IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF TENNESSEE

OAK RIDGE ENVIRONMENTAL PEACE ALLIANCE, NUCLEAR WATCH OF NEW MEXICO, NATURAL RESOURCES DEFENSE COUNCIL, RALPH HUTCHINSON, ED SULLIVAN, JACK CARL HOEFER, and LINDA EWALD, Plaintiffs, v. JAMES RICHARD PERRY, SECRETARY, UNITED STATES DEPARTMENT OF ENERGY, and LISA E. GORDON-HAGERTY, ADMINISTRATOR, NATIONAL NUCLEAR SECURITY ADMINISTRATION, Defendants.	**Case No. 3:18-cv-00150** **REEVES/POPLIN** **REPLY MEMORANDUM IN SUPPORT OF DEFENDANTS' CROSS-MOTION FOR SUMMARY JUDGMENT**

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INTRODUCTION

The National Nuclear Security Administration ("NNSA") has approved a new Uranium Processing Facility ("UPF") and an Extended Life Program ("ELP") of on-going upgrades and improvements to existing enriched uranium ("EU") facilities that will significantly improve safety at the Y-12 Complex. In conformance with the National Environmental Policy Act ("NEPA"), NNSA reviewed the environmental impacts of these actions at both the programmatic and project level on three occasions in its 2011 Site-wide Environmental Impact Statement ("2011 SWEIS"), 2016 Supplement Analysis ("2016 SA"), and 2018 Supplement Analysis ("2018 SA"). Through these reviews, NNSA considered the seismic risks about which Plaintiffs express concern, including new information concerning these risks; quantified the human health consequences that would result under a worst-case scenario of an unconfined release of nuclear materials at Y-12; and adopted measures to mitigate these risks in its enduring EU facilities. NNSA also actively involved the public in these reviews by soliciting and considering public comments on the 2011 SWEIS and 2018 SA. NNSA has further supplemented these reviews in its categorical exclusion ("CE") determinations. Finally, NNSA is analyzing future structural upgrades that would further mitigate potential seismic risks at Y-12. NNSA has fulfilled its NEPA obligations by reviewing the environmental impacts of its actions and involving the public in its decision-making. Plaintiffs' arguments to the contrary are unavailing.

ARGUMENT

I. NNSA has Repeatedly Reviewed the Environmental Impacts of the ELP under NEPA.

A. NNSA reviewed the ELP in the 2011 SWEIS.

Plaintiffs argue that "[t]he 2011 SWEIS did not—and could not—analyze the ELP" because the "NNSA developed the ELP in 2015—four years after issuing the 2011 SWEIS" and

this "'new program' *did not exist* when NNSA prepared the 2011 SWEIS." ECF No. 58 ("Reply") at 12. Plaintiffs miss the point. NEPA requires agencies to prepare an EIS for "major Federal actions significantly affecting the quality of the human environment." 42 U.S.C. § 4332(2)(C). Inherent in this requirement is that NEPA is triggered by new, proposed agency actions, not maintenance of the status quo. See, e.g., Tri-Valley CAREs v. U.S. Dep't of Energy, 671 F.3d 1113, 1125 (9th Cir. 2012). Accordingly, it is not surprising that the ELP did not exist when NNSA prepared the 2011 SWEIS. In fact, besides the No Action alternative, none of the alternatives reviewed in the SWEIS existed at the time it was prepared, as the decision to be made was whether to adopt a new program of on-going upgrades to existing EU facilities through the Upgrade in-Place alternative or whether to conduct future EU operations in an altogether new EU processing facility through one of the UPF alternatives. AR_00016947.

Plaintiffs argue that "the 2011 SWEIS could not have included the ELP because the ELP does not meet the 2011 SWEIS's 'purpose and need.'" Reply at 12. Plaintiffs are again mistaken. The Purpose and Need of the action reviewed in the SWEIS, as highlighted in a bold-faced box, "is to support the Stockpile Stewardship Program and to meet the missions assigned to Y-12 in the Complex Transformation SPEIS ROD [Record of Decision] efficiently and safely." AR_00016875. That prior ROD assigned Y-12 the mission of continuing to conduct NNSA's manufacturing and research and development operations involving uranium. AR_00016869; AR_00020606. The ELP plainly meets the Purpose and Need of the proposed action. As described in the 2016 Amended Record of Decision ("2016 AROD"):

> This amended decision will enable NNSA to maintain the required expertise and capabilities to deliver uranium products while modernizing production facilities. This amended decision will also avoid many of the safety risks of operating aged buildings and equipment by relocating processes that cannot be sustained in existing, enduring buildings. It will also allow NNSA to reduce the risks of EU operations through process improvements enabled by NNSA's investments in

> developing new technologies to apply in Y-12 facilities. Through an extended life program, mission-critical existing and enduring buildings and infrastructure will be maintained and/or upgraded, further enhancing safety and security at the Y-12 site.

AR_00020709 (emphasis added). By these terms, the approved action, including the ELP, met the purpose and need of allowing Y-12 to safely serve as NNSA's main site for EU operations.

Plaintiffs nonetheless argue that the ELP could not have met the Purpose and Need of the proposed action by pointing to other language included at the end of the Purpose and Need section of the 2011 SWEIS.[1] Reply at 12-13 (quoting AR_00016876). This language listed "[c]omply[ing] with modern building codes and environment, safety, and health [] standards" as one of six "goals and objectives of modernizing Y-12" that NNSA considered in developing the alternatives reviewed in the SWEIS. AR_00016876. Such "goals and objectives" were not the "Purpose and Need" of the proposed action, but were instead factors that the agency took into account in designing its alternatives. However, due to differences among the alternatives, they would not each meet these goals and objectives equally (or at all), nor were they required to do so. For instance, one of the listed goals was to "[r]educe the size of the Protected Area by 90 percent and reduce the operational cost necessary to meet the security requirements." Id. Although this goal and objective would have been met by the UPF alternatives, AR_00016934, 00016970, it would not have been met by the Upgrade in-Place alternative. AR_00017213. Plaintiffs err in treating these "goals and objectives" as synonymous with the "Purpose and

[1] In making this argument, Plaintiffs selectively quote the 2011 SWEIS to overstate the degree to which the Upgrade in-Place alternative would require existing facilities to comply with modern codes, stating that "this alternative would 'require structural upgrades to bring the buildings into compliance.'" Reply at 13 (quoting AR_00016948). The fully-quoted language actually states: "If the buildings are intended to operate an additional 50 years, they would require structural upgrades to bring the buildings into compliance" with "current codes and standards related to . . . earthquakes." AR_00016948 (emphasis added). This is a significant omission, as the 2016 AROD did not commit to use the existing EU facilities an additional fifty years. AR_00020707-09. Other documents in the record suggest the time period is projected at around 25 years. See, e.g., AR_00026127-29, 00026147, 00020405 n.1, 00026289.

