

March 18, 2019

Mark J. Langer, Clerk
U.S. Court of Appeals for the District of Columbia Circuit
333 Constitution Avenue N.W.
Washington, D.C. 20001-2866

SUBJECT: *Beyond Nuclear, Inc. v. U.S. Nuclear Regulatory
Commission, No. 18-1340*

Dear Mr. Langer:

On behalf of Petitioner Beyond Nuclear, Inc., I am enclosing the following documents:

- Petitioner's Certificate as to Parties, Rulings, and Related Cases;
- Petitioner's Docketing Statement Form and Addendum with Exhibits;
- Statement of Intent by the Parties to Utilize Deferred Joint Appendix;
- Petitioner's Nonbinding Statement of Issues to be Raised;
- Petitioner's Statement of Underlying Decisions from Which Appeal or Petition Arises; and
- Petitioner's Certificate of Service.

Thank you for your consideration.

Sincerely,

/s/ Diane Curran

Enclosures: As stated
Cc: Service list

UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BEYOND NUCLEAR, INC.,)	
)	
)	
Petitioner,)	Case No. 18-1340
)	
v.)	
)	
UNITED STATES NUCLEAR)	
REGULATORY COMMISSION and the)	
UNITED STATES OF AMERICA,)	
)	
Respondents.)	
)	

CERTIFICATE AS TO PARTIES, RULINGS AND RELATED CASES

Pursuant to D.C. Circuit Rules 15(c)(3) and 28(a)(1), counsel for Petitioner Beyond Nuclear, Inc. (“Beyond Nuclear”) certifies as follows:

1. Parties, Intervenors and Amici Curiae.

The parties are Beyond Nuclear and respondents United States Nuclear Regulatory Commission (“NRC”) and the United States of America.

Intervenors and Amicus Curiae. On February 8, 2019, the court admitted Holtec International and Interim Storage Partners, L.LC. as intervenors.

2. Rulings Under Review.

Petitioner Beyond Nuclear seeks review of an Order issued by the NRC on October 29, 2018, in the following proceedings: *Holtec International*

(Consolidated Interim Storage Facility) (Docket No. 72-1051) and *Interim Storage Partners L.L.C.* (WCS Consolidated Interim Storage Facility) (Docket No. 72-1051).

3. Related Cases.

There are no related cases pending in this court or other federal court.

Respectfully submitted,

/s/ Diane Curran

DIANE CURRAN

Harmon, Curran, Spielberg
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Counsel for Beyond Nuclear

/s/ Mindy Goldstein

MINDY GOLDSTEIN

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Counsel for Beyond Nuclear

March 18, 2019

UNITED STATES COURT OF APPEALS
DISTRICT OF COLUMBIA CIRCUIT

333 Constitution Avenue, NW
Washington, DC 20001-2866
Phone: 202-216-7000 | Facsimile: 202-219-8530

AGENCY DOCKETING STATEMENT

Administrative Agency Review Proceedings (To be completed by appellant/petitioner)

1. CASE NO. 18-1340 2. DATE DOCKETED: 12/27/19
3. CASE NAME (lead parties only) Beyond Nuclear v. U.S. Nuclear Regulatory Commission

4. TYPE OF CASE: [X] Review [] Appeal [] Enforcement [] Complaint [] Tax Court

5. IS THIS CASE REQUIRED BY STATUTE TO BE EXPEDITED? [] Yes [X] No
If YES, cite statute

6. CASE INFORMATION:

a. Identify agency whose order is to be reviewed: U.S. Nuclear Regulatory Commission
b. Give agency docket or order number(s): NRC-72-1050, NRC-72-1051
c. Give date(s) of order(s): 10/29/18

d. Has a request for rehearing or reconsideration been filed at the agency? [] Yes [X] No
If so, when was it filled? By whom?
Has the agency acted? [] Yes [] No If so, when?

e. Identify the basis of appellant's/petitioner's claim of standing. See D.C. Cir. Rule 15(c)(2):
See Addendum.

f. Are any other cases involving the same underlying agency order pending in this Court or any other?
[] Yes [X] No If YES, identify case name(s), docket number(s), and court(s)

g. Are any other cases, to counsel's knowledge, pending before the agency, this Court, another Circuit
Court, or the Supreme Court which involve substantially the same issues as the instant case presents?
[X] Yes [] No If YES, give case name(s) and number(s) of these cases and identify court/agency:
See Addendum.

h. Have the parties attempted to resolve the issues in this case through arbitration, mediation, or any other
alternative for dispute resolution? [] Yes [X] No If YES, provide program name and participation dates.

Signature s/Diane Curran Date 03/18/19

Name of Counsel for Appellant/Petitioner

Address Harmon, Curran, Spielberg & Eisenberg, L.L.P., 1725 DeSales St. N.W. Suite 500, Washington, D.C. 20036

E-Mail dcurran@harmoncurran.com Phone (240) 393-9285 Fax (404) 727-7851

ATTACH A CERTIFICATE OF SERVICE

Note: If counsel for any other party believes that the information submitted is inaccurate or incomplete, counsel may so
advise the Clerk within 7 calendar days by letter, with copies to all other parties, specifically referring to the
challenged statement.

**Addendum to Petitioner’s Docketing Statement for
Beyond Nuclear v. NRC, No. 18-1340**

Question 6(e): “Identify the basis of appellant’s/petitioner’s claim of standing.”

To establish standing in a case brought under the Hobbs Act, 28 U.S.C. § 2344 (2000), a party filing suit in federal court must demonstrate both associational and prudential standing. *Nuclear Energy Inst., Inc. v. EPA*, 373 F.3d 1251, 1278 (D.C. Cir. 2004) (citing *Hunt v. Washington State Apple Advertising Comm’n*, 432 U.S. 333, 343 (1977); *Reytblatt v. United States Nuclear Regulatory Comm’n*, 105 F.3d 715, 720 (D.C. Cir. 1997)). Petitioner Beyond Nuclear has both types of standing, as demonstrated by the discussion below and by the attached declarations of its members.¹

A. Associational Standing

Beyond Nuclear has associational standing to bring this petition for review as a representative of its members. *Nuclear Energy Inst.*, 373 F.3d at 1265 (citing *Hunt*, 432 U.S. at 342). As demonstrated by the attached declarations of Beyond Nuclear members, the organization’s members have standing to sue in their own

¹ See Declaration of Daniel C. Berry III (neighbor of Holtec Facility) (Exh. 1); Declaration of Elizabeth Berry (neighbor of Holtec Facility) (Exh. 2); Declaration of D.K. Boyd (neighbor of ISP Facility) (Exh. 3); Declaration of Jimi Gadzia (neighbor of Holtec Facility) (Exh. 4); Declaration of Rose Gardner (neighbor of ISP Facility) (Exh. 5); Declaration of Gene Harbaugh (neighbor of Holtec Facility) (Exh. 6); Declaration of Nick King (neighbor of Holtec Facility) (Exh. 7); Declaration of Margo Smith (neighbor of Holtec Facility) (Exh. 8).

right. Furthermore, the interests Beyond Nuclear seeks to protect are germane to its purposes: Beyond Nuclear is a nonprofit, nonpartisan membership organization that (a) aims to educate and activate the public about the connections between nuclear power and nuclear weapons and the need to abolish both to protect public health and safety, prevent environmental harms, and safeguard our future; and (b) advocates for an end to the production of nuclear waste and for securing the existing reactor waste in hardened on-site storage until it can be permanently disposed of in a safe, sound, and suitable underground repository. Finally, “neither the claim asserted nor the relief requested requires that an individual member of the association participate in the lawsuit.” *Id.*

Beyond Nuclear also demonstrates the “irreducible constitutional minimum” for standing: injury-in-fact, causation, and redressability. *Nuclear Energy Inst.*, 373 F.3d at 1279 (quoting *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992)). As demonstrated by the attached declarations of Beyond Nuclear’s members, those members’ health, safety, and property interests will be injured by radiological exposures and risks that are directly traceable to the issuance of licenses to Holtec and ISP; those injuries would be redressed by dismissal of the licensing proceedings and rejection of the applications.

The injuries to Beyond Nuclear’s members arise from their proximity to the significant quantity of radioactive material to be stored at the sites, their exposure

to normal and accidental doses of radiation during transportation of spent fuel to the facility, and the depression of their property values:

- First, Beyond Nuclear establishes standing by virtue of its members' proximity to a significant source of radiation. *See, e.g., Nuclear Energy Inst.*, 373 F.3d at 1266 (finding standing for an environmental organization to challenge the licensing of a nuclear waste disposal facility because one of its members "lives adjacent to the land where the Government plans to bury 70,000 metric tons of radioactive waste – a sufficient harm in and of itself. "). Spent fuel is and will remain highly radioactive and dangerous to humans for hundreds of thousands of years. *Id.* at 1257. Holtec proposes to store an astronomical quantity of this extremely dangerous and long-lived radioactive waste -- up to 100,000 MTU, more than twice the total amount of commercially generated spent nuclear fuel existing in the entire United States today. For its part, ISP plans to store 40,000 MTU of spent nuclear fuel -- a quantity that is more than half of the spent nuclear fuel existing in the United States.
- Second, Beyond Nuclear establishes standing by virtue of the radiological injuries to its members who live, work, and travel on or along routes that Holtec and ISP plan to transport spent nuclear fuel. As demonstrated in the attached member declarations, these injuries include: radiological exposure

received during normal transportation operations, radiological exposure received during a transportation accident, and limitation to the right to travel. To establish standing, such injury need not be large: even minor radiological exposures, within regulatory limits, resulting from a proposed license activity can be sufficient. *Duke Power Co. v. Carolina Env'tl. Study Group*, 438 U.S. 59, 74 (1978)) (“[T]he emission of non-natural radiation into appellees’ environment would also seem a direct and present injury, given our generalized concern about exposure to radiation and the apprehension flowing from the uncertainty about the health and genetic consequences of even small emissions like those concededly emitted by nuclear power plants.”).

- Finally, *Beyond Nuclear* establishes standing by virtue of adverse impacts to its members’ property values. *Kelley v. Selin*, 42 F.3d 1501, 1509–10 (6th Cir. 1995) (finding that spent fuel storage near petitioners “has the potential to interrupt enjoyment of their lakefront property and to diminish its value.”).

B. Prudential Standing

To establish prudential standing, a party's "grievance must arguably fall within the zone of interests protected or regulated by the statutory provision or constitutional guarantee invoked in the suit." *Nuclear Energy Inst.*, 373 F.3d at 1266 (quoting *Bennett v. Spear*, 520 U.S. 154, 162 (1997)). In this case, the grievance of Beyond Nuclear's members – *i.e.*, that the NRC is now conducting licensing proceedings for private spent fuel storage facilities that could unlawfully approve federal ownership of spent fuel those facilities -- falls within the zone of interest protected by the NWPA. As set forth in the NWPA's statement of "Purposes," the NWPA provides for the scheduling of transfer of ownership of spent fuel from private entities to the federal government on a "schedule" that "will provide a reasonable assurance that the public and the environment will be adequately protected from the hazards posed by high-level radioactive waste and such spent nuclear fuel as may be disposed of in a repository." 42 U.S.C. § 10131(b). By considering Holtec's and ISP's license applications, the NRC violates the NWPA's scheduling policy of requiring that a repository must be opened before spent fuel can be transferred to the federal government. 42 U.S.C. § 10222(a)(5)(A).

By the same token, Beyond Nuclear's grievance also falls within the zone of interest protected by the APA, which forbids federal agencies from taking action

that is “not in accordance with law” or “short of statutory right.” 5 U.S.C. §§ 706(2)(A) and (C).

Question 6(g): “Are there any other cases, to counsel’s knowledge, pending before the agency, this Court, another Circuit Court, or the Supreme Court which involve *substantially the same issues* as the instant case presents?”

Beyond Nuclear’s Petition for Review is related to two licensing proceedings that are now before the Atomic Safety and Licensing Board (“ASLB”) of the U.S. Nuclear Regulatory Commission (“NRC” or “Commission”). These licensing proceedings were noticed at 83 Fed. Reg. 32,919 (July 16, 2018) (notice of opportunity for hearing on Holtec International’s (“Holtec’s”) application to construct and operate an interim spent fuel storage facility in eastern New Mexico) and 83 Fed. Reg. 44,070 (Aug. 29, 2018) (notice of opportunity for hearing on Intern Storage Partners L.L.C.’s (“ISP’s”) application to construct and operate an interim spent fuel storage facility in western Texas). Beyond Nuclear has petitioned for intervenor status in both proceedings, and has raised the question of whether Holtec’s and ISP’s license applications violate the Nuclear Waste Policy Act (“NWPA”), 42 U.S.C. §§ 10222(a)(5)(A) and 10143, because they contemplate federal ownership of spent fuel during transportation to and/or storage at Hotec’s and ISP’s private facilities. Under the NWPA, transfer of title to spent fuel may not pass to the federal government until a repository is licensed and in

operation. *Id.*; 42 U.S.C. § 10151(a)(1) (establishing Congressional policy that private licensees have the “primary responsibility” for storing spent fuel).

