

UNITED STATES
NUCLEAR REGULATORY COMMISSION

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BRIEFING ON URANIUM RECOVERY

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TUESDAY,

NOVEMBER 29, 2016

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ROCKVILLE, MARYLAND

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The Commission met in the Commissioners= Hearing Room at the Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, at 9:00 a.m., Stephen G. Burns, Chairman, presiding.

COMMISSION MEMBERS:

STEPHEN G. BURNS, Chairman

KRISTINE L. SVINICKI, Commissioner

JEFF BARAN, Commissioner

ALSO PRESENT:

ANNETTE VIETTI-COOK, Secretary of the Commission

MARGARET DOANE, General Counsel

NRC STAFF:

MARC DAPAS, Director, Office of Nuclear Material

Safety and Safeguards (NMSS)

DIANA DIAZ-TORO, Project Manager, Environmental Review

Branch, Division of Fuel Cycle Safety,

Safeguards and Environmental Review, NMSS

ANDREA KOCK, Deputy Director, Division of

Decommissioning, Uranium Recovery and Waste

Programs, NMSS

MARK SHAFFER, Director, Division of Nuclear Materials

Safety, RIV

BILL von TILL, Chief, Uranium Recovery Licensing

Branch, Division of Decommissioning, Uranium

Recovery and Waste Programs, NMSS

MIKE WEBER, Acting Deputy Executive Director for

Materials, Waste, Research, State, Tribal,

Compliance, Administration and Human Capital

Programs

DUNCAN WHITE, Branch Chief, Agreement State Program

Branch, Division of Materials Safety and State

Agreements, Office of Federal and State

Materials and Environmental Management Program

ALSO PRESENT:

GEOFFREY FETTUS, Natural Resources Defense Council

REID NELSON, Advisory Council on Historic Preservation

TODD PARFITT, Wyoming Department of Environmental
Quality

YUFNA SOLDIER WOLF, Northern Arapaho Tribe

KATIE SWEENEY, National Mining Association

P-R-O-C-E-E-D-I-N-G-S

(9:09 a.m.)

CHAIRMAN BURNS: Good morning, everyone. Well, I want to welcome our external panel, who is here first -- will be first up, as well as members of the staff, members of the public, both those who are here in the room and those who may be listening in.

The purpose of today's meeting is to provide the Commission with an update on status and issues associated with licensing and oversight of uranium recovery facilities. And, first, we will -- as I had mentioned, we will have a presentation from a panel of external stakeholders, including Mr. Reid Nelson, Director of the Office of Federal Agency Programs for the Advisory Council on Historic Preservation. We will discuss the Section 106 process. I want to welcome him back. It seems almost yesterday you were here when we were talking on the tribal policy statement, but welcome again.

Ms. Yufna Soldier Wolf, Tribal Historic Preservation Officer for the Northern Arapaho Tribe, will also discuss Section 106 process and the interactions with the staff. Mr. Todd Parfitt, Director of the Wyoming Department of Environmental Quality, will discuss the status of the Wyoming -- of Wyoming's Agreement State application.

Ms. Katie Sweeney, General Counsel, National Mining Association, will provide feedback on the licensing and operation of new uranium recovery facilities, and I know Katie has been here a couple of times earlier this year, so welcome again. And Geoff Fettus, who has also been here within the last six months I think, who is a Senior Project Attorney with the Natural Resources Defense Council, will also provide feedback on the uranium recovery licensing process.

As I said, the presentations for the first panel will be followed by -- we will wait

1 until the end of all the presentations and then have the opportunity for questions from the
2 Commission. After that, we will take a brief break, and then ask the staff panel to come up and
3 provide their presentation.

4 So I look forward to the presentations this morning and the ensuing discussion.
5 Would any of my colleagues have anything before we begin? Very good. And we'll start with
6 you, Mr. Nelson, if you'd begin your presentation. Thank you.

7 MR. NELSON: All right. Thank you, Mr. Commissioner -- Mr. Chairman and
8 fellow Commissioners. I appreciate the chance to be back here again addressing you.

9 I wanted to spend some time today talking a little bit about the Section 106
10 review process, the important role it plays in your licensing process, and make some observations
11 about both some successes that we see you achieving as well as some challenges and perhaps
12 some recommendations on how you might address those challenges.

13 I am the Director of the Office of Federal Agency Programs at the Advisory
14 Council. We're a small independent federal agency. We advise the President and the
15 Congress on historic preservation matters, and I think we are probably best known for also
16 overseeing the Section 106 review process.

17 So let me just say in a few general terms a little bit about the National Historic
18 Preservation Act to provide context for the Section 106 review process. The NHPA was
19 established in 1966, and it really achieves a number of important goals that the Congress had for
20 considering the value of historic preservation in federal decision-making.

21 First, it established, importantly, a requirement that federal agencies create their
22 own preservation programs. And I'll talk a little bit about your preservation program as I get
23 further into my presentation. It establishes, importantly, the Section 106 review process, which

1 is a review process that requires federal agencies to consider the effects of their actions on historic
2 properties and to provide the Advisory Council the opportunity to comment.

3 We comment through the regulations that we issue, and I will talk a little bit
4 about those as well. It also established the National Register of Historic Places, and that register
5 both lists important places and also establishes criteria for federal agencies and others in
6 determining what is important as they move forward with their projects and assess effects to
7 historic properties.

8 Again, the NHPA also established the Advisory Council itself, and I would be
9 remiss if I didn't say that we are in the process of acknowledging the 50th anniversary of the
10 NHPA. It was signed into law just about 50 years one month ago by President Johnson, and so
11 we have been taking some time to speak with agencies about sort of their progress in
12 implementing its provisions and look forward to the future and sort of how we might as a -- you
13 know, as federal agencies, continue to advance the goals of that Act.

14 So let me just say that the regulations that implement the Section 106 review
15 process also provide a set of criteria for us to determine when we should be involved in an
16 individual Section 106 consultation. And I will say that we have been happy to be involved in
17 and formally engaged with NRC on a number of important Section 106 consultations that you
18 have implemented and put in place over the years.

19 Often these Section 106 consultations can be controversial for a variety of
20 reasons. And I think given the location of much of the uranium recovery activities in the United
21 States being largely in western areas and areas that are also important to tribes, there are often
22 important tribal issues and concerns that intersect with your activities, and those are both criteria
23 for our involvement.

1 So we have been very actively engaged with you all on a number of cases, and
2 we continue to see a number of things that present some interesting opportunities and challenges.
3 But I also wanted to acknowledge before I get to those challenges that the NRC has also I think
4 accomplished a great deal, and particularly in the last four or five years we have seen the agency
5 really sort of dig in to a number of the challenges that are presented to it, particularly in its recovery
6 activities.

7 And I wanted to just sort of briefly acknowledge those. One is I think we have
8 seen NRC very clearly look to improve the way it engages in Section 106 reviews itself, taking a
9 very deliberate and purposeful effort to identify historic properties, look at the early stages of
10 planning, and make sure that those -- that the results of those efforts are informing decision-
11 making.

12 We appreciate very much that NRC has established a number of important
13 policies. And as we acknowledged -- I think I was here just about two months ago to comment
14 on your tribal consultation policy -- we were very pleased to see you establish that. We think it
15 contains a number of very important provisions for continuing to both acknowledge the important
16 role that Indian tribes play in Section 106 reviews.

17 It also I think marks out a clear understanding of the expertise that those tribes
18 have in advising you on the significance of historic places and how to resolve effects. And we
19 think that your effort to sort of establish a policy that recognizes those benefits is very important.

20 We know that you are also working on a number of other pieces of guidance,
21 draft guidance for conducting Section 106 reviews for uranium recovery actions. We know that
22 you are working on a handbook for your Section 106 review process as well. So those are all I
23 think very important steps in sort of building and strengthening and expanding your program.

1 And I also would say that we have seen a very concerted effort to bring key
2 leadership into sort of a training -- the training opportunities, and we know that you have worked
3 very hard to get folks better trained and more aware of the requirements of the Section 106
4 process.

5 So let me turn to what I think are some challenges that you all face, and they
6 are not unique to your agency. You are not the only agency that faces these challenges. But,
7 nonetheless, they can present complications in the way you implement your responsibilities for
8 uranium recovery actions.

9 Let me first just talk about timing. We recognize that as a licensing agency
10 much of the planning is done by the applicant prior to requesting the license from you. And that
11 complicates Section 106 reviews in part because the Section 106 review process is very much a
12 planning process. It works best when it informs the various -- very earliest decisions being made
13 about the location of the recovery, about its potential impacts to historic properties, and about
14 ways you can modify the recovery actions to resolve or avoid or minimize those effects.

15 So we know that's a challenge. You're not the only agency that faces that
16 challenge, given that you license activities and that you are precluded from engaging in
17 consultation with outside parties until you receive that license.

18 We also know that you face challenges, again, as many agencies do, in being
19 able to ensure that historic properties are effectively identified at that very early stage. Your
20 challenges are complicated by the fact that often the applicants are developing recovery activities
21 on private lands that are always not -- not always open and accessible to those that would want
22 to come in and try to identify historic properties.

23 We know also that the applicants themselves are not always aware at that stage

1 of the requirements to identify historic properties, and so we know that often plans are developed
2 and a very specific approach is sort of set in motion prior to it coming to you. And once the
3 license is -- once the applicant requests the license, often much of the -- sort of the -- many of the
4 components are sort of already set in stone, and the opportunity to have a historic preservation
5 review inform the way the application is submitted is perhaps challenged.

6 So let me talk a little bit about perhaps a few recommendations and possible
7 solutions. One is that we have seen -- we have seen other agencies develop pre-application
8 processes, pre-filing processes, and there are a variety of different approaches that agencies
9 have used in sort of -- in a nutshell, a pre-filing process is a process that sets requirements in
10 place established by the agency that very clearly specifies actions the applicant should take to
11 initially identify historic properties, attempt to consult states and tribes and others about their
12 presence, and ensure that it has knowledge and information about historic preservation values
13 prior to requesting that license.

14 Now, we understand that your agency may or may not have the authority to
15 establish a pre-licensing process or a pre-filing process, but I would simply say that we would be
16 happy to advise you further on steps that you might be able to take to better inform applicants to
17 have them initiate and at least attempt to establish sort of a process for considering historic
18 properties prior to requesting that license.

19 And we recognize, importantly, that often tribes will decline to consult with an
20 applicant because they have the right to engage and consult with a tribe -- with a federal agency
21 on a government-to-government basis. So we understand that not all tribes wish to take
22 advantage of such opportunities, but we do know that often many tribes do find it beneficial to
23 work with applicants earlier on in the process, so that they can ensure that the -- their concerns

1 are at least factored into the plans that the applicant is developing.

2 Let me also just say that we continue to think that additional development in
3 your preservation program is necessary. As I said earlier, we have noted that NRC has
4 embraced Section 106 training. We recognize that there are a number of people within the
5 agency that have significant experience and expertise. We would encourage you to develop
6 procedures for calling on that expertise, ensuring that those folks are available to inform other
7 Section 106 reviews.

8 We would encourage you to continue to advance your training program and
9 move from training sort of a top tier of folks to ensuring that folks at all appropriate levels in project
10 development are adequately trained. And we also think that there is an opportunity for you to
11 continue to strengthen and expand your federal preservation officer position. I know you are
12 working on establishing one. That's very good. There are a number of things that we would be
13 happy to do to sort of assist you in implementing that.

14 So, in sum, I think there are a number of important things and accomplishments
15 that we have been pleased to see you make over the last number of years. We would look
16 forward to working with you to talk further about a pre-licensing process or a pre-filing process, if
17 that's possible from your perspective. And, as always, we remain available to assist you in
18 implementing training programs and staff development programs.

19 Thank you.

20 CHAIRMAN BURNS: Thank you very much. Ms. Soldier Wolf, please.

21 MS. SOLDIER WOLF: Hi. Good morning. My name is Yufna Soldier Wolf.
22 I am the Northern Arapaho Tribal Historic Preservation Officer, and the Native American Graves
23 Protection and Repatriation Act Coordinator for my tribe, the Northern Arapaho.

1 I am here today -- so I am here to give the tribal perspective. We do use the
2 Code of Federal Regulations through Section 106. As the Arapaho Tribe, we do have our own
3 tribal code. Our tribal code and policy and procedures, as a tribe, we do follow Section 106 and
4 our tribal code. We work with many federal agencies, including BOR, BLM, USF, DEQ, DOE,
5 BIA. You know, we work on federal land, tribal land, and our ancestral migratory territory, which
6 is from the Rocky Mountains to the Mississippi, which is a huge area for the Arapaho. A lot of
7 that area is migratory land.

8 I think here in Washington is the first time I have ever been here, actually, and
9 to see how far a distance that is is huge. As you can see on the map, this -- the middle there is
10 the reservation and the rest is the state of Wyoming.

11 So who are we as the Arapaho people? We are an Algonquin nation. Our
12 creation stories were believed to be fact. And just recently, through archaeology, we are
13 answering these questions. After many Indian battles, we were one of the -- one of the last tribes
14 to be forcefully settled in Wyoming.

15 The Arapaho never adopted the Indian Reorganization Act. We are not a
16 constitution tribe. We are a resolution tribe. We have a traditional government, and the
17 traditional authority comes from our elders. Why is this important? Because that is sovereignty
18 and self-determination.

19 As Mr. Reid had pointed out, we are considered a sovereign nation. We are
20 government to government, and a lot of the times we do not really deal with -- we work really good
21 with the state of Wyoming. Most of the time when we deal with things on the reservation it is
22 following our tribal code. So a lot of the Code of Federal Regulations still apply to us, and we do
23 like to use -- and as my slide will show, we do use -- okay. And I have done this -- this slide a

1 while back, so I guess what connects us back to these areas are oral history, practicing our tribal
2 law, our tribal code, our tribal customs, practicing our language, our religion. Those are our tribal
3 mechanisms to reinforce the foundation of going forward with projects.

4 So with any federal undertakings on and off the reservation, we deal with
5 anything that has land disturbance, tribal consultations on permits on and off the reservation. My
6 office deals with that. What we do is follow Section 106. I'm pretty sure you're all familiar with
7 this slide. Can we go to the next slide?

8 Basically, what we go off of and what we show as sites as significant to our tribe
9 is through traditional ecological knowledge, and it's to understand what traditional ecological
10 knowledge is through plants, wildlife corridors, the solstices. It's to identify that, document it.
11 We use our site forms. We deem if they are eligible and illegible and evaluated through the
12 Wyoming SHPO site forms, which meet Criteria A, B, C, and D.

13 I train all my employees to understand what these mean and how to correctly
14 and accurately -- documentation for TEK and TCPs. TCPs are traditional cultural properties.
15 We also have a GIS mapping information system in our office, which we use latitude and longitude
16 to generate our own tribal reports. We all know about latitude and longitude.

17 This is an example of a GIS map. We do this in our office, and we also work
18 with the Wyoming SHPO so that we can generate a tribal report for any type of project we are
19 working with, and to ensure that any type of sites that are found are accurately documented and
20 decide if they are significant or not.

21 We do NAGPRA, like I said, Native American Graves Protection and
22 Repatriation Act and repatriating items back to the tribes. I have gone to many site visits in the
23 state of Wyoming for uranium recovery, element resources, and a lot of those are ground-

1 disturbing. And so NAGPRA applies to a lot of projects there when you talk about our ancestors'
2 human remains.

