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Attention
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Re: comments on the *Draft Supplemental Programmatic Environmental Impact Statement* (Complex Transformation SPEIS, DOE/EIS-0236-S4)

These comments are prepared by HOME with help from the Western Shoshone Defense Project regarding Western Shoshone Treaty and Human rights comments.

Need for Agency Action

The Draft Supplemental Programmatic Environmental Impact Statement (DSPEIS) appears to be driven by three main objectives:

> *In accordance with the national security policies developed after 1996, this SPEIS focuses on the present need for a more responsive NNSA Complex that will:*
> - *Maintain core competencies in nuclear weapons;*
> - *Maintain a safe and reliable nuclear weapons stockpile; and*
> - *Create a responsive nuclear weapons infrastructure that is cost-effective, has adequate capacity to meet reasonably foreseeable national security requirements, and consolidate Category I/II special nuclear materials (SNM) at fewer sites and locations within sites to reduce the risk and safeguards costs.*
>
> *– DSPEIS, pg. 2-13*

Bullet point two is satisfied by the existing infrastructure, as nowhere in this document or preceding public documents that HOME is aware of does the National Nuclear Security Agency (NNSA) admit to the contrary, that our Nuclear Complex does not "maintain a safe and reliable nuclear weapons stockpile."

Bullet point one above is not clearly defined the text that follows in the DSPEIS. The language is consistently intermingled with the objective stated in bullet point three. However, it appears as though minor modifications to the existing nuclear complex and eliminating redundant facilities will accomplish the objective in bullet point one.

The objectives stated in bullet point three are in our view the linchpin of this EIS, which is derived from the Nuclear Posture Review, that necessitates the proposed action. Throughout the DSPEIS "responsive infrastructure" and "cost-effective" are used together implying that they are closely linked. HOME sees that some of the consolidation aspects of the proposed action may improve the cost efficiency of the complex, but Complex Transformation does not appear to HOME to be mostly about cost-effectiveness as about the development of new nuclear weapons.

The DSPEIS states on page 2-3 that:

> *In 2001, another NPR was conducted; it concluded that a strategic posture that relies solely on offensive nuclear forces is inappropriate for deterring potential future adversaries. A classified summary of the 2001 NPR was submitted to Congress in February 2002.*

This indicates that current designs will not be effective in the future and that we need a new kinds of nuclear weapons. The DSPEIS goes on to state:

> *A "new triad" was defined consisting of nuclear and non-nuclear strike capabilities, defenses, and a robust, responsive nuclear weapons infrastructure supported by enhanced intelligence and adaptive planning capabilities. Prior to the 2001 NPR, the term "triad" generally referred to strategic land, sea, and air nuclear forces.*
>
> *– pp 2-3 – 2-4*

Here we see the phrase "responsive nuclear weapons infrastructure" embedded in the not directly stated central purpose to develop new nuclear weapons. Since it is politically unpopular to state that we need to develop new nuclear weapons the DSPEIS uses the circuitous language of "responsive" and "adaptive" along with the usual buzz words "safety and reliability." Responsive is defined on page 2-10 as "the ability to successfully meet national security requirements on schedule and react to new developments." What does it mean by "react to new development?" The DSPEIS continues on page 2-10 to say, "Lack of responsiveness has been evidenced by difficulties in executing weapon production schedules in support of maintenance, retrofit, and Life Extension Programs, and by the lack of a sufficient pit production capability." While these examples are arguably evidence of lack of responsiveness they do not address what is meant by "react to new development." What is a new development; North Korea obtaining nuclear weapons? Is the public to assume that meeting existing production schedules will serve as a threat to a country like North Korea and thus force them to disarm their nuclear weapons?

Responsive is also put in some vague context further down on page 2-10:

> *The purpose of a reliable and responsive infrastructure is to deter adversaries from trying to seek advantage – an attempt to seek advantage would be detected and negated by a quick response.*

How would adversaries get an advantage on the United States? Since, there is an important emphasis within the proposed action to downsize our nuclear stockpile the "advantage" of concern here cannot be do to stockpile size. It must be capability; that US nuclear weapons can do something that the other country's nuclear weapons can't. Thus, we need to be capable of developing any new weapon quickly to demonstrate superiority. But, the "new triad" as mentioned above also includes "nuclear … strike capabilities," so the DSPEIS is suggesting use as well as show of ability to develop new nuclear weapons.

