIONAL EXTENSION- The Secretary shall extend the primary term of a geothermal lease (after an initial extension under paragraph (2)) for an additional 5 years if, for each year of the initial extension under paragraph (2), the Secretary determined under subsection (b) that the lessee satisfied the minimum work requirements that applied to the lease for that year.

### **`(b) Requirement to Satisfy Annual Minimum Work Requirement-**

`(1) IN GENERAL- The lessee for a geothermal lease shall, for each year after the 10th year of the lease, satisfy minimum work requirements prescribed by the Secretary that apply to the lease for that year.

`(2) PRESCRIPTION OF MINIMUM WORK REQUIREMENTS- The Secretary shall issue regulations prescribing minimum work requirements for geothermal leases, that--

`(A) establish a geothermal potential; and

`(B) if a geothermal potential has been established, confirm the existence of producible geothermal resources.

`(c) Payments in Lieu of Minimum Work Requirements- In lieu of the minimum work requirements set forth in subsection (b)(2), the Secretary shall by regulation establish minimum annual payments which may be made by the lessee for a limited number of years that the Secretary determines will not impair achieving diligent development of the geothermal resource, but in no event shall the number of years exceed the duration of the extension period provided in subsection (a).

`(d) Transition Rules for Leases Issued Prior to Enactment of Energy Policy Act of 2005- The Secretary shall by regulation establish transition rules for leases issued before the date of the enactment of this subsection, including terms under which a lease that is near the end of its term on the date of enactment of this subsection may be extended for up to 2 years--

`(1) to allow achievement of production under the lease; or

`(2) to allow the lease to be included in a producing unit.

`(e) Geothermal Lease Overlying Mining Claim-

`(1) EXEMPTION- The lessee for a geothermal lease of an area overlying an area subject to a mining claim for which a plan of operations has been approved by the relevant Federal land management agency is exempt from annual work requirements established under this Act, if development of the geothermal resource subject to the lease would interfere with the mining operations under such claim.

`(2) TERMINATION OF EXEMPTION- An exemption under this paragraph expires upon the termination of the mining operations.

`(f) Termination of Application of Requirements- Minimum work requirements prescribed under this section shall not apply to a geothermal lease after the date on which the geothermal resource is utilized under the lease in commercial quantities.'.

## **SEC. 232. ADVANCED ROYALTIES REQUIRED FOR CESSATION OF PRODUCTION.**

Section 5 of the Geothermal Steam Act of 1970 (30 U.S.C. 1004) (as amended by sections 223, 224, and 230) is further amended by adding at the end the following:

`(f) Advanced Royalties Required for Cessation of Production-

`(1) IN GENERAL- Subject to paragraphs (2) and (3), if, at any time after commercial production under a lease is achieved, production ceases for any reason, the lease shall remain in full force and effect for a period of not more than an aggregate number of 10 years beginning on the date production ceases, if, during the period in which production is ceased, the lessee pays royalties in advance at the monthly average rate at which the royalty was paid during the period of production.

`(2) REDUCTION- The amount of any production royalty paid for any year shall be reduced (but not below 0) by the amount of any advanced royalties paid under the lease to the extent that the advance royalties have not been used to reduce production royalties for a prior year.

`(3) EXCEPTIONS- Paragraph (1) shall not apply if the cessation in production is required or otherwise caused by--

`(A) the Secretary;

`(B) the Secretary of the Air Force;

`(C) the Secretary of the Army;

`(D) the Secretary of the Navy;

`(E) a State or a political subdivision of a State; or

`(F) a force majeure.'.

## **SEC. 233. ANNUAL RENTAL.**

(a) Annual Rental Rate- Section 5 of the Geothermal Steam Act of 1970 (30 U.S.C. 1004) (as amended by section 223(a)) is further amended in subsection (a) by striking paragraph (3) and inserting the following:

- `(3) payment in advance of an annual rental of not less than--
  - `(A) for each of the 1st through 10th years of the lease--
    - `(i) in the case of a lease awarded in a noncompetitive lease sale, \$1 per acre or fraction thereof; or
    - `(ii) in the case of a lease awarded in a competitive lease sale, \$2 per acre or fraction thereof for the 1st year and \$3 per acre or fraction thereof for each of the 2nd through 10th years; and
  - `(B) for each year after the 10th year of the lease, \$5 per acre or fraction thereof;'

(b) Termination of Lease for Failure to Pay Rental- Section 5 of the Geothermal Steam Act of 1970 (30 U.S.C. 1004) (as amended by sections 223, 224, 230, and 232) is further amended by adding at the end the following:

- `(g) Termination of Lease for Failure to Pay Rental-
  - `(1) IN GENERAL- The Secretary shall terminate any lease with respect to which rental is not paid in accordance with this Act and the terms of the lease under which the rental is required, on the expiration of the 45-day period beginning on the date of the failure to pay the rental.
  - `(2) NOTIFICATION- The Secretary shall promptly notify a lessee that has not paid rental required under the lease that the lease will be terminated at the end of the period referred to in paragraph (1).
  - `(3) REINSTATEMENT- A lease that would otherwise terminate under paragraph (1) shall not terminate under that paragraph if the lessee pays to the Secretary, before the end of the period referred to in paragraph (1), the amount of rental due plus a late fee equal to 10 percent of the amount.'

## **SEC. 234. DEPOSIT AND USE OF GEOTHERMAL LEASE REVENUES FOR 5 FISCAL YEARS.**

- (a) Deposit of Geothermal Resources Leases- Notwithstanding any other provision of law, amounts received by the United States in the first 5 fiscal years beginning after the date of enactment of this Act as rentals, royalties, and other payments required under leases under the Geothermal Steam Act of 1970, excluding funds required to be paid to State and county governments, shall be deposited into a separate account in the Treasury.
- (b) Use of Deposits- Amounts deposited under subsection (a) shall be available to the Secretary of the Interior for expenditure, without further appropriation and without fiscal year limitation, to implement the Geothermal Steam Act of 1970 and this Act.
- (c) Transfer of Funds- For the purposes of coordination and processing of geothermal leases and geothermal use authorizations on Federal land the Secretary of the Interior may authorize the expenditure or transfer of such funds as are necessary to the Forest Service.

## **SEC. 235. ACREAGE LIMITATIONS.**



Section 7 of the Geothermal Steam Act of 1970 (30 U.S.C. 1006) is amended--  
(1) by striking `sec. 7.', and by inserting immediately before and above the first paragraph the following:

**`SEC. 7. ACREAGE LIMITATIONS.';**

- (2) in the first paragraph--
  - (A) by striking `two thousand five hundred and sixty acres' and inserting `5,120 acres'; and
  - (B) by striking `twenty thousand four hundred and eighty acres' and inserting `51,200 acres'; and
- (3) by striking the second paragraph.

**SEC. 236. TECHNICAL AMENDMENTS.**

The Geothermal Steam Act of 1970 (30 U.S.C. 1001 et seq.) is further amended as follows:

- (1) By striking `geothermal steam and associated geothermal resources' each place it appears and inserting `geothermal resources'.
- (2) Section 2 (30 U.S.C. 1001) is amended by adding at the end the following:
  - `(g) `direct use' means utilization of geothermal resources for commercial, residential, agricultural, public facilities, or other energy needs other than the commercial production of electricity; and'.
- (3) Section 21 (30 U.S.C. 1020) is amended by striking `(a) Within one hundred' and all that follows through `(b) Geothermal' and inserting `Geothermal'.
- (4) The first section (30 U.S.C. 1001 note) is amended by striking `That this' and inserting the following:

**`SEC. 1. SHORT TITLE.**

- `This'.
  - (5) Section 2 (30 U.S.C. 1001) is amended by striking `sec. 2. As' and inserting the following:

**`SEC. 2. DEFINITIONS.**

- `As'.
  - (6) Section 3 (30 U.S.C. 1002) is amended by striking `sec. 3. Subject' and inserting the following:

**`SEC. 3. LANDS SUBJECT TO GEOTHERMAL LEASING.**

- `Subject'.

(7) Section 5 (30 U.S.C. 1004) is further amended by striking `sec. 5.', and by inserting immediately before and above subsection (a) the following:

**`SEC. 5. RENTS AND ROYALTIES.'**

(8) Section 8 (30 U.S.C. 1007) is amended by striking `sec. 8. (a) The' and inserting the following:

**`SEC. 8. READJUSTMENT OF LEASE TERMS AND CONDITIONS.**

`(a) The'.

(9) Section 9 (30 U.S.C. 1008) is amended by striking `sec. 9. If' and inserting the following:

**`SEC. 9. BYPRODUCTS.**

`If'.

(10) Section 10 (30 U.S.C. 1009) is amended by striking `sec. 10. The' and inserting the following:

**`SEC. 10. RELINQUISHMENT OF GEOTHERMAL RIGHTS.**

`The'.

(11) Section 11 (30 U.S.C. 1010) is amended by striking `sec. 11. The' and inserting the following:

**`SEC. 11. SUSPENSION OF OPERATIONS AND PRODUCTION.**

`The'.

