

**From:** Biernoff, Ari <abiernoff@slo.state.nm.us>  
**Sent:** Tuesday, September 22, 2020 7:38 PM  
**To:** Holtec-CISFEIS Resource  
**Subject:** [External\_Sender] Public Comment - Holtec International HI-STORE, Docket ID NRC-2018-0052  
**Attachments:** CPL Comment Letter Final.pdf

Please see the attached public comment letter in this matter from New Mexico Commissioner of Public Lands Stephanie Garcia Richard.

Yours,

**Ari Biernoff**

*General Counsel*

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Stephanie Garcia Richard  
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September 22, 2020

[Via electronic mail \(Holtec-CISFEIS@nrc.gov\)](mailto:Holtec-CISFEIS@nrc.gov)

United States Nuclear Regulatory Commission  
Attn: Program Management, Announcements and Editing Staff  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001

Re: Holtec International HI-STORE, Docket ID NRC-2018-0052

Dear Commissioners:

This comment is submitted in response to the United States Nuclear Regulatory Commission's ("NRC") solicitation of public comment regarding Holtec International's ("Holtec") application to build and operate a nuclear waste storage facility in New Mexico. *See* 85 Fed. Reg. 16150 (March 20, 2020); 85 Fed. Reg. 23382 (April 27, 2020); 85 Fed. Reg. 37964 (June 24, 2020).

Holtec's proposed project is problematic for many reasons. The intended site is located in the middle of the Permian Basin, one of the world's most productive oil and gas regions. Nearly 2,500 oil, gas, and mineral wells or sites are operated by 54 different businesses or entities within a 10 mile radius of the proposed site. Locating a nuclear storage site above active oil, gas, and mining operations raises serious safety concerns.

Holtec has falsely claimed to have secured agreements from oil and gas operators at or around the site to restrict these activities, specifically assuring the NRC that oil and gas drilling will only occur at depths greater than 5,000 feet. However, there are no such agreements containing these restrictions in place with oil and gas lessees at the project site or the State Land Office. One agreement has been made with Intrepid Mining LLC, a potash mining company, but that agreement has not been approved, as required by that company's lease terms, by the New Mexico State Land Office ("State Land Office").

Given the State Land Office's mineral ownership of the land and the lack of restrictions on mineral development at the site, any claim that activities at the site have been limited is incorrect. Holtec's submissions to the NRC, including the company's Facility Environmental Report and

Safety Analysis Report, include statements that have the potential, intended or not, to mislead federal regulators as they consider the safety implications of the proposal. In addition, two State Land Office lessees on or immediately adjacent to the site, COG Operating, LLC and EOG Resources, Inc., previously raised significant concerns about the proposed project at the land use restriction that Holtec requires, particularly its implications for salt water disposal wells, pipelines, and horizontal wells underneath the site that Holtec might determine – using unknown criteria – will “disturb or conflict” with its storage operations. (See Exhibit A, attached). Both companies advise that they will explore all legal options if the State Land Office were to impose a restriction on oil and gas activities permitted under their current leases, along the lines of what Holtec seeks. A third State Land Office lessee near the intended nuclear waste site is separately submitting a public comment letter to NRC outlining its concerns.

Holtec actually proposes a *de facto* permanent storage site for nuclear waste shipped from operating, decommissioning, and decommissioned reactors across the country. Considering the initial and planned expansions, it is unlikely to actually serve only as an interim facility. In addition, the proposed location, in one of the world’s top producing oil and gas regions, could have an adverse impact on one of New Mexico’s key economic engines.

The nuclear waste storage/disposal application also raises significant issues with respect to transportation safety, among other concerns; however, the State Land Office’s comments herein are primarily focused on errors, omissions, and unfounded assumptions in the draft Environmental Impact Statement relating to material legal, financial, environmental, and safety considerations that have a significant bearing on the proposed project.

#### ***New Mexico State Land Office***

The New Mexico State Land Office is an independent state agency responsible for administering around nine million acres of surface and 13 million acres of subsurface estate for the beneficiaries of the state land trust, which include public schools, universities, hospitals and other important public institutions. New Mexico acquired many of these lands, known as state trust lands, under federal legislation (the Ferguson Act of 1898 and the Enabling Act of 1910), with additional lands obtained through subsequent conveyances and exchanges.

As New Mexico’s Commissioner of Public Lands, it is my duty to optimize revenue for New Mexico schoolchildren and other beneficiaries while protecting the long-term health of state trust lands for future generations. By leasing state trust lands for a wide variety of uses, including farming and ranching, renewable energy, and oil and gas development, the State Land Office generates hundreds of millions of dollars each year to support the trust beneficiaries.

