

LLWnotes

Volume 12, Number 3 March 1997

California Department of Health Services v. Babbitt

California DHS Sues U.S. Interior Department to Compel Land Transfer

On January 31, the California Department of Health Services (DHS) and its Director, S. Kimberly Belshé, filed suit against the U.S. Department of the Interior, its Secretary—Bruce Babbitt, and the U.S. Bureau of Land Management. The action, which was filed in the U.S. District Court for the District of Columbia, seeks to compel the Interior Department to transfer the Ward Valley site to DHS for use in siting a low-level radioactive waste disposal facility. The federal government's answer to the lawsuit is due on April 1, 1997.

On January 30, California Governor Pete Wilson(R) sent letters to Secretary Babbitt and U.S. Senator Dianne Feinstein (D-CA) informing them of the pending litigation. The letters announced that Wilson has directed DHS to immediately begin conducting site tests for tritium and chlorine-36 at Ward Valley as recommended by the National Academy of Sciences (NAS) in its 1995 report on the planned facility. Wilson also requested the removal of protesters on and around the Ward Valley site in order to provide security for the sensitive testing procedures.

The Issues

The complaint contains various claims for relief, each of which is summarized below. Persons interested in additional information are directed to the complaint itself.

Failure to Perform Ministerial Duty

The plaintiffs assert that the defendants have a ministerial duty to issue a patent conveying the Ward Valley site under terms and conditions consistent with a January 19, 1993 Record of Decision signed by then-Interior Secretary Manuel Lujan.

In issuing its Record of Decision, Interior announced that all conditions to the issuance of the patent had occurred, including the completion of the required environmental impact reports, issuance of a finding of No Significant Impact under NEPA, and payment of the \$500,000 price for the land by US Ecology, California's license designee ... The Record of Decision concluded that the transfer of the land to the State of California would serve important public objectives ... Defendants are bound by this Record of Decision.

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Low-Level Radioactive Waste Forum

LLWNotes

Volume 12, Number 3 • March 1997

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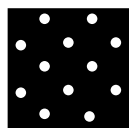
The Low-Level Radioactive Waste Forum (LLW Forum) is an association of state and compact representatives, appointed by governors and compact commissions, established to facilitate state and compact implementation of the Low-Level Radioactive Waste Policy Act of 1980 and the Low-Level Radioactive Waste Policy Amendments Act of 1985 and to promote the objectives of low-level radioactive waste regional compacts. The LLW Forum provides an opportunity for state and compact officials to share information with one another and to exchange views with officials of federal agencies and other interested parties.

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Key to Abbreviations

Code of Federal Regulations	CFR
U.S. Department of Energy	DOE
U.S. Department of Transportation	DOT
U.S. Environmental Protection Agency	EPA
U.S. General Accounting Office	GAO
U.S. Nuclear Regulatory Commission	NRC
naturally-occurring and accelerator-produced radioactive materials	NARM
naturally-occurring radioactive materials	NORM

LLW Forum Holds Winter Meeting

NRC Commissioner Dicus Addresses Group

The Low-Level Radioactive Waste Forum met in San Diego, California, on February 11 to 14, 1997. Twenty-six Forum Participants, Alternate Forum Participants, and meeting designees representing 22 compacts and states participated. Additional information was provided by 15 resource people from, variously, the States of California and Utah; the National Governors' Association; the Western Governors' Association; the National Conference of State Legislatures (NCSL); the Department of the Army; DOE; NRC; the U.S. Geological Survey/Department of Interior; the Electric Power Research Institute; Chem-Nuclear Systems, Inc.; and Scientific Ecology Group, Inc.

Also in attendance, as observers, were 16 other state and compact officials; one staff person from NCSL; two DOE contractor staff members; three NRC staff members; one staff person from the NRC's Advisory Committee on Nuclear Waste (ACNW); and 12 representatives of other interested parties including a national generators' association, a regional generators' organization, two disposal facility operators, three generators, two consulting firms and one anti-nuclear group.

Highlights of the meeting follow.

For further information, see LLW Forum Meeting Report, February 11-14, 1997. Prepared by Afton Associates, Inc.

Discussion with Commissioner Dicus of the NRC

NRC Commissioner Greta Dicus discussed

- NRC's strategic assessment process;
- external regulation of the U.S. Department of Energy;
- certification of the U.S. Enrichment Corporation;
- potential legislation re radioactive waste management;
- NRC's proposed rulemaking on radiological criteria for decommissioning and NRC's interaction with EPA; and
- the international radioactive waste convention.

Prior to her appointment to the NRC, Dicus served as the Forum Participant for the Central Compact Commission.

Overview of U.S. Geological Survey Studies Near Beatty, Nevada: 1976-1996

An official of the U.S. Geological Survey (USGS) summarized results from USGS studies of the unsaturated zone near the closed low-level radioactive waste disposal site at Beatty, Nevada. He also explained the applicability of these results to waste disposal in an arid environment. He noted that the USGS program on low-level radioactive waste was terminated in 1994, but that basic data collection and limited research has continued under other auspices, and that the Beatty testing may be pursued under the USGS Toxic Substances Hydrology program.

Forum Participants expressed support for continuation of USGS activities in this area.

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LLW Forum *continued*

DOD Management of Low-Level Radioactive Waste (Number 97.2.1)

Adopted on February 13, 1997

Whereas, The Department of Defense Executive Agency for Low-Level Radioactive Waste has served as a single point of contact for the states and compacts engaged in low-level radioactive waste management;

Whereas, Utilizing the services of the Executive Agency by Defense and other federal agencies is cost effective and reduces the cost to the nation's taxpayers;

Whereas, Working with one single agent representing the Department of Defense has reduced state and compact time and frustration over dealing with multiple installations and service practices; and

Whereas, The Department of Defense is reviewing the authorities and responsibilities of the Executive Agency; therefore, be it

Resolved, That the Low-Level Radioactive Waste Forum memorializes the U.S. Department of Defense to maintain a single Executive Agency responsible for management of low-level radioactive waste.

Resolved, That the Low-Level Radioactive Waste Forum instructs the Forum Convenor to notify appropriate individuals within the U.S. Department of Defense of this resolution.

LLW Forum Support for the Texas Low-Level Radioactive Waste Disposal Compact Consent Legislation (Number 97.2.2)

Adopted on February 13, 1997

Whereas, The Low-Level Radioactive Waste Policy Act of 1980 and its 1985 amendments make states responsible for the disposal of commercial low-level radioactive waste generated within their borders;

Whereas, This same federal law encourages states to form regional compacts to meet this obligation;

Whereas, Nine regional compacts, comprising forty-one states, have been consented to by the U.S. Congress;

Whereas, The Texas Low-Level Radioactive Waste Disposal Compact—whose members include Texas, Maine and Vermont—was negotiated and adopted by its member states to meet their responsibilities under federal law; and

Whereas, The Low-Level Radioactive Waste Forum, since its inception in 1986, has assisted compacts and unaffiliated states in meeting their obligations pursuant to federal low-level radioactive waste legislation; therefore, be it

Resolved, That the Low-Level Radioactive Waste Forum encourages the U.S. Congress to expeditiously provide its consent, without amendment, to the Texas Low-Level Radioactive Waste Disposal Compact.

**LLW Forum Support for the Amendments to the Midwest Interstate
Low-Level Radioactive Waste Compact (Number 97.2.3)**

Adopted on February 14, 1997

Whereas, The Low-Level Radioactive Waste Policy Act of 1980 and its 1985 amendments make states responsible for the disposal of commercial low-level radioactive waste generated within their borders;

Whereas, This same federal law encourages states to form regional compacts to meet this obligation;

Whereas, Nine regional compacts, comprising forty-one states, have been consented to by the U.S. Congress;

Whereas, Amendments to the Midwest Compact—whose members include Indiana, Iowa, Minnesota, Missouri, Ohio and Wisconsin—were enacted by each member state's legislature and signed into law by each member state's Governor; and

Whereas, The Low-Level Radioactive Waste Forum, since its inception in 1986, has assisted compacts and unaffiliated states in meeting their obligations pursuant to federal low-level radioactive waste legislation; therefore, be it

Resolved, That the Low-Level Radioactive Waste Forum encourages the U.S. Congress to expeditiously provide its consent, without amendment, to the Midwest Interstate Low-Level Radioactive Waste Compact Amendments.

Resolved, That the Low-Level Radioactive Waste Forum encourages the President to expeditiously sign the Midwest Interstate Low-Level Radioactive Waste Compact Amendments.