This appeal concerns the NRC Commissioners’ denial of Beyond Nuclear’s separate motion to dismiss Holtec’s and ISP’s license applications and terminate the licensing proceedings at the outset. Beyond Nuclear’s motion to dismiss charged that the NRC’s very consideration of Holtec’s and ISP’s license applications violates the NWPA and the Administrative Procedure Act (“APA”), 5 U.S.C. §§ 706(2)(A) and (C), because the applications seek approval of activities that would blatantly violate the NWPA.

While both the motion to dismiss and the ASLB licensing proceedings relate to the lawfulness of Holtec’s and ISP’s applications under the NWPA, the ASLB licensing proceedings will not address the question of whether the NRC is violating the NWPA and the APA in the very act of considering the license applications. That question was conclusively answered in the Commission’s October 29, 2018 Order now on appeal.

Therefore, this appeal raises issues that are distinct from, albeit related to, the ASLB licensing proceedings. Notwithstanding this distinction, decisions made by the ASLB in the licensing proceedings may clarify the issues on review before this court. Accordingly, on December 27, 2018, Petitioner filed a Motion to Hold

Petition for Review in Abeyance, pending the outcome of the ASLB licensing proceedings. That Motion is still pending before this court.

UNITED STATES COURT OF APPEALS FOR THE
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BEYOND NUCLEAR, INC.,)	
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REGULATORY COMMISSION and the)	
UNITED STATES OF AMERICA,)	
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Respondents.)	
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DECLARATION OF DANIEL C. BERRY III

Under penalty of perjury, I, Daniel C. Berry III, declare as follows:

1. My name is Daniel C. Berry III.
2. I am a member of Beyond Nuclear, Inc. (“Beyond Nuclear”).
3. I live with my wife, Elizabeth Berry, in Township 21S, Range 33E, Section 2, within 11 miles of the proposed Consolidated Interim Storage Facility (the “Facility”) for which Holtec International (“Holtec”) seeks a license from the U.S. Nuclear Regulatory Commission (“NRC”) to build and operate.
4. I own and ranch the T Over V Ranch, which is approximately 1,900 acres of a mix of private land and Bureau of Land Management and state leases. The T Over V Ranch is located in Township 20S, Range 34E, Sections 22, 27, 28, 34, and 35, Township 21S, Range 31E, Sections 1 and 12, and Township 21S, Range 32E, Section 6, all within 3 to 15 miles of the Facility. The T Over V Ranch has multiple homesteads on it. I have included a map identifying the location of my residence and my land in relation to the Facility. See **Attachment 1**.

5. I frequently and regularly spend time within 15 miles of the Facility because I live and work in the area. I manage and work the T Over V Ranch with my wife and a number of ranch hands. Every day, we spend time all over our land, horseback riding, hiking, or riding ATVs in order to manage our cattle.
6. I also frequently and regularly spend time on the local roads near the Facility and transportation routes for the Facility. For instance, I regularly drive Highway 62/180 where it parallels the Burlington Northern Santa Fe Carlsbad Subdivision railroad that Holtec plans to use to transport spent nuclear fuel to the Facility. See **Attachment 2**. Highway 62/180 is the only route I can take to travel to Carlsbad, the nearest major town to my home. I have to drive on this highway to access business and everyday necessities such as my bank and grocery store. This Highway, and others nearby such as Highway 176, are so busy with truck traffic that I normally have to wait at the onramp to enter the Highway, which is approximately one mile from the Facility. When I am on this Highway, I have noticed rail cars traveling next to me.
7. I am concerned about the risks to my property, my health and safety, and my environment posed by the construction and operation of the Facility, and by transportation of spent nuclear fuel to the Facility.
8. I am also concerned about the radiation risks to me and my family, including our health and safety, posed by living next to a facility housing such an enormous quantity of radioactive material as will be stored at the Facility. I am also concerned that an accident involving spent nuclear fuel at the Facility will harm my property due to radiological contamination.
9. I am also concerned that I will not be able to avoid small doses of unwanted radiation from driving next to rail cars carrying shipments of spent nuclear fuel, which will harm my health and safety. And I am concerned that I cannot avoid higher doses of unwanted radiation should Holtec transport the spent nuclear fuel by truck along Highway 62/180, Highway 176 and other roads in the area that I frequent. I am especially concerned that I cannot avoid higher doses of unwanted radiation from the extended length of time I spend on a regular basis waiting to enter Highway 62/180 near the Facility and transportation routes.
10. I am also concerned with the impacts to my interest and right to travel near my home posed by Holtec's proposed transportation routes for spent nuclear

fuel. In order to ensure myself and my family travel on the safest roads to avoid unwanted doses of radiation or potential accidents involving transportation of spent nuclear fuel, I would have to avoid highways and roads that are our primary routes to access business and everyday necessities.

11. I am also concerned about the impact the Facility will have on the value of my home and the T Over V Ranch. It is my understanding that property values near a nuclear facility can be reduced as early as when it receives its license to operate due to real or perceived risks of exposure to radiation releases from the nearby facility. It is also my understanding that property values continue to decrease once the facility is constructed and operating.
12. I am concerned that the licensing, construction, and operation of the Facility will impact the economic prosperity of Eddy County, where I live, and Lea County, where I own land. It is my understanding that the Permian Basin in Eddy and Lea counties in New Mexico and in Texas is the largest oil and gas producer in the United States and the second largest in the world. I am concerned that construction and operation of the Facility on top of the Permian Basin will impact the ability to continue drilling so successfully here and therefore have a negative effect on the economy. This could harm local businesses and the value of my property. I am also concerned that construction and operation of the Facility will limit the domestic production of oil and gas in the United States.
13. Finally, I am concerned that Holtec's license application is inadequate and illegal as written.
14. Therefore, I previously authorized Beyond Nuclear to protect my interests by representing me in both (a) a motion to the NRC to dismiss Holtec's license application and (b) a petition to intervene in the NRC's licensing proceeding for the Facility. When the NRC denied Beyond Nuclear's motion to dismiss Holtec's license application, I authorized Beyond Nuclear to appeal that decision to this court.

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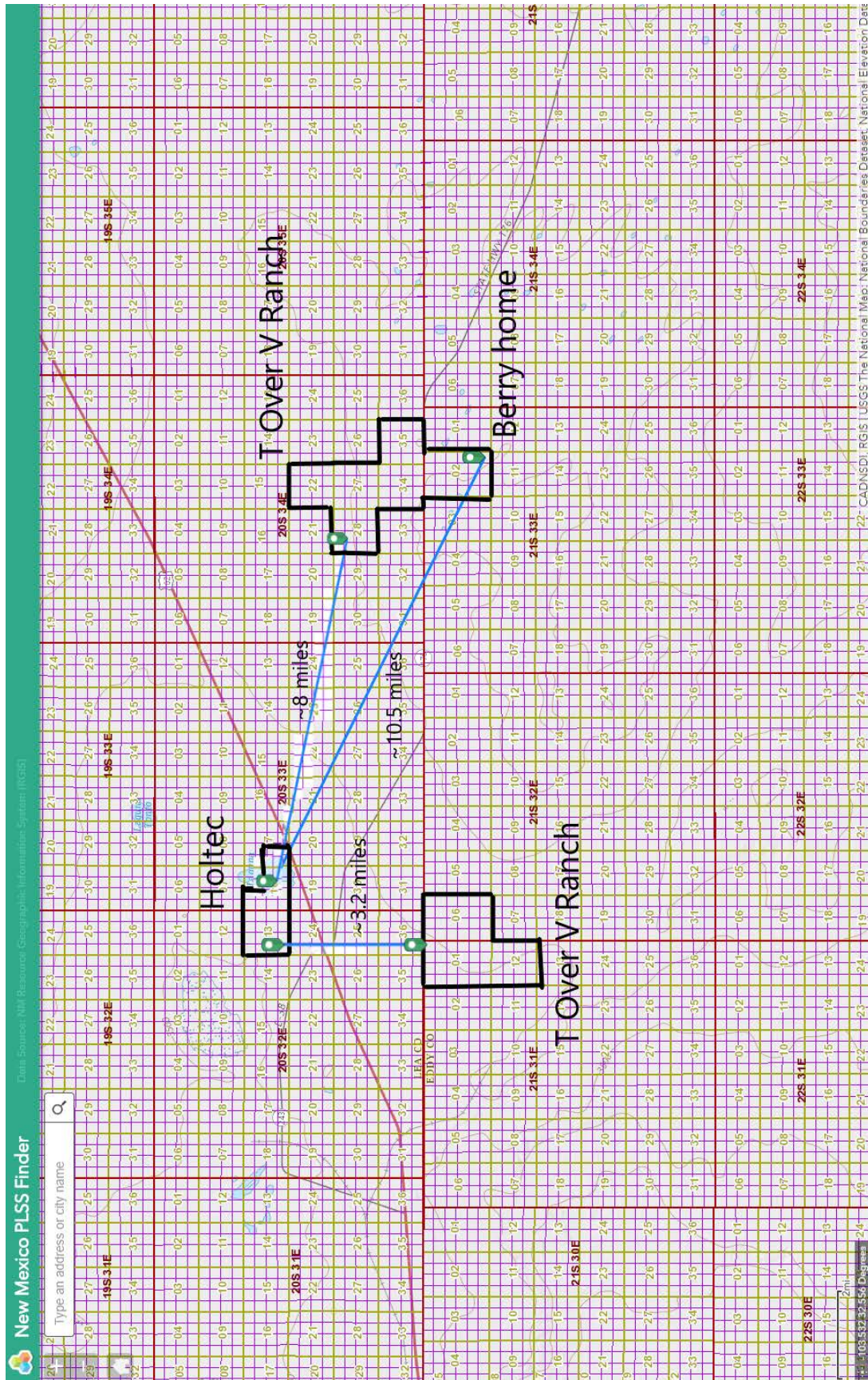
The declarant has caused this Declaration to be executed as of the date below.

Signed,

Daniel C Berry III
Daniel C. Berry III

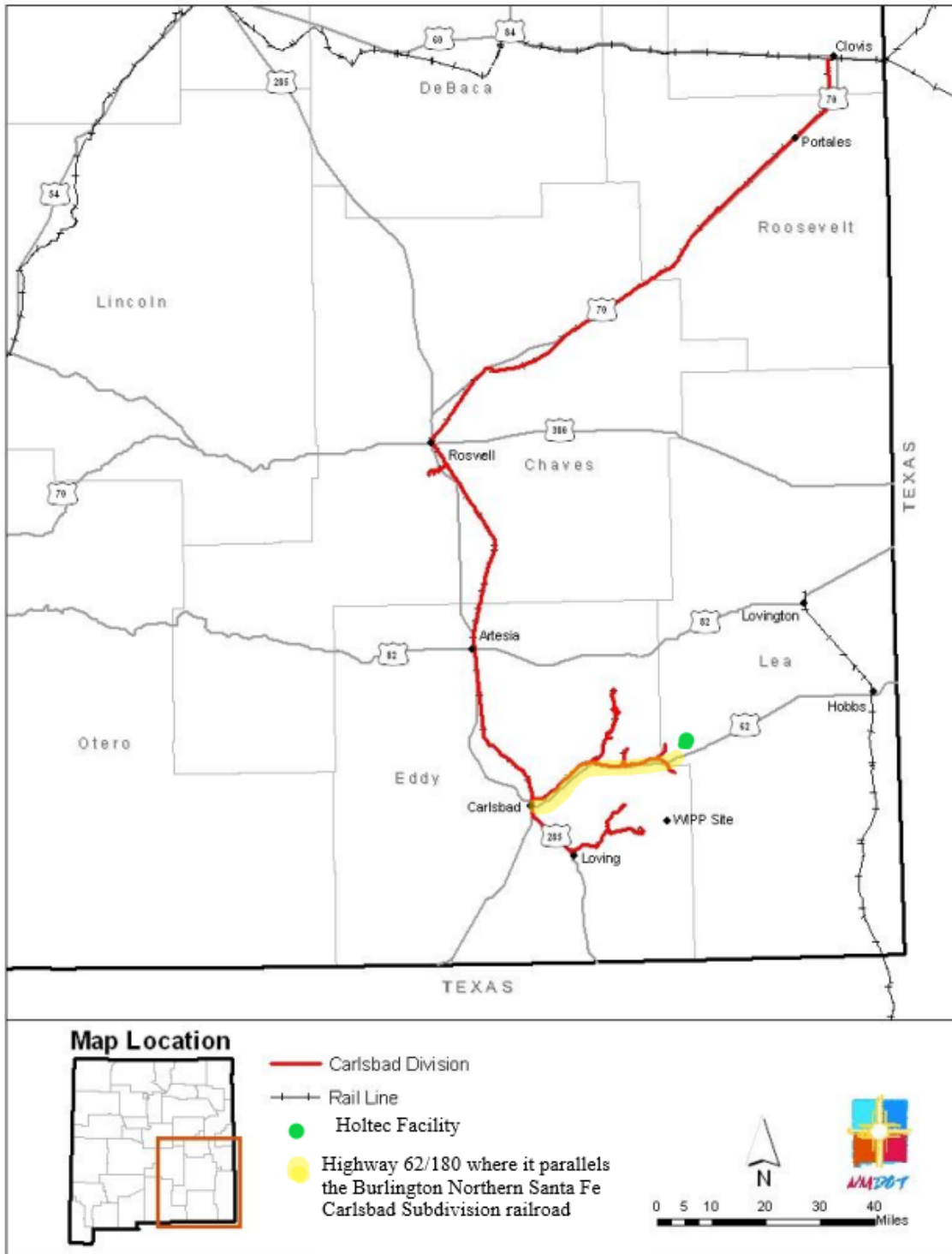
Dated: 3-13-19

ATTACHMENT 1



ATTACHMENT 2

Figure 2.12 SWRR Carlsbad Division



New Mexico Department of Transportation, *New Mexico State Rail Plan*, 2-23 (Mar. 27, 2014) (“Holtec Facility” and “Highway 62/180 where it parallels the Burlington Northern Santa Fe Carlsbad Subdivision railroad” added)

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BEYOND NUCLEAR, INC.,)	
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DECLARATION OF ELIZABETH BERRY

Under penalty of perjury, I, Elizabeth Berry, declare as follows:

1. My name is Elizabeth Berry.
2. I am a member of Beyond Nuclear, Inc. (“Beyond Nuclear”).
3. I live with my husband, Daniel C. Berry III, in Township 21S, Range 33E, Section 2, within 11 miles of the proposed Consolidated Interim Storage Facility (the “Facility”) for which Holtec International (“Holtec”) seeks a license from the U.S. Nuclear Regulatory Commission (“NRC”) to build and operate.
4. I own and ranch the T Over V Ranch, which is approximately 1,900 acres of a mix of private land and Bureau of Land Management and state leases. The T Over V Ranch is located in Township 20S, Range 34E, Sections 22, 27, 28, 34, and 35, Township 21S, Range 31E, Sections 1 and 12, and Township 21S, Range 32E, Section 6, all within 3 to 15 miles of the Facility. The T Over V Ranch has multiple homesteads on it. I have included a map identifying the location of my residence and my land in relation to the Facility. See **Attachment 1**.