The State Land Office manages significant land resources in Lea County in the southeast part of the state, where Holtec’s proposed nuclear waste storage facility would be located. In many instances, the State Land Office controls both surface and mineral estate, and in other instances only one or the other estate. The State Land Office, on behalf of its trust beneficiaries, controls the mineral estate at the site of Holtec’s proposed waste facility.

### ***The Proposed Nuclear Waste Facility***

Holtec seeks regulatory approval from NRC to store metal canisters containing between 5,000 and more than 100,000 metric tons of highly radioactive waste gathered from nuclear facilities across the United States. See United States Nuclear Regulatory Commission, Office of Nuclear Material Safety and Safeguards, NUREG-2237, *Environmental Impact Statement for the Holtec International's License Application for a Consolidated Interim Storage Facility for Spent Nuclear Fuel and High Level Waste – Draft Report for Comment* (“DEIS”) at 1-1, 2-1. The intended site for Holtec’s proposed nuclear waste facility is located in Section 13, Township 20 South, Range 32 East, Section 13, and portions of Section 17 and 18, Township 20 South, Range 33 East, between the cities of Hobbs and Carlsbad, in Lea County near its boundary with Eddy County (the “Site”). See DEIS at 2-2, DEIS Fig. 2-2.1.

While Holtec is seeking authorization to store nuclear waste at the Site for a minimum of 40 years, DEIS at xxii, 1-2, it has made clear its intention to keep waste at the Site for more than a century. DEIS at 2-2 (noting that Holtec “has indicated that it may seek to renew the license for two additional renewal periods of up to 40 years each for a total of up to 120 years”). Holtec has publicly stated that it expects to break ground on the site by 2021 and to accept the first shipment of nuclear waste by 2023, for which it already has booked orders. By Holtec’s own estimates, the nuclear waste that it intends to acquire would remain in Lea County until 2048 at the earliest, and the company acknowledges that there is no designated permanent repository anywhere in the nation for high-level nuclear waste. DEIS at 1-2, 2-21. The company also has advertised that the Lea County site is large enough to receive all of the used nuclear fuel that currently exists in the entire United States.

### ***Holtec’s Misrepresentations About Site Ownership and Control***

NRC should be aware that Holtec consistently has misrepresented its prospective ownership and control of the Site. The DEIS incorrectly states that “the proposed project area is privately owned by the Eddy-Lea Energy Alliance LLC.” DEIS at 2-2. While the surface estate is privately owned, the mineral estate remains the property of the State of New Mexico, held in trust and managed by the State Land Office.<sup>1</sup> This is not a technicality; there are real consequences that follow from Holtec’s misrepresentations; despite the fact that the Site mineral estate is owned and held in trust by the State Land Office, the agency was not consulted by the NRC. See DEIS at iii, 2-29. Instead, the DEIS relies on incorrect and misleading statements made by Holtec that the State Land Office previously noted in its June 19, 2019 letter to the company and NRC (attached as Exhibit B). Had the State Land Office been properly consulted as part of this process, it would have provided NRC staff with accurate information relating to the project site and existing and potential mineral estate activities.

Of great concern to me, Holtec claims that it “is in discussions with the New Mexico State Land Office regarding an agreement to retire potash leasing and mining within the proposed ... project area,” DEIS at 4-4, 5-24. This statement is false. The DEIS does not indicate any

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<sup>1</sup> The DEIS elsewhere acknowledges that “[l]and surrounding the proposed ... project area is either privately-owned or owned by the BLM or the State of New Mexico .... The State of New Mexico owns the subsurface property rights within the proposed ... project area.” DEIS at 3-2. The DEIS’ conclusions, however, are based on the incorrect assumption that Holtec (through Eddy-Lea Energy Alliance LLC, with whom it may have an agreement not disclosed in the record) controls the Site.

analysis by NRC of actual control of mineral resources at the Site, instead simply accepting Holtec's misrepresentation as true.

### ***Impairment of State Trust Mineral Resources***

Holtec has claimed in the past, and the DEIS accepts as true, that the State Land Office and its lessees will limit development of mineral resources to accommodate Holtec's intended use of the Site for nuclear waste storage and disposal. As noted above, Holtec is not "in discussions with the State Land Office" to limit mineral exploration and production at the site.

