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**STATE OF NEW MEXICO
BEFORE THE OFFICE OF THE SECRETARY**

IN THE MATTER OF:

**NEW MEXICO ENVIRONMENT
DEPARTMENT, HAZARDOUS WASTE
BUREAU CLASS 3 CLARIFICATION
OF TRU MIXED WASTE DISPOSAL
VOLUME REPORTING PERMIT
MODIFICATION TO THE WIPP HAZARDOUS
WASTE FACILITY PERMIT
EPA I.D. NUMBER NM4890139088**

HWB 18-19 (P)

**PERMITTEES' RESPONSE TO SOUTHWEST RESEARCH AND INFORMATION
CENTER'S MOTION FOR EXTENSION OF THE DEADLINE FOR FILING
PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW AND CLOSING
ARGUMENT**

COMES NOW, U.S. Department of Energy (DOE) and Nuclear Waste Partnership LLC, collectively referred to as the "Permittees", and file this Response to Southwest Research and Information Center's (SRIC) Motion for Extension of the Deadline for Filing Proposed Findings of Fact, Conclusions of Law and Closing Argument (collectively referred to as closing argument), and would show the following:

Permittees oppose SRIC's request for an additional extension of time for submitting its closing argument. SRIC's request for an extension should not be granted because: (1) SRIC has already received an extension of time; (2) SRIC has no right to a transcript in this proceeding and thus, it is not a valid basis for an extension; (3) no unfair advantage is being gained by any party and therefore no party is prejudiced; (4) language for the inaudible portions of the transcript have already been provided to SRIC; and, (5) Permittees are prepared to adhere to the already-extended deadline.

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SRIC already requested one extension of time for filing its closing argument until November 26, 2018. As a courtesy, this request was not opposed by Permittees, and SRIC's request was recently granted on November 13, 2018. SRIC now requests an additional extension of time for the same deadline. An additional extension is not appropriate or warranted, and Permittees oppose any further extension of time for the closing argument.

SRIC's basis for its request relates to the transcript from the second day of the hearing, but this is not a valid basis for an additional extension. Because the proceeding was tape recorded, the transcript is not a required part of this proceeding. NMAC 20.1.4.500.A. Any party desiring a copy of the tape recording must arrange copying with the hearing clerk at its own expense. NMAC 20.1.4.500.A. If SRIC failed to do so, it is not a basis for another extension of time.

Furthermore, even though a transcript is not required in this proceeding, should a party desire a transcript, it must be purchased by each party at that party's own expense, in accordance with NMAC 20.1.4.500.A. Therefore, no party has a right to a transcript in this proceeding unless the party purchases a transcript. Here, SRIC is not paying for any transcript as required, and the transcript is being made available to SRIC at Permittees' expense. Accordingly, the timeliness or condition of a non-required transcript that SRIC is not paying for is not a basis for further extension.

Additionally, the date or condition of its arrival has no prejudicial effect on SRIC because all parties receive the transcript at the same time and in the same condition. SRIC specifically complains of inaudible references in the day 2 transcript, but SRIC has already received commentary about the contents of those portions of testimony from the respective hearing witnesses. At the request by SRIC's representative, witnesses have already reviewed and

provided language for the inaudible portions of the transcript and the language has been provided to SRIC. Furthermore, the arrival time or condition of the day 2 transcript is immaterial because SRIC has had ample opportunity to obtain copies of the tape recordings from the hearing.

Permittees have diligently prepared their closing argument and plan to meet the already-extended deadline. A further extension would only serve to unnecessarily delay the proceeding without good cause. Accordingly, Permittees respectfully request that SRIC's request for an additional extension of time be denied.

Respectfully submitted,

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Permittees' Response to SRIC's Motion for Extension
November 20, 2018

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been forwarded to counsel or representative of record as set forth below on the 20th day of November 2018, to wit:

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