

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary
FROM: CHAIRMAN SVINICKI
SUBJECT: COMSECY-17-0019: YUCCA MOUNTAIN PROJECT
ACTIVITIES

Approved XX Disapproved ___ Abstain ___ Not Participating ___
Comments: Below XX Attached ___ None ___

I approve the authorization to use previously appropriated Nuclear Waste Fund monies to carry out the information-gathering activities recommended by the staff in this paper. These activities are not a resumption of the suspended proceeding. Rather, they are appropriate steps to develop the agency's readiness to execute the budget requested for the High-Level Waste Program in Fiscal Year 2018, consistent with the NRC budget request currently pending before the Congress, should such funds be appropriated.



SIGNATURE

06/ 2 /17

DATE

Entered on "STARS" Yes No ___

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary
FROM: Commissioner Baran
SUBJECT: COMSECY-17-0019: Yucca Mountain Project
Activities

Approved Disapproved Abstain Not Participating

COMMENTS: Below Attached None

Entered in "STARS"

Yes

No



SIGNATURE

6/9/17

DATE

**Commissioner Baran's Comments on COMSECY-17-0019,
"Yucca Mountain Project Activities"**

In this paper, the Office of the Secretary and the Atomic Safety and Licensing Board Panel seek Commission authorization for the expenditure of previously appropriated Nuclear Waste Fund monies to initiate "information-gathering activities" during Fiscal Year 2017 to prepare for a resumption of the Yucca Mountain adjudication. Specifically, they recommend: (1) convening up to three meetings of the Licensing Support Network Advisory Review Panel (LSNARP) to obtain stakeholder input on information technology issues related to the adjudicatory proceeding and (2) conducting security assessments and market research to identify potential venues in Nevada in which to hold adjudicatory hearings. The proposed LSNARP activities are estimated to cost \$299,000, while the estimated cost of the proposed hearing facility activities is \$128,000.

The underlying assumption behind these recommendations is that Congress will appropriate funds in Fiscal Year 2018 to resume the Yucca Mountain proceeding. Although the President's budget request includes such funding, we have no idea whether Congress will ultimately appropriate Nuclear Waste Fund monies for this purpose. That is a decision for Congress to make. We should not presume that Congress will take this step in Fiscal Year 2018. It has been six years since Congress last appropriated monies from the Nuclear Waste Fund, and the recently enacted 2017 Consolidated Appropriations Act did not include funding for NRC to resume the Yucca Mountain adjudication. Rather than making predictions about what Congress will choose to do in Fiscal Year 2018, NRC should await Congressional action before expending previously appropriated funds on activities that only make sense if the adjudication is going to resume in the near future.

Re-convening the LSNARP after several years of dormancy would be a significant step with resource impacts extending beyond NRC. It would involve gathering numerous interested parties, including states, local governments, tribes, and non-governmental stakeholders to evaluate options for reinstating or replacing the Licensing Support Network. Taking this step would be seen as a clear signal from NRC that the agency intends to resume the Yucca Mountain adjudication. The agency would be asking interested parties to begin spending their own resources to prepare for a proceeding that may or may not move forward in the near term. I do not believe that NRC should take such a step without knowing whether Congress will decide to appropriate funds for the licensing proceeding.

If the adjudication resumes, I agree that it is essential to have a forum in Nevada to hold hearings close to where many interested stakeholders are located. NRC has a longstanding policy of holding contested adjudicatory hearings in the vicinity of the proposed facility. In light of the very high level of public interest in the Yucca Mountain application, the agency has a responsibility, consistent with this established policy, to conduct the evidentiary hearings in Nevada. However, because leasing costs and facility availability are always changing, the agency should not conduct real estate market research and security assessments in the absence of funding to proceed with the actual selection and leasing of a hearing facility.

In my view, it is premature to spend over \$400,000 to prepare for the resumption of the Yucca Mountain adjudication in Fiscal Year 2018 without knowing whether NRC will receive funds to proceed with the adjudication. Given that the unknown costs of ongoing Yucca-related federal court litigation must be paid using Nuclear Waste Fund monies, it is also prudent to avoid completely expending the balance of the previously appropriated funds. Therefore, I

disapprove the recommendation to authorize spending previously appropriated funds on the proposed adjudication-related activities in Fiscal Year 2017.

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary
FROM: Commissioner Burns
SUBJECT: COMSECY-17-0019: Yucca Mountain Project Activities

Approved X Disapproved ___ Abstain ___ Not Participating ___

Comments: Below X Attached ___ None ___

I approve staff's recommendation to use previously appropriated Nuclear Waste Fund (NWF) monies to carry out certain information-gathering activities, consistent with the court's decision in *In re Aiken County*, 725 F.3d 255 (D.C. Cir. 2013). The results of these information-gathering activities would be used to inform the agency's estimated resource needs should the Yucca Mountain Repository activities be resumed. Specifically, I approve the Office of Secretary (SECY) and the Atomic Safety and Licensing Board Panel (ASLBP) to engage in meeting(s) with the License Support Network Advisory Review Panel (LSNARP) and the public about reconstitution of the License Support Network or a suitable replacement system. I also approve SECY and ASLBP's recommendation to perform security analyses for potential Nevada hearing venue sites, to begin market research, including interactions with GSA, concerning the possible procurement of a Nevada hearing facility space. As for the hearing facility itself, SECY and ASLBP should consider within its evaluation of potential hearing venues whether there continues to be a need for a dedicated courtroom in Nevada for all adjudicatory sessions associated with this proceeding. With the current state of NRC's technology, and the existence of electronic records, it may be possible to use a virtual courtroom in conjunction with the hearing facilities in Rockville, Maryland for some, if not all, adjudicatory hearings. As staff develops its proposal for Commission consideration driving guidelines should be prudent spending of the public's money, and focus on just what is needed accomplish this hearing to ensure we can quickly start the proceeding. Finally, with respect to the remaining NWF funds, I agree that SECY, ASLBP, and the Office of the Chief Financial Officer should monitor closely the status of these resources, but I encourage that they include the NRC's Solicitor in these discussion as he would be best positioned to identify and predict unanticipated drains on the resources as a result of the Yucca Mountain-related federal court litigation.

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Yes X

No ___



SIGNATURE

June 2017

DATE