5. I frequently and regularly spend time within 15 miles of the Facility because I live and work in the area. I manage and work the T Over V Ranch with my husband and a number of ranch hands. Every day, we spend time all over our land, horseback riding, hiking, or riding ATVs in order to manage our cattle.
6. I also frequently and regularly spend time on the local roads near the Facility and transportation routes for the Facility. For instance, I regularly drive Highway 62/180 where it parallels the Burlington Northern Santa Fe Carlsbad Subdivision railroad that Holtec plans to use to transport spent nuclear fuel to the Facility. See **Attachment 2**. Highway 62/180 is the only route I can take to travel to Carlsbad, the nearest major town to my home. I have to drive on this highway to access business and everyday necessities such as my bank and grocery store. This Highway, and others nearby such as Highway 176, are so busy with truck traffic that I normally have to wait at the onramp to enter the Highway, which is approximately one mile from the Facility. When I am on this Highway, I have noticed rail cars traveling next to me.
7. I am concerned about the risks to my property, my health and safety, and my environment posed by the construction and operation of the Facility, and by transportation of spent nuclear fuel to the Facility.
8. I am also concerned about the radiation risks to me and my family, including our health and safety, posed by living next to a facility housing such an enormous quantity of radioactive material as will be stored at the Facility. I am also concerned that an accident involving spent nuclear fuel at the Facility will harm my property due to radiological contamination.
9. I am also concerned that I will not be able to avoid small doses of unwanted radiation from driving next to rail cars carrying shipments of spent nuclear fuel, which will harm my health and safety. And I am concerned that I cannot avoid higher doses of unwanted radiation should Holtec transport the spent nuclear fuel by truck along Highway 62/180, Highway 176 and other roads in the area that I frequent. I am especially concerned that I cannot avoid higher doses of unwanted radiation from the extended length of time I spend on a regular basis waiting to enter Highway 62/180 near the Facility and transportation routes.

10. I am also concerned with the impacts to my interest and right to travel near my home posed by Holtec's proposed transportation routes for spent nuclear fuel. In order to ensure myself and my family travel on the safest roads to avoid unwanted doses of radiation or potential accidents involving transportation of spent nuclear fuel, I would have to avoid highways and roads that are our primary routes to access business and everyday necessities.
11. I am also concerned about the impact the Facility will have on the value of my home and the T Over V Ranch. It is my understanding that property values near a nuclear facility can be reduced as early as when it receives its license to operate due to real or perceived risks of exposure to radiation releases from the nearby facility. It is also my understanding that property values continue to decrease once the facility is constructed and operating.
12. I am concerned that the licensing, construction, and operation of the Facility will impact the economic prosperity of Eddy County, where I live, and Lea County, where I own land. It is my understanding that the Permian Basin in Eddy and Lea counties in New Mexico and in Texas is the largest oil and gas producer in the United States and the second largest in the world. I am concerned that construction and operation of the Facility on top of the Permian Basin will impact the ability to continue drilling so successfully here and therefore have a negative effect on the economy. This could harm local businesses and the value of my property. I am also concerned that construction and operation of the Facility will limit the domestic production of oil and gas in the United States.
13. Finally, I am concerned that Holtec's license application is inadequate and illegal as written.
14. Therefore, I have authorized Beyond Nuclear to protect my interests by representing me in this appeal of the NRC's refusal to dismiss Holtec's license application.

[remainder of this page intentionally left blank]

The declarant has caused this Declaration to be executed as of the date below.

Signed,

Elizabeth Berry
Elizabeth Berry

Dated: 3-13-2019

ATTACHMENT 1

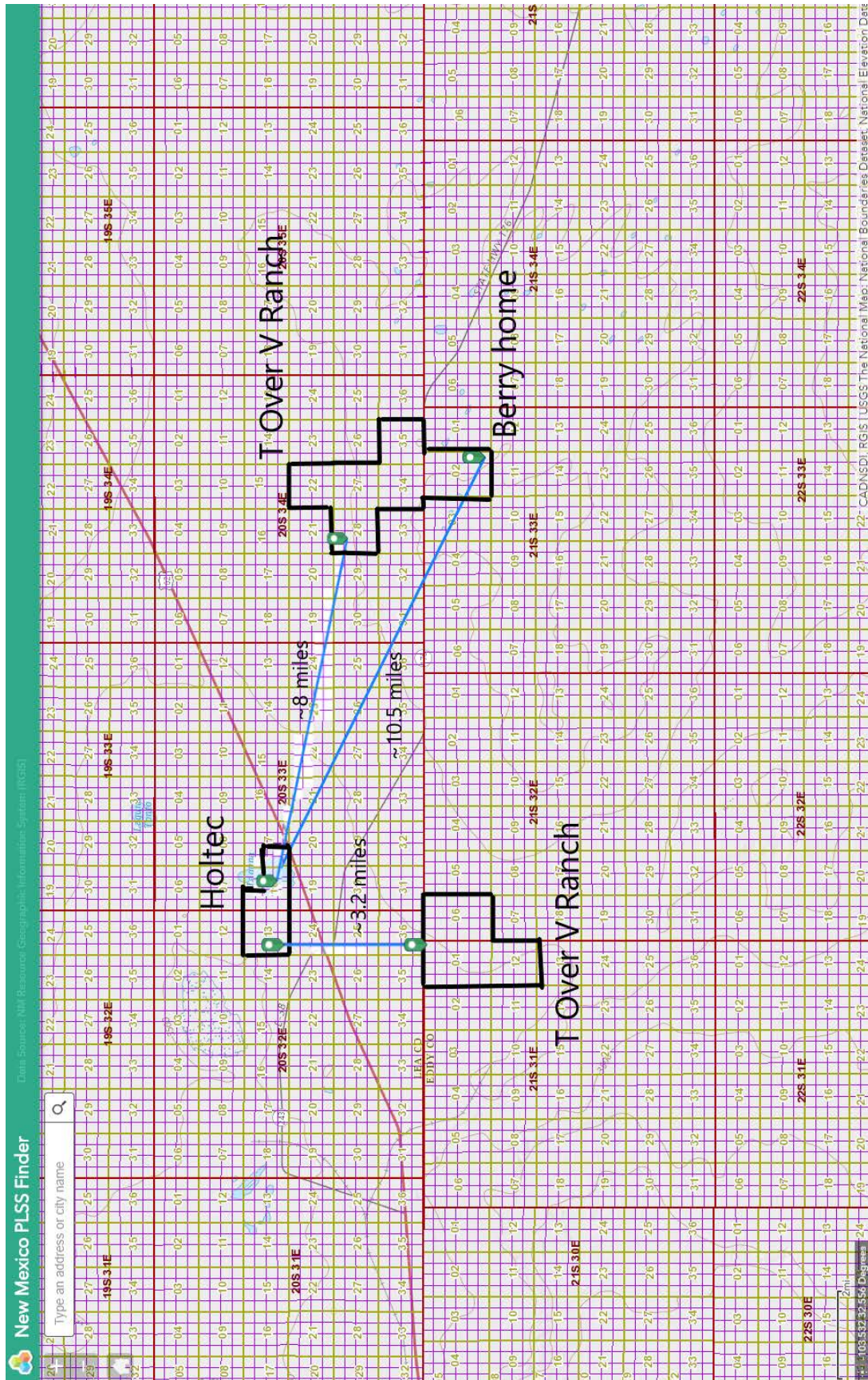
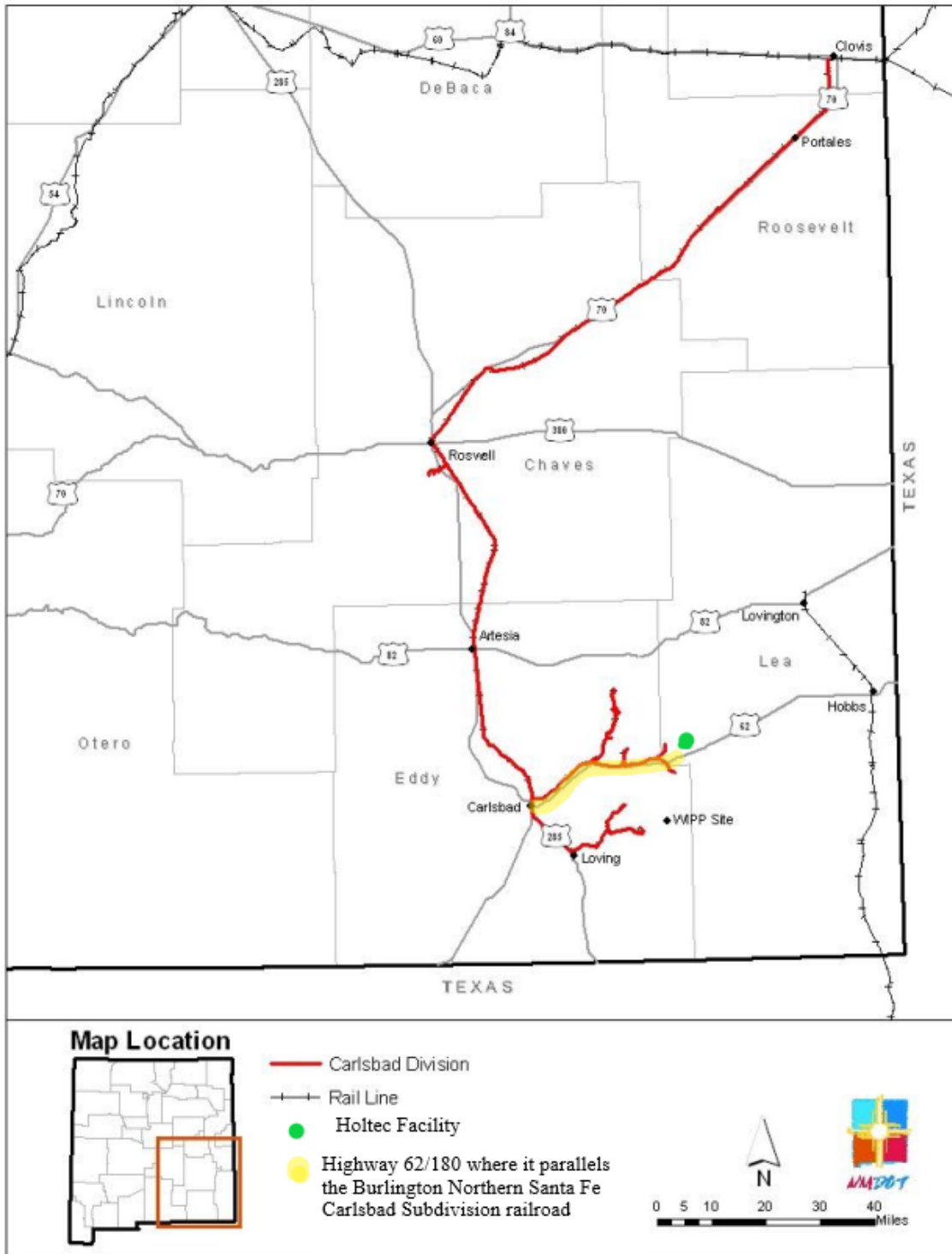


Figure 2.12 SWRR Carlsbad Division



New Mexico Department of Transportation, *New Mexico State Rail Plan*, 2-23 (Mar. 27, 2014) (“Holtec Facility” and “Highway 62/180 where it parallels the Burlington Northern Santa Fe Carlsbad Subdivision railroad” added)

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DECLARATION OF D.K. BOYD

Under penalty of perjury, I, D.K. Boyd, declare as follows:

1. I am a member of Beyond Nuclear, Inc. (“Beyond Nuclear”).
2. My main address is 4200 Tanforan Avenue, Midland, Texas, 79707.
3. I own and ranch the Frying Pan Ranch, most of which I own by deed and some of which I lease from New Mexico. The Frying Pan Ranch is located on 137,599 acres in southeastern New Mexico and western Texas. The closest part of the Frying Pan Ranch to Interim Storage Partners’ (“ISP’s”) Waste Control Specialists Consolidated Interim Storage Facility (the “Facility”) is only four miles away. I have attached a map identifying the location of this part of the Frying Pan Ranch and the Facility. See **Attachment A**.
4. I have mineral interests and working interests in oil and gas operations on the Frying Pan Ranch. I also lease some of the Frying Pan Ranch to companies conducting oil and gas operations.