Need" of the proposed action.[2]

Plaintiffs alternately argue that NNSA could not have reviewed the ELP as part of the Upgrade in-Place alternative because "the ELP is expressly limited by cost, but the Upgrade in-Place alternative was not." Reply at 13. Plaintiffs mischaracterize the nature of these actions. Rather than being "fundamentally" different, the ELP and the Upgrade in-Place alternative share the same, underlying premise that, although the safety of existing facilities can be significantly improved through on-going upgrades and other safety measures, these facilities cannot be upgraded to the same safety standards as an entirely new UPF. The 2011 SWEIS is replete with language to this effect. For instance, the 2011 SWEIS states: "Although existing production facilities would be modernized [under the Upgrade in-Place alternative], it would not be possible to attain the combined level of safety, security and efficiency made possible by the UPF Alternative." AR_00016880. In other words, the Upgrade in-Place alternative, like the ELP, would modernize existing EU facilities to a degree, but would not achieve the same level of safety, security, and efficiency as the UPF alternative. To similar effect, the 2011 SWEIS explains that "the Upgrade in-Place Alternative is included as a reasonable alternative because it would correct some of the facility deficiencies associated with the existing EU and non-enriched uranium processing facilities, and could potentially require smaller upfront capital expenditures than the UPF." Id. (emphasis added). Again, this language makes clear that the Upgrade in-Place alternative would correct some, but not all, deficiencies in the existing EU facilities and that cost considerations provided part of the rationale for this alternative.[3]

[2] The ELP, nonetheless, did make substantial progress toward satisfying this "goal and objective" by committing to make many upgrades at Y-12 that would bring its EU facilities closer to compliance with modern standards. See AR_00020631.

[3] Plaintiff Oak Ridge Environmental Peace Alliance itself acknowledged in its comments on the draft SWEIS that one of the arguments for the new UPF made over the last two decades was the

Finally, in the comparison of the environmental impacts of the different alternatives reviewed in the 2011 SWEIS, the SWEIS states relative to "Facility Accidents" that the Upgrade in-Place alternative was projected to have "[n]o greater impacts than the No Action Alternative" and that "[a]ccident risks would likely decrease compared to No Action because the existing EU facilities would be upgraded to contemporary environmental, safety, and security standards to the extent possible." AR_00016981 (emphasis added). By contrast, the 2011 SWEIS indicates that the several UPF alternatives "would decrease the overall Y-12 facility accident risks . . . because many of the operations and materials in the existing Y-12 nuclear facilities would be consolidated into a UPF, reducing the accident risks associated with those older facilities." Id. (emphasis added). By stating that the UPF alternatives would categorically decrease the accident risks of the existing facilities, but that the Upgrade in-Place alternative would only "likely" decrease these risks because upgrades to modern safety standards would only be made "to the extent possible," the 2011 SWEIS highlights the distinction between the Upgrade in-Place alternative and the several UPF alternatives. Plaintiffs' efforts to establish that "the ELP differs fundamentally from the Upgrade in-Place alternative" are refuted by the language in the 2011 SWEIS. Reply at 14.

In any event, NEPA does not require that the ELP and Upgrade-in-Place alternative have been identical in order for NNSA to have approved the ELP in the 2016 AROD. As established by the multiple cases discussed at length by Defendants in their opening brief, supplementation of an EIS is not required where, as here, "a proposed alternative is within the range of those

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"prohibitive cost of upgrades to existing facilities" and that "[m]any of these arguments are now being made in favor of the most recent modernization proposal, the Uranium Processing Facility (UPF)." AR_00017562-63. These comments recognize NNSA's concerns regarding the degree to which cost constraints may limit its ability to upgrade existing facilities.

reviewed in a prior EIS or otherwise does not have significant impacts beyond those previously considered." ECF No. 55 ("U.S. Br.") at 21-23. Plaintiffs largely ignore these cases, except to identify them in a footnote in briefly arguing they do not apply because the agencies in those cases had previously prepared EISs for the challenged projects. Reply at 19 n.5. But that is precisely what NNSA has done here. In the 2011 SWEIS, NNSA reviewed a range of alternatives that included a limited program of previously-approved upgrades under the No Action alternative (AR_00016929-34), a more extensive program of upgrades that would "extend the life of existing facilities" through the Upgrade in-Place alternative (AR_00016947), and several alternatives that would completely modernize its EU operations through an altogether new UPF. At the conclusion of this review, NNSA could have done exactly what it did in 2016—namely, approve a hybrid alternative that combined elements of the Upgrade in-Place and Capability-sized UPF alternatives, as that action was within the range of alternatives reviewed in the 2011 SWEIS. NNSA clearly reviewed and understood the environmental impacts of the ELP through its consideration of the multiple alternatives reviewed in 2011.

B. NNSA reviewed the ELP in the 2016 SA.

Plaintiffs argue that the 2016 SA cannot cure NNSA's alleged failure to prepare an EIS for the ELP because the 2016 SA "justif[ied] a decision that had already been made—and thus did not facilitate informed decision-making or public participation as would an EIS or EA [Environmental Assessment]." Reply at 14-15. Plaintiffs further argue that the 2016 SA did not even review the ELP. Id. Plaintiffs are again mistaken. Contrary to Plaintiffs' contentions, the 2016 SA did facilitate informed decision-making by reviewing the impacts of the ELP. In fact, three of the four elements of the proposed action were central features of the subsequently-adopted ELP. As described in the "Overview of the Proposed Action" in the 2016 SA:

- To reduce the safety risks of operating aged facilities and equipment, inventory and MAR [material at risk] reduction will be employed.
- To reduce mission and safety risks, process reinvestments will be performed ranging from maintenance of existing equipment to replacement of processes with new technology in existing and enduring facilities.

. . . .

- To reduce safety and mission risks, the mission-critical existing and enduring facilities and infrastructure will be maintained and upgraded through an extended life program."

AR_00020621 (emphasis added). Plaintiffs err in suggesting that NNSA did not review the ELP in the 2016 SA, as the defining features of that program—equipment and building upgrades to extend the safe operation of existing facilities and the reduction of "material at risk"—were included as central elements of the proposed action.