3 Like I said, if it's pre-NAGPRA, we talk about the Antiquities Act, the
4 Archaeological Resource Protection Act, and the Freedom of Religion Act.

5 So we are also -- my office also does international repatriation when we are
6 requesting items back from overseas. This is important because a lot of these areas that we talk
7 about in Wyoming in our ancestral area relate back to a lot of historical war chiefs who have fought
8 in many Indian battles that are significant to sites. And when these sites are identified and we
9 can relate back to these people and these stories, it brings more significance to these sites. And
10 if we do find that there is a war bonnet in the British Museum that one of our war chiefs had used,
11 it brings us back to how important and how significant that site may be.

12 We also work in Colorado. That was our homeland and, like I said, we'll find
13 remains of different ancestors, and we deem them important. They are significant, and we can
14 relate them back to locations, which is important in deciding the significance of a site.

15 Just recently I started a task force unit within my tribal historic preservation
16 office, which focuses on the illegal transfer through purchase of items that were stolen, being sold
17 on eBay, Amazon, collectors, and I am also training on how to identify cultural items and building
18 on the authentication of, are these items actually Arapaho or not? A lot of things are being sold,
19 and we have no recourse in receiving items back through private collections.

20 Like I said, this is just my tribal perspective and what we do, so you can kind of
21 understand where I'm coming from. A lot of things are being looted, a lot of things -- a lot of sites
22 are being looted when we do start ground disturbance, and a lot of sites are being -- a lot of
23 artifacts are being illegally sold overseas and within the nation.

1 Historic photography -- a lot of what we have, also in the history of our tribe we
2 do have a lot of -- like I said, we can reconnect back to the earth. We can reconnect back to
3 locations. We can reconnect back through oral histories and the way -- where we were through
4 our language, and a lot of that is important when we talk about sites and site forms and filling out
5 these site forms. That's what makes it significant.

6 Other than that, I really am kind of close to my presentation being done. I do
7 want to thank you for your time. I know that a lot of the time you are not able to receive the tribal
8 perspective, and that is the most important for me as a tribal historic preservation office is to give
9 that perspective and to talk about why these sites are important to us, and the significance into
10 why we are trying to preserve as much of our culture as we can because in Wyoming it is very
11 isolated, but we can go back to a lot of these sites and say that we are still connected to them.

12 I want to thank you for your time today. Thank you.

13 CHAIRMAN BURNS: Thank you very much. Mr. Parfitt.

14 MR. PARFITT: All right. Thank you and good morning. Is this on?

15 CHAIRMAN BURNS: Yes. I think you may have just turned it off.

16 (Laughter.)

17 MR. PARFITT: All right. Thank you and good morning. I'm Todd Parfitt.
18 I'm the Director of the Wyoming Department of Environmental Quality. I want to thank the
19 Commission for the opportunity to be here and to speak to the progress Wyoming has made on
20 becoming an Agreement State.

21 I have prepared a few slides that outline the progress to date, and if we can go
22 maybe to Slide 2. Slide 2 frames the discussion. Wyoming is seeking a limited agreement. As
23 stated in the Commission paper, June 5, 2016, Wyoming is only seeking authority over source

1 material involved in the extraction and concentration of uranium and thorium in source material
2 and ores at milling facilities, and the management and disposal of byproduct material as defined
3 in 11e(2) of the Atomic Energy Act. All other regulatory authority for other radioactive materials
4 would remain with the Nuclear Regulatory Commission.

5 So the recent interest in becoming an Agreement State really began back in
6 2013. There was some discussion with the legislature and industry with interest in becoming an
7 Agreement State, and then there was an Enrolled Act 100 that was signed by the governor,
8 enacted by the governor, which commissioned a feasibility study for evaluating the process on
9 becoming an Agreement State, with a focus on the process and the timing, also the personnel
10 and budget that would be necessary and how that would be structured and other interim study
11 items.

12 The feasibility study resulted in a favorable recommendation, and the Wyoming
13 legislature passed a bill in 2015 providing the funding for the Department of Environmental Quality
14 to pursue an agreement with the Nuclear Regulatory Commission.

15 The process of seeking an agreement was formalized February 27, 2015, when
16 the governor, Governor Mead, sent a letter of intent to the NRC. The timeline of our process is
17 detailed in Slide 3, as you can see. Slide -- and I'll come back to that or speak to that some
18 more.

19 Slide 4 talks a little bit about staffing. Wyoming began staffing the program
20 once the legislation passed with the funding and the positions necessary to do so. We began
21 the staffing with the uranium recovery program manager in July of 2015. To date, we have
22 brought on an assistant attorney general and a paralegal, and both of those positions are actually
23 housed within the Attorney General's office, but they service -- provide service to the agency.

1 We brought on an engineer, a geologist/hydrogeologist, and a health physicist.
2 Additionally, there are two more positions. We plan on bringing on an administrative assistant,
3 which is actually out for recruitment right now, and one additional technical position.

4 The DEQ continues to rely on, and will continue to rely on, the expertise that
5 already resides within the Land Quality Division, which has decades of experience regulating the
6 uranium recovery industries in Wyoming. Staffing of the uranium recovery program commenced
7 early in order to ensure we had sufficient time for staff to be trained sufficiently to meet the NRC's
8 standards, and that is going along ahead of schedule.

9 The DEQ is confident that the technical personnel in the uranium recovery
10 program will be found to be adequate by NRC personnel upon review of the final application.

11 Now, the development of the statutory authority and the regulations to establish
12 a program compatible with NRC requirements has been progressing on or ahead of schedule
13 and, importantly, within budget. And I would just mention that there was a lot of discussion early
14 on about how we would stand up this program and who would pay for the standup of the program.

15 And the state legislature and the governor agreed that the state would fund the
16 standup of the program, estimated to be four to five years, but once the program was stood up,
17 then we would go to a fee-based program and industry would support the program moving
18 forward.

19 The statutes were revised in March of 2016 to give the uranium recovery
20 program regulatory authority that was necessary to move forward with the limited agreement.
21 Additionally, the statute will be modified again during the 2017 session to account for additional
22 suggestions that have been provided by the NRC.

23 Now, going back to -- backwards to Slide 3, the regulations for the program

1 include 10 chapters and are moving through the Wyoming rulemaking process. This process
2 includes public participation in conjunction with the Land Quality Advisory Board, and you can see
3 that those regulations were passed through the Advisory Board in the second quarter of 2016.

4 In fact, they were -- met the requirements of the Board on September of this
5 year, and so now we are preparing to move forward to the Environmental Quality Council, which
6 in Wyoming is the formal rulemaking process, which is another opportunity to accept public input.
7 And we expect the Council to have their hearing on those rules early in 2017, probably in the first
8 quarter if not the second quarter of 2017.

9 So it's important to note that, in the development of the statutes and regulations,
10 the state sought consultation and input from the NRC, the public, and industry, early and
11 frequently throughout that process. With the majority of the staff in place, the statutory authority
12 to be completed in a -- hopefully in the first quarter of 2017, and the regulations moving through
13 the rulemaking process, we felt the state was in a position to send the NRC the draft Agreement
14 State application, which we did in October of this year.

15 We elected to do that to allow NRC staff adequate time to review the application,
16 providing Wyoming with further questions or comments. This will allow any necessary revision
17 to the regulations to be reviewed and incorporated before the regulations become final. Any
18 additional comments that we receive on the draft application will be considered for incorporation
19 into the final application, which is anticipated to be sent to the NRC in the third quarter of 2017.

20 So based on these NRC guidance, we anticipate at least a year for the review
21 of that application, and that Wyoming would enter into a final agreement by the third quarter of
22 2018.

23 The program has greatly benefited and appreciates NRC's support in ensuring

1 that Wyoming personnel are trained and that the state has a program that is both adequate and
2 compatible to NRC standards.

3 This support includes NRC-sponsored trainings, NRC Region IV inspection
4 accompaniments, and numerous calls made to the NRC materials program for help with concerns
5 and questions. More specifically, it should be noted that Steven Poy and Duncan White have
6 been very instrumental to the progress made to date.

7 So, in summary, as shown in Slide 5, the state has made considerable progress,
8 reaching several milestones and becoming an Agreement State, with the assistance of the NRC.
9 It is important to highlight that we were able to come to resolution on many issues, but not limited
10 to the state statutes and regulations, defining the scope of materials assumed by the state,
11 developing language that excluded independent and commercial laboratories from the state
12 program, and, as the process moves along, we continue to work towards resolution on concerns
13 related to the Wyoming -- that recently passed Wyoming's trespass laws, the disposition of Title
14 II sites, and how the state will handle programmatic agreements between the NRC and the local
15 Native American tribes on the 106 consultations.

16 So, with that, Wyoming looks forward to continuing the partnership with the
17 NRC. We anticipate the standup of the limited agreement to remain on or ahead of schedule,
18 with the agreement coming to completion in 2018. Now that is important for a lot of reasons.
19 The sooner we stand it up, the sooner the fee process takes place, and there is a lot of interest
20 in doing that as expeditiously as possible, and which we would be looking at about a three-and-
21 a-half-year timeframe, which is within the timeframe that we had expected, between three and
22 five years to do that.

23 So, with that, thank you for your time and your interest in the progress, and I

1 would be happy to take any questions that you have.

2 CHAIRMAN BURNS: Okay. Thank you. Ms. Sweeney.

3 MS. SWEENEY: Thank you for the opportunity to be here today to provide
4 National Mining Association's views on a host of issues important to its uranium recovery
5 members. I do have a -- the next slide, please?

6 Just some of the issues that I want to hit upon today, most of them just briefly,
7 starting off with risk-informed regulations and fee issues. I am not going to spend a lot of time
8 on these two items, as I focused on them in meetings with the Commission earlier this year. But
9 I didn't want to leave them off the list altogether as they remain significant issues for the industry,
10 and that's risk-informed regulations and fees, as I said.

11 I talked about risk-informed regulations earlier this year at the July 26th
12 presentation. Just a reminder, you know, the importance of focusing on issues that are of high
13 risk. Low-risk ones, you're wasting money, time, for both staff, NRC, and industry.

14 And, obviously, we would like you to continue to look for ways to streamline
15 regulatory processes. I will spare you my standard spiel on the underutilization of the generic
16 environmental impact statement, but that is one issue where we still think that some progress
17 could be made.

18 On the fee issue, we did get into that at the September 16th presentation. Lack
19 of cost containment and insufficient billing details were big issues for National Mining at that time,
20 and still are, but we are very pleased with the Commission vote and the direction in the October
21 19th SECY paper, are very interested in seeing how we can move forward with a voluntary pilot
22 initiative to determine whether certain uranium recovery activities are amenable to flat fees, and
23 also really appreciate you guys telling the staff to accelerate the transition to electronic billing,

1 because I think there is an opportunity to get more billing details in that way.

2 National Historic Preservation Act, I am glad to see that that has been such a
3 focus of the briefing. It is a big issue for the industry. It is one where we have seen, as the
4 ACHP has said, they have seen some improvements with NRC processes, we have seen some
5 improvements over time as well, but it is still a very difficult process to navigate.

6 We are seeing some earlier initiation, and I think that's very useful, but it doesn't
7 seem to impact the overall length of the process, but maybe we haven't given that enough time
8 to see how that is working. And timeframes are really important.

9 I really was very interested in Reid's idea of the pre-filing process. I am
10 wondering if that is something that could be married with the pre-submission audit that some
11 uranium licensees have taken advantage of, where they actually talk to the NRC staff before they
12 submit their application. And I'm wondering if there might be a way to build in some more 106
13 information early on through that process, and make sure that the applicants have the information
14 that they need, and also the understanding of how you can do some early outreach with the tribes
15 if they are amenable to that.

16 So I think that there are some -- there is definitely room for progress, but we are
17 seeing some progress being made. One thing that I think just to bring to people's attention again,
18 I think that the CEQ handbook on NEPA -- how to integrate NEPA and the National Historic
19 Preservation Act process is a very useful tool that we'd like to see, you know, more use being
20 made of that tool.

21 Just a gentle reminder on one issue that is outstanding that is providing
22 significant uncertainty is the Powertech decision, and we are still waiting for the Commission's
23 decision on that to resolve some of the uncertainty created by the ALJ's decision there to ignore

1 some of the ACHP recommendations.

2 Then on to the radon guidance. I don't want to spend a lot of time on this one
3 either, because I addressed it as part of -- as an example of the failure to adopt risk-informed
4 regulations and policies earlier this summer. It is still a problematic issue, but I do want to let you
5 know that conversations are continuing. There was an industry-staff conference call in
6 September.

7 We are still trying to find paths forward. There is a workshop being planned,
8 and so we are still trying to get past kind of this fundamental disagreement over interpretation of
9 what the regulations and the guidance actually require and how to demonstrate compliance. But
10 I think everybody is looking for a path forward, but it has been a big sticking point that we do need
11 to continue to focus some effort and resources on.

12 Next, EPA and NRC jurisdiction under UMTRCA and EPA's Part 192
13 rulemaking. I think most people are familiar that this rulemaking is ongoing and is currently sitting
14 at the Office of Management and Budget for interagency review. One of the National Mining
15 Association's big issues with this rule is we feel that it exceeds EPA's general standard-setting
16 authority under UMTRCA and really transgresses into NRC's or Agreement State's
17 implementation and enforcement authority.

18 Our concerns appear to be shared by NRC, at least to some degree, according
19 to FOIA documents that were obtained by the press. Obviously, National Mining Association
20 doesn't know the substance or extent of the discussions among the various agencies while this is
21 undergoing review at Office of Management and Budget, but we are pleased that NRC staff is on
22 the calls and listening firsthand to the stakeholders' concerns as those stakeholders are providing
23 those concerns to Office of Management and Budget.

1 And our biggest concerns, besides the jurisdictional issues, are the fact that we
2 don't see any evidence of contamination or adverse impacts to adjacent aquifers. We see that
3 EPA has really failed to acknowledge the data that NRC and the states have collected showing
4 that there really hasn't been these adverse impacts, failure to acknowledge existing federal and
5 state programs governing groundwater.

6 Even EPA's own underground injection control program doesn't seem to get --
7 the gravity of that program is just misunderstood or just slighted actually by the way EPA has
8 moved forward with this rulemaking, because that provides protections, too, to the groundwater.
9 Plus, there are state programs. There might be state programs under the mining laws. There
10 might be state programs under their Safe Drinking Water Act. There is different laws and
11 regulations existing to protect adjacent aquifers from contamination and harm.

12 And also, there is -- EPA's definition of "excursions" really is different than how
13 NRC talks about excursions, and that has been an issue, too, because when they say "excursion"
14 they seem to be implying that there is harm. When NRC uses the term "excursion," you are
15 talking about the fact that you need to actually make sure that everything is where it is supposed
16 to be and isn't moving. It is kind of that red flag that tells you to go out there and look and make
17 sure you know what is happening. And if there is anything happening, you have to address it
18 immediately.

19 And then, just finally, I'll touch briefly on regulation of ablation technology.
20 NRC staff recently had an advisory opinion to the state of Colorado, essentially equating ablation
21 to milling, and, therefore, waste from that process would be 11e(2) byproduct material.