### **Oil and Gas Development**

Additionally, as the NRC acknowledges, DEIS at 3-6, the proposed nuclear waste facility is in an area of active oil and gas development. Holtec claims that its nuclear waste facility "will have no impact on oil and gas exploration and development in the proposed project area because extraction will ... occur at depths greater than 930 m [3,050 ft]." DEIS at 4-6. While oil and gas production frequently takes place in deeper formations, the DEIS simply assumes without discussion that no shallower development can occur now or in the future. State Land Office oil and gas leases, whose terms are prescribed by the New Mexico Legislature, do not impose any depth restrictions on oil and gas development. NRC's actions to approve Holtec's nuclear waste facility, as contemplated by the DEIS, thus could directly impair both the State Land Office's enjoyment of the full benefit of its mineral rights as well as contractual rights afforded to its oil and gas lessees.

Relying on statements made by Holtec, the DEIS finds that "construction of the proposed CISF would not have an effect on oil and gas operations within the proposed project area" and that the company "has no plans to use any of the plugged and abandoned wells." DEIS at 4-4. This determination is based on incorrect information and unfounded assumptions.

First, this is not an assurance the company can make. The State Land Office leases the Site's mineral estate for oil and gas development. Holtec does not own, lease, or have any control whatsoever over the development of the mineral estate. The State Land Office has active oil and gas leases in the project area, which contain provisions that are intended to facilitate the extraction of oil and gas resources and generate royalties for the public schools. Oil and gas operations are conducted as deemed appropriate by the lessees, as long as the activities are in accordance with the lease terms, State Land Office rules and Oil Conservation Division regulations. These leases are held by production and may remain active for decades to come. Holtec has no authority to dictate what does or does not occur with respect to oil and gas mineral estate development.

Second, the DEIS incorrectly assumes that should oil and gas activities occur, they will not interfere with the project because oil and gas resources will be accessed through off-site drill islands and at depths below 3,000 feet. DEIS at 3-8, 4-5. While it may be true that targets exist at depths between 3,000 and 16,000 feet and the Belco Tetris Shallow and Belco Deep drill islands could provide an offsite location for wells, there is no assurance that this would occur. The State Land Office's oil and gas lease terms are set by statute and do not contain any depth limitations. By law and contract, oil and gas lessees are able to explore and develop resources at any depth. Even assuming the State Land Office desired to restrict mineral development to certain depths, it



would be subject to potential lawsuits for conflict with the statutory lease. (*See* Exhibit A). Additionally, the DEIS does not consider what environmental and safety impacts might reasonably manifest if oil and gas operations did occur at shallower depths

#### Potash Mining

As the DEIS notes, “potash mining is a major part of the Eddy and Lea County economies.” DEIS at 5-24. Potash deposits in the immediate vicinity of the Site are considerable. Potash extraction takes place at depths shallower than 3,000 feet, DEIS at 3-9, so the DEIS’ conclusion that mineral development at the Site will not be impaired by the nuclear waste facility because such development will occur deeper than 3,000 feet, DEIS at 4-6, does not logically follow.

The DEIS recognizes that the project proposal may interfere with potash mineral extraction activities at the Site but views the impact as minor considering that there are other available resources in the region. This conclusion fails to consider that the State Land Office, as the trustee of the mineral estate, is obligated to get revenue from the mineral estate that it owns for the trust beneficiary assigned to that specific tract of land, in this case the state’s public schools. It does not matter that resources exist elsewhere, because the State Land Office’s federal and state mandate is to generate money from all the lands it manages. The DEIS notes that potash demand is likely to increase over time with increased mining over the next 20-30 years, DEIS at 5-2, and with the potential potash resources at the site worth millions of dollars, abandoning the opportunity to develop these resources would result in a significant loss of revenue for public schools.

Furthermore, the DEIS relies on Holtec’s incorrect assumption that it will be able to restrict existing and future potash mining in the area. The DEIS notes that Holtec has asserted that “[t]he New Mexico State Land Office is currently in discussions with Holtec International regarding an agreement in principle to retire any potash, unencumbered by regulatory restrictions, in perpetuity.” DEIS at 4-4. Discussions Holtec may have had with the previous Commissioner of Public Lands did not result in the issuance of any land use restriction, Holtec is not “currently in discussions” with me or my staff about such restrictions, and I have made clear that I do not intend to issue any such restrictions.