Further, it was only after NNSA completed the analysis in the 2016 SA that the agency approved the proposed action. Although Plaintiffs suggest that this decision was pre-determined, Reply at 14-15, NEPA permits agencies to undertake extensive study into the formulation of a proposed action prior to its adoption, so long as there is no "irreversible and irretrievable commitment of resources" before the action is approved at the conclusion of the NEPA process. Tenn. Envtl. Council v. Tenn. Valley Auth., 32 F. Supp. 3d 876, 885-6 (E.D. Tenn. 2014). Here, NNSA made no such commitment before issuing the 2016 AROD. In fact, NNSA did not start construction of the reduced-scale UPF and implementing the ELP upgrades approved in the 2016 AROD until after it was issued. AR_00031085-86. Plaintiffs' efforts to establish that the decision to approve the proposed action was pre-determined are unsupported.

Finally, Plaintiffs' complaint that "NNSA issued the 2016 SA *with no public involvement*" overlooks the extensive public coordination that took place in connection with the 2011 SWEIS that preceded it. NNSA initiated this process by providing notice of its intent to prepare a SWEIS, requesting comments on the scope of that SWEIS and holding two public

hearings. AR_00017316-24. NNSA subsequently solicited and reviewed public comments on the draft SWEIS through an approximately three-month public-comment period and by holding two public hearings. AR_00017909. And again, NNSA provided an additional public comment period on the final SWEIS. AR_00017910. NNSA ultimately received 340 sets of written comments in response to its initial scoping notice, AR_00016896, 353 sets of written comments on the draft SWEIS, AR_00016900, and 108 comments from those who spoke at the two public hearings. Id. These comments included separate comments from Plaintiffs Oak Ridge Environmental Peace Alliance ("OREPA") and Nuclear Watch of New Mexico ("Nuclear Watch"), who commented on both the draft and final SWEIS and who both opposed the construction of a new UPF at that time. AR_00017562-73; 17530-39; 17910-13. NNSA was not required to again solicit public input on the range of alternatives when it prepared the 2016 SA. In fact, the Supplement Analysis process does not require a public comment period when NNSA considers whether modifications to a previously-approved action require preparation of a new or supplemental EIS. 10 C.F.R. § 1021.314(c)(3). Through the public review process for the 2011 SWEIS, the public had ample opportunity to comment on the environmental effects of the multiple alternatives considered, including maintaining the status quo under the No Action alternative, performing extensive upgrades under the Upgrade in-Place alternative, or constructing an altogether new EU processing facility under the UPF alternatives.

NNSA reviewed the environmental effects of the ELP under the Upgrade in-Place in the 2011 SWEIS, provided for public comment on that alternative following publication of the draft and final SWEIS, and updated that analysis in the 2016 SA before adopting the ELP as a component of the proposed action approved in the 2016 AROD. This analysis is in addition to the "voluminous internal consideration of the ELP" that Plaintiffs concede is contained within

the "hundreds of pages about the ELP" included in the administrative record. Reply at 15 n.3. This review satisfied the informed decision-making and public participation objectives of NEPA.

C. NNSA reviewed the ELP in the 2018 SA.

The 2018 SA provides yet further NEPA compliance for the ELP. Although Plaintiffs argue this analysis was deficient because "NNSA issued the 2018 SA *three years after* designing the ELP," Reply at 15, this argument neither addresses the sufficiency of the analysis in the 2018 SA nor the opportunity for public comment that NNSA provided through its publication. The fact is NNSA took yet another comprehensive look at the environmental effects of the ELP through this review and included the public in this process, even though not required to do so by regulation. C.F.R. §1021.314(c)(3), AR_00031076. As with the draft SWEIS, Plaintiffs OREPA and Nuclear Watch again submitted comments on the 2018 SA, AR_00031255-85, and NNSA again considered and responded to these public comments. AR_00031133-52.

Only if NNSA determined through this process that continuing its operations involved significant environmental impacts beyond those previously considered would agency regulations have required a new or supplemental EIS. 10 C.F.R. § 1021.314(a). But this is not what occurred. Rather, for the reasons explained in the 2018 SA, NNSA concluded that "there are no currently identified significant new circumstances or information relevant to environmental concerns that warrant preparation of a supplemental or new EIS." AR_00031122. Plaintiffs have demonstrated no error in this conclusion, and NEPA's aims of informed decision-making and public participation would not be furthered by having NNSA for a fourth time revisit these same issues through yet another public process.

II. A New EA or EIS Would Needlessly Duplicate NNSA's Prior NEPA analysis.

In a variation on these arguments, Plaintiffs argue that the ELP requires an EIS or at least

an EA. Reply at 16. But for many of the same reasons as just discussed, these arguments fail because NNSA has already reviewed the ELP, first, as a component of the Upgrade in-Place alternative reviewed in the 2011 SWEIS, second, as an element of the action reviewed in the 2016 SA, and, third, through the additional analysis of the ELP in the 2018 SA. None of the arguments raised by Plaintiffs require anything further.

A. NNSA has considered the programmatic and site-specific impacts of the ELP and a broad range of alternatives.

Plaintiffs argue that NNSA must prepare an EIS or an EA for the ELP because the 2011 SWEIS only included broad, programmatic analysis and "'[s]omewhere, the [agency] must undertake site-specific analysis, including consideration of reasonable alternatives.'" Reply at 17 (citation omitted). Plaintiffs mischaracterize the nature of the 2011 SWEIS. It is true that the 2011 SWEIS included analysis at the programmatic level of whether to meet the uranium processing mission at Y-12 by either (1) maintaining the status quo through the No Action alternative, (2) undertaking a program of on-going upgrades to existing EU facilities under the Upgrade in-Place alternative, or (3) completely modernizing these operations through the construction of a new UPF. However, the analysis in the 2011 SWEIS did not end there. Rather, as discussed in the United States' opening brief, the 2011 SWEIS also reviewed the reasonably foreseeable upgrades that NNSA would implement under the Upgrade in-Place alternative, including specific upgrades that NNSA has subsequently completed through the ELP. U.S. Br. at 18. Thus, the 2011 SWEIS included both programmatic and project-level analysis of the ELP.

