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Pro Hac Vice motions to be filed

17 *Attorneys for the State of Nevada*

18
19 **IN THE UNITED STATES DISTRICT COURT**
FOR THE DISTRICT OF NEVADA

20
21 STATE OF NEVADA,
Plaintiff,
22 vs.
23 UNITED STATES; UNITED STATES
DEPARTMENT OF ENERGY;
24 RICK PERRY, in his official capacity as
Secretary of Energy; NATIONAL
NUCLEAR SECURITY
25 ADMINISTRATION; and LISA E.
GORDON, in her official capacity as
26 Administrator of the National Nuclear
Security Administration and
27 Undersecretary for Nuclear Security,
Defendants.

Case No. 3:18-cv-00569-MMD-CBC

ERRATUM TO COMPLAINT

1 Plaintiff, the State of Nevada, by and through counsel, Nevada Attorney General
2 Adam Paul Laxalt and Chief Deputy Attorney General C. Wayne Howle, hereby files this
3 Erratum to the State of Nevada’s Complaint (the “Erratum”). Please find the Affidavit of
4 Pam Robinson attached to this Erratum as Exhibit D. This correction provides the
5 missing Affidavit of Pam Robinson consisting of 17 pages, identified as Exhibit D to the
6 Complaint. All other text remains the same.

7 DATED this 4th day of December, 2018.

8 ADAM PAUL LAXALT
9 Attorney General

10 By: /s/ C. Wayne Howle
11 C. WAYNE HOWLE (Bar No. 3443)
12 Chief Deputy Attorney General
13 DANIEL P. NUBEL (Bar No. 13553)
14 Deputy Attorney General

15 By: /s/ Marta Adams
16 MARTA ADAMS (Bar No. 1564)
17 Special Deputy Attorney General

18 EGAN, FITZPATRICK, MALSCH &
19 LAWRENCE, PLLC

20 By: /s/ Martin G. Malsch
21 MARTIN G. MALSCH
22 Special Deputy Attorney General
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CERTIFICATE OF SERVICE

I certify that I am an employee of the State of Nevada, Office of the Attorney General, and that on this 4th day of December, 2018, I served a true and correct copy of the foregoing ERRATUM TO COMPLAINT, by U.S. Mail, Certified, Return Receipt, to:

Civil Process Clerk
U.S. Attorney's Office
501 Las Vegas Blvd. So., Ste. 1100
Las Vegas, NV 89101
Certified No. 7003 1680 0001 3687 9023

Attorney General of the United States
U.S. Department of Justice
950 Pennsylvania Ave., NW
Washington, DC 20530
Certified No. 7003 1680 0001 3687 9030

U.S. Department of Energy
1000 Independence Ave., SW
Washington, DC 20585
Certified No. 7003 1680 0001 3687 9047

Secretary of Energy Rick Perry
U.S. Department of Energy
1000 Independence Ave., SW
Washington, DC 20585
Certified No. 7003 1680 0001 3687 9054

National Nuclear Security Administration
U.S. Department of Energy
1000 Independence Ave., SW
Washington, DC 20585
Certified No. 7003 1680 0001 3687 9061

Lisa E. Gordon, Administrator
National Nuclear Security Administration
U.S. Department of Energy
1000 Independence Ave., SW
Washington, DC 20585
Certified No. 7003 1680 0001 3687 9016

/s/ Dorene A. Wright

INDEX OF EXHIBITS

EXHIBIT No.	EXHIBIT DESCRIPTION	NUMBER OF PAGES
D.	Affidavit of Pam Robinson dated December 3, 2018	17

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EXHIBIT D

Affidavit of Pam Robinson

EXHIBIT D

AFFIDAVIT OF PAM ROBINSON

I, PAM ROBINSON, do hereby swear that the following matters are true and correct based on my personal knowledge:

