

Inside Energy

September 6, 2004

Court, NRC panel deliver blows to Yucca Mt. project

Proponents of a nuclear waste repository at Yucca Mountain in Nevada suffered a double-whammy last week as an appeals court denied an industry effort to retain environmental standards and a Nuclear Regulatory Commission board ruled that the Energy Department failed to post required data on the Internet.

The ruling Wednesday from the full U.S. Court of Appeals in Washington means that, barring a last ditch effort by the Nuclear Energy Institute to take its claims to the Supreme Court, the decision to nullify the Environmental Protection Agency's radiation standards for Yucca Mountain will go into effect Wednesday (Sept. 8). A three-judge panel of the court last month threw out the radiation standard, which the DOE was to rely on in its application for a license to the repository (*IE*, 30 Aug, 13).

Unless there is some nuanced legal finding that DOE can still file an application absent an EPA rule, or EPA offers a rapid-fire response to the court's ruling, DOE's plan to file an application by December will be foiled.

Robert Loux, executive director of Nevada's Nuclear Waste Projects Office, contended that the appeals court ruling effectively kills the Yucca Mountain Project. "It's a bitter pill for these guys to swallow after 20 years. But the fact is, the project as we know it is dead," he said Thursday.

As if the appeals court ruling was not bad enough for Yucca proponents, NRC's Atomic Safety and Licensing Board Tuesday found that the department "failed to make publicly available substantial quantities of documentary mate-

continued on page 12

Study finds 'prime' type of site for sequestration

An International Energy Agency study of carbon dioxide stored in a western Canadian oil field has shown that such formations can safely hold the gas, an Energy Department official said last week.

The study, the largest in-field scientific look at CO₂ storage ever done, supports government and industry efforts to demonstrate that using oil and natural gas formations to sequester CO₂ could significantly minimize greenhouse gas emissions.

"They've not found any evidence of leakage or other issues that would indicate that this formation would be a bad storage site for CO₂," Scott Klara, a technology manager with DOE's National Energy Technology Laboratory in

Pittsburgh, said last week. DOE helped fund the project.

The scientific study, at EnCana Corp.'s Weyburn field in Saskatchewan, also enabled researchers to test computer models, measurement tools and other technologies designed to track the movement of CO₂ in underground formations, Klara said.

The Weyburn field, where Encana has operated for more than 50 years, is one of two commercial-scale oil and gas formations being studied for CO₂-sequestration potential, Klara said. The other one is the Sleipner field in the North Sea, off Norway, where gas is produced. The operators of both fields use CO₂ to enhance production. At Weyburn, the CO₂ is piped in from North Dakota.

"The objective was to be able to show

continued on page 14

INSIDE THIS ISSUE

Congress

- Spending, tax and energy bills hang as Congress returns for stretch run 3

Election

- GOP says it will continue to promote energy bill to fulfill Bush's '01 plan 3
- Bush defends coal plan in W. Virginia, says Kerry has shifted in campaign 4

Emissions

- Leavitt decries 'fiction' in claims on mercury; Democrats seek meeting 4

Environmental Cleanup

- DOE turns down ex-worker's assertion of negligence at Rocky Flats cleanup 5
- New Mexico, DOE announce agreement to clean Los Alamos lab site by 2015 6
- DOE cuts CH2M HILL Hanford fee by \$300,000 over safety infractions 7
- Defense board doubts safety criteria assigned to waste treatment facility 8

Federal Lands

- Court stops Indian trust land sales that tribes say undercut their case 8
- ReInjection of CBM water into aquifers affordable, feasible, consultant says 9

Nuclear Power

- Claiming DOE's missed deadline hurt its reactor sale, utility seeks amends 12

Renewable Energy

- Interior assures support for geothermal, and industry backs recent U.S. efforts 13

Research & Development

- PNNL hopes consolidating bioenergy r&d expedites development of technology 13

News In Brief

- FERC: No abuse in '03 gas price run-up 15
- LNG imports soar to record high: EIA 15
- BLM outlines plan for Alaska tract 15

In an exclusive interview, BLM's chief says her agency aims to expand year-round drilling (page 10)

CONTRACT OPPORTUNITIES**DOE calls for bioenergy projects**

Sept. 1 — The Energy Department is calling for applications for grants supporting biomass and bioenergy research projects. In a Federal Business Opportunities notice (DE-PS36-04G094025), DOE's Golden, Colo., office said the department would provide grants to cost-shared projects involving consortia of at least four U.S. universities or colleges and at least one U.S. industrial concern. DOE also encouraged collaborations with department laboratories. No estimated funding level was provided. The deadline for applications is Oct. 13. Contact: Mary Hart, (303) 275-4754 (fax); gobioconsortia@go.doe.gov.

Hess Microgen wins DOE grant

Aug. 31 — Hess Microgen, a provider of cogeneration systems and services, announced it received an \$803,000 grant from the Energy Department to support projects that encourage adoption of integrated distributed generation systems. The \$1.6-million project, which will be done in conjunction with TIAX, a project and technology development firm, will consider how power inversion technology could alleviate the potential for disruption to power grids from distributed energy systems, a major concern of electric utilities.

Bechtel, lab team on infrastructure

Aug. 31 — Bechtel Corp. and the Energy Department's Idaho National Engineering and Environmental Laboratory announced they will collaborate on critical infrastructure testing. Some of the work may be conducted at the lab's new U.S. Computer Emergency Readiness Team Control Systems Security and Test Center, which opened earlier this month, a lab spokeswoman said. Bechtel is interested in INEEL's ability to test and evaluate critical infrastructure "on a scalable basis." Under the collaboration, which is likely to be long-term, Bechtel may compensate INEEL for its services by installing equipment and infra-

structure at the lab's 890-square-mile site, the spokeswoman said. "Just a little more than a year ago, Bechtel Telecommunications collaborated with the INEEL and established a Wireless Testbed in Idaho," Bechtel principle vice president and manager of research and technology coordination Linda Trocki said. "The success of this venture led us to look at additional ways we can help our customers."

\$70M set for nuclear physics work

Aug. 31 — The Energy Department's Office of High Energy Physics is offering \$70 million in grants for research in nuclear physics. DOE said in a Federal Business Opportunities notice (DE-FG01-04ER04-22) the deadline for applications is Nov. 1. Contact: Laura Scott, (301) 903-2860; laura.scott@doe.science.gov.

DOE seeks detector proposals

Aug. 31 — The Energy Department's Office of High Energy Physics is offering a total of \$500,000 to researchers for projects supporting its Advanced Detector Research Program. In a Federal Business Opportunities notice (DE-FG-04ER04-26), DOE said it would accept applications until Dec. 1. Contact: Laura Scott, (301) 903-2860; laura.scott@doe.science.gov.

HEP office offers faculty aid

Aug. 31 — The Outstanding Junior Investigator Program at the Energy Department's Office of High Energy Physics is offering a total of \$500,000 in grants to tenure-track faculty members at U.S. universities involved in experimental or theoretical HEP or accelerator physics research. The program is designed to support "outstanding" scientists early in their careers. The deadline for applications is Nov. 10, DOE said in a Federal Business Opportunities notice (DE-FG01-04ER04-25). Contact: Laura Scott, (301) 903-2860; laura.scott@doe.science.gov.

platts Inside Energy

September 6, 2004

ISSN: 0-278-2227

Chief Editor

William E. Loveless

Managing Editor

Michael Schmidt

Associate EditorsMatt Spangler, Daniel Whitten,
Angela Y. Hardin**Contributing Editors**

Catherine Cash, Elaine Hiruo

Contact the Editors

(202) 383-2240

Editorial Director, Global Power

Larry Foster

Vice President, Editorial

Dan Tanz

Platts President

Harry Sachinis

**Senior Vice President,
Information and Trading Services**

James Downham

Inside Energy is published every Monday by Platts, a division of The McGraw-Hill Companies. Registered office Two Penn Plaza, 25th Floor, New York, NY 10121-2298

Officers of the Corporation: Harold McGraw III, Chairman, President and Chief Executive Officer; Kenneth Vittor, Executive Vice President and General Counsel; Robert J. Bahash, Executive Vice President and Chief Financial Officer; Frank Penglase, Senior Vice President, Treasury Operations.

Copyright © 2004 by Platts, The McGraw-Hill Companies, Inc.

All rights reserved. No portion of this publication may be photocopied, reproduced, retransmitted, put into a computer system or otherwise redistributed without prior authorization from Platts.

Permission is granted for those registered with the Copyright Clearance Center (CCC) to photocopy material herein for internal reference or personal use only, provided that appropriate payment is made to the CCC, 222 Rosewood Drive, Danvers, MA 01923, phone (978) 750-8400. Reproduction in any other form, or for any other purpose, is forbidden without express permission of The McGraw-Hill Companies, Inc.

Text-only archives available on Dialog, Factiva, LexisNexis, and ProQuest.

Platts is a trademark of The McGraw-Hill Companies, Inc.

To reach Platts**E-mail:** support@platts.com**North America****Tel:** 800-PLATTS-8 (toll-free)
+1-212-904-3070 (direct)**Latin America****Tel:** + 54-11-4804-1890**Europe & Middle East****Tel:** +44-20-7176-6111**Asia Pacific****Tel:** +65-6530-6430

The McGraw Hill Companies

CONGRESS

Spending, tax and energy bills hang as Congress returns for stretch run

Congress returns this week from a six-week break with substantial work to do on FY-05 spending bills and flickering hopes of crafting comprehensive energy legislation before the election.

