



Los Alamos Study Group

Nuclear Disarmament • Environmental Protection • Social Justice • Economic Sustainability

Greg Mello testimony

27 April 2011

Q: Please identify yourself.

A: Gregory Mello

Q: And you are the Executive Director of the Plaintiff, Los Alamos Study Group?

A: Yes.

Q: How long have you been Executive Director?

A: Since 1992.

Q: What is your educational background?

A: a. I received a bachelor's degree with honors in engineering from Harvey Mudd College, with undergraduate and graduate courses in environmental policy, and a masters degree from Harvard in Regional Planning, where I was a HUD Fellow in Urban Studies.

Q: What has been your professional background?

A: a. Out of college I interned at the newly-created EPA, working on research and monitoring policy. I traveled extensively and interviewed many of the nation's prominent environmentalists and environmental managers.

b. I administered an external undergraduate program in environmental policy for Pitzer College at the Central Clearing House in Santa Fe, where I also worked as a staff member, largely on transportation and urban planning.

c. I built a successful business in Rochester, NY, where I also worked as a transportation planner in regional government. When I moved back to New Mexico I first taught high school science and math.

d. In the 1980s I worked for the New Mexico Environment Department (NMED), where I led the first environmental regulation of LANL. Later I was a supervising hydrogeologist. I led enforcement and supervised cleanups at dozens of sites. After leaving NMED I worked at two hydrology firms in New Mexico for industrial clients and consulted for a citizens group on the cleanup at Lawrence Livermore National Laboratory.

e. For the past 19 years I have directed a non-profit corporation.

Q: Did you work at the Woodrow Wilson School at Princeton?

A: In 2002 I was a Visiting Research Fellow at the Program on Science and Global Security there, working on the effects of low-yield nuclear earth-penetrating weapons and on plutonium warhead core ("pit") policy.

Q: You have published articles on issues of nuclear weapons policy?

A: When time has allowed, I have published analytical and policy pieces in the *Bulletin of the Atomic Scientists, Issues in Science and Technology*, the *Washington Post*, and elsewhere. I have spoken at the United Nations several times, at the European Parliament, the Council on Foreign Relations, and many other places.

Q: Have you advised the Department of Energy?

A: DOE has flown me to Washington to advise them about NEPA compliance. I have met with senior DOE officials on dozens of occasions.

Q: Have you advised officials in the legislative branch?

A: I have advised congressional staff and legislators in Washington. My comments are solicited by the Congressional Research Service and the Government Accountability Office. I meet regularly with both.

Q: Have you advised officials in the Executive Branch?

A: a. Yes, at DOE, NNSA, the National Security Council, and the Office of Management and Budget.

- b. I meet personally three or four times a year with the entire Defense Nuclear Facilities Safety Board (Safety Board) and senior staff.
- c. I spend about 30 days each year in Washington for face-to-face meetings.
- d. I also work closely with journalists, academics in the field, nongovernmental specialists, and retired officials and scientists.

Q: Have you discussed nuclear stockpile strategy with DOE officials?

A: I have participated in all-day, closed-door conferences with senior DOE, lab officials, and members of the JASON defense advisory group regarding stockpile stewardship. I was an invited guest of the Galvin Panel on the future of the nuclear laboratories. I have prepared a hundred or more published comments on various DOE proposals, I am sure.

Q: Have you studied the U. S. nuclear weapons complex?

A: Yes.

Q: How?

- A:
- a. I first met with LANL officials in 1989 to discuss post-Cold War plans for LANL.
 - b. I organized public discussions in Los Alamos regarding LANL's future from 1989 to 1992.
 - c. In 1990, I advised Senator Bingaman to withdraw support for a large planned plutonium facility, which he did.
 - d. In 1992 I published a report on possible new laboratory missions.

 - e. Since then I have been a full-time professional working on nuclear weapons management and policy.

Q: Do you maintain, for the Study Group, an internet web site with information about the nuclear weapons complex?

A: With the help of Trish Williams-Mello, I do.

Q: Do you monitor the users of this web site?

A: Trish does. Major users include the DOE, NNSA, LANL, and the Department of Justice.

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Q: What is Los Alamos Study Group?

A: We are a non-profit organization whose purpose is analysis and education regarding nuclear weapons policy, environmental issues, and aspects of energy policy.