1. I am Policy Director for Nevada Governor Brian Sandoval.
2. Beginning in April 2018, I was informed by Bradley Crowell, Director of the Nevada Department of Conservation and Natural Resources, of a potential proposed action by the United States Department of Energy to transfer plutonium from South Carolina to Nevada.
3. On approximately August 28, 2018, the Department of Energy sent a group e-mail to many Nevada contacts indicating that it would shortly post a Supplement Analysis proposing the transfer of up to one metric ton of plutonium for indefinite storage at the Device Assembly Facility (DAF) at the Nevada Nuclear Security Site (NNSS).
4. Shortly thereafter, Department of Energy representatives participated in a follow-up call with myself, Bradley Crowell, Nevada Division of Environmental Protection Administrator Greg Lovato, and Office of the Governor General Counsel Kathryn Reynolds, indicating that more details regarding the plan would be contained in the forthcoming Supplement Analysis.
5. The Department of Energy posted the Supplement Analysis on its website on approximately August 30, 2018.
6. On September 7, 2018, Governor Sandoval spoke with Secretary of Energy Rick Perry over the phone, in a call that included myself, Office of the

Governor General Counsel Kathryn Reynolds, Dan Wilmot, Assistant Secretary and Deputy Chief of Staff to Secretary Perry, and William White, Chief of Staff and Associate Principal Deputy Administrator at the National Nuclear Security Administration (NNSA).

7. Governor Sandoval expressed concerns regarding the adequacy of the Supplement Analysis, including the lack of a definite timeline for storage and removal.

8. The Governor also expressed concern that the Department of Energy had not discussed the proposed action with the Nevada/Department of Energy Working Group, which was initially created by way of a Memorandum of Understanding between the State of Nevada and the Department of Energy in December 2014, to address such issues.

9. Secretary Perry and Governor Sandoval agreed that staff would schedule a second phone call to discuss specific concerns, and would also schedule a meeting of the Nevada/Department of Energy Working Group.

10. A phone call between the Department of Energy and Nevada representatives took place on September 14, 2018. To the best of my knowledge, the call was attended by myself, Dan Wilmot, William White, Bruce Diamond (General Counsel, NNSA), Harris Walker (DOE Intergovernmental Affairs), Mike Willden (Chief of Staff, Governor Sandoval), Kathryn Reynolds, Greg Lovato, Jim Lawrence (Deputy Director, Nevada DCNR), and Dominique Etchegoyhen (Deputy Director, Nevada DCNR).

11. During this phone call, the Department of Energy and NNSA representatives declined to provide any additional information related to timeline, transportation, or the form/type of plutonium to be transported. All parties agreed to work to schedule a meeting of the Nevada/Department of Energy Working Group.

12. Following this phone call, on September 28, 2018 (attached as Attachment 1), Governor Sandoval sent a letter to Secretary Perry, reiterating that Nevada remained strongly opposed to the proposed storage of plutonium given the lack of a concrete plan and schedule for disposition, the reliance on an incomplete environmental analysis and Supplement Analysis, and the insufficient opportunity for public input from Nevada stakeholders regarding the proposed action.

13. A meeting of the Nevada/Department of Energy Working Group was held on October 30, 2018, at Department of Energy headquarters in Washington, DC. Bradley Crowell, Greg Lovato, Kathryn Reynolds, Tyler Klimas (Director, Office of the Nevada Governor, Washington D.C. Office), and I attended on behalf of the State of Nevada. Multiple representatives, including William White, Bruce Diamond, and others attended on behalf of the Department of Energy and NNSA.

14. With respect to the proposed transfer of plutonium, Nevada representatives again expressed concerns regarding the proposal, including the lack of a specific timeline in the Supplement Analysis and that this proposed new activity was outside the scope of previous Department of Energy environmental impact statements.

15. Department of Energy and NNSA representatives expressed their view that the Supplement Analysis was sufficient. Nonetheless, representatives indicated that the Department of Energy and NNSA would draft a letter addressing the concerns set forth by Nevada representatives.

16. To the best of my knowledge, no letter was sent.

17. Given this lack of response, on November 9, 2018, Bradley Crowell and I jointly sent a letter to Dan Wilmot and Lisa Gordon-Hagerty, Under Secretary for Nuclear Security and NNSA Administrator, requesting that the Department of Energy and NNSA articulate a specific commitment and timeline for the removal of any transferred plutonium, as well as a series of enumerated assurances (attached as Attachment 2).