Sen. Ted Stevens, R-Alaska, chairman of the Senate Appropriations Committee, said in a news briefing Aug. 27 that Congress would pass the Homeland Security Department's spending bill upon its return tomorrow (Sept. 7) and then would attempt to push through remaining appropriations bills by the end of the first week in October, when members are expected to again break for a final push to the Nov. 2 election.

"I would like to finish the bills on my watch," said Stevens, who under party rules will give up the Appropriations Committee chairmanship at the end of this congressional term. "We should be allowed to finish them and it is necessary in the public interest," Stevens said.

He said his goal is to pass spending measures individually, but as he has said for months, it is likely they will have to be enacted as one or multiple spending packages. In order for that to happen, the House would have to finish its work on the three appropriations bills that it has not passed.

So far, only the defense appropriations bill has passed the Senate; it was signed into law Aug. 5.

Sources have speculated for months that government would be funded through continuing resolutions until a lame-duck session after the election, or until next year, when a new Congress will be sworn in.

Stevens also said Aug. 27 new energy bills would be under consideration in the House and the Senate and they would resolve the thorny issue of how to treat makers of the gasoline additive MTBE (*IE*, 20 Aug, 1). Members and top congressional staffers were not available for comment last week.

But Hill sources who were contacted said they were unaware of any agreements on energy legislation. Democratic staffers in the House and Senate said Republicans had not shared any new energy legislation with them.

A Stevens spokeswoman said she stood behind Stevens statement that new energy legislation was in the works.

J. Bennett Johnston, a consultant and former chairman of the Senate Energy and Natural Resources Committee, said an agreement between Stevens and House Majority Leader Tom Delay, R-Texas, to tap a leaking underground storage tank fund and use it for MTBE cleanup is at hand. That agreement might be enough to push through an energy bill, Johnston said.

"I don't mean to suggest that this is a sure bet, or even probable, but the makings for a September victory are in place," the former Louisiana senator said.

Other legislation that may be considered as the term draws to a close could have energy implications. The Foreign Sales Corporation/Extra Territorial Income legislation contains the energy tax titles in the Senate version (S. 1637) and limited tax

incentives in a measure passed by the House (H.R. 4520). Members of both chambers could meet to resolve differences on the legislation, which is important because its chief goal is to end European tariffs on some U.S. products.

In addition, Congress is likely to work on FY-05 defense authorizing legislation, which could lead to a reform in the way the government compensates workers injured at the former nuclear weapons complex. A bill (S. 2400) passed by the Senate earlier this year that would transfer the program from the Energy Department to the Labor Department and the House bill would keep it at DOE, but would make changes intended to speed claims processing.

Also in the defense authorization bill is language that would allow South Carolina to reclassify Savannah River Site nuclear waste as waste "incidental to processing," which would make it easier to handle and cheaper to clean up than it is under its current high-level waste classification. The House defense authorization bill (H.R. 4200) did not address the reclassification issue but House energy and water development appropriators opposed it.

— Daniel Whitten

ELECTION

GOP says it will continue to promote energy bill to fulfill Bush's '01 plan

Saying that a comprehensive energy policy would mean the United States no longer has to "lurch from one energy crisis to the next," the Republican Party platform approved last week in New York blamed Democrats for failure to pass an energy bill.

Republicans said in the platform they are "proud of the record [they] offer to the American people," adding that "future prosperity demands that we have affordable, cleaner, more independent energy supplies." Democratic presidential nominee John Kerry has made "energy independence" a key feature of his campaign.

Platform authors said the president has implemented non-legislative elements of his 2001 energy plan, and they urged Republican members of Congress to overcome "intractable partisan opposition" and pass "a bill to secure America's energy future." Comprehensive legislation has been stalled in the Senate since last November, when supporters of a House-Senate bill (H.R. 6) fell two votes short in a their bid to force a vote on the measure. Six Republicans and all but 13 Democrats voted against the bill.

During the convention, speakers made scant mention of energy as a campaign issue, but President Bush in his speech accepting the Republican nomination Thursday said additional domestic energy production could boost jobs rolls. "To create jobs, we will make our country less dependent on foreign sources of energy," Bush said.

The platform differs from Kerry's energy plan in several areas, including its support for opening the Arctic National Wildlife Refuge to energy development. And it pledges \$2 bil-

lion for clean coal research over 10 years; Kerry has said he would spend five times that amount.

On nuclear energy, the platform says, "President Bush supports construction of new nuclear power plants ... and continues to move forward on creating an environmentally sound nuclear waste repository."

The battle over the Yucca Mountain repository between the candidates shapes up as an effort to capture Nevada's five electoral votes. Bush has been pushing for the opening of the repository, while Kerry has sided with the majority of Nevadans and said the repository will not be developed on his watch (*IE*, 16 Aug, 3).

The Republican plan seeks more domestic development of natural gas. The Democratic platform also stresses domestic development but emphasizes offshore drilling and does not mention onshore development, as the Republicans do.

Republicans and Kerry both support a \$20-billion gas pipeline from Alaska to the Lower-48 states and mandatory reliability rules for electricity transmission.

The platform made clear that the Republican strategy is to stay the course in promoting its plan to become less dependent on foreign sources of energy.

As part of that effort, the administration drew attention to its plan to spend \$1.7 billion over five years on development of hydrogen powered cars.

"In the first year of that program, we've had tremendous success," Energy Secretary Abraham said in an interview Tuesday on cable news channel CNBC. "We've brought international support to this effort, and we're moving as fast as we believe the research can move."

Predictably, environmental groups lambasted the platform. "The GOP environmental and energy platforms ... are an elaborately worded facade concealing plans for another four years of corporate giveaways at the expense of our health, safety and environment," said the League of Conservation Voters' Mark Longabaugh.

The pro-Kerry group is claiming that the energy legislation championed by Bush would give billions of dollars "to polluting and already profitable industries."

Sen. Conrad Burns, R-Mont., said Democrats "don't have an energy policy" and that "their policy is to stop our policy from coming through [Congress]."

The complaint that Democrats have been stonewalling on energy policy is not new and has been a central theme of senior Republicans this year. Last month, Abraham said the failure of Kerry, D-Mass., and Sen. John Edwards, D-N.C., his running mate, to show up for the energy bill vote last November, is a clear sign that the Democratic ticket is not interested in establishing a new energy policy.

Burns, speaking to reporters in a conference call from the convention, said the country cannot conserve its way out of the energy crisis. And he added that the Republican platform represents a good mix of energy conservation and development of renewable and fossil energy sources.

But he admitted that "energy is pinching us just a little bit [economically], and until we can get a program in place [prices are] going to continue to go up." — *Daniel Whitten*

Bush defends coal plan in W. Virginia, says Kerry has shifted in campaign

During a campaign stop in West Virginia last week, President Bush accused Democrat John Kerry of waffling on his views of coal's role in national energy policy.

Bush said Aug. 28 that investments in clean coal r&d were a vital part of his energy plan, and that Kerry had changed his mind about coal's role. "I'm running against a fellow who is kind of shifting. A while ago he said coal is a dirty source of energy. Then he decided he wanted to come to your state, and knock on your door. And then he said, 'Now, well, I am for legislation that is supporting clean coal technology.'" Bush aides have also said Kerry's support for legislative proposals (S. 366) to cap carbon dioxide emissions are incompatible with his coal plans.

A Kerry spokesman said in response to Bush's remarks that the president broke his promise to West Virginia voters by withdrawing clean coal technology funds and watering down mine safety regulations. "John Kerry knows that coal mining creates jobs and believes that with the right investment and commitment, coal will be an even cleaner part of America's energy future." Democrats have complained that Bush walked away from a commitment to fund clean coal technology research by diverting money toward the FutureGen coal power plant, which would be a near-pollution free plant planned for 2015.

Over 10 years, the Kerry energy plan would dedicate \$4 billion to basic research, \$2 billion in technology demonstrations to prove the commercial viability of clean coal technology and \$4 billion in deployment incentives to move clean coal technologies to market. Bush plans to spend \$2 billion on clean coal over 10 years. But DOE officials have said that the administration has spent at a rate of \$3.8 billion over 10 years on clean coal projects.

EMISSIONS

Leavitt decries 'fiction' in claims on mercury; Democrats seek meeting

While acknowledging it is possible to cut mercury emissions 90% given existing technology, the Environmental Protection Agency chief said last week such successes were rare and could not be replicated across the country, at least for now.

EPA is mulling two proposals to reduce utility mercury emissions and plans to finalize a rule by March. In remarks to an industry conference Monday, EPA Administrator Michael Leavitt panned "oversimplified statements" that claim there are highly effective mercury controls that are available and "widely distributable." Only in select cases, and with certain types of coal, have coal-burning utilities been able to slash mercury emissions, he said.

Leavitt said the belief that the technology is there for coal-based utilities is one of a "group of fictions" being circulated. The others are that EPA does not view mercury as a toxin and

that it is required to set a standard to achieve a 90% reduction in mercury, he said.

Major utilities supported Leavitt's comments on the availability of controls; a senior Southern Company manager said his company has just completed the longest testing of mercury control technologies — activated carbon injection and baghouses — at its Gaston, Ala., power plant. He said additional tests are necessary to discover any weaknesses in the technology. "We can't skip important tests. We are just now starting," Monroe said.

The administrator reiterated comments he made earlier this month that in considering how to slash mercury, EPA will be guided by health concerns and the need to keep coal economically viable (*IE*, 16 Aug, 7).