22 We are worried about this. In that advisory opinion, NRC staff stated that the
23 term "byproduct material" is defined by an action, not by -- not the characteristics of the waste.

1 But we think that's contrary to a previous SECY paper from 1999, and byproduct material is
2 defined by the intent of the action, not the action itself. So it has been in the past by the primary
3 purpose.

4 Well, the primary purpose of ablation is to dissociate uranium mineralization
5 from sands or other ores to minimize the tailings. It is not to extract or concentrate source
6 material primarily for the source material content.

7 So if any NRC license is needed, which, you know, we have our doubts about
8 that, it should be a simple source material license as have been done in the past for side stream
9 recovery, water remediation techniques.

10 And, with that, I am open for any questions when we're finished.

11 CHAIRMAN BURNS: Thanks. Mr. Fettus.

12 MR. FETTUS: Hi. Thank you, Chairman Burns, Commissioners Svinicki and
13 Baran. Thank you for having the Natural Resources Defense Council here today to present our
14 views. I am not going to present any slides today. I thought I would just get right to the point
15 and read you guys a short statement and then take any questions.

16 And, like Katie, I appreciate the focus on 106 reviews, and ensuring that they
17 are not a box-marking, box-checking exercise is extraordinarily important. Almost precisely eight
18 years ago, NRDC came before you and I made -- and it was me -- made the following statement.
19 Quote, I said eight years ago, "The history of uranium mining and milling across the American
20 West has been one of severe environmental and social harm. Despite this history, the framework
21 for the regulation of uranium recovery is a mish-mash of federal and state oversight with little
22 accountability for lax decisions and a decided unwillingness to enforce protective standards if
23 these would increase the cost to the industry.

1 "The NRC, EPA, DOE, and the Interior Department, especially the Bureau of
2 Indian Affairs, under its trust responsibility, all hold portions of responsibility for the regulation of
3 past, present, and future harms resulting from uranium recovery. Literally decades after the
4 original harm from uranium recovery was first inflicted on Western land, water, and communities,
5 the NRC has commenced" -- and this was in 2008 -- "drafting what we hope will be a rational,
6 protective, regulatory structure for any future uranium ISL recovery.

7 "Unfortunately, if the draft GEIS impacts -- if the draft generic environmental
8 impact statement for in situ leached uranium milling facilities issued in July of 2008 is indicative
9 of how the agency intends to go about managing its responsibilities, we are concerned." Our
10 draft comments were timely submitted, et cetera, et cetera, and we provided detailed illustrations
11 of our concerns that we will not repeat here.

12 Here I am, eight years on, and since that time NRDC, the Powder River Basin
13 Resource Council, the Oglala Sioux Nation, and others have proceeded to litigate over a number
14 of issues that I spoke about in 2008 and could again today, but for the fact that our case against
15 the NRC, for many of the NEPA harms we identified in those 2008 comments and in the Strata
16 proceeding, are now currently pending before the United States Court of Appeals for the D.C.
17 Circuit.

18 I will not, therefore, expand on this except to note that the papers are public and
19 the contents speak for themselves. I look forward to speaking to a host of technical and legal
20 issues without restraint after such time as the litigation concludes.

21 And so it is eight years on. The existing regulatory regime for uranium recovery
22 still fails to protect public health and the environment, and, indeed, it was never designed to
23 address the ISL problem in the first instance. But you guys know all of that.

1 The regulations promulgated in the '70s and '80s did not contemplate ISL
2 mining and its associated harms, and the legal framework is still inadequate to the task of
3 protecting scarce western U.S. groundwater resources as well as other matters. This regulatory
4 gap must be filled if the nation is to avoid future risk to this important public resources.

5 EPA, to its credit, has at least gotten the ball rolling with the issuance of a 2015
6 draft rule that Katie just mentioned, and now it is proposed final, as she said, currently sits at the
7 White House's Office of Management and Budget. We don't know when or if OMB or EPA is
8 going to move forward with its rule, but we are long on record strongly supporting EPA's proposed
9 revisions to 40 CFR 192 as the current regulatory regime fails on a number of fronts.

10 The EPA proposed rule addresses current deficiencies in charactering baseline
11 aquifer, the baseline aquifer water quality, groundwater degradation from mining activities, the
12 potential for ISL uranium mining to contaminate adjacent aquifers, as well as the mined aquifer
13 and the long-term groundwater impacts for the entire region.

14 These are fundamental challenges for the industry and for the -- and the EPA
15 rule properly focuses on those. Governing law and policy make clear that EPA has the authority
16 to promulgate this rule, which careful analysis has shown to have small economic impacts on the
17 mining industry relative to the rule's benefits.

18 Now, and in the future, groundwater represents a significant source of drinking
19 water supply for the municipalities and water for agriculture use in areas where uranium mining
20 has and will continue to occur. These aquifers and the U.S. citizens who depend on this water,
21 now and in a more arid future, need the scientifically rigorous protections built into EPA's draft
22 rule.

23 In short, as it has been for years, unless EPA and the NRC establish clear

1 protective rules for the ISL mining industry, there will continue to be divisive, contentious
2 groundwater contamination litigation and controversy similar to those that have happened in
3 Wyoming and New Mexico and South Dakota and Texas. And rather than specifically go through
4 the list of why EPA standards -- I'm not going to litigate those here today.

5 I'm happy to answer any questions about them, but -- and EPA can speak for
6 themselves when they are -- no longer have a rule in front of OMB.

7 So thank you again for this opportunity, and I am happy to answer any
8 questions.

9 CHAIRMAN BURNS: Okay. Well, thank you all for the presentations. I will
10 start with questions this morning. I'll start with Mr. Nelson. I think we heard from you in terms
11 of the notion in the 106 process for a pre-consultation or a pre-filing -- I guess you'd -- a pre-filing
12 process, and I heard some potentially positive aspects.

13 Can you tell me what that looks like in a sense? I know we've had some
14 engagement about -- because of the fee-based nature of this agency in terms of our kinds of
15 engagements. But what are the types of things that perhaps others do that you think might be
16 worth considering in this context?

17 MR. NELSON: Sure. Thank you for that question. Well, there are a number
18 of agencies that have pre-filing processes. Some work better than others, and none are perfect.
19 But generally what they have in common is that they -- the agency uses the pre-filing to establish
20 a set of expectations of what the applicant will do to consider in this case historic preservation
21 values prior to actually requesting the license.

22 It establishes expectations for the applicant in initiating Section 106 reviews and
23 first establishing contact with state and tribal historic preservation offices and other parties to

1 gather basic information about the presence and, if known, the nature of historic properties that
2 may be there, to gather information, importantly, from tribes on the potential for there to be
3 properties of concern to them in the area, and also to sort of establish expectations that the
4 applicant considered those values, the information they provide, and factor them into the final
5 application or license that it requests.

6 Now, as I said earlier, tribes enjoy a government-to-government relationship
7 with your agency and others. And so it is not always the case that tribes believe it appropriate
8 to work directly with an applicant, and some tribes say, "We would prefer to work with the agency."
9 But many do decide to work with the applicant, and there are different ways to do that. But I
10 think, in essence, it is a purposeful attempt to factor that information in prior to requesting the
11 license.

12 CHAIRMAN BURNS: Okay. And, Ms. Sweeney, you sort of commented
13 favorably on that in the context of the pre-submission, what I'll call the "free meeting" that there
14 is.

15 MS. SWEENEY: There is a TAC number for that.

16 CHAIRMAN BURNS: Well, there may be, but there is an initial engagement
17 you all can have. I mean, we need to understand what application there is out there, but that's -
18 - have some potential or the miners come licensing -- license companies attempted to do that, or
19 see that as a --

20 MS. SWEENEY: They have done the pre-submission audits and I think found
21 them quite useful. I think -- I am not sure to what extent they addressed any 106 issues in those
22 audits, but it seems like there would be an opportunity perhaps to do as suggested during that
23 meeting.

1 CHAIRMAN BURNS: I mean, is there a fairly good understanding within the
2 industry of the 106 process? After all, we just heard it's 50 -- I think I remember as a kid -- I didn't
3 watch President Johnson sign the legislation, but I remember it was a big issue and it was a big
4 issue not only for tribes, it is -- you know, parts of downtown Washington, which, you know, were
5 preserved because of that. But, you know, so is there, you think, a good understanding of the
6 industry of that -- that legislation and the need for consultation?

7 MS. SWEENEY: Yes. There definitely -- I mean, there is an understanding
8 and a respect for the process by the companies. It is just that the process needs to be more
9 efficient, and I think anything that we could do to make the process more efficient --

10 CHAIRMAN BURNS: And what are the efficiencies you would say?

11 MS. SWEENEY: I think that it's often that there aren't firm timeframes, that it
12 would be helpful to have some of those. I mean, there are suggestions in the ACHP guidelines
13 for timeframes, particularly with outreach and consultation and what is sufficient in those regards.

14 I do think early initiation and consultation is a fabulous idea and a way that
15 hopefully would help move things forward. Obviously, that will only work to the extent that the
16 tribes are willing to have that early -- those early discussions with the applicant, knowing that the
17 government-to-government consultation will be coming. So I think that there are some
18 opportunities that this pre-filing process might further.

19 CHAIRMAN BURNS: Okay. Ms. Soldier Wolf, one of the things I think you
20 touch on in your presentation is the preservation or, you know, protection for -- from a number of
21 important aspects of tribal cultural resources. One is either the sacred nature or the spiritual
22 nature of a site or objects that might be contained at that site, and to -- you know, on the other
23 end of the spectrum, you know, your protection basically from theft or things like that. Are there

1 things you think we can do in that process to allow, you know, an appropriate -- the appropriate
2 level of confidentiality, or are we achieving that?

3 Because I can see that as a valid concern on your part as, you know,
4 responsible for the protection of such assets, and things like that. And, you know, as you say,
5 when you see it on eBay or, you know, in an antique store somewhere where it should not -- it
6 should not be. So I would appreciate any thoughts you have on that issue.

7 MS. SOLDIER WOLF: Okay. And so from the tribal preservation perspective,
8 I had found one of the slides that -- it's really important to actually make sure that the pragmatic
9 agreement is really set in the language. Everything you just spoke about is in the PA.
10 Everything you have talked about can be addressed in the language in the PA and the pragmatic
11 agreement.

12 Basically, the tribes come to the table and they decide, okay, how are we going
13 to deal with this project in an efficient manner? Are we going to meet our timeframe? How are
14 we going to go about this in a way that is going to be productive? And how are we going to be
15 progressive?

16 One of the things I talk about in my program is we are not here to stand in
17 anybody's way of production. We are here to avoid, minimize, and mitigate. And one of the
18 things is that when you have a pragmatic agreement and that spells that out simply in English,
19 and we all understand that, then that is when a lot of the confidentiality insights and protecting
20 and preserving -- that is actually bringing that all together and saying, "This is what we are going
21 to do. And as a concurring party, or as a signatory to this PA, this is what we are going to go
22 through with this."

23 And, basically, if you don't have a PA, everybody is not on the same page. The

1 PA brings everybody in, and it is timeframes, it is being efficient, it is being effective, and when
2 you have that type of language in there it really brings confidentiality, it brings protection and
3 preservation back to why we are doing what we are doing.

4 CHAIRMAN BURNS: Okay. Thank you. Thanks for that.

5 Mr. Parfitt, as having gone or still proceeding through the Agreement State
6 process, are there any kind of lessons learned or observations that you'd make or suggestions to
7 us? You may have some internal to Wyoming in terms of how you all are proceeding, but are
8 there suggestions you might have for us that would be useful for us to consider?

9 MR. PARFITT: Well, sure. I think just a few comments and observations.
10 From what we see is there are agreements in place with the NRC, the tribes, and the State Historic
11 Preservation Office, and some other federal agencies. Right now, our agency is not signatory to
12 those agreements, and so there is ongoing discussion.

13 And this is really, as I mentioned, is where we need to focus our attention now
14 is how do you handle the existing agreements that are in place, which those would obviously be
15 on -- where there is a federal nexus with BLM lands in particular. So that's one category that
16 needs to be resolved.

17 The other is we will have to consider how we move forward where the activity
18 doesn't have that federal nexus, whether it's on state land or fee land, private, how do we
19 incorporate, as we talked about, this programmatic agreement? What does that look like when
20 there is no federal nexus? And those are the ongoing discussions. Don't have the answers for
21 you here yet.

22 CHAIRMAN BURNS: Well, no, I appreciate that. But I think that's an
23 important area for you all to be considering and looking at, so I appreciate the efforts going on in

1 that regard.

2 And, Geoff, one from me. If -- you know, I realize we are not going to, in effect,
3 arbitrate, you know, the discussion on 40 CFR 192 completely here. I will say it's -- you know, I
4 appreciate that EPA is doing it. It is something that has been I think long -- long needed.

5 I can go back earlier in my career in some interesting cases, and not actually
6 involving uranium but thorium, where this was a, you know, particular challenge.

7 MR. FETTUS: God help you, Mr. Chairman.

8 CHAIRMAN BURNS: Huh? Yes.

9 MR. FETTUS: Yes.

10 CHAIRMAN BURNS: And not out in the west either. But I guess if you had
11 to sort of sum up from your perspective, why would you -- how would you argue that basically the
12 EPA balances the NRC -- the NRC and EPA jurisdiction?

13 MR. FETTUS: They have a set of very straight forward statutory obligations
14 under UMTRCA to be consistent. When the EPA last did these revisions to Part 192, they left
15 ISL off the table, and it wasn't for nefarious reasons. I mean, it was actually because ISL was a
16 relatively, at best, marginal technology at that time, or it was a set of pilot projects at most in a
17 few spots around the west. It had gone on from I think the '50s were the earliest. Katie can
18 correct me, but the '50s and '60s. I think Chris Pugsley is here, too, and he could probably give
19 that history as well or better than I could.

20 But EPA left it off the table because it would have been silly to try and write a
21 whole set of regulatory standards for an industry that at that juncture hardly existed. It exists in
22 full measure now across the west from Wyoming to Texas in significant areas, affecting billions
23 upon billions of gallons of groundwater as well as surface areas and the associated harms that

1 go with it in all its glory.

2 And EPA has, rightfully, gone forward under its UMTRCA obligations and
3 sketched out how a set of general standards would go forward on setting proper baseline,
4 meaningful transparent restoration targets, and, just as important as all of the previous two,
5 monitoring requirements. And they also have a requirement in the statute to be consistent with
6 RCRA.

7 So this is all actually very straightforward regulatory process, and we don't think
8 it is a stretch at all.

9 CHAIRMAN BURNS: Okay. Thanks.

10 Commissioner Svinicki.

11 COMMISSIONER SVINICKI: Well, thank you to each of the panelists, both for
12 being here today, for your presentations, and for this Q&A engagement. I always appreciate this
13 part of the meeting.

14 I might start with just a couple of clarifications to be sure that I was tracking the
15 presentations accurately. Mr. Parfitt, you described the Wyoming rulemaking process with some
16 level of detail. It sounds like it is a multi-step process, gathering expertise and then I think the
17 stage right now is the Environmental Quality Council. So it sounds like there is another public
18 comment period associated with that stage, is that correct?