18. I received a response to this letter from William White, dated November 20, 2018. Beyond a general “expectation” that any plutonium would be removed by approximately 2026-27, the letter did not contain any of the requested assurances. Also, the letter omitted the reasonable assurances requested by Nevada in its November 9, 2018, letter that all shipments will be made with the same safety and security precautions that apply generally to shipments and handling of weapons-grade plutonium and that, as per other hazardous materials, the Department of Energy (NNSA) will avoid the highly populated areas of Las Vegas and will consult, as appropriate, with state officials with the objective to avoid other routes that may contain unusual hazards. The Department of Energy did not even agree that it would

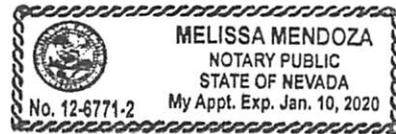
consult with Nevada and prepare a full environmental impact statement or supplemental environmental impact statement if it proposed to ship more than one metric ton of plutonium from South Carolina to the NNSS in Nevada (attached as Attachment 3).

Pam Robinson

PAM ROBINSON
Policy Director
Office of the Nevada Governor

STATE OF NEVADA)
 : ss.
COUNTY OF WASHOE)

SIGNED and SWORN to before me
this 3rd day of December, 2018,
by Pam Robinson.



Melissa Mendoza
NOTARY PUBLIC

ATTACHMENTS

No.	ATTACHMENT DESCRIPTION	NUMBER OF PAGES
1.	Letter from Office of the Nevada Governor to Rick Perry dated September 28, 2018	2
2.	Letter from Office of the Nevada Governor to Dan Wilmot and Lisa E. Gordon-Hagerty dated November 9, 2018	2
3.	Letter from Department of Energy to Bradley Crowell dated November 20, 2018	4

ATTACHMENT 1

ATTACHMENT 1

ONE HUNDRED ONE NORTH CARSON STREET
CARSON CITY, NEVADA 89701
OFFICE: (775) 684-5670
FAX NO.: (775) 684-5683



555 EAST WASHINGTON AVENUE, SUITE 5100
LAS VEGAS, NEVADA 89101
OFFICE: (702) 486-2500
FAX NO.: (702) 486-2505

Office of the Governor

September 28, 2018

The Honorable Rick Perry
Secretary
Department of Energy
1000 Independence Ave., S.W.
Washington, DC 20585

Re: Proposal to Store South Carolina Plutonium at the Nevada National Security Site

Dear Secretary Perry:

On approximately August 28, 2018, the Department of Energy (DOE) notified Nevada of a proposal to transfer up to one metric ton of plutonium from DOE's Savannah River Site in South Carolina for indefinite storage at the Nevada National Security Site (NNSS). As I expressed to you in a phone call on September 7, 2018, Nevada has significant concerns regarding this proposed transfer.

Since our conversation, staff from both our offices have engaged in follow up discussions regarding the proposal, and are coordinating a meeting of the working group that has previously discussed the uses and mission of NNSS. I am confident that the reengagement of this working group will help to ensure a cooperative process for future proposed actions involving NNSS.

While I appreciate these efforts, Nevada remains strongly opposed to the proposed storage of plutonium at the NNSS for many reasons, including but not limited to: DOE's failure to develop a concrete plan and disposition schedule for this plutonium, DOE's reliance on an incomplete environmental analysis, and the insufficient opportunity for public input from Nevada stakeholders on a new mission outside the scope of projects previously identified by DOE/National Nuclear Security Administration (NNSA) for the NNSS.

As we have discussed previously, Nevada is supportive of the primary NNSS missions, including ongoing research to maintain the nation's nuclear stockpile readiness and the appropriate management and disposal of low-level radioactive waste. Nevada also supports development of enhanced research and national security missions at the NNSS, and we have engaged with NNSS leadership regarding these opportunities. Unfortunately, the proposal to indefinitely store plutonium in Nevada from the failed South Carolina project at the Savannah River Site is not consistent with these missions.