LLW Forum Meeting (continued)

Waste Curies, Volumes and Toxicity: Relationship to Disposal Fees and Surcharges

Barnwell Site An official of Chem-Nuclear Systems, Inc. described the applicable surcharges and the new pricing structure for low-level radioactive waste disposal at Chem-Nuclear's facility in Barnwell, South Carolina. He discussed key elements of the new pricing and explained the customer cost impact. A Scientific Ecology Group representative explained the change in waste treatment objectives brought about by the new pricing system for disposal at Barnwell and how generators seem to be responding. He also discussed the general effect of the new disposal rates on waste management. A U.S. Army official then described the impact of the new pricing schedule on the Department of Defense.

Hanford Commercial Site A staff person for the Northwest Compact explained the regulation and structure of the rates charged by US Ecology for disposal of low-level radioactive waste at the Hanford commercial site.

Future Pennsylvania Site A Pennsylvania official discussed how the fee system for the future site for low-level radioactive waste disposal site in Pennsylvania will be structured to promote waste management goals.

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LLW Forum Meeting (continued)

Executive Session

Forum Participants adopted a motion that

the LLW Forum recognize the extraordinary efforts of the State of Washington in executing with the U.S. Department of Energy the current 3-year grant for the LLW Forum support and selection of the contractor, and express specific appreciation and gratitude to Jeff Breckel and Mike Garner.

Forum Participants also adopted a motion that

the LLW Forum acknowledge the important contributions made by Joe Stohr during his tenure as Executive Director of the Northwest Compact and wish him all success in his new assignment.

1996 Financial Report The Forum Management Advisor reported that the LLW Forum operated slightly under budget for calendar year 1996.

1997 Projected Budget The Forum Management Advisor reminded Forum Participants that the 1997 budget is a flat budget, the same amount as allocated for 1996, thus representing a budget reduction when inflation and increasing costs are considered.

LLW Forum Structure and Funding Forum Participants adopted a motion that

the LLW Forum hold off on the issue of incorporation until the May meeting or until the issue of indemnification is resolved.

LLW Forum Business Session

1998 Meeting Locations LLW Forum meetings will be held in 1998 in

San Diego, California <i>Southwestern Compact/California</i>	February
Wyoming/Montana <i>Northwest Compact</i>	May
Annapolis, Maryland <i>Appalachian Compact</i>	October

Election of Convenor

Gregg Larson

was unanimously re-elected Forum Convenor for calendar year 1997.

Election of Executive Committee

The following individuals were unanimously re-elected to serve as members of the Executive Committee for calendar year 1997:

**Janice Deshais
William Dornsife
Kathryn Haynes
Lee Mathews
Don Womeldorf**

Jeff Breckel
(ex officio on behalf of the State of Washington)

Bylaws of the Low-Level Radioactive Waste Forum, Inc. Forum Participants adopted a motion that

the LLW Forum adopt the Bylaws of the Low-Level Radioactive Waste Forum, Inc. to become effective upon incorporation.

Panel Discussion: DOE Low-Level Radioactive Waste Management

DOE Centers of Excellence A DOE headquarters and a DOE Idaho official discussed the creation of Centers of Excellence for specific DOE functions. The presentations included the history behind and rationale for creating Centers of Excellence; the specific issues addressed by and functions of the various Centers of Excellence; and the structure, purpose, and status of the Idaho Center of Excellence for low-level radioactive waste and mixed waste.

National Low-Level Waste Management Program Activities A DOE headquarters official, a DOE Idaho official, and a DOE contract staff person reported on DOE headquarters program activities, including the annual report to Congress, and on 1997 projects to assist states and compacts.

Planning and Prioritization of Projects to Assist States and Compacts A DOE headquarters and a DOE Idaho official discussed interaction between states and compacts and DOE in planning and prioritizing technical assistance projects for 1998 and beyond; and interaction between states and compacts and DOE in planning and prioritizing 1997 technical assistance projects.

Forum Participants then approved a motion that

The LLW Forum endorses the two-step procedure that DOE has outlined for review of the technical assistance program to states and compacts. This procedure includes an initial review of proposed projects and associated resource allocations for the upcoming fiscal year at the LLW Forum spring meeting, and a second report on the projects and dollar allocations at the LLW Forum fall meeting.

Regulatory Issues

The Forum Discussion Group Coordinator reported on the meeting of Regulatory Issues Discussion Group. (See related story, this issue.)

A DOE headquarters official discussed DOE's plans for producing tritium at commercial reactors; DOE's intent to investigate the impact, if any, of the use of mixed oxide (MOX) fuel in commercial reactors on the resulting low-level radioactive waste stream; external regulation of DOE; and legislative proposals to abolish DOE.

National Conference of State Legislatures' LLRW Working Group

The Chair of the NCSL working group explained the membership and purpose of the group, summarized past meetings of the group, and discussed an upcoming meeting in San Francisco. He noted that NCSL will consider amending its policy on radioactive waste management at the organization's 1997 annual meeting. (See *LLW Notes*, February 1997, p. 10.) He also noted that NCSL has developed a series of documents relevant to low-level radioactive waste.

Post-Closure Site Ownership: LLRW, 11e.(2) Waste, and Other Wastes

Commercial Low-Level Radioactive Waste An NRC staff person discussed NRC and Agreement State requirements, as well as Utah's alternative approach.

Other Radioactive Materials The NRC staff person then discussed the post-closure ownership requirements for Special Nuclear Materials; Site Decommissioning Management Plan (SDMP) sites; and fuel-cycle facilities. A DOE headquarters official discussed the post-closure ownership requirements for 11e.(2) waste.

DOE Low-Level Radioactive Waste The DOE and NRC officials then discussed post-closure ownership requirements both for DOE waste, if disposed of at a privately owned site exclusively for DOE waste, and for DOE sites, if NRC eventually regulates DOE disposal operations.

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LLW Forum Meeting (continued)

Panel Discussion: Commercial LLRW Management in the Context of Other Radioactive Waste Management

A State Perspective: Impact on Policy Decisions of Hosting Both DOE and Commercial Facilities The Forum Participant from the State of Washington discussed Washington's perspective on how hosting both DOE and commercial facilities impacts the state's process for making policy decisions.

A Regional Perspective: Western States' Equity Issues and Implications for Corridor States A staff person for the Western Governors' Association (WGA) discussed WGA policy regarding DOE waste disposal and WGA's protocols for specific shipments of DOE wastes.

A National Perspective: the Federal Facility Compliance Act and the National Dialog A staff person for the National Governors' Association discussed the Federal Facility Compliance Act (FFCA) Task Force process and NGA's activities vis-a-vis the National Dialog.

A Federal Perspective: DOE Waste Management A DOE headquarters official discussed external regulation of DOE; DOE use of commercial facilities; spent fuel; foreign reactor waste; and the 10-year plan.

Waste Manifesting and Tracking

Report of the LLW Forum Waste Information Working Group The Forum Staff Coordinator for the working group reported on the most recent meeting of the working group. (See related story, this issue.)

Forum Participants approved the working group's recommendation that the working group be abolished but that Afton be instructed to complete work on the agreement for uniform application of manifesting procedures among states and compacts for presentation to the full LLW Forum at a future meeting.

Other Topics

Other topics discussed at the meeting included

- new developments in states and compacts, including a lawsuit filed in January 1997 by the California Department of Health Services (DHS) to compel the transfer of federal land in Ward Valley, California, to DHS for use in siting a low-level radioactive waste disposal facility (see related story, this issue);
- regulation of and access to the Envirocare facility in Utah;
- the future role of the Department of Defense's Executive Agency for Low-Level Radioactive Waste, and potential disposal of DOD's waste at a DOE facility;
- Electric Power Research Institute projects designed to assist utilities in dry active waste minimization, wet waste minimization, and mixed waste treatment;
- federal risk harmonization efforts including the activities of the Interagency Steering Committee on Radiation Standards (ISCORS); and
- agenda planning for the May 1997 meeting.

—MAS, ed.

LLW Forum Waste Information Working Group Meets

Members Continue Work on Draft Agreement

Presentations and Discussion

The Waste Information Working Group met on February 13 in conjunction with the LLW Forum meeting. The focus of the meeting was a draft agreement concerning uniform application by states and compacts of policies for manifesting sealed sources, incinerator waste, and decontamination waste being shipped for disposal. During the course of the meeting, members

- heard a presentation by Marc Tenan, Executive Director of the Appalachian Compact and John Carroll, General Counsel for the Appalachian Compact, explaining their proposed revisions to the draft agreement;
- proposed changes to the draft agreement;
- agreed to informally continue work on the agreement; and
- agreed to recommend to the full LLW Forum that the Waste Information Working Group be formally disbanded.