19 MR. PARFITT: Yes, that's correct. There is a 45-day comment period with
20 the Environmental Quality Council, with the Land Quality Advisory Board. We brought the rule
21 package in parts throughout time, so there are actually a couple of opportunities, so there would
22 be a 30-day public comment period on a particular chapter, and then we had another hearing with
23 the Land Quality Advisory Board with the whole package, so they could see it, how it all connected

1 together. So there were many opportunities.

2 COMMISSIONER SVINICKI: And with your targeted date of being granted the
3 Agreement State status I think in the third quarter of 2018, would you forecast that in the absence
4 of anything new arising during the public comment period, would you forecast that the
5 development of the Wyoming regulations is on pace with the overall third quarter of 2018
6 timeframe that you are targeting for the Agreement State -- achieving the Agreement State status?
7 In the absence of surprises, of course.

8 MR. PARFITT: Yes. It is on target, if not ahead of schedule.

9 COMMISSIONER SVINICKI: Okay. Thank you for that.

10 And, Ms. Sweeney, could you just briefly describe ablation. Is that the high --
11 is that like a high-pressure water process? I was really kind of searching my memory on that
12 one.

13 MS. SWEENEY: I think of it as, you know, your -- when your water pressure,
14 like your stop --

15 COMMISSIONER SVINICKI: Okay. Like pressure washing. Okay. Then I
16 was thinking of the right thing. Okay. And I know that technology is -- my understanding is
17 growing in use internationally, is that correct?

18 MS. SWEENEY: Correct.

19 COMMISSIONER SVINICKI: Okay. Thank you. On the pilot flat fee
20 initiative, has the NRC staff -- this is a little awkward because we haven't heard from the NRC
21 staff yet. Have they reached out at all to begin the process of establishing that pilot? Has there
22 been engagement?

23 MS. SWEENEY: Not to date.

1 COMMISSIONER SVINICKI: Okay. And then, I -- if I could cheat, I have
2 some awareness of what the NRC staff is going to say on topics. I believe that they will state
3 that use of tiering off of the generic environmental impact statement, that they are going to
4 continue to look at that process. So the same question: has there been any engagement on
5 use of the GEIS, in reference of the GEIS? Since you provided a presentation on that I think in
6 July, has the staff reached out to anyone in the industry on that?

7 MS. SWEENEY: Not that I'm aware of.

8 COMMISSIONER SVINICKI: Okay. Thank you. And I'll ask the staff more
9 about their intended activities there.

10 This is always a little challenging because we have other programmatic uses of
11 generic environmental impact statements, most extensively, at least to my knowledge, in the
12 license renewal process on the power reactor side. Are you able to speak at all -- do you have
13 an understanding of whether NRC's use of a generic environmental impact statement for the
14 uranium recovery licensing is fundamentally different from what we do in something like power
15 reactor license renewal, or are you simply not equipped to answer that?

16 I'll ask the NRC staff if one side of NRC has talked to the other side of NRC
17 about how we do that. I imagine through the Office of General Counsel there is some
18 communication about the approach there.

19 And, Mr. Nelson, you mentioned that there has been a somewhat systematic
20 engagement with agencies since this is the 50th year of the National Historic Preservation Act.
21 I'm simply unaware, so I ask this question, is the Act subject to intermittent reauthorization by the
22 Congress?

23 MR. NELSON: No, it is not. There have been amendments periodically.

1 The last significant amendments to the Act were in 1992, but it is not just to reauthorization.
2 However, I will note that the Historic Preservation Fund, which supports state and tribal historic
3 preservation officers in carrying out its responsibilities, is subject to periodic reauthorization.

4 COMMISSIONER SVINICKI: Okay. As part of the systematic look, though,
5 at the implementation of the Act, is there a contemplated development of any legislative proposals
6 or sets of changes that are kind of lessons learned or things that need to be updated or would
7 benefit from some amendment?

8 MR. NELSON: Absolutely. In fact, we have spent the better part of the last
9 year sort of evaluating sort of what we have accomplished in the last 50 years and looking to the
10 future to see how we might improve and strengthen and otherwise advance the goals of the
11 Historic Preservation Act. Our council, our formal council, is actually meeting the day after
12 tomorrow to consider a plan to convey recommendations to the incoming administration and
13 Congress on just how to do that.

14 I think in this atmosphere there will probably be less emphasis on regulatory
15 change, and probably more emphasis on policy improvements, but, nonetheless, there will be a
16 suite of those sorts of recommendations.

17 COMMISSIONER SVINICKI: Okay. So if Congress adds that to their
18 oversight schedule, there might be a series of legislative engagements, and I assume you would
19 recommend that we might want to monitor that in case we have any abuse, to or in part, of shares
20 of --

21 MR. NELSON: Yes.

22 COMMISSIONER SVINICKI: -- to the experiences with the Act.

23 MR. NELSON: Yes.

1 COMMISSIONER SVINICKI: Okay. Thank you.

2 And, Mr. Fettus, I do appreciate that a whole terrain of issues between the
3 litigation and then the interagency process that goes on somewhat within the government on the
4 final rule took a whole set of issues, but I do want to thank you for being here today.

5 I didn't really have a question, but I know that your organization has just been
6 engaged over the course of time on a lot of these issues, so I do -- in a way, it was kind of -- was
7 a constraint or an awkwardness on your presentation. I know you have many views on these
8 things, but I found the comment and engagement by your organization always to be very
9 thoughtful, so I just appreciate your presence here today.

10 MR. FETTUS: I appreciate that very much, Commissioner. And if I could, if I
11 could take a moment to speak to the question you asked my friend Katie here on the issue of --

12 COMMISSIONER SVINICKI: On the GEIS, yes.

13 MR. FETTUS: -- the use of the GEISs across media, if you want to call it that,
14 from the power reactor world to the waste world to the uranium recovery world. I actually do
15 have one observation that may be useful to you --

16 COMMISSIONER SVINICKI: Thank you.

17 MR. FETTUS: -- in that context, and that -- and we could go down a long rabbit
18 hole, which we don't want to do here today, in discussing all of the problems that NRDC or others
19 might have with various use of the GEIS, and that's not what you are looking for. You are looking
20 for -- we haven't been contacted about the use of the GEIS, and we would be interested if anything
21 goes forward to be contacted.

22 Second, where we find it problematic that may be useful as grist for your mill, is
23 in the issue of how the GEISs get used within the context of licensing and the adjudicatory process

1 and the hearing process. And there very often whether it's in waste context, power reactor
2 context, the incorporation of severe accident mitigation alternative analysis into the NEPA process
3 and in the power reactor side, it often becomes a game essentially, the way we see it, for taking
4 things off the table in the hearing process, where you can't argue this because you had to argue
5 it earlier or --

6 COMMISSIONER SVINICKI: Or you have to select the --

7 MR. FETTUS: -- you have to submit it through a petition for rulemaking and it
8 just becomes a game of Whac-A-Mole rather than a serious discussion of a set of substantive
9 technical issues where -- and this actually harms states as much as it harms public interest
10 groups.

11 And so if there is something to be learned from this -- and I would ask the
12 Commission to pay close attention to, and I have raised this before with all of the Commissioners
13 -- is the -- is their review of the hearing process that is necessary to allow for -- I think it would be
14 much more efficient for industry, too, if the hearing process, the 2.206 process, or the hearing
15 procedures were substantially revamped in terms of allowing contentions to move forward and to
16 not have this flyspecking process, both procedurally as well as substantively, that currently goes
17 on. So that's an ongoing --

18 COMMISSIONER SVINICKI: Yet another fascinating topic. You were
19 mentioning how you were here years ago and quoted from other statements that you had
20 delivered. I am becoming a victim of that now myself because the reason I talked about -- I find
21 it really intellectually interesting the longer I'm at NRC to look at kind of how the materials on the
22 reactor side of the house often just approach things differently.

23 So I, unfortunately, put Ms. Sweeney on the hook for something she can't

1 fundamentally address, which is -- and sometimes there is a really good reason why it is done
2 differently, but sometimes it is just people getting kind of stove-piped -- so maybe I'll begin my
3 inquiry with the NRC staff there to say, are we even kind of comparing and contrasting? But
4 obviously the entire hearing and adjudicatory process is a subject for another day, but thank you.
5 Thank you for mentioning it.

6 Thank you, Mr. Chairman.

7 CHAIRMAN BURNS: Thank you, Commissioner.

8 Commissioner Baran.

9 COMMISSIONER BARAN: Well, let me start by thanking you all for being
10 here. I know a couple of you traveled all the way from Wyoming to be here, and we really
11 appreciate it.

12 Mr. Parfitt, I wanted to ask a few follow-up questions on the Agreement State
13 efforts. When the Commission last focused on this issue in a voting way in July and August, it
14 sounded like Wyoming, at that time at least, was interested in assuming regulatory authority over
15 operating uranium milling facilities, and applications for new milling facilities, as well as the sites
16 undergoing decommissioning.

17 More recently, we have heard from the staff that you may not be interested in
18 overseeing the decommissioning sites. Can you talk a little bit about what you are currently
19 envisioning for the scope of Wyoming's Agreement State authority, whether that is something that
20 is evolving--

21 MR. PARFITT: Yes. And that was a good point to bring up. Right now, there
22 are -- you know, we are talking about the Title II sites. There are eight Title II sites, and the
23 discussion is around we have two facilities that are either still operating or could restart their

1 operations in short order. We feel that those appropriately would fall under the Agreement State
2 process.

3 But there is another group of sites that are fairly long in the process to be able
4 to be turned over to the Department of Energy for long-term care and maintenance. And the
5 concern with some of those facilities is that they are so far along in the process, and there has
6 been significant investment in getting to that point, that turning those over to the state may result
7 in additional work to get back to that point.

8 So you would lose some of the efforts that have been achieved to this point.
9 So they are so close, does it really make sense to turn those over to the state and restart the
10 process? And those are the discussions that we are having now in how to address those, but
11 that's where our reluctance I guess, if you want to call it that, resides with some of those Title II
12 sites.

13 COMMISSIONER BARAN: And how are you thinking about future sites that
14 would be entering decommissioning. Would you be thinking that Wyoming would have
15 regulatory authority over those, or that would be with NRC?

16 MR. PARFITT: Well, I think those would fall within the Agreement State
17 process. It's just that the ones that we are talking about right now are so far along in the
18 decommissioning process and close to being turned over to DOE that I think from a practical
19 standpoint it doesn't make a lot of sense to then turn those over to the state and then we have to
20 start another process.

21 COMMISSIONER BARAN: Thanks for that clarification. It sounds like there
22 will be interest in how Wyoming would interact with tribes in its licensing process for a new
23 uranium recovery facility. That is probably not a surprise to anyone.

1 But, Reid, my understanding is that because the state of Wyoming, obviously,
2 isn't a federal agency, the National Historic Preservation Act's consultation requirements under
3 Section 106 wouldn't apply to them. Is that right?

4 MR. NELSON: Well, I want to be clear that our recommendation to the
5 Commission was that it consider the delegation to Wyoming as an undertaking, subject to a
6 Section 106 review.

7 In other words, our advice was that at that point that NRC engage in
8 consultation with the state and tribes to develop an agreement on how that delegation would occur
9 and how NRC would ensure that the state and tribes, et cetera, considered impacts to historic
10 properties by establishing a process, perhaps using a state process or some process that sort of
11 mimicked the Section 106 review process.

12 NRC disagreed with us that it was an undertaking and moved forward with the
13 delegation without doing a Section 106 review. Our position now is recognizing that it is moving
14 to a state and that there will no longer be a federal agency responsible, we have been supportive
15 of the state historic preservation officer and the tribes as well who are looking to work with the
16 state to establish some sort of environmental and historic preservation review processes.

17 Now, we can't formally be involved because when NRC is no longer involved
18 there is no federal action, there is no federal undertaking. That sort of removes us out of the
19 equation. But we have been supportive of the state and tribes discussing sort of at that level
20 whether there can be some sort of proxy, state level review process that still takes into account
21 the impacts on historic properties.

22 COMMISSIONER BARAN: Can you -- Mr. Parfitt, can you give us a sense of
23 how you are thinking about these issues, what you are envisioning for -- will there be something

1 like that, a Section 106 consultation process, or how far along are you all in your thinking about
2 what that might look like?

3 MR. PARFITT: Yes. So our ongoing discussions include just this issue. And
4 as I mentioned earlier, there are agreements in place with the NRC and other federal agencies,
5 the tribes, and our State Historic Preservation Office, and I think for those -- those to me are more
6 streamlined and easier to handle.

7 What we would be looking at is, is there a mechanism and is it appropriate for
8 the DEQ to take NRC and replace the names in the agreement so that at least the ones that I
9 have looked at have the ability to modify those agreements, if we were to become a signatory to
10 that.

11 I think the more challenging topic will be on the state and fee-owned surface
12 and mineral, engaging with the tribes, engaging with the SHPO, and identifying what that process
13 would look like. And that is the ongoing discussion that we are having with the NRC staff right
14 now.

15 So I think, to the point that Mr. Nelson made in terms of, you know, should there
16 be some consultation occurring, I think, you know, in the context of the state program, but, you
17 know, when you look at the compatibility issues and the appropriateness of our application, I think
18 we will satisfy that, but then we still have the side issue here that's not part of the agreement that
19 will have to be discussed in more detail, not only with the NRC but with the tribes and SHPO.

20 COMMISSIONER BARAN: Do others on the panel have thoughts about this
21 general question or the specifics in terms of for Wyoming or a new Agreement State that wouldn't
22 be subject to Section 106 and what tribal interaction should look like for licensing? Do you?

23 MS. SOLDIER WOLF: Yes, I do. One of the questions I would have is what

1 Mr. Nelson here had brought up is, what does that look like? What does it actually look like when
2 you are going to consultant with the tribes? You know, I have not seen any agreement yet or
3 any drafted agreement. And when we talked about pre-filing, this is a part of that process, is,
4 you know, let us know ahead of time. Let us know what we can do ahead of time, so we are not
5 caught off guard, last minute, trying to find out, you know, how are we going to make this work for
6 this tribe.

7 Basically, you know, come to the table asking, you know, what -- you know, let's
8 do this with transparency, let's go forward being accountable to a lot of these projects.

9 COMMISSIONER BARAN: It sounds like you've had a positive experience,
10 though, with the programmatic agreements. You think that's a good approach historically.

11 MS. SOLDIER WOLF: I think it has -- as I said before, it -- you have timeframes
12 that work sufficiently and effectively, and it helps you move forward.

13 COMMISSIONER BARAN: Katie or Geoff, do you have any thoughts on this?

14 MR. FETTUS: We have some significant concerns that, as the transfer goes
15 forward to a state-run program, that when you already have problematic and we think inadequate
16 federal obligations, that if they simply dropped away we would have significant objection to that.
17 That's what we are going to be looking forward to the next year as this process goes forward,
18 especially in the rulemaking framework.

19 COMMISSIONER BARAN: Well, thanks. I appreciate all your perspectives
20 on that. Thank you.

21 CHAIRMAN BURNS: Well, again, I thank you all, this first panel, for the
22 presentations you made and the engagement with the Commission in response to the questions.

23 We will take about a six- or seven-minute break to get reset for the staff.

1 Obviously, you are all welcome to listen in on the second half. And, again, thank you.

2 (Whereupon, the above-entitled matter went off the record at 10:30 a.m. and
3 resumed at 10:41 a.m.)