5. My brother and his employees frequently and regularly spend time within 15 miles of the Facility because my brother runs cattle operations on the Frying Pan Ranch. One of my brother's employees lives on Frying Pan Ranch in New Mexico in Township 23S, Range 38E, Section 8.
6. I also frequently and regularly spend time on the local roads near the Facility and transportation routes for the Facility. For instance, about once a week, I drive on Highway 18 south of Eunice, New Mexico. I have to use Highway 18 to travel for business, between different parts of my ranch, and between my residences. When I am on this Highway, I have noticed rail cars traveling next to me on the Texas and New Mexico Railway because this railroad parallels Highway 18 within a couple hundred feet for almost 40 miles. It is my understanding that ISP plans to transport spent nuclear fuel to the Facility on this railroad.
7. The Texas and New Mexico Railway also runs through approximately 5.5 miles of the Frying Pan Ranch. My family and I frequently and regularly cross this railroad via car or horse to conduct our cattle operations.
8. I am concerned about the radiation risks posed by the construction and operation of the Facility to my property, my health and safety, the health and safety of my family and employees, and my environment, by living and working next to a facility housing such an enormous inventory of radioactive material, and by transportation of spent nuclear fuel to the Facility.
9. I am also concerned that an accident involving spent nuclear fuel at the Facility will harm my family and property due to radiological exposure. I am also concerned that such an accident will harm the value of my mineral and working interests in gas and oil production or make them functionally inaccessible due to radiological contamination.
10. I am also concerned about the impact the Facility will have on the value of the Frying Pan Ranch. It is my understanding that property values near a nuclear facility can be reduced as early as when it receives its license to operate due to real or perceived risks of exposure to radiation releases from the nearby facility. It is also my understanding that property values continue to decrease as the Facility is constructed and operating.
11. I am also concerned that the licensing, construction, and operation of the Facility will impact the economic prosperity of the counties where I live and

own land. It is my understanding that the Permian Basin in New Mexico and Texas is the largest oil and gas producer in the United States and the second largest in the world. I am concerned that construction and operation of the Facility on top of the Permian Basin will impact the ability to continue drilling so successfully here and therefore have a negative effect on the economy. This could harm local businesses and the value of my property. I am also concerned that construction and operation of the Facility will limit the domestic production of oil and gas in the United States.

12. I am also concerned that I will not be able to avoid small doses of unwanted radiation from driving next to rail cars carrying shipments of spent nuclear fuel, which will harm my health and safety.
13. I am also concerned with the impacts to my interest and right to travel near my home posed by ISP's proposed transportation of spent nuclear fuel on the Texas and New Mexico Railway. In order to ensure myself and my family travel on the safest roads to avoid unwanted doses of radiation or potential accidents involving transportation of spent nuclear fuel, we would have to avoid highways and roads that are our primary routes to access business and everyday necessities.
14. Finally, I am concerned that ISP's license application is inadequate and illegal as written.
15. Therefore, I previously authorized Beyond Nuclear to protect my interests by representing me in both (a) a motion to the NRC to dismiss ISP's license application and (b) a petition to intervene in the NRC's licensing proceeding for the Facility. When the NRC denied Beyond Nuclear's motion to dismiss ISP's license application, I authorized Beyond Nuclear to appeal that decision to this court.

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The declarant has caused this Declaration to be executed as of the date below.

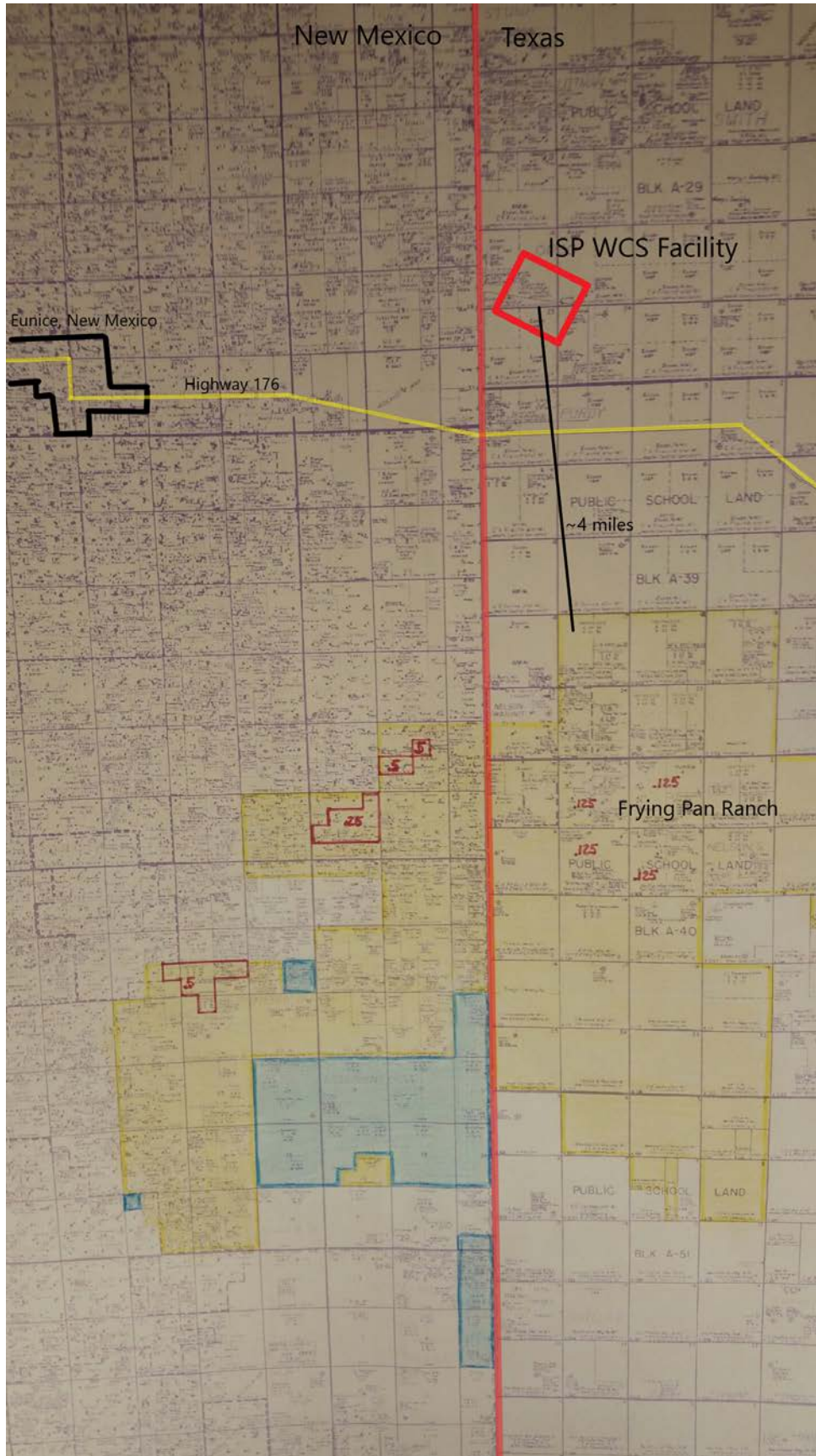
Signed,



D.K. Boyd

Dated: 03-15-19

ATTACHMENT A



UNITED STATES COURT OF APPEALS FOR THE
DISTRICT OF COLUMBIA CIRCUIT

)	
BEYOND NUCLEAR, INC.,)	
)	
Petitioner,)	Case No. 18-1340
)	
v.)	
)	
UNITED STATES NUCLEAR)	
REGULATORY COMMISSION and the)	
UNITED STATES OF AMERICA,)	
)	
Respondents.)	
)	

DECLARATION OF JIMI GADZIA

Under penalty of perjury, I, Jimi Gadzia, declare as follows:

1. I am a member of Beyond Nuclear, Inc. (“Beyond Nuclear”).
2. I live at 1604 East Berrendo Road, Roswell, New Mexico 88201. My home is located within 900 yards of the Burlington Northern Santa Fe Carlsbad Subdivision railroad that, as I understand, Holtec International (“Holtec”) will use to transport spent nuclear fuel to the Holtec Consolidated Interim Storage Facility (the “Facility”). I have attached a map identifying the location of my house and the railroad. See **Attachment 1**.
1. I also am a partial owner of seven federal mineral leases for oil and gas through the Graham Family Investments LLC. My mineral leases are located in Eddy County in portions of Township 18S, Range 31E, Sections 19, 20, 21, 23, 24, 25, 26, 27, 28, 29, 30, 33, 34, 35, within 10 to 16 miles of the Facility. I have included a map identifying the approximate location of my mineral rights and the Facility. See **Attachment 2**.
2. I also own a pecan farm located at 70 Avenida de Vista, Roswell, New Mexico, 88201, approximately 6 miles from the Burlington Northern Santa

Fe Carlsbad Subdivision railroad that, as I understand, Holtec will use to transport spent nuclear fuel to the Facility. I have included a map identifying the location of my pecan farm and the railroad. See **Attachment 3**.

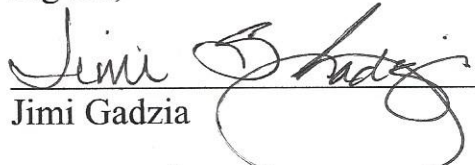
3. I drive regularly in Roswell on my normal business. In doing so, it is impossible not to drive parallel to and across the Burlington Northern Santa Fe Carlsbad Subdivision railroad that Holtec will use to transport spent nuclear fuel to the Facility. For example, approximately every other day I cross the railroad in Roswell both near Atkinson Avenue and 19th Street and again at College Boulevard and North Grand Avenue or at 3rd Street and North Railroad Avenue. The railroad here parallels Main Street at a distance of about 1,000 feet for approximately a mile. I also occasionally but regularly drive on County Road 102, which parallels, at a distance of approximately 70 feet, the railroad line north of Roswell, New Mexico that Holtec will have to use to ship spent nuclear fuel to the Facility.
4. I am concerned about risks to my health and safety, property rights, and my environment posed by construction of the Facility, by normal and accidental radiation releases during operation of the Facility, and by transportation of spent nuclear fuel to and from the Facility.
5. I am also concerned that an accident involving spent nuclear fuel at the Facility will harm the value of my mineral rights or make them functionally inaccessible due to radiological contamination.
6. I am also concerned about the impact the transportation of spent nuclear fuel on railroads near my home will have on my home's property value. It is my understanding that property values along spent nuclear fuel transportation routes can be reduced due to real or perceived risks from the transportation.
7. I am also concerned about my health and safety, and my interest and right to travel. Because I live close to the transportation route for spent nuclear fuel and regularly drive on roads in the area, I cannot avoid small doses of unwanted radiation from each shipment of spent nuclear fuel during normal operations. I am also concerned my travel interests and rights will be impacted by not knowing which roads are the safest to travel on to avoid these unwanted doses of radiation and avoid potential accidents with trains carrying spent nuclear fuel.

8. I am also concerned that a railroad accident may directly impact my pecans. In addition, I am concerned that New Mexico will become known as the nuclear waste state and no one will want to buy my pecans because of a real or perceived fear that they are poisoned or contaminated.
9. Finally, I am concerned that Holtec's license application is inadequate and illegal as written.
10. Therefore, I previously authorized Beyond Nuclear to protect my interests by representing me in both (a) a motion to the NRC to dismiss Holtec's license application and (b) a petition to intervene in the NRC's licensing proceeding for the Facility. When the NRC denied Beyond Nuclear's motion to dismiss Holtec's license application, I authorized Beyond Nuclear to appeal that decision to this court.

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The declarant has caused this Declaration to be executed as of the date below.