[to the Court] Your Honor, we offer the witness as an expert in the configuration and operation of the Nuclear Weapons Complex.

THE NUCLEAR FACILITY ORIGINAL DESIGN

Q: You are seeking a preliminary injunction of any further expenditure on the proposed CMRR Nuclear Facility at Technical Area 55 at LANL—correct?

A: Yes. We do not seek to enjoin work to analyze reasonable alternatives to the project. Design choices within the project, however, such as whether the project is built deeply or shallowly, are not true alternatives. That's just executing the chosen project.

An injunction wouldn't negatively affect any LANL program, by the way, because the proposed facility won't be operational until about 2023.

Q: Can we call it the Nuclear Facility?

A: Yes.

Q: Have you followed the evolution of this project?

A: Yes.

Q: When did it begin?

A: In 1999 Senator Bingaman announced he would seek \$5 million to plan a new plutonium facility.

(Tab 1) [I. Hoffman art., Aff. 3, ¶ 8, ref. 5]

Q: What kind of nuclear facility was envisioned in the early 2000's?

A: In 2000 LANL envisioned a Hazard Category III building, or less. This means it could contain only 900 g of plutonium—less than a single pit. (Tab 2) [Aff. 3, ¶ 10, ref. 8]

Q: Construction of DOE's major projects is governed by DOE Order 413.3, correct?

A: It is supposed to be.

Q: One stage in that process is Critical Decision 0, or “CD-0,” called the approval of mission need, correct?

A: Yes. CD-0 for the CMRR project was made on July 16, 2002. (Tab 3) [FY2011 CBR, 04-D-125, p. 215.] DOE and NNSA then immediately filed a Notice of Intent to prepare an EIS. (Tab 4) [67 Fed. Reg. 48160 (July 23, 2002)].

Q: What cost estimate was DOE using then?

A: In 2002, DOE advised Congress that both parts of the project – the nuclear facility and the RLUOB (Radiological Laboratory, Utility, and Office Building) could be built for \$350 to \$500 million plus administrative costs. (Tab 5) [Aff. 3, ¶ 11, ref. 13, 14]

Q: Did NNSA adopt an accelerated construction approach to this project?

A: NNSA adopted the design-build approach to speed up the project. (Tab 6) [Aff. 3, ¶ 86, ref. 62]

Under this approach, NNSA can approve beginning final design and construction at the same time. Construction can begin before design is completed. It's an approach meant for very simple or standardized projects. It accelerates the agency's commitment to a project and eliminates any final internal or external peer review.

Q: What was defendants' cost and time estimate one year later?

A: In 2003 they estimated a cost of \$600 million, including \$100 million administration. This was for two buildings. (refer to Tab 6). They said the project would be built by early 2011. (refer to Tab 6)

Q: When was the EIS issued?

A: November 2003.

Q: What alternatives did it consider?

A: The EIS considered many very similar alternatives. They were above-ground structures, no deeper than 50 feet, and below ground structures, no deeper than 75 feet, to be located at either of two adjacent technical areas. (Tab 7) [Aff. 1, ¶ 10, ref. 5]

Q: What was the construction schedule in the EIS?

A: Completion by 2009. (Tab 8) [Aff. 1, ¶ 10, ref. 3]

Q: What was the size of the Nuclear Facility?

A: 200,000 square feet overall with 60,000 square feet in Hazard Class II space and another 60,000 square feet of Hazard Class III-IV space. (refer to Tab 6 and 7)

Q: When was the ROD issued?

A: On February 12, 2004. (Tab 9) [Aff. 1, ¶ 7, ref. 2] Defendants selected the above-ground version, to be located in TA-55.

Q: What did the ROD state about construction impacts?

A: It says this:

Construction activities would result in temporary increases in air quality impacts, but resulting criteria pollutant concentrations would be below ambient air quality standards. Construction activities would not impact water, visual resources, geology and soils, or cultural and paleontological resources. . . . The socioeconomic impacts associated with construction would not cause any major changes to employment, housing, or public finance in the region of influence. (refer to Tab 9)

Simply put, they found none of importance.

Q: When did DOE make the next Critical Decision, CD-1?