(12) Section 12 (30 U.S.C. 1011) is amended by striking `sec. 12. Leases' and inserting the following:

**`SEC. 12. TERMINATION OF LEASES.**

`Leases'.

(13) Section 13 (30 U.S.C. 1012) is amended by striking `sec. 13. The' and inserting the following:

**`SEC. 13. WAIVER, SUSPENSION, OR REDUCTION OF RENTAL OR ROYALTY.**

`The'.

(14) Section 14 (30 U.S.C. 1013) is amended by striking `sec. 14. Subject' and inserting the following:

## **`SEC. 14. SURFACE LAND USE.**

`Subject'.

(15) Section 15 (30 U.S.C. 1014) is amended by striking `sec. 15. (a) Geothermal' and inserting the following:

## **`SEC. 15. LANDS SUBJECT TO GEOTHERMAL LEASING.**

`(a) Geothermal'.

(16) Section 16 (30 U.S.C. 1015) is amended by striking `sec. 16. Leases' and inserting the following:

## **`SEC. 16. REQUIREMENT FOR LESSEES.**

`Leases'.

(17) Section 17 (30 U.S.C. 1016) is amended by striking `sec. 17. Administration' and inserting the following:

## **`SEC. 17. ADMINISTRATION.**

`Administration'.

(18) Section 19 (30 U.S.C. 1018) is amended by striking `sec. 19. Upon' and inserting the following:

## **`SEC. 19. DATA FROM FEDERAL AGENCIES.**

`Upon'.

(19) Section 21 (30 U.S.C. 1020) is further amended by striking `sec. 21.', and by inserting immediately before and above the remainder of that section the following:

## **`SEC. 21. PUBLICATION IN FEDERAL REGISTER; RESERVATION OF MINERAL RIGHTS.'.**

(20) Section 22 (30 U.S.C. 1021) is amended by striking `sec. 22. Nothing' and inserting the following:

## **`SEC. 22. FEDERAL EXEMPTION FROM STATE WATER LAWS.**

`Nothing'.

(21) Section 23 (30 U.S.C. 1022) is amended by striking `sec. 23. (a) All' and inserting the following:

## **`SEC. 23. PREVENTION OF WASTE; EXCLUSIVITY.**

`(a) All'.

(22) Section 24 (30 U.S.C. 1023) is amended by striking `sec. 24. The' and inserting the following:

**`SEC. 24. RULES AND REGULATIONS.**

`The'.

(23) Section 25 (30 U.S.C. 1024) is amended by striking `sec. 25. As' and inserting the following:

**`SEC. 25. INCLUSION OF GEOTHERMAL LEASING UNDER CERTAIN OTHER LAWS.**

`As'.

(24) Section 26 is amended by striking `sec. 26. The' and inserting the following:

**`SEC. 26. AMENDMENT.**

`The'.

(25) Section 27 (30 U.S.C. 1025) is amended by striking `sec. 27. The' and inserting the following:

**`SEC. 27. FEDERAL RESERVATION OF CERTAIN MINERAL RIGHTS.**

`The'.

(26) Section 28 (30 U.S.C. 1026) is amended by striking `sec. 28. (a)(1) The' and inserting the following:

**`SEC. 28. SIGNIFICANT THERMAL FEATURES.**

`(a)(1) The'.

(27) Section 29 (30 U.S.C. 1027) is amended by striking `sec. 29. The' and inserting the following:

**`SEC. 29. LAND SUBJECT TO PROHIBITION ON LEASING.**

`The'.

**SEC. 237. INTERMOUNTAIN WEST GEOTHERMAL CONSORTIUM.**

(a) Participation Authorized- The Secretary, acting through the Idaho National Laboratory, may participate in a consortium described in subsection (b) to address

science and science policy issues surrounding the expanded discovery and use of geothermal energy, including from geothermal resources on public lands.

(b) Members- The consortium referred to in subsection (a) shall--

- (1) be known as the 'Intermountain West Geothermal Consortium';
- (2) be a regional consortium of institutions and government agencies that focuses on building collaborative efforts among the universities in the State of Idaho, other regional universities, State agencies, and the Idaho National Laboratory;
- (3) include Boise State University, the University of Idaho (including the Idaho Water Resources Research Institute), the Oregon Institute of Technology, the Desert Research Institute with the University and Community College System of Nevada, and the Energy and Geoscience Institute at the University of Utah;
- (4) be hosted and managed by Boise State University; and
- (5) have a director appointed by Boise State University, and associate directors appointed by each participating institution.

(c) Financial Assistance- The Secretary, acting through the Idaho National Laboratory and subject to the availability of appropriations, will provide financial assistance to Boise State University for expenditure under contracts with members of the consortium to carry out the activities of the consortium.

### **Subtitle C--Hydroelectric**

## **SEC. 241. ALTERNATIVE CONDITIONS AND FISHWAYS.**

(a) Federal Reservations- Section 4(e) of the Federal Power Act (16 U.S.C. 797(e)) is amended by inserting after 'adequate protection and utilization of such reservation.' at the end of the first proviso the following: 'The license applicant and any party to the proceeding shall be entitled to a determination on the record, after opportunity for an agency trial-type hearing of no more than 90 days, on any disputed issues of material fact with respect to such conditions. All disputed issues of material fact raised by any party shall be determined in a single trial-type hearing to be conducted by the relevant resource agency in accordance with the regulations promulgated under this subsection and within the time frame established by the Commission for each license proceeding. Within 90 days of the date of enactment of the Energy Policy Act of 2005, the Secretaries of the Interior, Commerce, and Agriculture shall establish jointly, by rule, the procedures for such expedited trial-type hearing, including the opportunity to undertake discovery and cross-examine witnesses, in consultation with the Federal Energy Regulatory Commission.'

(b) Fishways- Section 18 of the Federal Power Act (16 U.S.C. 811) is amended by inserting after 'and such fishways as may be prescribed by the Secretary of Commerce.' the following: 'The license applicant and any party to the proceeding shall be entitled to a determination on the record, after opportunity for an agency trial-type hearing of no more than 90 days, on any disputed issues of material fact with respect to such fishways. All disputed issues of material fact raised by any

## **APPENDIX 9**

**DECISION RECORD**  
**FINDING OF NO SIGNIFICANT IMPACT**  
***Environmental Assessment***  
***Spencer Hot Springs Area Geothermal Leases***  
***Lander County, Nevada***

***EA# NV63-EA04-59***  
NVN-077778, NVN-077779, NVN-077780

**Introduction**

In 2003 the Bureau of Land Management (BLM) received applications for three geothermal leases located on public lands managed by the BLM's Battle Mountain Field Office (BLM-BMFO) in the area surrounding Spencer Hot Springs, in the southeast corner of Lander County in central Nevada. These three geothermal lease applications are located approximately 15 miles southeast of the community of Austin and approximately 15 miles northeast of the community of Kingston and encompass an area of about 4,841 acres.

**SUMMARY OF PROPOSED ACTION:**

The Proposed Action is BLM's approval of three noncompetitive geothermal lease applications covering a total of approximately 4,841 acres of public land administered by the BLM which were submitted by Western Geothermal Partners, LLC of Reno, Nevada. The specific location of each of these lease applications is listed below. Surface disturbance is not a part of the Proposed Action. Geothermal leases convey to the lessee the "exclusive right and privilege to drill for, extract, produce, remove, utilize, sell, and dispose of geothermal steam and associated geothermal resources." However, federal geothermal leases do not grant the exclusive right to occupy the leased public land – existing authorized uses can continue and new uses compatible with the intent of the geothermal leases can still be authorized. Geothermal leases include the right of ingress to and egress from the leased lands; the right to construct and operate on the lease; and the right to occupy as much of the land as may be necessary; all of which are subject to lease stipulations and compliance with applicable laws and regulations, including compliance with all regulations and orders adopted under the Geothermal Steam Act. Regulations adopted to implement the Geothermal Steam Act expressly require separate approvals from the BLM, each subject to NEPA, for each proposed geothermal lease operation beyond "casual use" activities. Therefore, each exploration proposal, above casual use, and all development and production proposals will be analyzed as required by NEPA. The level of public participation will be commensurate with the type of NEPA document and the level of activity proposed.

Serial Number	Legal Description within Mount Diablo Baseline and Meridian
NVN-077778	Sections 1, 2, 11 and 12, Township 17 North, Range 45½ East
NVN-077779	Sections 11, 12 and 13, Township 17 North, Range 45 East
NVN-077780	Sections 14 and 24, Township 17 North, Range 45 East

**Decision**

The lands listed above are within the Shoshone-Eureka Planning Area and are open to geothermal leasing under the Shoshone-Eureka Resource Management Plan. Geothermal leasing is consistent with the Shoshone-Eureka Resource Management Plan. As a result of the analysis presented in the EA, it is my decision that the lands shall be leased subject to the attached stipulations and standard operating

procedures. It is also my decision that 200 acres of geothermal lease application NVN-077778 in the immediate vicinity of Spencer Hot Springs, as depicted in the attached figure and listed below, will be subject to no surface occupancy by the geothermal lessee. The analysis of the Proposed Action, coupled with stipulations and standard operating procedures, has led to the decision that all practicable means to avoid or minimize environmental harm have been adopted and that unnecessary or undue degradation of the public lands will not result.