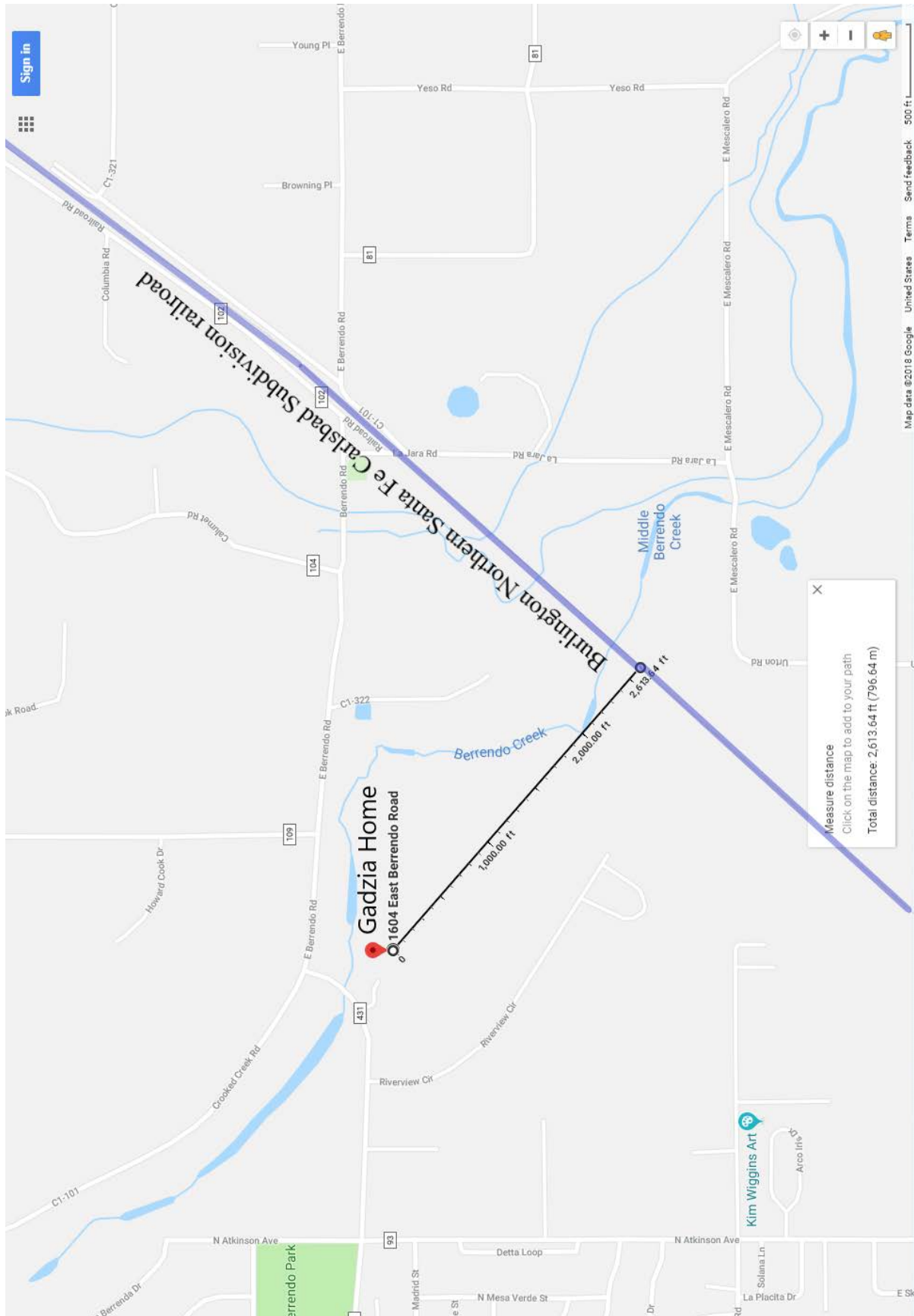
Signed,



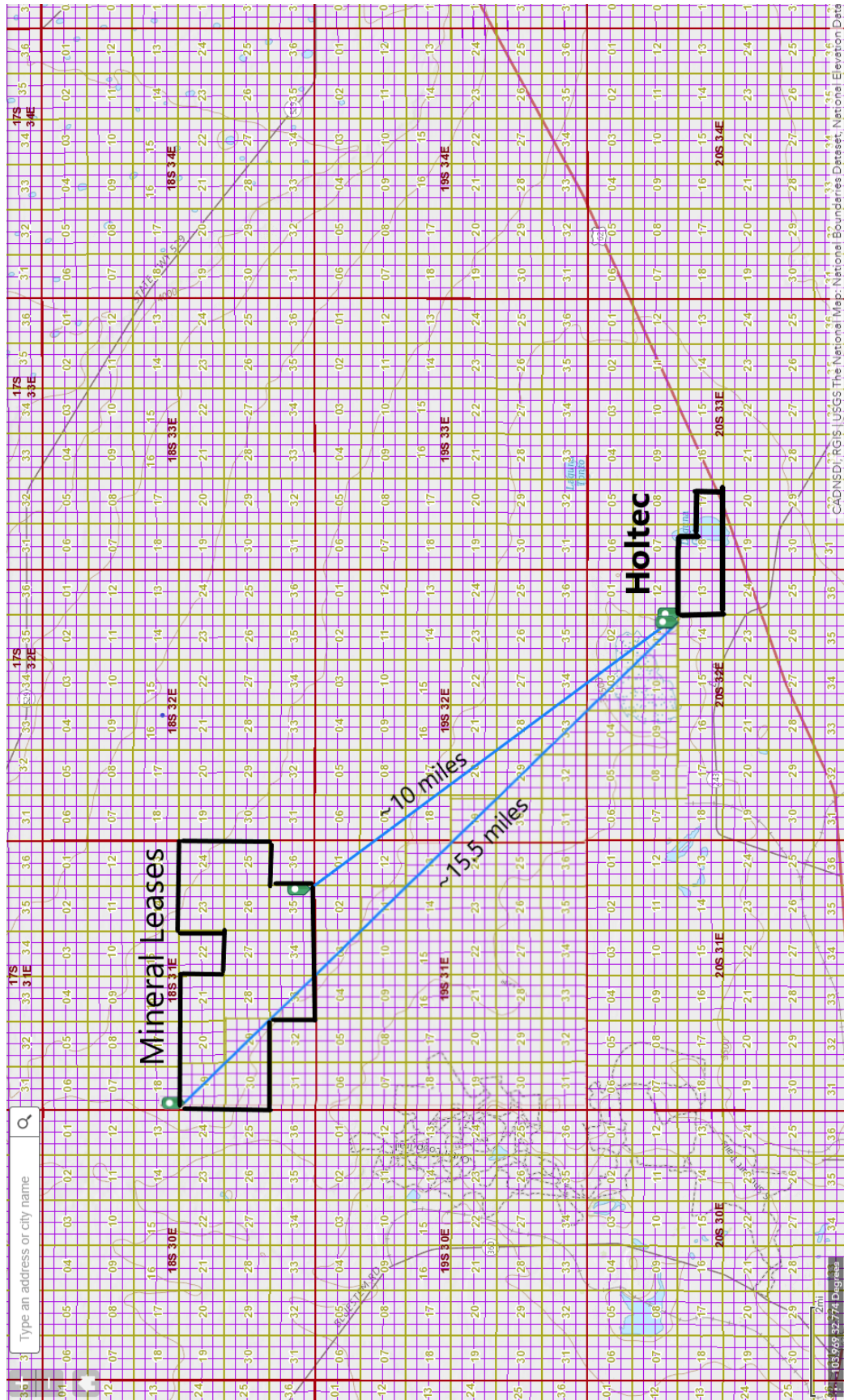
Jimi Gadzia

Dated: MARCH 11, 2019

ATTACHMENT 1

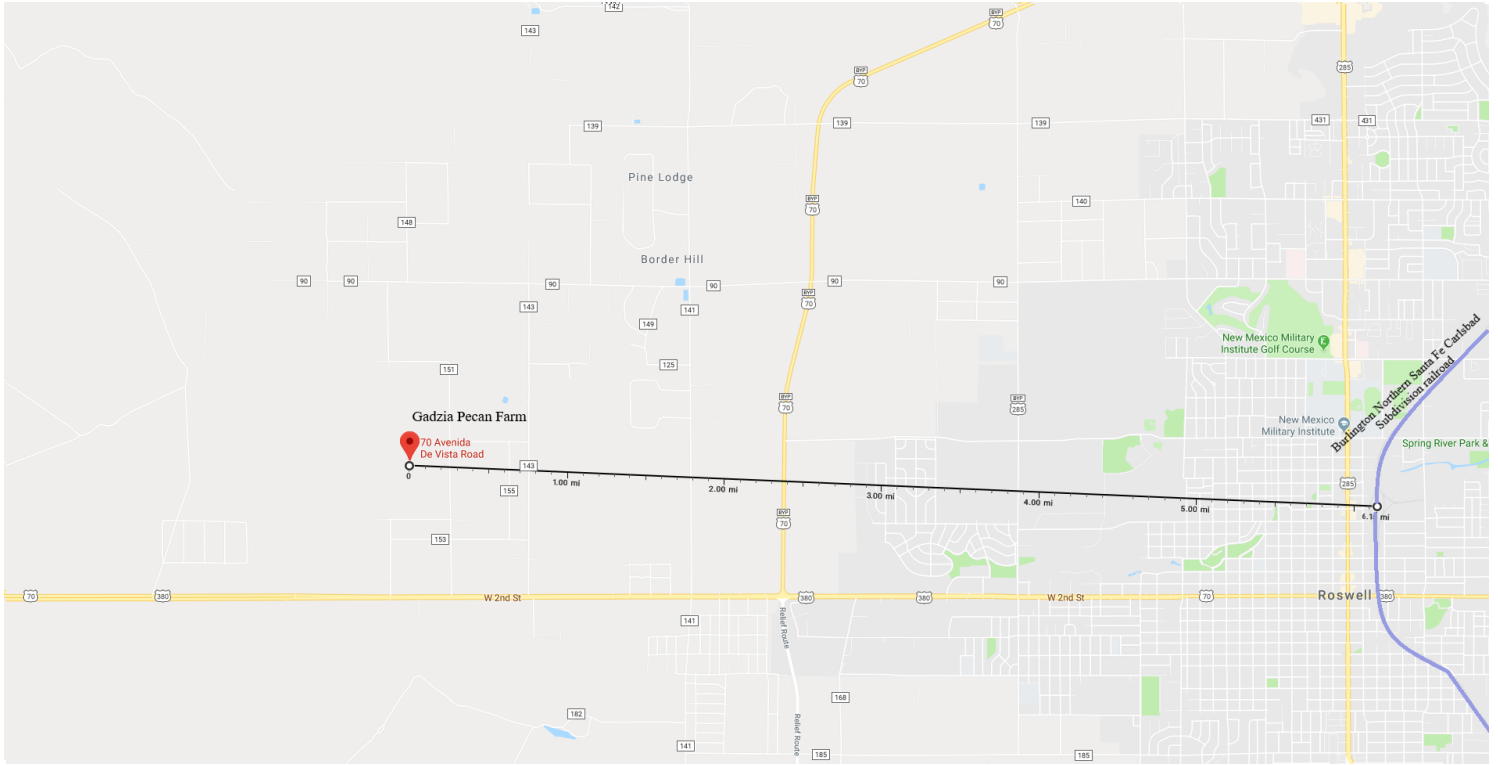


ATTACHMENT 2





ATTACHMENT 3




Map data ©2018 Google 2000 ft



70 Avenida De Vista Rd

Roswell, NM 88201

 C94F+FH Roswell, New Mexico

Measure distance
Total distance: 6.15 mi (9.90 km)

**UNITED STATES COURT OF APPEALS FOR THE
DISTRICT OF COLUMBIA CIRCUIT**

)	
BEYOND NUCLEAR, INC.,)	
)	
Petitioner,)	Case No. 18-1340
)	
v.)	
)	
UNITED STATES NUCLEAR)	
REGULATORY COMMISSION and the)	
UNITED STATES OF AMERICA,)	
)	
Respondents.)	
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DECLARATION OF ROSE GARDNER

Under penalty of perjury, I, Rose Gardner, declare as follows:

1. I am a member of Beyond Nuclear, Inc. (“Beyond Nuclear”).
2. I live with my husband at 1402 Avenue A, Eunice, New Mexico, 88231, within seven miles of Interim Storage Partners’ (“ISP’s”) Waste Control Specialists Consolidated Interim Storage Facility (the “Facility”).
3. The majority of my family members also live in Eunice, New Mexico. My first daughter lives next door to my home and my second daughter lives a block away from my home. My husband’s sister, her grown daughter, and her ten-year-old granddaughter live at the intersection of Highway 176 and Highway 18, within approximately five miles of the Facility. I regularly spend time with my family at their homes. For example, my niece lives in Eunice as well and I take care of her three young children in their home. My family and I all frequently and regularly spend time within eight miles of the Facility because we live, recreate, and work in Eunice.
4. I own a flower shop at 1700 Main Street, Eunice, New Mexico, about six miles from the Facility. At sometime in the near future, I plan to move this

flower shop to the 100 block of Main Street or to a location across the street from my home. I also own two acres of land on 16th Street between Avenue A and Avenue F on which I raise horses and chickens, also about six miles from the Facility.


5. I use Highway 176 and Highway 18 frequently, for example, to deliver flowers to my clients in Jal, New Mexico. Highway 18 parallels the Texas and New Mexico Railway that, it is my understanding, ISP plans to use to transport spent nuclear fuel to the Facility. When I drive on Highway 18, I notice rail cars next to me. I believe there have been multiple train derailments in the past few years on this railroad.
6. I regularly enter Highway 18 from Highway 207 south of Eunice, New Mexico. To enter Highway 18 at this location, I have to cross the Texas and New Mexico Railway.
7. I am concerned about the risks to my home, my health and safety, the health and safety of my family, and my environment posed by the construction and operation of the Facility and by transportation of spent nuclear fuel to the Facility.
8. I am concerned about the radiation risks to me and my family posed by living next to a facility housing such an enormous inventory of radioactive material as the Facility. I am especially concerned how the Facility could impact my young grandchildren, grandnieces, and grandnephews. I am also concerned that an accident involving spent nuclear fuel at the Facility will harm my family and home due to radiological contamination.
9. I am also concerned about the impact the Facility will have on the value of my home because I am concerned that the Facility will deter people from wanting to live in this area. It is my understanding that property values near a nuclear facility can be reduced as early as when it receives its license to operate due to real or perceived risks of exposure to radiation releases from the nearby facility. It is also my understanding that property values may continue to decrease as the facility is constructed and operating.
10. I am also concerned that my family and I will not be able to avoid small doses of unwanted radiation from driving next to rail cars carrying shipments of spent nuclear fuel, which will harm our health and safety.