Further, the 2011 SWEIS included the analysis of alternatives required by NEPA. Again, in addition to the No Action alternative, NNSA reviewed at the site-level the Upgrade in-Place alternative and several different configurations of an altogether new EU facility through the three UPF alternatives. NNSA also considered, but eliminated from detailed review, multiple, other

alternatives as unreasonable. AR_00016953-56. These alternatives included alternate site locations for the UPF and an "Alternative Six" or "Curatorship Alternative," which "would involve 'curatorship' of the current [nuclear] arsenal which could be achieved through consolidation, downsizing, and upgrading-in-place the current facility," but no new production to add to the arsenal. AR_00016954. Plaintiffs OREPA and Nuclear Watch proposed "Alternative Six." AR_00017534-36, 17570-71

NNSA ultimately rejected the alternate site location alternatives as unreasonable due to the need to co-locate the UPF with the recently-constructed Highly Enriched Uranium Materials facility. AR_00016954. And NNSA rejected the "Curatorship Alternative" because "many of the elements of a Curatorship approach are embodied within existing SWEIS alternatives," AR_00016955, and because this alternative "would not support current and reasonably foreseeable national security requirements." AR_00017912. Accordingly, NNSA has specifically considered whether to "upgrade the existing EU and non-enriched uranium processing facilities to contemporary environmental, safety, and security standards to the extent possible within the limitations of the existing structures" under the Upgrade in-Place alternative (AR_00016947), whether to move these uranium operations to a new facility under one of the several UPF alternatives, and whether any other alternatives raised by commenters, including an alternative proposed by Plaintiffs, would meet the purpose and need of the proposed action. Plaintiffs' complaints that the 2011 SWEIS contains only "extremely broad analysis" and that nowhere has NNSA considered alternatives to the ELP are belied by the record.[4] Reply at 18.

[4] Plaintiffs' suggestion that there are multiple other means of implementing ELP that NNSA should have reviewed in an EIS also lacks support. Reply at 18. In the 2016 SA, NNSA reviewed a proposed action that would: (1) de-commission the oldest and most deteriorated of Y-12's EU processing facilities (Building 9212) and move those operations to the new UPF (ECF No. 47, Am. Compl. ¶ 65); and (2) upgrade the other two facilities that would continue to contain EU operations (Buildings 9204-2E and the 9215 Complex). AR_00020621, 00020626. Short of

Nor do Plaintiffs' arguments account for NNSA's further site-specific analysis of the ELP through the 2016 SA, the 2018 SA, and the various CE determinations included in the administrative record. This analysis supplements and tiers to the prior analysis of the ELP in the 2011 SWEIS and refutes Plaintiffs' contention that "to the extent *any* NEPA analysis has been prepared bearing on the ELP—it only occurred at the 2011 SWEIS's broader scale regarding the entire modernization of Y-12." Reply at 17. At some point, this analysis must end, and NNSA must be permitted to implement the decisions approved through this multi-layered, NEPA review. Just as NNSA could have proceeded to construction of the Capability-sized UPF alternative following its approval of that alternative in the 2011 ROD, so, too, could it have proceeded to implement the ELP without further site-specific review, if it had instead selected the Upgrade in-Place alternative in 2011. NNSA has reviewed alternatives to the ELP and involved the public in its decisions concerning EU operations at Y-12 through the comment periods for the 2011 SWEIS and the 2018 SA, and Plaintiffs have availed themselves of these opportunities by submitting comments on both documents. NEPA requires nothing further.[5]

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also decommissioning these other two facilities—which was reviewed under the various UPF alternatives in the 2011 SWEIS—there are no other buildings containing EU operations that could have been upgraded under an additional set of alternatives. AR_00030060. To the extent Plaintiffs are instead suggesting that NNSA should have considered upgrading non-EU facilities to conduct EU operations, such an alternative is not "reasonable" under applicable regulations, both because: (1) EU operations can only be performed within the Perimeter Intrusion Detection and Assessment System fence (AR_00017294); and (2) the activities required would be similar to the construction of a new facility, which would exceed the cost constraints that resulted in modification of the previously-approved, single-structure UPF. As referenced in the 2011 SWEIS, "the term 'reasonable' has been interpreted by CEQ to include alternatives that are practical or feasible from a common sense, technical, and economic standpoint." AR_00016928.

[5] Plaintiffs highlight a deficiency in their position when they concede that alleged defects in NNSA's analysis of the ELP could be remedied by the issuance of an EA. Reply at 16. Many courts have held that an EA does not necessarily require a public comment period. See, e.g., Bering Strait Citizens for Responsible Res. Dev. v. U.S. Army Corps of Engineers, 524 F.3d 938, 952 (9th Cir. 2008) ("Our conclusion is consistent with the views of other circuits, which uniformly have not insisted on the circulation of a draft EA."); Fund for Animals, Inc. v. Rice, 85

Finally, Plaintiffs err in arguing that an EIS is required because NNSA rejected the Upgrade in-Place alternative on environmental grounds. Reply at 19. The sole case cited by Plaintiffs in support of this contention is Klamath Siskiyou Wildlands Ctr. v. Boody, 468 F.3d 549 (9th Cir. 2006). There, the court held the Bureau of Land Management must prepare an EIS in considering whether to adopt a policy that closely resembled an alternative that it had "unequivocally" rejected several months earlier due to serious environmental concerns. Id. at 559, 561-62. Here, these factors are not present. The record excerpt cited by Plaintiffs to purportedly establish that NNSA rejected the Upgrade in-Place alternative on environmental grounds is not a decision document, but is instead part of the description of the Upgrade in-Place alternative in the 2011 SWEIS. That description states: "Although existing production facilities would be modernized [under this alternative], it would not be possible to attain the combined level of safety, security, and efficiency made possible by the UPF Alternative." AR_00016880. And it further provides: "the Upgrade in-Place Alternative is included as a reasonable alternative because it would correct some of the facility deficiencies associated with the existing EU and non-enriched uranium processing facilities, and could potentially require smaller upfront capital expenditures than the UPF." Id. Far from establishing that NNSA rejected this alternative on environmental grounds, this language establishes that NNSA found it to be one reasonable means of achieving the purpose and need of the proposed action. Although NNSA in the 2011 ROD, which was the actual decision document approving the proposed action reviewed in the 2011

F.3d 535, 549 (11th Cir.1996) ("[T]here is no legal requirement that an Environmental Assessment be circulated publicly and, in fact, they rarely are."). Courts have likewise recognized that consideration of only two alternatives—no action and a preferred alternative—may be permissible under an EA. See, e.g., Native Ecosystems Council v. U.S. Forest Serv., 428 F.3d 1233, 1246 (9th Cir. 2005). Accordingly, issuance of an EA here would add nothing beyond the analysis that is already contained in the 2016 and 2018 SAs and, in fact, the 2018 SA actually exceeded what is required by regulation by providing a public comment period.

SWEIS, subsequently selected the Capability-sized UPF alternative, it based that decision on a multitude of factors. AR_00017910-11. NNSA did not "unequivocally" reject the Upgrade in-Place alternative as environmentally unacceptable or preclude its adoption five years later as a component of the modified action. Plaintiffs' citation to Klamath Siskiyou, like its other efforts to establish that further NEPA review is required for the ELP, falls short.