A: In May or June 2005. CD-1 means the formal approval of an alternative and anticipated cost range. This is when the project enters the implementation phase. This decision gives project officers, contract officials, OMB and appropriators a formal direction and commitment. NNSA cannot select another alternative without changing that formal decision. (Tab 10) [Aff. 3, ¶ 20, ref. 22a]; (Tab 11)[Aff. 3, ¶ 20, ref. 22b]

CHANGES IN 2009-2011

Q: Since the 2004 ROD, has the plan for the proposed Nuclear Facility changed?

A: It has changed dramatically.

Q: When did this happen?

A: It's unclear, but by February 2009 the cost had risen by about a factor of five, indicating some kind of change. (refer to Tab 10) About then, the Safety Board criticized the design, triggering congressional concern and legislation requiring that the Safety Board approve the design. The Safety

Board issued a Certification Review in September 2009. It says that in the summer of that year, defendants proposed a design with a deeper excavation, to 75 feet, and they acknowledged the need to either strengthen or replace an underlying 50 to 60 foot layer of unconsolidated volcanic ash. In addition, project staff committed to installing a confinement ventilation system that would work after the design basis earthquake. (Tab 12) [Aff. 1, ¶ 18, ref. 2]

Q: What was the nature of the new design?

A: On March 3, 2010, we learned defendants had decided that soil and seismic conditions called for an excavation to about 125 feet, with the bottom 50 or 60 feet to be filled with concrete, beneath the foundation. (Tab 13) [March 3, 2010 presentation, at 43-44]

Q: Was there any reference in the 2003 EIS to an excavation to 125 feet or to filling 50 to 60 feet with concrete?

A: No.

Q: Did that change the amount of concrete required for the building?

A: The 2003 EIS said 3,194 cu. yds. of concrete would be needed for the Nuclear Facility. (Tab 14)

[Aff. 2, ¶ 25, ref. 57] By August 2010, defendants were estimating 371,000 cu. yds. of concrete would be needed. (Tab 15) [Aff. 2, ¶ 25, ref. 56] Producing this concrete would generate more than 100,000 tons of carbon dioxide. (Tab 16) [Aff. 2, ¶ 27, ref. 59] Concrete is also needed for connected actions. Defendants expect they will need to build and operate two concrete batch plants. All the ingredients have to be trucked in.

Q: Did the 2003 EIS mention two concrete batch plants?

A: No.

Q: Did the amount of steel increase over what was stated in the 2003 EIS?

A: The EIS said 267 tons of steel would be needed. (refer to Tab 14) Plans now call for 18,500 tons of steel. (Tab 17) [Aff. 2, ¶ 26, ref. 58]

Q: How has the size of the building changed since the 2003 EIS?

A: It has about doubled from the 2003 version, to about 406,000 square feet. (Tab 18) [Dec. 2, 2010]

presentation to S.F. County]

Q: What working space would be within the current version of the building?

A: On March 20, 2009, Defendants' presentation showed that there would be about 38,500 square feet of Hazard Category II space, within which 22,500 square feet would be labs. (Tab 19) [Aff. 1, ¶ 23]

Q: Has the acreage of the project changed since 2003?

A: The 2003 EIS describes 27 acres of land committed to construction. (Tab 20) [Aff. 1, ¶ 27, ref. 2].

The current project will incorporate parts of TA-55 and parts of TA-46, 48, 50, 52, 63, 64, 66, and T-54 or 36. (Tab 21) [Snyder Aff. Ex. 2]; (Tab 22) [Aff. 1, ¶ 27, ref. 1, ex. 4] The acreage as of 2010 is 83 acres. (Tab 23) [Aff. 2, ¶ 12a, SA at 17] Plus about 13 acres for a 1,000 car parking lot equals 96 acres. (Tab 24) [Benson Aff. 1, ¶ 1B]

Q: What is the volume to be excavated?

A: About 90,000 cu. yds. have already been excavated. In the 2003 plan an additional 100,000 cubic yards or so would need excavation. In the current plan from 400,000 to 500,000 additional cubic yards would be excavated. (Tab 25) [Aff. 2, ¶ 12b, ref. 27, SA at 19] All this loose material must be stored; probably a lot of it will have to be moved twice. This would involve tens of thousands of additional heavy truck trips.

Q: What is the difference in construction employment?