11. I am also concerned with the impacts to my interest and right to travel near my home posed by ISP's future transportation routes for spent nuclear fuel. We will not be able to avoid highways and roads that are involved with transporting spent nuclear fuel to the Facility because these highways and roads are our primary routes to access work, school, and recreational activities.
12. Finally, I am concerned that ISP's license application is inadequate and illegal as written.
13. Therefore, I previously authorized Beyond Nuclear to protect my interests by representing me in both (a) a motion to the NRC to dismiss ISP's license application and (b) a petition to intervene in the NRC's licensing proceeding for the Facility. When the NRC denied Beyond Nuclear's motion to dismiss ISP's license application, I authorized Beyond Nuclear to appeal that decision to this court.

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The declarant has caused this Declaration to be executed as of the date below.

Signed,



Rose Gardner

Dated: 3-14-2019

**UNITED STATES COURT OF APPEALS FOR THE
DISTRICT OF COLUMBIA CIRCUIT**

BEYOND NUCLEAR, INC.,)
)
)
 Petitioner,) Case No. 18-1340
)
 v.)
)
 UNITED STATES NUCLEAR)
 REGULATORY COMMISSION and the)
 UNITED STATES OF AMERICA,)
)
 Respondents.)
)

DECLARATION OF GENE HARBAUGH

Under penalty of perjury, I, Gene Harbaugh, declare as follows:

1. I am a member of Beyond Nuclear, Inc. (“Beyond Nuclear”).
2. I live at 601 East Orchard Lane, Carlsbad, New Mexico 88220. My home lies within 250 yards of the Burlington Northern Santa Fe Carlsbad Subdivision railroad and 500 yards of a railyard on which, as I understand, Holtec International (“Holtec”) proposes to transport spent nuclear fuel to the Holtec Consolidated Interim Storage Facility (the “Facility”). I have attached a map identifying the location of my house, the railroad, and the railyard. See **Attachment 1**.
3. I am concerned about risks to my health and safety, my environment, and my property value posed by normal and accidental radiation releases during transportation of spent fuel to and from the Facility.
4. Because I live close to the transportation route and regularly drive on roads in the area, I cannot avoid small doses of unwanted radiation from each shipment of spent nuclear fuel during normal operations, which will harm my health and safety. I am especially concerned with any trains carrying

spent nuclear fuel that will wait at the railyard for extended periods of time, exposing me to higher levels of unwanted and unavoidable doses of radiation. I am also concerned my travel interests and rights will be impacted by not knowing which roads are the safest to travel on to avoid these unwanted doses of radiation and avoid potential accidents with trains carrying spent nuclear fuel.

5. I am also concerned that a rail accident of a spent nuclear fuel shipment may occur along this route of rail and harm my health and safety, and my environment (including my property). I believe there is a higher likelihood of an accident occurring near my property than elsewhere because of a combination of two factors: it is my understanding that (i) these railroads are already overburdened from the oil and gas boom in the area and are thus more susceptible to accident, and (ii) every shipment of spent nuclear fuel being sent to the Facility will have to pass along this rail corridor and the likelihood of accident increases in correlation with the number of shipments.
6. I am also concerned about the impact the transportation of spent nuclear fuel on these railroads will have on my property value. It is my understanding that property values along spent nuclear fuel transportation routes can be reduced due to real or perceived risks from the transportation.
7. Finally, I am concerned that Holtec's license application is inadequate and illegal as written.
8. Therefore, I previously authorized Beyond Nuclear to protect my interests by representing me in both (a) a motion to the NRC to dismiss Holtec's license application and (b) a petition to intervene in the NRC's licensing proceeding for the Facility. When the NRC denied Beyond Nuclear's motion to dismiss Holtec's license application, I authorized Beyond Nuclear to appeal that decision to this court.

The declarant has caused this Declaration to be executed as of the date below.

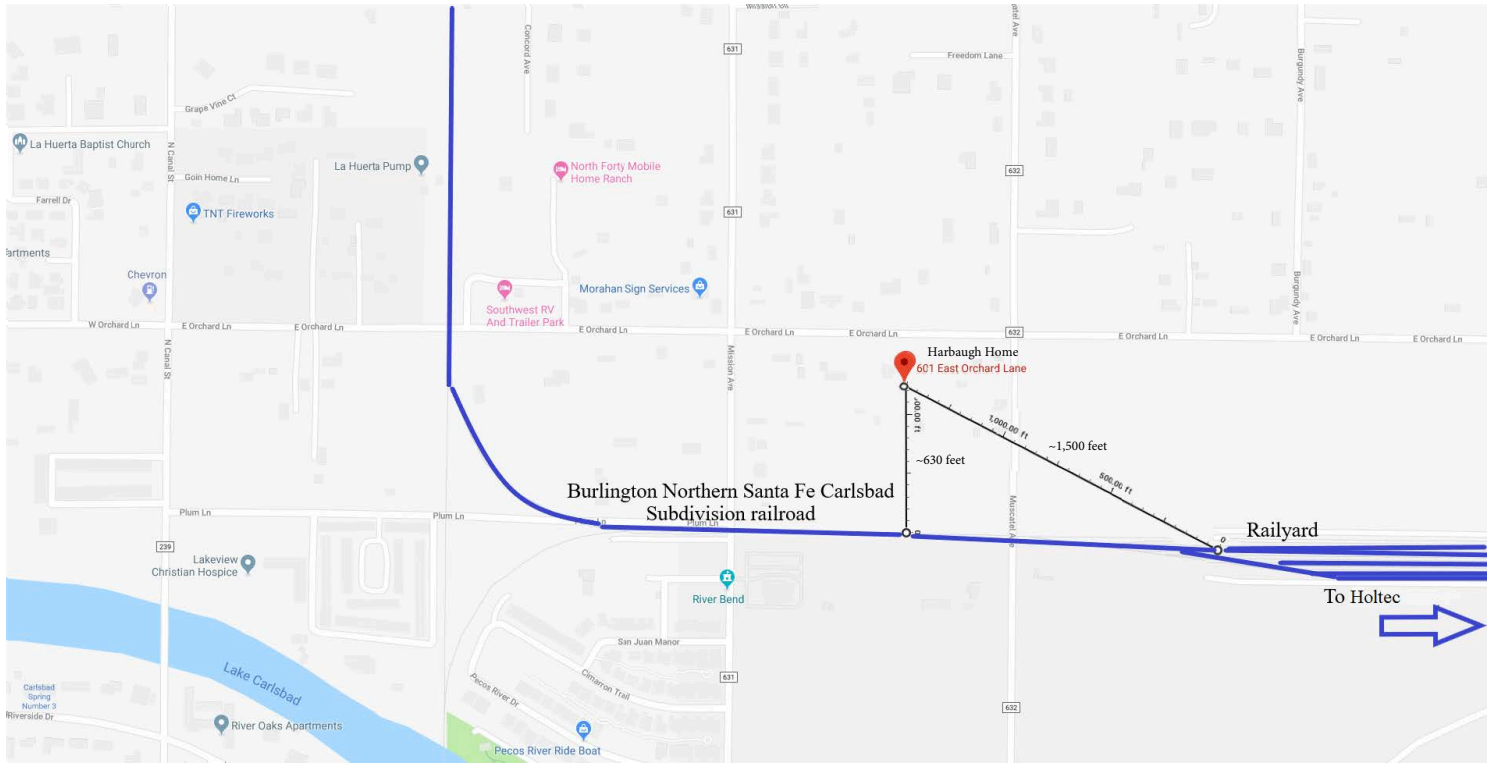
Signed,



Gene Harbaugh

Dated: Mar, 14, 2019

ATTACHMENT 1

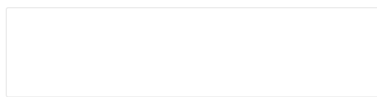


Map data ©2018 Google 200 ft



601 E Orchard Ln
Carlsbad, NM 88220

CQRJ+RH Carlsbad North, New Mexico



**UNITED STATES COURT OF APPEALS FOR THE
DISTRICT OF COLUMBIA CIRCUIT**

)	
BEYOND NUCLEAR, INC.,)	
)	
Petitioner,)	Case No. 18-1340
)	
v.)	
)	
UNITED STATES NUCLEAR)	
REGULATORY COMMISSION and the)	
UNITED STATES OF AMERICA,)	
)	
Respondents.)	
)	

DECLARATION OF NICK KING

Under penalty of perjury, I, Nick King, declare as follows:

1. I am a member of Beyond Nuclear, Inc. (“Beyond Nuclear”).
2. I live at 1107 North Canal, Carlsbad, New Mexico 88220. My home lies within 450 yards of one Burlington Northern Santa Fe Carlsbad Subdivision railroad, 800 yards of a second Burlington Northern Santa Fe Carlsbad Subdivision railroad, and a mile of a railyard, all of which it is my understanding that Holtec International (“Holtec”) may use to transport spent nuclear fuel to the Holtec Consolidated Interim Storage Facility (the “Facility”). I have attached a map identifying the location of my house, the railroad, and the railyard. See **Attachment 1**.
3. I am concerned about risks to my health and safety, my environment, and my property value posed by normal and accidental radiation releases during transportation of spent fuel to and from the Facility.
4. Because I live close to the transportation route and regularly drive on roads in the area, I cannot avoid small doses of unwanted radiation from each shipment of spent nuclear fuel during normal operations, which will harm

my health and safety. I am especially concerned with any trains carrying spent nuclear fuel that will wait at the railyard for extended periods of time, exposing me to higher levels of unwanted and unavoidable doses of radiation. I am also concerned my travel interests and rights will be impacted by not knowing which roads are the safest to travel on to avoid these unwanted doses of radiation and avoid potential accidents with trains carrying spent nuclear fuel.

5. I am also concerned that a rail accident of a spent nuclear fuel shipment may occur along this route of rail and harm my health and safety, and my environment (including my property). I believe there is a higher likelihood of an accident occurring near my property than elsewhere because of a combination of two factors: it is my understanding that (i) these railroads are already overburdened from the oil and gas boom in the area and are thus more susceptible to accident, and (ii) every shipment of spent nuclear fuel being sent to the Facility will have to pass along this rail corridor and the likelihood of accident increases in correlation with the number of shipments.
6. I am also concerned about the impact the transportation of spent nuclear fuel on these railroads will have on my property value. It is my understanding that property values along spent nuclear fuel transportation routes can be reduced due to real or perceived risks from the transportation.
7. Finally, I am concerned that Holtec's license application is inadequate and illegal as written.
8. Therefore, I previously authorized Beyond Nuclear to protect my interests by representing me in both (a) a motion to the NRC to dismiss Holtec's license application and (b) a petition to intervene in the NRC's licensing proceeding for the Facility. When the NRC denied Beyond Nuclear's motion to dismiss Holtec's license application, I authorized Beyond Nuclear to appeal that decision to this court.

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The declarant has caused this Declaration to be executed as of the date below.