Additionally, the EIS found that “Holtec has entered into an agreement with Intrepid to relinquish certain potash mineral rights to the State of New Mexico.” DEIS at 4-4. This statement is misleading in several respects. First, any agreement to relinquish a State Land Office lease for the benefit of a third party would require the approval of the Commissioner. NMAC 19.2.3.18. This has not occurred. Second, if the lease were simply relinquished by Intrepid back to the State Land Office, the potash resource would again be subject to leasing by another company. Regardless, the approval of the Commissioner is legally required. As such, the safety and environmental assessments that have been conducted so far rely on the mistaken assumption that future potash leasing will not occur in the project area.<sup>2</sup> NRC’s conclusion that Holtec’s proposal will have no meaningful impacts on potash development at the Site thus is premised on incorrect or incomplete assumptions.

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<sup>2</sup> *See, e.g.*, DEIS, Section 5.4, Geology and Soils, noting that because Holtec has entered into an agreement with Intrepid and previously discussed a leasing restriction with a prior Commissioner of Public Lands, the risk of soil subsidence from potash mining was low.

### Other Mineral Development

State Land Office control of the Site's mineral estate is not limited to oil, gas, and potash, but encompasses all mineral resources, including caliche, sand, gravel, and other substances. *See* DEIS at 3-6 ("Mineral extraction in the area of the proposed ... project area consists of underground potash mining and oil and gas extraction," and noting active State Land Office mineral leases). As the DEIS notes, the Site is located in an area of dense caliche deposits, DEIS at 3-4, 3-18, and nearby there is active sand, gravel, and quarry stone mining for various purposes, including roads and other infrastructure to support renewable energy projects in the area. DEIS at 5-24, 5-25. In addition to exercising control over mineral resources at the Site, the State Land Office is entitled to access and utilize surface lands to facilitate mineral development; "[a] holder of the dominant estate," a mineral owner "has the right to use the land, both surface and subsurface, absent an express limitation, as is reasonably necessary to enjoy" its property rights. *XTO Energy, Inc. v. Armenta*, 2008-NMCA-078, ¶ 10, 144 N.M. 212. The DEIS does not take any of these considerations into account, particularly the State Land Office's (and its lessees') right to access and utilize the Site's surface for mineral development purposes.

### ***Inadequate Cost-Benefit Analysis***

Holtec has not been forthcoming about the possible conflict between nuclear waste storage and current or future oil and gas development at the Site. The International Atomic Energy Agency appears to share my and State Land Office lessees' concerns about the interaction between nuclear waste storage and preexisting oil and gas development on the very same tract of land. In a 2007 publication, that agency explained that "[a]ny potential site will require an adequately controlled single-use land area to accommodate storage facilities," and that potential waste disposal sites should "avoid land with exploitable mineral and energy resources." International Atomic Energy Agency, *Selection of Away-From-Reactor Facilities for Spent Fuel Storage: A Guidebook*, IAEA-TECDOC-1558 (Sept. 2007) at 3.2.2 (pp. 23-24) (emphases added). Despite Holtec's assurances, it does not appear that the company – or the NRC, through the DEIS – has undertaken a thorough and critical analysis of the potential conflicts between nuclear waste storage and the vital economic activities that are already taking place on the Site.

The DEIS does not capture the full potential costs of the proposed project. It fails to consider the economic cost to the state and region if there were an accident that impacts the ability of companies to work in one of the most productive oil producing regions in the world. Any production decline related to a work stoppage could be hugely detrimental to the state's finances, which is heavily dependent on oil and gas taxes and revenues, as well as local economies. It also fails to recognize the potential negative revenue impact to the state's public schools if restrictions were put in place limiting mineral extraction at the Site.

Additionally, the DEIS does not consider the potential serious legacy costs of an accident. If the mineral estate were to become contaminated, the ability of the State Land Office to generate revenue from the Site and nearby areas could be severely limited or rendered impossible. A radioactive mineral estate could also result in vast remediation costs, which could fall on taxpayers and trust land beneficiaries.

For all the reasons stated above, I strongly urge the NRC to adopt the No-Action

Alternative and to not issue the proposed license to Holtec. I appreciate your attention to these issues. Please let me know if you have any questions or need any additional information from the State Land Office.

Sincerely,

A handwritten signature in blue ink, appearing to read "Stephanie", with a long horizontal flourish extending to the right.