Indeed, both of the above actions, new nuclear weapons development and use, are very unpopular politically, which would seem to explain the indirect language used in this document. HOME is very concerned that the NNSA is trying to hide the real intension of this proposed action behind words like cost-effective and the usual safety and reliability verbiage. The reason is clear since the Nuclear Posture of the Bush Administration is at odds with the public perspective and desire.

Given that the actual purpose is the development and ability to use new nuclear weapon designs there will eventually be a need to test these designs. No military commander would use an untested weapon. Existing virtual testing and related experiments are adequate for the weapons we have now, but as stated on page 2-19 new nuclear weapons will require testing:

> *…the development of new weapon designs requires integrated nuclear testing such as occurs in nuclear explosive tests. Short of nuclear testing, no single stockpile stewardship activity, nor any combination of activities, could confirm that a new-design weapon would work. In fact, a key effect of a "zeroyield" CTBT would be to prevent the confident development of new-design weapons.*

Again, the suggestion of resumed nuclear testing is very politically unpopular and would receive strong opposition in Congress, which is evidenced by public outcry to the Divine Strake experiment originally slated for the Nevada Test Site. Divine Strake was not even a nuclear weapon, but the connection to nuclear weapons and potential for radioactive dust lofted into the air as a result of the explosion was sufficient to move the public into overwhelming opposition. NNSA, then tactically "cancelled" Divine Strake and proceeded to perform the experiment at White Sands New Mexico under a different name.

The DSPEIS does not take nuclear weapons testing off the table, but does state in numerous locations the desire to avoid testing, and suggests that the proposed action will better allow the avoidance of testing. This can only be true of no new nuclear weapons are developed.

Since the real purpose of this action is not stated upfront the DSPEIS still does not address HOME's philosophical underpinning concern that we discussed in our scoping comments, which are:

> *Complex 2030 documentation cites the Nuclear Posture Review as a principle underpinning for the need for this action. The SEIS needs to reevaluate this underpinning. Since, the release of the NPR, it has become clear that the Bush administration's policy on nuclear deterrence and US nuclear weapons has been unsuccessful or at least ineffective. The North Korean nuclear weapons test, the actions of Iran in developing nuclear power infrastructure, which is suspected by our own government to be weapons related, and the US agreement with India shows that the philosophy of the Bush administration has at the very least encouraged nuclear weapons proliferation. … HOME views the motivating document for this action (NPR) to be flawed and dangerous, undermining years of non-proliferation work. As the principle philosophic document behind this action, HOME does not see how Complex 2030 could be in the best interest of the people of the United States. Therefore, the SEIS needs to fully explore the need for action here, and explain how this action will better advance the charge of securing the health and safety of the American people.*
>
> - *HOME, "scoping comments on Supplement to the Stockpile Stewardship and Management Programmatic Environmental Impact Statement," pg. 4.*

The NNSA Act (Title XXXII of the National Defense Authorization Act for Fiscal Year 2000, Public Law 106-65) specifies the agency's national security missions:

1. To enhance United States national security through the military application of nuclear energy;
2. To maintain and enhance the safety, reliability, and performance of the United States nuclear weapons stockpile, including the ability to design, produce, and test, in order to meet national security requirements;
3. To provide the United States Navy with safe, militarily effective nuclear propulsion plants and to ensure the safe and reliable operation of those plants;
4. To promote international nuclear safety and nonproliferation;
5. To reduce global danger from weapons of mass destruction; and
6. To support United States leadership in science and technology.

The situation regarding new nuclear weapons states is not better now than it was when HOME submitted those comments. In fact, the situation is arguably worse. HOME believes that NNSA is failing on points 4 and 5 and likely on point 2 as well, and that the proposed action will further erode these important missions. The NNSA

has not made the case that this action will motivate directives 4 and 5. There needs to be concrete evidence in the EIS that the approach outlined in the proposed action can be effective. The DSPEIS speaks of Complex Transformation as being a deterrent, but history has shown us over the past 60 years that active nuclear weapons programs to develop new nuclear weapons only encourages other countries to institute either openly or covertly nuclear weapons programs. For example, the following official press statement issued by the Ministry of External Affairs, New Delhi, India was released on May 11, 1998:

> *The Government is deeply concerned as were previous Governments, about the nuclear environment in India's neighborhood. These tests provide reassurance to the people of India that their national security interests are paramount and will be promoted and protected. Succeeding generations of Indians would also rest assured that contemporary technologies associated with nuclear option have been passed on to them in this the 50th year of our Independence.*

This kind of response to developing nuclear weapons technology is typical, and current activities by Iran and North Korea bear out the impulse for non-nuclear weapons states to become members of the nuclear club.