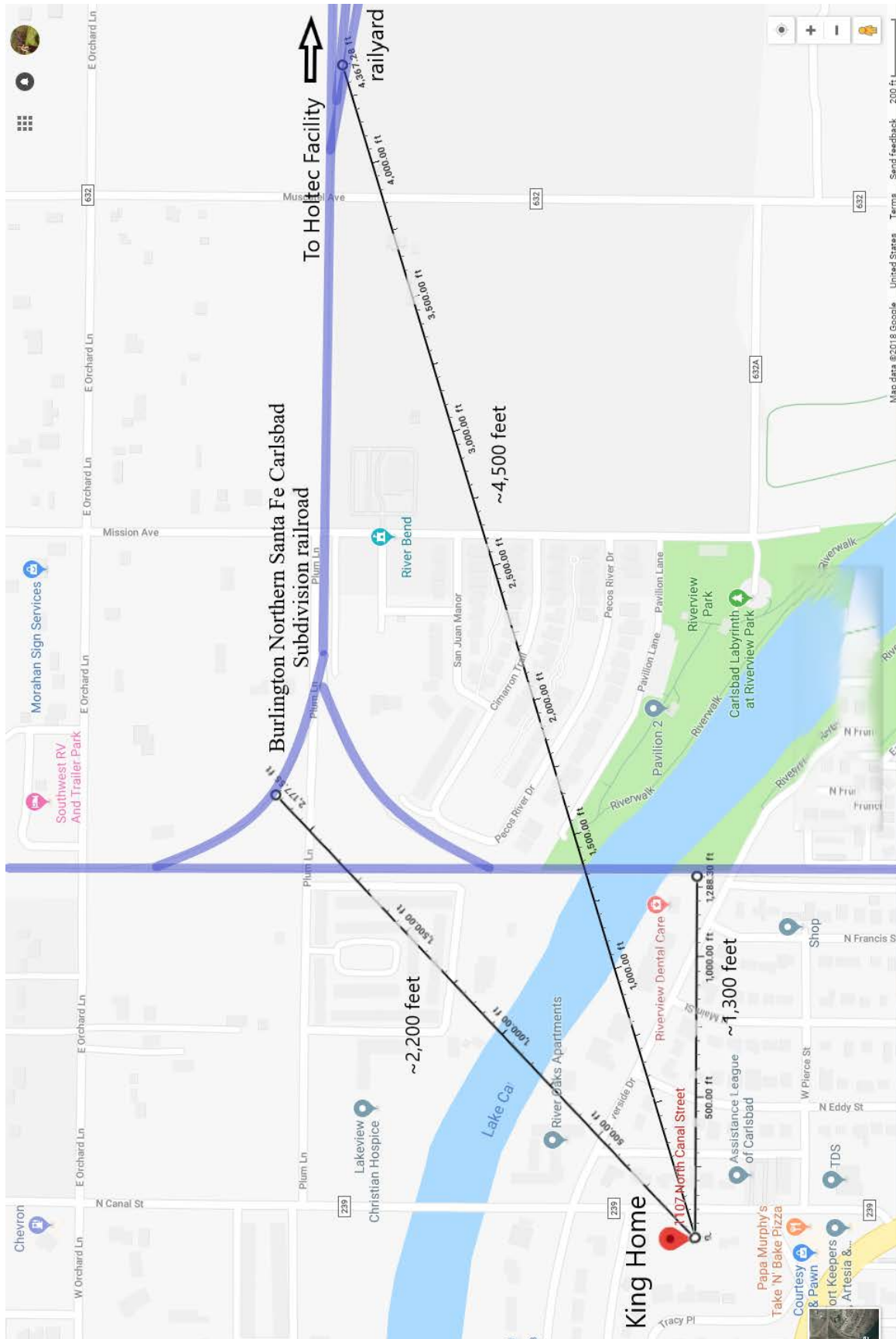
Signed:

A handwritten signature in blue ink, appearing to read "Nick King", is written over a horizontal line.

Nick King

Dated: 3-13-19

ATTACHMENT 1



**UNITED STATES COURT OF APPEALS FOR THE
DISTRICT OF COLUMBIA CIRCUIT**

BEYOND NUCLEAR, INC.,)
)
)
 Petitioner,) Case No. 18-1340
)
 v.)
)
 UNITED STATES NUCLEAR)
 REGULATORY COMMISSION and the)
 UNITED STATES OF AMERICA,)
)
 Respondents.)
)

DECLARATION OF MARGO SMITH

Under penalty of perjury, I, Margo Smith, declare as follows:

1. I am a member of Beyond Nuclear, Inc. (“Beyond Nuclear”).
2. I live with my husband, daughter, and grandchild at 258 Smith Ranch Road, Hobbs, New Mexico, 88240, located on the Smith Ranch and approximately seven miles from the Holtec Consolidated Interim Storage Facility (the “Facility”). I have attached a map identifying the location of my home and the Facility. See **Attachment 1**.
3. My family is comprised of fourteen members, including my three daughters, four grandsons ages 2, 9, 13, and 14 (one of whom lives with me), son-in-laws, and mother-in-law. My family and I all frequently and regularly spend time within 7 miles of the Facility because we live, recreate, and work on the Smith Ranch. The Facility will lie in the center of the Smith Ranch.
4. Every day my family and I spend time managing our cattle. As my cattle currently range on the land where the Facility will be built, I am currently able to enter this land. Once the Facility is built, I will be able to travel along its fence line.

5. I drive on Highway 62/180 at least two times a week to visit my daughters, Keli Hatley and Stephanie Logan. My daughter Keli Hatley lives at 307 Laguna Road, Hobbs, New Mexico, 88240, a mile from the Facility. My daughter Stephanie Logan lives at 111 Goathead Road, Hobbs, New Mexico, 88240, a little over two miles from the Facility. From Highway 62/180, I take Laguna Road/Country Road 55 to get to Keli's house, and it is my understanding that the construction of the Facility will require moving a section of this road.
6. I also regularly use Highway 62/180 between my home and Carlsbad where it parallels the Burlington Northern Santa Fe Carlsbad Subdivision railroad that Holtec plans to use to transport spent nuclear fuel to the Facility. See **Attachment 2**. I use this Highway regularly to go grocery shopping, and to attend and participate in rodeos in Carlsbad. I also drive from Highway 62/180 to Highway 360 to visit Artesia. Highway 360 intersects with the railroad that Holtec plans to use to transport spent nuclear fuel to the Facility. When I am driving on these highways and roads, I notice rail cars near me.
7. Every weekday, the local school bus drives from Hobbs on Highway 62/180 to Laguna Road/Country Road 55 to reach my daughter Keli's home at 307 Laguna Road, Hobbs, New Mexico, 88240, to pick up my grandsons. It is my understanding that construction of the Facility will require moving a section of the Laguna Road/Country Road 55 on which the school bus currently drives. The school bus then drives back to Highway 62/180 to come to my house to pick up more of my grandsons. My grandsons will be relying on this mode of transportation for several more years.
8. I am concerned about the risks to my home, my health and safety, the health and safety of my family, and my environment posed by the construction and operation of the Facility, and by transportation of spent nuclear fuel to the Facility.
9. I am concerned about the radiation risks to me and my family posed by living next to a facility housing such an enormous inventory of radioactive material as the Facility. I am especially concerned how the Facility could impact my children and young grandchildren. I am also concerned that an accident involving spent nuclear fuel at the Facility will harm my family and home due to radiological exposure.

10. I am also concerned about the impact the Facility will have on the value of my home and the Smith Ranch because I am concerned that the Facility will deter people from wanting to live in this area. It is my understanding that property values near a nuclear facility can be reduced as early as when it receives its license to operate due to real or perceived risks of exposure to radiation releases from the nearby facility. It is also my understanding that property values may continue to decrease as the facility is constructed and operating.
11. I am also concerned that the additional traffic from the Facility will harm myself or my family, especially because I have young family members who are currently driven to school on these roads, and who will soon be learning to drive on these roads. The roads in this area are already dangerous because they are overused by the oil and gas industry and were not constructed to withstand the amount of traffic that the industry entails. The roads contain many potholes and are extremely narrow. For example, I have been in an accident in which a passing vehicle's mirror and my car's mirror hit each other because of how narrow the road is. It is my understanding that there have already been multiple vehicular deaths in the area and that the Holtec application projects 2.9 deaths from transportation of spent nuclear fuel to the Facility. It is my understanding that the oil and gas industry have proposed the installation of helicopter pads for medical evacuations related to industry operations, as well as 600-800 "man camps" to house workers, which will only exacerbate the traffic and worsen road conditions.
12. I am also concerned that my family and I will not be able to avoid small doses of unwanted radiation from driving next to rail cars carrying shipments of spent nuclear fuel, which will harm our health and safety. I am also concerned that we cannot avoid higher doses of unwanted radiation should Holtec transport the spent nuclear fuel by truck along Highway 62/180, Highway 176/243, and other roads in the area that we frequent.
13. I am also concerned my grandsons cannot avoid doses of unwanted radiation from passing next to the Facility while being bused to and from school.
14. I am also concerned with the impacts to my interest and right to travel near my home posed by Holtec's proposed transportation routes for spent nuclear fuel. We will not be able to avoid highways and roads that are involved with

transporting spent nuclear fuel to the Facility in order to ensure myself and my family travel on the safest roads to avoid unwanted doses of radiation or potential accidents involving the transportation of spent nuclear fuel because these highways and roads are our primary routes to access work, school, and recreational activities.

15. Finally, I am concerned that Holtec's license application is inadequate and illegal as written.
16. Therefore, I previously authorized Beyond Nuclear to protect my interests by representing me in both (a) a motion to the NRC to dismiss Holtec's license application and (b) a petition to intervene in the NRC's licensing proceeding for the Facility. When the NRC denied Beyond Nuclear's motion to dismiss Holtec's license application, I authorized Beyond Nuclear to appeal that decision to this court.

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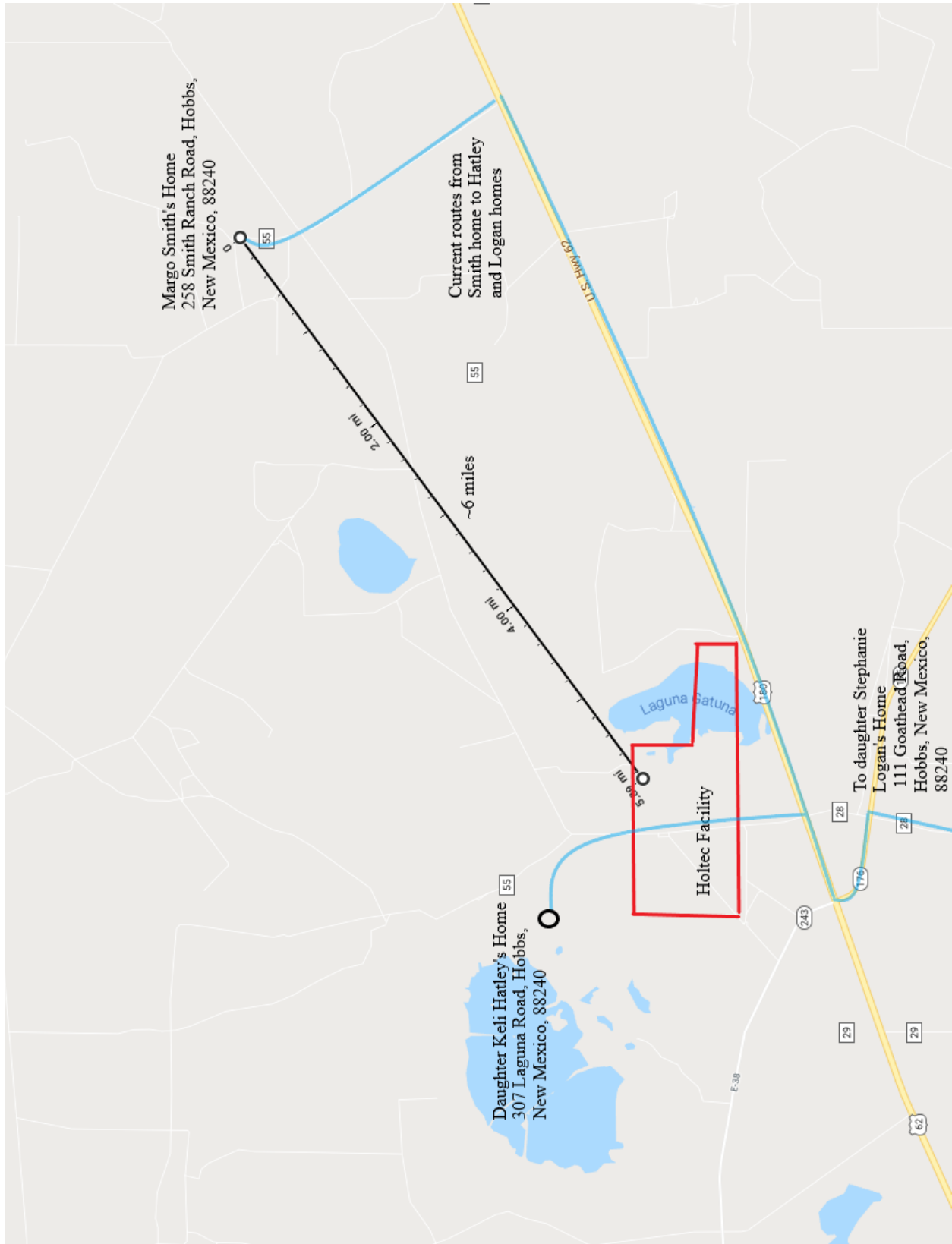
The declarant has caused this Declaration to be executed as of the date below.