A: The 2003 project would employ about 300 construction workers, at peak. (refer to Tab 14) [Aff. 1, ¶ 30, ref. 1] In June 2010 NNSA estimated a peak construction work force of 844. (Tab 26) [Aff. 1, ¶ 30, ref. 2] In September 2010 defendants estimated 900. This doesn't include support personnel, engineering and design, and administration, which add several hundred more. (Tab 27) [McKinney presentation to NM legislature, Sept. 8, 2010, slide 7]

Q: What additional buildings are in the current project, ones that are not in the 2003 EIS?

A: There would be a craft worker facility, an electrical substation, a truck inspection facility, an additional office building, and a warehouse. In addition, Pajarito Road is expected to be closed for two years.

years. Temporary facilities, possibly even housing, would be required. () [Aff. 1, ¶ 25 text] None of this was in the 2003 EIS, the EIS which preceded the execution phase of the project, which began with CD-1.

Q: What is the estimated completion date now?

A: The projected completion date is now 2020, with operations beginning in 2023. (Tab 28) [Aff. 3, ¶ 89, ref. 73, 80]

Q: At LANL, what is meant by the Pajarito Construction Corridor?

A: Look at the aerial view. [Visual] The Pajarito Corridor has several projects. Most are functionally related. All will have cumulative impacts. These include:

1. Nuclear Facility,
2. TA-55 Reinvestment Project for the PF-4 Plutonium Facility,
3. Transuranic Waste Facility,
4. Radioactive Liquid Waste Treatment Facility, and
5. Nuclear Materials Safety and Security Upgrades.

Q: What is the estimated cost now of the current proposed Nuclear Facility?

A: In November 2010, the White House estimated the budget at “\$3.7 to 5.8 billion.” (Tab 29)[Aff. 3, ¶ 95, ref. 79]. Defendants recently pushed back the projected date of a reliable cost estimate to 2015. (Tab 30) [NWMM March 11, 2011, p. 3-5] In its submissions to Congress, NNSA is just writing “TBD” in the future cost and schedule columns.

CAUSES OF THE CHANGES

Q: What caused the design changes?

A: a. Most of the changes are safety-related, with seismic safety a major factor, affecting all the rest. In 2007 LANL issued a new Probabilistic Seismic Hazard Analysis. (Tab 31) [Aff. 1, ¶ 16, ref. 1] It contains a very significantly increased estimate of the seismic hazard, in both the frequency of large earthquakes and their maximum acceleration, over the 2003 EIS. By early 2009, estimated cost had already increased about five-fold, even before Congress asked the Safety Board to certify the

design. (Tab 32) [Aff. 1, ¶ 17, ref.] Higher seismicity, the poor geology and a very small site, combined with the "hotel concept," make a very expensive and challenging project.

b. The seismic problem is not just accelerations of bedrock. The soft material beneath the building amplifies these accelerations (refer to Tab 31), and also allows the building to slide laterally. (refer to Tab 12)[DNFSB cert. rpt; DNFSB to Mello] This wasn't appreciated in 2003.

Q: Did DOE change other criteria for the building?

A: Yes—there were changes in the degree of security, "design basis threat," for nuclear facilities.

These made above-ground facilities less preferable. (Tab 33) [Aff. 1, ¶ 13, ref. 1]

Q: Were there some safety systems that had not been incorporated in the 2003 plan?

A. Yes. NNSA's 2003 plans did not require certain safety systems, including a confinement ventilation system which will operate after an earthquake. This safety system helps reduce the health and economic consequences of a major accident to target populations in Los Alamos, Santa Fe, and elsewhere downwind.

Q: Has the functional requirement changed?

A: We know that NNSA subsequently decided to employ what they call the "hotel concept," which is essentially wide flexibility to accommodate unspecified future uses. The Safety Board noted that the "hotel concept" led to "major seismic design challenges," because of the wide spans required. As a result, "the facility design was altered to thicken the basemat and slabs of structure." (refer to Tab 32)

THE MISSION

Q: Since the 2003 EIS what actions by NNSA bear upon the mission of the Nuclear Facility?

A: The primary mission of the proposed Nuclear Facility is to increase LANL's pit production rate. But with the end of the Reliable Replacement Warhead program, there is no large-scale pit production mission. (Tab 34) FY 2010 CBR, Vol. 1, p. 67] There is no mandate to produce any pits, past September of this year.