Stephanie Garcia Richard  
Commissioner of Public Lands

Enclosures: June 12 and 14, 2019 Oil and Gas Lessee Letters (Exhibit A)  
June 19, 2019 State Land Office Letter to Holtec (Exhibit B)



June 12, 2019

**HAND-DELIVER AND E-MAIL**

Commissioner of Public Lands  
Stephanie Garcia Richard  
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Santa Fe, NM 87504-1148  
Attn: Ari Biernoff, General Counsel, [abiernoff@slo.state.nm.us](mailto:abiernoff@slo.state.nm.us)

**Re: Holtec International proposed nuclear waste facility in Lea County New Mexico.**

Thank you for your letter dated May 31, 2019 (the Letter), concerning Holtec International's ("Holtec") proposal to build a nuclear waste storage facility in Section 13, Township 20 South, Range 32 East and Sections 17 and 18, Township 20 South, Range 33 East, NMPM, Lea County, New Mexico. COG Operating LLC ("Concho") is the lessee of record of New Mexico State Land Office ("SLO") Lease No. V0-2770-002 which covers the W/2, SE/4 of Section 13, Township 20 South, Range 32 East for a total of 480 acres. Concho is operator of the Hanson State Well No. 1 located in Unit N of Section 13 which produces from the Morrow formation. The Letter asked Concho to comment on a number of issues related to the Holtec proposal.

Concho's top priority is the safety of the environment, our employees and the communities in which we live and work. Impacts to Concho's operations are also a significant concern to Concho. While Holtec is applying for a 40-year permit from the U.S. Nuclear Regulatory Commission to temporarily store high-level radioactive nuclear waste it plans to store in Southeast New Mexico, it admits it has identified no permanent repository. Therefore, Concho must consider both the short and long-term impacts to the environment, people, communities and operations.

In response to the legal issues raised in the Letter, Concho observes that the SLO's authority to grant the "land use restriction or condition" ("LURC") requested by Holtec is unclear. Article 13, Paragraph 2 of the N.M. Constitution provides:

The commissioner of public lands shall select, locate, classify and have the direction, control, care and disposition of all public lands, **under the provisions of the acts of congress relating thereto and such regulations as may be provided by law.**

(emphasis added)

Applicable statutes and rules contemplate multiple prescribed uses of the land and subsurface. For example, the SLO may grant a waiver to an oil and gas lessee if there are potash operations that conflict with the ability to conduct oil and gas operations. 19.2.100.59 NMAC. The SLO may "take" acreage for military purposes for up to 5 years. 19.2.100.54 NMAC. The terms of oil and gas leases issued by the SLO are prescribed by statute and thus must be altered or amended by the state legislature. *ee* 19-10-4.1-4.3 NMAC. Again, the leases provide for other uses of the surface and

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subsurface. For example, the operator must compensate the surface lessee for damage to property. NMSA 1978 Sec. 19-10-4.1, Para. 9 & 11. The SLO also reserves, under the lease, the right to lease geothermal rights under the lands. *Id.* at Para. 20. Concho has been unable to locate any express right or reservation as required by the constitution under relevant laws or regulations granted to the SLO to impose a LURC on behalf of a third-party. Without such express authority, Concho will consider all legal options to protect its lease including the filing of an administrative contest.

Setting aside whether the SLO has the right or power to impose a LURC on Concho's oil and gas lease, Concho has numerous operational concerns around the imposition of such a LURC, as Concho already has a well operating in this area. For example, would operations be allowed to continue? Would a ban on oil and gas development between the surface and a depth of 3,000 feet prevent Concho from drilling or running casing through that vertical interval? Would Concho be required to alter its current drilling and completion practices to accommodate the "ban" in that interval? Would pipelines for oil, gas or water be allowed? Would salt water disposal wells be allowed in or near the area to receive produced water from wells producing from the site? Additionally, Concho has concerns regarding the prohibition of horizontal wells underneath the proposed site based on Holtec's determination that the wells would "disturb or conflict" with its use of the area. What criteria would Holtec use to determine if there was a disturbance? Has Holtec conducted a study or provided data to support what would be considered a disturbance or a conflict? If a LURC were granted to Holtec, it may amount to a condemnation of Concho's oil and gas lease. Concho's lease is already restricted because it is in a designated potash area and is therefore subject to both state and federal rules and regulations that include designating a development area and a drilling island.

The Letter also inquired about any existing agreement between Concho and Holtec to limit its operations in the area. Although Concho has engaged in various conversations with, and requested information from, Holtec, Concho has not entered into such an agreement.