B. NNSA's NEPA review complies with the "intensity criteria."

Plaintiffs' citation to the "intensity criteria" under 40 C.F.R. § 1508.27 fares no better. Critically, NNSA has already prepared an EIS for the ELP, as well as further NEPA analysis for this program through the 2016 and 2018 SAs. Although Defendants recognize that the intensity criteria may require preparation of an EIS, NNSA has already met any such requirement through its issuance of the 2011 SWEIS and its subsequent NEPA review of the ELP. As NNSA concluded, the intensity criteria do not require it to duplicate that prior analysis. AR_00031145.

Even were this not the case, Defendants have already explained why the intensity factors cited by Plaintiffs would not require a supplemental EIS, U.S. Br. at 24-26, and Plaintiffs' reply raises nothing new. First, the ELP is not "highly uncertain" and does not "involve unique or unknown risks" (Reply at 20-21) because NNSA has considered and quantified the radiological risks at Y-12 under a worst-case scenario in its multiple NEPA reviews and is undertaking measures to further mitigate these risks. U.S. Br. at 25. NNSA has also specifically considered in the 2016 and 2018 SAs new information concerning these risks. U.S. Br. at 41-45. NNSA need not await further analysis of these risks before implementing the action approved in the 2016 AROD due to uncertain and unknown risks.[6] Second, comments from a seismologist

[6] See, e.g., Sierra Nevada Forest Prot. Campaign v. Rey, 573 F. Supp. 2d 1316, 1345 (E.D. Cal. 2008) ("the existence of uncertainty does not preclude the agency from taking action, so long as that uncertainty has been identified."), aff'd in relevant part Sierra Forest Legacy v. Sherman, 646 F.3d 1161 (9th Cir. 2011) (per curiam); Sierra Club v. Sigler, 695 F.2d 957, 970 (5th Cir.

submitted by Plaintiffs do not transform the ELP into a "highly controversial" action. These comments assert that NNSA has committed to use "vulnerable facilities before obtaining any real understanding of" of their risk. Reply at 22. But NNSA has, in fact, quantified and accepted the risks of continued use of these facilities through its worst-case scenario analysis. U.S. Br. at 41-43. NNSA's continuing study of these risks and means by which they might be further mitigated provides more, not less, assurance that the agency is adequately addressing these risks in its implementation of the ELP. It is appropriate to defer to the agency's expert conclusions on these issues of differing opinions. U.S. Br. at 50. Third, NNSA has already considered the "public health or safety" risks of the ELP, Reply at 23, again through its review of the seismic risks associated with these facilities in the 2011 SWEIS and the 2016 and 2018 SAs. Plaintiffs' contention that NNSA only considered these impacts for the Upgrade in-Place alternative, not the ELP, id., fails for all the reasons explained above. Finally, Plaintiffs' assertion that the ELP "may establish a precedent" for other actions, Reply at 24, fails to take into account the unique nature of the new construction and proposed upgrades approved for the EU facilities at Y-12 and the lack of binding effect that NNSA's approval of the ELP could have on the NEPA reviews for other NNSA facilities. The intensity criteria provide no basis for requiring further NEPA compliance for the ELP beyond what NNSA has already completed.

III. NNSA has Properly Applied CEs to Actions Implementing the ELP.

Plaintiffs' broad challenges to NNSA's use of CEs fail for much the same reasons as their challenges to the NEPA compliance for the ELP as a whole—namely, NNSA has already reviewed the environmental impacts of the ELP in the 2011 SWEIS and the 2016 and 2018 SAs. NNSA's CE determinations provide an additional level of NEPA review for its site-specific

1983) ("the unavailability of information, even if it hinders NEPA's 'full disclosure' requirement, should not be permitted to halt all government action.").

actions implementing the ELP in order to ensure that the agency did not previously overlook any project-level impacts. These determinations, need not, as Plaintiffs seem to assume, duplicate the programmatic analysis already completed for the ELP. Consequently, even if Plaintiffs were to establish any defects in these individual CE determinations (which they have not), these defects would be at the individual project or task level, not the programmatic level, and would entitle Plaintiffs to no relief in connection with the ELP as a whole.

Nor can Plaintiffs alternately seek relief at the project or task level, as opposed to the programmatic level, as Plaintiffs have pled no claims challenging particular CE determinations, and the majority of such claims would be moot because NNSA has already completed a majority of the projects or tasks approved under CEs. U.S. Br. at 31-32, 32 n.8. In any event, the individual CE determinations comply with NEPA's requirements. Plaintiffs' challenges to NNSA's CE determinations, like their other challenges, fail to demonstrate any deficiencies in NNSA's NEPA compliance for the ELP, much less that NNSA must prepare another EIS for this previously-approved program of on-going upgrades to existing EU facilities.

A. NNSA has not unlawfully segmented the actions implementing the ELP.

Plaintiffs contend that NNSA's CE determinations violate NEPA by failing to consider segmentation and that "[t]he Government has no response" to this alleged defect. Reply at 24-25. Plaintiffs are incorrect. The majority of NNSA's CE determinations are tiered to and incorporate the 2011 SWEIS,[7] U.S. Br. at 28-29, AR_00031148 (discussing use of "tiering"), in

[7] Plaintiffs' contention that CEs may not tier to a prior EIS (Reply at 26 n.11) lacks support, as there is no basis to conclude that an EA can tier to an EIS, but CE determinations cannot. If anything, there is all the more reason to permit such determinations to tier to programmatic NEPA documents, as they are generally abbreviated, site-specific documents that would not include the type of broad analysis contained in an EIS. See Wilderness Watch & Pub. Empls. for Envtl. Responsibility v. Mainella, 375 F.3d 1085, 1095 (11th Cir. 2004) ("Documentation of reliance on a categorical exclusion need not be detailed or lengthy. It need only be long enough to indicate to a reviewing court that the agency indeed considered whether or not a categorical

which NNSA specifically addressed segmentation in response to comments from OREPA. In those comments, OREPA alleged, as it does here, that "DOE/NNSA was segmenting its NEPA analysis in order to minimize the overall impact of planned construction of facilities." AR_00017567. NNSA responded: "The SWEIS provides a comprehensive analysis of the current environmental situation at Y-12, and of ongoing and reasonably foreseeable future operations, activities, and facilities." AR_00017671. Those "reasonably foreseeable future operations, activities, and facilities" included many of the projects that Plaintiffs cite as evidence of improper segmentation. AR_00016947-48. Based on this review, NNSA concluded: "The SWEIS includes an analysis of all proposed actions and reasonable alternatives which are ripe for analysis and decisionmaking. Consequently, NNSA disagrees that it has segmented its NEPA analysis." AR_00017671. NNSA did consider segmentation in the 2011 SWEIS, which is incorporated into the majority of its CE determinations. Having already considered the overall impacts of its projects "to extend the life of existing facilities" under the Upgrade in-Place alternative, AR_00016947, NNSA need not duplicate that analysis in each CE determination.

