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Sent on behalf of Barbara Byron and Ken Niles, co-chairs of the WIEB HLW Committee.

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Created By: sharon@westgov.org

Recipients:
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17 February 2012

Christine Pineda
U.S. Nuclear Regulatory Commission
Office of Nuclear Material Safety and Safeguards
Washington, DC 20555-0001

(*via email*) WCOutreach@nrc.gov

Re: Draft Report for Comment; "Background and Preliminary Assumptions for an Environmental Impact Statement—Long-Term Waste Confidence Update," December 2011. (Accession number ML11340A141)

The Western Interstate Energy Board High-Level Waste Committee[1] greatly appreciates the opportunity to comment on the Draft Report, and to participate in NRC processes for extended storage/transportation assessment and the waste confidence EIS for spent fuel storage and handling. We have reviewed the February 2011 NRC report, "Plan for the Long-Term Update to the Waste Confidence Rule and Integration with the Extended Storage and Transportation Initiative" (SECY-11-00298). We also attended NRC's public meeting on October 6, 2011 in San Luis Obispo and participated (via webinar) in NRC's November 2011 Technical Exchange on "Interfaces Between Storage and Transportation Casks" and "Seismic Issues for Dry Cask Storage Systems," and in your January 2012 webinar on the Long-Term Waste Confidence update.

Background:
The U.S. Nuclear Regulatory Commission (NRC) has directed staff to consider a long-term extension to the NRC's Waste Confidence (WC) decision and rule to account for the storage of commercial spent nuclear fuel and high-level nuclear waste for more than 60 years after the licensed life for operation of any commercial nuclear power reactor. As part of this review, the NRC is developing an environmental impact statement (EIS). NRC adopted the original Waste Confidence Decision and Rule in 1984. The rule was updated in 1990, reviewed

1 The WIEB High-Level Waste Committee includes representative of eleven western state governments, and addressed issues related to the storage, transportation and disposal of commercial spent nuclear fuel (SNF) and high-level defense waste (HLW). The Committees have been active since the mid-1980s.

in 1999, and updated again in 2010. NRC's Waste Confidence Rule determines whether there is "reasonable assurance" that an offsite disposal solution will be available by the expiration of the plant's operating licenses, and, if not, whether there is reasonable assurance that the spent nuclear fuel can be stored (and transported) safely beyond those dates.

NRC is planning to update the 2010 Waste Confidence Rule, which determined that spent fuel can be stored safely for 60 years beyond a reactor's license termination. This update will consider the possibility of storing spent fuel at the reactor sites for up to 200 years beginning in 2050 (i.e. through 2250) and storage at reactor sites and away-from-reactor independent spent fuel storage installations for up to 300 years.[2] In updating its waste confidence rule, the NRC will develop and assess several storage and transportation scenarios and consider "composite generic sites". The update will consider the effect of aging on cask materials and spent fuel, and the transportability of containers following long-term storage at reactor sites. NRC also will consider the interfaces and interdependencies between various types of storage, transportation and disposal.

Western states have a strong interest in the NRC's initiative to reassess and revise its regulatory framework for extended storage, transportation and disposal. Several western sites have been considered for centralized spent fuel storage (Utah, New Mexico) and disposal (Nevada, New Mexico), and several western states have shut down or have operating nuclear reactors (Arizona, California, Colorado, Oregon, Washington) or U.S. Department of Energy spent fuel or high-level waste storage facilities (Washington, Idaho). Western states have a decades-long commitment to ensure that the evolving regulatory framework and federal policies adequately address public safety and security for extended spent fuel storage and transportation. In addition, there is considerable concern about the safety, environmental and economic impacts of extended spent fuel and high-level waste storage. There is also concern, particularly after the Fukushima Daiichi accident, regarding the risks of extended spent fuel storage in seismically active areas at increasing pool storage densities, and the use of higher burn-up fuels at some reactors. These concerns must be adequately addressed and analyzed in the EIS.