As discussed above, Concho is of course familiar with competing uses of the land and the subsurface, particularly in this area where grazing lessees operate and where potash mining occurs. Concho regularly works with grazing lessees to ensure surface operations do not impact grazing operations and vice versa. As to the subsurface, it has taken years, if not decades, for both the potash and oil and gas industries to conduct exhaustive studies and then agree how to conduct their respective operations without having a negative impact on the other. Extensive rules exist at both the state and federal level that both industries must abide by to conduct operations. Given the nature and extent of the radioactive waste and the likely permanence of the storage facility, Holtec's proposal is vague on the impact to other subsurface operations. Until and unless Holtec conducts scientific studies and provides data supporting its proposed use of the subsurface without negative impact to Concho's current and future operations underneath its oil and gas lease, Concho is unable to support Holtec's proposal.

No operation is risk free and certainly not any operation handling nuclear waste. The risks associated with transporting and storing such waste were seriously studied as part of New Mexico's acceptance of the Waste Isolation Pilot Project ("WIPP"). As part of New Mexico's acceptance of WIPP, assurances were made to prevent commercial spent fuel waste from being transported to and

stored in New Mexico. Holtec's proposal to build a nuclear waste storage facility violates those assurances.

With WIPP also came funding for substantial improvements to roads that would carry waste bound for WIPP. In addition, annual payments for numerous years were committed for purposes of maintaining infrastructure. In the case of Holtec's proposal there are no funds to improve roads or rail routes. Surely if such work was required for WIPP waste it also needs to be done for this waste. Also, in addition to federal oversight, the New Mexico Environment Department ("NMED") oversees WIPP's hazardous waste facility permit to ensure compliance. It does not appear that Holtec's operations will have any state oversight.

In addition, conditions have changed in Southeast New Mexico following WIPP's opening. The Permian Basin is now not only the most productive oil and gas basin in the United States, but it may also be the most productive basin in the world. At the very least, it is a world class oil and gas reservoir that is contributing to the energy independence of the United States, providing hundreds of thousands of jobs, and adding greatly to the economy of the state and to the revenues of state government. The dramatic increase in production has placed an incredible strain on infrastructure in the area. The shale boom has increased traffic on roadways to the point that Highway 285 is known as the death highway. Large truck traffic is constant and increasing. Adding even more large trucks carrying nuclear waste will exacerbate an already dangerous situation. A similar situation exists for transportation by rail. An increasing number of railcars transport sand and heavy equipment to the region, as well as transport oil and other products from the region. As a result of such increased activity, train derailments have increased. By adding transportation of nuclear waste via rail and truck, transportation safety may be further compromised. Such risks must be adequately mitigated by Holtec.

In conclusion, we join in with recent comments of Governor Michelle Lujan Grisham, that "Any disruption of agricultural or oil and gas activities as a result of a perceived or actual incident would be catastrophic to New Mexico...." Our employees work and live in New Mexico and we have a duty to look out for their welfare.

On behalf of Concho, thank you for this opportunity to express these concerns. Concho is one of the largest producers of oil and gas in Southeast New Mexico and holds over 160 State of New Mexico leases. Concho is committed to being a long-term partner in the production of oil and gas in New Mexico. Therefore, it is important to Concho that its opportunities are not unduly limited in order to continue to provide the many benefits that come from oil and gas production. Concho respectfully requests that the SLO carefully review Holtec's proposed plans to store nuclear fuel waste and reject their request to limit our oil and gas operations at the proposed site.

Sincerely,



Christopher Boehler  
Director, Government and Regulatory Affairs





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June 14, 2019

Mr. Ari Biernoff  
General Counsel  
New Mexico State Land Office  
310 Old Santa Fe Trail  
Santa Fe, New Mexico 87504-1148

Dear Mr. Biernoff:

We are in receipt of your May 31, 2019 letter regarding Holtec International's (Holtec) proposed siting of a nuclear waste storage facility in Southeast New Mexico and are pleased that you included EOG in the discussion of this very important issue for the State of New Mexico.

To date, EOG has not engaged in any discussions with Holtec about its proposed operation in New Mexico, nor has EOG entered into any agreements with Holtec. Without the benefit of any such discussions or reviewing the studies and analyses upon which Holtec made its determinations about the potential impact of its operations on oil and natural gas development, EOG is unable to provide a detailed response to the Holtec proposal.

EOG is generally concerned about Holtec siting the facility in a portion of New Mexico with a high level of oil and natural gas development and could reasonably expect that such siting would impact operations as well as future drilling and development in Eddy and Lea Counties, New Mexico.

We look forward to working with you and your team on a constructive solution to this matter that will allow New Mexico and its citizens to continue to benefit from responsible oil and natural gas development.