These geothermal leases are granted for a primary term of ten years, which under current law may be extended for up to two additional five-year periods. If the lessee produces or uses geothermal resources in commercial quantities during the primary term, the lease will continue in "additional term" for as long as geothermal resources are produced or used in commercial quantities for up to forty years beyond the end of the primary term

Several comments were received requesting that BLM not lease or stipulate no surface occupancy on 160 acres around Spencer Hot Springs. During internal review BLM-BMFO considered leasing only portions of the requested lease area. However, as discussed in Section 2.2 of the EA, BLM-BMFO determined that there was no site-specific information which would have supported excluding some of the requested lands from the leasing decision in order to respond to any of the identified issues or concerns. BLM considered the comments requesting no surface occupancy and reviewed the analysis in the EA to determine if this request should be adopted. Upon careful consideration, it was determined that there was sufficient reason to stipulate no surface occupancy in the immediate vicinity of the springs. The analysis in the environmental assessment supports this decision in that several mitigating measures imply no surface occupancy in the immediate area around the springs, but do not clearly define the specific area of no surface occupancy.

The No Action Alternative was not selected because the Proposed Action with the attached stipulations would not cause harm or degradation to any resource. The No Action Alternative may have an adverse energy impact.

## **Stipulations and Standard Operating Procedures**

The following stipulations are applicable to these geothermal leases:

### **1. Air Quality**

The operator will be required to implement at the direction of the Authorized Officer testing of emissions for H<sub>2</sub>S and other noxious / deadly gases where there is indication that these gases may occur.

### **2. Cultural-Historical Resources**

Cultural resource mitigation will be developed on a case-by-case basis as required by federal law and regulation. Stipulations will be developed during site-specific NEPA analysis.

Prior to the approval of each geothermal lease operation with the potential for surface disturbance, a cultural resource survey will be required to have been performed by a qualified archaeologist acceptable to the BLM-BMFO. Any prehistoric or historic cultural resources identified during each survey must be either avoided or appropriate mitigation measures developed and implemented to protect the resources.

### **3. Native American Issues**

Considering the characteristics or description of the action (geothermal lease) it has been determined that Native American consultation is unnecessary at this time. Upon the receipt of an application for exploration or development, Native American consultation would be initiated with the appropriate Tribal governments and other Native American groups. As surface disturbing activities occur, the BLM would require that the operator monitor the water temperature and outflow of water from local hot springs and existing wells as directed by the Authorized Officer. If the temperature and outflow of the water from the spring or well were impacted to a degree determined by the Authorized Officer to be more than negligible,



the BLM would require the operator to take corrective actions. Failure of the operator to take the corrective measures as directed could result in BLM terminating the operation.

#### **4. Special Status Species**

The lease area may now or hereafter contain plants, animals, or their habitats determined to be threatened, endangered, or other special status species. The special status species list is reviewed and / or updated annually and as species are added, new mitigations / stipulations may add further restrictions. BLM may recommend modifications to exploration and development proposals to further its conservation and management objective to avoid BLM-approved activity that will contribute to a need to list such a species or their habitat. BLM may require modifications to or disapprove proposed activity that is likely to result in jeopardy to the continued existence of a proposed or listed threatened or endangered species or result in the destruction or adverse modification of a designated or proposed critical habitat. BLM would not approve any ground-disturbing activity that may affect any such species or critical habitat until it completes its obligations under applicable requirements of the Endangered Species Act as amended, 16 U.S.C. § 1531 et seq., including completion of any required procedure for conference or consultation.

Exploratory endeavors on these leases would require a Special Status Species review, and may require a field survey for the presence of Special Status Species. Potential impacts to Special Status Species would be analyzed on a case-by-case basis. Mitigation measures would be developed on an individual project basis depending upon the results of the survey.

Springs within ½ mile of exploration activities would be inventoried by BLM approved and supervised personnel for the presence of invertebrates. If a rare genus, such as *Pyrgulopsis*, is found, identification to species and monitoring of effects of the proposed action would be required and site-specific mitigation may be developed by the BLM.

BLM could require measures listed below for activities in sage grouse and ferruginous hawk habitat.

Sage grouse: Operations would avoid active leks (strutting grounds) by 2 miles during strutting season. Approximate dates: March 1 - May 15. Operations would avoid nesting and brood rearing habitat (especially riparian habitat where broods concentrate beginning usually in June) by ½ mile during the time such areas are in use. Approximate dates: April 1 - August 15. Operations would avoid sage grouse wintering habitat by ½ mile while occupied. Most known wintering grounds in the Shoshone-Eureka Resource Area occur at high elevations and are not likely to be affected. Avoidance dates would vary with severity of the winter. BLM would limit the disturbance to and fragmentation of all known sage grouse habitat.

Ferruginous hawks: Operations would avoid active nests by ½ mile. Approximate dates: March 15 - July 1.

Prior to the approval of any geothermal operations with the potential for surface disturbance, a site-specific biological survey for special status species will be required to be undertaken by a qualified biologist acceptable to the BLM-BMFO. Any special status species identified during the survey must be either avoided or appropriate mitigation measures developed to protect the special status species.

#### **5. Hydrology and Water Quality and Quantity**

All applicants for exploration permits would be required to submit a surface water inventory to the Authorized Officer before authorization would be granted. The inventory would include a map of appropriate scale (such as 1:24,000) indicating the location of all surface water on public land within ½ mile radius from the surface-disturbing activity.

The NOTICE OF INTENT TO CONDUCT GEOTHERMAL RESOURCE EXPLORATION OPERATIONS (Form 3200-9), terms and conditions, number 10 states that "Vegetation shall not be

disturbed within 300 feet of waters designated by the Authorized Officer, except at approved stream crossing.”

At the commencement of surface disturbing activities for the drilling of exploration wells, the BLM would require that the drilling company monitor the water temperature and / or outflow of water from local springs and existing wells as directed by the Authorized Officer. If the temperature and outflow of the water from the spring or well were impacted to a degree determined by the Authorized Officer to be more than negligible, the BLM would require the operator to take corrective actions. Failure of the operator to take the corrective measures as directed could result in BLM's terminating the operation.

Results would be reported to Federal and State agencies on the status of these hydrologic systems during drilling.

Impacts include, but are not limited to, the following:

- Change in water temperature
- Change in discharge rate
- Substantial decrease in water table level
- Surface subsidence

In the event of impacts to surface or subsurface waters, determined by the Authorized Officer to be more than negligible, or if a violation of Federal or State water quality standards occurs, the Authorized Officer would assess the situation, and may require the operator to amend, relocate or discontinue operations. If operations were terminated, the BLM would develop and the operator would implement remediation measures.

Typical measures include:

- No use of the surface water;
- Limitations on the type of equipment that may be used, including no surface occupancy within ¼ mile of the springs; and
- Restrictions of activities during certain times of the year.

## **6. Invasive Nonnative Species**

Areas to be involved in surface disturbing activities would be inventoried for the presence of invasive, nonnative species and treated if present.

The exterior of all vehicles and heavy equipment would be cleaned by water before entering public lands to do work. To minimize the possibility for contamination, a designated wash area would be designated by the BLM and would be established and monitored by the operator in high use areas.

The boots of operators and other persons working in the areas would be cleaned of seed before coming onto BLM lands.

The BLM would develop and the operator would implement a weed treatment program from the time operation commences until the site is abandoned.

Seed and mulch used to reclaim disturbed areas would be free of invasive nonnative species.

Operator and workers would avoid driving through or parking in areas where invasive nonnative species occur.

When sites are abandoned, they would be inventoried for the presence of invasive nonnative species and treated if present.

## **7. Land Use Authorizations**

Proposals for exploration and development would be modified or denied if such proposals would interfere with the existing use authorizations. The public water reserve is closed to leasing.

## **8. Minerals**

Compatible uses of the surface are anticipated. If incompatible uses are proposed, the one with the prior existing right would be granted.

## **9. Allotment Management**

The lease area is within a grazing allotment, the Assistant Field Manager may require additional measures, including seasonal restrictions or no surface occupancy.

If operations cause a water source to become unavailable to livestock, the Authorized Officer may require a new well to be drilled, or another water development to be constructed in the general area to provide adequate water and may require the lessee to provide water by hauling or other means until such time as the well or water development is completed.

Fences and surface pipeline needed for geothermal operations must be constructed in a manner that will not prevent livestock access to undisturbed portions of the lease for grazing.

## **10. Recreation**

If access to the area were restricted as a result of these leases, the ability of the public to continue using the area could be reduced. Any efforts to limit access or physically alter the area should take current and potential recreational use into consideration.