Consideration of Draft Agreement by LLW Forum

Working group members and other LLW Forum Participants will continue to work on the agreement to address any ambiguities resulting from NRC's rule and to provide uniform disposal responsibility guidelines for these waste streams. Another draft agreement will be discussed by a group of interested parties at the May 1997 LLW Forum meeting.

Attendance

The following Waste Information Working Group members were present at the meeting:

- Carol Amick of the Massachusetts Low-Level Radioactive Waste Management Board;
- Janice Deshais of the Northeast Compact;
- William Dornsife of the Pennsylvania Department of Environmental Protection;
- Kevin McCarthy of the Connecticut Bureau of Air Management, Monitoring and Radiation Division; and
- Marc Tenan of the Appalachian Compact.

Others participating in the meeting were

- Tom Carlisle of the Illinois Department of Nuclear Safety;
- Jack Spath of the New York State Energy Research and Development Authority;
- Don Womeldorf of the Southwestern Compact;
- John Carroll of the Appalachian Compact (participating by conference call);
- Holmes Brown, Todd Lovinger, and M. A. Shaker of the LLW Forum/Afton Associates, Inc.

Observing were

- Dale Randall of the Maine Advisory Commission on Radioactive Waste;
- Steve Mapley of the U.S. Department of the Army;
- Ramon Davila of Wyle Laboratories; and
- Bonnie Ross of the Sabo Government Relations Group.

For further information, contact Todd Lovinger of Afton Associates/LLW Forum, at (202)547-2620.

LLW Forum Regulatory Issues Discussion Group Meets

Presentations Focus on Performance Assessment, Mixed Waste

Presentations and Discussions

The Regulatory Issues Discussion Group met on February 12 in conjunction with the LLW Forum meeting. During the course of the discussion group meeting, members

- heard a report from an NRC staff person on the requirements for engineered barriers contained in 10 CFR Part 61 and how NRC will address credit for engineered barriers in the branch technical position on performance assessment;
- heard a report from two state representatives on state perspectives regarding NRC's branch technical position on performance assessment;
- briefly discussed the use of mixed oxide fuel in commercial nuclear power reactors and the use of commercial nuclear power reactors for tritium production (a full discussion was deferred to the full LLW Forum meeting because the scheduled presenter missed the discussion group meeting due to an airline flight delay—see related article, this issue);
- heard a report from a discussion group member on the status of the mixed waste pilot project and the ongoing efforts to collect state-specific data on commercial mixed waste;
- discussed the next steps for the mixed waste pilot project, including the schedule for compilation of data;
- discussed with DOE representatives how external regulation of DOE and DOE privatization initiatives could affect commercial mixed waste management;
- briefly discussed DOE's proposal for external regulation of DOE; and

- agreed to recommend to the full LLW Forum that a DOE representative provide a report on DOE's privatization initiatives and the possible effects on commercial mixed waste management at the next meeting of the LLW Forum.

Attendance

Attending the Regulatory Issues Discussion Group meeting were the following discussion group members:

- Carol Amick of the Massachusetts Low-Level Radioactive Waste Management Board;
- William Dornsife of the Pennsylvania Department of Environmental Protection;
- Ronald Gingerich of the Connecticut Hazardous Waste Management Service;
- Teresa Hay of the Midwest Compact;
- Carl Lischeske of the California Department of Health Services;
- Lee Mathews of the Texas Low-Level Radioactive Waste Disposal Authority; and
- Don Womeldorf of the Southwestern Compact.

Others participating in the meeting were

- Jeff Breckel of the Washington Department of Ecology;
- Jack Spath of the New York State Energy Research and Development Authority;
- John Weingart of the New Jersey Low-Level Radioactive Waste Disposal Facility Siting Board;
- Peter Baldrige of the California Department of Health Services;

Northwest Compact/Washington

Envirocare Investigation Transferred to Feds

- Joseph Esker of the Midwest Compact and the Minnesota Pollution Control Agency;
- Michael Hogan of the New Jersey Department of Environmental Protection;
- Dale Randall of the Maine Advisory Commission on Radioactive Waste;
- Tim Harris of NRC;
- James Kennedy of NRC;
- Terry Plummer of DOE;
- Jeff Snook of DOE-Idaho; and
- Holmes Brown, Laura Scheele, and M. A. Shaker of the LLW Forum/Afton Associates, Inc.

Observing were

- Kenneth Alkema of Envirocare of Utah, Inc.;
- Eugene Gleason of Envirocare of Utah, Inc.;
- Howard Larson of NRC's Advisory Committee on Nuclear Waste;
- Bonnie Ross of Sabo Government Relations Group; and
- Jim Shaffner of US Ecology, Inc.

—LAS

For further information, contact Laura Scheele, Regulatory Issues Discussion Group Coordinator, at (202)547-2620.

The Utah Attorney General's Office has turned over to federal officials the criminal investigation of the financial relationship between Khosrow Semnani, owner of Envirocare of Utah, and Larry Anderson, a former state regulator. Scott Matheson of the U.S. Attorney's Office in Utah will coordinate the investigation for the U.S. Department of Justice. The Federal Bureau of Investigation (FBI), which acts as the Department of Justice's investigative arm, will participate. Several other federal agencies are also expected to be involved, including the Nuclear Regulatory Commission, the Environmental Protection Agency, and the Internal Revenue Service.

Rationale

Various federal agencies and the Utah Attorney General's Office have engaged in a "cooperative effort" to share information about the investigation for several months. According to William Sinclair of the Utah Division of Radiation Control and Todd Ultzinger of the Utah Attorney General's Office, however, a decision was recently made to transfer the investigation to the U.S. Attorney's Office for several reasons:

- Utah investigators have been unable to thoroughly interview Larry Anderson because he currently resides in the State of Nevada, and Utah investigators have limited authority outside of state boundaries. Federal investigators are not subject to the same jurisdictional limitations and have much broader investigative authority.
- Federal investigators have much greater resources available to them, including those of the FBI and other federal agencies. Utah's resources are more limited in scope.
- Federal law provides for more severe penalties for the crimes being investigated.
- The U.S. Attorney's Office has easy access to a grand jury for assistance in the investigation and consideration of indictments.

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Northwest Compact/Washington (continued)

- Utah Attorney General Jan Graham had previously received a \$2,500 contribution from Khosrow Semnani.
- Questions have been raised about the appropriateness of the involvement of the Utah Attorney General's Office in the investigation due to Anderson's claim that he received "informal advice" from the office prior to incorporating Lavicka—a consulting company involved in the investigation.

Background

The investigation arose after Anderson and Lavicka filed suit last October in state district court against Semnani and Envirocare alleging that the defendants owe them in excess of \$5 million for site application and consulting services related to the licensing and operation of the Envirocare disposal facility. Papers filed in that action have revealed that over an eight-year period Semnani gave to Anderson cash, gold coins, and real property totaling approximately \$600,000 in value. (See *LLW Notes*, January 1997, pp. 1, 5-12.)

Envirocare Licensing Decisions

NRC Denial of NRDC Petition The U.S. Nuclear Regulatory Commission recently denied a January 8 petition filed by the Natural Resources Defense Council (NRDC) concerning Envirocare of Utah and Khosrow Semnani. Specifically, the petition requested that NRC

- revoke the three major radioactive waste permits held by Envirocare,
- prohibit the grant of future licenses anywhere in the United States for Semnani or any company with which he has a "significant relationship"; and
- suspend Utah's status as an NRC Agreement State.

(See *LLW Notes*, January 1997, p. 8.)

The decision to deny the petition was transmitted in a February 7 letter from NRC Acting Executive Director Hugh Thompson, Jr. to NRDC Director of Nuclear Programs Thomas Cochran.

Although the NRC is concerned about the implications raised by the issues identified in your petition, at this time we do not believe that specific information exists to take the action requested in the petition. We will be closely monitoring the investigations of this issue being conducted by the State of Utah to ensure that we are aware of any information that may warrant action on our part.

The letter states that, as provided in 10 CFR 2.206(c)(1), the decision to deny the petition will constitute the final action of the Commission 25 days after its issuance "unless the Commission, on its own motion, institutes a review of the Decision within that time."

