

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

IN THE MATTER OF)	
)	Docket No. 72-1050
INTERIM STORAGE PARTNERS LLC)	
)	
(WCS Consolidated Interim Storage)	September 13, 2019
Facility))	

SIERRA CLUB’S MOTION TO AMEND CONTENTION 13

Comes now Sierra Club and in support of this Motion to Amend Contention 13, state as follows:

1. Sierra Club Contention 13 was admitted for hearing by the ASLB as a contention of omission based on the fact that sources allegedly relied on by ISP were not available to the public, including Sierra Club.

2. ISP has now made available the sources it claims to have relied on. Those four documents constitute new information that forms the basis for an amendment to Contention 13.

3. The four documents are an ecological assessment from 1997, a species survey from 2004, a supplemental survey from 2007, and an environmental assessment from 2008. These documents were submitted with a cover letter from ISP, at ADAMS Accession No. ML19248C910. It is significant that all four documents relate to the existing WCS low-level radioactive waste storage facility site, not the site of the proposed CIS project. Also, as shown by the dates, these documents are 11-22 years old.

4. The amended Contention 13 satisfies the three-prong test in 10 C.F.R. § 2.309(c)(i)- (iii), as follows:

(i) The information upon which the filing is based was not previously available. The four documents which ISP claims was the source material for the species discussion in the ER were not available to the public, or to the NRC Staff, or even to the ASLB. In fact, the unavailability of the documents was the basis for admission of Contention 13.

(ii) The information upon which the filing is based is materially different than information previously available. The only information previously provided was the general unsupported statements in the ER, 3.5.2 and 3.5.4, that the two lizard species are in the area of a 3.1 mile radius around the CIS site, without specifying where; that the horned lizard had been observed on the WCS LLRW site, with no reference to the CIS site; and that the dune sagebrush lizard has been reported northwest of the CIS site, when the 2004 document cited previously said there was suitable habitat northeast of the LLRW site, exactly where the CIS facility would be sited.

The 1997 document, at page 3, states that it only considered species within one mile of the core area of the LLRW site. The CIS site at issue in this case is beyond that one mile radius. Page 4 of that document states that reptiles and amphibians were observed, but this appears to refer to just casual observations, not a scientific survey. So, this document supports Contention 13, that the two species are or likely are present at the CIS site and more current scientifically supported surveys should be conducted.

The 2004 document, at page 6, states that the sand dune lizard was observed in the area of the LLRW site. Further, the document, at page 7, states that there is no suitable habitat for the sand dune lizard within 1.5 km (1 mi) of the LLRW site. The document goes on to state, however, that suitable sand dune lizard habitat exists west, north, northeast, south, and southeast of the LLRW site. Significantly, the proposed CIS site is

just northeast of the LLRW site. In fact, the document states, at page 7, that the study area was a 3.1 mile radius of the LLRW site and that the two lizard species occur within that area, and that the area around the LLRW site (which would include the CIS site) should be protected to preserve the habitat for both species.

The 2007 document, at page 59, as in the previous documents, states that the sand dune lizard does not occur on the site of the LLRW project, but suitable habitat does occur in the area around the site. The area around the LLRW site would include the CIS site. A table on page 60 of the 2007 document lists the Texas horned lizard as being observed on the LLRW site, but there is no discussion of the horned lizard in the document.

The 2008 document is an environmental assessment relating to the relicensing of the WCS LLRW facility. The assessment was apparently limited to a very narrow set of issues regarding the LLRW operation and impacts on the site itself. There is no indication that any review was made of the area surrounding the site. Pages 11-12 of the document mention the horned lizard and dunes sagebrush lizard but it simply says that the horned lizard is in the area and there is no dunes sagebrush lizard habitat on the site.

This is the very information that the ASLB said was missing and to which Sierra Club was entitled in order to adequately evaluate the information in the ER. Therefore, this is material information that was not previously available.

(iii) The filing has been submitted in a timely fashion based on the availability of the subsequent information. The amended contention is being filed within 30 days of Sierra Club having received the submission by ISP of the above-described documents, and therefore, it is timely. *Shaw AREVA MOX Services*, 67 NRC 460 (2008).

WHEREFORE, Sierra Club requests permission, pursuant to 10 C.F.R. § 309(c),
to file amended Contention 13 as a late-filed contention.

/s/ *Wallace L. Taylor*

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CERTIFICATE OF SERVICE

Pursuant to 10 C.F.R. § 2.305, I certify that, on this date, copies of Sierra Club's Motion to Amend Contention 13 were served upon the Electronic Information Exchange (the NRC's E-Filing System) in the above captioned proceeding.

/s/ *Wallace L. Taylor*

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