Normal operational noise levels generated by geothermal utilization facilities should not exceed a 24-hour time-weighted average of 45 dBA when measured from a representative location at Spencer Hot Springs.

To preserve the recreational value of the area, no surface occupancy will be stipulated on the following lands:

T. 17 N., R. 45½ E., MDM, Nevada

sec. 11, SESENE,	10.00 acres
E2SE.	80.00 acres
sec. 12, SWSWNW,	10.00 acres
SWNESW,	10.00 acres
NWNWSW,	10.00 acres
S2NWSW,	20.00 acres
SWSW,	40.00 acres
W2SESW.	20.00 acres

Total Acres                      200.00

## **11. Soils**

None identified.

## **12. Vegetation**

Disturbed areas would be reseeded with native or introduced plant species, depending on the site conditions. Disturbed areas would be reseeded with pure live seed (certified weed free) with the mixes in the EA. Native vegetation would be used wherever possible. However, to compete with invasive nonnative species, introduced species, as suggested in the BLM seed list would be used.

## **13. Visual Resources**

None identified.

#### **14. Migratory Birds**

The BLM would limit the amount of ground clearing or other disturbance (such as the creation of cross-country access to drill sites) that an operator may do during the migratory bird nesting season. Areas to be disturbed would be surveyed, by personnel approved and supervised by the BLM to determine the existence and location of any nests. If any nests were located, the nest would be avoided by ¼ mile. If the nest area cannot be avoided, mitigation would be developed on a case-by-case basis.

#### **15. Wildlife**

If operations cause a water source to become unavailable to wildlife, the Authorized Officer may require a new well to be drilled, or another water development to be constructed in the general area to provide adequate water and may require the lessee to provide water by hauling or other means until such time as the well or water development is completed.

Fences and surface pipelines needed for geothermal operations shall be designed, located and constructed in a manner that will not prevent pronghorn antelope and other wildlife access to foraging habitat in undisturbed portions of the lease.

#### **16. Wild Horses and Burros**

The lease area is within a HMA, the Authorized Officer may require additional measures for the protection of wild horses and burros, such as seasonal restrictions.

If operations cause a water source to become unavailable to wild horses and burros, the Authorized Officer may require a new well to be drilled, or another water development to be constructed in the general area to provide adequate water and may require the lessee to provide water by hauling or other means until such time as the well or water development is completed.

Fences and surface pipelines needed for geothermal operations shall be designed, located and constructed in a manner that will not prevent wild horses and burros access to undisturbed portions of the lease for foraging.

#### **17. All Resources**

Operators would adhere to all Standard Operating Procedures as outlined in the EA, unless specifically waived by the Authorized Officer.

#### **18. Playas**

Because playas are important recreational places, apt to have cultural sites nearby and provide critical habitat for some migratory waterbirds and shorebirds, including Special Status Species such as the Snowy Plover, mitigation measures would be developed if an exploration or development proposal would impact the playa. Mitigation may include no surface occupancy and seasonal restrictions. No surface occupancy would be allowed on or within ¼ mile of the playa, unless waived by the Authorized Officer. No drilling would be allowed on the playa, unless waived by the Authorized Officer. All surface disturbance would be recontoured to match the natural surface.

The following is a list of Standard Operating Procedures that have been developed via forms, laws, regulations, and BLM policy that the lessee must also adhere to:

1. The BLM requires roads, drill pads, and other disturbed surfaces to be watered for dust suppression as directed by the Assistant Field Manager.
2. The operator must obtain permits as required by Federal, State, and Local laws and regulations. The BLM will not permit any operation that would violate Federal, State, or County water quality regulations. All operations would be required to comply with all State and Federal regulations concerning wetlands and riparian areas.
3. Areas disturbed are to be scarified and revegetated as soon as feasible.

4. All traffic associated with exploration is required to follow routes that avoid cultural resources. Operators identify and flag anticipated routes and detours on the route.
5. A cultural inventory may be required. The decision to require a cultural inventory is made by the Assistant Field Manager for Nonrenewable Resources. The inventory would be one of the following types:
  - a. Class I: A review of existing historic documentation and BLM office records. This type of inventory is generally used when the proposed project is located in an area of complete disturbance, or where the area has been previously inventoried using methods consistent with existing standards
  - b. Class II: A review of existing historic documentation and BLM office records, and some fieldwork. This type of inventory is generally used when only a portion of the project area has been disturbed, or portions of the project area have been previously inventoried using methods consistent with existing standards. It may also include a determination of significance for cultural properties located within the project area, and a determination of effect.
  - c. Class III: A complete inventory that includes a review of existing historic documentation and BLM office records, and a complete inventory of the project area. It includes an evaluation of significance for cultural properties located within the project area and a determination of effect. This type of inventory is used in areas where there have been no previous inventories, in areas where there has been a change in ground visibility, or in areas that were inventoried using methods not acceptable by existing standards.
6. Cattle guards, fences, and other range improvement facilities would be constructed as required by the Authorized Officer to mitigate impacts to livestock grazing and wild horses and burros.
7. All topsoils, except playas, are salvaged, stockpiled, labeled, and used for reclamation activities, including revegetation. Surface disturbance is planned and constructed so as to avoid the most easily eroded soils.
8. A visual contrast rating worksheet is prepared by the BLM for each drill site and proposed road construction. Ridges and skylines are avoided.

### **Finding of No Significant Impact**

Based on the analysis of potential environmental impacts in the EA which analyzed direct, indirect and cumulative impacts, I have determined that impacts from the Proposed Action, when coupled with stipulations and standard operating procedures presented in detail in the EA and Decision Record, would not be significant. Therefore, an Environmental Impact Statement will not be prepared.

### **Rationale**

The Proposed Action as analyzed in the Environmental Assessment EA NV063-EA04-59 with the standard operating procedures and stipulations outlined in the Decision Record will prevent unnecessary or undue degradation of public land should future exploration, production, or development proposals be submitted. Although the implementation of the proposed action, issuance of three geothermal leases, conveys to the lessee the right and privilege to drill for, extract, produce, remove, utilize, sell, and dispose of geothermal steam and associated geothermal resources, it does not authorize the lessee to actually conduct any activities on the land beyond casual use. Thus, there is no potential for direct environmental impacts. However, indirect impacts may occur to certain resources. Resource review and analyses have been coordinated with other federal and state agencies. Resources determined to be potentially impacted were analyzed in the EA specific to the Proposed Action.

Recreation and hydrology, both surface and subsurface, were the major issues associated with the proposed action. While there is *ad hoc* recreation at and around Spencer Hot Springs, BLM does not recognize Spencer Hot Springs as a developed recreation facility. However, the recreational values of the area have been preserved by requiring monitoring for hydrogen sulfide, limiting the noise levels generated when measured at a representative location near the springs, and requiring no surface occupancy by the lessee on the 200 acres immediately surrounding the springs. Preservation of the springs and wells in the area were also determined by BLM to be paramount. While the EA presented a brief discussion on the hydrology of the Spencer Hot Springs area, BLM did not perform any studies to characterize the groundwater flow or sources in the area. While BLM at this point has an incomplete understanding of the hydrology of the area, the BLM has retained enough authority to require the operator to begin a monitoring program, approved by the BLM, when exploration occurs. This monitoring program would be used to gather data that would help increase the understanding of the hydrologic conditions in the area. A more complete understanding of the hydrologic conditions would be required prior to approval of production or development. Since protection of the springs and wells was determined to be paramount, and BLM does not have an adequate understanding of the hydrology of the area to determine where production and reinjection would have to occur within the lease area to not impact the springs and wells, the BLM has retained the authority through the stipulation to take any and all measures necessary, including denying any and all applications that would impact the springs and wells, and requiring a monitoring program to detect any changes in the springs and wells.

Based on the definition of significance in 40 CFR 1508.27, impacts to these resources are not significant based on the analysis in the EA.

#### **43 CFR, Part 4 Appeal Statement**

This decision may be appealed to the Interior Board of Land Appeals, Office of the Secretary, in accordance with the regulations contained in 43 CFR, Part 4 and the enclosed Form 1842-1. If an appeal is taken, your notice of appeal must be filed in this office (at the above address) within 30 days from receipt of this decision. The appellant has the burden of showing that the decision appealed from is in error.

If you wish to file a petition (pursuant to regulation 43 CFR 4.21 (58 FR 4939, January 19, 1993) (request) for a stay (suspension) of the effectiveness of this decision during the time that your appeal is being reviewed by the Board, the petition for a stay must accompany your notice of appeal. A petition for a stay is required to show sufficient justification based on the standards listed below. Copies of the notice of appeal and petition for a stay must also be submitted to each party named in this decision and to the Interior Board of Land Appeals and to the appropriate Office of the Solicitor (see 43 CFR 4.413) at the same time the original documents are filed with this office. If you request a stay, you have the burden of proof to demonstrate that a stay should be granted.