EPA prefers its cap-and-trade proposal, which would cap emissions at 15 tons per year by 2018, a 70% reduction from the 48 tons generated today, to one that would require utilities to install "maximum achievable control technology" by 2008 and cap emissions at 14 tons.

A group of technology manufacturers said in July that currently available controls could bring mercury emissions down to 14 tons by 2010. Utilities complain that the 15-ton goal is not achievable by 2018.

"We want to turn the ship but not swamp the boat," Leavitt said in describing EPA's intent to encourage use of emissions-control technology while not hurting any coal type. "One of the worries" with a MACT approach, he said, is that it will not encourage utilities to install advanced emission controls at their plants, he added. The final rule would allow coal, responsible for half of U.S. electricity generation, to remain a "vital part of our energy mix."

Time to 'narrow and conclude'

Leavitt told the conference, cosponsored by EPA and the Energy Department, it was time to "narrow and conclude" the mercury debate, begun after enactment of the 1990 Clean Air Act. He said senior EPA officials have been meeting frequently in "large group think sessions" to figure out the best path as the agency sifts through thousands of comments on its proposal.

Ten House and Senate Democrats have requested to meet Leavitt. In an Aug. 31 letter to the EPA chief, they urged the administration to adopt the toughest rule possible to control mercury emissions from power plants. In June, 180 House members requested similar action.

In the latest letter, the 10 lawmakers said recent statements by Leavitt "have not accurately communicated" the public health risk from certain fish contaminated by the neurotoxin. EPA's recently released National Fish Tissue Study found that 40% of fish samples collected from 1999 to 2003 have high mercury concentrations.

"[W]e continue to have grave concerns about the administration's process and substantive proposals on the utility regulation for hazardous air pollutants. Recent statements by you and other agency officials have in no way allayed these concerns," the congressmen wrote.

The lawmakers also said that, although Leavitt has said more analysis will be done before a final rule is issued in March, it appeared EPA does not plan to compare its proposed cap-and-

trade emission approach to the more stringent MACT standard required by the Clean Air Act to control hazardous air pollution. Modeling within the administration of a cap-and-trade approach has showed that it would not achieve its stated 70% reduction until years after its 2018 target date, they said.

"At this late stage in the rulemaking process, we are deeply concerned that EPA's rulemaking process is off track and will not produce a sound or defensible rule," said the lawmakers, who support the MACT proposal.

Signing the letter were Sens. Barbara Boxer, D-Calif., Hillary Clinton, D-N.Y., Jim Jeffords, I-Vt., Patrick Leahy, D-Vt., Joseph Lieberman, D-Conn., and Reps. Tom Allen, D-Maine, Edward Markey, D-Mass., Janice Schakowsky, D-Ill., Chris Van Hollen, D-Md., and Henry Waxman, D-Calif.

Separately, Sen. Thomas Carper, D-Del., the top Democrat on Senate panel responsible for clean-air legislation, requested Tuesday to meet with Leavitt this month or in October to discuss "how fast we can go" with the mercury rule. Carper has cosponsored legislation (S. 843) that would require power plants to reduce their emissions of mercury by 80% by 2014.

— Michael Schmidt, Catherine Cash

ENVIRONMENTAL CLEANUP

DOE turns down ex-worker's assertion of negligence at Rocky Flats cleanup

An Energy Department official last week rejected claims by an employee at the former Rocky Flats Nuclear Weapons Plant that DOE has overlooked hazardous and radioactive contamination at the site as it aims to complete the facility's environmental cleanup in 2006.

"The DOE has concluded, based on a thorough review of all available documentation, that no new information about the nature and extent of the environmental contamination at the Site is contained in your paper," Joseph Legare, director of program management at DOE's Rocky Flats Project Management Office, said in a letter Wednesday to Jacques Brever. "Every area identified in your paper has previously been investigated and incorporated into Site cleanup plans."

Brever and other critics of the Rocky Flats cleanup have contended in a book and more recently in a paper Brever sent to DOE that the department has neglected several contaminated areas of the site as it attempts to meet its goal of finishing the cleanup by December 2006 and then turning over much of the site to the Fish & Wildlife Service for a wildlife refuge.

Those critics of DOE as well as the department and other federal agencies have asked a U.S. attorney in Denver to release records of a secret grand jury that investigated Rocky Flats from 1989 to 1992 (*IE*, 23 Aug, 15).

Brever and her attorney, Caron Balkany, said in a statement Thursday that they had no immediate response to most of Legare's letter, which was based on an 11-page report prepared by his office's staff. They claimed, however, that "DOE does not

deny our documentation that it submitted false data" on Rocky Flats to the Environmental Protection Agency. "We think the ball is now in the EPA's court, and also the U.S. attorney's, to find out what other false data DOE has submitted and to investigate pressing criminal charges," Brever and Balkany said.

In her Aug. 18 paper, Brever maintained that DOE made false statements to regulators and the public regarding the cleanup of a section of Rocky Flats called East Spray Fields. She claimed DOE's cleanup plans exclude most of the contaminated lands in that area.

A DOE spokeswoman Thursday denied that assertion. "The claims are an intentional misrepresentation of DOE's response, and irresponsible in attempting to undermine public confidence in the cleanup and closure of Rocky Flats," she said.

The DOE rebuttal addressed each of the contentions Brever included in her paper. For example, the department said she mistakenly identified a site called Bowman's Pond by another name and maintained the area had not been included in cleanup plans. "Bowman's Pond is being remediated as part of the cleanup project," DOE said.

Legare also sent letters to the Colorado Public Health and Environment Department and EPA's Denver office describing its review of Brever's report.

Legare's letters followed newspaper columns by Rocky Flats project office manager Frazer Lockhart calling allegations of malfeasance in the \$7-billion cleanup program "not credible." "As the cleanup of Rocky Flats nears completion, a handful of individuals associated with old controversies but completely unfamiliar with the cleanup of the former weapons site have raised some startling charges," Lockhart said.

"In essence, these individuals formerly associated with the Rocky Flats Grand Jury matter claim that the agencies responsible for the cleanup either don't know or don't want to know the extent of the contamination at the site," Lockhart said. "These claims are not credible. They contradict the deliberate conclusions of multiple efforts of government agencies and citizen's groups conducted at taxpayer expense over the last 15 years, and which are based on enormous amounts of factual information. There may be issues at Rocky Flats where reasonable people can disagree. This isn't one of them."

Lockhart's column appeared in the *Rocky Mountain News* on Aug. 27 and the *Daily Camera* on Aug. 29 following an Aug. 18 news conference at which Brever claimed that nuclear waste is still hidden at the 6,240-acre site. FBI agent Jon Lipsky, who led the 1989 raid on the facility, attended the news conference. Brever's claims have been included in a book called *The Ambushed Grand Jury* that was written by Wes McKinley, the foreman of a secret grand jury that investigated Rocky Flats from 1989 to 1992, and Balkany.

On the day of the news conference, Lockhart asked a U.S. attorney in Denver to release any records from the grand jury investigation that he said would "further the Rocky Flats [cleanup] mission." Grand jury members accused DOE of dumping waste at Rocky Flats or of lying about it for decades while the site was producing materials for nuclear weapons. DOE officials were not indicted because the U.S. attorney in Denver at the time disagreed with the grand jury's recommendation. The

department closed the facility in 1992.

Balkany said last week that Lockhart's newspaper columns ignored information that she and other critics of DOE have brought to his attention. "He made accusations that we didn't know what we were talking about, but he didn't respond to issues we raised," she said in an interview. "Two areas of contamination we provided him information on, at his request, are not mentioned in the cleanup documents the department has."

The attorney maintained that release of the grand jury documents, which has also been sought by EPA and the Colorado Public Health and Environment Department, is crucial to a full review of cleanup decisions at Rocky Flats.

Steve Gunderson, the Rocky Flats program manager for the Colorado agency, said his office would give Brever the benefit of the doubt while it pores over her allegations and DOE's response, though he added until recently he had never heard of her or her associates. "When I first skimmed through Brever's allegations, I thought these weren't areas of any big surprises," he said Thursday. "But we want to make certain that all of what DOE is stating there is accurate."

Victor Holm, chairman of the Rocky Flats Citizens Advisory Board, said he doubts the claims made by the government's critics. "All the allegations I've read deal, with very few exceptions, with dumping material in places where it was known it was being dumped," Holm said in a recent interview. "No one has shown me any credible evidence that there are hidden dump sites out there."

Likewise, David Abelson, executive director of the Rocky Flats Coalition of Local Governments, said he saw "nothing in their book or in what they're telling the press ... that is not known."

"Their understanding of where to find documents and which documents to look for is incomplete," he said in an interview. "So, when they think something isn't being done, they simply have been wrong." — *Bill Loveless*

New Mexico, DOE announce agreement to clean Los Alamos lab site by 2015

The Energy Department and New Mexico have reached a tentative agreement on plans calling for a comprehensive environmental cleanup of Los Alamos National Laboratory by 2015. The New Mexico Environment Department announced last week a proposed consent order negotiated among the state agency, DOE and the University of California, which operates the lab.

The order includes a schedule for remediating hazardous and radioactive waste contamination that has occurred across the 40-square-mile LANL site since the lab opened in 1943. DOE would be required to meet the timetable or face fines from the state.

"This order will ensure that LANL is held responsible for the environmental contamination it created," NMED Director Ron Curry said in a statement Wednesday.

LANL has already been meeting timetables in the proposed consent order — "as a demonstrable measure of the laboratory's good faith" — even as the agreement was being negotiated in 2003 and this year, a lab spokeswoman said Thursday.