Further, improper segmentation exists where a major federal action is subdivided into smaller parts to avoid an EIS. See, e.g., Highway J Citizens Group v. U.S. Dep't of Transp., 456 F.3d 734, 738 n.8 (7th Cir. 2006); Tenn. Envtl. Council, 32 F. Supp. at 890. Here, that circumstance is not present, as the alleged major federal action at issue—the ELP—was reviewed in the 2011 SWEIS (and again in the 2016 and 2018 SAs). Rather than preparing CEs to avoid preparation of an EIS for the ELP, NNSA has already prepared an EIS that reviewed the collective impacts of that program. To the extent that any of the implementing actions challenged by Plaintiffs were not specifically described in the 2011 SWEIS, it is only because

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exclusion applied and concluded that it did."). Surely, a CE determination can, as here, incorporate by reference the broader analysis contained in a prior EIS.

they were not reasonably foreseeable at that time and therefore were not—and could not—have been considered in a single EIS. See Tenn. Envtl. Council, 32 F. Supp. 3d at 890 ("The doctrine of improper segmentation is limited . . . to proposed actions."). Plaintiffs' contention that NNSA must nonetheless review these actions in a single EIS in order to avoid improper segmentation proposes a wholly infeasible standard and would require redundant analysis of NNSA's program for extending the life of its existing EU facilities. It is only by repeatedly conflating the ELP as a whole and the individual actions implementing the ELP that Plaintiffs are able to argue to the contrary.[8] NNSA reviewed the collective impacts of the ELP and the reasonably foreseeable projects implementing the ELP in the 2011 SWEIS, which is incorporated into the majority of the CE determinations challenged by Plaintiffs. NNSA need not revisit that analysis for each incremental action that it takes to implement the ELP in order to avoid improper segmentation.

B. NNSA properly relied upon CEs in implementing the ELP.

Plaintiffs next argue that NNSA relied upon purportedly inapplicable CEs, largely repeating the arguments raised in their opening brief. Reply at 27-29. As Defendants have already explained, the CE determinations discussed by Plaintiffs involved a range of routine maintenance and equipment installation and relocation projects that fell squarely within the terms

[8] For instance, Plaintiffs contend "there is no merit to the argument that Plaintiffs seek to 'impose a wholly infeasible standard upon NNSA by requiring analysis in a single document' for the ELP" (Reply at 26, quoting U.S. Br. at 30) (emphasis added) and that "analyzing the entire Extended Life *Program's* impacts is precisely the proper role for an EIS." Reply at 26. The fully-quoted passage from the United States' brief actually states: "acceptance of Plaintiffs' argument would impose a wholly infeasible standard upon NNSA by requiring analysis in a single NEPA document of . . . all individual actions that NNSA may implement through the ELP, regardless whether those actions are proposed or foreseeable at any given moment in time." U.S. Br. at 30 (emphasis added). Plaintiffs' substitution of "the ELP" for "all individual actions that NNSA may implement through the ELP" language shows how they are treating the ELP and the individual actions implementing that program as interchangeable, when they are not. Programmatic impacts can be reviewed in an EIS, but all projects implementing that program, regardless of how unforeseeable they are at the time of the EIS, cannot.

of the CEs applied by NNSA. U.S. Br. at 31-34. Defendants do not repeat those arguments here, and the few additional points that Plaintiffs make on reply fail to support their position.

First, Plaintiffs appear to confirm that these challenges only seek to compel NNSA to prepare an EIS for the ELP and do not seek to challenge individual CE determinations. See, e.g., Reply at 27 n.12 ("Plaintiffs' claim that an EIS is necessary for the ELP is certainly not moot, as the ELP remains ongoing."). But, for all the reasons explained above, NNSA's compliance for the ELP as a whole is contained in the 2011 SWEIS and the 2016 and 2018 SAs, and the analysis in its CE determinations merely supplements that prior analysis at the project or task level, not the programmatic level. Consequently, even if Plaintiffs were to establish any defects in these determinations (which they have not), such defects would not entitle them to the relief they seek —i.e., preparation of a new or supplemental EIS to address the ELP's programmatic impacts.

Second, in seeking a determination that all of NNSA's CE determinations are unlawful, Reply at 27, Plaintiffs make clear the over-reaching nature of their challenges. Plaintiffs' contentions that all of the actions approved under CEs "are unprecedented" and the "opposite of 'routine,'" Reply at 29, are belied by the description of these CE determinations in the second supplemental index for the 2018 SA. As discussed in the United States' opening brief, that index "reveals a range of on-going maintenance and upgrade projects associated with the continued operation of aging, industrial facilities, including the upgrade and/or replacement of electrical, shelving, fan, sprinkler, waterline, lighting, elevator jack, loading dock, and other equipment." U.S. Br. at 32 (citing ECF No. 52-1). These are not "unprecedented" actions that give rise to the need for a new or supplemental EIS, but are instead routine actions associated with the on-going operation and upkeep of the enduring EU facilities at Y-12.

Third, Plaintiffs concede that the CE determinations are "focused on non-seismic

upgrades," while simultaneously claiming the determinations are unlawful because they "do not address seismic concerns." Reply at 28. These arguments again demonstrate that these challenges are misdirected against NNSA's CE determinations. NNSA is not deciding in its CE determinations whether to adopt or continue the ELP, as that decision was already made in the 2016 AROD. Rather, NNSA is supplementing its review of the site-specific impacts of the individual projects or tasks implementing that previously-approved program. NNSA need not again consider seismic and other programmatic risks associated with the ELP in its individual CE determinations or prepare another EIS for the ELP based upon these site-specific activities implementing that already-approved program, particularly given that Plaintiffs have conceded that these tasks do not involve seismic risks. Plaintiffs' efforts to demonstrate the inapplicability of the CEs invoked by NNSA for its maintenance and upgrade projects all fail.