Recent news reports indicate that NRDC has appealed NRC's decision to deny the petition, arguing that NRC is obligated to take immediate action because of "undisputed evidence that the state of Utah and Envirocare have violated a host of NRC regulations designed to ensure the safety of the licensing process and prevent conflicts of interest." The effect of such an appeal is unclear, however, given that 10 CFR 2.206(c)(2) states that "[n]o petition or other request for Commission review of a Director's decision under this section will be entertained by the Commission."

Utah Regulators' Position re License Review At a February 7 monthly meeting of the Utah Radiation Control Board, officials of the state's Division of Radiation Control reported that they had determined that none of Envirocare's licenses need to be re-reviewed outside of the regularly scheduled five-year renewal process that is currently under way.

For further information on the status of Envirocare's license renewal, see LLW Notes, January 1997, p. 7.

For further information on Utah's regulatory structure, see LLW Notes, January 1997, p. 12.

—TDL

The preceding information was distributed to Forum Participants and Alternate Forum Participants, Federal Liaisons and Alternates via facsimile transmission in a News Flash on February 27, 1997.

Host State TCC Meets in Laughlin, Nevada

The Host State Technical Coordinating Committee (TCC) met in Laughlin, Nevada, on January 28. The meeting was followed by a January 29 tour of the planned low-level radioactive waste disposal site in Ward Valley, California.

Meeting Program

The following items constituted the TCC agenda:

- a status report on the Mobile Low-Level Radioactive Waste Verification System;
- a status report on the National Low-Level Waste Management Program's development of an independent process to review waste forms and containers in accordance with NRC's Branch Technical Position on Waste Form;
- state highlights and reports;
- agency and organizational reports, including reports from DOE-Idaho, NRC, the National Low-Level Waste Management Program, and the Nuclear Energy Institute;
- a presentation on the ToxGon Vitrification process for low-level radioactive waste;
- a presentation on a Macintosh version of an icon-driven performance assessment system;
- a presentation on the Ward Valley site, the proposed facility design, and the license for the planned Ward Valley low-level radioactive waste disposal facility;
- the election of the Convenor and the TCC Planning Committee.

Ruben Alvarado of Texas was re-elected as TCC Convenor.

Planning Committee members are

- Joe Amarello (Connecticut),
- Paul Guichard (North Carolina),
- Carl Lischeske (California), and
- Robert Owens (Ohio).

Attendance

The TCC meeting was attended by

- nine state persons from seven host states (California, Connecticut, Nebraska, North Carolina, Ohio, Pennsylvania, and Texas);
- the LLW Forum liaison to the TCC;
- one person from the U.S. DOE Idaho Operations Office;
- one person from DOE's National Low-Level Waste Management Program at Idaho National Engineering and Environmental Laboratory;
- two persons from the NRC;
- one person from a tribal-based environmental organization;
- two persons from industry-based organizations;
- six persons from private companies; and
- approximately seven persons who did not register on the attendance list.

Upcoming Meeting

The TCC plans to meet again on May 19 in Salt Lake City, Utah. The meeting will be followed by the DOE Low-Level Radioactive Waste Conference on May 20–22.

For further information, contact TCC Moderator Thomas Kerr of DOE's National Low-Level Waste Management Program at (208)526-8465.

—LAS

Southwestern Compact/California

BLM to Require New Permit for California Site Testing

As instructed by California Governor Pete Wilson in late January, the California Department of Health Services (DHS) had planned to begin conducting site tests at Ward Valley soon. The entire testing process was expected to be concluded within three months, i.e., in June 1997. However, a recent letter from the Bureau of Land Management (BLM) may delay the state's plans.

BLM: Additional Authorization Needed

On March 21, Ed Hastey, the State Director of BLM's California State Office, wrote to Carl Lischeske, Manager of DHS' Low-Level Radioactive Waste Program, claiming that the proposed testing is outside the scope of permitted work at the site. Citing an Administrative Determination of which neither DHS nor its licensee, US Ecology, has a record, Hastey stated that the work proposed by DHS "is not authorized and may not be carried out until a new permit may be issued." Hastey also indicated that, "because of Endangered Species Act concerns," BLM would need to consult with the Fish and Wildlife Service, which would have to issue a biological opinion in advance of the testing.

Proposed Testing

As planned by DHS, the testing will involve the following steps:

- A principal scientist will draft a study protocol, which is to include testing for both chlorine-36 and tritium and probably also analysis of other chemicals or isotopic tracers. Peer review will be conducted by a panel of four scientists, including some former members of the National Academy of Sciences Committee that studied Ward Valley. A final determination as to study design will be made by the principal scientist after consideration of comments received from the peer review panel.
- A series of test holes of varying depths will be drilled at various locations, and samples will be taken at various depth intervals, as specified in the study protocol. The drilling will be conducted by a contractor of the licensee under the direction of a separate DHS contractor.

- Several laboratories will perform sample analyses, with samples being split and sent to separate laboratories to ensure the reliability of the analytical results. Analytical results will be reported to the principal scientist.
- The principal scientist will validate the data, ensuring their quality and reliability.
- The principal scientist will evaluate the data, with peer review. The principal scientist will prepare a report, to be made available to the public, documenting the study.

DHS Requests DOE's Assistance in Tests

On January 27, Lischeske sent a letter to DOE asking that DOE's National Low-Level Waste Management Program fund the peer review portion of the testing. The letter included a cost estimate of \$25,000. Lischeske subsequently submitted another request, on March 18, seeking about \$60,000 in funding for Lawrence Livermore National Laboratory to "perform some of the sample preparation and analytical work for tritium and chlorine-36."

For further information, contact Carl Lischeske of DHS at (916)323-3693.

—TDL, CN

Civil Rights Complaint by Local Indian Tribes

On February 6, five American Indian tribes filed an administrative civil rights complaint with the Interior Department asserting that transferring the Ward Valley site to the State of California, or closing it for environmental testing, would discriminate against them. The tribes complain that construction and operation of the proposed Ward Valley low-level radioactive waste disposal facility would desecrate tribal ceremonial grounds. Staff of the California DHS, however, report that the department did cultural investigations throughout the region and concluded that it contained no sites sacred to Native Americans. (See *LLWNotes*, February 1997, pp. 6-7.)

Senate Judiciary Committee Approves Texas Compact Bill

On March 20, the Senate Judiciary Committee conducted a markup on legislation to grant congressional consent to the Texas Low-Level Radioactive Waste Disposal Compact. The bill, S. 270, was approved by the committee without amendments. It now awaits consideration by the full Senate.

S. 270 was introduced in the U.S. Senate on February 5. Identical legislation, H.R. 629, was introduced in the U.S. House of Representatives on February 6. The House bill has been referred to the Subcommittee on Energy and Power of the House Commerce Committee. Both the House and Senate bills are identical to legislation introduced during the 103rd and 104th Congresses.

For additional information and a list of co-sponsors, see LLW Notes, February 1997, pp. 20-21.

Portions of the story on the previous page were distributed to Forum Participants and Alternate Forum Participants, Federal Liaisons and Alternates via facsimile transmission in a News Flash on February 11, 1997.

U.S. Department of Energy

Peña Sworn In as Energy Secretary, Grumbly Departs DOE

On March 12, the U.S. Senate voted to confirm Federico Peña as Energy Secretary. Vice President Vice-President Al Gore administered the oath of office to Secretary Peña on March 21. The following excerpt is taken from a March 13 speech by Secretary Peña to DOE employees. (Emphasis added.)

I want to start my administration energetically. In fact, I will be testifying today before the Senate Interior Appropriations Committee, and I have three more budget hearings scheduled for next week. To help me get going quickly, I am ready to announce nine members of my senior team. I am pleased that **Elgie Holstein** has agreed to serve as my chief of staff. Elgie focused on energy issues at the National Economic Council and has served on the Presidential Advisory Commission on Radioactive Waste Management. **Elizabeth Montoya**, a former employee at Los Alamos as well as the White House, will be my Deputy Chief of Staff. The public affairs director will be **Brooke Anderson**, who was Congressman Skaggs' Deputy Chief of Staff. **Tom Vellenga** and **John Angell**, formerly with Leon Panetta, the President of the United States chief of staff will join as Senior Policy Advisors. Recognizing the high quality of DOE employees, I have asked **Dan Reicher** and **Kyle Simpson** to join my staff as Senior Policy Advisors. Moving up within DOE are **Leigh Slaughter** from General Counsel and **Anna Ferrera** of the Policy Office, who will serve as Special Assistants in my office. The collective talent and experience of this team will ensure that DOE continues to meet its commitments and help implement my priorities.

On March 24, DOE Undersecretary of Energy Thomas Grumbly resigned his position. He will leave the Department on April 4 to take an executive position at ICF Kaiser.