Q: Has there been a study of the useful life of existing plutonium pits?

A: DOE's JASON science advisory group reviewed research done at LANL and Livermore on pit life. JASON concurred with these labs that most U.S. pits would last for a century or more. There are also extra pits for almost every kind of warhead, thousands in all, and these reserves are growing as warheads are dismantled. NNSA will end pit production in FY 2011. (Tab 35) [Aff. 1, ¶ 19, ref. 3]

Production of new plutonium pits is not necessary to maintain a very large, diverse, powerful nuclear weapons stockpile for several decades to come. (Tab 36) [Aff. 1, ¶ 19, ref. 2] (Tab 37) [Aff. 3, ¶ 52, ref.]

Q: What pit production capacity exists if the proposed Nuclear Facility is not built?

A: Significant pit production capacity exists at LANL now. The 1251 Report of May 2010 shows that, even before the proposed Nuclear Facility would be in operation, in 2021, a capacity of 60 pits per year would exist at the Plutonium Facility. (Tab 38) [1251 Report, May 2010, (at 6, Table D-2)]

In 2008 LANS fully met a contract requirement to increase pit capacity to 80 pits per year. (Tab 39) [FY2008 PER, pp. 9, 12]

Q: What policy on pit manufacturing has the Obama Administration adopted?

A: In April 2010 it released its Nuclear Posture Review, which states that Defendants should manage the weapons stockpile without pit manufacturing. Pit manufacturing would recommence only after special approval by the President and Congress. (Tab 40) [Aff. 1, ¶ 19, ref. 4]

STATE OF THE PROJECT

Q: What is the current status of the project from a budget standpoint?

A: To date, appropriations total \$458 million. (Tab 41) [Aff. 1, ¶ 54, ref.] Successive continuing resolutions appropriate nearly the full amount for NNSA weapons activities (Tab 42) [NWMM April 15, 2011, pp. 2-3]

Q: Are there contractual arrangements concerning construction of the project?

A: NNSA has an annually-updated contract with the LANL Management and Operating contractor, Los Alamos National Security, LLC ("LANS"). NNSA has directed LANS to complete CMRR-NF

construction by 2020 and to begin operation by 2022. (Tab 43) [Holmes presentation, June 10, 2010,

at 4]

A NNSA Performance Evaluation Plan (“PEP”) in LANS’s FY 2010 contract (Tab 44) [Aff. 2,

¶ 4d, ref.] requires LANS to “resolve issues,” i.e. problems,

“for TA-50-55 related projects (CMRR, TA-55 Reinvestment, RLWTF, New TRU, and NMSSUP2) that enhance overall site project performance and minimize operational impacts for the next decade.”

In addition, by this contract LANS was to be rewarded for producing planning tools to facilitate construction of Nuclear Facility and other projects. If LANS met each measure it would receive an additional \$300,000.

In this fiscal year, again by contract, LANS was to issue and execute initial construction contracts for the Nuclear Facility and continue finalizing its design. (Tab 45)[FY 2011 PEP at 101-02] This was subsequently changed but the contract still requires LANS to perform so that the Nuclear Facility design achieve[s] planned maturity and schedule goals. (Tab 46)[FY 2011 PEP (Dec. 9, 2010) at 101-102].

CONSTRUCTION—IRREVERSIBLE COMMITMENTS

Q: What physical construction has taken place?

A: NNSA has constructed the RLUOB, which is a support facility for the proposed Nuclear Facility and the existing plutonium facility. Several elements of the RLUOB serve the proposed Nuclear Facility: (Tab 47) [Aff. 3, ¶ 19, ref. 21a, 21b, 21c, 21d] It has:

1. a radiological lab section;
2. a central utility building (CUB) of 20,998 sq. ft., *serving both CMRR buildings*,
3. Offices in RLUOB accommodate 350 people working *in both buildings*.
4. A personnel entrance control facility *serves both buildings*;
5. a training center with laboratories *serving all of TA-55*;
6. a parking *lot for both buildings*;
7. fuel oil storage and backup electrical *generation for both buildings*;

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8. a facility incident command center for nearby nuclear facilities;

9. and an operations center.

RLUOB and the proposed Nuclear Facility are part of one project and were analyzed as one project in the 2003 EIS.

Q: What other construction has there been?