4 CHAIRMAN BURNS: Okay. Well, welcome back. The staff panel will be
5 with us this morning and we appreciate Mike Weber, who is filling in for Glenn Tracy this morning.
6 So, Mike, I will let you go ahead and do the introductions for the staff and then proceed. Okay?

7 MR. WEBER: Good morning, Chairman, Commissioner Svinicki,
8 Commissioner Baran. It is our pleasure to appear before you today to present the staff's
9 presentation on the oversight and licensing of uranium recovery facilities.

10 The presentations today by the NRC staff will include current activities,
11 priorities, accomplishments, challenges, and the actions that the staff is taking today to prepare
12 for the future of the program. Next slide, please.

13 We will begin today's presentation with Marc Dapas, who is the Director of the
14 Office of Nuclear Material Safety and Safeguards, and Marc will provide an overview of the
15 Uranium Recovery Program. Andrea Kock will next proceed and she is the Deputy Director of
16 the Division of Uranium Recovery -- excuse me. She is the Deputy Director of the Division of
17 Decommissioning, Uranium Recovery and Waste Programs. And she will discuss the Uranium
18 Recovery Program priorities and the status of the State of Wyoming's request to become an
19 Agreement State with respect to uranium recovery.

20 Then Bill von Till, to my immediate right, who is the Chief of the Uranium
21 Recovery Licensing Branch, will provide a summary of the Uranium Recovery Licensing Activities
22 and that will include accomplishments and challenges.

23 Then Diana Diaz-Toro, to Marc's left, who is a Senior Project Manager in the

1 Environmental Review Branch in Andrea's Division, will provide an overview of the Section 106
2 consultation process, which we heard a lot about this morning already under the National Historic
3 Preservation Act, as well as our review program under the Environmental Policy Act. And that,
4 too, will include accomplishments and challenges.

5 And finally, Mark Shaffer will round out the staff's panel. Mark is the Director
6 of the Division of Nuclear Material Safety in NRC's Region IV Office. And Mark will discuss the
7 oversight of operating uranium recovery sites. Next slide, please.

8 In discussing these topics, we will emphasize the themes that are highlighted
9 on this slide, with respect to the implementation of our Uranium Recovery Regulatory Program.

10 First, the NRC is proactively responding to external factors, including market
11 conditions, which create a dynamic environment for our regulatory program.

12 Second, a unique aspect of Uranium Recovery Program is the significant
13 international engagement that we participate in. And we continue these efforts to support our
14 collaboration with the international partners in this area.

15 Third, while the Uranium Recovery Program is a small portion of the NRC's
16 overall budget, it does involve significant stakeholder engagement, as we heard in the first panel,
17 and the issues tend to be rather complex. Also, there is a broad scope of work, including
18 operating facility oversight, as well as licensing new and operating facilities.

19 And finally, similar to other areas in decommissioning and low-level waste, the
20 business line which the Commission was briefed on last month, we remain committed to
21 continuous improvement.

22 The staff has made progress in enhancing the licensing process to realize the
23 improved efficiency, predictability, and transparency. And we continue to enhance other aspects

1 of our regulatory program.

2 And so at this point, before I turn it over to Marc Dapas, who will begin, I just
3 wanted to say how much Glenn Tracy wanted to be with us here this morning and, unfortunately,
4 with his condition over the weekend, he was unable to be with us.

5 So with that, I will turn it over to Marc.

6 MR. DAPAS: Thank you. Next slide, please.

7 Well, thank you, Mike. Good morning Chairman Burns, Commissioner
8 Svinicki, Commissioner Baran. As Mike noted during his remarks, I will begin with an overview
9 of the Uranium Recovery Program activities. Next slide, please.

10 The Uranium Recovery Program ensures the safety and security of a broad
11 range of activities in a dynamic environment. These include licensing of new facilities, licensing
12 of expansions to existing facilities, license renewals, and the oversight of operating facilities.

13 We have realized several successes since the last Commission briefing on the
14 Uranium Recovery product line in 2013, including issuing two initial licenses for in situ recovery
15 or ISR facilities at the Strata Ross and Powertech Dewey-Burdock sites. This included
16 supporting the associated evidentiary hearings before the Atomic Safety and Licensing Board for
17 these two sites; supporting a third evidentiary hearing involving the license renewal for the Crow
18 Butte ISR facility; and completing licensing and inspections to ensure pre-operational license
19 conditions were satisfied in order to allow the operation of three additional sites. The ISR
20 facilities that transitioned into operations were Uranerz Nichols Ranch, UR Energy Lost Creek,
21 and Strata Ross. Mark Shaffer will discuss the oversight activities associated with transitioning
22 new facilities into operation in more detail in his presentation.

23 The increase in the number of sites licensed and transitioning into operation

1 does represent a significant increase in workload over the previous three-year period. And as
2 Andrea and Bill will discuss later, in response to this increased work load, we have prioritized our
3 work. We have also leveraged overages from other program areas to ensure we had a full
4 complement of staff to address the workload increase. Next slide, please.

5 We are proactively addressing the challenge of responding to a dynamic
6 environment in this area. Specifically, we are reaching out to the industry to obtain information
7 on expected future applications so that we can accurately plan our work. This is a particular
8 challenge, given that the Uranium recovery market is commodity-based, making it difficult for
9 potential applicants to provide certainty on the timing of when applications will be submitted. For
10 example, there are letters of intent that are seven years old and we still do not have an application.

11 Bill will discuss, in his presentation, how we address this uncertainty in
12 budgeting our resources to ensure our program remains right-sized, flexible, and effective.

13 As Mark will discuss in detail in his presentation, we are also coordinating
14 closely with the Region IV Office to ensure appropriate oversight of an increased number of
15 operating sites.

16 We are evaluating and planning for the potential transfer of authority to the State
17 of Wyoming, should it become an Agreement State, which he discussed considerably in the last
18 panel's presentation.

19 On October 26th, we received the draft request from the State Wyoming to enter
20 into a limited agreement to assume regulatory authority over uranium milling activities. While the
21 review of an Agreement State application is under the purview of the Nuclear Materials Users
22 Business Line, I mention it today because presuming the application is approved, the transfer of
23 authority could have a significant resource impact on the NRC's Uranium Recovery Licensing and

1 Inspection Program. Andrea, Bill, and Mark will cover these topics in more detail. Next slide,
2 please.

3 We have started to develop and implement several changes to realize
4 improvements in efficiency, predictability, and transparency in the licensing process. There are
5 some changes we have already made to affect this outcome. There are other initiatives that we
6 recently began and, as such, associated improvements have not been completely realized yet.
7 Examples of these initiatives are completing pre-submission audits, which resulted in an increase
8 in the quality of submittals and a smoother transition to operations. Leveraging lessons learned
9 and best practices from other offices through the completion of an independent review of the
10 staff's uranium recovery licensing process. And as Katie Sweeney mentioned, an important area
11 is fee transparency. And in that regard, we are improving the transparency and predictability in
12 how we charge fees through collaboration with the Office of the Chief Financial Officer in support
13 of a piloted effort involving the examining of whether a flat fee structure could be utilized in the
14 area of uranium recovery on a voluntary basis.

15 Andrea Kock will discuss these more in her presentation. And as such, I will
16 now turn the presentation over to Andrea. Next slide, please.

17 MS. KOCK: Thank you, Marc. Good morning, Chairman Burns and
18 Commissioners.

19 My presentation will focus on the Uranium Recovery Program priorities, our
20 progress on several programmatic activities, and our evaluation of and preparation for the
21 potential impact on the NRC's Uranium Recovery Program if Wyoming becomes an Agreement
22 State. Next slide, please.

23 Implementing the NRC's Uranium Recovery Program, we continue to support a

1 number of priorities. To appropriately focus our resources, we prioritize our work in order of its
2 significance. Our first priority remains ensuring safety, security, and environmental protection
3 associated with uranium recovery facility operation. We accomplish this through licensing
4 activities, such as reviews of amendments and renewals and oversight through inspections.

5 Our second priority is reviewing licensing applications for new applications and
6 expansions of existing facilities to ensure the provision of safety, security, and environmental
7 protection.

8 Our third priority is supporting rulemaking and guidance updates related to the
9 Uranium Recovery Program. And we use this prioritization scheme in executing our work and
10 making decisions on where to focus our resources so that we can continue to focus on our primary
11 mission of ensuring security, safety, and environmental protection. Next slide, please.

12 As Mike mentioned, we continue significant efforts to support our international
13 partners in the area of uranium recovery. For example, in 2014, the Region IV Office hosted
14 Australian visitors to share best practices for completing uranium recovery inspections. Another
15 substantial Uranium Recovery Program.

16 Another substantial effort is our continued support of the Office of International
17 Programs cooperative activities in the international community through a program called the
18 Partnership for Uranium Recovery Regulation or PURR.

19 We coordinate our efforts with respect to the PURR program with our
20 colleagues from the International Atomic Energy Agency, Australia, and Canada. And as part of
21 this program, we supported six workshops since 2009, in which we described our experiences
22 and our regulatory framework in the uranium recovery area. The workshops have included
23 participants from over 30 countries from Central and South America, Asia, and Africa.

1 And as you can see on this slide, this is a photo from our August 2016 meeting
2 of the PURR, during which we completed comprehensive training on uranium recovery for the
3 Peruvian Institute of Nuclear Energy.

4 In addition to our activities related to PURR, we routinely participate in several
5 consultancies in Vienna, as well as the United States, and we also conduct and participate in
6 several international workshops. Next slide, please.

7 The activities listed on this slide demonstrate our commitment to continuous
8 improvement. We have made progress in a number of programmatic areas, including human
9 capital, the licensing process, and the manner in which we communicate about and charge fees.

10 In the area of human capital, we have modeled agility by working collaboratively
11 with other NRC offices to utilize staff overages to attain a full complement of staff. This has
12 ensured that we have the right mix of knowledge, skills, and abilities among our staff to fulfill our
13 mission. And as a result, we have started work on one application that was previously deferred
14 and we have made good progress on the applications that we are currently reviewing.

15 With regarding to licensing activities, as Marc mentioned, we have started to
16 develop and implement several strategies to realize improvements in efficiency, predictability, and
17 transparency. For example, we recently completed an independent assessment of our licensing
18 process that benchmarked the Uranium Recovery Program against a New Reactor Program to
19 identify best practices. As a result of this assessment, we are initiating actions in the areas of
20 acceptance reviews, guidance and rulemaking, the processing of requests for additional
21 information, planning and scheduling, and documentation of the staff's findings. Implementing
22 the recommendations from the assessment is expected to realize improvements in the licensing
23 process in the future. The reports summarizing the results of the assessment will be finalized

1 shortly and will begin to work on an implementation plan in the near future.

2 In addition to these planned enhancements, we have also already initiated
3 several licensing strategies to enhance efficiencies and improve the quality of submittals. These
4 strategies were developed independent of the assessment I just mentioned and include
5 completion of pre-submission audits, communicating more frequently with our applicants, and
6 conducting calls on requests for information to ensure that the requests are clear and the
7 responses are adequate. We found that implementation of these strategies has reduced the
8 number of requests for additional information necessary, as well as a time for our applicants to
9 respond to these requests.

10 We have also developed additional tools to monitor the progress of current
11 licensing actions. These tools include mechanisms to track the status of licensing actions, new
12 metrics to track the timeliness of our actions, and additional management engagement on any
13 necessary schedule adjustments. We are also more rigorously enforcing our acceptance review
14 standards.

15 I would like to highlight that by implementing license process efficiencies, we
16 are now on track to complete the Jane Doe Safety Evaluation Report, which is associated with a
17 request for an expansion of ISR activities within one and a half years from the acceptance of the
18 application. This is a significant regulatory improvement and efficiency.

19 We also realized a 33 percent efficiency in the time to complete the final safety
20 evaluation report for the Strata Ross facility by implementing pre-submission audits.

21 Bill and Diana will cover some additional strategies we have implemented to
22 enhance efficiency, predictability, and transparency of our licensing reviews.

23 And as Marc mentioned, we are currently working to improve the transparency

1 and predictability in the manner in which we charge fees. Last summer, we participated in an
2 Interagency Steering Committee that culminated in the delivery of a SECY paper to the
3 Commission with several recommendations on how to improve the transparency and simplify how
4 we calculate fees. These recommendations were discussed at the recent Commission meeting
5 regarding fees and a response to the direction provided in the Staff Requirements Memorandum
6 issued in response to the SECY paper, we have initiated actions to develop a voluntary pilot
7 initiative to explore whether a flat-fee structure could be established for routine licensing matters
8 in the area of uranium recovery.

9 We will continue to support the Steering Committee's evaluation of the
10 additional potential changes to the fees process for the Uranium Recovery Program that were
11 included in that SECY paper.

12 In addition to the items provided in the Staff Requirements Memorandum, on
13 our own initiative, we are increasing communications with applicants and licensees on estimates
14 of upcoming licensing costs. And we recently posted nominal costs for major licensing actions
15 on our public website. We expect that these actions will enhance the transparency of the cost of
16 licensing actions.

17 Lastly, we are reevaluating the appropriate uranium recovery license term to
18 determine if extending the term past the current ten-year duration is appropriate and
19 commensurate with the risk of these facilities. By the end of fiscal year '17, the staff has
20 committed to provide the results of this effort to the Commission. Next slide, please.

21 As Marc mentioned, one of the external factors that we are proactively
22 evaluating and planning for is the potential impact on the NRC's uranium recovery activities,
23 should Wyoming become an Agreement State. We are preparing for the significant impact that

1 this potential action would have on the size and the scope of the NRC's Uranium Recovery
2 Program.

3 The map on this slide shows the location of currently licensed uranium recovery
4 facilities and, as indicated on the map, the NRC currently provides oversight of ten sites licensed
5 to operate and an additional 11 uranium recovery facilities that are in decommissioning. Many
6 of these sites are in Wyoming.

7 As noted by the State, in response to Commissioner Baran's questions, the draft
8 request includes the NRC maintaining the authority for the majority of the uranium recovery sites
9 in decommissioning. The staff is evaluating this proposal and is considering both the practical
10 aspects of the request, as well as previous commission direction on the scope of Agreement State
11 Programs.

12 Since this request differs from the scope of the program approved by the
13 Commission, the staff plans to submit a notation paper to the Commission on this topic.

14 It is important to keep in mind that, as Mike and Marc noted, the number of
15 future license applications is highly dependent on the uranium market conditions and, therefore,
16 our approach will take into account both the potential significant reduction in our workload should
17 the State's application be approved, as well as the flexibility that is necessary to respond to the
18 volatility in the uranium market.

19 We have begun to evaluate the anticipated changes to our resources and are
20 developing strategies to address this potential change. For example, we have taken steps to
21 identify opportunities to cross-train our staff. We have also established a transition team to
22 appropriately manage and communicate the change that would result if Wyoming becomes an
23 Agreement State, consistent with the agency's change management process. This transition

1 team will evaluate potential resource impacts, evaluate what organizational changes, if any, are
2 necessary, and develop and implement communication strategies, if needed to our internal and
3 external stakeholders.

4 I will now turn the presentation over to Bill von Till. Next slide, please.

5 MR. von TILL: Thank you, Andrea. Good morning, Chairman and
6 Commissioners. Today, I will provide a summary of licensing activities, discuss some major
7 accomplishments, and describe how we are addressing challenges within the Uranium Recovery
8 Program. Next slide, please.