California Department of Health Services v. Babbitt (continued)

The plaintiffs argue that the defendants' failure to transfer the land has a significant potential adverse impact on the health, safety, and welfare of the citizens of California and the other compact states because it has resulted in their continued exposure to the hazards associated with the temporary storage of low-level radioactive waste in hospitals, universities, and businesses. Most of these temporary storage sites, they assert, are located in densely-populated urban centers.

For Actions in Excess of Authority, and For Abuse of Discretion, Under FLPMA

The plaintiffs assert that the defendants have an affirmative duty to interpret and implement their responsibility over the transfer of federal land in a manner consistent with the Federal Land Policy and Management Act (FLPMA), which provides for such transfers if they serve the national interest. Plaintiffs assert that defendants further have an affirmative duty to interpret and implement their federal land transfer responsibilities consistent with federal policy as set forth in the Atomic Energy Act (AEA), the Low-Level Radioactive Waste Policy Act (LLRWPA), and the Southwestern Low-Level Radioactive Waste Compact Consent Act (Compact Consent Act). The defendants are, according to the plaintiffs, prohibited from inserting any terms, covenants, conditions, or reservations in the issuance of land transfer patents that would interfere with, limit, restrict, contradict, or modify these federal statutes.

The plaintiffs allege that the defendants have acted in excess of their authority and abused their discretion under FLPMA by

- failing to issue a patent based upon the January 1993 Record of Decision that determined the transfer would serve important public objectives;
- refusing to issue a patent until plaintiffs conducted a hearing not required by FLPMA, National Environmental Policy Act, or the Record of Decision;
- refusing to issue a patent until completion of the NAS review;

- refusing to proceed with the land transfer based upon the findings of the NAS Report without receiving certain binding commitments from the State of California;
- refusing to issue a patent because plaintiffs would not grant to Interior or others oversight of the facility—"[f]ederal law does not authorize the State of California to transfer or delegate to Interior, or share with Interior, the State's authority to regulate for purposes of radiation safety";
- refusing to issue a patent in order to conduct tritium testing at the Ward Valley site "for which Defendants lack expertise"; and
- demonstrating through the above-described series of demands that they will continue to refuse to issue a patent to transfer the land in contravention of the express federal policies set forth in the AEA, the LLRWPA, and the Compact Consent Act—"[b]y their actions, Defendants have constructively denied Plaintiffs' application for direct sale of the Ward Valley land notwithstanding the Record of Decision."

The plaintiffs claim that many of the defendants' actions violate the exclusive commitment of authority to protect against radiation hazards that is granted to the plaintiffs under the Agreement States provision of the AEA, state law, and the Compact Consent Act. "Defendants have no statutory authority to regulate for protection against radiation hazards, or authority to regulate LLRW disposal facilities."

For Abuse of Discretion Under NEPA

The National Environmental Policy Act (NEPA) grants to the defendants the discretion to determine whether preparation of a Supplemental Environmental Impact Statement (SEIS) is required. The plaintiffs assert that NEPA only requires the defendants to prepare an SEIS when (1) the agency makes substantial changes in the proposed action that are relevant to environmental concerns, or (2) there are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts.

The plaintiffs argue that the defendants have abused their discretion by issuing the Notice of Intent to Prepare, and by continuing to prepare, an SEIS in the absence of information or circumstances that warrant preparation of an SEIS under applicable regulations, and by refusing to issue a patent during preparation of the SEIS. They contend that such action is arbitrary and capricious and should be corrected by the court. "The Administrative Procedure Act ... authorizes a reviewing court to compel agency action unlawfully withheld or unreasonably delayed, and to hold unlawful and set aside agency action, findings and conclusions found to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law."

For Declaratory Relief

The plaintiffs contend that the only factors which may be considered by Secretary Babbitt in determining whether to transfer the Ward Valley site, and in establishing the terms and conditions of the patent, are

- (1) the policies established in the LLRWPA and the Compact Consent Act;
- (2) the relative responsibility of plaintiffs, as the designated agents under state and federal law for protection against radiation hazards, to determine that the issuance of a radioactive materials license satisfies all public health and safety requirements; and
- (3) the extensive environmental review of the Ward Valley project prepared jointly by the plaintiffs and defendants.

The defendants, on the other hand, assert that they are entitled to evaluate the suitability of the Ward Valley site under their authority to include terms and conditions in patents "necessary to insure proper land use and protection of the public interest."

Accordingly, the plaintiffs allege that a dispute has arisen as to the regulatory scope of the defendants' authority under FLPMA and as to the plaintiffs' rights under FLPMA, the AEA, the California Radiation Control Law, the LLRWPA, and the Compact Consent Act. The plaintiffs are seeking a judicial determination as to those rights and duties.

Relief Requested

The plaintiffs are requesting that the court

- enter an order instructing defendants to issue a patent immediately, in accordance with the January 19, 1993 Record of Decision;
- issue a declaration that defendants' authority under FLPMA is limited by the federal policies expressed in the California Desert Conservation Area Management Plan, the AEA, the LLRWPA, and the Compact Consent Act;
- issue a declaration that the defendants have no authority under FLPMA to regulate for the purpose of protecting the public health and safety or the environment against radiation hazards;
- issue a declaration that the defendants have no statutory authority under FLPMA to withhold issuance of the patent for the Ward Valley site in order to engage in activities concerning the suitability of the site or facility to protect against radiation hazards, or to include terms or conditions in the patent regarding such suitability issues; and
- issue a declaration that, as long as California remains an Agreement State, the plaintiffs have the exclusive responsibility to protect the public health and safety against radiation hazards from low-level radioactive waste subject to the LLRWPA and with respect to the Southwestern Compact's regional disposal facility.

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Background: California Department of Health Services v. Babbitt

The following is a brief explanation of events leading up to the filing of the suit as described in the State of California's complaint. Persons interested in additional information are therefore directed to the referenced articles in the *LLWNotes* and to the referenced documents themselves.

Formation of Compact, Selection of Site, and Preparation of EIR/S

In response to the Low-Level Radioactive Waste Policy Act and its 1985 amendments, California entered into the Southwestern Low-Level Radioactive Waste Disposal Compact with the States of Arizona, North Dakota, and South Dakota. California was designated as the compact's first host state and is thereby charged with responsibility for timely development of a regional low-level radioactive waste disposal facility. The state chose US Ecology as its contractor and identified land at Ward Valley on which to site its facility. Because the land is owned by the federal government, California's State Lands Commission sought to have it conveyed to the state by an administrative process known as indemnity selection under which state lands are exchanged for those owned by the federal government. The California Department of Health Services and the U.S. Bureau of Land Management jointly prepared an environmental impact report/statement (EIR/S) addressing environmental impacts of the indemnity selection and the proposed facility as required by the National Environmental Policy Act (NEPA) and the California Environmental Quality Act (CEQA). A final joint EIR/S was issued in April 1991. The EIR/S concluded that the residual impacts of the Ward Valley disposal facility after mitigation were not significant.

Change in Method of Land Conveyance and Interior's Announcement of its Intention to Sell the Land

In July 1992, DHS filed an application with the U.S. Bureau of Land Management to purchase the Ward Valley site through direct land sale, which DHS had determined to be preferable to indemnity selection. (See *LLWNotes*, August/September 1992, p. 13.) the U.S. Bureau of Land Management elected to prepare a supplemental environmental impact statement (SEIS) to evaluate any environmental implications of the change of method of conveyance. The SEIS concluded that no environmental consequences were found and that all of the conditions necessary for a direct land sale of the site were met. On January 7, 1993, then-Secretary of Interior Manuel Lujan redesignated the final SEIS as a "Supplemental Environmental Assessment" and made a finding of "no significant impact" under NEPA with respect to the change in method of conveyance. Lujan also issued a written statement announcing the Interior Department's intention to sell the Ward Valley site to the State of California. (See *LLW Notes*, January 1993, pp. 1-2.) The next day, US Ecology paid \$500,000—the amount determined by the U.S. Bureau of Land Management to represent the site's fair market value—to the Interior Department for the land. (This purchase money was later returned to US Ecology.)

TRO Blocks Land Transfer

On the same day that US Ecology paid for the land, however, the U.S. District Court for the Northern District of California issued an order temporarily restraining Interior from delivering to DHS the patent to the Ward Valley site. The temporary restraining order arose under *Desert Tortoise v. Lujan*, an action initiated by several environmental and anti-nuclear groups in an attempt to prevent the land transfer until federal agencies designated critical habitat for the desert tortoise under the Endangered Species Act. (See *LLWNotes*, January 1993, p. 8.)