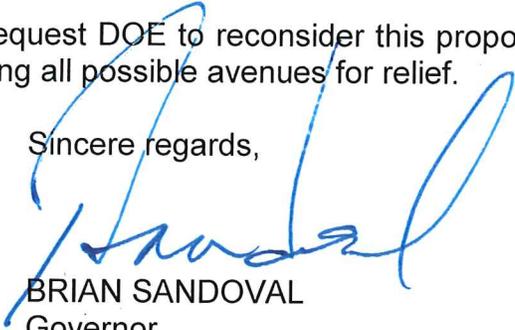
DOE's August 2018 Supplement Analysis for this action indicates that the duration of storage at NNSS is undefined and the timing for transport to Los Alamos for proposed plutonium pit production is not specified. DOE's analysis indicates that the transportation from NNSS will likely not take place for a period of years. The lack of a defined schedule does not give confidence that the material will be managed in a certain and timely manner. This lack of confidence is further magnified by DOE's repeated failures to process this material in South Carolina. Given that this material is ultimately destined for transport to Los Alamos, this proposal also unnecessarily adds thousands of miles to any proposed route.

In the Supplement Analysis, DOE incorrectly concludes that its previous National Environmental Policy Act (NEPA) documents adequately analyzed the proposed action. In making this determination, DOE inappropriately relied upon previous analyses and decisions, which did not include an analysis of the environmental impacts of the indefinite storage of up to one metric ton of plutonium at NNSS. In short, the Device Assembly Facility (DAF) at the NNSS is one of DOE's few Cat-1 Special Nuclear Material facilities intended to conduct sensitive nuclear security experiments, and should not be used as a high-priced storage facility for indefinitely housing plutonium that DOE has failed to properly manage.

Nevada's grave concern with this proposal is heightened further by recent DOE proposals to limit the oversight capabilities and scope of the Defense Nuclear Facilities Safety Board (DNFSB). The DNFSB plays a critical statutory role in providing communities adjacent to all DOE facilities the assurance that the safety of employees at DOE facilities and surrounding public remains DOE paramount priority. As such, we find DOE's recently issued Order 140.1 unacceptable. It is critical that the DNFSB maintain access to all information needed to provide independent analysis, advice and recommendations to ensure adequate protection of public health and safety at defense nuclear facilities, including NNSS.

Given these concerns, I respectfully request DOE to reconsider this proposed transfer. The State of Nevada is actively exploring all possible avenues for relief.

Sincere regards,



BRIAN SANDOVAL
Governor

Cc:

The Honorable Dean Heller
The Honorable Catherine Cortez Masto
The Honorable Dina Titus
The Honorable Mark Amodei
The Honorable Jacky Rosen
The Honorable Ruben Kihuen

ATTACHMENT 2

ATTACHMENT 2

ONE HUNDRED ONE NORTH CARSON STREET
CARSON CITY, NEVADA 89701
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FAX NO.: (775) 684-5683



555 EAST WASHINGTON AVENUE, SUITE 5100
LAS VEGAS, NEVADA 89101
OFFICE: (702) 486-2500
FAX NO.: (702) 486-2505

Office of the Governor

November 9, 2018

Mr. Dan Wilmot
Deputy Chief of Staff to the Secretary
U.S. Department of Energy
1000 Independence Ave., S.W.
Washington, DC 20585

Ms. Lisa E. Gordon-Hagerty
Under Secretary for Nuclear Security and NNSA Administrator
U.S. Department of Energy
1000 Independence Ave., S.W.
Washington, DC 20585

Re: 10/30/18 Meeting of Nevada National Security Site Working Group

Dear Mr. Wilmot and Ms. Gordon-Hagerty:

Thank you again for supporting the October 30, 2018 meeting of the Nevada National Security Site (NNS) Working Group (Working Group). The State of Nevada remains very supportive of the critical role of the NNS within the DOE/NNSA complex and the importance of continuing our state-federal Working Group to maintain and broaden support for the NNS within Nevada. More effectively integrating the NNS mission into the Nevada community will benefit us all. With that in mind, we greatly appreciated the discussion about potential opportunities for enhancing and expanding the core nuclear/national security missions performed by the NNS. To help achieve this goal, we look forward to working with your offices to revise and renew the NNS Working Group Charter to ensure DOE/NNSA and Nevada continue to communicate and cooperate during any current or upcoming proposals and transitions.