LANL estimates the cleanup will cost \$827 million. NMED

will take public comments on the proposed order for 30 days, then prepare the document for signature by itself, DOE and UC.

Curry cautioned, however, that he would not sign the order until the Environmental Protection Agency gives his agency authority to regulate groundwater at LANL. NMED and EPA are negotiating such an agreement. An NMED spokesman said Thursday the state agency is hopeful an agreement will be reached soon.

The proposed order addresses solid, hazardous and radioactive wastes disposed of in numerous pits, landfills, septic systems and other locations at the nuclear weapons lab. It claims that more than 1,900 "solid waste management units" and "areas of concern" require corrective action, though DOE disputed that number.

"The NMED press release cites 1,900 when, in fact, we have received official notice that no further action is required from the U.S. Environmental Protection Agency at more than 700 of those sites," the LANL spokeswoman said. "Also excluded from NMED oversight are those sites under sole Department of Energy jurisdiction. The remaining solid waste management units requiring remediation under NMED jurisdiction now number approximately 750."

Curry, in his agency's statement, emphasized its concern over surface water monitoring at LANL. "Surface water cleanup and monitoring are a key piece of this holistic LANL cleanup," he said. "As such, I will not sign the final order until this surface water agreement [with EPA] is completed."

It is essentially a glorified information request. It's not [a] cleanup [agreement], per se. Hopefully, it will actually lead to state-mandated cleanup in the not so distant future.

—Jay Coghlan, Nuclear Watch

New Mexico is also seeking from EPA regulatory authority over groundwater contamination throughout the state, with approval unlikely until 2006, the NMED spokesman said. Had it held such broad authority now, NMED would not need the specific agreement on LANL groundwater from EPA, he added.

LANL maintains that it has not significantly polluted groundwater. "Water quality impacts on the regional aquifer, though present, are negligible and present no immediate risk to human health," the lab spokeswoman said. "The fact is," she added, "drinking water in the Los Alamos area has not been adversely impacted by laboratory actions."

The proposed order followed nearly two years of negotiations between the federal and state governments and UC. New Mexico Gov. Bill Richardson, a Democrat, Sen. Pete Domenici, R-N.M., NMED and DOE announced general agreement on the matter in March. Since then, technical and legal staffs have been preparing details of the document released last week.

Nuclear Watch, a New Mexico watchdog group, praised the agreement but cautioned that it does not necessarily prescribe cleanup actions for LANL sites. "We're strongly in support of this agreement," The group's director, Jay Coghlan, said Thursday. "Having said that, it is essentially a glorified information request, albeit one with legal weight. It's not cleanup, per se. Hopefully, it will actually lead to state-mandated cleanup in

the not so distant future."

The NMED spokesman said the agreement specifically requires cleanup actions in some instances, though in others it requires information from LANL on contamination in order to determine what remedies are needed. "Nobody has records on everything buried there, so there has to be some investigation of what's there," he said. — *Bill Loveless*

DOE cuts CH2M HILL Hanford fee by \$300,000 over safety infractions

The Energy Department will deduct \$300,000 from future performance fees it will pay Hanford Site contractor CH2M HILL Hanford Group Inc. because of safety infractions over the past 14 months, DOE informed the company late last month.

The department cited six incidents at high-level-waste tank farms near the Columbia River that are operated by CH2M HILL Hanford, including one July 22 in which a worker was exposed to radiation while removing a thermocouple — a long pole used to determine temperature — from a tank vault.

In an Aug. 25 letter to the company's president and general manager, E.S. Aromi, Office of River Protection Manager Roy Schepens said the incidents "point to weaknesses" in the company's "conduct of operations."

"As a result," Schepens said, "I have determined that CH2M HILL has failed to meet minimum requirements for specified levels of performance of conduct-of-operations. Primary areas of concern include inadequate work planning, hazard identification, contingency planning, and procedure compliance."

DOE's reprimand follows findings earlier this year by the department's Office of Inspector General and Office of Independent Oversight and Investigation, which recommended that DOE and CH2M HILL take steps to better monitor the tank farms for chemical vapors. Concerns that tank vapors may be hazardous to the health of workers at the site also prompted a Senate hearing (*IE*, 21 June, 11).

In an interview last week, CH2M HILL Senior Vice President Dale Allen acknowledged shortcomings in the removal of the thermocouple from the tank vault. The item contained more radioactivity than anticipated by the company, leaving workers surprised as they hoisted it from the vault with a crane. Once they made the discovery, the workers continued to lift the thermocouple rather than leave it hanging while they got lead gloves and other equipment designed to handle higher doses of radiation, he said.

As a result, one worker received more than 22 rems of radiation to his hand, in excess of the 15 rems per year that is the administrative standard followed by DOE and the contractor, Allen said. The industry norm is 50 rems per year.

While Allen said the exposure did not threaten the worker's health, he added it did point to inadequate contingency planning on the part of the company.

"This is a case of where we disappointed ourselves," he said. "It caused us to back up and reset our expectations."

Allen said the other five incidents cited by Schepens were less urgent than the July event. "They were just examples of

DOE using incidents that happened in the field where they felt there were lapses in radiological planning, radiological work execution or contingency planning ...," he said.

The company does not deny that any of the incidents occurred and is examining them to determine what changes they may suggest for its operations, Allen said.

In an Aug. 25 statement, CH2M HILL said company officials "obviously are disappointed by the findings and have begun work immediately to implement corrective actions."

"We are committed to work in coordination with the Office of River Protection to vigorously address all medium- and high-risk radiological control work activities to ensure that there are no additional problems," the company statement said.

"Significant changes are also being made in the company's approach to better include our worker force in evaluating work practices; focusing on work planning, hazard identification and procedural compliance. We are also examining the management of our corrective action process to ensure that appropriate preventative measures are put into place and executed in such a way to prevent future issues."

Tom Carpenter, an attorney with the Government Accountability Project, an outspoken critic of DOE's cleanup program at Hanford, called the penalty insignificant. "From our perspective, this is not a very effective deterrent when the company receives literally millions and millions of dollars in fees for meeting schedules and deadlines," Carpenter said in an interview last week. "They spend three to five million dollars a day on cleanup there," he added. "There's a lot of money flowing through there. This [penalty] is practically a flea bite."

In a related matter, Allen said CH2M HILL has implemented about half the recommendations made by DOE's inspector general and oversight offices regarding vapors at the tanks farms, and he expects all of them to be met in "a few more months." Among the steps taken by the company are the appointment of an ombudsman to help workers file worker compensation claims and an environmental health director to coordinate safety initiatives. — *Bill Loveless*

Defense board doubts safety criteria assigned to waste treatment facility

The Defense Nuclear Facilities Safety Board has asked the Energy Department to revise its criteria for determining safety designations for DOE defense facilities following a critical board review of plans for a nuclear waste processing plant at the Savannah River Site in South Carolina.

In an Aug. 27 letter to acting Under Secretary of Energy David Garman, DNFSB Chairman John Conway maintained that DOE should have assigned a performance category three designation to the Salt Waste Processing Facility at SRS rather than the less stringent PC-2 rating assigned by department officials and contractors. "To protect workers and prevent an unfiltered release, this new facility should be designated as PC-3 to ensure that it will adequately confine hazardous material during natural phenomena events," Conway said.

Conway said the PC-2 designation for SWPF took into con-

sideration the likely impact of a design-basis earthquake on the facility's structure but not the potential for emissions of hazardous materials in such an event.

The chairman said the board raised a similar concern regarding the Highly Enriched Uranium Materials Facility at DOE's Y-12 National Security Complex in Tennessee, prompting the department to install a ventilation system. "A similar approach may be appropriate for SWPF," he said.

The board also asked DOE to revise its safety directives to "provide consistent and adequate guidance for natural phenomena hazards," and to implement them at individual facilities.

DOE, which ordered design work on SWPF to resume in June, would process about one-third of 34 million gallons of salt waste from high-level waste stored at SRS. The work had been stalled over disagreement between DOE and Congress over plans for disposal of HLW at SRS and department facilities in Idaho and Washington (*IE*, 24 May, 7).

Conway asked DOE to respond to the board's letter within 45 days.

FEDERAL LANDS

Court stops Indian trust land sales that tribes say undercut their case

A federal judge in Washington last week temporarily halted all auctions by the Interior Department of land it holds in trust for Native Americans, including many parcels containing rich deposits of coal, oil and natural gas.

The order, issued Tuesday, by Judge Royce Lamberth of the United States District Court for the District of Columbia stemmed from a request made by attorneys representing Indian trustees and tribes in a multibillion-dollar trust fund suit against Interior, *Cobell v. Norton*. The tribes allege Interior mismanaged royalties from their land as far back as the late 19th century, bilking them out of as much as \$140 billion.

In an Aug. 25 filing with the court, the plaintiffs asked Lamberth to stop a Bureau of Indian Affairs auction because the government had not properly assessed the value of the land, which would hurt the historical accounting effort Interior is working on. Before the judge's ruling, BIA's Anadarko, Okla., office planned to auction some 25 parcels, some with oil and gas rights attached.

"Without a current and accurate appraisal, there can be no assurance that the beneficiaries will receive 'fair and just compensation' for the sale of their trust assets," according to the tribes' filing, which said the government's sale notice suggests BIA will conduct an appraisal of the lands "at some point." The plaintiffs indicated that such shortchanging could be more widespread across Indian country.