Issuance of a Record of Decision

The temporary restraining order did not, however, prevent Lujan from issuing a Record of Decision. Lujan issued a written record on January 19, 1993, stating his decision to approve the land sale. The record incorporated a U.S. Fish and Wildlife Service biological opinion that found no jeopardy to the desert tortoise, the final EIS and final Supplemental Environmental Assessment for the project, and Lujan's finding of no significant impact with respect to the change in method of conveyance. The record contained several conditions for the direct sale, including that the land would revert to the federal government if the state did not hold a hearing previously agreed to by state officials on remaining scientific questions "unless precluded by a court of competent jurisdiction."

Court Ruling that Adjudicatory Hearings are Not Required

On May 7, the California Court of Appeal in *California Radioactive Materials Management Forum v. Department of Health Services* ruled that neither state nor federal law require formal adjudicatory hearings to be held. (See *LLW Notes*, May 1993, pp. 15-17.) Governor Wilson subsequently agreed to conduct a limited hearing anyway, at Babbitt's request.

License Issuance and Lease Execution

On September 15, 1993, the U.S. Bureau of Land Management issued a final SEIS concluding that the Ward Valley project served a valuable public purpose, created no significant adverse environmental impacts, and complied with all federal laws and regulations. The next day, DHS issued an operating license to US Ecology and executed a lease for the site conditioned upon the subsequent transfer of the land to DHS. (See *LLW Notes*, September 1993, pp. 1, 3-4.)

Babbitt Postpones Action

On November 24, 1993, Babbitt notified Wilson by letter that he was postponing the hearing and land transfer pending the outcome of litigation challenging the state's issuance of a license. (See *LLW Notes*, Winter 1993, pp. 14-19.)

Publication of the Wilshire Report and Subsequent NAS Review

On December 8, 1993, a report known as the "Wilshire Report" was released by three geologists employed by the U.S. Geological Survey but acting as private individuals. The geologists expressed concern based upon a review of the draft EIR/S that the proposed facility might contaminate the Colorado River. (See *LLW Notes*, Winter 1993, pp. 14-19.) Their report expanded upon concerns previously expressed in a memo to Babbitt dated June 2, 1993, which was referenced in the final SEIS as containing no new information or issues beyond those responded to in the April 1991 final EIR/S. Nonetheless, in March 1994, Babbitt requested that the Board on Radioactive Waste Management of the National Academy of Sciences (NAS) assemble an independent expert panel to evaluate issues raised in the Wilshire Report. (See *LLW Notes*, February/March 1994, p. 15.) Following its review, the NAS issued a report on May 11, 1995, concluding that contamination of ground water by facility operations would be "highly unlikely," and that contamination of the Colorado River was not a credible or significant issue. The NAS report recommended that further site characterization work be performed only to "enhance the data base for monitoring the complex unsaturated zone." (See *LLW Notes Supplement*, June 1995, pp. 8-10.)

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Background: California Department of Health Services v. Babbitt (continued)

Babbitt's Agreement to Transfer the Land and the Court's Upholding of the License and EIR/S

After publication of the NAS report and in response to a request from Wilson, Babbitt announced that he would proceed with the land transfer subject to "receiving a binding commitment from the State of California that the additional safeguards recommended by the Academy panel be carried out, that the total volume and radioactivity of the materials to be disposed of at the site will be limited to the amounts currently specified in condition 20 of the state license for the facility, and that there be a specific limit on plutonium." Babbitt concluded that "[w]ith appropriate conditions based on the recommendations of that report, I am now confident that the transfer is in the public interest." In September 1995, California offered Babbitt an agreement stating that DHS would implement specified recommendations of the NAS report and abide by other conditions in return for issuance of the patent. The following month, the California Court of Appeal upheld the validity of the Ward Valley license and the sufficiency of the EIR/S in *Fort Mojave Indian Tribe v. California Department of Health Services*. (See *LLW Notes*, October 1995, pp. 23–25.)

Interior's Rejection of California's Transfer Agreement and Announcement of the Preparation of a Second SEIS

On October 20, 1995, Deputy Interior Secretary John Garamendi rejected California's proposed agreement because it limited the ability of Interior or others to oversee the state's regulation of the Ward Valley facility. (See *LLW Notes*, October 1995, pp.14–16.) Garamendi then announced that the U.S. Bureau of Land Management would prepare a second SEIS and would conduct further testing to establish the safety of the Ward Valley site.

The stated justifications for the second SEIS were

- the passage of five years since preparation of the EIS;
- Interior's "responsibility to assure the public that their health and safety concerns are adequately addressed";
- consideration of "the effect of the transfer on nearby Indian sacred sites"; and
- reports prepared by the U.S. Geological Survey (USGS) about a low-level radioactive waste disposal facility in Beatty, Nevada, even though—by Interior's own account—USGS had concluded that the reports were "too inconclusive to be relevant" to the Ward Valley site.

Garamendi announced that Interior would not take any action on the land transfer until completion of the SEIS, which was expected to take a year. (See *LLW Notes*, March 1996, pp. 14–18.)

DHS' Objections to the Preparation of a Second SEIS

On May 17, 1996, the U.S. Bureau of Land Management issued a Notice of Intent to Prepare an SEIS for the Ward Valley land transfer. (See *LLW Notes*, June/July 1996, pp. 16–17.) In July, DHS filed formal objections to the preparation of the SEIS, advising the U.S. Bureau of Land Management that no significant new circumstances or information exist to justify its preparation. Representatives of the U.S. Bureau of Land Management and DHS subsequently met, and in November 1996 DHS advised the U.S. Bureau of Land Management that none of the comments received during the scoping process for the second SEIS contain significant new information. DHS requested the U.S. Bureau of Land Management to set aside its decision to prepare the SEIS and to transfer the land. On December 11, 1996, the U.S. Bureau of Land Management issued a Request for Proposal to prepare the second SEIS.

—TDL

The preceding information was distributed to Forum Participants and Alternate Forum Participants, Federal Liaisons and Alternates via facsimile transmission in a News Flash on February 11, 1997.

U.S. Supreme Court Tackles Property Rights Issues

This term, the U.S. Supreme Court accepted for review two cases that involve the ongoing struggle between the rights of private property owners and concern for protecting the environment and endangered species. Forum Participants may be interested in the cases due to their potential impact on siting decisions. Persons desiring further information are directed to the case documents themselves.

Suitum v. Tahoe Regional Planning Agency

The U.S. Supreme Court is expected to issue a narrow ruling by July in a case involving a relatively significant clash between property rights and environmental protection. The case concerns a claim for compensation by an 82-year old Nevada landowner, Bernadine Suitum, who has been prohibited from building a home on her property near Lake Tahoe by a government agency that claims erosion from the house would damage the clarity of the mountain lake. Upon making that determination, the Tahoe Regional Planning Agency offered Suitum “tradable development rights” (TDRs), which could be sold to landowners in unprotected parts of the Tahoe area to allow them to do more extensive construction than they could do otherwise. Suitum’s TDRs are estimated to be worth as much as \$35,000, but her property is valued at more than \$100,000. Her attorney says she does not want the TDRs and should not be forced to accept them.

The giving of TDRs instead of cash payments to landowners whose building rights are being restricted is a technique widely used by state and local governments to protect farmland, historic buildings, open spaces, endangered species, sensitive watersheds, and scenic coastal lands. Suitum claims the practice is unfair, arguing that the government has denied her all use of her property and is constitutionally obligated to compensate her in cash. The regulatory agency disagrees, claiming that Suitum must try to salvage some economic benefit from her property—such as by sale of the TDRs—before she is entitled to turn to the courts for compensation. Two lower courts have agreed with the agency that the issue of a compensatory cash payment by the regional planning agency is not ready, or “ripe,” for review.

Although the Supreme Court is expected to rule only on the narrow issue of “ripeness”—whether or not the

claim should be heard yet—the case has attracted national attention because the Court’s decision could clarify what hurdles landowners must clear before pursuing a claim that government regulation amounted to a “taking” of their private property. Friend of the court briefs have been filed in support of Suitum by the American Farm Bureau Federation, Defenders of Property Rights, the American Homeowners Foundation, the American Land Rights Association, and the National Association of Homebuilders. Support for the regulatory agency has been filed by seven states, i.e., Hawaii, Nevada, New Jersey, New York, Maryland, Montana, and Vermont; the American Planning Association; the National League of Cities; the National Governors’ Association; the National Trust for Historic Preservation; and California Governor Pete Wilson.