9 First of all, I would like to put the program in context. As Mike, Marc, and
10 Andrea mentioned, uranium is a commodity driven by market conditions, creating a dynamic
11 environment. Future license applications and new operations are uncertain and highly
12 dependent upon the price of uranium. As seen in 2007, a rapid increase in the uranium spot
13 price resulted in many new projects. Prior exploration and license application preparation was
14 performed in seven non-agreement states, where the NRC would have regulatory authority.
15 While many of these projects were suspended when the market turned, we could see renewed
16 interest in new facilities and expansion of existing facilities if the price of uranium increases.

17 Later in my presentation, I will cover how address the challenge associated with
18 uncertainty in planning and executing our work in this area. Next slide, please.

19 We continue to provide oversight at an increased number of operating sites.
20 As Mike indicated, Uranium Recovery is a small program that currently provides licensing and
21 oversight support for ten facilities. Of those sites, six facilities are in operational status, one is
22 constructed an in standby, and three additional sites are licensed but not constructed. All are in
23 situ recovery sites, except the Sweetwater Mill and, with the exception of three sites, all are in

1 Wyoming.

2 As Marc mentioned, one major accomplishment since the last Commission
3 briefing in 2013 was approving three additional sites to go operational. These sites include UR
4 Energy Lost Creek, Uranerz Nichols Ranch, and Strata Ross. This has been one of our main
5 priorities in the last three years that included pre-operational licensing and pre-operational
6 inspection activities. Next slide, please.

7 As an example, on the left is a typical wellfield at an operating in situ recovery
8 site. This is Cameco Smith Ranch site in the Powder River Basin of Wyoming. And on the right,
9 you will see the typical processing plant. This is the Uranerz Nichols Ranch site in Wyoming,
10 one of the newly operating facilities. Next slide, please.

11 While the effort for oversight of new operating facilities has increased over the
12 last three years, new licensing case work has remained steady. We were making progress on
13 seven major licensing actions. An additional three actions are on hold as requested by the
14 applicants and one additional applicant is conducting field work to address acceptance issues
15 associated with its expansion application. Some of the accomplishments associated with these
16 reviews will be covered later in my presentation.

17 I should also note that six of the seven active reviews are in Wyoming. Many
18 of these reviews will be completed by the tentative date that Wyoming could become an
19 Agreement State. We will continue with the existing licensing case work as planned, identify a
20 logical transition point for each review, and coordinate a smooth transfer of the licensing actions
21 upon the effective date of the potential agreement. Next slide, please.

22 As Mike mentioned, we have engaged a broad range of stakeholders. For
23 example, staff has participated in an interagency review process led by the Office of Management

1 and Budget for two significant Environmental Protection Agency rules, one related to groundwater
2 protection at in situ recovery sites and another one related to the control of radon emissions under
3 the National Emission Standards for Hazardous Air Pollutants or NESHAPs. Assuming the two
4 rules are promulgated, the NRC will review its current regulations and guidance and revise them
5 as appropriate. Next slide, please.

6 We continue to communicate with industry on radiation protection requirements
7 to ensure the necessary level of detail and scope in requested licensing actions and appropriate
8 implementation of radiation protection programs. Specifically, we held a radon workshop April
9 2nd and 3rd of 2014 here at NRC Headquarters; we participate in the annual NMA uranium
10 recovery workshop; we held a publicly-noticed meeting with industry regarding radiation
11 protection this fall, as Katie mentioned; and we were planning another radiation protection
12 workshop in the spring or summer of 2017. Next slide, please.

13 In 2014 and 2015, we completed five workshops where we collaboratively
14 engaged with a number of tribes to provide basic information on uranium recovery, the National
15 Environmental Policy Act, tribal consultation under Section 106 of the National Historic
16 Preservation Act and Health Physics. Next slide, please.

17 In addition to the successes that Marc and Andrea mentioned, have completed
18 many licensing actions for the Uranium Recovery Program. Since we last briefed the
19 Commission in 2013, we have completed five major licensing actions, including the licensing of
20 two new facilities, licensing one expansion, and completion of two license renewals. We also
21 recently completed the safety evaluation report for the AUC Reno Creek new facility application
22 in September.

23 As mentioned previously, we approved three additional facilities to commence

1 operation. This effort was in close coordination between headquarters and the Region IV Office.

2 In addition, the staff has also completed 60 minor licensing actions for licensed
3 facilities. Next slide, please.

4 We are addressing several challenges within the Uranium Recovery Program.
5 I will focus my remarks on challenges associated with the safety review and Diana will discuss
6 the challenges associated with the environmental reviews.

7 As Marc mentioned, future license applications and new operations are
8 uncertain and highly dependent upon uranium market conditions. Appropriately resourcing the
9 program based on the uncertainty of application submittal timing is challenging. To address this,
10 we continue to communicate with potential applicants on their schedules. We budget for
11 anticipated applications based on Letters of Intent in conjunction with historic submission rates.
12 Submission rates have been shown to be a good predictor on the number of applications to be
13 submitted. However, recent prolonged poor market conditions have caused most projects to be
14 delayed.

15 Lastly, as Andrea discussed, we continue to evaluate and plan for the potential
16 impact on NRC staff if Wyoming becomes an Agreement State.

17 I will now turn the briefing over to Diana. Thank you. Next slide, please.

18 MS. DIAZ-TORO: Thank you, Bill. Good morning, Chairman, Commissions.

19 The Environmental Review Branch in the Office of Nuclear Material Safety and
20 Safeguards is responsible for conducting the environmental reviews in support of the Agency's
21 decommissioning uranium recovery fuel cycle, spent fuel storage and transportation, and
22 byproduct materials licensing and regulatory activities. The focus of my presentation today will
23 be on the environmental reviews that we conduct for the Uranium Recovery License Application.

1 Next slide, please.

2 The National Environmental Policy Act of 1969 or NEPA requires federal
3 agencies to consider the environmental effects of their proposed actions in their decision making
4 process and to make this information available to the public. In doing so, federal agencies must
5 take a hard look at the potential environmental impacts of their proposed actions and the
6 reasonable alternatives to those actions.

7 In addition to fulfilling our NEPA obligations, we also comply with the Section
8 106 consultative process of the National Historic Preservation Act of 1966 or NHPA. The Section
9 106 process requires federal agencies to take into account the effects of their undertakings on
10 historic properties and provide the Advisory Council on Historic Preservation an opportunity to
11 comment.

12 The NRC carries out its Section 106 obligations for uranium recovery licensing
13 reviews in consultation with a number of parties, including the applicant or the licensee, the State
14 Historic Preservation Office, Native American tribes that attach religious and cultural significance
15 to historic properties that may be affected by the undertaking, other federal agencies such as the
16 Bureau of Land Management, and the Advisory Council on Historic Preservation and the public,
17 among other interested parties.

18 In complying with the Section 106 regulations, the NRC must meet the
19 reasonable and good faith standard for identifying the historic properties that may be affected by
20 the undertaking, including those of traditional and religious significance to the Native American
21 tribes. The NRC must also complete the Section 106 process prior to making its licensing
22 decision.

23 In the past few years, the NRC's efforts in support of its Section 106 reviews for

1 uranium recovery and licensing actions have grown significantly and have required additional
2 resources not anticipated, in part, due to the number of consulting parties with diverse interests.
3 I will discuss how we are addressing these challenges later in my presentation. Next slide,
4 please.

5 Since we last briefed the Commission in 2013, we have published two
6 supplemental environmental impact statements that tier off the in situ uranium recovery generic
7 environmental impact statement in support of the licensing of the in situ uranium recovery or ISR
8 facilities. We have also published an environmental assessment for the license renewal of
9 another ISR facility.

10 In regard to the Section 106 process, since we last briefed the Commission in
11 2013, we started to implement the activities under the site-specific programmatic agreement for
12 the Strata Ross ISR facility that was executed in 2014 in accordance with the Section 106 process.
13 Execution of the programmatic agreement involved documenting the NRC's compliance with the
14 Section 106 obligations. This programmatic agreement established a process by which the NRC
15 staff would complete its identification efforts, evaluation of adverse effects, and resolution of
16 adverse effects because these activities could not be completed in advance of the licensing
17 decision.

18 Once executed, this agreement governs the treatment of historic properties
19 adversely affected by the undertaking and must be carried out so that the NRC remains in
20 compliance. Next slide, please.

21 We are also making good progress on two more supplement environmental
22 impact statements, with one planned to be issued by the end of this calendar year. We are also
23 actively working on three environmental assessments in support of ISR facility expansions and

1 one environmental assessment in support of an ISR facility license renewal. Next slide, please.

2 Since the publication in 2011 of the first three supplemental environmental
3 impact statements that tier of the ISR generic environmental impact statement, we have enhanced
4 our environmental review process based on lessons learned. For example, we proactively
5 reached out to the Environmental Protection Agency to discuss EPA-identified issues in our first
6 three supplemental environmental impact statements to ensure effective and efficient issue
7 resolution. And we have continued to provide advance copies of our draft supplemental
8 environmental impact statements to EPA for early review and comment to facilitate issue
9 resolution. We also continue to implement the memorandum of understanding with the Bureau
10 of Land Management for actions affecting lands managed by the Bureau, with the goal of
11 minimizing duplication of efforts between the two agencies NEPA and Section 106 review
12 processes.

13 The NRC staff has appropriately used the generic environmental impact
14 statements in tiering our supplemental environmental impact statements by focusing on the
15 environmental evaluations of site-specific issues. However, as part of our continuous
16 improvement efforts, the NRC staff will look for additional opportunities to improve how we
17 document our environmental evaluations and conclusions in our NEPA documents in a more
18 concise and efficient manner. Next slide, please.

19 As I mentioned earlier, and similar to my presentation during the Tribal Policy
20 Statement Commission briefing this past September, over the past several years, we have seen
21 an increase in our efforts and activities related to the Section 106 process for uranium recovery
22 licensing actions. The complexity of these Section 106 reviews can vary due to several factors.
23 First, we have seen a significant increase in the number tribes interested in each uranium recovery

1 project from a few tribes prior to 2009 to a current average of about 20 tribes per project.

2 Also the siting of proposed uranium recovery facilities in areas that are known
3 to the original homelands of Indian tribes or near sites that are considered sacred by the tribes
4 can influence the nature and complexity of the Section 106 consultations.

5 The level of effort to identify the historic and cultural properties and to determine
6 the eligibility of these for listing in the National Register of Historic Places has impacted the
7 environmental review schedule as well. Tribes have requested field surveys of the proposed
8 project sites to identify properties of significance to them. Surveys are one of the approaches to
9 identify historic and cultural properties.

10 Responding to these field survey requests has taken a significant amount of
11 staff time, due in part to the extensive discussions with a large number of consulting parties on
12 the format, the scope, and the extent of field surveys. Next slide, please.

13 In response to these challenges, we are working to enhance our Section 106
14 review process. We have increased our tribal outreach activities. In 2015 and 2016, NMSS
15 staff visited with several tribes in the Northern Plains who have been involved in the licensing
16 process of uranium recovery activities to gather additional information about the tribes' concerns
17 and recommendations with respect to our consultation and communication efforts. We have also
18 developed a draft Interim Staff Guidance for conducting the Section 106 process for uranium
19 recovery licensing actions. And we are finalizing the guidance based on lessons learned from
20 our experiences with the process, as well as comments received from industry, tribes, and the
21 Advisory Council on Historic Preservation.

22 For example, the draft Interim Staff Guidance now focuses our efforts on the
23 identification of potential issues up-front to ensure timely resolution. The draft Interim Staff

1 Guidance also includes recommendations to license applicants, including coordinating with tribal
2 representatives to the extent possible at the project siting stage and when planning and
3 conducting pre-application archeological surveys.

4 In addition, our partnership with the Advisory Council on Historic Preservation
5 has been successful in providing dedicated training to the NRC staff on issues most relevant to
6 our compliance with the Section 106 process, such as development and implementation of
7 consultation agreement documents, determining whether a property is eligible for listing in the
8 National Register of Historic Places and determining the confidentiality and appropriate protection
9 of information considered sensitive.

10 Through the partnership, the Advisory Council on Historic Preservation has also
11 successfully helped us facilitate issue resolution during project-specific Section 106 reviews.

12 In summary, I have described the challenges that the staff has experienced in
13 these past four to five years in carrying out our Section 106 responsibilities. NRC staff has taken
14 steps to address these challenges and will continue to look for additional opportunities to most
15 effectively carry out our consultative responsibilities with a focus on the importance of getting it
16 right.

17 I will now turn it over to Mark Shaffer. Thank you. Next slide, please.

18 MR. SHAFFER: Well, one last good morning to Chairman Burns and
19 Commissioner Svinicki and Commissioner Baran. I am pleased to be here this morning to
20 provide you with an overview of Region IV's role in the oversight of uranium recovery facilities and
21 including a discussion of the close coordination we have between Region IV and NMSS program
22 areas in implementing the program. Next slide, please.

23 Region IV maintains a dynamic inspection program to provide an oversight of

1 NRC's uranium recovery licensees, recognizing that market conditions are ever-changing and the
2 scope and frequency of our inspection activities must be commensurate with the operating status
3 of the facilities.

4 As Bill mentioned, there are ten uranium recovery licensees. Six of these sites
5 are operating, while the others are in preconstruction phase or in standby. Routine inspections
6 at operating sites are generally performed every six months, although operating sites with steady
7 operations and good performance may be extended to an annual frequency.

8 Pre-operational inspections at new licensees are performed three months after
9 commencement of operations and then six months thereafter. We have also found, through
10 experience, that these pre-operational inspections typically take about three site visits prior to
11 authorizing operations. There are also 11 licensees that are performing decommissioning
12 activities. The inspection frequency at these sites varies, depending on how active the work is
13 going on and it averages about once every two years for inspections.

14 The region coordinates closely with NMSS project managers and the licensing
15 staff to develop a master inspection plan each fiscal year. On some of these inspections, NMSS
16 also provides technical assistance to the region with a review in areas such as groundwater
17 hydrology and chemistry. Next slide, please.

18 Routine inspections focus on risk-significant safety aspects of the operations.
19 So, these include the radiation protection program, environmental monitoring of effluence, and
20 packaging and transport of yellowcake 11(e)(2) material and uranium slurry.

21 Similar to other NRC inspection programs, when an event occurs at uranium
22 recovery facilities, Region IV staff evaluates the significance of the event, coordinates with NMSS,
23 and initiates a reactive inspection, as appropriate. Next slide, please.

1 The Region's inspection program continues to ensure the safety of operating
2 uranium recovery facilities. In accordance with NMSS inspection program requirements, we
3 completed nine inspections during fiscal year 2016, four inspections in 2015, eight in 2014, and
4 eight in 2013 at uranium sites in various stages of operation.

5 The number of operational inspections was lower during fiscal year 2015 largely
6 because the inspection staff was completing a number of complex pre-operational team
7 inspection reports, following up on a pressurized drum event and training additional uranium
8 recovery inspectors to assist with the workload.