### Standards for Obtaining a Stay

Except as otherwise provided by law or other pertinent regulation, a petition for a stay of a decision pending appeal shall show sufficient justification based on the following standards:

- (1) The relative harm to the parties if the stay is granted or denied,
- (2) The likelihood of the appellant's success on the merits,
- (3) The likelihood of immediate and irreparable harm if the stay is not granted, and
- (4) Whether the public interest favors granting the stay.

If you decide to appeal this decision, please provide this office with a copy of your Statement of Reasons.



Gail G. Givens  
Assistant Field Manager, Nonrenewable Resources  
Battle Mountain Field Office

January 31, 2005

Date

UNITED STATES  
DEPARTMENT OF THE INTERIOR  
BUREAU OF LAND MANAGEMENT

INFORMATION ON TAKING APPEALS TO THE BOARD OF LAND APPEALS

DO NOT APPEAL UNLESS

1. This decision is adverse to you,  
AND
2. You believe it is incorrect

IF YOU APPEAL, THE FOLLOWING PROCEDURES MUST BE FOLLOWED

1. NOTICE OF APPEAL . . . . . Within 30 days file a *Notice of Appeal* in the office which issued this decision (see 43 CFR Secs. 4.411 and 4.413). You may state your reasons for appealing, if you desire.
2. WHERE TO FILE  
NOTICE OF APPEAL . . . . . U.S. Department of the Interior  
Bureau of Land Management  
Battle Mountain Field Office  
50 Bastian Road  
Battle Mountain, NV 89820  
  
SOLICITOR  
ALSO COPY TO . . . . . U.S. Department of the Interior  
Office of the Field Solicitor  
6201 Federal Building  
125 S. State Street  
Salt Lake City, UT 84138-1180
3. STATEMENT OF REASON . . . . . Within 30 days after filing the *Notice of Appeal*, file a complete statement of the reasons why you are appealing. This must be filed with the Interior Board of Land Appeals, Office of Hearings and Appeals, U.S. Department of the Interior, 801 North Quincy St., Suite 300, Arlington, Virginia 22203 (see 43 CFR 4.412 and 4.413). If you fully stated your reasons for appealing when filing the *Notice of Appeal*, no additional statement is necessary.  
  
SOLICITOR  
ALSO COPY TO . . . . . U.S. Department of the Interior  
Office of the Field Solicitor  
6201 Federal Building  
125 S. State Street  
Salt Lake City, UT 84138-1180
4. ADVERSE PARTIES . . . . . Within 15 days after each document is filed, each adverse party named in the decision and the Regional Solicitor or Field Solicitor having jurisdiction over the State in which the appeal arose must be served with a copy of: (a) the *Notice of Appeal*, (b) the Statement of Reasons, and (c) any other documents files (see 43 CFR Sec. 4.413). Service will be made upon the Associate Solicitor, Division of Energy and Resources, Washington, D.C. 20240, instead of the Field or Regional Solicitor when appeals are taken from decisions of the Director (WO-100).
5. PROOF OF SERVICE . . . . . Within 15 days after any document is served on an adverse party, file proof of that service with the Interior Board of Land Appeals, Office of Hearings and Appeals, U.S. Department of the Interior, 801 North Quincy St., Suite 300, Arlington, Virginia 22203. This may consist of a certified or registered mail "Return Receipt Card" signed by the adverse party (see 43 CFR Sec. 4.401 (c) (2)).

Unless these procedures are followed your appeal will be subject to dismissal (see 43 CFR Sec. 4.402). Be certain that all communications are identified by serial number of the case being appealed.

NOTE. A document is not filed until it is actually received in the proper office (see 43 CFR Sec. 4.401 (a)).



## SUBPART 1821.2--OFFICE HOURS; TIME AND PLACE FOR FILING

Sec. 1821.2-1 *Office hours of State Offices.* (a) State Offices and the Washington Office of the Bureau of Land Management are open to the public for the filing of documents and inspection of records during the hours specified in this paragraph on Monday through Friday of each week, with the exception of those days where the office may be closed because of a national holiday or Presidential or other administrative order. The hours during which the State Office and the Washington Office are open to the public for the filing of documents and inspection of records are from 10 a.m. to 4 p.m., standard time or daylight savings time, whichever is in effect at the city in which each office is located.

Sec. 1821.2(d) Any documents required or permitted to be filed under the regulations of this chapter, which is received in the State Office or the Washington Office, either in the mail or by personal delivery when the office is not open to the public shall be deemed to be filed as of the day and hour the office next opens to the public.

(e) Any document required by law, regulations, or decision to be filed within a stated period, the last day of which falls on a day the State Office or the Washington Office is officially closed, shall be deemed to be timely filed if it is received in the appropriate office on the next day the office is open to the public.

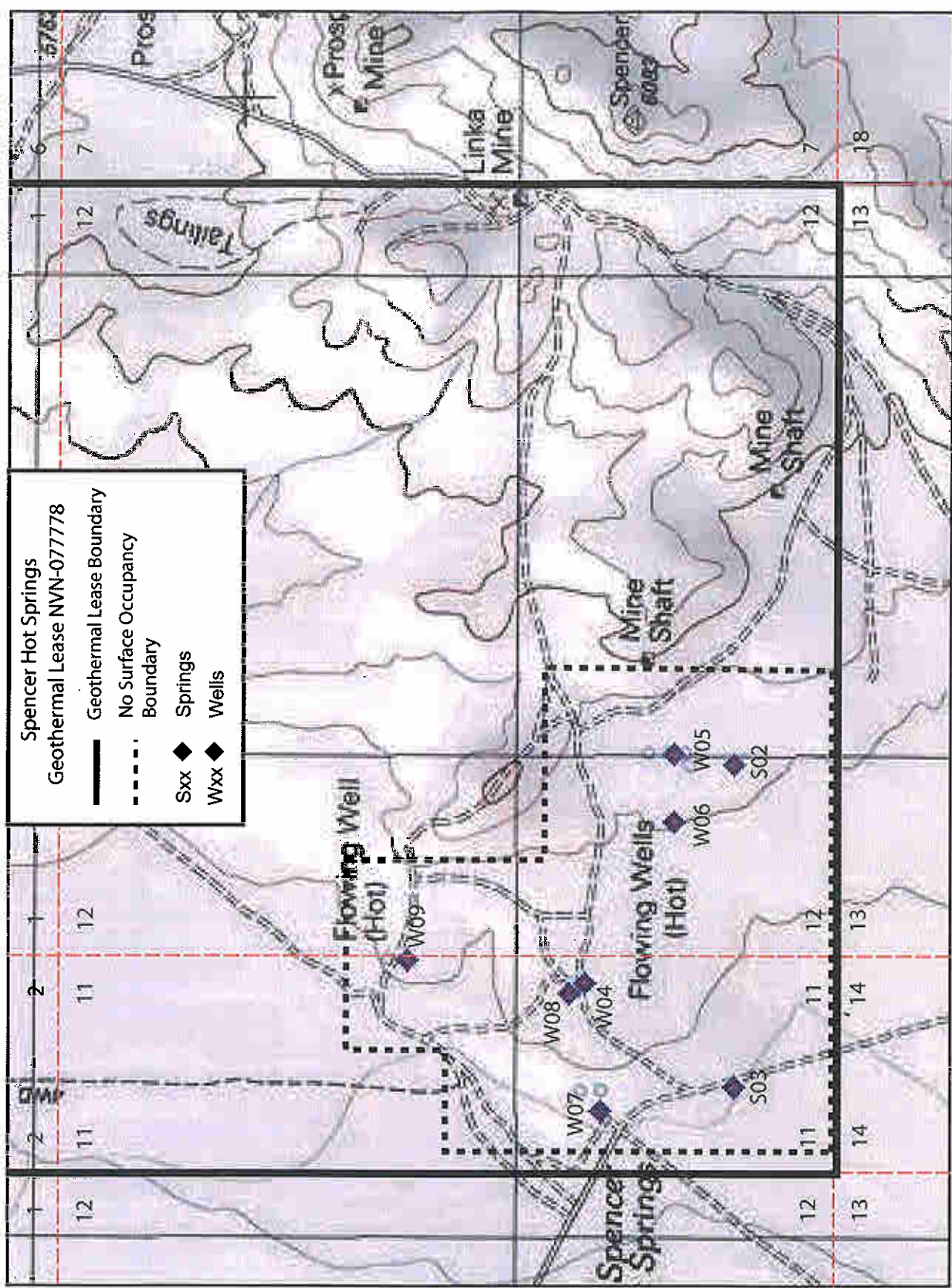
\* \* \* \* \*

R. 45 E. R. 45½ E.

R. 45½ E. R. 46 E.

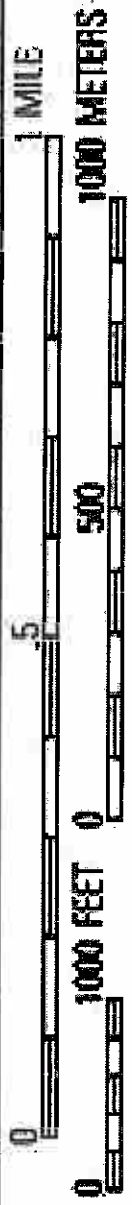
T. 17 N.