If the U.S. Supreme Court upholds the findings of the lower courts that the issue is not yet ripe for review, then the case will be closed. If the court rejects the lower courts’ opinions, then the case will be remanded to a lower court for a trial on the merits of the case.

Bennett v. Spear

On March 19, the U.S. Supreme Court issued a ruling in *Bennett v. Spear*, holding that landowners can sue under the federal Endangered Species Act because of economic loss.

The case stems from the appeal of a decision issued by the U.S. Court of Appeals for the Ninth Circuit which held that citizens do not have standing to bring suits under the Endangered Species Act based on such loss.

Federal Legislative Approach Congress could also address the issue of citizen losses incurred as a result of the Endangered Species Act. Currently, a bill (H.R. 752) is pending before the House Resources Committee that would reaffirm the right of citizens to file suit for economic damages under the Endangered Species Act. The bill, which is titled the “Citizens Fair Hearing Act of 1997,” was introduced by Representative Helen Chenoweth (R-ID) on February 13 and has 46 co-sponsors. No similar bill is pending in the U.S. Senate.

—TDL

GAO to Study DOI's Actions

In a letter dated February 3, nine U.S. Senators and Representatives requested a “timely General Accounting Office determination” concerning the following issues related to the Interior Department’s process for the Supplemental Environmental Impact Statement (SEIS) on the proposed Ward Valley land transfer:

- whether or not any “relevant and significant new environmental, radiological, hydrological, or other issues” have arisen concerning Ward Valley since the issuance of the National Academy of Sciences (NAS) report in April 1995;
- whether or not any new significant issues have been identified by Interior in its SEIS scoping process for the Ward Valley facility that have not previously been considered in the licensing, scientific, or judicial review performed to date;
- to what extent the Interior Department has sought and used other sources of expertise—including NRC, DOE, the California Department of Health Services’ completed licensing proceeding, and the NAS report—in identifying new radiological issues to be addressed in the second SEIS;
- what findings or statements have been made by NRC or DOE regarding the adequacy of California’s licensing process;
- whether the Interior Department has ever used factually incorrect information provided to it by non-government sources when the correct information was available from government sources;
- to what extent California has considered cultural resource issues; and
- whether Interior has considered the environmental justice impacts of the “no action” alternative under which wastes are stored in urban areas with significant minority populations.

The following members of Congress signed the letter to GAO:

Senator Frank Murkowski (R-AK), Chair of the Senate Energy and Natural Resources Committee

Representative Don Young (R-AK), Chair of the House Resources Committee

Representative Ken Calvert (R-CA)

Representative Ron Packard (R-CA)

Representative Joe Barton (R-TX)

Representative Dan Schaefer (R-CO)

Representative Brian Bilbray (R-CA)

Representative David Dreier (R-CA)

Representative Tom Campbell (R-CA)

According to General Accounting Office staff, GAO has decided to proceed with an investigation of the above-stated issues, has informed DOI of the congressional request, and has requested DOI’s cooperation. After GAO develops a suggested process for studying the issues, GAO will meet with Congressional staff to reach an agreement on the scope of work and a timetable for completing the study.

—TDL

The preceding information was distributed to Forum Participants and Alternate Forum Participants, Federal Liaisons and Alternates via facsimile transmission in a News Flash on February 11, 1997.

Congress Scrutinizes FY '98 Budget Requests

Congress has begun its review of FY '98 budget requests submitted by various federal agencies. Below is a brief summary of selected agencies' requests.

U.S. Department of Energy

DOE has submitted a \$16.6-billion budget request, which is 2.6 percent higher than the previous year's budget of \$16.2 billion. The majority of the increase is for construction and privatization projects.

The request includes \$6.8 billion for environmental restoration and waste management, approximately \$1.1 billion more than last year's estimated expenditures of \$5.7 billion. Only \$1.5 billion, however, is allocated for waste management—a decrease from last year's estimated expenditures of \$1.8 billion. Of that, \$4.3 million has been requested for the National Low-Level Waste Management Program.

Only \$1.5 billion, however, is allocated for waste management—a decrease from last year's estimated expenditures of \$1.8 billion. Of that, \$4.3 million has been requested for the National Low-Level Waste Management Program.

DOE's budget request includes \$380 million for funding civilian radioactive waste management, of which \$325 million is for continued characterization of Yucca Mountain for potential use as a high-level waste repository. This represents level funding for the project.

U.S. Environmental Protection Agency

EPA's FY '98 budget request is \$7.65 billion—\$850 million more than was appropriated by Congress in FY '97. The majority of the increase is allocated for the agency's Superfund program, to assist in efforts to double the pace of Superfund cleanups. This allocation is likely to be controversial given that the Superfund law has been up for revision for the past four years.

U.S. Interior Department

Interior's FY '98 budget request of \$7.5 billion is 6.6 percent higher than estimated current expenditures. The increase can be attributed largely to ecosystem restoration efforts, higher parks operations allocations, and elevated tribal trust funds—including a \$77-million increase in the budget of the Bureau of Indian Affairs. The \$1.1-billion budget request for the Bureau of Land Management is slightly less than the bureau's anticipated expenditures for 1997.

Interior Secretary Bruce Babbitt testified at hearings on the budget request beginning in late February. The hearings are expected to continue through mid-April.

U.S. Nuclear Regulatory Commission

NRC has submitted a budget of \$481.3 million for FY '98—\$4.5 million more than NRC's FY '97 budget. The request includes \$84.8 million for NRC's nuclear materials and nuclear waste program, a \$4.7-million increase from this year. Within this account, the allocation for high-level waste activities was raised to \$17 million, an increase of \$6 million. The low-level radioactive waste and decommissioning request was reduced from \$17.8 million this year to \$17.4 million in FY '98. The requested level of funding for other nuclear materials and waste activities was also reduced, from \$7.7 million to \$7.2 million.

NRC's budget request includes a \$2.1-million increase in funding levels for its management and support program, which is budgeted in FY '98 at \$154.5 million. The budget request reduces proposed funding levels for the commission's Inspector General from \$5 million to \$4.8 million.

The majority of NRC's budget—approximately \$462.3 million out of a budget request of \$481.2 million—will be offset by fees on nuclear utilities and other licensees.

—TDL

Senate Committee Passes High-Level Waste Bill

Clinton Threatens Veto

On March 13, the U.S. Senate Energy and Natural Resources Committee passed S. 104, the Nuclear Waste Policy Act of 1997, by a vote of 15 to 5. (See *LLW Notes*, February 1997, p. 22.) The controversial bill—which calls for construction of a temporary high-level waste storage facility at Yucca Mountain, Nevada—is opposed by Nevada's two Democratic Senators. In addition, President Clinton has threatened to veto the bill, arguing that it would designate Yucca Mountain as the nation's nuclear waste disposal site without a thorough review and would divert resources from the permanent repository now under study.

Amendments

Prior to passage of the bill, the committee approved several amendments and rejected others after vigorous debate. Among those approved were

- a proposal by Senator Larry Craig (R-ID) requiring that at least five percent of the high-level waste received each year by the interim facility be of defense origin; and
- two amendments by Senator Ron Wyden (D-OR) stipulating (1) that standards be adopted for transportation of waste to the interim facility that are commensurate with those currently applied to transuranic waste shipped to the Waste Isolation Pilot Program (WIPP) in New Mexico, and (2) that DOE's Hanford site be eliminated as a potential commercial spent fuel interim site.

The committee rejected several amendments offered by Jeff Bingaman (D-NM), including proposals to extend deadlines, limit the facility's capacity, and increase environmental reviews of the proposed facility site.

Background

Prior Legislation The legislation is similar to a bill that was passed by the Senate during the 104th Congress by a vote of 63 to 37—four votes shy of the two-thirds majority needed to override a Presidential veto. Although similar legislation had been introduced in the House, it was never brought to the floor. (See *LLW Notes*, August/September 1996, p. 37.)

Prior Judicial Involvement The U.S. Court of Appeals for the District of Columbia Circuit held in July 1996 that DOE has a statutory obligation to begin taking spent fuel by 1998 even though a permanent disposal facility will not yet be available. In January 1997, a group of nuclear utilities and a national coalition of states and Attorneys General filed two additional suits seeking, among other things, to enforce the district court's order. Those cases are currently pending before the U.S. Court of Appeals for the District of Columbia Circuit. (See *LLW Notes*, February 1997, p. 22.)