Their attorney, Dennis Gingold, said in an interview that he had heard from "second- and third-hand" sources tales of BIA staffers offering up trust lands for "substantially below market value," and then allowing the property to be "flipped by local

real estate speculators very quickly for a lot of money."

Fred Fodder, an appraiser with the Office of the Special Trustee in Lawton, Okla., which does the appraisal work for BIA's Anadarko office, disputed that, saying that while his staff does not have the time to appraise every parcel of land put up for auction, if a bid is offered on a parcel, it undergoes a valuation that is "done just like any other appraisal." This means the value of the parcel will be adjusted so that it is comparable to those in neighboring jurisdictions, he added.

Fodder also noted that the price parcels are sold for "depends on the interest in the area." Some are bought for substantially more than the appraised value, while others are "lucky to get the appraisal price." Justice Department attorney Michael Quinn told Lamberth during the hearing that it is "a waste of the [Interior] department's money" to prepare appraisals "on properties that aren't going to be sold."

Gingold accused Interior of using auctions to rid itself of its obligation to account for misappropriated fees paid for use of Indian trust lands for energy development, mining and grazing.

"What they're doing here is claiming that once the trust property is off the books, they no longer have the responsibility to conduct the accounting for the revenue that was received over the last 100 or so years," Gingold said, adding the government has argued on a number of occasions that once a parcel of trust land is off Interior's "books," it is no longer liable to account for the lost revenue to trustees for that land.

"That is a mischaracterization of what this process is all about," an Interior spokesman responded. "This is a practice that has continued for a number of years. Individuals actually approach the department, not the other way around. ... The department is pursuing, in its regular course of action, its trust responsibility in administering these lands at the request and discretion of the individual landowners."

Lamberth's order was a moot point in the case of Anadarko; the BIA staff there nixed the sale a day earlier — the first auction canceled in the office's 69-year history of conducting such sales.

How many other BIA auctions could be impacted by the ruling was a mystery after Lamberth's ruling, though more infor-

mation may come to light in coming days, as both sides file briefs on the plaintiffs' motion for a preliminary injunction blocking any sales until the agency conducts what they deem to be proper appraisals of the property being put on the block.

The issue of how improper appraisals may account in large part for how Indian allottees have not been fairly compensated for development on their lands surfaced last year, when the Cobell court released a report that claimed Navajo in Arizona were receiving hundreds of dollars less per rod (16.5 feet) for right-of-way access fees than adjacent lands. The top Indian trust official said in May that this phenomenon indicated a breakdown in Interior's fiduciary obligation to allottees, as BIA staffers have historically failed to advise tribes they can command greater sums for their ROWs than the appraised value. —*Matt Spangler*

Reinjection of CBM water into aquifers affordable, feasible, consultant says

A group representing ranchers in Montana has released a report that claims it is technically and economically feasible to reinject the salty water from coalbed methane production into depleted water aquifers and to treat the waste water before it is discharged. The report, prepared by Butte, Mont.-based consulting firm Kuipers & Associates for Northern Plains Resource Council, found that with methane gas selling for \$2.50 per thousand cubic feet and assuming a 40% return on investment, CBM producers could still net a 34% return after reinjecting 100% of the water and a 30% return if treating 100% of wastewater.

Mike Caskey, CEO of Fidelity Exploration & Production Co., one of the largest CBM producers in the Powder River Basin, said it is "theoretically" possible to inject produced water into depleted aquifers, but it is not feasible on the Tongue River, where the rock formations cannot handle the amount of water that would be injected according to the method proposed by Kuipers. The company currently injects wastewater into ponds that are utilized by the ranchers.

Caskey said Fidelity is currently engaged in its second pilot test of an "ion exchange system" that uses a resin bed to pull sodium and other constituents out of wastewater before it is discharged.

Fidelity's projects along the Tongue River have been challenged in several suits by Northern Plains.

The consulting firm released along with the study what it said was a never-before-seen draft report from the Environmental Protection Agency's Region 8 dated February 2003. Principal Jim Kuipers claimed the report bolstered his study's point about the affordability of reinjecting and treating wastewater.

The EPA office has not made public the draft, nor has it said its report is complete. Officials did not return calls for comment.

Region 8 has a CBM Web site that announces the "kick-off" of the produced water study, which focused exclusively on the Powder River Basin, but the most recent documents there are an attendee list and meeting notes from a December 2001 "CBM focus session." The latter document indicates that industry representatives present for the Denver meeting were concerned applying "best available" water treatment technologies CBM operations would not be economically feasible. — *Matt Spangler*

IBLA DIGEST

A SUMMARY OF INTERIOR BOARD OF LAND APPEALS ENERGY DECISIONS

CHEYENNE SALES CO. INC. v. OFFICE OF SURFACE MINING ET AL.

IBLA 94-736

Decided Sept. 2, 2004

Appeal from a decision of Administrative Law Judge David Torbett upholding a Notice of Violation. **Decision affirmed as modified. Under federal regulation, the Office of Surface Mining Reclamation and Enforcement properly reasserts jurisdiction to issue a Notice of Violation to a permittee after the state regulatory authority terminated jurisdiction over the mine site, pursuant to a written determination, when the record shows that the state regulatory authority's written determination was based on a misrepresentation of a material fact because all requirements imposed under the regulations had not been successfully completed.**

Copies of IBLA decisions may be obtained by contacting the Interior Board of Land Appeals at (703) 235-3750 or FAX (703) 235-9014.

INSIDE ENERGY INTERVIEW

BLM's Clarke aims to expand year-round drilling

As director of the Bureau of Land Management since President Bush came into office, Kathleen Clarke has received much flack from industry on the often dirgelike pace at which the government issues permits for energy exploration and development on federal land. But in an interview with Inside Energy's Matt Spangler last week, she expressed a sincere desire to reform the agency's processes in the hopes of lessening the nation's dependence on foreign oil.

In addition to her goal of finalizing by year's end the first revision in more than 20 years of "Onshore Order No. 1," which guides the agency's processing of energy permits, Clarke also highlighted her ambitions of expanding the year-round drilling project given a trial run in Pinedale, Wyo., to other areas, as well as holding field offices accountable for their estimated time to process drilling permits.

She was joined by Tom Lonnie, the agency's assistant director for minerals, resource and realty protection.

Inside Energy: What's your policy agenda for the balance of the term?

Clarke: It's the same one we've been working on all along, and that is to provide access and to promote responsible development on the public lands. We have numerous land management plans that are in the process of revision. ... We are trying to get many of those plans out. ... We have been working on the revision of the onshore order related to oil and gas activities, as well as the Gold Book. ... [The Gold Book is a 45-page BLM and Forest Service brochure designed to aid oil and gas operators in permit approval and conduct of oil and gas operations on federal lands.] We are aggressively implementing the president's request for us to work in a cooperative mode with partners, particularly with cooperating agencies, which would include government entities, but also outreach to all stakeholders in a cooperative conservation effort.

Inside Energy: Is there a time frame for completing the remaining land plans?

Clarke: They're all staggered. ... Two things have slowed us down. One is our commitment to the secretary's [principle of] communicating, cooperating and consulting with external partners to make decisions. That is a process that takes time if you do it with sincerity Litigation is the other thing that slows us down.

Inside Energy: What's on the long-term horizon, with respect to increasing energy production on federal lands?

Clarke: We completed the [Energy Policy Conservation Act] study that the last Congress directed us to do I think we really need to get into the business of how to remove those constraints [to production], how do we remove those constraints, how to make sure we're accommodating appropriately opportunities to develop while at the same time securing the environment.

We've got an interesting proposal right now in the Pinedale Anticline area from Questar. They want to do year-round drilling. We've had other companies ask about that same

opportunity. We are interested in understanding the pros and cons of moving ahead with year-round drilling. We want to make sure we understand the impacts, that we are charting a course that is totally respectful of the environment. What we're hopeful of is this scenario with Questar ... would be a pilot for us to understand if this is a good way to do business. If so, we may be willing to consider other areas where a year-round activity may be more appropriate and less environmentally impacted than our current protocols, which is to beef up in the summer and then lighten up in the winter.

Inside Energy: You've had some questions from the governor about that proposal. Do you think you may encounter similar resistance if you try to introduce the concept in other areas?

Clarke: We need in those locations to engage a broad base of local players ... It will all be decided in a public process. Governors and others will have an opportunity to engage with us. First, we need to decide if we're going to approve and move forward with the Questar [proposal], and if so we'd like to use that as a model and better understand how this works, and if we're comfortable with it, and if we want to expand that opportunity.

Lonnie: We've gotten so locked into these timing restrictions that we've lost sight of rig availability, availability with crews, availability with good equipment — all those things involved in safety and accidents — and also the impact on the socioeconomics of the area ... in terms of these communities bringing in everyone in these short periods of time and impacting then, as opposed to spreading this out over a longer period of time.

That fits in with what we're trying to do from a standpoint of having a more adaptable approach. In terms of things we're going to be doing, [like] implementing these best management practices We'll be doing that on a site-specific basis, and over the next year or so we're going to be evaluating that to see how it's working and where we need to expand it.

Inside Energy: You said "implement" best management practices. BMPs are really just guidance to field offices, correct?

Clarke: We set them out as guidance to the field. But the mandate to the field is that you will evaluate the BMP list vis-a-vis the proposal at hand. At any point you're going through a [National Environmental Policy Act] process, you can determine in the field office if it's appropriate to make the BMPs mandatory.

If you have an application for a permit to drill, it may be that that application will be dependent on several BMPs. They may, in fact, become mandatory.