C. NNSA has considered "extraordinary circumstances."

As with the preceding arguments, Defendants have already addressed the majority of Plaintiffs' arguments concerning "extraordinary circumstances," U.S. Br. at 34-37, and do not repeat those responses here. However, Defendants do respond to a few specific points. First, in their opening brief, Defendants noted that NNSA reviewed a broad range of environmental considerations under a broad range of environmental statutes in one of its CE determinations, but ultimately identified no environmental issues that would preclude the use of a CE for that project. Id. at 35. The same holds true for a majority of the CE determinations included in the record. AR_00031349-483; 31526-571; 31572-645. In response, Plaintiffs contend that "courts have regularly rejected the notion that complying with other statutes is functionally equivalent to following NEPA's action-forcing procedures." Reply at 30 (footnote omitted). This argument mischaracterizes Defendants' position. Rather than arguing that compliance activities completed

by NNSA under a separate statute also satisfy the agency's NEPA obligations, Defendants stress that the CEs prepared as part of the NEPA process demonstrate how NNSA considered the very types of factors that could give rise to an extraordinary circumstances determination and determined they did not exist. The fact that this review considered environmental considerations under a broad range of other statutes only demonstrates the comprehensiveness of this review. The cases cited by Plaintiffs are not on point. Reply at 30 n.14.

Second, Plaintiffs contend that, "because these CEs reflect components of the ELP, which is fraught with highly uncertain impacts and scientific controversy, NNSA could not validly determine that no extraordinary circumstances apply." Reply at 31. Again, this sweeping contention that in no circumstance could NNSA determine that "no extraordinary circumstances apply," regardless of how mundane the project or task, highlights how Plaintiffs' position erroneously conflates the ELP with the individual actions implementing that program. NNSA may properly approve routine actions, such as "electrical upgrades to machinery and shelving replacements," through CEs rather than EISs, as NNSA has determined through a separate NEPA process that such projects "do not individually or collectively have significant environmental impacts." U.S. Br. at 9. This is particularly true here, given that NNSA considered the broader programmatic impacts of the ELP through the 2011 SWEIS and 2016 and 2018 SAs. NNSA need not repeat that programmatic analysis in its CE determinations.

Third, Plaintiffs argue that, for several CE determinations, Defendants have invented a "classic *post hoc* rationalization of government counsel" that is "set forth nowhere in the record" in arguing that certain impacts are not uncertain "because they are covered by permits." Reply at 31. Plaintiffs are incorrect. In support of this argument, Defendants quoted language included in these CE determinations stating that the "actions would require no 'new or modifications to

environmental permits.'" U.S. Br. at 36. Implicit in this language is that the projected impacts are within the limits of existing permits or that no permits are required. This is not a *post hoc* rationalization, but is based directly upon language included in the CE determinations.

Finally, Plaintiffs dispute Defendants' position that NNSA satisfied NEPA by checking a box in five CE determinations indicating no extraordinary circumstances existed after reviewing a broad range of environmental considerations. Reply at 32. According to Plaintiffs, even though this listing of environmental considerations immediately precedes the "no extraordinary circumstances" determination, the listing and determination should be treated as entirely separate because they appear in consecutive, but separate sections of the form. Id. Such *pro forma* insistence that NNSA duplicate this same analysis under the no extraordinary circumstances determination serves no function, as it is readily apparent that NNSA has considered the very factors that could give rise to such a determination. In fact, these determinations far exceed the minimal standard that the agency briefly indicate that it considered whether a CE applied and concluded it did. Wilderness Watch, 375 F.3d at 1095. Plaintiffs' "extraordinary circumstances" arguments all fall short.

IV. NNSA has Complied with NEPA in its Analysis of the Modernization of Y-12.

A. NNSA has not unlawfully segmented its modernization plans.

Plaintiffs' next set of arguments concerning unlawful segmentation largely duplicates their arguments concerning lack of alternatives to and public participation in NNSA's plan for modernizing Y-12, which Defendants address above. Suffice it to say, far from "radically changing the scope of what the 2011 SWEIS proposed," Reply at 34, the proposed action reviewed in the 2016 SA was within the range of alternatives considered in the 2011 SWEIS, and NNSA involved the public in preparing both the 2011 SWEIS and 2018 SA. In fact, Plaintiffs'

contention that "NNSA has never prepared any NEPA analysis that considers the impacts of, or alternatives to, its new Y-12 modernization plan," id. at 33, is refuted by their earlier recognition that the 2011 SWEIS reviewed overall modernization. Id. at 11 ("The 2011 *Site Wide* EIS only considered alternatives for the *overall* modernization of *the entire* Y-12 Complex.").

Plaintiffs' argument that "the agency's scattershot approach to NEPA compliance lacks any apparent unifying principle—other than exclusion of public input" likewise fails. Reply at 32. NNSA has reasonably structured its NEPA compliance to review programmatic and foreseeable project-level impacts in the 2011 SWEIS and the 2016 and 2018 SAs—two of which reviews included public comment—and to take an additional look at site-level impacts as it proposes particular maintenance and upgrade tasks. NNSA determines the appropriate level of NEPA compliance for this additional review on a case-by-case basis, often concluding that the projects are covered by CEs, but sometimes preparing EAs where the agency determines a more extensive review is appropriate. This is precisely what NNSA did in preparing an EA for its Emergency Operations Center, which had a different scope and location than NNSA reviewed in the 2011 SWEIS. U.S. Br. at 39. By contrast, the actions reviewed in the 2016 SA were within the same footprint (AR_00020622) and range of alternatives previously reviewed. In any event, the manner by which NNSA elects to comply with NEPA for one project does not determine what NEPA requires for another. NNSA has not unlawfully segmented its NEPA analysis in reviewing programmatic and foreseeable project-level impacts of the ELP in the 2011 SWEIS and 2016 and 2018 SAs and completing further site-level review as it proposes specific projects.

B. NNSA has reviewed the new information cited by Plaintiffs.

Plaintiffs raise two principal arguments on reply concerning new information, alleging that (1) NNSA cannot take action to implement ELP while it continues to undertake further

seismic analysis; and (2) NNSA's bounding analysis is insufficient. Neither argument has merit. As discussed above, uncertainty does not preclude agency action. This is particularly true, where, as here, NNSA has identified that uncertainty and is diligently working with other agencies and entities to further develop its understanding of seismic risks and incorporate those findings into its safety-basis document. U.S. Br. at 49.

The Defense Nuclear Facilities Safety Board ("DNFSB"), which has oversight over NNSA's EU operations at Y-12, has specifically endorsed the reasonableness of NNSA's 2020 timeline for completing this review. Id. Upon completion of that review, NNSA may adopt further safety measures, including additional structural upgrades, and will complete any further NEPA analysis required for any new improvements that may be proposed. AR_00031147 (NNSA's review of updated seismic information "is on-going and may result in additional proposed seismic upgrades, which will be subject to appropriate NEPA analysis."). Pending the completion of that review, NEPA does not require NNSA to forego implementing the important safety improvements it has already approved under the ELP, and Plaintiffs' assertion that NNSA insists "it will engage in no further NEPA process" has no basis. Reply at 36.