Comments:
We would appreciate your response to the following suggestions, questions and comments regarding the December 2011 Draft Report. We have organized these comments under three headings:

2 See comment #6 below.

- The Waste Confidence EIS Assessment:
  1. SNF Characteristics and the Safety of Extended Storage and Transportation
  2. SNF Characteristics and the Four Scenarios
  3. Waste Confidence Findings
  4. Continued Use of Nuclear Power and NRC Regulatory Capacity
  5. Impacts of Terrorism
  6. Extended Storage Time Frame
  7. The NRC's "Composite Generic Site" Approach
  8. Lessons Learned from Fukushima Daiichi
- Waste Confidence EIS Assumptions:
  9. Risk of Exposure From Severe Natural Events
  10. Infrastructure Conditions and Congestion
  11. Pool Storage
  12. Aging Management
  13. Risk Analysis Assumptions and Technical Standards
- The EST and Waste Confidence EIS Processes.
  14. Stakeholder Participation in the EST Assessment
  15. Cask Vulnerability Information Sharing

The Waste Confidence EIS Assessment

1. SNF Characteristics and the Safety of Extended Storage and Transportation (EST).

SNF varies in age, cladding, enrichment, packaging, level of damage or deterioration, and burn-up, as well as by reactor type. For example:

- While the cladding of most spent fuel is zircaloy, there were 2,120 stainless steel assemblies discharged through 19933, and there is current development of ceramic composite cladding.
- Through 1993, only 1% of BWR assemblies were enriched above 3.4%, and only 8% of PWR assemblies were enriched above 3.8%. But, more recently discharged SNF and most prospective discharges have higher enrichment.
- Through 1993, almost 0% of BWR assemblies and about 14% of PWR assemblies had burn-up of over 40 GWDt/MTU. But, more recently discharged SNF and most prospective discharges will have higher burn-up.
- SNF is now located at 75 sites, some of which have greater seismic and flooding hazards than others.

Presumably, these and other distinctions have implications for the degree of confidence that NRC may have regarding the safety of extended storage and

3 The data is from "Spent Nuclear Fuel Discharges from U.S. Reactors: 1993," DOE/EIA, SR/CNEAF/95-01.

transportation. If so, the NRC may have more confidence in the safety of extended storage and transportation of some subgroups of the inventory than of others. The EIS should analyze the risks of storing and transporting higher burn-up fuels, including the impacts of higher burn-up fuels on package integrity and durability over extended periods. The EIS should take into consideration materials and packaging degradation[4] over time and the package manufacturers' long-term performance predictions. The EIS should address the uncertainties associated with the transportation and storage of spent fuel, and package integrity after decades of storage, particularly regarding higher burn-up fuels.

The EIS should assess the environmental and economic risks associated with long-term storage and transportation of higher burn-up fuels in dense storage configurations at sites with high seismic and flooding hazards, e.g., Diablo Canyon and San Onofre. The EIS risk assessment should also take into consideration the characteristics of the current and prospective inventory of spent fuel, the extent to which the safety of extended storage and transportation varies for certain inventory subgroups compared with others. The extended storage and transportation assessment should recommend different waste management strategies or measures (e.g. repackaging; reduced storage density in reactor pools, expedited transfer of spent fuel from pools to dry storage; early disposal), as appropriate, for different spent fuel subgroups.

2. SNF Characteristics and the Four Scenarios

The Executive Summary and Section 8.2 indicate that the NRC staff plans to analyze four preliminary scenarios in the WC EIS for extended storage and associated transportation for approximately 200 years beginning in 2050. These scenarios are:

a) Extended onsite storage at reactors and storage at offsite ISFSIs for up to 300 years.
b) Interim onsite storage and shipment to regional storage facilities.
c) Interim onsite storage and shipment to one centralized storage facility;
d) Interim onsite storage and shipment to at least one reprocessing facility co-located with an interim storage facility.

We have several questions about these scenarios, and how NRC intends to apply them to the spent fuel inventory:

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4 DOE SNF includes about 2,700 MT (78% at Hanford, 8% at Idaho National Laboratory, portions of which are damaged or degraded. The NRC's EST assessment should include an assessment of DOE spent nuclear fuel and explain how the findings related to DOE fuel will be applied to the much larger inventory of commercial SNF.