Inside Energy: Field offices will say that they're constrained by regulation in how much they can reduce the time it takes to review APDs. How much more can you really streamline the process?

Clarke: We're trying to set up a time frame that is realistic, given all the places a person has to punch their card if they're

going to move forward and get a permit We're trying to narrow that down ... and then hold ourselves and our partners for being accountable within that time frame. Part of that requires a company come to us with a complete request and application.

In the Buffalo [Wyo.] field office, where we have such a heavy workload on natural gas, we're getting a Fish & Wildlife Service employee in there to do the consultations with us. That will help facilitate getting our work done, as opposed to sending our paperwork and then waiting to get it back.

Inside Energy: Onshore Order No. 1 hasn't been updated in two decades, so theoretically operators should know what they're supposed to provide to the field offices. Why do you think they're not getting in the paperwork they need to get in?

Lonnie: The processes may have been in place since '83, but they've also changed, based on court actions and other things that have occurred.

A good example is cultural resources reports. We've found many times they're incomplete. So what we're attempting to do, particularly in some of the more active offices like Buffalo, is attempting to get the contractors that actually do the work with the oil and gas companies to educate them on what is a complete report.

We've also attempted to promote block surveys. So if we go out there and move a location around, we don't have to go back and do another cultural resource report.

Inside Energy: Can you give a sneak preview of what we can expect out of the new Onshore Order No. 1?

Lonnie: To a certain extent we go through a lot of the same workload and steps for one APD as opposed to several more, and in terms of coalbed natural gas that can be up to 20 of them.

Clarke: We can do our NEPA at the same time [and] our consultation with [the] Fish [& Wildlife Service]. We can do our cultural resource consultation all at once.

Inside Energy: So it's codifying some of the streamlining efforts that have already been undertaken through the bureau?

Clarke: Right. ... We have 30 days identified now in Onshore Order No. 1, and we're expanding that. Some people say, 'Oh, you're just gonna take more time.' Well, the reality is we never could do it in 30 days because, with the consultation process, we have to allow Fish 30 days. So there's two or three built-in extraneous activities which make it near impossible to get the 30 days.

What we've done is an evaluation of — given all these hoops we have to jump through — what is really a realistic time frame. We intend to hold ourselves accountable to it, so

there's some certainty in this business.

Lonnie: If it's going to be 46 days, which is the Buffalo process, then tell us it's going to be 46 days and meet 46 days. Then they can build their plans in terms of rig availability, crews and everything else into that process.

Inside Energy: Last fall, one of the agency's top officials told me it still has a shortage of staff to inspect and enforce oil and gas leases. Is that still an issue?

Clarke: I believe we've got enough money to run a very good program at the BLM. We expand our capacity with our partners every day, and we are constantly reviewing our management, looking for greater efficiency and greater effectiveness. Certainly there's always room for improvement. ... I do feel like we are funded adequately to get the job done.

Inside Energy: What effect has the most recent [Interior Board of Land Appeals] ruling in the Pennaco case had on BLM's practice of approving leases for CBM development in Wyoming in areas governed by land plans that didn't contemplate CBM?

[In August, the 10th Circuit Court of Appeals overturned a May 2003 ruling by Judge Clarence Brimmer of the U.S. District Court for the District of Wyoming upholding the issuance of the three CBM leases in the Powder River Basin area to Pennaco in 1999.]

Clarke: We're in the midst of doing a review of our litigation strategy on that one. We're trying to better understand our vulnerabilities. When we did the Powder River Basin [environmental impact statement], we did address the issue of leasing there, and considered a scenario if we hadn't leased, and determined in that document we would still lease. We're not sure if that was enough to really cure that problem, or whether we need to do something more dramatic.

We're asking ourselves the question, do we need to deal with [leases issued before the EIS]. There's two or three different ways you can identify blocks of leases, and then have a discussion as to whether or not there's vulnerabilities you need to address.

We're trying to determine if there's some way we can present information to the court that would satisfy their concerns, or if indeed we need to go through some sort of a NEPA process to cure [the problem].

Inside Energy: The bottom line is, there's potentially billions of cubic feet of gas at play here ...

Clarke: Absolutely. And a nation that's in desperate need of some natural gas resources to be marked to the market.

Lonnie: That's part of our analysis right now, but the direct impact is three leases.

The perfect complement to your
Inside Energy subscription!

SUBSCRIBE TODAY!

call: (800) PLATTS-8
e-mail: info@platts.com

platts *Inside Energy*EXTRA — get the latest *Inside Energy* news, delivered to your desktop daily.

NUCLEAR POWER

Claiming DOE's missed deadline hurt its reactor sale, utility seeks amends

The Justice Department maintained last week that former nuclear utility Boston Edison Co. is not entitled to damages from the government because the utility sold one of its reactors months before the Energy Department was supposed to begin disposing of the plant's spent fuel.

The Boston Edison case Tuesday became the first damage claim by a former reactor owner to be tried in the U.S. Court of Federal Claims. Claims by other members of the "Sellers Club" — Consolidated Edison Co., Delmarva Power & Light, Canal Electric Co., and Atlantic City Electric Co. — are pending.

Boston Edison, now operating as NSTAR, was the first U.S. utility to sell a power reactor. It maintains that DOE's failure to begin disposing of utility spent fuel — as was required under law in 1998 — substantially reduced what it received for its Pilgrim nuclear plant.

The utility executed a purchase agreement with Entergy Corp. in November 1998 and transferred the plant to the new owner in July 1999. It received \$14 million for the plant, only a fraction of the \$67 million it got for the plant's fuel. The utility conducted the auctions following electricity restructuring in Massachusetts that was aimed at turning power generation into a competitive service provided by merchant companies.

Much of the utility's argument centers on the affidavit of Geoffrey Lubbock, a Boston Edison official who conducted the auction of the utility's fossil fuel plants and the Pilgrim plant in 1997 and 1998, respectively.

The Justice Department, representing DOE, asked the court to throw out that document, claiming Lubbock had no first-hand knowledge of what bidders thought. However, utility attorney Richard Conway countered that because of his role in the plant auctions, Lubbock was in a position to know what happened and why.

"There were initially 10 prospective bidders for Pilgrim that expressed interest in pursuing due diligence of the nuclear plant," Lubbock's affidavit stated. He added that following due diligence, only two companies — each of which already owned nuclear power plants — were willing to submit bids. By comparison, Lubbock said 60 parties participated in the initial due diligence process in Boston Edison's auction of its fossil fuel assets. Nineteen of those parties paid a \$15,000 bidder's fee, and six submitted final bids, he said.

Lubbock attributed the low number of Pilgrim bidders to "the increased risk and cost" associated with the uncertainty of when DOE would begin disposing of the spent fuel.

"While DOE maintained at the time that it could commence acceptance of [spent nuclear fuel] as early as 2010, it was apparent that bidders were not confident DOE would actually perform by that date," he said. It was apparent, he said, that bidders considered the plant's additional risks, noting that without a repository, the owner would either have to forgo seeking a

renewal of the plant's Nuclear Regulatory Commission operating license and close it when the current license expires in 2012, or make a substantial investment in spent fuel dry storage at the site.

Entergy has indicated it is interested in renewing the plant's license but has not yet submitted an application to NRC.

Justice attorney Stefan Shaibani, however, argued that the case should be dismissed, saying the damages were purely "speculative." Boston Edison is not seeking a specific amount but has asked the court to determine damages. — *Elaine Hiruo*

Two hits on Yucca Mt. project; EPA says it's preparing 'regulatory response' ... (from page 1)

rial in DOE's possession" when it certified to NRC in June that an electronic database with information on the proposed repository was complete. The NRC board added that DOE did not follow regulations in posting the information on a department Web site.

DOE certified on June 30 that its documents were posted, a step required before its license application could be accepted by NRC.

Nevada filed a protest July 12 saying the department's data was unavailable and incomplete. DOE plans to submit its application by December.

"This is the first time DOE has been in a regulated environment," Loux said of the licensing board's decision against the department. "The fact that they've screwed it up speaks volumes about how they are going to proceed in the future."

An NEI spokesman said the industry lobby is considering its options in response to the appeals court decision not to rehear the EPA case and that the NRC ruling should have little bearing on DOE's license application efforts.

The spokesman said DOE must provide the data to the public six months before NRC's formal acceptance, or docketing, of the application. NRC has 90 days after receiving the application to docket it.

"If it's possible for them to adhere to the schedule, we believe that they should do that," the spokesman said of DOE's application efforts.

A DOE spokesman said the department was in the process of deciding whether to appeal the board's decision to NRC.

"The NRC did not question the 1.2 million documents we made available in June, and we continue to review other documents that we withheld for Privacy Act and Privilege consideration to see what can be submitted to the NRC," the DOE spokesman said. "We have a goal of opening Yucca Mountain in 2010, pending NRC approval. We are reviewing the [NRC] ruling to see what impact, if any, it has on a license application submission."

The future of Yucca Mountain could come down to the outcome of the Nov. 2 presidential election. If Democrat John Kerry wins, it is considered unlikely that he would have DOE file the license application. Kerry, who in 1987 voted to designate the desert site DOE's option for a high-level waste repository, has since sided with the majority of Nevadans in opposition

to shipping spent fuel there, and has vowed that the site will not be developed if he is elected president.

If President Bush reclaims the White House, more possibilities are in play for progress on the repository. With the president's support, Congress could revise the Energy Policy Act of 1992.

The appeals court rejected the EPA standard because it said the agency did not follow an EPACT mandate that it address the National Academy of Sciences' finding that a 10,000-year radiation standard was inadequate.