Plaintiffs' challenges to NNSA's use of a "bounding analysis" likewise fail. Through this analysis, NNSA quantified the environmental effects that would result under a worst-case scenario of an unconfined release of nuclear materials from the EU facilities at Y-12. U.S. Br. at 41-42. These effects include a maximum "risk of 0.4 latent cancer fatalities in the offsite population that could result from the unlikely airplane crash event and a risk of one latent cancer fatality in the entire 50-mile population that could be expected every 2,500 years from a design-basis fire." AR_00031147. In fact, even if the new seismic information showed an increased likelihood of a stronger earthquake at Y-12, NNSA has concluded that the actual human health

consequences would likely be significantly lower than these estimates, given the reduction of "material at risk" in the existing facilities. U.S. Br. at 42-43 (discussing AR_00031108). There is no basis for second-guessing these expert determinations by the agency.

There is likewise no basis for determining that the agency has not complied with 40 C.F.R. § 1502.22. This regulation requires federal agencies to make clear that "there is incomplete or unavailable information" when preparing an EIS. 40 C.F.R. § 1502.22. This regulation was not implicated when NNSA prepared the 2011 SWEIS, as NNSA relied upon "the most current seismic information available for the proposed UPF site" in that review, AR_00016943, and Plaintiffs have identified no missing or incomplete information that existed when NNSA prepared that analysis. Nor was the regulation triggered when NNSA subsequently prepared the 2016 and 2018 SAs, as those documents were governed by 10 C.F.R. § 1021.314(c), not the EIS requirements of 40 C.F.R. § 1502.22. NNSA nonetheless reviewed in those documents the latest-available seismic information, including the 2014 USGS seismic maps cited by Plaintiffs; identified additional seismic review that remains to be completed; and explained why this information was unlikely to change its prior conclusions. See, e.g., AR_00020614, 00031086-87; 00031096-97, 00031108-09; 00031150. NNSA fully complied with 40 C.F.R. § 1502.22 and 10 C.F.R. § 1021.314(c) in considering the new seismic information identified by Plaintiffs, and Defendants have otherwise already refuted Plaintiffs' other arguments alleging that NNSA's bounding analysis is inconsistent with regulatory guidance. U.S. Br. at 46-48. NNSA has adequately considered the new information cited by Plaintiffs. Id. at 39-45.

V. NNSA has Taken a "Hard Look" at the Effects of its Safety Improvements.

Plaintiffs' final set of arguments seek to fault NNSA for its allegedly "backward-looking" analysis taken in the 2016 and 2018 SAs. Reply at 40-42. These arguments again fail. First,

Plaintiffs argue that, "[b]ecause the 2016 SA merely looked back at an already-designed new program, and failed to consider any alternatives, it did not fulfill NEPA's core mandate to take a hard look *before* making a decision." Reply at 41. This argument confuses two separate concepts—the design of the ELP and the approval of the ELP. Of course, NNSA put significant effort into the design of the UPF and ELP proposals reviewed in the 2016 SA, as there would have been nothing to review, if NNSA had not yet developed a proposed action. But, it was only after NNSA completed its review in the 2016 SA that it made the decision in the 2016 AROD to approve that proposed action. Again, there was no "irreversible and irretrievable commitment of resources" until after NNSA issued the AROD. Tenn. Envtl. Council, 32 F. Supp. 3d at 885-6.

Plaintiffs likewise err in arguing that the 2018 SA is legally deficient because it only provides a backwards look at an already-approved action and that NNSA is refusing "to undertake any further NEPA analysis." Reply at 41. Contrary to Plaintiffs' contentions, the 2018 SA is a type of NEPA analysis. In fact, it is the very type of NEPA analysis that DOE regulations require NNSA to undertake when considering whether new information requires a supplemental EIS, and NNSA actually exceeded the applicable regulatory requirements by providing for public comment on the draft 2018 SA. 10 C.F.R. § 1021.314(c). To the extent NNSA determined through its consideration of the new information and public comments received that its operations involved significant environmental effects not previously considered, the regulation would have required a new or supplemental EIS. Id. But, for the reasons explained in the 2018 SA, NNSA did not so conclude. AR_00031122.

The leading example that Plaintiffs highlight in an attempt to demonstrate error in this analysis—NNSA's conclusion that retention of a larger security perimeter would not result in delays in clean-up (Reply at 41)—ultimately proves entirely reasonable. As NNSA explained,

"DOE-EM frequently completes cleanup operations in secure areas," and, "notwithstanding . . . potential increased costs and loss in efficiency, the timeline for cleanup remains the same under the 2016 amended ROD as it was under the 2011 ROD." AR_00031081. This conclusion logically stems from the fact that increased security requirements may require more staffing for security checkpoints, but will not prevent workers from getting to their jobs at the clean-up site each day. There is nothing arbitrary and capricious about this and the other conclusions in the 2018 SA, and Defendants have already refuted Plaintiffs' final contention that NNSA does not understand the risks of continuing to use aging facilities for some EU operations. U.S. Br. at 42-43. As explained in the 2018 SA, "even if the seismic hazard increases" as a result of the new seismic information, "the actual consequences from an earthquake are likely to be less than estimated in the 2011 SWEIS" due to the reduction of "material at risk" in Y-12's older EU facilities. AR_00031108. The Court should affirm the sufficiency of NNSA's NEPA review.

CONCLUSION

NNSA has completed a three-fold NEPA review of the actions approved in the 2016 AROD through the 2011 SWEIS, 2016 SA, and 2018 SA. Through these reviews, NNSA has considered all of the "new information" cited by Plaintiffs, considered alternatives to the action, and actively involved the public by soliciting comments on both the 2011 SWEIS and 2018 SA. NNSA has also completed additional site-level analysis, frequently through the use of CEs, as it implements particular projects under the ELP. Finally, NNSA continues to review information concerning seismic risks, is engaged in on-going consultation with DNFSB in a continuing effort to improve the safety of its operations at Y-12, and will complete appropriate NEPA compliance for any future structural upgrades that it proposes. NNSA has amply discharged its NEPA obligations for its on-going program of safety improvements at Y-12.

Respectfully submitted this 31st day of May, 2019.

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CERTIFICATE OF SERVICE

I hereby certify that, on May 31, 2019, I electronically filed the foregoing document and its attachments with the Clerk of the Court using the CM/ECF system, which will send notification of the filing to all parties registered with CM/ECF. The foregoing document was also sent to the below individual via overnight delivery, United States Postal Mail:

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