T. 17 N.



R. 45 E.

R. 46 E.



## **APPENDIX 10**

## WESTERN MINING ACTION PROJECT

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January 17, 2006

### VIA FACSIMILE (HARD COPY TO FOLLOW)

Bureau of Land Management  
Elko Field Office  
3900 East Idaho Street  
Elko, Nevada 89801-0611

**RE: Scoping Comments for the December 2005, Geothermal Non-Competitive Lease Sale, 3200 (NV-010)**

Dear Clinton Oke:

On December 1, 2005 your office noticed its intent to consider nine parcels of land in the Elko district of northeastern Nevada for non-competitive geothermal leasing. Please consider the following comments, submitted on behalf of the Western Shoshone Defense Project (WSDP), Carrie Dann, Battle Mountain Band Environmental Department, the South Fork Band, the Yomba Tribe and the Timbisha Tribe of Western Shoshone Indians in your consideration of the geothermal leases. In addition, a site visit has been scheduled through the Wells Band Environmental Department with BLM for the Wells area leases on January 17, with a second site visit requested for the Crescent Valley area.

### COMPLIANCE WITH THE NATIONAL ENVIRONMENTAL POLICY ACT (NEPA)

The BLM's scoping notice indicates that your office intends to prepare four Environmental Assessments (EAs) for the proposed leases. As an initial matter, it is not clear why the nine proposed leases will be examined in four separate NEPA documents rather than one comprehensive NEPA document. NEPA requires that the BLM consider connected actions, i.e. those that are related to each other closely enough to be, in effect, a single course of action, in one single, comprehensive NEPA document. 40 C.F.R. 1502.4(a).<sup>1</sup>

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<sup>1</sup> BLM must also consider whether there is any connection (and cumulative impacts) between the current lease proposals and the several mining and exploration proposals currently pending before BLM by Cortez Gold mines for the same generalized area. Cortez Gold Mines

It is also not clear why you intend to only prepare EAs for the leases rather than Environmental Impact Statements (EISs). The United States Court of Appeals for the Ninth Circuit, which includes Nevada, has unequivocally held that NEPA requires the preparation of an EIS for all non-NSO surface occupancy (NSO) leases as they represent a full and irretrievable commitment of resources. See Conner v. Burford, 848 F.2d 1441, 1448-51 (9<sup>th</sup> Cir. 1988). Several other courts, including the IBLA, have reached the same conclusion. See e.g., Sierra Club v. Peterson, 717 F.2d 1409, 1414 (D.C. Cir. 1983); Southern Utah Wilderness Alliance, 159 IBLA 220, 241-43 (2003); Union Oil Co., 102 IBLA 187, 192-193 (1988); Montana Wilderness Association v. Fry, 310 F.Supp.2d 1127, 1145 (D. Mt. 2004). As such, unless you intend to issue the leases as non-NSO leases, the BLM must prepare an EIS, not merely an EA.

In addition, regardless of the requirement for an EIS for Non-NSO leases, BLM is required to prepare an EIS if there are "substantial questions whether a project **may** have a **significant** effect." LaFlamme v. Federal Energy Regulatory Comm'n, 852 F.2d 389, 397 (9<sup>th</sup> Cir. 1988). An EIS can be avoided only if the federal action **will** have "no significant impact" on the environment. 40 C.F.R. 1501.4(c). Here, the nine proposed leases raise significant environmental concerns, particularly with regards to Native American and cultural resources, such that the BLM must prepare an EIS for the proposed leases.

The nine proposed leases are in the areas of the Wells community and the Crescent Valley area. The parcels in Crescent Valley are adjacent to hot springs owned by the Lowden family, the Dann Hot Springs, and the Cortez/Katz geothermal leases approved in 2004. The Dann Hot Springs and the Lowden family hot springs are of cultural and spiritual importance to the Western Shoshone. The Western Shoshone have traditionally used and continue to use both springs, for bathing, healing, and spiritual purposes. As BLM explained in its EA for the Cortez/Katz geothermal lease, "effects on the hot spring in the N1/2 of section 10 [the Dann Hot springs] are of specific concern" to Native Americans. EA for the Non-Competitive Lease Sale, BLM/EK/PL-2003/005 (Cortez/Katz EA), at 4. In addition, the BLM explained:

Active geothermal areas are generally thought of as being locations in which water spirits reside. It is often stated that "water babies" reside in the hot springs, cold springs, marsh areas, and other aquatic locations. Stories associated with "water babies" and other water spirits have been told from generation to generation and play an important role in defining the culture of the Western Shoshone people. Also, it is often told that certain hot springs and cold spring locations possess healing properties, which provide for spiritual cleansing and elimination of certain ailments to those seeking relief.

Id. Because of the importance of the hot springs to the Western Shoshone and the potential impacts that the proposed leases, and any geothermal development that results from the leases, may have on the hot springs, the BLM must prepare an EIS for the proposed leases, rather than a mere EA.

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and Katz, the proponent of the nine presently proposed leases, together obtained the previously issued Cortez/Katz leases in the area. If these proposals are connected or present any cumulative impacts, BLM must analyze them together in one NEPA document.



In addition, regardless of what sort of NEPA document BLM prepares for the proposed leases, it must take a "hard look" at the environmental consequences of the leases before the leases are issued. See e.g. Robertson v. Methow Valley Citizens Council, 490 U.S. 332, 349 (1989) (NEPA aims to encourage more environmentally sensitive decision-making by requiring Federal agencies to take a "hard look" at the environmental consequences of their actions before they occur, thereby ensuring "that the agency, in reaching its decision, will have available, and will carefully consider, detailed information concerning significant environmental impacts"). This "hard look" requires that BLM analyze both direct and indirect impacts that are reasonably foreseeable from the proposed project. 40 C.F.R. 1502.26, 1508.8(b), 1502.22.

In issuing the Cortez/Katz geothermal lease in 2004, the BLM explained that it had conducted "[n]o specific inventory of the project area" for the lease sale. Cortez/Katz EA, at 3. Relying on other cultural resource inventories that had been conducted in the area, the BLM acknowledged, however, that at least one large cultural resource site had been identified in the area, but that had not yet been evaluated for eligibility for listing on the National Register of Historic Places. Id. Before approving any additional lease activity, the nine parcels proposed for leasing must be evaluated for National Register eligibility and the BLM must conduct a comprehensive inventory of the cultural resources present in the entire project area. Without this information, there is no way that the BLM can comply with NEPA's requirement to take a "hard look" at the environmental impacts of the project.

Likewise, as part of its "hard look", the BLM must conduct a hydrological study of the groundwater in the area. BLM indicated at its December 14, 2005 open house on the geothermal leases that it had not yet conducted any analysis of the aquifer underlying the proposed leases. Prior to issuing any of the proposed leases BLM must first study and review the underlying hydrology to ensure that the proposed leases will not have a significant adverse impact on thermal and non-thermal waters in the area.

The BLM must also consider impacts from the proposed leases to its federal reserved water rights in springs and waterholes on federal public land, including federal reserved water rights in hot springs. Water flows in springs and waterholes on public land in the West are reserved for public use by Public Water Reserve # 107 ("PWR 107"), which was created by Executive Order by President Calvin Coolidge in 1926. BLM cannot issue the proposed leases if they will adversely affect federal reserved water rights. Similarly, BLM cannot lease any lands or resources that may adversely affect lands and/or waters withdrawn and/or reserved pursuant to the Executive Order of July 7, 1930 (concerning Hot or Medicinal Springs) and related authorities. See I.D. 269 (Interior Department Circular 1236, Feb. 11, 1931).

In addition, and in sum, BLM's NEPA analysis must include, at a minimum, consideration of the following resources in order to satisfy NEPA's requirement for a "hard look":

- Cultural resources;
- Native American Religious concerns;
- Historical resources;

- Paleontological resources;
- Recreation;
- Water quality and quantity
- Wildlife;
- Visual resources; and
- The cumulative impacts of all nine leases.

NEPA also requires that BLM consider a reasonable range of alternatives to the proposed action in order to "provide[c] a **clear basis for choice** among options by the decision maker and the public." 40 C.F.R. 1502.14; see also 42 U.S.C. § 4332(2)(E); C.F.R. 1507.2(d), 1508.9(b). The scoping letter for the proposed leases suggests that the BLM only plans to consider one alternative – the no action alternative – in its NEPA analysis. Consideration of a no-action alternative, alone, is not, however, sufficient to satisfy NEPA's requirement for the analysis of alternatives. Rather, NEPA requires that all viable alternatives be examined.