HOME submits for the record that "Complex Transformation" as outlined in the DSPEIS is primarily a program for new nuclear weapons development with eventual testing, and as such undermines at least 2 of the mission objectives of the NNSA; therefore, not is the spirit of the law and possibly illegal.

Western Shoshone Treaty of Ruby Valley

Appendix D of the DSPEIS contains a table with the headings: Subtopic, Comment Summary, Documents SPEIS, and Reference. On page D-55 in the table under the heading comment summary the following statement if found:

> *Commentors stated that the SPEIS must include an explanation of how U.S. government and Shoshone Nation Agreement in the Treaty of Ruby Valley of 1872 can be ignored. The SPEIS must also include how gradual encroachment (as the ICC alleged and was upheld by the Supreme Court) is a plausible reason for taking of Shoshone land when that is the ruling of only one Nation (the US). The IACHR and UNCERD decisions that the U.S. was unjust in the taking of land need to be considered.*

Again, the US government is ignoring this issue. There is a reference to section 4.3.8 in the DSPEIS that presumably addresses this comment, yet HOME sees no discussion related to this concern. A phrase search of the entire document only found one reference to "ruby valley" or "Treaty of Ruby Valley," which is the italic statement above. HOME is outrages that the NNSA will not even acknowledge this issue even to claim it is not an issue, and the NNSA needs to include a discussion of this in the FEIS and apologize to the Western Shoshone for failing to reply.

For the record HOME duplicates our scoping comments on this issue below, since they were ignored the first time around:

> *The US government has continued to disregard (for example, Yucca Mountain Final EIS) its agreements between Western Shoshone Nation in the Treaty of Ruby Valley of 1872. The SEIS must include an explanation of how the DOE/NNSA can ignore an agreement between the US government and the Western Shoshone, which is a treaty between nations and the highest law of the land. Further, if the DOE/ NNSA uses the claim that lands were taken by the U.S. through gradual encroachment as the quasi-judicial Indian Claims Commission (ICC) alleged and upheld by the subsequent Supreme Court decision (Dann vs US Government) that the Western Shoshone lost title of their land, then it must explain how a ruling of a court within one nation (US Supreme Court) is binding upon both nations. Further, the DOE/NNSA needs to address the decisions of the Organization of American States Inter-American Commission on Human Rights (IACHR) and the United Nations Committee to Eliminate Racial Discrimination (UNCERD) which both found the U.S. to*

have violated the fundamental human rights of the Western Shoshone people with regard to the Indian Claims Commission Proceedings which led to the Supreme Court decision. On March 9, 2006, UNCERD again urged the United States to "freeze", "desist" and "stop" actions being taken, or threatened to be taken, against the Western Shoshone Peoples of the Western Shoshone Nation, including threats related to ongoing weapons testing at the Nevada Test Site as well as efforts to build an unprecedented high-level nuclear waste repository at adjacent Yucca Mountain. The SEIS needs to take into consideration both the IACHR and UNCERD decisions and describe the proposed action in the context of these decisions.

- HOME, "scoping comments on Supplement to the Stockpile Stewardship and Management Programmatic Environmental Impact Statement," pg. 4.

Contamination at the Nevada Test Site (NTS)

In the comment summary table in Appendix D of the DSPEIS there is no mention of HOME's comments regarding the need to a complete characterization of the existing contamination at the NTS. Perhaps NNSA believes that our issues were addressed in Section 4.3 of the document. We will reproduce some of those comments here that appear not to have been addressed fully. In general, no new mission or facilities would be advanced without a complete understanding of the nature and degree of contamination.