9 Region IV has performed three pre-operational inspections since 2013, as Bill
10 mentioned at the UR Energy Lost Creek facility in 2013, Uranerz Nichols Ranch facility in 2013
11 and 2014, the Strata Ross facility in 2015. These significant inspections typically include staff
12 from the Uranium Recovery Licensing Branch on the inspection teams and require multiple site
13 visits to review and observe readiness for operations. Next slide, please.

14 Over the last couple of years, the majority of violations identified during the
15 inspections, including violations cited at the Severity Level IV, the least significant, and non-cited
16 violations relate to day-to-day operations of the Radiation Protection Program. For example, the
17 violations have involved adequacy of contamination control procedures, free release surveys for
18 equipment and personnel leaving a restricted area, reviews by the licensee's Safety and
19 Environmental Review Panels prior to making changes in the facility and packaging and
20 transportation surveys.

21 The industry does, however, appear to be addressing lessons learned from the
22 inspection findings by adjusting the level of oversight in their Health Physics Program and by
23 providing a proactive look at their problem identification and resolution programs.

1 The industry also leverages operating experience to determine whether
2 programs and processes need to be adjusted. For example, after the pressurized yellowcake
3 drum event occurred, licensees upgraded their procedures to ensure pressurization would not
4 occur in future shipments. Next slide, please.

5 These next slides show pictures of facilities and activities which we provide
6 oversight for. This slide shows the drumming operations at a Uranium One Willow Creek facility.
7 The picture essentially shows some corrective actions that were taken in response to the drum
8 pressurization event. The temperature of the drums' contents is now measured, as well as being
9 vented for longer periods of time to try to prevent pressurization.

10 The green color of the drum content is due to the high temperature drying of the
11 yellowcake. Uranium One uses a hearth dryer that exceeds 1000 degrees Fahrenheit. Other
12 facilities with drying capabilities are using vacuum driers and dry the yellowcake product at
13 approximately 250 degrees Fahrenheit. Next slide, please.

14 The photo just shows the ion-exchange columns at the central processing plant
15 at the Uranerz Nichols Ranch site. Of course, this is where they transfer uranium out of the water
16 solution onto the resin beads. Next slide, please.

17 This photograph shows the inside of a wellfield header house at the UR Energy
18 Lost Creek site. This is an area where you can get lots of information on what is going on out in
19 the field monitoring and adjustments for well flow rates and pressures and other variables. Next
20 slide.

21 Region IV is focusing on preparing for the future. As I noted earlier, we are
22 supporting Wyoming's request to become an agreement state by working closely with the staff
23 from the state to assist with inspector training and familiarization with each of the uranium

1 recovery sites, including having Wyoming staff accompany Region IV inspectors during the
2 inspections.

3 We will also remain agile in our ability to meet the required staffing needs to
4 maintain an appropriate inspection program while, at the same time, arranging for our staff to be
5 successful in other program areas if Wyoming becomes an agreement state.

6 To that end, we are actively cross-training our inspection staff to make them
7 more fungible so that they can perform inspections in the nuclear material users in
8 decommissioning low-level waste business lines.

9 As I described in my presentation, Region IV is actively engaged in providing
10 adequate oversight of uranium recovery facilities and we are preparing for the future if Wyoming
11 becomes an Agreement State. I will now turn it back over to Mr. Weber for some closing remarks.

12 MR. WEBER: Thanks, Mark. And we wish Mark well. He is about to embark
13 on an international regulatory review service mission. So, safe travels.

14 This completes the staff's presentation. We would be happy to respond to your
15 questions and comments.

16 CHAIRMAN BURNS: Thanks very much for all of you for the presentations on
17 the staff's program.

18 Let's start out some question related perhaps to the fee billing or fee
19 transparency process. I think we have heard in some, even in some of the earlier meeting on
20 the fee process, questions or suggestions the industry in terms of the level of detail in the billing
21 process is beyond where we are now. And I guess I would give maybe Marc or Mike and
22 opportunity to sort of respond to that. And some of the level of detail I think is to the point of what
23 staffer is actually working on it, that type of thing.

1 Where do you all sit with that suggestion or recommendation and what do you
2 see is perhaps the areas that we can do the most or have the most benefit in terms of assuring
3 the efficiency of staff review time and staff application of resources?

4 Anyone of you but let's start with you Marc.

5 MR. DAPAS: I will give an initial perspective and then Bill or Andrea can
6 elaborate.

7 But I had a lot of engagement with Maureen Wylie, Chief Financial Officer, on
8 transparency in fees, accuracy of fee billing and we are focused on providing an appropriate level
9 of detail. You know we are engaging with the licensees or the applicants to talk about the various
10 activities, trying to provide reasonable cost estimates on what the staff's review of a given activity
11 would entail. But that is an area that we are focused on.

12 And as you indicated, that transparency gets to what is the detail that you are
13 communicating regarding the various activities so that an applicant can plan as they budget for
14 those.

15 But I will let, Andrea, if you want to elaborate more specifically on what we are
16 doing within the Division.

17 MS. KOCK: Sure. So, the issue of a level of detail on invoices was an issue
18 that was looked at. You probably noticed in the SECY paper that went to the Commission this
19 summer. And the Steering Committee did look at that issue. I think there is a recognition that
20 more could be done to provide additional detail but there is also a recognition that some other
21 things need to be put in place in order to facilitate that.

22 For example, it would require some changes to our fee billing systems and also
23 I think we need to look at what is the appropriate level of detail. We want to provide an

1 appropriate level of detail but not too much.

2 So, I think that is something we need to look at. It was listed in the enclosure
3 to that paper as something that the CFO's office wanted to take a look at. I think we support that
4 but it was something that was put off a few years in the future because it would require some
5 other changes.

6 In the interim I think we are trying to fill the gap a little bit in that area by having
7 quarterly calls with our applicants to at least let them know what are the activities that we are
8 going to be working on in the next quarter, so that they are not surprised when they get their bill.

9 So, we are trying to do what we can now and then look to the future to see what
10 level of detail we can put into invoices.

11 MR. DAPAS: I just would leave you with the overarching message that we are
12 focused on that and that it is an activity that we want to provide as much transparency as we are
13 able to within the existing constraints and system compatibility, et cetera.

14 CHAIRMAN BURNS: Let me turn to another area and this goes in terms of
15 schedules. I think actually what we have experienced is some learning about how to engage on
16 the Historic Preservation Act responsibilities probably more effectively. And Diana, I think you
17 were at the Tribal Policy Statement meeting and all and talked a little bit about that.

18 But where do you -- maybe it is worth refreshing. Where do you see that in
19 terms -- because we hear on the one hand we hear from industry representatives with respect to
20 greater predictability, if you will, with respect to scheduling. On the other hand, you do have
21 statutory responsibilities under the various statutes to ensure that you have undertaken the
22 engagements. We have, just to make it more complicated, to say that engagement generally will
23 come with us when we get an application or, as the suggestion in this pre-application type review.

1 So, where do you see -- while I am not sure we will ever get to that you can
2 predict that in 193 and a half days we will have done this, where do you get to, how do you get
3 to, perhaps, and again maybe you call it a more transparent or more stable review process and
4 what are the challenges in being able to do that?

5 MS. DIAZ-TORO: So, I would probably call it a balancing act, maybe, in that
6 respect. And certainly you mentioned those three areas where we have to balance out.

7 I think in the last few years what we have or one of the most important things
8 that we have learned is the early engagement or early identification of issues. I think we have
9 found out that the more information that we can provide early to all the consulting parties, not only
10 the applicant or the State Historic Preservation Officer, but the Native American tribes, the earlier
11 that we can engage, the more opportunities we have to understand what are their concerns, what
12 are their recommendations, what is it that they would like to see in this consultation process.

13 So, that would allow us to better develop a process that it might be more
14 appropriate for that license application.

15 In that respect, we have gone out, in the past couple of years, not specific to a
16 license application, in a more general manner, to conduct outreach activities to Native American
17 tribes in the Northern Plains, specifically targeted to those that have been involved in the uranium
18 recovery licensing process just to understand how would it be best to communicate with you.
19 What would you like to see? What are your recommendations? Would you like to engage
20 earlier? Are you willing or open to engage with the applicants at the stage when they are
21 conducting their pre-application archeological surveys?

22 So, I think that that is where probably our focus is going to be or has been for
23 the last couple of years and will continue to be and see how that plays out in better balancing or

1 maybe trying to develop a more predictable, transparent process.

2 CHAIRMAN BURNS: Okay.

3 MR. DAPAS: Just one comment I would add here. Reid Nelson mentioned
4 the pre-filing process. And my understanding is our Interim Staff Guidance, when we have an
5 awareness of a potential application, we are encouraging the applicant to engage with the tribals
6 and have some of that discussion before we would formally get involved by virtue of having
7 received the application and then initiating the 106 consultation process.

8 So, I think we are trying to meet the intent, if you will, of that pre-filing process
9 that was discussed by the previous panel.

10 CHAIRMAN BURNS: One of the other questions I had goes to the generic
11 environmental impact statement. And recollection serves me well, in part the effort to develop
12 GEIS, I think it was even identified in some of the questions for the other panel, was partly tiering
13 off experience, if you will, from the license renewal and reactor side of the house in terms of
14 licensing, in particular the license renewal. But I think we heard some interesting criticisms on
15 both sides for Mr. Fettus, as well as from Ms. Sweeney, with respect to the GEIS.

16 And what I would like to hear from the staff is what do you see as the limitations
17 or maybe unrealized expectations from that process? Because again, this is one where if you
18 are tiering off, you really still have to be looking at particular sites. Sometimes what is my at least
19 superficial understanding is we are not tiering off. It is not another BWR Mark I or a PWR. It is
20 an expansion of land or an amendment maybe a greater expanse of land or things like that.

21 So, tell me what some of your challenges or your thinking is with respect to the
22 efficacy of the GEIS in this licensing environment.

23 MS. DIAZ-TORO: Sure, I can address that.

1 As you pointed out, Chairman, we still have to look at the site-specific features
2 of each proposed project. And in that respect, we look at the construction activities, the operation
3 activities, aquifer restoration, and decommissioning. And our counterparts at NRR, the scope of
4 the license renewal guides it is a little bit different than in this respect because it is focused on the
5 renewal and the aging management portion.

6 So, a lot of the activities that the GEIS that we look at in tiering from the GEIS
7 are with respect to land-disturbing activities, for example, which might not occur in the license
8 renewal GEIS for reactors.

9 So, in that respect is where we have seen, and Section 106 is one of those
10 areas, right, where these significant land-disturbing activities have driven in part the discussion
11 and the evaluation of the environmental impacts in our SEISs. And so that is where probably I
12 would pinpoint the GEIS might not have realized those efficiencies maybe as it was expected at
13 some point.

14 CHAIRMAN BURNS: Okay.

15 MR. DAPAS: I think the overarching focus, though, for the staff is to look at
16 what is bounded by the generic environmental impact statement versus what are the site-specific
17 impacts for which you have to address in the site-specific environmental impact statement to
18 ensure that we are fully addressing any potential adverse impacts there.

19 So, whether it is under the auspices of the GEIS or whether it tiers to the SEIS,
20 I think it is important to make sure that we are adequately evaluating the impacts and capture
21 that, if it is site-specific in that supplemental environmental impact statement and the process
22 associated with that where stakeholders have the opportunity to provide input for our full
23 consideration.

1 CHAIRMAN BURNS: Okay, thanks. Mike.

2 MR. WEBER: And if I could add, of course, the staff operates under the
3 framework established by the Commission in 10 CFR Part 51, which of course provides for this
4 use of generic environmental impact statement. So, this is not rocket science in terms of NEPA
5 law and practice.

6 And our so our decision making working in close coordination with the Office of
7 General Counsel is really driven by the law, the implementing regulations, and then case law that
8 is established over the decades since the enactment of NEPA.

9 And to Commissioner Svinicki's point, I think we have benefitted extensively by
10 leveraging the reactor experience in the Uranium Recovery Program and in other programs by
11 moving people among programs and by collaborating across the Agency, not just through the
12 General Counsel's Office but also moving staff around from one program to another brings with
13 them that experience and those insights, those good practices from one program to be applied to
14 the extent that they make sense in other parts of the Agency's programs.

15 CHAIRMAN BURNS: Yes. And don't get me wrong. I am not suggesting
16 that there is a -- that somehow the use of generic environmental impact statements is
17 inappropriate. I think what the reality check may be is that some of them may be -- sometimes it
18 may be easier or more adaptable than others. But that is the whole point of the NEPA process
19 in terms of looking at site-specific considerations. Thank you.

20 Commissioner Svinicki.

21 COMMISSIONER SVINICKI: Well, thank you all for your presentations.

22 My first question is for Mr. Dapas. Did you ever get your luggage?

23 MR. DAPAS: Yes.

1 COMMISSIONER SVINICKI: I should explain. I encountered Marc, like many
2 millions of Americans, late Sunday night. We were both returning from our family Thanksgiving
3 holidays and he looked like he had been waiting in baggage claim for some time. I think I had
4 much better luck than you because my bag showed right up. But you did get your luggage?

5 MR. DAPAS: Yes, and evidence important, I am wearing a jacket that was in
6 my luggage. So, about two hours later.

7 COMMISSIONER SVINICKI: Oh, okay, well, there you go. Okay.

8 Well, again, thank you all for your presentations. And I will pick up where the
9 Chairman left off on generic environmental impact statements. I appreciate Mike Weber's
10 comment that of course we move people around. And I know when you talk about utilizing folks
11 for licensing reviews, I think some of those folks probably came out of the reactors areas. I know
12 in environmental expertise, we often flow people over because what they are bringing is their
13 environmental expertise and not necessarily, it is not technology specific.

14 But I mean that being said, I do think that the Agency has more run time with
15 the GEIS for reactor license renewal and I appreciate Diana's statement and her presentation that
16 the staff will continue to look at leveraging off of the generic environmental impact statement.
17 So, I would put it under it is a balancing of site-specific and generic. That is the nature of it.
18 They have to do that on the license renewal side as well. And so it is just a continual learning, I
19 think, as you review different applications that come in. So, I appreciate the staff's continued
20 commitment to looking for opportunity there.

21 I will, since I am engaging on topics from Diana's presentation, I will ask this
22 question. You mentioned CEQ guidelines. Is that the same set of guidelines on NEPA and 106
23 consultations that was mentioned in the first panel by Ms. Sweeney? And if so, it sounds like we

1 actually utilize those CEQ guidelines already.

2 MS. DIAZ-TORO: So, the regulations that I mentioned are the National
3 Historic Preservation Act, regulations in 36 CFR Part 800, and we certainly carry out those
4 regulations.

5 The CEQ guidance, the Council on Environmental Quality is --

6 COMMISSIONER SVINICKI: I know they are just guidelines.

7 MS. DIAZ-TORO: Right. Well, they are related to NEPA, to the National
8 Environmental Policy Act. The CEQ and the ACHP collaborated a few years ago in developing
9 a guidance document on how to conduct the Section 106 process along with the NEPA.