Here, there are several other viable alternatives including, issuance of only some of the nine proposed leases, issuance of leases for only some of the acreage requested within each of the proposed nine parcels, issuance of the leases with seasonal wildlife restrictions, and/or issuance of the leases with no surface occupancy (NSO) stipulations. BLM must examine these other alternatives in its NEPA analysis. As explained by the United States Court of Appeals for the Ninth Circuit, "A viable but unexamined alternative renders [the] environmental impact statement inadequate." Muckleshoot Indian Tribe v. United States Forest Service, 177 F.Supp.3d 800, 814 (9<sup>th</sup> Cir. 1999) (internal quotations omitted). The requirement for an alternatives analysis exists regardless of whether an EA or EIS is required. See Bob Marshall Alliance v. Hodel, 852 F.2d 1223 (9th Cir. 1988), cert denied, 489 U.S. 1066 (1988) ("[a]ny proposed federal action involving...the proper use of resources triggers NEPA's consideration of alternatives requirement, whether or not an EIS is also required").

Finally, your scoping letter indicates that the EAs prepared for the proposed leases will be tiered to the EIS for the 1987 Elko Resource Management Plan and the 1985 Wells Resource Management Plan. An EA or EIS is allowed to tier to earlier NEPA documents so long as the previous documents took the requisite "hard look" at the impacts of the project and the current NEPA document includes discussion of all site-specific environmental impacts from the project. 40 CFR § 1502.20. BLM cannot, then, tier to earlier NEPA documents at the expense of a thorough review in its project-specific review of the proposed leases and their environmental impacts.

## **COMPLIANCE WITH THE NATIONAL HISTORIC PRESERVATION ACT AND REQUIREMENTS FOR NATIVE AMERICAN CONSULTATION**

The National Historic Preservation Act, NHPA, requires federal agencies, prior to approving an "undertaking," to "take into account the effect of the undertaking on any district, site, building, structure or object that is included in or eligible for inclusion in the National Register." 16 U.S.C. § 470(f) (section 106). The federal courts have reiterated that section 106 applies to properties already listed in the National Register, as well as those properties **that may**

be eligible for listing. *See Pueblo of Sandia v. United States*, 50 F.3d 856, 859 (10<sup>th</sup> Cir. 1995); *see also Boyd v. Roland*, 789 F.2d 347, 348-49 (5<sup>th</sup> Cir. 1986).

As explained, it does not appear that BLM has yet to review the entire project area for cultural sites. In addition, the BLM has identified at least one cultural site in the area that, as of its issuance of the Cortez/Katz leases, had not yet been evaluated for eligibility for listing on the National Register of Historic Places. In its consideration of the proposed leases, the BLM must conduct a comprehensive inventory of the cultural resources in areas and determine if any of the cultural resources present are eligible for listing on the National Register of Historic Places.

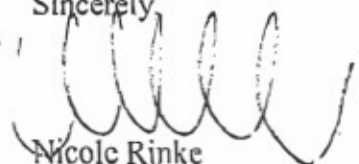
In addition, prior to approving the proposed leases, and as part of the NEPA process, BLM must consult with all federally recognized Native American tribes that may attach religious or cultural significance to the affected area. The NHPA, 16 U.S.C. § 470(a)(d)(6)(B), and other federal laws, including the American Indian Religious Freedom Act, 42 U.S.C. § 1996; Archaeological Resources Protection Act of 1979, 16 U.S.C. § 470aa; and Native American Graves Protection and Repatriation Act of 1990, 25 U.S.C. § 3001, require that a federal agency consult with Native American Tribes prior to approving any undertaking that may affect a Native American cultural, religious, or historic site. These requirements (including those for the NHPA, NEPA, and FLPMA) are detailed in a number of BLM Manuals and Handbooks. *See* Manual MS-8120 ("Tribal Consultation Under Cultural Resources"); Manual MS-8140 ("Protecting Cultural Resources"); Manual MS-8110 ("Identifying and Evaluating Cultural Resources"); Handbook H-8120-1 ("General Procedural Guidance for Native American Consultation"); Manual MS-8100 ("The Foundations for Managing Cultural Resources").

The BLM has failed, in issuing past geothermal leases in Nevada to consult with interested Native American Tribes. *See* Decision Record for the issuance of the Spence Hot Springs Geothermal Area Lease, at 2 (Lease Nos. NVN-07778, NVN-07779, and NVN-077780) ("Native American consultation is unnecessary at this time"); Environmental Assessment for Non-competitive Lease Sale of the Cortez/Katz lease (BLM/EK/PL-2003/005), at 4 ("[f]ormal Native American consultation for the Cortez/Katz Geothermal Leases was not conducted"). Here, as in the previous leases, the Western Shoshone have interests in the area of the proposed leases that will be affected by the proposed leases. As a result, the BLM is required to consult with the Western Shoshone in its consideration of the proposed leases.

## CONCLUSION

The WSDP, Carrie Dann, the Battle Mountain Band, the South Fork Band, the Yomba Tribe and the Timbisha Tribe of Western Shoshone Indians thank you for your consideration of the foregoing comments.

Sincerely,



Nicole Rinke



## **APPENDIX 11**

**U.S. Rep. Nick J. Rahall  
Extension of Remarks  
November 7, 2005**

**An Assault on America's Public Lands  
The Hardrock Mining Provisions  
of the Resources Committee's Budget Reconciliation Package**

**Mr. Speaker. Among the many egregious provisions of the Budget Reconciliation recommendations recently approved by the Resources Committee is a raid on America's public lands and our natural resources heritage of almost unparalleled proportions. Included in these recommendations to be considered by the House Budget Committee is the worst kind of "sham reform" of the Mining Law of 1872 that has ever been promoted during my tenure in Congress and if enacted would result in a blazing fire sale of federal lands to domestic and international corporate interests. It is actually a step backward from this 133-year old statute.**

**Signed into law by President Ulysses S. Grant, the Mining Law of 1872 to this day governs the mining of valuable 'hardrock' minerals such as gold and silver on federal western public lands. The law allows private companies to patent -- purchase -- public lands containing valuable minerals for a mere \$2.50 to \$5.00 per acre, prices set in 1872, without paying a royalty -- production fee -- on the mining of these minerals to the taxpayer. Since 1872, more than \$245 billion worth of minerals have been extracted from public lands at these bargain-basement prices. Further, a land area equivalent in size to the state of Connecticut has been sold to the mining industry for less than \$5 an acre. Since 1987, when I chaired the Energy and Minerals Subcommittee, I have worked to rewrite this antiquated law, introducing comprehensive reform bills in each successive Congress.**

**In addition, at my urging, since 1994, and with strong bipartisan support, Congress has placed an annual moratorium on the patenting of mining claim on federal lands. To be clear, bona fide mining can and does take place on unpatented mining claims. There is no indication or proof that this over one decade ban on the patenting of mining claims has diminished in any respect the actual production of hardrock minerals from unpatented mining claims on western public lands. Yet, the Resources Committee's budget reconciliation recommendations would repeal the moratorium and reinstate patenting -- the sale -- of these public lands. According to the Congressional Budget Office, this provision would only raise an estimated \$158 million over the next five years by patenting public lands for \$1,000 an acre or fair market value of only the surface of the land -- far from the true value of the minerals underneath. Let me emphasize that. The Resources Committee provision would allow the sale of potentially mineral rich public lands for the mere cost of the surface estate, completely ignoring the value to the underlying mineral estate. In contrast, an 8% royalty on the actual mineral production from mining claims which I have long**

advocated would raise \$350 million in the same time period. Keep in mind that if one mines coal on federal lands, the company is required to pay either an 8% or 12.5% production royalty depending on whether the coal is deep or surface mined. Further, producers of onshore oil and gas on federal lands pay a 12.5% production royalty. But producers of gold, or silver or copper.....zero, zilch, nothing.

The Mining Law of 1872 provisions adopted by the Resources Committee without benefit of public hearing also go far beyond just reinstating the much-maligned “patenting” provision. In fact, the provisions would require the federal government to sell such public lands to potential buyers, whether or not it is in the public interest to do so. Under the Resources Committee legislation, a prospective purchaser would merely (a) file a mining claim or mill site or “blocks of such claims,” (b) present evidence of mineral development work performed on the lands they want to buy totaling at least \$7,500 per claim, (c) pay for a land survey, and (d) show up to get the deed.

As such, under these provisions anyone, including real estate developers and oil and gas companies, could purchase and develop natural areas that are currently important for recreation, wildlife, fisheries or regional drinking water supplies under the guise of a mining law. This would enable oil and gas companies to purchase the land they currently lease from the federal government. Not coincidentally, since most federal oil and gas leases occur on federal lands not protected by this legislation, this provision would put at risk the rents, royalties and bonus payments currently collected annually by the federal government and shared with the States from onshore oil and gas leases which in fiscal year 2004 totaled \$1.850 billion.

Further, while the Resources Committee legislation would put off-limits to its provisions certain federal lands, such as National Parks, from location of new mining claims, it does not protect National Forests and Wilderness Study Areas, Areas of Critical Environmental Concern, and other similar areas, even if these other areas have been withdrawn from new mining claim location. For example, there are currently more than 60,000 acres of mining claims in the Tongass National Forest, the largest intact temperate rainforest in the world, which would be available for sale under these provisions. And the Resources Committee provisions do not protect National Parks, Wilderness Areas, and National Wildlife Refuges that have unpatented claims within them. In National Parks alone, there are more than 900 unpatented mining claims that would be subject to sale for \$1,000 per acre if these provisions become law.