The court did open the possibility that EPA could maintain a 10,000-year standard if it could provide adequate policy arguments for doing so.

A new law could effectively dump the court's ruling on the EPA rule. Alternatively, EPA could issue a new standard.

An EPA spokesman said that DOE was preparing a "regulatory response" to satisfy the court ruling under the assumption that the appeals court decision to vacate its old standards will stay in play. The spokesman did not provide a timeframe for publication of a response to the court ruling.

He also declined to say if the agency would issue a proposed rule with a comment period, or whether officials are considering some near-term regulatory maneuver in an attempt to satisfy the court's objections. — *Daniel Whitten*

RENEWABLE ENERGY

Interior assures support for geothermal, and industry backs recent U.S. efforts

A senior Interior Department official emphasized the Bush administration's commitment to geothermal energy in a speech at an industry conference last week, calling the source a "proven example" of renewable energy.

"That is why Interior is placing such a priority on the development of geothermal energy on public lands," Assistant Interior Secretary for Land and Minerals Management Rebecca Watson said Monday at the annual meeting of the Geothermal Resources Council in Indian Wells, Calif. She emphasized that, in keeping with President Bush's 2001 energy plan, the administration has issued more than 200 geothermal leases, compared to fewer than 20 during the Clinton administration.

The Gale Norton-led Interior Department recently has been questioned about its allegiance to geothermal energy after the Bureau of Land Management's California office earlier this year returned \$100,000 earmarked for resolving a backlog of geothermal leases. The office said it returned the money because its staff was too consumed with other projects.

In addition, the Government Accountability Office has criticized BLM for failing "to provide the same level of oversight over [geothermal] resources in production" to ensure their "longevity" as the Navy does for its geothermal program.

The director of the geothermal council, Ted Clutter, defended Interior last week, telling *Inside Energy* that the geothermal industry has "gained the ear" of the federal government after

years of being "lost in the shuffle."

He also said the monies rejected by the California office were reallocated to another Interior agency, the U.S. Geological Survey, to conduct geothermal resource assessments.

"I know they're working ... to improve things," said Clutter. "There's a lot more awareness by state BLM offices that they need to get their act in gear if we're going to see the benefits of geothermal."

But Karl Gawell, executive director of the Geothermal Energy Association, said that despite the reprogramming of the leasing monies, BLM still has a problem in California with deciding "how they're going to process leases and permits in any timely fashion." The process can take up to a year in California and Nevada, the states with the largest geothermal potential, according to Clutter.

New promises

Gawell bubbled over with enthusiasm, however, for John Bebout, the newly appointed director of BLM's geothermal office. In private, Bebout told geothermal advocates at GEA's trade show, held simultaneously with GRC's meeting, that he would strive to apply some of the lease and permit streamlining measures that have worked for the fluid minerals program to geothermal leasing and permitting, according to Gawell.

Similarly, Watson pledged that Interior would attempt to streamline geothermal project permitting.

Interior and Energy Department officials also indicated at the shows they would like to get BLM more involved in geothermal projects funded by DOE.

BLM and DOE's National Renewable Energy Laboratory in February 2003 identified 35 "hot spots" for geothermal development in the West. Interior's renewable ombudsman, Brenda Aird, said in a June interview that the department is striving to ensure that these areas are prioritized in the land plans the agency is currently revising. — *Matt Spangler*

RESEARCH & DEVELOPMENT

PNNL hopes consolidating bioenergy r&d expedites development of technology

With help from Pacific Northwest National Laboratory, Washington State University will break ground in November on a bioproducts laboratory that will consolidate PNNL bioenergy r&d that aims to reduce industrial use of oil and lessen U.S. dependence on crude imports.

WSU and the state of Washington are footing the bill for the Bioproducts, Sciences and Engineering Laboratory, which will cost \$24.7 million, said Gene Schreckhise, associate dean of the university's Tri-Cities campus in Richland, Wash. PNNL will contribute about \$10 million in equipment to outfit the building, said lab program manager Dennis Stiles.

The 57,000-square-foot building, which is expected to be completed by July 2007, will consolidate into one structure

PNNL's biomass researchers, Stiles said.

Those researchers are currently working in the so-called 300 Area of the Hanford Site, which is adjacent to PNNL. The 60 buildings that the lab currently occupies in the 300 Area must be vacated by 2009 (*IE*, 12 April, 8).

The Tri-Cities campus sits about a half-mile from PNNL, and will be the first addition to PNNL's "campus of the future."

The new Washington State facility has been in the planning stages since 1999, Stiles said.

Terms of the lease, as well as the bond that will pay for the facility, are still being worked out, Schreckhise said. PNNL is expected to be a long-term tenant of the facility.

The facility will accommodate the specific research needs of PNNL's biology and chemistry research, while at the same time allowing researchers from different disciplines to collaborate more easily than they do now, Stiles said.

"The labs are going to be specialized for biology research ... and will be connected back-to-back with chemistry [researchers and labs]," Stiles said. That will lead to a more interdisciplinary approach to doing research and could expedite research findings, he said. "Right now, it's more inhibitory than synergistic."

PNNL's research into biomass focuses on the conversion of plant materials into chemicals that can be used to make everyday products like liquid fuels, plastics and adhesives, which now rely on petroleum.

"The DOE's interest is in using any renewable biomass to make the kinds of chemicals that do not use petroleum," said Stiles, adding that 15% of U.S. oil demand is from chemical manufacturing. "DOE wants to cut that in half by 2025," he said. That would help meet environmental goals, too, by reducing waste, since "in many cases, through the biomass route, there is no waste," Stiles said.

The WSU facility will be equipped with an area that will allow researchers to move equipment to simulate on a small scale how technology might be run in a factory setting.

That space will come in handy for work on cooperative r&d agreements, especially when the lab needs to bring in corporate engineers and researchers for extended periods, Stiles said.

PNNL will share the building, which will also be equipped with teaching laboratories, with WSU. The school does work for the Agriculture Department and researches ways to convert agri-

cultural waste products such as manure into usable products like plastics, Schreckhise said.

Sharing the facility with WSU will be beneficial for PNNL on two fronts. It will act as a sort of farm in which future researchers can be cultivated and harvested to work at the lab, Schreckhise said. It will also give PNNL access to research the lab does not delve into, Stiles said. — *Angela Y. Hardin*

DOE-backed study identifies 'prime' type of site for carbon sequestration ... (from page 1)

that sequestration in a geologic formation where enhanced oil recovery takes place is feasible for long-term storage [of CO₂]," Klara said in an interview Wednesday. "They also wanted to be able to determine how much could be stored during enhanced oil operations."

Details of the study, which cost \$40 million and took four years to complete, are scheduled to be released tomorrow (Sept. 7) at the 7th International Conference on Greenhouse Gas Control Technologies in Vancouver. DOE provided about \$4 million to the project, Klara said.

The findings indicate that the Weyburn field would be "a prime candidate" for carbon sequestration, Klara said. They also could be used to assess the sequestration potential of other formations.

"This isn't just about Weyburn," he said. "This information is very transferable to many other [sites] with similar characteristics as the Weyburn field," he said.

IEA's Greenhouse Gas Research and Development Program sponsored the study, with funding from 15 public and private institutions. In addition to DOE, the government financial backers included the Alberta Energy Research Institute, the European Community, Natural Resources Canada and Saskatchewan Industry and Resources. Industry participants, besides EnCana, included BP, ChevronTexaco Corp., Dakota Gasification Co., Nexen Inc., Total and TransAlta.

The Petroleum Technology Research Center of Regina coordinated the research.

Klara said plans are underway for a second study at Weyburn that would look at a larger portion of the formation. He said that phase may begin this year or next. — *Bill Loveless*

platts

27th Annual Platts Coal Marketing Days

Issues in Coal: Regional Perspectives, National Implications
September 27-28, 2004 — Marriott City Center, Pittsburgh, Pa.

For additional information or to register, visit us on the Web @

www.coalmarketingdays.platts.com.

Registration Code: 1232

NEWS IN BRIEF

FERC finds no abuse in 2003 gas run-up

The Federal Energy Regulatory Commission last week closed its probe into the late 2003 run-up in natural gas prices after finding no evidence of wrongdoing. The Commodity Futures Trading Commission, which worked with FERC, earlier said its seven-month investigation uncovered no evidence market manipulation was behind the price spike.

On Monday, FERC said its Office of Market Oversight and Investigations examined supply and demand, and weather forecasts, and reviewed data from more than 900,000 physical and financial natural gas bids, offers and trades. Staff also interviewed more than two dozen energy traders, pipelines, storage field operators and local distribution companies.

"The cooperation with the CFTC represents our commitment to making sure energy markets continue to work in the best interests of customers," FERC Chairman Pat Wood said.

LNG imports soared in 2003

U.S. liquefied natural gas imports set a record in 2003, and doubled those of the prior year, with 70% of the LNG coming from Trinidad & Tobago, according to the Energy Information Administration. LNG imports reached 507 billion cubic feet, accounting for 8.5% of global gas trade, and came as Canadian pipeline shipments to the United States dipped nearly 8% in 2003 and the United States exported more gas to Mexico, EIA said in a report released Tuesday.

The agency attributed the drop in Canadian production to the maturity of its fields, which materialized despite a 50% rise in drilling activity in the huge Western Canadian Sedimentary Basin. EIA says Canadian production could rise again if Alberta is able to draw on its estimated 42 trillion cf of coalbed methane reserves.