—TDL

New Materials and Publications

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LLW Forum

^{DM} *LLW Forum Meeting Report, February 11-14, 1997.* Afton Associates, Inc. February 1997. Proceedings from the LLW Forum winter meeting including attendance listing. (Distributed on March 11, 1997.)

^{DM} *Prerequisites for a Stable Disposal Future at Barnwell* Presented to the Low-Level Waste Forum February 1997 Meeting. Overhead slides presented by George Antonucci, Director, New Site Development, Chem-Nuclear Systems, Inc. on February 12, 1997. (Distributed on March 11, 1997.)

^{DM} *New Waste Processing Strategies for LLRW Management Service Suppliers.* Overhead slides presented by James Gibson, National Sales Manager, Scientific Ecology Group, Inc. on February 12, 1997. (Distributed on March 11, 1997.)

^D *LLW Forum Contact Information.* Afton Associates, Inc. March 1997. Contains contact information for LLW Forum Participants and Alternate Forum Participants, Federal Liaisons and Alternates; and representatives of compacts and their member states, host states and sited states; unaffiliated states; state organizations; federal agencies; and Congressional committees. (Distributed on March 11, 1997.)

^{PA} Letter from Gregg Larson, LLW Forum Convenor, to Jeff Breckel, Interstate Liaison, and Michael Garner, Policy Analyst for Technical Assistance and Regulatory Coordination, of the Washington Department of Ecology's Nuclear Waste Program transmitting a resolution that Forum Participants passed during the February 1997 LLW Forum meeting. March 12, 1997.

^{PA} Letter from Gregg Larson, LLW Forum Convenor, to Jeffrey Snook, Program Manager, National Low-Level Waste Program, DOE, transmitting a resolution that Forum Participants passed during the February 1997 LLW Forum meeting. March 1, 1997. (Distributed on March 11, 1997.)

^{PA} Letter from Gregg Larson, LLW Forum Convenor, to Paul Kaminski, Undersecretary of Defense for Acquisition and Technology, transmitting a resolution that Forum Participants passed during the February 1997 LLW Forum meeting. Attached was a copy of the LLW Forum resolution on U.S. Department of Defense management of low-level radioactive waste. February 24, 1997. (Distributed on March 11, 1997.)

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States and Compacts

Midwest Compact/Ohio

Midwest Interstate Low-Level Radioactive Waste Compact Commission Databook. Midwest Compact Commission. February 1997. Includes information on radioactive material use, commercial LLRW generators in the compact region, LLRW classification, regional and national disposal volumes and curies, and radiation doses and decay rates. To obtain a copy, contact Sandra Schmidt of the Midwest Compact Commission at (612)293-0126.

Statewide Public Information and Involvement Program on Low-Level Radioactive Waste Management in Ohio. Ohio Low-Level Radioactive Waste Facility Development Authority. October 1996. Outlines steps that the Ohio Authority will take in order to encourage meaningful public involvement and participation in decisions related to the siting, development, licensing, and operation of a low-level radioactive waste disposal facility in Ohio. To obtain a copy, contact the Ohio Authority at (614)644-2776.

Northeast Compact/Connecticut/New Jersey

We Live in a Radioactive World. Brochure. New Jersey Low-Level Radioactive Waste Disposal Facility Siting Board. October 1996. Explains how radioactive materials are used in everyday life.

Transporting Radioactive Materials in New Jersey: Some Facts. Brochure. New Jersey Low-Level Radioactive Waste Disposal Facility Siting Board. October 1996. Explains some facts about the transportation of radioactive materials in New Jersey, how the material is packaged, and where the materials are being transported to and from.

To obtain the above-listed documents, contact the Siting Board at (609)777-4247.

Southwestern Compact/California

^D Letter from John R. Pierson, Deputy Director and Chief Counsel, and Peter Baldridge, Senior Staff Attorney, Department of Health Services, Health and Welfare Agency, State of California, to Laura Yoshi, Chief, Cross Media Division, Region 9, EPA, re California's history of addressing the concerns of the Native American tribes about the Ward Valley, California low-level radioactive waste disposal facility project and EPA's involvement with respect to environmental justice and Ward Valley. March 12, 1997.

Letter from Carl Lischke, Manager, Low-Level Radioactive Waste Program, Department of Health Services, Health and Welfare Agency, State of California, to Clarice Gaylord, Director, Office of Environmental Justice, EPA, re environmental justice considerations relevant to the Ward Valley, California low-level radioactive waste disposal facility project. January 23, 1997. (Distributed at the LLW Forum meeting in San Diego, California, on February 11, 1997.)

Southwestern Low-Level Radioactive Waste Commission Annual Report. July 1, 1995 to June 30, 1996. Southwestern Commission. January 1997. To obtain a copy, contact Don Womeldorf of the Southwestern Commission at (916)323-3019.

Nuclear Regulatory Commission (NRC)

Standard Review Plan on Power Reactor Licensee Financial Qualifications and Decommissioning Funding Assurance. (NUREG-1577). Draft Report for Comment. Division of Reactor Program Management, Office of Nuclear Reactor Regulation, NRC. January 1997. Describes the process NRC uses to review the financial qualifications and methods of providing decommissioning funding assurance required of power reactor licensees.

Obtaining Publications

to obtain federal government information

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- DOE Press Office(202)586-5806
- DOE Public Information Office, Secondary Distribution Center(202)586-9642
- EPA Public Information Center(202)260-7751
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- Government Printing Office (to order entire *Federal Register* notices)(202)512-1800
- NRC Public Document Room(202)634-3273
- U.S. House of Representatives Document Room(202)225-3456

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- U.S. Senate Document Room(202)228-2815
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- EPA Listserve Network • Contact John Richards for information on receiving *Federal Register* notices
.....VOICE (202)260-2253 • FAX (202)260-3884 • INTERNET richards.john@epamail.epa.gov
- GPO Access (for the *Congressional Record*, *Federal Register*, congressional bills and other government documents and access to more than two dozen government databases)
.....web browser—Superintendent of Document's home page at
http://www.gpo.gov/su_docs/aces/aaces001.html
.....dial-in by modem—(202)512-1661, type "swais" and log in as "guest"
.....general information— VOICE (202)512-1530 or INTERNET help@eids05.eids.gpo.gov

Receiving *LLW Notes* by Mail

LLW Notes and the *Summary Report: Low-Level Radioactive Waste Management Activities in the States and Compacts* are distributed to state, compact and federal officials designated by LLW Forum Participants or Federal Liaisons.

Members of the public may apply to DOE's National Low-Level Waste Management Program at the Idaho National Engineering and Environmental Laboratory (INEEL) to be placed on a public information mailing list for copies of *LLW Notes* and the supplemental *Summary Report*. Afton Associates, the LLW Forum's management firm, will provide copies of these publications to INEEL. The LLW Forum will monitor distribution of these documents to the general public to ensure that information is equitably distributed throughout the states and compacts.

To be placed on a list to receive LLW Notes and the Summary Report, by mail, please contact Donna Lake, Senior Administrative Specialist, INEEL at (208)526-0234. As of March 1996, back issues of both publications, are available from the National Technical Information Service, U.S. Department of Commerce, 5285 Port Royal Road, Springfield, VA 22161, (703)487-8547.

Low-Level Radioactive Waste Disposal Compact Membership



Appalachian Compact

Delaware
Maryland
Pennsylvania *
West Virginia

Central Compact

Arkansas
Kansas
Louisiana
Nebraska *
Oklahoma

Central Midwest Compact

Illinois *
Kentucky

Midwest Compact

Indiana
Iowa
Minnesota
Missouri
Ohio *
Wisconsin

Northwest Compact

Alaska
Hawaii
Idaho
Montana
Oregon
Utah
Washington * •
Wyoming

Rocky Mountain Compact

Colorado
Nevada
New Mexico

Northwest accepts Rocky Mountain waste as agreed between compacts.

Northeast Compact

Connecticut *
New Jersey *

Southeast Compact

Alabama
Florida
Georgia
Mississippi
North Carolina *
Tennessee
Virginia

Southwestern Compact

Arizona
California *
North Dakota
South Dakota

Texas Compact

Maine
Texas *
Vermont

The compact has been passed by all three states and awaits consent by the U.S. Congress.

Unaffiliated States

District of Columbia
Massachusetts
Michigan
New Hampshire
New York
Puerto Rico
Rhode Island
South Carolina •

The Low-Level Radioactive Waste Forum includes a representative from each regional compact, each designated future host state of a compact *, each state with a currently operating facility •, and each unaffiliated state.