A: NNSA have partially excavated the site of the proposed Nuclear Facility, removing approximately 90,000 cubic yards. (Tab 48) [Aff. 1, ¶ 65, ref. 2]

Construction of a parking lot for TA-55, including Nuclear Facility staff, appears complete.

Large portions of the NMSSUP project, parts of which are currently under construction, exist only to serve the Nuclear Facility. (Tab 49) [Aff. 2, ¶ 7, ref.]

DETAILED DESIGN

Q: Are detailed design activities going on right now?

A: NNSA is doing detailed final design to produce all of the plans necessary to go to construction.

(Tab 50) [Aff. 1, ¶ 74, ref.] Defendants estimated overall design would advance 15% between October 2010 and June 2011. (Tab 51) [Cook Aff. ¶ 25] They wish to maintain this effort uninterrupted.

Q: Does DOE guidance on NEPA discuss detailed design activity?

A: Yes. DOE's NEPA guidance cautions that design work during pendency of a NEPA analysis is inappropriate because it tends to exclude other alternatives and gives a schedule advantage to the agency's favorite, here the proposed Nuclear Facility: (Tab 52) [DOE NEPA guidance on interim activities.]

Proceeding with detailed design under DOE O 413.3, Program and Project Management for the Acquisition of Capital Assets, before the NEPA review process is completed (in contrast to conceptual design noted above) is normally not appropriate because the choice of alternatives might be limited by premature commitment of resources to the proposed project and by the resulting schedule advantage relative to reasonable alternatives. (at 4)

Q: Does NNSA have subcontracts for detailed design of the proposed Nuclear Facility?

A. Yes. Subcontractors include Merrick, for architecture and engineering, Sargeant and Lundy, for structural review, and Simpson, Gumpertz, and Heger, for seismic analysis.

Q. Where does NNSA stand on construction subcontracts?

A: Steve Fong, who is the CMRR Project Manager, has stated that the infrastructure package is ready for design-build contracting. (Tab 53) [Aff. 1, ¶ 44, ref. 1, 2] LANS plans to issue requests for proposals for at least \$60 million. (Tab 54) [Aff. 1, Exhibit 7]

Q: Have any individual jobs been advertised to the public?

A: Yes. For example, detailed engineering jobs are being advertised right now to prepare for constructing the Nuclear Facility. A subcontract specialist is being hired. Many other positions such as procurement specialists, electrical engineers, accountants, and seismic and structural engineers are being advertised for the CMRR project. (Tab 55) [Recent CMRR job listings at LANL]

Q: Is the project divided into sections in order to accelerate it?

A. Commitment to the project is being accelerated further by dividing it into 5 phases or “chunks,” so early chunks can get started long before later ones are ready. (Tab 56) [Aff. 1, ¶ 71, ref.] Defendants expect to initiate construction three years before the final design-build phase of the project even begins. The Senate Armed Services Committee has expressed concern about this approach. (Tab 57)

[Aff. 1, ¶ 19, ref. 6]

ADMINISTRATION STATEMENTS

Q: Are there public statements by the Administration indicating a commitment to the proposed Nuclear Facility?

A: Many. The Vice President publicly declared in a letter to the Senate Foreign Relations Committee that the Administration gives its “unequivocal support” to the proposed Nuclear Facility. He spoke of the President’s “commitment to an immediate start to his modernization initiatives,” including the proposed Nuclear Facility: “I write to assure the Committee of the Administration’s strong support for this program.” (Tab 58) [Aff. 1, ¶ 59, Letter, Sept. 15, 2010]

Q: Why was the Vice President writing to the Senate Foreign Relations Committee?

A: Because the Administration was seeking Senate ratification of the New START weapons treaty.

There was an agreement that, in exchange for certain Senators' votes on the treaty, the Administration would build the proposed Nuclear Facility.

Q: Are there other indications of the Administration's commitment?

A. The White House in a Fact Sheet dated November 17, 2010 expressly stated its commitment to CMRR-NF. It promised to -- quoting --

- Increase funding by \$4.1 billion increase over the next five years relative to the plan provided to Congress in May—including an additional \$315 million for the Uranium Processing Facility (Tennessee) and the Chemistry and Metallurgy Research Replacement (CMRR) facility (New Mexico);

And:

The Administration is committed to requesting the funds necessary to ensuring completion of these facilities... (Tab 59) [Aff. 3, ¶ 95, ref. 79]

Q: Have the Defendants told this Court of their commitment to completing construction of the proposed Nuclear Facility, rather than an alternative?