10 COMMISSIONER SVINICKI: Okay, somewhat like in harmony --

11 MS. DIAZ-TORO: Like in harmony, correct.

12 COMMISSIONER SVINICKI: -- because you have got two different processes.

13 MS. DIAZ-TORO: And how you could coordinate those two and leverage each
14 other to eliminate potential redundancies or increase efficiency. And the NRC has copies of
15 those and we were looking at that. That is something that we have identified that --

16 COMMISSIONER SVINICKI: Okay, it may have value when you are
17 evaluating it.

18 MS. DIAZ-TORO: Correct, yes.

19 COMMISSIONER SVINICKI: Okay, thank you for that.

20 MS. DIAZ-TORO: You're welcome.

21 COMMISSIONER SVINICKI: And Andrea, thank you for your presentation and
22 your response to the Chairman's question about efforts on fee transparency. I think, as you
23 acknowledged, the Office of Chief Financial Officer has brought to our attention that there are

1 some fundamental alterations that would need to be made to keep moving in this direction. But
2 you have acknowledged and I think the Commission's direction was consistent with recognizing
3 that there are opportunities available as we move into the future. I think the innovation of the
4 quarterly calls as a surrogate while we continue to try to make some of those underlying changes
5 is a very, very constructive engagement for just better transparency and to the timing and how
6 the reviews are going.

7 You did note that some of the update in the fidelity and detail in billing processes
8 has been pushed off for a few years. I just want to note that the Commission did direct, as a
9 result of the fee paper that we voted on, that I think the language was we requested or directed
10 that the staff look for opportunities to accelerate.

11 And I know I am really engaging on topics that are the Office of the Chief
12 Financial Officer and you will work in a way in concert with what they are doing.

13 You know we are all a product of our own experiences and I began with a state
14 regulatory agency in Wisconsin that I had to track my time on. It might have been less than
15 15-minute increments. I don't know what it is here.

16 But in any event, there was enough transparency that we would receive letters
17 back from regulated entities saying what was Svinicki doing for 15 minutes on this or we question
18 whether this kind of code of activity how did that have relevance to this item under review. So,
19 that was, I am ashamed, that was 26 years ago. So, I know that the technology exists to give a
20 lot of transparency on these kinds of fees that regulatory agencies have to do.

21 So, I am confident that NRC can move into the 19th century or the 20th century
22 on the fee billing system. So, we will keep pushing forward for progress there.

23 On the flat fee pilot, who is the lead on that? Is that the Steering Committee

1 that OCFO set up?

2 MS. KOCK: It is a subset of that Steering Committee. And as far as -- I
3 appreciate your comments about that may be more of a CFO issue but I really see us as one
4 team. So, it is not just a CFO issue. It affects us as well. So, we are working as a team.

5 COMMISSIONER SVINICKI: So, the Commission didn't direct a schedule on
6 that. What has been developed as just a notional of when you would begin engagement with the
7 particular class of licensee and start talking about it?

8 MS. KOCK: So, we are at the beginning of the process. And the CFO's office
9 is developing a project plan.

10 COMMISSIONER SVINICKI: Okay.

11 MS. KOCK: I think the next step is for us to look at what are the potential
12 licensing actions that might fit into a flat fee. And what I mean by that is what are the licensing
13 actions that have pretty much a standard cost and don't bury too much? So, I think we will help
14 the CFO look through our licensing actions to help them decide what might be the right category
15 of licensing amendments or actions that might fit into that. And then we will look to engage the
16 industry to see what they think.

17 COMMISSIONER SVINICKI: Okay.

18 MS. KOCK: So, we are really at the beginning of the process.

19 COMMISSIONER SVINICKI: So, we are basically getting our thoughts
20 together prior to having an engagement so we can get a reaction to that. Okay.

21 MR. WEBER: But if I could, you already have shared the expected costs for
22 different licensing actions, right?

23 MS. KOCK: Yes, from each licensing.

1 MR. WEBER: So that is part of this process.

2 COMMISSIONER SVINICKI: And that was my next question. Andrea
3 mentioned that we have posted nominal costs for different types of licensing actions on the
4 website. And I credit you with doing that very proactively because it was something in the give
5 and take in the previous Commission meeting on the fee process. I know there was a generic
6 discussion. It looks you all just took that on and kind of ran with it.

7 But my question was do you have ranges out there or how did you develop
8 nominal costs for different types of licensing actions that you can have some confidence in putting
9 out there on the website? Did you average or what did you do?

10 MS. KOCK: So, I will start and then I may need to turn it over to the experts.

11 COMMISSIONER SVINICKI: You are getting your CFO credentials today on
12 all the billing issues.

13 MS. KOCK: Well, I don't know about that but I can start and then Bill can fill in.

14 So, we looked at historical costs. What we posted was a range. And I think
15 we --

16 COMMISSIONER SVINICKI: Do you find a lot of variability in those costs? I
17 mean we have been talking on other issues about you know you used to have two tribes interested
18 in consultation, now you have got 20. Have you found a huge variation?

19 MS. KOCK: There is some variation and I think if you look at the website, you
20 will see that we recognize that costs could even fall outside of that range, depending on the
21 application. So, they do vary.

22 COMMISSIONER SVINICKI: Well, I would certainly caveat it because
23 anything we put on the website I am sure we had calibrated expectations.

1 MS. KOCK: Yes but we looked at historical data. We averaged the
2 information and then we put out a range. There was a range. We tried to capture it the best we
3 could and recognized that you can follow any of the scale from the low to the high, depending on
4 the complexity of the issues in the application, the quality of the application. A lot of things drive
5 that cost.

6 COMMISSIONER SVINICKI: Okay and one other question that I had was -- I
7 think, Andrea, this was you, as well, in your presentation. The analysis of extending license
8 terms for certain categories of licensees, I think you indicated that the staff has that under
9 evaluation now resulting in a recommendation to the Commission one way or another by the end
10 of fiscal year '17.

11 This is another one of these where I am kind of burdened with knowing that we
12 have been kicking this around for some time. What is it about the staff's evaluation that
13 necessitates it taking us that long to come up with a recommendation? And it may you know
14 your responses could be under your prioritization scheme for work, this is simply not a high
15 priority. Is there something underlying it, though, that really is that complicated?

16 MS. KOCK: So, as usual, I can start and then turn to Bill.

17 COMMISSIONER SVINICKI: Okay.

18 MS. KOCK: So, we do need to look at some of the factors to look at whether
19 extending the license term is appropriate. So, there is some analysis that needs to be done.
20 So, we need to look at licensee performance, stability of operations. What really is the risk of
21 these facilities? What kind of maintenance is involved? So, we need to think about that a little
22 bit.

23 I think also what is driving the schedule is, as you pointed out, we have to

1 prioritize our work. So, our first priority is operational facilities and we look at amendments. So,
2 this maybe falls into the third tier. I wouldn't say it is not important to us. It is an important policy
3 issue for us. We just need to prioritize it with the rest of our work.

4 COMMISSIONER SVINICKI: Okay, thank you. Thank you, Mr. Chairman.

5 CHAIRMAN BURNS: Thank you, Commissioner. Commissioner Baran.

6 COMMISSIONER BARAN: Thanks for your presentations.

7 I wanted to follow up a little bit on the discussion we had on the first panel on
8 Wyoming's efforts to become an Agreement State and where that is. And I guess either a
9 question for Andrea or Bill, or whoever wants to jump in.

10 Big picture, what does the staff see as kind of the most significant outstanding
11 issues that will have to be grappled with at some point during this process? I know when the
12 paper came up in July and August, there were a few issues that were flagged as more work needs
13 to be done on this. We heard a little bit about that on the first panel. How do you deal with these
14 programmatic agreements, other issues related to tribal consultation or interactions? And I think
15 there were some others.

16 Can you talk a little bit about are there tough issues that are going to have to
17 be resolved on this?

18 MR. DAPAS: I will just offer the perspective of my knowledge of what is
19 involved. We have a fairly structured process for reviewing an Agreement State application.
20 This isn't a limited agreement. I think right now the staff needs to focus on the evaluation of the
21 state's desire to limit oversight to one decommissioning facility versus seven and what
22 recommendation would we propose for the Commission's consideration. Because as we
23 indicated in the presentation, that is different than what the staff presented in the Commission

1 paper and what the Commission directed the staff, based on the SRM, staff requirements
2 memorandum.

3 So, we need to focus on that. Because I think we need closure on that because
4 that then will inform our review activities going forward. So, I see that as a significant
5 development here in the process.

6 I am not aware of other challenges, if you will, in part of the standard application
7 review. There has been a lot of engagement with the State of Wyoming here and comments
8 provided and incorporation of those comments, which is typical for the structured process that we
9 invoke when we are reviewing an Agreement State application.

10 But the reason why I think we need to revisit that with the Commission is there
11 is various questions that we answer based on the framework that the Commission had provided
12 in previous engagement with respect to Agreement State applications and there are various
13 questions that we need to answer and I think we need to do that in the context now with this more
14 limited approach that Wyoming has proposed.

15 COMMISSIONER BARAN: Okay. So you are focused on kind of the basic
16 scope question, at this point.

17 MR. DAPAS: Yes, sir. I don't know if there is other comments regarding the
18 specificity of the actual review process but --

19 MS. KOCK: I would just agree with what Marc said.

20 MR. WHITE: Duncan White from the Agreement State Program Branch.

21 I think in addition to what Marc talked about, about the decommissioning sites,
22 the other corollary to that is the sufficient staffing. What Wyoming has presented, is that going
23 to match what is ultimately going to be sites are going to get into the agreement? They have to

1 have sufficient resources for us to transfer that.

2 And I think that goes along with our final decision, what sites get transfers and
3 how that all works out. So, that is something that has to be balanced out and we have to look at
4 carefully.

5 COMMISSIONER BARAN: Okay.

6 MR. DAPAS: The resourcing, obviously, is driven by the scope of the activities
7 that would be within the State's purview.

8 COMMISSIONER BARAN: Okay. And then going back a little bit to the
9 discussion on the last panel with the programmatic agreements that were used to resolve some
10 of the NHPA issues, it sounds like that is still a little bit of an open question about how to handle
11 that. Is it just something that can be shifted over to the State or is it more complicated than that?

12 Do you all have any kind of thoughts about where that stands or is that
13 something that has progressed as an issue or is it still just kind of an open question about how to
14 resolve that?

15 MR. DAPAS: I will use a lifeline on this question.

16 COMMISSIONER BARAN: Totally fair.

17 MR. WHITE: I will take first shot at it and then I will probably kick it over to
18 OGC.

19 We have talked to Wyoming about program agreements and we have had some
20 early discussions as to how they would be handled but we haven't really -- one thing we were
21 waiting on is for their application to come in. Because one of the complications with them is
22 some of them are part of the license or incorporated into the license and some are not. And that
23 will dictate how they get handled and how the State would respond to them.

1 So, it is an ongoing issue.

2 MR. WEBER: If I could add, and Margie will kick me under the table with her
3 long legs if I am going too far, but there is a lot of legal issues here. And we operate under the
4 Atomic Energy Act in so far as our Agreement State Program operates.

5 And so there are separate issues under other laws and whether they transfer to
6 a State. I know some States, on their volition have basically mirrored, under their own authority,
7 the federal programs at the state level. I am not familiar enough with the State of Wyoming and
8 whether they have chosen to do that. But that would also be something that would be worthy of
9 pursuit, as we go forward.

10 COMMISSIONER BARAN: Yes, and along those lines, how do the tribal
11 consultation Section 106-type issues play into NRC's process for considering an Agreement State
12 application, if at all, I guess is the question.

13 Is an Agreement State required to have something like a Section 106 process
14 to be an Agreement State?

15 MR. DAPAS: No.

16 COMMISSIONER BARAN: Okay.

17 MS. DOANE: Okay, so those federal authorities kick in, once the NRC
18 undertakes a licensing action. So, if the NRC isn't doing the licensing action, it transfers it to the
19 state, then those obligations don't kick in, for lack of a better word.

20 But like Mike said, some states, many states have mirror statutes, state statutes
21 that would impose the same obligation at a state level. But it is a little bit tricky when you are
22 talking about licensing, conditions in licenses. That is a different situation because we would be
23 transferring the licenses. They would have the authority and to the extent that it is incorporated

1 into the license already, is the difference.

2 COMMISSIONER BARAN: If anyone knows, how have other Agreement
3 States with uranium recovery facilities like Texas, Colorado, Utah, how have they approached this
4 issue of tribal consultation? Have they gone the approach of mirroring what we do under Section
5 106 or they have different approaches? Does anyone have a sense of that?

6 MR. WHITE: Yes, Duncan White again. From experience, Colorado, Texas,
7 and Utah don't have much tribal interaction. I guess in their states there is not a lot of interest.

8 The State of Washington does have one site undergoing decommission, Dawn
9 Mine, and that site is adjacent to I think I don't know if it is a tribal reservation or tribal land. I'm
10 not sure which one I it is. So, they have quite a deal of engagement with them and they meet
11 with them quite frequently.

12 COMMISSIONER BARAN: And do they have a process similar to Section
13 106?

14 MR. WHITE: I don't know. I don't know exactly what it looks like but it has
15 been going on for several years. It is a routine type of process.

16 MR. DAPAS: I will just offer one thought. And I was talking quickly with
17 Diana. I think one of the challenges clearly is when you have these programmatic agreements,
18 as I understand it, there can be actions that the staff would be taking subsequent to the actual
19 licensing action being issued. And so we would have to work with the state and understand what
20 action might we continue with in the context of that programmatic agreement that was developed
21 prior to the actual execution of the licensing action.

22 So, it is a question that remains outstanding and open, if you will, on how would
23 we engage. But I would offer it would be in a collaborative manner in working with the State.

1 Because the overarching goal I would offer both with the State and the staff would be to ensure
2 that we are honoring and operating in good faith regarding the engagement with the tribal
3 consultation and what derives from that in the context of the programmatic agreement.

4 MR. WEBER: And if I could add, our colleague Reid Nelson, in the first panel,
5 was referring to delegation of the program. And I would just clarify we do not delegate to the
6 states the authority under Section 274. That is under their own authority. We terminate
7 authority over the program once that agreement is in place.

8 So, it is a different creation under federal law than many of the environmental
9 statutes.

10 COMMISSIONER BARAN: Okay. Go ahead.

11 MS. DOANE: I would just add one thing. I am probably going to kick myself
12 under the table for raising it. But I think for full transparency, there is also an issue with
13 Wyoming's trespass data collection law, which Mr. Parfitt, on the first panel from Department of
14 Environmental Quality, he mentioned. And that has to do with how you can use data that is
15 obtained if someone were to trespass and get the data, even if it raised health and safety issues.

16 MR. DAPAS: Well, we have been engaging Wyoming to try and address such
17 that they would have access to the inspection function here and not run crossways with this
18 trespass law because they would have to implement the inspection function as part of the
19 agreement and compatible with our program.

20 MS. DOANE: Right, that would cover the state but wouldn't cover individuals
21 who trespass and would get information or collect data that then would be used by a state agency.
22 And it is that second piece that the law prohibits a state agency from using any information that
23 is obtained through trespass.

1 But we are working through it but it would be a challenge to sign the agreement.

2 COMMISSIONER BARAN: Thanks for the update. I appreciate it. Thank
3 you.

4 CHAIRMAN BURNS: Well, thanks very much.

5 Well, again, thanks to the staff and to our first panel for the discussion today on
6 the Uranium Recovery Program, which has been and continues to be dynamic as the discussion
7 right now indicates. Information has been provided and the discussion in response to our
8 questions has been very useful.

9 Again, I thank you all and we stand adjourned.

10 (Whereupon, the above-entitled matter went off the record at 11:55 a.m.)
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