Signed,

Margo Smith
Margo Smith

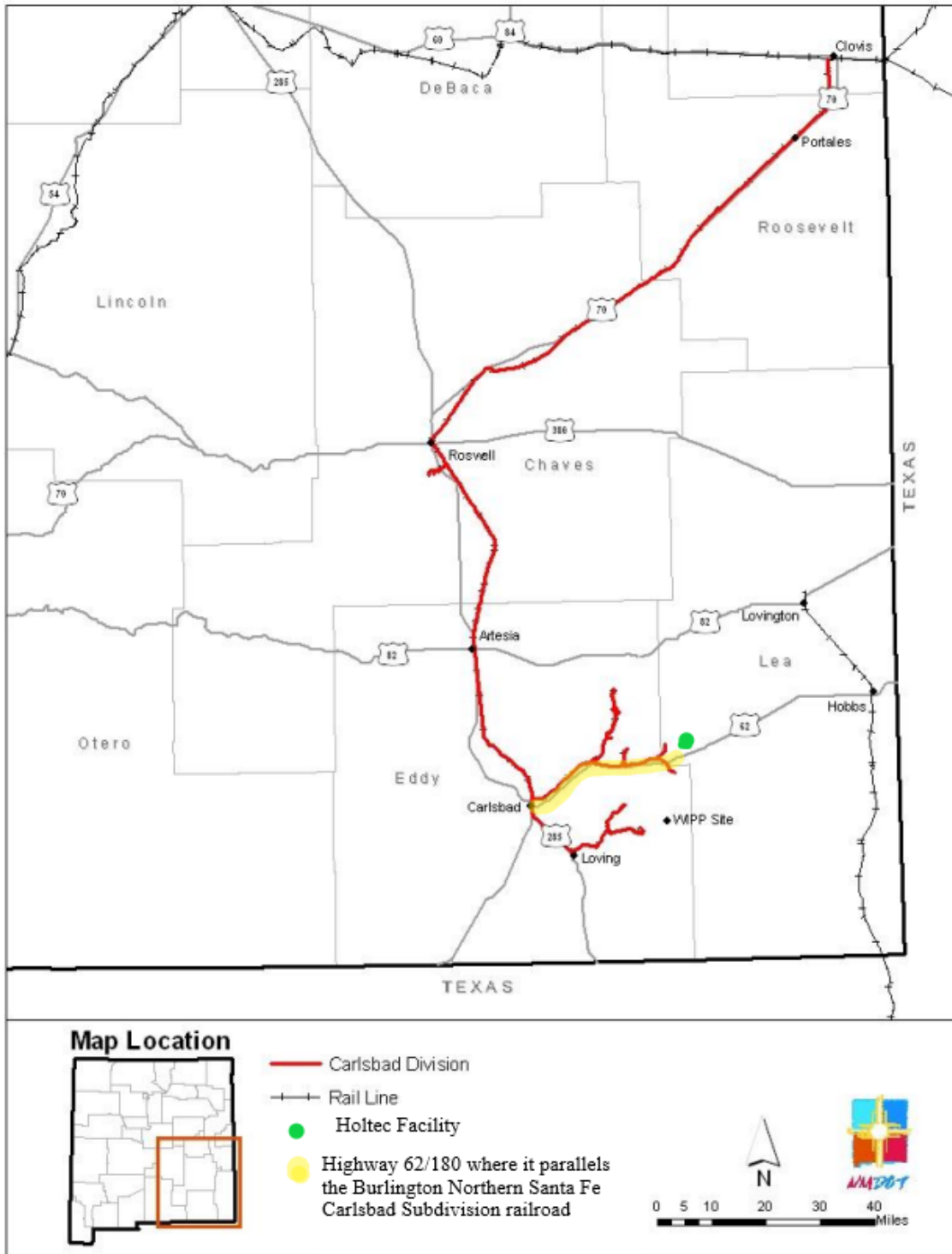
Dated: 3-18-19

ATTACHMENT 1



ATTACHMENT 2

Figure 2.12 SWRR Carlsbad Division



New Mexico Department of Transportation, *New Mexico State Rail Plan*, 2-23 (Mar. 27, 2014) (“Holtec Facility” and “Highway 62/180 where it parallels the Burlington Northern Santa Fe Carlsbad Subdivision railroad” added)

**UNITED STATES COURT OF APPEALS FOR THE
DISTRICT OF COLUMBIA CIRCUIT**

BEYOND NUCLEAR, INC.,)	
)	
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Petitioner,)	Case No. 18-1340
)	
v.)	
)	
UNITED STATES NUCLEAR)	
REGULATORY COMMISSION and the)	
UNITED STATES OF AMERICA,)	
)	
Respondents.)	
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STATEMENT OF INTENT TO USE JOINT APPENDIX

Undersigned counsel for Petitioner Beyond Nuclear, Inc. hereby informs the court that Petitioner, with the consent of the U.S. Nuclear Regulatory Commission, intends to utilize a deferred joint appendix, as authorized by Fed. R. App. P. 30(c).

Respectfully submitted,

/s/ Diane Curran
DIANE CURRAN
Harmon, Curran, Spielberg
& Eisenberg, LLP
1726 M Street NW, Suite 600
Washington, D.C. 20036
Tel: (202) 328-3500
Fax: (202) 328-6918
Email: dcurran@harmoncurran.com
Counsel for Beyond Nuclear et al.

/s/ Mindy Goldstein

MINDY GOLDSTEIN

Turner Environmental Law Clinic

Emory Law School

1301 Clifton Road

Atlanta, GA 30322

404-727-3432

Fax: 404-727-7853

Email: magolds@emory.edu

March 18, 2019

UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

)	
BEYOND NUCLEAR, INC.,)	
)	
Petitioner,)	Case No. 18-1340
)	
v.)	
)	
UNITED STATES NUCLEAR)	
REGULATORY COMMISSION and the)	
UNITED STATES OF AMERICA,)	
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Respondents.)	
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PETITIONER’S NONBINDING STATEMENT OF ISSUES

Petitioner Beyond Nuclear, Inc. states that it intends to raise the following issues in this case:

- Did the U.S. Nuclear Regulatory Commission (“NRC”) violate the Nuclear Waste Policy Act of 1982, 42 U.S.C. §§ 10101–10270, and the Administrative Procedure Act (“APA”), 5 U.S.C. §§ 706(2)(A) and (C), when it refused to dismiss license applications by Holtec International (“Holtec”) and Interim Storage Partners L.L.C. (“ISP”) to build and operate storage facilities for spent (*i.e.*, used) nuclear reactor fuel, where the applications assumed that the federal government could or would assume

title to the spent fuel during transportation and/or storage of the spent fuel;

and

- Did the NRC violate the APA when it referred Petitioner's claims to the Atomic Safety and Licensing Board for consideration in the licensing proceedings for the Holtec and ISP applications?

Respectfully submitted,

/s/ Diane Curran

DIANE CURRAN

Harmon, Curran, Spielberg
& Eisenberg, LLP

1726 M Street NW, Suite 600

Washington, D.C. 20036

Tel: (202) 328-3500

Fax: (202) 328-6918

Email: dcurran@harmoncurran.com

/s/ Mindy Goldstein

MINDY GOLDSTEIN

Turner Environmental Law Clinic

Emory University School of Law

1301 Clifton Road

Atlanta, GA 30322

404-727-3432

Fax: 404-727-7853

Email: magolds@emory.edu

March 18, 2019

**UNITED STATES COURT OF APPEALS FOR THE
DISTRICT OF COLUMBIA CIRCUIT**

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BEYOND NUCLEAR, INC.,)	
)	
Petitioner,)	Case No. 18-1340
)	
v.)	
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UNITED STATES NUCLEAR)	
REGULATORY COMMISSION and the)	
UNITED STATES OF AMERICA,)	
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Respondents.)	
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UNDERLYING DECISION FROM WHICH PETITION ARISES

Petitioner Beyond Nuclear, Inc. has attached a copy of the underlying decision from which this appeal arises: an Order issued by the U.S. Nuclear Regulatory Commission (“NRC”) on October 29, 2018, in the following proceedings: *Holtec International* (Consolidated Interim Storage Facility) (Docket No. 72-1051) and *Interim Storage Partners L.L.C.* (WCS Consolidated Interim Storage Facility) (Docket No. 72-1051).

Respectfully submitted,

/s/ Diane Curran

DIANE CURRAN

Harmon, Curran, Spielberg

& Eisenberg, LLP

1726 M Street NW, Suite 600

Washington, D.C. 20036

Tel: (202) 328-3500

Fax: (202) 328-6918

Email: dcurran@harmoncurran.com

/s/ Mindy Goldstein

MINDY GOLDSTEIN

Turner Environmental Law Clinic

Emory University School of Law

1301 Clifton Road

Atlanta, GA 30322

404-727-3432

Fax: 404-727-7853

Email: magolds@emory.edu

March 18, 2019

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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In the Matters of)
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HOLTEC INTERNATIONAL)
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(HI-STORE Consolidated Interim Storage Facility))
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INTERIM STORAGE PARTNERS LLC)
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(WCS Consolidated Interim Storage Facility))
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Docket No. 72-1051

Docket No. 72-1050

ORDER

On July 16, 2018, the NRC provided notice in the *Federal Register* of Holtec International’s application to construct and operate a consolidated interim storage facility for spent nuclear fuel.¹ Separately, on August 29, 2018, the NRC provided notice in the *Federal Register* of Interim Storage Partners’ application to construct and operate a consolidated interim storage facility for spent nuclear fuel.²

On September 14, 2018, Beyond Nuclear, Fasken Land and Minerals, and Permian Basin Land and Royalty Owners filed motions to dismiss both the Holtec and Interim Storage Partners applications.³ These groups argue that the NRC cannot, as a threshold matter, issue

¹ Holtec International HI-STORE Consolidated Interim Storage Facility for Interim Storage of Spent Nuclear Fuel, 83 Fed. Reg. 32,919 (July 16, 2018).

² Interim Storage Partner’s Waste Control Specialists Consolidated Interim Storage Facility, 83 Fed. Reg. 44,070 (Aug. 29, 2018), corrected, 83 Fed. Reg. 44,608 (Aug. 31, 2018) (noting that the correct deadline to file intervention petitions is October 29, 2018). Interim Storage Partners is a joint venture of Orano USA and Waste Control Specialists.

³ Beyond Nuclear filed its own motion to dismiss. *Beyond Nuclear, Inc.’s Motion to Dismiss Licensing Proceedings for Hi-Store Consolidated Interim Storage Facility and WCS Consolidated Interim Storage Facility for Violation of the Nuclear Waste Policy Act* (Sept. 14,

licenses to Holtec or Interim Storage Partners because both applications are contrary to the Nuclear Waste Policy Act (NWPA). Specifically, the groups argue that both applications contemplate the storage of Department of Energy-titled spent fuel in violation of various NWPA provisions.

The NRC's regulations allow interested persons to file petitions to intervene and requests for hearing in which they can raise concerns regarding a particular license application. These regulations do not, however, provide for the filing of threshold "motions to dismiss" a license application; instead, interested persons must file petitions to intervene and be granted a hearing. I therefore deny both motions to dismiss on procedural grounds, without prejudice to the underlying merits of the legal arguments embedded within the motions.

Beyond Nuclear also filed hearing petitions in the Holtec and Interim Storage Partners proceedings that incorporated by reference the NWPA arguments that it raised in its motion to dismiss and identified those arguments as proposed contentions.⁴ I am separately referring these hearing requests—as well as other hearing requests challenging the applications—to the Atomic Safety and Licensing Board Panel (ASLBP) for the establishment of a Board to consider *all* hearing requests in accordance with the hearing procedures set forth in 10 C.F.R. §2.309. And, in accordance with 10 C.F.R. § 2.346(i), I am referring the motion from Fasken Land and

2018) (ADAMS Accession No. ML18257A318). Fasken Land and Minerals joined with Permian Basin Land and Royalty Owners to file a motion to dismiss that is substantially similar to Beyond Nuclear's motion. *Motion of Fasken Land and Minerals and Permian Basin Land and Royalty Owners to Dismiss Licensing Proceedings for Hi-Store Consolidated Interim Storage Facility and WCS Consolidated Interim Storage Facility* (Sept. 14, 2018) (ML18257A330). Both the NRC Staff and respective applicants filed oppositions to the motions, and Beyond Nuclear, Fasken Land and Minerals, and Permian Basin Land and Royalty Owners then filed replies.

⁴ *Beyond Nuclear, Inc.'s Hearing Request and Petition to Intervene* (Sept. 14, 2018) (ML18257A324) (Holtec docket); *Beyond Nuclear, Inc.'s Hearing Request and Petition to Intervene* (Oct. 3, 2018) (ML18276A242) (Interim Storage Partners docket). Fasken Land and Minerals and Permian Basin Land and Royalty Owners have not filed related hearing petitions in either docket.

Minerals and Permian Basin Land and Royalty Owners to the ASLBP for consideration under § 2.309.

This Order is issued under my authority in 10 C.F.R. § 2.346(c), (g), (i), and (j).

IT IS SO ORDERED.

For the Commission

NRC SEAL

/RA/

Annette L. Vietti-Cook
Secretary of the Commission

Dated at Rockville, Maryland,
this 29th day of October 2018

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)	
)	Docket No. 72-1051
)	
HOLTEC INTERNATIONAL)	
)	
(HI-STORE Consolidated Interim Storage Facility))	

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing **ORDER OF THE SECRETARY** have been served upon the following persons by Electronic Information Exchange (EIE).

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Docket No. 72-1051

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[Original signed by Brian Newell]
Office of the Secretary of the Commission

Dated at Rockville, Maryland,
this 29th day of October, 2018

**UNITED STATES COURT OF APPEALS FOR THE
DISTRICT OF COLUMBIA CIRCUIT**

BEYOND NUCLEAR, INC.,)	
)	
)	
Petitioner,)	Case No. 18-1340
)	
v.)	
)	
UNITED STATES NUCLEAR)	
REGULATORY COMMISSION and the)	
UNITED STATES OF AMERICA,)	
)	
Respondents.)	
)	

CERTIFICATE OF SERVICE

I, Diane Curran, hereby certify that on March 18, 2019, I filed and served the following documents in *Beyond Nuclear v. NRC*, No. 18-1340, by posting them on the U.S. Court of Appeals’ ECF website:

- Petitioner’s Certificate as to Parties, Rulings, and Related Cases;
- Petitioner’s Docketing Statement Form and Addendum with Exhibits;
- Statement of Intent by the Parties to Utilize Deferred Joint Appendix;
- Petitioner’s Nonbinding Statement of Issues to be Raised;
- Petitioner’s Statement of Underlying Decisions from Which Appeal or Petition Arises; and
- Petitioner’s Certificate of Service.

Respectfully Submitted,

___/signed electronically by/___

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