However, as we strive for the above, it is imperative that we concurrently identify an agreeable path forward on NNSA's proposed transfer of up to one metric ton of plutonium from DOE's Savannah River Site in South Carolina for indefinite storage at the NNS. While the Nevada team appreciated the robust discussion on this topic at the October 30 Working Group meeting, we expressed a number of concerns that still must be resolved. Specifically, we continue to have concerns with DOE's August 2018 Supplement Analysis, which lacked sufficient detail to adequately assess the effects of NNSA's proposed action. Of primary concern is cumulative impact of the proposed activity and the lack of a definitive timeline for removal of the plutonium currently designated for indefinite storage at the NNS.

The clarification provided by your team that removal timelines depend on a variety of factors related to NNSA's expanded "pit" production activities is appreciated. However, if the intention of DOE/NNSA is to *temporarily* store plutonium at the NNSS and ultimately transfer to the Los Alamos National Laboratory (LANL) for pit production, then it is imperative that a proposed timeline for removal/transfer is clearly articulated, as well as a clear commitment from DOE/NNSA to remove the plutonium within a specific timeframe should DOE/NNSA's current "pit" production policy change. In addition to resolving these fundamental issues, the State of Nevada also requests assurances and commitments that:

1. All shipments will be made with the same safety and security protections that apply generally to shipments and handling of weapons-grade plutonium.
2. As per other hazardous materials, DOE/NNSA will avoid the highly populated areas of Las Vegas and will consult, as appropriate, with state officials with the objective to avoid other routes that may contain unusual hazards.
3. DOE/NNSA will not ship more than one metric ton of plutonium from the Savannah River Site to the NNSS without prior consultation with the State of Nevada and preparation of an adequate EIS or supplemental EIS addressing the additional shipments prior to any transport.
4. Starting in January 2019, DOE will provide routine updates to the State of Nevada on the progress of NNSA's "pit" production efforts and the general timeline for removing any plutonium stored at NNSS for processing at LANL or elsewhere in the DOE complex.
5. All plutonium stored at NNSS covered under DOE's 2018 Supplemental Analysis for the Removal of One Metric Ton of Plutonium from the State of South Carolina will be prioritized for processing ahead of any other surplus plutonium designated for new pit production.

We respectfully request a response regarding these overarching concerns and the above assurances on or before November 16, 2018.

Again, thank you for hosting the Working Group meeting. We look forward to the continuing the Working Group and supporting the critical national security missions at the NNSS.

Sincere regards,



Pam Robinson
Policy Director
State of Nevada Office of the Governor



Bradley Crowell
Director
Nevada Department of Conservation and
Natural Resources

cc:

Anne White, DOE Assistant Secretary for Environmental Management
Melissa Burnison, DOE Assistant Secretary for Congressional and Intergovernmental
Affairs
Steve Lawrence, DOE/NNSA Nevada Field Office Manager

ATTACHMENT 3

ATTACHMENT 3



Department of Energy
National Nuclear Security Administration
Washington DC 20585

November 20, 2018

OFFICE OF THE ADMINISTRATOR

Mr. Bradley Crowell
Director
Nevada Department of Conservation and
Natural Resources
Carson City, Nevada 89701

Dear Mr. Crowell:

Thank you for your letter regarding the Department of Energy (DOE) / National Nuclear Security Administration (NNSA)'s ongoing work at the Nevada National Security Site (NNSS).

As you know, DOE/NNSA protects the American people by maintaining a safe, secure, and effective nuclear weapons stockpile; reducing global nuclear threats; and providing the U.S. Navy with safe, militarily-effective naval nuclear propulsion plants. For more than 60 years, NNSS has been an integral part of most of these mission areas, beginning with its weapons testing program during the Cold War.