Besides Trinidad, LNG came to the United States from Algeria (53 billion cf) Nigeria (50 billion cf), Qatar (13 billion cf), Oman (8.6 billion cf) and Malaysia (2.7 billion cf).

EIA pointed out that LNG imports, expected to grow 16% annually from 2002 until 2025, are vulnerable to disruptions that Canadian supplies are not. A March strike in Trinidad and an Islamic insurgency in Indonesia in 2001 illustrate "the potential for possible conflicts in foreign countries that could affect supplies of LNG to the United States," EIA said.

Additional long-term gas supplies are likely to come from Egypt, Equatorial Guinea, Nigeria, Norway and Qatar, EIA said.

"The reliance on new countries for gas supply will undoubtedly change aspects of trade in natural gas for the United States," the report said, cautioning that "although economics appear favorable for tremendous growth in the global LNG industry" and for construction of several terminals in North America "there remain many obstacles and risks."

The Bush administration last year began to encourage greater use of LNG, and earlier this year a National Petroleum Council study concluded that the United States will need more

LNG in the coming years to meet growing demand.

The EIA report is available at <http://www.eia.doe.gov>.

FERC blocks Calif. evidence in Enron case

The Federal Energy Regulatory Commission has denied a motion by California officials to enter more evidence, including Enron phone conversations and financial records, into its investigation into market manipulation during the 2000-2001 power crisis. In an order issued Tuesday, the commission referred the evidence to an agency judge presiding over FERC's probe to determine if any of the documents are new and should be examined.

California officials in July asked FERC to include in its refund investigation submitted by the Snohomish (Wash.) Public Utility District evidence of profane Enron transcripts and other information that California and Snohomish said proves the bankrupt marketer gamed Western markets.

According to the state, the commission's earlier discovery proceeding — the so-called "100-days" process — did not leave enough time to gather all evidence of market manipulation. The 100-days proceeding led to the commission's issuance in June 2003 of "show-cause" orders to nearly all market participants, forcing them to prove they did not manipulate the market.

FERC, however, denied the motion, determining that the evidence is being properly addressed in its Enron-specific investigations. But the agency referred the documents to the presiding judge in the Enron proceedings and instructed him "to allow any relevant evidence that has not already been admitted."

Watson seeks mine program change

The Interior Department last week called upon Congress to reauthorize a fund that pays for cleanup of abandoned coal mines.

In letters Monday to Senate Energy Committee Chairman Pete Domenici, R-N.M., and House Resources Committee Chairman Richard Pombo, R-Calif., Assistant Interior Secretary for Land and Minerals Management Rebecca Watson said that if the Abandoned Mine Land fund is not renewed before Sept. 30, "more than \$2 billion worth of high priority coal reclamation in primacy states will remain unreclaimed." Of particular importance, she said, are sites in Appalachian states.

The Bush administration's plan to overhaul AML calls for awarding of monies under the fund based on a state's historic, rather than current, production, which would shift more funds toward Eastern states. The proposal faces stiff resistance from Rep. Barbara Cubin, R-Wyo., and Sen. Craig Thomas, R-Wyo., who have introduced bills that would retain the AML provision that guarantees Wyoming a 50% share of reclamation fees collected within its borders.

An Office of Surface Mining spokeswoman said the agency is not expecting any movement on any of the AML bills before the program sunsets, though she noted the Senate energy committee will hold a markup on the Thomas bill on Sept. 15.

BLM outlines preferred plan for Alaska tract

The Bureau of Land Management has issued a final version of a plan to expand oil drilling in and around Alaska's Colville River Delta. The agency said Tuesday it had addressed the concerns raised by the public and cooperating agencies in the final environmental impact statement for a plan that calls for ConocoPhillips Co. to develop five "satellite" drilling pads in and around the Alpine field, which is estimated to contain 429 million barrels of oil. The five satellite fields could contain 330 million barrels, BLM said.

The plan calls for 20 to 30 wells on each pad. Crude would travel through the existing pipeline system to the Trans-Alaska Pipeline System. The latest version of the EIS would see that pipelines are raised an additional two feet (to seven feet high) to assist migrating caribou and add "environmental enhancements" to the access road to one of the wellpads.

The first commercial production in the delta is expected in 2006, followed by production in 2008 in the National Petroleum Reserve-Alaska, which borders the Alpine area.

BLM will make a final decision on development in October after a 30-day comment period.

Agency plans no breach of dams

The National Marine Fisheries Service no longer plans to breach four dams located on Oregon's lower Snake River, allowing hydroelectric operations there to continue to operate.

Last year, a federal judge in Oregon had ordered NMFS to consider steps to help ensure local salmon populations thrive. On Tuesday, the agency said the biological opinion it will deliver later this month will not propose breaching the dams as an option to aid the salmon. Instead, NMFS is adopting the recommendation of the Army Corps of Engineers and Bureau of Reclamation that they install removable fences that would allow safe passage of the fish.

A spokesman for the Energy Department's Bonneville Power Administration, which markets the 1,000 megawatts generated by the four dams, said it was not certain what impact breaching would have had on the hydro facilities, though it could have made the regional transmission system run less efficiently.

Feds reject bid for Wyo. coal

The Bureau of Land Management rejected a bid by a unit of Peabody Energy Corp. of more than \$237 million for a coal tract in the Wyoming portion of the Powder River Basin.

The agency said Tuesday the offer did not meet its estimate of "fair market value" for the tract, estimated to contain 323 million tons of in-place coal. A BLM spokesman said the agency could not release what it believes to be the fair market value for the tract, which underlies approximately 651 acres of private surface and 1,719 acres of federal estate in Campbell County.

BTU Western Resources could conceivably place another bid for the tract within a month. A Peabody spokesman said the company will place another offer soon. The next sale is scheduled for Sept. 22, for a 718-million-ton tract nominated by an Arch Coal Inc. subsidiary. Following that, BLM will hold month-

ly coal sales in Wyoming for the balance of the year.

MMS, Wyoming award royalty oil

The Minerals Management Service has awarded about 2,500 barrels per day of royalty-in-kind oil to three companies as part of a joint sale conducted by MMS and Wyoming, the federal agency said Monday. The sale included both federal and state oil deliveries. The contracts will begin Oct. 1 and continue for six months.

Winning bidders were Teppco Crude Oil, Nexen Marketing and Eighty-Eight Oil. The sale is the 13th in a series of joint sales dating to 1998 when MMS and Wyoming entered into an RIK pilot program. MMS has since determined that RIK will be part of its approach to managing mineral royalties.

UCS: Big savings from renewables

A national renewable energy standard of 20% would save consumers billions annually on their electricity and natural gas bills, the Union of Concerned Scientists said last week. The findings run counter to those of the Energy Information Administration, which found last year that a 10% "renewable portfolio standard" would push retail electricity prices higher.

UCS said a 20% renewable standard by 2020 would, among other things, lower gas demand and bring total consumer savings of \$49 billion that would benefit "all sectors of the economy." It would also create more than 350,000 high-paying jobs, most in rural communities, while providing energy security by reducing energy imports. Democratic presidential nominee Sen. John Kerry, D-Mass., has made a 20% renewable standard a key part of his energy plan. The Bush administration opposes an RPS, arguing it would favor states with large renewable potential.

Texas A&M mulls LANL options

Texas A&M University remains interested in bidding on a contract to operate Los Alamos National Laboratory, though the school has been considering the proposition even more carefully since Lockheed Martin Corp. decided recently that it would not enter into the competition, an official said Thursday. "That made us think we want to look at it very carefully," said Lee Peddicord, the university's vice chancellor for research and federal relations.

While Texas A&M had not been discussing a possible collaboration on LANL with Lockheed Martin, the school considered it significant that a company of the caliber of the Bethesda, Md.-based defense contractor, which manages Sandia National Laboratories, had decided not to offer a proposal for the LANL job. Lockheed Martin cited strain on its resources as its reason for skipping the LANL contest.

Texas A&M officials were told by an industry source who had been meeting with Lockheed Martin that the company was concerned about security problems at the Energy Department lab.

Like other potential bidders, Texas A&M will examine the draft request for proposals for the LANL contract, due out this month, before deciding whether to bid, Peddicord said. The university is talking with other schools and an industrial concern about possibly forming a team to compete for the contract, he said.

Connect with the people who matter in the global energy industry.

Whatever your marketing or PR objectives. Platts' Newsletters provide the best channels

- Recruiting
- Announcements
- Legal notices
- RFPs
- Product & services
- Branding

For details contact

Jim Eubanks
 tel:
 +1-202-383-7944
 e-mail:
 ads@platts.com

Josie Parnell
 tel:
 +1-212-904-4367
 e-mail:
 ads@platts.com

Advertise in Platts' Newsletters

You've asked us for access to our newsletter subscribers and now Platts delivers.

For the first time, you can reach this unequalled community of market leaders by advertising in Platts' Newsletters. Now, you can precisely target your message to the hardest-to-reach audience of all: executive decision-makers. Only Platts can give you this level of access.

Incredible visibility

Limited ad space in each issue will ensure that your message isn't lost in the clutter and noise of other media.

Reach

We reach every industry leader and operator who matters to you, across the spectrum of energy and power companies, regulators, financiers, traders, analysts, risk managers, transporters and end-users.

Efficiency

You can target your message to specific industry sectors-such as policy, oil, natural gas, electrical power, coal, nuclear, petrochemicals, or metals-for a better, more qualified response.

When you need to communicate with the global energy industry, Platts delivers!