Sincerely,

A handwritten signature in blue ink, appearing to read "Gordon Goodman", with a long horizontal line extending to the right.

Gordon Goodman  
Director, Regulatory and Government Relations



Stephanie Garcia Richard  
COMMISSIONER

*State of New Mexico*  
*Commissioner of Public Lands*

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June 19, 2019

Krishna P. Singh  
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Camden, NJ 08104

Dear Dr. Singh:

I write regarding Holtec International's stated plans to build and operate a nuclear waste storage facility in western Lea County, New Mexico, near the Eddy County line. In the course of applying for a 40-year permit from the United States Nuclear Regulatory Commission (NRC) to deposit in New Mexico up to 120,000 metric tons of highly radioactive waste from nuclear facilities across the United States, Holtec has stated that its proposal enjoys "overwhelming support" in the state. In fact, a number of New Mexico industry associations, from the New Mexico Cattle Growers' Association to the Permian Basin Petroleum Association, recently have expressed serious concerns about – and in some instances outright opposition to – Holtec's proposal. Along with elected officials and non-profit organizations, they have raised significant questions about the effect of the proposed nuclear waste storage site on New Mexico's oil and gas industry, farm and ranch economy, and environment. This letter will not restate those concerns, which are a matter of public record.

Instead, as New Mexico's Commissioner of Public Lands, with direct oversight of mineral leasing at the location of Holtec's planned facility, I write to express my safety concerns and to address several misrepresentations that Holtec has made to the NRC and New Mexicans about its control of the proposed disposal site as well as agreements that it claims to have secured from New Mexico State Land Office mineral lessees. The State Land Office has reviewed a number of Holtec's submissions to the NRC, including the company's Facility Environmental Report (FER) and Safety Analysis Report (SAR). Those



submissions contain statements that have the potential, intended or not, to mislead federal regulators and the public alike, and require immediate correction.

The site for Holtec's proposed nuclear waste facility (the Site) is located in Section 13, Township 20 South, Range 32 East, and portions of Section 17 and 18, Township 20 South, Range 33 East, between the cities of Hobbs and Carlsbad. Holtec has repeatedly and publicly characterized the Site as under its control. *See, e.g.*, FER 2.2.1. In fact, the subject land is a split estate; while Eddy-Lea Energy Alliance, LLC privately owns the surface estate, the State of New Mexico, through the New Mexico State Land Office, owns the mineral estate. The State Land Office's control of the Site's mineral estate is not disclosed in the FER or other NRC submissions. To the contrary, in its filings with the NRC, Holtec appears to have entirely disregarded the State Land Office's authority over the Site's mineral estate. Holtec sent notice of its initial license application in March 2017 to over 60 elected and appointed government officials, but failed to include the State Land Office. The company's subsequent filings continue to ignore the State Land Office's legal interest in the Site. For example, Table 1.4.1 of the FER lists all applicable regulatory requirements, permits and required consultations – but conspicuously omits any reference to the State Land Office.

As you know, the Site is located within the Permian Basin, one of the world's most productive oil and gas-producing regions, and there is significant oil and gas development (as well as potash mining) in the Site's immediate vicinity. Holtec claims throughout its NRC submissions that it has secured the agreements of mineral lessees on or near the Site to forebear from certain development activities. For instance, Section 2.4.2 of the FER states that “[b]y agreement with the applicable third parties, the oil drilling and phosphate extraction activities have been proscribed at and around the site and would not affect the activities at the site.” Along similar lines, Section 2.6.4 of the SAR notes: “With regard to potential future drilling on the Site, Holtec has an agreement [2.6.9] with Intrepid Mining LLC (Intrepid) such that Holtec controls the mineral rights on the Site and Intrepid will not conduct any potash mining on the Site. Additionally, any future oil drilling or fracking beneath the Site would occur at greater than 5,000 feet depth, which ensures there would be no subsidence concerns [2.1.8].”

Holtec's claim that it has secured third-party agreements for control of the Site is incomplete at best. Site control generally refers to ownership of, or a leasehold interest in, a right to develop a particular tract of land. Holtec does not “control” the “mineral rights on the Site.” Instead, Holtec only has an agreement with a single company, Intrepid, relating to that company's potash mining – an agreement that has yet to be approved by the State Land Office, under whose authorization Intrepid conducts its mining activities on the Site. The State Land Office's oil and gas lessees, meanwhile, confirm they have not entered into agreements with Holtec to suspend or limit their oil and gas development to accommodate Holtec's planned nuclear waste disposal facility. In addition, there are other mineral resources potentially present on the Site that may fall within the State Land Office's mineral estate that are not addressed in Holtec's filings at all.