A: Defendants have said that “The proposed CMRR-NF is a unique facility, central to LANL’s mission and critical to the national security of the United States.” (Tab 60) [Mot to Dismiss at 1] Defendants’ witness Donald Cook swears to the “importance of the CMRR Project to our national defense.” (Tab

61) [Cook Aff. ¶ 2]. Defendant D’Agostino said on October 28, 2010 that “it is critical that we complete the design and construction of key facilities” including the Nuclear Facility. (Tab 62) [Aff. 2, ¶ 4a, ref.]

Q: To your knowledge, has NNSA presented any alternatives to this project to the Safety Board?

A. I met with six Safety Board staff members on February 15 in Washington. They told me they had not seen any document, nor had any discussion with defendants, about any alternative to the Nuclear Facility. In February I met with several officials working on nuclear weapons complex issues. No one mentioned any study of alternatives to CMRR. At the March 2011 public meeting, I asked what new engineering studies of alternatives were being conducted. Project Manager Steve Fong could not name any.

Q. Does the Draft SEIS contain any new information about the completeness of agency commitment to this process?

A. Yes. It explicitly states that NNSA is fully committed to this project and no other.

Because NNSA decided in the 2004 ROD to build CMRR – as a necessary step in maintaining critical analytical chemistry and materials characterization capabilities at LANL – the SEIS is not intended to revisit that decision. Instead the SEIS is limited to supplementing the prior analysis by examining the potential environmental impacts related to the proposed change in CMRR design.

(Tab 63) [Draft SEIS CMRR Summary, April 2011, page v]

IMPACT OF SEIS

Q: In that statement, what CMRR is referred to?

A: Good question. The CMRR that NNSA decided to build in 2004 was long ago abandoned as unsafe and unable to deliver the “hotel concept.” NNSA has revisited the project several times since, changing the mission and the very nature of the project. Its size, cost, and environmental impacts have blossomed tremendously. Several issues of design and function are still being debated. None of these studies has complied with NEPA. None of them has examined reasonable alternatives. If NNSA’s decision of 2011 is built, it will entirely escape NEPA analysis and comparison with alternatives. And several reasonable alternatives do exist.

Q: Why won’t the Draft Supplement to the EIS cure the problem of NEPA noncompliance?

A: In fact, the draft SEIS does not present any alternatives, as we just read. Not counting the deep vs. shallow design alternatives, which are just variations of the same project, the DSEIS *says* it offers two "alternatives." But both of these NNSA has previously said are unrealistic, unsafe, and NNSA has rejected them.

In any case, issuing a SEIS at this point could not achieve NEPA compliance. NEPA requires that an agency take an objective and good-faith look at alternatives. But Defendants’ NEPA activity is proceeding against a background of wholesale commitment to the proposed Nuclear Facility:

NNSA has made contracts with LANS to carry forward the Nuclear Facility project.

The Administration has made agreements with Senators to complete the Nuclear Facility.

NNSA has built the RLUOB.

NNSA has spent hundreds of millions on, and is completing, detailed design for the Nuclear Facility.

The entire organization is committed to this project, is in the process of executing it as fast as it can, and cannot consider alternatives objectively. To enforce NEPA, the Court should put the brakes on this juggernaut and then look for a way to achieve an objective NEPA analysis.

Q: Was the Los Alamos Study Group the lead plaintiff in the case in this Court involving the DAHRT facility?

A: Yes.

Q: What happened in that case?

A: We sued to halt construction of the DAHRT, which had inadequate NEPA compliance. After we sued, DOE said that they would prepare an EIS, and started. The Court held that it was no defense to NEPA liability that the DOE was writing NEPA documents, because it had made the decision to build already. It issued an injunction against continuing the project.

Q: What was the result of that injunction?

A: The project stopped for some months. DOE prepared its EIS analysis. In the end, the project resumed, but with a better design and with considerable environmental mitigation commitments. I think everyone ultimately agreed that the facility was much improved as a result of the pause ordered by Judge Mechem, and the NEPA analysis that was finally done.