- Regarding the scenarios and their assumed capabilities:
  - Would a "regional storage facility" be provided in each of the four NRC regions. Or, perhaps, in one selected NRC region but not in others? Would NRC assume that SNF from one NRC region could be transported to a "regional storage facility" in another?
  - Could DOE "accept" SNF at a regional storage facility but not at an ISFSI? Is an ISFSI an industry facility, while "regional storage" is a federal facility? Would the NRC consider a proposed storage facility such as PFS in Utah an ISFSI (privately sponsored) or a centralized facility (intended to receive but not "accept" SNF from multiple NRC regions?
  - Would repackaging capability be provided at a centralized storage facility, but not at a regional storage facility? Does the NRC assume that "centralized" storage is actually "central"—central geographically among the 48 states, or among the 75 origin sites? Does the NRC assume that there would be only one centralized storage facility? Or, might there be "one or more," as the BRC assumes regarding "consolidated" storage facilities?
  - Under scenario "d," does NRC assume that reprocessing might be co-located at a stand-alone regional or centralized storage facility, before it has been independently determined that reprocessing is an economic source of reactor fuel? The EIS should mention the National Academies' study in 2007 and other studies (MIT 2009) concluding that the rationale for commercial reprocessing (Global Nuclear Energy Policy) is unpersuasive, relies upon technologies that are too early for commercial development (decades away), is too expensive (costing tens of billions of dollars), raises weapons proliferation concerns, and has major uncertainties about its ability to address the U.S. waste disposal issues. The 2009 MIT "Update of the 2003 Future of Nuclear Power Report" said that, for the next several decades, a Once-Through Fuel Cycle using light-water reactors is the preferred economic option for the U.S. MIT also concluded that the benefits of recycling to resource extension (uranium) and waste management in LWRs using mixed oxide fuel as is being done in other countries is minimal.[5]

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5 In our view, there is no legitimate purpose in co-locating reprocessing at a stand-alone storage site until it has been independently concluded that reprocessing is a cost-effective source of reactor fuel in the U.S., and until the major uncertainties about its ability to address U.S. waste disposal and weapons proliferation issues have been resolved. Until determined to be an economic source of reactor fuel, the prospect of reprocessing jobs should not be used as an inducement in siting a consolidated storage facility.

  - Would NRC's assessment of scenario "d" apply to all SNF, not just the portion for which reprocessing is a prospectively economic source of reactor fuel?
  - More broadly, we are skeptical of the value of scenario "d" for purposes of the Waste Confidence EIS. The applicable reprocessing technology (and its waste streams and storage/transportation requirements) is not yet in hand. It is unclear whether reprocessing should be deployed at each offsite storage facility, or only at a single selected offsite facility, or at a prospective disposal facility. It would be a better use of analytical resources to focus on the first three scenarios, and, if necessary, conduct a supplemental EIS analysis at a point when, and if, the role of commercial reprocessing and its application in the nuclear waste management program has been made clearer.

- Will NRC consider that the scenarios could occur serially—e.g. transport first to an offsite ISFSI, then to a regional storage facility, then to a single centralized storage facility, which in due course gets a co-located reprocessing facility? Which of these types of transport would be supported by the Nuclear Waste Fund, and which by industry?
- Will the application of the scenarios consider an EST assessment of the components of the inventory that may require repackaging in order to be considered safe for 200-300 years? Will it consider the regional distribution of the SNF that may require repackaging in order to be considered safe?

3. Waste Confidence Findings

It is not clear whether it is necessary for the NRC to make each of these five findings (each in the affirmative) in order for the NRC to approve: a) a new reactor license application or approve, or b) a license extension.

It also is not clear whether NRC must make retroactive decisions regarding some or all of its past license approvals, depending upon the outcome of this Waste Confidence Rule update. For example, if the evidence does not support a positive conclusion on each finding, would NRC then need to revisit past license decisions?

It also is not clear whether "technical feasibility" in finding #1 can be met by technologies other than mined geologic repositories. This should be clarified in the EIS.

In addition, the EIS should clarify whether finding #2 refers to the capacity of an emplacement block or to the capacity of the federal government to make

credible progress towards providing permanent disposal for the waste. For example, might contrary evidence include:

- No action on BRC recommendations by 2015?
- No federal-state agreements to consider disposal suitability by 2030?
- Insufficient access to the Nuclear Waste Fund needed to support progress in waste characterization, facility licensing, and construction?