In addition to misstating its control over the Site, Holtec also treats as a foregone conclusion the State Land Office's ability and desire to restrict oil and gas drilling on the Site. Holtec, through the Eddy-

Lea Energy Alliance, has proposed that the State Land Office impose a negative easement called a “land use restriction or condition” on all mineral development on the Site, including a ban on oil and gas development between the surface and a depth of 3,000 feet, and a prohibition on any directional or horizontal wells bottomed beneath the site that Holtec believes might “disturb or conflict” with its use of the site. The State Land Office has not approved any such restriction, which would likely trigger legal challenges from businesses that already are conducting operations on the Site pursuant to their existing mineral leases.

The State Land Office’s oil and gas leases on and adjacent to the Site do not impose any depth restrictions on drilling activities. Contrary to Holtec’s assurances that “any future oil drilling or fracking ... would occur at greater than 5,000 feet depth,” the State Land Office’s analysis demonstrates the existence of numerous active oil and gas wells within a three-mile radius of the Site at depths of 5,000 feet or less.

In addition, two of the State Land Office lessees on or immediately adjacent to the Site, COG Operating, LLC and EOG Resources, Inc., raise significant concerns about the proposed project and the land use restriction that Holtec requires, particularly its implications for salt water disposal wells, pipelines, and horizontal wells underneath the Site that Holtec might determine – using unknown criteria – will “disturb or conflict” with its nuclear waste storage operations. Both companies advise that they will explore all legal options if the State Land Office were to impose a restriction on oil and gas activities that are permitted under their current leases, along the lines of what Holtec seeks. For those reasons, it is difficult to take at face value Holtec’s representation in its May 23, 2019 letter to the State Land Office that “Oil and Gas is not affected by the facility.”

The International Atomic Energy Agency appears to share the State Land Office’s and its lessees’ concerns about the unknown interaction between nuclear waste storage and preexisting oil and gas development on the very same tract of land. In a 2007 publication, it explains that “[a]ny potential site will require an adequately controlled single-use land area to accommodate storage facilities,” and that potential waste disposal sites should “avoid land with exploitable mineral and energy resources.” International Atomic Energy Agency, Selection of Away-From-Reactor Facilities for Spent Fuel Storage: A Guidebook, IAEA-TECDOC-1558 (Sept. 2007) at 3.2.2 (pp. 23-24) (emphases added). Despite Holtec’s assurances to the NRC and to New Mexicans, it does not appear that your company has undertaken a thorough and critical analysis of the possible conflicts between your nuclear waste storage proposal and the vital economic activities that are already taking place on the Site.

Finally, while I appreciate Holtec’s attendance at a February 19, 2019 meeting at the State Land Office to overview the company’s plans, a number of serious questions that I and my staff raised at that meeting remain unanswered. Holtec to date has not responded to our inquiry about the effects that its proposed operations will have on oil and gas lessees’ present or future fracking activities. In addition, we asked Holtec to identify the worst case scenario for an accident or other adverse event at the Site, and explain how the company would respond to such a contingency. To date, we have not received any

meaningful response to this inquiry, an omission that requires the State Land Office to assume that Holtec has not sufficiently analyzed the risks posed by its planned operations or is unwilling to do so.

If Holtec's proposal moves forward, nuclear waste likely would remain in southeastern New Mexico until 2048 at the earliest, and possibly much longer since there is no designated permanent repository anywhere in the nation for high-level radioactive waste. As the Commissioner of Public Lands, I am deeply concerned about the misrepresentations Holtec made to the NRC about purported agreements and restrictions regarding mineral leasing at the Site that do not exist and may very well never exist. Understanding the extent of oil and gas operations and other mining activities that may be conducted at the Site is essential to accurately assessing the risks of Holtec's planned nuclear storage operations. Holtec's NRC filings are materially inaccurate in this regard. Given these safety concerns, and lack of consideration for the State Land Office's fiduciary responsibilities, I do not believe that Holtec's proposed nuclear storage project is in the best interests of the State Land Office, its lessees, and its beneficiaries.

Sincerely,



Stephanie Garcia Richard  
Commissioner of Public Lands

cc: Hon. Rick Perry  
Secretary, United States Department of Energy

Hon. Kristine Svinicki  
Chair, United States Nuclear Regulatory Commission

Hon. Michelle Lujan Grisham  
Governor of the State of New Mexico