In addition, the bill does not require that the lands have been used or will be used for mining. As written, purchasing the land need only facilitate sustainable economic development. Since the term is not defined, sustainable economic development could include condominium construction, ski resorts, gaming casinos, name it. A unanimous Supreme Court said in 1979 that “the federal mining law

surely was not intended to be a general real estate law. The American Law of Mining, the standard industry treatise on the mining law, says that the law does “not sanction the disposal of federal lands under the mining laws for purposes unrelated to mining.” Yet, according to John Leshy, former Solicitor of the Department of the Interior, “Subtitle B is effectively a ‘general real estate law’ and will put in the hands of corporations, the keys to privatize millions of acres of federal land.”

In order to make it easier to dispose of federal lands, these provisions would also free the potential buyer from performing “mineral development work” on each unpatented claim or block of claims or millsites. Instead, it states that this type of work should be performed on “the federal lands identified and submitted for purchase.” In other words, the potential buyer need only show that there has been some mineral development work somewhere on the lands being sold. The tracts could be huge because the proposal contains no limit on the acreage or numbers of claims that could be purchased.

Moreover, the provisions so broadly define “mineral development work” as to render it essentially meaningless. It could involve activities that never come close to the land itself; e.g., geologic, geochemical or geophysical surveys, which can be done remotely. It could involve, for example, buying and looking at satellite data, or going through USGS reports; or hiring a consultant to do on-line or library searches. And, it could include environmental baseline studies, or “engineering, metallurgical, geotechnical and economic feasibility studies.” Again, consultants doing on-line searches and library work would qualify.

These provisions also prohibit any other fees or fair-market-value assessments to be applied to “prospecting, exploration, development, mining, processing, or reclamation, and uses reasonably incident thereto” - which would prohibit the government from levying any royalty or other production fee on mining operations.

As a long time advocate of responsible reform of the Mining Law of 1872, after reflecting on these provisions, I find it hard to believe that they would even be supported by responsible elements in the hardrock mining industry. Further, they represent an assault on America’s natural resource heritage and to the American taxpayer. And given my history on this issue, I find them personally insulting as well.

In closing, I would note that the following groups, on behalf of the millions of members from across the country, agree with me that these provisions should be deleted from the Resource Committee’s portion of the Budget Reconciliation Package: Taxpayers for Common Sense Action, Alaska Center for the Environment, American Rivers, Amigos Bravos Center for Biological Diversity, Center for Native Ecosystems, Citizens for Victor Clark Fork Coalition, Colorado Environmental Coalition Colorado Information Network for Responsible Mining, Earth Island

**Institute, Earthjustice, EARTHWORKS, Environmental Protection Information Center, Environmental Working Group, Friends of the Clearwater, Friends of the Earth, Friends of the Panamints, Gifford Pinchot Taskforce, Great Basin Mine Watch, Greater Yellowstone Coalition, Guardians of the Rural Environment, Idaho Conservation League, Indigenous Environmental Network, The Lands Council, Maricopa. Audubon Society, Mining Impact Coalition of Wisconsin, Montana Environmental Information Center, Mount Graham Coalition, National Environmental Trust, National Wildlife Federation, Natural Resources Defense Council, Northern Alaska Environmental Center Okanogan Highlands Alliance, Oxfam America, Rock Creek Alliance, Save the Scenic Santa Ritas, SHAWL Society, Sierra Club, Silver Valley Community Resource Center, Siskiyou Regional Education Project, Sky Island Alliance, South East Alaska Conservation Council, Southern Utah Wilderness Alliance, Umpqua Watersheds, Westerners for Responsible Mining, Western Organization of Resource Councils, The Wilderness Society, and Women's Voices for the Earth.**

**I urge my colleagues to join me in recommending that these provisions be stripped from the Budget Reconciliation Package if they are included by the House Budget Committee. America's public lands are held in trust for future generations. They deserve to be protected, not sold off at fire sale prices. American taxpayers deserve to be paid a fair royalty for the minerals taken from public lands, not to be cheated by a bill that sells their land to corporations for much less than its true worth. We can do better.**

## **APPENDIX 12**

**PCR, Inc.***Bob's*  
**COPY**

## FACSIMILE TRANSMISSION COVER SHEET

DATE: February 3, 2006

TO: Robert R Hager

RE: Account # 2401318270A

ATTN: \_\_\_\_\_

FAX#: 775-329-5819

FROM: Lori Martin

This is page 1 of      pages

Attached is the documentation we discussed. All checks should be made out to U.S. Department of Treasury – FMS and send to:

US Department of the Treasury  
Pioneer Credit Recovery, Inc  
PO Box 530290  
Atlanta, Ga 30353-0290

Please call me before mailing the check. Thank you for your assistance in this matter.

**received**  
FEB 03 2006

P O Box 189 < Arcade, NY 14009 < fax 877-907-1868 < 1-888-261-7783

**NOTICE OF CONFIDENTIALITY**

This accompanying fax transmission is intended for the use of the individual or entity to which it is addressed. It may contain information that is privileged, confidential, and exempt from disclosure under applicable law. If the reader of this message is not the intended recipient, or employee or agent responsible for delivering the message to the intended recipient, you are hereby notified that any dissemination, distribution, or copying of this communication is strictly prohibited. If you have received this communication in error, please notify us immediately by telephone and return the original to us by mail. Thank you.



June 24, 2005

Mary Dann / Carrie Dann  
HC 66 Unit 1 Box 11  
Beowaaawe, NV 89821

RE: Federal Agency: US Department of the Interior  
Amount of the Debt: \$ 5695610.33  
Treasury Account #: 2401318270A

The U.S. Department of the Treasury has, effective with this notice placed your account with our agency. You are legally responsible to repay this debt, including any accrued interest, penalty charges, fees, and expenses incurred by the Treasury Department in having a private agency collect this debt.

You must contact the agency listed on this notice to arrange for repayment of your account, or additional steps may be taken to collect this debt.

If you do not dispute the validity of this debt, or any portion thereof, in writing, within 30 days after receipt, we will assume it is valid. If you do dispute the validity of this debt, in writing, within the 30-day period, we will obtain verification of this debt or a copy of a judgment and will mail a copy to you. At your request, in writing, within the 30-day period, we will provide you with the name and address of the original creditor, if different from the current creditor. Federal law prohibits unfair collection practices.

Pioneer Credit Recovery, Inc.  
PO Box 189  
Arcade, NY 14009

Toll free: 877-907-1820

This notice is from a debt collector. This is an attempt to collect a debt. Any information obtained would be used for that purpose.



"Massachusetts residents can contact our office at: 400 Boston Post Rd., Sudbury MA 01776. Office hours: Walk-Ins: M-F 9am-6pm. Call-Ins: M-Th 8am-9pm; Fri 8am-5pm; Sat 8am-12pm."

"This collection agency is licensed by the Minnesota Department of Commerce."

"North Carolina Department of Insurance Permit # 3269."

"North Carolina Department of Insurance Permit # 3571."

"This collection agency is licensed by the Collection Service Board, State Department of Commerce and Insurance, 500 James Robertson Parkway, Nashville, Tennessee 37243."

"New York City Department of Consumer Affairs License No. 0958432."

"Colorado residents- important information may be found on the back (or second page) of this notice."

If you notify us in writing to stop contacting you by telephone at your residence and/or at your place of employment, no further contact will be made. If you refuse to pay the debt or you want us to stop all further communication with you, notify us in writing and we will not communicate further with you except to advise you, in writing, that: (1) we intend to invoke specific remedies permitted by law or we may invoke specific remedies which we ordinarily invoke; or (2) our efforts are being terminated.

Pioneer Credit Recovery, Inc. is licensed by the Collection Agency Board in the Department of Law, 1525 Sherman Street, 5th Floor, Denver, CO 80203.

"Do not send payments to the Board."

## **APPENDIX 13**

## PHOTOS DEPICTING DESTRUCTION OF WESTERN SHOSHONE TERRITORY AND BLOCKAGE OF ACCESS ROAD TO HORSE CANYON



**Photo 1:** Open pit mine in Shoshone territory, photographed in 2005 (Western Shoshone Defense Project).



**Photo 2 and 3:** Access road to Horse Canyon, spiritual area for Western Shoshone, demolished on the day of Shoshone medicinal gathering by the Cortez Joint Venture/Cortez Gold Mines (Barrick, formally Placer Dome, and Kennecott) photographed in November 2005 (Western Shoshone Defense Project- Carolyn Fuqua).



**Photo 4:** Van carrying Western Shoshone group Blocked from traditional gathering site near Horse Canyon, photographed in November 2005 (Western Shoshone Defense Project- Carolyn Fuqua).



**Photo 5:** Gold mining drill rig on access road to Horse Canyon, spiritual area for Western Shoshone, photographed in October 2005 (Western Shoshone Defense Project).