The EIS should clarify whether finding #3 presumes that the nuclear industry will continue to provide 20% of the nation's electricity, or whether finding #3 takes into consideration the contingency that the nuclear industry and its financial capacity is significantly reduced. (See also comment #4.)

4. Continued Use of Nuclear Power and NRC Regulatory Capacity

The Executive Summary states the major assumption "that extended storage would be fully regulated under a regulatory program similar to the current program; there would be no loss of controls over stored waste." Page 9 states the preliminary assumption that "the continued use of nuclear power is assumed…." and that the analysis will assume that "nuclear power continues to supply approximately 20 percent of U.S. electricity production."

We suggest that the first assumption be rephrased to set a more challenging mission for NRC: E.g. "Extended storage will be regulated under a fully independent and effective federal agency program." The rephrasing would imply NRC accountability to NRC's current mission, not just its current program.

We further suggest that a possible decline in the nuclear industry (providing significantly less than 20 percent of U.S. electricity production) could jeopardize the industry's ability to fulfill its obligations (financial and operational) to safely conduct extended storage, decommissioning, transportation operations, etc. The EIS should consider the possibility that the industry's financial ability to meet its obligations for extended spent fuel storage and transportation may be reduced, and that the federal government might lack the financial capacity to fully compensate in the event of a major accident or event. Price-Anderson liability coverage is approximately $12.6 billion; yet the estimated costs associated with the Fukushima Daiichi accident far exceed this amount.

The NRC should address the contingency that "the current structure of financial assurance for spent fuel storage (*may not*) continue to exist" (pg. 18), consider how this could affect the financial capacity of perhaps 10 of the 35 current licensees, and discuss how financial assurance would be maintained under such circumstances. The EIS should consider the possibility that plant

owners, after the plants have shut down and are no longer generating revenue, declare bankruptcy and abandon the waste. Although NRC is requiring that funds are being set aside for plant decommissioning, including spent fuel storage, the EIS should explain how the adequacy of funds over an extended period of spent fuel storage can be assured, including any costs associated with a major accident or attack at the site. In addition, the EIS should include a discussion on whether Price-Anderson Act liability coverage is available for privately owned away-from-reactor consolidated storage facilities, (such as the proposed PFS in Utah).

5. Impacts of Terrorism

Page 13 indicates that "the staff plans to consider the environmental impacts of terrorism….*at a generic level*" (emphasis added). It then lists several topics (current facilities, package technologies, etc.) that could provide the basis for a more detailed examination.

We encourage the NRC to undertake the more detailed examination[6], and to consider ways to share findings with state government officials who will be key partners in preparedness, prevention or response.[7] Regarding both transportation and storage, the NRC should consider its contribution to fulfilling three key recommendations of the National Academies' 2006 report, "Going the Distance."[8]

In addition, the impacts of terrorism analysis should consider the risks associated with extended spent fuel storage in densely populated areas such as the San Onofre Nuclear Generating Station and Indian Point, including concerns about the adequacy of timely emergency response and evacuation on congested access roads and highways.

6. Extended Storage Time Frame: Implications for SNF Disposal

In its first paragraph, the Executive Summary says that NRC's assessment will "account for the storage of commercial spent fuel and high-level waste for more than 60 years after the licensed life of operation of any commercial nuclear power reactor." This implies that fuel from a reactor that began operation in 1975 and received no license extension should (without convincing evidence of the safety of extended storage/transportation well beyond 60 years) be disposed of by 2035.

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6 In which NRC might usefully engage an independent panel of experts-with-security-clearances.

7 See comment #15 below.

8 Recommendations #2 (Transportation Security: pg. 8-9), #3 (Transportation Health and Safety Risk: pg. 9-10), and #12 (Information Sharing: pg. 21-22).

In its second paragraph, the Executive Summary says that the Waste Confidence EIS (and, presumably, the EST assessment) will "generically evaluate the impacts of extended storage and associated transportation for an analysis period of approximately 200 years, beginning in the middle of this century," resulting in the oldest fuel approaching 300 years of storage while newer fuel could be 150-200 years younger.