1. Air Quality

Page 4-128 of the DSPEIS refers to 2006 air quality data and states that, "the estimated annual dose to the public from radiological emissions from current and past NTS activities is well below the 10 millirem per year dose limit (NTS 2007)." The data that this result is based upon is presumably presented in Table 4.3.4-2 (this should the clarified), but DSPEIS does not present the dose calculation. Appendix C has some discussion of radiation dose and the Latent Cancer Fatality as a measure of risk, but does not present even and overview of how the values (emission rates) in Table 4.3.4-2 are converted into dose. Key in such an overview is the realization of the complexity and uncertainty in these dose estimates that goes largely unappreciated by the public. The DSPEIS should also provide a map to show the sampling locations.

It should be noted that the total radiological emissions reported in Table 4.3.4-2 is 170 curies per year for tritium, and in the previous year a value of 560 curies per years was in reported in "National Emissions Standards for hazardous air Pollutants," June 2005 (DOE/NV/11718-1065). This difference is very striking for measurements just one year apart. Given the nature of air measurements this difference may not be anomalous, and the EIS again needs to reflect this level of uncertainty.

2. Water Quality

The DSPEIS indicates insignificant radiological contamination from the underground testing and states that, Analytical results from the network of onsite monitoring wells indicate that migration of radionuclides from the underground test areas is not significant," pg. 4-137. There is no presentation of data here, and no map showing where the monitoring is occurring.

It is HOME's understanding that the DOE has not conducted drill hole excavations within the underground testing areas with the purpose of elucidating the nature and potential movement of radionuclides from the various test shots. Source term information has to our knowledge been calculated, but no attempt to obtain physical data to understand the movement of radionuclides from test shots has been made. In fact, the perspective of the DOE has been that except for tritium, radionuclides have not escaped into the groundwater:

"Much of the radioactivity exclusive of tritium, remains captured in the original cavity, and thus not available to leach into the groundwater." - FEIS-NTS, Vol. 1, pg. 3-28.

The assumption in this statement of over 10 years ago has not largely changed today, and there is still no physical data to date to support this belief. The question of whether there are radioactive "plumes" moving with the groundwater from any of the test shots has never been settled. The EIS must detail the contamination of the groundwater with physical data, and show whether the above statement from the FEIS-NTS is valid. Without a full analysis of the existing contamination, there can be no complete and meaningful environmental analysis of the NTS as part of the proposed action.

3. Soil Quality

The NNSA appears to have ignored HOME's comments regarding soil contamination at the NTS and still sees the existing analysis in the DSPEIS as incomplete, so below we will duplicate our scoping comments with the hope that the NNSA will address our recommendations.

> *The FEIS-NTS does contain some analysis of the existing contamination of the soils on the NTS. However, HOME sees this analysis to be insufficient, as has been made clear in the National Nuclear Security Agency (NNSA)/Defense Threat Reduction Agency (DTRA) attempt to conduct a high yield non-nuclear explosion, Divine Strake, at the NTS the summer of 2006. The State of Nevada just received (December 2006) a detailed soil analysis for the 1,000 ft radius encompassing the test area of Divine Strake. The State of Nevada will now be able to determine whether the test will conform to the existing air pollution permit for the NTS. The SEIS needs to fully disclose or determine the existing soil contamination data throughout the NTS and surrounding areas, especially downwind locations. The soil data ideally should contain the inventory of radionuclides present at various depths of soil, so that there is a complete understanding of the level and nature of the radioactive contamination. At the very least radionuclide analysis of the soil cores to a depth of about 20 centimeters should be detailed. It is this kind of data that is needed to evaluate the Divine Strake explosive experiment. Any soil disturbance at the NTS could loft radioactive particles in the air. Only when there is a detailed mapping of the soil, can there be a meaningful environmental evaluation of surface disturbances as a result of any activities at the NTS.*
>
> *The SEIS should also explore whether various plants and animals within and near the NTS have concentrations of radionuclides from the above ground testing period. HOME believes this to be necessary to understand impacts to people, especially indigenous, who either eat or handle various flora and fauna of the region.*
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> *- HOME, "scoping comments on Supplement to the Stockpile Stewardship and Management Programmatic Environmental Impact Statement," pg. 3*

In summary HOME does not support the preferred action, which we see as encouraging proliferation and endangering the people of the United States and world. The proposed action undermines important aspects of the mission of the NNSA and should be considered illegal.

Sincerely,

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