With regard to the issues expressed in your letter, the DOE/NNSA examined a number of options for the removal of one metric ton of plutonium at the Savannah River Site (SRS) as directed by the District Court. After conducting a thorough review, and in accordance with safety and environmental requirements, the DOE/NNSA decided to remove one metric ton of programmatic defense material from SRS and ship it to three sites (NNSS, the Pantex Plant, and Los Alamos National Laboratory (LANL)). Specific to NNSS, the Device Assembly Facility (DAF) is identified as a temporary staging area for this mission-essential, weapons-grade plutonium. This material will ultimately be used for vital national security missions and is not waste. We expect the material staged at NNSS to be prioritized for removal and transferred to LANL by the 2026-2027 timeframe. We will keep you updated on our progress as the pit production mission moves forward.

The NNSS has a long history of safely and securely managing and storing nuclear materials, including plutonium, and similar material has been at the DAF since it was placed into nuclear operation in 2005. In support of its ongoing material security work, the NNSS' receipt, storage, and management of nuclear materials, including plutonium, have been reviewed and analyzed in the Final Site-Wide Environmental Impact Statement (SWEIS) for the Continued Operation of NNSS and Offsite Locations in the State of Nevada (DOE/EIS-0426, February 2013). This Final SWEIS examined the environmental impact of NNSS activities, and nuclear material management/staging, as well as discussed the scope and risk to the public, worker health and safety, and transportation.

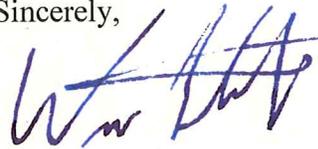


In order to further comply with the National Environmental Policy Act (NEPA), the DOE examined the environmental impact of this new activity in its Supplement Analysis (SA) for the Removal of One Metric Ton of Plutonium from the State of South Carolina to Nevada, Texas, and New Mexico (DOE/EIS-236-S4-SA-01, July 2018). This SA considered impacts from several NEPA documents and concluded that there were no substantial changes in the proposed action that would require a new environmental analysis. We are confident that we have met all applicable NEPA requirements.

As discussed in the Supplement Analysis, the DOE/NNSA Office of Secure Transportation (OST) provides safe and secure transportation for these plutonium shipments. Due to classification and security concerns, I am unfortunately unable to provide specific route information or timing of shipments, but I can assure you that OST follows the highest safety and security protocols, and all shipments subject to this removal plan will be completed by the end of 2019.

The DOE/NNSA values its longstanding relationship with the State of Nevada and is confident that the established Nevada Working Group, and revised charter, will continue to provide a foundation to collaborate on NNSA activities in 2019 and beyond. Thank you for your interest and support of the important missions executed at NNSS. If you have any questions, please contact me or Nora Khalil, Associate Administrator for External Affairs, at (202) 586-7332.

Sincerely,

A handwritten signature in blue ink, appearing to read "William I. White". The signature is stylized and cursive.

William I. White
Chief of Staff and
Associate Principal Deputy Administrator



Department of Energy
National Nuclear Security Administration
Washington DC 20585

November 20, 2018

OFFICE OF THE ADMINISTRATOR

Ms. Pam Robinson
Policy Director
State of Nevada Office of the Governor
Carson City, Nevada 89701

Dear Ms. Robinson:

Thank you for your letter regarding the Department of Energy (DOE) / National Nuclear Security Administration (NNSA)'s ongoing work at the Nevada National Security Site (NNSS).

As you know, DOE/NNSA protects the American people by maintaining a safe, secure, and effective nuclear weapons stockpile; reducing global nuclear threats; and providing the U.S. Navy with safe, militarily-effective naval nuclear propulsion plants. For more than 60 years, NNSS has been an integral part of most of these mission areas, beginning with its weapons testing program during the Cold War.

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Sincerely,

A handwritten signature in blue ink, appearing to read "W. White", with a long horizontal flourish extending to the right.

William I. White
Chief of Staff and
Associate Principal Deputy Administrator