The EIS should clarify the two different descriptions of the EST timeframe and the assumptions for each. The EIS should also explain what the NRC EST implies regarding a no-later-than date for disposal, and how the varying characteristics of the current and prospective SNF inventory (age, cladding, enrichment, burn-up, storage density and configurations, packaging) are addressed in the EST assessment that provides the basis for the Waste Confidence EIS.[9]

7. NRC's "Composite Generic Site" Approach is Flawed

As mentioned above, NRC proposes to conduct a "generic" evaluation of the impacts of extended storage and transportation for approximately 200 years, including extended storage at reactor sites. However, a generic approach may be insufficient since such an analysis may ignore or miss important site-specific considerations. For example, Diablo Canyon and San Onofre Nuclear Generating Station (SONGS) are located in earthquake and flood prone areas along California's coast. These plants store spent fuel in pools at far greater densities than their original plant designs (Diablo Canyon stores spent fuel in pools at five times greater density than original plant design), and they generate and store higher burn-up (more radioactive) fuels. In addition, San Onofre is located in one of the most densely populated areas of the U.S. adjacent to major freeways and railways. Concerns have been raised about the adequacy of timely emergency response and evacuation for both plants in the event access roads are damaged in an earthquake or are too congested. A major accident at Diablo Canyon or SONGS could have long-term costly and severe economic and environmental impacts to the local communities, agriculture, fisheries, wineries, industry, tourism, etc.,

The EIS should evaluate the site-specific impacts from extended waste storage and transportation, taking into consideration the storage and transportation of higher burn-up fuels, storage of spent fuel in densely configured pools, and storage and transportation at reactor sites located in seismically active and flood areas. Other reactors throughout the nation have their own unique characteristics, which should also be examined.

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9 See comment #14 below.

8. The EIS Should Consider the Lessons Learned from Fukushima-Daiichi Analyses

The NRC, the nuclear industry, international organizations and others are analyzing the events at Fukushima and lessons learned. The findings from these studies may have direct implications for the EIS and its assumptions. The EIS assessment should take into consideration the significant findings, lessons learned, and recommendations from these studies and their implications for long-term spent fuel pool storage in seismically active and flood susceptible areas.

Waste Confidence EIS Assumptions

9. Risk of Exposure from Severe Natural Events

Page 7 states the preliminary assumption that "the risk from radiation exposures resulting from severe natural events will increase over time, simply because more and more stored waste is subject to each subsequent event."

The volume of stored waste is one factor, but so is climate change and the scientific evidence that increased heat in the atmosphere causes more, more severe, and less predictable natural events. In addition, the risk of exposure is site-specific, including the proximity of large population centers and the inventory and density of spent fuel stored at a particular site. The EIS should include site-specific analyses of the risk of exposure to the public from severe natural events and terrorist attacks/sabotage at reactor or storage sites in densely populated areas where higher burn-up fuel is stored in densely packed storage configurations in pools.

10. Infrastructure Conditions and Congestion

Page 10 states that "the EIS will not speculate about changes in the national infrastructure or transportation modes that may occur over decades or centuries from now."

It is not speculation to observe that the nation's interstate highway system is increasingly congested and degraded, or that (given state and federal budgets) these trends are likely to continue, or that portions of the nation's rail system is congested (e.g., southern California) and/or hazardous and subject to severe weather conditions, thus slowing or complicating cross-country transport of SNF. Nor is it speculation that short-line rail access from reactor sites to mainline railroads is increasingly degraded or unavailable, or that alternatives to short-line rail may be increasingly complicated and contentious. While preliminary assumption #4 may be satisfactory for assessment purposes, NRC

should consider the implications of currently evident trends in highway and rail infrastructure conditions and congestion in evaluating assessment results.
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11. Pool Storage

Page 10 states the preliminary assumption that "some percentage of the inventory of spent fuel will be stored in pools," and that "the fraction of fuel that is stored in pools will likely decrease over time." Although the fraction of fuel stored in pools compared with dry storage may decrease over time (as more waste is generated, plants are decommissioned, and spent fuel is moved to dry storage), the volume and density of spent fuel stored in pools (pool inventory) at operating reactors is likely to remain the same or continue to increase. Some reactors--for example, Diablo Canyon--plan to store spent fuel in pools through the plant's 20-year license extension. Yet events at Fukushima Daiichi have brought renewed focus on the density of pool storage—particularly at sites that are subject to potential earthquakes or flooding.

While increasingly dense pool storage is less costly to industry than removal to dry storage, safety concerns point to the need to systematically reduce pool storage density. The EST assessment should address the issue (considering specific pool types, location in areas subject to earthquakes and flooding, high burn-up fuels, racking systems, SNF handling capabilities, etc.). Regulatory changes or recommendations for addressing concerns about increasing spent fuel pool storage density should be addressed in the Waste Confidence EIS.

12. Aging Management

Page 11 states the preliminary assumption that license renewals will involve "a program to monitor, detect and mitigate the effects of aging," and that "the EIS will look at impacts associated with maintaining the waste and container in a condition amenable to transport and handling at a potential disposal facility."

Transport and handling could occur, not just to a potential disposal facility, but several times to or from onsite and offsite storage facilities. (See #2 above: second bullet.) We also observe that recent discussions have pointed to fairly rudimentary monitoring and detection programs at many reactor sites, and to current and emerging monitoring technologies that provide a much better information basis (re the condition of assemblies, fuel rods and fuel) for aging management. We recommend specific attention to the data needed for effective aging management in storage, and the technology and programs that can provide it.

13. Risk Analysis Assumptions and Technical Standards.

The results of any risk analysis are dependent upon the assumptions and technical standards used. Therefore, the draft EIS should include, or reference, all assumptions and technical standards relied upon in each of the impact analyses, including any existing analyses. For example, the NRC EST should identify the technical standard used to determine whether a stainless steel or concrete cask is breached, or how spent fuel cladding degradation will be simulated, etc.

Process Recommendations for NRC's EST and EIS Assessments

14. Stakeholder Participation in the EST Assessment.

SECY-11-0029 (Enclosure 2, Figure 2-1) graphically depicts the central role of the Extended Storage and Transportation (EST) assessment as the basis for EST Regulatory Development on the one hand, and the EIS for Spent Fuel Storage and Handling on the other. The same figure depicts a similarly central role for stakeholder participation. For industry stakeholders, this role is implemented via periodic technical exchanges such as that in November 2011, in which NRC principal investigators (e.g. Bob Einziger; John Vera; David Tang; Gordon Bjorkman; Earl Easton) were paired with industry experts to discuss the status of a series of technical investigations on topics such as cladding material properties, moderator exclusion, reconfiguration, stackup configurations, retrievability, aging management, burn-up credit, etc.

While recent NRC webinars have been useful, no substantive process comparable to the technical exchange with industry has been implemented regarding state government stakeholders. We urge the NRC to initiate such a process, which, should include:

- NRC principal investigators and 5-6 state government representatives from each of the four NRC regions (20-24 state representatives);
- Two days of face-to-face meetings for presentation and follow-up questions and discussion;
- Explanation of presentation materials from the November 1 meeting and other technical exchanges for state government stakeholders;
- Similar forums at least annually during the current NRC Extended Storage and Transportation (EST) and Waste Confidence (WC) initiative.

We would appreciate NRC's consideration and positive response to this suggestion.

15. Cask Vulnerability Information Sharing

Page 13 of the report states that NRC will "consider the environmental effects of terrorism related to storage and transportation…..in accordance

with….NRC's regulations for the protection of sensitive unclassified and classified information." Thus constrained, the NRC's EIS may be useful for the general reader but of limited value for state government officials who share with federal agencies the responsibility to prevent and respond to terrorism and sabotage.

In this context, we remind the NRC of its 2007 commitment to initiate a dialogue with the state regional groups regarding the sharing of spent fuel package security information with the states. Called "Cask Vulnerability Information Sharing," the NRC and the State Regional Groups (SRGs) agreed on the appropriate provider, recipient, and use of several categories of relevant information.[10] The current three-year NRC initiative seems an appropriate context in which to revive this five-year old commitment, and to extend it to the terrorism-sabotage vulnerabilities of storage as well as transportation casks.

Sincerely,

Barbara Byron
WIEB HLW Committee Co-Chair

Ken Niles
WIEB HLW Committee Co-Chair

10 For EIS-relevant safeguard information that cannot be shared even among selected responsible state representatives, we recommend the use of an independent panel of experts with appropriate security clearance, for review and recommendations.